

Helga Pedersen
Moot Court Competition



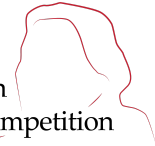
THE CASE OF THE

HELGA PEDERSEN

MOOT COURT COMPETITION

10TH EDITION - 2021





Velez v. Norland

Facts

1. The first applicant, Ms Elsa Velez, was born in 1980. She is married to the second applicant, Mr Rafael Velez, who was born in 1982. The third applicant, Mr David Velez, was born in 2015 and is the son of the first and the second applicant. All three applicants are nationals of Norland, a Council of Europe Member State. They live in Leti, in the Meganissia region of Norland. The first and the second applicants are teachers and their monthly net salaries are around the national average.

Background information

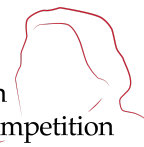
2. On 14 and 15 June 2020, exceptionally heavy rains fell across Norland, especially in the Meganissia region. Overall, approximately two-thirds of Meganissia were inundated with 120 millimetres in 24 hrs, while the average rainfall in the same area for the entire month of June was approximately 60 millimetres. The rainfall was the highest ever officially recorded in Norland and Meganissia. In addition, Norlandic scientists estimated that, in the absence of any recorded data, the rainfall in some areas had not been so extreme for the past several hundred years. As a result of the heavy rains, several rivers and lakes overflowed their banks.
3. The town of Leti with a population of 400,000 was among the most affected. In Leti, a flash flood swept away half of the houses on the main street located along the riverbank. Leti had occasionally flooded in prior years, but the floods were never a threat to the local population. After the 2020 rainfall and floods in Leti, 40 houses were completely destroyed and 80 houses were heavily damaged. 200 people were severely injured. The total property damage in Leti was estimated to 45,000,000 euros (EUR). Many remaining houses around the river bank did not have electricity or running water for two weeks due to the flood.
4. In addition to the above figures, 800 more people were injured in Norland, mostly in Meganissia region. Five people died as a result of the events in Norland, and a further 20 remain missing. The total property damage in the entire Norland has not yet been estimated, but could reach up to several billion EUR.

Flooding of the applicants' house

5. On 7 June 2020, the weather forecast predicted heavy rain for the following week.

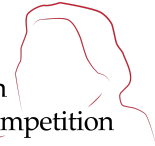


6. At 7 a.m. on 14 June 2020, the State Meteorological Service sent an urgent storm warning to the Department for Public Safety and Emergency Preparedness of the Norlandic Ministry of Defence (Department for PSEP). The notice indicated that heavy rainfall was expected in Meganissia for the following 48 hrs. The warning also stated that there was a high risk of floods due to the rising water levels of rivers and lakes in the region.
7. As of 8 a.m. on the same day, the Department for PSEP widely broadcasted the warning on national television, the Government's internet portals, social media, and via text messages to the local population. The broadcasts and text messages also noted the designated emergency shelters for evacuation, based on the place of residence. Rescue services were on standby and a number of teams deployed to check if everyone had evacuated. However, due to a malfunction of the warning system, some residents received the text messages with a one-hour delay. Also, some Leti residents did not take the warnings seriously, as the town had only seen some minor floods in the past.
8. At 9 a.m., Mr and Ms Velez received text messages with the warning and recommendation to evacuate to the nearest emergency shelter, a local warehouse. The two applicants had already seen the TV broadcasts, but this was the first time they wondered about the seriousness of the situation. They eventually thought that there was no need to evacuate and considered that the warnings were sent out of an abundance of precaution. Nevertheless, Mr Velez suggested his spouse to call him if there were any developments, and drove to his office located around 20 km from their home.
9. Around 12.30 p.m., with the torrential rains flooding the nearby rivers and lakes, the water in the Leti river moved rapidly and rose very quickly. As not all the Leti residents whose houses were along the riverbank, including the first and the third applicant, had left after the initial warning, the Department for PSEP now ordered an immediate evacuation. The immediate evacuation was communicated with text messages and an audio warning system. All rescue teams were deployed.
10. Around 1 p.m., the Leti riverbanks burst and water started entering houses that were along the riverbank. The water entered the applicants' home and started rising quickly. Ms Velez and her son David were inside the house. They did not have sufficient time to leave the house, so they tried to escape through the first-floor balcony. As they were running, a part of the staircase and the external wall collapsed and injured David. Ms Velez had to carry him to the balcony from where they were rescued by a rescue team 20 minutes later.
11. During these events, Mr Velez was at work in an area of Leti that was not affected by the floods. As news about the urgent evacuation spread, he watched his wife and son on live television, visibly shaken, waiting for assistance on the balcony, and finally being rescued by



a helicopter shortly before 2 p.m. As the live broadcast from the area continued, Mr Velez also witnessed their house being swept away water minutes later.

12. During the first and the third applicant's attempted escape, David sustained complicated fractures in both of his legs and his right arm. He also suffered a concussion. He underwent emergency surgery immediately upon transport to the hospital, where he was accompanied by Ms Velez. Later that afternoon, Mr Velez left the office and joined them. The hospital let Mr and Ms Velez stay with David for a few nights.
13. In the aftermath of the floods, all the affected persons from Leti, including the applicants, were offered accommodation in a local warehouse, the designated emergency shelter. Those who registered at the shelter received emergency food, water, hygiene products, mattresses and sleeping bags. Those with medical needs were treated in the local hospital, which was at a safe distance from the affected areas.
14. In the evening of the events, the Department for PSEP sent out a psychologist to the emergency shelter. The psychologist was certified to assist survivors dealing with the immediate aftermath of a trauma. Additionally, ten Red Cross volunteers provided psychological first aid to the affected individuals.
15. Mr and Ms Velez left the hospital in the afternoon of 16 June 2020 and returned to see what was left of their home. The authorities did not allow them to reach their property for safety reasons, but the applicants were told by the rescue services on the spot that their house had completely collapsed. They lost all of their belongings and personal effects of sentimental value.
16. Following this short visit, Mr and Ms Velez went to the emergency shelter for the first time, registered for assistance, and stayed there for two weeks. Subsequently they moved in with Mr Velez's parents who lived in an unaffected area of Leti.
17. David underwent one more arm surgery several weeks after the events to restore its appearance and function. He is currently undergoing physical rehabilitation with a good prognosis. All three applicants have been diagnosed with the post-traumatic stress disorder (PTSD), they suffer nightmares, panic attacks and extreme anxiety. They are undergoing psychotherapy since the tragic events.
18. All applicants are members of the regular compulsory state health insurance scheme. Accordingly, all of their medical costs are reimbursed through their health insurance, with the exception of psychiatric treatment, which is reimbursed up to 70%. In total, the applicants spend around EUR 150 a month on health care.



19. The Government used a special emergency fund and disbursed EUR 5,000,000 evenly to the affected population in Meganissia. The applicants received EUR 7,000. The local population and celebrities started fundraising activities and the applicants received additional EUR 1,000 from the funds collected.
20. The applicants are still living with Mr Velez's parents, as they do not have sufficient funds to rent or purchase a new property. The house destroyed during the floods was inherited by Mr and Ms Velez from relatives and valued at around EUR 300,000. Their private property insurance contract explicitly excluded natural disasters.

Compensation proceedings

21. On 20 July 2020, the self-represented applicants lodged a civil action with the Leti City Court against the Government of Norland, represented jointly by the Ministry of Defence and the Ministry of Environment. Referring to Article 12 of the Compensation Law, they claimed EUR 450,000 in damages. The applicants argued that Norland was responsible for the pecuniary and non-pecuniary damage they sustained due to the floods, especially their physical and mental suffering, loss of their home and property. They argued that Norland had failed to take timely actions to fight climate change, including by adopting legislation that would be able to minimise Norland's contribution to climate change, to proactively mitigate risks as well as to effectively respond to climate change-related natural disasters, such as floods. The applicants relied on the report prepared by the NGO Green World (see below) to support their arguments. They also argued that Norland had failed to comply with its obligations under the United Nations Framework Convention on Climate Change, the Kyoto Protocol, the Montreal Protocol, and the Paris Agreement. Finally, the applicants complained that the above-mentioned inaction endangered their lives and the lives of Norlandic people in view of similar future events.
22. On 31 August 2020, the Leti City Court held a public hearing where it heard the applicants, experts on climate change, representatives of the Department for PSEP, and the Ministry of Environment. Climate change experts explained the findings of the Green World report and the relation between climate change and hydro-meteorological extremes. The applicants adduced evidence concerning the damage to their property, medical reports attesting to the third applicant's state of health, medical expenses as well as psychiatric reports about the emotional suffering caused by the loss of their home and the stress and anxiety related to the past and future danger to their lives.
23. On 12 October 2020, the first-instance court ruled that Norland had failed to adopt a strategy and legislation on climate change and to implement its international obligations



- related to climate change, including adopting specific plans to reduce its greenhouse gas emissions and taking concrete measures based on such plans. With reference to the scientific evidence and the Paris Agreement, the court held that climate change required timely action as well as strategic planning. Norland had failed fully to comply with its obligations and, ultimately, to protect its population, including the applicants. Accordingly, its inaction established its liability under the Compensation Law for both the pecuniary and non-pecuniary damage sustained by the applicants. On 17 October 2020, the Government of Norland, represented jointly by the Ministry of Defence and the Ministry of Environment, lodged an appeal with the Meganissian Regional Court.
24. On 23 January 2021, the Meganissian Regional Court found in favour of the Government. It did not find any act or omission that could be attributable to Norland. Even though the court noted the pecuniary and non-pecuniary damage suffered by the applicants, it found that the lower court had erred in applying the law. The damage had been caused by the heavy rainfall and flash floods. Even though tragic, these were natural disasters and thus force majeure events for which Norland did not bear any responsibility. Finally, there was no clear link between the actions or omissions of the Norlandic authorities, climate change, and the concrete events that had affected the applicants on 14 June 2020.
 25. In any event, the court noted that the applicants had had all the relevant information about the weather forecast at their disposal but had not evacuated in a timely manner. Furthermore, as they did not have appropriate insurance for their property, which was available on the market, albeit at a higher price, they themselves had not exercised all the due preventive measures on their part. Accordingly, Norland could not bear responsibility for their private property loss.
 26. The court also noted that the applicants benefitted from the same health care and health insurance as any other resident of Norland. The applicants also had the option to take out private insurance should they wish to choose more generous coverage. Moreover, and in any event, Norland had already provided compensation to the applicants for the damage suffered under the Law on Emergency Situations. Finally, the court held that it could not speculate on theoretical possibilities of future danger to the applicants' lives caused by climate change.
 27. On 1 February 2021, the applicants, now represented by a *pro bono* attorney, submitted an appeal to the Supreme Court. They argued that the Regional Court had misinterpreted Norland's legal obligations and responsibilities, and misapplied the applicable national and international law. They noted that the case needed to be reviewed from a broader perspective. The latter would include, *inter alia*, the right to a healthy environment. Also, Norland had failed to take measures to address the issue of climate change in national

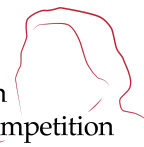


legislation and strategies and had effectively failed to recognise the role climate change played in natural disasters. The applicants also invoked Norland's positive obligations to protect lives, homes, and property, as well as to protect persons under its jurisdiction from grave harm or suffering. Finally, Norland had not fulfilled its obligations to prevent future harm, as not taking timely action against climate change would make it more difficult to prevent similar events in future. While the Norlandic Government offered the applicants partial compensation, it did not accept any responsibility for violation of their human rights. Norland had also completely failed to adopt preventive and risk reduction measures.

28. On 1 July 2021, the Supreme Court rejected the appeal. It held that, while it was true that Norland had not adopted a strategy and legislation on climate change, climate change was a complex phenomenon that in no case could be attributed to one particular State. The court did not dispute scientific evidence on climate change but noted that climate change was a result of actions or omissions by all countries around the world during a prolonged period of time. Even more so, the Norlandic Government had sent out timely warnings and had offered evacuation, shelter, therapy, and emergency relief to the affected population, including the applicants. The Government had thus complied with its obligations. Endorsing the reasoning of the Regional Court, the Supreme Court concluded that there were no grounds to engage the liability of the Government and grant additional compensation.
29. On 12 September 2021, the applicants submitted an application before the European Court of Human Rights alleging violations of their rights under Articles 2, 3 and 8 of the European Convention on Human Rights (the Convention) and Article 1 of Protocol No. 1.

Law

30. Norland is a Council of Europe Member State. It is not a Member State of the European Union. It has ratified all major Council of Europe and United Nations human rights treaties and all additional protocols to the Convention. It has signed but not ratified the Council of Europe treaties No. 150 and 172, which relate to the protection of the environment. On the other hand, it has ratified the United Nations Framework Convention on Climate Change, the Kyoto Protocol, the Montreal Protocol, and the Paris Agreement. For international law to be applicable in Norland it must be transposed into national legislation.
31. The Norlandic Constitution incorporates all rights guaranteed by the Convention and its Protocols. In addition, Article 54.1 of the Constitution provides that everybody has the right to a healthy environment. Article 54.2 states that Norland shall adopt effective environmental legislation and policy.



32. Norland has a population of 10 million. It is the 24th economy among the Council of Europe Member States based on its nominal gross domestic product (GDP). The average net monthly salary is EUR 1,200. The main industry sectors include automotive, chemical, textile, construction, agriculture industry, and livestock farming.

Law on Emergency Situations

33. The law and its by-laws include a rapid emergency response plan for natural disasters which outlines safe zones, actions to be taken, and the relevant institutions charged with adopting such measures. The plan includes a system of early warning through media, social media and telecommunication providers. It also includes an emergency fund to provide swift and urgent monetary relief based on the exigencies of individual situations.

Compensation Law

34. Article 12 of the Compensation Law provides that if an individual has suffered pecuniary or non-pecuniary damage as a result of an action or an omission by the State authorities, he or she may lodge a civil action with the competent city court. The State could not be held responsible for *force majeure* events.

Civil Procedure

35. Decisions of city courts may be challenged before the competent regional courts within 30 calendar days from the date when the decision was served on the party.
36. The Supreme Court as the highest court only hears certain types of cases, including appeals against decisions of regional courts on claims lodged under Article 12 of the Compensation Law. The deadline for such an appeal is 10 days after the adoption of the regional court's judgement. The decisions of the Supreme Court are final and not subject to a further appeal.

National Strategy on Action 13 (Climate Change) of the United Nations Sustainable Development Goals

37. Since 2018, a draft national strategy on climate change has been under discussion within the Ministry of Environment. One public general consultation has been held thus far. No draft law on climate change has been formally prepared yet. The preparatory documents envisage, *inter alia*, the Prime Minister to lay reports before Parliament containing an assessment of the national risks relating to the current and predicted impact of climate change. The strategy envisions that all greenhouse gas emissions are to be cut down to net-zero by 2050 and that fossil fuels be gradually replaced with renewable and cleaner sources of energy. In the past 10 years, Norland has emitted around 100 million tonnes of greenhouse gases per year.



38. The strategy also reflects on the need to amend the Law on Environment, which regulates traditional issues such as waste management, water pollution, and protection of flora and fauna. The Law was adopted in 1995 and has not been updated to reflect new scientific research and international standards.
39. The delay in the adoption of the strategy and legislation on climate change was caused by concerns about the budgetary impact. During the general consultations, the Ministry of Finance argued that other immediate and long-term measures were necessary to fulfil the Government's plans to increase the net average monthly salary, which stood at approximately EUR 1,200.
40. In 2020, the NGO Green World published a study entitled "Comparative research on climate change". The study examined the Council of Europe Member States' recognition of climate change in their national frameworks, as well as the measures taken to address climate change. The study pointed out the extent to which the national risk assessments and risk reduction strategies were based on scientific research and advice by local or international expert bodies. It also assessed whether these strategies were able effectively to assist States with fighting climate change. Norland was placed in the 24th place, as it had not adopted a national strategy, a specific law, nor taken any specific measures to fight climate change, except dealing with the aftermath of events related to climate change. Climate scientists consulted by the NGO underscored that human activities in Norland had led to large amounts of carbon dioxide and other greenhouse gases (methane, nitrous oxide) being released into the atmosphere and changed the earth's climate. The report further noted that there was unequivocal scientific evidence of a direct link between greenhouse gas emissions and forest fires, floods, and other extreme weather events. Scientists warned that the climate system responded to the emissions of greenhouse gases over an extended period of time. For example, the impact of gases emitted in 2020 might only be seen in thirty years. The future effects of climate change would include further increases in global temperatures, rising sea levels, and an increase in extreme weather events, such as tornadoes, fires, floods, or drought.