

Supreme Court's JUDGMENT

delivered in Stockholm on 5 April 2023

Case no.

T 538-22

PARTIES

Appellant

Kammarkollegiet

Box 2218

103 15 Stockholm

Respondent

Hargs Bruk Aktiebolag, 556163-4162

Harg 401

742 95 Hargshamn

Counsel: Attorney NL

THE MATTER

Compensation due to a felling prohibition

RULING APPEALED

Judgment of the Svea Court of Appeal, Land and Environment Court of Appeal, of 22/12/2021 in case M 7888-19

JUDGMENT

The Supreme Court, which finds no reason to seek a preliminary ruling from the Court of Justice of the European Union, modifies the judgment of the Land and Environment Court of Appeal only in the respect that the amount of SEK 3,392,000 is to be adjusted according to the consumer price index also for the period from 22 December 2021 up to the date of this judgment.

The State shall compensate Hargs Bruk Aktiebolag for its costs of litigation in the Supreme Court in the amount of SEK 112,910 plus interest, in accordance with Section 6 of the Interest Act from the date of this judgment. Of this amount, SEK 112,000 relates to counsel fees.

CLAIMS IN THE SUPREME COURT

The State has requested that the Supreme Court dismiss Hargs Bruk Aktiebolag's claim and relieve the State of the obligation to compensate the company for litigation costs.

Hargs Bruk has opposed modification of the Land and Environment Court of Appeal's judgment in the manner requested by the State. For its part, the company has requested that the amount of compensation be adjusted according to the consumer price index for the period following the date of the Land and Environment Court's judgment.

The parties have claimed compensation for litigation costs in the Supreme Court.

The State has requested the Supreme Court to obtain a preliminary ruling from the Court of Justice of the European Union on the question of whether the compensation requested by Hargs Bruk constitutes unauthorised state aid. Hargs Bruk has opposed the request.

REASONS FOR THE JUDGMENT

Background

1. Hargs Bruk Aktiebolag is a forestry company in Uppland. The company's holdings of forest are extensive. Among other holdings, the company owns the property ÖM 5:1 with an area of 2,326 hectares.
2. In 2015, Hargs Bruk notified the Forest Agency that the company intended to carry out a regeneration cut of an area of 17.4 hectares within ÖM 5:1. In the subsequent consultation between the company and the Swedish Forest Agency, information emerged that the area was a major site for capercaillie courtship.
3. By a decision of 3 October 2017, the Forest Agency prohibited the company from carrying out any form of felling in the area, subject to a fine of SEK 1,500,000. The decision was motivated by the fact that the regeneration cut, according to the Forest Agency's assessment, was prohibited under Section 4 of the Species Protection Ordinance (2007:845), as it would mean that the capercaillie's breeding or nesting areas could be damaged. It was stated that the decision did not apply if the County Administrative Board granted an exemption from the species protection regulations for the measure. The decision stated that it was issued pursuant to Chapter 12, Section 6 of the Environmental Code.
4. Hargs Bruk appealed the Forest Agency's decision, but the Land and Environment Court rejected the appeal. The company also applied for an exemption under Section 14 of the Species Protection Ordinance, but the County Administrative Board rejected the application. The rulings have become legally binding.
5. Hargs Bruk then brought an action against the State claiming compensation on the basis that the company had been completely prevented by

the Forest Agency's decision from felling the forest in an area totalling approximately 22 hectares. The area in question consisted of the 17.4 hectares of forest covered by the Forest Agency's felling prohibition and an additional area, located in the centre of the area to which the felling prohibition applies. According to the company, the State had significantly impeded ongoing use of the two areas of land, thereby causing the company damage which the State was obliged to compensate under Chapter 31, Section 4 of the Environmental Code.

6. The Land and Environment Court ordered the State to pay Hargs Bruk an amount of SEK 3,392,000, adjusted somewhat according to the consumer price index, plus interest. The amount corresponded to the depreciation of the value of the property with a 25 per cent surcharge. The Land and Environment Court of Appeal has modified the Land and Environment Court's judgment only in the respect that the starting date for index adjustment and the calculation of interest has been moved to a later date.

What is at issue in the Supreme Court

7. The case primarily raises the question of whether a landowner can be entitled to compensation from the State when he or she is prohibited from felling his or her forest because of the legal-protection provisions of the Species Protection Ordinance.

The legal framework

Landowners' obligation to respect the environment

8. Logging generally does not require authorisation from the authorities. However, under Section 14 of the Forestry Act (1979:429), a landowner is obliged to notify the Forest Agency of impending felling. Within the framework of the consultation that is then assumed to take place between the Forest Agency and the landowner, the Forest Agency can, with the application

of Chapter 12, Section 6, fourth paragraph of the Environmental Code, order the landowner to take measures necessary to limit or counteract damage to the natural environment. If such measures are not sufficient, and if necessary for the protection of the natural environment, the Agency may prohibit the felling.

9. When assessing whether an order or prohibition shall be issued pursuant to Chapter 12, Section 6, the general rules of consideration of Chapter 2 of the Environmental Code are significant. According to Section 3 of the same Chapter, anyone who carries out or intends to carry out an activity or take a measure must take the protective measures, observe the restrictions and take the other precautions necessary to prevent, hinder or counteract the activity or measure from causing damage or harm to human health or the environment. Environmental damage and inconvenience also refers to the depletion of valuable natural and cultural environments or biodiversity (see Government Bill 1997/ 98:45 II, p. 15). The provision can amount to significant restrictions on a landowner's ability to utilise his or her land; use may not, in principle, include measures that are harmful to human health or the environment.

10. However, according to Section 7, the rules of consideration apply only to the extent that it cannot be considered unreasonable for the individual to fulfil them. The provision must now be seen in the light of the principle of proportionality that has been developed in the light of the protection of property in the Instrument of Government and the European Convention on Human Rights (cf. RÅ 1996 ref. 56, "*Parkfastigheten*" NJA 2018 p. 753 and "*Båthuset i Stuverum*" NJA 2020 p. 1129).

11. In the assessment which must be made according to Section 7, particular consideration shall be given to the benefits of protective measures and other precautionary measures compared with the costs of such measures. The outcome of the balance to be struck will depend on the circumstances of

the individual case. In one case, very significant economic disadvantages for the landowner may mean that an otherwise important environmental interest has to give way. In another case, a very strong environmental protection interest may mean that the landowner must accept significant restrictions on his or her land use. The latter applies even if the restrictions amount to a significant hindrance to ongoing land use.

Right to compensation following an order or prohibition under Chapter 12, Section 6 of the Environmental Code

12. When an order or prohibition under Chapter 12, Section 6 of the Environmental Code results in the significant hindrance of ongoing land use in the affected part of the property, the landowner may be entitled to compensation from the State under Chapter 31, Section 4. Unless otherwise provided for in the Environmental Code, compensation shall be determined in accordance with the provisions of the Expropriation Act (1972:719). This means that the compensation shall in principle correspond to the reduction in the market value of the property resulting from the order or prohibition. As the legislation stands, the landowner is also entitled to a supplement, equivalent to 25 per cent of the depreciation of the property. (See Chapter 31, Section 2 of the Environmental Code and Chapter 4, Section 1 of the Expropriation Act.)

13. When applying Chapter 31, Section 4 of the Environmental Code, it is not intended that the landowner is to be compensated for such land use that is not permitted under the order or prohibition, if, already before the order or prohibition, he or she was prevented by law or previous official decision from using the land. Compensation must therefore be assessed with regard to the land use that was allowed immediately before the order or decision.

14. However, this principle cannot be without exception. In a given case, a land-use prohibition under Chapter 12, Section 6 may be a more or less direct consequence of the fact that the landowner is already prohibited, by law or

previous official decision, from using the land in the manner concerned. The prohibition is then, in practice, a confirmation of the existing limitation on land use. To the extent that the landowner may be entitled to compensation from the State because of the limitation already in force before the prohibition, the possibility of awarding the landowner compensation by application of Chapter 31, Section 4 should not be excluded.

15. In this context, there is reason to emphasise that a landowner, upon application of Chapter 31, Section 4, is usually not to be compensated for land-use limitations such as those resulting from the general consideration provisions of Chapter 2 of the Environmental Code. This relates to the fact that land use that is contrary to the consideration provisions is unauthorised and therefore not to be assessed as ‘ongoing land use’.

16. The delimitation of what a landowner must accept, under Chapter 2, Section 7 of the Environmental Code, does not, however, fully coincide with the delimitation of the right to compensation under Chapter 31, Section 4. There may thus be isolated incidents where a landowner is judged to be obliged to accept a certain limitation of land use, when balancing different interests, and yet, as a result of a decision under Chapter 12, Section 6, is entitled to compensation. This may particularly be the case if the limitation is due to incidental circumstances, for which the landowner is not responsible, and which he or she could not have foreseen. The limitation may then be assessed as such a hindrance to ongoing land use that – provided it is of a more far-reaching nature – entitles the landowner to compensation under Chapter 31, Section 4.

The Species Protection Ordinance

17. Chapter 8, Section 1 of the Environmental Code states that the Government, or the public authority designated by the Government, may issue certain types of regulations to protect wild animal species, including

regulations prohibiting the killing, injury or capture of animals or the destruction of their breeding areas and resting places. Provisions of this kind are found in the Species Protection Ordinance. Section 4 of the Ordinance contains provisions for the protection of birds. The Section included, through the end of September 2022, a prohibition on damaging the breeding and resting places of certain birds listed in an annex to the Ordinance (including the capercaillie).¹ Violations of Section 4 are punished as offences against the regulations governing protection of species (see Chapter 29, Section 2 b of the Environmental Code). Under Section 14 of the Species Protection Ordinance, a county administrative board may in individual cases grant exemptions from the provisions of Section 4.

18. The Species Protection Ordinance can be seen as a specification of the consideration provisions in Chapter 2 of the Environmental Code. In contrast to these provisions, Section 4 of the Species Protection Ordinance imposes an immediate criminal liability in order to hinder certain measures. In addition, the provision in Section 4 applies even if a corresponding prohibition in a proportionality assessment, under Chapter 2, Section 7 of the Environmental Code, would appear unreasonably burdensome to the individual. The interests of the individual are instead provided for by the possibility of exemption provided by Section 14 of the Species Protection Ordinance. Unlike Chapter 2, Section 7 of the Environmental Code, however, Section 14 of the Species Protection Ordinance does not identify inconvenience to the individual as a particular factor of importance in the assessment of whether an exemption is to be granted. This does not preclude taking into account the interests of the individual (cf., the principle of proportionality mentioned in para. 10). However, the scope for such considerations is less than the corresponding

¹ The current wording of the Section includes, among other things, a prohibition against intentionally disturbing wild birds, especially during their breeding and rearing period.

scope in a balancing of interests pursuant to Chapter 2, Section 7 of the Environmental Code.

Right to compensation following land-use restrictions due to the Species Protection Ordinance

19. There is no specific regulation that recognises the individual's right to compensation for the limitation of land use that the provisions of the Species Protection Ordinance themselves entail. Therefore, in principle, the individual is not entitled to such compensation. However, this does not exclude that, in special circumstances, there may be a right to compensation according to general principles (see paras. 26–32).

20. Nor, as stated above, does a prohibition issued by an authority pursuant to Chapter 12, Section 6 of the Environmental Code with reference to Section 4 of the Species Protection Ordinance normally entitle the landowner to compensation under Chapter 31, Section 4. This is due to the fact that, in these cases, the official decision does not impose any additional restrictions on the right to use the land (see para. 13). However, insofar as there is a right to compensation according to general principles for the limitation that follows directly from the Species Protection Ordinance (see para. 19), compensation can be assessed in accordance with Chapter 31, Section 4 (see para. 14).

The Instrument of Government's provisions on compensation for interference with ongoing land use

21. It follows from the above that a landowner is not normally entitled to compensation for such limitations on land use that follow from the Species Protection Ordinance. When assessing whether the landowner may nevertheless be entitled to compensation, the provisions of the Instrument of Government on the protection of property must be taken into account.

22. Chapter 2, Section 15, second paragraph, of the Instrument of Government provides – in the relevant portion – that one whose use of land or buildings is restricted by the public authorities in such a way that ongoing land use in the relevant part of the property is considerably hindered or that damage arises which is significant in relation to the value of that part of the property shall be guaranteed compensation on grounds specified by law. This provision may be considered as primarily addressed to the legislator. However, to the extent that the legal rules provided for by the provision have not been introduced, the individual may invoke it directly against the State.

23. Nevertheless, the provision in Chapter 2, Section 15, second paragraph includes certain exceptions. In the case of restrictions on the use of land or buildings for reasons of health protection, environmental protection or security, the third paragraph of the Section states that what follows from the law regarding the right to compensation applies. Following these types of restrictions, a landowner has no constitutional right to compensation.

24. It is subject to debate whether the restrictions on land use that the Species Protection Ordinance gives rise to fall under the second or third paragraph of Chapter 2, Section 15 (see, e.g., Swedish Government Official Reports 2013:59, p. 153 et seq. and Swedish Government Official Reports 2021:51, p. 728).

25. It is clear from the preparatory works to the Instrument of Government that the legislator intended the establishment of, e.g., national parks, nature reserves, cultural reserves and biotope-protection areas to fall under the second paragraph, while the third paragraph is intended to apply to interventions that take place under, for example, the provisions that previously existed in the environmental and health protection laws. The preparatory works stated that interventions for animal-protection reasons are also intended to fall under the third paragraph. (Government Bill 2009/ 10:80, p. 169 et seq.)

26. The regulation in Chapter 2, Section 15, third paragraph of the Instrument of Government must also be read in the light of the principles underpinning the Environmental Code. The Environmental Code is based on the notion that a landowner, when utilising his land, is obliged to take great care to avoid damage to the environment without claiming compensation from the public. The concept of 'damage to the environment' has been considered to include even such actions as the depletion of biodiversity or the mismanagement of natural and energy resources (see Government Bill 1997/98:45 I, p. 214). The preparatory works emphasised in particular that there is no right to compensation in the event of intervention by the authorities with the aim of ensuring compliance with a law's due diligence or consideration requirements (see *ibid.* I p. 551). There is nothing to indicate that the legislator, when drafting Chapter 2, Section 15 of the Instrument of Government some ten years after the introduction of the Environmental Code, intended to bring about any more significant change in this respect. On the contrary, reference was made in the preparatory works to the principle of the polluter's financial liability, i.e., the principle by which the person who causes or may cause damage or other inconvenience must pay the cost of preventing or remedying the damage (see Government Bill 2009/ 10:80, p. 169).

27. Against this background, such restrictions on land use that are merely a consequence of the general rules of consideration in Chapter 2 of the Environmental Code must be considered to fall outside the scope of Chapter 2, Section 15, second paragraph of the Instrument of Government. Since the provisions in the Species Protection Ordinance constitute a specification of the general rules of consideration, limitations on land use resulting from that Ordinance shall also be considered to fall outside the scope of Chapter 2, Section 15, second paragraph.

Right to compensation according to general principles

28. However, there is legislation that recognises the right to compensation even when the right to disposition is restricted in a way that falls under Chapter 2, Section 15, third paragraph.

29. In paragraph 19 of the case "*Gränsälvsfiskarnas förlust*", case NJA 2014 p. 332, it is stated that this type of legislation is based on the idea that compensation must be paid when the restriction is necessary to achieve the desired result but it is not reasonable, when weighing up the public interest to be protected, on the one hand, and the restriction's effect on the individual, on the other, that he or she shall bear the cost alone. When the legislation enabling a restriction of rights of disposition cannot be considered to provide any guidance on the issue of compensation, the corresponding proportionality assessment would naturally be made on a case-by-case basis, taking into account that compensation is normally not paid for interventions based on environmental protection reasons.

30. Therefore, even in the absence of a statutory basis, the State may, in special circumstances, be obliged to pay compensation for damage resulting from a restriction of rights of disposition imposed by a statute or a decision aimed to secure an interest or protect the environment or human life or health. However, this presupposes – as with such restrictions covered by Chapter 2, Section 15, second paragraph of the Instrument of Government – that the restriction has significantly hindered ongoing land use. It also presupposes that the restriction in the individual case is so particularly burdensome for the individual that it does not appear reasonable for him or her to bear the consequences of the restriction alone. This may be the case, for example, if the restriction results in very high costs or loss of revenue for the individual. (See also Government Bill 2009/10:80, p. 169.)

31. In that assessment, it is natural to start from the assumption that no obligation to pay compensation arises in a situation that falls outside Chapter 2, Section 15, second paragraph of the Instrument of Government, if the legislator has considered, in a previous legislative matter, that the landowner in such a situation should not be entitled to compensation.

32. This means that a landowner is not normally entitled to compensation from the State for limitations on land use that result directly from the Species Protection Ordinance. However, such a right may exist in special circumstances where it does not seem reasonable that the landowner alone should have to bear the economic consequences of an intrinsically justified restriction on land use. As a rule, the right to compensation should then presuppose, in addition to the fact that the limitation has been very burdensome for the individual, that he or she has requested but been denied an exemption under the Species Protection Ordinance. Since this right to compensation does not follow directly from Chapter 31, Section 4 of the Environmental Code, the compensation should not exceed the landowner's material damage.

The assessment in this case

The company's right to compensation

33. Hargs Bruk has claimed compensation from the State on the basis that the Forest Agency, pursuant to Chapter 12, Section 6 of the Environmental Code, issued a prohibition on 3 October 2017 that prevented the company from felling approximately 22 hectares of forest, and, as a consequence, the company is entitled to compensation under Chapter 31, Section 4.

34. The prohibition was based on the assessment that felling carried out in the area to which the prohibition relates would violate the Species Protection Ordinance. That this was the case was then confirmed in the exemption case at

the County Administrative Board and has not been challenged in the Supreme Court. The question of whether Hargs Bruk is entitled to compensation under Chapter 31, Section 4 of the Environmental Code must therefore be assessed on the basis that the company was already prevented from carrying out felling in the area before the prohibition was announced, and that the Forest Agency's decision thus did not entail any further limitation of ongoing land use. It is therefore a situation where a landowner is not normally entitled to compensation.

35. However, the above does not exclude that Hargs Bruk may nevertheless be entitled to compensation under Chapter 31, Section 4 of the Environmental Code. Such a right to compensation should exist if the land-use limitation confirmed by the Forest Agency's decision is of the kind which entitles the landowner to compensation from the State. The extent to which Hargs Bruk is entitled to compensation depends, in this case, on whether the underlying limitation – the felling restriction that applies as a result of Section 4 of the Species Protection Ordinance – entitles the company to compensation. (See para. 14.)

36. As has already been stated, Chapter 2, Section 15, second paragraph of the Instrument of Government regarding compensation for restrictions of the right of disposition is not applicable to limitations on land use resulting from the Species Protection Ordinance. In principle, therefore, limitations resulting from the Species Protection Ordinance are only compensated if there are legal provisions to that effect. There are no such legal provisions. However, it follows from general principles that, in special circumstances, compensation may still be awarded. (See paras. 19, 20 and 26–32.)

37. It is undisputed that, in this case, the provisions of the Species Protection Ordinance, in order to protect the capercaillie and its breeding grounds and resting places, have the effect of preventing Hargs Bruk from

carrying out any felling whatsoever within a continuous area totalling approximately 22 hectares of forest. It is also undisputed that the area is intended for forestry, and nothing else has been claimed than that the forest in question is mature for felling. It is established that the impediment to felling entails a significant hindrance to the ongoing land use at the relevant part of the property, i.e., the forest at issue in the case.

38. In order for Hargs Bruk to be entitled to compensation, it is also required that, in an overall assessment, it does not appear reasonable that the company be forced to bear the economic consequences of the felling restriction alone (see para. 30).

39. In assessing whether this is the case, the weight of the public interest underlying the limitation is, in principle, irrelevant. It is, on the other hand, significant that Hargs Bruk is obliged, without the right to compensation, to take significant environmental considerations into account in its activities. It is stated that the company has a total land holding of more than 20,000 hectares. It is obvious that the company must therefore accept greater costs or loss of income, calculated in absolute terms, than owners with smaller forest holdings in order to comply with the consideration requirements of the legislation. The effects of a particular limitation must also be assessed in the light of the size of the business; a larger company is usually better placed to bear the effects of the limitation.

40. Against this, however, must be weighed the fact that the limitation in this case is entirely due to circumstances that Hargs Bruk could not influence or foresee. In addition, the company has requested an exemption from the County Administrative Board and the exemption application has been rejected. The State's assertion that the need to protect the capercaillie in the area in question has arisen as a result of the company's way of conducting its forestry operations has no concrete support in the evidence presented in the case.

41. It is also significant that the felling restriction relates to a relatively significant area, approximately 22 hectares, and that the restriction has an extensive economic impact on the company in absolute terms, corresponding to a reduction in value of the property in question of just over SEK 2.8 million, a figure which has not been disputed. The felling restriction has thus given rise to such significant damage that it is not reasonable for the company – despite its relatively extensive enterprise – to be solely responsible for it.

42. The circumstances are thus so particular that there are reasons to order the State to pay compensation to Hargs Bruk. The amount claimed is not in dispute. The Supreme Court therefore has no reason to examine the amount of compensation.

The issue of state aid

43. The State has argued in the Supreme Court that disbursement of compensation to Hargs Bruk would constitute unauthorised state aid under Article 107 of the Treaty on the Functioning of the European Union, and that the Supreme Court should therefore obtain a preliminary ruling from the Court of Justice of the European Union.

44. According to Article 107(1) of the Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between Member States, incompatible with the internal market.

45. In order to constitute state aid within the meaning of the Article, four conditions must be met. It must be a State measure or a measure taken through State resources. The measure must also be likely to affect trade between Member States. In addition, it must also provide a selective advantage to the beneficiary. Finally, the measure must distort or threaten to distort

competition. (See, *inter alia*, the judgment of the Court of Justice of the European Union of 27 January 2022 in Case C 238/20 *Sātiņi-S SIA*, para. 39)

46. What these conditions entail has been developed by the European Commission in a notice on the concept of state aid.² In this context, what the notice states regarding the condition concerning distortion of competition is worth noting in particular. According to paragraph 187 of the Notice, a measure granted by the State is considered to distort or threaten to distort competition when it is liable to improve the competitive position of the recipient compared to other undertakings with which it competes. This is the case if the State grants an economic advantage to an undertaking in a liberalised sector where there is, or could be, competition. As stated in paragraph 189, it is not necessary that the aid helps the recipient undertaking to expand and gain market share. What is necessary is that the aid allows the undertaking to maintain a stronger competitive position than it would have had if the aid had not been provided.

47. Compensation of the specific type at issue in this case is intended to compensate the beneficiary when a particular State regulation has unforeseeable and particularly burdensome consequences of a kind that do not affect all landowners in the same way. It allows the company to maintain the same competitive position it would have had if these effects had not materialised. However, such compensation does not make the company's competitive position stronger than it would have been without the limitation imposed by the regulation. The distortion-of-competition condition in Article 107 is therefore not fulfilled.

48. With this finding, it is irrelevant whether the other conditions of Article 107 are met.

² Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (2016/C 262/01).

49. On the whole, it is clear that Article 107 of the Treaty on the Functioning of the European Union is not applicable. There is therefore no need to seek a preliminary ruling from the European Court of Justice.

Issues related to adjustment of compensation, etc.

50. As already stated, Chapter 31, Section 2 of the Environmental Code refers to the provisions of Chapter 4 of the Expropriation Act. According to Chapter 4, Section 4, second paragraph of that Act, compensation is to be adjusted with regard to the increase in the general price situation that has occurred after the property was received or was transferred to the expropriating party. When assessing compensation under Chapter 31 of the Environmental Code, the provision should be applied in such a way that the compensation is adjusted upwards with regard to changes in the consumer price index after the value date in question.

51. Hargs Bruk has claimed compensation on the basis of Chapter 31, Section 4 of the Environmental Code and the rules of the Expropriation Act. At the Land and Environment Court, the company also claimed that the compensation should be adjusted in accordance with Chapter 4, Section 4, second paragraph of the Expropriation Act. The State did not dispute that such an adjustment should be made.

52. An adjustment in accordance with Chapter 4, Section 4, second paragraph of the Expropriation Act can only be made if the person entitled to compensation so requests. Adjustment can also be made for the period following the decision in the first instance, but this requires that an application for adjustment has been made in that instance. (See NJA 1980 p. 478, NJA 1985 p. 355 and NJA 1991 p. 655.)

53. According to the judgment of the Land and Environment Court, the assessed compensation, SEK 3,392,000, is to be adjusted, according to the

consumer price index, to the date of that court's judgment. The Land and Environment Court of Appeal has not ordered any adjustment for the period thereafter, which is to be expected given that Hargs Bruk did not, so far as the documents show, present any claim for an adjustment in the Land and Environment Court of Appeal.

54. Since a claim has been made in the Supreme Court, it is possible to order further adjustment. However, no claim for adjustment was made in the Land and Environment Court of Appeal. Additional adjustment shall therefore be made only for the time between the judgments of the Land and Environment Court of Appeal and the Supreme Court.

55. The interest claimed by Hargs Bruk is not in dispute in the case.

Litigation costs

56. On that basis, the State is ordered to pay Hargs Bruk's costs. The amount claimed is reasonable.

Justices of the Supreme Court Anders Eka, Johnny Herre, Sten Andersson (reporting Justice), Petter Asp and Cecilia Renfors participated in the ruling.
Judge referee: Anna Eberstål