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Abstract

Land consolidation courts deal with cases where the relationship between holders of grazing rights needs be regulated, but also where the rights holders are competing with other potential land uses, such as building holiday cabins, forestry, hunting, etc. These cases are governed by the provisions of sections 3-8 and 3-10 of the Land Consolidation Act. We have analysed 20 grazing arrangements, based on the following criteria: duration of the case; substantive and geographic limits to the case, and how the parties' claims influenced the final shared use arrangement; need for expert advice; the parties' counsels; clarification of the legal basis and the need for dispute resolution; use of tools provided by the Land Consolidation Act; interconnection with other rights; in cases dealing with several types of land use – did the land consolidation court establish several associations or a single association; and issues arising in established grazing arrangements and associations. We provide examples of the material considerations, both general and detailed, that were given weight when drawing up the rules on grazing.

Keywords: Land consolidation; Grazing arrangements; Rural areas; Norway

JEL Codes: K11, Q15

[1] Photos on frontpage ©Per Kåre Sky. Top: Sheeps at Haukeliseter in Vinje municipality, 10. August 2012. Bottom: Sheep gathering at Fossestølen in Masfjorden municipality, 6. September 2014.

[2] An article based on the same data and almost the same text in Norwegian is first published in: Elvestad, H.E., Sky, P.K. and Taubøll, S. (2020). *Eiendom og juss vol. 1*. Oslo: Scandinavian University Press, pp. 197-221. This translation is done as part of the research project Futgraze, with permission from the Scandinavian University Press.

1. Introduction

1.1. Background and purpose

Around 45 % of Norway's land area consists of rough pasture suitable for grazing (Rekdal and Angeloff 2020, p. 17). Land consolidation courts deal with cases where the relationship between holders of grazing rights needs be regulated, but also where the rights holders are competing with other potential land uses, such as building holiday cabins, forestry, hunting, etc. The Land Consolidation Act provides several tools that can help to create good grazing arrangements and solve conflicts in grazing areas. These cases are governed by the Land Consolidation Act's Section 3-8 on shared use arrangements and Section 3-10 on establishing grazing associations and making changes to existing associations. These two types of cases are in the category that involves modifying easements; cf. Chapter 3 of the Land Consolidation Act.

In this article we take an in-depth look at grazing arrangements and the establishment of associations by analysing cases that have been heard by the land consolidation courts. We provide examples of the material considerations that were taken into account when drawing up the rules on grazing. There is currently no such overview, which has the potential to inform future work on grazing arrangements at land consolidation courts.

1.2. The competence of land consolidation courts

The tools set out in Chapter 3 of the Land Consolidation Act can be grouped into those that involve physical changes to properties (sections 3-2, 3 -4, 3-5, 3-6 and 3-7) and those that involve organisational changes to properties (sections 3-8, 3-9 and 3-10); cf. Sky and Bjerva (2018, p. 21-22).

A shared use arrangement is an organisational change that the land consolidation courts can use as a tool to regulate the use of a particular area. In accordance with Section 3-8 of the Land Consolidation Act, the land consolidation court is the competent body for settling cases relating to shared use arrangements for grazing, hereafter referred to as grazing arrangements. The Land Consolidation Act of 2013 made some changes to the rules, but in the main it continued existing practice pursuant to Section 2 (c) of the Land Consolidation Act of 1979. Under the first sentence of paragraph one of Section 3-8 of the Land Consolidation Act, the land consolidation court may maintain shared use arrangements in areas that are already used jointly. This gives the land consolidation court the competence to change existing rules. The second sentence of paragraph one of Section 3-8 also authorises the land consolidation court to establish shared use arrangements where no such legal agreement exists, "if there are special grounds for doing so". This rule also means that properties held in sole ownership, which have not previously been used jointly, can be ordered to participate in a shared use arrangement covering several properties. However, this should be the exception to the rule, and the requirement for special grounds means that there must be reasons beyond "normal" ones for forcing properties in sole ownership into a shared use arrangement with other parties (Prop. 101 L (2012-13), p. 436). According to p. 140 of Prop. 101 L (2012-13), for practical purposes the special grounds may be that the layout or legal status of the properties makes it hard to make good use of them, or forces everyone concerned to operate in an inefficient, sub-optimal way. Moreover, the idea is not to make properties held in sole ownership part of a tenancy in common, but rather to give the land consolidation court a legal basis for deciding that a resource belonging to a property shall be used jointly or in coordination with other properties in the ways and on the terms that it stipulates. On the question of special grounds, also see Bjerva et al. (2016, p. 76) and Austenå and Øvstedal (2000, pp. 36-37).

The second paragraph of Section 3-8 of the Land Consolidation Act allows both permanent and temporary rules to be established. As it can be difficult to set detailed rules for a shared use arrangement when the case is heard, temporary rules may be needed. Alternatively, the land consolidation court can let the parties decide more detailed rules at a later stage by majority vote.

When a property or easement will be used by several parties, the land consolidation court may also establish a new association to manage or maintain it, or make changes to existing associations, pursuant to Section 3-10. Changes to existing associations may involve changing the parties involved or the articles of association. In order to ensure long-term stability for the parties, it is important for the association to have articles of association. Section 3-10 of the Land Consolidation Act covers two different types of organisation: the ordinary associations that the land consolidation court establishes pursuant to the first paragraph, and operating companies established in conjunction with measures that involve high risk pursuant to the third paragraph. It is only the associations pursuant to the first paragraph that are relevant in our context, and we will not therefore discuss the operating companies any further here. Associations established pursuant to the first paragraph are often called "owners' associations". The land consolidation court assesses whether or not to create an association as part of the land consolidation settlement based on need; cf. the wording of the law, which states that it "may" establish an association. What is considered necessary follows from Section 3-2, paragraph two and Section 3-16. In the case of associations created by the land consolidation court, membership is compulsory and goes with the property. Normally is not possible to leave the association either. In practice, the land consolidation court's right to establish associations will often be most relevant in conjunction with shared use arrangements pursuant to Section 3-8 or joint measures and investments pursuant to Section 3-9, and the rule must be viewed in the context of those clauses; also see Bjerva et al. (2016 p. 82 ff.).

Establishing an association is a separate tool, and a party may request land consolidation for the sole purpose of establishing such an association, or in order to make changes to an existing association. This only became a separate tool in the new Land Consolidation Act of 2013. Section 34 (b) of the Land Consolidation Act of 1979 included a rule that gave land consolidation courts equivalent powers, but the case had to be initiated (requested) under the rules on shared use arrangements or joint measures, for example. In some of the cases that we studied where associations were established, Section 34 (b) was not particularly prominent in the rulings. This may be because Section 34 (b) was not a separate main tool, and so the land consolidation courts established associations without specifically mentioning it as the legal basis. [3]

The land consolidation court may constitute an association either as a tenancy in common or as a general partnership (DA). It is impossible to define general rules about which of these legal statuses an association will have. This must be determined through an individual case-by-case assessment. The Norwegian Courts Administration (2019a, pp. 45-46) states that the generally accepted method for deciding whether to establish a tenancy in common [No: tingsrettslig sameie] or a partnership depends on the extent of the economic activities carried out by the association, although some business activities can also be performed within the framework of a tenancy in common. Examples of business activities that should be possible within a tenancy in common include collecting toll charges and fees for joining a road owners' association.

The report "Organisation and registration of associations established through land consolidation settlements" (Ministry of Agriculture and Food, 2004, p. 6) recommended that such associations should be registered as tenancies in common. The justification for this was that "Although these associations do not always manage jointly owned land, they conduct their dealings with third parties as if they did. It is therefore natural to record these entities as tenancies in common both in the Central Coordinating Register for Legal Entities and in other associated registers."

[3] Examples of cases where an association was established without specific reference to Section 34 (b): Ortnevik, Båvola, Lusæter, Vestmarka and Annolseter.

In order to request a hearing pursuant to Chapter 3 of the Land Consolidation Act, including requesting a shared used arrangement and the establishment or modification of an association, the following prerequisites must be in place:

- At least one property or easement in the area covered by the land consolidation process must be difficult to use; cf. Section 3-2.
- The shared use arrangement must lead to a better solution; cf. Section 3-3.
- The outcome of the case must ensure that no property loses out; cf. Section 3-18.

In addition, the land consolidation settlement must not contravene binding public rules on land use, and the necessary permits must be in place before the case is closed; cf. Section 3-17.

Where relevant, the conditions that follow from the second sentence of paragraph one of Section 3-8 on "special grounds" apply in addition to the ones set out above. That was true in four of the cases in our selection. We will return to them in our analysis in Chapter 3.

As land consolidation settlements change the existing ownership rights and easements, the basis on which those changes are to be made should be established as early as possible in the case. If there is any uncertainty about this basis, it may also lead to uncertainty when drawing up the proposed settlement and adopting the land consolidation. As part of the basis for the land consolidation settlement, Section 3-13 of the Land Consolidation Act therefore requires the land consolidation court to determine the existing ownership rights and easements before land consolidation takes place. Pursuant to the Land Consolidation Act, rulings on the legal basis for the land consolidation shall be made by way of a judgement; cf. Section 6-23, first paragraph. This applies even if the parties agree on the nature of the ownership rights and easements. This represents a change from previous land consolidation legislation: under the Land Consolidation Act of 1979, the legal basis was determined through a court decision called a *rettsfastsettende vedtak*; cf. Section 17 (a).

In order to give a bit of context, we will briefly mention the other types of cases that are often used to deal with questions relating to grazing rights. For tenancies in common and areas where properties have shared use arrangements or it is unclear whether or not they have such arrangements, Section 4-1 (a) and (b) (Land Consolidation Act 1979, Section 88a) gives the land consolidation courts the competence to determine the ownership rights and legal status of real property through a separate case known as a *rettsutgreiing*. This also covers disputes and ambiguities relating to the proportionate allocation of grazing rights to rough pasture. Land consolidation courts have had the competence to hear these cases since the Land Consolidation Act of 1979 entered into force. For a more detailed discussion including how the rules were developed, see Austenå and Øvstedal (2000, p. 390 ff.) and Bjerva et al. (2016, p. 146 ff.). Disputes and ambiguities relating to property and easement boundaries are governed by Section 4-2.

Under Section 5-3 (e) of the Land Consolidation Act, land consolidation courts may use appraisals and issue other rulings pursuant to sections 7, 9 and 14 of the Grazing Act in conjunction with hearing cases. However, we will not look any further at those cases here. For a more detailed discussion, see Bjerva et al. (2016, p. 162) under Section 5-3 (c).

As we can see, the land consolidation courts have both the competence and tools to resolve issues relating to grazing.

This article consists of four chapters, and it is structured as follows: In the introduction, we have presented the background to, and purpose of, this article, as well as giving an outline of the competence of land consolidation courts. Chapter 2 explains the methodology and cases covered, and includes a literature review. In Chapter 3 we analyse twenty grazing arrangements based on ten different criteria, and present our findings in tables listing the general considerations and highlighting

some of the specific topics discussed by the land consolidation courts. In Chapter 4, we present our conclusions.

2. Methodology and literature review

2.1 Methodology

A selection of rulings by land consolidation courts are published on the website Lovdata and are available through LovdataPro[4]. It is up to individual land consolidation judges to decide whether or not to forward cases for publication and it is therefore arbitrary which cases are published. There has been an increase in the number of rulings that are published in recent years.[5] Only eight of the twenty cases that we have looked at are available through LovdataPro.

In addition to reviewing rulings on Lovdata, we asked land consolidation courts in typical grazing areas to send us relevant cases. We contacted approximately one third of Norway's land consolidation courts. In total, we reviewed twenty cases. Seven of them were appealed to a court of appeal. Only one of the rulings by the courts of appeal was relevant to our analysis.[6] Clearly, practice at courts of first instance has little value as a legal precedent, but our purpose is to illustrate the various material considerations that are given weight.

Our search for cases revealed that there is no rule as to whether or not land consolidation courts have a complete record of the extent to which their cases covered grazing arrangements. We cannot therefore rule out that more grazing arrangements have been decided by the land consolidation courts we contacted than the ones we were given access to. Furthermore, we did not contact all of Norway's land consolidation courts, so our selection is not comprehensive. However, we do not consider it necessary for our analysis to look at every single existing grazing agreement. The cases we analysed constitute a broad and varied selection, which makes them suitable for the kind of analysis performed in this article.

Our overall impression is that land consolidation courts hear few cases relating to grazing arrangements. It is difficult to know why this is. One explanation may be that the profitability of sheep farming has greatly decreased in recent years; cf. NIBIO (2017, p. 74).

Our selection of cases was heard by thirteen different land consolidation courts over the period 1969 to 2018. The hearings for the case requested in 1969 began in 1974 and it was concluded as recently as 1996. This means that the cases were heard under the Land Consolidation Acts of 1950, 1979 and 2013, depending on when they were requested. We have chosen to refer to the stipulations of the Land Consolidation Act of 2013 unless otherwise specified.

Table 1: *Selected cases by land consolidation court, case name/municipality and year they were requested.*

Land Consolidation Court (LCC)	**Court case name/municipality**	**Year of application**
Hardanger LCC	**Reinsnos** in Odda	1985
Lista LCC	**Virak** in Flekkefjord	2010
Lista LCC	**Tronvik og Hamre** in Lund	2011
Nedre Buskerud LCC	**Vestmarka** in Asker, Bærum og Lier	1997
Nord- and Midhordland LCC	**Fjellsbø søndre** ni Lindås	2015
Nord- and Midhordland LCC	**Erdal** in Askøy	2010

[4] LovdataPro is Lovdata's premium service for access to court rulings and other court documents.
[5] As of 28 December 2020, 1,393 cases heard by the land consolidation courts had been published on LovdataPro.
[6] In case LG-2016-4594, the land consolidation court's ruling on valuation was changed by the court of appeal.

Nord-Gudbrandsdal LCC	**Lomseggen sameie** in Lom	2014
Nord-Gudbrandsdal LCC	**Skåbu hyttegrend** in Nord-Fron	1998
Nord-Trøndelag LCC	**Osen** in Osen	2015
Nord-Østerdal LCC	**Tynset øst beitelag** in Tynset	2015
Nord-Østerdal LCC	**Båvola** in Tolga	2010
Sunnfjord and Ytre Sogn LCC	**Grøvlen** in Fjaler	2012
Sunnfjord and Ytre Sogn LCC	**Ortnevik** in Høyanger	1999
Sunnfjord and Ytre Sogn LCC	**Sandvik** in Flora	1989
Sør-Gudbrandsdal LCC	**Annolseter** in Ringebu	1969
Sør-Rogaland LCC	**Kleivaland** in Hjelmeland	2015
Sør-Trøndelag LCC	**Sistranda** in Frøya	2012
Sør-Trøndelag LCC	**Kjelsvollen og Brattlia** in Røros	2000
Valdres Land LCC	**Lusæter** in Sel	1995
Øvre Buskerud LCC	**Auenhauglie stølssameige** in Gol	2018

2.2 Literature review

We have based our analysis on preparatory acts to legislation and academic literature on land consolidation. Briefly, this includes: The commentaries on the Land Consolidation Acts of 1979 and 2013 by Austenå and Øvstedal (2000) and Bjerva et al. (2016) respectively.

There are three investigations into/reports on shared use arrangements. The Land Consolidation Authority (1996) created a working group to discuss shared use arrangements under the Land Consolidation Act of 1979. The Ministry of Agriculture and Food (2004) looked at the organisation and registration of associations established through land consolidation settlements. The Norwegian Courts Administration (2019a) includes a guide to shared use arrangements for roads. It also contains some general comments on shared use arrangements.

A general discussion of shared used arrangements and how they have developed over time can be found in Flø and Haraldstad (2009, pp. 397-428). Dating right back to the Land Consolidation Act of 1857, land consolidation courts have had the competence to regulate the relationship between landowners and holders of partial easements in areas that are used jointly, in so far as it has been necessary to ensure a beneficial relationship. Flø and Haraldstad (2009, p. 401) highlight that prior to the Land Consolidation Act of 1979 a shared use arrangement could only be established if there was a legal relationship between the parties such as a partial easement, property right or tenancy in common in the affected area. The Land Consolidation Act of 1979 extended the legal basis for shared use arrangements to properties where the shared use was not based on an easement, but where such an arrangement was justified by the parties' geographical relationship. Furthermore, Flø and Haraldstad (2009, p. 401) mention that in 1999 a new clause was added to Section 34 (b) of the Land Consolidation Act of 1979, which together with a 2004 report by the Ministry of Agriculture and Food clarified to what extent corporate law applied to the associations established through cases dealing with shared use arrangements and joint actions. Ot.prp. no. 8 (2005-2006), cf. Ot.prp. no. 78 (2004-2005) p. 18 ff., added a new Section 1 (a) to the Land Consolidation Act of 1979 allowing shared use arrangements to be established for all types of properties in Norway unless otherwise explicitly stated in legislation (Flø and Haraldstad 2009 s. 402).

There is also an interesting observation in Rognes and Sky (1998, p. 9). They found that, of the category of cases involving the modification of easements, those relating to shared use arrangements created the highest level of conflict. This was a study of 394 cases involving the modification of easements heard by the land consolidation courts in 1996. There is no reason to believe that this has changed much.

Ravna (2009) discusses, amongst other things, the question of protection against losses. The consolidation value is one of the main pillars used to test whether the parties have been protected

against losses, which Ravna refers to as the "no-loss guarantee". Ravna points out that the absence of a consolidation value will in practice reduce the "precision with which the no-loss guarantee can be tested to such an extent that the shared use arrangement will lack the necessary guarantee that the parties will not incur greater costs or inconveniences than benefits" (Ravna 2009 p. 308).

The Ministry of Agriculture and Food (2004) and Norwegian Courts Administration (2019a) provide examples of articles of association for various shared use arrangements for roads, owners' associations and gravel pit owners' associations. The Ministry of Agriculture and Food's sample articles of association for owners' associations (2004:29) refer to grazing rights, but there are no published articles of association specifically for grazing arrangements. The County Governor of Oppland has summarised the various models for organising grazing associations.[7]

The Norwegian Association of Sheep and Goat Farmers has drawn up two sets of sample articles of association for grazing/sheep gathering associations organised as cooperatives, depending on whether or not they have share capital. [8] For the differences between associations created by the land consolidation courts (tenancies in common) and cooperatives, see the Norwegian Courts Administration (2019a, pp. 46-48).

The Ministry of Agriculture and Food (2004, p. 16) writes the following about grazing associations:

> "Their purpose is to organise the activities of the holders of the grazing rights by regulating how and when grazing can take place, pasture management, gathering pens, feeding sites, the subleasing of grazing rights, etc. Associations can act as the spokesperson for the holders of the grazing rights when dealing with the planning authorities and other parties. The land consolidation court decides the articles of association and how many shares each owner shall have in the owners' association. " [our translation]

It goes on to say "Almost without exception, these associations are not covered by the Partnerships Act, and they are recorded as tenancies in common in the Register for Legal Entities, in the same way as the majority of associations formed by the land consolidation courts." (Ministry of Agriculture, 2004, p. 19)

3. An Analysis of Grazing Arrangements

3.1 Introduction

Below we will analyse the twenty shared use arrangements covered by this article. In our discussion of individual cases, we will use the case name highlighted in Table 1. The analysis is based on the following criteria: duration of the case; substantive and geographic limits to the case, and how the parties' claims influenced the final shared use arrangement; need for expert advice; the parties' counsels; clarification of the legal basis and the need for dispute resolution; use of tools provided by the Land Consolidation Act; interconnection with other rights; in cases dealing with several types of land use – did the land consolidation court establish several associations or a single association; and issues arising in established grazing arrangements and associations. Finally we will look at the conclusions of general interest that can be drawn from this review.

[7] County Governor of Oppland. https://www.fylkesmannen.no/contentassets/700f454a827f4f4eb0ec9a6afb39f8cd/modeller_for_organisering_av_beitelag_48hfr.pdf

[8] Norwegian Association of Sheep and Goat Farmers. http://www.nsg.no/valg-av-organisasjonsform/category656.html (downloaded 28 December 2020).

3.2 Analysis of rulings by land consolidation courts

The **duration of the case** is the period of time that elapses from when the land consolidation court holds its first hearing until the case is closed at a hearing. This is considered the official time it takes to process the case. We haven't included the waiting time from when the case is requested until the land consolidation court starts processing it. For the parties, however, this will feel like part of the processing time. That is unsurprising bearing in mind that there is period of written preparations for the case before the first hearing; cf. Land Consolidation Act, sections 6-2 and 6-5.

A recurring complaint from the parties involved is that land consolidation cases take a long time. Our material shows great variation in the duration of cases, ranging from just three months[9] right up to 22 years and three months[10]. The average for the twenty cases is approximately three years and two months. From the point of view of the parties, that is too long. Nevertheless, the processing time has changed slightly in recent years. The Norwegian Courts Administration's annual statistics for the land consolidation courts in 2019 show that the average processing time for cases involving the modification of easements was 17.2 months.[11] It isn't the case that cases involving many parties necessarily take longest. Of the cases we studied, the one involving most parties (200) was processed in 5.5 months[12], and the one with the third highest number of parties (90) took three months[13]. Reducing processing times has become a growing priority for land consolidation courts, but there are no statutory limits on how long cases can last.

Substantive and geographic limits to the case, and the relationship between the parties' claims and the final shared use arrangement. The reason for the case being requested is set out in the claim. The other parties can also respond to the claim; cf. Land Consolidation Act, Section 6-9. There is a great deal of variation in our material, but in eleven out of the twenty cases[14], changes were made in relation to the original request. This is a clear indication that as well as the claimant, the other parties to the case help to shape it. We have also seen examples of additional topics being added to cases, for instance through a legal clarification case being expanded to cover shared use arrangements.[15] There are also examples of temporary grazing rules being established while waiting for the final arrangement to be put in place.[16] The scope of the case shall reflect the claims of the claimant; cf. Section 6-2. It follows from the first paragraph of Section 6-9 that the limits to the case shall reflect the initial claim and the other parties' responses to the claim. In other words, the other parties can influence whether the case expands or contracts in comparison with the original claim. However, this must be based on a substantive or geographic connection with the original claim. It is the land consolidation court that decides the limits to the case. In two cases[17], the land consolidation court judged that there were substantive and geographic links between them, so the cases were expanded.

We have investigated to what extent the claims of the parties correspond with the shared use arrangement finally adopted. We did this by looking at the details of the claims set out in the court record, the parties' responses and the final shared use arrangement.

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[9] Lomseggen sameie.
[10] Annolseter.
[11] Norwegian Courts Administration (2019b) https://www.domstol.no/arsrapport-2019/aktiviteter-og-resultater/saksavvikling-i-domstolene/#jordskifterettene
[12] Sistranda.
[13] Lomseggen.
[14] Grøvlen, Ortnevik, Sandvik, Reinsnos, Brattlia, Tynset øst, Fjellsbø søndre, Erdal, Virak, Tronvik og Hamre, and Annolseter.
[15] Grøvlen
[16] Tynset øst and Kjelsvollen and Brattlia
[17] Tronvik and Hamre, and Kjelsvollen and Brattlia.

According to Section 6-9 of the Land Consolidation Act, land consolidation courts shall set the substantive and geographic limits to the case based on the claim or the matters raised by the other parties. If there is disagreement about how to use joint rough pasture, in many cases the parties would ideally like the tenancy in common to be dissolved, but if that is not possible they would like a shared use arrangement to be established. The dissolution of a tenancy in common may often be in conflict with the prerequisites for land consolidation, whereas a shared use arrangement is considered a more limited measure. It is particularly the requirement for protection against losses in Section 3-18 that may prevent the dissolution of a tenancy in common.

If there will be a large change in value, the ownership of land or easements should not be transferred unless required for a beneficial land consolidation; cf. Section 3-23 of the Land Consolidation Act. In two of the cases, the shared use arrangement also dealt with the distribution of any added value from rezoning.[18] These were areas that could potentially experience a large change in value.

In some cases, the parties request land consolidation in order to solve a number of problems relating to the running of the properties. For example, there might be some problems that only affect a small number of the properties, and others that affect all of them. It is possible to process these kinds of cases, but they can easily become hard to keep track of for both the parties and the land consolidation court. In those cases, the land consolidation has the ability to limit the scope of the case. In our material we have examples of arrangements to regulate a marina and waterfall rights being rejected.[19] These are very different kinds of topics to grazing rights.

The general conclusion we can draw from this is that in ten out of our twenty cases, subsidiary claims were rejected, withdrawn or subject to a dispute as to whether or not they should be heard.[20]

In the cases of Tronvik and Hamre and Kjelsvollen and Brattlia, three and two cases respectively were heard together. With Tronvik and Hamre, there were three separate land consolidation cases that were interrelated to a greater or lesser degree either substantively or geographically. One of the cases was a legal clarification case under Section 88 (a) of the Land Consolidation Act of 1979 (now Section 4-1). With Kjelsvollen and Brattlia, the claim related to a shared use arrangement for sheep grazing. The geographic boundaries of the two cases overlapped and they dealt with the same kinds of issues. This is an efficient way of dealing with cases.

Pursuant to Section 15-6 of the Dispute Act, cases can be heard together and be subject to a joint ruling. This applies to cases that raise similar issues, and that should be heard with the same composition of the court and under more or less the same administrative procedures. It is worth noting that when two cases are heard together under Section 15-6 of the Dispute Act, the court costs shall still be calculated separately for each case; cf. HR-2017-331-A (Supreme Court of Norway).

Need for expert advice. From the mid-1990s until 2006, the land consolidation courts were allocated some of the Ministry of Agriculture and Food's budget to cover the cost of things like vegetation surveys by the Norwegian Institute of Land Inventory (now merged into the Norwegian Institute of Bioeconomy Research), so the parties involved did not incur any expenses for this. A survey was performed and a report was drawn up and presented at the land consolidation court. The person responsible for the report was appointed an expert witness. This scheme was discontinued in 2006. In six of the twenty cases we studied, the land consolidation courts used experts to assess the grazing conditions and to estimate the grazing capacity.[21] To inform the assessments of grazing conditions,

[18] Erdal and Annolseter.
[19] Sandvik (marina) and Ortnevik (waterfall rights).
[20] Ortnevik, Sandvik, Reinsnos, Skåbu hyttegrend, Fjellsbø søndre, Erdal, Tronvik and Hamre, Annolseter, Lusæter and Vestmarka.
[21] Ortnevik, Sandvik, Reinsnos, Lusæter, Skåbu hyttegrend and Vestmarka.

vegetation maps were created, as well as grazing maps for sheep and cattle based on them (cf. Rekdal 2001a, 2001b, 2002, 2003a, 2003b and 2006).

Neither land consolidation judges nor the engineers who work at the land consolidation courts have specialist expertise in vegetation surveys. Indeed, since the Norwegian Institute of Land Inventory produced vegetation maps for the land consolidation courts until as recently as 2006, there was no particular reason for them to have that expertise. It is a very long time since vegetation surveys were something that the people eligible for judging cases at the land consolidation courts studied. Besides which, vegetation mapping is something that you need to do regularly.

Currently, if the land consolidation court believes that a vegetation map is required, it must appoint the relevant experts, the cost of which is passed on to the parties to the case. Those costs form part of the land consolidation court's assessment as to whether or not the case shall be heard in accordance with Section 3-18 of the Land Consolidation Act and the protection against losses.

After the old scheme was discontinued, these kinds of maps have not been produced. No experts on grazing issues have been involved in the cases in our selection requested after 2000.

Kilden, the Norwegian Institute of Bioeconomy Research's main map portal[22], provides information about where vegetation maps are available. These vegetation maps are split into two categories: maps available on Kilden and maps available on paper. Only a few areas have vegetation maps available, and it is down to luck whether one is available for an area where land consolidation is requested.

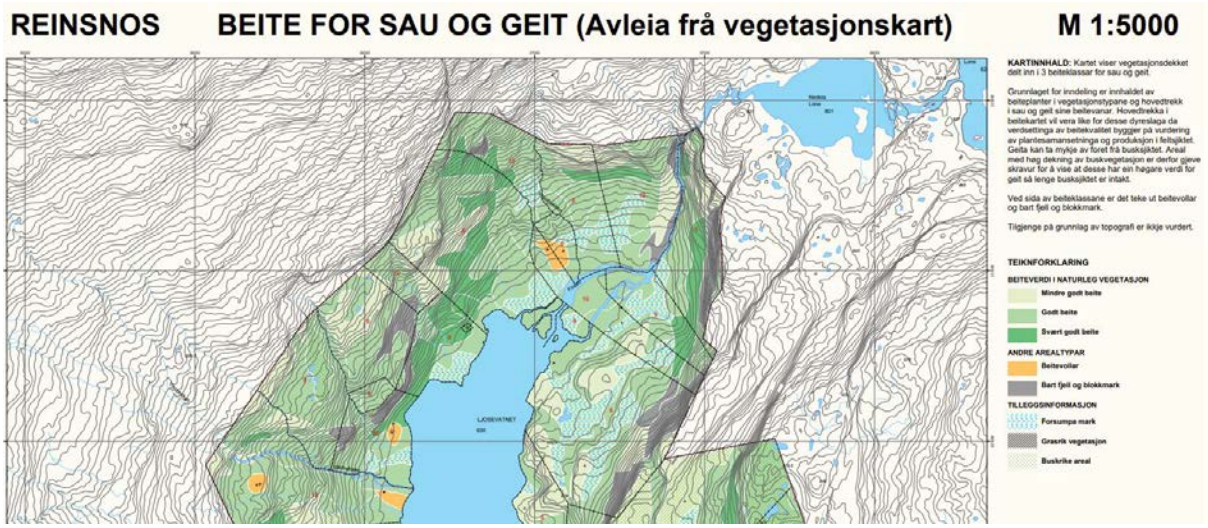

Figure 1: *Section of grazingmap (sheep and goat) derived for a vegetation map of Reinsnos used in a case heard at Hardanger land consolidation court (Rekdal 2000).*

The parties' counsels. Many parties represent themselves at the land consolidation court, and the aim of the revised Land Consolidation Act of 2013 was to make the land consolidation process simpler and more efficient, and for the Act to become easier for parties to use.

In spite of this intention, the Land Consolidation Act's rules on administrative procedures remain complex; cf. Prop. 101 L (2012-2013) p. 19. Some of the most complex rules are found in Section 3-8 on shared use arrangements and Section 3-10 on establishing grazing associations. This, together with the fact that shared use arrangements often involve a high level of conflict, can mean that the parties

[22] https://www.nibio.no/tjenester/kilden

require a counsel. One or more of the parties was represented by a lawyer in eleven of the twenty cases we analysed.[23]

Under Section 7-9 of the Land Consolidation Act, as a general rule the parties shall cover the cost of their own expert and legal advice in land consolidation cases. In the case of rulings on disputes, Chapter 20 of the Disputes Act governs the reimbursement of costs directly attributable to hearing the dispute; cf. Section 7-9, paragraph one. For our purposes, that means the parties must cover their own expenses in conjunction with drawing up rules on shared use arrangements and establishing grazing associations. When hearing disputes under Section 3-13 of the Land Consolidation Act, for example ones relating to grazing areas, Section 7-9 will apply.

Clarification of legal status and need for dispute resolution. In fourteen of our twenty cases, there was a need to clarify the legal status and/or issue a ruling; cf. sections 6-22 and 6-23 of the Land Consolidation Act.

In three cases the legal basis had been established in a prior land consolidation case.[24] In another one, the case involved changing the type of organisation from a cooperative to a tenancy in common.[25] In one case, the court record concludes vaguely that there are no legal disputes[26], and in another one it was not considered necessary to establish the legal basis.[27] The latter case involved as many as 200 parties.

It follows from Prop. 101 L (2012-2013) p. 157 that land consolidation courts don't need to determine the status of ownership rights and easements that are not relevant to the case being heard. Land consolidation courts shall address the legal issues that are relevant to the land consolidation settlement. Our material shows that in two cases the land consolidation court did not consider it necessary to decide on the legal status. Section 3-13 of the Land Consolidation Act states that "The land consolidation court shall determine the existing ownership rights and easements." The term "ownership rights and easements" refers to who owns what, which rights pertain to the properties, and the position of the boundaries between real properties and easements. This stipulation requires land consolidation courts to determine the ownership rights and easements even in cases where there is no dispute. Even if the parties are in agreement, the land consolidation court shall determine the ownership rights and easements in order to ensure a reliable basis for the changes being made (Prop. 101 L (2012-2013) p. 430).

Paragraph two of Section 3-13 of the Land Consolidation Act states that if the parties agree on all or part of the legal basis for the land consolidation settlement, the land consolidation court may base its settlement on that. Prop. 101 L (2012-2013) p. 430 mentions that paragraph two of Section 3-13 builds on the second sentence of paragraph one of Section 28 of the Land Consolidation Act of 1979. The aim of the stipulation in the second paragraph is to allow the parties to agree on something that isn't necessarily the legally correct outcome. They may want to do this because of the cost of the administrative process or the difficulty of ascertaining the truth.

Seven of the cases in our selection were disputed. [28] Almost all of the disputes related to the whether or not the parties had grazing rights.

[23] Grøvlen, Sandvik, Brattlia, Osen, Tynset øst beitelag, Skåbu hyttegrend and Fjellsbø søndre, Tronvik and Hamre, Auenhauglie stølssameige, Lusæter and Vestmarka.
[24] Tynset øst beitelag, Erdal and Annolseter.
[25] Auenhauglie stølssameige
[26] Skåbu hyttegrend
[27] Sistranda
[28] Grøvlen, Reinsnos, Kjelsvollen og Brattlia, Kleivaland, Fjellsbø søndre, Lusæter and Vestmarka.

Use of tools provided by the Land Consolidation Act. The main tools for shared use arrangements are set out in section 3-8 of the Land Consolidation Act, and if an association is to be established the stipulations in Section 3-10 apply.

In eight of the twenty cases in our selection, a shared use arrangement was combined with other tools provided for by the Land Consolidation Act, such as land exchanges (Section 3-4)[29], dissolution of a tenancy in common (Section 3-6)[30] and joint measures (Section 3-9)[31].

Paragraph one of Section 3-1 of the Land Consolidation Act allows land consolidation courts to use the tools in sections 3-4 to 3-10 to remedy impractical property arrangements. The tools chosen by the land consolidation court shall reflect the claim made by the claimant, as well as the issues raised by the other parties; cf. paragraphs one and two of Section 6-9. The parties describe the problems that need to be solved and the land consolidation court chooses the tools to remedy them. When determining the legal basis for the shared use arrangement, Section 3-13 applies; cf. discussion in Chapter 2.

The second sentence of paragraph one of Section 3-8 allows the land consolidation court to establish shared use arrangements and set their rules where there was no pre-existing arrangement, provided there are "special grounds" for doing so. In four of the twenty cases we studied, this "special grounds" clause of Section 3-8 was used. [32] This merits further analysis.

At Sistranda, there was some joint rough pasture, and some that was owned individually. There were 200 landowners, and it would have been difficult to work out the shares of each individual in order to calculate the pasture rent; cf. pp. 5-6 of the court record. At Kjelsvollen and Brattlia the pasture land was initially split into sections, but the shared use arrangement merged them. Amongst other things, the court record states on p. 45 that: "The court considers that the most efficient use of the pasture land will be achieved by organising the grazing and fences independently of the grazing rights areas. This will allow the best solutions from a practical and financial point of view." [our translation] In the case of Tronvik and Hamre, the land consolidation court made the following argument in favour of special grounds on pp. 10 and 11:

> "The pasture land at Hamreheia is not currently used jointly. Under Subsection c (2) of Section 2 of the Land Consolidation Act, the land consolidation court may establish rules for shared use, even where no such prior legal agreement exists. However, it may only do so if there are special grounds: The cost of using each plot individually for grazing is so high that there are geographic grounds for shared use. Rearrangement of the parcels is not feasible. The cost of rebuilding a proper fence along the boundary between gnr. 19 and gnr. 20 makes it appropriate for the shared use arrangement to also include parts of gnr. 19, Tronvik. The court finds that special grounds exist, which means that the prerequisite for establishing a shared use arrangement is met." [our translation]

In Vestmarka, the special grounds given were that a shared use arrangement for grazing pursuant to Subsection c (2) of Section 2 of the Land Consolidation Act of 1979 would help to safeguard the forestry interests of the property. The court considered that you could not assume that there would be no grazing on the property when assessing the merits of the case. "In practice, animals from neighbouring plots will graze here, and fencing off the property or shepherding the animals are not feasible solutions." [our translation] According to the court, animals from neighbouring plots continuing to graze there without a shared use arrangement would lead to conflicts; cf. pp. 11-13 of the court record of 13 August 2007.

[29] For example, Sandvik, Virak and Tronvik, and Hamre.
[30] Virak
[31] For example, Skåbu hyttegrend.
[32] Sistranda, Kjelsvollen and Brattlia, Tronvik and Hamre, and Vestmarka.

Interconnection with other rights relating to rough pasture land. In ten of the twenty cases, the shared use arrangement also covered other topics than grazing.[33] Grazing and fences, which are closely linked, were involved in fourteen of the twenty cases.[34] In five cases, grazing rights were part of a wider owners' association[35], and there are several examples of grazing rights being managed by the same association as the roads and hunting rights.[36] Two of the arrangements also included rules on development and on the distribution of added value from rezoning.[37]

When an association and shared use arrangement cover several types of land use, more rules are required, but it also makes it possible to better coordinate the different uses of a given area. For example, this may be the relationship between building holiday cabins and rough pasture resources, the relationship between roads and fences[38], and when the small game hunting season and sheep gathering should begin.

In cases dealing with several types of land use – did the land consolidation court establish several associations or a single association? There are many ways in which a shared use arrangement can be organised, but we can distinguish between situations where a single large association is created covering several types of land use and ones where there is a separate association for each type of use.

In five of the cases we looked at a single owners' association was established covering several types of land use.[39] Three of the cases established an owners' association to deal with several topics, one of which was with grazing.[40] In one case, a separate grazing agreement with its own rules was kept outside the main owners' association.[41] In another case, the land consolidation court drew up the articles of association for the overall owners' association, and created separate rules on shared use for each of the following types of land use: tourist development, grazing, hunting and roads.[42]

Grazing rights and fences are closely intertwined, and most of the cases include rules on maintaining fences. However, we will not look any further at fence maintenance here. In our material, roads were a topic in six of the twenty cases.[43]

Issues arising in established grazing arrangements and associations. Our analysis found that the structure of the articles of association varied greatly, but several of the shared use arrangements were based on the Ministry of Agriculture and Food's sample articles for owners' associations (2004, pp. 29-34). The sample articles of association must be adapted to the situation in question.

In three of the cases, temporary grazing rules were established while waiting for the final arrangement to be put in place.[44] In Vestmarka, the following justification was given for establishing temporary rules:

[33] Grøvlen, Ortnevik, Sandvik, Lomseggen sameie, Erdal, Virak, Tronvik and Hamre, Annollseter, Auenhauglie stølssameige, Lusæter
[34] Grøvlen, Sandvik, Reinsnos, Sistranda, Brattlia, Tynset øst beitelag, Skåbu hyttegrend, Kleivaland, Fjellsbø søndre, Virak, Tronvik and Hamre, Båvola, Annolseter, Lusæter.
[35] Ortnevik, Lomseggen sameie, Erdal, Virak and Annolseter.
[36] Ortnevik, Virak, Erdal, Lomseggen sameie and Annolseter.
[37] Erdal and Annolseter.
[38] Grøvlen and Båvola (maintenance of roads and fences)
[39] Ortnevik, Lomseggen sameie, Erdal, Virak and Annolseter.
[40] Lomseggen sameie, Erdal and Virak.
[41] Ortnevik.
[42] Annolseter.
[43] Grøvlen, Sandvik, Virak, Tronvik and Hamre, Annolseter and Lusæter.
[44] Kjellsvollen and Brattlia, Tynset øst beitelag and Vestmarka.

> "… temporary rules in order to further clarify issues surrounding grazing capacity and grazing damage, fences and any expansion of the grazing area. It may also be worth reassessing other matters in the rules and articles of association after they have been put into practice for one season." [our translation]

If the land consolidation settlement covers several types of land use, grazing arrangements are often treated as a separate item. In Sandvik that was done like this:

> "VIII Grazing agreement for gnr. 84
>
> The owner of gnr. 84 bnr. 1, 2, 3, 4, 8 and 10 is entitled to put his farm animals (horses, cattle and sheep) out to graze on his own rough pasture land, but in such a way that the farm animals can graze freely. This is a practical arrangement that reflects the fact that there is no obligation to put up fences along property boundaries in rough pasture land. The shared use arrangement does not give grazing rights to other people's parcels and does not prevent them from fencing in their parcels. The number of farm animals that can graze freely in the rough pasture land is restricted to the grazing capacity of the landowner in question's share of the unfenced pasture land." [our translation]

The most basic shared use arrangements in our material consist of three or four simple rules.[45] Examples include rules on the number of grazing animals, on the number of animals allowed during specific periods, on the ratio of cattle to sheep and goats (e.g. four sheep per head of cattle) and on subleasing. [46] The most comprehensive shared use arrangements contain far more rules and are based on the sample articles of association published by the Ministry of Agriculture and Food (2004).

3.3. What points of general interest can be concluded from our review?

In tables 2 and 3 we have listed some of the issues that have been raised at land consolidation hearings and have been mentioned in the land consolidation settlement for the various grazing arrangements. Based on the articles of association in the cases we analysed, we have highlighted the material issues included in the grazing arrangements. The purpose of these tables is to provide a summary that can inform discussions about future grazing arrangements. We have not included the general rules in the most comprehensive grazing associations; for further details see the Ministry of Agriculture and Food (2004, pp. 29-34).

[45] Ortnevik and Reinsnos.
[46] Ortnevik p. 67.

Table 2: *Some general topics that are mentioned in the land consolidation settlements for the grazing arrangements analysed.*

Topic	Comments
General topics	
Shares of grazing rights	Ownership status, ownership interests and shares must be determined. This can be expressed as follows: "*The following properties are joint owners and/or easement holders in the tenancy in common and their shares are as follows:* *Gnr./bnr. Owner Share* *70/2 Peter Farmer 1/8* *70/3 etc."*
Boundaries of the grazing area/agreement	The substantive and geographic limits of the land consolidation case shall be established; cf. Land Consolidation Act, Section 6-9. Paragraph one of Section 3-8 allows the land consolidation court to limit the area where easements apply and to set rules on how the area can be used.
Assessment of grazing capacity	In six of the cases, the grazing capacity was estimated by an expert. The grazing capacity may change after the shared use arrangement is established, and the need for an expert reassessment may arise.
Drawing up a plan for pasture use/work plan	Allows the parties to come up with a local plan for long-term exploitation of the pasture resources. There may also be a need for a work plan for the coming grazing season.
Trial periods and temporary rules	Paragraph two of Section 3-8 of the Land Consolidation Act allows the land consolidation court to set temporary rules for a shared use arrangement. This can also be regulated by the parties themselves within the final arrangement. There is often a need to test out arrangements over a period of time.
Access to pasture and rerouting farm tracks	Grazing arrangements may include the need to regulate access to the pasture through areas where grazing is not allowed. It may also be necessary to reroute old farm tracks if fences are moved. Many old farm tracks have stone walls on both sides. These may have cultural heritage value.
Separate grazing committees and relationship with other committees	Where grazing is part of an owners' association that regulates several types of land use (hunting, fishing, tourism, roads, developing holiday cabins, etc.) it may be necessary to have a separate grazing committee and to regulate the relationship between the various committees and types of land use.
Ratio of cattle to sheep and goats	It may be necessary to regulate the ratio of cattle to sheep and goats that each person can put out to graze. Arrangements have used the ratios 1:4 and 1:5. One form of shared grazing that can be regulated is allowing sheep to graze in spring and autumn, and cattle in the summer months. This may reduce the infection pressure from intestinal parasites and allow better use of the pasture.
Land removed from grazing arrangements	Regulates situations where land is removed from the grazing agreement because it will used for cultivation, recreation, building cabins, etc. How would this affect each person's share of the grazing rights?
Termination of grazing/dissolution of the grazing association	It can be important to have rules on what will happen if the land stops being used for grazing. The holders of the grazing rights are responsible for removing fences and clearing up after their removal. This should be done as soon as possible, and the work must be completed within two years of grazing ending. If it is not done within that deadline, the landowners can do this at the expense of the holders of the grazing rights.

Table 3: *Some detailed topics that are mentioned in the land consolidation settlements for the grazing arrangements analysed.*

Topic	Comments
Detailed topics	
Organisation of sheep gathering/lead gatherer	Sheep gathering is a joint activity that requires organisation and clarity. The timing of the gathering must also be agreed, and it should be coordinated with hunting and the hunting season in order to avoid conflicts. In some cases it may be beneficial to nominate someone to lead the gathering (a lead gatherer).
Start of the grazing season	The earliest date on which animals may be put out to graze is important in terms of grass production and certain practical considerations such as putting up electric cattle grids and gates, and inspecting and maintaining fences.
Season for maintaining fences	This shall be before the start of the grazing season.
Supervision of grazing activities and fences during the grazing season.	Organisation of supervision during the grazing season. Put up notices indicating whom to contact if you find an injured/dead grazing animal or a collar.
Preventive treatment against parasites	It may be relevant to require animals that are put out to graze to be treated against parasites.
Setting the annual grazing fee/pasture rent/unused grazing quotas	Grazing rights that are neither used by the holder himself/herself, nor subleased to other active rights holders, can be used by the association in return for an agreed rent. It may be necessary to set a grazing fee for the holders of the grazing rights to cover expenses. The grazing fee could, for example, finance measures related to grazing, such as fences, supervision/shepherding/inspection, administration, any costs associated with enforcement, etc.
Rules on subleasing	Regulate whether other holders of grazing rights in the shared use arrangement shall have pre-emptive rights. Regulate the respective areas of responsibility of the lessor, lessee and association.
Allocation of expenses and revenues	Allocation of expenses and revenues between the holders of the grazing rights in accordance with ownership interest/share of grazing rights/shared use arrangement.
Allocation of any public grants	Allocated between the holders of the grazing rights in accordance with ownership interest/share of grazing rights/shared use arrangement.
Pasture protection	Pasture protection is an important joint responsibility that needs to be planned.
Grazing damage	Damage to cultivated land caused by grazing and walking shall in principle be avoided by maintaining fences.
Pests/predators	The association can give individuals or hunting associations permission, if allowed by the authorities, to hunt bears, wolves, wolverines or lynx with a suitable licence in the area of the tenancy in common.
Gathering pens	These are important tools when sheep gathering. Their location must be planned in order for them to be effective.
Grazing near water sources	In areas with holiday cabins that rely on open water sources, fencing them off must be considered.
Putting out salt blocks	Several considerations must be taken into account when putting out salt blocks; proximity to summer farms; restrictions in relation to deer and chronic wasting disease.
Breach of grazing rules	React with the necessary sanctions in the event of breaches of the grazing rules. In the event of failure to pay the grazing fee, including any additional fees, payment shall be enforced pursuant to the Enforcement Act; cf. Land Consolidation Act, Section 6-28. In these cases, the association's board must request enforcement.

Proposals for land consolidation settlements are regulated by Section 6-21 of the Land Consolidation Act. The land consolidation court draws up a proposal that is sent to the parties for their feedback.

Before the proposal is drawn up, the parties should have a chance to express their views. Clearly, the feedback of active users of grazing rights plays an important role in informing shared use arrangements. It is not unusual for proposals to be revised after the parties have had a chance to express their views on the arrangement and the other parties' comments. Everything takes place in a fully adversarial process.

In our selection, the contents, scope and, to some extent, structure of the articles of association vary greatly: from a few, simple rules to comprehensive shared use arrangements with a large number of rules. Moreover, they range from general topics, such as shares of grazing rights, boundaries of the grazing area, access, etc., to more detailed topics like the organisation of sheep gathering, regulation of subleasing and the allocation of expenses and revenues. There is also variation in terms of whether a single large association is established for several types of land use or separate associations for each type of use.

The parties to a case being heard by the land consolidation court will have to pay legal costs and fees pursuant to Chapter 7 of the Land Consolidation Act, so by way of conclusion we will comment very briefly on the legal costs and fees in the cases covered by this article.

Under the first paragraph of Section 7-1 of the Land Consolidation Act, the parties shall pay any fees and legal costs. This includes a filing fee pursuant to Section 7-2 and court fees under Section 7-4. A boundary length fee is rarely charged in these kinds of cases. The filing fee is five times the basic court fee and the court fee payable by each party is twice the basic court fee. The basic court fee is adjusted regularly and is currently (as of 1 January 2021) NOK 1,199. The land consolidation court may modify the total fees payable if the number of working hours involved varies significantly from what is normal.[47] In some cases there may be a fee for lay judges. Small cases normally have two or three hearings. Big cases may require more hearings, and so the costs may rise if lay judges are involved. Legal costs are allocated in accordance with Section 7-6, which gives the general rule that this shall done based on the benefits derived.

4. Conclusion

Our review of cases heard by the land consolidation courts relating to grazing arrangements has shown that the issues raised vary greatly. The regulation of grazing and fences, which are closely intertwined, comes up in the many of the cases. Sometimes, a dispute about rights may be the trigger for the land consolidation case. In those cases, the land consolidation court resolves the dispute, before creating rules on how the joint resource shall be managed, provided that it has been asked to modify the easements. In other cases, it may be challenging for the holders of the grazing rights to reach an amicable agreement on the rules because there are too many properties involved. We have examples of cases involving 100-200 properties. In cases with a very large number of easement holders (such as Sistranda, with 200 parties), it will be almost impossible to reach an amicable agreement, so the solution is generally to request a land consolidation case.

When regulating grazing rights, the applicable legislation is Section 3-8 of the Land Consolidation Act on joint use (shared use arrangements), and potentially Section 3-10 on establishing associations and articles of association. Various joint activities, such as maintaining fences and roads, are regulated by Section 3-9. These types of cases are in the category that involves modifying easements pursuant to Chapter 3 of the Land Consolidation Act. A distinction is made between grazing arrangements pursuant to Section 3-8 and grazing associations pursuant to Section 3-10. Our material included everything from cases that set simple rules on usage under Section 3-8 to ones that established

[47] This was the case in Sistranda. Here the costs were reduced by NOK 285,000. This considerable reduction was due to the fact that the work involved in the land consolidation case was very limited in relation to the large number of parties affected.

associations and involved much more comprehensive rules under Section 3-10. These variations exist because the type of shared use arrangement or association should reflect the problem the parties want the land consolidation court to solve; cf. Section 6-9 of the Land Consolidation Act on substantive and geographic limits.

Moreover, our review of shared use arrangements for grazing found that the rules are generally relatively simple. Many cases that deal with several different topics take a very long time to process. Although reducing processing times has become a growing priority for land consolidation courts, cases can still last several years, particularly if they involve several different topics. This is an unfortunate situation. When an association and shared use arrangement cover several types of land use, more rules are required, but it also makes it possible to better coordinate the different uses of a given area. For example, it may be an advantage to coordinate hunting and hunting seasons with grazing periods, in order to prevent potential conflicts between the start of the small game hunting season and sheep gathering.

In other words, a more detailed and comprehensive settlement may be beneficial in cases where there are competing land uses (holiday cabins, grazing), and particularly if there is a high level of conflict. However, overly extensive and complex rules should be avoided unless absolutely necessary.

It may be appropriate to extend the geographic limits of the case, but in order to mitigate against the problem of long processing times, our general recommendation is for the parties to request a case involving one or few topics and for the land consolidation court, where possible, to avoid extending the scope of the case with additional topics. In the cases we analysed, the land consolidation courts were reluctant to expand cases to cover topics that were not closely related to the grazing agreement.

Another issue that can be time-consuming is determining the status of the ownership rights and easements, particularly in cases with very many parties. Even if the parties are in agreement, the land consolidation court has a duty to determine the ownership rights and easements in order to ensure a reliable basis for the changes made; cf. Land Consolidation Act, Section 3-13. This is to ensure adequate protection against losses; cf. Section 3-18. This is important, as it can prevent the parties from changing their minds during the case and thereby undermining the basis for the land consolidation settlement. We therefore believe that land consolidation courts should be cautious about implementing shared use arrangements without first clarifying the legal basis.

Vegetation surveys require expert assistance. In our selection of cases, six brought in outside experts. In these cases, the state paid through a special scheme whereby the Norwegian Institute of Land Inventory (now the Norwegian Institute of Bioeconomy Research) provided this service to the land consolidation courts without the parties incurring any expenses. This scheme was discontinued in 2006. The majority of the cases that we analysed were essentially resolved without the use of outside experts. Vegetation surveys are time-consuming and expensive, and with the revenues generated by the grazing industry today, they are hard to justify in view of the guarantee against losses in Section 3-18 of the Land Consolidation Act. Now that the parties have to pay for them, it is likely that they will be used very rarely in future cases.

The number of shared use arrangements processed by the land consolidation courts has risen in recent years. Road arrangements have been responsible for a large part of the increase. There hasn't been an equivalent rise in the number of grazing arrangements. We don't know why this is, but it may be because users of grazing rights are unfamiliar with the tools available under the Land Consolidation Act, or because their grazing associations already work smoothly. This chapter is part of a research project: Towards a Future for Common Grazing – rules, norms and cooperation in outlying grazing areas (FUTGRAZE). If users of grazing rights are not sufficiently familiar with the tools available under the Land Consolidation Act, this project will hopefully help to spread knowledge about the land consolidation courts' competence to establish rules for grazing areas.

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Prop. 101 L (2012-2013)

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HR-2017-331-A.

Appeal court

LG-2016-4594

Land consolidation court

JLHM-1969-17 Annolseter

15-197830REN-JSTE Osen

15-198450REN-JTYN Tynset øst beitelag

6/1985 Reinsnos

11/1989 Sandvik

0530-1995-0020 Lusæter

0006-1997-0037 Vestmarka

3/1998 Skåbu hyttegrend

6/1999 Ortnevik

1600-2000-0005 Brattlia

1600-2000-0043 Kjelsvollen

JTYN-2010-17 Båvola

JBER-2010-11 Erdal

JFLE-2010-35 Virak

1010-2011-0044 Tronvik og Hamre

JFOR-2012-3 Grøvlen

JTRD-2012-32 Sistranda

JVAG-2014-2 Lomseggen sameie

JBER-2015-198949 Fjellsbø søndre

JSTA-2015-198564 Kleivaland

JGOL-2018-111462 Auenhauglie stølssameige