



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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FIFTH SECTION

Application no. 34068/21
GREENPEACE NORDIC and Others
against Norway
lodged on 15 June 2021
communicated on 16 December 2021

SUBJECT MATTER OF THE CASE

The applicants are two organisations (Greenpeace Nordic and Young Friends of the Earth (Nature and Youth)) and six individuals who are affiliated with one of them.

In 2013 the Norwegian Parliament consented to open the southeast Barents Sea under section 3-1 of the Petroleum Act with a view to granting petroleum production licences.

On 10 June 2016 the Norwegian Government (the Ministry of Petroleum and Energy) issued under section 3-3 of the Petroleum Act ten petroleum production licences for a total of 40 blocks or parts of blocks on the Norwegian continental shelf in the marine areas of the south and southeast Barents Sea.

On 18 October 2016 the two organisation applicants (Greenpeace Nordic and Young Friends of the Earth Norway) brought an action for judicial review in the Oslo City Court against the State represented by the Ministry of Petroleum and Energy, contesting the validity of the said decision to issue the production licences. The organisations argued that the decision was in violation of Article 112 of the Constitution, which relates, *inter alia*, to the right to an environment that is conducive to health, and entirely or partially invalid because it breached sections 3-3 in conjunction with 3-1 of the Petroleum Act, as interpreted in the light of Article 112 of the Constitution.

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In the alternative, it was argued that the decision was invalid due to a number of procedural errors.

On 4 January 2018 the Oslo City Court held that the decision was valid.

The two applicant organisations appealed against the Oslo City Court’s judgment to the Borgarting High Court. As new and alternative grounds for invalidity, they claimed that the decision was in violation of Articles 93 and 102 of the Constitution and Articles 2 and 8 of the Convention. The contentions relating to sections 3-3 in conjunction with 3-1 of the Petroleum Act were abandoned. Otherwise, the organisations maintained the invalidity grounds that they had relied on before the High Court.

On 23 January 2020 the Borgarting High Court dismissed the appeal.

The two applicant organisations appealed against the Borgarting High Court’s judgment to the Supreme Court. In the appeal they challenged the High Court’s application of the law and its findings of fact with regard to Article 112 of the Constitution. In so far as the appeal relied on procedural errors, it was limited to the licences issued in respect of the southeast Barents Sea. A reservation was made in the appeal to rely on Articles 93 and 102 of the Constitution and Articles 2 and 8 of the Convention.

The Supreme Court’s Appeals Committee granted the applicant organisations leave to appeal against the Borgarting High Court’s judgment on 20 April 2020.

At the Supreme Court’s hearing, the applicant organisations relied on Articles 93 and 102 of the Constitution and Articles 2 and 8 of the Convention as grounds for declaring the decision invalid.

In its judgment of 22 December 2020 the Supreme Court – sitting in a plenary formation – dismissed the appeal by 11 votes to 4.

In their application to the Court the applicants rely on Articles 2 and 8, Article 13 in conjunction with Articles 2 and 8, and Article 14 in conjunction with Articles 2 and 8 of the Convention.

QUESTIONS TO THE PARTIES

1. Does each of the applicants have *locus standi* under Article 34 of the Convention with regard to the alleged violations that each of them refers to in the application (Articles 2, 8, 13 in conjunction with 2 and 8 and 14 in conjunction with 2 and 8)?

2. Has each of the applicants exhausted all domestic remedies within the meaning of Article 35 of the Convention in respect of each of the complaints lodged with the Court (Articles 2, 8, 13 in conjunction with 2 and 8 and 14 in conjunction with 2 and 8)?

3. In the light of the domestic proceedings' having concerned judicial review of the decision of 10 June 2016 to issue ten petroleum production licences under section 3-3 of the Petroleum Act:

(a) Observing the reasons provided by the Supreme Court in paragraphs 148 and 161-162 of its judgment: to what degree do the applicants' arguments, in so far as they might be perceived to concern environmental consequences of the respondent State's petroleum activities in a more general manner and its policies in that regard, fall within the scope of the case before the Court?

(b) Could the applicants have brought their Convention grievances in respect of the respondent State, in so far as they might be perceived to rely on such arguments as mentioned in (a) above, before the domestic courts in any other manner?

(c) Observing the reasons provided by the Supreme Court in paragraphs 167 *et seq* of its judgment: what is the link between the concrete decision of 10 June 2016 and the matters which the applicants argue entail violations of their rights under the Convention?

(d) *Inter alia*, observing the reasons provided by the Supreme Court's minority in paragraphs 272 *et seq* of its judgment, and assuming that the purpose of issuing production licences is ultimately the subsequent extraction of oil and gas: to what degree – factually and legally – may the applicant organisations' arguments concerning the environmental consequences of any specific petroleum production and extraction in continuation of the licences granted in the decision reviewed by the domestic courts realistically be taken into account at any later stages of the administrative process relating to production (such as in connection with approval of plans for development and operation/exploitation of petroleum deposits under section 4-2 of the Petroleum Act)? Will the scope, depth, quality and efficiency of any such subsequent assessment be such as to render unnecessary under the Convention an assessment, prior to the granting of the licences, of the environmental consequences of future extraction of oil and gas?

4. In general: Have there, in the light of the applicants' arguments and the scope of the case before the Court, been any violations of:

a) Article 2 of the Convention?

b) Article 8 of the Convention?

c) Article 13 in conjunction with Articles 2 and/or 8 of the Convention?

d) Article 14 in conjunction with Articles 2 and/or 8 of the Convention in respect of the different applicants on the grounds upon which they rely (particularly "age" and "association with a national minority")?

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APPENDIX

No.	Applicant's Name	Nationality	Place of residence
1.	GREENPEACE NORDIC	Norwegian	Oslo
2.	YOUNG FRIENDS OF THE EARTH NORWAY	Norwegian	Oslo
3.	Lasse Eriksen BJORN	Norwegian	Oslo
4.	Mia Cathryn Haugen CHAMBERLAIN	Norwegian	Oslo
5.	Gaute EITERJORD	Norwegian	Oslo
6.	Gina GYLVER	Norwegian	Oslo
7.	Ella Marie Haetta ISAKSEN	Norwegian	Oslo
8.	Ingrid Eline Morsund SKJOLDVAER	Norwegian	Oslo