



Deferring environmental impact assessment in respect of licences granting petroleum exploration did not breach the Convention

The case of [Greenpeace Nordic and Others v. Norway](#) (application no. 34068/21) concerned the procedural aspect of the obligation to effectively protect individuals from the serious adverse effects of climate change on their life, health, well-being and quality of life in the context of petroleum exploration preceding extraction. On 10 June 2016 the Norwegian Ministry of Petroleum and Energy awarded ten exploration licences to 13 private companies for petroleum gas production. A judicial review requested by the applicant organisations, Greenpeace Nordic and Young Friends of the Earth Norway, of the validity of that decision was unsuccessful.

In today's **Chamber** judgment¹ in the case, the European Court of Human Rights held, unanimously, that there had been **no violation of Article 8 (right to respect for private and family life)** of the European Convention on Human Rights in respect of the complaints introduced by the applicant organisations.

The Court held, in particular, that when making a decision in the context of the environment and climate change, the State had to carry out an adequate, timely and comprehensive environmental impact assessment in good faith, and based on the best available science. While the processes leading to the 2016 decision had not been fully comprehensive and, in particular, the assessment of the activity's climate impacts had been deferred, there was no indication that deferring such an assessment had been inherently insufficient to support the State's guarantees of respect for private and family life within the meaning of the Convention.

The Court also found the complaints introduced by the individual applicants under **Article 8** and by all the applicants under **Article 13 (right to an effective remedy)** and **Article 14 (prohibition of discrimination) in conjunction with Article 8** were **inadmissible**.

Principal facts

The applicants are six Norwegian nationals born between 1995 and 2001 who live in Oslo, and two non-governmental organisations, Greenpeace Nordic and Young Friends of the Earth Norway, based in Norway. The individual applicants are all current or former members of Young Friends of the Earth.

On 10 June 2016 the Ministry of Petroleum and Energy awarded ten licences to 13 private companies for petroleum gas production on the Norwegian continental shelf, where Norway's offshore petroleum activities take place. The two applicant organisations sought a review of the validity of that decision. On 4 January 2018 the Oslo City Court held that the decision had been valid.

On 22 December 2020 the Supreme Court dismissed an appeal by the applicants, holding, by a majority of 11 votes to 4, that the decision granting the licences had been valid and finding that the effects of possible future emissions as a result of the licences awarded did not constitute an "immediate risk" and, consequently, that the issue did not fall within Article 8 of the Convention.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 15 June 2021.

Relying on Articles 2 (right to life) and 8 (right to respect for private and family life), the applicants complained that, before issuing the petroleum production licences, the authorities had not conducted an environmental impact assessment (“an EIA”) of the potential impact of petroleum extraction on Norway’s obligations to mitigate climate change.

Relying on Article 14 (prohibition of discrimination) in conjunction with Articles 2 and 8, the applicants argued that Norway’s climate change policy and the outcome of the licensing round in question had breached their rights. In particular, the policy had disproportionately prejudicial effects on young people and members of the indigenous minority Sámi population. They complained that they had not had access to an effective domestic remedy under Article 13 as the domestic courts’ assessment of their claims had been superficial and seriously erroneous.

The United Nations Special Rapporteurs on human rights and the environment and on toxics and human rights; ClientEarth; the Norwegian Grandparents’ Climate Campaign; the European Network of National Human Rights Institutions; the International Commission of Jurists (ICJ International); and ICJ Norge, were granted leave to intervene as third parties.

Judgment was given by a Chamber of seven judges, composed as follows:

Saadet **Yüksel** (Türkiye), *President*,
Arnfinn **Bårdsen** (Norway),
Jovan **Ilievski** (North Macedonia),
Oddný Mjöll **Arnardóttir** (Iceland),
Gediminas **Sagatys** (Lithuania),
Juha **Lavapuro** (Finland),
Hugh **Mercer** (the United Kingdom),

and also Hasan **Bakırcı**, *Section Registrar*.

Decision of the Court

The Court observed that the applicants’ case differed from that of the applicants in [Verein KlimaSeniorinnen Schweiz and Others v. Switzerland](#) (application no. 53600/20) as it concerned the State’s procedural, rather than substantive obligations. The general principles elaborated in that case would, however, guide the Court’s examination in this case.

It also noted that this case concerned the allegedly faulty decision-making process in one specific round of licensing, which had been the subject matter of domestic proceedings brought by the applicant organisations. It followed that the general complaint about Norwegian climate or petroleum policy, namely about certain measures of climate change mitigation, such as the omission to phase out petroleum production from undiscovered deposits, was outside the scope of the Court’s examination.

On examining the individual applicants’ victim status, the applicant associations’ right to bring the case to the Court (*locus standi*) and the applicability of Article 8 of the Convention, the Court found that there was a sufficiently close link between the exploration-licensing procedure and the effects of climate change on the lives, health, well-being and quality of life of individuals. While exploration would not always, and certainly not automatically or unconditionally, be followed by extraction, in Norway, it was both a legal and practical precondition for it. It found that the applicant organisations had the right to bring the case in the proceedings, and Article 8 was applicable to their complaint. Their complaint under that Article was therefore admissible.

As regards the individual applicants, while the Court did not dismiss the seriousness of conditions such as climate anxiety or climate grief, it observed that their claims had not been supported by medical evidence. Furthermore, the case file did not contain any other materials which would lead it to conclude that they had been exposed to high intensity adverse effects of climate change which had affected them personally, or that there was a pressing need to ensure their individual protection from harmful effects of climate change on their human rights. It followed that the individual applicants did not fulfil the criteria for victim status under the Convention, so their complaints were inadmissible.

Article 2

Following the approach it had taken in *Verein KlimaSeniorinnen Schweiz and Others*, the Court considered it appropriate to examine the applicant organisations' complaints from the standpoint of Article 8 only.

Article 8

When making a decision in the context of the environment and climate change, the State had to carry out an adequate, timely and comprehensive environmental impact assessment ("an EIA") in good faith, and based on the best available science. In the context of petroleum production projects, the EIA had to include, at the very least, a quantification of the greenhouse gas emissions anticipated to be produced (including the combustion emissions both within the country and abroad). Moreover, at the level of the public authorities, there had to be an assessment of whether the activity was compatible with their obligations under national and international law to take effective measures against the adverse effects of climate change. Lastly, informed public consultation had to take place at a time when all options were still open and when pollution could realistically be prevented at source.

Petroleum activities in Norway were highly regulated under a framework with three consecutive stages. The first stage was the opening of an area to exploration, which, under domestic law, had to be preceded by a strategic EIA conducted by the Ministry of Petroleum and Energy and by a public consultation. The second stage was licensing, which corresponded to the exploration phase and did not formally require any EIA or public consultation. The third and final stage was the Plan for Development and Operation ("PDO"), which corresponded to petroleum extraction and had to, in principle, be preceded by an EIA conducted by the licensee, as well as by a public consultation. In certain circumstances, the requirement of an impact assessment could be waived. The second and third stages of the administrative procedure could each be judicially reviewed.

The Court found that the impact assessment during the processes leading to the 2016 decision had not been fully comprehensive. The relevant orientation paper had explicitly deferred the assessment of climate effects, ecological relationships, ocean acidification, and so on, to the stage at which the management plans would be laid. The Supreme Court's judgment had, in turn, deferred the subject of exported combustion emissions either to general climate policy or to any future PDO decisions. That court had held that a failure to assess the effects of exported combustion emissions at the strategic assessment stage could be remedied at a later procedural stage, namely, either through the EIA at the PDO stage or through a general political decision to reduce petroleum activities overall.

The Court noted that several petroleum extraction projects had apparently been authorised by the Ministry without any assessment of their combustion emissions or their impact on climate change. The Court agreed with the applicants that a widespread use of such a waiver could indeed circumvent and, in reality, completely undermine, the very purpose of a comprehensive and timely EIA, as a means of protection of the Convention rights against serious impacts of climate change on the life, health, well-being and the quality of life of individuals.

The Court attached greater importance, however, to developments that had structurally reinforced the guarantee to effectively implement the relevant procedural obligations as regards PDOs. Firstly, the Supreme Court had clearly stated that the Norwegian authorities had a constitutional obligation not to approve a PDO if that were so required by general considerations for the climate and environment at the time. Secondly, the Court referred to the recent adoption of a ruling of the EFTA Court ("European Free Trade Association") in respect of domestic proceedings concerning three projects in the North Sea. That court had found that the EIA Directive required a national court to eliminate the unlawful consequences of a failure to carry out a full EIA which accounted for petroleum combustion emissions. Regularisation was indeed permitted by conducting an assessment while the project was under way or even after it had been completed, but only if it did not serve to circumvent the law and if the assessment took a retrospective view of the environmental impact of the project. Thirdly, the Court noted the official assurance from the Government that an assessment of combustion emissions, and an informed public consultation would take place before the decision was made.

It could not be said that there was any structural problem that would undermine the conclusion that the above legal framework was being implemented effectively. There was no indication that a deferred EIA was inherently insufficient to support the State's guarantees of respect for private and family life within the meaning of Article 8 of the Convention.

There had therefore been no violation of Article 8 of the Convention.

Article 14 in conjunction with Article 8

No such complaint had been made, even in substance, during the course of the domestic judicial review proceedings. The complaint was therefore inadmissible.

Article 13

The Court was satisfied that the domestic courts had duly considered the case. The Supreme Court had devoted a separate section of its judgment to a comprehensive consideration of whether Convention rights had been engaged, addressing the applicants' arguments and discussing the Court's rulings. The fact that the Supreme Court's conclusion on whether Convention rights had been engaged could be called into question in the light of the Court's findings in the case did not mean that the assessment had been insufficient or that it had not been diligently undertaken. Having regard to the reasons given by the domestic courts for their findings, the Court considered that there was no indication that the extent of their review had not been sufficient to comply with the Convention. The complaint was inadmissible.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.