



Impossibility for landowners in Norway to increase rents breached their property rights

In today's Chamber judgment in the case [Lindheim and Others v. Norway](#) (application nos. 13221/08 and 2139/10), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 1 of Protocol No 1 (protection of property) of the European Convention on Human Rights.

The case concerned the impossibility for landowners to increase rents to people leasing their land as a result of a change in the legislation obliging them to extend leases on the same conditions as before without limitation in time.

The Court found that the bar on increase of ground leases placed a disproportionate financial burden on owners as compared to the general interest of the community, showing that the Norwegian authorities had not struck a fair balance between the various interests involved.

Principal facts

The applicants are Berit Mogan Lindheim, Knut Heian, the spouses Ellinor and Georg Nilsen, Nina Titten Brandt-Kjelsen, and Dagfin Bonde Henriksen. All six applicants are Norwegian nationals who were born between 1940 and 1956 and live in different towns in Norway.

They are the owners of plots of lands in Norway leased, at various points in time, for permanent homes or holiday homes for periods between 40 and 99 years. A new Ground Lease Act was passed in 1996 and entered into force in 2002. Amendments to it, with effect from 1 November 2004, granted all those whose leases on plots for permanent and holiday homes had expired the right to claim extension of their leases on the same conditions as before and without limitation in time.

In a leading case brought before the Supreme Court by a lessor, who was not among the applicants, the Norwegian Supreme Court found in favour of the lessees. It held that the new legislation regulating housing lease rents was compatible with the Constitution as it aimed at protecting the right to housing and was not, therefore, contrary to the Convention.

Berit Mogan Lindheim, Knut Heian, the spouses Ellinor and Georg Nilsen, and Dagfin Bonde Henriksen, owned agricultural property for holiday and permanent housing. Nina Titten Brandt-Kjelsen owned 21 plots for permanent homes. Upon the expiry of their leases, the lessees of all the applicants – referring to the new legislation – asked that

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

their leases be extended on the same conditions as before, i.e. without the increase proposed by the applicants. The applicants disagreed and pursued their position either by way of valuation and discussion with the lessees' lawyers, or by conciliation and court proceedings, but to no avail.

Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No 1, the applicants complained that their right to protection of their property had been breached as a result of the application of the 2004 amendments to the 1996 Ground Lease Act to their lease situations.

The applications were lodged with the European Court of Human Rights on 14 March 2008 and 21 December 2009 respectively. A public hearing took place on 21 June 2011.

Judgment was given by a Chamber of seven, composed as follows:

Nicolas **Bratza** (the United Kingdom), *President*,
Lech **Garlicki** (Poland),
Päivi **Hirvelä** (Finland),
Ledi **Bianku** (Albania),
Zdravka **Kalaydjieva** (Bulgaria),
Vincent A. **de Gaetano** (Malta),
Sverre Erik **Jebens** (Norway), *Judges*,

and also Lawrence **Early**, *Section Registrar*.

Decision of the Court

Protection of property (Article 1 of Protocol No 1)

The parties agreed that there had been an interference with the applicants' possessions as a result of the application of the Ground Lease Act, and that it had been lawful. The Court found that the Act's application had had the effect of control over the use of the applicants' property. However, the parties differed on the questions of whether the interference had pursued a legitimate aim and whether it had been proportionate to that aim, as required by the Convention.

The Court recalled that the national authorities were in principle better placed than the international judge to assess what was in their society's general interest. In addition, national authorities – including parliaments – enjoyed a wide discretion (margin of appreciation) in implementing social and economic policies.

In this case, the authorities' aim had been to secure lessees, who could not buy their plots, a lasting right to use and dispose of those plots. That had been set in section 33 of the Act, in accordance with which lessees had been given an indefinite term for extending their lease contracts under the same conditions as had applied previously. Section 33 had been generally applicable to old lease contracts up for renewal, irrespective of the financial means of the lessee or of whether the land was used for permanent or holiday homes. The Court observed that while that measure seemed to reflect social policy considerations in a broad sense, as opposed to being confined to situations of potential financial hardship for lessees, the aim pursued by the Norwegian Parliament to protect the interests of lease holders lacking financial means had been legitimate under the Convention.

Turning to the proportionality of the measure, the Court noted that from a lessor's point of view, the ground lease s/he received was out of tune with the reality of the property-

market, given that the real estate prices had gone up drastically since the 1980s. On the other hand, the lessees had a strong interest in maintaining the contractual conditions even after the expiry of the lease contract. Those were conflicting interests, difficult to reconcile, and the issues before the Norwegian Parliament had been particularly complex. The need to have clear and foreseeable solutions and to avoid costly and time-consuming litigation on a potentially massive scale (given that there were around 300,000 lessees in Norway) was an understandable objective.

Looking into the situation immediately after the entry into force of the Ground Lease Act in 2002, the Court observed that, as a result of a provision allowing the partial adjustment of ground rents in view of developments in the consumer price index, many lessees had seen a drastic increase of their ground lease rents for which they had been unprepared. The gap between rents subject to rent control and price increases in the housing market had widened over time. The lifting of rent control after 2002, although partial, had substantially affected many households. The solution favoured by the Government and adopted in Parliament had been a rule permitting one-off upward adjustment for contracts with ground value clauses, followed by the introduction of an adjustment scheme linked to changes in the consumer price index.

The Court was struck that no specific assessment had been made as to whether the amendment to section 33 regulating the extension of the type of ground lease contracts at issue in the applicants' case achieved a fair balance between the interests of the lessors and the lessees. In fact, the applicants had been receiving a particularly low level of rent, amounting to less than 0.25 % of the plots' market value, under the various ground lease agreements as extended in accordance with section 33 of the Ground Lease Act.

Indeed, the extension of the ground lease contracts concluded by the applicants had been for an indefinite duration and there had been no possibility of upward adjustment, other than in respect of the consumer price index. Therefore, it had not been possible to take the value of the land as a relevant factor in assessing the level of the rent in such contracts. Only the lessee could choose to end a lease agreement, either by withdrawing from the contract or by redeeming (purchasing under preferential conditions) the plot of land. Lessees were free to sell the lease with any dwellings attached to it to third parties: in such cases, any increase resulting from the change in value of the land would go to the lessee. That would not be the case in respect of lessors who decided to sell their rent entitlement to a third party: the control on the rent level would be in force indefinitely. The Court accepted, however, that the applicants could entertain a legitimate expectation that the relevant lease contracts would expire as agreed according to their terms, independently of the intervening discussions on and adoption of legislative measures..

In view of all the above, the Court concluded that a financial and social burden had only been placed on the applicant lessors. Consequently, no fair balance had been struck between the general interests of the community and the property rights of the applicants, in violation of Article 1 of Protocol No 1.

Enforcement of the judgment (Article 46)

The Court held that the problem underlying the violation in this case lied in the legislation in question. Having identified the main shortcomings in that legislation, the Court held that Norway had to introduce a mechanism in its domestic legal system in order to ensure a fair balance between the interests of lessors and the general interests of the community, and left it up to the Norwegian authorities to choose how to achieve this objective.

Just satisfaction (Article 41)

The Court rejected the applicants' claims for loss of income and held that Norway was to pay the applicants between 4,900 euros (EUR) and EUR 9,570 in respect of pecuniary damage, which concerned compensation for judicial costs paid to the adversary parties in the domestic proceedings. The Court also awarded the applicants EUR 200,000 for costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.