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Oslo District Court
Post box 8023 Dep.
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Oslo, 5. februar 2018

DIRECT APPEAL
TO
THE SUPREME COURT OF NORWAY

Case no.	**16-166674TVI-OTIR/06**
Appellant:	Foreningen Greenpeace Norden BOX 15164 104 65 Stockholm, Stockholm County Natur og Ungdom Torggata 34, 0183 OSLO
Intervener	Besteforeldrenes klimaaksjon c/o Lund & Co, Akersgt 30, 0158 Oslo
Counsel for the Environmental Organisations and the Intervener:	Advocate Cathrine Hambro Wahl-Larsen Advokatfirma AS Fridtjof Nansens plass 5, 0160 Oslo Advocate Emanuel Feinberg Advokatfirmaet Glittertind AS Post Box 1383 Vika, 0114 Oslo
Respondent:	The Government of Norway through the Ministry of Petroleum and Energy. Post box 8148 Dep. 0033 Oslo
Counsel:	Office of the Attorney General of Norway in the person of Attorney General Fredrik Sejersted and Co-counsel Anders Wilhelmsen and Ane Egeland Post Box 8012 Dep., 0030 Oslo

1. Introduction

The Appellants (the Environmental Organisations) assert that the Royal Decree of 10 June 2016 on awarding production licenses on the Norwegian continental shelf (the 23rd Licensing Round) is wholly or partially invalid. Geographically, the production licences apply to

particularly vulnerable areas, further north and east than previously awarded production licences.

On 4 January 2017 (sic) the Oslo District Court pronounced judgment in the case with the following decision:

The Government of Norway through the Ministry of Petroleum and Energy is found not liable.

2. Föreningen Greenpeace Norden, Natur og Ungdom and Besteforeldrenes klimaaksjon are jointly ordered to pay within 2 – two – weeks legal costs of 580,000 – five hundred and eighty thousand – Norwegian kroner to the Government of Norway through the Ministry of Petroleum and Energy.

The Appellants allege that the judgment is based on erroneous application of the law and assessment of evidence. It is primarily alleged that the production licences contravene Article 112 of the Constitution and are consequently invalid. It is further alleged that there are procedural errors under administrative law which result in invalidity.

The production licences are authorised in Section 3-3 of the Petroleum Act, which grants a licensee the sole right to carry out surveys, exploratory drilling and production and stipulates that the licensee will become the owner of the petroleum. Production licences are something quite different from exploration licences, which are regulated by Chapter 2 of the Petroleum Act. Exploration licences do not provide licensees expectations of,, or any right to, subsequent production or ownership of the resources, unlike production licences. The District Court seems at several points to assess the production licences at issue in the case as though they were exploration licences, which means that the starting point for the discussion is erroneous.

2. Direct appeal

The Environmental Organisations ask for leave to bring the case directly before the Supreme Court of Norway, see § 30-2 of the Dispute Act. Such leave may be granted □where the case raises particularly important issues of principle on which it is important to ascertain promptly the position of the Supreme Court, and regard for proper handling of the case does not weigh against direct appeal.□

The case involves the application of Article 112 of the Constitution as a basis for review of administrative decisions, which has never previously been reviewed by the courts. In addition, the case is the first time production licences granted pursuant to the Petroleum Act have been reviewed by Norwegian courts. This is a decision of unusually great importance for Norwegian society, and the case raises several issues of principle related to the legal frameworks for such decisions. Accordingly, there is little doubt that the decision raises particularly important issues of principle.

The Decision relates to production licences for petroleum production, and both society and the authorised oil companies are currently investing billions in the exploration activity that is taking place based on the production licences. These are costs which are entirely unnecessary if the licences are declared invalid. In addition, the exploration phase – with test drilling – is a particularly hazardous phase in the context of petroleum activities. It is therefore important to have the Supreme Court's position in the case promptly clarified.

Furthermore, the Environmental Organisations fail to see how regard for proper handling of the case weighs against direct appeal. The case relies exclusively on written evidence and expert witness testimony. The Government did not pose a single question to the Environmental Organisations' four expert witnesses, so their testimony appears to be particularly well suited for the taking of evidence.

Consequently, the conditions for permission for a direct appeal to the Supreme Court of Norway have been met.

3. Overall

The District Court has concluded that Article 112 is a fundamental *rights provision* that grants the individual a *right* to a safe environment and that the courts can review whether this right has been infringed. This is an important explication of the state of the law which the Environmental Organisations agree with.

However, the Environmental Organisations believe that the District Court's interpretation of the provision errs in concluding that the first and third paragraphs of Article 112 are not independent provisions but must be assessed in close relationship with each other.

The Environmental Organisations argue that the first paragraph of Article 112 must be assessed in isolation, independently of the third paragraph. One can obviously imagine measures being implemented that result in the cessation of the detrimental environmental effect of a decision, which under the circumstances would mean that the first paragraph of Article 112 has not been contravened. However, this is something different than an isolated assessment of whether the generally-worded duty to take measures in the third paragraph has been met. It is possible to imagine a declaratory judgment action claiming that the Government has not upheld its duty to implement measures in the third paragraph of Article 112, and the court could then satisfy itself with assessing the third paragraph in isolation. However, this is not such an action. The central question in this lawsuit is whether the Decision infringes the right to a safe environment in such a way that it is contrary to the first paragraph of Article 112 of the Constitution.

The District Court has also erroneously interpreted Article 112 by concluding that it is only harmful effects through emissions from the production in Norway, and only from the production licences in this isolated decision, that are relevant under Article 112. The District Court says that these effects are marginal or greatly limited and – as the District Court must be understood to say – fall below a threshold established by the first paragraph

of Article 112. This latter contention, which seems to rely on the assumption that a threshold always applies, irrespective of the extent of harm that has already been caused and will be caused by a decision of the nature involved in this case, constitutes an erroneous interpretation of Article 112. The provision provides no basis for interpretations that are harmful to the climate in this way.

The District Court has a strikingly fragmented approach to the issues the case raises, and relies in particular on the following erroneous premises to conclude that the DecisionDecision's environmentally harmful effect is limited:

1. The District Court concludes that it is only greenhouse gases released to the atmosphere in Norway that need be assessed. Greenhouse gas emissions released from Norwegian-produced petroleum other places in the world are irrelevant under the District Court's legal interpretation.

   This restrictive legal interpretation means that the District Court disregards the fact that it is *actions that occur in Norway itself which introduce new carbon into the carbon cycle*. These actions are making a decision on awarding the production licences and the subsequent petroleum production for which the licences provide a basis.

   The world is experiencing serious anthropogenic warming, and drastic, immediate measures are required to avoid catastrophic consequences. The production licences contribute to the opposite, namely further global warming. These are the first production licences granted after there is reliable knowledge that the world's proven fossil fuel resources exceed what can be burned within the temperature goals the world has determined to be safe. If the actions of 1) awarding new licences and 2) subsequent petroleum production are removed from the picture, the supply of new fossil fuels will be reduced.

2. The District Court also concludes that because the negative climatic effect of the ‚Decision when seen in isolation, has marginal or greatly limited importance (in relation to total emissions in Norway and the world), the right to a safe environment has not been infringed. As the District Court interprets Article 112, the environmentally-harmful activities, and the impacts from these activities, must be assessed in isolation for each decision made. This is also a restrictive interpretation of Article 112.

   Isolated assessment of the impacts of these production licences in Norway and the presumption of a new threshold at each new decision is a fragmented and environmentally harmful approach that suppresses the fact that the licences are included as the first stage in plans for large-scale petroleum production in the Barents Sea with far greater actual effects. The Government itself describes the 23rd Licensing Round as the next major step in the Norwegian petroleum industry, see for example the press release from the Ministry of Petroleum and Energy, see

the factual excerpt for the District Court (hereinafter FU) at page 4236. The objective is to lay the groundwork for extensive new petroleum production in a new area, despite reliable knowledge that greenhouse gas emissions must be reduced at a drastic pace. The licences pave the way for enormous new investments in the petroleum industry and open the door for production that could persist into the next century, based on these and later licences. The latter can be illustrated by the additional 103 blocks announced in the 24th Licensing Round after this lawsuit was brought. In reality, we are at a crossroads, and the decisions taken now (by the Government and by the petroleum companies) will be decisive for Norway's future contributions to global warming for a long time. If Article 112 of the Constitution is to have any effect whatsoever, it is self-evident that every individual stage in these gargantuan plans cannot be assessed one at a time under Article 112.

3. Development of new fields necessarily occurs in several phases. The District Court uses in practice the division into phases as a justification for imposing lenient requirements for assessing impacts at the time a decision is made (June 2016), see for example page 39 of the judgment. In addition, it is said that it is not relevant whether it is □actually difficult or simple for the authorities to impose conditions□ in this later phase. This is also a fragmentation of applicable procedural requirements which in itself results in the undermining of the right under Article 112. To be sure, Section 4-2 of the Petroleum Act does state that the owner of the petroleum resource (the oil company that has made a discovery) must account for the impacts of developing the field and that the assessment must be approved by the Ministry. However, the District Court does not discuss the legal significance of the fact that the assessment 1) in this phase is only aimed at the *individual field,* 2) is performed by the exact same oil company that wants the development carried out, and 3) is performed at a time when the company has already spent large sums of money on locating the discovery and planning development and operation, trusting in a claim of being able to produce from a discovery. Article 112 of the Constitution requires that an overall and total assessment be carried out because that is the only way the environment is ensured real protection.

4. The District Court's interpretation is contrary to the precautionary principle laid down in the first paragraph of Article 112. It is self-evident that it is impossible to *protect health and biological diversity for current and future generations if this precautionary principle is disregarded in the manner the District Court does.*

The District Court's □bit by bit□ assessment means that all possible environmentally-harmful activity can be carried out if the activity can be divided up by means of a steady stream of new decisions. The consequence of this legal interpretation is that the right to a safe environment has no substance, at least with respect to the climate: Petroleum production itself releases a quantity of CO2 that only corresponds to approximately 5 per cent of the CO2 that is stored in the petroleum that is produced. The District Court's reasoning means that only about 5 per cent of the carbon release from Norwegian-

produced petroleum is considered legally relevant. In addition to this disclaimer of responsibility, the District Court thinks that each individual negative environmental impact must be assessed separately and independently of the *total burden* the activity has. With that, yet another pulverising occurs of the responsibility related to Norwegian-produced petroleum. It is argued that this is an erroneous legal interpretation that results in erroneous application of the law.

The legal interpretation also entails a *legal approach to an environmental problem* that *deviates fundamentally from a scientific approach* to the same problem. This is despite the fact that the precise purpose of Article 112 was to ensure that environmental problems are handled in a proper manner by the decision makers, in line with the conclusion drawn from the science.

Climate science assesses the planet as a whole because it is the only way to meet the climate challenges and the only way that makes sense in a climatological context. A greenhouse gas emission in Asia has the same effect on the atmosphere as an emission in Norway and thus also exactly the same importance for those who live in Norway as the Norwegian emissions. This has not been disputed by the Respondents (sic).

An increase in temperature creates a risk in all the world's societies. The Paris Agreement establishes a uniform level for what risk is justifiable. The Paris Agreement requires that the increase in the global average temperature be maintained □*well below 2C .. and [to pursue] efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change.*□, see Article 2, Section 1(a) of the Agreement (FU4445).

Climate scientists have calculated how much additional greenhouse gases there is room for in the atmosphere within the Paris Agreement's temperature goals, so-called carbon budgets. It has been shown that parts of the world's *proven* petroleum resources cannot be produced if the temperature goals are to be reached. The production licences involve *unproven* resources, which are in addition to the resources the world already has proven and which are included in the calculations of what can be produced within the carbon budgets.

These circumstances have not been described or assessed by the District Court despite comprehensive presentation of evidence on the topics.

The science assesses impacts of environmental harm based on the *total burden* that the measures result in and based on the *precautionary principle*. These exact principles are codified in Article 112. It is therefore astounding when the District Court through a restrictive legal interpretation arrives at conclusions that make it possible to completely disregard critical scientific realities.

The District Court's approach and conclusion mean that it is legal to ruin the environment and the climate, so long as it done little by little.

The above has led to several law professors being strongly critical of the District Court's reasoning.

Exhibit 1: Hans Petter Graver in Morgenbladet on 5 January 2018.
Exhibit 2: Interview with Jan Frithjof Bernt in Aftenposten on 13 January 2018.
Exhibit 3: Interview with Inge Lorange Backer and Jan Frithjof Bernt in Dag og Tid on 19 January 2018.

The District Court also has a fragmented approach to the procedural requirements that must be imposed for decisions on production licences. This means that the administrative body is not obliged at any point in the proceedings to assess the total burden to the planet's climate from the production licences in question as regards historic and future emissions from Norwegian-produced petroleum, and with respect to Norway's emissions reductions. Similarly, proven calculation errors (failure to discount) have been considered to be irrelevant because economic assessments for the individual field will nevertheless also be carried out later in the process. As a result, obvious errors of several hundred billion kroner have been considered irrelevant. The District Court's reasoning in this area as well has attracted expert commentary in the press:

Exhibit 4: Dagens næringsliv 15 January 2018, opinion article by Gøril Bjerkan, cand. oecon., lawyer and research fellow at the Faculty of Law, University of Oslo.

As regards the failure to discount, the District Court stated that it does not find any basis in the sources of law for a duty to discount. Bjerkan's comment in response to this was: *«It is the same as seeking a legal justification for doing addition sums correctly.»*

Proper application of Article 112 and relevant procedural rules require that the Decision be assessed with respect to the total burden Norwegian-produced petroleum has had on the climate and is expected to have in the future, particularly in connection with what additional greenhouse gas emissions there is room for within the level of risk the world has established as acceptable.

Norwegian-produced petroleum has already created 16 billion tonnes of greenhouse gas emissions. The production licences are the next big step in the Norwegian petroleum saga; the goal in opening new, immature fields in the Barents Sea is extensive petroleum production with a likely start-up at the earliest in 10-20 years and production extending towards the end of this century and the beginning of the next.

It must also be taken into account that Norway, which is one of the world's largest petroleum producers (number 8) is in the upper echelon of the emissions statistics in the world (measured on a per capita basis), and that Norwegian emissions are clearly higher than in 1990, which is the reference year for Norwegian goals that have been adopted for emissions reductions.

Article 112 of the Constitution also requires that the risk of local environmental harm be brought into the overall assessment. This being the case, the production licences at issue here are also worse than previous production licences because they bring Norwegian petroleum activities close to the vulnerable ice edge, further north than ever before. This has been documented through the advice from the Norwegian Environmental Agency and the Norwegian Polar Institute against proceeding with a total of 20 of the 40 blocks included in the production licences.

4. Precisely why are the production licences in question invalid?

It is argued that the licences in question distinguish themselves from previously awarded licences on the Norwegian continental shelf because these are the first licences that:

1) Are being awarded after the publication of the fifth report from the UN Climate Panel and after the Paris Agreement was entered into. The Paris Agreement documents that the world *agrees* that there is a pressing need to reduce the world's CO2 emissions so that the average temperature increase of the planet is held □*well under 2C .. and [to pursue] efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change.*□, see Article 2, Section 1(a) of the Agreement (FU4445).
2) Are being awarded after the carbon budget was established by the UN's Climate Panel. The carbon budget can be calculated in various ways, but irrespective of method it establishes that there is very limited □room□ for additional greenhouse gas emissions if the temperature goals in the Paris Agreement are to be reached.
3) Are being awarded after the world gained knowledge that the world's discovered fossil fuel resources exceed what can be burned.
4) Are being awarded after the world gained indisputable knowledge that emissions must be reduced rapidly, across the entire world, and that current measures are undoubtedly inadequate to reach agreed goals.

The Appellants' understanding is that items 1-4 above are not disputed by the Government.

It is also important that the licences in question are for blocks located further north and east than previously and thus closer to vulnerable areas than ever before. It is argued that the local environment's vulnerability, with the risk of environmental harm that arises from petroleum production in these areas, in itself is an infringement of the right in Article 112. In addition, it is argued that in the necessary choice between which resources will continue to be produced, this is a circumstance which adds to the climate facts indicating that there is an infringement of a right with respect to Article 112.

There are very few other individual decisions, if any, which the state of Norway can make that are close to generating greenhouse gas emissions as great as these production licences open the door to.

5. Factual basis for the case and the District Court's assessment of this

The parties prepared for the District Court a jointly agreed presentation of parts of the facts in the case which has been included in its entirety in the judgment, see Section 2.1 of the judgment. As indicated, the presentation covered only parts of the facts cited.

The Environmental Organisations presented to the District Court very comprehensive factual materials which are accounted for in the Notice of Proceedings at pages 8-36 (FU page 4976 et seq.) with related exhibits.

The District Court's grounds for the judgment barely describe which facts are the basis for the application of the law. However, the District Court has concluded that Article 112 includes a *right* to an environment. However, in order to assess whether there is an infringement of the right, it is necessary to decide which facts the right and the alleged infringement are to be assessed against. Such an assessment of the current factual situation with respect to the right laid down in Article 112 has not been carried out.

For example, evidence was provided to the District Court that Norway has not started its emissions reductions, whereas the vast majority of other countries have succeeded in reducing their emissions, see the supporting documents at pages 1-5 and 9-11 in the supplementary factual excerpt, page 4 et seq. Furthermore, it was shown, and it has not been contested, that Norway's reported emissions reduction contributions (□Nationally Determined Contributions – NDC□) under the Paris Agreement, and the sum of the country's reported contributions, are nowhere close to meeting the Paris Agreement's requirement to endeavour to limit the average temperature increase to 1.5C, see for example, the UN Environment report □The Emissions Gap Report□ on page 794 of the supplementary factual excerpt, where the discrepancy between reported contributions and the need for emissions reductions is referred to as □*alarmingly high*□, see the supplementary excerpt at page 807. Evidence was also provided to show, and appeared to be uncontested, that the proven carbon resources in the world today far exceed the quantity of additional carbon there is room for in the atmosphere, if meeting the Paris Agreement's requirements is to continue to be possible.

At page 37 in the judgment, an account is provided of the advice from the Norwegian Environmental Agency and the Norwegian Polar Institute against awarding production licences for 20 of the blocks that were actually awarded. The District Court can thus be seen not to agree that the matter involves advice against 20 blocks that actually have been awarded despite advice against proceeding from either the Norwegian Environmental Agency, the Norwegian Polar Institute or both bodies. However, this fact, which is illustrated in the supporting document included in the factual excerpt at page 29, is indisputable. The Government has not disputed the content of the supporting documents.

It is necessary for the District Court to take a position on these factual circumstances and the rest of the comprehensive factual materials that have been accounted for in the Notice of Proceedings and during the trial in order to assess whether the right under Article 112 has been infringed.

It is unclear how the District Court has assessed the facts for which evidence has been provided. The appeal requires a full review of the factual circumstances the Environmental Organisations cited before the District Court. It will be necessary to supplement the evidence with more recent research materials.

The same documentary evidence and witness evidence will be cited for the Court of Appeal as for the District Court, and additional evidence will be submitted.

6. Application of the law
6.1 Article 112 of the Constitution
6.1.1 What does the right in the first paragraph entail?

In section 5.2.1 in the judgment, the District Court concludes that Article 112 is a rights provision. The Environmental Organisations agree with this. The right to an environment that is conducive to health and to a natural environment whose productivity and diversity are maintained is laid down in the first paragraph of Article 112.

Under Section 5.2.2, the District Court discusses what the right entails, and it is stated that encroachments on the environment must exceed a certain threshold in order to be relevant for assessment under Article 112. In a purely general sense, i.e. with respect to all forms of human activity, this is presumably correct. But it is an error in legal interpretation when the District Court thinks that emissions from petroleum activities pursuant to decisions such as the one in this case must also exceed a certain threshold. The question of a threshold cannot be decided independently of the context the Decision is part of: Norwegian-produced petroleum has created 16 billion tonnes of harmful CO2 emissions. The Decision (the 23rd Licensing Round) is the next stage for Norwegian petroleum production, which will contribute perhaps another 4 billion tonnes of CO2. The District Court seems to interpret Article 112 in such a way that it involves new thresholds, and in total ever higher thresholds, for each new decision on petroleum production. This obviously cannot be a correct interpretation of Article 112.

The Environmental Organisations argue that the activity for which the Decision provides a basis are per se of such a nature and extent that the threshold has been exceeded, and that Article 112 contains an absolute limit for which environmentally-harmful activities are lawful. The District Court has not taken a position on this legal argument.

The District Courts states on page 18, in a purely general fashion, that fulfilment of the duty to take measures under the third paragraph of Article 112 will mean that a decision which is otherwise prohibited becomes lawful. It is further stated that the right under the first paragraph is nothing other than a duty for the Government to take measures when

measures are available. The Environmental Organisations argue that this is an erroneous interpretation of the first paragraph of Article 112 that is contrary to the wording.

An activity can be imagined which results in irreversible environmental harm and which therefore *cannot be remedied* with Government measures. A decision to blast the Jotunheimen Mountains, based on the world's need for gravel, is a hypothetical, but useful, example. The decision has irreversible consequences. In such a case, the individual nevertheless has a right under the first paragraph. The consequence of the right is that the irreversible activity cannot be carried out. The Government thus has a duty under the first paragraph of Article 112 not to make the decision. Assessed under the third paragraph, it can be said alternatively that the Government's measure is to refrain from the activity.

Such a duty to refrain under the first paragraph is obviously not incompatible with a duty to take measures under the third paragraph, as the District Court seems to think. The Government is obliged *both* to implement and to maintain climate measures, forexample, in the form of CO2 taxes, see the third paragraph, *and* to refrain from making the decision.

The Environmental Organisations further argue that Article 112 also contains a relative limit that applies if the court in the application of the law concludes that the absolute limit has not been exceeded. When determining such a relative limit, the court must decide whether the circumstances weighing in favour of making the Decision (economic considerations) are so important that the Decision is nonetheless lawful. The District Court has not taken a position on this argument.

The first paragraph of Article 112 is a rights provision intended to ensure the basis of existence for current and future generations. It is argued that the court therefore is authorised and obliged to fully review whether the right has been infringed.

6.1.2. Do □measures□ under the third paragraph of Article 112 outweigh the Decision's environmentally-harmful effects?

The Environmental Organisations' main argument is that the Decision is contrary to the right under the first paragraph of Article 112 of the Constitution. One argument from the Government's side is that the Government's *general* climate measures outweigh the Decision's environmentally-harmful effects. We will examine this argument more closely here. In this context, it is in principle irrelevant whether the Government's measures are carried out in order to meet a legal obligation under the third paragraph of Article 112, or the measures are carried out for political or other reasons.

Under the third paragraph of Article 112, the Government has a legal obligation to implement measures to look after and protect the environment. The Environmental Organisations argue the following regarding this obligation provision:

- The provision is general, independent of specific decisions or encroachments that threaten the environment, and imposes continuous obligations on the Government to protect the environment.
- The Government's obligation under the third paragraph becomes a reality, particularly in the event of environmentally harmful decisions or encroachments or an imminent hazard.
- The extent of the Government's obligation, and what it consists of, will vary over time, depending on the era's environmental risk factors.
- If appropriate, necessary and sufficient measures are not available, there is a duty to refrain from the environmentally harmful activity. Refraining from doing something (forexample, forgoing the awarding of production licences in special areas) is thus in itself a measure. This is the principal reason that the Environmental Organisations believe the Government's argument that general measures compensate for the Decision's environmentally harmful effects is mistaken, see below.
- It is the Government that has the burden of showing that at any time it is meeting its obligations under the third paragraph of Article 112.

The duty to take measures under the third paragraph is a particular and constitutionally-established obligation provision that is independent of, and exists in addition to, the rights provision in the first paragraph.

In theory at least, technology can be imagined which effectively removes CO2 from the atmosphere in the necessary quantities. In such an eventuality, the infringement of the right to a safe environment under the first paragraph and production licences could be assessed in light of this. With such technology available, measures under the third paragraph could ensure that the right to a safe climate on the planet was not infringed. Such a situation will reveal a relationship between the first and third paragraphs; given that the measure clearly ensured the right to a safe environment, Article 112 would not be infringed. However, such technology does not exist. The CO2 released into the atmosphere causes harm which currently cannot be repaired with technological means. The witnesses Bjørn Samset and Eystein Jansen explained this to the District Court, and it has not been disputed on the part of the Government.

The District Court does not separately discuss the duty to take measures, but instead puts it together with the question of whether harm to the climate from Norwegian-produced petroleum that arises abroad is covered by Article 112. We will specifically examine here the duty to take measures under the third paragraph, and then we will comment further on the delineation of the right with respect to climate impacts from Norwegian-produced petroleum which first arise abroad.

The District Court states at page 18: *How Norwegian authorities would be able to fulfil their duty to take measures for exported oil and gas has not been clarified for the Court. According to what the Court understands, such measures ([CO2 taxes and emissions quotas] will not be available to Norwegian authorities for emissions from activities*

abroad. (□) The relationship between the first and third paragraphs of Article 112 therefore argues against – as the Court sees it – considering emissions abroad as covered by Article 112.»

When the District Court thinks that emissions from Norwegian-produced petroleum that are released into the atmosphere outside Norway's boundaries are not covered by Article 112 because Norway cannot take □measures□ in, for example, the form of CO2 taxes in other countries, this relies on an untenable interpretation of the provision.

The Environmental Organisations argue that the climate situation in the world is such that Norway (like other petroleum-producing countries) must refrain from producing *unproven* petroleum resources, in order to thus limit the quantity of carbon that is emitted. It was shown to the District Court that such refraining will reduce the quantity of CO2 emissions, even if it is not possible to ensure that other petroleum producers do the same. Such refraining is a measure, see the third paragraph of article 112, which will have precisely as great a climate effect outside Norway as in Norway. To use the District Court's terminology, it can be said that this measure is □*available to Norwegian authorities for emissions from activities abroad.*□» Other climate measures the Government takes in Norway (for example, CO2 taxes and subsidised electric vehicles) have *the same effect* abroad as in Norway. It is consequently not correct that there are no measures available to Norwegian authorities that are relevant with respect to harm to the climate that arises other places in the world; climate measures in Norway are fully relevant for harm to the climate that arises in other countries.

The Environmental Organisations also argue that the District Court in the first sentence of the quotation above may have intended to state an evidentiary burden rule: that the Organisations must show actual measures that have not been carried out in order for a duty to take measures to exist. Such an evidentiary rule is not rooted in applicable law.

The Environmental Organisations argue that *if the Government believes* that the infringement of a right under the first paragraph is compensated for by the Government's measures, then it is the Government which must show what these measures are, *and* that the measures protect the right to a safe environment and climate.

The Government argues, as mentioned, that general measures, such as CO2 taxes and the duty to surrender allowances, eliminate the harmful effects of the Decision and therefore protect the rights under the first paragraph of Article 112.

When the District Court has erroneously adopted the Government's arguments on this point, it is because of three circumstances in particular:

1) The District Court has satisfied itself with referring to the general measures the Government has cited as sufficient, without carrying out any assessment of the effect and significance of the measures with respect to the current climate situation,

including in particular Norway's willingness and ability to carry out emission reductions and the fact that Norway's emissions reductions have not yet started.

2) The District Court has erroneously concluded that the general measures are to be related exclusively to a duty to compensate for the marginal or greatly limited emissions that result from the production licences covered by the Decision, and not a duty to compensate for Norwegian-produced petroleum from new deposits being brought to market.
3) The District Court has erroneously concluded that the general measures are to be related to the Decision in isolation, and not to Norway's past contributions to greenhouse gas emissions or to the extensive plans Norway has for further petroleum production.

If the application of the law contents itself with confirming that general incentives to reduce emissions (for example, CO2 taxes) have been implemented, and thus there is no infringement of a right, this is circular reasoning. The right then has no substance other than the duty to take one or more measures. If the duty to take measures is then also the subject of non-intensive judicial review, the protection of the environment is no longer something the courts can assist with.

At this point in the District Court judgment, the Court discusses Article 112 and the duty to assess environmental impacts under Sections 3-1 and 4-2 of the Petroleum Act. It is stated that because the Petroleum Act has not been understood to say that climate impacts abroad must be assessed, then Article 112 of the Constitution cannot encompass climate effects from Norwegian-produced petroleum other than those directly generated through petroleum production. The District Court consequently uses formally-enacted legislation to undertake a restrictive interpretation of Article 112 of the Constitution, without considering whether putting the mentioned provisions in the Petroleum Act into practice today is constitutional. There is no foundation in the sources of law for this reasoning.

The right to the environment is infringed by the Decision and there are no measures (for example, technology referred to as carbon capture and storage) that can compensate for the environmental infringement. The Environmental Organisations therefore argue that the Government was obliged to refrain from making the Decision. The District Court has not taken a position on this argument.

6.1.3. Particulars regarding which environmental and climate impacts are relevant to assess in the application of the first paragraph of Article 112

At the top of page 20 in the judgment, the District Court concludes that CO2 originating from Norwegian-produced petroleum is only relevant if this CO2 is released to the atmosphere in Norway. As mentioned, the District Court thus disregards the fact that the actions that are *the main reason* that new carbon is released into the atmosphere occur in Norway. The District Court also disregards the fact that it is indisputably of no

importance, both for those who live in Norway and those who live other places, where emissions occur.

The Environmental Organisations argue that it is primarily the actions that contribute to new petroleum being brought up at all from underground that must be assessed with respect to Article 112. In this context, it must be assessed what significance it has that a demonstrably substantial part of the world's petroleum resources cannot be produced if the temperature increase is to be limited to the level the world has defined as justifiable.

It is difficult to understand the reasoning of the District Court when it concludes that CO2 emissions from Norwegian-produced petroleum are irrelevant *because* the petroleum is exported. This perspective means that Article 112 has no significance for what is our era's greatest environmental challenge, namely the climate challenge.

This restrictive interpretation is contrary to the wording of Article 112, note that □environment□ according to the preparatory works and the parties' joint understanding also includes climate, and the purpose of the provision. From a source of law perspective, it is difficult to justify an interpretation which is contrary to *both* the wording *and* the purpose. The interpretation is also incompatible with the requirement for sustainable development that is codified in the environmental provision, including the explicit proviso that consideration for □future generations□ shall be taken into account. The requirement for sustainable development stems from the Brundtland report □Vår felles fremtid□ (□Our common future□), which was the direct reason for the adoption of the environmental report. Sustainability and consideration for future generations' need for a liveable climate cannot be assured properly without an assessment of what is needed to protect *the planet's* climate and what actions harm the climate.

The District Court's perspective appears to be grounded in the international climate agreements' systems *calculating* greenhouse gas emissions and emission reductions by allocating emissions to the country where the fossil fuel resource is combusted. However, the District Court disregards, and does not discuss, the fact that this restrictive interpretation of Article 112 is contrary to the purpose of the climate agreements. In addition, the principle of differentiated responsibility is overlooked, which is extremely important, see Article 4, Section 3 in the Paris Agreement (FU page 4446): □*Each Party's ... contribution will ... reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.*□»

The District Court also overlooks the fact that there is a relationship between the countries' individual responsibilities under the Agreement and collective responsibility obligations under the same agreement. The Paris Agreement requires that wealthy countries take a greater share of the collective obligations than poor countries. This is precisely expressed as □differentiated responsibility□, a term that is used several places in the Paris Agreement. The principle would have been impossible to *quantify* (how much greater responsibility?) in an international agreement, but it is sufficiently clear. It is precisely the

relationship between individual and collective obligations in the climate agreements that is essential for solving a collective problem where both the countries' past contributions and their capacity to contribute to reducing emissions vary.

Regarding the relationship between Article 112 and the climate agreements, the District Court states at page 19:

□*However, obligations under international law do not limit protection rules in domestic law, for example under Article 112 of the Constitution. Nevertheless, it appears unclear what consequences it would have for international cooperation if Norway should be responsible for emissions from exported oil and gas in addition to the emitting country.»*

The response to this is that it is *inconceivable* to imagine that it would regarded as negative if Norway, based on domestic Norwegian law, were considered to have obligations with respect to the climate crisis that go beyond the specified minimum obligations resulting from the Paris Agreement. On the contrary, this would be precisely in full harmony with the Paris Agreement's principle of □*differentiated responsibility*□. In addition, it can be noted that there is currently considerable uncertainty about whether Norway will ever be able to meet the mentioned minimum obligations.

6.2 Some additional comments concerning the importance of international law and comparative law in the interpretation of Article 112

The District Court has generally limited the application of international law when it is stated at page 28, that the Environmental Organisations have not claimed that the Decision is contrary to international obligations and consequently the disposition principle calls for the District Court not to go into relevant international law.

This is a misunderstood and erroneous representation of the Environmental Organisations' arguments, see Section 9.2.2 of *the Notice of Proceedings* (FU page 5007 regarding the presumption principle), Section 9.2.3 regarding the precautionary principle, also being part of international law and the □no harm principle□ of customary international law (FU pages 5008 and 5009), Section 9.2.5 regarding human rights climate protection (FU page 5009).)

The Pleadings in Support contain substantial comparative law materials. It is argued that these are relevant legal considerations in the interpretation and the application of Article 112.

7. The Decision is invalid as a result of procedural errors

7.1. Summary

The Environmental Organisations allege that the Decision is invalid as a result of procedural errors under administrative law. The District Court concluded that procedural errors have not been committed, and the judgment is also appealed on this point.

The Environmental Organisations allege that both the duty to assess and the duty to justify have been breached. The government has neither assessed nor provided satisfactory justification for the following matters:

- The Decision's socio-economic impacts
- The Decision's climatic impacts
- The Decision's local environmental impacts

In the following, we will first deal with breach of the duty to assess before we review breach of the duty to justify. For the sake of order, it is clarified that the errors will be cumulated and it is the sum of the procedural errors that forms a basis for invalidity.

With regard to the duty to assess in particular, we have found reason to provide a relatively thorough description of the legal basis for the assessment. It is important to be clear about the particular process that has led to the Decision, including the interplay between general administrative law and the petroleum law's procedural rules.

We will also provide some special comments on the duty to assess related to the Decision's socio-economic and climate impacts. Otherwise please refer to the arguments put before the District Court.

7.2. The duty to assess has been breached

7.2.1. Legal basis

The administrative law duty to assess begins with Section 17 of the Public Administration Act, which requires that the case be □clarified as thoroughly as possible□ before an individual decision is made. The rule is in place as a basic requirement for all administrative activity.

Even though it is clear that the Act cannot be taken entirely literally, it is simultaneously clear that the duty to assess is relative to the seriousness of the matter; particularly stringent requirements are imposed for assessment if the decision is particularly serious (seefor example, The State of Norway through the Immigration Appeals Board v. A, HR-2017-2376-A). The preparatory works indicate that the purpose of the case preparation is to □acquire all the material of a factual and legal nature that is necessary for deciding the matter□ (NUT 1958:3 page 161).

Because the challenged decision is among the decisions in Norwegian public administration with the most drastic impacts, the requirement for assessment must be set especially high. The Decision's serious environmental impacts also mean that Article 112 of the Constitution heightens the duty to assess, partly in order that the environmental

impacts be assessed especially thoroughly, but also so that the necessity of making the decision (and thus making encroachments on the environment) must be assessed especially thoroughly.

The duty to assess must also be seen in relation to the special procedural rules laid down in the Petroleum Act and the Petroleum Regulations.

The first step in the process leading to production licences in new maritime areas is that the Storting, through a plenary decision, opens the maritime area to petroleum activities, see Section 3-1 of the Petroleum Act and Chapter 2a of the Petroleum Regulations. The Storting's plenary decision has not been challenged in this lawsuit but is relevant as part of the proceedings that have led to the Decision, and the referenced Chapter 2a of the Petroleum Regulations has comprehensive assessment rules.

The decision that is challenged was made by Royal Decree in June 2016 and is a decision authorised in Section 3-3 of the Petroleum Act. This provision (including related regulatory provisions) provides hardly any special assessment rules.

Seven of the Decision's licences (14 of the blocks) have been awarded in Barents South, which was opened to petroleum activities back in 1989. The remaining three licences (26 of the blocks) have been awarded in Barents Sea South-east, which was first opened to petroleum activities in 2013.

As a basis for the Storting's plenary decision, there is a comprehensive impact assessment in line with detailed rules in Chapter 2 of the Petroleum Regulations. Even though this inquiry into the matter does not assess the Decision directly, it was undertaken a relatively short time before the Decision was made, and the inquiry is a part of the decision basis included in the evaluation of whether the administrative body has sufficiently assessed the matter before the Decision was made.

For the licences in Barents Sea South, the assessments in connection with the Storting's prior opening decision are now so old that they are of limited interest in evaluating the administrative body's assessment. However, both Barents Sea South and Barents Sea South-east must be seen in the context of the applicable management plan (FU page 2256 et seq.), which assesses the basis for economic activity in the area.

It is consequently essential to understand clearly that the decision that is being challenged has been made pursuant to Section 3-3 of the Petroleum Act, where the petroleum regulatory structure imposes relatively few express requirements for the proceedings, and where the general procedural rules of the Public Administration Act therefore become of central importance for evaluating whether the duty to assess has been met.

The District Court has considered the legal starting points for the duty to assess that apply to the Decision in Section 5.3.2. The District Court's review is unsatisfactory on several points:

- At page 30 in the judgment, it is stated that it is "without question that Section 17 of the Public Administration Act applies in principle", but nevertheless it has not been "shown that this provision has independent significance in connection with the assessment of the decision on opening Barents Sea South-east or the Decision." This assertion is difficult to follow.

  For "the assessment of the decision on opening Barents Sea South-east", it is indeed possible to conclude that Section 17 of the Public Administration Act has limited independent significance. The requirements for assessment under Section 3-1 of the Petroleum Act and Chapter 2a of the Petroleum Regulations are sufficiently detailed that most errors can be classified, through interpretation, as a violation of this set of rules rather than Section 17 of the Public Administration Act. However, it depends on how stringently the petroleum regulatory structure is interpreted, and for most assessment deficiencies it will be a matter of taste whether the error is considered a violation of the petroleum regulatory structure (interpreted and supplemented) or a violation of the general duty to assess in Section 17 of the Public Administration Act. In Universitetsforlaget's commentary edition of the Petroleum Act, the following is said with respect to Section 3-1: "A judicial review of the proceedings when opening new areas will involve in our opinion whether this has been carried out properly with respect to Section 17 of the Public Administration Act and general administrative law principles, and not an isolated assessment of specific requirements in Section 3-1 of the Petroleum Act".

  However, the statement that Section 17 is not independently important for "the assessment of the decision regarding " the Decision" is far more difficult to follow – and as specified above, it is this decision that is challenged. Sections 3-3 and 3-5 of the Petroleum Act and Chapter 11 of the Petroleum Regulations govern this decision, and these provide hardly any special assessment rules. It must therefore be quite obvious that Section 17 of the Public Administration Act (and Article 112 of the Constitution) are central to whether the duty to assess has been met.

Because the District Court adopts the wrong legal starting point here, neither is any clarification provided as to which specific assessment requirements can be imposed on a licensing decision.

- With respect to the Environmental Organisations' argument that Article 112 of the Constitution heightens the requirements for assessment prior to the Decision, the District Court contents itself (at page 31) with referring to statements in the preparatory works where it is stated that Sections 3-1 and 4-2 of the Petroleum Act seek to meet assessment requirements resulting from Article 112 of the Constitution. It is also stated that the District Court has no "reason to see things differently than that the requirements in Sections 3-1 and 4-2 satisfy the requirements for assessment in the second paragraph of Article 112". The District Court's angle of attack here is exclusively formalistic and leaves a distinct impression that it has misunderstood the

Environmental Organisations' argument and what significance Article 112 of the Constitution has for the administrative body's duty to assess. The Environmental Organisations are arguing that Article 112 actually heightens the duty to assess. It appears as though the District Court assumes that the second paragraph of Article 112 of the Constitution has no independent importance for the requirements for assessment because the petroleum regulatory structure has procedural rules with requirements for impact assessments. In that event, this is a mistaken legal interpretation. In the independent assessment of whether the administrative body has met its duty to assess, it is critically important that the Decision has extremely serious harmful effects on the environment. This means that the general duty to assess is heightened out of concern for the environment, see the second paragraph of Article 112 of the Constitution. From such a perspective, it is not important that the petroleum regulatory structure has rules regarding impact assessments. It is not the case – as the District Court seems to assume – that the second paragraph of Article 112 of the Constitution is automatically met if an impact assessment has been carried out in line with Section 3-1 of the Petroleum Act. The point is that the specific impact assessment that has been completed does not meet the requirements in Article 112.

- In the assessment of whether the duty to assess has been met, it is relevant that the development of new petroleum fields is carried out in phases. In connection with each phase, a certain new assessment is undertaken. The first phase is a decision on the general opening of new areas to petroleum activities, see Section 3-1 of the Petroleum Act. The next phase is awarding specific production licences, which is what the Decision involves. The third phase occurs after a discovery has been made and the oil companies that own the discovery make a plan for the actual development and operation of the individual field, see Section 4-2 of the Petroleum Act. Assessments are also required in the latter phase, including development-specific conditions.

  At page 31, the District Court refers to the duty to assess, which applies to the third phase, i.e. when a plan for development and operation is drawn up. Similarly, a reference is made at page 30 in the judgment to a quotation from the preparatory works where it is stated that it is difficult to carry out assessments related to the development and operation phase (Phase 3) as early as the opening phase (Phase 1). Seen in context, this leaves an impression that the District Court does not consider assessments related to actual production (Phase 3) as important before decision are made under Sections 3-1 (Phase 1) and 3-3 (Phase 2) of the Petroleum Act, because new assessments will be carried out later irrespectively. The fact that this is how the District Court has reasoned is also evidenced by the District Court's specific discussions (see the judgment at pages 39/40 and page 43).

The District Court's reasoning undermines the importance of carrying out proper and sufficient assessments before decisions are made under Section 3-3.

The most important reason that thorough assessments already in their first and second phases are especially important, and probably more important than later development-

specific assessments, is that the opportunity to later refrain from or limit production (if discoveries are made) is highly limited. This is because the production licences already grant the petroleum companies the right to produce the resources the companies find. This is the reason that the companies are willing to make investments into the billions to search for petroleum, and it is therefore clear that a great deal will be required to stop such production once discoveries are made.

Another important reason to emphasise the importance of thorough assessments before decisions on production licences occur is that it is only at this early stage that it is possible to assess the importance of the sum of future fields, which is particularly important with respect to the environment and climate. In the third phase, it is only the individual field development that is assessed in an isolated way, and for that reason environment and climate considerations already become less prominent. This is also a type of □bit-by-bit□ approach on the part of the District Court, which undermines the substance of Article 112 of the Constitution.

Consequently, there is no basis for going easy on the assessment requirements in the licensing phase by referring to the chance to carry out more thorough assessments later.

7.2.2. The socio-economic results of the Decision have not been adequately assessed

Virtually any administrative decision requires a balancing of advantages and disadvantages, and it is these advantages and disadvantages the administrative body must satisfactorily assess prior to a decision.

The advantages the Decision pursues are socio-economic gains. The environmentally-harmful effects of the Decision are thus justified by the opportunities for such gains. Therefore, the socio-economic consequences of the Decision require an equally thorough assessment as do the environmental ones. . Pushed to extremes: It would obviously not be appropriate to open an area to petroleum production if it were overwhelmingly likely that this would lead to socio-economic loss. To illustrate, it is stated directly in Section 3-1 of the Petroleum Act that an assessment shall be undertaken of the □impacts [to trade and industry] of the petroleum activities ... as well as the economic ... effects that the petroleum activities may have□» before an area is to be opened for petroleum activities.

There are no socio-economic assessments related to the Decision or the individual licences. What is available are socio-economic assessments carried out prior to the opening of Barents Sea South in 1989 and Barents Sea South-east in 2013, as part of the impact assessments that formed a basis for the openings.

The Environmental Organisations allege that these assessments do not satisfy the administrative law requirements for proper assessment, and in particular that the

assessments carried out in connection with the opening of Barents Sea South-east – which are the basis for three of the ten licences – are encumbered with unusually gross errors and deficiencies.

In connection with the assessment of the matter that was carried out before the Storting's opening of Barents Sea South-east, the petroleum authorities had a report prepared that assessed the socio-economic aspects of such an opening. The report was based on two scenarios (high and low), and it was concluded that petroleum activities would yield net revenues of NOK 280 billion in the high scenario and NOK 50 billion in the low scenario. These conclusions are recounted as very essential in both the Report to the Storting (FU page 328 et seq.,, particularly page 3311 and in the Storting's consideration of the matter (FU s. 3331 et seq.,, particularly page 3339). The conclusions are thus also essential for the production licences that were awarded in Barents Sea South-east through the Decision.

This report has been reviewed by the Environmental Organisations' expert witnesses, Knut Einar Rosendahl at the Norwegian University of Life Sciences in Ås and Mads Greaker at Statistics Norway. Rosendahl and Greaker have shown a number of errors and defects in the report, which overall mean that the conclusion should not have been a positive NOK 280 billion (high scenario) and NOK 50 billion (low scenario), but a negative NOK 4 billion and NOK 12 billion, respectively.

Perhaps the greatest error is the failure to discount. Petroleum production results in great costs in initial phases, whereas the revenues come far later. This means that adjusting for future monetary value (discounting) becomes particularly important. The undiscounted cash flow says nothing about the project's socio-economic value. The failure to discount on its own means that the socio-economic benefit has been overestimated by NOK 228 billion (high scenario) and NOK 44 billion (low scenario) respectively. The latter assumes a discount rate of 7 % which is the rate recommended by the Government for petroleum projects. The latter appears in Rosendahl and Greaker's presentation to the District Court.

Exhibit 5: Presentation from Knut Einar Rosendahl and Mads Greaker submitted during the trial at the District Court.

In addition to national government revenue, assessments of employment effects related to petroleum activities were also carried out in connection with the impact assessment. Gross errors were also committed here which have been documented by the Environmental Organisations' expert witnesses. The specific details appear in the report from Rosendahl and Greaker (FU page 5645 et seq.)).

As the Environmental Organisations see it, these errors alone must lead to invalidity for the licences awarded in Barents Sea South-east. It is clear from the Storting's deliberations that the socio-economic forecasts were absolutely essential to the Storting's assessment (FU page 3339).

The District Court has nonetheless concluded that the abovementioned circumstances do not constitute a violation of the duty to assess under administrative law. This conclusion is based in part on the following erroneous assumptions:

- The District Court concludes (at page 43) that it is not necessary to discount estimate revenues in order to carry out a proper assessment.

Given that undiscounted figures alone do not provide a basis for forming any opinion whatsoever about the real value of the activities, this is tantamount to saying that it was not necessary to carry out any assessment at all of likely socio-economic benefit.

When it is simultaneously clear that the socio-economic benefit from the activities is the advantage that justifies the negative environmental impacts, and Section 3-1 explicitly emphasises that the socio-economic impacts must be assessed even at the opening stage, this conclusion is absolutely incomprehensible.

- The District Court discredits the need for thorough socio-economic assessments by citing the fact that the extent of oil and gas at the stage in question is uncertain (at page 43). However, it is difficult to understand how uncertainty concerning the extent of the resource is supposed to justify not having done the assessments correctly. And if it were the case that it was nevertheless too uncertain for calculations to be made, it is clear that it is this uncertainty that should have been communicated, not a conclusion which the Government itself regards as untenable because of uncertainly.

The District Court also completely overlooks the opportunity the administrative body had to wait for an updated resource basis that was known to be coming not long after the report was issued.

- The District Court discredits the need for thorough socio-economic assessments by citing the fact that thorough assessments will be carried out at a later stage – upon approval of plans for development and operation after discoveries have been made. We refer generally in this regard to what is stated above regarding why it is improper to reduce the requirements for assessment because subsequent assessments are also to be carried out. In connection with this, there is also a supplementary point that later assessments only apply to individual discoveries, and it is entirely possible that individual projects may be profitable without the area as a whole being profitable. It is only at the award stage that it is possible to carry out comprehensive profitability assessments.

7.2.3. The climatic impacts of the Decision have not been adequately assessed

The climatic impacts of the Decision are discussed in detail above. From a climate perspective, it is hardly possible to imagine a decision of this type with greater negative impacts than the decision in question. Given that it must be recognised at the same time

that the climate challenges are among the absolutely greatest challenges to society, it is clear that the Decision's negative climatic impacts must be assessed with particular thoroughness.

No independent climate assessments have been carried out in connection with the Decision, nor are there any such assessments in connection with the impact assessment prior to the opening of Barents Sea South-east. The latter is the case despite the fact that Section 6 c of the Petroleum Regulations clearly establishes that the impact assessment shall include to the extent necessary a □description of the relationship to ... relevant environmental goals laid down through national guidelines, national environmental goals, reports to the Storting or such, and how these have been taken into account.□» Similar requirements are stated in international rules Norway is subject to.

The latter are addressed in the opening report to the Storting, and it is only briefly stated that the emissions contributions are considered marginal in relation to the total burden, while at the same time the Government's general climate policy is cited, including the applicable climate reporting (FU page 2322). However, there are no specific discussions regarding what new and extensive petroleum production will mean for the opportunity to reach the climate goals and Norway's contribution in connection with this.

In particular, there is no discussion of:

- The climatic effect of opening Barents Sea South-east and further developing Barents Sea South for the purpose of maintaining Norwegian petroleum production at the same level as today beyond 2020.

- The climatic effect of arranging for extensive petroleum production beyond 2030 and far into the future. These effects result both from granting the particular licences and from stimulating investments and technology.

- The climatic effect from contributing to the world's petroleum production on a large scale and thereby stimulating increased petroleum consumption.

- Whether there is a basis for trusting that the emissions trading system will be sufficiently effective for the emissions from petroleum production to continue within Norwegian climate goals.

Despite the above, the District Court concludes that the climatic impacts of the Decision have been adequately assessed. This is primarily because the District Court concludes that the Decision must be assessed in a narrower climate context and that Norway is not obliged to assess the importance of petroleum production that leads to emissions in other countries. Because the District Court reaches the wrong conclusion on these substantive points, the District Court's conclusion related the duty to assess is also wrong.

7.3. The duty to justify has been breached

The starting point under general rules of administrative law is that all individual decisions must be justified in writing at the same time the decision is made. The duty to justify is important because it compels a decision-maker to carry out a conscientious compilation of the arguments for and against the substance of the decision.

The Environmental Organisations assert that Article 112 of the Constitution requires that an express justification be provided for why the Decision has been made despite its negative impact on the environment. Because the harmful effects are unusually serious, stringent requirements are also imposed for the justification, see the principle in Rt. 1981, page 745.

There is no justification for the Decision whatsoever. It is thus impossible to know how the administrative body has balanced the environmental considerations against the benefits pursued in the Decision.

The District Court's consideration of this argument is extremely inadequate, and the justification hardly meets the justification requirement in the Dispute Act, see Section 19-6 of the Dispute Act. Without any further justification, the District Court only writes that it does not find that □circumstances [have been] demonstrated indicating that the Decision is invalid because of inadequate justification.□ This is obviously unfounded, and as indicated above, there are good reasons that the Decision must be considered invalid as a result of inadequate justification.

8. The Decision is based on erroneous facts

The Environmental Organisations also argue that the Decision is invalid because it is based on erroneous facts which have influenced the substance of the Decision. The Decision adopts erroneous socio-economic forecasts as a basis for the awards. Under general rules of administrative law, an individual decision is invalid if it is based on erroneous facts which may have influenced the decision. The Decision is based on forecasts indicating revenues from NOK 50-280 billion. As indicated, these forecasts are wrong, and corrected for errors the actual forecasts are a negative NOK 4 to 12 billion. It is clear that this error may have affected the decision.

This argument is closely related to the argument that the Decision's socio-economic benefit has not been sufficiently assessed – had the duty to assess been met, the Decision would not have relied on erroneous facts.

9. Prayer for relief

On behalf of Föreningen Greenpeace Norden, Natur og Ungdom and Besteforeldrenes klimaaksjon, we hereby submit the following:

Prayer for relief

1. The Royal Decree of 10 June 2016 on awarding production licenses on the Norwegian continental shelf □the 23rd Licensing Round□ is wholly or partially invalid.

2. Föreningen Greenpeace Norden, Natur og Ungdom and Besteforeldrenes klimaaksjon are awarded legal costs for both courts.

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This appeal has been sent to the Oslo District Court via Aktørportalen. A copy has been sent by email to the Office of the Attorney General of Norway.

Oslo, 5 February 2018
WAHL-LARSEN ADVOKATFIRMA AS

Cathrine Hambro
Advocate

Oslo, 5 February 2018
ADVOKATFIRMAET GLITTERTIND AS

(signature)
Emanuel Feinberg
Advocate