

Workshop at the Faculty of Law, University of Oslo

International Law and Article 112 of the Norwegian Constitution on the Right to Environment

15 and 16 May 2018

Auditorium 13, Domus Media, Faculty of Law, University of Oslo, Karl Johans gate 47 (entrance from the University Garden).

The Workshop with roundtable discussion between academics, practitioners and non-governmental organisations, seeks to explore the interplay between international law, climate change law and national law in the Norwegian context. Within the global movement of climate litigation, the discussions will focus on the first Norwegian climate case in order to give substance to the rights and obligations under Article 112 of the Norwegian Constitution on the right to a natural and healthy environment for current and future generations.

Two environmental NGOs, Greenpeace Nordic and Nature and Youth, supported by Grandparents Climate Campaign, have taken the Norwegian government to court for its decision to grant oil exploration licenses in the Arctic. In its judgment of 4 January 2018, the Oslo District Court held that Article 112 of the Norwegian Constitution grants a right to a healthy environment to individuals, which is enforceable in the courts and gives the State the obligation to protect it. While the Oslo District Court recognised the right to a healthy environment, it also found that the government had not breached its obligations under the Constitution.

While both sides are waiting to see whether the appeal will be heard directly at the Supreme Court level, the debate on the legal consequences of Article 112 for Norway's oil policies must go on. This debate on the obligations of the State to uphold the right to a healthy environment in a climate change context is an important one for Norway and for the global climate movement. The Workshop will situate the rights and obligations in Article 112 in relation to Norway's obligations under international law.

Reading material: Amicus curiae briefs and Oslo District Court judgment at <https://www.savethearctic.org/en/peoplevsarcticoil/background-documents/>

Article 112 of the Norwegian Constitution:

“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.”

The Norwegian constitution:

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

Programme

Tuesday 15 May 2018

10.00-10.30 Introduction and welcome

Ketil Lund, former Justice of the Supreme Court and Commissioner of the International Commission of Jurists, and Professor Mads Andenas, University of Oslo

10.30-11.30 Session 1: The role of international and comparative law in interpreting the Norwegian Constitution

- How does the *presumption principle* and the *precautionary principle* inform the duties of the State to take measures under Article 112?
- What is the “principle of autonomous Norwegian constitutional interpretation” cited by the Norwegian government in its response to the appeal in the People vs arctic oil case? How does it align with the presumption principle?
- How is international law applied by the Norwegian judiciary when adjudicating national issues?
- How is comparative law instructive to the Norwegian judiciary?

Moderator: Mads Andenas

Participants include:

Professor Catherine Banet, University of Oslo

Professor Beate Sjøfjell, University of Oslo

Professor Geir Ulfstein, University of Oslo

11.30-12.00 Coffee break

12.00 – 13.15 Session 2: Article 112 in the context of international and European human rights law

- How does the jurisprudence of the ECtHR inform the duties of the Norwegian State under article 112?

- How can international and comparative law be used to define the scope of judicial deference to the legislative and executive branches?
- How are the rights of future generations defined under international law and how should these rights be protected under the Norwegian Constitution?

Moderator: Professor Geir Ulfstein

Participants include:

Professor Mads Andenas

Professor Alan Boyle, University of Edinburgh

Sébastien Duyck, Center for International Environmental Law, London

13.15-14.45: Lunch break

14.45- 15.30 Session 3: Article 112 in the context of the international environmental law

- How does the precautionary principle inform the duty of the Norwegian State in relation to new Arctic oil drilling?
- How does the Norwegian government duty to take measures under Article 112 correspond to its obligation under customary international law not to cause transboundary environmental harm?
- How does international and European environmental impact assessment standards inform the duty of the Norwegian government to examine climate change impacts, taking into account the prohibition against project splitting?
- How do foreign courts jurisdictions handle environmental impact assessment of extractive projects and climate change?

Moderator: Professor Inger Johanne Sand, University of Oslo

Participants include:

Professor Ole Kristian Fauchald, University of Oslo

Navraj Singh Ghaleigh, University of Edinburgh

Michelle Jonker-Argueta, Legal Counsel Greenpeace International

15.30-16.00: Break

16.00-17.00 Session 3 continued

Wednesday 16 May 2018

10.00-11.15 Session 4: Article 112 in relation to Norway's climate change obligations

- How should Norway, as a developed country, fulfill its climate obligations under the Paris Agreement?
- How do the obligations of Norway under the Paris Agreement inform its obligations under Article 112?

Moderator: Mads Andenas

Participants include:

Professor Hans Petter Graver, University of Oslo

Professor Inger Johanne Sand

Richard Harvey, Legal Counsel, Greenpeace International

11.45-12.45: Final round table discussion and conclusion

Lunch
