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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 38190/97
by FEDERATION OF OFFSHORE WORKERS' TRADE UNIONS
AND OTHERS
against Norway

The European Court of Human Rights (Third Section), sitting on 27 June 2002 as a Chamber composed of

Mr G. RESS, *President*,
Mr L. CAFLISCH,
Mr P. KŪRIS,
Mr R. TÜRMEN,
Mr J. HEDIGAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mrs H.S. GREVE, *judges*,
and Mr M. VILLIGER, *Deputy Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 30 September 1997,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The first applicant, the Federation of Offshore Workers' Trade Unions (*Oljearbeidernes Fellessammenslutning* - "the *OFS*"), was established in 1970 and is a federation of trade unions for workers of all categories in the North Sea oil and gas industry. It is represented before the Court by Mr B. Endresen, a lawyer practising in Stavanger, Norway. The second applicant, Mr Claus Idland was born in 1950 and lives in Figgjo; the third applicant, Mr Kenneth Kråkstad, was born in 1963 and lives in Tjelta. They are both Norwegian citizens. At the time of the events complained of they worked as roustabouts on oil rigs on the Norwegian Continental Shelf and were members of the *OFS*.

The facts of the case, as submitted by the parties, may be summarised as follows.

Between 1980, when the *OFS* became a nation wide federation, and 1994, when the events giving rise to their application under the Convention occurred, claims being negotiated by the organisation, including every collective wage agreement except for one in 1992, were referred to compulsory arbitration on eight occasions.

In the spring of 1994 the Confederation of Norwegian Business and Industry (*Næringslivets Hovedorganisasjon* - *NHO*) and the Norwegian Oil Industry Association (*Oljeindustriens Landsforening* - "the *OLF*") negotiated with the *OFS* and the Norwegian Association of Supervisors, Technicians and other Managers (*Norges Arbeidslederforbund* -"the *NA*") on a new wage agreement to take effect on 1 July 1994. The negotiations were conducted with three major employee federations, namely the *OFS*, the Norwegian Oil and Petrochemical Workers' Union *(Norsk Olje og Petrokjemikeres Fagforbund* - "the *NOPEF*") and the Norwegian Supervisors' Association (*Norges Arbeidslederforbund* - "the *NALF"*), on 1, 6 and 7 June 1994. The main demand made by the *OFS* was a reduction in the retirement age from 67 to 60 years, with a possibility of flexible retirement between 57 and 62 years; this demand entailed a 12.5 % increase in costs. In addition a pay rise was requested. The *OLF* and the *NOPEF* agreed to a 2.5 % pay rise. The same offer was also made to the *OFS*, but the negotiations were broken off without any agreement being reached.

On 9 June 1994 the *OFS* issued a collective strike warning with respect to 106 of its members at the Gyda platform (oil rig). On 14 June 1994 the *NA* issued a collective strike warning for all members, initially confined to 50 members at the Gullfaks B and Oseberg C platforms. On 15 June 1994 the *OLF* issued a warning of a lockout of 3,600 *OFS* members at all fixed installations on the Norwegian continental shelf. On 24 June 1994 the *OLF* warned that there would be a lockout of 821 *NA* members included in the collective notice but not part of the initial strike group.

In accordance with the procedures laid down in the Act on Labour Disputes 1927 (*lov om arbeidstvister* - Law no. 1 of 5 May 1927) for disputes involving a strike or lockout, the State Mediator (*Riksmeklingsmannen*) made an order prohibiting any work stoppage prior to compulsory mediation and summoned the parties to mediation. Midnight on Thursday, 30 June 1994 was then fixed as the time-limit for resolving the dispute by mediation. As the mediator was unable to broker an agreement between the parties, the mediation was terminated on 30 June 1994 at 11.45 p.m. and work stopped after midnight.

The Minister of Local Government and Labour thereafter summoned the parties to a joint meeting that same night at 00.15 a.m. The parties briefed the Minister on the situation. The Minister referred to the serious consequences of a complete work stoppage on all fixed installations on the Norwegian section of the Continental Shelf, and stated that at a cabinet meeting the following day he would recommend that the Government should issue a provisional ordinance imposing compulsory arbitration of the disputes.

In support of his recommendation for the Government to adopt a provisional ordinance, the Minister stated that the industrial action announced would lead to the complete suspension of all Norwegian oil and gas production, leading to a fall in production of an estimated value of NOK 2.5 billion per week (close to EUR 0.34 billion). This would worsen Norway's foreign trade balance by a corresponding amount. The State's tax revenues would be reduced by an estimated NOK 1 billion per week and its direct oil revenues by NOK 800 million per week. The industrial action would have direct consequences for the State's financial commitment for the current year and would affect the State's financial needs both that year and the following year. The estimated impact on the balance of trade and the reduction of State revenues would be extremely harmful to the Norwegian economy. An industrial dispute of any length was likely to have very damaging consequences. Oil and gas not produced at that time would nevertheless be exploited at a later stage and that would result in an increase of production after the different oil fields had passed the maximum production level. This production increase would be spread over a number of years, until such time as production ceased. Thus the overall societal consequences of the industrial action would also depend *inter alia* on the evolution in price levels until the possibilities of exploitation of these resources had been exhausted. Since Norwegian natural gas was being delivered under long-term contracts, a work stoppage over a lengthy period would seriously reduce Norway's credibility as a reliable supplier of gas. If the technical installations were to be closed down for longer periods, it could entail damage to the installations and negative consequences for safety would follow. The equipment was designed with a view to regular use over long periods. A work stoppage of any length would moreover

require the lay off of other categories of employees. At the close of the negotiations the situation was deadlocked with both parties unwilling to compromise. It therefore seemed likely that the conflict would continue for some time. The recommendation concluded:

> "Considering the matter as a whole, the Ministry ... has reached the conclusion that the conflict ... should be resolved without industrial action. In this assessment, great emphasis has been placed on the fact that the complete cessation of production of oil and gas would lead to a considerable loss of income for the country. The industrial conflict will therefore have great consequences for the financing of the State and Social-Security budgets. The Ministry has further emphasised the importance of not undermining Norway's position as a dependable and reliable gas supplier.
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> Norway has ratified several Conventions of the International Labour Organization (ILO) which protect freedom of association (Convention nos. 87, 98 and 154). As interpreted by competent organs, the Conventions only allow intervention in the right to strike where the strike jeopardises the life, health or personal security of the entire population or parts of it. The European Social Charter, under the Council of Europe, contains in Article 6, 4 cf., Article 31, corresponding provisions which protect the right to take industrial action.
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> In the light of the fact that the Norwegian authorities have on several occasions imposed compulsory arbitration and prohibited strike action in labour disputes in the North Sea, the *OFS* has on three occasions lodged complaints against Norway with the ILO, alleging breaches of the Conventions on freedom of association. The ILO agencies have in this connection levelled criticism against the Norwegian authorities' practice, stating that the legislative interventions in labour disputes in the oil sector are not compatible with the principles of freedom of association.
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> The Ministry of Local Government and Labour has appraised the problems in relation to the Conventions and the criticism expressed by the ILO bodies and balanced this against the harmful effects of the strike, and after careful consideration has concluded that it is correct and necessary to intervene in the dispute. In this context great weight has been given to the fact that the situation between the parties upon the expiry of the deadline for mediation was absolute deadlock and that there is therefore reason to believe that the dispute may be long-lasting."

Under Article 17 of the Constitution, the Government adopted with immediate effect on 1 July 1994 a provisional ordinance, according to which disputes relating to the revision of the wage-agreement in question were to be settled by the National Wages Board (*Rikslønnsnemnda*), the provisions of the Compulsory Arbitration Act 1952 (*lov om lønnsnemnd i arbeidstvister* - Act no. 7 of 19 December 1952) should apply, and work stoppage and picketing were prohibited. Work was duly resumed the same day at 2 p.m.

The Board is a permanent arbitration body composed of seven members, five of whom are appointed by the Government for a period of three years and the other two are appointed by the respective parties to the dispute. The group of five includes three members who are independent of the Government, the employers' or employees' organisations and two experts

representing respectively employers' and employees' interests, who, unlike the other members, have no voting rights.

On 6 July 1994 the *OFS* brought an action in the Oslo City Court (*byrett*) demanding that the compulsory arbitration be held invalid. By judgment of 27 July 1995 the City Court found for the State, represented by the Ministry of Local Government and Labour, and ordered the *OFS* to pay the State's legal costs.

The *OFS* appealed to the Borgarting High Court (*lagmannsrett*), invoking an error of law. Concurrently the applicant organisation sought to appeal directly to the Supreme Court (*Høyesterett*). The Appeals Selection Committee (*kjæremålsutvalg*) of the Supreme Court subsequently granted leave.

The *OFS* claimed firstly that the provisional ordinance was unlawful (*ugyldig*) as the ban on strikes ran counter to general principles of constitutional law. Alternatively, the *OFS* argued that the ban violated Norway's international legal obligations which, in the event of a dispute, override Norwegian domestic law. The State, represented by the Ministry of Local Government and Labour, disputed these contentions.

In its judgment of 10 April 1997, the Supreme Court unanimously rejected the *OFS*'s appeal and ordered it to pay the State's legal costs in the proceedings. Mr Justice Stang Lund's opinion, to which the other Supreme Court justices subscribed, included the following reasons:

As regards the position under domestic law, it was noted that between 1953 and 1994, 50 Acts of Parliament and 33 provisional ordinances had been adopted on compulsory arbitration in labour disputes, including 8 disputes in the oil sector, and 20 royal decrees had been adopted under the legislation on compulsory arbitration. The longstanding practice of using compulsory arbitration to settle labour disputes in pursuance of major societal interests did not contravene general legal principles of constitutional law. Setting aside a statute or a provisional ordinance on the grounds that it conflicted with general principles of constitutional law could only be envisaged in the most extreme cases. Although freedom of association and the right to take strike action were generally accepted in Norway, it was also generally recognised that the right to strike was not unlimited. Since 1915 the legislation had contained provisions stating when and on what conditions strike action could be taken in labour disputes. In order to safeguard substantial societal interests, bans on strikes and compulsory arbitration had been imposed by special legislation or provisional ordinances.

On the question whether the restriction on strikes conflicted with Norway's international law obligations, it was recalled that work stoppages were not mentioned in the ILO Convention nos. 87 and 98, nor had they been a theme for negotiation during the ILO labour conferences in 1948 and 1949. Since those conferences, the stance taken by the ILO bodies had

evolved. The Committee on Freedom of Association had already expressed the view in 1952 that from the ILO Statute, the ILO conference in Philadelphia in 1944 and Convention no. 87, it was implicit that the right to strike and to impose a lockout were fundamental aspects of the right to freedom of association, which view was later accepted by the expert Committee. This evolution in the interpretation advocated by the ILO bodies led to their criticism of the use of compulsory arbitration in Norway. The Freedom of Association Committee of the ILO Governing Body and, subsequently, the Committee of Experts had in many instances, including in Norwegian cases, affirmed that the right to strike must be regarded as a part of trade union freedom of association and the right to bargain, and that it was therefore protected against interference by the authorities.

However, according to the practice of the ILO bodies, strike action could be forbidden in respect of public servants engaged in the administration of the State, if it would affect essential services thereby jeopardising the life, health or personal security of the entire population or parts of it, and the harm was clear and imminent. Harmful economic effects to society, even if deemed substantial, had not been considered a sufficient reason for intervention. Dock work, oil production, education and transport were examples of services that had been regarded as non-essential. Since 1962 the use of compulsory arbitration in Norway had been the subject of eight complaints to ILO agencies. The Freedom of Association Committee, with the support of the ILO's Governing Body, had endorsed the petitioner's contention that the use of compulsory arbitration did not comply with the principle of freedom of association. Three of the successful petitions had concerned compulsory arbitration in respect of the *OFS*. However, the court emphasised that, under the 1919 ILO Statute, the Governing Body, the Committee of Experts and the Freedom of Association Committee had no competence to determine with binding effect disputes on the interpretation of the ILO Conventions, for which competence was vested in the International Court of Justice. The court observed that Norway had never accepted that the use of compulsory arbitration required by a substantial societal interest was contrary to the ILO Convention nos. 87 and 98. In its view, the opinions held by the institutions of the ILO on the limits to State intervention in labour disputes did not have a basis in the Convention texts as negotiated and adopted.

As regards the more recent provision in Article 8 § 1 (d) of the International Covenant on Economic, Social and Cultural Rights, the court observed that Norway had found it necessary to make a reservation in the light of the use of compulsory arbitration, with possible further exceptions being made to the right to strike.

Moreover, the court noted that the Norwegian practice of compulsory arbitration had been criticised by the European Committee of Social Rights of the 1961 European Social Charter for going further than authorised by

Articles 6 § 4 and 31 § 1 of the Charter. In 1995 the Committee had proposed in a draft recommendation that a provisional ordinance on compulsory arbitration of disputes in the oil sector dated 2 July 1990 be deemed incompatible with the Charter. The Governmental Committee later rejected the proposal. In these circumstances there was, in the court's view, no clear practice establishing that the provisional ordinance in issue in the present case was contrary to the Social Charter.

The court also had regard to the European Court's Schmidt and Dahlström v. Sweden judgment of 6 February 1976 (Series A no. 21), and noted that neither the Commission nor the Court had found an infringement of Article 11 § 1 of the Convention by virtue of the award of increments to members of non-striking unions, but not to members of striking unions, which included the applicants although they had not actually been on strike themselves.

In addition, it was noted that in interpreting Article 22 of the International Covenant on Civil and Political Rights in J.B. v. Canada (case 118/1982), the Human Rights Committee had had regard to the fact that, while the right to strike was expressly included in Article 8 § 1 (d) of the Covenant on Economic, Social and Cultural Rights, it was not mentioned in Article 22, indicating that this right fell outside its scope.

In the light of the above, the court did not find that Norway was required by international law to limit the use of compulsory arbitration in a labour dispute where such intervention was necessary in order to safeguard substantial societal interests. In any event, neither the Convention nor the International Covenant on Civil and Political Rights contained any detailed standards limiting State restrictions on the right to strike, such as those derived by the ILO bodies from the ILO Convention nos. 87 and 98 and the Philadelphia Declaration. Accordingly, it concluded that the provisional ordinance of 1 July 1994 was not at variance with Norway's obligations under international law. Thus, it was not necessary to examine the question of any conflict between Norway's obligations under international law and its domestic law.

The European Committee of Social Rights, formerly the Committee of Independent Experts of the Social Charter, in its 17th report (with reference to the period 1994 to 1996), observed with respect to the provisional ordinance in issue in the present case that it accepted that the implications of the industrial action would have been serious in terms of the loss of revenue. However, the Committee was not satisfied that the situation was so serious that it fell within Article 31 of the Charter, that is to say that it was necessary for the protection of the public interest. It noted that the loss of revenue would not necessarily have been of a permanent nature. Accordingly, it concluded that in this case the imposition of compulsory arbitration and the termination of the industrial action did not fall within the

terms of Article 31 of the Charter (Conclusions XIV-1, Vol. 2, Norway, Article 6 paragraph 4, p. 621).

When the matter was subsequently considered by the Governmental Committee of the Social Charter, which observed:

> "Several delegates thought that they were not in a position to assess the Norwegian situation since the case law of the Committee of Independent Experts on the interpretation of Article 31 of the Charter is sparse, and it is difficult for them to assess whether, in the case at hand, the action of the Government went beyond what is authorised by Article 31 of the Charter."

The Governmental Committee decided to draw the attention of the Norwegian authorities to the fact that action by Parliament or the Government in the event of compulsory arbitration should not go beyond the limits laid down by Article 31 of the Charter (Governmental Committee Report XIV-1, paragraph 184). No warning was issued by the Governmental Committee with respect to the events in 1994.

During the proceedings before the Court, the Government supplied information according to which if the strike had lasted one month it would have reduced the value of petroleum extraction by approximately NOK 11 billion (1 % of Norway's Gross Domestic Product) and central government revenues by NOK 8 billion (2%). The calculations did not take into account shutdown and start-up costs, the fact that it would be some time before the production level reached the pre-shutdown level and that a shutdown of any length could result in damage to installations and equipment that was designed to be in continuous operation over a longer period. Since production would normally be maintained at maximum level, recovery of lost production would only take place after peak production levels at the relevant fields had been reached. Notwithstanding the possibility of recovering lost revenues at a later stage, a halt in extraction would inevitably be accompanied by a loss in extraction value, export earnings and central government revenues for the year in which the halt occurred. The real loss in revenues would thus depend on the prices prevailing at the time of recovery. The net present value of the loss would have amounted to approximately 40%. The central government budget deficit was sizeable and had grown from 1991 to 1993; as at May 1994, it was expected to amount to NOK 42.5 billion (before loan transactions) for that year. A strike would have caused an increase in that deficit.

The Government further submitted that Norway, together with Russia and Algeria, was the main gas exporting country to the European Union ("the EU"). In 1994 natural gas covered approximately 20% of the primary energy consumption in the EU countries. Norwegian gas supply counted for approximately 20% of gas imports and 10% of gas consumption in the EU area. The rigidity and inflexibility associated with pipeline delivery of natural gas implied that sources of gas supply were impossible or difficult to replace. Substantial volumes of hydrocarbons passing through the Emden (Germany) and later Zeebrugge (Belgium) landing points were largely

irreplaceable in the short and medium term. Industries and households in this region in particular would depend on the Norwegian gas supply. A storage facility had been built in Germany but would only cover 12% of Norway's obligations for a fortnight. In the event that the Norwegian gas supply were to be cut off, the consequences would be substantial for the North German and North Belgian industries, which did not have any alternative possibilities and would be faced with complex shutting down and restarting procedures. Norway had therefore undertaken to be a reliable gas supplier, notably under the Troll Gas Sales Agreements, which took effect in October 1993, and involved an investment of over NOK 100 billion for platforms, terminals and pipelines and NOK 2 billion for a storage facility. Under these agreements suppliers and buyers were bound under unique physical and commercial arrangements forming a complex web of mutually dependent relations, with stability in gas supply being a key element. Any suspension in delivery would be likely to lead to a dramatic fall in both current and future gas prices.

In response to the above-mentioned information adduced by the Government, the applicants submitted information to the effect that the real price per barrel of crude oil was NOK 124.90 in 1994, NOK 119.30 in 1995, NOK 147.10 in 1996, NOK 145.70 in 1997, NOK 101.40 in 1998, NOK 146.60 in 1999 and NOK 253.00 in 2000. In 2000 it was assumed that the average lifetime of oil fields was, in fact, longer than the 1994 estimate of seven years, on which the Government apparently relied. A deferment of production from 1994 because of a strike could thus have led to far higher real prices than would have been achieved without a delay, and a present value loss that was less than the 40% suggested by the Government.

The applicant further stated that in 1994 Norway had an export surplus of NOK 54 billion and the public administration had been in the unique position of having significant net receivables (NOK 263.9 billion in 1992, 244.1 billion in 1993, 233.8 billion in 1994 and 261.1 billion in 1995).

COMPLAINT

The applicant organisation, the *OFS*, and the two applicant members, Mr Idland and Mr Kråkstad, complained that the provisional ordinance of 1 July 1994 restricting the right to strike and imposing compulsory arbitration violated Article 11 of the Convention.

THE LAW

Article 11 of the Convention reads:

> “1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

A. Whether the applicant union was a victim

1. The Government submitted that the first applicant, the trade union, could not claim to be a victim of a violation of Article 11 of the Convention and, accordingly, did not have standing under Article 34.

The applicants disputed this submission, invoking the competence and role of the trade union under domestic law in conducting collective bargaining and calling strike action.

The Court observes that in several cases concerning collective aspects of trade union freedom (see the National Union of Belgian Police v. Belgium judgment of 27 October 1975, Series A no. 19; the Swedish Engine Drivers’ Union judgment of 6 February 1976, Series A no. 20), including strike action (see *UNISON v. the United Kingdom*, no. 53574/99, dec. 10.01.2002, ECHR 2002-), the Court has examined complaints brought by a trade union under this Article. Despite the Government’s objection, the Court sees no reason for following a different approach in the instant case, where it was the union that called the strike action and later exercised the remedies available under national law against the contested restrictions. It should be borne in mind that, under the domestic systems of some Contracting States, the right or freedom to strike vests in individuals acting in concert, whereas under the systems of other Contracting States it is a union privilege. In the view of the Court, the words “for the protection of his interests” in Article 11 of the Convention cannot be construed as meaning that only individuals and not trade unions may make a complaint under this provision.

B. Whether the two applicant union members have exhausted domestic remedies

The Government maintained that the applications of the second and third applicants, Mr Idland and Mr Kråkstad, should also be declared inadmissible. As they had not been parties to the domestic proceedings brought by the union against the State, they could not be considered to have

exhausted domestic remedies as required by Article 35 § 1 of the Convention.

The second and third applicants submitted that, although it was true that only the first applicant had been a party to the domestic proceedings, which related to a measure specifically addressed to the *OFS* and the *NHO*, they were nevertheless – as members of the *OFS* – directly concerned by those proceedings. For all intents and purposes, under national law, the action brought by the *OFS* had adequately addressed both the union's interests and those of its members. It would thus have served no purpose for the second and third applicants to file a separate action.

The Court observes that the interests sought to be protected by the second and third applicants under the Convention appear identical in all material respects to those pursued by the first applicant collectively on behalf of all the union members, initially before the national courts and subsequently before the Court. It has not been made aware of any fact or circumstance which suggests that the second and third applicants might have obtained a different outcome had they brought proceedings before the domestic courts, either together with the *OFS* or in a separate action. Against this background, the Court does not find that their omission to do so can be viewed as a failure to exhaust domestic remedies. The Government's claim must therefore be rejected.

C. The complaint under Article 11 of the Convention

The applicants maintained that the provisional ordinance of 1 July 1994 prohibiting with immediate effect their right to continue striking and imposing compulsory arbitration had violated Article 11 of the Convention. The Government disputed that contention and requested the Court to declare the complaint inadmissible as being manifestly ill-founded.

1. Arguments of the parties

(a) The applicants

While not disputing that the impugned measure was "prescribed by law", the applicants submitted that its purpose was purely fiscal and could not be regarded as legitimate for the purposes of Article 11 § 2. Nor could it be viewed as "necessary".

They submitted that the Supreme Court's interpretation of the relevant law had failed to take into account both the autonomous and dynamic nature of the relevant international instruments and to attach appropriate weight to international standards. In particular, that interpretation had failed to give

effect to the jurisprudence of the ILO bodies concerning Conventions nos. 87 and 98, and of the European Committee of Social Rights of the European Social Charter on Articles 6 § 4 and 31 of the Charter, and notably to the condemnation of the compulsory arbitration and strike bans imposed by the Norwegian authorities in the oil sector. The oil and gas industry was not an essential service such as the police, the army or the civil service, and purely economic considerations – the sole ground for the impugned measure in issue – could not in any event constitute sufficient reasons for prohibiting a strike. While not challenging the optional nature of the right to strike under Article 6 § 4 of the Social Charter, the applicants submitted that the trade unions' right to protect the occupational interests of their members by trade union action had to include the right to take strike action in a situation where workers and their trade union were denied all effective and lawful means of protecting employees' occupational interests. No less than twenty-two of the twenty-nine States Parties to the Charter had opted to be bound by Article 6 § 4.

The applicants further argued that, unlike other types of association, trade unions acted on behalf of their members in negotiating and re-negotiating their terms and conditions of employment. In that connection, trade unions were entrusted with two important powers: firstly, as a part of the bargaining process, the power to terminate an existing collective bargaining agreement and to take their members out on strike; and, secondly, the power to conclude collective bargaining agreements. These two powers were inextricably intertwined: negotiations would be quite illusory unless they were backed by the threat of force.

The provisional ordinance of 1 July 1994 had not only interfered with a lawful strike called by the *OFS* but had also prevented it from continuing the collective bargaining process as a means of protecting its members' occupational interests in the impending dispute on the revision of the collective bargaining agreement. Thus the *OFS* had been prevented from executing a collective termination of the existing agreement with a view to contracting a new agreement with the employers. It was the National Wages Board which had subsequently imposed a new collective bargaining "agreement". Because of the practice in the respondent State of barring it from carrying out industrial action and imposing compulsory arbitration, the *OFS* had been reduced to conducting negotiations with the employers without any leverage, with obvious destructive effects.

Pressure on those working on the Norwegian Continental Shelf had increased considerably in recent years owing to demands for higher productivity and lower costs. The nature of the work and its hectic pace had made it particularly hard for many employees. Only a small proportion of operative employees could expect to remain in their job until normal retirement age. A significant number of employees (12 % of those aged 60 or more, according to a survey from 2000) would have to find alternative

employment before that age as they would not be certified fit to work or would resign, being unable to cope with the high pressure. Employees aged 60 or more had an average absence exceeding 40 days per year (according to the same survey). Those circumstances, which had to be taken into account when comparing off shore workers' terms of employment with those of industrial workers on shore, constituted the main reason for the *OFS'* demand for a lowering of the retirement age. The Government were wrong to argue that the nature of the *OFS* pension claim was such that its inclusion in the wage settlement agreement was in principle impossible. This was by no means new in the private sector; the fact that the *NHO* had chosen not to discuss it with the *OFS* did not mean that it had been impossible to accommodate.

Stressing that Norway had one of the strongest national economies in the world, the applicants denied that economic considerations could be a relevant justification for the restrictions imposed. The Government's argument that, had the strike been allowed to continue, it would have generated a 40 % reduction in the value of oil and gas production during the conflict, was based on an erroneous assumption that 1994 prices would remain constant. On the contrary, prices had increased considerably, so deferment of 1994 production because of industrial action could have led to much higher revenues. Even in 1994 it was apparent that the price level was abnormally low. The threat to gas deliveries had in no way been caused by the notice of a strike at the Gyda field, but by the petroleum companies' own notice announcing a lockout. As the sole shareholder in *Statoil* and a controlling shareholder in *Norsk Hydro* and an investor, the Norwegian Government had an important dual role in the conflict. Both companies had actively participated in the employers' decision to give notice that there would be a lockout of 3,600 employees members of the OFS. The fact that the conflict had been so extensive was the result of the lockout, not the strike.

In the instant case there had been no question of the strike going on for days or weeks and certainly not months or years. Neither the State's financial situation, nor Norway's balance of payments in 1994 was in such a state as to warrant denying the oil workers their fundamental right to strike.

(b) The Government

The Government maintained that there was no ground for holding that the right to strike was ever included in the Convention at the outset. Even if the right to strike was to a certain extent protected by national law within the Contracting States, there was no consensus as to the extent of the right or as to what limitations may be required by societal needs. There was no basis in law for the proposition that the doctrine of evolutive interpretation could be used to read a right to strike into Article 11 of the Convention. Doing so would be an impermissible legislative move necessitating the

creation of a whole code of industrial relations under the Convention. The Government invited the Court to hold that a right to strike could not be inferred from Article 11 § 1 of the Convention. That provision was accordingly inapplicable to the present case.

In any event the limitation at issue could not be said to have impaired the very essence of the right protected by that provision and did not amount to an interference with the Article 11 right of the trade union members to have their interests protected by a trade union.

If the Court nevertheless found Article 11 § 1 applicable and that there had been an interference with the applicants' freedom of association, the Government submitted that the interference was justified for the purposes of Article 11 § 2.

In that connection, the Government mainly invoked the reasons to be found in the Supreme Court's judgment and the Ministry's recommendation of the provisional ordinance of 1 July 1994, summarised above. In support of their argument that the strike would have had serious economic and social implications had it been allowed to continue, the Government submitted the figures and particulars summarised above. Even if lost extraction resulting from a strike could have been recovered at a later stage, a halt in extraction would inevitably have been accompanied by a loss in extraction value, export earnings and central government revenues for the year in which it occurred. In view of the great uncertainty in petroleum-price trends, the 1994 estimates had been based on constant real prices. The Government further explained that, by taking immediate action, considerable costs associated with shutting down and restarting production had been avoided. They categorically denied having played any role in the decision to impose a lockout.

In addition, the Government emphasised that the *OFS* membership made up a relatively small group comprising the best-paid workers in Norway. Because of the extremely high production values per employee, off shore workers' unions had an abnormally strong bargaining power not subjected to normal market pressures. The *OFS'* claims were clearly out of line with the mutually agreed policy of moderation in the labour market, commonly referred to as the "Solidarity Alternative", and with the agreement reached with the *NOPEF*. It would have been highly inappropriate to enter into a significantly more favourable wage settlement with the *OFS*. More importantly, retirement age was an issue relevant to the public and could not ordinarily be dealt with in wage settlements. Private pension schemes were matters to be dealt with at board level within the individual member companies rather than by the employers' association. Thus, having floundered on an important point of principle, the conflict between the *OFS* and the *NHO* had reached a deadlock and was likely to last for a lengthy period, during which all extraction of oil and gas on the Norwegian

Continental Shelf would come to a halt with very serious financial and other implications.

2. The Court's assessment

The Court reiterates that while Article 11 § 1 includes trade union freedom as a specific aspect of freedom of association this provision does not secure any particular treatment of union members by the State. There is no express inclusion of a right to strike or an obligation on employers to engage in collective bargaining. At most, Article 11 may be regarded as safeguarding the freedom of trade unions to protect the occupational interests of their members. While the ability to strike represents one of the most important of the means by which trade unions can fulfil this function, there are others. Furthermore, Contracting States are left a free choice of means as to how the freedom of trade unions ought to be safeguarded (see the Schmidt and Dahlström v. Sweden judgment of 6 February 1976, Series A no. 21, pp. 15-16, §§ 34-36; and *UNISON v. the United Kingdom* cited above). It follows that restrictions imposed by a Contracting State on the exercise of the right to strike do not in themselves give rise to an issue under Article 11 of the Convention.

In the instant case, the ban on strikes imposed by the provisional ordinance of 1 July 1994 was implemented after the trade union members had been allowed to exercise their right to strike for 36 hours. The strike had been preceded by collective bargaining and compulsory mediation between the *OFS* and the relevant industrial partners, none of which had borne fruit. Thus, before the ban was imposed, the trade union members had enjoyed several means of protecting their occupational interests. These included collective bargaining (which is commonly accepted as the most suitable way of settling conditions of employment), compulsory mediation (a form of cooling-off procedure aimed at limiting strikes to a minimum) and strikes (as a complement to collective bargaining). The dispute was then referred to the National Wages Board for independent resolution.

The Court will proceed on the assumption that the first paragraph of Article 11 applied to the matter complained of and that the impugned restriction amounted to an interference with a right guaranteed by it. Accordingly, it will examine whether the measure fulfilled the conditions in the second paragraph. Since the oil workers do not fall within the categories of civil-service professionals referred to in the second sentence of paragraph 2, the three conditions set out in the first sentence are applicable. The Court will consider whether the measure was "prescribed by law", pursued one or more legitimate aims and was "necessary in a democratic society".

As regards the first of these conditions, the Court finds no reason to question that the provisional ordinance had a legal basis in national law, namely Article 17 of the Constitution and the Compulsory Arbitration Act

1952, as interpreted on its own or in the light of international law. In this connection, the Court reiterates that it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see, *inter alia,* the Pérez de Rada Cavanilles v. Spain judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, § 43). This also applies where domestic law refers to rules of general international law or international agreements. The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (see the Waite and Kennedy v. Germany judgment of 18 February 1999, *Reports* 1999-I, § 54).

As to the second condition, the Court finds that the provisional ordinance could reasonably be regarded as pursuing legitimate aims, being in the interests of "public safety" and for the protection of the "rights and freedoms of others" and "health".

As regards the third condition, the Court recalls that the test of necessity in a democratic society requires it to determine whether the interference complained of corresponded to a "pressing social need", whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authorities to justify it are relevant and sufficient (see, for instance, the United Communist Party of Turkey and Others v. Turkey judgment of 30 January 1998, *Reports* 1998-I, § 47). In assessing whether such a "need" exists and what measures should be adopted to deal with it, the national authorities have a wide margin of appreciation in the area under consideration (on this point, see the Gustafsson v. Sweden judgment of 25 April 1996, *Reports* 1996-II, § 45; and, *mutatis mutandis*, the above-mentioned Schmidt and Dahlström judgment, § 36). This power of appreciation is not, however, unlimited but goes hand in hand with a European supervision by the Court, whose task it is to give a final ruling on whether a restriction is reconcilable with freedom of association as protected by Article 11. The Court's task in exercising its supervisory function is not to take the place of the national authorities, but rather to review under Article 11, in the light of the case as a whole, the decisions taken pursuant to the power of appreciation (see the above-mentioned United Communist Party of Turkey and Others judgment, § 47).

Turning to the particular facts of the present case, the Court recalls that, following a collective bargaining process and mediation, the members of the *OFS* were able to exercise their right to strike as protected under Norwegian law. Thus, various means of safeguarding the Article 11 rights of the trade union members were respected. Although the duration of the strike was relatively short – 36 hours – it can be deduced from the material submitted that the action, which apparently involved all union members and affected all fixed installations on the Norwegian Continental Shelf, had already generated significant losses. The pressure thereby created must have been considerable. It is not for the Court to express any view on whether there

was parity of arms in the industrial dispute or as to the causes of the dispute. Nor does it find the applicants' allegation that the Government played a dual role in the conflict to be substantiated. The Court notes, however, and attaches weight to the fact that to a large extent the *OFS* was afforded an opportunity to protect its members' occupational interests.

Had the strike been allowed to continue, it would have led to the suspension of all oil and gas production on the Norwegian Continental Shelf. The Court is in no position to determine whether the *OFS* demand for a lower retirement age could appropriately have been dealt with in the context of collective bargaining, which the Government dispute. However, it sees no reason to doubt the assessment made by the domestic authorities that, since the situation had been deadlocked at the close of the negotiations, the action was likely to go on for a lengthy period.

At the time the provisional ordinance was adopted it was further expected that, with a fall in production of an estimated NOK 2.5 billion (close to EUR 0.34 billion) per week, a continued strike would have resulted not only in a very substantial drop in production revenues for both private and State companies, but would also have adversely affected energy supply to industries and households in EU countries and Norway's credibility as a gas supplier to the EU. This would have seriously hampered the implementation of transnational agreements forming a complex web of mutually dependent relations between suppliers and buyers and involving investment of an extraordinary magnitude. It was also considered that there would have been negative repercussions on the State budget, including the funding of social-security services, and on Norway's trade balance.

In this connection the Court notes that the Government have made extensive submissions with regard, firstly, to the estimated losses of petroleum and gas revenues and, secondly, the importance of Norway's being able to assume its role as a reliable gas supplier.

Only the Government's submissions on the first point were contradicted by the applicants, in large part on the basis of information gained with the benefit of hindsight about increases in petroleum prices after 1994 (in 1996, 1997, 1999 and 2000) and a recent estimate suggesting a longer average "life expectancy" of the oil fields. However, the Court finds nothing to indicate that the assessment made by the competent authorities in the light of the situation, as it presented itself at the material time in 1994, could be said to have been unreasonable.

As to the second point, the applicants do not dispute that, apart from stability in gas supply being an essential element of gas sales agreements, a halt in the gas supply could entail serious consequences in the receiving countries.

The Court further notes that, the technical installations risked being damaged if they had to close down for long periods, with ensuing consequences for health and safety, and the environment. Thus, it appears

that, while the drop in oil production might have been recouped at a later stage, the strike was likely to have serious implications beyond the mere loss of revenue.

The Court moreover emphasises that its decision in the present case should not be taken as meaning that a system of compulsory arbitration for bringing lawful strikes to an end would be considered proportionate in all cases in which economic pressure is being exerted. In the view of the Court, specific and exceptional circumstances existed in the present case, which related to the sector of energy supply, namely petrol and gas production, where the interruption of activity would have immediate and very serious repercussions on the international distribution network affecting countries, particularly in Europe, dependent upon that supply at the relevant time, and where significant damage to technical installations and the environment were foreseeable if there was a complete halt in activities for a lengthy period. In addition, the very high level of salaries in the sector under consideration compared to that in other sectors also suggests that the imposition of compulsory arbitration was not disproportionate.

Thus, the Court finds that in the circumstances of this case, where the impugned measure was implemented for reasons that were not purely economic, the national authorities were justified in resorting to compulsory arbitration.

Against this background, and having regard to the margin of appreciation to be accorded to the respondent State in this sphere, the Court is satisfied that the impugned measure was supported by relevant and sufficient reasons and that there was a reasonable relationship of proportionality between the interference with the Article 11 rights of the applicants and the legitimate aims pursued.

It follows that the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court unanimously

Declares the application inadmissible.

Mark VILLIGER
Deputy Registrar

Georg RESS
President