



Convention on Access to Information,
Public Participation in Decision-making and
Access to Justice in Environmental Matters
(Aarhus Convention)

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UN Special Rapporteur on environmental defenders under the Aarhus Convention

Ref: ACSR/C/2024/38 (Norway)
(Please use this reference in your reply)

19 April 2024

Excellency,

I have the honour to address you in my capacity as UN Special Rapporteur on environmental defenders under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

As you may be aware, article 3 (8) of the Aarhus Convention requires that “Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement.” Norway has been a Party to the Aarhus Convention since 2003.¹

At its seventh session (Geneva, 18–21 October 2021), the Meeting of the Parties to the Aarhus Convention adopted decision VII/9 on a rapid response mechanism to deal with cases related to article 3 (8) of the Convention.² Decision VII/9 establishes the rapid response mechanism in the form of an independent Special Rapporteur on environmental defenders under the authority of the Meeting of the Parties. At its third extraordinary session (Geneva, 23–24 June 2022), I was elected, by consensus, by the Meeting of the Parties as the Convention’s Special Rapporteur on environmental defenders.

In accordance with the mandate in decision VII/9, I write to bring to your attention information I have received concerning the alleged persecution, penalization and harassment of Ms. Anne Kleng and Mr. Joachim Skahjem in connection with the exercise of their rights under the Aarhus Convention.

As further described below, Ms. Kleng and Mr. Skahjem participated in peaceful environmental protest organized by Stopp Oljeletinga, a Norwegian environmental organization belonging to the A22 Network that uses different forms of civil disobedience to promote environmental protection. The aim of the protest was to call for an end to oil and gas licensing in Norway and to ensure the just transition of the energy sector.

Based on the information received, in the light of their participation in peaceful environmental protest, Ms. Kleng and Mr. Skahjem are environmental defenders within the meaning of the ninth preambular paragraph of decision VII/9.³

¹ See https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-13&chapter=27&clang=en.

² Available at: https://unece.org/sites/default/files/2022-01/Aarhus_MoP7_Decision_on_RRM_E.pdf.

³ Ibid.

According to the information received, as a result of their participation in peaceful environmental protest, Ms. Kleng and Mr. Skahjem face a criminal trial on **23 and 24 April 2024**. If found guilty of the charged offences, Ms. Kleng and Mr. Skahjem each face a maximum penalty of up to six years imprisonment. Ms. Kleng and Mr. Skahjem's environmental protest, and the alleged penalization, persecution and harassment that they face as a result of their protest, are described below:

Peaceful environmental protest and civil disobedience – throwing of washable paint on the Monolith and nearby sculptures

1. On the morning of 18 November 2022, in the context of an action organized by Stopp Oljeletinga, Ms. Kleng and Mr. Skahjem poured washable orange paint on the Monolith monument, and six other sculptures, on the Monolith Plateau in the Frognerparken in Oslo.
2. Ms. Kleng and Mr. Skahjem also painted the number 53 with a brush on the bottom part of the statue, representing the number of oil licenses issued by the Norwegian government in 2022.
3. Based on the photographic images I have seen, despite Ms. Kleng and Mr. Skahjem's use of washable paint, some very small and barely discernible traces of orange paint residue remain on the statues.

Measures taken by Norway in response to Ms. Kleng and Mr. Skahjem's actions

Arrest

4. Upon arriving at the scene of the protest, the police ordered Ms. Kleng and Mr. Skahjem to leave the protest area within five minutes and thereafter not to enter Oslo city centre for 24 hours.
5. When Ms. Kleng and Mr. Skahjem did not leave the protest area as instructed, the police arrested them and carried them away to the police car. Ms. Kleng and Mr. Skahjem were then taken to the main police station in Oslo.
6. Ms. Kleng and Mr. Skahjem were released very soon after being brought to the police station with a reminder not to enter Oslo city centre for 24 hours. They were not informed of the possibility that any charges might subsequently be filed against them.

Criminal prosecution and trial

7. On 22 December 2023, after hearing nothing for more than one year, Ms. Kleng and Mr. Skahjem received a Prosecution Decision from the Oslo State Prosecutor's office notifying them that they were charged with the following offences:
 - a. In relation to the damage caused to the monument and sculptures:
 - i. Section 242(1) of the Penal Code for a "cultural heritage crime";
 - ii. Subsidiarily, section 352(1) of the Penal Code for aggravated vandalism;
 - b. In relation to the failure to obey the police order to leave the protest location within five minutes:
 - i. Section 30 of the Police Act for failure to comply with police orders.
8. Section 242(1) or 352(1) of the Penal Code each carry a maximum sentence of six years imprisonment. A violation of section 30 of the Police Act carries a maximum sentence of 3 months imprisonment or a fine.
9. The Prosecution Decision dated 22 December 2023 also states that section 79(a) of the Penal Code applies to both Ms. Kleng and Mr. Skahjem. Section 79(a) provides for the

imposition of a penalty of up to double the length of the most severe penal provision charged.

10. The court hearing on the above charges against Ms. Kleng and Mr. Skahjem will take place on **23 and 24 April 2024**, with a judgment expected to be rendered in the weeks following the trial.

Without prejudging the accuracy of the above allegations, I am gravely concerned about the very serious consequences faced by Ms. Kleng and Mr. Skahjem for their peaceful environmental protest. If proven to be accurate, the information set out above may constitute penalization, persecution or harassment of the environmental defenders engaged in peaceful environmental protest in breach of article 3 (8) of the Aarhus Convention.

Peaceful environmental protest is protected under the Aarhus Convention and international human rights law

The Aarhus Convention Compliance Committee has made clear that peaceful environmental protest is a legitimate exercise of the public's right to participate in decision-making as recognized in article 1 of the Convention.⁴ The Compliance Committee has also held that penalizing members of the public seeking to exercise their right to engage in peaceful environmental protest violates article 3 (8) of the Convention.⁵

A peaceful act of civil disobedience is a form of protest, and, as long as it is non-violent, it is a legitimate exercise of the right of freedom of peaceful assembly. This has been expressly confirmed by the UN Human Rights Committee in its General Comment No. 37 on the right of peaceful assembly under article 21 of the International Covenant on Civil and Political Rights.⁶

In its General Comment No. 37, the UN Human Rights Committee has also addressed what is required for a protest to be peaceful or non-violent and therefore to be protected by the right to peaceful assembly in article 21 of the International Covenant of Civil and Political Rights. It explained that:

“Violence” in the context of article 21 typically entails the use by participants of physical force against others that is likely to result in injury or death, or serious damage to property. Mere pushing and shoving or disruption of vehicular or pedestrian movement or daily activities do not amount to “violence”.⁷

The UN Human Rights Committee also made clear that there should be a presumption in favour of considering assemblies to be peaceful.⁸

Based on the photographic images I have seen, the damage caused to the Monolith statues by Ms. Kleng and Mr. Skahjem is extremely minimal and limited to some very minor residual traces of paint. Based on this evidence, it does not appear that these residual traces of paint could be considered

⁴ Compliance Committee's findings on communication ACCC/C/2014/102 (Belarus), ECE/MP.PP/C.1/2017/19, para. 96.

⁵ Compliance Committee's findings on communication ACCC/C/2014/102 (Belarus), ECE/MP.PP/C.1/2017/19, para. 107.

⁶ General Comment No. 37 (2020) of the Human Rights Committee on the right of peaceful assembly, CCPR/C/GC/37, para. 16, available at: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-37-article-21-right-peaceful>.

⁷ General Comment No. 37 (2020) of the Human Rights Committee on the right of peaceful assembly, CCPR/C/GC/37, para. 15 (emphasis added).

⁸ General Comment No. 37 (2020) of the Human Rights Committee on the right of peaceful assembly, CCPR/C/GC/37, para. 17.

to be “serious damage to property” as would be required before a protest could be considered violent or non-peaceful in accordance with General Comment No. 37. Accordingly, since Ms. Kleng and Mr. Skahjem’s actions on 18 November 2022 amounted to a peaceful environmental protest under the Aarhus Convention and international human rights law, Norway is required by article 3 (8) of the Aarhus Convention to ensure that Ms. Kleng and Mr. Skahjem are not penalized, persecuted or harassed for the exercise of these rights.

Any sanction must be reasonable, proportionate and serve a legitimate public purpose

The protection of peaceful environmental protest under international human rights law does not, however, shield members of the public from prosecution or sanction if they commit acts which contravene domestic law in the course of exercising their right to engage in peaceful environmental protest. However, as the Aarhus Convention Compliance Committee has made clear, any such prosecution or resulting sanction must be “reasonable, proportional and pursue a legitimate public purpose”.⁹ If not, the prosecution or sanction may amount to persecution, penalization and harassment under article 3 (8) of the Convention.¹⁰

Moreover, any sanction imposed should not have a “chilling effect” on the future exercise of the right to freedom of peaceful assembly.¹¹ In the assessment of whether an unacceptable chilling effect may arise from a given sanction, authorities should take into account the nature and severity of any penalty imposed.¹²

In the present case, I have serious doubts about the reasonableness and proportionality of the possible sanction that could be imposed on Ms. Kleng and Mr. Skahjem should they be convicted of the offences under the Penal Code that they have been charged with. Based on the information received, Ms. Kleng and Mr. Skahjem each face sentences of up to six years imprisonment. Given that any remaining traces of paint on the Monolith statues appear to be barely discernible, it is difficult to see how a sentence of imprisonment of any length could be proportionate to the acts committed by Ms. Kleng and Mr. Skahjem or the harm caused.

Nor do I see how a sentence of imprisonment would serve a legitimate public purpose. Rather, sending peaceful environmental protesters to prison in fact undermines the fundamental pillars of a democratic society, including the fundamental freedoms of expression and peaceful assembly. The fact that the decision to prosecute Ms. Kleng and Mr. Skahjem was taken more than a year after their arrest further reinforces this impression. It implies that there was indeed no overwhelming public purpose for prosecuting Ms. Kleng and Mr. Skahjem and, in particular, for seeking a multi-year prison sentence.

I am also concerned that such a belated decision to prosecute may have serious repercussions on environmental defenders’ mental wellbeing, since it means that environmental defenders who engage in peaceful environmental protest must live with ongoing uncertainty that they could potentially face charges for their protest at some unknown date long into the future.

⁹ Compliance Committee’s findings on communication ACCC/C/2014/102 (Belarus), ECE/MP.PP/C.1/2017/19, para. 69.

¹⁰ Compliance Committee’s findings on communication ACCC/C/2014/102 (Belarus), ECE/MP.PP/C.1/2017/19, para. 69.

¹¹ See European Court of Human Rights, case no. 28793/02, *Christian Democratic People’s Party v. Moldova*, 14 February 2006; and case no. 1543/06, *Bączkowski and others v. Poland*, 3 May 2007.

¹² See European Court of Human Rights, case no. 37553/05, *Kudrevičius and Others and Others v. Lithuania*, 15 October 2015.

I understand that the criminal trials of Ms. Kleng and Mr. Skahjem are set to take place imminently, on 23 and 24 April 2024. It is therefore important that I draw to your attention that the Aarhus Convention Compliance Committee has made clear that article 3 (8) of the Convention “is not limited in its application to acts of public authorities as defined in article 2, paragraph 2, of the Convention, but rather covers penalization, persecution or harassment by any State body or institution, including those acting in a judicial or legislative capacity.”¹³ Judicial and prosecutorial independence therefore in no way diminish Norway’s obligation under article 3 (8) to ensure that environmental defenders who have engaged in peaceful environmental protest, including civil disobedience, are not subject to penalization, persecution or harassment by either the Prosecutor’s Office or the Courts.

As it is my responsibility, under the mandate entrusted to me by the Meeting of the Parties to the Aarhus Convention, to seek to clarify all complaints brought to my attention, I would be grateful for your response to the following matters:

1. Please provide any information and/or comments you may have on the allegations set out in the present letter.
2. Please provide information on all actions taken in response to this letter to ensure the immediate dismissal or withdrawal of all pending charges against Ms. Kleng and Mr. Skahjem in relation to their action on 18 November 2022.
3. Please provide information on ethical rules in place and/or trainings and guidelines available, if any, to ensure prosecutors and judges do not seek, or impose, disproportionate sanctions on environmental defenders that have engaged in peaceful environmental protest, including civil disobedience.
4. Please provide information as to other steps taken, if any, in response to this letter.

I would appreciate receiving your response within 60 days, that is by **18 June 2024**. After this date, the present letter and the response received from your Excellency’s Government may be made public on the Aarhus Convention’s website.¹⁴ They will also subsequently be reported upon in my report to the eighth session of the Meeting of the Parties in 2025.

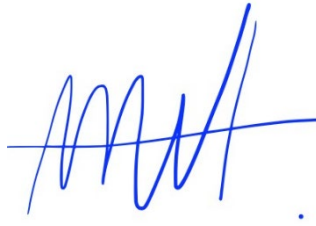
While awaiting your response, I urge that all necessary interim measures be undertaken to immediately halt the alleged persecution, penalization and harassment of Ms. Kleng and Mr. Skahjem. In this regard, your Excellency’s Government should take great care, when looking into the allegations in the present letter, that nothing is done that could put the environmental defenders at risk of further persecution, penalization or harassment.

In the event that your investigations support or suggest the allegations to be correct, I urge you to ensure the prompt cessation of the alleged persecution, penalization and harassment of Ms. Kleng and Mr. Skahjem.

¹³ See the Compliance Committee’s findings on communication ACCC/C/2014/102 (Belarus), ECE/MP.PP/C.1/2017/19, para. 70, available at: <https://unece.org/fileadmin/DAM/env/pp/compliance/CC-58/ece.mp.pp.c.1.2017.19.e.pdf>.

¹⁴ <https://unece.org/environmental-policy/public-participation/correspondence-regarding-complaints-special-rapporteur>.

Please accept, Excellency, the assurances of my highest consideration.

A handwritten signature in blue ink, consisting of stylized, overlapping loops and a long horizontal stroke extending to the right.

Michel Forst
UN Special Rapporteur on environmental defenders under the Aarhus Convention

To: His Excellency, Mr. Espen Barth Eide, Minister of Foreign Affairs, Norway
Cc: Ms. Beate B. Ekeberg, national focal point for the Aarhus Convention, Ministry of
Climate and Environment, Norway