



Comité européen de droit rural – European Council for Rural Law – Europäische Gesellschaft für Agrarrecht und das Recht des ländlichen Raums

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Commission III

Développement scientifique et pratique du droit rural dans l'UE, dans les Etats, les régions et dans l'OMC – **Scientific and practical development of rural Law in the EU, in States and regions and in the WTO** – Wissenschaftliche und praktische Entwicklung des Rechts des ländlichen Raums in der EU, in den Staaten und Regionen sowie in der WTO

National report for Norway

Answers from The Norwegian Farmers' Union

A. Legal developments since the last Congress (September 2011)

1. From your national viewpoint, what are the main legal developments at WTO, EU and national level in the following areas:

Norway is not part of the European Union, therefore we will concentrate on the main changes at the national level. Through the EEA agreement EU law also affects Norway, although agriculture is exempt from the agreement. These changes will be mentioned when found relevant, but will mostly be integrated through national legislation. We cannot see that there have been developments at WTO level since September 2011 causing main legal developments in Norway. But it might be worth mentioning that WTO rules restricting the size of amber box support, has caused products to be taken out of the target price system.

1.1. Rural economic and structural law

The main changes in Norwegian agricultural development take place at the annual negotiations between the state and the two farmers organisations (The Norwegian Small Holders Association and The Norwegian Farmers' Union). The final agreement is then approved (or not) by the Parliament. Some changes might also occur in the annual national budget, but these changes are small compared to the agricultural agreement mentioned.

The agricultural agreement, including the two farmers' organisations right to negotiate, was put into law in 1950. The law was last revised in 1992. The agreement mainly sets changes in subsidies and target prices and other measures that are not sufficiently regulated by law elsewhere. In 2012 the farmers' organisations broke off the negotiations without reaching a deal with the government. This resulted in the government's first offer being passed by the Parliament. In 2013 the organisations and the government agreed on a deal at 1,27 billion Norwegian Kroners, giving the farmers an average of 31.000 Norwegian Kroners in annual income raise potential.

In December 2011 the government presented a white paper on the Norwegian policy on agriculture and food. There were no legal binding measures in the white paper, but it set out the main direction and framework of the policy for

the coming years, stating that the Norwegian food production has to grow by one percent annually to keep up with the Norwegian population growth.

1.2. Rural environmental law

A: Changes to the Nature Diversity Act (Naturmangfaldslova) and the law of Outdoor Recreation Act (Friluftsløva)

The purpose of the Nature Diversity Act is to protect biological, geological and landscape diversity and ecological processes through conservation and sustainable use, and in such a way that the environment provides a basis for human activity, culture, health and well-being, now and in the future, including a basis for Sami culture.

The changes to the Nature Diversity Act are partly aimed to delegate more authority from the government itself down to lower ranking authorities. For instance changes to the borders of smaller protected areas, changing of names etc. Another change in the Act concerns clearer rules to when it is necessary to apply for certain activities within the protected area. A third change is what the government calls a “precision” (clarification) that the Act can evaluate one activity on the basis of other existing activities, also planned activities. The Norwegian Farmers Union (NFU) is critical to this change, claiming that this is more than a simple clarification, and that it might affect activities that are not in themselves harmful, but together with possible future activities might be harmful. NFU claims that this rule can harm the justice of the citizens, and harm activities already started in the area. There are also changes to the Act about the right to complaint and some adjustments in accordance with old laws.

Parallel with the changes in the Nature Diversity Act, the closely related Outdoor Activity Act was also changed slightly. These changes put back in place regulations about rights to complain and take issues to court, that were taken away unintended. The purpose of the Outdoor Recreation Act is to protect the natural basis for outdoor recreation and to safeguard the public right of access to and passage through the countryside. This is aimed at maintaining and promoting the opportunities for outdoor recreation that is both healthy and environmentally sound.

B: Changes to the Act on the governmental nature authority

This Act from 1996 regulates the control of those parts of environmental laws connected to viable use and protection of nature diversity and outlying fields. A state authority (called SNO) was established with the responsibility of controlling the area. The changes to the Act aims to make the control duty clearer and easier to fulfill. The changes are meant to clarify, and not expand the authorities

of SNO. The Norwegian Farmers Union (NFU) is critical to the changes because the need for the SNO to act will differ from law to law. Further, the NFU believes it is important to separate the authority of the SNO when it is doing surveillance and when it performs other tasks, such as registrations of species. The NFU also believes the changes give too much leeway to the SNO to evaluate when they for instance can halt activities in certain areas. The NFU finds this particularly disturbing since the only way to test if the SNO had the right to stop the activity, would be to refuse to comply, and thereby be persecuted. The NFU is also negative to the demand of documented identification, which breaches with the general Norwegian rule of people not having to carry identification.

C: Changes to the Act on Salmon and Freshwater fishing

The changes aim to update the Act but also suggest the establishment of an obligatory organisation composed of the people who own the fishing rights (often times farmers). This is done to make the owners take a clear and active responsibility for the salmon rivers. Even though this restricts the owners freedom to organise, the Norwegian Farmers Union (NFU) supports the changes, to protect good salmon rivers. On the other hand, the NFU does not support the changes implying that fishing will be public for a certain periode of time, in the cases where the state gives economic support to combat deseases. NFU recons this will restrict the rights of the owner, and not serve the environment well.

1.3. The law governing agricultural aspects of the food supply chain

This has been an area of considerable discussions since the last conference in 2011. In 2011 a government appointed commision released a report (“The power less and the power full”) stating that the power structure in the food supply chain is imbalanced in favour of the retailers, and that there is a need for regulation of trading pratices between retailers and suppliers. Four retail chains control the whole of the Norwegian food market. Interviews conducted by the commission revealed distrust and lack of openness in the negotiations between retailers and suppliers. The commission suggested the introduction of a law of good conduct and an ombudsman to supervice the law.

The work of the commision was followed up by a new white paper, aiming at setting principles for fair trading practices in the food supply chain. This second commision, set up by lawyers, economists and representatives of the union and employers organisations, concluded that there is a need for a new law of good conduct, and a surveillance office to follow up on the law. Their report

concludes that the laws regulating this area today (mainly competition laws) are too fragmented and are not inclined to “educate” the food sector. The commission suggests that the law should regulate commitments before signing contracts, how contracts should be formulated, what should be in a contract and rules to avoid copying products. The aim is to get more openness, predictability and respect for immaterial rights. This better functioning market would again benefit the consumer, the commission states.

The report is now on a public hearing, and will be forwarded to the Parliament for a final decision this autumn.

1.4. The law governing rural land use (including planning law)

A: Ground Lease Act

Last summer (2012) the European Court of Human Rights (ECHR) concluded that the Norwegian Ground Lease Act was not in line with the protection of property (Article 1 of Protocol no.1 of the European Convention on Human Rights). The Court concludes that the law does not strike a fair economical balance between the farmer and the ground leaser. The case concerned the impossibility for landowners of permanent homes or holiday homes to increase rent to people leasing their land as a result of a change in the legislation. They were therefore obliged to extend leases on the same conditions as before without limitation in time.

The Court found that the bar on increasing ground leases placed a disproportionate financial burden on owners as compared to the general interest of the community, showing that the Norwegian authorities had not struck a fair balance between the various interests involved.

A new Ground Lease Act was passed in 1996 and entered into force in 2002. Amendments to it, with effect from 1 November 2004, granted to all those whose leases on plots for permanent and holiday homes had expired, the right to claim extension of their leases on the same conditions as before and without limitation in time.

In a leading case brought before the Supreme Court by a lessor, who was not among the

applicants, the Norwegian Supreme Court found in favour of the lessees. It held that the

new legislation regulating housing lease rents was compatible with the Constitution as it aimed at protecting the right to housing and was not, therefore, contrary to the Convention.

Some Norwegian land owners sent a common complaint to the European Court of Human Rights after their lessees – referring to the new legislation – asked that their leases be extended on the same conditions as before, i.e. without the increase proposed by the applicants. This was after the applicants and land owners had pursued in vain their position either by way of valuation and discussion with lessees' lawyers, or by conciliation and court proceedings.

The Norwegian government has now appointed a committee that will look into how the law should be changed to comply with the decision. A representative of the Norwegian Farmers' Union participates in the committee.

B: Changes to the Landlaw (Jordlov)

The Landlaw from 1955 gave a general prohibition to divide agricultural and forest properties. This was done to avoid properties being split more than was seen as economically viable for the running of the farm/forest property. The law was replaced by a new law in 1995. The prohibition of dividing the property was kept, but the justification for the division focused more on the societal development and rural settlement in the area, equally to the economical viability of the farming family. Still the farmer needs to apply to the government if he or she wants to divide the farm.

The changes to the law, sanctioned by the King on June 14 2013, makes it easier to split agricultural land in order to stimulate settlement, even if agricultural considerations would go against the split. The aim is to make it easier to build houses on the land, and to split the land to sell to neighboring farmers, who today would have to rent the land. On the other hand, where the aim of the split is to change the use of the land away from agricultural production, the change can not be accepted until the redistribution itself is allowed. This is to protect agricultural land from going out of production. The Norwegian Farmers' Union is generally positive to these changes. The changes will come into force July 1, 2013.

C: A new Law of Severance (Jordskiftelov)

June 21, 2013 a new Law of Severance was sanctioned by the King of Norway. The new law replaces the Law of Severance from 1979. The old law from 1979 has been changed several times, but not as comprehensively as this

revision. The law regulates the regulatory entities dealing with the Law of Severance. The changes to the law contain for example rules about the aim of the Law of Severance courts, how they are organised, what cases these courts should handle, the rules of handling, the division of costs and the process of appeal of the cases.

The aim of the revision is a modernisation of the law, making it easier to understand the use of the law, as well as updating it with other laws. In addition there are some new regulations, for example the possibility to establish joint ownership in the outfields when appropriate.

1.5. Rural tax law

The government has announced substantial changes to the general tax and fee system from 2014. The tax on all companies, included farmers, will be reduced from 28% to 27%, to approach the tax level in the neighbouring countries. This will be financed by higher taxes for the oil industry and bigger hydro installations. The technical details for the changes will be presented this autumn, connected to the annual budget.

1.6. Rural social law

Changes to the allodial law

This law originates from the first national law in Norway (from the 13th Century), but the main principles are even older. When a farm is sold, the law gives the right of family members, by principle of primogeniture, to buy it. This entails that the firstborn child, male or female, has the first right to inherit the whole farm. In the absence of children, inheritance passes to collateral relatives, in order of seniority of their lines of descent. The eligible descendants of deceased elder siblings take precedence over living younger siblings.

June 14 2013 the King sanctioned changes to the Allodial law. The changes imply that nieces and nephews of the seller no longer have the allodial right to the farm. It also implies that children of previous owners with allodial rights, and children and grandchildren of the last owner with allodial rights, have the allodial right to the farm. The changes also implies that a buyer of land that is under allodial law can not apply for the Allodial law to be exempt for this property. This last change to the law is meant to strengthen the allodial law. The other changes are meant to stimulate more turnover of farms. The Norwegian Farmers' Union has been positive to the changes to the Allodial law. The

rational behind this view is to decrease the high degree of land lease in Norway. The changes will have effect from January 2014.

1.7. Other areas of rural law

Changes to the law on keeping reindeer (Reindriftslova)

The Law of keeping reindeer from 1978 established a system of local boards responsible for overseeing the keeping of reindeer in their area. Reindeer owners are also represented in the boards. Evaluations of the system states that there is a problem with the legal competence of these boards, that the local boards are separated from the rest of the public administration, and that they have problems building relevant competence. With the changes to the law these local boards will be eliminated, and their tasks transferred to the county governor.

B. Analysis

2. Which of the above (see point 1) legal developments do you consider

2.1. ... to be particularly successful? And for which reasons?

We consider the developments in the Ground Lease Act to be particularly successful. The European Court of Human Rights concluded that the Norwegian law that obliged the owner to extend leases on the same conditions as before without limitation in time, adversely affects the economical balance between the farmer and the leaser. This is positive for the land owners, who were previously disadvantaged by the Norwegian Law. This gives the owner of the land the right to take part in the raising value of the leased land. This is an important ruling for the owners rights in Norway.

The development in the agricultural aspects of the food supply chain is also positive. If voted through, the new law will ensure more openness and fairness in the negotiations between different parties along the food supply chain. This will benefit the farmers and their cooperatives, as well as consumers.

The white paper on the future of agricultural production in Norway is also positive. It makes clear the importance of agriculture, and the need to produce more food in Norway in order to keep up the needs of a growing population. Although this is not established law, it is

considered as the most important framework document for agricultural development in Norway in the coming decade.

2.2. to be particularly unsuccessful? And for which reasons?

The changes to the laws of Natural Diversity Act and the Nature Authority Act were all mainly negative for the farmers. They put stricter regulations on the land owner and tightened the regulatory control, mainly without compensation for the land owners or farmers loss, and often without any compelling reason. We believe the rights of the land owners are diminished through these Acts.

3. Can you discern, in light of the above developments, new or current trends?

The trend seems to be that the rights of the land owner are being diminished to the benefit of the public interest and sometimes to corporate business interests. Untouched nature and wilderness are receiving better protection, but sometimes to the disadvantage of the farmer. The general public has a more distant relationship to farming, and is more eager to use nature for recreational purposes. This in turn affects the the political will and therefore future legal developments.

4. How do you assess the overall role of international and European legislation and jurisprudence in the development of rural law?

In general the role of international and European legislation is less in Norway than in most of Europe, since we are outside the European Union. But although agriculture is exempt from the EEA agreement, we are affected by EU law when it comes to animal welfare, environmental laws etc. The WTO has a strong influence on Norwegian agricultural politics, for instance regarding restrictions to subsidy levels, but the negotiations within the WTO are presently at a standstill, and no laws affecting agriculture have been passed lately. However, bilateral trade agreements will continue to affect Norwegian agriculture, in particular in the absence of progress in the WTO negotiations.

5. How do you assess the overall influence of your national legislature on the development of rural law?

As we are not members of the European Union, our national legislature has a substantial influence on the development of rural law, with the exceptions of the

legislation originated from the EEA agreement. Since we are not represented in the EU institutions and have no vote in the EU parliament and Council, the influence is reduced compared to most other European countries. But at the same time more legislation is ruled by the national state.

6. How do you assess the overall influence of your national jurisprudence on the development of rural law?

The direct influence of the national judisprudence is limited, but the general debate on other political areas can also influence the legislation in agriculture and other rural law. As mentioned above, the predominant trends towards stronger environmental regulation, animal welfare and urban values, influences the legislation also in agriculture.

7. Current question: what is your national approach to the proposed reforms of the CAP for the period 2014–2020?

Since Norway is outside the European Union, the CAP is not a part of our legislation.

SUMMARY

This report has aspired to sum up the main legal changes in Norwegian agricultural/rural law. The main framework for Norwegian agriculture the next decade was set in the white paper released in December 2011. The paper emphasises the importance of agriculture, and launches an ambition of producing 1% more food a year, to keep up with the population growth.

The annual negotiations between the two farmers organisations and the state, constitute the most important changes to the ongoing agricultural policy.

When it comes to concrete changes to the laws in the agricultural fields, we have mentioned environmental law changes to the Nature Diversity Act (Naturmangfaldslova) and the law of Outdoor Recreation Act (Friluftsløva), the Act on the governmental nature authority and the Act on Salmon and Freshwater fishing.

On the agricultural aspects of the food supply chain, there has been a strong debate the last two years. A suggestion of a new law regulating the negotiations between different parts of the food chain is now being considered.

Regarding the law governing the rural land use we have seen changes to the laws of ground lease, the land law and the act of Severence. In the area of rural social law, the allodial law has been changed in terms of the persons being recognised as having an allodial right to the farm.

On rural tax law, the government has announced substantial changes to the general tax system from 2014, taking down the tax on companies slightly.

In other areas of rural law, we have had a change in the law on keeping reindeer. The authority locally has changed from local boards with reindeer owners directly represented, to the regional authorities.

The ruling of the European Court of Human Rights on the Norwegian Ground Lease Act, was seen as particularly successful. The same can be said by the proposals on a new law regulating the food chain. On the negative side, there have been changes on the environmental laws, diminishing power - and more strictly regulating - the land owners.

This seems to form a trend giving stronger support to the values and needs of the urban population compared to the rural population and farmers.

The overall influence of the national legislation is strong, given that we are not members of the European Union. But we see a growing influence of EU legislation due to the EEA agreement.