SUPREME COURT OF NORWAY

On 9 May 2018, the Supreme Court gave judgment in

HR-2018-865-S (case no. 2017/1693), civil case, appeal against reappraisal

The municipality of Nannestad	(Counsel Christian Piene Gundersen)
v.	
Rådyrvegen housing cooperative	(Counsel Torstein Burkeland)
Attending under section 30-13 of the Dispute Act: The state represented by the Ministry of Justice and Public Security	(The Office of the Attorney-General by counsel Karen Mellingen)

(1) Justice **Endresen:** This case concerns ground rent adjustment. The issue at stake is the basis on which to calculate the adjustment: changes in the monetary value or changes in the land value. The appeal before the Supreme Court addresses in particular the significance of Article 1 of Protocol no. 1 to the European Convention on Human Rights on the protection of property for the interpretation of the so-called *unequivocally agreed* requirement in section 15 subsection 2 (2) of the Ground Lease Act when the landowner (the lessor) is a municipality. This provision currently follows from transition rule no. 5 (b) to Act of 19 June 2015 No. 63.

(2) The application of provisions of the Ground Lease Act 1996 in the light of Article 1 Protocol 1 has been dealt with by the Supreme Court in a number of cases. In the plenary judgments Rt-2007-1281 (*Øvre Ullern*) and Rt-2007-1306 (*Lindheim*), concerning the lessee's right under the then section 33 to extend the agreement on the same terms after its expiry, the Supreme Court found that Article 1 Protocol 1 had not been violated. Several lessors, having lost cases in the Norwegian legal system due to these plenary judgments, appealed to the European Court of Human Rights (the Court) claiming that their property rights under the Convention had been violated. In a judgment of 12 June 2012 in

Lindheim and others v. Norway, the right to extend the leasehold on the same terms was held to constitute a violation of the lessor's property rights.

(3) *Lindheim and others v. Norway* has been significant in a number of more recent Supreme Court judgments. In Rt-2015-421 (*Grimstvedt*), a grand chamber of the Supreme Court concluded that the interpretation of the law in a previous case, Rt-2007-1706 (*Bøvre*), on the right to a so-called one-off adjustment in section 15 subsection 2, could not be continued due to the considerations that had been addressed by the Court. In *Bøvre*, the Supreme Court had concluded that a contractual adjustment of the ground rent according to the consumer price index had to count as "the first adjustment", and thus prevent a contractual adjustment based on the land value. In grand chamber judgment HR-2016-304-S (*Guldberg*), concerning the consistency of the rules for stipulation of redemption price in section 32 with the protection under Article 1 Protocol 1, it was held that the lessor's interests were sufficiently protected.

(4) In HR-2016-2195-S (*Hegdahl II*), the lessor submitted that the *unequivocally agreed* requirement in section 15 subsection 2 (2) was inconsistent with Article 1 Protocol 1. With dissenting opinions, however, the case was dismissed, and the convention issue was not in fact resolved. A minority of three justices, who disagreed as to whether the appeal should be dismissed, addressed the convention issue and concluded that the lessor's property rights under Article 1 Protocol 1 had been violated.

(5) In the case at hand, the submissions of Nannestad municipality are largely similar to those of the lessor in *Hegdahl II* on the application of Article 1 Protocol 1.

(6) On 24 October 1977, Nannestad municipality entered into a leasehold agreement with the Norwegian Church Endowment (*Opplysningsvesenets fond*) regarding areas originally pertaining to Nannestad parsonage. Under this agreement, the ground rent could be adjusted every ten years according to changes in the value of the leased land, and the municipality had a right to sublet.

(7) In connection with the development of Gardermoen airport in the 1990s, Nannestad municipality wanted to offer prepared sites for housing and commercial projects. Following proceedings in the municipal council in 1994, it was decided that 45 sites at Preståsen in Nannestad – included in the area in the municipality's leasehold agreement with the Norwegian Church Endowment – were to be prepared for development. The parties also decided to use a standard leasehold agreement.

(8) The case before the Supreme Court concerns one of these sublet agreements. The leasehold agreement between the municipality and Rådyrvegen housing cooperative, the latter represented by an interim board, was entered into on 23 December 1996. The leasehold was set at 80 years. The agreement consisted of a standard leasehold contract with one appendix. The following is stated in item 8 of the appendix:

> **"A temporary ground rent of NOK 0.55 per square meter shall be paid, as well as a temporary administration fee of NOK 200 per year. The ground rent shall be adjusted in accordance with the times stated in the leasehold contract between the municipality and the ministry for cadastral unit no. 27 property unit no. 1 leasehold unit no. 64, which means every 10 years. The first adjustment is per 1 January 1998."**

(9) The following is taken from the leasehold agreement's provisions on "disputes":

"Any dispute that may arise from this leasehold contract shall be resolved in accordance with the provisions of the Ground Lease Act that governs the contract in full …"

(10) The leased land included seven sites. Nannestand building society projected and developed the sites during the period 1997-1998. The building society built 16 units distributed on six duplexes and one quadraplex.

(11) Until this date, the housing cooperative has paid an annual ground rent of NOK 1,737. The rent has not been adjusted since 1996, and – for reasons unnecessary to present – it has been somewhat lower than what the municipality had a right to demand.

(12) In December 2013, Nannestad municipality sent Rådyrvegen housing cooperative a notice of increase in the ground rent. In a letter of 18 September 2014, the municipality fixed the ground rent at NOK 60,973, effective from 1 January 2014. The increase was based on a change in the land value. The municipality wanted to exercise its right to increase the ground rent due to the substantial increase in the ground rent it paid to the Norwegian Church Endowment.

(13) The housing cooperative disputed the municipality's right to adjust the ground rent based on changes in the land value, holding that it could not be considered to have been "unequivocally agreed" that such a right existed. An adjustment would thus have to be based on the change in the monetary value under the main rule in section 15 subsection 1 of the then Ground Lease Act, and not under the exception in subsection 2 (2). The parties did not reach an agreement.

(14) In 2016, the municipality purchased the leasehold areas at Preståsen from the Norwegian Church Endowment. For the area to which the appraisal applies, the price was fixed at NOK 475 per square meter.

(15) On 30 April 2015, the housing cooperative petitioned for judicial appraisal demanding the ground rent adjusted in accordance with the main rule in the Ground Lease Act. During the case preparations, the district court decided in line with section 2 of the Appraisal Act and section 6-1 subsection 1 of the Dispute Act to split the hearing, so that the basis on which to calculate the adjustment would be considered first.

(16) On 10 June 2016, Øvre Romerike District Court gave the following appraisal:

"1. The appraisal is allowed.

2. The ground rent for cadastral unit no. 27 property unit no. 1 leasehold unit no. 179 in Nannestad municipality is to be adjusted in accordance with changes in the consumer price index, and will be NOK 2 439.38 as from 1 January 2014.

3. Nannestad municipality is to pay costs of NOK 166 271.88 to Rådyrvegen housing cooperative within 2 weeks from the service of the appraisal.

4. Nannestad municipality is to cover the fees of appraisal members as estimated in a separate ruling."

(17) The district court found that the parties appeared to have agreed that an adjustment could take place based on the land value, but that this had not been "unequivocally agreed". No violation of Article 1 Protocol 1 had been asserted, and the provision was not considered by the court.

(18) The municipality of Nannestad petitioned for a reappraisal. The court of appeal had three expert judges and two appraisal members, see section 34 subsection 2 of the Appraisal Act. Before the court of appeal, the municipality submitted that the unequivocally agreed requirement was not consistent with the protection of property provision in Article 1 Protocol 1.

(19) On 12 June 2017, Eidsivating Court of Appeal gave the following reappraisal:

> **"1. Ground rent for cadastral unit no. 27 property unit no. 1 leasehold unit no. 179 in Nannestad municipality is to be adjusted according to the changes in the consumer price index, and will be NOK 4 208.70 – fourthousandtwohundredandeight 70/100 – as of 1 January 2014.**
>
> **2. The Nannestad municipality is to pay costs in the court of appeal to Rådyrvegen housing cooperative of NOK 197 750 – onehundredandninetyseventhousandsevenhundredandfifty – within 2 – two – weeks from the service of this reappraisal.**
>
> **3. Nannestad municipality is to pay statutory costs for the reappraisal, including remuneration to the appraisal members as stipulated by the court.**

(20) The court of appeal found no reason to assess whether the *unequivocally agreed* requirement was consistent with Article 1 Protocol 1, as the court did not consider the municipality protected under this provision.

(21) Nannestad municipality has appealed the reappraisal to the Supreme Court. The appeal is directed against the procedure and the application of the law.

(22) The Supreme Court's Appeals Selection Committee granted leave to appeal in a decision of 28 November 2017. Chief Justice Øie decided on 29 November 2017 that the case be heard by a grand chamber of the Supreme Court in accordance with section 5 subsection 4 and section 6 subsection 2 of the Courts of Justice Act.

(23) The state has participated in the case in accordance with section 30-13 of the Dispute Act.

(24) Before the court of appeal, the municipality argued principally that the *unequivocally agreed* requirement had been met. This argument has not been brought before the Supreme Court. Apart from that, the case is the same as before the court of appeal.

(25) The appellant, *Nannestad municipality*, has contended:

(26) The leasehold agreement gives the municipality a right under general principles of contractual interpretation to demand a ground rent increase based on changes in the land value.

(27) A municipality is not protected under the European Convention of Human Rights and cannot invoke the presumption principle[1] based on its own legal position. However, the presumption principle may have indirect significance, since the Ground Lease Act, out of concern for private lessors, must generally be interpreted in a specific way. This is also significant for the legal status of the municipality, since the Act also applies to public lessors. Such an approach fully corresponds to Supreme Court judgment Rt-2015-421 (*Grimstvedt*).

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[1] Translator's comment: The presumption that Norwegian law is consistent with international law.

(28) Hence, the court must consider whether the protection of private lessors under the Convention entails that the *unequivocally agreed* requirement must be generally disregarded in the interpretation of the Ground Lease Act.

(29) The direct effect of the *unequivocally agreed* requirement is that lessors are precluded from the agreed increase in the ground rent. This interference with the lessor's legal status is inconsistent with the provision on protection of property in Article 1 Protocol 1. The *unequivocally agreed* requirement must thus be abandoned. To avoid violation of Article 1 Protocol 1, the contents of agreements entered into must be established under ordinary interpretation and evidentiary rules; the *unequivocally agreed* requirement cannot be read into them.

(30) Even if the Supreme Court on a general basis should not accept such an altered interpretation of section 15 of the Ground Lease Act, the result must still be that the municipality becomes entitled to increase the ground rent based on the land value. The application of the *unequivocally agreed* requirement towards a private lessor under the same circumstances as in the case at hand would entail a violation of Article 1 Protocol 1, and the supremacy provision in the Human Rights Act thus entails that the agreed right to increase cannot be precluded. The legislature has decided on a principal basis that the same rules apply for leasehold agreements with a public entity as the lessor as for leasehold agreements where the lessor is a private entity; thus, indirectly, Article 1 Protocol 1 entails that a municipality is equally entitled to demand an increase.

(31) Already in the preparatory works to the Ground Lease Act 20 December 1996, the Storting (Norwegian parliament) expressed that the law must apply equally to public and private lessors. Former special rules for public lessors were abandoned, and equality was introduced as a principle.

(32) The equality was continued when the Act was amended in 2015 as a result of the Court having concluded on violation in *Lindheim and others v. Norway*. It was clear that the judgment did not require an amendment in terms of public lessors, but the Storting chose nevertheless to continue the previously established principle of equality for all lessors.

(33) Emphasis must be placed on the Storting's assumption, as the Supreme Court in its judgment Rt-2009-1118 emphasised the legislature's assumption of equal rules in civil and criminal procedure when deciding that any refusal by the court of appeal to hear cases must also be justified in civil cases. In this case, the assumption of equality was emphasised although it concerned the interpretation of two different acts with potentially deviating concerns. In the case at hand, there is even more reason to emphasise the equality principle.

(34) Also, if the Supreme Court should find that the very strict standard of proof, presumably deriving from the *unequivocally agreed* requirement, cannot be continued, but that an appropriate standard of proof still derives from the same requirement, then the court of appeal must have based its decision on a misinterpretation of the statutory requirement for evidence. This alone must entail an annulment of the court of appeal's reappraisal.

(35) The municipality of Nannestad has submitted this *prayer for relief:*

> **"1. Eidsivating Court of Appeal's reappraisal of 12 June 2017 in case 16-171398SKJ-ELAG is to be set aside.**

2. Nannestad municipality is to be awarded costs in the district court, the court of appeal and the Supreme Court."

(36) The respondent, *Rådyrvegen housing cooperative*, has mainly contended the following:

(37) It is evident from a general interpretation of the leasehold agreement, alone, that the lessor may only increase the ground rent based on changes in the consumer price index. No questions arise as to what has been unequivocally agreed; there has been no violation. Hence, no issue of principle is to be considered with regard to the *unequivocally agreed* requirement in this case.

(38) It is undisputed that municipalities do not have rights under the Convention, and that the legislature can impose limitations on public lessors without having to consider the protection of private lessors. What the appellant is in fact submitting is that the municipality should nevertheless have a right to invoke the Convention. This is unfounded, and it must be the legislature's call to determine whether public lessors should have a right to adjust the ground rent other than under the current provisions of the Ground Lease Act.

(39) Even if the special standard of proof should preclude adjustments to the land value, this would not under any circumstance be a violation of Article 1 Protocol 1, as the Ground Lease Act reads after the amendment in 2015. With a prolongation of the leasehold agreement, the municipality, like private lessors, will be entitled to increase the ground rent based on the land value, see section 15 subsection 4 the Ground Lease Act. This would also be the situation for a private lessor under the same conditions as for Nannestad municipality.

(40) The legal regulation of leasehold agreements in Norway and the special concerns in this legal field are thoroughly accounted for in the Supreme Court's plenary judgment Rt-2007-1281 (*Øvre Ullern*). Nothing in *Lindheim and others v. Norway* alters the superior approach taken by the legislature. The durability of this approach is demonstrated in the Supreme Court's grand chamber judgment HR-2016-304-S (*Guldberg*).

(41) What was crucial in *Lindheim and others v. Norway* was the infinite preclusion of the possibility to increase based on land value – also beyond the term of the leasehold agreement. After the 2015 amendment, it has only been a question of limiting the right to increase the ground rent within the leasehold period agreed between the parties.

(42) As reflected in long-term case law, the Court of Human Rights is highly reluctant to interfere with various forms of public ground rent adjustment. This practice has been continued after *Lindheim and others v. Norway.*

(43) Also, considering the lessor's possibility of preparation and predictability, the purpose of the preparation of the land area and its financial position, there are no special concerns in this case suggesting that a limited right to increase would be a disproportionate measure towards a private lessor in a comparable situation.

(44) Rådyrvegen housing cooperative has submitted this *prayer for relief*:

"1. The appeal is to be dismissed.

2. The public authorities are to be awarded costs in the Supreme Court."

(45) *The state represented by the Ministry of Justice and Public Security* has endorsed the main views of the housing cooperative, and emphasised that a conflict with section 3 of the Human Rights Act does not arise when the lessor is a public entity. Should the Supreme Court – after a prejudicial, abstract and hypothetical assessment – nevertheless conclude that the *unequivocally agreed* requirement is inconsistent with Article 1 Protocol 1 when the lessor is a private entity, the presumption principle cannot entail that the *unequivocally agreed* requirement is precluded towards public lessors. The principle that the courts should not use safety margins in the application of international law is highly significant in this case, since the municipality is not protected under Article 1 Protocol 1. In any case, there is no conflict between the *unequivocally agreed* requirement in section 15 of the Ground Lease Act and Article 1 Protocol 1. The solution chosen by the legislature balances the contractual parties' conflicting interests in this particular contractual field.

(46) The state is not taking as stand in the private-law dispute between the parties and has not submitted any prayer for relief or demanded costs.

(47) *I have concluded* that the appeal must be dismissed.

(48) Pursuant to the Ground Lease Act of 1996, implemented on 1 January 2002, each of the parties could demand adjustment of the ground rent in accordance with the money value, unless it had been unequivocally agreed that the ground rent should remain unchanged or be adjusted on different grounds, see section 15 subsection 1. With the amendment of 2 July 2004, this was implemented in more detail. The *unequivocally agreed* requirement was continued as a condition for demanding adjustment based on the land value, see section 15 subsection 2 of the Ground Lease Act in its then form. The further implications of this standard of proof have been clarified through a number of Supreme Court judgments, see Rt-2005-1202 (*Falkum*), Rt-2006-1547 (*Hegdahl*), Rt-2007-1697 (*Båtsvikdalen*), Rt-2007-1706 (*Bøvre*), Rt-2008-306 (*Strinda*) and Rt-2010-577 (*Rygge*). These judgments established that a stricter standard of proof applies than the general preponderance of the evidence. A central issue in the case at hand is whether this particular standard of proof is to be interpreted otherwise due to the provision in Article 1 Protocol 1 and due to the presumption that Norwegian law is consistent with international law.

(49) A municipality is not a subject protected under the Convention. This is also true when the municipality is party to a private-law agreement, see the Court's judgment 7 June 2001 *Danderyd kommun v. Sweden*. With reference to previous case law, the judgment sets out:

> **"According to this jurisprudence it is not only the central organs of the State that are clearly governmental organisations, as opposed to non-governmental organisations, but also decentralised authorities that exercise public functions, notwithstanding the extent of their autonomy vis-à-vis the central organs. This is the case even if the municipality is claiming that in this particular situation it is acting as a private organ."**

(50) Hence, it is clear that a possible limitation to Nannestad municipality's right to increase the ground rent does not constitute a violation of the Convention.

(51) However, the appellant has submitted that if the unequivocally agreed requirement, as it has been interpreted in case law, systematically leads to violations of private lessors' rights under Article 1 Protocol 1, it must be assessed whether the presumption principle

can make basis for a new interpretation of the Ground Lease Act, which in turn would have consequences also for public lessors.

(52) In my view, the appellant's arguments cannot succeed.

(53) First, the leeway for alternative interpretations of the provision is highly limited in this regard. It appears already from the provision's wording that a special standard of proof must apply, and it is reflected in the preparatory works that this was indeed the purpose of the provision. In a number of Supreme Court judgments, this interpretation is, as mentioned, continued and elaborated on.

(54) In the wake of *Lindheim and others v. Norway*, the legislature revised the Ground Lease Act to avoid violations of Article 1 Protocol 1, and the established standard of proof was left unchanged. Hence, it seems natural to conclude as the Supreme Court did in its plenary judgment Rt-2000-1811 on page 1831:

> **"We are beyond the cases where a provision 'can be… interpreted in alternative ways', see what I have previously quoted from Proposition to the Odelsting No. 79 (1991–1992), and we are thus also beyond what may reasonably be considered to be interpretation of the provision."**

(55) Based on this alone, there is barely room in the case at hand for the approach on which the Supreme Court based its grand chamber judgment Rt-2015-421 (*Grimstvedt*). Since the appellant's submission is closely linked to *Grimstvedt*, there is reason to emphasise that our case differs substantially from that in more than one respect.

(56) In *Grimstvedt*, which did not involve a public lessor, the Supreme Court found that the previous interpretation would complicate the application of Article 1 Protocol 1, and that the one-off adjustment was necessary for the overall legislative system to involve such a balancing of interests as the Court of Human Rights accentuates. Thus, my understanding is that the new interpretation of the statutory condition for increase based on the land value was chosen to avoid a systematic violation of Article 1 Protocol 1.

(57) It was also accepted in the judgment that the outcome of the previous interpretation differed among the lessees, although the differences in contracts and in the circumstances as such could not give any satisfactory justification for this.

(58) The case at hand concerns a standard of proof that alone cannot constitute a violation of Article 1 Protocol 1. However, Article 1 Protocol 1 may be applicable when it comes to the potential *consequences* of the standard of proof in each case. It is thus clear that the standard of proof will not systematically result in violations. If, for example, the relevant leasehold is soon to expire, it is evident that no disproportionate interference has taken place.

(59) Precluding the *unequivocally agreed* requirement on a general basis will involve setting aside the solution chosen by the legislature also in cases where the legislature's balancing of the parties' interests is fully consistent with Article 1 Protocol 1.

(60) My overall view is that there exists no obligation under national law suggesting that the *unequivocally agreed* requirement can be interpreted in any other way than what is set out in Supreme Court case law. I have no cause to consider whether, and in which

circumstances, the *unequivocally agreed* requirement may result in disproportionate interference against private lessors.

(61) Against this background, I will now turn to the appellant's submission that the public has placed private lessors on par with private lessors on a principal basis, and that, as a result, the municipality has acquired the same right to increase the ground rent based on changes in the land value as the one held by private lessors under Article 1 Protocol 1. The submission appears to be an alternative argument for precluding the *unequivocally agreed* requirement. However, in my understanding, the municipality finds that the requirement of equality between private and public lessors applies although the private lessor's legal status is not established from a general interpretation of the law, but rather based on the supremacy provision in section 3 of the Human Rights Act.

(62) The appellant submits that the Supreme Court should reason in line with Rt-2009-1118, a judgment on a different legal area: the duty to give grounds for refusing appeals in civil cases. This judgment must be read against grand chamber judgment Rt-2008-1764 where the Supreme Court held that the court of appeal's obligation to give grounds for any refusal to hear criminal appeals was found in UN's Covenant on Civil and Political Rights. The following year, the same question arose for civil appeals. It was clear that the same obligation to give grounds for refusing appeals in civil cases was not found in the said Covenant. In its judgment from 2009, the Supreme Court found, nevertheless, that grounds must be given also in civil cases, arguing that the provisions on refusal to hear civil appeals were consciously worded based on the provisions of the Criminal Procedure Act, and that the legislature would undoubtedly have implemented an obligation to give grounds also in civil cases if it had perceived this to be applicable criminal procedure already when adopting the Dispute Act.

(63) However, the case concerned a central legal security issue that did not affect the parties' substantive legal positions, and the circumstances were also such that the decision does not give guidance for the judgment in the case at hand.

(64) In my view, as the case now stands, a more natural approach would be the principal views in the Supreme Court's plenary judgment Rt-2000-1811, which dealt with the application of the EEA Agreement. The justice delivering the leading opinion stated the following on page 1832:

> **"… It is the task of the legislature to incorporate the directive in Norwegian law, and it is the legislature that – in a case like this – must correct any misjudgments that are later established. Thus, the Ministry of Transport and Communications has, in Proposition to the Odelsting No. 26 (1999–2000) page 24, expressed that the EFTA Court's advisory opinion makes it necessary to amend section 7 subsection 3 (b) of the Motor Car Liability Act, and that the case will be followed up by the Ministry of Justice. The courts cannot decide the case based on what the other powers of state will do once inconsistency has been established."**

(65) Acts are adopted under special procedural rules established in the Constitution and can normally not be replaced by the courts' perception of a hypothetical legislative will.

(66) This is undoubtedly the situation in our case. It concerns the establishment of a rule involving a balancing of various political concerns, and which, as opposed to grand chamber judgment Rt-2009-1118, interferes directly with the economic accounts between the parties. There is no precise obligation under international law to take into account in

the interpretation of Norwegian law, and given that the *unequivocally agreed* requirement cannot be generally precluded, it seems unclear how the invoked equality should be practiced. For instance, a public lessor many have had other goals with the leasehold agreement than a private lessor.

(67) For the sake of completeness, I add that in my view, there is no need for a reasoned prediction of what would be the legislative choice, if it should turn out that the *unequivocally agreed* requirement results in violations of Article 1 Protocol 1. The preparatory works to the Ground Lease Act contain statements that appear to be a principal approach to the issue of equality between private and public lessors, see sections 3.2 and 3.4.2 of Norwegian Official Report (NOU) 1993: 29 and section 3.11 of Proposition to the Odelsting No. 28 (1995–1996), but the legislative intent seems rather to have been to strengthen the position of *lessees* by giving them the same protection against public and private lessors. Instead, the interpretation of the law asserted by the municipality diminishes this protection.

(68) Under any circumstance, the revision of the Ground Lease Act in 2015 clarifies that the previous principal approach is not suitable to give guidance in our case. The question whether special rules should apply to public lessors is discussed in section 6.2.3 of NOU 2013: 11 and in section 5.2 of Proposition 73 L (2014–2015), but no traceable conclusions are drawn from any principal opinions on equality. The conclusion that the new provisions were to cover public lessors is instead politically based.

(69) Consequently, I find it clear that there is no legal basis on which Nannestad municipality may increase the ground rent apart from changes in the consumer price index, and the appeal must be dismissed.

(70) The appeal has not succeeded. The respondent has been granted public legal aid in the Supreme Court, and the appellant is to cover the public expenses accrued, see section 20-2 subsection 1 of the Dispute Act. On behalf of the respondent, Torstein Burkeland has claimed a fee of NOK 182 325 including costs. The claim is allowed.

(71) I vote for this

J U D G M E N T:

1. The appeal is dismissed.

2. The municipality of Nannestad is to pay the public expenses for free legal aid in the Supreme Court of NOK 182 325 – onehundredthousandthreehundredandtwentyfive – within 2 – two – weeks of service of the judgment.

(72) Justice **Matningsdal:** I agree with the justice delivering the leading opinion in all material respects and with his conclusion.

(73) Justice **Tønder:** Likewise.

(74) Justice **Matheson:** Likewise.

(75) Justice **Noer:** Likewise.

(76) Justice **Bull:** Likewise.

(77) Justice **Bergsjø:** Likewise.

(78) Justice **Ringnes:** Likewise.

(79) Justice **Falch:** Likewise.

(80) Justice **Høgetveit Berg:** Likewise.

(81) Chief Justice **Øie:** Likewise.

Following the voting, the Supreme Court gave this judgment:

J U D G M E N T:

1. The appeal is dismissed.

2. The municipality of Nannestad is to pay the public expenses for free legal aid in the Supreme Court of NOK 182 325 – onehundredthousandthreehundredandtwentyfive – within 2 – two – weeks of service of the judgment.