

SVW Dispute Resolution Newsletter

Q2 2025

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Dear reader,

The SVW Dispute Resolution team is excited to bring you the latest insights and updates in the world of litigation and arbitration. In this quarterly issue, we explore developments and trends that are shaping the legal landscape.

This edition features a summary of the recent judgment from the EFTA Court in the Norwegian climate case regarding the validity of approvals for three oil- and gas field. The ruling concerns the interpretation of the EIA Directive.

Additionally, we provide updates from the Supreme Court, presenting key takeaways from four recent judgments. The first judgment regards the conditions for cancelling air freight agreements where the freight has been carried out. The second judgment addresses the independence and impartiality of arbitrators. The third ruling establishes general rules on compensation outside contractual obligations. The final judgment regards the conditions for private expropriation of a private road.

Furthermore, we present a summary of a recent judgment from the Borgarting Court of Appeal regarding the interpretation of section 36 of the Norwegian Contracts Act in commercial disputes.

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19 June 2025

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A new era for Section 36 in commercial relations?



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EFTA Court Confirms Duty to Assess Combustion Emissions in EIA



EFTA Court Confirms Duty to Assess Combustion Emissions in EIA

- On 21 May 2025, the EFTA Court issued a landmark judgment in case E-18/24, concerning the obligation to carry out an environmental impact assessment (“EIA”) before granting development consent to oil and gas projects under Article 3(1) of Directive 2011/92/EU (“the EIA Directive”).
- The judgment was requested by Borgarting Court of Appeals in a case brought by Greenpeace and Natur og Ungdom concerning the validity of approvals for three oil- and gas fields in the North Sea (Tyrving, Breidablikk and Yggdrasil).
- In its judgment, the EFTA court confirmed the environmental organisations’ interpretation of the EIA Directive on all three questions posed by the referring court.
- The environmental organisations were represented by partner Jenny Sandvig, assisted by Carl Victor Waldenstrøm, Ida Werenskiold, Christian Reusch, Eivind H. Midtgård and Sala Hajrizaj at Simonsen Vogt Wiig.





Findings of the EFTA Court in Case E-18/24

- In its judgment, the EFTA Court confirmed that:
 - Greenhouse gas emissions embedded in oil and gas are environmental “effects” of projects to extract oil and/or natural gas within the meaning of Article 3(1) EIA Directive. Their impacts must be assessed in publicly available EIAs before oil and/or gas projects can be approved.
 - Assessment of these effects serves democratic purposes. Hence, the obligation to carry out an EIA may not be fulfilled by pointing to speculative analyses of knock-on effects on other projects elsewhere – what is sometimes referred to as marked substitution or net effects. Rather, the impact on the climate from all embedded emissions in the reserve must be assessed.
 - A national court must take all measures under the law to eliminate the unlawful consequences of a project approved without a prior and lawful assessment of these effects, including by revoking, invalidating and/or suspending the approval.
 - National courts have no discretion to uphold approvals on the basis that a flawed assessment would not have impacted the decision, since a failure to assess these effects in publicly available impact assessments before approval violates a substantive obligation of the EIA Directive.



HR-2025-832-A: Retroactive cancellation of a freight agreement



HR-2025-823-A: Retroactive cancellation of a freight agreement

- In our Q1/2025 newsletter, we discussed the upcoming Supreme Court decision concerning an agreement involving transportation of 76 tons of frozen salmon from Belgium to China. Due to insufficient cooling at the Chinese airport, the salmon was supposed to be delivered quickly after arrival. However, mandatory infection control measures delayed delivery by four days, causing much of the cargo to spoil outdoors.
- The question for the Supreme Court was whether the service recipient was still required to pay for the freight service or if the agreement could be retroactively cancelled.
- The Supreme Court established that for services that cannot be returned, a *“significant breach”* in the contractual obligations is *“not enough”* for retroactive cancellation. The breach must be so severe that the freight service has *“no, or only very limited, value”* for the service recipient, or entail that *“the purpose of the service is significantly defeated”*.
- Based on this, the Supreme Court clarified that retroactive termination is reserved for *“particularly serious breach”* situations, including where the carrier has shown gross negligence.
- The Supreme Court concluded that the conditions for retroactive termination were not met, and that the service recipient had to pay for the freight service.



HR-2025-921-A: Independence and Impartiality of an Arbitrator



HR-2025-921-A: Independence and Impartiality of an Arbitrator

The Norwegian Supreme Court has issued a judgment concerning the independence and impartiality of an arbitrator. The arbitrator in question was a partner at a law firm where another lawyer had previously assisted one of the parties in an unrelated matter. The Supreme Court found no legitimate reason to question his impartiality and independence. Key points from the judgment include:

- There is no general difference in the disqualification threshold between judges in ordinary courts and arbitrators, although the unique features of arbitration may lead to deviations.
- Disqualification due to client relationships depends on the nature, scope, and duration of the relationship.
- Factors such as whether the arbitrator or a colleague managed the relationship, as well as the size and organization of the firm, are relevant.
- Significant assignments for a party involved in the arbitration typically disqualify a lawyer from serving as an arbitrator, even if handled by other lawyers in the firm.
- In this specific case, the assignment (valued at MNOK 1.9) was considered insignificant compared to the firm's other activities and total annual revenue (NOK 1 billion), as it involved specialized assistance rather than strategic advice.
- The arbitrator's status as a key figure in the firm was not sufficient to outweigh the aforementioned factors.



HR-2025-844-A: The conditions for private expropriation



In a judgment 9 May 2025 (HR-2025-844-A) The Supreme Court addressed the conditions for private expropriation of a private road.

- The owners of a residence sought road rights on a neighbor's property for better access and parking.
- Gulating Court of Appeal had granted the homeowners expropriation under section 53 of the Road Act, emphasizing safe and convenient access.
- The main issue for the Supreme Court was which interests were relevant societal interests to consider under section 53 of the Road Act.
- The Supreme Court provides a detailed assessment of the conditions for compulsory acquisition and expropriation under article 105 of the Constitution and the ECHR Additional Protocol 1 Article 1.
- The Supreme Court concluded that the conditions for expropriation under section 53 of the Road Act were met; private need for a road can outweigh the disadvantages for the affected party. Relevant considerations emphasized in this case were traffic safety, traffic flow, and safe access to the property.





HR-2025-1115-A: General Rules on Compensation Outside Contractual Obligations



HR-2025-1115-A: General Rules on Compensation Outside Contractual Obligations

The case addressed the issue of whether a developer could seek compensation directly from a previous party in a contractual chain under the general rules for compensation outside of contract. In this judgment, the Supreme Court offers crucial and clarifying guidelines on the general rules for compensation outside contractual obligations.

Key insights include:

- Contractual liability is complemented by the general rules on negligence and employer liability.
- Such liability requires a breach of a conduct standard that exists independently of the contractual relationship.
- To establish negligence when the loss is purely economic and the alleged harmful act is an omission, it must be shown that a conduct standard exists, and that this standard has been violated.
- The Supreme Court further clarified that it is not necessary for the conduct standard to be explicitly expressed in advance. To prevent potential confusion, the Court stated that the term "general conduct standard" was to be used in this context.



A new era for Section 36 in commercial relations?



A new era for Section 36 in commercial relations?

- In our Q1/2025 newsletter, we discussed the Supreme Court's ruling in case HR-2025-251-A (Red Rock), where Section 36 of the Contracts Act was used as legal basis to set aside a settlement agreement between professional parties. This, along with similar rulings from the courts of appeal, suggests a new era for Section 36 in commercial relations, where the provision has lived a life in the shadows in Norwegian law.
- Agder Court of Appeal in case LA-2024-81282 also used Section 36 to invalidate a share purchase agreement due to disclosure failures. As in HR-2025-251-A, the factual circumstances leading to the invalidity of the agreement were largely related to the failure to fulfill the duty of disclosure when the agreement was entered into.
- In LB-2024-49213 Borgarting Court of Appeal addressed the application of Section 36 on subsequent circumstances in a long-term contractual relationship between two professional parties. The case concerned the provision of payment processing and other IT services to a bank. The agreement included a renegotiation clause, which the court found lowered the unfairness threshold under Section 36. As a result, the supplier was entitled to a significant increase in compensation.



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