

THE CONSEQUENCES OF INSUFFICIENT EIA IN EUROPE: THE NORWEGIAN CASE

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Synopsis: Environmental impact assessments (EIAs) have emerged as a critical procedural battleground in European climate litigation, with Norway's petroleum licensing regime serving as a pivotal test case. This article examines the evolution of Norwegian *Climate Lawsuits* from the landmark 2016 constitutional challenge to the 23rd licensing round through the landmark November 2025 Borgarting Court of Appeal decision invalidating Plans for Development and Operation (PDOs) for three petroleum fields due to insufficient assessment of combustion emissions. The Norwegian cases demonstrate a fundamental tension in petroleum licensing: at what stage must authorities conduct comprehensive climate impact assessments, and what must such assessments include? The European Court of Human Rights, in its October 2025 judgment in *Greenpeace Nordic and Others v. Norway*, established that while climate assessment need not occur at the exploration licensing stage, the regulatory framework must ensure robust, science-based assessment at a meaningful subsequent stage. The Borgarting Court of Appeal, applying this framework alongside the EFTA Court's advisory opinion, concluded that Norway's approval of the Breidablikk, Yggdrasil, and Tyrving PDOs failed to satisfy the Environmental Impact Assessment Directive's requirements because the State did not adequately assess gross combustion emissions, cumulative climate effects, or compatibility with remaining carbon budgets. As a result, this development applies not only to the oil and gas sector but to all large emitters and major industrial projects subject to the EIA regime.

This article: (1) traces the development of Norwegian climate litigation from *Climate Lawsuit I* through *Climate Lawsuit II*, examining the evolution of legal arguments regarding constitutional environmental rights and procedural EIA obligations; (2) analyzes the European Court of Human Rights' articulation of minimum procedural requirements for climate risk assessment in petroleum licensing decisions; and (3) assesses the national, regional, and international implications of these rulings. For Norway's petroleum industry, the Court of Appeal's decision signals that future PDO approvals will require comprehensive assessment of downstream combustion emissions and their relationship to national and international climate commitments. This procedural requirement may introduce significant uncertainty and delay into project development timelines, potentially affecting investment decisions in new exploration and production

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*** We want to acknowledge and thank the GW Law research assistants for their exceptional support: Emily Dollison (JD '27), Sagar Suresh (LLM '26), and Clara Kinken (JD '27).

activities. The convergence of European Court of Human Rights (ECtHR) jurisprudence, European Free Trade Association (EFTA) Court guidance, and domestic Norwegian case law suggests that similar procedural challenges may arise across European jurisdictions, with implications for petroleum producers throughout the continent.

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I. INTRODUCTION

A. *Norwegian Climate Lawsuits*

In 2020, the Supreme Court of Norway delivered its judgment in the country's first climate related lawsuit, concerning the validity of production

licenses¹ awarded in the 23rd licensing round for petroleum exploration in the Barents Sea.² The case, commonly referred to as *Climate Lawsuit I*, challenged the government decision to grant production licenses to private operators on the Norwegian continental shelf.³

The 23rd licensing round was initiated by the Norwegian State⁴ in August 2013, and concluded in June 2016 with the award of ten production licenses.⁵ In the autumns of 2016, Nature and Youth and Greenpeace Nordic Association, the Plaintiffs, brought legal proceedings against the Norwegian State, arguing that the licensing decision violated Article 112 of the Norwegian Constitution, which enshrines the right to a healthy environment.⁶

The case culminated in a 2020 Supreme Court (Norway's highest court) ruling in favor of the State, upholding the validity of the licenses.⁷ The majority held that Article 112 primarily function as a constitutional “safety valve,” establishing a “very high” threshold for judicial intervention to overturn the Norwegian Storting's (Parliament's) 2013 decision to open the Barents Sea Southeast to petroleum activities.⁸

While the Court upheld the licenses and established a high threshold for judicial review of parliamentary decisions on environmental matters under Article 112 of the Norwegian Constitution, the adequacy of environmental impact assessments emerged as a contested issue.⁹ Although the majority found no procedural errors at the licensing stage, a significant dissent argued that combustion emissions should have been assessed earlier in the process.¹⁰

This procedural dimension of the Supreme Court's judgment, particularly regarding the timing and scope of environmental impact assessments, became the foundation what is commonly referred to as *Climate Lawsuit II*. In 2023, Nature

1. For an explanation of the differences between the licenses under Norwegian law, see discussion *infra* Section I.B.

2. See generally *Natur og Ungdom v. Staten* [Nature & Youth Nor. v. State], Norges Høyesterett [Nor. Sup. Ct.] Dec. 22, 2020, HR-2020-2472-P (Nor.).

3. *Id.* at ¶ 2.

4. In the Norwegian constitutional framework, the distinction between the “State” and the “Government” is a matter of legal identity versus executive function. The Norwegian State (Staten) is the permanent legal entity and sovereign power that possesses international legal personality, owns public assets (like the petroleum resources on the continental shelf), and enters into treaties. It encompasses all branches of power, including the Parliament (Stortinget) and the Judiciary. Conversely, the Norwegian Government (Regjeringen) refers specifically to the executive branch, currently led by the Prime Minister and the Council of State. While the Government exercises authority on behalf of the State and manages its administration, it is temporary and dependent on the confidence of the Parliament, whereas the State remains a continuous legal constant regardless of which political party is in power.

5. *Vurderinger av forbrenningsutslipp fra norsk petroleum* [Assessments of Combustion Emissions from Norwegian Petroleum], REGJERNINGEN.NO - ENERGIDEPARTEMENTET [GOVERNMENT.NO – MINISTRY OF ENERGY] (last updated Dec. 16, 2024), <https://www.regjeringen.no/no/aktuelt/te/id2920648/>.

6. *Natur og Ungdom* [Nature & Youth Nor.], Norges Høyesterett [Nor. Sup. Ct.] Dec. 22, 2020, HR-2020-2472-P, ¶¶ 3, 6 (Nor.).

7. *Id.* at ¶ 250.

8. *Id.* at ¶ 142.

9. *Id.* at ¶¶ 23-24, 142.

10. *Natur og Ungdom* [Nature & Youth Nor.], Norges Høyesterett [Nor. Sup. Ct.] Dec. 22, 2020, HR-2020-2472-P, ¶ 269.

and Youth and Greenpeace Nordic Association brought suit against the Norwegian State again, arguing that the State did not follow the Supreme Court decision in *Climate Lawsuit I* when approving the subsequent Plans for Development and Operation (PDOs) for the three petroleum fields, Breidablikk, Yggdrasil, and Tyrving.¹¹ Because these fields had already been granted production licenses, the approval of the PDOs represented the final critical authorization in the project development process.

As *Climate Lawsuit II* progressed through the Norwegian legal system, the Borgarting Court of Appeal issued a decision in November 2025 invalidating the State's approval of Plans for Development and Operation for the three petroleum fields due to insufficient environmental impact assessments.¹² The State has appealed this decision to the Supreme Court of Norway, which has decided to hear the case in plenary session (Grand Chamber).¹³ While the date for the hearing has not yet been set, it is expected to take place in the first half of 2026. *Climate Lawsuit II* thus represents a shift in Norwegian climate litigation from abstract challenges to licensing policy toward judicial scrutiny of concrete project approvals necessary for the petroleum projects to advance to the development stage.

This article traces the procedural history of both *Climate Lawsuit I* and *Climate Lawsuit II*, examines the evolving legal standards for environmental impact assessments in petroleum licensing, and assesses the potential implications of the Supreme Court's forthcoming decision for Norway's petroleum sector.

B. Procedural context and the Norwegian licensing system for petroleum

For readers unfamiliar with Norwegian law, two features are essential to understanding the Norwegian **Climate Lawsuits**: (1) the distinction between **main proceedings and interim relief**, and (2) the **stepwise structure of the Norwegian petroleum approval system**.

Under Norwegian procedural law, challenges to administrative decisions are brought through **main proceedings**, which concern the legality of the decision on the merits.¹⁴ Separately, parties may request **interim relief**, a temporary measure aimed at suspending a decision while the case is pending, where there is a risk of irreversible harm.¹⁵ Interim relief is assessed under distinct criteria, namely urgency, risk of irreparable harm, and proportionality, and does not determine, nor prejudice, the outcome of the main case.¹⁶

The Norwegian petroleum industry is built on the principle that the State of Norway owns all subsurface resources and grants access to private developers

11. *Föreningen Greenpeace Norden v. Staten* [Greenpeace Nordic Ass'n v. State], Oslo tingrett [Oslo Dist. Ct.] Jan. 18, 2024, TOSL-2023-99330, § 2.1 (Nor.).

12. *See generally* *Staten v. Natur og Ungdom* [State v. Nature & Youth], Borgarting lagmannsrett [Borgarting App. Ct.] Nov. 14, 2025, No. 24-036180ASD-BORG/02LB-2024-36810-4 (Nor.).

13. *Staten v. Natur og Ungdom* [State v. Nature & Youth Nor.], Norges Høyesterett [Nor. Sup. Ct.] February 23, 2026, HR-2026-441-J, ¶¶ 1-2 (Nor.).

14. *Lov om mekling og rettergang i sivile tvister (tvisteloven)* [Act on Mediation and Trial in Civil Disputes (The Dispute Act)] [The Dispute Act], June 17, 2005, No. 90, §§ 1-1-1-5 (Nor.).

15. *Id.* §§ 34-1-34-2.

16. *Id.*

through the issuance of licenses on specified terms.¹⁷ Regulatory approvals are required for a private company to advance a petroleum project from exploration to production.¹⁸ Following a strategic environmental impact assessment, the Norwegian State determines which portions of the subsurface, notably the continental shelf, will be opened for potential petroleum activity.¹⁹ The Norwegian State then determines whether to issue production licenses, granting the right to explore but not produce petroleum.

In Norway, a production license serves as the primary legal framework for petroleum activities on the continental shelf, effectively combining both exploration and production rights into a single concession.²⁰ While the term “exploration license” exists, it typically refers to a non-exclusive license that only permits preliminary surveys like seismic data collection without the right to drill. In contrast, the production license grants a consortium of companies the exclusive right to explore for, drill, and produce petroleum (after a PDO is approved) within a specific geographical area for an initial period (usually 4 to 10 years).

Crucially, the development of the petroleum project may only commence after the Ministry of Energy approves a Plan for Development and Operation (PDO) for a specific field.²¹ Each PDO must include a project-specific environmental impact assessment and is subject to ministerial approval,²² ensuring continued state control over environmental, societal, and economic impacts of the petroleum project.²³

Climate Lawsuit I primarily concerned the early stage of the approval process, namely the decision to open areas of the continental shelf and award production licenses in the Barents Sea. While the Supreme Court upheld the three licenses, it clarified that more detailed assessment of downstream climate effects could, under Norwegian law, be addressed at the PDO stage.²⁴

Climate Lawsuit II arises precisely at this later and more concrete stage of PDO issuance. The case concerns the State’s approval of PDOs for the Bredablikk, Yggdrasil, and Tyrving fields and examines whether the environmental impact assessments underlying those approvals complied with constitutional and statutory requirements, including Article 112 of the Norwegian Constitution.²⁵

17. Lov om petroleumsvirksomhet (petroleumsoven) [Petroleum Activities Act (Petroleum Act)] [Petroleum Act] Nov. 29, 1996, No 72, §§ 1-1, 2-1 (Nor.).

18. *Id.* §§ 1-1–4-13.

19. *Id.* § 3-1; Forskrift til lov om petroleumsvirksomhet [Regulations on the Petroleum Activities Act] [Petroleum Activities Act Regulations] Apr. 27, 1997, No. 653, §§ 6(a)-(d) (Nor.); Forskrift om konsekvensutredninger [Regulations on Impact Assessments] [Impact Assessments Regulations] June 21, 2017, No. 353 (Nor.).

20. Petroleum Act § 3-3 (Nor.).

21. *Id.* § 4-2.

22. *Id.* In Norway, the Ministry of Energy formally approves Plans for Development and Operation (PDO) for oil and gas fields. For major developments, for example those that are controversial, very costly (over NOK 20 billion), or of significant societal importance, the PDO must also be approved by Parliament.

23. Petroleum Activities Act Regulations §§ 6(a)-(d) (Nor.); Impact Assessments Regulations § 1 (Nor.).

24. Natur og Ungdom [Nature & Youth Nor.], Norges Høyesterett [Nor. Sup. Ct.] Dec. 22, 2020, HR-2020-2472-P, ¶¶ 190-92 (Nor.).

25. *Id.*

Procedurally, *Climate Lawsuit II* illustrates the separation between substantive judicial review and interim relief. While the main proceedings concerned the legality of the PDO approvals, the plaintiffs simultaneously sought interim relief to temporarily halt implementation of the PDOs.

C. The legal climate framework

To understand the legal basis for these *Climate Lawsuits* and the evolution of environmental impact assessment requirements, it is necessary to examine the development of the international and domestic legal framework governing environmental protection and climate obligations. The following section outlines the key legal instruments that form the foundation for Norway's constitutional and statutory duties regarding environmental impact assessments in petroleum project approvals.

Norway's legislative climate framework is built upon three interconnected pillars: international treaty obligations, close regulatory cooperation with the European Union through the European Economic Area (EEA) Agreement, and comprehensive domestic legislation. As a strong advocate for developing legal frameworks to curb CO₂ emissions on the global arena, Norway has consistently been an early adopter of international climate commitments and has integrated these obligations into its national legal system.²⁶

In 1992, the United Nations Framework Convention on Climate Change (UNFCCC) was adopted, and Norway ratified it on June 11, 1993.²⁷ Under this convention, the Kyoto Protocol was adopted, providing for the use of flexible plans of implementation and collaboration, Kyoto Flexible Mechanisms, between countries to aid in meeting Greenhouse gas emissions commitments.²⁸ Norway ratified the Kyoto Protocol in 2002.²⁹ In 2015, the United Nations Climate Change Convention adopted the Paris Agreement under the UNFCCC framework, which Norway ratified in 2016.³⁰ The primary goal of the Paris Agreement is to hold the increase in the global average temperature to well below 2°C above pre-industrial levels, while pursuing efforts to limit the temperature increase to 1.5°C.³¹ According to Norway's most recent National Determined Contribution (NDC)

26. Norway was the first industrialized country to ratify the UN Framework Convention on Climate Change (UNFCCC) in 1993 and one of the first to implement a CO₂ Tax in 1991. *See generally* Harald Dovland, Ministry of Env't Nor., Presentation at the Seminar of Governmental Experts: Norwegian Climate Change Policies, UNFCCC (2005), https://unfccc.int/files/meetings/seminar/application/pdf/sem_pre_norway.pdf.

27. *United Nations Framework Convention on Climate Change*, U.N. CLIMATE CHANGE, <https://unfccc.int/process-and-meetings/united-nations-framework-convention-on-climate-change> (last visited Mar. 24, 2026). For Norway's status under the UNFCCC and its' signature, see *Parties to the United Nations Framework Convention on Climate Change: Norway*, U.N. CLIMATE CHANGE, <https://unfccc.int/node/61132> (last visited Mar. 24, 2026).

28. *The Kyoto Protocol*, U.N. CLIMATE CHANGE, <https://unfccc.int/process-and-meetings/the-kyoto-protocol> (last visited Mar. 24, 2026).

29. *Parties to the United Nations Framework Convention on Climate Change: Norway*, *supra* note 27.

30. *The Paris Agreement*, U.N. CLIMATE CHANGE, <https://unfccc.int/process-and-meetings/the-paris-agreement> (last visited Mar. 24, 2026). For date of ratification, see *Parties to the United Nations Framework Convention on Climate Change: Norway*, *supra* note 27.

31. *The Paris Agreement*, U.N. CLIMATE CHANGE, <https://unfccc.int/process-and-meetings/the-paris-agreement> (last visited Mar. 24, 2026).

under the Paris Agreement,³² the country is obliged to reduce Greenhouse Gas Emissions by at least 70–75% by 2035 compared to 1990 levels.³³

Through the EEA Agreement, Norway is deeply integrated into the EU's climate framework and fully participates in the European emission reduction efforts, despite not being an EU member.³⁴ EU law incorporated into the EEA framework forms the basis for approximately 80% of Norway's climate and environmental legislation.³⁵

Three main pillars constitute the EU's climate architecture: the EU Emissions Trading System (EU ETS), the Effort Sharing Regulation (ESR), and the Land Use, Land-Use Change and Forestry Regulation (LULUCF).³⁶ These frameworks together form the overarching European climate policy structure. Norway participates in the EU ETS and is also integrated into both the ESR and LULUCF frameworks.³⁷

One piece of EEA legislation of particular relevance for the analysis in this article is the Environmental Impact Assessment (EIA) Directive, which mandates that environmental and climate impacts be assessed before major projects are authorized.³⁸

32. Nationally Determined Contributions (NDCs) are national climate commitments submitted by Parties to the Paris Agreement pursuant to Article 4. Each NDC sets out a country's self-determined mitigation targets and measures and must be updated every five years with progressively higher ambition. *Norway's Nationally Determined Contribution for 2035*, UNFCCC, at 1 (June 26, 2025), <https://unfccc.int/sites/default/files/2025-06/Norways%20NDC%20for%202035..pdf>.

33. *Id.*

34. Norway follows a dualistic legal system, meaning that international and EEA obligations do not have direct effect domestically. Accordingly, EU climate legislation, even when binding through the EEA Agreement, must be formally incorporated into Norwegian law through national legislative or regulatory acts before it becomes legally enforceable. *See generally* Oljearbeidernes Fellessammenslutning v. Staten [Fed. of Offshore Workers' Trade Unions v. State], Norges Høyesterett [Nor. Sup. Ct.] April 10, 1997, HR-1997-24-A (Nor.).

35. DET KINGELIGE KLIMA- OG MILJØDEPARTEMENTET [ROYAL MINISTRY OF CLIMATE AND ENVIRONMENT], MELD. ST. 25 (2024–2025) MELDING TIL STORTINGET [REPORT NO. 25 (2024–2025) TO THE STORTING] 9 (2025), <https://www.regjeringen.no/contentassets/d51d0e3cc153440b9611cdece49f4549/no/pdfs/stm202420250025000dddpdfs.pdf>.

36. *Effort Sharing 2021-2030: Targets and Flexibilities*, EUR. COMM'N, https://climate.ec.europa.eu/eu-action/effort-sharing-member-states-emission-targets/effort-sharing-2021-2030-targets-and-flexibilities_en (last visited April 7, 2026).

37. *Id.* Through the EU's Fit for 55 package, these frameworks were strengthened to align with the EU's more ambitious 2030 climate target. *Fit for 55: Delivering on the Proposals*, EUR. COMM'N (last updated Oct. 31, 2025), https://commission.europa.eu/topics/climate-action/delivering-european-green-deal/fit-55-delivering-proposals_en. Norway has already incorporated the revised EU ETS rules into the EEA Agreement and continues dialogue with the European Commission regarding the terms for continued participation in the ESR and LULUCF frameworks after 2030. *Effort Sharing 2021-2030: Targets and Flexibilities*, EUR. COMM'N, https://climate.ec.europa.eu/eu-action/effort-sharing-member-states-emission-targets/effort-sharing-2021-2030-targets-and-flexibilities_en (last visited April 7, 2026).

38. 2011 O.J. (L 26), *amended by*, 2014 O.J. (L 124). The EIA Directive is not a sub-component of the three pillars (ETS, ESR, or LULUCF) listed; rather, it belongs to the broader horizontal EU environmental legal framework.

At the domestic level, the EIA Directive has been transposed primarily through the Planning and Building Act.³⁹ The Planning and Building Act establishes a comprehensive framework requiring that climate and environmental considerations be systematically integrated into building planning processes broadly, through mandatory impact assessments.⁴⁰ These assessments must be completed before building development consent is granted, ensuring that decision-makers have adequate information about a project's environmental effects. The Planning and Building Act designates municipalities as the competent authority for most planning decisions, though coordination with sectoral authorities, in this case the Ministry of Energy, is required where specialized environmental concerns arise.⁴¹

This domestic implementation of the EIA Directive formed the principal legal basis for the Borgarting Court of Appeal's ruling in *Climate Lawsuit II*, which found that the State had failed to conduct adequate environmental impact assessments of combustion emissions before approving the Plans for Development and Operation for the three petroleum fields.⁴²

Beyond the general building procedural requirements described above, Norwegian law also contains an overarching constitutional safeguard for the environment and climate. Article 112 of the Norwegian Constitution establishes a right to a healthy environment and obliges the authorities to implement measures that protect natural resources and safeguard this right for future generations.⁴³ It also requires the State to ensure transparency and public participation in environmental decision-making.⁴⁴

II. CLIMATE LAWSUIT I

A. *The Oslo District Court*

In *Climate Lawsuit I*, Nature and Youth and Greenpeace Nordic Association (Plaintiffs) brought suit against the State, represented by the Ministry of Petroleum and Energy (Defendant), asserting that the Royal Decree of June 10, 2016, was inconsistent with Article 112 of the Constitution.⁴⁵ The decree is the mechanism used to issue the licenses.

Article 112 establishes a constitutional right to a healthy environment and imposes corresponding duties on the State:

39. Lov om planlegging og byggesaksbehandling (plan- og bygningsloven) (plandelen) [Act on Planning and Building Application Processing (Planning and Building Act) (the planning part)] [Planning and Building Act] June 27, 2008, No. 71, §§ 14-1–14-6 (Nor.).

40. *Id.*

41. *Id.* See also Impact Assessments Regulations § 5 (Nor.).

42. Natur og Ungdom v. Staten [Nature & Youth v. State], Borgarting lagmannsrett [Borgarting App. Ct.] Jan. 23, 2020, LB-2018-60499, pt. III, § 1 (Nor.).

43. KONGERIKET NORGES GRUNNLOV [CONSTITUTION OF THE KINGDOM OF NORWAY] May 17, 1814, LOV-1814-05-17, art. 112 (amended 2014) (Nor.).

44. *Id.*

45. Föreningen Greenpeace Norden v. Staten [Greenpeace Nordic Ass'n v. State], Oslo tingrett [Oslo Dist. Ct.] Jan. 4, 2018, TOSLO-2016-166674, (Nor.).

Every person has the right to an environment that is conducive to health and to a natural environment whose productivity and diversity are maintained. Natural resources shall be managed on the basis of comprehensive long-term considerations which will safeguard this right for future generations as well. In order to safeguard their right in accordance with the foregoing paragraph, citizens are entitled to information on the state of the natural environment and on the effects of any encroachment on nature that is planned or carried out. The authorities of the state shall take measures for the implementation of these principles.⁴⁶

Against this constitutional backdrop, the Plaintiffs advanced several arguments. First, the Plaintiffs argued that the decision to issue production licenses for the geographical areas, Barents Sea South and Barents Sea Southeast, violated an “absolute limit” in Article 112.⁴⁷ Article 112 of the Norwegian Constitution establishes both an absolute and a relative threshold for environmental protection.⁴⁸ The absolute threshold prohibits certain public decisions that cross a minimum standard of environmental harm, decisions that would fundamentally breach the core environmental protections guaranteed by the Constitution.⁴⁹ The absolute threshold requires assessing whether environmental damage and climate impacts from a decision, when viewed cumulatively with other activities rather than in isolation, exceed what can be tolerated whilst still ensuring a healthy environment and preserving nature’s productive capacity and diversity for current and future generations.⁵⁰ The absolute threshold concept is, however, intangible rather than being tied to a specific emissions number.

All parties agreed that Article 112 establishes a substantive limit on public decision-making, prohibiting decisions that may cause environmental harm beyond a certain threshold.⁵¹ At the same time, there was agreement between the parties that the Article is not violated where adequate and effective measures are adopted to prevent, mitigate, or compensate for such harm.⁵² The Plaintiffs reasoned that the decision of awarding licenses to petroleum companies following the 23rd round was incompatible because (1) the issuance of the licenses would result in the production of a large amount of emissions, and (2) the awarded licenses encompassed areas adjacent to and overlapping with the marginal ice zone and the polar front, regions characterized by an exceptionally vulnerable ecology.⁵³ Second, the Plaintiffs asserted that the State has failed to take sufficient measures to prevent negative effects on the climate.⁵⁴ Third, the Plaintiffs

46. KONGERIKET NORGES GRUNNLOV [CONSTITUTION OF THE KINGDOM OF NORWAY] May 17, 1814, LOV-1814-05-17, art. 112 (amended 2014) (Nor.).

47. Föreningen Greenpeace Norden [Greenpeace Nordic Ass’n], Oslo tingrett [Oslo Dist. Ct.] Jan. 4, 2018, TOSLO-2016-166674 (Nor.).

48. KONGERIKET NORGES GRUNNLOV [CONSTITUTION OF THE KINGDOM OF NORWAY] May 17, 1814, LOV-1814-05-17, art. 112 (amended 2014) (Nor.).

49. *Id.*

50. *Id.*

51. *See generally* Föreningen Greenpeace Norden [Greenpeace Nordic Ass’n], Oslo tingrett [Oslo Dist. Ct.] Jan. 4, 2018, TOSLO-2016-166674 (Nor.).

52. *Id.*

53. *Id.* § 3.1.

54. *Id.*

contended that the investigation conducted before the decision of awarding licenses was not adequate, because it did not consider the relevant climate implications and was based on incorrect facts.⁵⁵

The Oslo District Court ruled in favor of the State and held that the Royal Decree awarding the 23rd licensing round was valid.⁵⁶ This outcome was not surprising, given both the high threshold for finding a violation of Article 112 and the significant discretion afforded to the Government in determining which measures are adequate to mitigate environmental harm pursuant to section 3 of Article 112.

The court held that emissions resulting from the combustion of exported oil and gas fell outside the scope of Article 112, as responsibility for greenhouse gas emissions rests with the state in which the emissions occur, and the majority of the petroleum in question would not be used in Norway.⁵⁷ The court further reasoned that the State had adopted sufficient measures, noting that the risk of negative climate effects was limited, that the contribution to Norway's total emissions would be marginal, and that the likelihood of a potential oil spill was low.⁵⁸ Finally, the Court found that the factual errors in the underlying assessments were procedurally irrelevant at the approval processes, as the decision to issue the licenses concerned an early phase of the petroleum project.⁵⁹ Potential deficiencies or misleading information could, in the Court's view, be addressed and taken into account at later stages of project development.⁶⁰

B. The Borgarting Court of Appeal

Nature and Youth and Greenpeace Nordic Association (Appellants) appealed this judgment from the District Court in Oslo to the Borgarting Court of Appeals.⁶¹ The Grandparents' Climate Action and the Friends of the Earth Norway declared party assistance (the Norwegian equivalent of third-party intervention) in support of the Appellants.⁶²

The Appellants asserted that the production licenses issued in the 23rd licensing round were in violation of Article 112 because they were invalid under the first paragraph of the article's description of an absolute and relative threshold, and under the third paragraph's establishment of a duty to take action.⁶³ Additionally, the Appellants asserted that the District Court's decision was invalid because it violates Articles 2 and 8 of the European Convention on Human Rights

55. Föreningen Greenpeace Norden [Greenpeace Nordic Ass'n], Oslo tingrett [Oslo Dist. Ct.] Jan. 4, 2018, TOSLO-2016-166674, § 3.3 (Nor.).

56. *Id.* § 5.4.

57. *Id.* § 5.2.2.

58. *Id.* §§ 5.2.3, 5.3.3.

59. Föreningen Greenpeace Norden [Greenpeace Nordic Ass'n], Oslo tingrett [Oslo Dist. Ct.] Jan. 4, 2018, TOSLO-2016-166674, § 5.3.5 (Nor.).

60. *Id.*

61. *See generally* Natur og Ungdom [Nature & Youth], Borgarting lagmannsrett [Borgarting App. Ct] Jan. 23, 2020, LB-2018-60499 (Nor.).

62. *Id.*

63. *Id.* at pt. II

(ECHR), because the climate crisis should have been considered imminent as it currently affected and would continue to affect the people of Norway.⁶⁴

The State, as the respondent, argued that the decision of the District Court did not conflict with Article 112 and that the Article does not confer enforceable substantive rights on the courts.⁶⁵ Furthermore, the respondent noted that while the third paragraph of Article 112 establishes a duty to take action, it does not apply to alleged inaction, and that in any event the determination of what constitutes effective mitigation measures lies largely within the Government's discretion.⁶⁶

In arguing that the District Court's decision did not violate Article 112 regardless of any threshold, the respondents provided that emissions resulting from the 23rd licensing round could not be quantified at that time of issuance of licenses and that any such emissions would be insignificant in comparison to global emissions.⁶⁷ Regarding the duty to take action under the third paragraph of Article 112, the respondent argued that a number of measures had already been taken, and that additional measures would be required if further discoveries were made.⁶⁸ Lastly, the respondent claimed that the environmental nonprofit organizations, that operates independently of any government, did not have standing under ECHR Articles 2 (Article 2 imposes a positive obligation on States to take preventative measures to protect life when there is a known risk) and 8 (Article 8 has been interpreted broadly by the ECtHR to include the right to a healthy environment, as environmental degradation can interfere with an individual's well-being and home life) because the Appellants were not victims.⁶⁹

This Court affirmed the decision of the lower court, but departed from the District Court's earlier reasoning that combustion emissions outside the Norwegian territory were outside the scope of Article 112.⁷⁰ Instead, the Appeal Court emphasized that Article 112 is a comprehensive constitutional provision that can give rise to enforceable environmental rights, but noted that these rights are subject to a high threshold for judicial intervention.⁷¹ This high threshold reflects the principle of democratic deference: courts must be cautious about overturning policy decisions made by elected authorities, particularly in complex areas like energy and climate policy.⁷²

The Court emphasized that while Article 112 establishes substantive obligations on the State to protect the environment, the standard for finding a violation is rigorous, and concerns that might arise in the future would be assessed

64. *Id.*

65. Natur og Ungdom [Nature & Youth], Borgarting lagmannsrett [Borgarting App. Ct] Jan. 23, 2020, LB-2018-60499, pt. III, § 2.2 (Nor.).

66. *Id.* at pt. II.

67. *Id.* at pt. III, § 5.2.

68. *Id.* at pt. II.

69. Natur og Ungdom [Nature & Youth], Borgarting lagmannsrett [Borgarting App. Ct] Jan. 23, 2020, LB-2018-60499, pt. II (Nor.).

70. *Id.* at pt. III, §§ 3.3–3.5.

71. *Id.* at pt. II, pt. III, § 2.3.

72. *Id.* at pt. III, § 2.3.

when there is more concrete evidence or a more immediate risk.⁷³ This leaves significant discretion to the Government in determining what measures are adequate to mitigate environmental harm.

Lastly, The Court found that the District Court's decision had not violated the European Convention on Human Right (ECHR) Articles 2 and 8 because the causal link between the 23rd licensing round production licenses and the environmental harm to the polar front/ice edge was too attenuated, and a more direct link is required.⁷⁴

The Borgarting Court of Appeal dismissed this appeal and found the award of the 23rd licensing round was valid.⁷⁵

C. *The Supreme Court of Norway*

Nature and Youth and Greenpeace Nordic Association (Appellants) appealed to the Supreme Court of Norway. The majority opinion of the Supreme Court, delivered by Justice Høgetveit Berg, emphasized that decisions concerning Parliament's potential neglect of its duties are subject to judicial review in the interest of democracy, but also stressed that the threshold for intervention is very high, consistent with prior court rulings.⁷⁶ In other words, while Norwegian courts can review whether the State has complied with constitutional environmental obligations under Article 112, such review is limited by the principle of democratic deference, reflecting the weight of Parliament's political discretion in resource and energy policy.

The Supreme Court found that, in this case, the duty to take action under Article 112, which requires the State to safeguard the natural environment and reduce emissions, had not been "seriously neglected".⁷⁷ The Court's analysis focused on the measures the Government had already taken to limit greenhouse gas emissions and mitigate environmental harm.⁷⁸

Regarding procedural requirements, the majority reasoned that no procedural errors had occurred.⁷⁹ The majority found that at the early licensing stage, climate and environmental impacts are difficult to quantify because key project details, such as exact locations, extraction volumes, and methods, are not yet determined.⁸⁰ As a result, the majority argued, only preliminary assessments are possible, with detailed evaluations deferred to later stages, such as the Plan for Development and Operation (PDO) phase, when project parameters and potential impacts are better defined.⁸¹

73. Natur og Ungdom [Nature & Youth], Borgarting lagmannsrett [Borgarting App. Ct] Jan. 23, 2020, LB-2018-60499, pt. III, § 3.5 (Nor.).

74. *Id.* at pt. III, § 4.2.

75. *Id.* at pt. III, §§ 5.4, 6.

76. Natur og Ungdom [Nature & Youth Nor.], Norges Høyesterett [Nor. Sup. Ct.] Dec. 22, 2020, HR-2020-2472-P, ¶¶ 1, 123, 141-42 (Nor.).

77. *Id.* at ¶ 157.

78. *Id.* at ¶¶ 157-60, 163.

79. *Id.* at ¶ 241.

80. Natur og Ungdom [Nature & Youth Nor.], Norges Høyesterett [Nor. Sup. Ct.] Dec. 22, 2020, HR-2020-2472-P, ¶¶ 193-95, 216, 223, 241 (Nor.).

81. *Id.* at ¶¶ 241, 246, 249.

Justice Webster dissented, joined by Justices Bull, Falch, and Østensen Berglund.⁸² While agreeing with the majority on Article 112 and ECHR Articles 2 and 8, the dissent argued that a procedural error had occurred.⁸³ Specifically, the dissenting opinion maintained that the State had a duty to “identify, describe, and assess”⁸⁴ emissions from the eventual combustion of exported oil at the initial licensing stage. Waiting until the PDO stage, in their view, conflicted with the objective of the Strategic Environmental Assessment (SEA) Directive, which seeks to ensure that environmental considerations are integrated throughout the decision-making process generally, not postponed.⁸⁵

Ultimately, the Supreme Court held that the Royal Decree awarding the 23rd licensing round was valid and dismissed the appeal.⁸⁶ The decision clarified that while Norwegian courts recognize constitutional environmental obligations, these are balanced against the Government’s discretion in early-stage project approval, the staged nature of environmental review, and the practical limitations of assessing global climate impacts at an early point in a project’s lifecycle.⁸⁷

In addition, the Supreme Court followed the reasoning of the Borgarting Court of Appeals, concluding that there had been no violation of Articles 2 and 8 of the ECHR.⁸⁸ These provisions protect the right to life and the right to private and family life. The Court emphasized that, to engage these rights, the environmental risks must be both imminent and directly linked to the claimants.⁸⁹ The Court concluded that in this case, the connection between potential environmental harm and the appellants was too indirect to trigger ECHR protections.⁹⁰ This reasoning set the stage for scrutiny by the ECtHR.

D. The ECtHR Judgment and Findings in Greenpeace Nordic and Others v. Norway

1. Scope of Review

On October 28, 2025, the ECtHR issued its judgment in *Greenpeace Nordic and Others v. Norway*.⁹¹ The applicants, Nature and Youth and Greenpeace

82. *Id.* at ¶¶ 253-54, 289-91 (Webster, J., dissenting).

83. *Id.* at ¶¶ 254, 258 (Webster, J., dissenting).

84. Natur og Ungdom [Nature & Youth Nor.], Norges Høyesterett [Nor. Sup. Ct.] Dec. 22, 2020, HR-2020-2472-P, ¶ 274 (Nor.) (Webster, J., dissenting).

85. *Id.* at ¶¶ 266-67, 269 (Webster, J., dissenting).

86. *Id.* at ¶¶ 251-52

87. *Id.* at ¶¶ 49-251.

88. Natur og Ungdom [Nature & Youth Nor.], Norges Høyesterett [Nor. Sup. Ct.] Dec. 22, 2020, HR-2020-2472-P, ¶ 176 (Nor.)

89. *Id.* at ¶¶ 166, 168-69.

90. *Id.* at ¶¶ 168, 171.

91. *See generally* *Greenpeace Nordic v. Nor.*, App. No. 34068/21 (Oct. 28, 2025), <https://hudoc.echr.coe.int/eng/?i=001-245561>; European Court of Human Rights Press Release 251, Deferring Environmental Impact Assessment in Respect of Licenses Granting Petroleum Exploration Did Not Breach the Convention (Oct. 28, 2025), <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-8367909-11820103&filename=Judgment%20Greenpeace%20Nordic%20and%20Others%20v.%20Norway%20-%20Deferring%20environmental%20impact%20assessment%20in%20respect%20of%20licences%20granting>

Nordic Association, together with six individuals, challenged Norway's decision of June 10, 2016 to grant production licenses in the Barents Sea as part of the 23rd licensing round.⁹² They argued that deferring detailed climate-impact assessment to later decision points exposed people to serious climate-related harms.⁹³ This, they contended, was in violation of the Convention.⁹⁴

The Court limited its review to the specific matters contested and adjudicated domestically, focusing on the 23rd exploration licensing round and its decision-making process.⁹⁵ While national climate strategy and cumulative effects provided context, the Court refrained from conducting an abstract review of overall petroleum policy.⁹⁶ The central question was therefore whether this particular licensing procedure adequately satisfied Convention-level procedural guarantees concerning climate risk.⁹⁷

2. Admissibility and Standing

Applying the Grand Chamber's framework in *KlimaSeniorinnen*,⁹⁸ the Court reiterated the "especially high" threshold for individual victim status in climate cases.⁹⁹ To meet this, applicants must demonstrate both a high intensity of exposure to climate-related harms and a pressing need for individual protection under the convention.¹⁰⁰ In other words, it is not enough to allege general or

%20petroleum%20exploration%20did%20not%20breach%20the%20Convention.pdf [hereinafter Press Release 251].

92. Greenpeace Nordic v. Nor., App. No. 34068/21, ¶¶ 1, 5-15, 181 (Oct. 28, 2025), <https://hudoc.echr.coe.int/eng?i=001-245561>; Press Release 251, *supra* note 91, at 2.

93. Greenpeace Nordic v. Nor., App. No. 34068/21, ¶¶ 218-19, 260, 329, 357 (Oct. 28, 2025), <https://hudoc.echr.coe.int/eng?i=001-245561>; Press Release 251, *supra* note 91, at 2.

94. Under the ECHR, to which Norway is a party and which is incorporated into Norwegian law through the Human Rights Act § 2, NGOs and private individuals in Norway can bring complaints to the ECtHR. However, before an application can be considered by the ECtHR, the applicant must have exhausted all available and effective domestic remedies, meaning the claim must first be pursued through the Norwegian court system. *See* Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221, art. 35. Applicants must also demonstrate that they are directly affected or have a legitimate interest in the matter and that the alleged violation engages rights protected by the Convention. *See* Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221, art. 34.

95. *See generally* Greenpeace Nordic v. Nor., App. No. 34068/21 (Oct. 28, 2025), <https://hudoc.echr.coe.int/eng?i=001-245561>; *see also* Press Release 251, *supra* note 91, at 2-4.

96. Press Release 251, *supra* note 91, at 3.

97. *Greenpeace Nordic and Others v. Norway*, COLUM. L. SCH.: SABIN CTR. FOR CLIMATE CHANGE L., https://www.climatecasechart.com/document/greenpeace-nordic-and-others-v-norway_0687 (last visited Mar. 29, 2026).

98. *See generally* Verein KlimaSeniorinnen Schweiz v. Switz., App. No. 53600/20 (Apr. 9, 2024), <https://hudoc.echr.coe.int/eng?i=001-233206>. The Grand Chamber is the ECtHR's highest formation for adjudicating particularly significant or complex cases, hearing appeals from the Chamber level after a first-instance judgment. Its decisions carry heightened authoritative weight and provide guidance for lower Chambers, making it a key procedural stage in the ladder of ECtHR review.

99. Greenpeace Nordic v. Nor., App. No. 34068/21, ¶¶ 286-87 (Oct. 28, 2025), <https://hudoc.echr.coe.int/eng?i=001-245561>.

100. *Id.*

diffuse environmental risks; the claimant must demonstrate a direct, personal, and imminent impact on their life, health, or home.¹⁰¹

The Court held there was a sufficiently close link between petroleum production licensing and the serious adverse effects of climate change on individuals' lives, health, well-being and quality of life, noting exploration licensing is a legal and practical precondition for extraction.¹⁰² However, the Court ruled that the six individual applicants did not meet the high threshold for "victim status", and their Article 8 complaints were declared inadmissible.¹⁰³

In contrast, the two applicant organizations, Nature and Youth and Greenpeace Nordic Association, satisfied the Court's locus standi criteria for climate cases, and their Article 8 complaint was declared admissible.¹⁰⁴ This decision reinforced the availability of associational standing for climate procedural claims at Strasbourg, following *KlimaSeniorinnen*.¹⁰⁵

3. Article 8: Procedural Obligations on Climate Risk Decisions

Article 8 protects private and family life and the home.¹⁰⁶ Within the domain of environmental and climate concerns, it mandates procedural duties, requiring states to implement decision-making processes capable of effectively informing and safeguarding individuals against serious environmental risks.¹⁰⁷ Consequently, when authorizing activities with potential climate impact, such processes must include an environmental impact assessment that is "adequate, timely, and comprehensive."¹⁰⁸ This assessment must be conducted in good faith, grounded in the best available science, involve meaningful public participation, and lead to reasoned decisions.¹⁰⁹

Two questions structured the Court's analysis: first, regarding timing, whether climate impacts must be assessed before production licenses are issued;

101. *Id.* at ¶ 288. For American readers, this standard can be compared to the 'standing' requirement in U.S. federal law. Both systems reject generalized grievances and require plaintiffs to demonstrate individual harm.

102. *Id.* at ¶ 299.

103. Greenpeace Nordic v. Nor., App. No. 34068/21, ¶ 306 (Oct. 28, 2025), <https://hudoc.echr.coe.int/eng?i=001-245561>.

104. *Id.* at ¶ 312.

105. Press Release 251, *supra* note 91, at 2; Rob Harkavy, *ECtHR Clears Norway's Oil Licensing Process but Upholds NGO Standing*, ICLG NEWS (Oct. 29, 2025), <https://iclg.com/news/23217-ecthr-clears-norway-s-oil-licensing-process-but-upholds-ngo-standing>.

106. Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221, art. 8.

107. Greenpeace Nordic v. Nor., App. No. 34068/21, ¶¶ 317-19 (Oct. 28, 2025), <https://hudoc.echr.coe.int/eng?i=001-245561>. See e.g., *Giacomelli v. Italy*, App. No. 59909/00, ¶¶ 76-83 (Nov. 2, 2006), <https://hudoc.echr.coe.int/eng?i=001-77785>.

108. Greenpeace Nordic v. Nor., App. No. 34068/21, ¶ 318 (Oct. 28, 2025), <https://hudoc.echr.coe.int/eng?i=001-245561>.

109. Press Release 251, *supra* note 91, at 1.

and second, concerning sufficiency, what features make an EIA adequate for Article 8 purposes.¹¹⁰

4. Merits: No Violation of Article 8

The Court acknowledged a sufficient link between production licensing and serious climate effects, thereby bringing the associations' Article 8 complaint under the provision's scope.¹¹¹ With the complaint falling under Article 8, the crucial consideration shifted to the quality of Norway's general process and procedural legal system, rather than its petroleum policy.

The Court held that an adequate environmental impact assessment for approvals related to petroleum projects, must at minimum, quantify anticipated greenhouse gas emissions, including both domestic and exported combustion emissions, and facilitate informed public consultation.¹¹² The applicants argued that meaningful climate assessment had been improperly deferred to later stages, particularly PDO approval under the Petroleum Act section 4-2.¹¹³

Although the Court agreed the 2016 licensing process was not "fully comprehensive" because significant climate effects were deferred, it found that sufficient safeguards existed to address these shortcomings at the PDO stage.¹¹⁴ This aligns with the Supreme Court's prior holding that the State is legally obligated to withhold approval of a PDO should climate impact assessments warrant such a rejection.¹¹⁵

In other words, the Court concluded that Article 8 does not specify a single administrative moment for climate assessment throughout the petroleum lifecycle.¹¹⁶ Deferring detailed climate evaluation from production licensing to the PDO stage, is compatible with Article 8 provided that the legal framework ensures a full, science-based, participatory, and reviewable assessment, with the power to shape or halt the project if necessary.¹¹⁷

The Court found that Norway's petroleum framework, which rely on later-stage controls through government licenses and mandatory environmental impact assessment obligations at the PDO stage, was sufficient to provide an Article 8 compliant evaluation in a timely manner, allowing the authorities to take

110. Corina Heri & Hazhar Jamali, *Fossil Fuel Litigation Goes to Strasbourg: Making Sense of Greenpeace Nordic*, STRASBOURG OBSERVERS (Nov. 7, 2025), <https://strasbourgoobservers.com/2025/11/07/fossil-fuel-litigation-goes-to-strasbourg-making-sense-of-greenpeace-nordic/>.

111. *Greenpeace Nordic v. Nor.*, App. No. 34068/21, ¶¶ 294-99 (Oct. 28, 2025), <https://hudoc.echr.coe.int/eng?i=001-245561>.

112. *Id.* at ¶ 319.

113. *Id.* at ¶ 329.

114. *Id.* at ¶¶ 330-36.

115. *Natur og Ungdom [Nature & Youth Nor.]*, Norges Høyesterett [Nor. Sup. Ct.] Dec. 22, 2020, HR-2020-2472-P, ¶ 70 (Nor.).

116. *Greenpeace Nordic v. Nor.*, App. No. 34068/21, ¶¶ 314, 326, 335-37 (Oct. 28, 2025), <https://hudoc.echr.coe.int/eng?i=001-245561>.

117. Press Release 251, *supra* note 91, at 3; Petroleum Activities Act Regulations § 8 (Nor.).

appropriate account of environmental and climate considerations when making decisions.¹¹⁸

Given its finding of no violation under Article 8, the Court deemed a separate examination of Article 2 unnecessary.¹¹⁹ This is because, under the ECHR, if no interference with private or family life is found, there is generally no need to analyze potential impacts on life in this context, since the alleged harm was already deemed insufficiently direct or imminent. Since no Article 8 violation was established, there was no legal basis to sustain a separate discrimination claim.¹²⁰

5. Key Insights and Implications

The ECtHR reaffirmed that environmental NGOs may bring climate claims under Article 8 without having to show that individual members satisfy the Convention's strict victim-status requirements.¹²¹ Individual applicants, by contrast, remain subject to an "especially high" threshold, requiring both severe exposure to climate-related harm and a pressing need for personal protection.¹²² This confirms the Grand Chamber's approach in *KlimaSeniorinnen*, strengthening access to justice for procedural climate challenges by allowing qualified NGOs to bring claims where individual standing would otherwise be unattainable.¹²³

The Court articulated that an adequate, timely, and comprehensive environmental impact assessment must be conducted in good faith and based on the best available science before authorizing a potentially dangerous activity that may harm individuals' rights to effective protection from serious adverse climate effects.¹²⁴ For petroleum production projects specifically, the assessment must at minimum quantify anticipated greenhouse gas emissions, including combustion emissions both domestically and abroad, assess whether the activity is compatible with national and international climate obligations, and allow for informed public consultation at a time when all options are still open.¹²⁵ The Court emphasised that this assessment cannot ignore cumulative effects by slicing them across individual projects; cumulative impacts must be addressed.¹²⁶

This procedural standard applies throughout the petroleum project lifecycle and establishes the baseline for Convention compliance. Whilst the Court accepted that climate analysis may be conducted in stages, it emphasised that the 2016 licensing process was "not fully comprehensive" because significant climate effects, including exported combustion emissions, had been deferred to later

118. Press Release, *supra* note 91, at 3; *Petroleumsloven og Konesjons- Systemet [The Petroleum Act and the Licensing System]*, NORSK PETROLEUM [NORWAY PETROLEUM] (last updated Apr. 9, 2025), <https://www.norskpetroleum.no/en/framework/the-petroleum-act-and-the-licensing-system/>.

119. Greenpeace Nordic v. Nor., App. No. 34068/21, ¶¶ 284-85 (Oct. 28, 2025), <https://hudoc.echr.coe.int/eng?i=001-245561>.

120. *Id.*

121. *Id.* at ¶¶ 308-12, 360.

122. *Id.* at ¶ 287.

123. Greenpeace Nordic v. Nor., App. No. 34068/21, ¶¶ 286-88, 310-12 (Oct. 28, 2025), <https://hudoc.echr.coe.int/eng?i=001-245561>.

124. *Id.* at ¶ 318.

125. *Id.* at ¶ 319.

126. *Id.* at ¶ 336.

stages.¹²⁷ The question then became whether such deferral was compatible with Article 8's procedural demands.¹²⁸

Deferral to later stages was acceptable only because the Court was satisfied that deficiencies at the licensing stage could genuinely be remedied later, either through a full environmental assessment at the PDO stage or through broader political decisions to limit petroleum activity.¹²⁹ Central to this conclusion was that petroleum extraction still required PDO approval and that an exploration license created no legitimate expectation of production.¹³⁰ The Court also relied on structural safeguards, including the Supreme Court's confirmation that authorities are constitutionally obliged to refuse the issuance of a PDO where climate considerations so require, and assurances that combustion emissions would be comprehensively assessed at the PDO stage with public participation.¹³¹

The Court nevertheless issued a clear warning by saying that extensive reliance on waivers from PDO-stage assessment could "completely undermine" the purpose of environmental impact assessment under Article 8.¹³² Deferral is therefore permissible only where later-stage decision-making remains genuinely open and capable of influencing or stopping the project.

Although Norway prevailed on the facts, the Court's articulation of procedural duties sends clear system-wide signals: states should be prepared to demonstrate a credible, science-based climate assessment, one that quantifies greenhouse gas emissions (including exported combustion emissions), evaluates compatibility with climate obligations, and involves meaningful public participation, before authorizing fossil-fuel extraction activities. While this assessment is not strictly mandated at the exploration license step, it is crucial that the framework ensures effective control at a meaningful subsequent stage, supported by clear legal constraints and genuine procedural guarantees that ensure the assessment is timely, comprehensive, and challengeable.¹³³

III. CLIMATE LAWSUIT II

A. *Oslo District Court*

Nature and Youth and Greenpeace Nordic Association brought suit against the Norwegian State in 2023 asserting that the State had failed to comply with the Petroleum Act and its obligation to conduct adequate environmental impact assessments, when it approved the Plans for Development and Operation (PDOs)

127. *Greenpeace Nordic v. Nor.*, App. No. 34068/21, ¶ 330 (Oct. 28, 2025), <https://hudoc.echr.coe.int/eng?i=001-245561>.

128. *Id.* at ¶¶ 331-36.

129. *Id.* at ¶ 331.

130. *Id.* at ¶¶ 104, 331.

131. *Greenpeace Nordic v. Nor.*, App. No. 34068/21, ¶¶ 331, 334-35 (Oct. 28, 2025), <https://hudoc.echr.coe.int/eng?i=001-245561>.

132. *Id.* at ¶ 332.

133. Nerijus Adomaitis, *Europe's Top Rights Court Rejects Climate Challenge Against Norway's Oil*, REUTERS (last updated Oct. 28, 2025), <https://www.reuters.com/sustainability/cop/europes-top-rights-court-rejects-climate-challenge-against-norway-oil-2025-10-28/>.

for the three petroleum fields Breidablikk, Yggdrasil and Tyrving; all located in the North Sea.¹³⁴

The Oslo District Court ruled in favor of the Plaintiffs on all accounts, declaring the approved PDOs invalid.¹³⁵ The Court found that the State had failed to adequately assess and describe, in the environmental impact assessment, the greenhouse gas emissions resulting from the combustion of exported oil, as well as the associated climate impacts.¹³⁶ The District Court further granted a temporary injunction, prohibiting the State from making any new decisions related to the three fields until the climate case had been fully resolved by the courts.¹³⁷ The Court did not invalidate the issued licenses. The purpose of the injunction was to prevent continued production of climate-damaging oil and gas while the legality of the approvals was under judicial review, a process expected to take several years.¹³⁸

B. Borgarting Court of Appeal – temporary injunction

The Norwegian State appealed both the temporary injunction and the judgment to Borgarting Court of Appeal, maintaining that the decisions to approve the PDOs for Breidablikk, Yggdrasil, and Tyrving were lawful, that the environmental impact assessments satisfied the applicable legal requirements, and that there were no grounds to suspend the approvals.¹³⁹

Given the urgency of the temporary injunction issue, the State requested that Borgarting Court of Appeal bifurcate the proceedings to address the injunction separately through written submissions.¹⁴⁰ However, following written review, the Court of Appeal determined that oral hearings were necessary and that certain deficiencies in the District Court's decision warranted that the injunction remain in effect.¹⁴¹

In the oral hearings, conducted in May 2024, the State pointed out that billions of Norwegian kroner (NOK) were at stake if this process of approving PDOs were paused, as energy companies were entirely dependent on the State continually approving applications related to development and production.¹⁴² The State was concerned about potential layoffs and bankruptcies among subcontractors and argued that a temporary injunction would have major consequences for the State, license-holders, workers, and Europe's access to stable

134. Föreningen Greenpeace Norden [Greenpeace Nordic Ass'n], Oslo tingrett [Oslo Dist. Ct.] Jan. 18, 2024, TOSL-2023-99330, §§ 2.1-2.2 (Nor.).

135. *Id.* § 5.

136. *Id.* § 3.5.3.

137. *Id.* § 4.4.

138. Föreningen Greenpeace Norden [Greenpeace Nordic Ass'n], Oslo tingrett [Oslo Dist. Ct.] Jan. 18, 2024, TOSL-2023-99330, § 4.4 (Nor.).

139. Staten v. Föreningen Greenpeace Norden [State v. Greenpeace Nordic Ass'n], Borgarting lagmannsrett [Borgarting App. Ct] Mar. 20, 2024, LB-2024-36810-1 (Nor.).

140. *Id.*

141. *Id.*

142. Staten v. Natur og Ungdom [State v. Nature & Youth], Borgarting lagmannsrett [Borgarting App. Ct] Nov. 14, 2025, No. 24-036180ASD-BORG/02LB-2024-36810-2, slip op. at 52 (Nor.).

oil and gas.¹⁴³ The Plaintiffs argued that once oil and gas were extracted and combusted, the action is irreversible, and that serious and irreversible damage would occur whilst waiting for all appeals to be ruled on throughout the court system.¹⁴⁴ The plaintiffs argued that the decision to grant the PDOs would result in emissions equivalent to many times Norway's annual territorial emissions, and correspond to large exceedances of Norway's remaining carbon budget for limiting global warming to 1.5 degrees.¹⁴⁵

The State prevailed in the initial appeal, with the Court of Appeal suspending the effect of the District Court's ruling of January 18, 2024, pending its decision on the appeal against the ruling.¹⁴⁶

C. *The Supreme Court of Norway – temporary injunction*

Dissatisfied with the Court of Appeal's denial of the injunction, Nature and Youth and Greenpeace Nordic Association appealed the temporary injunction decision to the Norwegian Supreme Court.¹⁴⁷ On April 11, 2025, the Supreme Court unanimously reversed the Court of Appeal's ruling and granted the environmental organizations' appeal.¹⁴⁸

The Norwegian Supreme Court found that the Court of Appeal had misinterpreted the law regarding temporary injunctions.¹⁴⁹ The Supreme Court reasoned that although courts typically exercise discretion under section 34-1 of the Dispute Act, such discretion is superseded when a breach of the EIA Directive is established. Consequently, a temporary injunction cannot be refused if the Directive has been violated and all other legal criteria are met.¹⁵⁰ The Supreme Court rejected the Court of Appeal's reliance on separation of powers arguments and the purported special nature of climate cases.¹⁵¹ It held that where a breach of the EIA Directive engages the EEA principles of effectiveness and effective judicial protection, national courts are required to exercise their competence to grant interim relief, provided the ordinary conditions are met.¹⁵² Courts cannot refrain from doing so on the basis of alleged limits to judicial authority in politically sensitive matters such as petroleum or climate policy.¹⁵³

The Court of Appeal was required to reassess whether the environmental organizations were entitled to demand a temporary injunction.¹⁵⁴

143. *Id.* at 9.

144. *Id.* at 11.

145. *Id.*

146. *Staten v. Natur og Ungdom* [State v. Nature & Youth], Borgarting lagmannsrett [Borgarting App. Ct.] Nov. 14, 2025, No. 24-036180ASD-BORG/02LB-2024-36810-2, slip op. at 4 (Nor.).

147. *See generally* *Föreningen Greenpeace Norden v. Staten* [Greenpeace Nordic Ass'n v. State], Norges Høyesterett [Nor. Sup. Ct.] Apr. 11, 2025, HR-2025-677-A (Nor.).

148. *Id.* at ¶ 65.

149. *Id.* at ¶ 55.

150. *Id.* at ¶ 46.

151. *Föreningen Greenpeace Norden v. Staten* [Greenpeace Nordic Ass'n v. State], Norges Høyesterett [Nor. Sup. Ct.] Apr. 11, 2025, HR-2025-677-A, ¶¶ 53-59 (Nor.).

152. *Id.* at ¶¶ 53-54.

153. *Id.* at ¶ 53-55.

154. *Id.* at ¶¶ 53-56.

D. EFTA Court Advisory Opinion

While the battle over the temporary injunction made its way through the Norwegian court system, the Court of Appeal, in preparing to hear the remainder of the case, specifically whether the environmental impact assessment had been conducted sufficiently, sought an advisory opinion from the EFTA Court in Luxembourg.¹⁵⁵ The EFTA Court is the judicial body responsible for interpreting the EEA Agreement and ensuring its uniform application across the EFTA states (Norway, Iceland, and Liechtenstein).¹⁵⁶ An advisory opinion from the EFTA Court provides guidance on how EEA law should be interpreted, clarifying legal obligations under EU-derived directives such as the EIA Directive.¹⁵⁷ Although such opinions are not formally binding on the national court, they carry significant persuasive weight and are highly influential in shaping the Court of Appeal's reasoning.¹⁵⁸ In this case, the advisory opinion was particularly relevant for informing how the Court of Appeal should assess compliance with environmental assessment obligations in light of EEA law, and it played an important role in framing the arguments and issues that the appeal court would ultimately decide.

The EFTA court favored the Plaintiffs on a key issue: the Norwegian State must assess the negative impact that the production of oil and gas will inflict upon the global climate before issuing approval for the development of a new petroleum field.¹⁵⁹ The Court made clear that emissions from combustion of the extracted oil and gas are part of a project's environmental impact and must be assessed before approval.¹⁶⁰ Where such an assessment was not conducted, courts must ensure that this deficiency is properly remedied. Moreover, the obligation to assess climate impacts cannot be circumvented by reference to the stage of the approval process; even if a project is denied at a subsequent stage, or has already commenced or completed construction, the requirement to conduct a full assessment remains. Any subsequent assessment must account for the full climate impact of the project, not merely its prospective effects.¹⁶¹

155. See generally *State v. Greenpeace Nordic*, Case No. E-18/24, Judgement, European Free Trade Association Court, (May 21, 2025), <https://eftacourt.int/download/18-24-judgment/?wpdmdl=10625>. The EFTA ensures that the EFTA states comply with their obligations under the EEA Agreement, which extends much of EU internal market law to them. The Court has jurisdiction similar to that of the Court of Justice of the European Union (CJEU), including the power to issue advisory opinions to national courts on the interpretation of EEA law.

156. *The Court: Introduction*, EFTA COURT, <https://eftacourt.int/the-court/> (last visited Apr. 21, 2026). The EEA (European Economic Area) Agreement extends the EU's internal market, including rules on trade, competition, and environmental protection, to three non-EU countries: Norway, Iceland, and Liechtenstein. While these countries are not members of the European Union, they are bound by many EU laws through the EEA Agreement and must implement and apply them in their national legal systems.

157. See generally *State v. Greenpeace Nordic*, Case No. E-18/24, Judgement, European Free Trade Association Court, (May 21, 2025), <https://eftacourt.int/download/18-24-judgment/?wpdmdl=10625>.

158. GUIDANCE TO NATIONAL COURTS AND TRIBUNALS REQUESTING ADVISORY OPINIONS, EFTA Ct., <https://eftacourt.int/the-court/guidance-for-advisory-opinion/?wpdmdl=7446&ind=1751881486495> (last visited Apr. 21, 2026).

159. *State v. Greenpeace Nordic*, Case No. E-18/24, European Free Trade Association Court, ¶ 57, (May 21, 2025), <https://eftacourt.int/download/18-24-judgment/?wpdmdl=10625>.

160. *Id.* at ¶¶ 58-59.

161. *Id.* at ¶ 110.

E. Borgarting Court of Appeal - judgement on the merits)

On November 14, 2025, the Borgarting Court of Appeal ruled in the *Climate Lawsuit II*, about three weeks after the ECtHR had ruled in the *Climate Lawsuit I*. The Court of Appeal ruled in favor of the environmental organizations.¹⁶² It found that the Ministry of Energy's decisions of August 28, 2024 (for Tyrving and Yggdrasil) and December 20, 2024 (for Breidablikk) upholding the approvals of the Plans for Development and Operation (PDOs) for the three petroleum fields were invalid.¹⁶³ While the Court held that the original 2021 and 2023 PDOs approvals were legally invalid, it concluded that a formal repeal was unnecessary. Because the Ministry had issued new, "corrected" decisions in 2024, the plaintiffs' legal interest in challenging the now-superseded original approvals had been extinguished, leaving the 2024 authorizations as the current operative basis for the projects.¹⁶⁴

The core issue before the Court of Appeal was whether the climate consequences of combustion emissions (Scope 3) had been adequately investigated and assessed in connection with the original PDO approvals, and whether any deficiencies constituted procedural errors rendering those approvals invalid.¹⁶⁵ Although the State initiated supplementary environmental assessments after the District Court's ruling, the Court of Appeal found both these reports and the Ministry's subsequent confirmatory PDO decisions to be deficient.¹⁶⁶ For the Tyrving and Yggdrasil fields, the State submitted estimates of projected gross combustion emissions via supplementary reports to the Ministry in early 2024 to support new administrative decisions.¹⁶⁷ Similarly, for Breidablikk, a supplementary report was submitted to the Ministry in October 2024.¹⁶⁸ The original EIA relied upon for the Breidablikk PDO approval in June 2021 had completely omitted calculations of projected combustion emissions. While the later 2023 approval processes for Yggdrasil and Tyrving contained more updated data, the Court of Appeal ultimately concluded that for all three projects, the Ministry's decisions failed to satisfy the substantive requirements of Article 3 of the EIA Directive. Although the operators had met the basic technical reporting requirements under Article 5(1), the State's failure to properly assess the global climate impact of the produced petroleum rendered the approvals invalid.¹⁶⁹ The Court emphasised that the EIA Directive not only required authorities to identify and describe a project's environmental effects, but also to assess them.¹⁷⁰

162. Staten v. Natur og Ungdom [State v. Nature & Youth], Borgarting lagmannsrett [Borgarting App. Ct] Nov. 14, 2025, No. 24-036180ASD-BORG/02LB-2024-36810-2, slip op. at 53 (Nor.).

163. *Id.*

164. *Id.* at 16.

165. *Id.* at 13.

166. Staten v. Natur og Ungdom [State v. Nature & Youth], Borgarting lagmannsrett [Borgarting App. Ct] Nov. 14, 2025, No. 24-036180ASD-BORG/02LB-2024-36810-2, slip op. at 27, 30-37 (Nor.).

167. *Id.* at 38.

168. *Id.* at 37.

169. *Id.* at 41, 43.

170. Staten v. Natur og Ungdom [State v. Nature & Youth], Borgarting lagmannsrett [Borgarting App. Ct] Nov. 14, 2025, No. 24-036180ASD-BORG/02LB-2024-36810-2, slip op. at 42 (Nor.).

1. Assessment Requirements - Net vs. Gross Emissions

The Court first emphasized that an assessment based on net (local) emission calculations did not meet the requirements of the EIA Directive,¹⁷¹ and that it must be sufficiently clear that the EIA was conducted on the basis of gross (global) calculations.¹⁷² The Court adopted the EFTA Court's view that the investigation and assessment must be done on the basis of gross emissions, whilst net emissions could be additional information that might be relevant for the assessment.¹⁷³ The Ministry had also failed to meet the requirement to include cumulative effects.¹⁷⁴ The Court emphasized that the assessment of cumulative effects must not be restricted to the project at hand; rather, it must incorporate the aggregate combustion emissions from the wider Norwegian petroleum sector. This necessitates a demonstration of how the project's lifecycle emissions align with the remaining carbon budget compatible with the 1.5°C target, accounting for both current production and reasonably foreseeable future developments on the continental shelf.

2. Public Participation and Reasoned Conclusions

The Court also placed great emphasis on the EIA Directive's purpose and requirement to facilitate public participation.¹⁷⁵ The directive's assessment requirements had "independent significance" for environmental information, ensuring "effective public participation in the decision-making process" when "all options are still open."¹⁷⁶

Finally, the Court emphasised that the PDO approvals also lacked the necessary reasoning required under Article 8 of the EIA Directive.¹⁷⁷ Where authorities chose to grant permission despite identified negative environmental and climate consequences, this required a "reasoned conclusion."¹⁷⁸ The Court held that the directive must be understood to require the Ministry to clarify which environmental consequences it assumes, and that if approval is given despite the project having significant negative environmental consequences, the rationale for approval must be justified.¹⁷⁹

3. Legal Basis for Invalidity

The ruling emphasized that procedural errors must lead to invalidity.¹⁸⁰ The Court of Appeal held that rules on procedural requirements must be enforced

171. *Id.* at 31.

172. *Id.* at 33

173. *Id.* at 24.

174. *Staten v. Natur og Ungdom* [State v. Nature & Youth], Borgarting lagmannsrett [Borgarting App. Ct] Nov. 14, 2025, No. 24-036180ASD-BORG/02LB-2024-36810-2, slip op. at 31 (Nor.).

175. *Id.* at 20-21.

176. *Id.* at 23, 26.

177. *Id.* at 30-33.

178. *Staten v. Natur og Ungdom* [State v. Nature & Youth], Borgarting lagmannsrett [Borgarting App. Ct] Nov. 14, 2025, No. 24-036180ASD-BORG/02LB-2024-36810-2, slip op. at 30 (Nor.).

179. *Id.*

180. *Id.* at 43-44.

particularly strictly given the seriousness of the matter, having regard to the requirements in the Norwegian Constitution section 112(2), Norway's obligations under the EEA Agreement, and the European Convention on Human Rights Article 8.¹⁸¹ Following the EFTA Court's advisory opinion of May 21, 2025, the Court of Appeal held that projected gross combustion emissions must be assessed by the time of PDO approval.¹⁸²

Although the Court of Appeal declared the PDO approvals invalid, it did not grant the plaintiffs' request to suspend the effect of those approvals.¹⁸³ The Court's application of the proportionality principle acted as a bridge between legal theory and economic reality. By categorizing the lack of a combustion emission assessment as a remediable procedural defect rather than a fundamental material breach, the Court allowed a "period of grace" for the Ministry to cure the error. This effectively prioritized the stability of established industrial investments over the immediate cessation of activities, provided the procedural gaps were eventually filled.¹⁸⁴

4. Remedy Ordered

In a pragmatic application of administrative discretion, the Court balanced the necessity of legal reconsideration against the broader socio-economic imperatives of institutional predictability, employment stability, and Norway's strategic role as a reliable energy partner.¹⁸⁵ As a result, the Court created a supervised "corrective window" that keeps the projects operational while forcing a total administrative overhaul. By declaring the original PDOs invalid but staying the traditional consequences of that invalidity, the Court effectively granted the Ministry a temporary reprieve to backfill the missing climate data. This "fix-it" mandate requires the Ministry to issue entirely new administrative decisions within a strict six-month timeframe – or two months following a final appellate ruling – thereby ensuring that the projects do not remain in legal limbo indefinitely. From a practical standpoint, the burden has shifted back to the State to prove that these specific petroleum developments can be reconciled with Norway's broader climate obligations and carbon budgets.¹⁸⁶ The Court emphasized that the process must be designed so that the outcome remains open, in accordance with the directive Article 6(4).¹⁸⁷

The plaintiffs' attorney Jenny Sandvig stated: "The Court of Appeal's decision was crystal clear."¹⁸⁸ The State and "the companies failed to inform the

181. *Id.* at 44.

182. *Staten v. Natur og Ungdom* [State v. Nature & Youth], Borgarting lagmannsrett [Borgarting App. Ct] Nov. 14, 2025, No. 24-036180ASD-BORG/02LB-2024-36810-2, slip op. at 22-25 (Nor.).

183. *Id.* at 49-50.

184. *Id.* at 49.

185. *Id.* at 49-50.

186. *Staten v. Natur og Ungdom* [State v. Nature & Youth], Borgarting lagmannsrett [Borgarting App. Ct] Nov. 14, 2025, No. 24-036180ASD-BORG/02LB-2024-36810-2, slip op. at 50-51(Nor.).

187. *Id.* at 51.

188. *Victory: Three Oil Fields in the North Sea Declared Illegal*, GREENPEACE (Nov. 14, 2025), <https://www.greenpeace.org/international/press-release/79756/greenpeace-victory-three-oil-fields-north-sea-declared-illegal-norway/>.

public about the devastating effects to life, health and planet from the 565 million tons of CO₂ that would inevitably follow if these projects go ahead.”¹⁸⁹ Such impacts include more than 50,000 climate-attributed heat deaths in a 2.5°C scenario, exposing 2.7 million children to at least one additional dangerous heat wave over their lifetime, melting 1,450 km² of Arctic summer ice, a temperature rise of 0.00024 degrees, and exhausting any carbon budget for 1.5°C.¹⁹⁰

The decision by the Supreme Court to hear the appeal in a plenary session underscores the profound constitutional and economic stakes of the case. The State’s challenge focuses on whether the judiciary exceeded its mandate by imposing a “shot clock” on administrative reconsideration and by requiring that individual project approvals be explicitly linked to global carbon budgets – a task the State views as a matter of high-level political policy rather than a procedural requirement of the EIA Directive. By elevating the matter to the Grand Chamber, the Court is poised to deliver a definitive ruling on the separation of powers, specifically regarding how much oversight the courts can exercise over the executive branch’s discretionary management of the Norwegian continental shelf in the face of escalating climate litigation.¹⁹¹ This is a significant procedural decision, as plenary sessions are reserved for cases of particular importance or complexity. While the date for the hearing has not yet been set, it is expected to take place in the first half of 2026.

IV. ANALYSIS

Greenpeace Nordic and Others v. Norway was the latest climate litigation at the ECtHR being brought under Article 8 of the European Convention, after youth plaintiffs had failed to receive relief in the Norwegian Judicial System.¹⁹² Though the Court held that the proposed petroleum project did not violate the right to life under the Convention, it affirmed more stringent procedural requirements when it comes to assessing the climate impact of European fossil fuel projects.¹⁹³

A. National Impact and Consequences

The decision rendered in this case is binding upon Norway, affirming a requirement for the Norwegian government to “conduct a full environmental impact assessment, including greenhouse gas [GHG] emissions from combustion, for any new petroleum production.”¹⁹⁴ As the largest oil and gas producer in

189. Jenny Sandvig, LINKEDIN (Nov. 14, 2025, at 17:06:19 GMT), https://www.linkedin.com/posts/jenny-sandvig-165456164_milj%C3%B8organisasjonene-vant-klimas%C3%B8ksm%C3%A5let-activity-7395145068187295744-edyo?utm_source=share&utm_medium=member_desktop&rcm=ACoAACvLYT0BXBIYWESHbVZHfPYr42icGeefQg.

190. *Id.*

191. *See generally* Staten v. Natur og Ungdom [State v. Nature & Youth], Norges Høyesterett [Nor. Sup. Ct.] Feb. 23, 2026, HR-2026-441-J (Nor.).

192. *Greenpeace Nordic v. Nor.*, App. No. 34068/21, ¶¶ 122-28 (Oct. 28, 2025), <https://hudoc.echr.coe.int/eng?i=001-245561>.

193. *Id.* at ¶¶ 318-19.

194. Jessica Corbett, *European Court of Human Rights Delivers ‘Quantum Leap for Climate Accountability’*, COMMON DREAMS (Oct. 28, 2025), <https://www.commondreams.org/news/norway-oil>.

Western Europe, Norway will likely see this ruling influence the scope and depth of environmental impact assessments for future national fossil fuel projects and other high emitting projects.¹⁹⁵

Given that Norway's current oil and gas policy is to continue developing this industry,¹⁹⁶ the ruling has significant implications for numerous ongoing and future petroleum projects. The Norwegian government consider this case a judicial determination that national energy projects are in line with global climate targets.¹⁹⁷ However, as became evident from the Court of Appeal, insufficient environmental impact assessments, and, in that case, the failure of the State and the oil companies to inform the public about the negative emission-related impacts to life, health and planet from the estimated five hundred and sixty-five million tons of CO₂ that would result if these projects proceed, may lead to the invalidation of production and developments approvals.¹⁹⁸

In 2024, Norway was the largest producer of crude oil in Europe, after Russia.¹⁹⁹ The country is also the twelfth largest crude oil producer in the world.²⁰⁰ However, Norway exported nearly all its crude oil production, and the Norwegian crude oil export was about 29% of the total external trade in goods.²⁰¹ Therefore, it becomes extra important for Norway when the ECtHR decision emphasize how the environmental impact assessment should have included the emission data when oil is sold and burned, or the resulting consequences for the climate, which would most likely be outside Norwegian borders.²⁰²

B. Regional Impact and Consequences

While the decision rendered in this case is binding upon Norway, the Court's reasoning regarding the importance of assessing emission-related impacts when proposing petroleum production set precedent across the European continent.²⁰³ This precedential effect arises because the Court's reasoning is built upon the interpretation of the EIA Directive, an EU directive incorporated into the EEA Agreement, which applies uniformly across all EEA member states. In certifying this decision, the Court affirmed the EFTA Court's findings that the EIA Directive requires states to "carry out a full EIA which accounted for petroleum combustion

195. Adomaitis, *supra* note 133.

196. Press Release, Ministry of Energy, High Production and Large Revenues from the Petroleum Industry, Government.no (Oct. 15, 2025), <https://www.regjeringen.no/en/whats-new/high-production-and-large-revenues-from-the-petroleum-industry/id3121780/>.

197. Adomaitis, *supra* note 133 (quoting a Norwegian energy ministry statement asserting Norway is "not violating human rights and that climate concerns are being taken care of in a solid and democratic manner" according to the Court).

198. See generally *Staten v. Natur og Ungdom* [State v. Nature & Youth], Borgarting lagmannsrett [Borgarting App. Ct] Nov. 14, 2025, No. 24-036180ASD-BORG/02LB-2024-36810-2 (Nor.).

199. *Oil Production by Country (2024)*, WORLDOMETER, <https://www.worldometers.info/oil/oil-production-by-country/> (last visited May 12, 2026).

200. *Id.*

201. *Exports of Oil and Gas*, NORSK PETROLEUM [NORWAY PETROLEUM] (last updated Apr. 4, 2026), <https://www.norskpetroleum.no/en/production-and-exports/exports-of-oil-and-gas/>.

202. Press Release 251, *supra* note 91, at 2-4.

203. See Yonathan Lupu & Erik Voeten, *Precedent in International Courts: A Network Analysis of Case Citations by the European Court of Human Rights*, 42 BRIT. J. POL. SCI. 413, 415-16 (2012).

emissions.”²⁰⁴ The Court held that for oil production projects, EIAs requires, at minimum, “a quantification of the GHG emissions anticipated to be produced (including the combustion emissions both within the country and abroad).”²⁰⁵ Additionally, approval by the proper authorities requires assessment into whether an activity is compatible with national and international legal obligations in addressing climate change.²⁰⁶ Here, the Court expanded upon its earlier jurisprudence in *KlimaSeniorinnen*, in which the Court had previously held states had an obligation under Article 8 of the European Convention on Human Rights to protect citizens from consequences tied to territorial emissions.²⁰⁷ In the present case, the Court clarified that the development and production of petroleum from such projects would lead to GHG emissions.²⁰⁸

In addition to Norway, other crude oil producing countries in Europe bound by this procedural addition to project EIAs included the United Kingdom, Italy, and Turkey, among others.²⁰⁹ According to the Director of the Center of International Environmental Law’s Climate and Energy Program, Nikki Reisch, this procedural rule “[this] underscores the risk of sinking money into exploring for oil” that might not be extractable given GHG emissions determinations.²¹⁰ Offshore oil companies may therefore become increasingly cautious about exploring new oil reserves in Europe, though the long-term impacts remain uncertain.

C. International Impact and Consequences

As mentioned earlier, the Court emphasized that public authorities must assess a project’s compatibility with international obligations related to measures taken against climate change effects.²¹¹ Under international law, state obligations to address climate change are principally governed by the 2015 Paris Climate Agreement.²¹² There is no disagreement that state parties to the Paris Climate Agreement are bound by legal obligations.²¹³

204. Greenpeace Nordic v. Nor., App. No. 34068/21, ¶ 334 (Oct. 28, 2025), <https://hudoc.echr.coe.int/eng?i=001-245561>.

205. *Id.* at ¶ 319.

206. *Id.*

207. Verein KlimaSeniorinnen Schweiz v. Switz., App. No. 53600/20, ¶ 519 (Apr. 9, 2024), <https://hudoc.echr.coe.int/eng?i=001-233206>; see also ECtHR Finds No Violation in Climate Case Against Norway, but Clarifies Obligations for Petroleum Projects, NORWEGIAN HUM. RTS. INST. (last updated Oct. 29, 2025), <https://www.nhri.no/en/2025/ecthr-finds-no-violation-in-climate-case-against-norway-but-clarifies-obligations-for-petroleum-projects/>.

208. ECtHR Finds No Violation in Climate Case Against Norway, but Clarifies Obligations for Petroleum Projects, *supra* note 207.

209. See *Europe: Oil Supply*, IEA, <https://www.iea.org/regions/europe/oil> (last visited Nov. 14, 2025).

210. Harkavy, *supra* note 105.

211. Greenpeace Nordic v. Nor., App. No. 34068/21, ¶ 319 (Oct. 28, 2025), <https://hudoc.echr.coe.int/eng?i=001-245561>.

212. See Daniel Bodansky, *The Paris Climate Change Agreement: A New Hope?*, 110 AM. J. INT’L L. 288, 289 (2016).

213. Claudio Franzius & Anne King, *The Paris Climate Agreement and Liability Issues*, in CLIMATE CHANGE LITIGATION: A HANDBOOK 197, 200 (Wolfgang Kahl & Marc-Philippe Weller eds., 2021).

Beyond binding international legal principles, the decision rendered in this case may have impacts on domestic litigation worldwide through transnational legal processes or “legal globalization.”²¹⁴ This process highlights the way in which domestic (or regional) court decisions are referenced as persuasive arguments in other domestic courts worldwide.²¹⁵ For example, in *Gloucester Resources Limited v. Minister for Planning*, a case in which the Land and Environment Court in New South Wales found that an application for construction of a coal mine was against public interest, the opinion directly referenced legal reasoning regarding national greenhouse gas emissions contributions from *Urgenda Foundation v. The State of the Netherlands*, a Dutch case from the Hague District Court.²¹⁶ In *Urgenda Foundation*, the Dutch court relied on international climate science and the precautionary principle to hold that the State had a duty of care to reduce emissions in line with the The Intergovernmental Panel on Climate Change (IPCC) recommendations, reasoning that proved persuasive to the Australian court in assessing the public interest implications of approving new coal mining.²¹⁷

Such cross-referencing illustrates how climate litigation has become embedded in a broader transnational discourse. National courts in Europe do not treat foreign judgments as binding precedent; however, they frequently consider them as persuasive authority, particularly in areas such as human rights and climate law where legal norms are evolving and shared across jurisdictions. The weight afforded to such decisions varies, but courts often engage seriously with well-reasoned foreign judgments, especially from jurisdictions facing analogous legal and scientific questions.

Against this backdrop, *Greenpeace Nordic and Others v. Norway* could similarly influence how domestic courts beyond Europe approach the question of considering emissions production when completing EIAs, particularly given its grounding in the widely applicable EIA Directive framework.

When it comes to the United States, however, the case is less likely to persuade domestic courts to follow the development of European court precedent.²¹⁸ In the United States, courts are less deferential to legal analysis in foreign jurisdictions and are even less likely to look beyond foreign common-law jurisdictions to civil law systems such as those predominately found in Europe, though some scholars disagree with this.²¹⁹ The recent dismissal of *Lighthiser v. Trump* by the United States District Court for Montana demonstrates the challenges to guaranteeing consideration of GHG emissions for domestic energy

214. Christina Voigt, *Introduction: Climate Change as a Challenge for Global Governance, Courts and Human Right*, in *CLIMATE CHANGE LITIGATION: A HANDBOOK* 2, 18 (Wolfgang Kahl & Marc-Philippe Weller eds., 2021).

215. *Id.*

216. *Id.*; *Gloucester Res Ltd v Minister for Planning*, [2019] NSWLEC 7, 521-24 (Austl.).

217. *Gloucester Res Ltd v Minister for Planning*, [2019] NSWLEC 7, 521-24 (Austl.).

218. See generally Stephen Yeazell, *When and How U.S. Courts Should Cite Foreign Law*, 26 CONST. COMMENT. 59 (2009).

219. See *id.* at 60-61.

projects, although individual state law may provide some relief.²²⁰ Consideration of GHG emissions for federal action is governed by the National Environmental Policy Act (NEPA), which, in the current U.S. political climate, has experienced weakened precedents and regulations.²²¹ While Europe is seeing wider inclusions of climate impacts in Environmental Impact Assessments, the recent Supreme Court case *Seven County Infrastructure Coalition*²²² stated that U.S. agencies do not have to assess the environmental effects of projects they cannot authorize or control.²²³ In this specific case, the ruling meant the Board only needed to evaluate the environmental impacts of the eighty-eight-mile railway's construction and operation.²²⁴ It was not required to assess other future, separate projects, such as upstream oil drilling or downstream refining activities, even if these activities were reasonably foreseeable.²²⁵ The ECtHR takes a broader view of potential environmental impact and analysis compared to the narrower view in *Seven County Infrastructure Coalition*.

V. CONCLUSION

The recent developments in Norwegian climate litigation, particularly Borgarting Court of Appeal's rulings of November 14, 2025, and the ECtHR's judgment against Norway, mark a significant clarification of the procedural obligations of Norwegian authorities in environmental and climate-related decision-making. The case law is converging toward a more stringent and structured framework for assessing environmental impacts, where procedural requirements are not merely formalities but operate as substantive constraints on administrative discretion.

Both the ECtHR and the Norwegian courts now articulated, with increasing precision, the authorities' obligation to identify and the environmental and climate effects of a project.

The Appeal Court repeatedly emphasized that a legally sufficient EIA must meaningfully engage with both direct and indirect emissions, including downstream combustion emissions from exported oil and gas, and cumulative environmental effects that such emissions may have in light of the remaining climate budget. This represented a more mature judicial interpretation of

220. *Compare* Lighthiser v. Trump, No. 25–54–BU–DLC, 2025 WL 2930569, at *1, *4-11 (D. Mont. Oct. 15, 2025) (dismissing the case on procedural lack of readdressability despite “overwhelming evidence that the climate is changing at a staggering pace, and that this change stems from the rise in atmospheric carbon dioxide, caused by the production and burning of fossil fuels”) with *Held v. Montana*, 560 P.3d 1235, 1260-61 (Mont. 2023) (holding that “Montanans’ right to a clean and healthful environment was violated by the MEPA Limitation, which precluded an analysis of GHG emissions in environmental assessments and environmental impact statements during MEPA review. The MEPA Limitation . . . is unconstitutional and the State is enjoined from acting in accordance with it”).

221. Hannah Northey, *Trump Moves to Claw Back Almost 50 Years of NEPA Regs*, E&E NEWS BY POLITICO, (Feb. 18, 2025), <https://www.eenews.net/articles/trump-moves-to-claw-back-almost-50-years-of-nepa-regs/> (discussing the impact of the White House rescission of regulations issued by the Council on Environmental Quality since 1977).

222. *Seven Cnty. Infrastructure Coal. v. Eagle Cnty. Colo.*, 605 U.S. 168 (2025).

223. *Id.* at 174.

224. *Id.*

225. *Id.* at 175.

Norway's obligations, grounded in the intersection of administrative law, environmental law, and human rights law.

The decisions show that EIA requirements now function as a genuine substantive check on administrative decision-making. Climate-related impacts cannot be left superficially assessed or deferred to later licensing phases. The courts are, in practice, treating the EIA obligation as a *condition for legality*, not an optional exercise in documentation. This development applies not only to the oil and gas sector but to all large emitters and major industrial projects subject to the EIA regime.

A defining shift in the Norwegian judiciary is the increasingly explicit reliance on international climate law as a primary interpretive framework. While the ECtHR's jurisprudence is directly binding via the Human Rights Act, the Borgarting Court of Appeal has signaled an even more expansive approach by integrating a broader corpus of international legal materials into its reasoning. Specifically, by invoking the ICJ's 2025 Advisory Opinion, the court has made it clear that Norwegian authorities can no longer view domestic environmental duties in isolation. Instead, national obligations – particularly regarding the assessment of Scope 3 emissions – must now be harmonized with evolving global climate standards. This development does not erode the national character of Norwegian energy law; rather, it underscores that domestic legality is now inextricably tethered to the international legal order.

The latest case law primarily concerns procedural duties, but these duties are beginning to lay the foundation for discussions about substantive obligations. Both the ECtHR and the Court of Appeal seem aligned in one fundamental principle: authorities must not only *consider* environmental harm in the project approval process; they must consider it in a legally meaningful way, capable of influencing the decision. The emerging question is therefore: *When do Norway's international and human-rights-based obligations require not only assessment, but denial of a permit?* This remains an open but increasingly pressing legal issue.