

Media Briefing:

The People's Appeal vs Norway's Arctic Oil



BACKGROUND

Nature and Youth and Greenpeace Nordic (hereafter Greenpeace) are taking the Norwegian government to court for opening up new oil fields in the fragile and diminishing Arctic.

On 18 October 2016, with the backing of a wide coalition, the two environmental organisations filed a historic legal case against the Norwegian government for granting new oil drilling licenses in a newly opened area for the first time in 20 years.

This violates the goals of the Paris Agreement and the right to a healthy and safe environment for future generations as required by the Norwegian Constitution. The case was heard in the Oslo District Court in November 2017, and then again in the Court of Appeal in Oslo in November 2019. It is the world's first case to challenge drilling for new oil and gas based on the Paris Agreement, and it is the first time the rights contained in Norwegian Constitutional Article 112 is invoked in Court.

This could set an international precedent for future climate cases around the world. At the moment, there are more than 600 such lawsuits filed by individuals and non-governmental organisations that assert the rights of people impacted by the climate crisis around the world.¹ These include high profile cases also led by youth in the United States, Canada and Colombia.

¹ Greenpeace 2019: "The climate generation are taking their concerns to court. I am here for it." <https://www.greenpeace.org/international/story/22437/the-climate-generation-are-taking-their-concerns-to-court-i-am-here-for-it/>

The suit against the Norwegian government is significant, because it addresses a key question on the constitutional protections for future generations.

On 23 February 2020, the plaintiffs filed an appeal to the Supreme Court.

This is on the leading edge of a worldwide wave of lawsuits to make governments and political leaders keep below the Paris Agreement's 1.5°C warming limit and protect the basic human rights of their constituents. It's about turning political promises into the change we urgently need - for the survival, safety and health of people all over the world and for future generations.

THE PLAINTIFFS

Nature and Youth is the largest environmental youth organisation in Norway. They have more than 70 local groups across the country which work with local environmental causes. They have more than 9000 members. They are well-respected in Norway, where they are the youth-branch of the Norwegian part of Friends of the Earth.

Greenpeace is an independent global network that acts to change attitudes and behavior, to protect and conserve the environment and to promote peace. Greenpeace does not accept money from governments, political parties or corporations. It is the regional office Greenpeace Nordic that is co-plaintiff in this case.

Since Nature and Youth and Greenpeace filed the case on 18 October 2016, two organisations have joined the lawsuit as interveners on the side of the plaintiffs - the Grandparents' Climate Campaign and Friends of the Earth Norway.



COMPANIES IN THE 23rd OIL LICENSING ROUND

The 13 oil companies that were granted license blocks in the 23rd licensing round in the Barents Sea are:

- Equinor (formerly Statoil) (Norway)
- Capricorn, Spirit Energy (formerly Centrica) and Tullow (UK)
- Chevron and ConocoPhillips (USA)
- DEA (Germany)
- Det Norske (merged with BP) (Norway)
- Idemitsu (Japan)
- Lukoil (Russia)
- Lundin Petroleum (Sweden)
- OMV (Austria)
- PGNiG (Norway/ Poland)



Since the lawsuit was filed, two companies - Chevron and Tullow Oil Norge - have sold their share in the licenses. Centrica Resources and Bayerngaz Norge have merged into Spirit Energy.

Norway's state-owned oil company Equinor (formerly Statoil) has conducted a major drilling program in the Barents Sea from 2017 to 2020, including in the most northern blocks ever licensed on the Norwegian continental shelf. So far, no major discoveries have been made. Equinor was founded in 1972 as a state-owned oil company, and is still 67 % owned by the Norwegian State. It is thus particularly questionable that Norway - committed to ambitious climate targets and Arctic protection - allows its own oil company to pursue Arctic drilling.

TIMELINE

2016:

22 April : Norway signs the Paris Agreement

18 May: The Norwegian government offer new oil licences in the Arctic

10 June: The Norwegian government award new oil licences in the Arctic

21 June: Norway ratifies the Paris Agreement

18 Oct: Greenpeace and Nature and Youth file lawsuit

2017:

14 Feb: The Oslo District Court announces trial dates

11 July: the Grandparents' Climate Action joins the court case as intervener on the side of the plaintiffs

14 Nov : Climate case is heard in the Oslo District Court

2018:

4 Jan: The Oslo District Court presents its judgement

5 Feb: Nature and Youth and Greenpeace appeal the decision of the Oslo District Court, and asks for a direct appeal to Supreme Court

12 April: Request to proceed directly to Supreme Court is denied. Case is forwarded to the Court of Appeal

2019:

12 Aug: Friends of the Earth enters the court case as intervener on the side of the plaintiffs

5 Nov: Climate case is heard in the Court of Appeal in Oslo

2020:

22 Jan: The Court of Appeal presents its judgement

23 Feb: Nature and Youth and Greenpeace appeal the decision of the Court of Appeal

THE PARIS AGREEMENT

Norway was among the first countries in the world to sign the Paris climate agreement and the first industrialized nation to ratify it. The Paris Agreement shows that the countries which have signed the agreement agree on:

Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change.²

The 1.5°C goal of the Paris Agreement means that Arctic oil must not be burned. In light of climate science and the sheer amount of oil currently discovered or in production, this oil has to stay in the ground in order to stay below a 2°C maximum temperature increase.³ Granting new licences in the Arctic cannot be reconciled with what Norway committed to when it signed and ratified the Paris Agreement.

THE NORWEGIAN CONSTITUTION ARTICLE 112

Based on the Norwegian Constitution Article 112 we are challenging the Norwegian government's decision to award new oil licences in the 23rd licensing round, made in June 2016. Article 112 of Norway's Constitution was almost unanimously passed by Parliament in 2014. This is the official translation.⁴

Article 112

“Every person has the right to an environment that is conducive to health and to a natural environment whose productivity and diversity are maintained. Natural resources shall be managed on the basis of comprehensive long-term considerations which will safeguard this right for future generations as well.

In order to safeguard their right in accordance with the foregoing paragraph, citizens are entitled to information on the state of the natural environment and on the effects of any encroachment on nature that is planned or carried out.

The authorities of the state shall take measures for the implementation of these principles”.

² The Paris Agreement of the UNFCCC

<https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>

³ McGlade, Christophe (2014) “Un-burnable oil: An examination of oil resource utilisation in a decarbonised energy system” in Energy Policy, Volume 64, January 2014, Pages 102-112, <https://doi.org/10.1016/j.enpol.2013.09.042>

⁴ English translation of the Norwegian constitution

<https://www.stortinget.no/globalassets/pdf/english/constitutionenglish.pdf>



UN RAPPORTEUR IS CALLING FOR AN END TO NORWAY'S SEARCH FOR NEW OIL

The UN Special Rapporteur on human rights and the environment Dr. David Boyd highlighted the “Norwegian Paradox” and the need for a just transition after his recent visit in September 2019. In his end of mission statement, Boyd stated:

(...) The Norwegian paradox is that its leadership in some aspects of addressing the global climate emergency is enabled by wealth generated by a large petroleum industry. Greenhouse gas emissions from this sector are well above 1990 levels and exploration for additional oil and gas continues in Norway, despite clear evidence that human society cannot burn existing reserves of oil, gas and coal while meeting the targets established in the Paris Agreement.

To provide international leadership on climate change - the paramount human rights challenge facing humanity today - Norway should stop exploring for additional oil and gas reserves, stop expanding fossil fuel infrastructure, and harness Norwegian wealth and ingenuity to plan a just transition to a fossil-fuel free economy. Norway, as one of the world's wealthiest nations and one of the world's leading producers of oil and gas, must accept substantial responsibility for leading efforts in mitigation, adaptation, and addressing loss and damage.

Read the full statement [here](#).

JUDGEMENT BY THE OSLO DISTRICT COURT IN 2018

On January 4, 2018 the Oslo District Court found the Norwegian government not responsible for breaching the Constitution. However, the Court did find that the right to a healthy environment is protected by the Constitution and the Government must uphold those rights.

In particular, the court stated that the Norwegian State is not responsible for the carbon emissions connected to the burning of Norwegian oil and gas outside of Norway. Following this, the court found the impact from the decision to not be in breach of the constitution. Further, the judgement did not accept that the positive benefits of selling oil drilling sites were wildly overstated in government reports and that the environmental impacts of the decision were not thoroughly assessed.

The organisations stated on the day of the judgement:

The demand for immediate action against climate change may not have been heard by the Norwegian government or courts, but every environment defender has heard the millions of people across the world who want Arctic protection. This decision should serve to shape the playbook which is being used everywhere by people taking their governments' to court to protect their basic human right to a healthy environment.

We have shown that the Norwegian Constitution gives future generations the right to a safe and healthy environment. We see this as an important step for stronger protection of the environment, that can serve as inspiration for youth all around the world.

RATIONALE FOR THE APPEAL OF THE DISTRICT COURT JUDGMENT

On 5 February, 2018 the organisations appealed the judgement with the aim of taking the legal dispute directly to the Supreme Court of Norway. Instead we were referred to the Court of Appeal in Oslo. The case will be heard again starting on 5 November, 2019.

In the Norwegian system, the law provides the right for a full retrial at the appeals court level, and the arguments by the plaintiffs will be similar to the arguments provided in Oslo District Court.

Additionally, since the judgement, the IPCC has released three new Special Reports which amplifies the severe consequences of not adhering to the emissions targets set out in the Paris Agreement, and which confirms the science as it stood at the time of the decision by the Norwegian government to grant licences in the 23rd licencing round.

Additionally, some landmark judgements have come down across the globe. In particular in the Urgenda case, where the Court of Appeal has sided with the plaintiffs against the State of the

Netherlands on the merits of Dutch climate change commitments. The People vs. Arctic Oil court case also bears a resemblance to the recently decided Gloucester Resources v. Minister for Planning case from New South Wales, Australia, in that it concerns the effects of decisions taken within a country on the international climate, through the exported emissions from fossil fuels. In the case of Gloucester Resources, the judgement bars the expansion of a coal mine on climate grounds. Both judgements strengthen the Norwegian case, and provides comparative law for the judges of the Court of Appeal.

We stand by the fact that Norway is indeed responsible for the emissions caused by the oil and gas it exports, in addition to its territorial emissions, and that this needs to be taken into account by the judge. The argument is supported by recent research showing the climate effect of curbing fossil fuel extraction, as well as on the slim remains of the carbon budget left before overshooting the 1.5 emissions target set out in the Paris Agreement.

JUDGMENT BY THE COURT OF APPEAL 2020

On 22 January 2020 the Court of Appeal found that the Norwegian State did not breach the Constitutional right to a healthy environment. However, the Court did find that this right is protected and the Government must safeguard it for current and future generations. The Court of Appeal also held that in establishing whether the government is protecting this right, all GHG emissions from Norwegian oil exported abroad must be taken into account.

The Court of Appeal found that the harm caused by the Arctic oil permits is uncertain, and can not yet be considered large enough to constitute a violation of the Constitution and that the state is taking sufficient climate action to remedy any damage. Despite this, the judgement is a big step closer to victory. The most important thing is that the Court of Appeal states that Norway is responsible for emissions from Norwegian-produced oil which is burned in other countries.

The Court of Appeal additionally found that the case raises important principles pertaining to the environment and the living conditions for current and future generations. Thus it has given an exceptional ruling that, although they didn't win the case, Greenpeace and Nature and Youth should not bear the government's legal costs from the District Court or the Court of Appeal.

The organisations stated on the day of the judgement:

We are happy the Norwegian Court of Appeal acknowledges current and future generations' right to a healthy environment and that right also includes the duty to take into account the full emissions from the burning of Norwegian oil, wherever that takes place. This is an important legal victory on the right to a healthy environment under the Norwegian Constitution.

This is a big step closer to guaranteeing our future and sending a message that we can't afford to drill for new oil. The Norwegian Court of Appeal is standing behind the

constitutional right to a healthy environment, and finding that the Norwegian government could be responsible for emissions made by Norwegian oil burned abroad.

Still, the Court finds that the threshold for invalidating the oil drilling licences has not yet been breached. The co-plaintiffs will appeal the judgement to the Supreme Court, as it is clear that this necessitates further review by the judiciary.

RATIONALE FOR THE APPEAL OF THE COURT OF APPEAL JUDGEMENT

On 23 February, 2020 the organisations appealed the judgement to the Supreme Court of Norway.

In the Norwegian system, the Supreme Court is to provide judicial review in areas where the law is unclear. The Supreme Court also has a responsibility for the development of justice, within the framework of the legislation, where new social problems require it. In order for a case to be admissible, it must raise fundamental questions beyond the specific case or, for other reasons, be particularly important to consider.

As this case is the first to invoke Article 112 of the Norwegian Constitution before the court and raises fundamental principles, we find it important to appeal all the way to the Supreme Court. This will hopefully give clarity as to the meaning of Article 112's right to a healthy environment and the obligations of the State.

The judgement of the Court of Appeal reaffirmed and strengthened the interpretation of Article 112, stating that "climate is part of the environment". The judgement signaled that all emissions must be viewed in light of the world's total carbon budget, and that Norway has responsibility for the emissions caused by the export of Norwegian oil and gas.

The plaintiffs still believe that the state has exceeded the threshold of acceptable CO₂-emissions by handing out the 10 oil licenses in the 23rd licensing round.

INTERNATIONAL RELEVANCE

The climate lawsuit against the Norwegian government can set an international precedent. Laws in over 100 countries explicitly recognize the right to a healthy environment. Because these rights are universal, judges around the world are taking into account how other jurisdictions are upholding these rights. Therefore, as with the Urgenda case in the Netherlands, we can expect that courts around the world will look to the People vs. Arctic Oil to guide and inspire the interpretation of this right in their domestic legal systems.