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

Press Release
issued by the Registrar of the Court

ECHR 339 (2012)
18.09.2012

Chamber hearing concerning disabled deep sea divers

The European Court of Human Rights is holding a Chamber hearing today **Tuesday 18 September 2012 at 9 a.m**. in the case of **Vilnes and Others v. Norway** (applications nos. 52806/09 and 22703/10), concerning complaints by former deep sea divers that they are now disabled as a result of North Sea diving.

The hearing will be broadcast from 2.30 p.m. on the Court's Internet site (www.echr.coe.int). After the hearing the Court will begin its deliberations, which will be held in private. Its ruling in the case will, however, be made at a later stage.

The applicants are five Norwegian nationals living in Norway, Dag Vilnes (born in 1949 and living in Tønsberg), Magn Håkon Muledal (born in 1953 and living in Førde), Bjørn Anders Nesdal (born in 1958 and living in Kristiansand), Knut Arvid Nygård (born in 1961 and living in Tananger) and Per Arne Jacobsen (born in 1954 and living in Larvik); and, a Swedish national, Mr Lindahl (born in 1942, and living in Avaldsnes, Norway) and an Icelandic national, Sigurdur P. Hafsteninsson (born in 1953 and living in Jersey, United Kingdom).

They are all former deep sea divers who took part in North Sea diving operations for the petroleum industry during what is known as the pioneer period (from 1965 to 1990). All allege that they developed health problems and are now disabled as a result of both bounce (short) and saturation (longer duration) diving jobs. Most now suffer from obstructive lung disease, encephalopathy, reduced hearing and Post Traumatic Stress Disorder (PTSD).

They particularly allege that shortcuts taken in their working conditions and safety had put their health and lives in jeopardy. Dispensation arrangements from safety regulations were often authorised[1], such as extending the maximum period of a saturation dive as well as the maximum length of the divers' umbilical (the breathing gas supply). Longer shifts had involved higher psychological strain and exhaustion; a longer umbilical increased the risk of it being cut and divers being dragged over cranes and other installations. Furthermore, decompression tables used for the return of divers to the surface were not standardised until 1990, allowing oil companies to reduce the decompression time, lower their labour costs and have a competitive advantage over other companies. As a result, most of the applicants experienced decompression sickness and the bends. Notably, Mr Vilnes was involved in an incident when working on board the diving vessel *Arctic Surveyor* in 1977 when he was exposed to serious decompression sickness causing him permanent brain and spinal damage. He claims that his injuries were the result not only of excessively rapid decompression but also a lack of on-the-spot medical assistance. He also complains of another incident when, working on the *Tender Comet* in 1983, he experienced earache and severe pain during decompression and decided to discontinue a dive. He alleges that this was the result of serious breaches of safety requirements, the authorities having authorised dispensations from the maximum length of the umbilical and saturation time. He lodged complaints with the Petroleum Directorate, the police and the prosecuting authorities, which passed back and forth between them and eventually became time-barred.

[1] By the Norwegian Labour Inspection Authority (until April 1978) and subsequently the Petroleum Directorate, the public authorities entrusted with supervising and authorising diving operations.

In addition, Mr Vilnes alleges that Norway failed in its duty to provide him with sufficient information about the risks to which he was exposed when accepting diving assignments in the North Sea. It would not have been difficult for the State – in its capacity as a legislative and executive authority and as an authority granting authorisations – to require openness about the decompression tables and their harmonisation. Furthermore, divers had not known – when taking on work for a diving company – whether or not they had accepted to use dangerous diving tables as they were confidential.

Some of the applicants also often felt unsafe during a dive as their lives were in the hands of unskilled workers on the surface. Mr Hafsteinsson, for example, reported a narrow escape in 1982 when a supervisor stopped an unskilled worker from loosening a clamp connecting the diving bell to the diving chamber, thus preventing a decompression explosion. All the applicants complain of near-death incidents with problems or errors occurring with their breathing gas supply or their being nearly hit or trapped by heavy items under water. Most had also been involved in recovering the bodies of divers who had died during fatal accidents. Furthermore, there was – according to the applicants – a culture of under-reporting of such accidents and near accidents, with the Norwegian authorities accepting that they were not investigated.

Lastly, the last six applicants also provide detailed accounts of the harm caused to them by test diving in which they participated – without their informed consent – in Bergen and the Norwegian fjords with *NUI AS/Nutec AS (Norsk Undervannsintervensjon* – Norwegian Underwater Intervention Ltd and Falc Nutec safety company*).* The test diving was intended for research and to prove that diving was possible at ever greater depths.

It has been known for some time that the 350 to 400 pioneer divers, including the applicants, had developed health problems from diving. Long term studies showed possible connections between diving and injuries to the central nervous system; and, in December 2002, a report from an independent inquiry led by High Court Justice Mr P.A. Lossius (the "Lossius report") made a number of criticisms:

- Three out of four divers surveyed had experienced diving accidents or disorders, with a disturbingly high number being on disability pensions, and complaining of concentration, memory and hearing loss as well as mental disorders

- Lack of supervision: inspections were directed at technical devices rather than at diving methods and routines. The Labour Inspection were aware of but had not been concerned about the time pressures put on divers and the resulting frequency with which decompression sickness occurred as well as the lack of security in the divers' working environment

- There was an absence of rules and appropriate diver training (the only requirement for professional divers in the first years of the petrol industry was to have an approved medical certificate) and safety efforts were delayed due to conflict between the various authorities involved

The report suggested that the State had legal and therefore financial liability for the injuries sustained by North Sea divers and recommended that the divers be granted compensation. The Government, although not accepting liability from a legal point of view, considered that it had a moral and political duty to compensate the divers (*ex gratia* compensation) and a special compensation scheme was set up.

Mr Vilnes has a disability pension and work injury benefits and, under the State compensation scheme, has received 3,600,000 Norwegian krone (462,700 euros). The other six applicants each receive disability pensions and some of them – like Mr Vilnes – have received *ex gratia* compensation from the State and the oil companies, Statoil/Hydro.

In February 2005 Mr Vilnes brought proceedings against the State claiming additional compensation and in December 2005 Mr Muledal and the other five applicants brought similar claims. All the cases were subsequently joined, the third to seventh applicants' claims being adjourned pending the outcome of the proceedings brought by Mr Muledal.

Initially, in August 2007, Oslo City Court found for Mr Vilnes and Mr Muledal. Although the State had taken all measures that could reasonably be expected to protect divers' lives (meaning no breach of Article 2 of the European Convention), when balancing the various interests (the disturbing number of disabled divers compared to the fact that Norway had become one of the world's richest nations thanks to oil), it found on the whole that it would be reasonable and equitable to make the State liable for the damage to divers' health.

Later, however, in decisions of November 2008 and October 2009 the High Court and the Supreme Court both found against the first and second applicants. No violation of Article 3 (prohibition of inhuman and degrading treatment) or Article 8 (right to respect for private life) of the Convention was found. The State, whose role was limited to ownership of the oil resources under the sea floor as well as supervision and control, could not be held liable. The licence holders were the wrongdoers as it was they who had conducted the diving operations and oil extraction and it was therefore they who were jointly and severally liable for damage. As concerned Mr Vilnes' complaints about specific incidents at the diving vessels *Arctic Surveyor* in 1977 and *Tender Comet* in 1983 the courts found no basis for holding the State liable. Nor was there a violation of Article 2 of the Convention as the State had provided effective deterrence against threats to life by adopting extensive regulations on diving activities and setting up an administrative framework with supervisory bodies. There was nothing to suggest that those supervisory bodies had been passive when made aware of risks taken by rules being transgressed. The courts further held that the State was not responsible for the test diving and, in any case, there was no proof that Mr Muledal's injuries were the result of test dives.

Relying in particular on Articles 2 (right to life), 3 (prohibition of inhuman and degrading treatment) and 8 (right to respect for private life) of the Convention, all the applicants complain that the State failed to take appropriate steps to protect deep sea divers' health and lives when working in the North Sea and, as concerned the last six applicants, at testing facilities. They all also allege that the State failed to provide them with adequate information about the risks involved in deep sea diving and, as concerned the last six applicants, in taking part in test diving.

Procedure

The applications were lodged with the European Court of Human Rights on 24 September 2009 and 7 April 2010, respectively. The Court communicated[2] both applications to the Norwegian Government on 7 June 2011 and asked the parties to submit their observations. The hearing today concerns both the admissibility and the merits of the cases.

Composition of the Court

The case will be heard by a Chamber, composed as follows:

Nina **Vajić** (Croatia), *President*,
Peer **Lorenzen** (Denmark),

[2] In accordance with Rule 54 of the Rules of Court, a Chamber of seven judges may decide to bring to the attention of a Convention State's Government that an application against that State is pending before the Court (the so-called "communications procedure").

Khanlar **Hajiyev** (Azerbaijan),
Mirjana **Lazarova Trajkovska** ("The former Yugoslav Republic of Macedonia"),
Julia **Laffranque** (Estonia),
Linos-Alexandre **Sicilianos** (Greece)*, judges*,
Dag Bugge **Nordén** (Norway)*,* ad hoc *judge*,
Elisabeth **Steiner** (Austria),
Anatoly **Kovler** (Russia), *substitute judges*,

and also André **Wampach**, *Deputy Section Registrar.*

Representatives of the parties

Government

Mr Marius **Emberland**, *Agent*,
Ms Anne **Hesjedal Sending**,
Ms Tone **Kjeldsberg**,
Ms Bente Helene **Torstensen**,
Mr Anders **Østre**,
Mr Martin **Heidar**,
Mr John Arne **Ask**,
Mr Bjarne **Sandvik**,
Mr Olav **Hauso**, *Advisers*;

Applicants

For Mr Vilnes

Mr Eivind **Ludvigsen**, *Counsel*,

For Mr Muledal and the further five applicants

Mrs Katrine **Hellum-Lilleengen**,
Mr Erik **Johnsrud**, *Counsel,*
Mr Heike **Bentsen**, *Adviser*.

Magn **Muledal** and Sigurdur **Hafsteinsson** will also attend the hearing.

Press contacts
echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)
Céline Menu-Lange (tel: + 33 3 90 21 58 77)
Nina Salomon (tel: + 33 3 90 21 49 79)
Denis Lambert (tel: + 33 3 90 21 41 09)