SUPREME COURT OF NORWAY

O R D E R

issued on 11 April 2025 by a division of the Supreme Court composed of

Justice Aage Thor Falkanger
Justice Per Erik Bergsjø
Justice Ingvald Falch
Justice Borgar Høgetveit Berg
Justice Knut Erik Sæther

HR-2025-677-A, (case no. 24-177617SIV-HRET)
Appeal against Borgarting Court of Appeal's order 14 October 2024

Greenpeace Nordic Natur og Ungdom	(Counsel Jenny Arge Sandvig)
v.	
The State represented by the Ministry of Energy	(The Office of the Attorney General represented by Omar Saleem Rathore)

(1) Justice **Høgetveit Berg:**

Issues and background

(2) The case concerns a request for an interim measure to invalidate decisions and halt development and production on three petroleum fields in the North Sea. The question before the Supreme Court is whether the Court of Appeal has correctly interpreted section 34-1 of the Dispute Act.

(3) The key issue in the main case is whether environmental impact assessments carried out before the decisions approving plans for development and operation (PDOs) must include the consideration of the climate effect of the subsequent combustion of the energy products. The appellants argue that the PDO approvals for the Breidablikk, Tyrving and Yggdrasil fields are invalid due to the absence of such impact assessments. The claim for invalidation forms the core of the request for an interim measure. The environmental organisations have requested that the court order the State to suspend the effect of the PDO approvals, or, in the alternative, that it prohibit the State from adopting any further decisions based on the validity of those approvals until the main claim has been finally determined.

(4) *Breidablikk* is exclusively an oil field with estimated extractable reserves of just over 30 million standard cubic meters of oil. The gross emissions from the field are estimated at 87 million tons of CO2. The total investments are approximately NOK 19 billion, and the expected production period is 20 years. The Ministry of Petroleum and Energy approved the PDO for Breidablikk on 29 June 2021. The field was originally expected to start production in the first quarter of 2024, but the Norwegian Petroleum Directorate approved an earlier start in September 2023, and the Ministry of Petroleum and Energy issued the first production license on 13 October 2023. The latest impact assessment for Breidablikk is from 2013. The climate effects of the subsequent combustion of the products have not been assessed.

(5) *Tyrving* is also exclusively an oil field. The extractable reserves are estimated at just over 4 million standard cubic meters of oil equivalents. Gross emissions are estimated at 11.3 million tons of CO2. Production start was planned for the first quarter of 2025, but this was accelerated to September 2024. The expected production period is 15 years. The rights holders applied for approval of the PDO in August 2022. The Ministry approved the PDO on 5 June 2023, and production from Tyrving started on 3 September 2024. Combustion emissions are not covered by the 2022 impact assessment.

(6) *Yggdrasil* comprises the Hugin, Munin and Fulla fields and contains oil, gas and NGL – *natural gas liquids*. The extractable reserves are estimated at 103 million standard cubic meters of oil equivalents. Total gross emissions are estimated at 365 million tons of CO2. The total expected investments for the development of the field are over NOK 115 billion. The expected production start is in 2027, and the expected production period is 25 years. Due to the high investment costs, the PDO approval was presented to the Storting in Proposition 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 approving the PDO, see Recommendation 459 S (2022–2023). On 6 June 2023, the Storting adopted a decision in accordance with the majority's recommendation. The Ministry of Petroleum and Energy approved the PDO for Yggdrasil on 27 June 2023. The climate effects of the subsequent combustion of the extracted products have likewise not been assessed for Yggdrasil.

(7) On 29 June 2023, Greenpeace Nordic and Natur og Ungdom (Young Friends of the Earth Norway) brought an action in Oslo District Court, challenging the validity of the Ministry's PDO approvals for the Breidablikk, Tyrving and Yggdrasil fields. The organisations also requested an interim measure.

(8) On 18 January 2024, Oslo District Court handed down its judgment and order, declaring the three PDO approvals invalid. The Court held that impact assessments ought to have been carried out in respect of combustion emissions, see section 4-2 of the Petroleum Act and section 22a of the Petroleum Regulations, interpreted in the light of Article 112 of the Constitution and Article 4 (1) in conjunction with Article 3 (1) of the EIA Directive[1]. The error could have influenced the substance of the decisions. The District Court ruled as follows:

> "1. The State is prohibited from adopting any further decisions based on the validity of the PDO approval for Breidablikk until the validity of the PDO approval is finally determined.
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> 2. The State is prohibited from adopting any further decisions based on the validity of the PDO approval for Tyrving until the validity of the PDO approval is finally determined.
>
> 3. The State is prohibited from adopting any further decisions based on the validity of the PDO approval for Yggdrasil until the validity of the PDO approval is finally determined."

(9) The State appealed against the judgment and order to the Court of Appeal. On 20 March 2024, the preparatory judge in the Court of Appeal directed that there be a separate hearing of the grounds for security and the balancing of interests in relation to the interim measure, see section 34-1 subsections 1 and 2 of the Dispute Act. He also directed that the enforcement of the measure be postponed until the Court of Appeal had decided these issues. On 16 May 2024, the Court of Appeal decided that the State's appeal against the District Court's interim measure order would, after all, be heard together with the main case. The enforcement of the measure was suspended pending the Court of Appeal's decision on the appeal against the order, see section 19-13 subsection 3 of the Dispute Act. By decisions dated 17 June and 5 July 2024, the Court of Appeal rejected requests for reversal of the suspension.

(10) On 5 July 2024, the Court of Appeal decided to suspend the main case and seek an advisory opinion from the EFTA Court regarding the interpretation of the EIA Directive, see section 51a of the Courts of Justice Act. The request was sent on 2 September 2024. The case concerning the interim measure was not suspended.

(11) In its pleadings of 28 August 2024, the State presented a decision from the Ministry of Energy from the same day, which concluded that there was no basis for reversing the approvals from June 2023 for the Yggdrasil and Tyrving fields. Greenpeace Nordic and Natur og Ungdom filed an alternative claim in the main case to the Court of Appeal, seeking to have these rejections declared valid as well.

[1] The Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment.

(12) On 14 October 2024, Borgarting Court of Appeal ruled as follows:

> "1. The request for an interim measure is not granted.
>
> 2. Costs are not awarded, neither in the Court of Appeal nor in the District Court."

(13) The Court of Appeal did not consider whether the requirements for an interim measure – a main claim and basis for security – were met, as the Court found that the case in any case had to be decided on a broader basis. The parties disagree as to the grounds on which the Court of Appeal decided the case, which I will return to.

(14) Greenpeace Nordic and Natur og Ungdom have appealed against the order to the Supreme Court. The appeal challenges the interpretation of the law and the procedure. On 9 December 2024, the Supreme Court's Appeals Selection Committee decided that the appeal would be heard by a division of the Supreme Court composed of five justices in accordance with section 5 subsection 1 second sentence of the Courts of Justice Act, see HR-2024-2249-U.

(15) The Supreme Court has received two written submissions in accordance with section 15-8 of the Dispute Act, to highlight matters of public interests. The submissions are from Klimarealistene and Save the Children, and they form part of the basis for the ruling, see section 15-8 subsection 2 third sentence.

The parties' contentions

(16) The appellants – *Greenpeace Nordic* and *Natur og Ungdom* – contend:

(17) The Court of Appeal must be understood to mean that, in cases concerning fundamental environmental issues, the courts lack jurisdiction to assess the interests under section 34-1 subsection 2 of the Dispute Act and to grant an interim measure under section 34-1 subsection 1, even where both a main claim and a basis for security have been proven. There is no basis for this. The Act does not provide exceptions for cases concerning the environment, the climate or petroleum activities. On the contrary, section 32-11 subsection 1 third sentence and section 34-2 subsection 3 explicitly permits interim measures in such cases. The underlying main claim is invalidity, which falls within the courts' jurisdiction. The request for an interim measure does not exceed the courts' power to invalidate administrative decisions. Refusing an interim measure where an invalid decision has been proven would undermine the rule of law and democratically enacted legislation.

(18) The fact that the courts "may" grant an interim measure, does not imply that they – when the conditions are met – may refrain from conducting the required balance of interests under the Act. If the Court of Appeal's actual basis for rejecting the request was that an interim measure would go too far, this should have been addressed under section 34-1 subsection 2. In any event, it is for the courts to determine how the measure should be implemented to secure the main claim, see section 34-3 subsection 2 of the Dispute Act.

(19) The Court of Appeal misinterprets the Supreme Court's plenary judgment HR-2020-2472-P. The democratic considerations emphasised by the Supreme Court concerned the substantive constraints placed on the petroleum policy by Article 112 subsections 1 and 3 of the Constitution. These are not applicable in a case concerning an interim measure, where

Article 112 has not been invoked, and the Court of Appeal has proceeded on the assumption that the decisions are invalid. The Court of Appeal's reasoning – that climate and environmental issues are matters of political debate – applies equally to many other areas of law.

(20) The Court of Appeal's failure to exercise its jurisdiction is contrary to the Aarhus Convention. It also violates the obligation to interpret national law in conformity with the EEA Agreement, see Article 3. Regardless, the Court of Appeal's reasoning is so flawed that it precludes a hearing of the appeal on this issue. The interpretation also contradicts the principle of effectiveness under EEA law. Since the effects of the PDO approvals are irreversible encroachments, the obligation to remedy becomes void if an interim measure is not granted. The State cannot succeed in arguing that the EEA violation has been remedied through the flawed, retrospective impact assessments. Finally, the Court of Appeal's application of the law is incompatible with several provisions in the European Convention on Human Rights – ECHR. The absence of an interim measure deprives the environmental organisations of access to environmental information and participation in the process, thereby undermining their right to effective protection against serious harm to life and health.

(21) *Greenpeace Nordic* and *Natur og Ungdom* ask the Supreme Court to rule as follows:

> "1. Borgarting Court of Appeal's order of 14 October 2024 is set aside.
>
> 2. Greenpeace Nordic and Natur og Ungdom are awarded costs in the Court of Appeal and the Supreme Court."

(22) The respondent – *the State represented by the Ministry of Energy* – contends:

(23) The Court of Appeal has correctly interpreted section 34-1 of the Dispute Act to mean that the provision confers upon the courts the authority, but not an obligation, to grant an interim measure when the conditions are met. Furthermore, there is no obligation to grant an interim measure under the Aarhus Convention, EEA law or the ECHR.

(24) Both the proportionality assessment under section 34-1 subsection 2 of the Dispute Act and the judicial discretion under the "may" rule in subsection 1 allow for a balancing of all conflicting interests. In exercising discretion under section 34-1 subsection 1, emphasise may be placed on the nature of the interim measure requested, the interests it is intended to protect and may affect, whether the measure requires the courts to review assessments already made by the Storting, and how this aligns the court's consideration of the claim in the main case. Any other approach would be difficult to reconcile with the Supreme Court's position in HR-2020-2472-P. The Court of Appeal has emphasised objective considerations.

(25) The Court of Appeal has not found that courts are generally precluded from granting interim measures in cases concerning climate and petroleum activities. However, it has assessed whether, in the present case, there was sufficient reason to shut down the petroleum fields under production and development. This individual and discretionary assessment cannot be reviewed by the Supreme Court, see section 30-6 of the Dispute Act.

(26) There are no EEA rules that harmonise the conditions for granting an interim measure. While other general EEA rules may influence the State's procedural autonomy, such as Article 3 of the EEA Agreement, the principle of an EEA-conform interpretation and the principle that

procedural rules must not render the enforcement of EU law in national courts impossible or excessively difficult, none of these rules alone provides a legal basis for an interim measure. In any event, the Court of Appeal has conducted an individual assessment and concluded that the appellants' right to enforcement of EEA law is sufficiently maintained when the proceedings are considered as a whole.

(27) Nor is the Court of Appeal's order contrary to the ECHR. A ruling on the request for an interim measure will not in itself determine the right to environmental information and participation, or potential procedural rights under the ECHR. Article 6 ECHR requires a fair trial, and Article 13 requires an effective remedy in the event of violation. Neither provision mandates the granting of interim measures. Nor does Article 8 of the ECHR require that interim measures be granted in climate-related cases such as the present one.

(28) The reasoning of the Court of Appeal does not contain flaws that preclude a hearing of the appeal. The order must be read in its entirety, and it provides a sufficient basis for assessing whether the Court of Appeal has correctly interpreted the law.

(29) The State represented by the Ministry of Energy asks the Supreme Court to rule as follows:

> "The appeal is dismissed."

My opinion

The issue

(30) The case concerns an interim measure to secure the main claim for which the District Court has ruled in favour, and which the appellants assert they have. The main claim is that the PDO approvals for three petroleum fields must be invalidated due to procedural errors. The central issue in the main case is whether it constitutes a violation of the EIA Directive, among other regulations, to approve the PDOs without conducting an impact assessment of the consequences of petroleum combustion from the fields. The Court of Appeal will consider the main claim after the EFTA Court has issued its advisory opinion on the interpretation of the EIA Directive.

(31) The issue before the Supreme Court is whether the Court of Appeal has correctly interpreted the rules on interim measures. The request for an interim measure is based on the harm caused by the combustion of the extracted oil and gas. According to the environmental organisations, the greenhouse gas emissions occurring until a final judgment is rendered in the main case will, in themselves, result in serious harm. In addition, continued development and operations will reduce the likelihood that a judgment declaring invalidity in the main case will lead to a reversal.

(32) As a starting point, the Supreme Court may only review the Court of Appeal's interpretation of the law and its procedure, see section 30-6 of the Dispute Act. The Supreme Court may not review individual assessments. However, with regard to the ECHR, the individual application of the law may also be reviewed. It is not necessary for me to take a position on whether the same applies under the EEA Agreement.

The fundamental conditions for an interim measure

(33) There are three fundamental conditions for an interim measure. First, section 34-2 subsection 1 of the Dispute Act requires that a main claim has been proven. Second, the measure must be necessary, meaning that there must be a basis for securing the claim, see section 34-1 subsection 1. Third, the measure must not be disproportionate, see subsection 2. Section 34-1 reads:

> "(1) Interim measure may be granted:
> a. when the defendant's conduct makes it necessary to provisionally secure the claim because the action or execution of the claim would otherwise be considerably impeded, or
> b. when it is necessary to make a temporary arrangement in a disputed legal issue in order to avert considerable loss or inconvenience, or to avoid violence which the conduct of the defendant gives reason to fear.
>
> (2) An interim measure cannot be granted if the loss or inconvenience to the defendant is clearly disproportionate to the interests of the claimant in the interim measure being granted."

(34) Upon the entry into force of the Dispute Act, the rules on provisional security, including arrest and interim measures, were largely carried over without amendment from the Enforcement Act. The preparatory works to these provisions are therefore primarily found in Proposition to the Odelsting No. 65 (1990–1991).

(35) It is generally accepted that public-law requirements, including requests for invalidation, may also be secured by an interim measure. This was established in Rt-1955-953 *Czardas* and continued under the Dispute Act, see Proposition to the Odelsting No. 65 (1990–1991) pages 290. The same applies to main claims based on the premise that rules safeguarding environmental interests have been violated, as explicitly stated in section 32-11 subsection 1 third sentence and section 34-2 subsection 3 of the Dispute Act. In any event, the claimant must demonstrate a genuine need to have the claim decided – and it must be possible to obtain a judgment for the main claim, see section 32-2 in conjunction with section 1-3 of the Dispute Act.

(36) An interim measure cannot be granted if the loss or inconvenience to the defendant is "clearly disproportionate" to the claimant's interests in having the interim measure granted, see section 34-1 subsection 2 of the Dispute Act. The provision establishes a fundamental principle of proportionality, taking all relevant interests into account. The preparatory works specify that even if both a main claim and basis for security have been proven, there may still be no grounds for granting an interim measure. The proportionality requirement was introduced into the Act in 1992, but the preparatory works describe it as a continuation of the "may" discretion from older legislation, see Proposition to the Odelsting No. 65 (1990–1991), pages 292–293.

The "may" rule in section 34-1 subsection 1 of the Dispute Act

(37) The Court of Appeal assumed that, finally, "it must be assessed whether an interim measure should also be granted, see the words "may be granted". The appellants, however, have

argued that the initial "may" in the wording of section 34-1 subsection 1 must in reality be read as "must"'.

(38) Initially in the special remarks to section 15-2 of the Enforcement Act – not section 34-1 of the Dispute Act – the following is set out in Proposition to the Odelsting No. 65 (1990–1991) on page 291:

> "The provision sets out the grounds for securing a claim through an interim measure. According to the provision, the court may grant an interim measure when the conditions are met. Even where the court finds that the statutory requirements are satisfied, it may still, based on an overall assessment of the conflicting interests, choose not to grant the interim measure. This balancing of interests includes an evaluation of the potential harm or inconvenience to both parties."

(39) The Ministry proceeds by addressing the requirement of a basis for security in subsection 1 and the balancing of interests in subsection 2. The appellants argue that the comprehensive assessment referenced in the cited passage is the assessment the court must make under subsection 2. I do not agree. As previously noted, the cited passage appears early in the remarks and relates to the entire section, see also the use of "statutory requirements". Moreover, it would have been natural to clarify that the earlier "may" discretion was replaced by subsection 2, had this been the intention.

(40) There is no case law from the Supreme Court that explicitly addresses whether the "may" discretion continued after 1992. However, there is supporting case law from the Court of Appeal. Nor is any case law or legal literature been cited that supports the interpretation that "may" must always be read as "shall". On the contrary, legal literature is consistent in maintaining that "may" should be read as "may". Se for instance Inge Lorange Backer, *Norsk sivilprosess* [Norwegian civil procedure] 3rd edition 2024, page 228:

> "Although the conditions for provisional security in the Dispute Act are met, the claimant is not automatically entitled to such a measure – the provision states that the court 'may' grant an interim measure. However, as a general rule, the claimant will be succeed when the conditions are met."

(41) The fact that the court may exercise broad discretion to set the terms for the individual interim measure, see section 34-3 subsection 2 of the Dispute Act, supports that there is a legal basis for an overall assessment of whether an interim measure should be granted, see also the initial words "may be granted".

(42) Accordingly, the conclusion is that "may" in section 34-1 subsection 1 of the Dispute Act confers judicial discretion. This discretion must be exercised in the light of the purposes set out in section 1-1 of the Dispute Act. This purpose provision identifies the key considerations in the exercise of such discretion, see Proposition to the Odelsting No. 51 (2004–2005) pages 363.

(43) In my view, it is also accurate to state that this judicial discretion, in practice, largely aligns with the proportionality assessment under section 34-1 subsection 2. The courts have relatively broad discretion in both assessments and may take into account a wide range of considerations. In any event, both assessments must be conducted on an individual basis.

(44) However, in the present case, the court's leeway under the "may" discretion in section 34-1 subsection 1 is limited if a breach of the EIA Directive is substantiated. While the EEA Agreement does not regulate national hearings of requests for interim measures to secure claims based on the EEA Agreement, the EEA-law *principle of effectiveness* and the closely related principle of *effective judicial protection* of EEA rights imply that there such discretion cannot be exercised if the conditions for an interim measure are otherwise met. As for the existence and content of these EEA principles, I refer to Article 3 of the EEA Agreement, EFTA Court's judgment 13 June 2013 in Case E-11/12 *Koch and Others* paragraph 117 and 121, Rt-2005-597 *Allseas* paragraph 38 and judgment from the Court of Justice of the European Union (CJEU) of 13 March 2007 in Case C-432/05 *Unibet* paragraph 82.

(45) These principles imply that it must be practically possible to secure such claims through an interim measure – particularly where it is established or substantiated that inadequate impact assessments may result in irreversible environmental harm. Then, the State will be obligated to eliminate the consequences of the EEA breaches, for instance by suspending the effects of decisions already adopted, see the CJEU's judgment of 25 June 2020, in Case C-24/19 *A and Others* paragraph 83. This obligation also extends to national courts, within the scope of their jurisdiction.

(46) In my view, the consequence must be that the courts cannot exercise the "may" discretion under section 34-1 subsection 1 of the Dispute Act to deny an interim measure if it is substantiated that the EIA Directive has been breached, and the conditions for an interim measure are otherwise met. In such a case, the courts are obligated to exercise their jurisdiction to grant the interim measure.

The Court of Appeal's order

(47) As mentioned, the question is whether the Court of Appeal has correctly interpreted the rules on interim measures and whether its reasoning is sufficient to conduct a hearing the appeal. Has the Court of Appeal adhered to the interpretation of section 34-1 of the Dispute Act as outlined above?

(48) Initially, the Court of Appeal's reasoning is based on correct legal principles, including the "may" discretion generally provided for in the Dispute Act. The Court of Appeal then proceeds on the assumption that the environmental organisations have a main claim. When discussing the basis for security – under section 34-1 subsection 1 (a) and (b) – the Court also applies correct legal principles and highlights several relevant factors. However, it presupposes, rather than concludes, that the environmental organisations' contentions are correct for all three petroleum fields – under both subsection 1 (a) and (b).

(49) In paragraph 4, the Court of Appeal seems to discuss the proportionality assessment under section 34-1 subsection 2 of the Dispute Act. Both the headline and the content of subparagraph 4.1 indicate that this assessment is the topic of the discussion.

(50) In paragraph 4.2, the Court of Appeal describes the interests affected by an interim measure, but concludes as follows:

> "In the Court of Appeal's view, the conflicting considerations illustrate that we are dealing with real-world political balancing and priorities, which 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 involving a number of diverse interests and considerations.
>
> The question then becomes to what extent the courts, in an interim measure case, should conduct such a balancing of interests."

(51) In paragraphs 4.3 and 4.4, the Court of Appeal refers to the Supreme Court's plenary judgment HR-2020-2472-P and the statements therein concerning democratic considerations and judicial review. Finally, in paragraph 4.4, the Court writes:

> "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 on which the Supreme Court bases its plenary judgment: Fundamental environmental issues require political balancing of interests and broader priorities that should be handled by popularly elected bodies, and not the courts, see the plenary judgment paragraph 141. As shown above, an interim measure in this case requires the courts to examine the political balancing and priorities underlying the maintenance of Norwegian petroleum activities. In a balancing of interests, and when the question of an interim measure is to be decided, the Court of Appeal places great emphasis on the democratic considerations highlighted in the plenary judgment.
>
> …
>
> Against this background, the Court of Appeal concludes that, in the present case, there is no basis for granting an interim measure under section 34-1 of the Dispute Act."

(52) Nonetheless, the "clearly disproportionate" requirement in section 34-1 subsection 2 of the Dispute Act is not mentioned in the discussion, neither in paragraph 4.2, 4.3 nor 4.4. At the same time, the Court of Appeal refers to the "may" discretion in paragraph 4.4. It is therefore somewhat unclear on what legal basis the Court of Appeal has decided the case. If the Court of Appeal intended to assess disproportion under section 34-1 subsection 2, its interpretation of the law cannot be fully examined. The reasoning is flawed, as a central condition has not been addressed. This constitutes a procedural error which must lead to the ruling being set aside, see section 29-21 subsection 2 (c), see section 30-3, of the Dispute Act.

(53) Furthermore, as mentioned above, the judicial discretion under section 34-1 subsection 2 requires an individual assessment. While parts of the Court of Appeal's discussion in paragraph 4.2 are concrete and relevant, the paragraph concludes by highlighting political priorities and raising the question of the extent to which the courts, in an interim measure case, "must conduct" such a balancing of interests. As I read it, the Court of Appeal questions whether the courts have *jurisdiction* to conduct this balancing of interests.

(54) Taken as a whole, this suggests that the Court of Appeal believed it lacked jurisdiction to grant an interim measure, and therefore did not carry out an individual assessment. In my view, this becomes clear the discussion is read in conjunction with the conclusion:

> "The Court of Appeal's conclusion is that limitations on the courts' judicial review and democratic considerations imply that measures cannot be ordered. For this reason, the Court of Appeal will not consider whether the respondents have proven a main claim.
> …
>
> The Court of Appeal's main conclusion, based among others on the Supreme Court's plenary judgment HR-2020-2472-P, is that democratic considerations entail that it is not

> for the courts to order such an temporary stoppage as that requested by the environmental organisations."

(55) In other words, I interpret the Court of Appeal as having concluded that it lacked jurisdiction to grant the request for an interim measure because the case concerns greenhouse gas emissions from petroleum extraction, see its references to "limitations" and "not for the courts". This constitutes a misinterpretation of the law.

(56) The Court of Appeal found support for its conclusion in the plenary judgment HR-2020-2472-P. However, I do not find that the statements therein – regarding democratic considerations and the threshold for judicial review under Article 112 subsections 1 and 3 of the Constitution – are determinative for the courts' jurisdiction to grant interim measures. There is a significant distinction between a substantive assessment of whether a constitutional provision limits the legislature's authority and an assessment of whether the conditions in Chapter 34 of the Dispute Act are met. The matter concerns a vital area of public interest. The plenary judgment does not support the view that the rules on interim measures are inapplicable to climate or petroleum-related issues.

Conclusion and costs

(57) The Court of Appeal's order must consequently be set aside.

(58) Upon the renewed hearing of the request for an interim measure, the Court of Appeal must assess whether the fundamental conditions – main claim, basis for security and proportionality – are met. If one or more of the conditions are not met, an interim measure cannot be granted.

(59) The proportionality assessment under section 34-1 *subsection 2* of the Dispute Act is concrete and cannot be based on the assumption that the courts' jurisdiction is limited. Subsection 2 assigns this assessment to the courts.

(60) If it is substantiated that the EIA Directive has been breached and the other conditions are met, the jurisdiction conferred upon the courts under the "may" discretion in section 34-1 *subsection 1*, must, in this case, be exercised to grant an interim measure.

(61) I stress that I have therefore not taken a position on the main claim, the basis for security or the proportionality assessment required under section 34-1 subsection 2 of the Dispute Act.

(62) The appeal has succeeded, and Greenpeace Nordic and Natur og Ungdom have prevailed in the case. According to the main rule in section 20-2 subsection 1 of the Dispute Act, the State is liable for the appellants' costs before the Supreme Court, see section 20-8 of the Dispute Act. I find no grounds for making an exception under section 20-2 subsection 3.

(63) Greenpeace Nordic and Natur og Ungdom have claimed a total of NOK 1,322,516 in costs before the Supreme Court. This amount covers legal fees for 366.5 hours of work, at an average rate of approximately NOK 3,600 per hour. VAT on the legal fees and an appeal fee of NOK 7,662 are added.

(64) The State considers the claim to be somewhat excessive. I agree, but find nonetheless that the claim must be upheld, see sections 20-5 and 20-6 of the Dispute Act. The hearing in the Supreme Court lasted two full court days. The source material was extensive, and the case has raised important and principled legal issues.

(65) I vote for this

O R D E R :

1. The Court of Appeal's order is set aside.

2. The State represented by the Ministry of Energy is to pay NOK 1,660,807 in costs before Supreme Court to Greenpeace Nordic and Natur og Ungdom jointly, within two weeks of service of this order.

Justice **Bergsjø:**	I agree with Justice Høgetveit Berg in all material respects and with his conclusion.
Justice **Falch:**	Likewise.
Justice **Sæther:**	Likewise.
Justice **Falkanger:**	Likewise.

Following the voting, the Supreme Court issued this

O R D E R :

1. The Court of Appeal's order is set aside.

2. The State represented by the Ministry of Energy is to pay NOK 1,660,807 in costs before the Supreme Court to Greenpeace Nordic and Natur og Ungdom jointly, within two weeks of service of this order.