

June 2012

***Lindheim and Others v. Norway* - 13221/08**

Judgment 12.6.2012 [Section IV]

Article 1 of Protocol No. 1

Article 1 para. 2 of Protocol No. 1

Control of the use of property

Statutory right for lessees under ground leases to demand indefinite extension of lease on pre-existing conditions: *violation*

Facts – In the post-war area, limited resources for the purchase of real estate in Norway made so called ground-lease arrangements attractive for people wishing to own a home. For landowners, such arrangements offered means of obtaining a steady income from their land without making any investments and an attractive alternative to selling at a time of moderate price levels. Some 300,000 to 350,000 ground-lease contracts were entered into, mainly for private homes. Following the rise of real-estate prices in the 1980s the legislature found it necessary to intervene to protect the interests of lessees who had invested in their homes but could not afford to purchase the land (by redeeming the lease). By virtue of section 33 of the Ground Lease Act 1996, as amended in 2004, anyone holding a long lease of land for use as a permanent or holiday home is entitled at the expiry of the contractual term to claim an extension of the lease on the same conditions as those applicable under the original lease and without limitation in time. Rent can be increased only in line with general inflation, not the rising cost of land. In a leading judgment of 21 September 2007, the Supreme Court ruled that the amended section 33 was compatible with the Constitution.

The applicants owned plots of land that had been let prior to 1976 under ground-lease contracts for permanent or holiday homes for periods of between 40 and 99 years. In their applications to the European Court they complained that by virtue of the legislation as amended, their lessees had been able to demand an indefinite extension of their leases on the same conditions as before.

Law – Article 1 of Protocol No 1: The interference with the applicants' possessions resulting from the application of the amended section 33 of the Ground Lease Act was lawful and constituted control of the use of property for the purposes of Article 1 of Protocol No. 1. The Norwegian Parliament's view that there was a legitimate need, on grounds of social policy, to protect the interests of leaseholders who were financially unable to exercise their statutory right of redemption was not manifestly unreasonable. The interference could therefore be deemed to be in accordance with the general interest.

Turning to the proportionality of the measure, the Court noted that the Norwegian Parliament had been confronted with the particularly complex task of trying to reconcile competing interests that were markedly different in nature: on the one hand, the lessor's interest in negotiating rent that reflected market values and, on the other, the lessee's interest in continuing the lease at the end of the term in view of his or her financial investment in the constructions on the land. In view of the very large number of ground-lease contracts in Norway (in excess of 300,000), it was understandable that the legislative process should have emphasised the need to have clear and foreseeable solutions and to avoid costly and time-consuming litigation on a potentially massive scale.

Nevertheless, the Court was not satisfied that the respondent State, notwithstanding its wide margin of appreciation, had struck a fair balance between the general interest of the community and the applicants' property rights. In this connection, it noted that no specific assessment had been made of whether the amendment to section 33 achieved such a balance between the lessors' and lessees' interests; the level of rent received by the applicants was strikingly low (less than 0.25% of the market value of the plots concerned); the legislation appeared to go beyond situations of potential financial hardship and social injustice and to apply generally whenever a lease came up for renewal, irrespective of the lessee's financial means; extensions were of indefinite duration and the rent could be increased only in the light of the consumer price index, not the value of the land; lastly, only the lessee could choose to terminate a lease agreement, either by rescinding the contract or by redeeming (purchasing under preferential conditions) the plot of land. A disproportionate burden had thus been placed on the applicant lessors.

Conclusion: violation (unanimously).

Article 46: The respondent State was required to take appropriate legislative and/or other general measures to secure in its domestic legal order a mechanism which would ensure a fair balance between the interests of the lessors and the general interests of the community, in accordance with the principles of protection of property rights under the Convention and having regard to the shortcomings the Court had identified in its judgment.

Article 41: The Court dismissed the applicants' claims for compensation equal to the market value of the undeveloped plots less the capitalised value of the rent payable under the Ground Lease Act. It considered that, in the particular circumstances of the case, having regard to the complexity of the issues with which the Norwegian Parliament was confronted, to the Court's indication of legislative and/or other general measures and to the principle of legal certainty inherent in the law of the Convention, the respondent State should be dispensed from liability with regard to legal acts or situations that predated the instant judgment. However, it awarded the applicants compensation for the costs they had had to pay the opposing parties in the domestic proceedings.