To the European Court of Human rights

Oslo, 29.06.2022

Written observations on behalf of Applicants in app. no. 34068/21, GREENPEACE NORDIC and Others v. Norway

Observations in reply to the Respondent's submissions

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1. INTRODUCTION AND SUMMARY

1.1 Introduction

1. The climate crisis not only threatens but harms the rights enshrined in ECHR Articles 2 and 8.

2. The line of argumentation followed by the State would leave the Convention devoid of protection against what is becoming a human rights catastrophe.[1] The State's argumentation, and the Norwegian regulatory framework governing the petroleum sector, negligently overlook any consideration of the massive disproportionality between the younger birth cohorts having to carry the most severe burdens of climate change, and the generation now representing governmental power in Norway.

3. The Norwegian State's present view is that enabling the search for *undiscovered* oil and gas is in the interest of society. This view as a whole runs contrary not only to the interest of the Applicants, but also to the existing scientific certainty that "[n]o fossil fuel exploration"[2] nor approval of new oil and gas fields are aligned with the goal to achieve net-zero by 2050,[3] and to the geopolitical view shared by every signatory to the Paris Agreement and the Glasgow pact.[4] As it

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[1] The UN Secretary General Antonio Guterres described the latest scientific report on the global climate crisis as "an atlas of human suffering", noting that "delay means death" and that "It is essential to meet the goal of limiting global temperature rise to 1.5 degrees". See United Nations (8 February 2022). "António Guterres (UN Secretary-General) to the Press conference Launch of IPCC Report". *UN Web TV*, available at: https://media.un.org/en/asset/k1x/k1xcijxjhp .

[2] IEA (2021), *Net Zero by 2050*, IEA, Paris, p. 51 https://www.iea.org/reports/net-zero-by-2050.

[3] See IEA (2021), *Net Zero by 2050*, IEA, Paris, p. 21 https://www.iea.org/reports/net-zero-by-2050 ("Beyond projects already committed as of 2021, there are no new oil and gas fields approved for development in our pathway [to net-zero]").

[4] Paris Agreement to the UNFCCC, 12 December 2015, T.I.A.S. No. 16-1104, available at https://treaties.un.org/doc/Treaties/2016/02/20160215%2006-03%20PM/Ch_XXVII-7-d.pdf (hereinafter: "Paris Agreement"); Glasgow Climate Pact to the UNFCCC, 13 November 2021, FCCC/PA/CMA/2021/L.16, available at: https://unfccc.int/sites/default/files/resource/cma2021_L16_adv.pdf.

stands, the continuation of *current* implemented policies is projected to lead to 3.2°C warming by 2100,[5] and no developed country is reducing emissions at a rate required to keep global warming below the 1.5°C limit.[6]

4. The asymmetrical nature of the burdens borne by climate change on the one hand, and the dissipating power to act in due time on the other hand, call for the application of human rights law to draw boundaries against the misuse of power. The Norwegian institutions' (including its courts') unwillingness to compensate for this asymmetrical distribution of power is in stark contrast with the German Federal Constitutional Court's view in *Neubauer* on the same problem, e.g, in § 192: "*It follows from the principle of proportionality that one generation must not be allowed to consume large portions of the CO2 budget while bearing a relatively minor share of the reduction effort, if this would involve leaving subsequent generations with a drastic reduction burden and expose their lives to serious losses of freedom* (…)".[7]

5. The same asymmetrical distribution of power will also impact the versatile balancing and proportionality tests that the Court must perform when assessing the complaint,[8] leaving little room for a margin of appreciation in the hands of the State of Norway.

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[5] See IPCC AR6 (2022). "Working Group III Report on Mitigation of Climate Change, Summary for Policymakers". P. 21, § C.1.3, available at https://www.ipcc.ch/report/ar6/wg3/ (hereinafter: "IPCC Mitigation Summary for Policymakers") ("In modelled pathways consistent with the continuation of policies implemented by the end of 2020, GHG emissions continue to rise, leading to global warming of 3.2 [2.2–3.5] °C by 2100 (*medium confidence*)").

[6] See IPCC AR6 (2021). "Working Group III Report on Mitigation of Climate Change, Technical Summary". P. 18, Fig. TS.4, available at https://www.ipcc.ch/report/ar6/wg3/ (hereinafter: "IPCC Mitigation Technical Summary") (chart showing that current emissions reductions are insufficient to limit warming to 1.5°C).

[7] Judgment from the German Constitutional Court, BVerfGE, 1 BvR 2656/18, Neubauer, et al. v. Germany, 24 March 2021, § 192, available at https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2021/03/rs20210324_1bvr265618.html (hereinafter: "Neubauer Decision"). See also id. at § 142.

[8] For a comprehensive analyses of the Courts 'fair balance' test, see Kobylarz, N (2018) "The European Court of Human Rights: An Underrated Forum for Environmental Litigation". *5th European Environmental Law Forum's Book*, p. 110, available at https://www.academia.edu/76928040/The_European_Court_of_Human_Rights_An_Underrated_Forum_for_Environmental_Litigation (hereinafter: "Kobylarz Analysis").

6. As the Applicants see it, the question is not if the Convention shall secure their individual rights in relation to climate change and the licensing for unexplored areas. The main question arising from this case is how the Convention must be applied to secure sufficient protection against the foreseeable consequences of enabling the search for *undiscovered* oil and gas. The harms inflicted by climate change on human rights are already occurring and will worsen in the future.[9] Regardless of whether any particular act (such as licensing) or omission (such as failure to conduct environmental assessments) represents an acute problem in isolation, the sum of such actions and omissions are completely devastating for the lives of the Applicants.

7. Whilst the Respondent points towards the Norwegian political majority being positive towards the licensing in question and more generally to the policy of seeking as much undiscovered acreage as possible,[10] the Applicants' view is that this consensus, which also implicates Norwegian institutions other than Parliament, is an inherent part of the violation of rights that this case is about. Even though the Norwegian Supreme Court (NSC) clearly stated that the law requires combustion emissions (i.e., scope 3 emissions or exported emissions) to be assessed and evaluated at the PDO-stage,[11] this has not been done by the government for the four or more PDOs that have been approved[12] since the NSC-judgment on 22 December 2020. The Applicants, in any case, also

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[9] IPCC AR6 (2022). "Working Group II Report on Impacts, Adaptation and Vulnerability, Summary for Policymakers." P. 13, § B.1.5, available at https://www.ipcc.ch/report/ar6/wg2/ ("observed climate change has caused impacts on human health, livelihoods, and key infrastructure (*high confidence*)") (hereinafter: "IPCC Adaptation Summary for Policymakers").
[10] The Respondent's Written Observations, §§ 8, 57, 147.
[11] Nature and Youth Norway, Greenpeace Nordic v Norway, HR-2020-2472-P (sak nr. 20-051052SIV-HRET), (Supreme Court of Norway), 22 December 2020, §§ 222-223, available in Norwegian and English at https://www.regjeringen.no/contentassets/4a0732c2360c4f7ca197ce19986f8f0f/dom-hoyesterett.pdf https://www.greenpeace.org/static/planet4-norway-stateless/2022/04/48cc2803-annexes.pdf (hereinafter: "NSC Judgment").
[12] The Norwegian National Institution for Human Rights (NHRI) (2022) Report on '§ 112 of the Constitution and plan for development and operation of petroleum deposits,' § 2.4, available at: https://www.nhri.no/wp-content/uploads/2022/03/Utredning-om-Grunnloven-%C2%A7-112-og-plan-for-utbygging-og-drift-av-petroleumsforekomster.pdf (hereinafter: "The NHRI Report on § 112"). The approved PDOs are for the fields Kobra East and Gekko, Kristin Sør, Troll and Breidablikk.

maintain that the postponement of the assessment to the PDO stage is in itself a violation of their rights.

8. The licences in question are expected to produce yields in the period of ~2030-2050, by which time mitigation efforts are highly unlikely to be capable of limiting warming to 1.5°C.[13] The State's line of reasoning shows that the Respondent is completely overlooking that the crux of the case is how to secure protection against breaches of rights continuing in the future. The Respondent's persistent argumentation regarding the Ukraine war must be understood in this context. This case is not about ongoing production but rather about new production from undiscovered acres in areas where there is no infrastructure for the production and transportation as of today, cf. the attached maps (that were part of the case documentation at all levels of domestic court) showing existing substrata's infrastructure and the licenced blocks.

Annex 1: Infrastructure on the Norwegian Continental Shelf. Location of licences issued in the 23rd Concession round.

9. The case is also about the current and ongoing harm resulting from Respondent's failure to take measures to curb further expansion of production into novel areas (to abstain is also a measure). The case decided by the NSC was never about the phasing out of the ongoing Norwegian petroleum production.[14]

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[13] See IPCC Mitigation Summary for Policymakers (supra n.5), p. 18, n.24 ("mitigation after 2030 can no longer establish a pathway with less than 67% probability to exceed 1.5°C").

[14] The written submission submitted in this case (Application no. 34068/21) by the International Commission of Jurists (ICJ) and it's Norwegian Section (ICJ-Norge) on 4 May 2022 precisely outlines the differences between discontinuation (phase-out), the continuation at present levels, and the expansion of the Norwegian petroleum industry in Norway with references to, e.g., Norwegian Petroleum Directorate's resource classification system, cf. item III of the written submissions. This written submission has been available to the applicants via websites. This writ does not refer to other written submissions by intervenors. This should not be read as an implication that the applicants do not see the remaining written submissions by intervenors as highly relevant. https://www.icj.org/wp-content/uploads/2022/05/ECtHR-Greenpeace-Nordic-and-others-v-Norway-Intervention-Final-2022.pdf

The case heard by the NSC, and the Applicants' complaint, are both about undiscovered resources.[15]

1.2 Summary

10. First, it should be noted that this document does not follow the consecutive order of the questions posed by the Court to the Respondent, but rather uses a more dynamic approach relating to the topics referenced by each question. This was done to allow for a more readily coherent and accessible reading of the issues in this case.

11. Following a brief introduction to the matters in this case, some of the factual errors made in the Respondent's written observations are addressed and corrected in Section 2. This includes the degree to which a Convention violation was argued on a domestic level, a consideration of whether the disputed licences were de facto relinquished, and the irrelevance of the distinctions between gas and oil persistently emphasised by the Respondent. This section also elaborates on the physical and mental health impacts that climate change is causing in young people, which the Respondent fails to consider.

12. Section 3 addresses the Respondent's observations on the law, with consideration given first to the issue of admissibility. It argues that the victim concept must be "interpreted in an evolutive manner" such that the applicant organisations should be considered victims within the meaning of Article 34 as they represent their members' interests. This section also contests the *actio popularis* claim made by the Respondent by arguing that the individual applicants do not represent the interest of the society as a whole simply because the issue at hand can affect many people. Further, in terms of admissibility, it argues that the individual Applicants did in fact exhaust all domestic measures

[15] The Norwegian Petroleum Directorate (NPD) (2018) "The Norwegian Petroleum Directorate's resource classification system 2016." Available at: https://www.npd.no/globalassets/1-npd/regelverk/forskrifter/en/classification-of-petroleum-resources.pdf

by virtue of their membership in the relevant organisations as well as their involvement in the domestic proceedings.

13. Section 3 then proceeds to address the merits of the case, including the questions posed by the Court as well as the Respondent's reply. It argues for a causality framework necessary to make the ECHR's safeguards "practical and effective" in climate cases, and outlines the Respondent's procedural obligations under Articles 2 and 8, as well as the Applicants' substantive rights under Articles 2, 8, 13, and 14.

14. More specifically, Section 3.3 replies at large to Questions 4A, 4B, and also - as indicated by headlines - to Questions 3C (in item 3.3.2), 3A (in item 3.3.3), and 3D (in item 3.3.5) in that order. Question 3B is answered in item 3.3.8.

15. Section 4 respectfully specifies the Applicants' procedural requests of the Court. These are comprised of a request for an oral hearing, including the opportunity to present evidence by expert testimony, and the opportunity for the Applicants themselves to be heard by the Court.

16. Section 6 concludes with a request for just satisfaction in the form of pecuniary damages for legal costs, non-pecuniary damages set at the Court's discretion, and general measures to ensure the protection of the Applicants' human rights, and the preservation of the Paris Agreement's below 1.5°C-target.

2. REPLY TO THE RESPONDENT'S OBSERVATIONS ON THE FACTS

2.1 From the inception of the case, Applicants have consistently argued that the impugned decision violated the Convention.

17. The Respondent incorrectly asserts that the "organisations did not claim that the impugned decision violated the Convention [before the District Court]" and that

"this was first introduced as a new and alternative grounds for invalidity before the High Court".[16]

18. In fact, the Applicants invoked the Convention in the initial submission[17] to Oslo District Court. In the final written summary of the allegations (Norwegian: "sluttinnlegg") to the same court, the Applicants, as an alternative to invoking constitutional and domestic law, invoked "*Norway's international law- and human rights law obligations*", the latter which is a clear reference to the Convention. In the leapfrog appeal to the NSC (which was referred to the Court of Appeals - Borgarting Lagmannsrett.) The Applicants clarified that the Oslo District Court had misinterpreted and referenced the Applicant's allegations wrongfully, cf. item 6.2 of the document which is attached.

Annex 2: Final written summary of the allegations to Oslo District Court dated 6 November 2017.

Annex 3: Leapfrog appeal to the NSC dated 5 February 2018.

19. Respectfully, the Court should notice that in the Court's letter dated 10 January 2022, the description of the subject matter of the case is imprecise where the Court states that "As *new* and alternative grounds for invalidity, they claimed that the decision was in violation (...) and Articles 2 and 8 of the Convention" (emphasis added).

2.2 The Applicants claimed procedural errors under the Convention for all the disputed licences

20. The Respondent claims that the "applicant organisations explicitly did not claim that the [procedural errors] were made when awarding the licences in the Barents Sea south".[18] The organisations claimed that all 10 licences, including the licences in the Barents Sea south, violated the Convention, and this claim

[16] The Respondent's Written Observations § 32.
[17] In Norwegian: stevning.
[18] The Respondent's Written Observations § 33.

was, inter alia, based on a claim that the licences violated the organisations' procedural rights under the Convention, namely the right to a due process before decisions with potentially severe impacts on the Applicant's rights under the Convention are made.

2.3 It appears unclear if all the licences have *actually* been relinquished

21. In what seems to be an attempt to trivialise the disputed licences, the Respondent highlights the fact that "all of the licences awarded in 23rd licensing round have since been relinquished".[19]

22. As there are no viable alternatives other than to dispute these licences at a stage in which it is unknowable whether or not a licence will result in exploration, the fact that a licence did not lead to exploration in hindsight cannot be decisive. The licences must be assessed on the basis of their aim to explore as much oil and gas as commercially possible.

23. Moreover, the applicants have not been able to fully verify that all disputed licences have *in reality* been relinquished. Formally, it seems clear that all the licences have been relinquished. However, the operator that was awarded one of the licences, PL 855, announced in 2019 that it had found an oil discovery with recoverable resources.[20]

24. Even if this licence has been formally relinquished, the geographical area covered by this licence (PL 855) has been awarded through *another licensing system* to the same operator. The Applicants have not been able to clarify the connection between the PL 855-licence and the new licence in the same geographical area. The Applicants therefore respectfully ask the Respondent to clarify this sequence of events.

25. Furthermore, the 23rd licensing round is also part of an integrated system which aims to explore as much oil and gas as economically possible. Based on the

[19] The Respondent's Written Observations § 4.
[20] Equinor (August 2019) "New light oil discovery in the Barents Sea." *Equinor*, available at: https://www.equinor.com/news/archive/2019-08-oil-discovery-barents

same grounds and procedure as the 23rd licensing round, the Respondent has offered 12 new licences in the 24th licensing round[21] and 4 new licences in the 25th licensing round.[22] Inherently, it is not possible to predict which of these licences will lead to oil or gas production. At the same time, the sum of these licences have in the past led to vast amounts of oil and gas production, and if nothing changes, these licences will also lead to vast amounts of oil and gas production in the future.

2.4 The licences aimed to facilitate exploration and production of both gas and oil

26. The Respondent strongly emphasises that the disputed licences mainly aimed to pursue exploration of gas: "The impugned decision ... was made in the hopes of finding large reservoirs of natural gas".[23]

27. Respectfully, the Applicants do not find this to fully reflect the written grounds that were given before the opening of the Barents Sea Southeast and the impugned decision. Even though it is true that the petroleum authorities expected *more* gas than oil, they also expected (and hoped) to find significant quantities of oil.[24]

28. It is not entirely clear why the Respondent emphasises the gas-aspect of the licences so strongly, but it appears to be motivated by the notion that it is easier to defend gas exploration than oil exploration, namely with reference to the EU taxonomy, and also the Ukraine war.[25] However, it seems that the Respondent is

[21] NPD (June 2019) "12 Production Licences Offered to 11 Companies in the 24th Licensing Round." *Norwegian Petrolem Directorate*, available at: https://www.npd.no/en/facts/production-licences/licensing-rounds/24th-round/12-production-licences-offered-to-11-companies-in-the-24th-licensing-round/.

[22] NPD (June 2021) "25th Round." *Norwegian Petroleum Directorate*, available at: https://www.npd.no/en/facts/production-licences/licensing-rounds/25th-round/.

[23] The Respondent's Written Observations § 3. See also §§ 7-10, 23, 27.

[24] The Norwegian Government, White Paper 36 (2012-2013) available at: https://www.regjeringen.no/no/dokumenter/meld-st-36-20122013/id725083/?ch=1

[25] See The Respondent's Written Observations §§ 8-10. See also id. at §11 ("the relevant context in which Norway strives to balance both its role as a stable, predictable, democratic supplier of energy, while at the same undertaking a wide range of efforts both domestically and abroad in order to accelerate the necessary transition to renewable energy sources").

not considering that, even though EU taxonomy *may* cover gas in a *transition period*, gas activities must also be fully replaced by renewables or low-carbon gases by December 2035.[26] This is important in context of the impugned licences, since gas produced from the licences was expected to be produced in the period of ~2030-2050. Furthermore, the decision to include gas in the list of environmentally sustainable economic activities is not final and is highly controversial,[27] and current "production plans and projections would lead to…57% more oil and 71% more gas than would be consistent with limiting global warming to 1.5°C".[28]

29. It is fundamentally disingenuous for the State to seek to justify a decision made in 2016, by referencing Russia's invasion of Ukraine six years later, in 2022, and to use this as grounds for continuous search for oil and gas today, which cannot be brought to market until 2030 and beyond.[29] Indeed, increased reliance on gas exploration today involves increased threats to peace, as the Ukrainian Energy Transition Coalition notes:

> "Including gas projects in the EU taxonomy will increase Europe's dependency on gas – particularly Russian gas, as Europe is unlikely to replace all its gas demand with gas from the Middle East or the United States. Russia could earn an extra €4 billion per year from a taxonomy-aligned expansion of gas capacity, totaling €32 billion by 2030, while the inclusion of nuclear energy in the taxonomy would create opportunities for

[26] Spinaci, S (2022) "EU Taxonomy: Delegated Acts on Climate, and Nuclear and Gas." *European Parliamentary Research Service*, p. 6, available at: https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/698935/EPRS_BRI(2022)698935_EN.pdf.

[27] The European Parliament (June 2022) "Taxonomy: MEPs Object to Commission's Plan to Include Gas and Nuclear activities." *Press Release*, available at https://www.europarl.europa.eu/news/en/press-room/20220613IPR32812/taxonomy-meps-object-to-commission-s-plan-to-include-gas-and-nuclear-activities; See also Brooks, C (February 2022) "EU Taxonomy Adds Gas, Nuclear Despite Veto from EC's Own Experts." *Clean Energy News*, available at: https://cleanenergynews.ihsmarkit.com/research-analysis/eu-taxonomy-adds-gas-nuclear-despite-thumbsdown-from-ecs-own-e.html.

[28] SEI, IISD, ODI, E3G, and UNEP. (2021). The Production Gap Report 2021, 4, available at: https://productiongap.org/wp-content/uploads/2021/11/PGR2021_web_rev.pdf (hereinafter: "2021 Production Gap Report").

[29] See IPCC Mitigation Summary for Policymakers (supra n.5), p. 18, n.24 ("mitigation after 2030 can no longer establish a pathway with less than 67% probability to exceed 1.5°C").

Russian state-owned nuclear power company Rosatom to secure a share of an estimated €500 billion of potential investment in new EU nuclear capacity".[30]

2.5 Clarification regarding applicants

30. First, the Applicants are referred to in accordance with the numbers assigned to them in the original Application as well as the Respondent's Written Observations. In § 85 and footnote 29, the Respondent raises the issue that one of the Applicants, Applicant 5, does not mention "any connection to the Sámi community in the individual statement". To avoid any confusion, we confirm that Applicant 5 is not part of the indigenous Sámi community; however, Applicant 2 is a part of the indigenous Sámi community, as indicated by her statements relating to the effects that climate change is having on the fishing and reindeer industries in her regions.

2.6 Further observations on the impacts of the Respondent's actions and omissions regarding climate change on Applicants

31. Applicants 1-6 are all young people who are knowledgeable of the climate crisis, and are actively advocating for action against it, thus carrying a much heavier burden than other parts of society. As the most adverse effects of climate change will manifest in the future, it is today's youth and tomorrow's succeeding generations that will pay the highest price and thus are most affected by climate change. Even today, younger age groups - particularly children[31] - are especially vulnerable to the effects of climate change, especially in terms of mental

[30] Energy Transition Coalition (2022) "Appeal from Ukraine to Members of the European Parliament: Make EU Taxonomy Free from Gas and Nuclear." *Energy Transition*, available at: https://energytransition.in.ua/zvernennia-ukrainy-do-deputativ-yevropeyskoho-parlamentu-vykliuchyty-haz-ta-iadernu-z-taksonomii-yes-appeal-from-ukraine-to-members-of-the-european-parliamen-make-eu-taxonomy-free-from-gas-and-nuclear/.

[31] For example, children are uniquely vulnerable to food safety risks that can cause cancer and stunting in children. See IPCC AR6 (2021). "Working Group II Report on Impacts, Adaptation and Vulnerability, Technical Summary." P. 18, § B.5.5, available at https://www.ipcc.ch/report/ar6/wg2/ (hereinafter: IPCC Adaptation Technical Summary) ("Climate-related food safety risks have increased globally (*high confidence*). These risks include…mycotoxins associated with cancer and stunting in children (*high confidence*)").

health,[32] displacement,[33] water insecurity,[34] weather-related mortality,[35] economic livelihood,[36] and malnutrition.[37]

32. Second, Applicants 4, 2 and 6 are part of the Sámi indigenous people, who will also have to bear a much heavier burden than the general society as a whole.[38]

33. Third, all the Applicants experience harmful psychological impacts that have a severe effect on their lives. They experience emotional distress, fear for the future, and their life-choices are affected by the climate crisis. They already suffer harms and face increased risk of harm and irreversible impacts in the future.

34. The Applicants strongly disagree with the implication that these psychological responses are a subjective choice they make, as implied by the Respondent when arguing that the emphasis on the Applicants' anxiety (described as a "concern")

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[32] See IPCC Adaptation Summary for Policymakers (supra n.9), p. 17, § B.4.4 ("Mental health challenges…are expected to increase…particularly for children, adolescents, elderly, and those with underlying health conditions (*very high confidence*)").

[33] See, e.g., IPCC Adaptation Technical Summary (supra n.31), p. 36, § TS.C.9 ("Climate change increases risks for a larger number of growing cities and settlements…Most at risk are women and children…(*high confidence*)").

[34] See IPCC Adaptation Technical Summary (supra n.31), p. 15, § TS.B.4.1 ("Water insecurity disproportionately impacts the poor, women, children, Indigenous Peoples…(*high confidence*)").

[35] See IPCC Adaptation Technical Summary (supra n.31), p. 16, § TS.B.4.4 ("Observed mortality and losses due to floods and droughts are much greater for…children, Indigenous Peoples, and the elderly due to historical, political, and socio-economic inequities (*high confidence*)").

[36] See IPCC Adaptation Technical Summary (supra n.31), p. 23, § TS.B.9.3 (2021) ("Economic livelihoods that are more climate sensitive have been disproportionately degraded by climate change (*high confidence*)…the poor, women, children, the elderly, and Indigenous populations have been especially vulnerable…(*high confidence*)").

[37] See IPCC Adaptation Technical Summary (supra n.31), p. 18, § TS.B.5.4 ("Climate change has contributed to malnutrition in all its forms…children and pregnant women experience disproportionate adverse health and nutrition impacts (*high confidence*)"). See also id. at 34, § TS.C.6.4 ("Near-term projections (2030) of undernutrition are the highest for children (*confidence*)").

[38] See IPCC Adaptation Technical Summary (supra n.31), p. 16, § TS.B.4.4 ("vulnerable populations [include] the poor, women, children, Indigenous Peoples, and the elderly due to historical, political and socio-economic inequities (*high confidence*)"); id. at 20, § TS.B.7.2 ("Climate change is impacting Indigenous Peoples' ways of life (*very high confidence*), cultural and linguistic diversity (*medium confidence*), food security (*high confidence*), and health and wellbeing (*very high confidence*)"). See also IPCC Adaptation Summary for Policymakers (supra n.29), p. 14, § B.2.4 ("Vulnerability at different spatial levels is exacerbated by inequity and marginalization…especially for many Indigenous Peoples and local communities (*high confidence*)").

would "make the 'victim test' completely subjective".[39] Anxiety is undoubtedly a result of objective facts that naturally trigger an anxious response. To further substantiate the seriousness of climate impacts on mental health, the Applicants submit that there have been recent studies on the matter. The studies show that the psychological impact of climate change is an identifiable and measurable[40] rational response[41] to an enormous crisis, and that it has been correlated with harmful, unevenly-distributed[42] mental health outcomes.

35. Climate-related mental health impacts have been characterised by experts as "representing a different level of magnitude than the focus of typical studies on risk", and have been described "as a potential loss of ontological security (…)".[43] This characterisation is also mirrored in Applicant 5's statement that she has suffered from "several bouts of what some might refer to as 'climate anxiety,' an all-encompassing fear of the state of the future".[44]

36. Studies show that the psychological impacts of climate change encompass a number of harmful mental health outcomes, including insomnia,[45] cognitive

[39] The Respondent's Written Observations § 84.
[40] See Clayton, S and Karazsia, B (2020) "Development and Validation of a Measure of Climate Change Anxiety." *Journal of Environmental Psychology* 69, p. 8, available at https://www.sciencedirect.com/science/article/pii/S0272494419307145?casa_token=FKo35q2GoFYAAAAA:35T_3YCp3TPeBBffNjlaR8T4RmneIosdE3qS5nVQ_SB1TfrfNI0NblXQEPyZdpYCPXsudpY ("The results of these studies indicate that climate change anxiety can be identified and reliably measured"); Hogg, T et al. (2021) "The Hogg Eco-Anxiety Scale: Development and Validation of a Multidimensional Scale." *Global Environmental Change* 71, p. 7, available at https://www.sciencedirect.com/science/article/pii/S0959378021001709?casa_token=PI7KfCKToC0AAAAA:FcShEJrM2sPF7IhiXUZxZSGJcFhmO_eClzit1LaG3VtDo1olEjaXyLRXsXtuM6tqGH_4rlI ("our findings support ecoanxiety as a quantifiable psychological experience that is reliably measured using the 13-item Hogg Eco-Anxiety Scale").
[41] See Hogg, T et al. (2021) "The Hogg Eco-Anxiety Scale: Development and Validation of a Multidimensional Scale." *Global Environmental Change* 71, p. 8 ("Eco-anxiety and climate change anxiety are *rational* responses, given the enormity of the crisis").
[42] See, e.g., Clayton, S (2020) "Climate Anxiety: Psychological Responses to Climate Change." *Journal of Anxiety Disorders* 74, p. 3 ("In general, younger age groups reported higher scores than older adults"). See also id. at 4 ("it seems likely that climate anxiety may be or may become more prevalent among indigenous groups").
[43] Clayton, S (2020) "Climate Anxiety: Psychological Responses to Climate Change." *Journal of Anxiety Disorders* 74, p. 2.
[44] Applicant 5's Written Statement of Evidence to 34068/21 the Norwegian Supreme Court (Annex 1, p. 13).
[45] See generally Ogunbode, C et al. (2021) "Negative Emotions about Climate Change are Related to Insomnia Symptoms and Mental Health: Cross-Sectional Evidence from 25 Countries." *Current Psychology*, available at https://link.springer.com/article/10.1007/s12144-021-01385-4.

impairment and functional impairment,[46] and are often a significant factor in decisions to not have children.[47] The Applicants are already suffering from these mental health effects. For example, Applicants 3 and 4 "feel climate sorrow",[48] while Applicant 1 feels that the "ongoing climate crisis threatens to make my life…in Norway increasingly more difficult, ultimately leaving us to face challenges no generation has ever faced before".[49] Applicant 5 explains that thoughts about the climate crisis "have brought me down severely, and…I have experienced depressive thoughts, leading to a number of days where I was not able to attend school".[50]

37. Applicants' daily lives and decision-making are being affected as well. For example, Applicant 2 states that the decision to have children with her partner "is impacted by the fact that I worry about how my future children's life will be affected by climate change".[51] Similarly, for Applicant 3, the threat of climate

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[46] See generally Clayton, S and Karazsia, B (2020) "Development and Validation of a Measure of Climate Change Anxiety." *Journal of Environmental Psychology* 69, p. 8. For purposes of this study cognitive and emotional impairment in response to climate change was "reflected in rumination, difficulty sleeping or concentrating, and nightmares or crying". High ratings in functional impairment, meanwhile, indicated "that concern about climate change is interfering with a person's ability to work or socialize". Id. at 4.

[47] See, e.g., Relman, E. and Hickey, W (March 2019) "More than a Third of Millennials Share Rep. Alexandria Ocasio-Cortez's Worry About Having Kids While the Threat of Climate Change Looms." *Business Insider*, available at: https://www.businessinsider.com/millennials-americans-worry-about-kids-children-climate-change-poll-2019-3. See also Jenkins, L (September 2020) "1 in 4 Childless Adults Say Climate Change Has Factored Into Their Reproductive Decisions." *Morning Consult*, available at: https://morningconsult.com/2020/09/28/adults-children-climate-change-polling/. Childless Hispanic adults were especially likely to say climate change was a factor, with 41% citing it as having some influence, and 18% considering it a "major reason". See id. In addition, 39% of 10,000 respondents aged 16-25 reported being "hesitant to have children" due to climate change in a global survey. See Hickman, C et al. (2021) "Climate Anxiety in Children and Young People and Their Beliefs about Government Responses to Climate Change, a Global Survey." *Lancet Planetary Health* 5(12), pp. 867-868, available at https://www.sciencedirect.com/science/article/pii/S2542519621002783.

[48] Applicant 3's Written Statement of Evidence to the ECtHR, App No 34068/21 (Annex 1, p. 8). ("I feel climate sorrow. A sorrow over everything that will be gone. Over all the nature that I will never be able to see, which my children will never experience"); Applicant 4's written statement of evidence to the ECtHR, App No 34068/21 (Annex 1, p. 10). ("I feel a huge sorrow…In particular, I feel it inside when the areas I know well and have grown up in are altered by climate change").

[49] Applicant 1's Written Statement of Evidence to the ECtHR, App No 34068/21 (Annex 1, p. 2).

[50] Applicant 5's Written Statement of Evidence to the ECtHR, App No 34068/21 (Annex 1, p. 13).

[51] Applicant 2's Written Statement of Evidence to the ECtHR, App No 34068/21 (Annex 1, p. 6). ("my partner and I are at an age where we are starting to think about having children. This thought-process and decision is impacted by the fact that I worry about how my future children's life will be affected by climate change").

change "will command which education I will pursue, my choice of what to work with and many other choices about my future". Applicant 3 therefore feels her "freedom of choice is encroached upon by, and disappears due to, the gravity and haste the climate crisis necessitates".[52]

38. Applicants 2, 4 and 6 also suffer additional harm by virtue of their membership in an ethnic minority, the Sámi Indigenous Peoples. For example, Applicant 4 states that for "as long as I can remember my family and I have fished in this river, but due to the effects of climate change (...) my family and I have to refrain from using the river (...) in doing so, we lose an important source of substance". For her, the "most painful part is that the traditions tied to the fisheries cannot be continued as previously".[53] Similarly, Applicant 6 mourns a recent crisis caused by higher temperatures in his region,[54] and that as "a young person from the Sea Sámi culture, I fear the impact that climate change will have on my people's way of life (...) How will we be able to continue the practice of our culture, living on the basis of traditional knowledge of nature, if the species that our culture has nurtured for centuries disappear?"[55]

39. Psychologists have warned that the mental health effects of climate change can be "debilitating",[56] and have emphasised the importance of paying greater attention to these psychological impacts[57] as "levels of climate anxiety are likely

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[52] Applicant 3's Written Statement of Evidence to the ECtHR, App No 34068/21 (Annex 1, p. 7).
[53] Applicant 4's Written Statement of Evidence to the ECtHR, App No 34068/21 (Annex 1, p. 11).
[54] Applicant 6's Written Statement of Evidence to the ECtHR, App No 34068/21 (Annex 1, p. 16). ("In the winter of 2020, there was a crisis in the reindeer husbandry industry in my region, as higher temperatures caused 'rain on snow' events".)
[55] Applicant 6's Written Statement of Evidence to the ECtHR, App No 34068/21 (Annex 1, p. 16-17).
[56] See Taylor, M and Murray, J (Feb 2020) "'Overwhelming and Terrifying': The Rise of Climate Anxiety." *The Guardian*, available at: https://www.theguardian.com/environment/2020/feb/10/overwhelming-and-terrifying-impact-of-climate-crisis-on-mental-health ("Psychologists warn that the impact can be debilitating for the growing number of people overwhelmed by the scientific reality of ecological breakdown").
[57] See, e.g., Clayton, S (2020) "Climate Anxiety: Psychological Responses to Climate Change." *Journal of Anxiety Disorders* 74, p. 5 (2020) ("it is time to think seriously about the ways in which climate change can impair mental health".); Clayton, S and Karazsia, B (2020) "Development and Validation of a Measure of Climate Change Anxiety." *Journal of Environmental Psychology* 69, p. 9 ("clinical psychologists and other therapists should be attentive to the way in which their clients are being affected by climate change, and think about ways to address climate change anxiety among their clients")

to increase over time as increasingly more people are directly impacted".[58] In addition, these effects are more prevalent and severe among certain social groups including Indigenous Peoples[59] and especially younger people.[60] This prevalence and severity are also driven by awareness of climate change[61] as well as perception of government inaction.[62] This too is evidenced by, for example, the statements of Applicants 2,[63] 3,[64] and 4.[65]

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[58] Taylor, S (2020) "Anxiety Disorders, Climate Change, and the Challenges Ahead: Introduction to the Special Issue." *Journal of Anxiety Disorders* 76, p. 2, available at https://www.sciencedirect.com/science/article/pii/S0887618520301274?casa_token=te2p2ZQwtNsAAAAA:7V35asHHAREuc8DMi9ra4B_wkJCTEgnqki6mVO2jD5UooFngk1fTvrQTT6ava_LzIs9eXnI.

[59] See Clayton, S (2020) "Climate Anxiety: Psychological Responses to Climate Change." *Journal of Anxiety Disorders*, 74, p. 4 ("it seems likely that climate anxiety may be or may become more prevalent among indigenous groups").

[60] See, e.g., Clayton, S (2020) "Climate Anxiety: Psychological Responses to Climate Change." *Journal of Anxiety Disorders* 74, p. 2 ("Children may experience the strongest effects [of] climate-related mental health impacts"); American Psychological Association (2020) "Stress in America: Generation Z." P. 3, available at https://www.apa.org/news/press/releases/stress/2018/stress-gen-z.pdf.; Burke, S et al. (2018) "The Psychological Effects of Climate Change on Children". *Current Psychiatry Reports* 20(5), p. 1, available at https://link.springer.com/article/10.1007/s11920-018-0896-9 ("Children represent a uniquely vulnerable group"); Hogg, T et al. (2021) "The Hogg Eco-Anxiety Scale: Development and Validation of a Multidimensional Scale." *Global Environmental Change* 71, p. 8 ("younger adults are especially at risk of experiencing climate change anxiety"); Hickman, C et al. (2021) "Climate Anxiety in Children and Young People and Their Beliefs about Government Responses to Climate Change, a Global Survey." *Lancet Planetary Health* 5(12), p. 863 (finding that, in a global survey of 10,000 respondents in 10 different countries aged 16-25, more than half reported being at least "moderately worried" [84%] or "extremely worried" [59%] about climate change, stated that "the future is frightening" [75%], and reported feelings of sadness [67%], helplessness [51%], anxiety [62%], anger [57%], guilt [50%], and fear [67%]).

[61] See Clayton, S (2020) "Climate Anxiety: Psychological Responses to Climate Change." *Journal of Anxiety Disorders* 74, p. 3 ("Climate anxiety is not evenly distributed; not surprisingly, it is more common among those who care more about environmental issues"). See also Hogg, T et al. (2021) "The Hogg Eco-Anxiety Scale: Development and Validation of a Multidimensional Scale." *Global Environmental Change* 71, p. 8 ("awareness of climate change and fear of the unknown is sufficient to cause psychological distress".).

[62] Hickman, C et al. (2021) "Climate Anxiety in Children and Young People and Their Beliefs about Government Responses to Climate Change, a Global Survey." *Lancet Planetary Health* 5(12), p. 870 ("Climate anxiety and distress were correlated with perceived inadequate government response and associated feelings of betrayal".).

[63] Applicant 2's Written Statement of Evidence to the ECtHR, App No 34068/21 (Annex 1, p. 5). ("Norway issues new oil licenses...This decision exposes my life...to a great an unacceptable risk...The government thus effectively removed our possibility to partake in and impact the democratic discussion on this subject").

[64] Applicant 3's Written Statement of Evidence to the ECtHR, App No 34068/21 (Annex 1, p. 8). ("I am deeply disappointed that the Norwegian Supreme Court is indifferent with regards to the significance of the climate crisis for future generations...").

[65] Applicant 4's Written Statement of Evidence, App No 34068/21 (Annex 1, p. 14). ("I never really got used to it, to the absolute denial of responsibility, and paralysis with regards to sufficient action, of those with power, of those generations of 'grown-ups', those who originally put us in

3. REPLY TO THE RESPONDENT'S OBSERVATIONS ON THE LAW

3.1 ADMISSIBILITY: LOCUS STANDI, CF. QUESTION NO 1

3.1.1 Applicants 7 and 8 (the organisations) are "victims" within the meaning of Article 34 in respect of Article 2 and 8

40. The Respondent asserts that "an organisation may not be granted *locus standi* in relation to a Convention right only granted to physical individuals".[66] However, the victim concept must be "interpreted in an evolutive manner" to avoid the protection guaranteed by the Convention becoming "ineffectual and illusory".[67] If Article 34 is understood as rigidly as the Respondent claims, the Convention would in fact be ineffectual and illusory in the face of the biggest threat to the rights guarded by the Convention since its conception.

41. Undeniably, climate change has already caused severe harm all over the world, including Europe and Norway.[68] The Respondent presumably accepts that climate change already has caused loss of life and that it has had severe negative effects on individuals' life, health, and general well-being. The Respondent presumably also accepts that these effects will worsen significantly if society is not able to mitigate emissions in an effective manner.[69] As the most adverse

this situation...Those people who will have to bear the largest consequences of climate change don't yet have the right to vote").

[66] The Respondent's Written Observations § 74.

[67] Gorraiz Lizarraga and others v. Spain, App No 62543/00, 27 April 2004, § 38. Court's assessment must engage with the precautionary principle, intergenerational equity, and Article 3(1) of the UN Convention on the Rights of the Child, see Neulinger v Switzerland (GC) App No 41615/07, 6 July 2010, § 132.

[68] See NOU (2018) "Klimarisiko og norsk økonomi". *Norges Offentlige Utredninger*, pp. 41-46, available at: https://www.regjeringen.no/contentassets/c5119502a03145278c33b72d9060fbc9/no/pdfs/nou201820180017000dddpdfs.pdf.

[69] See IPCC Adaptation Summary for Policymakers (supra n.9), pp. 15-16, §§ B.3, B.4 ("Global warming, reaching 1.5°C in the near-term, would cause unavoidable increases in multiple climate hazards and present multiple risks to ecosystems and humans (*very high confidence*)...The magnitude and rate of climate change and associated risks depend strongly on near-term mitigation and adaptation actions, and projected adverse impacts and related losses and damages escalate with every increment of global warming (*very high confidence*)").

effects will arise in the future, it is clear that the heaviest burden will be carried by young individuals (such as Applicants 1-6) and individuals who are not yet born and who were not afforded an opportunity to advance a legal claim on their own behalf at the time decisive action must be taken.[70]

42. As in cases of secret and mass surveillance, the nature of the risk makes it inherently difficult to point to all who are already affected, or which individuals will be affected in the future.[71] The situation thus "potentially affects all persons" in society.[72]

43. The Convention, and namely Article 34, must be interpreted with consideration afforded to the specific features of climate change mentioned above. The only way the Court will be afforded an opportunity to assess the full scope of its implications for individual human rights is to grant NGOs such as the Applicants, and especially Applicant 7 as the most natural representative for youth, victim status.

44. Furthermore, the Respondent's view does not consider the burden that bringing a lawsuit against the State would impose on young individuals in Norway acting in their personal capacity. National climate cases are often very high profile and would expose young individuals to the public in a way that young people should not be pressured to take upon themselves. This case is no exception.[73]

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[70] See the recent Federal Court of Australia case: Sharma by her litigation representative Sister Marie Brigid Arthur v. Minister for the Environment [2021] FCA 560, § 293, available at: https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2021/2021fca0560

[71] See e.g., Klass and others v. Germany, App No 5029/71, 6 September 1978, § 34; Centrum för rättvisa v. Sweden (GC), App No 35252/08, 25 May 2021, § 90-95; Roman Zakharov v. Russia (GC), App No 47143/06, 4 December 2015; and Big Brother Watch and others v. United Kingdom (GC), App Nos 58170/13, 62322/14,24960/15, 25 May 2021.; The NHRI highlights this parallel in the report "Climate and Human Rights" (2021), § 5.9.3, available at: https://www.nhri.no/en/report/climate-and-human-rights/.

[72] Centrum för rättvisa v. Sweden (supra n.71), §§ 169, 175

[73] Some of the biggest international outlets have been covering this story. See, e.g., Libell, H and Kwai, I (December 2020) "Norway's Supreme Court Hears Rights Challenge to Arctic Oil Drilling." *The New York Times,* available at: https://www.nytimes.com/2020/11/05/world/europe/norway-supreme-court-climate-change.html; Holter, M (November 2017). "With Arctic Drilling Under Attack, Norway Oil Chiefs Fight Back." *Bloomberg*, available at: https://www.bloomberg.com/news/articles/2017-11-14/with-arctic-drilling-under-attack-norway-oil-minister-hits-back?cmpid=socialflow-twitter-business&utm_content=business&utm_campaign=socialflow-

Furthermore, it seems undisputed that the claim for invalidity involves a complex administrative decision representing real obstacles for individuals and young people to challenge alone. The organisation "as a collective body has been an accessible, and arguably the only, means to defend their common interests effectively".[74]

45. The Respondent seems to accept that the Court's case law *could* be open for an approach that would grant *locus standi* to applicants 7-8,[75] but argues that the approach is not viable as these "exceptions concern situations where representatives seek to bring cases before the Court regarding the state's 'negative' interference with the Convention (…)" and that the "present application concerns the alleged omission by the state to take the *positive* climate change measures preferred by the applicants (…)".[76] Furthermore, the Respondent claims that the Applicants' approach would "mean extending the Court's competence to reviewing positive policy measures".[77]

46. The applicants disagree with the view of the Respondent.

47. First, the applicants disagree with the notion that the present application (only) concerns alleged omission by the State to take positive climate change measures. The essence of rights *includes* the negative obligations stemming from them as also noted by the NSC majority.[78] The Applicants therefore also claim that the licences constitute a breach as a negative interference with the Convention

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organic&utm_source=twitter&utm_medium=social; Reuters staff (April 2020). "Norway Supreme Court to Hear Case Against Arctic Oil Exploration." *Reuters,* available at: https://www.reuters.com/article/us-norway-oil-environment/norwegian-supreme-court-to-hear-lawsuit-against-arctic-oil-exploration-idUSKBN2221WH.

[74] Gorraiz Lizarraga and Others v. Spain (supra n.67), § 38.

[75] The Respondent's Written Observations § 75.

[76] The Respondent's Written Observations §§ 75-76.

[77] The Respondent's Written Observations § 77.

[78] The State's positive obligations vs. negative interference obligations were also discussed in the domestic courts. See NSC Judgment (supra n.11), § 143 ("Against the background of the parties' contentions before the Supreme Court, I mention that these duties may involve both positive and negative measures. The purpose of the constitutional provision would largely be lost if the provision does not also involve a duty to abstain from making decisions violating Article 112 subsection 3").

rights:[79] the licences – as part of the Respondent's scheme to extract oil and gas – has (in sum with other factors) led to, and will contribute to, climate change and interference with individuals' rights under the Convention, as demonstrated in Section 3 below.

48. If Applicants 7–8 are not recognised as victims alongside the individual Applicants, the full range of consequences the Respondent's violations of its obligations under the Convention risk becoming "unchallengeable" in the limited time[80] in which the means of prevention are still available.[81]

3.1.2 Applicants 7 and 8 (the organisations) are "victims" within the meaning of Article 34 in respect of Article 13 in conjunction with Article 2 and 8

49. Since applicant 7 and 8 were direct parties in the domestic proceedings, it seems clear that they are "victims" under Article 34 in respect of their claim under Article 13 in conjunction with Article 2 and 8.

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[79] Cf. Applicants' Application § 42, where it is noted that according to case law from the Court, that positive and negative obligations overlap.
[80] See IPCC Adaptation Summary for Policymakers (supra n.9), p. 35, § D.5.3 ("Any further delay in concerted anticipatory global action on adaptation and mitigation will miss a brief and rapidly closing window of opportunity to secure a liveable and sustainable future for all (*very high confidence*)").
[81] Compare Klass and others v. Germany (supra n.71), § 36; see also European Network of National Human Rights Institutions (ENNHRI) (2021) "Climate Change and Human Rights in the European Context." § 4.2, available at: http://ennhri.org/wp-content/uploads/2021/05/ENNHRI-Paper-Climate-Change-and-Human-Rights-in-the-European-Context_06.05.2020.pdf.
NGO standing in such legal proceedings is a cornerstone of the domestic Norwegian legal system, see The Norwegian Dispute Act 2005 §§ 1-4, and recognized in European legal systems in general, compare with Gorraiz Lizarraga and others v. Spain (supra n.67), § 38; Goodwin v. the United Kingdom (GC), App No 17488/90, 27 March 1996, § 39.

3.1.3 Applicants 7 and 8 (the organisations) are "victims" within the meaning of Article 34 in respect of Article 14 in conjunction with Article 2 and 8

50. Applicants 7 and 8 are "victims" within the meaning of Article 34 in respect of Article 14 in conjunction with Article 2 and 8 on the same basis that they are "victims" in respect of Article 2 and 8.

3.1.4. Applicants 1-6 (the individual applicants) are "victims" within the meaning of article 34 in respect of Article 2 and 8

51. The Respondents' main argument against the "victim status" of applicants 1-6 appears to be that their claim – in the Respondent's view – is a claim "defending what is perceived as the collective interest of the population as a whole",[82] arguing that these Applicants' claims therefore constitute an *actio popularis.*

52. Respectfully, the Respondent seems unable or unwilling to distinguish between 1) an application concerning a decision that affects a vast number of individuals (possibly most of those protected by the Convention) directly and 2) a claim on behalf of the society as a whole. The mere fact that an action could be brought forward by a vast number of individuals does not in itself make the action an *actio popularis*.[83] The Convention protects individuals irrespective of whether the harms affect a larger number of individuals.[84,85] The Applicants do not claim to represent the society as a whole, but rather that the licences constitute a breach of their own individual rights.

53. Furthermore, applicants 1-6 do not accept the implied premise that their situation is no different from the situation of society as a whole. As substantiated in detail above, Applicants 1-6 are indeed in a particularly

[82] The Respondent's Written Observations § 82.
[83] Cordella and others v. Italy, App Nos 54414/13, 54264/ 15, 24 January 2019, §§ 107, 109.
[84] Cordella and others v. Italy (supra n.83), §§ 97-104; Open Door and Dublin Well Women v. Ireland App Nos 14234/88 and 14235/88, 29 October 1992,§ 44.
[85] See Bursa Barosu Başkanlığı and Others v. Turkey, App No 25680/05, 19 June 2019, § 128.

vulnerable position in regards to the negative effects of climate change (see Section 2.6 above).

54. Potential victimhood can also provide the grounds for granting "victim status". When assessing the situation of Applicants 1-6 it is therefore important to recall that the *risk of harm* faced by an applicant also determines whether the applicant can claim to be a victim of a violation. The Convention also safeguards individuals who are potential victims of harm that can occur in the distant future.[86] We cannot exaggerate how important it is that states must act now - the likelihood of reaching 1.5°C warming is already higher today than in 2019,[87] and current projections indicate that this level of warming will be reached around 2035.[88] If individuals only become victims when the most severe effects of climate change have already become fact, it will be far too late. If States are not obliged to take necessary precautionary measures based on victim status on the grounds of potential harm, the full effects will materialise later at a time when it is no longer possible to take effective preventive - or even remedial - measures.[89] Only in this way can the Convention guarantee rights that are "practical and effective".[90]

3.1.5 Applicants 1-6 (the individual applicants) are "victims" within the meaning of Article 34 in respect of Article 13 in conjunction with Article 2 and 8

55. Applicants 1-6 are "victims" within the meaning of Article 34 in respect of Article 13 in conjunction with Articles 2 and 8 on essentially the same basis that

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[86] Taşkin and others v. Turkey, App No 46117/99, 10 November 2004, § 114.
[87] See IPCC Mitigation Summary for Policymakers (supra n.5), p. 21, n.40 ("In absolute terms, the 2030 GHG emissions levels of pathways that limit warming to 1.5°C (>50%) with no or limited overshoot are higher in AR6 (31 [21–36] GtCO2-eq) than in SR1.5 (28 (26–31 interquartile range) GtCO2-eq)").
[88] See IPCC Adaptation Technical Summary (supra n.31), p. 8, box TS.2 ("a GWL [global warming level] of 1.5°C is projected to be reached at about the same time, around 2035").
[89] See IPCC Adaptation Summary for Policymakers (supra n.9), p. 35, § D.5.3 ("Any further delay in concerted anticipatory global action on adaptation and mitigation will miss a brief and rapidly closing window of opportunity to secure a liveable and sustainable future for all (*very high confidence*)").
[90] See, e.g., Airey v. Ireland, App No 6289/73, 9 October 1979, § 24.

they have exhausted all domestic remedies within the meaning of article 35, cf. Section 3.2.3 below. They pursued their claim before domestic courts in the normal, natural form nationally, and their "victim status" under Article 13 in conjunction with Articles 2 and 8 must be assessed as if they had brought their claim themselves directly before the domestic courts.

3.1.6 Applicants 1-6 (the individual applicants) are "victims" within the meaning of Article 34 in respect of Article 14 in conjunction with Article 2 and 8

56. Applicants 1-6 are "victims" within the meaning of Article 34 in respect of Article 14 in conjunction with Articles 2 and 8 mainly on the same basis that they are victims in respect of Articles 2 and 8. They claim to be discriminated against on the basis of their age and birth cohort themselves and are therefore "victims" in regards to the claim that their right not to be discriminated against has been breached.

3.2 ADMISSIBILITY: EXHAUSTED DOMESTIC REMEDIES, CF. QUESTION NO 2

3.2.1 Applicants 1-6 (the individual applicants) have exhausted all domestic remedies within the meaning of Article 35

57. Applicants 1-6 maintain that they have exhausted all domestic remedies within the meaning of Article 35.

58. The Respondent seems to agree *in principle* that individuals can fulfil their obligation to exhaust all domestic remedies within the meaning of Article 35 without formally being part of the domestic proceedings. The Respondent argues, however, that Applicants 1-6 failed to fulfil this obligation by not being party to the domestic proceedings in *this specific case*. In fact, however, each of the Applicants were members of Applicant 8 during the domestic proceedings,

were working actively with the case, and both Applicants 1 and 2 appeared and gave statements before the domestic courts.[91]

59. There are at least two reasons why the Court in some cases accepts that individuals can be exempted from bringing their own domestic proceedings. First, respecting the fact that in some states' legal systems it is more natural or practical for individuals to pursue their rights through a member organisation, which could in fact secure a more effective protection under the Convention, lowering the threshold for judicial control is appropriate.[92] Second, if a separate/new domestic procedure brought forward by the applicants would *in reality* be only a repetition of the domestic procedure already put forward by an organisation or where it is clear for other reasons that a domestic procedure would have no prospect of being successful, the Court has found that an obligation for a new domestic procedure would be unnecessary formalism.[93]

60. First, the Norwegian legal system has a long tradition for lawsuits from member organisations on behalf of groups of individuals pursuing specific claims.[94] Dismissing the claims of Applicants 1-6 based on a failure to exhaust domestic remedies would in fact force individuals to pursue individual claims in the Norwegian system, contrary to a long-standing tradition. This potentially leaves individuals vulnerable to negative unwanted public attention that they are spared when filing as part of an organisation, cf. § 44 above. A lawsuit brought in individual capacity would also expose the individuals to a risk of being responsible for the Respondent's legal costs, which would be very difficult for most young individuals to handle. The Respondent made a claim against Applicants 7 and 8 for their legal costs both before the District Court and before the High Court, and also threatened to seek compensation for legal costs in an

[91] Applicant 1 and 2's Written Statement of Evidence to the ECtHR, App No 34068/21 (Annex 1, pp. 1, 4).
[92] Kosa v Hungary, App No 53461/15, 14 December 2017, § 57.
[93] Open Door and Dublin Wee & 50, Kósa v Hungary (supra n.92), § 54; Gorraiz Lizarraga and others v. Spain (supra n.67), § 37.
[94] Supreme Court of Norway, RT-1980-56923, *Altakjennelsen,* 23 April 1980.

initial stage before the NSC.[95] The Norwegian Dispute Act's rules on costs do not provide any guaranteed safeguards against legal responsibility for costs in environmental cases.[96] This would increase the threshold for securing the rights under the Convention contrary to the Convention's objective.[97]

61. Second, it appears evident, based on NSC's reasoning, that an individual domestic procedure brought forward by Applicants 1-6 would only be a repetition of the domestic proceedings. The domestic proceeding formally brought by Applicants 7-8 subsumed all the Applicants' grievances, and there is, respectfully, absolutely no reason to believe that a new domestic proceeding brought by the individual applicants would yield a result any different from the domestic proceeding brought forward by Applicants 7-8.

62. Respectfully, we also find reason to address the fact that the question of whether Applicants 1-6 fulfil the requirements under Article 35 must also be assessed in connection with Respondent's claim that Applicants 7-8, who brought the case directly before the domestic court, are not themselves "victims" in accordance with Article 34. If neither the individuals (Applicants 1-6) nor the organisations (Applicants 7-8) are found to have admissible claims, the reality would be that a claim advanced through the normal and natural national forums is not possible to bring before the Court. This would not secure an effective protection of Convention rights.

[95] The State's Notice of Defence to Oslo District Court, 14 December 2016: https://www.regjeringen.no/contentassets/23be3168015543a6b76c87731f09dded/tilsvar.pdf;
The State's Notice of Defence to the Norwegian Supreme Court, 31 March 2020: https://www.xn--klimasksml-95a8t.no/wp-content/uploads/2020/04/2020-03-31-D158-Anketilsvar-H%C3%B8yesterett-fra-staten.pdf .
[96] The Norwegian Dispute Act (1 January 2008) Ch. 20.
[97] Ref § 52 above.

3.3 REPLY TO THE RESPONDENT'S ARGUMENTS REGARDING THE MERITS UNDER ARTICLE 2 AND 8, CF. QUESTION 4 A AND B

3.3.1. Introduction

63. Applicants allege that the licences as such 1) represent a breach of their rights under Articles 2 and 8, and 2) that it represents a breach of the same rights to postpone the part of the impact assessment that is most relevant from a climate change perspective until the PDO-stage, and 3) that the subsequent process that the State has recently described to some extent (if relevant at all) will not rectify or prevent the breach of and continuous threat to the Applicants' rights, cf. §§ 120-130 below for elaboration.

64. Applicants further allege that NSC's invalidation of the licences on either material grounds (in conflict with the Constitution § 112, provisions of the Petroleum Act or the Convention) *or* due to the lack of environmental impact assessments covering combustion emissions, *would have had* a "real prospect of altering the outcome or mitigating the adverse effects"[98] of climate change as part of the Respondents duty to "do its part",[99] and as part of the obligation to do "everything in its power"[100] to protect the life and the private life of the Applicants.

65. The NSC majority held that the licences were not invalid neither on material grounds nor due to the lack of environmental impact assessments covering combustion emissions. The NSC also held that an impact assessment undertaken prior to licensing could *lawfully* omit (and thereby postpone consideration of) emissions from combustion of Norwegian oil and gas, however, with *the*

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[98] O'Keefe v Ireland (GC), App No 33810/09, 26 January 2014, § 149; E. and Others v. the United Kingdom (GC), App No 33218/96, 26 November 2002, § 99.
[99] Supreme Court of the Netherlands (Civil Division), No 19/00135, Urgenda v The Netherlands, 20 December 2019, § 5.7.1, available at: https://www.urgenda.nl/wp content/uploads/ENG-Dutch-Supreme-Court-Urgenda-v-Netherlands-20-12-2019.pdf ((hereinafter "Urgenda Judgment").
[100] Kolyadenko and others v. Russia, App Nos 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05, 28 February 2012, §§ 191, 212, 216; Önerylidiz v. Turkey, App No 48933/99, 30 November 2004, § 135.

presupposition that such emissions will be assessed in a subsequent environmental impact assessment undertaken at the PDO-stage.[101] The PDO-stage follows actual discoveries and great expense relating to the discovery process.

66. As outlined in the complaint,[102] the requirement to do strategic environmental impact assessments before licensing is legal common ground, cf. Directive 2001/42(EU) (SEA Directive).

67. The Applicants emphasise that conventional rights threatened by climate change should be preventively and systematically protected by legal requirements to carry out high-quality strategic environmental assessments covering all adverse effects (including combustion emissions) *before* licences etc. are granted. Such environmental assessments entail considerations of proportionality and precautionary measures which, in essence, represent the most important part of legal (and political) balancing tests. Proper environmental assessments for large projects secure democratic participation, and such assessments could lead to licences not being granted in the first place or to a more limited number of granted licences. High quality environmental assessments thus prevent the breach of rights.

68. Additionally, the NSC's judgment itself begets an Article 14 claim, as postponement of the climate impact assessment in itself exacerbates the differential treatment of different birth cohorts, and thus generates discriminatory effects. As such, the Applicants' claims under Article 14 were argued only to the general extent of intergenerational equity in the Application,

[101] NSC Judgment (supra n.11) §§ 222, 223, 241. This interpretation of the judgment is echoed in The NHRI Report on § 112 (supra n.12), Sec. 2.3 § 3 ("På denne bakgrunn fant flertallet at …en eventuell mangelfull vurdering av forbrenningseffekter i utlandet før åpningen kunne rettes opp i den videre prosessen". Translation: "Based on this, the majority found that a possible lack of assessment of combustion emissions abroad prior to opening, could be corrected in the further process".) available at: https://www.nhri.no/wp-content/uploads/2022/03/Utredning-om-Grunnloven-%C2%A7-112-og-plan-for-utbygging-og-drift-av-petroleumsforekomster.pdf
[102] Applicants' Application §§ 49, 50, 51.

as raised in the domestic proceedings, cf. item 3.3.6 below for further elaboration.

3.3.2 Causality, cf. question no. 3 c)

69. The Court's question 3 c) is what the link is between the decisions of 10th June 2016 (the licences) and the violation of the Applicants' rights.

70. This question relates to what causality test should apply in climate change cases, and to the case at hand in particular.

71. In general terms, the purpose of legal causality tests is to decide who is responsible for what harm, and to what extent. A traditional causality test, requiring one act to lead to one effect, will fundamentally undermine the protection of Convention rights against the threats posed by climate change. Interpreting the Court's case law to require a traditional causality standard for climate-related harms would contradict the established principle that the Convention's provisions must be interpreted and applied so as to make its safeguards practical and effective.[103]

72. The Respondent contends that there is no sufficiently clear link between the impugned situation and the licensing.[104] Courts in all parts of the world have, however, throughout history acknowledged the need to adjust causality tests applied in various parts of the law to novel societal problems. One example from Norwegian law is the shift undertaken by the NSC from requiring that one main cause of harm be proven to establish liability, to requiring only that the cause of harm in question be one precondition for the harm caused, *but not necessarily* the main cause.[105] In the latter case, the NSC also expressed that the legal causality requirements are less stringent than natural sciences' causality tests.[106]

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[103] Urgenda Judgment (supra n.99), §§ 5.4.1, 5.8.
[104] The Respondent's Written Observations § 136.
[105] Supreme Court of Norway, Rt. 1974-1160, *P-pilledom I*, 11 November 1974 and HR-1992-8-B, *P-pilledom II*. Both cases concerned product liability for producers of birth control pills). In the last case the producer was held responsible for severe medical harm suffered by the woman using the pills, but not in the first case.
[106] HR-1992-8-B (supra n.105) page 71.

This resonates with the Court's view in relation to positive obligations that "it is not necessary to show that "but for" the State omission" the breach of rights would not have happened.[107]

73. Recent case law from European courts (and courts in other parts of the world) show that the correct causal test is whether there is individual, partial or joint responsibility to contribute to the fight against dangerous climate change. In the Dutch climate case *Urgenda*, the Advisory Opinion to the Supreme Court examined the issue of causality: "This case is about the State's duty of care to Dutch residents on the basis of Articles 2 and 8 ECHR and an order to be based thereon. Therefore, issues of causality play 'only a limited role'... In essence the question is whether the State is required to take measures to avert a certain threat. To the extent that 'causal' elements play a role in this, this concerns in this case (a) the question of whether there can be a legal obligation to act… and (b) the question of whether there is cause for an order to act if the problem to be addressed is caused, even almost entirely, by others or external factors".[108]

74. The Dutch Supreme Court held that "under Articles 2 and 8 ECHR, the Netherlands is obliged to do 'its part' in order to prevent dangerous climate change, even if it is a global problem".[109] As such, the Dutch State would be "required pursuant to Articles 2 and 8 ECHR to take measures to counter the genuine threat of dangerous climate change (...)".[110] This part of the judgment seems to be overlooked by the State's argument[111] that the Convention was not applied directly in *Urgenda*.

75. The Dutch Supreme Court determined that the fact that a risk "will only be able to materialise a few decades from now and that it will not impact specific persons or a specific group of persons but large parts of the population, does not

[107] O'Keefe v Ireland (supra n.98) § 149; E. and Others v. the United Kingdom (GC), App No 33218/96, 26 November 2002, § 99.
[108] Urgenda Advisory Opinion, ECLI:NL:PHR:2019:1026, 8 October, 2019, § 4.194.
[109] Urgenda Judgment (supra n.99), § 5.7.1.
[110] Urgenda Judgment (supra n.99), § 5.6.2.
[111] The Respondent's Written Observations § 134(ii).

mean…that Articles 2 and 8 ECHR offer no protection from this threat".[112] As such, "the assertion that a country's own share in global greenhouse gas emissions is very small and that reducing emissions from one's own territory makes little difference on a global scale"[113] cannot be accepted, and "the defence that…other countries will continue their emissions cannot be accepted…either: no reduction is negligible".[114]

76. The German Federal Constitutional Court in *Neubauer* focused on the "direct causal link" between greenhouse gas emissions and climate change "with every amount of CO2 emitted over and above a small climate neutral quantity, the Earth's temperature rises further along its irreversible trajectory and climate change also undergoes an irreversible progression".[115] It held that states cannot evade responsibility "by pointing to greenhouse gas emissions in other states".[116] The court also pointed towards a special duty of care in cases of uncertainty regarding causal relationships of environmental relevance, thus applying the precautionary principle.[117]

77. Likewise, the Dutch District Court focused on the "direct linear link between man-made greenhouse gas emissions, in part caused by the burning of fossil fuels and global warming".[118] It held that "every emission of CO2 and other greenhouse gases, anywhere in the world and caused in whatever manner, contributes to this damage and increase" and found with regard to Royal Dutch Shell an "individual partial responsibility to do its part".[119]

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[112] Urgenda Judgment (supra n.99), § 5.6.2.
[113] Urgenda Judgment (supra n.99), § 5.7.7.
[114] Urgenda Judgment (supra n.99), § 5.7.8.
[115] Neubauer Decision (supra n.7), § 119.
[116] Neubauer Decision (supra n.7), § 202.
[117] Neubauer Decision (supra n.7), Headnote 2b.
[118] The Hague District Court, HA ZA 19-379, *Milieudefensie vs Royal Dutch Shell,* 26 May 2021, § 2.3.2, (hereinafter: "RDS Decision"), available at: https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2021:5339 .
[119] RDS Decision (supra n.118), §§ 4.4.54, 4.4.49.

78. Other courts in the context of climate change in Belgium, Germany and France, have similarly held that the existence of different actors does not absolve any one actor from its own responsibility.[120]

79. As follows from O'Keefe vs Ireland, "A failure to take reasonably available measures which could have had a real prospect of altering the outcome or mitigating the harm is sufficient to engage the responsibility of the State".[121] In the present case, the Applicants have shown in their Application[122] how the failure of the Respondent State to take all necessary and appropriate measures is exacerbating climate change. As pointed out in *Urgenda*, "no reduction is negligible",[123] and each government's obligations must be "determined individually on the basis of its own conduct and by reference to its own international obligations".[124] This approach is also consistent with the Paris Agreement's principle of "common but differentiated responsibilities and respective capabilities, in the light of different national circumstances".[125] In light of the fact that Respondent is the biggest producer of oil and gas in western Europe, that it "covers significant investments in exploration and field development",[126] that its projected production out to 2030 has "consistently been adjusted upwards",[127] and that its emissions are among the top 20 per capita (out of 180 countries),[128] Applicants submit that the Respondent's obligations must

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[120] See, French Speaking Court of First Instance of Brussels (Civil Section) VZW Klimaatzaak v Kingdom of Belgium & Others, 17 June 2021, p. 61; Paris Administrative Court, Notre Affaire à Tous and Others v. France, 3 February 2021, p. 34; Higher Regional Court of Hamm, Lliuya v RWE, Interlocutory Decision of 1 February 2019, p. 4.
[121] O'Keefe vs. Ireland (supra n.98), § 149.
[122] Applicants' Application §§ 60, 61.
[123] Urgenda Judgment (supra n.99), § 5.7.8.
[124] Urgenda Judgment (supra n.99), § 5.7.8 (citing Yearbook of the International Law Commission 2001, Vol. II, Part Two, p. 125, right-hand column).
[125] Paris Agreement (supra n.4), Article 2.2.
[126] 2021 Production Gap Report (supra n.28), p. 49.
and field development. For example, exploration costs are fully deductible, with cash refunds available for companies that are in a negative tax position".)
[127] 2021 Production Gap Report (supra n.28), p. 49.
[128] Wolf, M. J., Emerson, J. W., Esty, D. C., de Sherbinin, A., Wendling, Z. A., et al. (2022). 2022 Environmental Performance Index. New Haven, CT: Yale Center for Environmental Law & Policy. https://epi.yale.edu/epi-results/2022/country/nor (hereinafter: "Yale Environmental Performance Index").

also be among the highest. As such, the prospects of altering the outcome or mitigating the harm must be evaluated within this context.

80. The causal relationship between a business-as-usual policy (i.e, licensing in novel areas, for oil and gas to be produced from 2030 and onwards) and actually preserving the chances of maintaining heating below the 1.5°C limit is hardly debatable. Additionally, the "lock-in effect" on the Norwegian economy will exacerbate the negative consequences of climate change in Norway.[129]

81. The Applicants suggest that the relevant causality test is 1) whether the threat against the rights, and the level of risk involved, require a *rapid change* in the State's behaviour (the licensing) or preventive action to be taken, *and* 2) whether the Applicants' ask of the domestic courts (invalidation of licences) could have been a reasonable preventive measure with a real prospect of altering the outcome or mitigating the adverse effects as part of the State's duty to do "everything in its power"[130] to do "its part"[131] and thereby protect the Applicants.

82. The two causality questions suggested above are interlinked: if the need for rapid change is urgent, the prospect of the licences' invalidation altering the outcome is significant so long as it is relevant to achieving the desired result. With climate change, all modelled pathways that limit warming below even 2°C "assume immediate action", and "involve rapid and deep and in most cases immediate GHG emission reductions in all sectors".[132] A call for a shift in governmental authoritative patterns therefore seems more relevant than measuring and quantifying emissions reductions from each action or non-action undertaken by the State.

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[129] In conflict with the Paris Agreement Article 2(c) which requires the state to make finance flows consistent with a pathway towards low greenhouse gas emissions and Article 4.4 which obliges parties to undertake economy wide changes.
[130] Kolyadenko and others v. Russia, App Nos 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05, 28 February 2012, §§ 191, 212, 216; Öneryildiz v. Turkey, (supra n.100) § 135.
[131] Urgenda (supra n.99) § 5.7.1.
[132] IPCC Mitigation Summary for Policymakers (supra n.5), pp. 21, 28, §§ C.1, C.3.

83. Applicants further allege that when a rapid change in a State's behaviour is needed or if additional preventive action must be taken soon, the State's margin of appreciation is limited or none.

84. With reference to question 3 c): The link between the licences and the violation of rights is that a *rapid change* in the State's behaviour (the licensing) is required now, and preventive action, which includes refraining from developing certain fields, must be taken now. Invalidation of the licences would have had a real prospect of altering the outcome or mitigating the adverse effects of climate change, since this would ensure that these oil fields would not be explored and thus would prevent the related emissions. Alternatively, it would ensure that environmental assessments conducted prior to potential licensing could lead to another outcome based on high-quality assessments of combustion emissions, carbon budgets, selection of fields to be developed within the relevant budgets, the States obligation to do its part etc., *and* an informed public debate. Moreover, one could expect that a State doing everything in its power to address climate change would ameliorate the mental health harms experienced by the Applicants.

85. As part of establishing the link between the licensing and the breach of rights suffered from the Applicants due to climate change, Applicants underline that the licensing pertains to undiscovered oil and gas fields for the purpose of producing oil and gas from 2035 and onwards in a time when society struggles to undergo sufficient change, barriers are numerous, and deep decarbonization is needed.

86. The Respondent argues that "it cannot be conferred that the issuing of a production licence in any event, unconditionally and for the unforeseeable future will lead to extraction of oil and gas".[133] Applicants submit that the licensing decision should be evaluated on the basis of its purpose (production and subsequent combustion of fossil fuels) and that according to the precautionary

[133] The Respondent's Written Observations § 107.

principle, lack of scientific certainty should not be used as a reason to delay measures to prevent environmental degradation when there is risk of serious or irreversible damage.

87. Research shows that "[g]lobal fossil fuel production must start declining immediately and steeply to be consistent with limiting long-term warming to 1.5°C ".[134] Indeed, there is no scenario in which warming is kept below even 2°C without abatement of fossil fuel emissions,[135] and "the worldwide fleet of [existing] coal and gas power plants would need to retire about 23 and 17 years earlier than expected lifetimes, respectively, in order to limit global warming to 1.5°C".[136]

88. Respondent also claims, on the basis of a decade-old report, that gas is a "climate friendly" substitute for coal.[137] However, the 2021 Production Gap report explicitly notes that, even in terms of oil and gas specifically, governments' current production plans will result in 57% more oil and 71% more gas than is compatible with the 1.5°C target.[138]

3.3.3 Context, cf. question no 3 a)

89. **The Court's question 3(a) is - in short - whether the Applicants' arguments, to the extent that they concern environmental consequences of the respondent State's petroleum activities in a general manner, fall within the scope of the case before the Court?**

90. Applicants allege that the general environmental consequences of the Respondent State's petroleum activities, and in particular the emissions from

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[134] 2021 Production Gap Report (supra n.28), p. 4.
[135] See IPCC Mitigation Summary for Policymakers (supra n.5), p. 20, § B.7 ("Projected cumulative future CO2 emissions over the lifetime of existing and currently planned fossil fuel infrastructure without additional abatement exceed the total cumulative net CO2 emissions in pathways that limit warming to 1.5°C (>50%) with no or limited overshoot. They are approximately equal to total cumulative net CO2 emissions in pathways that limit warming to 2°C (*high confidence*)").
[136] IPCC Mitigation Technical Summary (supra n.6), p. 53, § TS.5.1.
[137] The Respondent's Written Observations § 27. (White Paper 36 (2012-2013) (supra n.24)).
[138] 2021 Production Gap Report (supra n.28), p. 4.

combustion, fall within the scope of the case before the Court both as part of what is directly relevant under legal common ground and as relevant context.

91. The Court must evaluate the case in the correct context which is: climate change and the global struggle in solving the problem, the ongoing Norwegian policy regarding seeking new, undiscovered oil and gas fields in novel areas and subsidising the development of such activities,[139] as well as the lack of emission reductions undertaken in Norway thus far.[140]

92. The NSC, in paragraphs 148 and 161-162 of its judgment, sought to balance between distancing itself from this context and at the same time accepting that the same context matters. In the Applicants' view, the NSC wrongfully drew a border against relevant context in doing so. However, when the NSC unanimously concluded that it is a requirement of the law to consider exported emissions, cf. § 149 of the NSC judgment, the Applicants see this as a reflection of accepting that context matters.

93. When the NSC in para. 162 of the judgment further states that specific requirements (such as the organisations' ask for the exported emissions to be assessed against a carbon budget) cannot (note that the public translation of the judgment is not correct on this point)[141] be interpreted into the Norwegian Constitution § 112 by the Norwegian courts, this reflects a Norwegian legal tradition entailing that regulation is left to Parliament. Thus, when the relevant detailed laws, subordinate regulations or administrative practices are insufficient, said tradition leaves a law-empty space. This tradition, however,

[139] Petroleum Tax Act no. 35 (13 June 1975) as amended cf. § 11 (2). Deadlines for the release of subsidies on 1 January 2023. According to the NHRI Report on § 112 (supra n.10) Sec. 2.2, it is expected that 58 PDOs will be submitted by oil companies for approval in 2022 and 2023 and that the majority of these will be decided by the Ministry of Petroleum and Energy (and not by Parliament).

[140] The 2022 Environmental Performance Index (EPI) by the Yale Center for Environmental Law and Policy ranks Norway at no. 70; in comparison Denmark, UK, Finland and Sweden are nos. 1, 2, 3, and 6, respectively. Yale Environmental Performance Index (supra n.128).

[141] The Norwegian version of para. 162 reads: «Eg kan vanskeleg sjå at domstolane ved prøving av enkeltvedtak kan stille opp slike spesifikke krav med grunnlag i Grunnlova § 112» which means that the courts cannot interpret specific requirements into § 112. The public English translation states that this kind of interpretation is "unlikely".

does not prevent the Court from considering the full context (climate realities and petroleum policies), and concluding that the shortcomings of the Norwegian law represent a breach of rights.

94. As rightly pointed out in the Respondent's Written Observations, propositions in Parliament to curb licensing for new oil and gas resources have been unsuccessful,[142] which demonstrates the need for the Court to secure the Applicants' rights under the Convention.

95. The NSC's further reasoning in para. 162 is that "specific requirements" based on the Constitution § 112 would "largely involve a controlled shutdown of Norwegian petroleum production". The Applicants contest this line of argumentation which stems from the State's arguments in the oral hearings before the NSC. The purpose of this argument is to allow room for governmental manoeuvring and a 'business as usual' policy. It is, however, scientific common ground that there is no room for new fossil fuels supply in the net zero pathway.[143] As part of the relevant context, the Court must note that the Respondent has undertaken no assessments or evaluations that are known to the public to substantiate that the ongoing licensing policy is in conformity with a duty on the State to reduce risks from climate change.

96. The Norwegian National Institution on Human Rights has expressed that unless it can be shown, based on the precautionary approach, that each PDO-approval is in line with a legally assessed tolerance limit, additional PDOs cannot be approved.[144] Detailed requirements relating to the licensing, such as measuring combustion emissions against a carbon budget would not automatically involve a "shutdown" of the Norwegian petroleum industry. Rather, it would clarify

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[142] Respondent's Written Observations § 28; See also, debate from the Norwegian parliament on ceasing the handing out of licences (5 January 2022) available at: https://www.stortinget.no/no/Saker-og-publikasjoner/Publikasjoner/Referater/Stortinget/2021-2022/refs-202122-01-06?m=12#2022-01-06-5.

[143] IEA (2021), *Net Zero by 2050*, IEA, Paris, p. 11 https://www.iea.org/reports/net-zero-by-2050 ("There is no need for investment in new fossil fuel supply in our net zero pathway. Beyond projects already committed as of 2021, there are no new oil and gas fields approved for development in our pathway, and no new coal mines or mine extensions are required").

[144] The NHRI Report on § 112 (supra n.12), Sec. 3.4 § 12.

which resources can be produced and when - and which cannot. It would also allow for people in Norway to have knowledge of which carbon budgets and temperature limits the State actually uses in its assessments. This would facilitate the public debate in Norway.

3.3.4 Substantive rights – Articles 2 and 8

97. The Applicants' allegations as described in 3.3 of the Application are maintained.

98. The Applicants have submitted robust evidence, cf. § 31, 39, reflecting the scientific consensus that younger age groups and birth cohorts are and will be disproportionately affected by climate change. The impacts of climate change on the Applicants' mental health have also been described above, cf. §§ 35-38.

99. As highlighted below, cf. § 141, Applicants 2, 4 and 6 have also described how their cultures, livelihoods, and traditions have been harmed by climate change in their statements to the Application.

100. The Applicants emphasise that the allegation is that the issuance of the licences as such represent a breach of Articles 2 and 8, as it contributes to increasingly exposing them to effects of climate change.

101. The Respondent has failed in its primary obligation to adopt a legal framework that protects the Applicants[145] against climate change and its effects. Such a framework must contain a duty to refrain from certain decisions (i.e., licensing) when this is required in order to safeguard rights. As noted by the NSC, the purpose of the constitutional provision "would largely be lost if the provision does not also involve a duty to abstain from making decisions violating (...)"[146] This is true for all basic rights and is reflected in the Court's case law as well,

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[145] Nicolae Virgiliu Tănase v. Romania, App No 41720/13, 25 June 2019, § 135 ("This substantive positive obligation entails a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life").

[146] NSC Judgment (supra n.11), § 143.

which emphasises that there is no firm distinction between positive and negative obligations of the State.[147]

102. The legal framework in force in Norway today does not give the Applicants sufficient protection against the threats from climate change as it in practice allows for new licences for undiscovered gas *and* oil to come into the market in 2035 onwards. Even though the NSC has declared that the Constitution's present legal framework may lead to decisions to refrain from developing resources,[148] the Government has to date never interpreted the law to have that effect, and it remains unclear and non-transparent what - if any - circumstances may actually lead to a decision to refrain, cf. item § 121-129 below for elaboration.

103. Applicants also allege that the Respondent has failed in the secondary obligation of states, to undertake reasonable and appropriate measures to reduce the risk when the threat or risk to life is "serious" or "real and immediate", cf. Application item 56, 57, 60 and 61 for references.

104. The NSC accepted that climate change is a real and serious threat to lives in Norway.[149] Other apex courts have adopted similar conclusions,[150] and several courts have also established that there is a causal link between decisions facilitating fossil fuel extraction and their negative consequences for humans through climate change.[151] The risk for overshooting the 1.5°C-limit is imminent

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[147] López Ostra v. Spain, App No 16798/90, 9 December 1994, § 51; Jugheli v. Georgia, App No 38342/05, 13 July 2017, § 73.
[148] NSC Judgment (supra n.11), § 143.
[149] NSC Judgment (supra n.11), §§ 45–55, 167.
[150] Commune de Grande-Synthe v. France, no. 427301 (Le Council d'Etat), 19 November 2020, § 3; Notre Affaire à Tous et al. v. France, nos. 1904967, 1904968, 1904972, 1904976/4-1 (Administrative Court of Paris), 2 March 2021, §§ 16 ff.; Neubauer Decision (supra n.7), §§ 147–148; Friends of the Irish Environment v. Ireland, Appeal No: 205/19 (Supreme Court of Ireland) 31 July 2021, §§ 1, 3.6; Urgenda Judgment (supra n.99), § 5.6.2; Massachusetts v. EPA, 549 U.S. 497 (Supreme Court of the United States), 2 April, 2007, p. 23; Greenhouse Gas Pollution Pricing Act, 2021 SCC 11 (Supreme Court of Canada), 25 March 2021, § 171; Future Generations v. Ministry of the Environment et al., STC4360- 2018 (Supreme Court of Colombia), 4 May 2018, p. 34; Shrestha v. Office of the Prime Minister et al., no. 10210, no. 074-WO-0283 (Supreme Court of Nepal), 25 December 2018, pp. 5, 11.
[151] Gloucester Resources Ltd v. Minister for Planning, 234 LGERA 257, *2019* § 525; Gray v. Minister for Planning and others, 152 LGERA 258, 2006, §§ 93-100; Minister for the Environment v. Sharma, FCAFC 35, 2022, §§ 293, 332, 403 and 423; see also RDS Decision (supra n.118) §§ 4.4.37, 4.4.49.

- current projections indicate that 1.5°C warming will be reached around 2035,[152] and any chance of avoiding an overshoot is rapidly deteriorating as "mitigation after 2030 can no longer establish a pathway with less than 67% probability to exceed 1.5°C".[153] The need for change in governmental authoritative patterns and for positive preventive measures to be taken is thus urgent now.

105. Measures introduced by the State to meet its obligation to initiate preventive measures against the effects and threats of climate change are insufficient as Norwegian emissions are hardly decreasing,[154] and Norway is falling heavily behind comparable countries in doing its part.[155]

106. Whilst it is true[156] that the Convention does not contain an environmental provision as such, it is also clear that the Court has already evaluated breaches of Articles 2 and 8 in instances where an environmental situation threatens those rights in more than 270 cases as of 2018.[157] The Court's case law shows use of dynamic interpretation in areas where there is an evolving understanding in society of the need for rights-based protection well before binding international agreements are concluded. An example of this is the case law regarding protection of women from violent abuse,[158] which inspired the Council of Europe's legally binding Istanbul Convention on preventing and combating

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[152] See IPCC Adaptation Technical Summary (supra n.31), p. 8, Box TS.2 ("a GWL [global warming level] of 1.5°C is projected to be reached at about the same time, around 2035".).
[153] IPCC Mitigation Summary for Policymakers (supra n.5), p. 18, n.24.
[154] Norwegian Environment Agency, "Norwegian Emissions" available at: https://www.norskeutslipp.no/no/Komponenter/Utslipp/Klimagasser-CO2-ekvivalenter/?ComponentType=utslipp&ComponentPageID=1166&SectorID=90
[155] Yale Environmental Performance Index (supra n.128).
[156] As pointed out by the State in its submission. The Respondent's Written Observations, §§ 38, 130.
[157] See Kobylarz Analysis (supra n.8), pp. 101-102, ("Since the 1960s, the [ECtHR]...have issued, by the author's count, approximately 270 such environment-related rulings…All in all, these environment-related rulings prove that the European system of human rights protection efficient safeguards the environment by proxy of first-generation human rights, the scope of which is constantly evolving and which are recognised as being interdependent and indivisible from economic and social rights").
[158] See generally Opuz v. Turkey, App No 33401/02, 9 June 2009.

violence against women and domestic violence.[159] In the landmark case on the problem, the Court stated that it "*is a general problem which concerns all member States* (...)"[160]

3.3.5 Procedural obligations under Article 2 and 8, cf question no. 3 d)

107. **The Court's question 3 d) is in short, to what degree – factually and legally – the Applicant arguments concerning the environmental consequences of the petroleum production and extraction following the licences granted, realistically can be taken into account at any later stages of the administrative process relating to production?**

108. It is uncontested that climatic effects of combustion emissions from production based on the disputed licences were not clarified or considered in the environmental impact assessment that the licences are based on, nor in any earlier assessments. Other documentation, such as the "Climate Report" (Norwegian: Klimameldingen),[161] does not address combustion emissions either, cf. NSC minority opinion in § 272 of the NSC judgment.

109. The Applicants allege that all environmental consequences, including emissions from combustion, should have been taken into consideration prior to the licensing. The assessments of combustion emissions cannot be realistically taken into account at a later stage of the administrative process, either factually or legally.

110. In the factual context it is evident that larger discoveries of oil and gas leads to higher emissions from combustion. As pointed out by professor Bjørnebye of the

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[159] The Istanbul Convention was adopted by the Council of Europe Committee of Ministers on 7 April 2011 and entered into force on 1 August 2014. See Council of Europe, *Council of Europe Convention on preventing and combating violence against women and domestic violence*, 11 May 2011, available at: https://www.refworld.org/docid/4ddb74f72.html.

[160] Opuz v. Turkey (supra n.158), § 132.

[161] Report No. 21 (2011–2012) to the Parliament (white paper), "The Climate Report", available at: https://www.regjeringen.no/contentassets/aa70cfe177d2433192570893d72b117a/no/pdfs/stm201120120021000dddpdfs.pdf; Summary in English available at: https://www.regjeringen.no/contentassets/aa70cfe177d2433192570893d72b117a/en-gb/pdfs/stm201120120021000en_pdfs.pdf.

Institute of Petroleum Law at the University of Oslo: " (…) *in practice it is close to unthinkable that the authorities should deny PDO-approval because the discoveries are larger than expected. The example shows that assessments of combustion emissions at the PDO-stage will not most likely not have any practical significance and that it makes little sense to postpone the assessments to this point in time".* [162] (Our translation.) In the factual context it is also relevant that discoveries of oil and gas come at great expense.

111. In the legal context, the Court has established that a State "must determine complex issues of environmental and economic policy, the decision-making process must firstly involve appropriate investigations and studies in order to strike a fair balance between the various conflicting interests at stake".[163] The Court increasingly requires impact assessments to fulfil these requirements.[164] The onus is on the Respondent[165] to justify how fossil fuel licensing in undeveloped areas is compatible with an obligation to protect against a violation of the Convention rights.

112. The legal requirements laid down by the Court are fundamentally based on democratic considerations.[166] The NSC minority opinion is based on the same fundamental considerations, cf. § 255 of the NSC judgment: *"The impact assessment is to provide information to – and create a basis for participation from – the public in the decision-making process".*

113. The legal question of substance is whether the environmental impact assessment which preceded the granting of licences should have taken into consideration

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[162] Bjørnebye, H (2021) "Spørsmålet om mangelfull utredning av klimavirkninger i HR-2020-2472". *Lov og rett* cf. item 3. Available at https://juridika.no/tidsskrifter/lov-og-rett/2021/3/artikkel/bj%C3%B8rnebye

[163] Taşkin and others v. Turkey (supra n.86) § 119.Hatton and Others v. The United Kingdom (GC), App No 36022/97, 8 July 2003, § 128 with further references.

[164] Tătar v. Romania, App No 67021/01, 27 January 2009, § 112; Giacomelli v. Italy, App No 59909/00, 2 November 2006, §§ 93-94.

[165] Önerylidiz v Turkey (supra n.100), § 89; Budayeva v Russia, App Nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, 20 March 2008, § 132; Cordella and other v Italy (supra n.83), §§ 161, 173; Dubetska and others v. Ukraine, App No 30499/03, 10 February 2011, §§ 145, 155. See also Urgenda Judgment (supra n.99), § 5.3.3. See also Taşkin v Turkey (supra n.86), § 119 and Hatton v UK (supra n.163), § 128 with further references.

[166] See, e.g., Opuz v. Turkey, (supra n.158) § 192.

combustion emissions in order to fulfil requirements of legal common ground. If answered in the affirmative, the next question is whether this omission is a breach of rights under the Convention.

114. The NSC majority (11 judges) deferred the assessment of combustion emissions to the later administrative stage referred to as the PDO-stage.[167]

115. The NSC minority (4 judges) found that the SEA Directive requires this to be assessed before licensing.[168] Professor Bjørnebye (mentioned above) opines with the minority.[169]

116. The SEA Directive[170] and the EIA Directive[171] constitute a legal common ground, cf. § 66 above and §§ 49-51 of the Application. The democratic considerations shared by the Court and the NSC minority are in line with European legislation.[172] The SEA Directive applies to plans and programmes subject to preparation or adoption by the authorities.[173] According to Article 3, an environmental assessment shall be carried out for plans "which set the framework for future development consent of projects", including projects involving extraction of petroleum.[174] According to the SEA Directive the environmental assessment must be carried out "*before*" the adoption of a plan, cf. SEA Directive Article 4. paragraph 1. The succession of actions is logical and necessary, as only then will it be possible to fulfil the purpose of the directive, i.e., to secure participation from "*the public affected or likely to be*

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[167] NSC Judgment (supra n.11), §§ 222, 223, 241.
[168] NSC Judgment (supra n.11), §§ 266, § 269.
[169] Bjørnebye, H "Spørsmålet om mangelfull utredning av klimavirkninger i HR-2020-2472" (supra n.162).
[170] EU directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (SEA Directive), 27 June 2001: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32001L0042 .
[171] EU Directive 85/337/EEC (now Directive 2011/92/EU) on the assessment of the effects of certain public and private projects on the environment (EIA Directive), 13 December 2011: https://eurlex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011L0092 .
[172] SEA Directive (supra n.170) preamble no. 15.
[173] SEA Directive (supra n.170) Article 2.
[174] SEA Directive (supra n.170) Article 3.; See the reference in Article 3 to Directive 85/337/EEC Annexes I and II. Annex I no. 14 refers to extraction of petroleum and natural gas for commercial purposes.

affected ... by the decision-making process", cf. SEA Directive Article 6 paragraph 4.

117. The CJEU has held that the environmental assessment should be made "at the earliest possible date"[175] and "as soon as possible so that its conclusions so that its results could still have an influence on any potential decision-making"[176] and that "an environmental impact assessment report completed under the EIA Directive cannot be used to circumvent the obligation to carry out the environmental assessment required under the SEA Directive in order to address environmental aspects specific to that directive".[177] In the conclusive remark the CJEU held: "Thus, the fact, (...) that the future planning permission applications will be subjected to an impact assessment procedure under the EIA Directive *is not capable of calling in question the need to carry out an environmental assessment of a plan or a programme falling within the scope of Article 3(2)(a) of the SEA Directive* and establishing the framework within which those town planning projects will subsequently be authorised, *unless* an assessment of the environmental effects of that plan or programme, (...) *has already been carried out"*.[178] (Emphasis added).

118. Moreover, the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters of 1998 to which Norway is a party states in Article 7 that there should be "early" public participation in the elaboration of plans or programmes which are "relating to the environment. This participation shall take place "when all options are open and effective public participation can take place".[179]

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[175] Case C-160/17, Thybaut and Others v. Région wallonne, 8 May 2019, § 62.
[176] Case C-671/16, Inter-EnvironnementBruxelles ASBL and others v. Brussels Capital Region, 7 June 2018, § 63.
[177] Inter-EnvironnementBruxelles ASBL and others v. Brussels Capital Region (supra n.176), § 65.
[178] Inter-EnvironnementBruxelles ASBL and others v. Brussels Capital Region (supra n.176), § 66.
[179] The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (The Aarhus Convention), 25 June 1998, 2161 U.N.T.S. 447, Article 7 and Article 6.4.

119. Additionally, domestic courts in Europe, the United States and Australia increasingly rule that these emissions are part of the legal responsibility for a State, or a company must assess in relation to the decision to open an area for exploration and extraction.[180] The Biden administration has recently decided not to appeal domestic court decisions to that effect.[181]

120. The Applicants allege that the duty to assess all climate impacts as early as possible at a time when all options are open – including the option not to extract petroleum – in accordance with the requirements under the SEA and EIA Directive and the Aarhus Convention has not been complied with in relation to the 10 licences for drilling in the Barents Sea, and not in relation to any other licences either. As such, the Respondent State is failing to take all necessary and reasonable measures to safeguard the Applicants' rights under the Convention.

121. A further question that can be raised is if the procedural measures that the State has recently introduced will consider whether a further breach of rights will be prevented. The Applicants allege that the question must be answered in the negative, and that the introduced procedures (to be described below) in fact demonstrate the urgent need for the impartial systemic control that the Court's handling of the case at hand represents.

122. In the governmental Report to Parliament dated 8th April 2022, the following is stated in item 1.3: "*In order to follow up the Supreme Court's judgment on Constitution § 112, the Ministry will undertake assessments of climate impacts from production and combustion in relation to the dealing with all new [...]*

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[180] RDS Decision (supra n.118) §§ 4.4.18, 4.4.19; Ctr. for Biological Diversity v. Bernhardt (Liberty), 982 F.3d 723 (9th Cir.), 7 December 2020, pp. 19-23; Sovereign Inupiat for a Living Arctic et al v. Bureau of Land Management et al., 555 F.Supp.3d 739 (District Court of Alaska), 18 August 202,1 pp. 28-31,; Friends of the Earth et al. v. Debra A. Haaland et al., Civil Action No. 21-2317 (District Court of Columbia), 27 January 2022, pp. 23-40, Gloucester Resources Ltd v. Minister for Planning, NSWLEC 7 (Land and Environment Court, New South Wales), 8 February 2019, §§ 449-513(referencing some 10 cases from other jurisdictions around the world).

[181] News Release (2 June 2022). "Settlements: Biden Administration will Address Oil and Gas Leasing Climate Impacts on Nearly 4 million Acres of Western U.S. Public Lands, Reconsider Sales to Oil and Gas Industr.". *Western Environmental Law Center*, available at https://westernlaw.org/settlements-biden-administration-will-address-oil-and-gas-leasing-climate-impacts-on-nearly-4-million-acres-of-western-u-s-public-lands-reconsider-sales-to-oil-and-gas-industry/

PDOs. The extent of the assessments will be adjusted to the size of the resources in each development. The Ministry will make transparent the [the assessments made] when the [the Ministry's] decision [on the further development] is made".
[182](Our translation)

123. As the quotation shows, the way forward chosen by the Respondent is not in conformity with the SEA Directive. The planned assessments are not environmental assessments nor are they transparent *prior* to the decision-making. The public will not be afforded an opportunity to consider or influence the outcome prior to the further licensing.

124. Additionally, as pointed out by the Norwegian National Institution of Human Rights (NHRI) in its report dated 18 March 2022, the Ministry has, disregarding the precedent set by the Supreme Court in para. 222 and 223 of the judgment, subsequently approved several PDO applications without *any* environmental assessment of combustion emissions.[183] Consequently, as a matter of fact, the NSC's prerequisite that the environmental assessments be made according to law at this later stage has also - in the period between the NSC judgment and the mentioned report to Parliament - thus far been flawed.

125. In a recent letter to Parliament dated 28th April 2022, the Ministry of Petroleum and Energy (the Ministry), partly commenting on NHRI's report, has stated that the Ministry will "*in the continuation make transparent the evaluations [that have been] made when deciding*[184] *on applications from licensees*[185] *regarding approval of PDOs, cf. Report to Parliament (2021-2022) page 11*". (Our translation). It is apparent from the process the Government is now introducing, that decisions will be made by the Ministry *before* the public receives information regarding the environmental assessments. The public will not have

[182] The Government of Norway, White Paper 11 (2021–2022), Sec 1.3, available at: https://www.regjeringen.no/no/dokumenter/meld.-st.-11-20212022/id2908056/?q=H%c3%b8yesterett&ch=1#match_0 .
[183] The NHRI Report on § 112 (supra n.12), Sec. 2.4. According to the NHRI-report, at least 4 PDOs have been approved after the NSC judgments without such assessments.
[184] In Norwegian: "i vedtak".
[185] In Norwegian: "rettighetshavergrupper".

any knowledge of how considerations for combustion emissions (scope 3) are accounted for, which carbon budget such emissions are weighed against, etc.

Annex 4: Letter from the Ministry of Petroleum and Energy to the Parliament dated 28 April 2022.

126. It should also be noted that the NHRI, cf. footnote 12, has suggested how such assessments could be made to ensure the appropriate context (scope), depth and quality of such assessments, and warned that the current climate situation indicates that *no further PDOs for undiscovered acreage should be approved*, and further that the scientific sources cited indicate that permitting the extraction of oil and gas (in general) is not compatible with limiting the temperature increase to 1.5°C, cf. page 25 of the report.

127. The Ministry concludes the aforementioned letter by stating that it is "*not correct as stated in the NHRI-report and on the NHRI-web site, that the Ministry has asked NHRI to investigate these issues*".

128. Lastly, it is also worth noting that the NSC's presumption that an environmental assessment will be done at the PDO-stage leans on an interpretation of the Norwegian Constitution's Article 112 as amended by Parliament in 2014, the SEA Directive and the EIA Directive. Thus, all PDOs approved after 2014 should have been reassessed in order to comply with the obligation to assess combustion emissions.[186] It is clear from the Report to Parliament and the letter from the Ministry of Petroleum and Energy discussed above, that this will not happen.

129. The procedural steps that the Government now plans to undertake when considering PDOs (to the extent such subsequent adjustment of the administrative procedure is relevant at all when considering the licensing from

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[186] Professor of law at the University of Oslo, Ole Christian Fauchald has expressed this view in the press, for example: Engen R, Sviggum S (April 2022). "Professor: Langt flere oljevedtak kan være ulovlige". *E24* available at: https://e24.no/olje-og-energi/i/mr28pl/professor-langt-flere-oljevedtak-kan-vaere-ulovlige.

2016) will clearly not render unnecessary an environmental assessment *prior* to the granting of licences.

130. Both the lack of establishing a legal framework that effectively protects the Applicants against a breach of rights, and the failure to all necessary and reasonable measures to safeguard from the same, represent a breach of Articles 2 and 8 of the Convention.

3.3.6 Substantive rights - Article 14, cf. question 4 d

a) Context

131. Applicants categorically reject the characterization by the Respondent that reduces their claims to an allegation of "'missing out' on positive societal development" and that qualifies their plight as a non-legal issue but a "topic of social and philosophical discussion" regarding "which generation is more privileged".[187] However, that is precisely the heart of the matter: the right to life and the right to private and family life as protected by the Convention are not privileges - they are rights. The Respondent's characterisation of these claims shows how the climate justice demands of younger generations and the Sámi Indigenous Peoples are disregarded by the authorities. The disregard of the Norwegian State's actions (and the NSC sanctioning thereof) for the younger generation and the Sámi Indigenous Peoples constitute differential treatment that cannot be justified, and its discriminatory effects are a violation under the Convention.

132. Applicants submit that postponing climate impact assessment to the later PDO-stage is discriminatory in at least two regards. First, it exacerbates the disproportionate climate impacts on individuals belonging to younger generations and the Sámi Indigenous Peoples. Second, it reflects disregard of

[187] The Respondent's Written Observations, § 169.

these groups, which itself generates emotional distress and mental health impacts to which they are particularly vulnerable.

b) Discrimination on the basis of age, birth cohort, and ethnic minority

133. Discrimination is constituted by "treating differently, without an objective and reasonable justification, persons in relevantly similar situations".[188] In addition, "a general policy or measure which has disproportionate prejudicial effects on a group of individuals can be regarded as discriminatory even if it does not specifically target the group and there is no discriminatory intent",[189] and "notwithstanding that it is not specifically aimed at that group".[190] Applicants 1-6 submit that Respondent has engaged in discrimination against them on the basis of their age and birth cohort in violation of Article 14.[191] Applicants 2, 4 and 6 also submit that they have been subject to discrimination on the basis of their association with an ethnic minority.[192]

134. While the Applicants' claims are made in conjunction with Article 2 and 8, the Applicants submit that a violation of Article 14 can be found notwithstanding the conclusions regarding the ambit articles.[193]

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[188] Willis v. the United Kingdom, App No 36042/97, 11 June 2002, § 48.

[189] Similarly, this is only the case when "such a policy or measure has no objective and reasonable justification". Dakir v. Belgium, App No 4619/12, 11 July 2017, § 65.

[190] D.H. and Others v. the Czech Republic, App No 57325/00, 13 November 2007, § 175.

[191] "Birth cohort" refers to those born within a specific time span, while "age group" refers to those who currently are at a specific age. Gosseries A (2015) "Environmental Degradation as Age Discrimination." *E-Pública* 5:1-15, available at https://e-publica.scholasticahq.com/article/34524.pdf. See also, Kaya R (2019) "Environmental Vulnerability, Age and the Promises of Anti-Age Discrimination Law." *Review of European, Comparative & International Environmental Law* 28(2), pp. 162-174, available at https://onlinelibrary.wiley.com/doi/abs/10.1111/reel.12279?casa_token=bSZLQIQP1t0AAAAA:5yl1cJeRvUo38s2BcxaAWOmmL-GvB0KKEQIcnVfvA910hpDxSvLt5C4HPA_dCb3P5W0YS7bmGr73Og.

[192] Association with a national minority is one of the grounds of discrimination listed in Article 14, and this Court has recognized that "no difference in treatment which is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified(...)". Timishev v. Russia, App Nos 55762/00, 55974/00, 13 December 2005, § 58. The Court has likewise noted that, as is the case for the Sámi people, "ethnicity has its origin in the idea of societal groups marked by common nationality, tribal affiliation, religious faith, shared language, or cultural and traditional origins and backgrounds". Id. at § 55.

[193] Abdulaziz, Cabales and Balkandali v United Kingdom, App Nos 9214/80, 9473/81, 9474/81, 28 May 1985, § 71; Volodina v Russia, App No 41261/17, 9 July 2019, §115; Sommerfeld v Germany, App No 31871/96, 8 July 2003, §§75, 94.

135. The Court has recognised that age can constitute a basis for discrimination for the purposes of Article 14,[194] and Article 14 has been found to be violated on the grounds of age and the differential treatment of young individuals.[195] Moreover, discrimination on the grounds of birth cohort has been addressed as an age discrimination issue by the CJEU.[196] Differential treatment on the grounds of birth cohort exists when young people are exposed to an environmental problem for a longer time given their longer expected life spans compared to adults. In this case, discrimination based on age and birth cohort arises from the fact that the young Applicants are and will be increasingly impacted by climate change, and yet their views and interests are not sufficiently considered given their lack of opportunities to participate in the Respondent State's decision-making processes. These young people have been mobilising for climate action to ensure that their fundamental rights are protected. The authorities, however, have ignored them and the NSC has sanctioned that disregard, leading to additional mental and emotional distress. According to the Court's caselaw, the language in domestic court judgments can cause discrimination against the young, especially when young people's feelings are ignored.[197] In its judgment, the NSC asserted that climate action can be postponed without assessing the claims of the applicants, who currently bear and will increasingly bear the heaviest burdens of climate change in the following decades. As found by the German Federal Constitutional Court in *Neubauer*, the State actions' disregard of younger generations will result in a larger burden and responsibility to address the worsening effects of climate change later on in their lives, which would place a "disproportionate burden on the future freedom"[198] and lives of the Applicants.

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[194] Schwizgebel v. Switzerland, App No 25762/07, 10 June 2010, § 85. ("the applicant may consider herself to have been treated differently from a younger single woman...Accordingly, the applicant may claim to be a victim of a difference in treatment between persons in analogous situations".).
[195] Deaconu v. Romania, App No 66299/12, 28 January 2019, § 39.
[196] See generally Case C-286/12 Commission v. Hungary, 6 November 2012.
[197] Deaconu v. Romania, (supra n.195), § 34.
[198] Neubauer Decision (supra n.7), §§ 186, 192 and 204.

The Council of Europe has also recognised discrimination against younger generations in environmental matters.[199]

136. Discrimination towards Applicants 2, 4, and 6, as members of a national minority of the Sámi Indigenous Peoples, is based on the particular and enhanced detrimental effects that climate change poses to the cultural lives of the Sámi, including their traditions, ways of life, and communities' ability to use land and resources.

137. This differential treatment against the Applicants exists even if there is no discriminatory intent animating the disproportionate impact,[200] and may be shown through statistical evidence of disproportionate effect.[201] The Court has found statistical evidence to be particularly relevant where, as here, the discrimination pertains to an issue that is a historic and ongoing concern in member states.[202]

138. Applicants have submitted extensive and robust evidence reflecting the scientific consensus that younger age groups and birth cohorts are and will be disproportionately affected by climate change. Young people are more vulnerable to the negative effects of climate change because they physically cannot tolerate environmental exposure in the same manner as adults. According to the World Health Organisation, children experience 88% of the existing burden of disease as a result of climate change.[203] As noted above, cf. §§ 31, 39,

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[199] See Council of Europe Recommendation 2211 (2021). "Anchoring the Right to a Healthy Environment: Need for Enhanced Action by the Council of Europe." See also Council of Europe, Resolution 2396, directly recognising environmental discrimination against younger generations.
[200] See D.H. and Others v. the Czech Republic, App No 57325/00, 13 November 2007, §§ 185, 174 ("[Discrimination arises by] disproportionately prejudicial effects of a general policy or measure which, though couched in neutral terms, discriminates against a group…which does not necessarily require a discriminatory intent").
[201] See Zarb Adami v. Malta, 2006, § 77, 78 ("The Court notes that it is apparent from the statistics produced by the parties…[that] there has been a difference in treatment between two groups").
[202] See Hoogendijk v. Netherlands, App No 58641/00, 6 January 2005; Opuz v. Turkey; D.H. and Others v. the Czech Republic.
[203] UNICEF (2015) "Unless We Act Now: The Impact of Climate Change on Children". P. 48, available at https://www.unicef.org/media/50391/file/Unless_we_act_now_The_impact_of_climate_change_on_children-ENG.pdf.

this is particularly - though not exclusively - true in terms of mental health.[204] Applicants have likewise submitted evidence of the scientific consensus that Indigenous Peoples are and will be disproportionately affected by climate impacts as well.[205] Applicants 1-6 are already suffering these disproportionate effects, as evidenced in their Statements.

139. Finally, regarding Applicant 7, the Applicant submits a claim of discrimination on behalf of its members, most of whom are between the ages of 13-25.[206] The Applicant respectfully requests that the Court apply a flexible approach to allow for the protection of rights under Article 14 for its members,[207] cf. § 64.

c) The comparator group in this case

140. Regarding differential treatment specifically, Applicants submit that Respondent's inaction affects them disproportionately compared to non-vulnerable older adults. In the context of the climate crisis, the right to life and right to private and family life are affected for later generations and young people due to both their biological vulnerability, how it is harder for them to cope with the physical and psychological impacts climate inaction, and how they will have to deal with the effects of climate change well into the future.

141. Applicants 2, 4 and 6, as members of the Sámi Indigenous Peoples, have a connection to traditional ways of life in the Barents Sea; their culture and

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[204] See IPCC Adaptation Summary for Policymakers (supra n.9), p. 17, § B.4.4 ("Mental health challenges...are expected to increase...particularly for children, adolescents, elderly, and those with underlying health conditions (*very high confidence*)").

[205] See See IPCC Adaptation Technical Summary (supra n.31), p. 16, § TS.B.4.4 ("vulnerable populations [include] the poor, women, children, Indigenous Peoples, and the elderly due to historical, political and socio-economic inequities (*high confidence*)"); id. at 20, § TS.B.7.2 ("Climate change is impacting Indigenous Peoples' ways of life (*very high confidence*), cultural and linguistic diversity (*medium confidence*), food security (*high confidence*), and health and wellbeing (*very high confidence*)"). See also IPCC Adaptation Summary for Policymakers (supra n.9), p. 14, § B.2.4 ("Vulnerability at different spatial levels is exacerbated by inequity and marginalization...especially for many Indigenous Peoples and local communities (*high confidence*)").

[206] There is no minimum age to join. There are some members under 13 years of age. The upper age limit is 26.

[207] Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania, App No 47848/08, 17 July 2014, § 112.

livelihoods have been directly impaired by climate change. Applicants 2[208] and 4[209] both explain that warming temperatures have prevented them continuing the essential fishing practices on which they have relied for centuries. Similarly, Applicants 2[210] and 6[211] are struggling to sustain the reindeer that the Sámi have nurtured and relied on for generations. This affects not only their livelihoods, but also their traditional and cultural ways of life as "Sámi culture is closely related to the use of nature, and fisheries are essential".[212]

142. Younger generations are disproportionately affected given their longer expected lifespans in comparison to older adults and their lack of both physical and psychological capacity to deal with the climate inaction of States. Members of the Sámi community are disproportionately affected compared to individuals who have no ties, or ethnic or cultural identity tied to the Arctic zone because the negative effects of global warming are already being felt and will become worse in the Arctic. Current scientific consensus shows a warming of 2 to 3 times higher in the Arctic.[213] Recent scientific data shows that the "increasing temperature rates for the Northern Barents Sea region are exceptional on the

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208 Applicant 2's Written Statement of Evidence to the ECtHR, App No 34068/21 (Annex 1, p. 6) ("Due to warming oceans, the stocks of cod we have depended on for thousands of years are moving further north, forcing fisheries with them")
209 Applicant 4's Written Statement of Evidence to the ECtHR, App No 34068/21 (Annex 1, p. 11) ("As long as I can remember, my family and I have fished in this river, but due to the effects of climate change on the Barents Sea…my family and I have to refrain from using the river…in doing so, we lose an important source of sustenance. Still, the most painful part is that the traditions tied to the fisheries cannot be continued").
210 Applicant 2's Written Statement of Evidence to the ECtHR, App No 34068/21 (Annex 1, p. 6) ("The reindeer herders of the indigenous Sámi people are struggling to find grazing land for their reindeer, due to uneven winters and changing climate conditions, putting their culture and livelihood at risk").
211 Applicant 6's Written Statement of Evidence to the ECtHR, App No 34068/21 (Annex 1, p. 16) ("In the winter of 2020, there was a crisis in the reindeer husbandry industry in my region [caused by] higher temperatures…How will we be able to continue the practice of our culture, living on the basis of traditional knowledge of nature, if the species that our culture has nurtured for centuries disappear?").
212 Applicant 6's Written Statement of Evidence to the ECtHR, App No 34068/21 (Annex 1, p. 17).
213 IPCC (2018). "Special Report on the Impacts of Global Warming of 1.5°C." P. 4, § A.1.2, available at https://www.ipcc.ch/report/sr15/ (hereinafter: "IPCC 1.5°C Report").

Arctic and global scale and correspond to 2 to 2.5 times the Arctic warming averages and 5 to 7 times the global warming averages".[214]

d) The aim pursued is not legitimate and it is not proportional

143. Respondent's observations do not provide an "objective and reasonable justification" for such differential treatment and indirect discrimination. Applicants submit that the margin of appreciation in this case is narrow. To begin with, the margin of appreciation is narrower in situations where, as is the case for applicants 2, 4 and 6, "the difference in treatment is based on...ethnic origin".[215]

144. In addition, the Court has conversely applied greater scrutiny in cases where the differential treatment pertains to major goals of the member States. It is indisputable that protecting young and future generations from the effects of climate change has become a major goal of member States.[216] Applicants therefore respectfully contend that the Respondent must provide "very weighty reasons...before such a difference in treatment could be regarded as compatible with the Convention".[217]

145. The Respondent has provided neither "objective and reasonable justification" nor "very weighty reasons" for failing to consider the disproportionate effects of postponing the climate impact assessment. Differential treatment amounts to discrimination where "it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised".[218] The primary purpose of the environmental impact assessment is to ensure that Norway's economic growth is achieved sustainably;

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[214] Isaksen, K. et al. (2022). "Exceptional Warming Over the Barents Area." *Scientific Reports* 12:1, 11.
[215] Horvath and Kiss v. Hungary, App No 11146/11, 29 January 2013, § 112. In such cases, "the notion of objective and reasonable justification must be interpreted as strictly as possible".
[216] Recently, the Parliamentary Assembly of the Council of Europe explicitly recommended an additional protocol to the ECHR stating that "No one shall be discriminated against on account of his/her belonging to a particular generation", and that "Each High Contracting Party shall ensure that additional measures are taken to protect the rights of persons who are more vulnerable to or particularly threatened by environmental harm". Recommendation 2221, Article 3 (2021).
[217] Ēcis v. Latvia, App No. 12879/09, 10 January 2019, § 84.
[218] Deaconu v. Romania, (supra n.195), § 23.

Applicants respectfully submit that its postponement contradicts that purpose, and that neither the Respondent nor the NSC's decision have provided a legitimate aim for doing so.

146. Prior decisions issued by this Court have emphasised that justifications based on legitimate aims should be predicated on expert findings and scientific data;[219] Considering the requirements under domestic law, the SEA Directive, the EIA Directive, and CJEU case law, cf. §§ 66, 117, there is no objective justification for postponing environmental impact assessment (including all the climate impacts) in the present case. The NSC judgment does not provide an objective justification for the decision to postpone the assessment.[220]

147. The actions of the State are neither legitimate nor are they proportionate. Applicants submit that the timing of action should be determined by considering the most vulnerable individuals. It is also paradoxical to assume the proportionality of delaying the climate impact assessment in favour of a given social aim, when that assessment is relevant in understanding the social (and economic) repercussions of achieving that aim in the first place. Doing so effectively prioritises the economic and social rights of non-vulnerable older populations over the same rights of younger generations and the Sámi minority, without balancing the aims being achieved against the differential impact being generated. This balancing is required[221], and the importance of intergenerational approaches to climate planning has also been emphasised by the IPCC.[222]

[219] See Deaconu v. Romania, (supra n.195), § 36 ("without basing its findings on expert reports or any psychological evaluation of the applicants, which would have allowed for a much more objective justification of the differential treatment of the applicants…the Bucharest Court of Appeal set an arbitrary [standard]").
[220] See Deaconu v. Romania, (supra n.195), §§ 25, 36.
[221] See Deaconu v. Romania, (supra n.195), § 23 ("differential treatment…will be deemed discriminatory…if there is not a reasonable relationship of proportionality between the means employed and the aimed sought to be realized").
[222] See IPCC Adaptation Technical Summary (supra n.31), p. 73, § TS.D.9.4 ("Intergenerational approaches to future climate planning and policy will become increasingly important in relation to the management, use and valuation of social-ecological systems (*high confidence*")).

e) Positive obligations

148. Applicants also submit that the Respondent has failed to meet its positive obligations to ensure that younger generations and ethnic minorities do not bear the disproportionate effects of climate change. This Court has explained that "the State has specific positive obligations to avoid the perpetuation of past discrimination",[223] and that failing to properly "investigate" acts of ill treatment constitutes a breach of these duties.[224] This Court has also emphasised that there are "positive obligations incumbent on the State in a situation where there is a history of discrimination against ethnic minority children".[225]

149. The State has ignored the effects that climate change will have on Arctic communities in their traditional living environment.

150. Applicants therefore respectfully submit that Respondent's postponement of the climate impact analysis constitutes a failure to meet its positive obligations to ensure that the Applicants are protected from the harmful impacts of climate change to which they are uniquely vulnerable.

151. Applicants 2, 4, and 6 are young members of the Sámi ethnic minority, which has historically been - and continues to be - disproportionately harmed by Respondent's climate inaction.

152. The State has the positive obligation to correct the disproportionate effects of its past and current actions that are detrimental to the climate on younger generations and the Sámi community.

f) Reply to Respondent observations

153. Respondent argues that disproportionate impacts on different age groups cannot amount to Article 14 discrimination because determining which generation is

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[223] Horvath and Kiss v. Hungary (supra n.215), § 116.
[224] Burlya and Others v. Ukraine, App No. 3289/10, 6 November 2018, § 128. The Applicants respectfully analogise the duty to investigate with the duty to assess the negative impacts on populations that have suffered past discrimination.
[225] Horvath and Kiss v. Hungary (supra n.215), § 119.

favoured by a given policy is subjective and hard to assess.[226] In this case, however, the scientific assessment is objective and clear: expansion of fossil fuel exploration, extraction and production is certain to harm younger age groups who are already sure to suffer the effects of climate change most acutely. Respectfully, Respondent's claim that greenhouse gas emissions are inherently indiscriminate because "they target no one and affect everyone"[227] likewise ignores the scientific certainty that some groups are disproportionately - and significantly - more affected than others, and that such groups have often contributed least to the climate crisis while also bearing the brunt of its effects.[228]

154. Respondent argues that Applicant 7 may not raise an Article 14 claim because, in the domestic proceedings, they did not argue 'in essence' that young people were subjected to discrimination based on age,[229] or membership in the Sámi minority.[230] First, the Applicants emphasised intergenerational equity throughout the domestic proceedings[231] and the Court does not consider it necessary for a given Convention right to be explicitly raised in domestic proceedings so long as it is raised "at least in substance".[232] This is well-established case law, and the Applicants respectfully contend that discrimination was raised as a complaint at least in substance, and that they may therefore invoke Article 14. Moreover, Article 14 is brought in conjunction with Articles 2 and 8, which were previously invoked in the domestic proceedings.[233]

155. More significantly, however, the NSC's judgment itself is a violation of Article 14 (in conjunction with Article 2 and 8) as postponement of the climate impact assessment generates differential treatment and has discriminatory effects.

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226 The Respondent's Written Observations, § 169.
227 The Respondent's Written Observations, § 169.
228 See IPCC 1.5°C Report (supra n.213), p. 55. §1.1.1 ("the benefits from industrialization have been unevenly distributed and those who benefitted the most historically also have contributed most to the current climate problem…the worst impacts tend to fall on those least responsible for the problem, within states, between states and between generations").
229 The Respondent's Written Observations, § 168.
230 The Respondent's Written Observations, § 92.
231 See Notice of Proceedings to Oslo District Court, § 4.
232 Castells v. Spain, App No 11798/85, 23 April 1992, § 32.
233 Notice of Proceedings to Oslo District Court, § 9.2.5.

156. Postponing climate action disproportionately affects the younger generations and the Sámi community; these groups are in more vulnerable situations given the longer expected lifespan of younger generations and the living environment of the Sámi community.

157. As such, the Applicants request the Court to find a violation of Article 14.

3.3.7 Substantive rights Article 13, cf. question 4 d

158. The Applicants fully uphold that the Respondent failed to secure the Applicant's access to an effective domestic remedy under Article 13.

159. As stated in the Application (para. 66), the Norwegian courts assessment of the Convention claims were superficial and seriously erroneous. In particular the following issues were handled without the sufficient diligence:

160. The Norwegian courts applied an erroneous threshold to assess the Respondent's obligations pertaining to Article 2 and 8 and limiting the aspects of the environmental harm to "local" harm, not considering the effect harm in other countries will have on individuals in Norway.

161. Furthermore, the NSC's determination that emission reductions may be deferred to PDO stage entails two separate issues, both underlying how Article 13 was breached.

162. First, deferring the assessment of emission reduction to the PDO stage does not grant judicial control over the licensing procedure at a time where the licences still have a reasonable chance of being found invalid, failing to meet the obligation of promptness.

163. Second, the Norwegian courts did not assess the Respondent's procedural obligations under Article 2 and Article 8 *at all*, failing to assess the full extent of the Applicant's claims under the Convention.

3.3.8 Considerations related to Question 3b)

164. Question 3b) poses whether applicants could have brought their Convention grievances in respect of the respondent State, insofar as they might be perceived to rely on such arguments regarding environmental consequences in general, before the domestic courts in any other manner?

165. At this point the State refers[234] to the Dispute Act section 1-4 and the plenary decision by NSC in *Acer* where the majority found that the organisation "No to the EU" could bring an action against the State in order to seek a declaratory judgment to the effect that the Storting did not act in accordance with the Constitution when it consented to the incorporation of the EU's third energy market package into the EEA Agreement with a general majority.

166. However, it is not mentioned by the State that in *Acer,* the State argued, successfully in the first two instances, that "the main action does not concern a 'legal claim', but an abstract legal issue that cannot be challenged through legal action"[235] - hence the request for a declaratory judgment. The case was transferred to plenary where, in the ruling, there was a dissenting opinion of seven judges (12-7). Whether a breach of the Constitution had taken place or not was not judged upon, as the ruling was purely on procedural issues and constitutional issues remained for the court of first instance (and the Court of Appeals and the Supreme Court) to decide. There is no tradition in Norwegian law for such declaratory judgments, hence the procedural discourse through the domestic court levels.

167. Whether a request for a declaratory judgment could be brought in 2016, or even in November 2020 when the applicant's case was heard by the NSC (before *Acer*), can in hindsight and in consideration of *Acer* (presuming that the procedural issues would have been solved in the same manner) likely be answered in the affirmative. However, had the applicants brought their claim in

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[234] The Respondent's Written Observations, § 101.
[235] Supreme Court of Norway, HR 2021-417-P, *Acer,* 1 March 2021, § 46 available at: https://www.domstol.no/globalassets/upload/hret/avgjorelser/2021/hr-2021-417-p.pdf .

2016 in the way the Respondent suggests, the Applicants' case would have been subject – as in the first case - to the procedural uncertainties that took three levels of courts to clarify through *Acer*. For the Applicants, the first round in the three levels of Norwegian courts would then have been limited to procedural questions. This would have depleted the Applicants' resources and would have prolonged the exhaustion of domestic remedies by several years. In contrast, challenging the validity of licences was and is indisputably legally viable, and the more obvious choice of action. The Applicants note that "the established case-law of this Court entitles an applicant to choose one feasible domestic remedy over another, the applicant was entitled to devote resources to pursue one feasible appeal (...) over another (...)".[236]

168. As we understand the Courts question 3b), this question too refers to NSC judgment paragraph 148 and 161-162. In short, the NSC sees the Applicants' allegations as too general. As shown in Section 3.3.6, the Applicants refute this view. However, it is likely that the NSC would also have regarded the context as being too general had the Applicants' allegations been brought as a request for a declaratory judgment

4. PROCEDURAL REQUESTS

169. The Applicants respectfully submit the following procedural requests to the court:

170. Request for an oral hearing on the admissibility and merits of the case;

171. Request for the presentation of evidence by expert testimony during the oral hearing;

172. Request that the Applicants themselves be granted the opportunity to be heard and give testimony about the harms that they have endured.

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[236] O'Keefe v Ireland (supra, n.98), § 111.

5. REQUEST FOR JUST SATISFACTION (Article 41) and REQUEST FOR GENERAL MEASURES (Article 46)

5.1 Introduction

173. Considering the Respondent State's violation of the Applicants' rights under the Convention (under Articles 2, 8, 13 and 14), the Applicants respectfully submit a request for just satisfaction (Article 41) in terms of pecuniary and non-pecuniary damages (see §§ 174-178 below), and general measures (Article 46) (see §§ 179-187 below).

5.2 Non-pecuniary damages

174. As stated in the Application and the Annexes 1-6 (statements of Applicants), the Applicants have already suffered mental harm due to the impending climate catastrophe, as well as the Respondent State's refusal to take the necessary and appropriate measures to safeguard their rights. In addition, the frustration that they have endured at every level in the domestic proceedings and even now in the Respondent State's observations has aggravated this mental anguish.

175. The Applicants' primary concern is the vindication of their rights and they therefore request non-pecuniary damages in an amount that the Court sets at its discretion.

5.3 Pecuniary damages

176. Regarding legal costs and expenses specifically, the Applicants submit a claim for the total amount of EUR 652,938.75. The costs for preparing and litigating the case at the domestic level and before the European Court of Human Rights, taking into account the order of the NSC reducing the court costs that had been awarded to the State and VAT-compensation, consists of the following amounts (including 25% VAT):

-Proceedings before the Oslo District Court EUR 394,738.20

-Proceedings before the Court of Appeals EUR 188,700.55

-Proceedings before the NSC: EUR 0 (Applicants were granted free legal aid)

-Proceedings before the European Court of Human Rights until end of 2021 EUR 87,243.55

177. **Annex 5**: Detailed fee note with invoices.

178. This amount is in line with the complexity of the issues and the length of proceedings, the nature of the issues litigated as matters of first impression in Norway, the consultation of experts in law and fact, and the need to safeguard the interests of the Applicants at all times.

179. Due to the foregoing reasons, the Applicants respectfully submit to the Court a claim of pecuniary damages (legal costs, expenses and costs associated with preventative or mitigation measures totalling EUR 652,938.75) and non-pecuniary damages in an amount to be set by the Court at its discretion.

5.4 General Measures

180. Applicants submit that in addition to the finding of the violations, the Court orders measures given that, in light of the nature of the violation and the Respondent State's history, its arguments throughout litigation, its public statements and views in light of the war in Ukraine on continuing the expansion of fossil fuel production, the Applicants' vulnerable status as young people and (for Applicants 2, 4 and 6) members of the Sámi Indigenous Peoples, the Respondent's actions and omissions constitute a continued breach of the Applicants' rights.

181. It follows from the jurisprudence of the Court that it has the competence and can exercise its discretion to order measures in cases, such as the present one, rooted in systemic issues that will continue to breach Convention rights. These systemic issues can affect other potential future applicants due to the impending climate crisis and the obligation of Norway to act, applying the precautionary principle, according to the best available science, and under the Paris Agreement according

to its principle of common but differentiated responsibilities, and in a way which reflects its highest possible ambition.

182. Failure of the Respondent State to take all necessary and appropriate measures will result in a continued violation of Applicants' rights and pose harm to countless others. Therefore, the Applicants submit that the Court could make an order for general measures, including the following:

183. A declaration in respect of the Respondent State to have breached Article 2, 8, 13 (in conjunction with Article 2 and 8) and Article 14 (in conjunction with Article 2 and 8) of the Convention.

184. An order for the Respondent to adopt all necessary and appropriate measures by conducting an assessment of all cumulative climate impacts resulting from the disputed licences, including greenhouse gas emissions that will result from combustion, (i.e. "exported emissions") at the earliest possible stage. This assessment should be based on best available science and show the compatibility of the proposed licences with the Paris Agreement temperature limit of below 1.5°C. This assessment should include an evaluation of the effects on the youth and the Arctic, including impacts on the ways of life of Sámi Indigenous Peoples.

185. An order for the Respondent to apply the precautionary approach and ensure that if the assessment of the disputed licences shows incompatibility with the Paris Agreement temperature limit of below 1.5°C that these licences be withdrawn.

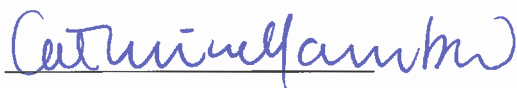
186. To avoid a continued breach, the Respondent should further cease to hand out new licences for exploration of oil and gas.

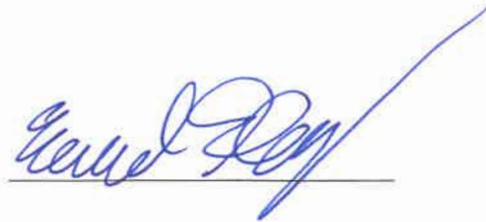
187. Alternatively, a full strategic environmental assessment as described above (in Section 3.3.1) should be conducted ahead of the licensing, at the earliest possible stage, and must not be postponed to the PDO stage.

188. Given the geopolitical considerations named by Respondent as a pretext to continue its breach of the Convention and the anticipated temptation to postpone

cost-effective emission reduction measures, the Applicants submit that the Court set a time-limit in which the State can implement the measures.

Oslo, 29 June 2022





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List of annexes:

Annex 1 - Maps infrastructure and licenses 23rd round. App. no 34068-21

Annex 2 - Final written summary of the allegations to Oslo District Court dated 6 November 2017

Annex 3 - Leapfrog appeal to the NSC dated 5 February 2018

Annex 4 - Letter from the Ministry of Petroleum and Energy to the Parliament dated 28 April 2022

Annex 5 - Detailed fee note with invoices.