Norwegian Supreme Court - Orskurd - HR-2025-677-A

Instance	Supreme Court of Norway – Order
The date	2025-04-11
Published by	HR-2025-677-A
Keyword	Civil proceedings. Temporary injunction. Petroleum fields in the North Sea.
Executive summary	The case concerns a claim for interim relief - "temporary injunction" - for a claim for invalidity of a so-called PDO decision and suspension of development and production at three petroleum fields in the North Sea. The question before the Supreme Court was whether the Court of Appeal had interpreted the rules on interim measures in Section 34-1 of the Dispute Act correctly. The Court of Appeal had assumed - based on overriding societal considerations - that it did not have the authority to comply with the request for interim relief, since it concerned greenhouse gas emissions from petroleum production. The Supreme Court has ruled that this is an incorrect interpretation of the law, and overturns the order. The Supreme Court has not itself ruled on the main requirement of invalidity, or whether it is necessary to intervene ("security reason") and whether the injunction sought will be proportional, but states that the Court of Appeal must base its new assessment on the following: - If one or more of the basic conditions in section 34-1 of the Dispute Act for interlocutory relief - main claim, security reason and proportionality (misuse) - are not met, interlocutory relief may not be granted. - The proportionality assessment under section 34-1 second paragraph of the Dispute Act is specific and cannot be based on the courts having limited competence. - If it is likely that the EU's Project Directive has been violated and the conditions are otherwise met, the competence that the "discretion" in section 34-1 first paragraph gives the courts must be used in this case to adopt an interim measure. The decision clarifies the content of section 34-1 of the Dispute Act.
Key paragraphs	Paragraphs 57, 58, 59, 60, 61
Procedure	Oslo District Court TOSL-2023-99330 - Borgarting Court of Appeal LB-2024-36810-3 - Supreme Court HR-2025-677-A, (case no. 24-177617SIV-HRET).
Parties	Föreningen Greenpeace Norden and Natur og Ungdom (attorney Jenny Arge Sandvig) v Staten v/Energidepartementet (Regjeringsadvokaten v/advokat Omar Saleem Rathore - for trial).
Author	Judges Borgar Høgetveit Berg, Per Erik Bergsjø, Ingvald Falch, Knut Erik Sæther and Aage Thor Falkanger.

Table of contents

(1) Judge **Høgetveit Berg:**

What the case is about and its background

(2) The case concerns a claim for interim relief - "temporary injunction" - for a claim for invalidity of administrative decisions and for suspension of development and production at three petroleum fields in the North Sea. The question for the Supreme Court is whether the Court of Appeal has interpreted section 34-1 of the Dispute Act correctly.

(3) The central issue in the main case is whether impact assessments prior to the decision to approve the plan for development and operation (PDO) must include the climate impact of subsequent combustion emissions from the energy product. The appealing parties believe that the PDO decisions for the Breidablikk, Tyrving and Yggdrasil fields are invalid because they lack such assessments. The claim of invalidity is the main claim in the injunction case. In the injunction case, the environmental organizations have demanded that the court order the state to suspend the effect of the PDO decisions, or alternatively prohibit the state from making other decisions that imply valid PDO decisions until the main claim has been legally decided.

(4) *Breidablikk* is an oil-only field with estimated recoverable reserves of just over 30 million standard cubic meters of oil. Gross emissions from the field are around 87 million tons of CO2. Total investments amount to around NOK 19 billion. The expected production period is 20 years. The Ministry of Petroleum and Energy approved the PDO for Breidablikk on June 29, 2021. The field was originally expected to start up in the first quarter of 2024, but the Norwegian Petroleum Directorate approved start-up in September 2023, and the Ministry of Petroleum and Energy granted the first production license on 13 October 2023. The most recent impact assessment for Breidablikk is from 2013. The climate impact of the later combustion emissions from the products has not been assessed.

(5) *Tyrving* is also a pure oil field. The recoverable reserve is calculated at just over 4 million standard cubic meters of oil equivalents. Gross emissions are calculated at 11.3 million tons of CO2. Production start-up was planned for the first quarter of 2025, but this was brought forward to September 2024. Expected production time is 15 years. The licensees applied for approval of the PDO in August 2022. The Ministry approved the PDO on June 5, 2023. Production from Tyrving started on September 3, 2024. Combustion emissions are not included in the impact assessment from 2022.

(6) *Yggdrasil* comprises the Hugin, Munin and Fulla fields, and contains oil, gas and NGL - *natural gas liquid*. The expected recoverable reserve is calculated at approximately 103 million standard cubic meters of oil equivalents. Total gross emissions are calculated at 365 million tons of CO2. Total expected investments for the development of the field are over NOK 115 billion. Production is expected to start in 2027 and the expected production time is 25 years. Due to the high investment cost, the PDO approval was submitted to the Norwegian Parliament in Prop. 97 S (2022-2023) in March 2023. In May 2023, the majority of the Energy and Environment Committee recommended that the Storting consent to the Ministry's decision to approve the PDO, see Innst. 459 S (2022-2023). On June 6, 2023, the Storting made a decision in accordance with the majority's recommendation. The Ministry of Petroleum and Energy then approved the PDO for Yggdrasil on June 27, 2023. For Yggdrasil, too, the climate impact of subsequent combustion emissions from the product has not been investigated.

(7) On June 29, 2023, Föreningen Greenpeace Norden and Natur og Ungdom (Nature and Youth) filed a lawsuit in Oslo District Court challenging the validity of the Ministry's decision to grant PDO approval for the Breidablikk, Tyrving and Yggdrasil fields. The organizations also demanded interim relief.

(8) On January 18, 2024, Oslo District Court handed down its verdict and order. The court ruled that the three PDO decisions were invalid. The court was of the opinion that combustion emissions should have been subject to an impact assessment, cf. Section 4-2 of the Petroleum Act, cf. Section 22a of the Petroleum Regulations, interpreted in light of Section 112 of the Norwegian Constitution and Article 4(1) of the EU Project Directive, cf. Article 3(1). The error could have affected the content of the decisions. The conclusion of the order on interim measures is worded as follows:

> "1. The state is prohibited from making other decisions that require valid PDO approval for Breidablikk until the validity of the PDO decision is legally binding.
>
> 2. The state is prohibited from making other decisions that require valid PDO approval for Tyrving until the validity of the PDO decision is legally binding.
>
> 3. The state is prohibited from making other decisions that require valid PDO approval for Yggdrasil until the validity of the PDO decisions has been legally determined."

(9) The state appealed the judgment and the order to the Court of Appeal. On March 20, 2024, the presiding judge in the Court of Appeal decided that there should be a separate hearing on the grounds for security and the balance of interests for interim measures, cf. Section 34-1, first and second paragraph of the Dispute Act. He also decided that the right to enforce the injunction should be postponed until the Court of Appeal had decided these issues. In its decision of 16 May 2024, the Court of Appeal decided that the state's appeal against the District Court's ruling on interim measures should nevertheless be heard together with the main case. The right to enforce the injunction was suspended until the Court of Appeal had decided on the appeal against the injunction, cf. section 19-13 third paragraph of the Dispute Act. In decisions of June 17 and July 5, 2024, the Court of Appeal rejected claims for reversal of the suspension.

(10) On July 5, 2024, the Court of Appeal decided to postpone the main case and ask the EFTA Court about the interpretation of the EU's Project Directive, cf. Section 51a of the Courts Act. The referral letter was sent on September 2, 2024. The case on interim measures was not postponed.

(11) In a written submission dated August 28, 2024, the state presented a decision from the Ministry of Energy made on the same day, in which the ministry concluded that there was no basis for revising the approvals from June 2023 for the Yggdrasil and Tyrving fields. Greenpeace Norden and Natur og Ungdom submitted an alternative claim to the Court of Appeal in the main case that these rejections are also invalid.

(12) Borgarting Court of Appeal ruled on October 14, 2024 with this conclusion:

> "1. The request for a temporary injunction is not granted.
>
> 2. Case costs are not awarded, neither for the Court of Appeal nor the District Court."

(13) The Court of Appeal did not decide whether the conditions for interlocutory relief - the main claim and the grounds for security - were met, as the court concluded that the case had to be resolved according to more general considerations. The parties disagree on the basis on which the Court of Appeal decided the case, which I will come back to.

(14) Greenpeace Norden and Natur og Ungdom have appealed the decision to the Supreme Court. The appeal is directed against the interpretation of the law and the handling of the case. On December 9, 2024, the Appeals Committee of the Supreme Court decided that the appeal should be decided by the Supreme Court in a division with five judges, cf. section 5, first paragraph, second sentence of the Courts of Justice Act, see HR-2024-2249-U.

(15) The Supreme Court has received two written submissions pursuant to section 15-8 of the Dispute Act that are intended to shed light on public interests. The submissions are from Klimarealistene and Save

the Children. They form part of the basis for the decision, cf. section 15-8, second paragraph, third sentence.

View of the parties

(16) The appealing parties - *Föreningen Greenpeace Norden* and *Natur og Ungdom (Nature and Youth)* - have essentially claimed:

(17) The Court of Appeal must be understood to mean that in cases concerning fundamental environmental issues, the courts do not have the competence to assess the interests pursuant to section 34-1, second paragraph of the Dispute Act and adopt interim measures pursuant to section 34-1, first paragraph, even if both the main claim and grounds for security have been established. There is no basis for this. The Act does not make exceptions for cases concerning the environment, climate or petroleum activities. On the contrary, it follows directly from section 32-11, first paragraph, third sentence of the Dispute Act, and section 34-2, third paragraph, that interim measures may be used in this case. The underlying main claim is invalidity - which the courts can decide. The requirement for interlocutory relief does not go further than the courts' competence to declare administrative decisions invalid. Denying interlocutory relief where invalid decisions with grounds for protection are likely would undermine the rule of law and democratically enacted legislation.

(18) The fact that the courts "may" adopt interim measures does not mean that the courts - when the conditions are met - may fail to undertake the balancing of interests required by the Act. If the Court of Appeal's real reason for the refusal was that an interim measure would go too far, the Court of Appeal should have discussed this under section 34-1, second paragraph. In any case, it is up to the court to decide what measures should be taken to secure the main claim, cf. section 34-3 second paragraph of the Dispute Act.

(19) The Court of Appeal misread the Supreme Court's plenary judgment HR-2020-2472-P. The democratic considerations that the Court of Appeal emphasized concerned the substantive limits set by Article 112 of the Norwegian Constitution paragraphs 3 and 1 for oil and gas policy. These do not apply in a case of interim measures where these rules in section 112 are not invoked, and the Court of Appeal has ruled that the decisions are invalid. The Court of Appeal's reasoning - that climate and environmental issues are politically controversial - also applies to many other areas of law.

(20) The Court of Appeal's failure to make use of its competence is contrary to the Aarhus Convention. The Court of Appeal's failure to do so is also contrary to the duty to interpret in conformity with EEA law, cf. Article 3 of the EEA Agreement. In any event, the Court of Appeal's reasoning is so deficient that it prevents the appeal from being heard on this point. The interpretation is also contrary to the principle of effectiveness in EEA law. Since the effects of the PDO decisions result in irreversible harm, the obligation to repair will be unenforceable if interim relief is not granted. The state cannot claim that the EEA breach has been repaired as a result of the inadequate additional assessments made subsequently. The Court of Appeal's legal practice is ultimately contrary to several rules in the European Convention on Human Rights - ECHR. The lack of intermediate injunction cuts off the environmental organizations' right to environmental information and participation in the process, and erodes the right to effective protection against serious harm to life and health.

(21) *Föreningen Greenpeace Norden* and *Natur og Ungdom* have made this claim:

"1. Borgarting Court of Appeal's ruling of October 14, 2024 is set aside.

2. Föreningen Greenpeace Norden and Natur og Ungdom shall be awarded legal costs before the Court of Appeal and the Supreme Court."

(22) The respondent - *the Norwegian State represented by the Ministry of Energy* - has essentially made the following claims:

(23) The Court of Appeal has correctly interpreted section 34-1 of the Dispute Act to mean that the provision gives the courts the right, but not the obligation, to grant interim relief when the conditions are met. Nor is an obligation to grant interim relief provided for in the Aarhus Convention, EEA law or the ECHR.

(24) Both the proportionality assessment pursuant to section 34-1, second paragraph of the Dispute Act and the judge's discretion pursuant to the "may" rule in the first paragraph allow for an assessment of all intersecting interests. In the assessment pursuant to Section 34-1, first paragraph, emphasis can be placed on what kind of interim measure is demanded, what interests this is intended to protect and may affect, whether the measure means that the courts in the case must overrule assessments that have already been made by the elected representatives, and how this relates to the courts' review of the claim in the main case. Anything else would not harmonize well with the Supreme Court's view in HR-2020-2472-P. The Court of Appeal has emphasized factual considerations.

(25) The Court of Appeal has not established that the courts are generally precluded from adopting interim measures in cases concerning climate and petroleum activities. On the other hand, the Court of Appeal has considered whether there was sufficient reason to shut down petroleum fields during production and development in this case. This specific assessment under the judge's discretion cannot be reviewed by the Supreme Court, cf. Section 30-6 of the Dispute Act.

(26) There are no EEA rules that harmonize the conditions for interim relief. It is true that other general EEA rules may modify the principle of the state's procedural autonomy, such as Article 3 of the EEA Agreement, the principle of EEA-conform interpretation and the principle that the procedural rules must not make it impossible or impractical to enforce EU law in the courts. However, none of the rules in themselves provide a right to interim relief. In any case, the Court of Appeal has assessed the case concretely and concluded that the appellants' claim to enforcement of EEA law is sufficiently safeguarded when the legal process is viewed as a whole.

(27) Nor is the Court of Appeal's ruling contrary to the ECHR. A decision on the claim for interim relief will not effectively determine the right to environmental information and participation or possible procedural ECHR rights. Article 6 of the ECHR requires a fair trial, and Article 13 requires an effective remedy for violations of the ECHR. None of these rules require interim measures. Nor does Article 8 of the ECHR require interim measures to be adopted in climate cases such as this one.

(28) The Court of Appeal's reasoning does not have any deficiencies that prevent the appeal from being heard. The order must be read as a whole and provides full opportunity to assess whether the Court of Appeal has interpreted the law correctly.

(29) The Norwegian State, represented by the Ministry of Energy, has made this claim:

"The appeal is dismissed."

My view

The issue

(30) The case concerns interim measures to secure the main claim for which the District Court has given judgment, and which the appealing parties believe they have. The main claim is that PDO approvals

for three petroleum fields should be declared invalid due to procedural errors. The question in the main case is whether it is a breach of, inter alia, the EU Project Directive [2011/92/EU as amended by 2014/52/EU][1] not to assess the consequences of burning oil and gas from the fields before the PDO is approved. The Court of Appeal will take a position on the main claim after the EFTA Court has ruled on how the Project Directive should be interpreted.

(31) The issue before the Supreme Court now is whether the Court of Appeal has interpreted the rules on interim measures correctly. The request for interim measures is based on the harmful effects that the extraction of oil and gas will have when the products are combusted. In the view of the environmental organizations, the emission of greenhouse gases until a final judgment in the main case will in itself lead to significant harmful effects. In addition, development and further operation will reduce the prospects that a judgment of invalidity in the main case will lead to reversal.

(32) In principle, the Supreme Court can only review the Court of Appeal's general interpretation of the law and handling of the case, cf. Section 30-6 of the Dispute Act. The Supreme Court cannot review the specific assessments. When it comes to the ECHR, the specific application of the law can also be reviewed. It is not necessary for me to consider whether the same applies to the EEA Agreement.

The basic conditions for intermediate fastening

(33) There are three basic conditions for interim relief. Firstly, section 34-2(1) of the Dispute Act requires that the main claim has been made probable. Secondly, it must be necessary to intervene, i.e. there must be a security reason, cf. Section 34-1, first paragraph of the Dispute Act. Thirdly, the intervention must not be manifestly disproportionate, cf. the second paragraph. Section 34-1 of the Dispute Act reads as follows:

> "(1) An interim injunction may be ordered:
> a. when the defendant's conduct makes it necessary to temporarily secure the claim because the prosecution or enforcement of the claim would otherwise be significantly impeded, or
> b. when it is deemed necessary to obtain a temporary settlement of a disputed legal matter in order to prevent significant damage or inconvenience, or to prevent violence that the defendant's behavior gives reason to fear.
>
> (2) An interim injunction may not be granted if the damage or inconvenience caused to the defendant is manifestly disproportionate to the interest of the plaintiff in the injunction being granted."

(34) When the Dispute Act came into force, the rules on interim security - arrest and interim measures - were, with very few exceptions, transferred from the Enforcement Act to the Dispute Act without any changes. The preparatory work for the rules on interim security is thus mainly Ot.prp. nr. 65 (1990-1991).

(35) It is settled law that public law claims - claims that an administrative decision is invalid - can also be secured by interlocutory relief. This was established in Rt-1955-953 *Czardas* and has been continued in the Dispute Act, cf. Ot.prp. nr. 65 (1990-1991) page 290. Main claims based on assertions that rules that safeguard environmental considerations have been violated can also be secured by means of an interlocutory injunction, cf. also explicitly Section 32-11, first paragraph, third sentence of the Dispute Act, and Section 34-2, third paragraph. The prerequisites in all cases are that the plaintiff has a legal interest - and that it is possible to obtain a judgment for the main claim, cf. Section 32-2 of the Dispute Act, cf. Section 1-3.

(36) An interlocutory injunction may not be granted if the damage or inconvenience caused to the defendant by the injunction is "manifestly disproportionate" to the plaintiff's interest in the injunction being granted, cf. section 34-1 second paragraph of the Dispute Act. The provisions make it clear that a principle of proportionality applies, whereby all interests in the picture are taken into account. The preparatory work specifies that there may be cases where both the main claim and the grounds for security are present, but there is still no basis for intervening with an interim measure. The misuse assessment was added to the Act in 1992, but is described in the preparatory work as a continuation of the "discretion" under older law, see Ot.prp. nr. 65 (1990-1991) pages 292-293.

The discretionary rule in section 34-1, first paragraph of the Dispute Act

(37) The Court of Appeal based its decision on the fact that "an assessment must ultimately be made as to whether an injunction should also be ordered, cf. the words 'may be ordered'". On the other hand, the appealing parties have argued that the introductory "may" in the wording of section 34-1, first paragraph, must be read as a "shall".

(38) By way of introduction, in the special notes to section 15-2 of the Enforcement Act - now section 34-1 of the Dispute Act - one can read in Proposition no. 65 (1990-1991) on page 291:

> "The section contains provisions on the grounds for interim injunctions. According to the provision, the court may order an interim injunction when the conditions are met. Even if the court finds that the statutory conditions are met, the court may nevertheless refrain from ordering an interim injunction after an overall assessment of the intersecting interests. The balancing of the intersecting interests will, among other things, involve an assessment of damages or disadvantages for both parties."

(39) After this quotation, the Ministry comments on the condition of security grounds in the first paragraph and then the balancing of interests in the second paragraph. The appealing parties are of the opinion that the overall assessment referred to in the quote is the assessment to be made by the court under the second paragraph. I do not agree with this. As mentioned, the quote appears in the introduction to the notes and relates to the entire section, cf. also the use of the expression "the terms of the Act". It would also have been natural to specify that the former "may discretion" had been replaced by the second paragraph if this was the intention.

(40) There is no case law from the Supreme Court that explicitly addresses the question of the continuation of the "can discretion" after 1992. However, there is confirmatory court of appeal practice. Nor is there any case law or literature that suggests that "may" must always be read as "shall". On the contrary, the legal literature is unanimous that "may" should be read as "can". I refer, for example, to Inge Lorange Backer, *Norsk sivilprosess*, 3rd edition 2024, page 228:

> "Even if the conditions for temporary protection are met, the plaintiff is not entitled to have the court decide on protection - it is said that the court 'may' decide on temporary protection. But usually the plaintiff will be successful when the conditions are met."

(41) The fact that the court is very free to design the specific interim measure, cf. section 34-3, second paragraph, of the Dispute Act, substantiates that there is a basis for an overall assessment of whether interim measures should be adopted, cf. the introductory words "may be decided".

(42) The conclusion is therefore that "may" in the first paragraph of Section 34-1 of the Dispute Act refers to a judge's discretion. This discretion must be exercised in light of the objectives set out in section 1-1 of the Dispute Act. This preamble points to the most important aspects of the exercise of discretion, cf. Ot.prp. nr. 51 (2004-2005) page 363.

(43) In my view, it is also a correct characterization that this judicial discretion in practice will largely coincide with the misconduct assessment under section 34-1 second paragraph. The courts are relatively free in both assessments and can give weight to a wide range of considerations. Both assessments must nevertheless be specific.

(44) In this case, however, the leeway the courts have under the "discretion" in section 34-1, first paragraph, must be limited if it is likely that the EU Project Directive has been breached. The EEA Agreement does not have rules on national handling of claims for interim measures to secure claims based on the EEA Agreement. However, the EEA law *principle of effectiveness* and the adjacent principle of *effective protection* of EEA law indicate that there is no room for "discretion" if the conditions for interim measures are otherwise fulfilled. As regards the existence and detailed content of these EEA principles, I confine myself to referring to Article 3 of the EEA Agreement, the EFTA Court's judgment of 13 June 2013 in Case E-11/12 *Koch and others*, paragraphs 117 and 121, Rt-2005-597 *Allseas*, paragraph 38, and the ECJ's judgment of 13 March 2007 in Case C-432/05 *Unibet*, paragraph 82.

(45) The principles mean that it must be practically possible to secure such requirements through interim measures. This is particularly important if it is established or likely that inadequate impact assessments lead to irreversible environmental damage. The state will then have a duty to stop the effects of the EEA breach, for example by postponing the effects of decisions made, see the European Court of Justice's judgment of June 25, 2020 in case C-24/19 *A and other* paragraphs 83. This duty is also incumbent on the national courts, within the framework of their competence.

(46) In my opinion, the consequence must be that the "discretion" the courts have under section 34-1, first paragraph of the Dispute Act cannot be used to refuse an interim measure if the court finds it probable that the EU Project Directive has been breached, and the conditions for an interim measure are otherwise met. The courts must then use their competence to adopt an interim measure.

The Court of Appeal's decision

(47) As mentioned, the question is whether the Court of Appeal has interpreted the rules on interim measures correctly, and whether the grounds are sufficient to hear the appeal. Has the Court of Appeal adhered to the interpretation of section 34-1 of the Dispute Act that I have outlined above?

(48) In the introductory part of its reasoning, the Court of Appeal takes the correct legal starting point, including that the Act generally contains a discretionary power. In the further discussion, the Court of Appeal assumes that the environmental organizations have substantiated a main claim. Also in the discussion of grounds for security - both pursuant to Section 34-1 first paragraph, letter a and letter b - the Court of Appeal takes the correct legal basis and points to a number of relevant elements. On the other hand, the Court of Appeal does not come to a conclusion, but also assumes here that the claims of the environmental organizations are fulfilled for all three petroleum fields - both pursuant to Section 34-1, first paragraph, letter a and letter b.

(49) In section 4 of the order, the Court of Appeal apparently discusses the proportionality assessment pursuant to section 34-1 second paragraph of the Dispute Act. Both the heading of the paragraph and the content of subsection 4.1 indicate that it is this balancing act that is discussed.

(50) In section 4.2, the Court of Appeal describes the interests that are affected by an interim measure, but writes in conclusion:

> "In the Court of Appeal's view, the conflicting considerations illustrate that these are real political trade-offs and priorities that are difficult to fit into a legal proportionality assessment. The weight of the various considerations will not only consist of an analysis

> of effects, but also of political priorities of a number of different interests and considerations.
>
> The question then becomes to what extent the courts in an injunction case should make these trade-offs."

(51) In sections 4.3 and 4.4, the Court of Appeal refers to the plenary judgment HR-2020-2472-P and refers therein to democratic considerations and judicial review. The Court of Appeal concludes in section 4.4:

> "In the Court of Appeal's view, the provision in Section 34-1 of the Dispute Act must be applied in line with the democratic considerations which the Supreme Court based itself on in the plenary judgment: Fundamental environmental issues involve political trade-offs and broader priorities that should be the responsibility of the elected representatives and not the courts, cf. the plenary judgment, paragraph 141. As shown above, an injunction in this case presupposes that the courts put to the test the political trade-offs and priorities that form the basis for maintaining Norwegian petroleum activities. In a balancing of interests, and in the question of whether an injunction should be granted, the Court of Appeal places great emphasis on the democratic considerations highlighted in the plenary judgment.
>
> ...
>
> The Court of Appeal therefore concludes that in this case, there will in principle be no basis for deciding on an interim injunction pursuant to section 34-1 of the Dispute Act."

(52) The condition in section 34-1, second paragraph of the Dispute Act regarding "manifestly disproportionate" is nevertheless not included in the discussion, neither in sections 4.2, 4.3 nor 4.4. At the same time, the Court of Appeal refers to the "may discretion" in section 4.4. It is thus somewhat unclear on what legal basis the Court of Appeal has decided the case. If the Court of Appeal has meant to discuss proportionality under section 34-1 second paragraph, it is not possible to fully review the interpretation of the law. The reasoning is deficient since the central condition has not been discussed. In that case, this is a procedural error that leads to annulment, cf. Section 29-21, second paragraph (c) of the Dispute Act, cf. Section 30-3.

(53) Furthermore, as mentioned above, a concrete assessment must be made in the judge's discretion under section 34-1 second paragraph. Parts of the Court of Appeal's discussion in section 4.2 are specific and relevant, but the section concludes with a reference to political priorities and a question about the extent to which the courts should "make" these trade-offs in a case concerning interim measures. As I read this, the Court of Appeal asks whether the courts have *the competence* to make this balancing of interests.

(54) Taken together, this suggests that the Court of Appeal believed that he did not have the authority to adopt an interim measure - and therefore did not make a concrete assessment. In my view, this becomes clear when you see the discussion in the context of the conclusion:

> "The Court of Appeal's conclusion is that the limits that apply to the courts' right of review and considerations of democracy indicate that an injunction cannot be ordered. For this reason, the Court of Appeal does not consider whether the respondents have substantiated a main claim.
>
> ...
>
> The Court of Appeal's main conclusion, which is based in part on the Supreme Court's decision in the plenary case, HR-2020-2472-P, is that democratic considerations mean that it is not a matter for the courts to decide on such a temporary shutdown as the environmental organizations have requested."

(55) I understand the Court of Appeal to mean that it does not believe it has the authority to comply with the requirement for interim relief since it concerns greenhouse gas emissions from petroleum extraction, cf. "limits" and "not a matter for the courts". This is an incorrect interpretation of the law.

(56) The Court of Appeal found support for the conclusion in the plenary judgment HR-2020-2472-P. I cannot see that what it says - about democratic considerations and the threshold for judicial review under section 112 of the Constitution, first and third paragraph - can be decisive for the courts' competence to adopt interim measures. There is a big difference between a substantive assessment of whether a constitutional provision restricts the competence of the legislators and an assessment of whether the conditions in Chapter 34 of the Dispute Act are met. The case concerns a very important area of life. The plenary judgment cannot be used to argue that the rules on interim measures do not apply to climate or petroleum issues.

Conclusion and legal costs

(57) The Court of Appeal's ruling must therefore be overturned.

(58) When rehearing the claim for interim relief, the Court of Appeal must decide whether the basic conditions - main claim, security reason and proportionality - are met. If one or more of the conditions are not met, interim relief cannot be granted.

(59) The proportionality assessment pursuant to section 34-1 of the Dispute Act, *second paragraph*, is specific and cannot be based on the courts having limited competence. The second paragraph leaves this assessment to the courts.

(60) If it is likely that the EU's Project Directive has been breached and the other conditions are fulfilled, the "discretionary power" in section 34-1, *first paragraph*, must be used to adopt an interim measure in this case.

(61) I would like to emphasize that I have not taken a position on either the main claim, the grounds for security or the assessment of proportionality pursuant to section 34-1 second paragraph of the Dispute Act.

(62) The appeal has been successful. Greenpeace Norden and Natur og Ungdom have won the case. Pursuant to the main rule in Section 20-2, first paragraph, of the Dispute Act, the State shall cover the costs of the appealing parties before the Supreme Court, cf. Section 20-8 of the Dispute Act. I see no reason to make an exception under section 20-2 third paragraph.

(63) Greenpeace Norden and Natur og Ungdom have claimed a total of NOK 1,322,516 before the Supreme Court. The amount only covers lawyers' fees - for 366.5 hours at an average of just over NOK 3,600 per hour. In addition, there is value added tax on the fees, and appeal fees of NOK 7,662.

(64) The state believes the claim is somewhat high. I agree, but I nevertheless believe that the claim must be accepted, cf. sections 20-5 of the Dispute Actand 20-6 . The proceedings in the Supreme Court took two full court days. The scope of the case was extensive, and the case has raised important and principled issues.

(65) I vote for this

ORDER:

1. The Court of Appeal's decision is repealed.

2. The Norwegian State, represented by the Ministry of Energy, will pay Föreningen Greenpeace Norden and Natur og Ungdom jointly NOK 1,660,807 - one million six hundred and sixty thousand eight hundred and seven - in legal costs before the Supreme Court within two weeks of service of the order.

(66) Judge **Bergsjø:** In essence and in the result, I agree with the first judge.

(67) Judge **Falch:** Likewise.

(68) Judge **Sæther:** Likewise.

(69) Judge **Falkanger:** Likewise.

(70) After the vote, the High Court said

ORDER:

1. The Court of Appeal's ruling is repealed.
2. The Norwegian State, represented by the Ministry of Energy, will pay Föreningen Greenpeace Norden and Natur og Ungdom jointly NOK 1,660,807 - one million six hundred and sixty thousand eight hundred and seven - in legal costs before the Supreme Court within two weeks of service of the order.

1 Added by Lovdata.