SVW Dispute Resolution Newsletter

Q1 2025

Dear reader,

The time has come for the first 2025 newsletter from SVW's Dispute Resolution Team - as usual, we provide an update on the most significant topics within litigation and arbitration.

In this first quarter, several interesting decisions have been made. For example, the Norwegian Supreme Court has decided on the application of section 36 of the Contracts Act regarding unreasonable terms and contract revision in commercial matters.

Significant decisions have also been made outside Norway - we would like to highlight the decision in which the Scottish Court of Session quashes the permits for Equinor's oil field Rosebank and Shell's gas field Jackdaw and the decision E 13/24 from the EFTA Court on the interpretation of the Water Framework Directive 2000/60/EC.

Furthermore, it is useful to know the rules on the defendant's right to demand security for legal costs as stated in Section 20-11 of the Dispute Act.

Looking ahead, in the next quarter the Supreme Court will hear a case on the question of retroactive termination of an air freight agreement, which can be of great importance.

You can read more about all these topics in this newsletter for Q1 2025.

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27 March 2025

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The relevance of section 36 of the Contracts Act in commercial disputes

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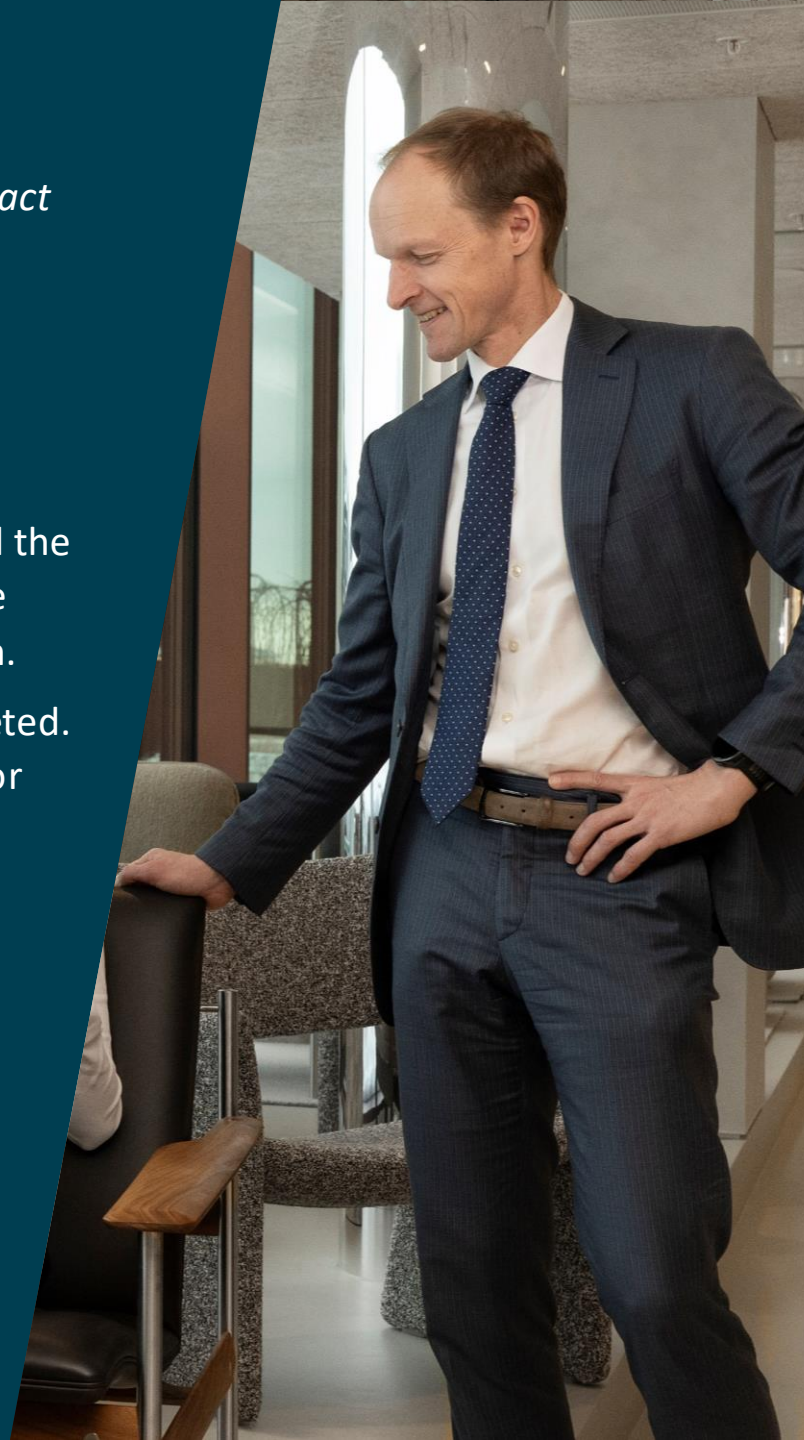
In a judgement 12 February 2025 (HR-2025-251-A) the Supreme Court found that a contract between entrepreneurs was unreasonable, and it was set aside under section 36 of the Contracts Act

- In 2017, four founders sold 45.5% of their shares to the remaining two founders for approximately 41 million NOK, with the buyers receiving credit against the shares.
- In connection with negotiations with a foreign company regarding capital infusion and the sale of shares in the company, the parties entered into a settlement agreement where the agreed price of the shares was reduced by 70 percent, to around NOK 12.2 million.
- Payment was to be made when the transaction with the foreign company was completed. A few months later, all the shares in the company were sold to the foreign company for NOK 180 million, resulting in a significant profit for the two remaining owners.
- The Supreme Court found the settlement agreement to be unreasonable and set it aside, ruling that the sellers are entitled to payment according to the original 2017 share purchase agreement. The decision provides guidance on the application of Section 36 of the Contracts Act in commercial contracts.
- Lawyer / partner Christian Reusch represented the sellers before the Supreme court.



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Court in Edinburgh quashes permits for Rosebank and Jackdaw

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Court in Edinburgh quashes permits for Rosebank and Jackdaw

On January 30, 2025, the Scottish Court of Session issued a ruling in a case brought by Uplift UK and Greenpeace UK against Equinor. In the ruling, the Scottish court quashes the permits for Equinor's oil field Rosebank and Shell's gas field Jackdaw and bans production of oil and gas pending lawful assessment of their impacts on climate.

- The Court of Session follows similar judgments by the UK Supreme Court in Finch on 20 June 2024 and the Oslo District Court on 18 January 2024, in a case pleaded by SVW on behalf of two environmental organizations (Greenpeace and Nature and Youth).
- The consequence of the ruling from the Scottish court is that the companies lost their permit for the controversial fields in the UK. It is not certain whether new permits will be granted.
- However, Equinor is still allowed to continue the construction development of the field, at its own risk, during the period until an application for a new permit has been evaluated.
- The court emphasizes that it is a condition that no oil or gas can be extracted from the Jackdaw or Rosebank fields until they have potentially received a new permit.

- Read the decision from the Court of Session here.

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New decision from the EFTA-court: Case E-13/24

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New decision from the EFTA-court: Case E-13/24

- In 2022, two Norwegian environmental NGOs (Norges Naturvernforbund and Natur og Ungdom) took legal action against the Norwegian Government before Oslo District Court, arguing that four permits granted to Nordic Mining were invalid. This included a permit for mining operations allowing disposal of up to 170 million tonnes of mining waste in Førdefjorden. According to the environmental organizations, this permit violated the EEA law, including Article 4(7) of the Water Framework Directive 2000/60/EC. The environmental organizations argued i.a. that the permits were based on considerations outside the scope of what can constitute an "*overriding public interest*" under Article 4(7)(c) of Directive 2000/60/EC.
- After losing in the District Court, the environmental organizations appealed to the Appellate Court. The Appellate Court decided to request an advisory opinion from the EFTA Court on the interpretation of Article 4(7)(c) of Directive 2000/60/EC.
- On March 5th, 2025, the EFTA Court ruled in case E-13/24 that exceptions to Article 4(7)(c) should be interpreted strictly and that economic interests alone cannot constitute an *"overriding public interest"*. More specifically: Income generated as a result of an economic activity (including for employees, shareholders, or the EEA State in question via taxes), cannot be considered to constitute an "*overriding public interest*" within the meaning of Article 4(7) of Directive 2000/60.

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- This was the main advantage of the mining project in question (future revenues from mining activities distributed between employees, shareholders, municipalities and the state).
- However, the EFTA Court also expressed that certain considerations linked to the social and economic situation of a particular area, or the contribution of a project to the security of supply, or the supply, of critical raw materials within the EEA, may be considered to constitute an "*overriding public interest*" within the meaning of Article 4(7) of Directive 2000/60, provided that all the other conditions set out therein have been fulfilled.
- In other words, E-13/24 confirms that economic interests alone are not sufficient for allowing pollution of a fjord.
- This ruling from the EFTA Court clarifies the stringent criteria for exception to the general obligation to prevent deterioration in the status of surface water bodies based on "*overriding public interest*" and will be important when the case is reviewed by the Appellate Court in June 2025.

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Security for legal costs

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Security for legal costs – The Norwegian Dispute Act section 20-11

- When faced with legal action, the defendant always runs some risk of winning the case, without being able to recover incurred legal costs. Particularly if the plaintiff is in financial difficulties, this raises the question of whether it is possible for the defendant to demand security for potential liability for legal costs.
- Under Norwegian law, a defendant may demand that a plaintiff provide security for potential liability for legal costs, cf. the Dispute Act section 20-11 (1). If the security is not provided as ordered by the court, the case shall be dismissed.
- However, this provision only applies if the plaintiff is not domiciled in Norway or another EEA-country. There are also exceptions if the provision violates international law obligations, or if it would appear disproportionate based on the nature of the case, the relationship between the parties or other circumstances.
- The purpose of the provision is to prevent the defendant from suffering a loss if awarded legal costs that must be recovered abroad. Therefore, the decisive factor is where the plaintiff is domiciled, rather than their citizenship. As a result, the defendant cannot require security from foreign nationals residing in Norway, but it can be required from Norwegian nationals residing outside the EEA. For companies, the deciding factor is where the company is formally registered, or if the company is not registered, where the main administration is located.
- An important practical exemption from the duty to provide security follows from the Civil Procedure Convention of March 1, 1954. Updated information about the member states can found here.

Supreme Court to consider case on retroactive rescission of air transport agreement

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Supreme Court to consider case on retroactive rescission of air transport agreement

- The case concerns an agreement to transport 76 tons of salmon by plane from Norway to China in 2021. Due to pandemic restrictions, goods handling at the airport in China was disrupted. The fish was left out in the heat and spoiled and could not be sold.
- Consequently, the Norwegian seller claimed rescission of the contract for transport of the salmon. As a main rule under Norwegian law, rescission only has effects going forward.
- Rescission may be applied retroactively (“ex tunc”) if the breach of contract is especially severe. Borgarting Court of Appeals found this to be the case and held in favor of the seller.
- The Supreme Court’s judgment in the case will provide clarification on the threshold for retroactive rescission of contracts under Norwegian law. It will also offer clarification on how rescission should be carried out in cases where a transport assignment has been performed without the goods reaching their intended customer.
- The hearing in the Supreme Court is scheduled for the 1st and 2nd of April, with case number 24-144137SIV-HRET.

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Leading Norwegian Law Firm Within Dispute Resolution

Our team has experience from all domestic courts, EFTA and EU courts, as well as Norwegian and international arbitration.

11
Partners Admitted to the Supreme Court

18
Dedicated Litigation Lawyers

Top ranked
By Legal 500 and Leaders League

"With its excellent legal knowledge, strong guidance and eye for the important details, Simonsen Vogt Wiig really contributes to obtaining good results in legal disputes."

- Chambers and Partners, 2025

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