ACQUISITION OF REAL PROPERTY AND STATE APPROVAL (CONCESSION)

BY

THOR FALKANGER

© Stockholm Institute for Scandianvian Law 1957-2009

I. INTRODUCTION

1. *Presentation of the Concession System*

In 1888 the National Assembly in Norway passed an Act on citizenship. Somewhat surprisingly, this Act also included a section 9 dealing with real property:

> Without permission, given by the King, or a body empowered by him, real property in the realm can hereafter with full legal effect be acquired only by Norwegian[1] citizens or corporations, foundations or companies with limited liability whose board of directors has its domicile in Norway and consists of Norwegian citizens only. The same applies to rights of user of real property ....

Hereby a new principle was introduced in the Norwegian legislation. The principle has proved to have great staying power and has gradually become one of the basic elements of real property law in Norway today. This system of state permissions (concessions) concerns not only the transfer of real property. When a concession is applied for, the competent administrative body may grant the concession on certain conditions, some of which may be prescribed in formal law, while others are derived from loosely formed rules of law, giving the competent body wide discretionary powers in this respect. Thus the State has been given an instrument that enables it to direct or at least influence the utilization of real property. There are, of course, a number of other instruments in this sector, notably the planning and building law, which may be very effective. They are, however, characterized by being frameworks—though it must be admitted that they sometimes give the owner so little freedom that they could be described as detailed regulations. The conditions for granting a concession may also represent a framework, but there is always the possibility of imposing duties to act in a specific way.[2] Finally, it should be noted that a different set of rules has been linked with the concession system: When a transfer of property requires concession, the State and/or the municipality (in which the property is located) has in principle a right of pre-emption. The term pre-emption has to be understood in a broad sense inasmuch as the right

[1] At that time and up to 1905, Norway was in union with Sweden, and also Swedish citizens, corporations etc. were then exempted from the permission requirements.

[2] E.g., using the property for a defined purpose: for farming, for industry of a particular kind, with Norwegian labour during the construction stage, etc.

© Stockholm Institute for Scandianvian Law 1957-2009

arises also when the transfer is not based upon a regular sales contract, but comes about through, say, inheritance or a forced public sale.

In this paper, the emphasis will be on the rules as to when a concession is required today (section II below). First of all (II.1), it is necessary to examine the legal effects of the concession requirement: For example, is the transfer invalid before the concession is given? Or is it invalidated when a concession is refused? Thereafter, the main rules and the most important exceptions will be dealt with (II.2–4). Not only acquisition of ownership, but also rights of a more limited character, may require a concession; a survey of the relevant rules is given in section III. This is followed by an outline of the procedure when deciding on an application, and in particular some of the questions related to conditions for a concession (section IV). In order to make the regulations reasonably "watertight" it is necessary to let the concession requirements include the transfer of shares in a limited company; it would be too easy to circumvent the rules if there was freedom to buy shares in a company whose property cannot be acquired directly without a concession. The rules, which have caused a lot of problems in respect of companies quoted on the stock exchange, are briefly mentioned in section V. The right of pre-emption is as indicated a kind of appendix to the concession system which in this context justifies a few words only (section VI).

The discussion of the present rules should, however, be seen in a historical perspective (I.2).

2. *The Development of the Concession System: The Current Legislation*

The Act of 1888 was motivated partly by a fear of foreign interests. In a period of rather harsh imperialism it was felt that, by invoking alleged principles of international law, foreigners owning property in Norway might obtain protection from their national governments. But also more practical day-to-day arguments were used; references were made, *inter alia*, to the unfortunate misuse of forest properties by foreigners, and to problems connected with Finnish citizens immigrating to Norway.

In 1903 the concession area was extended to cover mines, and shortly thereafter, in 1906, also to waterfalls. The Act of 1906 was a spontaneous reaction to newspaper information about the extent to which foreign investors had bought or negotiated options to buy waterfalls. Protection against foreign influence over resources of national importance was, however, only part of the underlying philosophy: Waterfalls were considered so essential for the future national economy that acquisition even by Norwegian corporations was made subject to the concession requirements. In the latter respect the 1906 Act is a

© Stockholm Institute for Scandianvian Law 1957-2009

turning point in the development of the concession system: In order to give the State control over the use of a vital resource which cannot be expanded or replaced, there has from then on been legislation imposing the concession requirement on Norwegian nationals as well as foreigners. However, as will appear, this does not necessarily mean that the rules are the same for the two categories.

After an interim period during which the 1906 Act covered waterfalls, mines and forests, a more permanent legislative period commenced with an Act of 1909 relating to forests, and another Act of the same year relating to waterfalls, mines and other real property. The latter was replaced in 1917 by an Act which is still in force—though it has been amended a number of times. The scope of this piece of legislation is indicated by its popular name, the Industrial Concession Act, for which the Ministry of Industry is the responsible administrative body.

The Act of 1909 regarding forests was supplemented in 1920 by an Act on cultivated land, and both Acts were the responsibility of the Ministry of Agriculture.

The overall legislative structure[3] was clearly unsatisfactory. An amalgamation together with an up-dating of substantive as well as procedural rules appeared to be the sensible approach. However, in 1974 only a partial revision concerning the Acts under the Ministry of Agriculture was implemented. The main results were that the Act of 31 May 1974 on Concession and Public Pre-emption in Respect of the Acquisition of Real Property (the Concession Act) repealed the 1909 and 1920 Acts, and now appears as the general law on concession, under the auspices of the Ministry of Agriculture. Questions in respect of waterfalls and mines are—as indicated above—still to be dealt with under the 1917 Act. An important feature is the public right of pre-emption, which was introduced in the Act relating to forests of 1909 and thereafter has been gradually broadened as regards its scope of application. The 1974 Act is an extension of this tradition, and is also a consolidation inasmuch as rules on public right of pre-emption in other Acts have been harmonized with and incorporated into this Act.

When construing Norwegian statutes the courts are entitled to study the documents etc. leading up to the enactment in question, and considerable weight is attached to pronouncements therein. Among such relevant *preparatory works* (*travaux préparatoires*) one will typically find recommendations from a Royal Commission, the Government Bill to Parliament, the report by the Parliamentary Committee to Parliament, as well as the Parliamentary debates. In respect of the current

[3] In addition there were some minor concession Acts, concerning bogs (1913), limestone (1914), mountain areas (1915) and quartz (1949). The Acts for lime and quartz are still valid.

© Stockholm Institute for Scandianvian Law 1957-2009

concession rules the relevant documents are quite voluminous, due to the many enactments and amendments, with new legislation to a great extent building upon the old rules.[3a]

II. THE CONCESSION REQUIREMENT: TRANSFER OF OWNERSHIP

1. *What are the Legal Effects of the Concession Requirement?*

The natural starting point is a discussion of the legal effects of a transfer being subject to the concession rules.

The phrase used in the 1888 Act, that no one can "with full legal effect" acquire real property unless a concession is given, has been repeated in many of the following enactments, and is still found in the 1917 Act. In the 1974 Act the wording has been changed: Real property cannot be acquired "without" concession.

A further analysis of the Acts shows, however, that neither phrase shall be construed as rules on validity. For example: A contract of sale to which the 1974 Act is applicable is not invalid until concession is granted, nor is it invalidated if concession is denied. But from this transaction an obligation arises to apply for concession. If this is not done, or an application is turned down, the owner (here: the buyer) has to transfer the property to the seller, or to a third party who either needs no concession or to whom a concession may be given. Failing this, the Ministry may order the property sold at a public auction in accordance with the rules for forced sales. Such a sale is for the account and at the risk of the buyer. The authorities may, e.g., have denied concession because the price is considered to be too high (see section V), so the price obtained at the auction will for this and other reasons tend to be lower; the difference between the two prices is the loss borne by the first buyer.

Thus, as between the seller and buyer the agreement is binding. The buyer cannot cancel the agreement or plead frustration on discovering that the transaction falls within the concession rules, or on experiencing that a concession is denied or is given on conditions which are burdensome from his point of

[3a] The legal writings of interest are reflected by the above: Comparatively old books or articles may still be useful. But here there will merely be mention of some books directly related to the law of today: *Om lov om erverv av fast eiendom* (On the Act on the Acquisition of Real Property), 6 lectures published by Den Norske Advokatforening, Oslo 1975, T. Austenå, *Konsesjonsreglane for fast eigedom* (The Concession Rules for Real Property), Oslo 1978, T. Falkanger, *Eierrådighet og samfunnskontroll* (Ownership and State Control), 3rd ed. Oslo 1986, pp. 71–105, and Ø. Knudsen, *Konsesjons- og forkjøpsrett* (The Law of Concession and Pre-emption), Oslo 1980. On the Act of 1917 the commentary by O. Amundsen, *Lov om erhvervelse av vandfald, bergverk og anden fast eiendom* (The Act on the Acquisition of Waterfalls, Mines and Other Real Property), Christiania 1918, is of interest also to-day.

© Stockholm Institute for Scandianvian Law 1957-2009

view. There may be exceptions to this strict rule, but only in very special circumstances, e.g. when the seller has given misleading information on matters of relevance for the concession question. What happens frequently, however, is that there are specific contract clauses regulating the risk inherent in the concession procedure, e.g. that the contract shall be considered null and void if concession is denied or not granted within a specified period.[4]

2. *When Is Concession Necessary?*

This question is dealt with on the basis of the 1974 Act. Some of the aspects of the 1917 Act are briefly outlined in II.3. Here it is sufficient to mention that the 1974 Act does not apply to the acquisition of waterfalls and mines which are subject to concession in accordance with the 1917 Act.

(a) *The general rule* is extremely wide. Sec. 2 states that "real property cannot be acquired without concession granted by the King".[5] "Real property" is real property of any kind—regardless of size, value, and location. Whether it is a property with buildings or not is also irrelevant. And "acquisition" is also all-embracing: It covers sale, gift, barter, inheritance (in accordance with a will or the intestate rules), voluntary or compulsory auction, expropriation etc. The only exception is acquisition as part of land reallocation.

In some instances the construction of the term acquisition may be doubtful. Usually, ownership passes gradually, typically so in the case of an ordinary sale.[6] At what stage is there an acquisition in respect of sec. 2? It is not required that the sale is perfected through registration in the land register; indeed, it is expressly forbidden to have the transfer registered before concession is given.[7] What is decisive is whether there exists a binding, definite contract between the parties.[8] Thus an option to buy is not sufficient; but when the option has been exercised and the amounts due have been paid, a duty to apply for concession may exist. Furthermore, an acquisition implies that

[4] To II.1, see in particular Falkanger, *op.cit.*, pp. 74–77. It should be noted that in respect of the public right of pre-emption such a clause is not always valid, see section VI below.

[5] The powers of the King (i.e. the Government) have been delegated to the Ministry of Agriculture and even further down in the administrative hierarchy.

[6] Modern Norwegian jurisprudence adheres to the view that ownership is a sum of functions, which as indicated do not necessarily pass *en bloc*, but in most cases successively.

[7] Sec. 22. But the contract of sale may be registered, i.e. the contract whereby the seller promises to transfer the property on certain conditions, first of all on being paid the purchase price. The prohibition concerns the final document (deed of conveyance) evidencing or declaring that the buyer now has become the owner.

[8] Usually, the courts are hesitant to accept a contract regarding real property as binding unless it is in writing. But there are examples of oral contracts being accepted as definite contracts of sale, see e.g. 1981 NRt 595.

© Stockholm Institute for Scandianvian Law 1957-2009

ownership functions have been transferred to such an extent that it reasonably can be stated that ownership has passed.[9]

There are, however, a number of exceptions related to the nature of the object (b) and to the status of the acquirer (c). In addition, the King is given powers to make exceptions (d).

(b) *The object-related exceptions* are found in sec. 5. The most important ones need some comments.

The legislator has been particularly concerned with acquisition of land for development, because of the possible consequences of uncontrolled speculations. However, anyone is entitled to acquiring one plot for the building of a permanent home, provided that the plot is—broadly speaking—regulated for that purpose in a municipal plan. This exception is inapplicable, however, when the acquirer, or his spouse or one of his children under age, owns a home or a plot for a home in the same municipality.[10]

In a country where the people are addicted to hut-life, it is to be expected that the rules are not too harsh on the prospective owner of a hut or second home. The solution is that the exception for permanent homes is applicable to plots for huts as well.

The economically most important object-related exception concerns developed land: Property not exceeding 5,000 square metres may be freely acquired, regardless of type of buildings. Whether the building is a family house, an apartment building, an office or factory building, etc., is immaterial as long as the size of the plot is not substantially bigger than the buildings require, and the value of the buildings is higher than that of the plot itself. Without the two last restrictions the exception could be used for the acquisition of property which in fact is a plot to be developed (after demolishing the existing buildings).

This exception for developed property is in striking contrast to the first-mentioned exception. There is complete freedom to buy the most valuable property in the country, i.e. the developed land in the cities and towns.[11] It should be

[9] See as an illustration 1980 NRt 663: Based upon a concrete evaluation of rights and obligations, the Court held that the parties called *lessees* in the contract could not be considered as owners with respect to the Forest Concession Act of 1909 (mentioned in I.2), which would have been the result also in respect of the 1974 Act.

[10] E.g., when the family home no longer is sufficiently big, the solution may be to build a new house within the same municipality. Often it is not expedient to sell the old home before the building of the new home is well under way. But then the acquisition of the plot for the new home is subject to the concession rules. And as long as no concession is granted the deed of conveyance cannot be registered, with the effect that the buyer is not in a position to grant a mortgage, which can be registered, to the bank willing to provide a building loan against security in the plot and the buildings to be raised thereon. It should be added that concession is more or less a formality in such a case, but may be time-consuming; and, furthermore, that there are other ways of arranging security, but they are more complicated.

[11] E.g., it is a fair guess that the percentage of properties not exceeding 5,000 square metres in size is in the high nineties in the cities and towns.

© Stockholm Institute for Scandianvian Law 1957-2009

noted that there are no restrictions as to the number of properties which can be acquired without concession, neither municipally nor in the whole country.

However, one basis for restricting the free area does exist: The King may, in the form of regulations, limit or totally exclude the freedom in respect of developed properties in defined localities where this is considered necessary in order to avoid houses which should be used as permanent homes becoming second homes.

The reasoning here is influenced by what has happened in townships and villages which are popular vacation resorts: Many houses have been bought by non-residents, who often are both able and willing to out-bid local residents. The result is that off-season the little community is more or less a "ghost-town". What can be prescribed in the regulations—and has in fact been prescribed in a number of instances—is that the acquisition of property previously used as homes is subject to the concession requirement; however, this does not apply to acquisitions by those who undertake to use the property as their permanent residence.

(c) *The subject-related exceptions*, now found in sec. 6, have a long tradition in Norwegian concession legislation.

The most important one is where property of any kind or size is transferred from one spouse to the other, from parents to children, and generally to closely related persons. The same is true for the acquirer who has an allodial right[12] to the property.[13]

But when the property is farm or forest land the freedom is on the condition that "the acquirer settles on the property within one year and lives there and cultivates it at least for five years".

This condition represents one of the major changes introduced by the 1974 Act. Its consequence is that an owner who does not wish to settle on his property or continue to live there, is forced to transfer the property, hopefully to children willing to fulfil the requirements, or to a third party—typically to a farmer in the vicinity who is in need of more land.

[12] The allodial right (Norwegian: *odelsretten*) is a special Norwegian legal institution with roots in our first written codes from the 11th century. The right concerns farm or forest property. It comes into existence when such property has been owned by a person for 20 years. Then he and his descendents have an allodial right to the property, with a defined priority between themselves. The content of the right is that when the owner dies, the one with the best priority is entitled to take over the property. And furthermore, if the property is transferred to someone who has no allodial right (or a right with low priority), a person with an allodial right (or an allodial right with better priority) may redeem the property within two years. See Act of 28 June 1974 no. 58 and T. Falkanger, *Odelsrett og åsetesrett*, (The Allodial Right and the Right of Primogeniture), Oslo 1984.

[13] The relevant text is: "Concession is not necessary when the acquirer: (1) is the owner's spouse, or related to the owner or the owner's spouse in the direct ascendental or descendental line or in the owner's or the spouse's first sideline including children of sisters and brothers ... (2) has an allodial right to the property." The term *owner* is not so well chosen, but it clearly means the former owner, typically the seller.

© Stockholm Institute for Scandianvian Law 1957-2009

The Act does not define farm or forest property, neither as to size nor as to what constitutes farm or forest property. The Act on Allodial Right of 1974[14] has, however, drawn lines in both respects, and it is generally accepted that a property falling within these lines, is farm or forest property also in relation to the concession rules.[15] Thus, the main rule is that the dwelling and cultivation requirements arise in respect of property suitable for farming or forestry, provided that the farming area is at least 10,000 square metres or the productive forest area exceeds 100,000 square metres.

In order to avoid the concession rules the acquirer has to continue living on the farm, or, if he has lived elsewhere, settle on the property within one year reckoned from the time that the acquisition was final (typically from the date the deed of conveyance is signed); i.e. the new owner has to make the property his permanent place of residence. Ordinarily his family will come with him, but this is not necessary to meet the condition, nor is it sufficient that spouse and children settle on the property if the acquirer himself does not in fact do so. The second part raises two questions: How should the property be run, and is the owner obliged personally to carry out the work required? The Cultivated Land Act of 1955 and the Forestry Act of 1965 contain provisions on the owner's duty to maintain the agricultural standard,[16] and it is generally accepted that compliance with these rules is sufficient also in relation to the 1974 Act. If the owner performs the necessary work all is well. The essential thing however is that the property is run for the account and at the risk of the owner. Thus he may hire labour for all work, but if he leases the farm to a third party the condition is not fulfilled.

Obviously, the underlying principle is more than that farm and forestry land should be kept in a good condition; these more technical aspects of national resource management could be and in fact are taken care of in other enactments. The rules are also based upon the theory that ownership of this type of land should be restricted to those who are willing to have their homes on the land, and try to get a living out of it. Apart from more philosophical ideas, the argument most frequently used in favour of the rules is that they are an important incentive with respect to maintaining the sparse population in the rural areas.

However, even with these objectives it would seem that a strict adherence to

[14] See footnote 12.

[15] But properties smaller than those described in the Act on the Allodial Right may be subject to the rules on dwelling and cultivating. See further Falkanger, *Eierrådighet og samfunnskontroll*, p. 86.

[16] See in particular the Cultivated Land Act of 18th March 1955 no. 2, sec. 53, stating that "all cultivated land shall be kept in a good state of cultivation". If this is not complied with, the agricultural authorities may give orders to the owner, have the work carried out at his expense, or have the property leased to a third party for up to 10 years. The ultimate remedy is that the property is expropriated.

© Stockholm Institute for Scandianvian Law 1957-2009

the rules might have unacceptable consequences. For example, illness and education may be legitimate reasons for "absenteeism", and obviously small children inheriting property from their parents presents special problems. The Act has therefore a provision empowering the King (the relevant authority) to make exemptions in the individual case—from one or both of the requirements, for a given period or on a more permanent basis. In practice, the overwhelming number of the exemption applications are consented to.

The status exception in sec. 6 also includes other persons or entities. Worth noting is that the county and the municipality in principle have to apply for concession, but with important exceptions in sec. 6. This section also allows a bank or a similar institution, in order to save its investment secured by a mortgage, to acquire the mortgaged property without a concession, but only for two years.

(d) *The discretionary powers of the King* (*the relevant authority*). The discretionary powers of the relevant authority have been mentioned: The exception regarding property with buildings (sec. 5) may be narrowed down, and the owner of farm or forestry land may be granted relief from the dwelling and cultivation requirements (sec. 6). The relevant authority is, however, given even more important powers in sec. 2:

First, by way of regulations the concession area may be restricted, and this is done in statutory instruments dated 20 January 1984 (with amendments). Herein the free area is extended primarily on the basis of the nature and size of the property, but there are also extensions due to the status of the acquirer.[17]

Secondly, the relevant authority may in particular cases grant exemptions "from the concession obligation or the right of pre-emption". This discretion has been exercised primarily in connection with mergers of corporations owning real property. The alternative would be to grant a concession in the ordinary way, but this may be a costly and, above all, a time-consuming process. In addition, when following the ordinary concession rules a right of pre-emption may exist and be utilized by the municipality where the real property is situated.

3. *The Other Concession Acts, in particular Ch. III of the 1917 Act*

It has been mentioned that the 1974 Act does not interfere with the provisions of the 1917 Act as regards waterfalls and mines.[18]

[17] E.g., acquisition of a property with buildings where the plot does not exceed 15,000 square metres is outside the rules, provided there is an area development plan (i.e. a local plan binding as to the use of land) determining that the property shall be used for shops, offices, industry etc. A similar extension exists for unbuilt land not exceeding 5,000 square metres.

[18] The same is true for concession Acts of 1914 and 1949 concerning limestone and quartz, respectively.

© Stockholm Institute for Scandianvian Law 1957-2009

The acquisition of a waterfall—even by the county or the municipality—requires concession (ch. I), provided that it would through regulation[19] be possible to produce more than 1 000 h.p.[20] The bulk of the stipulations in ch. I concerns the question of to whom a concession may be given and the conditions which should usually be laid down when a concession is granted.

The rules for mines in ch. II are also rather strict. Everyone except the county or municipality must have a concession.[21] This is the position when the object is minerals to which others have acquired rights in accordance with the Mines Act of 1972 (derivative acquisition). The primary acquisition is in principle free, i.e. the mine resources do not belong to the property owner, but the Mines Act of 1972 excludes non-Norwegians as possible primary acquirers through discovering and claiming a right to a mineral deposit.[22]

Ch. III of the 1917 Act has subsidiary rules; the chapter is applicable where acquisition of ownership or use of land is not subjected to any particular regulation on duty to obtain concession according to the 1917 Act or other statutes. Then sec. 19 states that everyone needs a concession for the acquisition of ownership or use of land, except "the State, Norwegian municipalities and counties, Norwegian citizens as well as corporations with limited liability ... which have a fully Norwegian board of directors and in addition thereto at least eight tenths of whose stock capital is Norwegian".

An example will show the importance hereof: The acquisition of a waterfall comes within the rules of ch. I if its potential is more than 1 000 h.p.; if it is less, the 1974 Act is appalicable, cf. its sec. 2. But there may be an exception in favour of the acquirer in sec. 5 or sec. 6 of the 1974 Act, e.g. because he is closely related to the former owner. Then we come to the last stage: The acquisition which has "escaped" the concession rules in ch. I of the 1917 Act as well as those in the 1974 Act may be "caught" by ch. III of the 1917 Act, if the acquirer is not a Norwegian citizen. Another illustration of the scope of ch. III is the following: A property, say 1,800 square metres with a private house or an office building, is bought by A which is a corporation with limited liability. Ch. I or II in the 1917 Act is not applicable, nor is the 1974 Act due to the exception in sec. 5. But depending upon the structure of corporation A

[19] Regulation—i.e. construction and other measures (dams/tunnels) to influence the flow of water in a river system—is subject to concession being granted in accordance with the Act on Regulation in River Systems of 17 December 1917 no. 17. This is necessary even though the applicant may be the owner of the land and river system affected by the regulation. We may therefore talk of an "enterprise concession" in contrast to the "acquisition concession" which this paper is concerned with.

[20] There is an exception when a waterfall is acquired by persons closely related to the former owner, but only so if the acquirer is a Norwegian citizen (sec. 1, para. 2). E.g., the Norwegian citizen inheriting a farm—with waterfalls—from his parents, needs no concession.

[21] There is an exception of the same type as the one mentioned in footnote 20.

[22] The Mines Act of 30 June 1972 no. 70, sec. 2, is coupled with a duty actually to start experimental operation of the mine, see the 1917 Act, sec. 12.

© Stockholm Institute for Scandianvian Law 1957-2009

ch. III of the 1917 Act may lead to an obligation to apply for concession. To avoid this obligation, it is not sufficient to show that A is a corporation domiciled in Norway and founded in accordance with Norwegian law. At least 80 per cent of the stock capital must be owned by Norwegians, i.e. by Norwegian citizens or corporations etc. which are considered to be Norwegian (see sec. 39(a)). If 75 per cent is owned by corporation B one has to ascertain whether at least 80 per cent of the stock capital in B is nationally owned.[23] With a positive answer, A is Norwegian, provided that at least 5 per cent of the remaining 25 per cent is owned by Norwegians. Furthermore, it is required that the board of directors in A consists of Norwegian citizens only.

It should be noted that these rules have been an important instrument for regulating the establishment of foreign commercial activities in Norway. A physical operation base (offices, warehouses, production premises etc.)—large or small—is the precondition for such activities. Concession will, however, be necessary whether one buys a plot with the intention of building or a plot with existing buildings. And as indicated this is also true if one acquires the necessary rights of disposal of real property by leasing ground or premises. Paragraph 2 of sec. 19 has an important qualification to the lease rules: Concession is not required for leases for a period up to 10 years, without option on the part of the lessee to have the period extended beyond the said 10 years, provided that the property shall not be used for industrial purposes or for the processing of fish.[24] Admittedly, the authorities cannot arbitrarily say yes or no, or arbitrarily set burdensome conditions when granting concession (see IV.2 and 3 below), but the acceptable leeway is considerable.

Sec. 19 empowers the King to modify the rules, but only in respect of property to be used as homes. In a statutory instrument dated 28th November 1980 any foreigner residing in Norway has been exempted from the concession requirement when acquiring ownership of or right of use of property which is to be used as his own home.

4. *The Control Problem*

The 1974 Act lays down a duty to apply for concession within four weeks after the acquisition is definite (sec. 20), and the consequences of not doing so is briefly outlined above (II.1). Obviously, there are practical problems: The acquirer may believe that the acquisition is not subject to concession. But first of all, the administrative bodies have problems in ascertaining that all transfers

[23] Also the requirements in respect of the board of directors have to be satisfied if B shall qualify as Norwegian in the present context.

[24] See *Innstilling fra Konsesjonslovkomiteen* (Report from the Royal Commission on the Concession Legislation), 1960, p. 89.

© Stockholm Institute for Scandianvian Law 1957-2009

falling within the concession rules are dealt with in conformity with these rules. The important control function is connected with the land register. The acquisition of property is valid without registration, but in order to get full protection against the creditors of the former owner as well as others with rights derived from the former owner, registration is necessary.[25] Thus it may be said that in practical life the registration is an essential part of the transfer of property. This is the background for the stipulation in sec. 22 that a deed of conveyance[26] in respect of an acquisition for which concession is necessary, cannot be registered unless concession is granted. The control is, in other words, left to the land registrar.[27] But the land registrar has not the pertinent information on the physical characteristics of a property, nor has he knowledge of who the acquirer is or his possible relationship to the former owner. These problems have been solved by the use of a personal declaration form. For example: The buyer has to fill in this form, thereby giving the information which will make it possible for the registrar to decide whether the transaction is outside the rules or not. This form, which in some respects has to be confirmed by others, has to accompany the application for registration.

Also in the 1917 Act the land registrar is given the primary control function. But lack of concession is no ground for denying registration. It must, however, be noted in the register and on the document registered that concession is not granted, and in addition the land registrar shall inform the Ministry of Industry, which will take the necessary action.[28]

III. THE CONCESSION REQUIREMENT: OBTAINING RIGHT OF USER[29]

1. *The Background*

The purpose of the concession rules could easily be thwarted if right of user (as opposed to ownership) is outside their scope. To be sure, in many cases it might be argued by the administrative authorities—and be accepted by the

[25] Registration of Land Act of 7 June 1935 no. 2, in particular secs. 20 and 23.

[26] The contract of sale, i.e. the contract whereby the seller binds himself to transfer the property to the buyer on being paid a certain amount, can be registered. The buyer can hereby obtain protection e.g. against the creditors of the seller: If the seller goes bankrupt, the buyer will then have a right to get a deed of conveyance from the bankruptcy estate—against paying to the estate what is owing according to the registered contract.

[27] As a general rule there is one land register for the district of each court of first instance, and the district court is the land registrar.

[28] See the 1917 Act, sec. 30.

[29] To this section III, see in particular T. Falkanger, "Konsesjon og begrensede rettigheter over fast eiendom—herunder om såkalte utbyggingskontrakter" (Concession and Limited Rights to Real Property—hereunder on so-called Development Contracts), in *Samfunn, rett, rettferdighet. Festskrift til Torstein Eckhoffs 70-årsdag*, Otta 1986, pp. 311–22.

© Stockholm Institute for Scandianvian Law 1957-2009

courts—e.g., that a transaction called a lease in real terms is tantamount to a transfer of ownership and should be treated as such, in any case in relation to the concession rules. There are, however, further arguments in favour of extending the rules to right of user, notably that also medium- or short-term leases or other types of rights in real property may concern the legal and/or factual use of the land in a way which the State should be able to control.

The first concession stipulation from 1888 covered right of user. This is also the position in today's legislation—however, the differences between the two principal Acts are such that it is not natural to discuss these at the same time.

2. *The 1974 Act*

(a) *The principle* in this Act is that certain rights of user, which will be defined below, are treated on the same footing as acquisition of ownership. This appears, *inter alia*, from the title to ch. 2, wherein the operative sec. 3 is found.

Consequently, there is a duty to apply for concession—with remedies on the part of the State (as indicated in II.1 above) etc. What is of particular importance is that the exceptions in secs. 5 and 6 are applicable. A long-term lease comes within sec. 3, but if the lease concerns e.g. a plot for building a home, or premises in a building on a plot not exceeding 5,000 square metres, the lessee may successfully contend one of the exceptions in sec. 5. The rationale is fairly clear: If one can obtain ownership without concession, one should not be hampered by concession problems when the object of acquisition is something less. On the other hand, it might be argued that a lease of rather restricted premises should not be subject to concession because the property (where the premises are) happens to be larger than 5,000 square metres. Parliament has, however, made it quite clear that concession is required in this case, which can be justified, *inter alia*, by the wish to avoid difficult borderline questions.

(b) *The rights*, subject to concession, are grouped in two categories in sec. 3.

The first group comprises rights combined with possession of the property —typically a lease of land or premises.[30] A precondition is that the right is created for a period of more than 10 years, or for a shorter period if the lessee has the option to extend the period so that the 10-year limit is exceeded. The concession requirement exists not only when such a right is created, but also

[30] More specifically: Sec. 3, para. 1, covers (1) lease of land without buildings—regardless of the purpose of the lease, (2) lease of land together with buildings—regardless of type and use of buildings, and (3) lease of building or part thereof—regardless of intended or actual use of leased area.

© Stockholm Institute for Scandianvian Law 1957-2009

when it is subsequently transferred—and then without regard to how many years remain of the lease period.[31]

The second group is defined in this way (sec. 3, para. 2):

> The rules of this Act on concession also apply to development contracts of any kind, hereunder agreements on preferential rights to be in charge of development, and to other rights to real property which imply that the owner's possibility to dispose over the property or to get the economic yield therefrom is substantially reduced.[32]

Originally the text did not mention development contracts, but an amendment was proposed by the Ministry of Agriculture in order to remove all doubts.[33] It should be noted that there is no time-limit in the quoted text, the reason being the fact that development contracts are as a rule for a short period of time only. The time-limit set in the regulations under sec. 2 (see II.2(d) above) is, however, in accordance with that of sec. 3, para. 1, except in respect of development contracts.

The latter part of the quoted text is the easier one. The idea behind it is that, seen from the owner's point of view, these rights are restrictions which may have (almost) the same effect as an outright sale. A good illustration is provided in 1980 NRt 663: A number of owners of huts on leased ground had an agreement with the owner of about 20,000 square metres of adjoining property that this area should not be developed. Such a restriction on property falls clearly within sec. 3 when no other mode of use yielding a reasonable profit exists. When evaluating the degree of restriction (or seen from another angle: the extent to which the proprietary contents are consummated) one has to look not to the property as a whole, but the part thereof actually affected.

Where development contracts are concerned the problems are apparent, basically because the term "development contract" is not defined, neither in the Act itself, nor, satisfactorily, in the *travaux préparatoires*. However, the core of the term is generally agreed on: A development contract concerns the right and/or duty of a contractor, as towards the owner of land, to have a defined

[31] For example: A lawyer leasing office premises of, say, 200 square metres for 10 years with option to renew the lease for five years at the rates then applicable, has to apply for concession —provided that the property does not come within the exception in sec. 5 (properties not exceeding 5,000 square metres with buildings). If after eight years he sells his practice, including the lease, the buyer needs concession in respect of the assignment of the lease. Should the lawyer instead of selling take in a partner, this will ordinarily involve a part assignment of the lease, requiring concession. But the partnership agreement may, depending upon the circumstances, be construed so that the partner's rights to the premises are in the nature of a sublease.

[32] The translation should be taken with reservations, in particular in view of the very vague words used in the original version. As will appear from the text below there are further reasons for criticism. For a more detailed analysis, see the work by Falkanger mentioned in footnote 29.

[33] That there were reasons for such doubts was evidenced a little later when the Supreme Court held that the original text did not include development contracts, see 1983 NRt 127.

© Stockholm Institute for Scandianvian Law 1957-2009

area regulated for development[34]—typically the building of homes or huts —and to carry out the development. The term was used and apparently accepted in 1983 NRt 127 also when the contractor's position was substantially more limited: If the property owner decided to have his land developed, then the contractor should carry out what is necessary to make the land ready for building; but the owner should retain full right of disposal, including the right to sell the individual plots which the area would be divided into. The contractor had no unconditional right to build the houses.

The minimum requirements for a development contract[35] are difficult to specify. Accordingly, it has to be expected that a fairly large number of contracts are not treated in conformity with the rules. If the authorities intervene this may in many quarters be considered as unfair when the rules are so imprecise and randomly practised. In the present author's view it is undesirable to have rules formulated so broadly that many contracts are covered when the rational thing is to get control of a few far-reaching contracts. It is like catching big fish with a small-meshed net; a lot of time and resources are wasted in disentangling the small fish and throwing them back. And furthermore, if the rules are not applied in practice, this may undermine general respect for what are announced as statutory rules.

3. *The 1917 Act*

The right of user as regards waterfalls and mines is also subject to concession, regardless of duration (secs. 1 and 11). From II.3 above it appears that ch. III applies to right of user as well; both aspects have been dealt with there.

IV. THE DECISION IN THE CONCESSION QUESTION. CONDITIONS

1. *The Procedural Questions*

The rules on procedure are found primarily in the concession legislation, but, in addition, the rules in the general Administration Act of 10 February 1967—as well as more general principles established by the courts or by usage—may be of relevance. Here we have to restrict ourselves to the bare outline of the rules in the 1974 Act, ch. 6.

Assuming e.g. a sale which needs concession, the first stage is an application

[34] This is primarily a reference to the planning and building legislation, which usually requires a plan, formulated or at least approved by the building authorities, allowing the development.

[35] The most important questions, to which no reply will be attempted here, are: How big must the area be? How many houses (huts) must be involved? How many functions must the contractor have the obligation or right to perform?

© Stockholm Institute for Scandianvian Law 1957-2009

for concession, giving the necessary information to decide both on questions of concession and pre-emption. This application should be sent within four weeks from the time the sale was concluded, and it should be addressed to the mayor of the municipality wherein the property is located. The application is placed before the local farming committee,[36] which gives its views on the concession question as well as on whether the right of pre-emption (section VI below) should be used. Thereafter the municipal council decides on the pre-emption issue. Alternatively, the case is sent to the county farming committee[37] together with the recommendations of the municipal council. The county farming committee can exercise the State's right of pre-emption for farming purposes.[38] If this is not done, the committee will take up a position to the concession question; the final decision is the task of the Ministry of Agriculture.[39]

The procedure prescribed in the 1917 Act is somewhat different. In the present context it is sufficient to emphasize that it may be time-consuming.

2. *The Actual Decision*

The final determination of the concession application might follow more or less automatic rules: When clearly defined criteria are satisfied, the application shall be granted. This has not been the principle in Norwegian concession legislation. The final outcome depends upon an evaluation. The 1917 Act gives a number of guidelines, while the 1974 Act, which is to be dealt with here, leaves much more to the discretion of the relevant authority.

The 1974 Act has only a few rather vague recommendations as to how the Ministry shall decide. Sec. 7 contains rules on "general circumstances which are against concession": Ordinarily, concession should not be granted if there is reason to believe that primarily the acquirer intends to invest in real property, and in particular so if there is reason to believe that the acquisition is a short-term investment. Clearly, words of such a vague character can be given a far-reaching construction, which is not entirely unwarranted in light of how the purpose of the Act is defined in sec. 1.[40] The opinion of the present author

[36] This is a body appointed by the municipal council, in accordance with the rules of the Cultivated Land Act of 18 March 1955 no. 2.

[37] This is also a committee appointed under the rules of the Cultivated Land Act. It is superior to the farming committees in the county—and has much wider powers. The county committees report to the Ministry of Agriculture.

[38] For example, acquiring a small farm which later on is to be sold to a farmer who has too small an area for rational farming.

[39] This authority has to some extent been delegated to the county farming committee.

[40] The essence of sec. 1 is: The purpose of the Act is to regulate and control acquisition of real property, in order to obtain an effective protection for cultivated land and such owner and user structure which is most beneficial to society, *inter alia*, in order to benefit or advance (1) agriculture, (2) the need for development land, (3) environment protection, (4) socially acceptable prices for real property.

© Stockholm Institute for Scandianvian Law 1957-2009

is that the wording has been unduly influenced by the tradition of the concession legislation administered by the agricultural authorities. When this legislation was made general in 1974 the wording (as well as the *travaux préparatoires*) does not sufficiently reflect the substantial change in the scope of application.[41] Furthermore, the authorities would seem not to have used the apparent power to the full extent in the non-agricultural sector.

This is not the place for a survey of the arguments considered relevant by the authorities when deciding whether a concession should be given or refused. One important element, in addition to those indicated in sec. 7, is the price. During the preparatory stages the farming committees as well as the municipal council will give their view as to whether the agreed price is acceptable, and in the end the Ministry of Agriculture will pay close attention to this point. That the price is considered to be high, has been the decisive factor in a great number of refusals.[42]

3. *Conditions for a Concession*

Originally, it was a matter of dispute whether conditions could be set when accepting an application. Today the answer is clearly affirmative according to general principles of administrative law. In addition, now the concession legislation has explicit stipulations on conditions—rather detailed ones in the 1917 Act, while the 1974 Act has a short, but far-reaching stipulation in sec. 9:

> Concession according to this Act can be given on such conditions which in the individual case are found required with a view to the purposes of the Act. On application the conditions may be modified.

The conditions may e.g. concern the use and development of the property, payment of licences or require part of the production result to be sold to the State or the municipality (sometimes at a low price), that the property after a certain period shall be transferred to the State without compensation (the so-called fall-back right), etc. For farms the conditions usually have been: an obligation to live on the property and keep it in good cultivated condition.

Sometimes it has been argued that a specific condition is unwarranted. An illustration is provided in 1964 NRt 209, wherein the Supreme Court accepted that the sale of part of a farm to a neighbouring farm could be set as a concession condition.

[41] The traditional attitude is found in sec. 8 dealing with farm and forest properties, enumerating circumstances to which special regard shall be paid.

[42] The Ministry of Agriculture submits every year a report to Parliament on the use of the 1974 Act. These reports contain statistical data as well as information on the general principles applied when granting or denying concession and setting conditions.

© Stockholm Institute for Scandianvian Law 1957-2009

Another, but no less important aspect of the condition-complex is whether a condition may be viewed as an act of expropriation. This issue was brought before the Supreme Court in 1918, see 1918 NRt 401: The condition that the buyer of a waterfall had to transfer the property to the State within 60–80 years after acquisition—without compensation—led to a substantial reduction of the purchase price compared to what could have been obtained without this condition. The seller argued that the condition was tantamount to expropriation and that he was entitled to compensation in accordance with sec. 105 of the Constitution. The Court refused the claims, holding that there was no transfer of proprietary rights, only a limitation of ownership which does not give rise to a claim for compensation under the Constitution.[43]

4. *Administrative and Judicial Control*

A denial of concession or a conditional concession may be reviewed, administratively or judicially.

It follows from general administrative law that decisions of this type may be brought before the next higher authority in the administrative hierarchy. This authority has full competence to review the case, and may e.g. decide that concession shall be given or that a condition stipulated by the lower authority shall be deleted or moderated.

There is also a possibility for judicial review when the administrative law remedies have been exhausted. The courts may quash the decision if the proper rules of procedure have not been followed, if the decision is based upon incorrect facts, and, of course, if the law is applied wrongly. But in the end the decision of the relevant authority depends upon a discretionary assessment of a number of circumstances. This final evaluation is in principle outside the competence of the courts. But the courts may nevertheless interfere if they find that the decision represents unreasonable discrimination. If regard has been paid to circumstances which are deemed to be immaterial, the court will be entitled to quash the decision; the proper explanation here is not interference with the discretionary powers, but annulment because the administration has interpreted the law wrongly.

V. ACQUISITION OF SHARES IN PROPERTY-OWNING COMPANIES

Both the 1917 Act and the 1974 Act have concession rules related to transfer of shares in companies. Here we restrict the outline to companies with limited

[43] See, *inter alia*, Falkanger, *Eierrådighet og samfunnskontroll* (cf. I.2 above), pp. 39 ff.

© Stockholm Institute for Scandianvian Law 1957-2009

liability, and, furthermore, to cases of ordinary sales of shares (even though the concession requirement encompasses other modes of transference).

1. *The 1917 Act*

The rules are more detailed here than in the 1974 Act, which makes it natural to start with the older Act.

(a) *The general rules for a buyer*

As indicated above (I.1), when a direct purchase of real property from a limited company is subject to concession, it is necessary to have concession rules for the purchase of shares in that company as well—because the buyer of shares may obtain practically the same rights of disposal over the property as when he is the direct owner. This is obvious when the buyer has all the shares, but ordinarily his influence may be considerable even with a substantially lower percentage. In sec. 36 the limit is now set as low as 10 per cent.[44] Any acquisition whereby the buyer becomes the owner of more than 10 per cent of the stock capital is subject to concession, e.g. when buying 11 per cent, or buying 3 per cent when he already is the owner of 8 per cent. Once the limit has been transgressed it becomes necessary to apply for concession in respect of any further acquisition of shares.

An easy way to circumvent the 10 per cent rule would be to distribute the shares among members of the family, friends etc. The Act has, therefore, far-reaching—and, unfortunately, in many respects unclear—rules on the identification of owners of shares, which cannot be discussed here. But at least an example should be given: When the buyer of shares is a limited company one has to add to the number of shares owned by the company, the shares belonging to the members of the board of directors and to a substantial number of the employees,[45] as well as shares belonging to another company, a majority of whose directors also are directors of the first company.

[44] Originally, concession was necessary only when the acquirer became a majority stockholder, in 1931 the limit was set at 35 per cent, in 1969 it was lowered to 20 per cent, and finally in 1972 to 10 per cent. Accordingly, it was natural to have the same 10 per cent limit in the corresponding sec. 4 of the 1974 Act. This limit in sec. 4 was raised to 20 per cent in 1983, without—as will have appeared—a similar amendment of the 1917 Act.

[45] This part provides an extremely good example of bad draftsmanship. The Norwegian text is "*øvrige tjenestemenn*", which implies that the directors are *tjenestemenn* (employees), which they are not. And further, the term *tjenestemann* may comprise all employees, but in view of the general understanding at the time the term was introduced in the Act, it may be argued that it comprises only personnel on the administrative side. Under both alternatives it is absurd to take account of shares owned by persons at all levels of the company hierarchy. See, in particular, Brunsvig in *Om lov om erverv av fast eiendom* (see footnote 3a above), pp. 171–73.

© Stockholm Institute for Scandianvian Law 1957-2009

The exceptions indicated above are relevant here as well, e.g. a transfer of shares from father to son. What should be noted in particular is that there is no exception for the acquisition of shares in companies quoted on the stock exchange. And, furthermore, that the rules are applicable once the company owns (or has rights concerning) real property falling within the concession categories; it is immaterial whether the property represents a substantial or negligible part of the assets of the company.

The remedies available to the buyer who has not applied for concession or is denied concession are the same as outlined above. In the extreme case, the shares can be sold by the authorities for the account of the buyer who has not got concession.

(b) *The special rules when the buyer is not Norwegian*

In 1931 it was considered that the rules in sec. 36 were not sufficient to protect the Norwergian status of a company. Within the rules in sec. 36 it was quite possible for a number of non-Norwegians to acquire, say, 8 per cent each of the stock capital. The solution was new stipulations in sec. 37 to the effect that any acquisition of shares whereby the total non-Norwegian-owned capital exceeded 20 per cent,[46] required concession. The company could have acquired its real property according to a conditional concession, e.g. that 70 per cent of the capital was nationally owned. Then the foreign quota was 30 per cent.

Thus, the foreigner's position is the following: His acquisition has primarily to be viewed in connection with the foreign quota. If this quota is full, his acquisition has to be measured against the rules in sec. 37. When the quota is not full, even after having taken his acquisition into account, the pertinent stipulation is sec. 36: Does it exceed the 10 per cent limit for any individual shareholder?

(c) *The consequences for the company*

The sale of shares may have consequences for the company itself. The company may have acquired e.g. the waterfall with the concession condition that 75 per cent of the stock capital is owned by Norwegians. If this is no longer true, sec. 34 has the effect that a new concession application should be submitted. Should the application be rejected, the final result may be that the waterfall is sold at a compulsory auction at the demand of the authorities.

It may happen that the waterfall was bought at a time when the acquisition

[46] The nationality of a shareholder, e.g. a limited company, is defined in the same way as indicated in II.3 above.

© Stockholm Institute for Scandianvian Law 1957-2009

was not subject to concession. Then sec. 34 provides that the company has to ask for a concession if more than 20 per cent is in foreign hands.[47]

(d) *The powers of the board of directors*

In view of the dramatic effects a transfer of shares can have for the company there is an obvious need for protective measures. One is built into the concession system: When deciding whether concession should be granted, the authorities should, of course, have due regard to the consequences for the company. In addition sec. 37(a) empowers the board of directors to refuse a transfer of shares when the acquisition is subject to concession according to either sec. 36 or sec. 37.[48] Obviously the board of directors may refuse for the same reasons which the concession authorities are entitled to invoke. The issue is whether the board of directors can go one step further and refuse an application for consent for other reasons, provided, of course, that such reasons are legitimate from a company point of view.[49]

Another important question concerns the voting right during the period of transition. Even in this respect the rules are not crystal clear. The general opinion is, however, that the buyer has the voting right as soon as the board of directors has consented to the transaction. He need not wait until he has obtained concession from the authorities.

2. *The 1974 Act*

The rules in the 1974 Act are a simplified version of those found in the 1917 Act. Sec. 4 (cf. sec. 36 in the 1917 Act) provides that, *inter alia*, the acquisition of shares in a limited company owning real property, subject to the general concession rules of the Act, shall be treated on the same footing as the acquisition of real property. The requirement is, however, that the acquirer thereby becomes the owner of more than 20 per cent of the stock capital.

There are no direct rules on foreign acquisition and the possible consequences for the company (cf. the 1917 Act, secs. 37 and 34, respectively). A proposal to include at least a stipulation parallel to sec. 37 of the 1917 Act was

[47] Sec. 34 has also requirements in respect of the *situs* of the company and the composition of the board of directors. Thus a non-Norwegian becoming a director may have consequences similar to those when shares are transferred to foreigners.

[48] These powers are different from the powers which may be derived from the articles of the company; the latter powers are subject to the rules in sec. 3–4 of the Limited Company Act of 4 June 1976 no. 59.

[49] It is the opinion of the present writer that the question should be answered affirmatively, clearly with the restriction that the legality of a refusal can be reviewed by the courts. See *Ot.prp.* no. 69 (1966–67), p. 76.

© Stockholm Institute for Scandianvian Law 1957-2009

deleted in the Government Bill with the somewhat cryptic remark that "to the extent it might be deemed necessary to have special rules hereon it is assumed that the rules should be in the 1917 Act".[50]

VI. THE RIGHT OF PRE-EMPTION

The right of pre-emption[51] for the State and the municipality was introduced in the concession legislation in 1909 and has thereafter been an element in all legislation of this type. In this respect, the 1974 Act is undoubtedly the most extensive one. It is based upon the principle that the right of pre-emption arises if an acquisition is subject to concession. In sec. 10 there are, however, some exceptions, *inter alia*, as regards the acquisition of right of user of the types described in sec. 3, para. 2 (III.2(b) above), and the acquisition of shares.

The municipality (wherein the property is located) has a limited right of pre-emption, viz. to undeveloped areas which in a final regulation plan are plotted for other purposes than agriculture. This right takes precedence over the State's right of pre-emption. It should be noted that if the municipality is interested in acquiring e.g. a block of flats, the State may use its right of pre-emption and thereafter transfer the property to the municipality.

The right has to be exercised by the municipality within three months from receipt of the concession application. Also for the State the time-limit is three months, but this period starts to run when the documents are received by the county farming committee (see IV.1 above). It is sufficient that the decision is taken before the expiry of the time-limit; whether the buyer is notified before or after the end of the three-month period is immaterial.

The legal effect of the pre-emption is that the State or the municipality takes over the buyer's position, both his rights and obligations as towards the seller (sec. 14, para. 1). To this there are some modifications. Only two of these, concerning the price to be paid, will be mentioned here. Often, a purchase price is on the low side because the transaction is from parents to children, sometimes the price is merely symbolic or the transfer is an outright gift from the parents. Of course, the State or the municipality should not benefit in such cases. Accordingly, the rules provide that in such circumstances the private parties may demand that the price to be paid shall be fixed through an assessment by the court. The other exception is not so self-evident. Where a property is acquired for agricultural purposes, the State may find that the

[50] *Ot.prp.* no. 6 (1972–73), p. 34.

[51] The term is to be taken in a broad sense as it is applicable not only in case of a transfer due to a purchase, but in principle whenever property passes.

© Stockholm Institute for Scandianvian Law 1957-2009

contract price is too high. The State may then demand that the sum to be paid shall be set by the court, based upon the utility value as an agricultural property (sec. 14, para. 2). The intention of Parliament is clearly to keep prices of farms at a level which may be lower than those obtainable on a free market.

In many instances the private parties feel that a pre-emption takes away the very basis for the sales agreement. They may, therefore, stipulate beforehand or after the exercise of the pre-emption that pre-emption nullifies the sale. Such clauses have, however, been declared inoperative by the Act (sec. 15). These rather harsh rules caused a lot of criticism; eventually an amendment was agreed upon in 1983, giving the seller—provided he is not a legal person—the right to annul the sale within six weeks after receipt of notice that the pre-emption is final.

© Stockholm Institute for Scandianvian Law 1957-2009