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National Report –Rapport national - Landesbericht

Norway

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JURISDICTION AND ALTERNATIVE DISPUTE RESOLUTION IN AGRICULTURE

I. Summary

Norway is a small country with a population of 4.5 million people and limited land available for agriculture: Approximately 3.2% of the total area of the country of 324 000 sq. km. At present, Norway has 55 000 active farmers.

Traditionally, forestry has formed part of Norwegian agriculture because farm forests have always been operated by farmers. In addition, there are large areas of forest that do not form part of farm forests where operations may be industrial with a separate processing stage. Forests constitute some 22% of land areas.

Reindeer husbandry is included in Norwegian agriculture.

In addition, hunting and fishing form part of the income base of many farmers.

The size of both the country and the industry entails that organised conflict resolution, within and outside the courts, is generally non-specialised and does not differ greatly from the methods of resolving conflicts used elsewhere in the country.

Historically, there have been a large number of boundary disputes in Norway due to small resources, which have created strong feelings. It is said of the Norwegian farmer in certain parts of the country that he is not well unless he is involved in at least two disputes at the same time.

As a general rule, conflicts arising in Norwegian agriculture are resolved in the ordinary courts.

There are courts of special jurisdiction for boundary disputes and practical land consolidation ("The Land Consolidation Court"), and for the land in Finnmark, a county in the far north of the country.

Norwegian farmers are to a very great extent organised in cooperatives. Conflicts within cooperatives are resolved either before the ordinary courts or by arbitration.

The very limited number of specialist arrangements that exist are not widely used or well known by other parties than those concerned.

Presumably, Norwegian farmers have sufficient confidence in the legal training and common sense of the ordinary courts.

Conflicts between traditional agriculture/forestry and the indigenous population, the Sami, are discussed separately after my responses to the other questions.

This report is accompanied by an overview of Norwegian agriculture in the broadest sense and the framework conditions affecting the industry.

II THE QUESTIONS AND THE ANSWERS

1 STATUTORY PROVISIONS FOR ARBITRATION

Set out briefly the principal statutory provisions in your country for Arbitration and whether the UNCITRAL model is followed. (United Nations Commission on International Trade Law 1985.) Are there any problems in practice in the operation of these rules in your country?

1.1 The principal statutory provisions

The rules follow from the Arbitration Act of 14 May 2004 No.25 which is based on the UNICITRAL-model.

The Arbitration Act was drafted as a consequence of a pronounced need to revise the earlier regulations, which had remained unchanged since 1927. The revision was of particular importance with a view to introducing a greater degree of predictability for the users and to supplement and clarify the existing rules. A further objective of the legislative amendment was to make arbitration in Norway more widely available to foreigners. The Arbitration Act applies to both national and international disputes and makes no distinction between foreign and Norwegian parties.

As a general rule, the provisions of the Arbitration Act are non-mandatory and the parties accordingly have a broad degree of freedom and influence with regard to how the individual proceedings should be planned and implemented. Parties can, inter alia, choose the venue, determine the procedural rules that will apply and decide on the principles that should govern the allocation of costs.

Arbitration precludes the ordinary courts from reviewing the same case except in the case of specific individual issues: the ordinary courts may appoint arbitrators and review objections to the arbitrators. The arbitration panel itself decides on its jurisdiction on the basis of the terms of the arbitration agreement, although this too may be reviewed by the courts. Moreover, fundamental due process is safeguarded since the courts may consider whether a minimum of legal principles has been followed, e.g. notice, disqualification issues, serious procedural errors.

Most civil disputes may be subject to arbitration. There are exceptions when a party do not have the dispute at his own discretion, primarily when children and citizens with mental diseases are involved.

Norwegian law contains no provisions on the required form of an arbitration agreement. Nevertheless, an arbitration agreement with a consumer will be valid only if it is in writing and was concluded after the dispute arose.

Parties will normally nominate three arbitrators. If they fail to agree on the choice of arbitrators, the parties will each nominate one arbitrator, and these two in turn will appoint a third who will act as the chairman of the tribunal.

The rules of procedure are decided by the arbitral tribunal within the framework of the Act and the agreement concluded between the parties. Originating writs and statements of defence are mandatory. Moreover, each party may call for oral proceedings. Generally, the evidence may be freely presented.

The arbitration panel may implement temporary security measures, but the decision cannot be enforced. Enforcement requires a decision by the courts.

Norway has ratified the New York Convention on the recognition and enforcement of foreign arbitral awards.

1.2 Problems in practising the rules

1.2.1 Publication of the arbitral decision

The Arbitration Act contains the non-mandatory rule that the decision reached by the arbitral panel is free to be made public. The most widely-used arbitration clauses confine themselves to a reference to the provisions of the Arbitration Act. Thus, if a party did not take an active position on the question of publication of the decision at the time the agreement was concluded, he cannot subsequently insist on confidentiality unless the other party so agrees.

1.2.2 Level of costs

The costs involved in using arbitration will often exceed the costs involved in using the ordinary courts. In an arbitration the administrative costs involved in implementing the arbitration proceedings and the arbitrator's fees will be payable in addition to the ordinary costs to lawyers, witnesses and so on involved in hearing the case. This limits the use of arbitration in less complex cases.

On this point, the general rule in the Arbitration Act is that the parties are jointly and severally liable for the costs of the arbitration panel. The arbitration panel may, subject to an application by one of the parties, decide on a different distribution of these costs and order the other party to cover the costs of the first party, in whole or in part. These provisions may be derogated from subject to agreement. If there is a difference between the financial strengths of the parties, one party may opt to shoulder all the costs if it is important to have the dispute decided by arbitration.

1.2.3 Choice of law and language

The national statutory rules that will apply are as a general rule decided by the Norwegian choice of law provisions. The parties should agree on this question. Moreover, the parties should agree on venue and language.

2. STATUTORY TRIBUNALS

Set out the Statutory Tribunals dealing with Rural Disputes in your country.

Are there any problems in practice in the operation of these rules in your country?

2.1 General rules

Most disputes involving agricultural issues are resolved by the ordinary courts. There are no dedicated "agricultural courts" in Norway.

A new Act concerning conciliation and procedure in civil cases dated 17 June 2005 No. 90 ("the Dispute Act") has been enacted and will enter into force on 1 January 2008. One of the primary objectives during the drafting of the Act was to improve the scope for amicable settlements both before and during legal proceedings.

2.2 The ordinary courts

As a general rule, all disputes brought before the courts must be initiated in the Conciliation Board. The Conciliation Board comprises three non-lawyers who mediate between the parties. The Conciliation Board may render a judgment. If one of the parties is dissatisfied with the decision of the Conciliation Board, the case may be brought before the ordinary court of first instance by issuing an originating writ, not by an appeal. There is one consiliation board in each municipality.

Certain cases are exempted from hearing by the Conciliation Board and may proceed directly to the court of first instance. These include cases where the parties do not have full discretion of the the dispute, in cases where both parties have been assisted by counsel and cases in which one of the parties is a public body/authority.

The court of the first instance is the District Court ("Tingrett"), which is the local court. In addition, there are five regional second tier courts, the Courts of Appeal ("Lagmannsretten").

The courts are legally bound to attempt to mediate between the parties, provided that the parties so wish. This is referred to as judicial mediation. It is a highly efficient arrangement, with settlements being reached in approximately 80% of the cases in which judicial mediation is conducted.

The Norwegian Supreme Court ("Høyesterett") is the court of final instance. The Supreme Court's Appeals Committee decides whether the parties in a case should be granted leave to appeal to the Supreme Court. In addition, the Appeals Committee may render final and non-appealable judgments in matters of less importance.

2.3 Courts of special jurisdiction / the Land Consolidation Court

In addition to the ordinary courts, Norway has a number of courts of special jurisdiction which review certain types of cases. The only court of significance within the agricultural sector is the Land Consolidation Court.

A court of special jurisdiction is empowered to adjudicate in a limited area of the law.

The characteristic feature of the courts of special jurisdiction is the consistently high element of lay judges. The various courts of special jurisdiction follow different rules for appointing/nominating professional judges, in some cases they are not civil servants (unlike judges presiding in the ordinary courts), in some cases they practise their roles as judges as a secondary post, and in some cases they are appointed for a specific period of time.

The Land Consolidation Act contains a number of means for increasing the financial return on the operation of land and property and remedying the disadvantages created by unclear and inexpedient property relationships. Thus the task of the Land Consolidation Court is to find expedient solutions to inappropriate property and usage situations. In its performance of land consolidation, the Land Consolidation Court clarifies and determines the legal relationships between properties in an area. Disputes are decided by judgment (or in-court settlement). The Land Consolidation Court marks, fixes coordinates for and maps the boundaries that form part of a land consolidation case. Following an amendment enacted in 2006, the Land Consolidation Act applies to the entire country (earlier densely populated areas were exempted), and provisions are included for "urban" land consolidation.

The Land Consolidation Court is regulated by the provisions of the Land Consolidation Act of 21 December 1979 No. 77. The Land Consolidation Court is presided over by a land consolidation judge with a land consolidation degree from a university. In procedural terms, the land consolidation system is complex, amongst other reasons because it offers choices in relation to the ordinary courts. For example, the parties to a boundary dispute may choose whether to approach the Land Consolidation Court or the ordinary courts. Following a decision by the Land Consolidation Court, the parties may decide whether they wish to take the case on to the Land Consolidation Court of Appeal or to the ordinary appeal courts.

One of the advantages of land reallocation is that the Land Reallocation Court has competence to go beyond the parties' assertions and seek reasonable solutions. Furthermore land reallocation magistrates possess training which combines surveying, agricultural studies and jurisprudence within real estate legislation which may be advantageous in many cases. The ordinary courts have a broader scope of jurisdiction and may therefore be better suited in cases where questions concerning rights are more complex.

In 2007, the Ministry introduced an experimental scheme involving judicial mediation between the parties for certain aspects of land consolidation cases.

The land consolidation system decides some 1000 cases per year.

The Department of Agriculture and Food is in the process of preparing a consultation paper regarding a complete revision of the Land Consolidation Act.

2.4 Appraisement

In valuation disputes, Norwegian law provides a right, in many areas, to refer the issue for appraisement. Two types of appraisement exist: appraisement by a Court of Appraisement where a judge and four expert appraisers decide the issue, and appraisal presided over by a district sheriff ("lensmann") assisted by two appraisers. The district sheriff will generally have police training and need not be a jurist.

As well as determining value, the appraisement may decide in conflicts regarding rights and obligations concerning the object of appraisement or review the basis for the petition for appraisal.

A number of acts refer certain subjects of dispute to appraisement. Several of these acts concern areas relating to agriculture. Examples include appraisements in connection with disputes with neighbours, disputes involving common lands, pasture rights and servitudes. The appraisement can be appealed.

In areas covered by the Land Consolidation Act, the Land Consolidation Court may perform appraisements.

2.5 Conflict resolution within agricultural cooperatives

Most sales of agricultural products in Norway are arranged through large producer cooperatives. The largest of these are Tine BA, which sells milk and dairy products, and Nortura BA, which sells meat and poultry products. Forestry products are sold through a number of regional cooperatives. The cooperatives control most of the Norwegian production of foodstuffs and forestry products. The food cooperatives in particular are feeling the pressure from producers that economically are more liberally oriented.

The rights and obligations of producers in relation to the cooperatives are regulated by their articles of association. The articles of association contain provisions on the obligation of producers to deliver produce, non-competition clauses, marketing measures and give the cooperative the right to determine the price to the producer. Conflicts between the cooperative and a producer concerning the interpretation of the articles of association have traditionally been regulated by an arbitration provision in the articles of association. These days, articles of association vary on this point, amongst other reasons because arbitration cases can be costly. In any event, disputes of this nature are rare.

Sales by producers to a cooperative are regulated by the terms of delivery. Disputes concerning deliveries are resolved before the ordinary courts. Disputes of this nature are also rare.

Politically, the Norwegian Government favours supporting the cooperative model. The cooperative model secures national ownership, at the same time as which it has shown itself to be a relatively successful economic model for users. The EU Commission has also commented favourably on the model.

At present the Norwegian Parliament ("Stortinget") is considering a proposal for a new Cooperatives Act. The proposal do not include any specific conflict resolution bodies for cooperatives

2.6 Conflict resolution within special interest organisations in agriculture

The owners of agricultural properties in Norway have their own interest organisations which work to improve the terms and conditions of the industry as well as to promote social and cultural interests. The articles of association of some organisations include arbitration provisions, while others do not, as a result of which disputes are referred to the ordinary courts.

2.7 The Agricultural Agreement ("Jordbruksavtalen")

Each year negotiations are conducted between the State and agricultural organisations on the subject of the price of agricultural goods and other provisions regulating the industry. The agreement determines the subsidy payable by the State to the industry in any individual year. Negotiations are conducted on prices, the allocation of subsidies for various measures, marketing schemes and regulation of the market.

The agreement is negotiated within the terms of a General Agreement, originally concluded in 1950 and last renewed in 1992, legal authority for which was provided in Section 18 of the Land Act. When the agreement has been approved by the Government and the organisations, it is presented to Stortinget with proposals for the necessary grants, decisions on prices etc.

Disputes are resolved in two ways: If the organisations disagree amongst themselves on what demands should be put forward, the State is required to attempt to resolve the problem by neutral and impartial informal contact. The State may opt to conclude an agreement with a single organisation. If questions arise about whether an agricultural agreement is valid or how it should be interpreted, the General Agreement provides instructions on arbitration, assuming that the parties so agree. No conflict arising as a result of the agricultural settlement has ever been referred to the courts.

2.8 Other special bodies

Two private special complaints boards exist within the area of agriculture for milking equipment and grain purchases, respectively. The complaints boards were established as a result of agreements between producers, suppliers and buyers.

The Complaints Board for Milking Equipment gives its opinion on conflict issues relating to milking machines and accessories. These opinions are not binding.

The Complaints Board for Grain handles disputes about grain settlement to the Norwegian Agricultural Purchasing and Marketing Cooperative. The disputes generally concern the quality of delivered grain. The decisions of the Board are binding.

2.9 Other agreement-based arrangements

The parties may agree other arrangements, for example arbitration, the use of a mediation attorney (a service offered by the Norwegian Bar Association) or the use of a single arbitrator who need no other qualifications than the trust of the parties.

2.10 Summary

Based on the arrangements that exist for conflict resolution within Norwegian agriculture, no problems can be said to exist in this area. The regulations for the ordinary courts and the arbitration institution are new and are generally expected to increase the number of out-of-court settlements of disputes. The somewhat complicated regulations governing the Land Consolidation Court are due to be simplified, as a result of which proceedings are expected to be speeded up. The other conflict resolution arrangements available are of less significance.

3. INDEPENDENT ASSESSORS

Set out any Statutory Provisions or lack of them dealing with Independent Assessors.

Are there any problems in practice either with the rules or lack of rules in your country?

3.1 Introduction

Norway has no statutory provisions regulating independent assessors. A framework statute on the activities of independent assessors is currently being drafted. Independent assessor training is not regulated by any college or university. The activities of assessors are to some extent specialised, for example claims assessment, company valuations and valuing housing for sale. Some assessors have specialised in agricultural properties, including livestock and machinery.

In relation to conflicts within the agricultural sector assessors are used within all conflict resolution models where deemed practical by the conflict resolution body and/or party (parties).

3.2 Court proceedings

3.2.1 Court-appointed independent assessors

If an ordinary court concludes that a need exists to enhance its expertise within valuation in a specific area, it may at its own discretion appoint one or two assessors. These will then be given the status of expert witnesses. The parties must be given the opportunity, prior to such an appointment, to comment on the need, expertise, number and individual choice of assessor. As a general rule, expert witnesses submit their opinions to the court in writing and will in addition testify before the court. Court-appointed expert witnesses are present during the proceedings and may put questions to the parties and witnesses.

3.2.2 An independent assessor appearing as a witness for a party

The general rule under Norwegian law is that the parties are at liberty to call whatever witnesses they may wish. If a party wishes to argue for a particular value or valuation, an independent assessor may be summoned to appear as expert witness. The same rules as for court-appointed independent assessors then apply.

3.2.3 Expert lay judges

Subject to application by (one of) the parties, the court may include expert lay judges during ordinary proceedings. Such an application will be motivated by the wish of the parties to enhance the expertise of the court in, for example, valuation questions. The courts have pools of expert lay judges for this purpose, although expert lay judges may also be chosen from outside these pools. In the District Court two expert lay judges will be appointed, in the Court of Appeal four. This entails that the expert lay judges will be in a majority in the court.

3.2.4 Appraisement (the Appraisement law of June 1, 1917 No 1)

As noted in Section 2.6, the Court of Appraisement comprises two or four appraisers. The appraisers are selected from a special pool appointed for the judicial district. In special cases appointees may be drawn both from the pool of appraisers within the judicial district and from outside the district. The pool of appraisers must be ”broadly” composed so that sufficient expertise within the most common areas of appraisement is available. The appraisers in the pools include independent assessors with expertise within agriculture.

Expert witnesses may be appointed and called during an appraisement hearing.

3.2.5 The Land Consolidation Court

The Land Consolidation Court generally comprises one professional judge and two lay judges appointed from a special pool. The lay judges must be experts in the type of cases with which the court normally deals in the municipality.

Expert witnesses may be appointed and called as witnesses before the Land Consolidation Court.

3.2.6 Evaluation

There is little controversy surrounding the use of assessors/expert witnesses in Norwegian law. The recently enacted Dispute Act continues the arrangements described above. The objections to the use of experts as appraisers/expert lay judges is that they may identify themselves with their own group interests, that misunderstandings may arise because their expertise may be difficult to communicate and because expertise is used in the evaluation of evidence without being the subject of counter-argument. These objections do not outweigh the advantages of the system.

3.3 Experts in conflict resolution bodies outside the courts

3.3.1 Arbitration

The members of the arbitration panel are selected by the parties themselves. It will be up to the parties whether or not they wish to appoint expert lay judges rather than professional judges.

The arbitration panel may at its own discretion appoint one or more experts. If so, the parties will be required to make the relevant information available to the expert in accordance with the decisions of the arbitration panel. The expert witness will normally submit a written opinion to the panel. If required by the court or the parties, he will also be required to appear in court. The rules on expert witnesses are non-mandatory.

3.3.2 Special complaints boards

These boards are agreement-based and comprise experts within the field in question. There is no reason to believe that the boards require greater expertise. However, this point has not been checked.

4. MEDIATION.

Set out any Statutory Provisions or lack of them dealing with Mediation.

Introduction

Norway has no specific legislation regulating mediation.

The legislative history of the new Dispute Act contains a thorough discussion and assessment of out-of-court conciliation, including mediation and other forms of alternative dispute resolution (ADR) as applicable to Norwegian conditions. As has already been noted, the new act has a stronger focus on out-of-court arrangements than the earlier act.

The ordinary system for legal proceedings includes a number of provisions that presuppose contact between the parties at various stages of a case with a view to resolving the dispute before judgment is rendered, see Section 4.3 below.

4.1 What is the view of your government on the draft Directive SEC (2004) 1314? If your country is not in the EU have any similar systems been adopted and how are these promoted?

Norway is not a member of the EU.

The Norwegian authorities have not considered the draft Directive SEC (2004) 1314, and did not do so during their work on the new Dispute Act.

It should be noted that Norway has adopted quite similar systems. For descriptions, differences and promotion, please see Section 4.3. below.

4.2 It is noted that Denmark has opted out of the draft Directive SEC (2004)1314 on Mediation and it would be interesting to know the reasons for this. Would any of the other countries have similar objection?

I have not conducted any investigations into this question. My general assumption is that Denmark has opted out because of general reservations with regard to legal and domestic issues.

4.3 Does your country have compulsory mediation and is this satisfactory?

Norway does not have compulsory mediation, but does have a variety of arrangements, some mandatory and some voluntary, before and during court proceedings, designed to contribute to the resolution of disputes. Some of these provisions have features in common with compulsory mediation.

4.3.1. Mediation rules in the Dispute Act

4.3.1.1 Obligations prior to the instigation of legal proceedings

The claimant is required to notify the defendant of the claim and of the grounds of the claim. The defendant must be urged to state his position on the claim.

Both parties are required to disclose important documents and any other evidence that they have reason to believe the other party will not be aware of.

The parties must investigate whether scope exists for resolving the dispute out of court. An agreement will not be enforceable.

These obligations are not sanctioned in any other way than that they may be of significance when it comes to allocating the costs in the case should the dispute end in a judgment.

4.3.1.2 Out-of-court mediation

An agreement on out-of-court mediation may be concluded before a dispute arises.

The parties are at liberty to decide who should act as mediator, if applicable that the mediator should be appointed by the courts. The mediator must be qualified, impartial and independent of the parties. The mediator may be aided by one or more assistants, and is entitled to remuneration.

Minimum rules apply with regard to procedure, and inadmissibility of evidence rules and confidentiality about the mediation apply in respect to any subsequent disputes before the courts.

Out-of-court mediation does not interrupt or suspend the limitation period. If an agreement is reached, it will not be enforceable.

These rules have been included in the Dispute Act in order to encourage the parties to reach amicable settlements. The legislative history of the Dispute Act opens the way for the development of the rules, both generally and with respect to specific areas of the law.

4.3.1.3 The Conciliation Boards

See also Section 2.2 above.

In 1998, the Conciliation Boards considered 132,000 cases. Of these it is assumed that some 10% represented genuine disputes. (The remaining 90% were dropped, either on formal grounds (16%) or because the claim was not disputed and accordingly the complainant applied for the claim to be enforced (74%)). Of the 10%, approximately 3.5% were resolved in settlements, i.e. one-third.

Agreements concluded before the Conciliation Board are enforceable.

There was some discussion of this arrangement during the drafting of the Dispute Act.

4.3.1 4 The general rule on mediation during proceedings

The Dispute Act contains a general rule to the effect that the court may at any stage of the proceedings propose an amicable settlement of all or parts of the dispute. The guiding principle behind such proposals is that the parties must retain their confidence in the court, the court must not for example negotiate separately with the parties or receive information that cannot be made available to both parties. Any agreement reached will be enforceable.

4.3.1.5 Judicial mediation (Chapter 8 of the Dispute Act)

Judicial mediation is conducted at the discretion of the court after legal action has been instigated. The court must carefully consider the scope for reaching a solution to all or parts of the case. If the parties do not wish to conduct judicial mediation they must give specific reasons for their refusal.

The mediation process is headed by the judge preparing the case for trial or by a mediator appointed from a special pool of mediators.

The judicial mediator determines the procedural rules. He must clarify the interests of the parties, may point out strengths and weaknesses in facts and law, suggest solutions and conduct meetings with the parties (and their counsel) jointly or individually.

If the process of judicial mediation results in an agreement, the agreement will be enforceable.

4.3.1.6 Evaluation

It is assumed that these rules will result in out-of-court settlement of a greater number of conflicts and that more conflicts will be resolved by agreement following the instigation of legal action. With the exception of the question of whether the conciliation boards should be retained, the introduction of these rules – which represent a considerable expansion relative to previous legislation – has not been controversial.

4.3.2 Rules contained in other statutes

I do not discuss other statutes in detail. Generally speaking, the Dispute Act's rules on in-court mediation and judicial mediation apply to all other legislation regulating conflict resolution.

4.4 Do you se any problems in your country intend on the enforcement of agreements reached by mediation? (This should not be a problem if the agreement is set up correctly either by an enforceable agreement or as an agreed judgment of the court).

Norway has no mandatory mediation. See Section 4.3 above about enforceable agreements.

In order to be enforced, the wording of the agreement must be clear. Inaccurate agreements might lead to non-fulfilment for parties that are to receive contributions.

4.5 As regards admissibility of evidence of the details of the mediation and the mediator in the UK the mediation agreement provides for this. Article 6 brings these provisions into the statute. Do you see any problems with these provisions? The essence of mediation is that it is "Without Prejudice" to any formal proceedings.

The provisions of the Norwegian Dispute Act on judicial mediation and out-of-court mediation are worded differently from Article 6. The justifications for the rules are basicly the same and in legal terms the rules appear to provide for the same outcome. Nevertheless, there are some noticeable differences:

1. Art 6 only includes the mediators, not the parties, which is surprising. Mediation cannot be conducted without confidentiality from all participants involved. This question will have to be solved at the national level.
2. Art 6 para 1 specifies the kind of evidence that is inadmissible. I then assume evidence not mentioned is admissible. The Dispute Act states that anything learnt during "mediation" (both judicial and out-of-court) is inadmissible, i e nothing is admissible. This seems to illustrate a difference in how to edit laws.

   In Norway there are two exceptions from inadmissibility:

   (1) Concrete evidence presented or referred to in "mediation". This is due to a party's obligation to disclose to the court all relevant and proportionate evidence, even to his own disadvantage.

   (2) A party's own written proposal for an agreement during "mediation". A party is free to tell the court what he would settle for. This might have an impact on the court's allocation of costs.
3. In the Norwegian law the mediator can give evidence regarding certain aspects of an agreement if the parties later dispute what they previously agreed.
4. The Norwegian law does not make any exceptions for "overriding considerations of public interests". The expression might be hard to interpret regarding revelation of (severe) pollution or animal mistreatment in agriculture. The consideration behind the expression is attended to elsewhere in the Norwegian legislation.
5. In the Norwegian law, information obtained during "mediation" is considered privileged.

5. RECOURSE AGAINST DECISIONS

Appeals. Following decisions of Tribunals and Arbitrators what are the basis of appeal to the courts in your country? Are there any problems in practice in the operation of these rules in your country?

5.1 Conflicts resolved out of court

5.1.1 Arbitral decisions

These cannot be appealed to the courts. However, if the decision is invalid in any way, it can be remedied by bringing the matter before the ordinary courts. Such grounds for invalidity might for example include the invalidity of the arbitration agreement, procedural errors which may have had a bearing on the decision, the judgment may lie outside the jurisdiction of the arbitration panel etc.

5.1.2 Other decisions

Whether other decisions are appealable will depend on the contractual basis for the decision. The right to appeal varies, as discussed above.

5.2 Disputes that are resolved amicably in court

Agreements of this nature, cf. Sections 4.3.1.3 to 4.3.1.5, are final and not appealable. They are enforceable if they are recorded in the records of the court and signed by the parties and the members of the court. If so, the agreement is referred to as an in-court settlement. The courts may review whether an in-court settlement is valid in terms of contract law. The time for initiating legal action of this nature is six months after knowledge of the basis (negligent lack of knowledge).

6 Briefly on Sami issues

6.1 Background

The Sami are an ethnic group living in northern Scandinavia, northern Finland and northern Russia. The settlements predate the time during which Norway became a separate nation. Statistics Norway (SSB) estimates that the number of Sami in Norway is ca. 40 000. The Sami parliament informs that ca. 12 500 individuals were registered on the electoral roll of the Sami parliament in 2005. The Sami are best known for their hunting and fishing activities, and reindeer husbandry, in addition to an agricultural tradition. The fact of the matter however, is that few Sami are active within these commercial fields.

Traditional Sami crafts exist in the north and central Norway, with the emphasis on Finnmark. Traditionally there has been antagonism between Norwegian agriculture and Sami crafts, usually involving reindeers grazing the land. Disputes have especially involved the rights to grazing and hunting. The conflicts have been resolved in the ordinary courts.

6.2 The Reindeer Husbandry Act

A new Reindeer Husbandry Act came into force on 1 July 2007 as a replacement of the previous law of 1978. The act shall arrange for an ecological, economic and culturally viable reindeer industry with basis in the Sami culture and tradition. The act regulates organisation and management of reindeer husbandry within those areas of the country where the Sami have old tradition for carrying out their activities. It decides who may carry out reindeer husbandry, and how such rights can be transferred or phased out. There are regulations concerning district divisions and joint husbandry (“siida”). The act stipulates what rights belong to reindeer husbandry, such as grazing, rights to shelter, fences, firewood and timber, motorised traffic and more. Finally, there are regulations concerning various forms of control and supervision.

Basically, the act does not regulate the relationship between the Sami themselves or the laying down of the Sami’s rights to or in real estate beyond stating that such rights exist.

Within the boundaries of the reindeer grazing districts there is also traditional agriculture. Measures by landowners which may cause major damage or inconvenience for reindeer husbandry are to be notified to the board of the reindeer district in question. If the measure is disputed, a due assessment must be made in accordance with the Land Consolidation Act whether it may be implemented or not, and if so on what basis.

The reindeer owners have an objective and joint liability for any damage that reindeer may cause within a reindeer grazing district. If agreement cannot be reached concerning the compensation sum, it will be determined by appraisal or in accordance with the Land Consolidation Act.

The Act contains a general clause that disputes may be referred to out-of-court arbitration by the board in the individual reindeer grazing district.

6.3 The Finnmark Act

In the spring of 2005 Parliament adopted a separate law, the Finnmark Act, concerning the administration of land and rights in Finnmark, Norway's northernmost county. The act implies that ca. 95% (ca. 46 000 m2) of the land in Finnmark is transferred to the county's population, and also includes others than Sami, through a new organ named Finnmark Property ("Finnmarkseiendommen"). The land has previously been subject to the State.

The basis for the Finnmark Act and the establishment of Finnmark Property were demands from the Sami side that Sami rights should be elucidated. The government pursued this line by appointing the Sami Parliament Committee in 1980 in order to clarify the legal status and make submissions. The Sami Parliament Committee's proposal has formed the basis for the Finnmark Act and the establishment of Finnmark Property.

In times past, Norwegian authorities held the interpretation that the traditional reindeer husbandry and sporadic agriculture of the nomadic Sami did not qualify to establish rights of use to land areas. This interpretation has gradually changed, and the Sami's rights to use of land and water has by degrees gained acceptance.

The basis for the act is that the Sami have, through age-old use of land and water, have built up an individual and collective right of use and proprietary right to land in Finnmark. One of the most important purposes of the act is to give the population of Finnmark a greater influence on the administration of the land in the county. Charting and acknowledgement of existing rights is another important factor in the Finnmark Act. The right of use and property rights in Finnmark shall still be investigated and clarified. The principles concerning common usage and old time use shall form the basis for the work.

A commission has been established in order to determine right of use and ownership rights of the land that Finnmark Property took possession of from the State. The commission's conclusions shall be published in accordance with fixed rules and afterwards be examined by a tribunal ("Finnmark Land Tribunal") if there is any subsequent disagreement. The land tribunal's decisions may be brought before the Supreme Court.

6.4 Sami rights to real estate beyond Finnmark

The Sami Parliament Commission is still working in order to examine Sami rights to property beyond Finnmark. The commission is expected to publish a report in 2007.

6.5 Summary

During the past 25 years, continuous and comprehensive action has taken place in order to clarify the Sami's position in Norway, culturally, politically, legally and economically. The result is, amongst other things, the establishment of a separate Sami parliament to safeguard Sami interests and legislation as mentioned above. The fundamental research work is now hopefully in its concluding phase. The legal clarifications will, nevertheless, not be available until some time in the distant future.

Enclosure

Norwegian agricultural law is part of the Germanic tradition with strong elements of Roman law.

Norway is not a member of the European Union, but connected through the EØS Agreement of 02.05.1992, which was included in Norwegian legislation by act of 27.11.1992. According to chapter 2, agriculture is exempted. Nevertheless, the main principles of the Treaty of Rome apply.

Norway has a population of 4 533 000, is ca. 1752 km long, stretches from 57th to 71st degree of latitude and borders to Sweden, Finland and Russia. The coast is ca. 17 000 km long.

One fifth of the Norwegian land area, some 324 000 km2, is owned by the public authorities.

There are few areas in Norway which are suitable for agriculture. For topographical reasons, agricultural areas in Norway are moreover, small, far-flung and in some places difficult to manage. Only some 3.2% of the total land area (with exception of Svalbard) is cultured land. This is very little compared to other countries.

The most important limiting factor is length of the growing period and the sum of heat during this period. Rain conditions, the Gulf Stream and to some degree favourable light are factors which may affect plant growth positively. Spring droughts have however, not been unusual in some important agricultural areas. The cool climate has a favourable effect on the occurrence of plant diseases and pests. The geographical placement entails that Norway lies on the outer edge of growth areas for several important crops, and is one of the few countries in which sugar crops are not grown. The climate also contributes to corn crops being far lower than in many other countries. In large parts of the country the cultivation of animal feeding stuffs, in the main grass, is by far and large the only possibility. Livestock farming based on the cultivation of grass is therefore of great importance in Norwegian agriculture. This gives an indication of the kind of natural constraints must be taken into account.

Norwegian agricultural policy has as it purpose to secure sufficient foodstuffs in the country, as well as providing the possibility for people to be able to live in the whole of the country. The self-sufficiency rate in 2005 was 56%. The State's monopoly on corn was repealed in 1995.

The challenges for Norwegian agriculture are to be found – beyond the natural limitations – in the small units and cost levels in relation to other countries. In order to achieve settlement throughout the whole country, reliable food production and not too expensive prices, regulations for various kinds have been introduced. Conditions have been placed to own farms, various kinds of regulations governing import of foodstuffs at certain times, toll duties etc.

Norwegian farms can be quite large in area, but the cultivation potential is fairly small. On average a Norwegian farm consists of ca. 18.6 hectares arable land. This means that traditional Norwegian agriculture is a combination of agriculture and forestry, as well as exploitation of far-lying fields, grazing, hunting and fishing. This also provides possibilities for sale and hiring out of building plots for leisure purposes and tourism.

The resources found in outlying rough-grazing areas are often organised in so-called common lands of various kinds. Commons are largely defined as a joint property between all the farms in a community where everyone enjoys special rights, or a publicly owned area where all properties in the surrounding communities have special rights. This facility is now undergoing a comprehensive modernisation process.

There is only a small amount of specialisation in agriculture through factory production. But small-scale production is a growth area. A characteristic of Norwegian farmers is that they by and large base their activities on a broad spectre of products, and hardly specialise at all. There are large variations in various parts of the country.

Norwegian agriculture is largely dependent on subsidies. These are granted by means of the so-called "agricultural negotiations", and appurtenant legislation, see review item 2.7.

Pressure groups have major significance for Norwegian farmers. The most important are the Norwegian Farmers' Association, Norwegian Farmers' and Smallholder Association and the Norwegian Forest Owners' Association.

All hunting and inland fishing are landowner rights. Elk hunting especially provides considerable resources. Ca. 35 000 elk are shot each year. With an average weight of 130 kg of edible meat this provides a total of 4 455 000 kg. Everything is consumed in Norway.

Long-lasting hiring out of land plots for leisure purposes is widespread. Lessors are in the main farmers who thereby gain considerable annual income. The authorities wish to regulate the annual rent through legislation, as well as limit tenant's losses or undesirable transfers of assets to lessor upon expiry of the tenancy. There are regulations that the tenant is entitled to have the land plot released at a reduced price upon expiry of the tenancy. This is the source of innumerable disputes as well as political conflict. At present there are three cases before the Supreme Court concerning whether such releasing clauses are unconstitutional.

An important factor for Norwegian farmers and forest owners is the so-called allodial right, which gives the eldest child (regardless of sex) the right to take over the farm. The allodial privilege has been the source of many disputes before the courts.

Norway has sovereignty over some islands in Antarctica (Bouvet Island, Peter 1st Island and Queen Maud Land) and Jan Mayen and Svalbard (Spitsbergen) toward the Arctic. Here there is no agriculture apart from hunting which is assigned to the landowner.