



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF SAARIVUOMA SAMI VILLAGE v. NORWAY

(Application no. 2381/22)

JUDGMENT

Art 1 P1 • Control of the use of property • Inability of a Swedish Sami community to exercise reindeer grazing rights for about fifty years, across the border between Sweden and Norway, by virtue of the application of legislation by the Norwegian authorities • Interference “in accordance with the law”, in the public interest and proportionate • Supreme Court’s decision not to award compensation in case-circumstances did not render the interference disproportionate

Prepared by the Registry. Does not bind the Court.

STRASBOURG

3 March 2026

FINAL

03/06/2026

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Saarivuoma Sami Village v. Norway,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Saadet Yüksel, *President*,

Arnfinn Bårdsen,

Jovan Ilievski,

Péter Paczolay,

Stéphane Pisani,

Juha Lavapuro,

Hugh Mercer, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application (no. 2381/22) against the Kingdom of Norway lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by the Swedish Sami village Saarivuoma (“the applicant community”), on 17 December 2021;

the decision to give notice to the Norwegian Government (“the Government”) of the application;

the parties’ observations;

Having deliberated in private on 27 January 2026,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns complaints under Article 1 of Protocol No. 1 to the Convention and Article 14 of the Convention, relating to a situation in which the applicant community, a Swedish Sami village, had been prevented from exercising reindeer herding rights in Norway for a number of years, owing to the Norwegian authorities having applied legislation which did not reflect those rights.

THE FACTS

2. The applicant community is a Sami village (*sameby*) called Saarivuoma which is registered as an organisation and holds legal personality under Swedish law. It was represented before the Court by Ms A. Johnsen, a lawyer practising in Oslo.

3. The Government were represented by their Agent, Ms H. Busch, of the Attorney General’s Office (Civil Matters), assisted by Mr H. Vaaler, an advocate at the same office.

4. The facts of the case may be summarised as follows.

I. BACKGROUND

5. Sami reindeer herding across the modern border between Sweden and Norway has a long history, which may be summarised as follows.

- When the border between the two countries was drawn in 1751, the relevant treaty included an addendum – the Lapp Codicil (*lappekodisillen*) – dealing with, *inter alia*, cross-border reindeer herding.

- In 1883 legislation on Swedish-Norwegian cross-border reindeer herding (*felleslappeloven*) was enacted, in which yearly grazing time for Swedish Sami's reindeer in Norway was regulated.

- In 1919 a bilateral convention on reindeer grazing was concluded between Sweden and Norway. In addition to regulating grazing time, it regulated grazing areas.

- In 1949 a new convention was agreed upon. Changes were then made to, *inter alia*, the grazing areas.

6. The 1949 convention automatically expired after ten years and negotiations on a new convention took place throughout the 1960s. According to the Government, an important issue during the negotiations was how to determine the optimal use of the limited grazing resources, particularly in view of the limited access to winter pasture both in Sweden and Norway.

7. In 1972 a new convention was agreed upon. Further changes to grazing periods and areas were made, including a reduction by some 70% of the areas designated for reindeer herding by Swedish Sami – including the applicant community – in Troms County in Norway. The Swedish authorities considered at the time that the grazing areas granted in Norway under the new convention were fully sufficient for Swedish reindeer husbandry of the same magnitude as under the former conventions.

8. In Norway the 1972 convention was implemented by the 1972 Act on reindeer grazing in accordance with the convention of 9 February 1972 between Norway and Sweden on reindeer grazing (see paragraph 39 below). In the 1972 legislation the applicant community was given access to a grazing area in Troms County. The area to which it had access was later expanded by way of an amendment to the 1972 legislation that entered into force in 1985.

9. The 1972 convention automatically expired after thirty years. Negotiations between Sweden and Norway did not lead to the conclusion of a new convention. After the end of a three-year extension that was agreed upon during the negotiations, there has been no convention in place since 2005 (a new convention was signed in 2009, but never ratified).

10. In 2005 the Norwegian Parliament revised the 1972 legislation, which could no longer be based on the 1972 convention, and renamed it the Act on Swedish reindeer grazing in Norway and Norwegian reindeer grazing in Sweden (“the Cross-Border Reindeer Husbandry Act” – see paragraph 39 below). Although the Act no longer implemented the 1972 convention owing

to that convention's expiry, the revised Act nonetheless essentially entailed the unilateral extension by Norway of the regulations that had been in place under the 1972 convention as amended in 1985. The applicant community's grazing areas thus remained the same as they had been prior to 2005, and from 2005 onwards they were defined in administrative regulations under the revised Act (see paragraph 39 below).

II. THE DOMESTIC PROCEEDINGS

A. Institution of proceedings by the applicant community

11. The applicant community was of the view that it held rights to reindeer grazing in two areas in addition to the area to which it had access to under the legislation of 1972 and 2005 (see paragraphs 8 and 10 above, and 39 below; hereinafter "the contested areas").

12. On 23 June 2017 the applicant community issued a notice of proceedings to the Norwegian Government and to Statskog SF, which is a State-owned enterprise that owns the contested areas. In the notice it was stated that the defendants were not respecting the applicant community's herding rights in Norway. Specifically, it was contended that the applicant community held rights to reindeer grazing in the contested areas that had been established on the basis of private law, and yet those areas had not been included in the area defined for its use in the relevant legislation.

13. In their response to the notice, the Government submitted that any proceedings brought against them would be inadmissible as they had nothing to do with the applicant community's claims relating to property belonging to Statskog SF.

Statskog SF responded by stating that it would object to the admissibility of any proceedings brought against it, on the grounds that the applicant community would have no standing to bring such proceedings, because there was insufficient legal interest in obtaining a judgment about any private-law reindeer herding rights in an action involving Statskog SF.

14. On 9 February 2018 the applicant community brought proceedings in the Senja District Court against the Government and Statskog SF. The applicant community applied for a declaratory judgment, submitting that it had exclusive rights to reindeer herding in the contested areas by way of the private-law institution of consuetude/historical use (also described as "immemorial use" (*alders tids bruk*)). They also sought compensation for the losses that its members had suffered owing to having been refused reindeer grazing rights in those areas.

15. The Government objected to the admissibility of the applicant community's claim relating to reindeer herding rights in the contested areas. Statskog SF also signalled that it would object to the proceedings against it.

16. Following a Supreme Court decision on the admissibility of a similar case brought by another Sami village (Talma) against the Government (see paragraph 43 below), the latter withdrew their objections to the admissibility of the proceedings brought by the applicant community against them.

17. On 27 November 2018 the Senja District Court gave judgment and ruled in favour of the Government and Statskog SF, finding that the Cross-Border Reindeer Husbandry Act with the accompanying administrative regulations (see paragraphs 8 and 10 above, and 39 below) regulated where the applicant community could engage in reindeer grazing, irrespective of any rights it might have established under private-law.

18. On appeal to the Hålogaland High Court, objections were again lodged regarding the admissibility of the applicant community's action. In its decision of 17 July 2019, the High Court, gave weight to the Supreme Court Appeals Committee's decision of 27 July 2018 regarding the admissibility of the proceedings brought by Talma (see paragraph 42 below) and did not uphold the objections. Both the Government and Statskog SF appealed against the High Court's decision to the Supreme Court's Appeals Committee, which dismissed their appeals on 24 October 2019.

19. On 25 August 2020 the Hålogaland High Court went on to rule on the merits of the applicant community's claim. It upheld the District Court's judgment on essentially the same grounds as those that had been provided by the District Court.

B. The proceedings before the Supreme Court

20. The Supreme Court gave judgment on 30 June 2021.

1. Scope and outcome of the case before the Supreme Court

21. In its judgment, the Supreme Court unanimously declared the case inadmissible in so far as it had been brought against Statskog SF. It noted that the applicant community's claim was of a public-law nature, whereas Statskog SF had no public-law authority. Moreover, Statskog SF had in any event not contested the existence of herding rights in the contested areas, nor had it taken any stance as to who held those rights.

22. As to the case brought against the Government, the Supreme Court considered that proceedings concerning the existence and scope of the applicant community's private-law rights in the contested areas would have to involve other reindeer herders who had claimed to have established competing rights. The Supreme Court therefore found that the question that could be decided with operative effect in the course of the case before it was whether the Cross-Border Reindeer Husbandry Act (see paragraph 39 below), as an instrument of public law, precluded the applicant community from exercising any herding rights in the contested areas that had been established

on the basis of private law. The Supreme Court declared its action admissible, interpreting the applicant community's claim as encompassing that question.

23. In the judgment, a majority of four judges concluded, by way of a preliminary ruling, that the applicant community had established rights relating to herding (including, among other things, summer grazing) in the contested areas, based on consuetude/historical use, which were concepts of private law. On the merits of the case before it, the four judges also concluded that the Cross-Border Reindeer Husbandry Act did not preclude the applicant community from exercising those rights. However, they were split into two groups of two judges each as to why that was the case (see paragraphs 30-32 and 36 below, and paragraph 38 below, respectively).

24. The Government have informed the Court that, following the Supreme Court's judgment of 30 June 2021, the applicant community is no longer restrained from accessing the contested areas.

2. The historical background to the regulation of grazing rights

25. In the Supreme Court's judgment, the reporting judge opened by emphasising that the case was a difficult one because of historical events and decisions which had created an unfortunate situation and that it was no simple task for a judicial review to remedy that situation. The starting-point was that the reindeer herding industry was an important Sami cultural institution, and that the rights relating to those activities enjoyed special protection, under both domestic law and international conventions that Norway was bound by. References were made to domestic law, including Article 108 of the Constitution, concerning the protection of Sami interests, Article 27 of the United Nations' International Covenant on Civil and Political Rights, concerning the protection of ethnic, religious and linguistic minorities, Articles 6 and 14 of the International Labour Organization's Convention no. 169 concerning Indigenous and Tribal Peoples in Independent Countries, and the United Nations Declaration on the Rights of Indigenous Peoples from 2007.

26. Moreover, the reporting judge stated that there was broad consensus that there had been periods in history when Sami rights had been forced to give way to other interests. The case before the Supreme Court was not entirely one where the interests and needs of society at large had led to restrictions of reindeer grazing areas – it concerned instead conflicts between various interests within the reindeer herding industry – but there was no ignoring that those conflicts were at least partly due to the dispositions of the State, even though the State had also taken several actions to safeguard the interests of the industry.

27. In the latter context, the reporting judge considered that part of the reason why the situation had become complicated related to the fact that there had been a development in the view taken of the nature of the legal basis for the Sami's use of grazing land. While reindeer grazing had formerly been

considered a “tolerated use” of land, over time, it has become recognised as a right that enjoyed the same protection as other rights. A milestone in this development was reached in 1968 with the Supreme Court judgment Rt-1968-429 (the Altevåtn judgment) which recognised the rights of Sami reindeer herders based on long-term usage and customary practice. This judgment established that this usage was not merely based on “tolerated use” and something the state simply had allowed the Sami to do. The principle had since been expressed in the third paragraph of section 42 of the Reindeer Husbandry Act (see paragraph 41 below). According to the reporting judge, there were reasons to believe that earlier views of reindeer grazing as “tolerated use” of land had historically meant that the State had administered the herding areas based on what seemed practical and appropriate for reindeer herding as a whole, and to a lesser extent with regard to existing individual rights.

28. The reporting judge also provided a detailed overview of the background to the Cross-Border Reindeer Husbandry Act and its regulation of the disputed areas, including the various conventions that had been entered into throughout history (see paragraphs 5-7 above). He summarised the situation up to the initial expiry of the 1972 convention in 2002 (see paragraph 9 above) as follows:

“Briefly summarised, the primary purpose of the various conventions over the years has been to find practical solutions for different commercial interests. The rights of Swedish Sami have gradually been curtailed in favour of other interests. Little attention has been paid to the importance of the private-law rights of individuals. Since at least the 1972 Convention, the objective has essentially been to reconcile different interests within the reindeer herding industry.”

29. As to the situation from 2002 onwards, it was noted that, since no new convention had been introduced following the expiry of the 1972 convention, the relevant international legal agreement on cross-border reindeer herding between Sweden and Norway had once again become the addendum of 1751 to the border treaty between the two countries (see paragraph 5 above), which contained no rules relating to specific grazing areas or specific grazing periods. Instead of basing the administration of cross-border reindeer herding on such an “unknown and unpredictable” regulatory framework, the legislature had decided to extend the rules that had been in place since 1972, with later amendments. Consequently, in spite of technical adjustments, the content of the 1972 Act, with later amendments, had been retained by virtue of the Cross-Border Reindeer Husbandry Act since 2005 (see paragraph 10 above).

3. The reporting judge’s interpretation of the regulations in place

30. Turning to the interpretation of the Cross-Border Reindeer Husbandry Act and how it related to any reindeer grazing rights that had been established on a private-law basis, the reporting judge explained that that Act did not

specify any private-law rights of Swedish Sami reindeer herders in Norway. It was a regulatory act pursuant to public law. It was also clear from its wording that it exhaustively regulated Swedish reindeer grazing in Norway. The intention to do so was also apparent from the preparatory work to the Act.

31. However, the reporting judge went on to examine various other statements in the preparatory work (cited in paragraph 40 below). He indicated that it was not entirely clear how those statements were to be understood. The preparatory work did, nevertheless, assume that the public-law regulations would not as such apply when the existence of private rights had been determined by a judgment. This led the reporting judge to infer the existence of a particular legal arrangement that could provide for an additional exception to those set out in section 1 of the Act (see paragraph 30 above), namely situations where the Sami had previously obtained court judgments which acknowledged that they had established specific rights on the basis of private law. The reporting judge stated that he was not aware of similar arrangements from other areas of law, but that the arrangement in the Cross-Border Reindeer Husbandry Act had to be viewed in the light of the very special history of how it had come into being.

32. Taking into account, *inter alia*, the considerations set out by the Supreme Court's Appeals Committee in the decision relating to the admissibility of the proceedings brought by Talma (see paragraph 18 above), the reporting judge concluded that the action brought by the applicant community was one that could fulfil the criteria for the legal arrangement that he had identified in the preparatory work to the Cross-Border Reindeer Husbandry Act. Since the applicant community was preliminarily found to have established grazing rights in the contested areas on a private-law basis (see paragraph 23 above), its claim therefore succeeded. However, the reporting judge emphasised that the authorities would still have the right to regulate reindeer grazing in the area in the future, just as the exercise of any right could be regulated by law. This would, however, require a different legal basis other than that of the Cross-Border Reindeer Husbandry Act.

4. The applicant community's claim for compensation

33. The reporting judge was of the opinion that the applicant community's claim for compensation should be dismissed, finding that the Government were not liable on grounds of negligence or principles relating to expropriation enshrined in the Constitution and Article 1 of Protocol No. 1 to the Convention.

34. With regard to the principles relating to expropriation, the reporting judge noted that the applicant community's herding rights had not been expropriated, but had only been restricted. In such cases, the applicable law stipulated that an obligation to compensate only arose when there had been

significant interference that, on the basis of an overall assessment, would be unreasonable to accept.

35. In applying that rule to the facts of the case before the court, the reporting judge distinguished between the period from 1972 to 2005 and that from 2005 until the Supreme Court’s judgment. In the first period, it had been a matter of legislation based on a Swedish-Norwegian convention (see paragraphs 7-8 above), and it would have been more natural for the applicant community to turn to the Swedish authorities if that convention had not appropriately attended to the interests of the Swedish Sami. From 2005 onwards, when no such convention had existed (see paragraphs 9-10 above), it was evident that the Norwegian State had limited the applicant community’s exercise of rights to reindeer herding. This had, however, been a matter of continuing the limitations that had previously been based on the 1972 convention, the aim of which had been to regulate access to herding areas in Norway during the summer months. That access had been guaranteed to the applicant community by way of the legislation so that the grazing land to which it had access in summer would suffice for the number of animals that it could keep on the basis of the grazing opportunities available in Sweden during the winter months.

5. *Other judges’ opinions*

36. One of the other judges on the panel agreed with the assessment of the reporting judge.

37. Another judge considered that the applicant community had not proved its alleged rights in the contested areas either by way of an agreement or by obtaining a judgment in proceedings against a third party who had opposed its alleged rights. According to this judge, this was what domestic law required. Among other things, she pointed out that the relevant parts of the preparatory work (cited at paragraph 40 below) referred to “specific” private rights, which, in her assessment, could only be established in proceedings between parties who disagreed on what rights existed in respect of ownership or other uses of a property – not in proceedings instituted by one party against the Government. Regardless of what rights might have existed, the authorities had not acted contrary to the legislation, and there was accordingly no basis for compensation. The judge also emphasised that, even if the applicant community did hold grazing rights in the area, those rights could be regulated on the basis of relevant considerations such as ensuring a sustainable use of the grazing resources and the overall interests of the reindeer industry. Although that judge’s vote, was based on different reasoning to that of the reporting judge (see paragraphs 30-32 above), who had been joined by one further judge (see paragraph 36 above), it meant that there was a majority of three judges against awarding compensation.

38. The other two judges agreed with the reporting judge that the applicant community should succeed in its claim to have its grazing rights

acknowledged by way of the proceedings that were under consideration, but on a different legal basis. They considered that it could not have been the legislature's intention that the legislation of 1972 and 2005 should set aside grazing rights until such rights were acknowledged by the courts. They therefore disagreed with the reporting judge about the existence of the "legal arrangement" which he had inferred from the preparatory work to the Cross-Border Reindeer Husbandry Act (see paragraphs 31-32 above). They were instead of the view that the applicant community had held grazing rights in the contested areas that had not been respected by the authorities, in a manner which had borne clear similarities to expropriation. They pointed out that the 2005 legislation had been in force for sixteen years and if one took into account the previous period, when a Swedish-Norwegian convention had been in place, the applicant community had been prevented from exercising its grazing rights for about 50 years. Had the applicant community attempted to exercise its rights in the contested areas, it would have run the risk of being charged fees, being fined or forced to move its animals, or being ordered to remove its cabins. In the view of those judges, it would be highly unreasonable to require the applicant community to accept the regulation of herding rights as set out in the legislation, and there were therefore grounds for awarding compensation.

RELEVANT LEGAL FRAMEWORK

A. Domestic law

39. Section 1 of the Act on Swedish reindeer grazing in Norway and Norwegian reindeer grazing in Sweden ("the Cross-Border Reindeer Husbandry Act" (*grensereinbeiteloven*)) – which was originally enacted in 1972 (see paragraph 8 above), but later amended, renamed and revised, most importantly in 2005 (see paragraph 10 above) – read at the time of the Supreme Court's judgment of 30 June 2021 as follows:

"The purpose of this law is to provide a basis for the sustainable development of Norwegian Sami reindeer herding and to ensure stable and predictable conditions that contribute to sustainable cross-border reindeer herding, until a new convention between Norway and Sweden on reindeer herding can come into force.

Swedish Sami reindeer herding in Norway may only take place in the grazing areas determined by the King through regulation. The grazing areas shall be determined on the basis of the previous convention of 9 February 1972 between Norway and Sweden on reindeer grazing ... The King may make adjustments to the areas if Norwegian reindeer herding districts are prevented from using winter pastures in Sweden to which they have been entitled under the convention. Such adjustments may also be made if Norwegian and Swedish reindeer herders agree on a different use of the grazing areas."

The Cross-Border Reindeer Husbandry Act is accompanied by the Regulations on grazing areas for Swedish reindeer in Norway of 21 June 2005

(*forskrift om beiteområder for svensk rein i Norge*), which define the grazing areas and periods.

40. The preparatory work to the Cross-Border Reindeer Husbandry Act, as revised in 2005 (*Ot.prp.nr. 75 (2004-2005)* pages 3 and 6), included the following statements:

“There is no disagreement that the rights of the Swedish Sami villages must be respected. However, the Norwegian side has not been able to accept the type of confirmation of the legal status that the Swedish side has proposed. What the Norwegian side has proposed is a provision that explicitly states that if, by way of a final and enforceable judgment, a party that engages in cross-border reindeer herding is able to establish grazing rights that go beyond the provisions of the convention, the judgment must take precedence over the convention. This will ensure that a new convention will not deprive or weaken any party’s legal claim to grazing areas outside of the convention areas. It must be the courts that determine the private-law rights that exist and what consequences the previous reindeer herding conventions may potentially have had in connection with this.

...

If any reindeer-herding Sami consider their rights to be infringed, the courts will be able to consider this and to establish the location and scope of any such rights. In order to establish such rights, a court hearing will be required because the Lapp Codicil does not identify specific private rights.”

41. Section 42 of the Act on reindeer husbandry (“the Reindeer Husbandry Act” (*reindriftsloven*)) of 15 June 2007 provides the following:

Reindeer grazing district

“When dividing the Sami regional reindeer grazing areas into reindeer grazing districts, the Reindeer Husbandry Board shall take customary use as its starting-point while emphasising that reindeer grazing districts should be natural and appropriate from an operational point of view.

A district shall preferably include all the seasonal pastures for the reindeer herders who are connected to the district. Where appropriate, the seasonal pastures may be distributed over several districts.

The division into districts does not prevent cooperation between reindeer herders across district boundaries, as long as such cooperation does not affect the rights of other reindeer herders. Nor does the division into districts prevent the use of pasture in another district when there is special legal basis.”

B. Relevant case-law

42. On 27 July 2018 the Supreme Court gave a decision in proceedings brought by another Swedish Sami village, Talma, against the Government and Statskog SF. Talma claimed that it had obtained reindeer herding rights in Norway on a private-law basis and that the members of that village had been prevented from exercising those rights. In that case, both the Government and Statskog SF had objected to the admissibility of Talma’s claims. On 27 February 2018 the Borgarting High Court had declared the

proceedings brought by Talma against the Government inadmissible, but those brought against Statskog SF admissible. Further to appeals lodged by both Talma and Statskog SF, the Supreme Court declared the proceedings against both the Government and Statskog SF admissible.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

43. The applicant community complained that it had been unlawfully deprived of its reindeer grazing rights in the contested areas from 1972 until the Supreme Court's judgment of 30 June 2021, without any compensation, in violation of Article 1 of Protocol No. 1 to the Convention, which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

44. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

(a) The applicant community

45. The applicant community maintained that it had been deprived of its possessions in the form of its reindeer herding rights in the contested areas, as the impact of the measures applied by the domestic authorities to exclude it from exercising those rights throughout the years had been so profound as to make them comparable to an expropriation.

46. The applicant community further submitted that that interference with its property rights had not met the requirement of lawfulness. While the geographical restrictions had been clear, the consequences of the applied legislation for its rights had not been foreseeable. The implications of the various cross-border reindeer grazing conventions for private-law rights had

been a sensitive issue during the negotiations, and the issue had deliberately been left unsolved in those conventions. As late as in 2005, in the preparatory work to the amendments to the Cross-Border Reindeer Husbandry Act, the Government had stated that a final and enforceable judgment establishing grazing rights that went beyond the provisions of the convention would take precedence over the convention.

47. The applicant community further maintained that that interference with its rights had been in neither the public nor the general interest, and had not been proportionate. It disagreed with the Government's assertion and the Supreme Court's observation that the limiting factor for its reindeer herd had been limited winter pasture areas in Sweden, and submitted an expert opinion in that connection. It also submitted that, by being excluded from the contested areas, it had not only lost access to grazing land, but also the possibility to make use of other rights included in the reindeer herding right, such as the right to construct the necessary huts and fences, the right to fish, hunt and collect firewood.

48. Finally, the applicant community submitted that the Supreme Court had been wrong to deny it compensation in respect of the losses which it had suffered and which it had described before that court. It also submitted a 2023 expert report which indicated that those losses could be quantified at over 8 million euros.

(b) The Government

49. The Government submitted that, in its judgment of 30 June 2021, the Supreme Court had made a thorough and nuanced assessment of the case, on the basis of which it had recognised that from that point on the domestic law did not prevent the applicant community from exercising its grazing rights in the contested areas, and had decided not to award any compensation. There were no reasons for departing from its conclusions. In the Government's view, the fact that the applicant community had been free to exercise its reindeer herding rights in the contested areas after the Supreme Court's judgment showed that these rights had never been expropriated, and that the restrictions in the domestic law had merely entailed a control of their use, regulating the applicant community's access to the area.

50. The Supreme Court had also struck a fair balance when it had decided not to award any compensation for the interference in question. A key consideration in that regard was the fact that the limitation on grazing in the contested areas had not caused the applicant community any monetary loss. The Swedish authorities had concluded on several occasions that the regulation would not affect the number of reindeer the applicant community could rear, as the summer pastures in Norway accessible to it were adequate when assessed against the limiting factor in the applicant community's reindeer herding operations, namely the limited available winter pastures in Sweden. During the proceedings before the Norwegian courts the

Government had repeatedly requested the applicant community to provide evidence, if necessary from an expert witness, to document that the regulation in question had led to a loss for them, but no such corroborating evidence had ever been presented.

2. *The Court's assessment*

(a) **Applicability of Article 1 of Protocol No. 1 and the existence of interference**

51. The Court notes at the very outset that the dispute in the case, as it was argued before the Supreme Court, pertained to whether the applicant community had any private-law rights in the disputed areas in the northern part of Norway. The Court further notes that, in its judgment of 30 June 2021, the Supreme Court made clear that the applicant community did indeed have such private-law rights pertaining to reindeer husbandry, including, among other things, grazing rights (see paragraph 25 above). Those private-law rights had been acquired by “immemorial use” since the late seventeenth century, in accordance with unwritten principles of private law as adapted to the particular Sami context in the Supreme Court’s case law, and hence they were rights that long predated the contested legislation of 1972 and 2005 (*ibid.*).

52. Moreover, in its judgment of 30 June 2021, the Supreme Court noted that the reindeer herding industry was an important Sami cultural institution, and that rights relating to this activity enjoyed special legal protection. In this connection, the Court considers that the present case concerns one important aspect of human rights law, namely the cultural rights of indigenous peoples, as protected by several other human rights instruments. This was also expressly acknowledged by the Supreme Court with reference to both domestic law and a number of international treaties that Norway is bound by, in particular Article 27 of the United Nations’ International Covenant on Civil and Political Rights and Articles 6 and 14 of the International Labour Organization’s Convention no. 169 concerning Indigenous and Tribal Peoples in Independent Countries (see paragraph 25 above).

53. The case that was brought before the Court does not concern the existence the private law rights pertaining to reindeer husbandry, which is no longer in dispute between the parties. Nor was there any dispute between the parties that the private-law rights in question qualify as “possessions” within the meaning of Article 1 of Protocol No. 1 to the Convention. The Court shares this assessment, in noting the Supreme Court’s emphasis on the particular historic, cultural and legal context relevant to the indigenous Sami people.

54. As to whether there was an interference with these rights, the Court emphasises that, by virtue of the contested legislation from 1972 and 2005 on cross-border reindeer herding, the applicant community had been prevented from making use of its private-law rights in the contested areas up until the

Supreme Court’s ruling in 2021, that is, for a period of some fifty years. Any attempts to do so during that period would have been effectively stopped by the Norwegian authorities, including through the imposition of fees and fines and by the forced removal of animals and cabins. There was therefore an interference with the applicant community’s possessions in the present case.

55. The Court recalls that Article 1 of Protocol No. 1 to the Convention contains three distinct rules that may apply to such interferences (see, for example, among many authorities, *NIT S.R.L. v. the Republic of Moldova* [GC], no. 28470/12, § 245, 5 April 2022). In the present case, the parties disagreed as to which of the three rules was applicable: the applicant community submitted that the Government’s actions had meant that throughout the period in which the applicant community had effectively been barred from exercising its herding rights in the contested areas because of the impugned legislation it had been “deprived” of its possessions within the meaning of the second sentence of the provision’s first paragraph (the second rule), whereas the Government argued that the rule which should be applied was the “control rule” in the second paragraph (the third rule).

56. The Court observes that the applicant community had been completely prevented from exercising its grazing rights for about fifty years. This has partly benefitted Norwegian Sami communities, who had gained improved access to the contested areas as an intended consequence of the applicant community’s exclusion. Nonetheless, as it is clear that the applicant community’s rights in respect of the contested areas were ultimately acknowledged and restored by virtue of the Supreme Court’s judgment of 30 June 2021 and that the exclusion of the applicant community from the contested areas was brought to an end by that judgment, the Court finds that the situation complained of did not amount to a “deprivation” of its private-law rights, but rather constituted “control of the use” of its property within the meaning of the second paragraph of Article 1 of Protocol No. 1 to the Convention (compare *Chassagnou and Others v. France* [GC], nos. 25088/94 and 2 others, § 74, ECHR 1999-III; *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 46, ECHR 1999-V).

(b) Compliance with Article 1 of Protocol No. 1

(i) General principles

57. The Court has set out general principles of relevance to the present case in many previous cases, such as *G.I.E.M. S.R.L. and Others v. Italy* ([GC], nos. 1828/06 and 2 others, §§ 292-93, 28 June 2018).

58. For the purposes of the present analysis, the Court reiterates that an essential condition for an interference with a right protected by Article 1 of Protocol No. 1 to the Convention to be compatible with that provision is that it should be lawful. The existence of a legal basis in domestic law does not suffice, in itself, to satisfy the principle of lawfulness. In addition, the legal

basis must have a certain quality, namely it must be compatible with the rule of law, which is inherent in all the Articles of the Convention (see, for example, *Bélané Nagy v. Hungary* [GC], no. 53080/13, § 112, 13 December 2016, and the references therein), and it must provide freedom from or guarantees against arbitrariness. The principle of lawfulness also presupposes that the applicable provisions of domestic law are sufficiently accessible, precise, and foreseeable in their application (see *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, §§ 96-97, 25 October 2012).

59. As to the notion of “foreseeability”, its scope depends to a considerable degree on the content of the instrument in issue, the field it is designed to cover and the number and status of those to whom it is addressed (see, *mutatis mutandis*, *Sud Fondi S.r.l. and Others v. Italy*, no. 75909/01, § 109, 20 January 2009). In particular, a rule is “foreseeable” when it affords a measure of protection against arbitrary interferences by the public authorities (see *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 143, ECHR 2012). Similarly, the applicable law must provide minimum procedural safeguards commensurate with the importance of the principle at stake (see, *mutatis mutandis*, *Sanoma Uitgevers B.V. v. the Netherlands* [GC], no. 38224/03, § 88, 14 September 2010).

(ii) *Application of these principles to the present case*

(α) Whether the interference was lawful

60. Turning to the instant case, the Court notes that the “laws enforced” within the meaning of Article 1 of Protocol No. 1 included the provisions expressly set out in the Cross-Border Reindeer Husbandry Act and the accompanying regulations (see paragraph 39 above). That legislation had, in essence, been in place since 1972, and created the formal basis in domestic law for the control of the applicant community’s property rights relating to reindeer herding, including in the contested areas.

61. With respect to the quality of the law applied to the applicant community’s situation, the Court considers that the legislation that regulated grazing in the contested areas was sufficiently clear in its terms: the applicant community was denied access to those areas for grazing purposes. The reporting judge in the Supreme Court likewise noted that the Cross-Border Reindeer Husbandry Act was intended to constitute an exhaustive regulation of the matter and that its terms did not allow for any derogation (see paragraph 30 above).

62. The applicant community argued that the legislation that had applied to its grazing rights had fallen short of the lawfulness requirement because, while the geographical restrictions of its rights had been clear, the consequences of the applied legislation for its private-law rights had not been foreseeable.

63. In this connection, the Court observes that the Supreme Court inferred the existence of a particular “legal arrangement” from the relevant statements in the preparatory work for the relevant legislation (see paragraph 40 above). This “legal arrangement” involved regulatory legislation that “set aside” private-law rights until the right holders had successfully brought proceedings to have their rights acknowledged (see paragraphs 30-32 and 36 above, and paragraph 38 above, respectively). In other words, the Supreme Court held that the Sami villages could bring proceedings to have their private-law grazing rights recognised over areas other than those explicitly allocated to them in the relevant legislation.

64. While the above interpretation provided by the Supreme Court seems to be rather unique in the Norwegian legal system, the Court reiterates that the requirement of foreseeability cannot be read as outlawing the gradual clarification of the rules through judicial interpretation from case to case, provided that the resultant development remains consistent with the essence of the provision in question and could reasonably be foreseen (see *The J. Paul Getty Trust and Others v. Italy*, no. 35271/19, § 297, 2 May 2024, and *Kopytok v. Russia*, no. 48812/09, § 34, 15 January 2019).

65. Consequently, the Court accepts that the interference with the applicant community’s property rights had been “in accordance with the law”.

(β) Whether the interference pursued a legitimate aim

66. The Court is further satisfied that the interference with the applicant community’s grazing rights was in the public interest. Namely, as explained by the Government, it sought to distribute limited amounts of land to various Sami groups in order to ensure their survival and their unique way of life.

(γ) Whether the interference was proportionate to the legitimate aim pursued

67. Turning to whether the interference complained of was disproportionate, the Court notes that the thrust of the applicant community’s complaint in this respect concerned the Supreme Court’s decision not to award it compensation for the period between 1972 and 2021 during which it had been unable to use the contested areas.

68. In this connection, the Court reiterates that where a measure controlling the use of property is in issue, the lack of compensation is a factor to be taken into consideration in determining whether a fair balance has been achieved but is not of itself sufficient to constitute a violation of Article 1 of Protocol No. 1 (see *Depalle v. France* [GC], no. 34044/02, § 91, ECHR 2010). In the present case, the Court notes that the Supreme Court had put forward certain reasons for not awarding any compensation in the case, which the Court does not deem unreasonable (see paragraph 35 above). The Court would add that for the period between 1972 and 2005, while the

legislation was based on an international treaty, and when the agreed division of available land for grazing had been the result of ongoing international negotiations between Norway and Sweden, it could hardly be argued that the Norwegian State bore all the responsibility for the fact that the applicant community had been denied access to the contested areas. As regards the period after 2005, when in the absence of any further agreement the Norwegian State decided to prolong the arrangement as agreed in 1972, it is unclear why the applicant community waited until 2018 to bring court proceedings to have its grazing rights recognised.

69. Moreover, the Court notes that the allocation of grazing areas and times under the existing legal framework proceeded on the assumption that the summer pasture in Norway allocated to the applicant community had been sufficient to sustain the number of animals that it could reasonably keep in view of the limited available winter pasture it had available in Sweden (see paragraph 35 above). The applicant community contested this assumption, submitting an expert report in support of its claim (see paragraph 47 above). In addition to not being in a position to deal with the allegations of erroneous assessment of facts by the domestic courts, the Court notes that the applicant community does not seem to have adduced this evidence in the domestic proceedings.

70. Finally, the Court cannot but note that, apart from making a general claim that it had suffered pecuniary losses as a result of its inability to use the contested areas, in the proceedings before the Supreme Court, the applicant community never submitted any sort of concrete evidence, let alone calculations, in respect of the damage actually suffered. The fact that the applicant community submitted an expert opinion on such losses in the proceedings before the Court (see paragraph 48 above) can thus not put right its failure to do so before the competent domestic courts.

71. Against that background, the Court does not find any grounds for considering that the decision of the Supreme Court not to grant compensation to the applicant community rendered disproportionate the interference with its right to the peaceful enjoyment of its property under Article 1 of Protocol No. 1 to the Convention.

(δ) Conclusion

72. In the light of the above considerations, the Court concludes that there has been no violation of Article 1 of Protocol No. 1 to the Convention.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

73. The applicant community complained that the application of the Cross-Border Reindeer Husbandry Act and the accompanying regulations in a manner interfering with its rights under Article 1 of Protocol No. 1 to the Convention had entailed discrimination on the grounds of national origin and

association with a national minority, contrary to Article 14 of the Convention, which reads as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

74. The Government maintained that there had been no difference in treatment on grounds of nationality as the Cross-Border Reindeer Husbandry Act applied equally to Swedish and Norwegian Sami. In the alternative, with reference to the Supreme Court’s considerations to the effect that there had also been and still were significant restrictions on Norwegian reindeer owners, they argued that any difference in treatment had had an objective and reasonable justification. There had also not been any discrimination against the applicant community on the grounds of “association with a national minority” as the applicant community had had its grazing rights acknowledged by way of the domestic proceedings and, in some ways, Sami rights enjoyed stronger protection than those of non-Sami people because of, among other things, the protection guaranteed by international law.

75. The applicant community argued that its exclusion by the domestic authorities from the contested areas and the allocation of those areas for Norwegian reindeer herding reflected the outdated view that reindeer herding was a matter of “tolerated use” of land and not one of private-law rights, which amounted to discrimination against the Sami as an ethnic minority. Furthermore, the applicant community had been discriminated against as Swedish because the Norwegian authorities had wanted to limit Swedish Sami reindeer herders’ access to Norwegian areas owing to conflicts with Norwegian agriculture and forestry interests, and with the interests of Norwegian Sami reindeer herders. The applicant community also pointed out that Norwegian reindeer herders were subject to domestic legislation in which it was made clear that public-law regulation of reindeer districts did not prevent access to areas by virtue of other private-law bases (see section 42 of the Reindeer Husbandry Act, cited at paragraph 41 above), whereas the applicant community, falling under the relevant cross-border legislation (see paragraph 39 above), had had to have recourse to the domestic courts in order to have its reindeer herding rights in Norway recognised, as they had been in the Supreme Court’s judgment in its case.

76. The Court notes that the complaint under Article 14 of the Convention relates to applicant community’s substantive rights under Article 1 of Protocol No. 1 to the Convention. In considering that complaint it must necessarily take account of the fact that the applicant community’s legal position with regard to rights in the contested areas was effectively settled by the Supreme Court in its judgment of 30 June 2021. In the light of that judgment, the Court does not consider that the application discloses any appearance of the applicant community having been treated differently from

a person or a group in a relevantly similar position, either on grounds of nationality or of association with a national minority (see *Bakirdzi and E.C. v. Hungary*, nos. 49636/14 and 65678/14, §§ 49 and 50, 10 November 2022).

77. In view of the foregoing, the Court considers that the complaint under Article 14 of the Convention is manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected pursuant to Article 35 § 4.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning Article 1 of Protocol No. 1 to the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention;

Done in English, and notified in writing on 3 March 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Saadet Yüksel
President