NORWAY'S SUPREME COURT

DOM

handed down on 11 October 2021 by the Supreme Court in the Grand Chamber with

justitiarius Toril Marie Øie
judge Jens Edvin A. Skoghøy
judge Aage Thor Falkanger
judge Ragnhild Noer
Judge Henrik Bull
judge Knut H. Kallerud
judge Per Erik Bergsjø
Judge Ingvald Falch
judge Cecilie Østensen Berglund
Judge Erik Thyness
Judge Kine Steinsvik

HR-2021-1975-S, (Case No. 20-143891SIV-HRET), (Case No. 20-143892SIV-HRET) and (Case No 20-143893SIV-HRET)
Appeal against the Frostating Court of Appeal's judgment on 8 June 2020

IN.	
Statnett SF	(lawyer Pål-Martin Abell lawyer Johan Fredrik Remmen)
towards	
Sør-Fosen site	(lawyer Andreas Brønner - for trial lawyer Eirik Brønner - for trial)
Nord-Fosen siida	(lawyer Knut Helge Hurum)
Fosen Vind DA	(lawyer Pål-Martin Abell lawyer Johan Fredrik Remmen)

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II.	
Fosen Vind DA	(lawyer Pål-Martin Abell lawyer Johan Fredrik Remmen)
towards	
Sør-Fosen site	(lawyer Andreas Brønner - for trial lawyer Eirik Brønner - for trial)
Nord-Fosen siida	(lawyer Knut Helge Hurum)
III.	
Sør-Fosen site	(lawyer Andreas Brønner - for trial lawyer Eirik Brønner - for trial)
towards	
Fosen Vind DA	(lawyer Pål-Martin Abell lawyer Johan Fredrik Remmen)
The state v / the Ministry of Petroleum and Energy (party assistant)	(The Attorney General v / lawyer Anders Blakstvedt)

VOTING

(1) Judge **Bergsjø:**

Questions and background of the case

(2) The case concerns the validity of decisions on licensing and expropriation to wind power development on the Fosen peninsula. The key question is whether discretion must be denied promoted as a result of the development being contrary to the protection of the reindeer husbandry industry under the UN Article 27 of the Convention on Civil and Political Rights (SP).

(3) On 7 June 2010, the Norwegian Water Resources and Energy Directorate (NVE) made a decision on a license for four wind power plants on the Fosen peninsula in Trøndelag county, including the Roan wind farm and Storheia wind power plant, to which the case here applies. The Directorate also granted a license establishment of two power line plants, including a 420 kV power line on the section Namsos – Roan − Storheia. A license for this power line was awarded to Statnett SF - hereafter Statnett. Consent was also given to the expropriation of land and rights.

(4) A license for the construction of the Roan and Storheia wind turbines was originally awarded Sarepta Energi AS and Statkraft Agder Energi Vind DA, respectively. The wind power business at Fosen was later reorganized, and a construction license for the two The wind turbines were notified to Fosen Vind DA in 2016 - hereinafter Fosen Vind. Roan wind turbines and associated assets, rights and obligations have now been transferred to a new one company, Roan Vind DA. However, it has been agreed that Fosen Vind will take care of Roan Vind DAs interests in the trial. The decision in the case will have legal effects for Roan Vind DA after Disputes Act § 19-15 first paragraph second sentence.

(5) Roan wind turbine was put into operation in 2019 and was then Norway's largest with its 71 turbines. The planned area is 24.5 square kilometers, while the access road and internal roads make up one stretch of about 70 kilometers. Especially the eastern part of the plant - Haraheia - affects reindeer husbandry in the area.

(6) When the Storheia wind farm was completed in 2020, this plant was Norway's largest. The facility consists of 80 turbines and has a planning area of just under 38 square kilometers. Access road and internal roads extend over about 62 kilometers. They total six the wind farms at Fosen are stated to be Europe's largest onshore wind power project.

(7) Storheia and Roan wind turbines are located within the area of the Fosen reindeer grazing district. Two siidas practice reindeer husbandry in their respective parts of the district - Sør-Fosen sijte and Nord-Fosen siida. The Siidas are often referred to as the Southern Group and the Northern Group, also in court decisions in the case. I still choose to stick to the page names. A siida - "sijte" in Southern Sami - is after The Reindeer Husbandry Act § 51 a group of reindeer owners who carry out reindeer husbandry jointly on certain areas. Each of the two siida at Fosen consists of three siida shares. According to the Reindeer Husbandry Act § 10 is a siidaandel a family group or individual who runs reindeer husbandry. Overall Reindeer numbers for the district are in the rules of use set at a maximum of 2,100 reindeer, divided equally between them to siidaene.

(8) Fosen reindeer grazing district has a total area of around 4,200 square kilometers, divided into Nord-Fosen siida with 2,200 square kilometers and Sør-Fosen sijte with 2,000 square kilometers. Roan wind farm is located within the grazing area of Nord-Fosen siida, while Storheia wind farm is located in the area where Sør-Fosen sijte has pasture.

(9) The decisions from 2010 on the license and expropriation permit for the wind power plants were appealed by a number of organizations and individuals. Nord-Fosen siida was among the complainants on the decision on the Roan wind farm, while Sør-Fosen sijte appealed the decision on the plant at Storheia. By the Ministry of Petroleum and Energy's decision of 26 August 2013, the decisions were changed license and expropriation maintained, but with some changes and conditions. Among otherwise, parts of the areas at Haraheia were taken out of the planning area for the Roan wind farm. Sør-Fosen also appealed the decision on the license for the power line Namsos − Roan − Storheia, without the complaint leading up.

(10) The Ministry of Petroleum and Energy built in the licensing decision on that the planning area for *Roan* wind turbines are of "great value" for reindeer husbandry. The consequence of a development was assessed to «large negative» in both the construction and operation phases. But at the same time it was assumed that the area is still «can be used for reindeer husbandry even after a development, even if this should be the case demand greater resources from reindeer herders in the form of an increased workload ». For *Storheia* part of the wind power plant, the ministry built on the fact that a development "will be negative" for reindeer husbandry, but without the area «becoming unusable as a winter grazing area». The Ministry saw so that the wind power project does not «prevent further operation for the southern group».

(11) The wind turbines were expanded and put into operation following a decision on pre-accession. The Ministry of Petroleum and Energy's decisions on licensing and expropriation are discussed in the following the discussion largely as the «licensing decision».

The proceedings before the courts

(12) On 25 August 2014, Fosen Vind requested discretion to determine compensation as a result of development and operation of, among others, Roan and Storheia wind turbines. Nord-Fosen siida og Sør-Fosen sijte was among the defendants. Statnett submitted a discretionary application that applied the power line Namsos − Roan − Storheia.

(13) Sør-Fosen's site stated that the discretion had to be denied as far as Storheia was concerned wind turbines, mainly because the licensing decision was in violation of SP article 27 on minorities' right to cultural practice. The consequences of the 420 kV power line were also drawn into this connection. This part of the case was dealt with separately by Inntrøndelag District Court together with discretion towards one of the landowners who was affected by the power line. On 15 August 2017, the district court ruled that the development of the wind power plant in Storheia with associated infrastructure does not involve such a large narrowing of the Sami opportunities for continued reindeer husbandry that SP Article 27 has been violated. The discretion was therefore promoted.

(14) Sijten requested an overestimation in order to have the decision that the discretion should be promoted reviewed. The petition was rejected by the Frostating Court of Appeal, and the further appeal to the Supreme Court was rejected. The reason was that a decision that promotes discretion cannot be challenged especially before the judgment is rendered.

(15) Inntrøndelag District Court ruled on 28 June 2018 on the assessment of compensation in connection with the expropriation of land and rights to the wind power plants at Fosen and the power lines. Sør-Fosen sijte was awarded compensation for grazing losses, feeding in crisis years, additional work and expenses for equipment with just under NOK 8.9 million. For Nord-Fosen siida, the total compensation was set at approximately NOK 10.7 million. The amount includes compensation also in connection with Kvenndalsfjellet and Harbakksfjellet wind farms.

(16) Statnett and Fosen Vind requested overestimation and claimed that the compensation was set for loud. Sør-Fosen sijte also requested overestimation and dropped the claim that the discretion should refused to be promoted. Sijten stated that the development of Storheia is contrary to SP article 27, European Convention on Human Rights, Article 1 of Protocol 1 (ECHR P1-1) and International Convention on the Elimination of All Forms of Racial Discrimination (Convention on Racial Discrimination) Article 5 letter d Roman numerals v.

(17) In the alternative, Sør-Fosen sijte claimed that it was responsible for procedural errors in the Oil and the Ministry of Energy's decision in that it is based on incorrect factual assumptions and is inadequately investigated. Finally, the site linked subsidiary allegations to the compensation assessment. Nord-Fosen siida argued that the right of discretion had to test its validity the licensing and expropriation decision of its own initiative and dropped the claim that overestimated should be denied promoted for Roan wind turbines. Nord-Fosen siida also linked allegations to the various compensation issues in the case.

(18) The Frostating Court of Appeal ruled in its discretion on 8 June 2020. The Court of Appeal concluded that the discretion was to be promoted, both for Storheia and Roan wind turbines.

(19) The Court of Appeal ruled that the areas Storheia and Haraheia - which is the eastern part of the Roan wind farm - in practice has been lost as late winter grazing areas for reindeer husbandry. It saw it so that the loss could not be fully compensated by using alternative grazing areas, that the reindeer numbers as a result of this will eventually have to be reduced considerably unless mitigating measures are implemented, and that the development thus threatens the existence of the reindeer husbandry industry at Fosen. When this, however, was not considered a violation of SP article 27, it was because in the opinion of the Court of Appeal, winter feeding could be initiated of the reindeer - based on the compensation determined by the Court of Appeal. The Court of Appeal considered whether such a measure is so far removed from traditional reindeer husbandry that it would in itself violate the law to practice Sami culture, but answered this in the negative under "a certain doubt".

(20) In its assessment, the Court of Appeal further concluded that the decisions do not violate ECHR P1-1 or Racial Discrimination Convention Article 5 letter d Roman numerals v. Due to the need for winter feeding, the compensation for the consequences of the wind power plants was set considerably higher than it was in the district court - around NOK 44.6 million for each of the siidas. The three The largest items concern non-recurring investments in plant and equipment, annual capitalized feeding costs and annual capitalized expenditure on collection and emissions. The one-time compensation to investment in facilities is in the overestimation justified by the fact that in the view of the Court of Appeal among other things, several enclosures must be established with a total fence length of upwards 4,500 meters. Fosen Vind and Statnett were held jointly and severally liable for the compensation amounts. The two siidas were awarded costs.

(21) Statnett has appealed the overestimation to the Supreme Court (case 20-143891). The appeal applies the application of the law and is limited to the question of whether the enterprise can be held jointly and severally responsible for the compensation that has to do with the wind power plants. Under

In preparing the case for the Supreme Court, the parties have agreed that Statnett cannot be held jointly and severally liable with Fosen Vind for the compensation for the wind power plants, and it is on this point laid down coincidental claims.

(22) Fosen Vind has appealed against the Court of Appeal's determination of the compensation (case 20-143892). The appeal is stated to apply to the application of the law and the case processing. It is claimed that the Court of Appeal has not linked the compensation to the siidaene's financial loss, and that it is not taken into account the duty of adaptation. The case processing appeal is linked to the Court of Appeal justification.

(23) Sør-Fosen sijte has also appealed the judgment to the Supreme Court (case 20-143893). Anken applies to the application of law and addresses the interpretation and application of SP Article 27 and Racial Discrimination Convention Article 5 letter d Roman numerals v. It has been argued that discretion must be denied.

(24) Nord-Fosen siida has not appealed the overestimation, but has filed a claim before the Supreme Court that discretion is denied.

(25) In the further presentation, I deal with the various questions thematically, without clearly distinguishing between the three appeals.

(26) On 23 November 2020, the Supreme Court Appeals Committee made the following decision:

> «The appeals from Fosen Reinbeitedistrikt, Sørgruppen and Statnett SF are promoted processing in the Supreme Court.
>
> The appeal from Fosen Vind DA is permitted to be submitted as far as the application of the law is concerned the question of financial loss and the duty to adapt. The appeal is otherwise not allowed promoted. "

(27) The state at the Ministry of Petroleum and Energy has before the Supreme Court pursuant to the Disputes Act § 15-7 first paragraph letter a acted as party assistant for Fosen Vind in the question of discretion shall be promoted. In the part of the case concerning the appeal from Fosen Vind, the state has acted in accordance with the Disputes Act § 30-13 on the state's right to act in cases that apply The Constitution or international obligations. Within the limits of the referral decision and the Supreme Court's jurisdiction, the case is otherwise essentially in same position as for the previous instances.

(28) The case has been heard by the Supreme Court at a remote meeting, cf. the Temporary Act of 26 May 2020 no. 47 on adjustments in the process regulations as a result of the outbreak of covid-19 etc. § 3.

The parties' views on the matter

(29) *Sør-Fosen sijte* has in short stated:

(30) The development of Storheia violates the rights of the reindeer herding Sami according to SP article 27 and Racial Discrimination Convention Article 5 letter d Roman numerals v. Oil and the Ministry of Energy's licensing decision is therefore invalid, and the discretion must be refused.

(31) In assessing whether the convention rights have been violated, a specific one must be made assessment based on the actual circumstances at the time of judgment. There are questions about

the decisions are contrary to the material barriers to administrative discretion, and the doctrine that the courts can only test the soundness of the administration's forecasts, then do not get application.

(32) The Court of Appeal's assessment of the consequences of the wind power development on Storheia for reindeer husbandry in Sør-Fosen sijte, is correct. The Supreme Court has a poorer basis for its assessments and should not deviate from the assessment of evidence in the overestimation.

(33) SP article 27 protects the right of individuals to practice their culture, and the question is therefore in the starting point about the individual reindeer herder's rights has been violated. Reindeer husbandry has however, a collective character, and also a siida can therefore assert rights under the Convention. In any case, the siida must be able to act as a party in the expropriation discretion and invoke violations on behalf of the members.

(34) According to SP article 27, violation occurs not only when an intervention entails total refusal of cultural practice, but also when it has significant significance. When the cultural practice on advance is vulnerable, the rights of the individual will be violated already when the intervention has one «Certain limited impact». Article 27 is violated if it is not possible to continue economic dividends from the industry. It is sufficient that there is a threat to cultural practice, and the provision does not allow for a margin of discretion or proportionality assessment. Consultation with the minority is an important factor, but cannot in itself prevent infringement if the adverse effects are significant. Indigenous peoples' connection to the land areas must be included in the assessment.

(35) The development of the Storheia wind farm entails a violation of SP article 27. The intervention leads to Sør-Fosen sijte losing an important land area for late winter grazing. Wallpaper of Storheia will over time lead to a halving of the herd and make it impossible to operate with profits of importance. The particularly vulnerable South Sámi culture must be taken into account. Compensation for winter feeding costs will not prevent violation. Section 108 of the Constitution has the same content as SP article 27 and acquires independent significance if it is assumed that the siidas cannot invoke a violation of the article.

(36) The licensing decision also violates the reindeer owners' rights Racial Discrimination Convention Article 5 letter d Roman numerals v. Loss of land threatens the maintenance and continuation of the Sami culture. Such a loss can not compensated with a compensation amount as in the case of encroachment on the rights of others. If the reindeer herding Sami's grazing rights are nevertheless treated in the same way as the rights of others in property, there is in fact not equal treatment, but discrimination.

(37) In the event that compensation is to be determined, Sør-Fosen agrees with the allegations from Nord-Fosen said about this question. Sør-Fosen sijte agrees with Statnett that the company is not jointly and severally liable for any compensation for the consequences of the wind turbines.

(38) Sør-Fosen sijte has filed such a claim:

> "IN. The appeal from Sør-Fosen sijte
>
> *Principal:*

The discretion is denied.

In the alternative:
The overestimation is revoked as far as it is appealed.

In both cases:
Sør-Fosen sijte is awarded the costs of the case.

II. The appeal from Fosen Vind DA

1. The appeal is rejected.

2. Sør-Fosen sijte is awarded the costs of the case.

III. The appeal from Statnett SF

1. The overestimation is revoked with regard to Statnett's responsibility for the wind turbines.

2. Sør-Fosen sijte is awarded the costs of the case. "

(39) *Nord-Fosen siida* has briefly stated:

(40) The development of the Roan wind farm violates the siida members' rights under SP Article 27 and the Convention on Racial Discrimination Article 5 letter d Roman numerals v. Oil and The Ministry of Energy's appeal decision on the license is therefore invalid, and the discretion must be denied promoted.

(41) The question of breach of convention is a material question. The courts must consider everyone the evidence available at the time of sentencing and is not referred for consideration the soundness of the administration's forecasts. In this case, moreover, there is no question of consider new legal facts, but evidentiary facts. There are then no restrictions for the test.

(42) The Supreme Court must also use the Court of Appeal's assessment of evidence as a basis for assessing what consequences Roan wind turbines will have for the reindeer husbandry industry. Nord-Fosen siida agrees with Sør-Fosen's allegations that the Supreme Court should not deviate the assessment of evidence in the overestimation.

(43) Nord-Fosen siida agrees with Sør-Fosen sijte's general understanding of SP article 27. When it applies to the specific assessment of whether Article 27 has been violated, it must be assumed that Nord-Fosen siida is the reindeer husbandry group in Norway that has the greatest load from wind turbines and associated infrastructure. The development of Haraheia in particular is getting big negative consequences for reindeer husbandry in that a central winter pasture can no longer be used. Compensation for winter feeding costs will not prevent violation. Also the rights after Article 5, letter d, Roman numeral v is violated. Nord-Fosen siida agrees at this point with the allegations from Sør-Fosen sijte.

(44) In the alternative, the appeal from Fosen Vind must be related to the Court of Appeal's compensation assessment rejected. The Court of Appeal's application of law is not incorrect, and neither is the assessment of evidence nor the exercise of discretion can be tried. In the assessment, the Court of Appeal has correctly based on the fact that they Sami interests are subject to special protection, carved out in case law. SP article 27 is not used as a basis for compensation in the overestimation. The Expropriation Compensation Act does not apply, and the provisions of the law do not in themselves cut off compensation in any case which goes beyond the loss of return. The Court of Appeal's compensation assessment is below anyone

circumstance in accordance with the principles of compensation for loss of non-profit interests. The Constitution and the international law provisions for the protection of Sami reindeer husbandry are relevant as interpretive factors and barriers, but can also provide an independent basis for compensation. The Court of Appeal has correctly assessed the possibilities for adapting the operation.

(45) Statnett is right that the company is not jointly and severally liable for any compensation for the consequences of the wind turbines.

(46) Nord-Fosen siida has made the following claim:

> «In Case 20-143892SIV-HRET (appeal from Sør Fosen sijte)
>
> 1. Principal: Discretion is denied.
>
> 2. In the alternative: The overestimation is revoked with regard to the application of the law for the question of whether discretion should be promoted.
>
> 3. Nord-Fosen siida is awarded the costs of the case.
>
> II Case 20-143893SIV-HRET (appeal from Fosen Vind AS)
>
> 1. The appeal is rejected.
>
> 2. Nord-Fosen siida is awarded the costs of the case.
>
> In case 20-143891SIV-HRET (appeal from Statnett SF):
>
> 1. The overestimation is revoked with regard to Statnett's responsibility for the wind turbines.
>
> 2. Nord-Fosen siida is ordered to pay the costs. "

(47) In short, *Fosen Vind DA* has stated:

(48) The Court of Appeal has correctly assumed that the licensing decision is valid, and the judgment must therefore promoted. This means that the appeal from Sør-Fosen sijte must be rejected. Overestimated must, however, be revoked because the determination of compensation is based on incorrect application of law.

(49) The question of the promotion of discretion should not be tried for Nord-Fosen siida. The siida has not appealed against the promotion of discretion, and for this group of reindeer owners it is available in in principle not a "dispute" on this issue, cf. the Discretionary Procedure Act § 48. It is not talk about a procedural premise that the courts try on their own initiative, but about a substantive one questions that are only tried if it is disputed. The case is subject to free disposal. The it is nevertheless acknowledged that the question may be in a different position when Nord-Fosen siida has now added down the claim that the discretion is denied.

(50) The assessment of the question of validity must be based on facts at the time of the decision. The question is whether the administration's forecasts of the development for reindeer husbandry at Fosen are sound. New evidence can only be included in the assessment as far as it sheds light the soundness of the licensing decision at the time of the decision.

(51) The Court of Appeal has judged the evidence incorrectly. It is recognized that reindeer husbandry in both siidas is disturbed by the wind power plants, but the Court of Appeal has overestimated the negative ones the consequences. Late winter grazing is not a so-called «minimum factor» for reindeer husbandry in district - it is the supply of summer pasture that sets the limit for how many animals

reindeer owners can have.

(52) The threshold for violation according to SP article 27 is very high, cf. the expression «denied». The use of the term "threat" in practice by the UN Human Rights Committee does not mean that it is enough that the culture of the minority is threatened - the intervention must be so large that it can be equated with one complete denial. Considerable emphasis must be placed on consultations and involvement in the decision-making process. The states have no margin of discretion, but it must be possible to make one balancing against other societal considerations.

(53) The development of the wind power plants does not violate the reindeer owners' rights according to the SP article 27. The consequences are not so serious that the Sami are denied the right to practice their culture Fosen. The Ministry of Petroleum and Energy's assessments and forecasts are thorough and at all ways sound. It must be emphasized that the reindeer husbandry industry has been consulted along the way, at the same time as a balance against other societal interests also indicates that it does not there is a violation. The meaning of the "green shift" comes with weight. Rather not the Racial Discrimination Convention Article 5 letter d Roman numerals v is violated. The appears at this point for state allegations.

(54) The assessment of compensation in the overestimation is based on incorrect application of law. The Court of Appeal has firstly, incorrectly failed to link the calculation of compensation to the reindeer herders financial losses. SP Article 27 does not provide a basis for deviating from the ordinary ones the expropriation law principles for the assessment of compensation. Secondly, it is not taken into account the duty of adaptation. Fosen Vind agrees that Statnett is not responsible for the consequences of the wind turbines.

(55) Fosen Vind DA has filed such a claim:

> «In Case 20-143893 (validity case):
>
> 1) The appeal is rejected.
>
> 2) Fosen Vind is awarded legal costs before the Supreme Court.
>
> In case 20-143892 (compensation case):
>
> 1) The overestimation is revoked. "

(56) The party assistant for Fosen Vind - the state *at the Ministry of Petroleum and Energy* - has joined to the allegations from Fosen Vind and otherwise in brief summarized:

(57) SP Article 27 protects only natural persons, not groups of individuals. Nord-Fosen siida og Sør-Fosen sijte thus has no convention rights of its own. The Siidas can not either appeal to the UN Human Rights Committee under the individual appeal scheme on behalf of their members. In a case like this, procedural law does not allow the siidas to represent their members in lawsuits. The claim that the discretion should be denied, can not be tried on this background.

(58) The Siidas cannot uphold rights under the Convention on Racial Discrimination Article 5 letter d Roman numerals v are violated. It is at best unclear about the rights of the Siida is protected under the Convention. In any case, the Convention does not list other material requirements for the right of expropriation than a condition of equal treatment. The authorities have followed the Convention has the right to positively discriminate against a group, but is not obliged to do so.

(59) The state at the Ministry of Petroleum and Energy has not filed a claim.

(60) *Statnett SF* has stated:

(61) The Court of Appeal's conclusion that Statnett is jointly and severally liable for the whole the amount of compensation, is based on incorrect application of law. Statnett has only received a license and expropriation permit for the establishment of a 420 kV power line and cannot be held responsible for the consequences of the wind turbines.

(62) Statnett SF has filed such a claim:

> "The overestimation is revoked with regard to Statnett's responsibility for the wind turbines."

My view on the matter

The main issue in the case and the further presentation

(63) The main question in the case is, as mentioned, whether the discretion must be denied as far as it is concerned Roan and Storheia wind turbines as a result of the Ministry of Petroleum and Energy's licensing decisions are invalid. The two siidas in the Fosen reindeer grazing district have stated two grounds for invalidity - violation of SP Article 27 and the Racial Discrimination Convention Article 5 letter d Roman numerals v. I first explain my view of the Supreme Court test competence under the validity question. Then I go into the evidence assessment and the evidentiary result that must form the basis of the discussion. On that basis, I take position on whether the reindeer herders' rights under SP or the Racial Discrimination Convention has been violated.

The Supreme Court's jurisdiction under the question of validity

The framework for the examination pursuant to the Discretionary Procedure Act § 38

(64) According to the Discretionary Procedure Act § 38, an overestimation can only be appealed «due to errors in the application of the law or the case processing on which the decision is based ». It is in case law stated that this limitation of competence only applies to questions of the valuation. In deciding whether the material conditions for promoting discretion are

fulfilled, the Supreme Court has full jurisdiction, cf. Rt-2006-1547 section 46 et seq references.

(65) The appeal from Sør-Fosen in the validity case is addressed to the Court of Appeal application of law. However, the appellant Fosen Vind disputes the Court of Appeal's evidence assessment. Points in an appellant's claim basis that are addressed the assessment of evidence, can not be cut off even if the appeal is limited to the application of the law, cf. HR-2017-2165-A section 104 with further references. As highlighted in Rt-2014-1240 this is a necessary consequence of the fact that the person who has been upheld in the lower instance does not has a legal interest in appealing, cf. the Disputes Act § 29-8 first paragraph first sentence. When the appellant exercises the right to challenge the assessment of evidence, the appellant may party at the relevant point counteract this by arguing for their view on the question of evidence, cf. HR-2017-2165-A section 104. These principles apply correspondingly by discretion, cf. the Discretionary Procedure Act § 2. After this, the Supreme Court must try the assessment of evidence under the question of validity to the extent that the allegations from Fosen Vind and the objections

from the siidas at the same point provides the basis for it.

More about the Supreme Court's competence to try facts

(66) Fosen Vind has stated that facts at the time of the decision must be decisive for the question of validity. The company has further argued that the Supreme Court can only take position on whether the administration's forecasts were justifiable when the licensing decision was made.

(67) As stated in the plenary judgment included in Rt-2012-1985 *Long-term children in* section 81, the general starting point in the judicial review of validity actions is that the test shall take place on the basis of facts at the time of the decision. In my view, this one can the restriction does not apply when the question as here is whether a judgment is to be promoted.

(68) I first point out that if during a discretionary transaction a dispute arises about the right to or the conditions for expropriation or on what is the subject of expropriation, shall the court pursuant to the Discretionary Procedure Act § 48 decides the dispute during the discretionary transaction. This applies, among other things, to disputes about the validity of the expropriation decision. If the court comes to that the decision is invalid, the discretion shall be denied. If, on the other hand, the court comes to the decision is valid, no separate decision shall be made on this. The court must then continue the proceedings and determine the expropriation compensation. However, the decision will come together with the discretionary preconditions form the actual basis for the court's compensation assessment.

(69) Section 10, first sentence, of the Expropriation Compensation Act states that «the time when the host is deemed avheimla »shall form the basis for the determination of the consideration. From this rule do § 10 second sentence exception for cases where the expropriation measure has been implemented before that time. In that case, the compensation shall be determined on the basis of the value at the time of acquisition. The case here illustrates that there may be a close connection between the validity of the expropriation decision and the determination of compensation. It would be inappropriate to these questions should be decided on the basis of facts at different times. The new actual enters circumstances after the time of the decision of significance for the validity of the decision, must the solution is therefore that the discretion is denied, and the case is sent back to a new one administrative treatment.

(70) In this case, however, the question of factual time does not come to the fore. It is regardless of the opportunity to present new evidence that sheds light on the situation the time of the decision, cf. section 50 of the Long-Term Child I judgment on the distinction between new ones evidentiary facts and legal facts. In the case here, it is not claimed that new legislators have entered into force facts after the expropriation permit was granted, but new evidence has been presented in form of reports etc. Such evidentiary facts are therefore in any case permissible to build on.

(71) In the examination of administrative discretion, it has been assumed in case law that in it to the extent that the management decision is based on forecasts of future development, will the judicial review may be limited to whether the forecasts were sound at the time the management decision was made. The basic decision on this is Rt-1982-241 *Alta* on page 266, as referred to in Rt-2012-1985 *Long-term children In* section 77. This however, may not apply in a case such as this, where it is a question of SP article 27 prevents the promotion of discretion. In my view, the courts must then assess the effect of the intervention is based on an independent factual assessment and cannot limit its testing to whether the administration's forecasts were sound. I point out here that the Supreme Court in HR-2017-2247-A *Reinøya* did not limit itself to assessing the soundness of the forecasts.

Should the Supreme Court decide whether the discretion should also be denied to Nord-Fosen siida?

(72) Nord-Fosen siida has not appealed the overestimation. On that basis, questions have been raised
The Supreme Court can decide whether the judgment should also be promoted for this siida.

(73) I take as my starting point section 48 of the Discretionary Process Act, which I have already touched on.
The provision reads:

> "If a dispute arises during a discretionary transaction controlled by a judge, the right to
> and the conditions for expropriation or on what is the subject of expropriation,
> the dispute is settled during the discretionary transaction. "

(74) In the final submission to the Supreme Court, Nord-Fosen siida dropped the claim that the discretion should be denied promoted and stated that the expropriation and licensing decision is invalid. The claim is maintained during the appeal hearing. Thus, there is a "dispute" about the right to expropriation pursuant to section 48. The Supreme Court must then in principle decide the question of validity also for Nord-Fosen siida.

(75) Fosen Vind has pointed out that the claim that the discretion should be denied was dropped after that the appeal deadline expired and also after the Supreme Court's appeal committee's referral decision. This however, are not decisive objections. Whether the discretion is to be promoted does not constitute a separate claims in the procedural sense, but is a material precondition for determining compensation. Nord-Fosen siida can therefore claim that the judgment was denied, even though the siida has not appealed over this. According to the Disputes Act § 30-7, it is admittedly not permissible to extend the claim and submit new grounds for assertion after consent has been given to advance the appeal. But this is not an absolute rule - expansion can take place later if «special reasons speak for themselves the". As the case stands, it must be assumed that the appeals committee has accepted it the expansion that Nord-Fosen siida has made here. The Supreme Court must therefore comply the Discretionary Process Act § 48 test whether there is a basis for promoting the discretion also in this respect applies to Nord-Fosen siida.

The assessment of evidence under the question of validity

Some starting points

(76) In assessing the validity of the licensing decision, the central question of evidence is what which is lost by the late winter grazing of the Siida in the areas of Storheia and Roan wind turbines, and what significance this has for reindeer husbandry.

(77) Late winter grazing takes place from January to around Easter over a period of about 90 days. One a prerequisite for an area to be used for late winter grazing is that it gives the reindeer access low. It will be able to do this especially in barren mountain areas with higher-lying wind-blown ridges, but this will vary according to the snow conditions each year. Only a small part of the total the area referred to as late winter grazing is such that the reindeer can graze there. The turbines in the two the wind turbines are located along the mountain ridges and thus in areas that are well suited as late winter work.

(78) This is a case where immediate evidence is of great importance, something I also come back to. The Supreme Court has a poorer basis for assessing the consequences of the development than the Court of Appeal had and should therefore in principle be careful about the examination of the Court of Appeal's assessment of evidence. There are no restrictions for Fosen Vinds access as an appellant to attack the Court of Appeal's assessment of evidence. But an appellant who takes advantage of this opportunity must, in my opinion, have one special responsibility for providing the Supreme Court with a sound basis for assessing the evidence. Supreme Court must be able to concentrate attention on the objections raised, and only review evidence to the extent that the objections call for it.

The Court of Appeal's assessment of the development's consequences for reindeer husbandry

(79) The Court of Appeal has concluded that the reindeer will evade the wind turbines in Storheia and Roan. In the estimate, this is summarized as follows:

> "After this, the Court of Appeal assumes that the reindeer will evade the wind turbines which is developed at Fosen, where Storheia and Roan (Haraheia) are by far the most important. In the opinion of the Court of Appeal, the avoidance will be so significant that the areas must seen as lost as grazing areas. The avoidance zone can be assumed to be at least three km, but this does not come to the fore in this matter. For late winter grazing, there are the mountain rabbits which are valuable, and these will be lost anyway. "

(80) In the Court of Appeal's view, it will further be "speculative" to assume that the reindeer will get used to the wind turbines and later use the areas for grazing.

(81) Based on these conclusions, the Court of Appeal discusses the consequences they lost the grazing areas will get for reindeer husbandry. The Court of Appeal takes as its starting point that this among another will depend on whether late winter grazing is a limiting factor for the number of reindeer - a so-called minimum factor - so that loss will have to lead to reduced reindeer numbers and / or lower slaughterhouse.

(82) After a review of the evidence, the Court of Appeal concludes that the development of *Roan* wind turbines will lead to a «significant grazing loss for Nordgruppen, which in the long run will had to lead to a reduction in the number of reindeer unless measures in the form of winter feeding are introduced. "

(83) For *Storheia* and Sør-Fosen sijte, the Court of Appeal assesses the consequences of the development reindeer husbandry as follows:

> "Despite these objections, the Court of Appeal has found to presume that Storheia, assessed over a longer time perspective, is a late winter pasture used by reindeer owners, and also depend on. In this assessment, emphasis is placed on the area's objectives fitness; these are significant and naturally delimited areas, which due to its location in the heights and near the coast is well suited for late winter grazing. With one more unstable climate, there is reason to expect that such areas will become more important forwards. It is also clear that the area has historically been widely used, if not in recent times.
>
> It is nevertheless a separate question whether Sørgruppen with today's reindeer numbers can cope Rissa and Leksvik work late winter, as it has done since 2007. The Court of Appeal assumes that in the long run it will be difficult to maintain the number of reindeer without Storheia being available as late winter grazing. Partly because the others the winter pastures, especially Leksvik, will at some point need rest to avoid grazing. The Court of Appeal does not have reliable information about the current wear and tear on these the areas, but reindeer owner Jåma has explained that the areas now bear the mark of long-term beite. Partly also because Storheia is the only safe due to climatic conditions

> the winter grazing area in so-called crisis years. Both Leksvik and Rissa may be exposed to icing at winter temperatures around 0 degrees Celsius. Storheia is, however, bare along the mountain rabbits and therefore far less exposed. "

(84) During the discussion of the question of validity, the Court of Appeal states, among other things:

> «As mentioned, the Court of Appeal has based its assessments on both Storheia and Haraheia in practice has been lost as late winter grazing areas for reindeer husbandry. Furthermore, the Court of Appeal assessed the extent of the loss and the grazing areas in general so that the loss did not can be fully compensated by using alternative grazing areas. Without compensatory measures, the development could mean that the number of reindeer must be reduced considerably. Both sides have suggested a halving, but such an estimate is naturally fraught with both uncertainty and understandable pessimism.
>
> As mentioned, the number of reindeer is 1050 for each site, divided into 350 for each of the three side shares (families). Leif Arne Jåma from Sørgruppen has stated that the annual profit for his business in 2018 was just under NOK 300,000. The is with such rather marginal results reason to believe that a significant reduction of the number of reindeer will mean that the business can no longer be run with a profit, or in in any case so that the profit is no longer in reasonable proportion to the effort. The expense side will be about the same even with a reduced number of reindeer. If the reduction leads until one of the families resigns, this will lead to operational problems for the other two; during slaughter and other collection of the reindeer, it is in the opinion of the reindeer owners necessary with at least three operating units. The Court of Appeal has no basis for raising doubts this.
>
> An isolated assessment, in the opinion of the Court of Appeal, indicates that the development of wind turbines at Storheia and Haraheia will threaten the reindeer husbandry industry's existence Fosen. »

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(85) The Court of Appeal is thus based on the fact that the development of the wind turbines in Storheia and Roan will threaten the reindeer husbandry industry's existence at Fosen, unless compensatory measures are put in place. The question is whether the Supreme Court has reason to deviate from these assessments. I look at first the basis for the Court of Appeal's assessment of evidence, before I consider the objections from Fosen Wind.

The basis for the Court of Appeal's assessment of evidence

(86) The case was heard in the Court of Appeal with three legal judges following a decision from the first team member, cf. the Discretionary Procedure Act § 34 first paragraph. The court was set at four discretionary members, two of whom have reindeer husbandry expertise. Discretionary negotiations took place over 13 court days. Two court days went to the inspection, and it appears from the court book that both Roan and Storheia were "inspected in detail". The court was also on a helicopter inspection of parts of the area. A total of ten expert witnesses were questioned, as well as a significant number research reports have been reviewed. I note that the case has been dealt with in a thorough manner, and that the Court of Appeal has had a solid basis for its assessments.

(87) The Court of Appeal bases its assessment of the consequences of the wind power plants in report 1305 from the Norwegian Institute for Natural Research «Wind power and reindeer - a knowledge synthesis »(2017). The report is a summary of various studies on the effect of wind power plants and power lines on reindeer. The Court of Appeal cites from the summary in the report on wind turbines and rotors, which states, among other things, that variations in the findings in the various surveys are due to «both topography, grazing conditions, proximity to other infrastructure and design / implementation of the various surveys ». On

against this background, the Court of Appeal takes this as a starting point for the further discussion:

> "Although the conclusion is relatively open with regard to the effect of wind power plants, is so that the transfer value from the various surveys as the conclusion in the report builds on, and to the situation at Fosen, varies. It is therefore necessary to go into more detail on geographical and other premises for the various surveys. "

(88) This is a sound approach, which is not attacked either. The Court of Appeal goes into it further discussion into six different reports, which are assessed and commented on. I come back to the objections from Fosen Vind to the conclusions drawn by the Court of Appeal. IN this connection is the point that the Court of Appeal has been aware of the somewhat divergent the conclusions of the various research reports, discussed them and applied them to the conditions in Storheia and Roan.

(89) The Court of Appeal has placed considerable emphasis on a presentation by lecturer Anna Skarin The Swedish University of Agricultural Sciences in Uppsala went to court. For the Supreme Court is hers conclusions neither commented nor disputed by Fosen Vinds. The Court of Appeal has also relied on several other expert witnesses and reindeer owners with experience from areas with wind turbines. No evidence or written explanations have been submitted by any of them these.

(90) In the overestimation, reference is further made to GPS measurements of the reindeer's use of the Haraheia area before, during and after the development of the Roan wind farm. In the view of the Court of Appeal supports the measurements the conclusion of avoidance. I do not see that Fosen Vind has much met these measurements.

(91) The Court of Appeal also comments on the nature of the area in several places. The suitability of the area in which late winter grazing is commented, and the same is the significance of how visible the turbines are for the reindeer. The assessment of what has been lost to reindeer husbandry is thorough and specific. I understand the overestimation so that the Court of Appeal here is largely based on its own observations during the inspection, which are then held against information from, among others, those expert witnesses.

(92) Overall, I see it as the Court of Appeal has had a good basis for its assessments, and that these are justifiable in all respects. The court's own observations and immediate explanations from witnesses have made important contributions to the understanding. As mentioned, the Supreme Court has a poorer basis for their assessment of the wind power plants' impact on reindeer husbandry, and I refer to what I have already said that this indicates restraint in the test.

Fosen Vinds objections to the Court of Appeal's assessment of evidence

(93) A main objection from Fosen Vind is that the Court of Appeal has not considered alternatives grazing resources. I can not agree with this. I have already mentioned that the Court of Appeal has decided whether the grazing areas in Storheia and Roan are minimum factors for the two siidaene, so that loss leads to a reduction in reindeer numbers and / or reduced slaughter weight. In a assessment of this is necessarily that other grazing areas must also be taken into account. For Sør-Fosen's part is also the other late winter pastures in Leksvik and Rissa assessed more explicitly.

(94) In the discussion of whether the late winter pastures are decisive for the number of reindeer, the Court of Appeal has taken into account considering the impact assessment from 2008 and the rules of use for the two siidas. Both suggests that winter grazing is not the critical factor for operation. Based on other evidence in the case

however, the Court of Appeal has not placed decisive emphasis on this in the assessment of the consequences of the intervention in the longer term. I have no reason to deviate the Court of Appeal's assessment of evidence here.

(95) Fosen Vind has also been critical of the Court of Appeal's interpretation and application of some of the research articles. The objections relate in particular to the studies of Fakken, Gabrielsberget and Raggovidda wind turbines. It may well be that not all the references to these surveys in the judgment is equally apt. The attack on the Court of Appeal reviews, however, are also not at this point anchored in such a way that I have basis for saying that they are incorrect.

(96) In Fosen Vind's view, the Court of Appeal has no evidence that it is necessary to winter feed 44 percent of reindeer. However, this is a prerequisite that the Court of Appeal has built their compensation assessment on. During the validity discussion, the Court of Appeal has stated that number reindeer as a result of the loss of grazing areas must be "significantly reduced". Based on that the knowledge base available today, I do not have sufficient evidence to deviate from this assessment.

(97) Overall, the objections from Fosen Vind do not provide a basis for setting the Court of Appeal evidence assessment aside. I therefore build on this when I now move on to discuss the question of validity.

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The question of violation of SP Article 27

Presentation of the provision - starting points

(98) Article 27 of the UN Convention on Civil and Political Rights (SP) has the following wording:

> «In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language. »

(99) SP Article 27 must be seen in connection with the Constitution § 108, which imposes the state authorities «to create the conditions for the Sami people to secure and develop their language, their culture and their social life ». The constitutional provision is based on Article 27 and may be an independent legal basis to which other sources of law do not provide an answer, cf. HR-2018-872-A section 39.

(100) According to the Human Rights Act § 2 no. 3, SP applies as Norwegian law and is thus a counter for management discretion. In the event of a conflict, the provisions of the Convention take precedence over provisions in other legislation, cf. § 3. This means that the licensing decision is invalid if SP Article 27 is violated.

(101) It is clear that the Sami are a minority within the meaning of Article 27 and that reindeer husbandry is a form of protected cultural practice. I refer to HR-2017-2247-A *Reinøya* section 120 and HR-2017-2428-A *Reindeer herd reduction In* section 55.

(102) In interpreting Article 27, opinions of the UN Human Rights Committee will be given significant weight, cf. the Grand Chamber decision included in Rt-2008-1764 section 81.

Individual or collective protection - who can claim a breach?

(103) The State has in principle argued that SP Article 27 only protects individuals, not legal persons or groups of individuals. On this basis, the state has advocated that the protection cannot be invoked by the siidas. Here are two questions, and I see first further on *who is protected* under the provision.

(104) The protection applies according to the wording of Article 27 "persons belonging to such minorities". The wording of this first part of the provision indicates that there are individuals in a minority protected. But in the continuation it appears that the individuals shall have the right to cultivate their culture, etc. «In community with the other members of their group» - sammen with the other members of his group. This element of the provision was added to bring out the collective character of the provision, see Nowak's CCPR Commentary, 3rd edition, 2019 page 799–800.

(105) In line with this, the Supreme Court in HR-2017-2428-A *Reindeer Number Reduction In* section 55 based on the fact that Article 27 protects individuals, but adds that the protection nevertheless has «A certain collective touch». Furthermore, the UN Human Rights Committee does not always clearly distinguish between protection of individuals in a minority group and the group as such. I refer here to the *Lubicon Lake Band v. Canada case* (March 26, 1990, CCPR-1984-167). Complaints are initially stated to be "Chief Bernard Ominayak *and* the Lubicon Lake Band",

partly "Chief Bernard Ominayak *of* the Lubicon Lake Band" (my highlights). In point 33 the committee found that the intervention threatened «the way of life and culture of the Lubicon Lake Band".

(106) I see it after this so that Article 27 in principle protects individuals in a minority. But the culture of the minorities is practiced in a community, and the protection therefore has a collective character. For reindeer husbandry, this is expressed, among other things, in the fact that the reindeer husbandry Sami's grazing rights are collective and lies to the individual siida, see HR-2019-2395-A *Reindeer numbers reduction II* section 51 with further reference to Rt-2000-1578 *Seiland* . The Siida are a group of reindeer owners who carry out reindeer husbandry jointly on certain areas, cf. the Reindeer Husbandry Act § 51. Against this background, it will be difficult to draw a sharp distinction between individuals and the group.

(107) The question then is whether the two siidas who are parties to the case here can *invoke* the minority protection in Article 27 before Norwegian courts. I take the Disputes Act as my starting point § 2-1, which contains the provisions on who has party capacity. After the second paragraph can associations other than those mentioned in the first paragraph, have party capacity so far follows from an overall assessment. Particular emphasis shall be placed on the factors listed in the joint. Among other things, the provision was intended to continue the previous rules on so-called limited party capacity, see Skoghøy, Dispute Resolution, 3rd edition, 2017 page 284 and so on references to preparatory work and practice.

(108) In my view, there is no doubt that a siida may have limited party capacity, which it also is based on Rt-2000-1578 *Seiland.* On page 1585 of the judgment, the first voter states:

> "In this case, the intervention affects only a group of reindeer herders in the district, and then this group must have the right to file a claim for compensation, cf. NOU 1997: 4 The natural basis for Sami culture page 337. »

(109) I also refer in this connection to the fact that the Reindeer Husbandry Act Chapter 6 Part II contains detailed rules on the authority and organization of the siida. The Reindeer Husbandry Act § 44 second paragraph in fine strikes further stated that the siidas can safeguard "their own special interests", among other things in lawsuits.

(110) The question of limited party capacity depends on a specific assessment. I find it clear that

The siidas in the Fosen reindeer grazing district have limited party capacity for the questions raised by the Supreme Court take a position on this matter, and that they must be able to invoke the members' individual rights. As I have already pointed out, the obligations under international law are of great importance in this area. I have also emphasized the collective character of cultural practice, and that a siida is precisely characterized by a group of reindeer owners practicing reindeer husbandry jointly specific areas. The Siida is further as mentioned carrier of the collective land rights which the reindeer husbandry industry is linked to, see HR-2019-2395-A *Reindeer husbandry reduction II* section 51. In a case of such rights, a siida must then be able to act as a party and invoke the individual reindeer owner's rights under Article 27 on their behalf. Section 108 of the Constitution, which, among other things instructs the authorities to create the conditions for the Sami people to secure and develop their culture, support such an understanding.

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The term "denied" - where is the threshold for violation?

(111) Although Article 27 of the SP uses the term «denied», it is clear that interventions such as does not constitute a total refusal, may violate the right to cultural practice. Already in The Human Rights Committee's general comment no. 23 (1994) item 6.1 emphasizes that the provision imposes an obligation on states to ensure that indigenous peoples' rights to cultural practice is protected against "denial or violation". The same understanding is assumed in HR-2017-2428-A *Reindeer number reduction In* section 55 with further reference to NOU 2007: 13 A *The new Sami law* . On page 203 of the report, the Sami Law Committee states that one Denial within the meaning of Article 27 will not only include "total denials" of the right to cultural practice, but also «violations».

(112) As the Sami Law Committee states on page 202 of the report, the wording in Article 27 dictates nevertheless, the scope of the provision is «relatively narrow». The question is where the threshold for violation lies.

(113) There are four decisions in particular from the Human Rights Committee that shed light on how much should to before the right to cultural practice under Article 27 is violated - *Ilmari Länsman et al Finland* (October 26, 1994, CCPR-1992-511), *Jouni* Länsman and Others *v Finland I* (30 October 1996, CCPR-1995-671), *Jouni* Länsman and Others *v Finland II* (17 March 2005, CCPR-2001-1023) and *Ángela Poma Poma v Peru* (March 27, 2009, CCPR-2006-1457). In HR-2017-2247-A *Reinøya* , these decisions are explained in more detail. The verdict concerned, among other things, the question of whether a road construction on Reinøya north of Tromsø was in conflict with SP article 27 due to the consequences for Sami reindeer husbandry. First voter pronounces in section 124 of the judgment follows this on the four decisions:

> «(124) In the case of *Ilmari Länsman and others v. Finland* from [26. October] 1994 [CCPR-1992-511] the committee stated that intervention as' ... amount to a denial of the right 'would be contrary to the Convention. On the other hand, measures that have '... a certain limited impact on the way of life of persons belonging to a minority ... necessarily amount to a denial of the right under article 27 ', se section 9.4. The committee then stated in section 9.5 that the question was whether the quarry in question had such an 'impact' in the area '... that it does effectively deny to the authors the right to enjoy their cultural rights in that region'. It appears in the following that neither the made nor the planned the interventions were of such a nature that Article 27 was violated.

(125) The case of *Jouni E. Länsman and others v. Finland* from [30. October] 1996 [CCPR-1995-671] confirms the distinction drawn in section 9.4 f the case from 1994, see section 10.3. The question in this case was whether it the felling that had already taken place, together with the one that was planned, '... is of such proportions as to deny the authors the right to enjoy their culture in that area ', see section 10.4. In the specific assessment in section 10.6 the committee states that the felling in the area caused the Sami '... additional work and extra expenses .... ', men at den' ... does not appear to threaten the survival or reindeer husbandry '.

(126) In the case of *Jouni Länsman and others v. Finland* from [17. March] 2005 [CCPR-2001-1023] there were again questions about the consequences of felling in Sami territory. The Committee emphasized in section 10.2 that in the assessment one had to look at the effect over time, '... the effects of past, present and planned future logging ... '. As in previous decisions, the committee pointed out

on that reasons other than the intervention explained the low profitability in the reindeer husbandry industry, see section 10.3. The Committee concluded in conclusion this section that the consequences of the felling '... have not been shown to be serious enough as to amount to a denial of the authors' right to enjoy their own culture in community with other members of their group under article 27 of the Covenant '.

(127) In a decision of [27. March] 2009 - *Angela Poma Poma v Peru* [CCPR-2006-1457] - the committee formulated the crucial question as follows in section 7.5: '... the question is whether the consequences ... are such as to have a substantive negative impact on the author's enjoyment of her right to enjoy the cultural life of the community to which she belongs'. Committee found that Article 27 had been violated in this case. Among other things, it was pointed out that thousands of domestic animals had died as a result of government intervention, and that the complainant had been forced to leave his area. "

(114) On the basis of the review, the first voter concludes as follows in section 128 i Reinøya judgment:

> "Overall, the Human Rights Committee's practice shows that it takes a good deal before intervention becomes so serious that Article 27 is infringed. "

(115) In this case, there are three elements in particular in these decisions of the Human Rights Committee which has been discussed. In connection with the threshold issue, the Siidas have emphasized the statement in *Ilmari* Länsman and Others *v Finland* (CCPR-1992-511) paragraph 9.4 that «measures that have a certain limited impact on the way of life of the persons belonging to a minority will not necessarily amount to a denial of the right under article 27 ». They have laid this out so that violation will occur when an intervention with limited effect interacts with previous and planned interventions, so that it has significant consequences for cultural practice.

(116) I agree with the siidas that the intervention must be seen in connection with other measures that affect cultural practice, something I will return to. But in my opinion this does not say anything about where the threshold for violation lies. In this connection, I mention that the committee in section 9.5 initiates the specific assessment by asking questions about the consequences of the intervention was so "substantial" - significant, significant or serious - that it involved a breach of article 27.

(117) The question is, secondly, what lies in the use of the term "threaten" some of the decisions. In *Jouni Länsman et al.* V *Finland I* (CCPR-1995-671) point 10.6, the committee justifies its conclusion, among other things, by saying that the felling «does not appear to threaten the survival of reindeer husbandry », see also *Lubicon Lake Band v Canada*

(CCPR-1984-167) paragraph 33. In my view, these statements do not relate to themselves the threshold for violation. In the Länsman decision, section 10.6, the term is used in the specific discussion, while the Committee uses the terms "deny" and "denial" in the discussion of the points 10.4 and 10.5. The Lubicon Lake Band decision does not discuss the threshold at all, at the same time as the issue of violation of Article 27 does not seem to have been central.

(118) The statement in *Ángela Poma Poma v Peru* (CCPR-2006-1457) point 7.5 that the question must be whether the intervention has "a substantive negative impact" on cultural practice, has been stated particularly central to the case. This is the latest statement on the threshold and therefore in my view an important point of reference for understanding. The term "substantive" can in this context translated as "significant" or "significant". In other words, the threshold is high.

(119) Against this background, my *conclusion is* that there will be a violation of the rights after SP Article 27 if the intervention leads to significant negative consequences for the possibility for cultural practice. The intervention itself can have such great consequences that there is a breach. But the impact does not have to be as serious as in the Poma Poma decision, where thousands of domestic animals had died as a result of government action, and the complainant had been forced to to leave their territory. The intervention must also be seen in connection with other measures, both earlier and planned. The overall effect of the measures is decisive for whether it there is a violation, cf. *Jouni Länsman et al. v Finland I* (CCPR-1995-671) section 10.7.

The importance of consultation

(120) Although the consequences of the measure are central to the assessment of whether the rights after Article 27 has been violated, it also matters whether the minority has been consulted along the way in the process. This is stated in several decisions from the UN Human Rights Committee. Both in *Ilmari Länsman and others v. Finland* (CCPR-1992-511) item 9.6 and *Jouni Länsman and others v. Finland I* (CCPR-1995-671) section 10.5, this aspect is included in the specific discussion. The Committee speaks more generally in *Ángela Poma Poma v Peru* (CCPR-2006-1457) point 7.6. It is stated here that the question of violation depends, among other things, on « the members of the community in question have had the opportunity to participate in the decision-making process in relation to these measures… ». The Supreme Court has emphasized the importance of consultation in HR-2017-2247-A *Reinøya* section 121 and HR-2017-2428-A *Reindeer herd reduction In* section 72.

(121) The decisions of the Human Rights Committee and the above-mentioned Supreme Court judgments state that cannot in itself be decisive if and to what extent the minority has been consulted. This is a factor that is included in the assessment of whether the cultural protection has been violated, see NOU 2008: 5 *The right to fish in the sea off Finnmark* page 272. Are the consequences of the intervention large enough, it does not prevent violation that consultations have been conducted. It's on the other page no unconditional requirement under the convention that the participation of the minority has affected the decision, but it can also be important in the overall assessment.

(122) I mention that with effect from 1 July 2021, provisions have been included for consultation in Sami Act, Chapter 4. The Ministry explains in Prop. 86 L (2020–2021) section 4.2 the Sami's right to self-determination and the relationship to consultations. As this case stands an, I see no reason to go further into this topic.

The question of whether there is room for a margin of discretion and proportionality assessment

(123) In its discretion, the Court of Appeal has taken as its starting point that Article 27 does not express

balancing standard in the form of a proportionality assessment or similar », but holds nevertheless open whether it is permissible to make discretionary considerations against others interests. In this connection, the Court of Appeal emphasizes, among other things, consideration for climate and emission-free energy. Fosen Vind has acknowledged that the states cannot be granted any margin of discretion States have not been given the freedom to interpret the Convention on their own terms. The company has however, stated that the purpose behind the measure can be drawn into an overall balance - one proportionality assessment. The Siidas have rejected such an interpretation of the provision of the Convention. The sources related to the margin of discretion and

proportionality assessment are partly the same. I therefore address the issues collectively, even though these are two different questions.

(124) The wording of Article 27 does not, in principle, allow States to make a balancing of interests between indigenous peoples' rights and other legitimate purposes. The rights appear to be absolute, yet so that they can be deviated from in a national crisis situation, cf. Article 4. Article 27 differs here from a number of other rights provisions in SP, including Article 12 on the right to freedom of movement, Article 18 on religion and freedom of religion, Article 19 on freedom of expression and Article 22 on freedom of association. These the provisions explicitly allow states to limit the scope under certain conditions, and a proportionality assessment is planned. There is also nothing in the wording in Article 27 which indicates that States may be granted a margin of discretion.

(125) In *Ilmari* Länsman and Others *v Finland* (CCPR-1992-511), the Human Rights Committee that the States have no margin of discretion in the application of Article 27. If this states Committee in point 9.4:

> «A State may understandably wish to encourage development or allow economic activity by enterprises. The scope of its freedom to do so is not to be assessed by reference to a margin of appreciation, but by reference to the bonds it has undertaken in article 27. »

(126) Furthermore, the Committee in *Ángela Poma Poma v Peru* (CCPR-2006-1457) points out 7.4 that economic development considerations may not undermine the rights under Article 27.

(127) In line with this, NOU 2008: 5 states the *right to fish in the sea off the Finnmark* side 252 that a majority of the population should not be able to limit the protection according to the article, and that the states have no margin of discretion. The Sami Law Committee in NOU 2007 states the same: 13 A *The new Sami law* page 195−196 that the states have no discretion margin of interpretation. The selection continues as follows on page 196:

> "In this relationship, it is thus an absolute right, which protects minorities against the majority limiting their rights. This is a natural consequence of the rationale for the provision. Its minority protection would soon become ineffective if the majority population could limit it based on an assessment of theirs legitimate needs. "

(128) The Committee follows this up in the summary of the legal situation on page 210 by emphasizing that the rights under Article 27 have an "absolute character". Also in legal theory it is added due to the fact that the rights under the provision are absolute and that it is not open to anyone margin of discretion or proportionality assessment. I refer to Skogvang, *Sami* law , 3. edition, 2017 page 174, Nowak's *CCPR Commentary* , 3rd edition, 2019 page 833−834 and Åhrén, *Indigenous Peoples' Status in the International Legal System* , 2016 page 94.

(129) The clear starting point after this must be that the states are not granted any margin of discretion

according to SP article 27, and that the provision does not allow for a proportionality assessment where other societal interests are weighed against the interests of the minority. This is a natural consequence of the rationale for the provision, as minority protection would be ineffective if the majority population could limit it based on an assessment of their legitimate needs.

(130) In situations where Article 27 conflicts with other rights under the Convention, however, the fundamentally conflicting rights must be weighed against each other and harmonized. This may lead to Article 27 having to be interpreted restrictively, cf. also, among other things NOU 2007: 13 A *The new Sami law* page 195. The Human Rights Committee has further opened for a balancing act in cases where the interests of an individual in a minority group stands against the interests of the group as a whole, cf. among others *Ivan Kitok against Sweden* (July 27, 1988, CCPR-1985-197) section 9.8. I HR-2017-2428-A *Reindeer Number Reduction I* section 76, the Supreme Court also proposes that in such situations one must take action balancing of interests.

(131) I see it so that similar considerations may have to be made if the rights under Article 27 stands against other fundamental rights. In my view, the right to the environment is a right which in a specific case may come in with such a weight that a trade-off must be made. In other words, the consideration of the "green shift" may be relevant. As I come back to, however, this case is not such that it is necessary to elaborate on this.

The importance of whether the business can still provide benefits

(132) In some decisions, the Human Rights Committee has emphasized that the members are in the minority a financial return must still be secured. In *Ilmari Länsman et al. V Finland* (CCPR-1992-511) item 9.8, the committee states that other economic activities in the area must exercised so that the complainants «continue to benefit from reindeer husbandry». In a similar way The Committee in *Ángela Poma Poma v Peru* (CCPR-2006-1457), paragraph 7.6, emphasizes that The question of violation depends, among other things, on whether the minority population can continue to «Benefit from their traditional economy». On this basis, the Siidas have stated that it will there is a violation if the intervention means that the minority can no longer pursue its own traditional business with profit.

(133) The sources do not provide much guidance on how to understand these statements from the Committee. The quote from the Ilmari Länsman decision is commented on in NOU 2007: 13 A *Den nye Sami law* page 198, but without this making any particular contribution to the understanding. The problem is also affected in HR-2017-2428-A *Reindeer numbers reduction in* sections 69−71. But in that case stood the interests of a single reindeer herder against the interests of the reindeer herding Sami as a group, and it is therefore not so interesting in our context.

(134) In my view, the starting point must be that it is the cultural practice that is protected in Article 27. As mentioned, reindeer husbandry is a form of protected cultural practice and at the same time a way of earning a living themselves on. The economy in the industry is therefore relevant in a discussion of whether it exists violation. The significance must be assessed specifically in the individual case and must, among other things, depend on how the economy affects cultural practice. In my view, Article 27 will at least be broken if a reduction in grazing area deprives reindeer owners of the opportunity to continue with something which can naturally be characterized as a business activity.

The specific assessment of whether the rights under SP Article 27 have been violated

(135) The question of whether the reindeer owners' rights under Article 27 have been violated must be decided by based on the Court of Appeal's assessment of evidence and the understanding of the provision that I has accounted for. I first decide whether Storheia and Roan wind turbines have one significant negative impact on the Sami's opportunity to cultivate their culture.

(136) As I have mentioned, the two wind turbines are part of the largest wind power project on land in Europe. Both were largest in Norway when they were completed, and the planning areas cover together well over 60 square kilometers. The development has changed the character of the area complete. In line with the Court of Appeal's assessment of evidence, I assume that the interventions causes the siidas to lose winter grazing on important land areas such as reindeer husbandry - and thus reindeer owners' culture - is linked to late winter. The development will in the long run lead to losses grazing opportunities to such an extent that it will not be possible to fully compensate by using them alternative grazing areas. As a result, the reindeer numbers will most likely have to significantly reduced.

(137) The reindeer husbandry industry at Fosen already operates with small margins. I have in the past quoted from the Court of Appeal's assessment of the development's consequences for the economy in the industry. The Court of Appeal assumes that a significant reduction in the number of reindeer will imply that the business of the reindeer owners can no longer be run at a profit, or at all fall so that the profit is no longer in reasonable proportion to the effort. For the Supreme Court is it presented compilations of the figures in the reindeer owners' business tasks that build up under the Court of Appeal's assessments on this point. After this, the intervention will in the long run amount to a serious threat to business and thus to cultural practice.

(138) Fosen Vind has emphasized that the production revenues in reindeer husbandry have never been large enough to to be able to live off, and that regardless of the procedure they would never be. The industry is dependent of government grants, and the company has on that basis claimed that there are others reasons other than the intervention that a weakening of the economy threatens the industry. I do not agree with one such a way of looking at it. The basis for reindeer husbandry in Norway has for a long time been partly income from operations, partly various grants for the purpose of maintaining the industry. The reindeer owners in our case has managed with this. It is the intervention that gives the significant negative effect for the economy.

(139) From Fosen Vind's side, it is also stated that meaningful practice of reindeer husbandry can happen with a significantly lower number of reindeer. To this I note that it has not been presented documentation that supports the citation. This is a question of evidence and I am building on the Court of Appeal's conclusion that the development threatens the existence of reindeer husbandry at Fosen.

(140) I add that both the production subsidy and the calf subsidy according to the information will be less if the reindeer population is reduced. This is a consequence of the fact that the calf supplement is dependent of the number of slaughtered calves, while the production subsidy is turnover-based. The information is not disputed. This also shows that a reduction in reindeer numbers will lead to a significant reduction opportunities to benefit from the industry.

(141) It is also a factor in the assessment that the South Sámi culture is particularly vulnerable. It The traditional reindeer husbandry industry is the mainstay of this culture and of Southern Sami the language. The intervention does not imply a total denial of the reindeer owners' right to practice their culture

at Fosen. My view is nevertheless after an overall assessment that the wind power development will have one significant negative effect on their ability to cultivate this culture.

(142) The development is based on thorough studies and assessments. Along the way in In the process, there has been a close dialogue with the reindeer owners, and certain adjustments have been made mitigating measures after input from them. These are factors that have weight in the overall assessment, but they cannot in themselves be decisive.

(143) I readily agree with Fosen Vind that the consideration for «green shift» and increased renewable energy production is important. But as mentioned, in principle, SP Article 27 does not allow for a balance of interests. As I have also mentioned, this may well be the case different if different fundamental rights are opposed. The right to the environment can be relevant in such a context. In the case here, however, no collision has been proven between fundamental rights. I point out in particular that NVE considered a number of different wind power projects at Fosen and in Namdal in 2009. Despite the negative the consequences for reindeer husbandry have been highlighted throughout the process, the choice fell on including Roan and Storheia. Fosen Vind has not disputed that consideration of how far they some of the facilities had been included in the planning, was a key factor in the selection. As the case is informed before the Supreme Court, I must assume that the consideration of «the green the shift "could also have been taken care of by choosing others - and for reindeer husbandry less intrusive - development alternatives. In that case, consideration for the environment cannot be taken into account in the assessment of whether Article 27 here has been violated.

(144) After this, I believe that the development of wind power will have a significant negative effect on the reindeer owners' opportunity to cultivate their culture at Fosen. Without satisfactory mitigation measures there is thus a violation of SP article 27, and the licensing decision will in that case be invalid. I turn to consider whether the decision can still be upheld by that compensation is given for winter feeding of the reindeer, as the Court of Appeal has done.

Compensation for winter feeding - mitigating measures and duty to adapt

(145) In its discretion, the Court of Appeal summarizes its view on whether SP Article 27 has been violated, on this way:

> «An isolated assessment indicates, in the opinion of the Court of Appeal, that the development of wind turbines at Storheia and Haraheia will threaten the reindeer husbandry industry's existence at Fosen. The extent to which consideration for climate and clean power can be included in an overall assessment and lead to Article 27 nevertheless not being considered violated, the Court of Appeal does not rule. As will appear below during the compensation assessment, the Court of Appeal has arrived to that there is a basis for awarding compensation based on winter feeding of reinene. Such a measure, which is admittedly not ideal from a Sami-cultural point of view, will give reindeer owners security that the reindeer herd will survive the late winter also in so-called crisis years and during the periods when the available late winter pastures need rest. Under one If there is any doubt, the Court of Appeal considers that the wind power development in this perspective does not constitute a threat to the reindeer husbandry industry against which it is protected under Article 27. "

(146) The Court of Appeal goes so far as to say that the consequences of the intervention are so significant that the rights of reindeer owners under SP Article 27 have been violated. Then comes the Court of Appeal in doubt that violation can be avoided by providing compensation for winter feeding. I understand the Court of Appeal so that it is in reality based on the siidas here having a duty to - against

compensation - to adapt, and that this duty is relevant in the assessment of whether article 27 have been violated. In the extension of the quoted, the Court of Appeal states that such compensatory measures are not in themselves a violation of the Sami culture, but also here doubt is expressed. When the Court of Appeal's decision is read in context, it must proceed understood so that other measures will not have a sufficient compensatory effect.

(147) To this I note that mitigating measures by the authorities or the expropriator as reduces the disadvantages of an intervention, in principle must be taken into account in the assessment of whether Article 27 has been violated. Such measures may, depending on the circumstances, contribute to the intervention does not reach the threshold of violation. In this case, grants are given to Nord-Fosen siida's slaughterhouse at Meungan, and grants for, among other things, electronic reindeer marking and barrier fences to Sør-Fosen sijte, examples of measures that are relevant in the infringement assessment. I have looked at these supplements in my specifics violation assessment.

(148) Reindeer husbandry also has, in accordance with general principles of expropriation law, a duty to adapt the operation as long as the actual economic basis is not shaken, see for example Rt-2000-1578 *Seiland* on page 1585. To what extent the possibilities for adaptation is also relevant in the assessment of whether Article 27 has been violated is not elucidated in the case here. However, I will not go into this question further, because I can not see anyway that the licensing decision can be upheld on the grounds given by the Court of Appeal.

(149) Here I first point out that winter feeding according to the model of the Court of Appeal differs significantly from traditional, nomadic reindeer husbandry. Such a feeding, where half the reindeer herd for about 90 days every winter should be within a relatively small enclosure, is reportedly not tried out in Norway. No information has been provided on the impact of such a model, either other for animal welfare, based on experiences from other countries. As the case is informed for Supreme Court, it further appears uncertain whether such a scheme is compatible with the reindeer owners' right to practice their culture according to SP article 27. The question has not been subject to a broad and thorough assessment, and general reindeer husbandry interests have not become heard.

(150) I also see regulatory challenges in the solution that the Court of Appeal has fallen for. Pursuant to the Reindeer Husbandry Act § 24 second paragraph, fences and facilities that are to be left over one can season, not listed without the approval of the Ministry. And according to the Reindeer Husbandry Act § 60 is the starting point is that the number of reindeer shall be determined on the basis of the grazing basis as the siida disposes. What significance can a scheme with winter feeding of the animals in enclosure have for the application of this provision, is not elucidated in the case.

(151) After this, there are such great uncertainties associated with the Court of Appeal's arrangement with compensation for winter feeding that it can not matter whether SP Article 27 is violated, even if it should be such that an adaptation obligation is relevant also according to SP article 27. My conclusion is therefore that the licensing decision violates the reindeer owners' rights after the provision of the Convention.

(152) I add that, in my view, the courts cannot in any case rely on such a measure as paragraph in the expropriator's duty of adaptation. Measures of this kind may need to be determined by the administration as a condition for the expropriation permit, or provisions may be made about this in the discretionary assumptions.

(153) The decision is then invalid. I perceive it as the claim that discretion is denied promoted only relates to the wind turbines in Storheia and Roan, not to the replacement for the consequences of Statnett's 420 kV power line. I formulate the conclusion in line with this.

(154) Siida's allegation of infringement of Article 5 (d) of the Convention on Racial Discrimination Roman numerals v are related to the fact that the Court of Appeal has emphasized during the validity debate the replacement for winter feeding systems. With my conclusion on the validity question is the issue is not relevant.

The appeal from Statnett

(155) The appeal from Statnett concerns the fact that the Court of Appeal has held the company in solidarity responsible for the *entire* amount of compensation. It has been claimed that Statnett is only responsible for the part of the compensation that is connected to the 420 kV power line, more specifically NOK 288,000 for moving calving land. The Siidas and Fosen Vind have agreed with Statnett, and the siidas and Statnett have filed a concurring claim that the overestimation is revoked with regard to Statnett's responsibility for the wind turbines.

(156) I have concluded that the discretion is denied in respect of Storheia and Roan wind turbines. Thus, Fosen Vinds liability for the compensation related to the wind turbines. However, Statnett is not a party to the cases concerning the promotion of discretion, and I see so that the claim for annulment in the Statnett case on that basis must be upheld. The compensation of NOK 288,000 for moving calving land due to the power line is not attacked by appeal and is not affected by the refusal of discretion promoted for Roan and Storheia.

Conclusion and legal costs

(157) The conclusion is after this that the discretion is denied with regard to Storheia and Roan wind turbines. The overestimation is revoked as far as Statnett's responsibility is concerned the wind turbines.

(158) Sør-Fosen sijte and Nord-Fosen siida have won the case. They are then entitled to have theirs replaced legal costs in the validity case pursuant to the Discretionary Procedure Act § 54 b second sentence cf. § 54. According to § 54 b first sentence, cf. § 54, Fosen Vind is also obliged to replace the legal costs in the compensation case. Statnett is obliged to reimburse the siidaene's legal costs in the case of joint and several liability for the amount of compensation, cf. the Discretionary Procedure Act § 54 b first points cf. § 54.

(159) Nord-Fosen siida has demanded reimbursement of its legal costs by NOK 31,125 in The Statnett case, NOK 2,701,961 in the compensation case and NOK 449,375 in the validity case. For Sør-Fosen sijte, the corresponding amounts are NOK 34,438, NOK 1,105,625 and 2,626,875 kroner. Sør-Fosen sijte has stated that NOK 750,000 has been paid in advance in the claim, and this amount must be deducted. The remaining amount in the compensation case is da 355 625 kroner. The requirements include VAT.

(160) Fosen Vind has argued that the claims related to the compensation case are too high. I see so that the case has raised extensive and complicated questions, and that the claims do not expire above what is necessary, cf. the Discretionary Process Act § 54. The requirements are taken into account.

(161) I am voting in favor of this

JUDGMENT:

In Case No. 20-143891SIV-HRET:

1. The overestimation is revoked with regard to Statnett SF's responsibility for the wind power plants.

2. In legal costs before the Supreme Court, Statnett SF pays Sør-Fosen sijte 34 438 - thirty-four thousand four hundred and thirty-eight - kroner within 2 - two - weeks from the proclamation of this judgment.

3. In legal costs before the Supreme Court, Statnett SF pays Nord-Fosen siida 31 125 - thirty thousand one hundred and twenty-five - kroner within 2 - two - weeks from the proclamation of this judgment.

In Case No. 20-143892SIV-HRET:

1. The discretion is denied as far as the Roan wind farm is concerned.

2. In legal costs before the Supreme Court, Fosen Vind DA pays Sør-Fosen sijte 355 625 - three hundred and fifty-five thousand six hundred and twenty-five - kroner within 2 - two - weeks from the pronouncement of this judgment.

3. In legal costs before the Supreme Court, Fosen Vind DA pays Nord-Fosen siida 2 701 961 - two million seven hundred and one hundred thousand one hundred and sixty - kroner within 2 - two - weeks from the pronouncement of this judgment.

In Case No. 20-143893SIV-HRET:

1. The estimate is denied as far as Storheia wind farm is concerned.

2. In legal costs before the Supreme Court, Fosen Vind DA pays Sør-Fosen sijte 2,626,875 - two million six hundred and twenty-six thousand eight hundred and seventy-five - kroner within 2 - two - weeks from the pronouncement of this judgment.

3. In legal costs before the Supreme Court, Fosen Vind DA pays Nord-Fosen siida 449 375 - four hundred and carried in one thousand three hundred and seventy-five - kroner within 2 - two - weeks from the proclamation of this judgment.

(162) Judge **Skoghøy:** I essentially and in the result agree with first-time voter.

(163) Judge **Falkanger:** Likewise.

(164) Judge **Noer:** Likewise.

(165) Judge **Bull:** Likewise.

(166) Judge **Kallerud:** Likewise.

(167) Judge **Falch:** Likewise.

(168) Judge **Østensen Berglund:** Likewise.

(169) Judge **Thyness:** Likewise.

(170) Judge **Steinsvik:** Likewise.

(171) Justitiarius **Øie:** Likewise.

(172) Following the vote, the Supreme Court dismissed this

JUDGMENT:

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In Case No. 20-143893SIV-HRET:

1. The estimate is denied as far as Storheia wind farm is concerned.

2. In legal costs before the Supreme Court, Fosen Vind DA pays Sør-Fosen sijte 2,626,875 - two million six hundred and twenty-six thousand eight hundred and seventy-five - kroner within 2 - two - weeks from the pronouncement of this judgment.

3. In legal costs before the Supreme Court, Fosen Vind DA pays Nord-Fosen siida 449 375 - four hundred and carried in one thousand three hundred and seventy-five - kroner within 2 - two - weeks from the proclamation of this judgment.

HR-2021-1975-S, (Case No. 20-143891SIV-HRET)