To the European Court of
Human rights

Oslo, 16 August 2024

ADDITIONAL WRITTTEN OBSERVATIONS

BY GREENPEACE NORDIC, NATURE AND YOUTH AND SIX INDIVIDUAL APPLICANTS

represented by Cathrine Hambro, attorney at Bull and Co, Emanuel Feinberg, attorney at Glittertind, and Jenny Sandvig, attorney at Simonsen Vogt og Wiig, in

app. no. 34068/21, Greenpeace Nordic and others v. Norway

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1 INTRODUCTION

1. Reference is made to the Court's letter of 19 June 2024 in which the Court invited the Applicants to submit further written observations on the admissibility and merits of application no. 34068/21 *Greenpeace Nordic and Others v. Norway* in light of the developments in the Court's case-law, namely, the Grand Chamber's judgment in the case of *Verein KlimaSeniorinnen v. Switzerland and Others v. Switzerland* [GC], no. 53600/20, 9 April 2024. By the Court's letter of 5 July 2024, both parties were granted an extension of the time-limit to 16 August 2024.

2. The Applicants have structured their updated observations in accordance with the Court's questions to the parties of 10 January 2022. In the context of Question 3, the Applicants will also describe certain new developments in relevant domestic court proceedings where the Respondent State has been held in breach of domestic law as climate impacts from combustion are *not* subjected to environmental impact assessments (EIA) before extraction, as the Norwegian Supreme Court (NSC) presupposed they would be. For the Court's benefit, the Applicants will use the complaint numbers originally assigned by the Court.[1]

2 LOCUS STANDI UNDER ARTICLE 34, CF. QUESTION 1

2.1 Applicant 1 (Greenpeace Nordic) has the necessary locus standi

3. In accordance with the Court's decision in *KlimaSeniorinnen*, an association can have *locus standi* based on a Contracting State's alleged failure to take adequate measures to protect individuals from the adverse effects of climate change on human lives and health. This conclusion was based on the fact that "when citizens are confronted with particularly complex administrative decisions, recourse to collective bodies such as associations is one of the accessible means, sometimes the only means, available to them whereby they can defend their particular interests effectively. This is especially true in the context of climate change, which is a global and complex phenomenon".[2] The Court also accepted the reasoning of the CJEU and its interpretation of the Aarhus Convention and the important role that environmental

[1] Complaint numbers assigned by the ECtHR to the parties in its letter of 10 January 2022 p. 5
[2] Verein KlimaSeniorinnen Schweiz and Others v. Switzerland App No 53600/20 *(KlimaSeniorinnen)* § 489

organisation operating in accordance with the requirements of national law have in contesting measures affecting the environment.[3]

4. Taking into account the exclusion of *actio popularis* under the Convention, an Association has to fulfil three specific criteria to lodge applications before the Court.[4] Given the significant considerations justifying the standing of associations in climate-related cases, and the limited time window within which prolonged climate litigation can still be effective in preventing Convention-violating climate damage, it is crucial that the criteria for granting associations standing are not interpreted and applied too strictly.

5. In applying the criteria in a case against Norway, it should also be taken into account that under Norwegian law, it is generally not possible for an organisation established for the purpose of pursuing a specific lawsuit to bring a claim:[5] If the criteria are applied too strictly, it may become impossible to enforce Convention violations, as established organizations may not meet the Court's criteria, while newly formed organisations could be barred under national law.

6. First, the association must be "lawfully established in the jurisdiction concerned or have standing to act there."[6] Greenpeace Nordic has "lawful standing to act" in the jurisdiction concerned. Although Greenpeace Nordic is formally established in Sweden, it has been registered and active in Norway since 1988 as a Norwegian-registered Foreign Company (NUF).[7] In contrast to the situation in *KlimaSeniorinnen*, here the Court has evidence of the nature and extent of the association's activities within the respondent state (see n.17, below), and the record below shows, Greenpeace Nordic is lawfully established in Norway and has standing before Norwegian courts, as demonstrated by its role as one of the plaintiffs in this case.

7. Second, Greenpeace Nordic, taking into account the nature and extent of its activities in Norway,[8] can demonstrate that it "pursues a dedicated purpose in accordance with its statutory objectives in the defence of the human rights of its members or other affected individuals

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[3] *KlimaSeniorinnen* (supra n.2) *§ 492*
[4] *KlimaSeniorinnen* (supra n.2) *§ 502*
[5] Rt-2003-833 Section 29
[6] *KlimaSeniorinnen* (supra n.2) *§ 502 (a)*
[7] See *KlimaSeniorinnen* (supra n.2) § 522: "... the Court does not have the benefit of the assessment of the legal status of the Applicant association under domestic law or of the nature and extent of its activities within the respondent State."
[8] *KlimaSeniorinnen* (supra n.2) § 503

within the jurisdiction concerned, (…) including collective action for the protection of those rights against the threats arising from climate change."[9]:

8. Respectfully, Greenpeace Nordic is one of the most active associations, if not the most active, acting on behalf of affected individuals in Norway. It pursues collective action to protect human rights against threats from climate change, fully in accordance with its bylaws, which establish its purpose to "expose global environmental problems and to advocate for solutions essential to a green and peaceful future".[10]

9. Greenpeace Nordic is a multifaceted organization that utilizes a wide range of tools to seek climate justice, protect the environment and vulnerable groups, and combat climate inaction and injustices against our planet and its people. Greenpeace Nordic influences governments and companies through lobbying, non-violent direct actions, legal actions, demonstrations, participation in public processes both online and offline, policy work at national and international levels, and scientific research, among other activities. In addition, Greenpeace Nordic assists and facilitates other organisations and individuals in upholding their Convention rights, as exemplified by this case.

10. Consequently, Greenpeace Nordic fulfils the second criterion. Its extensive activities in lobbying, direct actions, legal actions, demonstrations, public participation, policy work, and scientific research demonstrate a dedicated purpose in defending human rights against climate change threats within the jurisdiction.

11. Third, Greenpeace Nordic, considering the nature and extent of its activities in Norway,[11] can demonstrate that "it can be regarded as genuinely qualified and representative to act on behalf of members or other affected individuals within the jurisdiction who are subject to specific threats or adverse effects of climate change on their lives, health or well-being as protected under the Convention"[12]:

12. Greenpeace Nordic is not a membership organisation but acts as a "vehicle of collective recourse" aimed at defending the rights and interests of individuals against the threats of

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[9] *KlimaSeniorinnen* (supra n.2) § 502(b)
[10] Bylaws for the Non-Profit Association Greenpeace Nordic (Annex 1)
[11] *KlimaSeniorinnen* (supra n.2) § 503
[12] *KlimaSeniorinnen* (supra n.2) § 502(b)

climate change in the respondent State[13], with substantial support from the Norwegian civil society. Notably, leading up to the hearing in the national district court, over 400 000 people globally signed a petition in support of the claimants.[14]

13. Like all Greenpeace offices worldwide, Greenpeace Nordic does not accept funding from governments or companies. Nearly 80 % of its work in the Nordic countries is funded by supporters / donors who contribute so that Greenpeace Nordic can advocate for environmental and human rights on their behalf. In Norway, there has been significant growth in supporters / donors —from 3,023 supporters in 2012 to 17,493 by the end of 2023.[15] As the supporter base increased fivefold, Greenpeace Nordic, together with Young Friends of the Earth, has taken legal action against Norway for violating the constitutional right to a healthy and liveable environment by issuing new oil and gas licences.[16]

14. Greenpeace Nordic has a long-standing and well-established record of advocating for environmental and human rights in Norway and beyond. It employs various methods and strategies, including legal action, public awareness campaigns, scientific research, and non-violent direct action. Greenpeace Nordic has been involved in several landmark cases and campaigns related to climate change and its consequences, such as the lawsuit against the Norwegian government for granting new oil and gas licences in violation of the constitutional right to a healthy environment, civil disobedience actions against human rights violations related to the Fosen wind park project in Sápmi, and actions against oil rigs commissioned by Equinor in the Arctic.[17] These examples demonstrate that Greenpeace Nordic has the expertise, experience, and credibility to challenge authorities and corporations responsible for or complicit in the climate crisis, and to raise awareness and mobilise public opinion in favour of climate justice and the human rights of individuals in that context.

15. Greenpeace Nordic acts not only on behalf of its own supporters / donors, but also on behalf of other affected individuals within the jurisdiction who are subject to specific threats or adverse effects of climate change on their lives, health, or well-being, particularly those who are marginalised, vulnerable, or underrepresented in the political and legal system. For instance,

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[13] *KlimaSeniorinnen* (supra n.2) § 523
[14] Final writ of evidence to Oslo District Court, 31 October 2017 (Annex 2)
[15] Greenpeace Nordic Annual Report 2022: https://www.greenpeace.org/static/planet4-sweden-stateless/2023/05/57a51c6c-greenpeace-glossy-report-2022.pdf
[16] See Annex 3 for an overview of Greenpeace Nordic engagement
[17] Ibid.

Greenpeace Nordic has expressed solidarity with and support for the Sámi people, who are facing the loss of their ancestral lands, culture, and livelihoods due to the expansion of renewable energy projects to inter alia power petroleum extraction offshore without proper consultation and consent.[18] Additionally, Greenpeace Nordic has highlighted the plight of young people and future generations, who are disproportionately affected by the climate crisis and whose voices are often ignored or dismissed by decision-makers.[19] By acting as a vehicle of collective recourse aimed at defending the rights and interests of individuals against the threats of climate change in the respondent State, Greenpeace Nordic plays a crucial role in ensuring that Convention rights are respected and protected for all.

16. In 2023 Greenpeace Nordic and the Centre for International Environmental Law (CIEL) also made a submission to the Committee on the Rights of the Child (CRC) on issues to be addressed.[20] Also, in 2023, together with CIEL, Greenpeace Nordic submitted a joint report to the UN Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) during the Committee's 84th Session (6-24 February 2023)[21]. This submission, made in its capacity as a member of civil society, outlined how Norwegian petroleum policy infringes upon the rights set out in the Convention on the Elimination of All Forms of Discrimination Against Women. As a result, the Committee expressed concern over the recent surge in new oil and gas approvals in Norway and concluded that Norwegian oil and gas policy undermines gender equality. CEDAW recommended that the State party review its petroleum policy in light of these findings.[22][23]

17. In sum, Greenpeace Nordic fulfils all three criteria set by the Court for an association to have the necessary *locus standi* to bring forward this claim.

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[18] Fosen-aktivistene preget da politiet gikk til pågripelser: – Sorgen og traumene går gjennom generasjoner (aftenposten.no); Høring - faglig utredning av forbrenningsutslipp fra olje og gass utvunnet på norsk kontinentalsokkel - regjeringen.no
[19] *Ibid.*
[20] See supra n. 16
[21] *Ibid.*
[22] CEDAW Concluding observations on the Tenth Periodic Report of Norway, 2 March 2023, at §49(a) https://documents.un.org/doc/undoc/gen/n23/064/97/pdf/n2306497.pdf
[23] Greenpeace Nordic has also participated in periodic review processes under the UN Human Rights Treaty Bodies and given regular briefings to UN Special Rapporteurs David Boyd and Marcos Orellana.

2.2 Applicant 2 (Young Friends of the Earth) has the necessary locus standi

18. Young Friends of the Earth must fulfil the same three criteria as Greenpeace Nordic, as outlined in section 2.1 above.

19. First, Young Friends of the Earth has "lawful standing to act" in the jurisdiction concerned. The record below shows Young Friends of the Earth is lawfully established in Norway and has standing before Norwegian courts, as demonstrated by its role as one of the plaintiffs in this case before the Norwegian courts.[24] Unlike the *KlimaSeniorinnen*'s situation[25], in the present case the Court does "have the benefit of the assessment of the legal status of the Applicant association under domestic law or of the nature and extent of its activities within the respondent State."[26]

20. Second, the association must demonstrate that it "pursues a dedicated purpose in accordance with its statutory objectives in the defence of the human rights of its members or other affected individuals within the jurisdiction concerned, whether limited to or including collective action for the protection of those rights against the threats arising from climate change".[27] In this connection such factors as "the nature and extent of its activities within the relevant jurisdiction" must be considered.[28]

21. Young Friends of the Earth stands as Norway's largest and most influential environmental youth association, boasting 5224 individual members aged 13 to 25.[29] It operates as a democratic, member-based organisation, addressing the voices and concerns of its young members. Since its establishment in 1967, Young Friends of the Earth has played a pivotal role in shaping and advancing Norwegian environmental policies. The association's contributions span numerous significant initiatives, campaigns, and legislative influences, marking it as a cornerstone in the nation's environmental advocacy. In recognition of its impactful work, Young Friends of the Earth, received the OSCE's Max van der Stoel 2024 award, which "recognizes this organization's efforts to give young people of all backgrounds a voice in

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[24] The Norwegian Dispute Act Section 1-4: "… an organisation or foundation may bring an action in its own name in relation to matters that fall within its purpose and normal scope"
[25] Cf *KlimaSeniorinne*n (supra n.2) § 522, where the Grand Chamber did not have this information. See also below for further details of Nature & Youth's history dating back more than half a century.,
[26] *KlimaSeniorinnen* (supra n.2) § 522
[27] *KlimaSeniorinnen* (supra n.2) §§ 502 (b)
[28] *KlimaSeniorinnen* (supra n.2) § 502
[29] As per 31.12.2023

environmental policy."[30] And in 2019 Young Friends of the Earth, alongside climate activist Greta Thunberg, was honoured with the prestigious Fritt Ord (Freedom of Expression) Award "for their contribution to making the climate and environmental debate action-oriented".[31]

22. The efforts to secure the human rights of children and youth in Norway are fundamental to Young Friends of the Earth's mission. These efforts are deeply embedded in the association's purpose, which includes working for the "protection of the world's resources" by ensuring that "all forms of pollution and environmental destruction are kept at levels that nature can tolerate."[32] The association's formal Fundamental View underscores this mission, establishing a commitment to fostering a "society based on respect for all people" and advocating for a system that meets people's essential needs.[33]

23. Young Friends of the Earth fulfils the second criterion by demonstrating a dedicated purpose in defending human rights within the concerned jurisdiction of Norway. Through extensive activities focused on mitigating environmental harm and advocating for social justice, Young Friends of the Earth defends the human rights of its members (Norwegian youth) and other affected individuals in Norway.

24. Third, the association must "demonstrate that it is genuinely qualified and representative to act on behalf of members or other affected individuals within the jurisdiction who are subject to specific threats or adverse effects of climate change on their lives, health, or well-being as protected under the Convention."[34] The "nature and extent of its activities within the relevant jurisdiction" must also be considered in this context.[35]

25. As mentioned above, Young Friends of the Earth is Norway's largest environmental youth organization, with members spanning the entire country and actively participating in local and regional chapters. Through Young Friends of the Earth, Norwegian youth are equipped with

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[30] See OSCE (July 2024) "Natur og Ungdom from Norway Wins the 2024 Max van der Stoel Award." OSCE, available at: https://www.osce.org/hcnm/573631
[31] Fritt Ord (2019), "Fritt Ords Pris 2019, Natur og Ungdom og Greta Thunberg." Fritt Ord, available at: https://frittord.no/nb/priser/fritt-ords-pris/natur-og-ungdom-og-greta-thunberg
[32] Natur og Ungdom Vedtekter (Articles of Association) Statutes, Section 1.1-1.3 (Annex 4)
[33] Natur og Ungdom Grunnsyn ("Fundamental View)", page 3, Section 3 (Annex 5). These states the core values of the organisation.
[34] *KlimaSeniorinnen* (supra n.2) § 502
[35] *KlimaSeniorinnen* (supra n.2) § 503

resources, funds, and support to tackle environmental issues on local, national, and international levels. This comprehensive support system empowers them to advocate for their rights and address the environmental challenges that directly impact their lives and threaten their fundamental rights.

26. A significant portion of Young Friends of the Earth's members are under 18 and, therefore, do not have the opportunity to participate in democracy through the right to vote. To address this, the organization's purpose and structure are specifically designed to compensate for the lack of traditional democratic avenues available to Norwegian youth. Young Friends of the Earth supports its members to secure their interests through various alternative means, including lobbying politicians, influencing public opinion, bringing cases before the courts, participating in public hearings, and facilitating direct actions.

27. Undeniably, climate change has already caused severe harm all over the world, including Europe and Norway.[36] It is equally undeniable that the said effects will come at a much bigger scale in the future if society is not able to mitigate emissions in an effective manner. As the Grand Chamber has recognised, "in the specific context of climate change, intergenerational burden-sharing assumes particular importance both in regard to the different generations of those currently living and in regard to future generations."[37] Young Friends of the Earth's role in Norwegian society makes it genuinely qualified and representative to act on behalf of young individuals and future generations in Norway who must carry a much bigger burden of climate harm and postponed emission cut than society in general.

28. Furthermore, as Young Friends of the Earth strives to support a society that respects "all people,"[38] it has actively worked to support Norway's Sámi indigenous people. Several members of the association belong to the Sámi community, whose traditional way of life is particularly vulnerable to the adverse effects of climate change.[39] Recognizing the unique challenges faced by the Sámi, Young Friends of the Earth has committed to advocating for their rights and preserving their cultural heritage.

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[36] *KlimaSeniorinnen* (supra n.2) § 103-120 and Environment Norway (last updated April 2023), "Climate Change in Norway", Environment Norway, available at: https://www.environment.no/topics/climate/climate-change-in-norway/
[37] *KlimaSeniorinnen* (supra n.2) § 420
[38] Grunnsyn ("Fundamental View)" (supra n. 33)
[39] Cf. Section 8.3 below

29. To illustrate the work Young Friends of the Earth does to support and protect the rights of both young people and Sámi indigenous people (beyond the case at hand), we highlight the following important activities:

30. In 2023, Young Friends of the Earth, in collaboration with the Sámi youth organisation NSR-N, occupied the Ministry of Petroleum and Energy after 500 days had passed since the Supreme Court ruled that a wind park on the Fosen peninsula violated the Sámi indigenous people's rights to culture under ICCPR Article 27, yet the Government showed no intention of respecting their human rights.[40] This protest evolved into one of the largest acts of civil disobedience in Norwegian history and resulted in a public apology from the Prime Minister of Norway.[41] The international attention garnered by the protests paved the way for negotiations conducted in good faith and on equal terms. Young Friends of the Earth played a pivotal role in these protests by providing experience, training in lawful civil disobedience, activists and support personnel, as well as equipment and facilities. Their significant contribution, alongside NSR-N, was recognized with the Norwegian Amnesty Prize 2024 for their efforts in the Fosen protests.[42]

31. 18 of the hundreds of protesters who participated in the Fosen protests, including the leader and several board members of Young Friends of the Earth, were later charged with violating the Police Act for not complying with police orders during the civil disobedience actions.[43] Young Friends of the Earth supported the defence by providing documentation from the protests and reaching out to expert witnesses in Sámi political history, as well as the president of the Sámi parliament, who provided key testimonies at the District Court trial. All 18 activists were

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[40] Emilie Kaland Lindseth (March 2023), "La Fjella Leve: Okkuperer Olje- og Energidepartementet", Universitas, available at: https://www.universitas.no/demonstrasjon-fosen-fosensamer/okkuperer-olje-og-energidepartementet/363558; [English translation of original article] Eva Jensine Pritchard (March 2023), "Let the Mountains Live: The Ministry of Petroleum and Energy Blocked off by Sámi Protestors", Universitas, available at: https://www.universitas.no/let-the-mountains-livethe-ministry-of-petroleum-and-energy-blocked-off-by-sami-protestors/363898; See Supreme Court judgment 11 October 2021, HR-2021-1975-S (Case No. 20-143891SIV-HRET, Case No. 20-143892-SIV-HRET and Case No. 20-143893SIV-HRET)

[41] Norwegian Government (March 2023), "Norwegian Government Apologises to Sámi Reindeer Herders on the Fosen Peninsula", Norwegian Government, available at: https://www.regjeringen.no/en/aktuelt/norwegian-government-apologises-to-sami-reindeer-herders-on-the-fosen-peninsula/id2965357/#:~:text=The%20Norwegian%20Government%20has%20apologised,a%20violation%20of%20human%20rights.

[42] NRK (April 2024), "Samiske Aktivister og Natur og Ungdom får Amnestyprisen", NRK, available at: https://www.nrk.no/nyheter/samiske-aktivister-og-natur-og-ungdom-far-amnestyprisen-1.16856790

[43] Sunniva Skurtveit, Mette Ballovara, Ingá Káre Márjá I. Utsi (March 2023), "Vil gje Fosen-aksjonistane 6000 kroner i bot." NRK, available at: https://www.nrk.no/trondelag/aktor-og-forsvarar-legg-fram-prosedyre-i-rettssaka-mot-fosen-aksjonistane-1.16809609

acquitted by the District Court, which ruled that a conviction would violate the activists' rights under ECHR Article 11.[44] The case is currently on appeal.

32. In 2023, Young Friends of the Earth, together with Greenpeace Nordic, took the government to court once again. This case, currently ongoing, is before the Borgarting Appeals Court. The core issue revolves around the authorities' failure to assess consumption emissions and their negative climate effects also during the plan for development and operation (PDO) stage, prior to approving new oil and gas fields. The claim was successful in the District Court, making plain the government's breach of domestic law and continued disregard for the Applicant's right to environmental information also at the subsequent PDO-stage. The government has appealed to the Court of Appeal, asking it to refer a preliminary issue to the EFTA Court for an advisory opinion.

33. In April 2024, Young Friends of the Earth hosted the event "The Struggle Continues – Gathering for the Environment and Human Rights,"[45] which focused on the collaboration between the environmental movement and Indigenous activists. Young Friends of the Earth firmly believes that Indigenous rights and the adverse effects of climate change are closely interconnected. To address this, Young Friends of the Earth organised the event to forge new bonds, exchange knowledge, and strengthen cooperation between the Sámi indigenous people and civil society. The goal was to enhance collaborative efforts in securing the right to a healthy environment for the future.

34. Consequently, Young Friends of the Earth, also fulfils the third criterion and, therefore, all three criteria set by the Court for an association to have the necessary *locus standi* to bring forward this claim

2.3 Applicants 3-8 (the individual Applicants) have the necessary locus standi

35. In accordance with the Court's decision in *KlimaSeniorinnen*, two "key criteria have been set out for recognising the victim status of natural persons in the climate-change context: (a) high intensity of exposure of the Applicant to the adverse effects of climate change; and (b) a

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[44]AP (April 2024), "Norwegian Court Finds Police Acted Unreasonably in Fining Activists who Blocked Government Buildings." AP, available at: https://apnews.com/article/norway-wind-farms-sami-acquitted-fines-c98cdb40e1e65325ccd50a40def5cc3c

[45] Natur og Ungdom (2024), "Kampen Fortsetter" [Instagram]. 18 March. Available at: https://www.instagram.com/naturogungdom/p/C4piU5ugbdP/?img_index=1

pressing need to ensure the Applicant's individual protection (see paragraphs 487-488 above)."[46] Furthermore, the "threshold for fulfilling these criteria is especially high"[47].

36. Applicants 3-8 have a high intensity of exposure to the effects of climate change in light of their unique position of vulnerability. While intergenerational equity also was a key factor for the individual senior women Applicants in KlimaSeniorinnen, due to the young age of Applicants 3-8, they not only do experience present and ongoing harm, they also have clear and urgent need to secure their future protection against irreversible and catastrophic effects of climate change, especially due to the increase in exposure to adverse climate events such as heatwaves, wildfires, floodings over the lifetime of the individual Applicants.[48] Moreover, three of the individual Applicants are part of the Sámi indigenous people, and thus bear a heavier burden than the general society cf. section 8.3 below.

37. As emphasised and substantiated in the Applicants' Written Submissions of 29 June 2022, Applicants 3-8 are young individuals who are well-informed about the climate crisis and actively advocate for action against it. This advocacy role places a heavier burden on them compared to other parts of society. The most severe effects of climate change will manifest in the future, meaning today's youth and future generations, most likely throughout their lifespan, will bear the highest costs. Currently, younger age groups, particularly children, are especially vulnerable to climate change, facing issues such as mental health problems, displacement, water insecurity, weather-related mortality, economic hardship, and malnutrition (Applicants' Written Submissions paragraph 31).

38. Furthermore, all individual Applicants experience significant psychological impacts from the climate crisis, including emotional distress and fear for the future, as highlighted in the *Applicants' Written Statements of Evidence, Annexes 1-6 to the Applicants' Submission*. These impacts severely affect their lives and decision-making. They already suffer from these harms and face increased risks of harm and irreversible impacts in the future. The ongoing climate crisis forces them to constantly worry about their future, influencing their lives in the most fundamental ways ranging from choosing whether or not to have children to their ability to maintain indigenous cultural traditions and overall well-being. This crisis will most likely be

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[46] *KlimaSeniorinnen* (supra n.2) § 527
[47] *Ibid.*
[48] Expert statement by Professor Thiery, Exhibit 1

ongoing throughout their total lifespan.[49] Anxiety caused by climate change is not a subjective choice but a rational response to objective facts. Recent studies, as noted in the *Applicants' Written Submissions*, confirm that the psychological impacts of climate change are identifiable and measurable, correlating with harmful mental health outcomes. These outcomes are not uniformly distributed; they disproportionately affect younger people who are more aware of the impending threats and the "widely acknowledged inadequacy of past State action to combat climate change globally",[50] presenting them with a pressing need for individual protection.

39. Climate-related mental health impacts have been characterised by experts as "representing a different level of magnitude than the focus of typical studies on risk" and as potentially leading to a loss of ontological security. This characterization is mirrored in Applicant 4's statement, where she describes suffering from "several bouts of what some might refer to as 'climate anxiety,' an all-encompassing fear of the state of the future" (Applicants' Written Submissions of 29 June 2022 section 35).

40. As emphasised in the *Applicants' Written Submissions,* paragraph 36, studies show that the psychological impacts of climate change encompass a number of harmful mental health outcomes, including insomnia, cognitive impairment and functional impairment, and are often a significant factor in decisions to not have children. The Applicants are already suffering from these mental health effects. For example, Applicants 6 and 7 "feel climate sorrow",[51] while Applicant 5 feels that the "ongoing climate crisis threatens to make my life … in Norway increasingly more difficult, ultimately leaving us to face challenges no generation has ever faced before".[52]

41. Second, Applicants 8, 7 and 3, as part of the Sámi indigenous people, bear a heavier burden than the general society.[53] For example, Applicant 7 states that for "as long as I can remember my family and I have fished in this river, but due to the effects of climate change (…) my family and I have to refrain from using the river (…) in doing so, we lose an important source

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[49] Applicants' Written Submissions, paragraphs 33-37
[50] *KlimaSeniorinnen* (supra n.2) § *413.*
[51] Applicant 6's Written Statement of Evidence (Annex 1, p. 8). ("I feel climate sorrow. A sorrow over everything that will be gone. Over all the nature that I will never be able to see, which my children will never experience"); Applicant 7's written statement of evidence to the ECtHR, App No 34068/21 (Annex 1, p. 10). ("I feel a huge sorrow…In particular, I feel it inside when the areas I know well and have grown up in are altered by climate change").
[52] Applicant 5's Written Statement of Evidence to the ECtHR, App No 34068/21 (Annex 1, p. 2).
[53] Applicants' Written Submissions paragraph 38

of sustenance". For her, the "most painful part is that the traditions tied to the fisheries cannot be continued as previously".[54] Similarly, Applicant 3 mourns a fairly recent crisis caused by higher temperatures in his region,[55] and that as "a young person from the Sea Sámi culture, I fear the impact that climate change will have on my people's way of life (…) How will we be able to continue the practice of our culture, living on the basis of traditional knowledge of nature, if the species that our culture has nurtured for centuries disappear?"[56] The prospect of increasing trauma throughout five decades or more meets the Court's criterion of "a high intensity" and also represents "a pressing need to ensure the Applicant's individual protection, owing to the absence or inadequacy of any reasonable measures to reduce harm."[57]

42. Overwhelming statistical evidence, including reliable national and international reports, establishes that the CO2 from fossil fuel reserves in the Barents Sea South (BSS) and Barents Sea South-East (BSSE) pose disproportionate risks to the Sámi population. The significant vulnerability of the Applicants as members of the Sámi people should be well known to the Respondent State. These risks are compounded by the Sámi people's deep connection to their traditional lands, waters, and resources, which are crucial for the survival of their culture and livelihood. According to the Norwegian National Human Rights Institution (NHRI), further warming poses a serious threat to the sustainability of core elements of Sámi culture and identity, such as reindeer husbandry and fishing practices.[58] If emissions are not reduced, the average temperature in Sámi areas will significantly increase, snow cover duration will decrease, and sea surface temperatures will rise, all within the Applicants' expected lifetimes. This would be devastating for reindeer husbandry and for cold-water species traditionally used in Sámi fishing, with associated impacts on Sámi health, cf. section 8.3 below.

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[54] Applicant 7's Written Statement of Evidence to the ECtHR, App No 34068/21 (Annex 1, p. 11).
[55] Applicant 3's Written Statement of Evidence to the ECtHR, App No 34068/21 (Annex 1, p. 16). ("In the winter of 2020, there was a crisis in the reindeer husbandry industry in my region, as higher temperatures caused 'rain on snow' events".)
[56] Applicant 6's Written Statement of Evidence to the ECtHR, App No 34068/21 (Annex 1, p. 16-17).
[57] *See KlimaSeniorinnen*, [supra n.2] 487(a) "the Applicant must be subject to a high intensity of exposure to the adverse effects of climate change, that is, the level and severity of (the risk of) adverse consequences of governmental action or inaction affecting the Applicant must be significant;(b) "there must be a pressing need to ensure the Applicant's individual protection, owing to the absence or inadequacy of any reasonable measures to reduce harm."
[58] Norwegian National Human Rights Institution (2024) "Canary in the Coal Mine, Sámi Rights and Climate Change in Norway" Section 8.2.1, p.49 (Exhibit 6)

43. Based on these facts all of Applicant 3-8 have the necessary *locus standi* to bring forward this claim

3 EXHAUSTION OF DOMESTIC REMEDIES, CF. QUESTION 2

44. As explained in the Applicants' observations of 29.06.2022 Section 3.2, the Applicant associations have exhausted available domestic remedies. The individual Applicants exhausted domestic remedies through their active participation in the domestic proceedings through Nature and Youth.[59] It would be unnecessary formalism and futile to require the individual Applicants to repeat these domestic proceedings after HR-2020-2472-P.[60] When the Supreme Court denied application of Articles 2 and 8, it thereby ruled out any prospect of success for accessory grievances under Article 14.[61] Hence, Article 35 is fulfilled.

4 THE COURT'S QUESTION 3 IN LIGHT OF NEW CASE-LAW

4.1 The scope of the case, cf. question 3a

45. The Applicants' arguments under Articles 2, 8 and 14 pertain to the potentially life-threatening, health-impairing, and disparate effects of climate harm for younger age cohorts and the Sámi people, that may ultimately ensue from the opening of the BSS and BSSE for petroleum activities. For the reasons set out in Section 4.2 below, these opening decisions were challenged preliminarily through a legal review of the latest production licences of 10.06.2016 in the BSS and BSSE.

46. The official resource estimate (**annex 6**) prior to the opening of the BSS was 1.0 - 2.2-billion-ton o.e.,[62] which corresponds to 2.88 – 6.336 billion tons CO2 (GtCO2) or 2880 – 6336 million tons CO2 (MtCO2).[63] The official resource estimate (**annex 7**) prior to the opening of BSSE

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[59] Kosa v. Hungary, app. no. 5346/1/15, 14 December 2017, § 57.
[60] Open Door and Dublin Wee § 50; Kosa v. Hungary § 54; Gorraiz Lizarraga and Others v. Spain, § 37.
[61] TOSL-2023-99330, Oslo District Court, 18.01.2024, Section 3.9. The District Court referenced the Supreme Court's interpretation of Articles 2 and 8 of the Convention in HR-2020-2472-P and held that it was not, per 18.01.2024, "basis to expand the applicability to climate cases before the ECtHR had clarified the interpretation to that effect" in the Grand Chamber cases, including *KlimaSeniorinnen.*
[62] St. meld. Nr. 40 (1988-1989), Report to the Storting No. 40 (1988-1989): "The expected resources in the entire Barents Sea are estimated by the Norwegian Petroleum Directorate to be between 1.0 and 2.2 billion t.o.e., with a weighted mean value of approx. 1.8 billion t.o.e. The companies expect that there can be between 1-2 billion t.o.e. in total in the South Barents Sea, and that the main amount of this is gas. Some of the companies, however, expect a larger share of oil than the Norwegian Petroleum Directorate does." (Google-assisted translation). (Annex 6)
[63] Converted to CO2 based on the Norwegian Statistical Bureau's emission factors, available here: https://www.ssb.no/_attachment/404602/ utslippsider_2020

was 300 – 565 million Sm3 o.e.,[64] which corresponds to 722 – 1627 MtCO2, or 0.722 – 1.627 GtCO2. Per 31.12.2023, at least 110 million Sm3 o.e. had already been extracted from the BSS, with 260 million Sm3 o.e. in reserves, 39 million Sm3 o.e. in contingent resources in fields and 161 million Sm3 o.e. in contingent resources in discoveries.[65] Per 16.08.2024, and to the Applicants' knowledge, oil and gas corresponding to 11.5 – 33.9 MtCO2 (or 25 - 73% of annual Norwegian territorial emissions) have been discovered in the very areas that the impugned production licences covered.[66] The discoveries have been made in the vicinity of the Wisting reserve containing 197.4 MtCO2 in oil, increasing the likelihood that all is extracted.[67]

47. The Applicants' argue that i) the actual and potential substantive harm caused by the extraction of these resources, ii) the Respondent State's failure to regulate the licensing in a way that safeguards the Applicants' rights to be protected from climate harm, and iii) the lack of any impact assessment of potential climate harm to life, health and well-being prior to the openings, all violate Articles 2 and 8. The disparate risk of harm to the young Applicants and the Applicants of Sámi origin, also violates Article 14. The Supreme Court's failure to sufficiently engage with climate science[68] in the assessment of these risks, violates Article 13. All factual allegations were raised in the Applicants' complaint and fall squarely within the scope of the case before the Court.[69]

48. The fact that similar flaws may pertain to other licences, suggests that the alleged violations are structural and grave. This is a reason for heightened, not diminished, judicial control. Otherwise, the most widespread of violations could avoid scrutiny for its pervasiveness.

4.2 Could the Applicants have brought their grievances in any other manner, cf. question 3b

49. As set out above, the crux of the Applicants' Convention grievances pertains to the harmful effects of the opening decisions of the BSS and BSSE. As explained in the Applicants' written

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[64] St. Meld. Nr. 36 (2012-2013), Report to the Storting No. 36 (2012-2013): "Expected recoverable resources for the south-east of the Barents Sea are estimated at around 300 million Sm3 o.e., with a downside from 55 million Sm3 o.e. (P95) to an upside of 565 million Sm3 o.e. (P05) (…). The expected recoverable resources are divided into 50 million Sm3 of liquid and 250 billion Sm3 of gas, respectively." (Google-assisted translation) (Annex 7)
[65] Production data accessed through Rystad Energy AS
[66] See Section 4.3 below
[67] See further https://www.offshore-energy.biz/woodmac-sees-sputnik-oil-find-developed-as-wisting-satellite/
[68] *KlimaSeniorinnen*, § 635
[69] *KlimaSeniorinnen*, § 278-283; *Grosam v The Czech Republic*, App No 18750/13, 1 June 2023, § 88

observations of 29.06.2022 section 3.2, the feasible route to challenge these decisions, per 2016, went through legal review of the latest production permits issued in the areas.[70] This point can now be substantiated considering recent events.

50. In 2016, it was believed that Section 1-3 of the Dispute Act precluded, or at least made it excessively difficult, to challenge an opening decision directly. As noted in paras. 166 *seq* of the Applicants' observations of 29.06.2022, the Respondent State's year-long admissibility dispute in HR-2021-417-P (Acer), ultimately determined by the Supreme Court in plenary in 2023 (12-7), proves that the Respondent State would have contested – and at best significantly delayed - the admissibility of any direct challenge to the opening decisions of the BSS and BSSE. Indeed, even after the Supreme Court's clarifications to the contrary in Acer (para. 172), the Respondent State disputes the admissibility of the first legal challenge ever brought against an opening decision, in the context of deep-sea mining. Citing the Petroleum Act and the NSC judgment at issue here, the Respondent State argues that an opening decision can only be challenged preliminarily through subsequent production licences,[71] as the Applicants have done here.

51. A declaratory challenge alleging violation of Articles 2, 8 and 14 of the Convention, would have run into similar, if not greater, procedural hurdles. The Respondent State's suggestion that the Applicant associations could have brought such a challenge back in 2016, is contradicted by the State's own pleadings in domestic procedures, also after *KlimaSeniorinnen*.[72] At any rate,

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[70] O'Keefe v. Ireland, App No 35810/09, 28 January 2014, § 111.

[71] Case No. 24-081980TVI-TOSL/04, WWF v. the Norwegian State/Ministry of Energy. The State's written reply of 28.06.2024. The Respondent State argues in Section 4.2: *"Opening decisions" are not 'decisions' according to Section 2(a) of the Administration Act, cf. HR-2020-2472-P para. 180. This suggests that a claim for invalidity of the decision is not a "legal claim" either. […] Opening decisions are political and procedural decisions that do not raise unresolved legal issues. Procedural requirements can be tested when and if concrete decisions are made, as was done in the climate case in HR-2020-2472-P. Such decisions will apply to far smaller geographical areas, and lawsuits will then have more impact of concrete litigation than what is the case here. Similar authorizations for opening as in the Seabed Minerals Act are found in the Petroleum Act and the Offshore Energy Act. As far as the state is aware, no lawsuit has previously been brought about 'opening'. If the court finds that the invalidity claim cannot be considered a 'legal claim' and/or that the case lacks current interest, the lawsuit must be dismissed."* (Google-assisted translation)

[72] See TOSL-2023-99330, Oslo District Court's judgment 18 January 2024, Section 2.3 "The defendant's arguments". Certified English translation available here: https://www.greenpeace.org/static/planet4-norway-stateless/2024/07/bcba5dd8-final-greenpeace-nordic-and-nature-and-youth-norway-v.-the-norwegian-government-represented-by-the-ministry-of-energy-23-099330tvi-tosl-05-18.01.2024-oslo-district-1.pdf

even supposing that a declaratory challenge was feasible, an Applicant is entitled "to choose one feasible domestic remedy over another".[73]

52. The Applicants could not have brought their Convention grievances at any later stage either. A challenge against subsequent approvals for plans for development and operations (PDOs) would be limited to the much smaller emissions to be extracted from one particular field. To protect themselves from the aggregate emissions that may ultimately ensue from the opening of the BSS and BSSE (up to 6,336 and 1,627 GtCO2, respectively), the Applicants would have had to bring countless lawsuits challenging each PDO-approval. Even assuming that such an endeavour would have been economically and practically feasible, it would in practice be too late. It is telling that the Respondent State has permitted the accelerated construction and production from two oil fields *after* domestic legal proceedings were brought to (successfully) quash the PDO-approvals,[74] and *despite* a temporary injunction ordered by the District Court.[75] The Respondent State has since been able to suspend enforceability of the injunction based on *pure economic* considerations generic to any PDO-approval in Norway.[76]

53. It follows that if the Applicants, prior to *Acer*, had challenged the opening decisions of BSS and BSSE directly, or brought a declaratory suit, they would have been caught in protracted and excessively expensive admissibility proceedings that would have depleted their resources. In 2016, the only feasible way to bring the Convention grievances to avert the extraction of potentially 6.336 and 1.627 GtCO2 from the BSS and BSSE, was to challenge the most recent production licences in the two opened areas.

4.3 The link between the decision and the violations of the Convention, cf. question 3c

54. In furtherance of the observations above, the Applicants submits that the link between the risk of harm to the Applicants' right to life, health, and well-being under Articles 2 and 8 must be understood with reference to *all emissions* that could ensue from the opening of BSS and BSSE, and not merely the emissions intended by the most recent production licences of 10.06.2016.

55. In HR-2020-2472-P para. 167 *et seq*, the NSC argued that there was not an "adequate link" between the production licences and possible loss of human lives, which would "meet the

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[73] *O'Keefe* § 111
[74] Judgement Oslo District Court, 18 January 2024
[75] Injunction order Oslo District Court, 18 January 2024
[76] Decisions Borgarting Court of Appeals 20 March 2024 and 16 May 2024

requirement of a 'real and immediate' risk" under Article 2. The NSC opined that was "uncertain whether and to which extent the decision will actually lead to greenhouse gas emissions", and that the "possible impact on the climate will be discernible in the more distant future". In para. 170, the NSC assumed that Article 8 only applies "if there is a direct and immediate link between the impugned situation and the Applicant's home or private or family life", which it held was not satisfied here.

56. Respectfully, as *KlimaSeniorinnen* confirms, the NSC's approach was misguided.

57. Under Article 2, and in view of the "grave risk of inevitability and irreversibility of the adverse effects of climate change", the Court clarified that the "real and immediate" test refers to a "serious, genuine and sufficiently ascertainable threat to life, containing an element of material and temporal proximity" (emphasis added).[77] Moreover, "complaints concerning the alleged failures of the State to combat climate change most appropriately fall into the category of cases concerning an activity, which is, by its very nature, capable of putting an individual's life at risk".[78]

58. The Court also reiterated that Article 8 applies not only to "actual interferences" with a "direct and immediate link" but may encompass the "exposure of a person to a serious environmental risk" in the future, including from climate change.[79] Indeed, Article 8 has long applied "where the dangerous effects of an activity to which the individuals concerned could potentially be exposed established a sufficiently close link with private and family life" (emphasis added).[80]

59. The Court's general statements in *KlimaSeniorinnen,* applies *a fortiori* to the specific context of fossil fuel licensing. According to the IPCC, the extraction and inevitable combustion of fossil fuels causes between 81 – 91% of all anthropogenic CO2 emissions.[81] The physical removal of carbon in the form of oil, gas and coal from the geological carbon cycle is, in other words, the

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[77] KlimaSeniorinnen § 513
[78] KlimaSeniorinnen § 509
[79] KlimaSeniorinnen § 518
[80] KlimaSeniorinnen § 518
[81] IPCC AR6 WGI *Physical Science Basis* 2021, Full report, p. 676, 687-688: "Of the total anthropogenic CO2 emissions, the combustion of fossil fuels was responsible for 81–91%" [2010-2019] available at: https://report.ipcc.ch/ar6/wg1/IPCC_AR6_WGI_FullReport.pdf ; see also IPCC AR6 (2022). "Working Group III Report on Mitigation of Climate Change, Summary for Policymakers." Figure SPM.1: Global net anthropogenic GHG emissions (GtCO2-eq yr-1) 1990–2019. Available at: https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_SummaryForPolicymakers.pdf

root cause of climate change.[82] As opposed to other forms of greenhouse gas emissions in society, the extraction of fossil fuels is wholly dependent on licences.[83] Pursuant to Norwegian law, the Respondent State is in complete formal and practical control over whether the emissions enter the atmosphere or stays underground.[84] Fossil fuel extraction therefore differs from many other forms of policies and activities resulting in GHG emissions. Accordingly, while societal GHG emissions in general "are not limited to specific activities that could be labelled dangerous",[85] (emphasis added) the specific activity of fossil fuel licensing can only be labelled as such.

60. The particular and inevitable link between fossil fuel licensing and existential climate harm, has been recognized in Duarte. Here, the Court said (emphasis added):

> *"[T]he problem of climate change is of a truly existential nature for humankind, in a way that sets it apart from other cause-and-effect situations. More fossil fuels being extracted or burnt anywhere in the world, beyond what can be offset by natural carbon sinks (net zero), will inevitably lead to higher GHG concentrations in the atmosphere and therefore to worsening the effects of climate change globally."*[86]

61. This inevitable chain of causation has been analyzed in a similar way by the UK Supreme Court in *Finch* (emphasis added):

> *"Expressed in terms of necessary and sufficient conditions, this is not simply a case in which the "but for" test is satisfied in that, but for the extraction of the oil, the oil would stay in the ground and so would not be burnt as fuel. On the agreed facts, the extraction of the oil is not just a necessary condition of burning it as fuel; it is also sufficient to bring about that result because it is agreed that extracting the oil from the ground guarantees that it will be refined and burnt as fuel. As discussed above, a situation*

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[82] Ibid., p. 682, Figure 5.2, p. 700, Figure 5.12.
[83] See e.g. Rio Declaration on Environment and Development, 12 August 1992, A/CONF.151/26 (Vol.I), Principle 2; United Nations Framework Convention on Climate Change (UNFCCC), 9 May 1992,1771 U.N.T.S. p. 107, Preamble, recital 8; The Convention on Biological Diversity (CBD), 5 June 1992, 1760 U.N.T.S. p. 69, Preamble, recital 4; Principle 3; The Stockholm Convention on Persistent Organic Pollutants, (The Stockholm Convention) 23 May 2001, UN Doc. UNEP/POPS/CONF/4, App. II, Preamble, recital 10; Principle 21
[84] Petroleum Act Section 1-1 *("The Norwegian State has the proprietary right to subsea petroleum deposits and the exclusive right to resource management")* and Section 1-3 *("None other than the State may conduct petroleum activities without the licences, approvals and consents required pursuant to this Act.")*
[85] *KlimaSeniorinnen,* § 418
[86] *Duarte Agostinho and Others v. Portugal and 32 Others*, App No 39371/20, 9 April 2024 (Duarte Agostinho and Others), § 194

where X is both necessary and sufficient to bring about Y is the strongest possible form of causal connection - much stronger than is required as a test of causation for most legal purposes."[87]

62. Consequently, a decision to open areas for petroleum activities, and a production licence granting companies the right to explore for and exclusively extract any petroleum, is a necessary condition for any fossil fuel to release into the atmosphere. Put differently, fossil fuels would not be extracted but for (*sine qua non*) the opening of an area for fossil fuel extraction, and the granting of production licences. The fact that other factual events and permits are also necessary before extraction can take place, does not negate this chain of causation. At most, it suggests that an opening decision and a production licence is not sufficient, on its own, to bring about combustion.

63. This largely satisfies the requisite causality under Articles 2 and 8. The Court has not required that the Respondent State's action be necessary and sufficient, nor that the Respondent's action be necessary. It suffices that "reasonable measures which the domestic authorities failed to take could have had a real prospect of altering the outcome or mitigating the harm".[88] In the context of climate change, this "must also be understood in the light of Article 3 § 3 of the UNFCCC according to which States should take measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects".[89]

64. Clearly, the Respondent State would have had a real prospect of altering the outcome or mitigating the potential risk of harm had the decisions at issue not been granted.

65. First, it is certain that no fossil fuels could have been extracted from the BSS or the BSSE without the decisions to open said areas for petroleum activities under Section 3-1 of the Petroleum Act.[90] For the purposes of the BSS, this includes the ongoing mega productions of Snøhvit (totaling 249.5 million Sm3 o.e., corresponding to 685.8 MtCO2), Goliat (totaling 31.3 million Sm3 o.e., corresponding to 86 MtCO2) and the new Johan Castberg (totaling 89 million

[87] R (on the application of Finch on behalf of the Weald Action Group) (Appellant) v Surrey County Council and others (Respondents) [2024] UKSC 20 (Finch), para 80
[88] *KlimaSeniorinnen*, § 444; *O'Keeffe,* § 149
[89] *KlimaSeniorinnen*, § 444
[90] The Petroleum Act Sections 1-3 and 3-1.

Sm3 o.e., corresponding to 244.6 MtCO2).[91] It may well also include the potential field of Wisting (estimated to 71.8 million Sm3 o.e., corresponding to 197.4 MtCO2)[92] and all new adjacent discoveries to Wisting made in the areas that the impugned licences covered.

66. Second, it is certain that no fossil fuels could be extracted without preceding production licences. According to Section 3-3 of the Petroleum Act, subparagraph 3, "[a] production licence entails an exclusive right to survey, exploration, drilling and production of petroleum deposits in areas covered by the licence. The licencee becomes the owner of the petroleum which is produced" (emphasis added). Hence, the licence's only purpose is to enable the extraction of oil and gas. Legally, extraction cannot be approved without a preceding production licence. Factually, no company would spend resources exploring for oil and gas if it did not expect return on the investment.

67. The fact that the impugned production licences have, *ex post,* been relinquished, cannot be a decisive factor. As a matter of law, Articles 2 and 8 do not require that the decisions be sufficient or even necessary. As a matter of fact, even production permits that result in no-discoveries, map out an opened area for discoveries going forward. Hence, relinquished production licences are a step in the chain of causation towards locating and extracting deposits of oil and gas. Any licence also aggravates carbon lock-in effects.[93]

68. This is evidenced by the fact that petroleum has been discovered in the same areas that the impugned production licences covered. As the Respondent State glosses over in paras. 33 – 42 of its observations of 15.09.2022, it has *re-licenced* the acreage covered by the impugned production licence 855 as a result of the latter licence being relinquished. The new (but essentially the same) production licence 1170 has brought about the discovery of significant petroleum deposits, adjacent to the mega reserve of Wisting. The first of these discoveries was

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[91] Field sizes from the Norwegian Offshore Directorate, available at: www.norskpetroleum.no; Emission factors from the United States Environmental Protection Agency (EPA), "Greenhouse Gases Equivalencies Calculator -– Calculations and References, Barrels of oil consumed (15.08.2024), available at: https://www.epa.gov/energy/greenhouse-gases-equivalencies-calculator-calculations-and-references

[92] Ibid.

[93] Stockholm Environment Institute, Climate Analytics, E3G, International Institute for Sustainable Development and United Nations Environment Programme (UNEP), The Production Gap Report 2023 p. 21, available at: https://doi.org/10.51414/sei2023.050: *"Given that governments' production plans and targets help to influence, legitimize, and justify continued investments in fossil fuel infrastructure, there is a real risk that current production plans are undermining the energy transition by exacerbating "carbon lock-in" and entrenching fossil fuel dependence".*

announced on 20.08.2019 and is estimated to contain 20 - 65 m.b.o.e. in oil.[94] The other was announced on 07.08.2017 and contains 3 - 8 m.b.o.e. in oil.[95] A third discovery was announced on 28.06.2024, containing 3.2 - 4.4 m.b.o.e.[96] Altogether, the resources from the three fields corresponds to 11.5 - 33.9 MtCO2, equivalent to 25 - 73% of annual Norwegian territorial emissions.[97]

69. Scientific expert opinions presented in Section 5 below, show that the aggregate GHG emissions that are and potentially will be released as a result of the opening of the BSS and BSSE, and as intended by the impugned production licences, will cause up to 1 428 000 and 366 000 heat-related deaths until 2100 and expose an increasing number of children to life-threatening extreme weather events such as floods, fires, heat, cyclones and droughts. The emissions contained in these reserves would rise global average temperatures by up to 0,004C, and could even trigger catastrophic tipping points.

Exhibit 1: Expert opinion of Professor Wim Thiery

Exhibit 2: Expert opinion of Professor Helge Drange

70. At the material time, the Respondent State thus knew or ought to have known that the opening decisions, and the production licences, could expose the Applicants to the potential risk of lethal or indeed cataclysmic harm. There is thus a necessary link between the licences and the risk of harm to the Applicants.

4.4 Climate harm will not be assessed at a later stage, cf. question 3d

71. The Applicants recall that neither the opening decisions of the BSS and BSSE nor the decision to licence exploration and production on 10.06.2026 was preceded by an environmental assessment (SEA) of the potential climate effects from the embedded emissions.[98] As the minority of the NSC correctly points out, this violated *Directive 2001/42/EC on the assessment*

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[94] Equinor, "Nytt lettoljefunn i Barentshavet". Available at: https://www.equinor.com/no/news/archive/2019-08-oil-discovery-barents
[95] Halftan Carstens, "Nytt, lite oljefunn i Barentshavet", Geo 365. Available at: https://geo365.no/nytt-lite-funn-i-barentshavet/
[96] Norwegian Offshore Directorate, "Gassfunn i Barentshavet (7324/8-4)", available at: https://www.sodir.no/aktuelt/nyheter/resultat-av-leteboring/2024/gassfunn-i-barentshavet-73248-4/
[97] Emission factors from United States Environmental Protection Agency (EPA), "Greenhouse Gases Equivalencies Calculator -– Calculations and References, Barrels of oil consumed". Available at: https://www.epa.gov/energy/greenhouse-gases-equivalencies-calculator-calculations-and-references
[98] *Giacomelli v. Italy,* app. no. 59909/00, 02/11/2006, § 86

*of certain plans and programmes on the environmen*t ("SEA Directive") article 3(1) *litra* a, since climate effects from combustion are "undoubtedly comprised by the term 'environmental effects' in Article 5 of the SEA Directive, see Annex I (e) and (f)".[99] The majority of the NSC also implied that climate effects from combustion are "effects" under the SEA Directive Article 5(1) but held – erroneously – that the assessment could be deferred to the environmental impact assessment (EIA) prior to a possible application for specific project approval at the PDO-stage.[100]

72. For now, it suffices to note that both the majority and the minority of the NSC agreed that the climate effects from combustion shall, at the very least, be assessed as part of any EIA at the PDO-stage.[101] This obligation flows both from the Petroleum Act Section 4-2 read in conjunction with the Constitution Section 112 (2), and the EIA Directive article 3(1). However, the Respondent State has refused to comply.[102] Whilst its observations to the Court seek to assure that any climate effects of combustion are assessed at the PDO-stage,[103] the Respondent State simultaneously argues elsewhere that it is under no legal obligation to do so and that the NSC (in plenary) erred in its interpretation of *domestic* law.[104]

73. As the Court in *KlimaSeniorinnen* "attaches importance to the fact that the situation complained of breached the relevant domestic law",[105] an updated account of the Respondent State's consecutive failures to abide by domestic law is set out below:

    i. From the delivery of the NSC's judgment on 22.12.2020 until 07.02.2021, the authorities did not conduct any publicly available *assessment of climate effects*. In para. 67 of its observations to the Court of 15.09.2022, the Respondent State disingenuously claims that "[o]nly one PDO has been sanctioned after the judgement without these specific assessments (Breidablikk)". In fact, three PDOs were

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[99] HR-2020-2472-P, para. 263, 274. The SEA Directive Annex I *litra* f defines likely significant "effects" on the environment as including "secondary, cumulative, synergistic, short, medium and long-term permanent and temporary, positive and negative effects."
[100] HR-2020-2472-P para. 211, para. 213 *seq.,* see also para. 271 (minority)
[101] HR-2020-2472-P (paras. 241, 216-218, 222-223, 245)
[102] Oslo District Court's judgment 18.01.2024
[103] Respondents' Written Observations to the ECtHR, App No 34068/21, 26 April 2022 (Respondents' Written Observations), §§115-116
[104] Oslo District Court's judgment 18.01.2024, The defendant's arguments, p. 18-21: *"Nor can a requirement to investigate combustion emissions be derived from Section 4-2 of the Petroleum Act, Section 22a of the Petroleum Regulations, the wording of Article 112, second paragraph, of the Norwegian Constitution or administrative practice. The plaintiffs' statement is thus based exclusively on certain formulations in HR-2020-2472-P."*
[105] *KlimaSeniorinnen* § 428; *Giacomelli v. Italy*, § 93-94.

sanctioned without any assessment of combustion emissions disclosed to the public.[106] Breidablikk alone would emit 87 MtCO2, twice the annual territorial emissions of Norway.[107]

ii. On 01.07.2022, after repeated criticism from the Norwegian National Human Rights Institution and public outcry, the Ministry conceded to adjust its case-handling, but in a non-meaningful way. For fields below 30 million Sm3, the Ministry would quantify the emissions (not their environmental impact) in a one-page spreadsheet available online and quantify the emissions (not their environmental impact) in the *final decision to approve the fields*. For fields above 30 million Sm3, which are submitted to the Parliament for information purposes, the Ministry would also calculate so-called net emissions. This was to be based on a consultancy report that independent experts characterize as "systematically biased and seriously flawed".[108]

iii. On 29.06.2023, Applicants 7 and 8 brought legal proceedings and sought a temporary injunction against three of the many PDO-approvals granted since the NSC's judgment without EIAs of combustion emissions.

iv. On 18.01.2024, the Oslo District Court quashed all PDO-approvals. The District Court held that the Respondent State violated the Petroleum Act section 4-2 read in conjunction with the Constitution Section 112 (2), and the EIA Directive article 3(1). The court also granted a temporary injunction to suspend further licensing to construct and produce from the fields. The Respondent State appealed, and licenced further construction and production regardless.[109]

v. On 02.05.2024, whilst still contesting the legal obligation to assess climate emissions, the Respondent State proposed that the PDO Circular be amended to suggest that companies "ought" to assess these emissions in their EIAs. Contrary to best available science and the District Court, the Ministry did not suggest that any effects on life

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[106] PDO-approvals of Kristin Sør on 02.02.2022, Kobra East Gekko (GEK) on 08.02.2022, press releases available here https://www.regjeringen.no/no/aktuelt/gront-lys-for-kristin-sor-prosjektet-i-norskehavet/id2897998/ and https://www.regjeringen.no/no/aktuelt/tommel-opp-for-ny-utbygging-i-alvheim-omradet/id2900536/

[107] Judgment Oslo District Court 18.01.2024, p. 10

[108] Lazarus M., Stockholm Environmental Institute, Expert opinion of 07.11.2023 in case 23-099330TVI-TOSL/05 p. 6, available here: 8fbd7f7e-11.-skriftlig-erklaering-fra-michael-lazarus.pdf (greenpeace.org); see also Harstad, B., Professor at Stanford University, Expert opinion, 07.11.2023, available here: f71a20e3-12.-skriftlig-erklaering-fra-bard-harstad.pdf (greenpeace.org); Fæhn T., Statistisk sentralbyrå, Expert opinion, 06.11.2023, available here: 78e7f51c-9.-skriftlig-erklaering-fra-taran-faehn.pdf (greenpeace.org)

[109] *Giacomelli,* §§ 92-94; *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 63, ECHR 1999-V

and health, the Sámi people or the environment in Norway be assessed.[110] Instead, it suggested that companies speculate as to net effects.

vi. On 21.06.2024, the UK Supreme Court ("UKSC") quashed a planning permission for an oil field because the climate effects of combustion had not been assessed in the EIA. The UKSC cited the Oslo District Court as "persuasive" authority, noting that it "entirely accords" with the proper interpretation of the EIA Directive.[111] The UK Government has since conceded that licences granted without EIAs that consider climate impacts from combustion violate the EIA Directive and must be quashed.[112]

74. In sum, the Respondent State breaches domestic law and defies the NSC and the Oslo District Court. Its latest suggestion that combustion emissions "ought" to be assessed in EIAs going forward, is discretionary only. Consequently, it cannot be assumed – factually or legally - that the climate effects that may ultimately ensue from the opening decisions of the BSS and BSSE, and the impugned decisions, *will* be assessed at any later stage in the administrative process.

4.5 Any later assessment cannot dispel the obligation to assess the cumulative emissions, cf. question 3d

75. At any rate, the scope, depth, quality and efficiency of any such subsequent assessment will not be such as to render unnecessary under the Convention an assessment, prior to the granting of the licences, of the environmental consequences of future extraction of oil and gas. To defer the assessment to the PDO-stage is contrary to consensual international and EU/EEA law, is ill-suited for considering the cumulative impact, and would amount to an "impermissible 'just trust us'" doctrine".[113]

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[110] See Public Comment from Norway's NHRI of 07.06.2024, available at: https://www.nhri.no/wp-content/uploads/2024/06/Horingsuttalelse-fra-NIM-Forslag-til-endring-i-veileder-til-PUD-PAD.pdf

[111] *Finch*, para. 173

[112] Following the decision in Finch (supra n.Finch), the UK government consented to a similar challenge on lack of access to downstream emissions in an EIA (SOS Bicathorpe (Acting through Mathilda Dennis) and The Secretary of State for Levelling Up, Housing and Communities; Egdon Resources UK Limited; Lincolnshire County Council, Consent Order, AC-2023-LON-003737) and also withdrew its defence of a new coal mine in the case of Friends of the Earth and Secretary of State for Levelling Up, Housing and Communities [2023] EWHC 3255 (KB), citing an "error in law" (Friends of the Earth (July 2024), "High Court Hearts Legal Challenges to Cumbrian Coal Mine." Friends of the Earth, available at: https://friendsoftheearth.uk/climate/high-court-hears-legal-challenges-cumbrian-coal-mine)

[113] *Friends of the Earth v. Debra A. Haaland et al.* Civil Action, No.: 21-2317 (RC), District Court of Colombia, 27.01-2022, p. 19: *"Allowing it to avoid review of an allegedly inadequate NEPA action it did not take on the basis that it will undertake further discretionary review down the road would amount to an impermissible 'just trust us' from the agency."*

76. As noted in the Applicants' observations of 29.06.2022 para. 116 *seq*, such postponement is ruled out under EU/EEA law. The minority of the NSC correctly observed that the SEA Directive article 11(1) precludes postponing the assessments of any potential significant environmental effects to the EIA-stage. This accords with consistent CJEU case-law.[114] The majority of the NSC's interpretation of the SEA Directive Article 5(2) does not engage with Article 11 and is, with respect, flawed.

77. In essence, there are three reasons why subsequent assessments in an EIA cannot dispense with the obligation to assess potential environmental effects at the SEA-stage.

78. First, as the CJEU explains in case C-295/10 Valčiukienė, assessments carried out pursuant to the SEA and EIA Directive "*differ for a number of reasons*". It is therefore "*necessary to comply with the requirements of both of those directives concurrently*." For instance, whereas SEAs are carried out by the authorities at a strategic level and concern the cumulative environmental effect from the entire area, EIAs are carried out by the company for a specific project within the opened area, after said company has invested heavily in exploration, and secured exclusive production rights through a production licence. The SEA Directive was adopted precisely because EIAs at the project stage are too late in time and too narrow in scope.

79. Second, as the CJEU explains in cases C-290/15 D'Oultremont para. 48 and C-617/16 Inter-Environnement Bruxelles para. 55, 63 and 65, postponement would allow for "*strategies which may be designed to circumvent the obligations laid down in the SEA Directive by splitting measures, thereby reducing the practical effect of that directive*". Indeed, if projects are sliced finely enough, EIAs are avoided altogether.[115]

80. Third, as the CJEU explains in case C-617/16 Inter-Environnement Bruxelles, Article 6(2) of the SEA Directive requires that the environmental assessment is "*carried out as soon as possible so that its conclusions may still have an influence on any potential decision-making. Indeed, it is at this stage that the various alternatives may be analysed and strategic choices be*

[114] See C-305/18 Associazione Verdi Ambiente e Società; C-160-17 Thybaut; C-617/16 Inter-Environnement Bruxelles; C-295/10 Valčiukienė

[115] The EIA Directive Article 4(1) cf. Annex I point 14 makes EIAs mandatory only for projects extracting petroleum and natural gas "*where the amount extracted exceeds 500 tonnes/day in the case of petroleum and 500 000 cubic metres/day in the case of gas."*

made." In sum, the CJEU concludes in case C-617/16 Inter-Environnement Bruxelles as follows (emphasis added):

> *"[A]n environmental impact assessment report completed under the EIA Directive cannot be used to circumvent the obligation to carry out the environmental assessment required under the SEA Directive in order to address environmental aspects specific to that directive. Thus, the fact, raised by the referring court, that the future planning permission applications will be subjected to an impact assessment procedure under the EIA Directive is not capable of calling in question the need to carry out an environmental assessment of a plan or a programme falling within the scope of Article 3(2)(a) of the SEA Directive and establishing the framework within which those town planning projects will subsequently be authorized…"*

81. The same distinction between SEAs and EIAs follows from the Aarhus Convention,[116] which is incorporated in the SEA and EIA Directives, and the SEA Protocol to the Espoo Convention.[117] The distinction reflects consensual international law.[118]

82. For the same reasons, the Respondent State should not be allowed to evade its obligations under Article 2 and 8 of the Convention by pointing to the possibility that certain emissions might be subjected to EIAs in connection with future PDO-applications.[119]

83. If the assessment of climate effects is postponed to the PDO-stage, no appropriate investigations or studies would allow the authorities to assess the potential harm from the cumulative GHG emissions.[120] The balancing of interests prior to an opening decision would be skewed. While the resource estimates are used to forecast economic benefits, employment effects and future tax revenue,[121] the authorities make no predictions or evaluations of the climate harm that would ensue from the same resources. As the Court will recall, this accounts for 95% of the total emissions. The public is thus kept in the dark about the size of these

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[116] Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (The Aarhus Convention), 25 June 1998, United Nations Economic Commission for Europe (UNECE), Article. 6 and 7.
[117] Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context, 21 May 2003, UNTS , vol. 2685, p. 140, Articles 2(5), 4 and 11.
[118] See further third-party submissions of ClientEarth and the European Network of National Human Rights Institutions (ENNHRI)
[119] *KlimaSeniorinnen* §§ 539 and 554
[120] Barents Sea South (up to 6,336 GtCO2) and Barents Sea South-East (up to 1,627 GtCO2)
[121] St. Meld. 40 (1988-1989) and St. Meld. 36 (2012-2013) (Annex 6 and 7)

emissions relative to a national and global carbon budget to limit warming to the required limit of 1.5C, how many lives would be lost if said resources were extracted, and the risk of triggering tipping points. Without such information, the decision-makers cannot balance competing interests or let climate protection carry "considerable weight in the weighing up of any competing considerations".[122]

84. Second, and relatedly, the cumulative harm would not be "*predicted and evaluated in advance*" (emphasis added).[123] Indeed, it is only at the SEA-stage that these cumulative emissions may be assessed in their entirety. The sequence of various EIAs at the PDO-stage and the limited scope of each means that this stage is ill-suited to assess the collective harm from the opening. Not only would any future EIA allow for "project-splitting" that conceals cumulative effects; specific projects may also be exempted from the EIA obligation altogether. For instance, the Respondent State exempted the 87 MtCO2 Breidablikk field in the North Sea, equivalent to two years of territorial Norwegian GHG emissions, from an EIA citing the Petroleum Regulation Section 22°C.[124] What is more, according to the Respondent State's interpretation of the EIA Directive, EIAs are only required where the amount extracted "exceeds 500 tonnes/day" for petroleum and "500 000 cubic metres/day" for gas.[125] Following the UKSC's ruling in *Finch*, the operator boasts that it will simply prolong the lifetime of the oil well to escape the EIA obligation it is in breach of now.[126] It follows that postponing the assessment to the PDO-stage does not guarantee that future emissions will be assessed.

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[122] *KlimaSeniorinnen* § 542
[123] *KlimaSeniorinnen* §§ 439, 554
[124] See Judgment 18 January 2024 Oslo District Court p. 64, Section 3.5.6.1: *"On 28 March 2019, the Ministry decided that the obligation to conduct an impact assessment had been fulfilled by the existing assessments. There was no publicity or right of appeal related to this. On 29 June 2021, the Ministry of Petroleum and Energy then made a decision to approve the plan for development and operation (PDO) for Breidablikk. In the decision, it is indicated that the Ministry had previously confirmed that the obligation to conduct an impact assessment had been fulfilled for the development. It was confirmed that the obligation to conduct an impact assessment was considered to be covered by the existing impact assessments pursuant to Section 22a of the Petroleum Regulations. The most recent assessment for the area is thus from 2013, and there is no information or assessments relating to combustion emissions and climate impacts."*
[125] EIA Directive, Article 4(1), Annex I, point 14
[126] Press release, UK Oil & Gas PLC, RNS Number 2367T, 20.06.2024, available here: https://www.londonstockexchange.com/news-article/UKOG/horse-hill-update/16529289 : *"In the case of a retrospective planning solution, the field's historic and future expected production volumes would fall below the 500 tonnes/day (c. 3,700 barrels/day) production threshold for which an EIA is mandatory for petroleum extraction developments."*

85. Third, the Applicants would not be given "an early and effective opportunity" to participate *on an informed basis* in the decision-making process at a strategic face when all doors are open.[127] And whilst companies have no legally protected expectation of PDO-approvals after EIAs,[128] approvals have in practice been a foregone conclusion.[129] Scholars have even (erroneously) argued that the authorities are precluded from denying PDO-approvals for climate considerations because it would overturn the licencee's production licence.[130]

86. Fourth, even if the Applicants were to successfully challenge a PDO-approval for flawed climate assessments in an EIA and obtain a temporary injunction, it may well be too late to avert the harmful effects to life and health. That has come to pass in the domestic proceedings. The Respondent State has been able to delay court hearings,[131] while processing out-of-schedule permits to allow two of the fields to start producing half a year early[132] - without informing the Applicants or the court.[133] The Respondent State has not abided by the District Court's injunction[134] and has since obtained a suspension of the enforceability of the injunction pending appeal.[135] Meanwhile, oil is being extracted from one of the fields,[136] with production being imminent from the second.[137]

87. On this basis, the mere possibility that climate effects may be assessed in EIAs at the PDO-stage, does not remove the obligation under the Convention to assess the cumulative harm in the SEAs.

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[127] HR-2020-2472-P, paras. 189, 210
[128] HR-2020-2472-P, paras. 222-223
[129] To the Applicants' knowledge, no PDO has ever been denied, at least not on environmental grounds
[130] Further references in the Applicants' observations of 29.06.2022 para. 110
[131] Judgment 18 January 2024 Oslo District Court, p. 13, Section 1.7
[132] VG 24.11.2023, *Den ukjente kampen mot oljebrønner,* available at: https://www.vg.no/nyheter/innenriks/i/Mo0mar/greenpeace-og-natur-og-ungdom-kjempet-ukjent-kamp-foer-nytt-klimasoeksmaal ; Dagbladet 30.01.2024, *Kynisk og grovt uetisk,* available at: https://borsen.dagbladet.no/nyheter/kynisk-og-grovt-uetisk/80897303
[133] Ruling 18 January 2024 Oslo District Court, p. 114: *"In addition, the Court points out that a production quantity licence for Breidablikk was granted despite the validity being under consideration, and despite the fact that the plaintiffs had also applied for a temporary injunction. Nor did the State provide information about this until after the licence had been issued."*
[134] E24 22.01.2024, *Aker BP advarte om «konsekvenser» - dagen etter snudde Miljødirektoratet,* available at: https://e24.no/energi-og-klima/i/wAw3O4/aker-bp-advarte-om-konsekvenser-dagen-etter-snudde-miljoedirektoratet
[135] Decision 20.03.2024 Borgarting Appeals Court; Energiwatch, 24.04.2024, *Aker BP vurderer risikoen for Yggdrasil- og Tyrving-planene som "betydelig redusert",* available at: https://energiwatch.no/nyheter/olje_gass/article17047373.ece
[136] 10,3 million-ton CO2 only in 2024
[137] Aker BP, Quarterly Report Q1 2024, p. 8, available at: aker-bp-2024-q1-report.pdf (akerbp.com)

5 APPLICABILITY OF ARTICLES 2 AND 8

5.1 Applicability of Article 2

88. As clarified in *KlimaSeniorinnen,* the complaint would "most appropriately fall into the category of cases concerning an activity, which is, by its very nature, capable of putting an individual's life at risk".[138] According to Expert Evidence, the emissions embedded in the opening decisions of the BSS and the BSSE would, as a best estimate, cause up to 1 428 000 and 366 000 heat-related deaths by 2100[139] and exacerbate other climate extremes.[140] The emissions would increase global warming up to 0,004°C,[141] and drive further temperature increases in Norway through loss of up to 24 000 km2 Arctic summer-ice which in turn exacerbates the phenomenon known as Arctic amplification.[142] If global average warming exceeds 1.5°C, Norway is projected to suffer one of the world's most dramatic increases (28%) in days with extreme heat.[143] By 2018, Norway's rate of climate-attributed heat-mortality at 46% was the highest in Europe.[144]

89. Moreover, given the *size* of the embedded emissions in the BSS and BSSE, they may even trigger self-perpetuating tipping points. On scientific evidence presented to the Court, "it cannot be ruled out that these [emissions] may activate one or more of the tipping elements that may occur with a global temperature increase of between 1.5°C and 2°C".[145] This could have cataclysmic consequences for life on Earth, including risks of tipping cascades.[146] Five tipping points would affect the Applicants during their lifetime, including the collapse of the West Antarctic ice sheet, abrupt thaw of permafrost, loss of sea ice in the Barents Sea, and reduced vertical mixing in the Labrador Sea weakening the Gulf Stream System.[147] Given the "grave risk of inevitability and irreversibility of the adverse effects of climate change", the embedded emissions in the BSS and BSSE thus expose the Applicants to a "serious, genuine and

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[138] *KlimaSeniorinnen,* § 509
[139] Expert statement by Professor Thiery, Exhibit 1, p. 6
[140] Ibid., pp. 2-4
[141] Expert statement by Professor Drange, Exhibit 2, p. 43
[142] Expert statement by Professor Drange, Exhibit 2, pp. 9-11
[143] Miranda et al., *Change in cooling degree days with global mean temperature rise increasing from 1.5 °C to 2.0 °C,* Nature Sustainability 6, 1326-1330 (2023).
[144] Vicedo-Cabrera et al., *The burden of heat-related mortality attributable to recent human-induced climate change,* Nature Climate Change, Vol 11, 492-500, 2021
[145] Expert statement by Professor Helge Drange, Exhibit 2, p. 47
[146] McKay et al., *Exceeding 1.5°C global warming could trigger multiple climate tipping points,* Science Vol 377 Issue 6611 (2022); Lenton et al., *Climate tipping points - too risky to bet against,* Nature 575, 592–595 (2019)
[147] Expert opinion of Professor Helge Drange, (Exhibit 2), p. 19; Meld. St. 26 Section 2.7, "Vippepunkter i klimasystemet kan påvirke Norge"

sufficiently ascertainable threat to life".[148] The threat to life contains an "element of material and temporal proximity",[149] as it affects the Applicants within the territory of the Respondent State, and during their expected lifetime.

90. Their complaint under Article 2 is also distinguishable from *KlimaSeniorinnen*. First, it is "limited to specific activities that could be labelled dangerous"[150] namely fossil fuel licensing. Second, the emissions at stake represents up to 17 152% of Norway's overall GHG footprint,[151] a much larger share of unaccounted emissions than Switzerland's "embedded emissions".[152] Furthermore, unlike the embedded emissions in Switzerland, the Respondent State has full control over the emissions at stake and can prevent their release entirely. Third, it regards exponential increases in mortality risks until and beyond 2100 that the individual Applicants in *KlimaSeniorinnen* would not experience.[153] For instance, the emissions contained in the BSS and BSSE would expose around 1 470% more children born in 2010-2020 to an additional heatwave during their lifetime, as compared to adults born as late as 1960-1970.[154] Put differently, if warming exceeds 1.5°C, a European "summer as hot as 2003" (which claimed 70 000 lives) "will be very common" by the 2040s and, under higher emission scenarios (RCP6.0 and RCP8.5), be deemed "an extremely cold event by the end of the century".[155]

91. As set out above in Section 2, the individual Applicants are subject to a high intensity of exposure on account of their age. The level and severity of the risk of adverse consequences of the licensing activity in the BSS and BSSE are significant. There is also a pressing need to ensure the Applicants' individual protection. No reasonable measures can reduce the harm. Indeed, the Respondent State's demonstrated failure to respect court ordered injunctions at the PDO-stage, shows that the risk of harm cannot (at least not adequately) be reduced when

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[148] *KlimaSeniorinnen* (n.KlimaSeniorinnen), § 513
[149] *KlimaSeniorinnen,* (n.KlimaSeniorinnen) § 513
[150] *KlimaSeniorinnen,* (n.KlimaSeniorinnen) § 418
[151] The 6366 MtCO2 (BSS) is equivalent to 137 times the annual Norwegian territorial emissions of 46,6% (2023), while 1627 MtCO2 (BSSE) is equivalent to 35 times the annual Norwegian territorial emissions
[152] Expert Opinion, Calculation of an emission budget for Switzerland, p. 6, available here: https://en.KlimaSeniorinnen.ch/wp-content/uploads/2023/04/230427_53600_20_Annex_Doc_2_Robiou_du_Pont_Nicholls_Expert_Report.pdf
[153] Expert Opinion of Professor Wim Thiery, (Exhibit 1)
[154] Expert Opinion of Professor Wim Thiery, (Exhibit 1), p. 2
[155] Christidis et al., *Dramatically increasing chances of extremely hot summers since the 2003 European heatwave,* Nature Climate Change, Vol. 5, 46-50, 2014

emissions are more certain. The decisions thus posed a "serious risk of a significant decline" in the individual Applicants' life expectancy that triggered the applicability of Article 2".[156]

92. The Applicant associations also satisfy the criteria for victimhood for the purposes of Article 2. As set out above in Section 2, both Applicant associations are lawfully established, pursue a dedicated purpose in accordance with their statutory objectives in defense of the human rights of their members and other affected individuals against the threats of climate change, and are genuinely qualified and representative.[157] Accordingly, Article 2 applies.

5.2 Applicability of Article 8

93. As in *KlimaSeniorinnen*, the Respondent State's actions infringed the Applicants' right to "effective protection" from "serious adverse effects of climate change on their life, health, well-being and quality of life" derived from Article 8.[158] Since Article 8 also protects against "the exposure of a person to a serious environmental risk" in the future, the NSC erred when it limited its scope to local harm that had already incurred.

94. As shown in Section 4.3, there is causality between the licensing and the risk of serious adverse effects. The opening decision of the BSS, which was preliminarily reviewed through the production licences of 10.60.2016, has already caused the extraction of 110 million Sm3 o.e.[159] In the very area covered by the production licence 855 of 10.06.2016, re-licenced through production licence 1170, the same companies have so far discovered three significant resources.[160] Hence, it would amount to excessive formalism to regard only the emissions that would formally ensue from the production licence of 10.06.2016, and not the inherent risk of all emissions which the Respondent State sought to realise through the opening of the BSS and BSSE and the 10.06.2016 decision.

95. Based on scientific evidence, there is a sufficiently close link between the dangerous effects of the Respondent State's licensing and the Applicants' private and family life.[161]

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[156] *KlimaSeniorinnen*, § 513
[157] Compare *KlimaSeniorinnen* § 521-526 with regard to Article 8
[158] *KlimaSeniorinnen*, § 519
[159] See Section 4.1 above
[160] See Section 4.3 above
[161] *KlimaSeniorinnen* (n.KlimaSeniorinnen), § 518

96. According to the IPCC, "[e]very tonne of CO2 emissions adds to global warming".[162] This well-established near-linear relationship between CO2-emissions and temperature increase[163] would have allowed the Respondent State to quantify the warming that would result from the embedded emissions in the BSS and BSSE. According to Professor Drange, the maximum resource estimates for the BSS and BSSE would result in 0,0032 and 0,0008 °C of additional warming, respectively, or up to 0,004°C combined.[164] This warming is "clearly non-negligible".[165] Indeed, the IPCC notes that the "[r]isks and projected adverse impacts […] escalate with every increment of global warming (very high confidence)" (emphasis added).[166] The emissions would impact the Applicants' health and well-being with a "high degree of exposure"[167] through a number of quantifiable linear impacts:

97. According to Professor Thiery, the BSS and BSSE (median estimates) would expose:

i. 30 257 300 and 4 213 500 children born in 2010-2020 to one additional heatwave
ii. 933 300 and 129 500 children born in 2010-2020 to one additional drought
iii. 324 900 and 44 900 children born in 2010-2020 to one additional wildfire
iv. 212 400 and 29 000 children born in 2010-2020 to one additional river flood[168]

98. According to Professor Drange, the BSS and BSSE (maximum estimates) would:

i. Melt Arctic sea-ice as measured in September by 19 000 and 4 900 square kilometers, or 24 000 combined, further amplifying warming in the Arctic in winter
ii. Reduce snow cover in the northern hemisphere by 9 600 square kilometers, or 21 times the size of the municipality of Oslo
iii. Elevate the snow line (140 metres per 1°C) and shorten the winter season in Norway

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[162] IPCC, AR6, WGI, Summary for Policymakers, para. D.1.1
[163] IPCC AR6 WGI, p. 742, p. 3179 (0.45C per 1000 GtCO2) with further references to Meinshausen et al., *Greenhouse-gas emissions targets for limiting global warming to 2 C.* Nature 458, 1158-1166 (2009), Allen et al., *Warming caused by cumulative carbon emissions towards the trillionth tonne.* Nature 458 , 1163-1166 (2009), Matthews et al., *The proportionality of global warming to cumulative carbon emissions.* Nature 459, 829-832 (2009)
[164] Expert opinion, Professor Drange, (Exhibit 2) p. 43
[165] Expert opinion, Professor Drange, (Exhibit 2) p. 44
[166] IPCC, AR6 Synthesis Report, Summary for Policymakers, para. B.2, available at: https://www.ipcc.ch/report/sixth-assessment-report-cycle/
[167] KlimaSeniorinnen § 520, 487
[168] Expert Opinion by Professor Thiery (Exhibit 1)

iv. Increase extreme rainfalls, which has already caused quick clay landslides with loss of lives in Norway[169]

99. In their personal and updated statements, the individual Applicants have explained how they are "personally and directly affected" by these and other impacts.[170] It is pertinent to note that all individual Applicants were in their twenties when they applied to the Court. Today, each of them faces a threat to their life and family life that the Court was not called upon to address in *Klimaseniorinnen.* As Applicant 8 (I.N.) stated in her application:

> *"Climate change makes the future uncertain and insecure. I worry a lot about what the future looks like. I was a child when I became aware of the threat of climate change. Now I'm an adult and my partner and I are of an age where we're starting to think about having children. This thought-process and decision is impacted by the fact that I worry about how my future children's life will be affected by climate change."*

100. Being of age to bear and raise children, they and their age cohorts confront the certainty that their government's conduct will result in global temperature rises that exceed environmental tipping points in their own lifetimes, and those of their prospective children.

101. The individual Applicants' aggregate interest is at any rate protected through the Applicant associations, which satisfy the criteria for victimhood under Articles 34 and 8, see Section 2. Accordingly, Article 8 applies.

6 OBLIGATIONS OF ARTICLES 2 AND 8

6.1 Scope of the obligation

102. The Respondent State's obligations under Articles 2 and 8 encompass risks to life, health and well-being of its inhabitants from any fossil fuel emissions extracted from its territory. The Court has already noted that "embedded" emissions from imported goods do not raise an issue of jurisdiction, but rather one of "responsibility for the alleged effects of the 'embedded emissions' on the Applicants' Convention rights".[171] The Court noted that it would be "difficult, if not impossible, to discuss" a Contracting State's "responsibility for the effects of

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[169] 30.12.2020, Ask, loss of lives: 11, see further: https://www.nve.no/naturfare/sikringstiltak/sikringsprosjekter/gjerdrum/bakgrunn-og-historie/
[170] *KlimaSeniorinnen*, § 520, § 487
[171] *KlimaSeniorinnen,* § 287

its GHG emissions on the Applicants' rights without taking into account the emissions generated through the import of goods and their consumption".[172]

103. The same reasoning applies *a fortiori* to fossil fuel emissions that originate from the Respondent State's territory and cause harm to its residents.[173] Indeed, whereas imported or embedded emissions may derive from multiple sources over which a State has limited control, a State that licences fossil fuel extraction from its territory has exclusive formal and practical control of whether the fossil fuels ends up in the atmosphere or stays underground.[174] As the Court rightly noted in *Duarte,* "*[m]ore fossil fuels being extracted or burnt anywhere in the world […] will inevitably lead to higher GHG concentrations in the atmosphere and therefore to worsening the effects of climate change globally*" (emphasis added).[175] Hence, the Respondent State's responsibility encompass harm to its inhabitants caused through the licensing of fossil fuels from its territory regardless of where they are ultimately released to the atmosphere and indeed the oceans.[176]

104. Moreover, since a Respondent State cannot "evade its responsibility by pointing to the responsibility of other States, whether Contracting Parties to the Convention or not",[177] it must answer to all emissions that may ultimately be extracted as the result of the impugned decisions. Hence, speculations about so-called net-effects cannot reduce the Respondent State's obligations under the Convention. First, such speculations are assumption-driven, contrafactual, and highly uncertain.[178] As such, they run counter to the precautionary principle.[179] Second, the "environmental impact remains unacceptable regardless of where it is caused" and irrespective of any "hypothetical but uncertain alternative development" that *might* cause the same unacceptable environmental impact.[180] Third, speculations of this kind has consistently been

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[172] *KlimaSeniorinnen,* § 280, see also the partly dissenting opinion § 4, which emphasizes that the "primary duty" under Articles 2 and 8 is "covering both emissions emanating from within their territorial jurisdiction as well as 'embedded emissions' (i.e. those generated through the import of goods and their consumption)".
[173] See *Duarte,* §§ 214, 178 in respect of Portugal. The Court held that Portugal had jurisdiction over a complaint that covered harms from its exported fossil fuels.
[174] *Duarte* § 194; Finch.
[175] *Duarte,* § 194.
[176] See also the NSC in HR-2020-2472-P, para. 149
[177] *KlimaSeniorinnen,* § 442
[178] Lazarus (n.Lazarus); UNEP has noted that perfect substitution of oil and gas "defies basic economics of supply and demand", *Production Gap Report 2019*, p. 50; Welsby et al., *UK oil and gas policy in a 1.5C world,* 2021, p. 4
[179] Tatar v. Roumanie, no. 67021/01, 27 January 2009, § 109; Rio Declaration on Environment and Development, 12 August 1992, A/CONF.151/26 (Vol.I), Principle 15; Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, Case No.31 (2024), §§213, 242, 361.
[180] Gloucester Resources Ltd v. Minister for Planning (2019) 234 LGERA 257, para. 525 *(Gloucester)*.

rejected in courts as "arbitrary and capricious", invalid, "indefensible" or "flawed.[181] Hence, they merely obscure the fact that all fossil fuels extracted from the Respondent State will "inevitably" lead to higher GHG concentrations and worsening climate effects.[182]

6.2 Violation of the primary obligation to limit warming to 1.5 C

105. First, the contested licenses violate the Respondent State's obligation to protect against adverse effects from climate change above the required 1.5°C limit.

106. In *KlimaSeniorinnen*, the Court clarified that each Contracting State is obliged to "do its part" to ensure the right for individuals to enjoy effective protection from "serious adverse effects on their life, health, well-being and quality of life arising from the harmful effects and risks caused by climate change".[183] The State's primary duty is to "adopt, and to effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change".[184] Hence, the Contracting States "need to put in place the necessary regulations and measures aimed at preventing an increase in GHG concentrations in the Earth's atmosphere and a rise in global average temperature beyond levels capable of producing serious and irreversible adverse effects on human rights".[185] Based on extensive evidence from the IPCC, the Court recognized that warming beyond the "currently required 1.5°C limit" would seriously and irreversibly affect human rights.[186] The contested licences violate the Respondent State's obligation to prevent a rise in global temperatures above 1.5°C. Indeed, as noted above, the embedded emissions from the BSS and BSSE would rise global average temperatures with up to 0,004°C.[187]

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[181] Oslo District Court, 18 January 2024 (appealed) Section 3.6.3, see also p. 26; Waratah Coal Pty v. Youth Verdict Ltd & Ors, paras. 869-1027, 1393-1409, 1789-1792; *Center for Biological Diversity v. Bernhardt,* no. 18-73400 (9th Cir. 2020) pp. 21-23; Sovereign Inupiat for a Living Arctic v. Bureau of Land Management (District Court of Alaska), 2021, pp. 28-31; *Friends of the Earth* p. 23-40; *Shell, ECLI:NL:RBDHA:2021:5339 (The Hague District Court), 26.05.2021* para. 4.4.50 (appealed); *Gloucester,* para. 538.
[182] *Duarte*, § 194; *Finch* UKSC (n.87), para. 2: *"It can therefore be said with virtual certainty that, once oil has been extracted from the ground, the carbon contained within it will sooner or later be released into the atmosphere as carbon dioxide and so will contribute to global warming. This is true even if only the net increase in greenhouse gas emissions is considered."*
[183] *KlimaSeniorinnen,* §§ 544-545, 519
[184] *KlimaSeniorinnen,* § 545
[185] *KlimaSeniorinnen,* §546
[186] *KlimaSeniorinnen,* § 558
[187] Expert opinion of Professor Helge Drange, Exhibit 2, p. 43

107. Clearly, the emissions contained in the opened areas in BSS and the BSSE would overshoot the remaining *global* carbon budget for limiting warming to 1.5°C.

108. In 2020, the IPCC noted that even carbon budgets "to limit warming to 2°C (<67%) could already be exhausted by current and planned fossil fuel infrastructure".[188] The IPCC noted that estimated future emissions from "existing fossil fuel infrastructure alone are 660 (460-890) GtCO2 and from existing and currently planned infrastructure 850 (600-1100) GtCO2", compared to the remaining global carbon budgets per 2020 at "510 (330-710) GtCO2 in pathways that limit warming to 1.5°C (>50%) with no or limited overshoot, and 890 (640–1160) GtCO2 in pathways that limit warming to 2°C (>67%)".[189] Given that the 1.5°C budget (50% likelihood) carries a 10% risk of exceeding 2°C, only the stricter 1.5°C budgets can effectively keep warming well below 2°C in all instances.[190] Accordingly, the IPCC warned that even the well below 2°C target "could move out of reach unless there are dedicated efforts for early decommissioning, and reduced utilisation of existing fossil fuel infrastructures" and "cancellation of plans for new fossil fuel infrastructure".[191] By 2024, the latest update of the IPCC 1.5°C budget shows that it has now shrunk to 247 GtCO2 (50% likelihood), 60 GtCO2 (67% likelihood) and -166GtCO2 (83% likelihood).[192] Hence, the emissions from the BSS and BSSE of 6,336 GtCO2 and 1,627 GtCO2 are *a priori* incompatible with limiting warming to 1.5°C.[193]

109. This conclusion is consistent with the International Energy Agency (IEA) finding that any new approval of oil and gas development is inconsistent with limiting warming to 1.5°C.[194] It is aligned with the 2023 UNEP Production Gap Report, noting that "no new coal mines and oil and gas fields can be developed unless existing infrastructure is retired early".[195] Recent studies

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[188] IPCC, Climate change 2022: Mitigation of climate change, 04.04.2022, Full report, p. 267
[189] IPCC AR6 (2022). "Working Group III Report on Mitigation of Climate Change, Technical Summary" p. 68, available at https://www.ipcc.ch/report/ar6/wg3/.
[190] IPCC Special Report, 2018, Table 2SM-19, p. 19, available at: https://www.ipcc.ch/sr15
[191] IPCC, Climate change 2022: Mitigation of climate change, 04.04.2022, Full report, p. 267, see also Technical Summary p. 68.
[192] Lamboll et al,, *Assessing the size and uncertainty of remaining carbon budgets.* Nat. Clim. Chang. 13, 1360–1367 (2023), available at: https://www.nature.com/articles/s41558-023-01848-5 ; see also Expert Statements of du Pont and Drange (Exhibits 3 and 2)
[193] IISD, *New fossil fuels 'incompatible' with 1.5C goal, comprehensive analysis find, CarbonBrief, 23.10.2022, available here: https://www.carbonbrief.org/new-fossil-fuels-incompatible-with-1-5c-goal-comprehensive-analysis-finds/*
[194] IEA, World Energy Outlook 2021, 2021, p. 112, 123; IEA, Net Zero by 2050, 2021, pp. 23, 99.
[195] UN Climate Change, Production Gap Report 2023, (2023) pp. 8, 12, available at: https://www.un.org/en/climatechange/reports?gad_source=1&gclid=Cj0KCQjwzva1BhD3ARIsADQuPnUWEJYtHY3W9ibPMfXd_l-cmVS_jmSxvvdbS9Z2CO19dtVM35KWYYkaAs0uEALw_wcB.

not yet cited by the IPCC also confirm that estimated future emissions from existing fossil fuel projects, totaling 936 GtCO2 per 2018, exceed all remaining budgets for 1.5°C.[196] A study published in Nature specifically shows that oil and gas in the BSS and BSSE as part of the Arctic must remain undeveloped if the world is to limit warming to 1.5°C.[197] The opening of the BSS and BSSE in the Arctic, with licences to explore for and ultimately extract new fields with a lead-time of 15-17 years, thus violate the primary obligation to limit a rise in "global average temperature beyond levels capable of producing serious and irreversible adverse effects on human rights".[198]

110. Consistently, the embedded emissions from the BSS or BSSE would also overshoot any *national* carbon budget for Norway for 1.5°C. According to an expert opinion to the Court by dr. Yann Robiou du Pont of Utrecht University, the emissions embedded in the BSS or BSSE would greatly overshoot even a generous equal per capita allocation of the remaining global carbon budget for Norway.

Exhibit 3: Expert opinion by Dr. Yann Robiou du Pont: Calculation of a carbon budget for Norway

111. In 2016, when the Paris Agreement came into force and the impugned licences were granted, the remaining 1.5°C budget for Norway totaled 289 MtCO2 (83% likelihood), 359 MtCO2 (67% likelihood) and 429 MtCO2 (50% likelihood). In comparison, the emissions embedded in the maximum resource estimates of the BSS and the BSSE totaled 6336 MtCO2, and 1627 MtCO2. They would overshoot the allocated national budget (83% likelihood) with a ratio of 21.92 (BSS) or 5.63 (BSSE). Even the lower production scenario for the BSSE of 388 MtCO2 would exhaust the remaining equal per capita budget for Norway (83% likelihood) by a ratio of 1.34. As these budgets are calculated based on the IPCC's global carbon budget and population data without relying on national emissions data, they can be used to assess exported combustion emissions without any issue of double counting. Moreover, since an equal per capita approach

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[196] Trout et al, *Existing fossil fuel extraction would warm the world beyond 1.5 °C,* Environ. Res. Lett. 17 064010, available here: https://iopscience.iop.org/article/10.1088/1748-9326/ac6228/pdf; Green et al., *No new fossil fuel projects: The norm we need,* Science, Vol. 384, No. 6699, pp. 954-957, available here: https://www.science.org/doi/abs/10.1126/science.adn6533

[197] Welsby et al., *Unextractable fossil fuels in a 1.5 °C world,* Nature 597, 230-234 (2021); see also McGlade et al., *Un-burnable oil: An examination of oil resource utilization in a decarbonized energy system,* Energy Policy, Volume 64 pp. 102-112

[198] *KlimaSeniorinnen,* § 547

cannot capture a fair distribution of the mitigation effort for a country like Norway, a breach of the equal per capita budget *unambiguously* entails a breach Norway's fair share.

112. What is more, the Respondent State has failed to put in place regulations and measures aimed at preventing warming beyond 1.5°C from its licensing of petroleum extraction. The Respondent State has not quantified any remaining national carbon budget, or assessed the emissions embedded in the BSS and/or the BSSE against the remaining global budget for 1.5°C, despite science enabling such assessments is endorsed by the Respondent State.[199] The Respondent State has no plan or law to limit exploration and extraction as required to keep the global average temperature below 1.5°C. The mere ambition to electrify offshore installations from shore does not reduce GHG emissions, as any excess gas not used to power extraction will only be sold for consumption. And whilst it is correct that subsequent approvals under the Petroleum Act and licences under the Pollution Control Act regarding the technical plans for specific petroleum fields, are required before extraction, these Acts do not contain provisions geared towards denying a project or limit the amount of petroleum extracted on climate grounds. As the NSC made clear, any duty to deny production for climate considerations under Section 112 of the Constitution can hardly, if at all, be enforced in courts.[200]

6.3 Violation of the obligation to put in place an adequate framework

113. The Court's substantive requirements for an economy wide legal framework are set out in *KlimaSeniorinnen* at § 550 as follows (emphasis added):

a. adopt general measures specifying a target timeline for achieving carbon neutrality and the overall remaining carbon budget for the same time frame, or another equivalent method of quantification of future GHG (greenhouse gas) emissions, in line with the overarching goal for national and/or global climate-change mitigation commitments;

b. set out intermediate GHG emissions reduction targets and pathways (by sector or other relevant methodologies) that are deemed capable, in principle, of meeting the

[199] See Expert Statement by du Pont (Exhibit 3) with further references: "Note that this report uses the latest carbon budget presented by the IPCC in its 6th Assessment Report, but carbon budgets were available in previous IPCC reports, including the 5th Assessment Report published in 2013."
[200] HR-2020-2472-P para. 139 *seq*

overall national GHG reduction goals within the relevant time frames undertaken in national policies;

c. provide evidence showing whether they have duly complied, or are in the process of complying, with the relevant GHG reduction targets (see sub-paragraphs (a)-(b) above);

d. keep the relevant GHG reduction targets updated with due diligence, and based on the best available evidence; and

e. act in good time and in an appropriate and consistent manner when devising and implementing the relevant legislation and measures.

114. In its scrutiny of the Norwegian legislative framework, the Court must note that "*the margin of appreciation for the domestic authorities is not unlimited and goes hand in hand with the European supervision by the Court, which must be satisfied that the effects produced by the impunged national measures were compatible with the Convention.*"[201]

115. The following leads to a very limited margin of appreciation for the Norwegian authorities *today and in 2016* in deciding the legal framework applicable for the petroleum sector, and hence the legal arrangements for petroleum production licences:

i. The legal framework must by necessity regulate the country's emissions in general and emissions facilitated by the production licences in particular as each one of them was capable of leading to emissions that represents the *largest single source of emissions* in Norway. In addition, comes the emissions from consumption of the produced petroleum.

ii. In 2023, Norway had only reduced 9,1 % of its emissions compared to 1990[202], which is very far from Norway's share of emissions reductions considering its capabilities.[203]

iii. The quantities of petroleum in the licenced areas (cf. Section 4.1 above) amounts to a level of intended extractions that when evaluated against the remaining global

[201] *KlimaSeniorinnen* § 450
[202] Norwegian Central Statistical Beureau (SSB) "Utslipp til luft" available at https://www.ssb.no/natur-og-miljo/forurensning-og-klima/statistikk/utslipp-til-luft
[203] *KlimaSeniorinnen* § 442

carbon budget and Norway's fair share of the budget (cf. Section 6.1 above) certainly has the potential of overshooting these budgets.

116. The protection against violation of rights due to climate change offered by the Convention, will "*largely be lost*"[204] if Norwegian authorities under present days climate conditions and considering the facts in 1) 2) and 3) above are free to issue as many licences as they wish without a national carbon budget and without a plan for the step-by-step phasing out of the Norwegian petroleum production.

117. Throughout the domestic courts and for the ECtHR, the State has referred to various mitigation efforts, such as being Party to the UNFCCC, the European Emissions Trading System (ETS) etc. in the defense of the licensing, implying that these efforts taken together are sufficient to meet the obligation of the State under Article 2 and 8. Applicants allege that the measures that the Responding State calls upon in its defense are far from sufficient to fulfil the obligation of the State according to Article 2 and 8.

118. Being a party to the UNFCCC and related international agreements, referred to as a mitigation measure by the Responding State, can hardly, at this stage, in itself be regarded as a mitigation effort , as was noted by the Court: "*the Court cannot but note that the IPCC has stressed the importance of carbon budgets and policies for net-zero emissions (see paragraph 116 above), which can hardly be compensated for by reliance on the State's NDCs under the Paris Agreement, as the Government seemed to suggest."*[205]

119. Assumingly in the defense of lack of legislative measures for emission reductions pertaining to the petroleum industry, the Respondent State refers in para. 25 of it's Written Observation of 15.09.2022 to a joint EU-Norway statement of 23.06.2022, claiming that the parties have agreed to long-term gas supplies from Norway. However, as has been widely reported in Norwegian media, the formulations on long-term oil and gas were strongly contested by the EU.[206] In this context, the Court must note that the EU Commission in October 2022 stated the

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[204] NSC reasoning in § 143 applies similarly in respect to the ECHR Articles 2 and 8: " *[T]he purpose of the constitutional provision would largely be lost if the provision does not also involve a duty to abstain from making decisions [licensing] violating Article 112 subsection 3 of the Constitution*".
[205] *Klimaseniorinnen* § 571. International Tribunal for the Law of the Sea, Advisory Opinion Case 31 at §§ 223, 224.
[206] Marie Melgård, (November 22), "Norge og EU i klinsj om grønn industriavtale: Krangler om olje og Arktis", *DN,* available at: https://www.dn.no/politikk/norge-og-eu-i-klinsj-om-gronn-industriavtale-krangler-om-olje-og-arktis/2-1-1359942.

following: *"The Commission is not aware of any plans of Norway to increase the production above current levels now or after 2030 or to invest in any significant exploration projects with a lead-in time of 15-17 years."*[207] This precludes the possibility of a long-term agreement between Norway and the EU regarding Norwegian gas-supplies which is relevant for the 10 licences in the BSSE and BSS. Additionally, the rapid roll-out of renewables in the EU over recent years confirms that it is highly unlikely that the EU would need more Norwegian gas after 2035 as existing gas supplies in Norway and Algerie more than covers EU's future demand for gas.[208]

120. When applying the principles of *KlimaSeniorinnen* § 550 (litra a – b) to the present case the Court must note that:

121. Litra a): Applicants submit that the requirements for carbon budget requires such a budget at a detailed and specific level that cannot be met by simply stating that Norway shall strive at complying with the 1.5°C-degree limit, cf. for example the Norwegian Climate Act Articles 3 and 4.[209] The State has not at any time or in any form expressed what the «*remaining carbon budget*» for Norway is, and even less so combined such carbon budget with a "*timeline for achieving carbon neutrality*" cf. litra 550 (a). Not only does this mean that the State policy, including the extraction policy, is not in line with the obligations laid down by the Court, it also means that the State's extraction policy is not aligned with best available climate science in breach of the obligation laid down in 550(d). As the Court held: "*it is not convinced that an effective regulatory framework concerning climate change can be put in place without quantifying, through a carbon budget or otherwise, national GHG emissions limitations […].*"[210]In additional to the fact that the State failed to quantify its fair share of the global carbon budget, the Norwegian Climate Ac does not contain any obligation on any subject whatsoever to reduce emissions. The Act does not include any legal obligations at all, apart from the Government's obligation to report in general to Parliament on climate issues. It is also

[207] European Parliament, (October 2022), "Answer given by Ms. Simson on behalf of the European Commission", Parliamentary question -P-002870/2022(ASW), in reply to a question from Germany's MEP Rasmus Andersen available at: https://www.europarl.europa.eu/doceo/document/P-9-2022-002870-ASW_EN.html.
[208] Worthy, M.Vettore, G., Bounfour, A. *et al.* (2024) "On Thin Ice: Norway's Fossil Ambitions and the EU's Green Energy Future", *Greenpeace Norway*, available at: https://www.greenpeace.org/static/planet4-norway-stateless/2024/02/db93e772-on-thin-ice-feb-2024.pdf.
[209] Act relating to Norway's climate targets (Climate Change Act), 01 January 2018, LOV-2017-06-16-60, available at: https://lovdata.no/dokument/NLE/lov/2017-06-16-60
[210] KlimaSeniorinnen § 570

clear that people in Norway have no right to bring about a lawsuit regarding breaches of the Climate Act[211].

122. Litra b): Neither the Climate Act nor any other legislation or regulations set out GHG emissions reduction targets and pathways by sector or other relevant methodologies as required in 550 (b). All sectors are aware of the general aims to reduce emissions as set out in the Climate Act, however, no sector including the petroleum sector is obliged to reduce emissions by a certain amount within a certain timeframe. In principle, all sectors, including the petroleum sector, may believe the brunt of the reduction in emissions must and will be taken by other sectors than themselves.

123. With effect from December 2023 Parliament strengthened the emissions reduction goals laid down in the Climate Act from a reduction of "50 % aiming at 55%" to a reduction of "55%", which aligns the Climate Act with the most recent Norwegian NDC. However, the preparatory works does not explain how a strengthened emission reduction goal correlates to the fact that Norway is falling behind on its previous reduction goals as laid down in the Climate Act before December 2023 and never has achieved any of its previous emission reduction plans[212].

124. In lieu of precise emission reduction obligations, certain sectors have obligations to deliver CO2-quotas under the European ETS regime, which is an indirect and market-based method of obtaining emission reductions. The Court's clear requirement for a fair national carbon budget shows that simply making the ETS applicable is not sufficient. National GHG emission cuts - in line with a quantifiable carbon budget - must also be part of the effective regulatory framework that the Court requires.

125. Norwegian policy is for many new petroleum fields, to require as part of the PDO-approval, but not via legislation and not on every production site, that the power used on the production facility is renewable. This is referred to as *electrification* and shifts the use of power on the production facility from stationary gas power plants to hydropower from scarce resources on-

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[211] NCS § 61 and preparatory works Prop. 77 (2016-2017) page 34 and page 53.

[212] This fact has never been disputed by the Respondent State. As an illustration the first historical emission reduction goals are found in St. Meld. Nr. 46 1988-89 (Report to Parliament 1988 – 1989) page 58: "*The Government's goal is to: Reduce the increase in CO2 emissions to stabilize through the 1990's or in 2000 at the latest. The Government presumes that the emissions thereafter can be reduced"* and St. Meld nr 41 (1994-95) (Report to Parliament 1994 – 1995) page 9: " ... *the emissions from the petroleum sector is expected to peak around 2000 and thereafter decline so that in 10-15 years the emissions will be lower than today [1994].*"

shore from the integrated European grid. However, this "electrification" measure wholly neglects the fact that the emission from the production of the petroleum *as such* represent less than 5 % of the emissions[213] whereas emissions from combustion account for the rest of the total emissions from produced petroleum. The excess gas that is replaced by electricity, is simply sold for consumption with inevitable release of greenhouse gases. Electrification can consequently never curtail the risk of overshoot of the 1.5°C-limit caused by the licensing.

126. The technique of carbon capture and storage (CCS) is often referred to as an emissions reduction measure. The technique is, however, still at the research level, is not in place at any scale[214], and there is no legislation describing a duty to install such a measure.

127. Litra c): Applicants hold that political statements, free of any legal liability, such as "Norway shall meet its climate goals"[215] is not evidence as required according to litra 550 (c). The State has provided no evidence in the present case before the Court or in all of the years of domestic litigation to the effect that the State has duly complied, or is in the process of complying, with the relevant GHG reduction targets. The fact that the Norwegian emission reductions are at

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[213] Through the domestic hearing the Responding State never contested that emissions from production was less than 5 %. These emissions from combustion can now be calculated to about 2 % as in 2021, emissions from exported Norwegian oil and gas amounted to 557 MtCo2, while emissions from oil and gas production were 12,1 MtCo2, i.e. Elise Grieg et. al., (October 2022), *"Norske utslipp i utlandet",* available at: https://www.regjeringen.no/contentassets/20944f0c5bf14bd5b5112ae8aa08e853/no/sved/19.pdf. SSB, (November 2022), *"Klimagassutslippene gikk ned 0,7 prosente i 2021",* available at: https://www.ssb.no/natur-og-miljo/forurensning-og-klima/statistikk/utslipp-til-luft/artikler/klimagassutslippene-gikk-ned-0-7-prosent-i-2021]

[214] IPCC AR6 (2021). "Working Group III Report on Mitigation of Climate Change, Technical Summary." Figure SPM.7, available at https://www.ipcc.ch/report/ar6/wg3/.

[215] Such statements are numerous from the major political blocs. Examples are: i) «Hurdals-plattformen» a political document issued by the present government consisting of a coalission of politicians representing the Labour Paty (A) and the Center Part (Sp) where it is stated that «*Regjeringen skal for inneværende stortingsperiode iverksette tiltak som gir reelle utslippskutt, og føre en ambisiøs og effektiv klimapolitikk i tråd med målene i Parisavtalen. Innen 2030 skal 55 prosent av de norske klimagassutslippene kuttes, målt mot 1990*». In shorts this means that the government will abide by the Paris goals. Available at: https://www.regjeringen.no/contentassets/cb0adb6c6fee428caa81bd5b339501b0/no/pdfs/hurdalsplattformen.pdf ii) "Granavollden-plattformen" a political document issued by the former government consisting of a collision of politicians from the Conservative Party (H), the Progress Party (FrP), the Christian Democratic Party (KrF) and the Liberal Party (V), where it is stated that "*Regjeringen vil [] gjøre Norge til et lavutslipssamfunn i 2050, hvor klimagassutslippene reduseres med 90-95 prosent*». In short this means that Norway will reduce its emissions with 90-95 % by 2050. Available at: https://hoyre.no/content/uploads/2020/12/Granavolden-plattformen.pdf; iii) Prime minister Støre's speech at the so-called "Zero" conference in 2023: "*Norway shall reach its climate goals, and much of what is seen here today will contribute*."(Our translation). Available at: https://www.regjeringen.no/no/aktuelt/statsministerens-innlegg-pa-zero-konferansen-2023/id3012990/ iv) Former prime minister Erna Solberg's speech at the COP 25 meeting in Madrid: "*Norway intends to do its part. Our long-term target has become a low emissions society where we reduce emissions by 90-95% within 2050*". Quoted by the national broadcaster here*:* https://www.nrk.no/urix/erna-solberg-bekymret-for-apningen-av-klimakonferansen-i-madrid-1.14804448

9.1% as per 2023[216], and that Norway never has reached previous climate goals, speaks for itself.

128. Taken together, these facts show a clear failure of the Respondent State to "fulfil its positive obligation derived from Article 8 to devise a regulatory framework setting the requisite objectives and goals"[217]. The Respondent State has never truly engaged in suggesting or putting in place an adequate legislative and administrative framework in accordance with the required provisions[218]. Instead of implementing "regulations and measures aimed at preventing an increase of GHG concentrations"(emphasis added)[219] considering that GHG emissions must be rapidly decreasing and reach net-zero as the Court noted in Klimaseniorinnen - "each Contracting State undertake measures for the substantial and progressive reduction of their respective GHG emission levels, with a view to reaching net neutrality within, in principle, the next three decades" - the State does exactly the opposite via licensing.

129. The lack of concrete measures to achieve the (misaligned) GHG emissions targets and the lack of binding obligations to reduce GHG measures, the lack of any attempt at quantifying a national carbon budget in line with equity, the Respondent State fails to fulfil its regulatory obligation under Article 8 ECHR[220].

130. The Applicants allege that when the substantive requirements relating to the State's positive obligations are not fulfilled, the only relevant mitigation measure available is to refrain from licensing of new acreage.

6.4 Violation of the procedural obligation

131. Finally, and as noted in Section 4.5 above, the lack of any assessment of climate harm to life and health in the SEAs prior to the opening of the BSS and BSSE, is in violation of Articles 2 and 8.

132. In the context of planning permissions, the Court will assess:[221]

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[216] Norwegian Central Statistical Beureau (SSB) "Utslipp til luft" available at https://www.ssb.no/natur-og-miljo/forurensning-og-klima/statistikk/utslipp-til-luft
[217] *KlimaSeniorinnen* § 562
[218] *KlimaSeniorinnen* § 550.
[219] *KlimaSeniorinnen* § 546
[220] *KlimaSeniorinnen* § 572
[221] *KlimaSeniorinnen,* § 539

i. if appropriate investigations and studies allowed the authorities to strike a fair balance between the various conflicting interests at stake,

ii. if the effects of activities that might harm the environment and thus infringe the rights of individuals may be predicted and evaluated in advance,

iii. if the public had access to the conclusions of the relevant studies, allowing them to assess the risk to which they are exposed,

iv. the extent to which the views of individuals were taken into account throughout the decision-making procedure, and

v. if the individuals had an opportunity to protect their interests in the decision-making process, which implies that they must be able to participate effectively in relevant proceedings and to have their relevant arguments examined.

133. In the context of climate change, the Court considers similar types of procedural safeguards:[222]

i. If information held by public authorities of importance for setting out and implementing the relevant regulations and measures to tackle climate change was available to the public, including available procedural safeguard to ensure that the public can have access to the conclusions of relevant studies, allowing them to assess the risk to which they are exposed

ii. If procedures are available through which the views of the public, and in particular the interests of those affected or at risk of being affected by the relevant regulations and measures or the absence thereof, can be taken into account in the decision-making process.

134. None of these procedural safeguards are fulfilled, cf. Section 4.5 above.

135. The Respondent State made no assessment before the opening decisions of the BSS or the BSSE to assess the harm that the estimated resources would inflict if extracted. Whilst the SEAs used *the same resource estimates* to highlight potential economic benefits and employment effects,[223] they did not describe, assess or evaluate the potential harmful effects of the emissions embedded in them at all. The public was thus deprived of essential information that would have allowed them to assess the risk to which they were exposed, such as the risk of triggering tipping points including the collapse of the West Antarctic Ice Sheet (which could

[222] *KlimaSeniorinnen,* § 554
[223] St. Meld. 40 (1988-1989) p. 14 (Annex 6) ; St. Meld. 36 (2012-2013) Section 6.1, Section 7 (Annex 7)

rise sea-levels in parts of Norway by 1-2 meters by 2100, and ultimately 3-5 meters), the exponential increase in mortality rates for young age cohorts due to heat, or the loss of snow and the devastating effects of winter thaw for Sámi cultural practices (see Section 8.3 below). The public was thus deprived of the opportunity to participate effectively in the decision-making process *on an informed basis.* As a result, the authorities could not properly balance the competing interests at stake.

136. This fundamental flaw must be distinguished from the minor procedural defect in Büttner,[224] where "qualitatively and quantitatively similar effects" had been considered in the environmental assessment with regard to other individuals.[225] In the present case, the domestic court proceedings did not demonstrate that the authorities took into account and balanced the rights at stake (see Section 7 on Article 13). The majority of the NSC's conclusion that a failure to assess the combustion emissions could not have affected the outcome was also arbitrary. The Respondent State has admitted elsewhere that as "the contents of an SEA […] cannot be predicted beforehand, a failure to carry out an SEA […] in accordance with the regulations should in most cases lead to the conclusion that the error may have affected the contents of the decision, and therefore that the decision is invalid."[226]Hence, as the minority of the NSC correctly notes, "it is futile to speculate on how political processes could and would have advanced had the impact assessment had a different content".[227]

137. Even assuming that the information would not have affected the outcome, the procedural obligation under Article 2 and/or 8 has still been breached. As the UKSC reasons in *Finch*, with regard to EIAs:

> *The argument made is a version of the claim that, if information about environmental impacts would make no difference to the decision whether to grant development consent (or on what conditions), it is not legally necessary to obtain and assess such information in the EIA process. Such a contention was resoundingly rejected by the House of Lords in Berkeley. It misunderstands the procedural nature of the EIA. The*

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[224] *Büttner and Krebs v. Germany* App No.27547/18, 4 June 2024 (*Büttner*) §§ 41, 76 et. seq.
[225] *Büttner* § 76
[226] Letter from the Ministry of Climate and Environment to ESA, 15.02.2022, available at: https://www.eftasurv.int/cms/sites/default/files/documents/gopro/Request%20for%20information%20concerning%20the%20requirements%20to%20carry%20out%20environmental%20assessments%20and%20environmental%20impact%20.pdf
[227] HR-2020-2472-P para. 278 (minority)

fact (if it be the fact) that information will have no influence on whether the project is permitted to proceed does not make it pointless to obtain and assess the information. It remains essential to ensure that a project which is likely to have significant adverse effects on the environment is authorised with full knowledge of these consequences.

Looking at the matter more broadly, it needs to be recognised that the process of EIA takes place in a political context and that the information generated by an EIA will be considered within a political decision-making arena. It is therefore inevitable that economic, social and other policy factors will outweigh environmental factors in many instances. But this does not avoid or reduce the need for comprehensive and high-quality information about the likely significant environmental effects of a project. If anything, it enhances the importance of such information. Nowhere is this more so than where issues arise relating to climate change.

It is foreseeable in today's world that, when development consent is sought for a project to produce oil, members of the public concerned will express comments and opinions about the impact of the project on climate change and the potential contribution to global warming of the oil produced. (...) It is not good enough that the potential global warming effect of the proposed development was not "completely ignored". The effect should have been properly assessed so that public debate could take place on an informed basis. That is a key democratic function of the EIA process. It was not fulfilled here.»[228]

138. The UKSC's approach is perfectly aligned with CJEU case-law on both SEA and EIA Directives. Under Article 4 TEU, the CJEU has consistently ordered national courts to annul, revoke or suspend planning permits granted without a SEA carried out in accordance with the Directive. The CJEU has not once reserved its position on the basis that the flaw did not impact the decision.[229] Even in C-278/21 AquaPri, where it must have been highly unlikely that the omission impacted the decision, the Member State was obliged to eliminate the unlawful consequences of the breach.[230] The opinion from advocate general Kokott in C-411/17 also

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[228] *Finch* (n.87) paras. *62, 152* with further references to *Berkeley v Secretary of State for the Environment* [2001] 2 AC

[229] See e.g. the ruling in C-201/02 Wells, C-411/17 Bond Beter Leefmilieu Vlandeeren § 172, C-41/11 Inter-Environnement Wallonie § 46, C-261/18 Commission v. Ireland § 75 and the case-law therein cited

[230] C-278/21 AquaPri §§ 39 and 41-42 with references to case-law regarding the EIA directive

presupposes that such an obligation exists even when it is highly likely that the omission could not have impacted the decision.[231] And while it is correct that the CJEU in cases on Article 11 has accepted national standing rules requiring an alleged failure to have impacted the outcome for individuals,[232] these decisions do not assist here. As the CJEU notes, they must be understood in view of the ”significant discretion” that Article 11 affords Member States in legislating standing criteria for individuals.[233]

139. Based on the above and recalling that the Respondent State’s breach of domestic law by failing to assess climate effects in subsequent EIAs (see Section 4.4 and 4.5), the Court is invited to hold that Articles 2 and/or 8 has been violated.

7 ARTICLE 13 IN CONJUNCTION WITH ARTICLES 2 AND 8

140. As stated in the Application, the right to an effective remedy requires a substantive and rigorous review of an arguable claim and remedies that are adequate to address the nature of the wrongs in a timely manner. The Norwegian courts did not assess the merits of the Convention claims in full and based on the Court’s case law. Their assessment was superficial and partly erroneous. The Norwegian courts did not apply the correct thresholds to assess the Respondent’s positive obligations pertaining to Articles 2 and 8 and wrongfully required an “immediate link” between the climate risks and the licences for the environmental harm to be local.

141. *KlimaSeniorinnen* further substantiates the Norwegian courts failure with regards to Article 13. The Grand Chamber clearly states that the Convention imposes obligations on the state related to the climate threat that are significantly different and much stricter than what Norwegian courts have established. It does not require an "immediate" link between the claimed risks and the licences.[234]

142. Furthermore, The Grand Chamber emphasizes the critical importance of the domestic courts’ assessment of specific facts. Notably, it is not persuaded by the domestic court’s finding that

[231] C-411/17 Bond Beter Leefmilieu Vlandeeren § 220
[232] C-72/12 *Gemeinde Altrip* og C-535/18 *Land Nordrhein-Westfalen*
[233] *Land Nordrhein-Westfalen,* para. 59; compare e.g., *KlimaSeniorinnen* § 527
[234] Cf. Section 5, and Section 4.3 above

"there was still some time to prevent global warming from reaching the critical limit" [235] as grounds for finding a violation of Article 6.[236]

143. With this in mind, it is essential to highlight the following important factual errors in the NSC's decision: The NSC states that the average global temperature has increased by approximately 1°C since pre-industrial times, [237] which incorrect; it has risen by at least 1.2°C.[238] The NSC also states that global warming will reach 1.5°C around 2040,[239] whereas the correct projection is around 2030.[240] Additionally, the NSC opined that there is a real danger of critical tipping points at temperatures above 2°C.[241] In reality, the risk of such tipping points emerges already at 1.5°C.[242] The NSC further asserts that there is a risk of unprecedented extreme weather events and that these changes could have consequences for marine life.[243] In truth, these events have already occurred.[244] Finally, the NSC claims that the annual temperature in Norway has increased by 1 degree since 1900,[245] but the reality is that it has already risen by 1.9°C.[246] The NSC thus failed to engage in a "sufficient examination of the scientific evidence concerning climate change".[247]

144. Moreover, under reference to the aforementioned inaccuracies, the Applicants find it pertinent to underscore that the Norwegian Supreme Court denied their request to have an oral expert witness provide testimony, despite the provision in Section 30-11 of the Norwegian Dispute Act. This section grants the Supreme Court the authority to appoint experts who "may be examined directly before the Supreme Court."[248]

145. On this basis, Article 13 has been violated read in conjunction with Articles 2 and/or 8.

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[235] *KlimaSeniorinnen* (supra n.2) § 635
[236] Article 6 serves as *lex specialis* in relation to Article 13, cf. *KlimaSeniorinnen § 644*
[237] HR-2020-2472-P paragraph 51
[238] IPCC AR6 Synthesis Report, Summary for Policymakers, para. A.1
[239] HR-2020-2472-P paragraph 51
[240] IPCC AR6 Synthesis Report, Summary for Policymakers, para. B.1
[241] HR-2020-2472-P paragraph 53
[242] IPCC AR6 Synthesis Report, Summary for Policymakers, para. A.3, see also https://www.regjeringen.no/no/dokumenter/meld.-st.-26-20222023/id2985027/?ch=2#kap2-7
[243] HR-2020-2472-P paragraph 53
[244] IPCC AR6 SYR SPM A.3
[245] HR-2020-2472-P paragraph 54
[246] Expert Statement by Professor Helge Drange
[247] *KlimaSeniorinnen* § 635
[248] https://lovdata.no/dokument/NLE/lov/2005-06-17-90/KAPITTEL_6#KAPITTEL_6

8 ARTICLE 14 IN CONJUNCTION WITH ARTICLES 2 AND 8

8.1 Applicability of Article 14

146. Article 14 is applicable within the scope of Articles 2 and 8. It follows from *KlimaSeniorinnen,* that in the climate context Article 2, and at the very least Article 8, apply.

8.2 Indirect discrimination based on age

147. All individual Applicants, and the Applicant associations representing their aggregate interests, have been treated less favourably than older birth-cohorts based on their date of birth[249] or age[250]. The opening of the BSS and BSSE exposed the Applicants to disparate risks of harm compared to older age cohorts in Norway amounting to indirect discrimination.[251]

148. Statistical evidence, including "[r]eliable national or international reports", is sufficient to prove *prima facie* indirect discrimination.[252] In this case, there is overwhelming evidence to this effect. According to the IPCC, whose reports carry "particular importance",[253] there is an "uneven distribution of exposure of age cohorts" to extreme weather events.[254] The Respondent State's euphemism that GHG emissions "are inherently indiscriminate"[255] run counter to scientific authority. Not only are "[c]hildren and adolescents […] particularly vulnerable to post-traumatic stress after extreme weather events", with long-lasting "impacts on their adult functioning",[256] but young age cohorts are also projected to experience increases in exposure to extreme weather events in their life-time that "would not be experienced by a person of the age of 55 in 2020 in their remaining lifetime under any warming scenario".[257] In Europe, the IPCC notes that "[l]ifetime exposure to extreme weather events for children born in 2020 will be about 50% greater at 3.5°C compared with 1.5°C GWL".[258]

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[249] Zaggai v. France, 2022, § 55
[250] Spisák v. the Czech Republic, 2024 § 73; Schwizgebel v. Switzerland, 2010, § 85
[251] Spisák v. the Czech Republic, 2024 § 73
[252] *Memedova and Others v. North Macedonia,* 24.10.2023, § 88
[253] *KlimaSeniorinnen*, § 429
[254] IPCC, AR6, WGII, Full Report, Section 7.3.2, p. 1099
[255] Respondents' Written Observations to the ECtHR, App No 34068/2, 29 June 2021 (Respondents' Written Observations), para. 169
[256] IPCC, AR6, WGII, Full Report, Section 7.1.7.3.2p. 1053
[257] IPCC, AR6, WGII, Full Report, Section 7.3.2, p. 1099
[258] IPCC, AR6, WGII, Full Report, Section 13.7.1.1, p. 1860

149. The IPCC relied on research by Professor Thiery et al.[259] For the benefit of the Court, Professor Thiery has estimated the age-dependent exposure of children to extreme weather events that would be caused if the total estimated resources of the BSS and the BSSE are extracted, as compared to adult age cohorts.[260]

150. Professor Thiery's results imply, as a best estimate, that 36 978 000 children born in 2010-2020 will endure one additional heatwave if the maximum resource estimate of the BSS is extracted, with similar numbers for the BSSE at 9 489 000 children of the same age cohort. A staggering 1470% more children than adults born in 1960-1970 will be exposed to dangerous heat if said resources from the BSS or the BSSE are extracted. Moreover, and as a best estimate, 1 134 000 and 288 000 children born in 2010-2020 will endure one additional drought if the maximum resources of the BSS and BSSE are extracted. Such droughts will not be experienced by any person born as late as 1960-1970. Similarly, 1 030 000 and 261 000 children born in 2010-2020 will experience one additional crop failure if the maximum emissions embedded in the BSS and BSSE are extracted, which is 1132% to 1374% higher than the number of adults in the comparator group. Similar disparities are seen with other climate extremes, such as wildfires and river floods. Moreover, on account of their young age and expected lifespan, children will be disproportionately represented among those 1 428 000 and 366 000 heat-deaths that the maximum resources in the BSS and BSSE would inflict until 2100, compared with adults born in any comparator group. Bearing in mind that these estimates do not assess the risk of tipping points or other causes of climate-attributed death than heat, the numbers could "well be higher".[261]

151. Consequently, the opening of the BSS and BSSE to petroleum extraction posed inacceptable and disparate risks to the young Applicants over their lifetime as compared to older age cohorts. Indeed, current members of Nature and Youth's are born as late as 2010, 2011 and 2012, and each year, the association welcomes new cohorts of children aged 12 to their association. The failure to assess the risks at the earliest opportunity harmed the Applicants beyond

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[259] Thiery, W., et al., 2021: Intergenerational inequities in exposure to climate extremes. Science, 374(6564), 158–160, doi:10.1126/science.abi7339; Thiery, W., et al., 2021: Age-dependent extreme event exposure. Science. Accepted 1 September 2021, https://spiral.imperial.ac.uk/bitstream/10044/1/92988/2/ manuscript.pdf
[260] Expert Statement by Professor Thiery, Exhibit 1
[261] Expert Statement by Professor Thiery, Exhibit 1, p. 6

comprehension. As the IPCC notes, "the extent to which current and future generations will experience a hotter and different world depends on choices now and in the near-term".[262]

152. The strong, clear and concordant statistical evidence above establishes *prima facie* indirect discrimination. The burden is then on the Respondent State "to show that the practice in question was objectively justified by a legitimate aim and that the means of achieving that aim were appropriate, necessary and proportionate".[263] However, neither the Government nor the domestic courts provided an objective and reasonable justification for the lack of any assessment of the climate effects in the SEAs, prior to the opening and the granting of the impugned licences.

153. First, the difference in treatment pursued no legitimate aim. Rather, it ran counter to the legislative purpose of the SEA Directive and the Constitution Section 112 (2) to assess any potential direct, indirect, cumulative and long-term effects, with a view to enhance democratic participation in full knowledge of the potential environmental effects.[264]

154. Second, there was no objective or reasonable justification for not assessing these effects. Indeed, the resource estimates were *known* and *used* in the SEAs for calculating other potential effects *in favor* of the opening, such as economic and employment effects. Best available science would have allowed the Government to calculate the emissions and assess the potential long-term effects prior to the opening of both areas, in 1989[265] and 2012,[266] and at any rate before the granting of the licences in BSS and BSSE in 2016.[267] The failure to assess the disparate effects on young age cohorts in the SEAs exceeded any margin of appreciation.[268] In depriving the public and decision-makers of this vital information, it fundamentally negated the possibility for climate protection to carry "considerable weight in the weighing up of any

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[262] IPCC, Summary for policymakers, p. 7, Figure SPM.1, litra c.
[263] Memedova and Others v. North Macedonia, 24.10.2023, § 96
[264] HR-2020-2472-P para. 183
[265] IPCC First Assessment Report, *Climate Change*, 1990, published in August 1990 with the support of *inter alia* Norway, summarizing previously published peer-reviewed studies, available at: https://www.ipcc.ch/site/assets/uploads/2018/05/ipcc_90_92_assessments_far_full_report.pdf
[266] Expert Statement by du Pont; IPCC AR6 WGI, p. 742, p. 3179 with further references to Meinshausen et al., *Greenhouse-gas emissions targets for limiting global warming to 2 C.* Nature 458, 1158-1166 (2009), Allen et al., *Warming caused by cumulative carbon emissions towards the trillionth tonne.* Nature 458 , 1163-1166 (2009), Matthews et al., *The proportionality of global warming to cumulative carbon emissions.* Nature 459, 829-832 (2009)
[267] Ibid.
[268] *KlimaSeniorinnen* § 542

competing considerations".[269] As a result, Article 14 read in conjunction with Articles 2 and 8 has been violated.

8.3 Indirect discrimination based on ethnicity

155. The individual Applicants 3, 7, and 8, and the Applicant associations representing their aggregate interests in this specific case, have also been treated less favourably than the majority population based on ethnicity. The opening of the BSS and BSSE exposed them to disparate risks of harm as members of the highly climate-sensitive Sámi population.

156. Overwhelming statistical evidence, including reliable national and international reports,[270] establish that the licensing of potentially 6,336 GtCO2 and 1,627 GtCO2 from the BSS and the BSSE pose disproportionate risks to the Applicants as members of the Sámi population. The significant vulnerability of the Sámi people should be well known to the Respondent State.[271] To the extent the Respondent State *wishes* to dispute these effects, the Applicants submit the following evidence:

Exhibit 4: Arctic Monitoring and Assessment Programme (AMAP), Arctic Climate Change Update 2021: Key Trends and Impacts, ch. 2

Exhibit 5: The Saami Council & The Sámi Parliament: Climate Change in Sápmi – an Overview and a Path Forward (2023).

Exhibit 6: NHRI, Canary in the Coal Mine, Sámi Rights and Climate Change in Norway (2024)

157. According to the IPCC, climate change in the Arctic is occurring at a "magnitude and pace unprecedented in recent history, and much faster than projected for other world regions", with natural and human systems "approaching a level of change potentially irreversible" even for millennia.[272] Indeed, the Arctic warms *nearly four times faster* than the global average due to a phenomenon known as "Arctic amplification", which is driven largely by feedback loops such as Arctic sea ice loss in summer and thawing permafrost.[273] The amplified warming has already

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[269] *KlimaSeniorinnen* § 542
[270] Memedova and Others v. North Macedonia, 24.10.2023, § 88
[271] The Respondent State has endorsed the IPCC reports and itself described the Sámi People as vulnerable to climate change in Meld. St. 26 (2022-2023) p. 30
[272] IPCC, AR6 WGII, *Impacts, Adaptation and Vulnerability: Cross Chapter Paper 6,* 2022, p. 2321
[273] Rantanen et al., *The Arctic has warmed nearly four times faster than the globe since 1979,* Communications Earth and Environment 3, no. 168 (2022). Earlier estimates indicated that Arctic temperatures have increased at twice the global rate, see IPCC, 2021, AR6 WGI, SPM p. 15, Atlas 11.2.2

caused significant negative effects, including increased precipitation, permafrost thaw, loss of sea and land ice, changes in snow cover, extreme weather events, and northward shifts of species on land and in freshwater and marine ecosystems.[274]

158. While these changes affect everyone in the Arctic, groups that organize their lives and societies in close connection with nature bear a disproportionate burden.[275] The Sámi people, as noted by the IPCC, have a deep connection to their traditional lands, waters and resources, which are crucial for the continued survival of their cultures, languages, livelihoods and knowledge.[276] Increased temperatures threaten essential cultural practices such as reindeer herding and fisheries, and thereby Sámi identity and well-being.[277] Their capacity for adaption is also strained, with the IPCC noting that "adaptation limits are being approached" for Sámi reindeer herding even at current levels of warming.[278] Similar accounts are found in reports by the Arctic Monitoring and Assessment Programme (AMAP),[279] and the Saami Council.[280]

159. On this basis, the NHRI notes that "[f]urther warming poses a real, serious and reasonably foreseeable threat to the long-term sustainability of core elements of Sámi culture and identity, such as reindeer husbandry"[281] and "fishing practices".[282] The NHRI points out that these risks "greatly accelerate if warming exceeds the critical 1.5°C limit and worsen under higher emission scenarios".[283] Indeed, if emissions are not brought down, "the average temperature in Finnmarksvidda will increase by 6,7°C, snow cover duration will decrease by 2-3 months, there will be up to 50 more days with 0°C crossings per year and sea surface temperatures along the coast in Northern Norway will increase by 2.2°C",[284] all within Applicant 3, 7 and 8's expected life-time. The NHRI notes that "[t]his would be devastating for reindeer husbandry, and for

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[274] IPCC, AR6 WGI, The Physical Science Basis: Summary for Policymakers, 2021, p. 15, para. B.2.1; IPCC, AR6 WGII, Impacts, Adaptation and Vulnerability, 2022, ch. 2, p. 200 and p. 2321; Arctic Monitoring and Assessment Progroamme (AMAP), Arctic Climate Change Update 2021: Key Trends and Impacts 2021, ch. 2
[275] NHRI, 2024. Section 6.1.3
[276] IPCC, Climate Change 2022: *Impacts, Adaptation and Vulnerability: Summary for Policymakers,* para. B.2.1; Tyler et al., "The Shrinking Resource Base of Pastorialism: Saami Reindeer Husbandry in a Climate Change"; NHRI 2024 p. 12.
[277] IPCC, AR6, WGII, Full Report, p. 620
[278] IPCC, AR6, WGII, p. 2348, 2351, CCP63.2.3 and Table CCP6.6; NHRI 2024 p. 34
[279] Arctic Monitoring and Assessment Programme (AMAP), *Arctic Climate Change Update 2021: Key Trends and Impacts,* ch. 2
[280] The Saami Council & The Sámi Parliament: *Climate Change in Sápmi – an Overview and a Path Forward* (2023).
[281] NHRI, Report 2024 (Exhibit 6), 49
[282] NRHI, Report 2024, p. 12
[283] NRHI, Report 2024, p. 50
[284] NHRI, Report 2024 (Exhibit 6), p. 50

cold-water species traditionally used in Sámi fishing, with associated impacts on Sámi health" (emphasis added).[285] To protect the Sámi people's right to culture and health from the future effects of climate change, the NHRI recommends that the Respondent State "implement deep, rapid and sustained reductions in both domestic and exported greenhouse gas emissions" which are consistent with "the remaining carbon budget for limiting global warming to 1.5°C".[286]

160. As noted above, the embedded emissions in the BSS and BSSE will overshoot any remaining carbon budget to limit warming to 1.5°C and raise global average temperatures with up to 0,004°C.[287] This would cause quantifiable environmental impacts that are detrimental to traditional Sámi culture. The embedded emissions in the BSS and BSSE would, *inter alia*:

    i. Reduce snow cover during spring in the Northern hemisphere by 9 600 km2, almost equal to the *entire* Sámi municipality of Kautokeino.[288] Snow cover is "inextricably linked to the health of Arctic ecosystems" and "plays a central role in Sámi language, culture, traditional knowledge and livelihoods."[289]
    ii. Increase the frequency and intensity of rain-on snow events and freeze-thaw cycles, with ice formations making it difficult for reindeer to access food.[290] The IPCC notes that "[m]ore frequent ice formation on soil and snow […] will negatively impact reindeer herding and thus Saami identity and well-being".[291]
    iii. Increase the melting of migration routes over lakes and rivers in winter, which the IPCC notes will "probably increase the physical risks to Saami practicing reindeer herding".[292]
    iv. Melt 24, 000 km2 of September-ice in the Arctic,[293] which in turn drives more warming through Arctic amplification in winter, as the excess heat captured by ice-free waters are stored and released during winter, causing further winter thaw on Sámi

[285] NHRI, Report 2024 (Exhibit 6), p. 50
[286] NHRI, Report 2024, p. 8
[287] Expert Statement by du Pont (Exhibit 3); Expert Statement by Professor Drange (Exhibit 2) p. 43
[288] Expert Statement by Professor Drange (Exhibit 2); Kautokeino is 9 707 km2, the largest municipality in Norway
[289] NHRI, Canary in the Coal Mine, Sámi Rights and Climate Change in Norway, 2024, p. 31-32; Meld. St. 26 (2022-2023) Section 3.9; Sámi Council, Climate Change in Sápmi, 2023
[290] Expert Statement by Professor Drange (Exhibit 2), p. 44; IPCC, AR6, WGII, p. 1057; NHRI 2024, p. 25 and 51
[291] IPCC, AR6, WGII, Full Report, p. 620
[292] IPCC, AR6, WGII, Section 4.58, p. 619
[293] Expert Statement by Professor Drange (Exhibit 2), p. 45

land.[294] As noted by Professor Drange, Arctic amplification "is expected to impose existential challenges to [I]ndigenous people".[295]

v. Increase warming, sea ice loss, and ocean acidification.[296] If warming exceeds 1.5C, the IPCC projects substantial range contraction and even extinction of several saltwater and freshwater fish species by the end of the century in the Arctic.[297] These cascading marine impacts affect the Sámi in particular, whose cultures and traditional livelihoods are closely connected to fishing.[298]

161. As the individual Sámi Applicants explain in their personal accounts, these environmental risks have direct and immediate impacts on their culture and well-being.[299] Their accounts are corroborated by the IPCC, noting that climate change is increasing the risk of depression, post-traumatic stress disorder, anxiety, suicide ideation, loss of cultural knowledge and continuity, disruptions to intergenerational knowledge transfers and loss of place-based identities and connections for Arctic Indigenous Peoples.[300]

162. What is more, the opening of the BSS and BSSE, and the impugned decisions, pose inacceptable risks of intrusive interferences on Sámi land through new power generation from shore. The Respondent State boasts that new fields in the BSS or the BSSE could be electrified, to reduce the burning of gas to power extraction. Leaving aside the fact that the excess gas will only be sold for combustion elsewhere, and thus not reduce emissions in practice,[301] electrification of fields in the BSS and BSSE would require new land-intensive power generation in adjacent North-Sámi areas.[302] The NSC has already held that a land-intensive power project on Sámi winter pastures, partly built to power oil-extraction in the North Sea, violate South-Sámi rights under the ICCPR Article 27.[303]

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[294] Taylor, P. C. et al (2022) Process drivers, inter-model spread, and the path forward: A review of amplified Arctic warming, Frontiers in Earth Science, doi:10.3389/feart.2021.758361
[295] Expert Statement by Professor Drange (Exhibit 2), p. 11
[296] Expert Statement by Professor Drange (Exhibit 2)
[297] IPCC, AR6, WGII, p. 2321 and p. 202, Saami Council, p. 55; NHRI p. 34.
[298] AMAP, Arctic Climate Change Update 2021: Key Trends and Impacts, 2021, p. 117; NHRI 2024 p. 35.
[299] See written Statements of Evidence submitted on behalf of Applicant 3,7 and 8 as part of the initial application to ECtHR (updated Applicant numbers here - as per the Courts numbering).
[300] IPCC, AR6, WGII, Cross-Chapter Paper 6, p. 2340; NHRI p. 29-30.
[301] NHRI, Report p. 57; NOU 2023 p. 226
[302] NHRI Report 2024; NOU 2023 p. 226
[303] HR-2021-1975-P

163. Consequently, the opening of the BSS and the BSSE posed disparate risks to the Applicants of Sámi origin. The failure to assess these effects in the SEAs constituted indirect discrimination of the Applicants based on ethnicity.

164. As set out above in Section 8.2, the Respondent State has failed to show any objective and reasonable justification for the lack of climate assessment in the SEA with respect to young age cohorts. Bearing in mind that the notion of objective and reasonable justification must be interpreted as strictly as possible where the difference in treatment is based on ethnicity,[304] the Respondent State has not shown any weighty reasons that could justify the blatant disregard for the plight of the young Sámi Applicants and the group to which they belong in the decision-making processes leading up to the opening of the BSS and BSSE. It ran counter not only to the purpose of the SEA obligation, which is to assess *inter alia* potential significant effects on Sámi nature and culture,[305] but also to the specific right to consultation for the Sámi people.[306]

165. On this basis, Article 14 read in conjunction with Articles 2 and 8 is violated.

9 CONCLUDING REMARKS

166. Based on the foregoing considerations, the Applicants invite the Court to declare the complaint admissible and hold that Articles 2 and 8 of the Convention, and Articles 13 and 14 read in conjunction with Articles 2 and 8 of the Convention, have been violated.

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[304] D.H. and Others v. The Czech Republic [GC], 2007, § 196

[305] Konsekvensutredningsforskriften § 21 ("Konsekvensutredningen skal identifisere og beskrive faktorer som kan bli påvirket og vurdere vesentlige virkninger for miljø og samfunn, herunder […] samisk natur- og kulturgrunnlag […]. Beskrivelsen skal omfatte […] negative, direkte, indirekte, midlertidige, varige, kortsiktige og langsiktige virkninger. Samlede virkninger av planen […] sett i lys av allerede gjennomførte, vedtatte eller godkjente planer eller tiltak i influensområdet skal også vurderes. Der hvor reindriftsinteresser blir berørt, skal de samlede virkningene av planer og tiltak innenfor det aktuelle reinbeitedistriktet vurderes.»

[306] The Sami Act Chapter 4; ICCPR Article 27, cf. HR-2021-1975-S paras. 120-123; ILO Convention 169, Articles 6, 7, 15, and 16; UNDRIP Article 10 and 19.

Oslo, 16 August 2024

(sign)	(sign)
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