



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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 33678/96  
by Geert DRIEMAN and Others  
against Norway

The European Court of Human Rights (Third Section), sitting on 4 May 2000 as a Chamber composed of

Mr J.-P. Costa, *President*,  
Mr L. Loucaides,  
Mr P. Kūris,  
Mrs F. Tulkens,  
Mr K. Jungwiert,  
Mrs H.S. Greve,  
Mr M. Ugrekhelidze, *judges*,  
and Mrs S. Dollé, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 29 August 1996 and registered on 7 October 1996,

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 deliberated, decides as follows:

## THE FACTS

The application was lodged by four applicants, namely Mr Geert Drieman and Mr Albert Kuiken, both Dutch nationals, Ms Felicity Jane Arnold Crush, a British national, and Mr Kevin Dennis Bell, a national of the United States of America. They were born in 1950, 1948, 1963 and 1962 respectively. They are represented before the Court by Mr Menno T. Kamminga, professor of law.

### A. Particular circumstances of the case

The facts of the case, as described mainly in the judgments of the national courts, may be summarised as follows.

In July 1994 *Greenpeace* conducted, with two of its vessels *MS Solo* and *MS Sirius*, registered in the Netherlands, and fast rubber dinghies stationed on board the ships, a campaign against Norwegian whaling in the exclusive economic zone south-west of Egersund. The first applicant was Director of the *Greenpeace* Foundation in the Netherlands, and formally in charge as campaign leader on board the *Solo* as from 14 July 1994. The other three applicants were respectively captain, deckhand and assistant-engineer on board that vessel. For a month they followed the movements and catching activities of a whaling ship, the *Senet*. According to its captain, the campaign had had as a consequence that the hunt was prolonged by a fortnight. The *Senet* was the only vessel pursuing whales in the area in question on 20 and 23 July 1994, the dates on which the incidents giving rise to the present case occurred.

The *Solo* arrived in the area where the *Senet* was hunting in the afternoon of 20 July 1994, just after the *Sirius* had been put under arrest by the Coastguard (*kystvakten*). Later in the afternoon a whale was shot from the *Senet*. While it was lying on deck being cut up, a new whale was observed. The *Senet* then manned the harpoon gun and followed the whale. This was observed by the applicants on board the *Solo*. Shortly thereafter, a dinghy was launched from the *Solo* and positioned in front of the bows of the *Senet* where it drove in zigzag and otherwise consistently manoeuvred towards the last place where the whale had been seen on the surface.

The Coastguard forced the dinghy away, and the *Solo* therefore launched another one with the third and fourth applicants on board, together with a camera man from a German television company. The Coastguard seized the second dinghy immediately but the third and fourth applicants were allowed to board the *Solo* again. They then launched a third dinghy (this time without the cameraman) on the other side of the *Solo*, unhindered by the Coastguard. The third applicant was navigating and she manoeuvred the dinghy up to the starboard side of the *Senet*, then alongside until it was positioned across the bows of the ship. The distance to the *Senet* during these manoeuvres varied from 5-6 to 15-20 metres. The third and fourth applicants kept the dinghy in position in front of the bows and in so doing forced the *Senet* to change course. The noise of the dinghy's engine was such as to frighten the whale away.

On the morning of 23 July 1994, the second applicant, the *Solo's* captain, acting on the instructions given by the first applicant as the responsible campaign leader, manoeuvred the *Solo* in such a way as to force the *Senet* to change course when chasing a whale which it

had observed. Moreover, the *Solo's* water canons were used in a manner impeding visibility from the *Senet* and thereby shielding the whale. The intended purpose and effect of these measures was to prevent the *Senet* from shooting the whale.

Following the above incidents the 4 applicants were arrested and were held in detention on remand for 2 days before being released.

After hearings on 6 and 9 September 1994, the Dalane District Court (*herredsrett*), by judgments of 20 September 1994, convicted the applicants, under Sections 14 (2) (1) and 53 (1) of the Sea-Water Fisheries Act 1983 (*Saltvannsfiskeloven* - Act of 3 June 1983 No. 40) and a Royal Decree of 15 July 1994, for having obstructed lawful whaling. It sentenced the first and second applicants to pay a fine of respectively NOK 25,000 and 20,000, or 40 days' imprisonment in default. Moreover, under Articles 35 (2) and 37 C of the Penal Code, it ordered the confiscation of a dinghy belonging to the first applicant. The third and fourth applicants were each sentenced to pay a fine of NOK 10,000, or 15 days' imprisonment in default.

The second applicant then appealed on points of law and sentencing, while the other applicants sought to obtain a new trial before the High Court (*lagmannsretten*), or alternatively to appeal on points of law and sentencing to the Supreme Court (*Høyesterett*). The first applicant also challenged the confiscation order. The Supreme Court's Appeals Selection Committee (*kjæremålsutvalg*) refused the request for a new trial but allowed a joint appeal on points of law and sentencing, as well as the appeal against confiscation.

By judgment of 4 March 1996 the Supreme Court upheld the applicants' convictions but limited the sentences to the fines imposed. It also upheld the confiscation of the dinghy.

In upholding the applicants' convictions, the Supreme Court observed that it was satisfied that the measures had a legal basis in Sections 14 and 53 of the Sea-Water Fisheries Act, as extended by the Royal Decree of 15 July 1994. This was not prevented by Article 65 of the 1982 United Nations Convention on the Law of the Sea, which did not contain a general prohibition on whaling. Nor was it prevented by the moratorium in 1982 for all whaling or the moratorium in 1985 to classify minke whale as a threatened species, decided by the International Whaling Commission established under the 1946 International Convention for the Regulation of Whaling. In accordance with Article V no. 3 of the Convention, Norway had protested and exempted itself from these decisions by way of reservation, as the District Court noted, on the ground that there was no scientific basis for upholding a total ban.

The Supreme Court further considered whether the convictions were compatible with Articles 10 and 11 of the Convention. While leaving open whether the acts concerned, in particular those by the first and second applicants, could be regarded as falling within the notions of freedom of expression in Article 10 or freedom of peaceful assembly in Article 11, the Supreme Court found that the conditions for restricting these freedoms under the second paragraphs of these provisions had been fulfilled. Firstly, it was satisfied that the requirement of lawfulness had been fulfilled, as the interference not only had a legal basis but the law in question was also accessible and foreseeable. The Royal Decree of 15 July 1994 had in fact been aimed at the specific campaign conducted by *Greenpeace*; the matter had attracted media attention and, according to the findings of fact made by the District Court, the applicants had been aware of the amendments in question. Even if they had not, one could have expected them to acquaint themselves beforehand with the relevant legislation, under

which the proscribed conduct was illegal even before the decree. Moreover, the measure had been necessary in a democratic society in order to protect the rights of others. *Greenpeace* had demonstrated against whaling over a long period with a large amount of media attention, but its freedom to demonstrate had not been impaired by the disputed measures which related to 2 isolated incidents where attempts had been made to protect the whalers' lawful exercise of their right to catch whales.

As regards sentencing the Supreme Court recalled that, under Section 53 (3) of the Sea-Water Fisheries Act, prison sentences should not apply to offences committed by foreign vessels in the exclusive economic zone, and that, under Article 73 (3) of the 1982 United Nations Convention on the Law of the Sea, prison sentences should not be imposed for contraventions of fishery legislation. It further observed that Norway had not ratified this Convention. Nonetheless, having regard to the preparatory work for Section 53 (3) of the Sea-Water Fisheries Act, which referred to the provision of the Law of the Sea Convention, the Supreme Court quashed the sentences in so far as they imposed imprisonment in default of the payment of the fines.

As regards the confiscation of the dinghy belonging to the first applicant, the Supreme Court recalled that this had been used by the third and fourth applicants in connection with the acts leading to their arrest. On two occasions they had, by the manner in which they had manoeuvred the dinghy in front of the *Senet*, hindered the exercise of lawful whaling. Although a special provision on confiscation was contained in Section 54 of the Sea-Water Fisheries Act, the Supreme Court was satisfied that Article 35 and 37 C of the Penal Code were applicable. The confiscation was also justified in the interests of ensuring the effective enforcement of Section 14 of the Sea-Water Fisheries Act.

## **B. Relevant domestic and international law**

According to Section 14 of the Sea-Water Fisheries Act, vessels in a fishing zone must not manoeuvre so as to damage or needlessly endanger catching gear or reduce catching opportunities. This provision applies to all vessels, not only fishing and catching vessels.

Under Section 53, Chapter X, a person who by intent or negligence violates the provisions of the Act may be liable to fines and, in the event of a previous conviction under the Act or aggravating circumstances, up to 6 months' imprisonment. Section 54, Chapter X, authorises the confiscation of, *inter alia*, vessels used in violating the provisions of the Act. General provisions on confiscation of objects used in the perpetration of crime are contained, *inter alia*, in Articles 35 of the Penal Code. Under Article 37 C such confiscation may be effected with regard to the possessions of foreigners who are not resident in Norway if it is deemed reasonable.

Pursuant to the Royal Decree of 15 July 1994, Section 14 and Chapter X of the Sea-Water and Fisheries Act should apply to sealing and whaling activities and the provisions in, *inter alia*, Sections 53 and 54 in Chapter X of the Act should, as appropriate, apply to all activities other than fishing.

According to Section 3 of the Sea-Water and Fisheries Act, its provisions do not affect the right of navigation in the exclusive economic zone under the Norwegian Economic Zone Act 1976, and are subject to the limitations which follow from public international law and agreements with other States.

In the proceedings the applicants referred to the following provisions of the Convention on the Law of the Sea, which entered into force in 1994 and which were ratified by Norway in 1996:

#### Article 56

Rights, jurisdiction and duties of the coastal State in the exclusive economic zone

"1. In the exclusive economic zone, the coastal State has:

(a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;

(b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:

(i) the establishment and use of artificial islands, installations and structures;

(ii) marine scientific research;

(iii) the protection and preservation of the marine environment;

(c) other rights and duties provided for in this Convention."

#### Article 58

Rights and duties of other States in the exclusive economic zone

"1. In the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation and use of airspace and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention."

#### Article 65

Marine mammals

"Nothing in this Part restricts the right of a coastal State or the competence of an international organisation, as appropriate, to prohibit, limit or regulate the exploitation of marine mammals more strictly than provided for in this Part. States shall co-operate with a view to the conservation of marine mammals and in the case of cetaceans shall work in particular through the appropriate international organisations for their conservation, management and study."

## Article 73

## Enforcement of laws and regulations of the coastal State

- “1. The coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention.
2. Arrested vessels and their crews shall be promptly released upon the posting of a reasonable bond or other security.
3. Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment.
4. In cases of arrest or detention of foreign vessels the coastal State shall promptly notify the Flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed.”

## Article 97

## Penal jurisdiction in matters of collision or any other incident of navigation

- “1. In the event of a collision or any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such person except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national.
2. In disciplinary matters, the State which has issued a master's certificate or a certificate of competence or licence shall alone be competent, after due legal process, to pronounce the withdrawal of such certificates, even if the holder is not a national of the State which issued them.
3. No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the Flag State.”

**COMPLAINTS**

The applicants complained that, by preventing them from carrying out their right to freedom of peaceful demonstration against whaling, the Norwegian authorities violated their rights under Articles 10 and 11 of the Convention.

## THE LAW

1. The applicants complain of violations of Articles 10 and 11 of the Convention which read as follows:

### Article 10

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

### Article 11

“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.”

Referring to Article 1 of the Convention, the applicants stressed from the outset that to the extent that its agents had exercised powers in the exclusive economic zone, Norway had been responsible for these Convention breaches. Furthermore, the applicants argued that the various measures deployed by the Norwegian authorities amounted to an interference with the exercise of their right to peaceful demonstration as guaranteed by the first paragraphs of Articles 10 and 11 of the Convention. In their opinion, this interference was not justified on the grounds set out in the second paragraph of these provisions.

In the first place, the applicants disputed that the restrictions imposed were "prescribed by law". By virtue of the Royal Decree of 15 July 1994, adopted only a few days before the events at issue, the scope of application of Section 14 of the Sea-Water and Fisheries Act had been extended to whaling activities. It could hardly be argued that the applicants should have been aware of this amendment to the law or that the law was

adequately accessible. Nor could it be said that the applicants had "needlessly" reduced catch opportunities in the sense of Section 14, which provision did not cover the acts of demonstration in issue.

The applicants further disputed that the measures taken by the Norwegian authorities had pursued a legitimate aim. While the *Senet's* whaling activities may have been lawful under Norwegian law and may not have run counter to any prohibition by the International Whaling Commission, the unilateral decision by Norway to resume commercial whaling had been unlawful under international law. In particular, under Article 65 of the 1982 Law of the Sea Convention, States had a duty to co-operate for the protection of marine mammals. Moreover, there was a certain scientific uncertainty attached to the size of the minke whale population and the effects of whaling on these stocks. Furthermore, under this Convention coastal States have a stewardship-role. In addition, there was a near consensus that whales should not be hunted for commercial purposes. This being so, the interference by the respondent State with the applicants' exercise of their right to freedom of expression and assembly could not be said to further the aim of protecting the rights of the Norwegian whalers. Nor could it be regarded as pursuing the interests of the protection of public order.

Finally, the applicants disputed that the measures taken by the Norwegian authorities had been necessary in a democratic society. The applicants maintained that regard should be had to certain provisions of the Law of the Sea Convention, which militated in favour of a restrictive application of the necessity test. As a general rule, a coastal State did not have a right to board, inspect, arrest and institute proceedings against foreign vessels navigating in the exclusive economic zone. However, under Article 73 it could take such measures subject to the proviso that it be necessary in order to ensure compliance with the coastal State's laws and regulations. In the enactment and enforcement of laws on whaling, coastal States should, in the applicants' view, have due regard to the freedom of navigation of all ships in the exclusive economic zone, in accordance with Article 58 (1). According to one legal writer, the harassment of a ship by an inflatable craft could not amount to a denial of its rights of navigation. In principle, incidents of navigation outside the territorial sea not involving a vessel engaged in fishing would be governed by Article 97, pursuant to which judicial proceedings may only be instituted in the Flag State or the State of which the defendant is a national. It followed that the right of coastal States to arrest and institute judicial proceedings against foreign vessels in its exclusive economic zone was an exception and should be interpreted restrictively.

The Court notes that the applicants' convictions and sentence to pay fines and the confiscation of the first applicant's dinghy were all measures which the respondent State had taken in the exercise of its jurisdiction in the sense of Article 1 of the Convention, and thus were capable of engaging its responsibility under the Convention.

The measures at issue had been imposed specifically in response to the fact that on 20 and 23 July 1994 the applicants manoeuvred dinghies in such a manner as to obstruct whaling from the *Senet* by, on each occasion, interposing the dinghy between the vessel and the whale, thereby making it impossible to harpoon the whale. The Court accepts that the campaign carried out by *Greenpeace* in July 1994 was aimed to express a protest against Norwegian whaling. It recalls that restrictions on conduct may constitute an interference with freedom of expression under Article 10 of the Convention (see, for instance, the *Hashmann and Harrup v. the United Kingdom* judgment of 25 November 1999, *Reports of Judgments*



*and Decisions* 1999-, § 28). However, in view of its conclusions below, the Court does not find it necessary to determine whether the particular conduct which gave rise to the disputed measures could be viewed as falling within the notions of "expression" in Article 10 and/or "assembly" in Article 11, or was otherwise covered by the guarantees set out in the first paragraphs of these Articles. The Court will proceed on the assumption that the measures entailed an interference with the applicants' rights under Articles 10 and 11 of the Convention and will examine whether the conditions for restricting them under the second paragraph of these provisions were fulfilled, namely whether they were "prescribed by law", pursued one or more of the legitimate aims mentioned, and were necessary in a democratic society for the pursuit of those aims.

As regards the first of these issues, whether the interference was "prescribed by law", the Court sees no reason to question that the measures had a legal basis in national law, namely in Sections 14 and 53 of the Sea-Water Fisheries Act, as extended by the Royal Decree of 15 July 1994, and in Articles 35 and 37 C of the Penal Code, as interpreted on its own or in the light of international law.

Nor is the Court able to accept the applicants' contention that, because the Royal Decree had been issued and had entered into force only a few days before the events, the law in question had not been sufficiently accessible. According to the findings of fact made by the District Court, which were upheld on appeal to the Supreme Court, the amendments introduced by the Decree were known to those who participated in the campaign and all the applicants were aware of them when they committed the acts in respect of which they were convicted. No evidence has been adduced in the Convention proceedings casting doubt on these findings by the national courts. In these circumstances, the Court is also satisfied that the relevant law was sufficiently accessible and foreseeable to meet the quality requirement flowing from the autonomous concept of lawfulness under the second paragraph of Articles 10 and 11 of the Convention.

The Court further notes that the interference was aimed at securing the effective enforcement of the rules protecting whaling in the Norwegian exclusive economic zone. It is not convinced by the various arguments invoked by the applicants in support of their contention that the resumption by Norway of commercial whaling was unlawful under international law and that, consequently, the interference could not be said to pursue a legitimate aim. According to the findings of the Supreme Court, neither the moratoria decided by the Whaling Commission, against which Norway had validly lodged a reservation, nor the general duty of States to co-operate in the protection of marine mammals, warranted the conclusion that the whaling in question was unlawful. In this connection the Court recalls 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* 1998, § 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, § 54). In the view of the Court, the measures taken against the applicants' conduct in obstructing whaling could reasonably be viewed as having been taken for the prevention of disorder or crime or for the protection of the rights and freedoms of others.

Finally, as regards the issue of the necessity in a democratic society of the measures in question, the Court notes that during their one month campaign the applicants were able to express and demonstrate without restraint their disapproval of the whaling activity concerned. The contested interference related exclusively to two specific incidents of conduct making it impossible for the whalers to catch whales. The object of the applicants' campaign was not simply to convey disapproval of the activity to which they were opposed but went further by trying to stop the activity physically. In fact, by interposing their dinghies between the hunting vessel and the whales, they confronted the whalers with an ultimatum, forcing them to make a choice between triggering the harpoon, and consequently putting the applicants' life at risk, or abandoning the hunt, the latter being the only real option for the whalers. In other words, the particular method of action used by the applicants amounted to a form of coercion forcing the whalers to abandon their lawful activity.

In the Court's view, the disputed interference related to conduct which could not enjoy the same privileged protection under the Convention as political speech or debate on questions of public interests or the peaceful demonstration of opinions on such matters (see, for instance, *G. v. the Federal Republic of Germany*, Commission's admissibility decision of 6 March 1989, application no. 13079/87; cf the *Wingrove v. the United Kingdom* judgment of 25 November 1996, *Reports* 1996-V, p. 1957, § 58; the *Sürek v. Turkey (No. 1)* judgment of 8 July 1999, to be published in the Court's official reports; the *Ezelin v. France* judgment of 30 January 1998, Series A no. 202). On the contrary, the Court considers that the Contracting States must be allowed a wide margin of appreciation in their assessment of the necessity in taking measures to restrict such conduct. In this connection, it is not persuaded by the applicants' argument that the proscribed conduct should be assimilated to an incident of navigation and that the discretion enjoyed by the respondent State in restraining it was accordingly circumscribed by Article 97 of the Law of the Sea Convention.

In addition, the Court attaches weight to the fact that the purpose of the measures was, as mentioned above, to ensure the efficient implementation of the legal protection of lawful exploitation of the living resources in the respondent State's exclusive economic zone.

In the light of the above elements, the Court considers that, in finding that the public interest in taking the contested measures against the applicants were preponderant, the authorities of the respondent State acted within their margin of appreciation. The Court finds that the interference complained of was supported by relevant and sufficient reasons, was proportionate for the purposes of Articles 10 § 2 and 11 § 2 of the Convention and could reasonably be viewed as necessary in a democratic society.

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, by a majority,

**DECLARES THE APPLICATION INADMISSIBLE.**

S. Dollé  
Registrar

J.-P. Costa  
President