

Response by the Government of Norway to the letter from the Aarhus Special Representative

1 Introduction

Thank you for your letter dated 19 April 2024, in your 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). The Government of Norway wishes to reiterate our commitment to the Convention and its implementation and application in Norway, and our full support for the mandate of the Special Rapporteur.

Norway attaches great importance to the role of human rights defenders, including environmental human rights defenders. Protection of human rights defenders is a key priority in Norway's human rights efforts. Our overall objective is for human rights defenders to be able to carry out their work of promoting and defending human rights in all parts of the world freely and safely, without encountering restrictions or threats to themselves or their families.

Please be informed that Oslo District Court reached a verdict in the case referred to in your letter on May 12th 2024, in which the defendants were sentenced to 100 days in prison and civil liability in solidum of NOK 13.700 for violating the Penal Code section 352, cf. section 351 in addition to the Police Act section 30, cf. section 5. The defendants were acquitted of violating section 242 of the Penal Code. From what we understand, the verdict has been appealed to Borgarting Court of Appeal.

The principles of division of powers and judicial independence are fundamental in Norwegian constitutional law. According to the Criminal Procedure Act section 55, the Prosecuting Authority is independent when dealing with individual criminal cases, and no one can instruct the prosecution in individual cases or overturn a prosecution decision. For these reasons, neither the executive nor the legislative branch of the Norwegian government will under any circumstance interfere with proceedings or decisions made by the Prosecuting Authority or by the Courts. For the same reason, the Norwegian Government does not comment on individual court cases. The only way to influence the handling and the outcome of a case is through appeal.

Norway wishes, however, to address some issues in response to the Special Rapporteur's questions. In doing so, we emphasize that we remain open for dialogue with the Special Rapporteur about the implementation of article 3, paragraph 8 of the Aarhus Convention.

2 General context

The right to demonstrate, including for environmental purposes, is an important part of the rights to freedom of expression and assembly. Anyone has the right to demonstrate in public places in Norway, without prior permission. There is an obligation to notify

the police in advance pursuant to the Police Act (Section 11), but the police may only act to restrict or dissolve demonstrations if there is reason to fear that it may cause serious disturbance of public order or legal traffic, or the purpose or means of the demonstration are against the law.

Demonstrations, including for environmental purposes, are not uncommon in Norway and are usually carried out without restrictions, dissolution or other consequences. In some cases however, it has been considered necessary and proportionate to dissolve demonstrations, take those demonstrating into custody, fine them or otherwise prosecute them. Some of these cases have been brought to court. There are examples of cases having been brought to The Supreme Court, see for instance [HR-2023-604-A](#) where the demonstrator was acquitted on some charges and where the fine and subsidiary imprisonment for other points were reduced, and [HR-2022-981-A](#) where the fine and subsidiary imprisonment were adjusted. The Supreme Court carefully considered the extent and limitations of the right to peaceful assembly pursuant to Norway's international obligations, including in particular the requirements pursuant to the European Convention on Human Rights Article 11, which requires interventions in peaceful assembly to have a legal basis, have a legitimate purpose and be necessary in a democratic society.

As stated in your letter, 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. The central question in the cases mentioned above is whether a protest is peaceful and thus should be allowed to proceed without restrictions or consequences for those demonstrating. This has to be decided upon based on the facts of each individual case and the rights of freedom of expression and assembly and the conditions for restricting these rights set out in Norway's national legislation and international obligations.

As a general comment, we note that demonstrators referring to Stopp oljeletinga in some way or the other during their demonstrations, or demonstrations referred to by Stopp oljeletinga, often use methods such as blocking public traffic or throwing paint at cultural objects or public buildings. The consequences of these methods of demonstration may vary. Whether these are peaceful protests falling under Article 3(8) of the Aarhus Convention or not has to be considered on a case-by-case basis, as exemplified above.

3 General legal framework

Norway ratified the Aarhus Convention on the 2nd of May 2003. As stated in Norway's last Report on Implementation of the Convention delivered in February 2021, the obligation pursuant to Article 3(8) to 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, is considered implemented through the national legislation concerning the rights to freedom of expression and assembly, and

the general legal framework providing for legal security and due process for individuals.

[The Norwegian Constitution](#) has a human rights chapter which includes the rights to freedom of expression (Section 100) and assembly (Section 101). Under Section 92, all public bodies must respect and safeguard the rights enshrined in the Constitution and in the human rights treaties to which Norway is a party.

The Human Rights Act incorporates five key human rights conventions into national law, some of which include the rights to freedom of expression and assembly. Under Article 3 of the Act, these conventions prevail in the event of a conflict with regular domestic legislation.

4 Ethical rules, training and guidelines

As for ethical rules, training and guidelines are available to ensure that prosecutors and judges do not seek or impose disproportionate sanctions on environmental defenders that have engaged in peaceful environmental protest. Both the courts and the Prosecuting Authority have ethical guidelines that emphasize the importance of acting in accordance with the rule of law and ensuring that proceedings maintain high quality. The Norwegian Courts Administration is responsible for the training of judges. It offers a national professional development program for all judges. The national training program for judges is based on two main measures:

1. A mandatory five module introductory program over three day periods which is held during the first year following a person's appointment as a judge. One of the modules covers international law, with human rights and the European Convention on Human Rights (ECHR) as key topics. The course has a practical orientation, and focuses on how to handle issues related to human rights in both civil and criminal cases. An introduction is given to sources of law and searches of law sources. The procedural requirements that follow from human rights, especially the ECHR, naturally form part of the procedural aspects of the module. The topics covered are key literature, judgments from the European Court of Human Rights (ECtHR), and judgments from other bodies. Teaching is given in legal methodology, with a special focus on the use of international sources of law.

2. An annual two day seminar for all judges.

A compulsory training program for public prosecutors has also been established. The Director General of Public Prosecution is partly responsible for this program, which varies from year to year in terms of content.