AS TO THE ADMISSIBILITY OF

Application No. 17228/90
by A.A.
against Norway

The European Commission of Human Rights (Second Chamber) sitting in private on 12 January 1993, the following members being present:

MM. S. TRECHSEL, President of the Second Chamber
G. JÖRUNDSSON
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
MM. F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS

Mr. K. ROGGE, Secretary to the Second Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 5 June 1990 by A.A. against Norway and registered on 27 September 1990 under file No. 17228/90;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having regard to the observations submitted by the respondent Government on 28 Februry 1992 and the observations in reply submitted by the applicant on 15 April 1992;

Having deliberated;

Decides as follows:

THE FACTS

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicant is a citizen of the United States of America. He is of Norwegian origin and was born in 1925 at Vanse, Norway. In 1947 he moved to the United States, but returned to Norway in 1983. He now resides at Vanse, Norway.

A. The particular circumstances of the case

In 1979 the applicant's uncle died and left the family farm to his wife. The farm was subject to "odelsrett", hereinafter called allodial right, and the applicant was one of the holders of such a right.

In 1981 the County Agriculture Committee (Fylkeslandbruksstyret) allowed the aunt to separate the farm house together with a field of 60 ares form the property on condition that the rest of the property be sold to neighbouring farmers who were in need of land.

On 27 October 1982 and 23 February 1983 the County Agriculture Committee allowed the rest of the property to be divided and sold to two neighbours as additional land. One of them was the applicant's brother. The areas were transferred to the new owners in January and April 1983.

Proceedings before the District Court (Herredsretten)

By a submission dated 30 December 1983, the applicant instituted proceedings in the District Court of Lyngdal in order to buy the land by virtue of his allodial right (proceedings for redemption - odelsløsningssak). It was received by the Court on 10 January 1984. The suit was directed against three neighbours, the two mentioned above and a family which had bought the farm house. The same day, the Court ordered the defendants to submit their reply within three weeks.

The defendants submitted their reply on 24 January 1984. They all disputed that the applicant had a right of redemption. The Court requested observations from the applicant by 13 February 1984. On 15 February 1984 the applicant submitted his comments, which were sent by the Court to the defendants for comments by 12 March 1984. Since they did not respond by that date, the Court fixed a new time-limit, 18 April 1984.

On 16 April 1984 two of the defendants (the neighbouring farmers) acknowledged that the applicant had an allodial right, whereas one defendant (the buyer of the farmhouse) maintained that the applicant had no right of redemption. The Court asked for the applicant's comments by 23 May 1984.

On 23 May 1984 the applicant withdrew the case against the buyer of the farm house. At the same time, he requested the Court to fix a date for the hearing on the merits of the case against the remaining two defendants. On 25 May 1984 the Court stated that the parties would soon be contacted in order to fix a date for the main hearing.

Following correspondence between the parties and the Court, the defendants informed the Court on 14 June 1984 that they had on that day filed an application with the County Agriculture Committee in accordance with section 31 of the Act of 28 June 1974 relating to allodial rights (odelsloven), hereinafter the 1974 Act, the purpose being to exempt the land from allodial rights. Referring to section 33 of the said Act they requested that the case be adjourned pending the outcome of the administrative proceedings as to their request for an exemption.

On 18 June 1984 the applicant argued that the conditions for exemptions from allodial rights were not fulfilled. He objected to the adjournment and requested that a date for the main hearing be fixed. Within the deadline set by the Court - 5 July 1984 - the defendants repeated on 26 June 1984 that the proceedings should be adjourned. The applicant made submissions on 26 June 1984. No date for a main hearing was fixed.

On 27 June 1984 the County Agriculture Committee decided to consider the application. In conformity with section 33 of the 1974 Act the application was accordingly sent to the Municipality of Farsund (Farsund kommune) for consideration and recommendation. On 31 August 1984 the holders of allodial rights were invited to submit, by 3 December 1984, any opinions they might wish to state in conformity with section 33 of the 1974 Act. The case pending before the District Court was adjourned.

The case was also sent to the Municipal Agriculture Board (Landbruksnemnden) which received the application on 10 September 1984 and recommended on 1 October 1984 against freeing the land of the

applicant's allodial right. The Municipality Council (kommunestyret) of Farsund did the same on 13 October 1984. The case was sent back to the County Agriculture Committee on 24 October 1984. On 20 February 1985 the County Agriculture Committee sent the case to the Ministry of Agriculture for final decision with a recommendation in accordance with the views expressed by the lower administrative instances. On 27 February 1985 it was registered in the Ministry.

After the County Agriculture Committee had made a recommendation against the defendants' application, the applicant informed the District Court on 28 February 1985 of this and requested the Court to fix a date for the main hearing. The Court stated that dates would now be fixed, but was informed by the defendants, on 4 March 1985, that there was no final decision as the application had been forwarded to the Ministry of Agriculture. On 9 March 1985 the applicant maintained his request for a date for the main hearing. The case, however, remained adjourned.

By 11 April 1985 a draft report had been prepared in the Ministry of Agriculture. On 5 June the relevant department in the Ministry decided that there was a need for an inspection (befaring) of the land before deciding upon the application. The District Court, th and the administrative authorities involved were informed of the decision by a letter of 11 June 1985.

On 22 June 1985 the applicant informed the Ministry that his lawyer was ill and requested that the inspection be postponed until he had recovered or another lawyer had had the opportunity to acquaint himself with the case.

On 16 August 1985 the parties were informed that the inspection would take place on 27 August. A report following the inspection was completed on 22 October and a draft decision from the relevant department in the Ministry of Agriculture was available on 22 November. The draft was approved by the State Secretary on 24 March 1986.

On 4 April 1986 the King in Council (regjeringen) decided by Royal Decree that the land should be exempted from the provisions of allodial law and accordingly the land became free of allodial rights.

On 18 April 1986 the defendants informed the District Court of the Royal Decree and asked the applicant to state whether he intended to withdraw the case against them or to challenge the validity of the decision. The applicant, who at that junction was without legal representation, replied on 9 May that he did not wish to withdraw the case against the defendants. On 2 June he informed the Court that he wished to institute proceedings against the Government in order to challenge the validity of the Royal Decree.

On 11 June 1986 the District Court informed the applicant that if he intended to challenge the legality of the Royal Decree he should institute proceedings before 15 July 1986.

On 11 July 1986 the applicant, who had a new lawyer, informed the court that he would not institute proceedings against the Government. However, in the case pending he would now, by way of preliminary plea, argue that the Royal Decree was invalid. At the same time he stated that at that stage it was not possible to fix a date for the main hearing as he had to make thorough inquiries in order to prepare his case. The Court asked for observations by 5 August 1986.

In a submission of 23 July 1986 the defendants accepted that the validity of the Royal Decree was now to be decided upon on a preliminary basis in the pending case. The Court asked for observations by 15 August 1986.

On 3 September 1986 the applicant introduced a new contention and

indicated that he would submit more documents. He repeated and elaborated on his previous argumentation in a submission of 9 October 1986 with 21 enclosures, and indicated that more material would be produced during the main hearing. At the same time he stated that the dates of the hearing could be fixed provided that there was sufficient time for preparation. The Court fixed 31 October 1986 as the time-limit for observations and stated that the hearing would take place as soon as the Court had time available.

On 27 and 29 October 1986 the defendants, who now had a new lawyer, asked for extended time-limits and requested the applicant to submit the supplementary material indicated in his submission of 9 October 1986.

On 7 November 1986 the dates for the main hearing were fixed at 2-4 March 1987.

The applicant produced supplementary material in a submission of 8 January 1987.

The main hearing took place on 2 and 3 March 1987. During the hearing the District Court made an inspection of the land. The applicant maintained in particular that Section 31 of the 1974 Act had been applied retroactively to his detriment as it had been amended on 11 May 1984, i.e. while his case was pending before the District Court, to such an extent that his legal position had been changed.

In its judgment of 3 April 1987, however, the District Court found in favour of the defendants who had referred to the decision of the Ministry of Agriculture and therefore refused to accept the applicant's allodial right. The Court did not find that the Royal Decree of 4 April 1986 was contrary to the Norwegian Constitution as the amendment to the 1974 Act did not in fact mean a change in the substance of Section 31 but merely concerned a procedural matter.

Proceedings before the Agder High Court (Agder Lagmannsrett)

On 5 May 1987 the applicant appealed against the judgment to the Agder High Court. He argued on the same grounds as those advanced before the District Court that the Royal Decree was invalid.

On 12 May 1987 the High Court requested the defendants to submit observations, which were submitted on 20 May. The High Court decided that any further observations from both parties should be submitted by 22 June. The defendants' and the applicant's submissions were dated 9 and 12 June 1987, respectively. On 25 June 1987 the applicant was asked to prepare excerpts from the documents necessary for the High Court's consideration of the case by 1 August 1987.

On 30 September 1987 the Court decided that the appeal hearing would take place on 25-27 May 1988.

During the hearing on 25 and 26 May 1988 the High Court made an inspection of the land.

On 3 June 1988 the High Court overruled the District Court and gave judgment in favour of the applicant. According to the High Court the application of section 31 of the 1974 Act as amended would affect the applicant's legal position in such a way that it was contrary to Article 97 of the Constitution.

Proceedings before the Supreme Court (Høyesterett)

On 5 August 1988 the defendants lodged an appeal with the Supreme Court. The applicant's observations were submitted on 15 August.

On 1 September 1988 the case was admitted by the Appeals

Selection Committee of the Supreme Court (Høyesteretts kjæremålsutvalg). At the same time, the parties were asked to file any requests for the taking of evidence by 25 September 1988. Such requests were submitted by the defendants and the applicant on 13 and 21 September, respectively.

On 5 September 1988 the Government declared that it wished to intervene in the proceedings as amicus curiae (erklære hjelpeintervensjon) since the Supreme Court was called upon to decide an issue of alleged unconstitutionality of the 1974 Act.

Written observations were submitted by the parties on 7 November 1988 and 2 January 1989. On 23 January 1989 all parties withdrew their requests for the taking of evidence. The Supreme Court then allowed for further observations to be submitted by 1 March 1989.

The Supreme Court hearings took place on 12-14 December 1989. On 21 December 1989 the Supreme Court upheld the judgment of the District Court, finding that the Royal Decree was not contrary to the Constitution and not invalid on other grounds.

Finally the applicant filed an application with the Supreme Court in August 1990 requesting that the case be re-opened. On 29 November 1990 the Supreme Court rejected the application.

B. Domestic law and practice

"Odel" is an ancient right in law which is specific to Norway. The right is protected by Article 107 of the Constitution of 17 May 1814 which reads:

(translation)

> "The allodial right and the right of primogeniture shall not be abolished. The specific conditions under which these rights shall continue for the greatest benefit of the State and the best advantage of the rural population shall be determined by the first or second Storting."

Detailed statutory provisions are set out in the 1974 Act. The allodial right is designed to ensure that farms and farmland remain in the hands of one family, and traditionally also to prevent the accumulation of agricultural land in a few hands. The right applies to agricultural land and may include woodland and mountain pasture. It does not apply to mines, factories, industrial works and the land on which they stand.

The right is created when a single owner has had full title to the property for 20 years, and it passes to descendants of the original owner of the right. Between the descendants there is a priority system. When the property is transferred from one family to another, only relatives closely related to the last owner acquire the allodial right.

If the property is transferred to somebody outside the family, a family member with an allodial right has the right of redemption. A family member with a higher priority allodial right may also buy back property sold to a family member with a lower priority.

A family member wishing to use his right of redemption must institute proceedings against the buyer before the District Court within two years after the transfer of ownership. The Court decides what price the family member must pay on the basis of the value of land being used for normal agricultural purposes according to principles laid down in chapter XI of the 1974 Act. If there is any dispute whether the plaintiff has an allodial right, the Court will first of all decide this issue.

The decision of the District Court may be appealed against to the High Court and then to the Supreme Court.

The King in Council may decide to exempt land from prior allodial right (odelsfrigjøring). The conditions are set out in chapter VIII of the 1974 Act. Sections 31 and 33, which are relevant in the present case, read as follows:

(translation)

> "Section 31. In so far as the State might be prevented by the provisions of allodial law from acquiring land by purchase pursuant to the provisions of the Land Act or by exercising its right of preemption pursuant to the Concession Act, the King may exempt such land from prior allodial right. Such exemption may not, however, be effected in relation to any person who, pursuant to section 6, item 1, of the Concession Act, may purchase the property without the State being able to exercise a right of preemption, unless it is a case of property covering an area of less than 300 ares or the conditions regarding expropriation pursuant to section 20 of the Land Act are fulfilled.
>
> The provisions of subsection one apply correspondingly to land that has passed to a new owner by means of a voluntary transaction when the County Agricultural Board has approved the purchase on the grounds that the purchaser should have additional land.
>
> ...
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> Section 33. Before a decision concerning exemption from the provisions of allodial law is made pursuant to sections 30 to 32, the matter shall be submitted to the Municipal Council for an opinion. The holders of allodial rights shall, in so far as possible, be given an opportunity to state their opinions on the matter within a three-month period. If it is a case of exemption from the provisions of allodial law pursuant to sections 30 and 31, the opinion of the County Agricultural Committee shall be obtained.
>
> When steps have been taken to obtain exemptions from the provisions of allodial law pursuant to sections 30
>
> to 32, any proceedings for the redemption of allodial rights that have been instituted shall be stayed until the question of such exemption has been decided."

As a main rule, the King in Council will not consider whether land should be exempted from the allodial right unless any holder of such a right wishes to make use of it. Only in exceptional cases will this question be considered before redemption proceedings are instituted. If no allodial right holder wishes to make use of his right, a decision relating to exemption from allodial law will not be necessary.

If the King in Council decides that the land should not be exempted from allodial rights, a plaintiff who has instituted proceedings for the redemption of allodial rights has the following options if he wishes to challenge that decision:

- he may institute proceedings against the Government and maintain that the Royal Decree is invalid. In that case, he must request the adjournment of the case which is already pending;

or

- he may pursue the proceedings already instituted and invoke as a preliminary argument that the Royal Decree is invalid.

If he does not wish to contest the validity of the Royal Decree, the redemption case will be discharged.

COMPLAINTS

In his original application to the Commission the applicant complains that the Supreme Court's interpretation in its judgment of 21 December 1989 of the 1974 Act, Section 31, as amended on 11 May 1984, discloses a breach of Article 6 of the Convention in that the Act had retroactive effect to his detriment. He further complains that he was not given a fair hearing within a reasonable time.

In his letter of 22 January 1991 the applicant also complains that his allodial right is a right protected by Article 8 of the Convention and that the economic consequences of the Supreme Court judgment constitute a breach of this provision.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 5 June 1990 and registered on 27 September 1990.

On 2 December 1991 the Commission decided to bring the application to the notice of the respondent Government and to invite them to submit written observations on the admissibility and merits of the application.

The Government submitted their observations on 28 February 1992. The applicant's observations in reply were submitted on 15 April 1992.

On 30 March 1992 the Commission decided to refer the application to a Chamber.

On 7 July 1992 the Commission (Second Chamber) decided not to grant legal aid to the applicant.

THE LAW

1.a. The applicant complains that the Supreme Court's interpretation and application of the 1974 Act was in violation of Article 6 (Art. 6) of the Convention in that the Act was, in his opinion, applied retroactively to his detriment for which reason he did not get a fair hearing.

Article 6 para. 1 (Art. 6-1) reads in its relevant part as follows:

> "In the determination of his civil rights ..., everyone is entitled to a fair and public hearing within a reasonable time ..."

With regard to the judicial decision of which the applicant complains, the Commission recalls that, in accordance with Article 19 (Art. 19) of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties in the Convention. In particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention. The Commission refers, on this point, to its established

case-law (see e.g. No. 458/59, Dec. 29.3.60, Yearbook 3 pp. 222, 236; No. 5258/71, Dec. 8.2.73, Collection 43 pp. 71, 77; No. 7987/77, Dec. 13.12.79, D.R. 18 pp. 31,45).

It is true that in this case the applicant also complains that he did not get a fair hearing. However, the Commission has not found any substantiated allegations which could lead to the conclusion that the applicant, in the determination of his allodial rights, was not afforded a fair hearing within the meaning of Article 6 (Art. 6) of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

b. Under Article 6 (Art. 6) of the Convention the applicant also complains that his case was not determined within a reasonable time.

As far as the period to be taken into consideration is concerned, the Commission notes that the proceedings commenced on

30 December 1983, when the applicant instituted proceedings in the District Court of Lyngdal, and ended with the judgment of the Supreme Court of 21 December 1989. Thus these proceedings lasted approximately 6 years.

The applicant argues that this period cannot be regarded as reasonable within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention. The Government, on the other hand, submit that the length of the proceedings in the circumstances of the case was reasonable.

The European Court of Human Rights and the Commission have consistently held that the reasonableness of the length of proceedings coming within the scope of Article 6 para. 1 (Art. 6-1) of the Convention must be assessed in each case according to its particular circumstances and on the basis of the following criteria: the complexity of the case as regards the facts and the law, and the conduct of the applicant and the competent authorities (cf. e.g. Eur. Court H.R., Vernillo judgment of 20 February 1991, Series A no. 198, p. 12, para. 30).

Applying these criteria, and taking into account the circumstances of the present case, the Commission considers that the period of time which elapsed in the proceedings raises a serious issue under Article 6 para. 1 (Art. 6-1) of the Convention requiring an examination of the merits of the case.

Consequently, the Commission considers that this part of the application is not manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. No other grounds for declaring it inadmissible have been established.

2. The applicant finally complains, in his letter of 22 January 1991, that his allodial right is protected under Article 8 (Art. 8) of the Convention and that the economic consequences of the Supreme Court judgment constitute a breach of this provision.

However, the Commission is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of this provision, as Article 26 (Art. 26) of the Convention provides that the Commission "may only deal with the matter ... within a period of six months from the date on which the final decision was taken".

In the present case the judgment of the Supreme Court, which was the final decision regarding the subject of this particular complaint, was given on 21 December 1989, whereas the complaint under Article 8 (Art. 8) of the Convention was submitted to the Commission on 22 January 1991, that is, more than six months after the date of this decision. Furthermore, an examination of the case does not disclose the existence of any special circumstances which might have interrupted or suspended the running of that period.

It follows that this part of the application has been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

For these reasons, the Commission unanimously

DECLARES ADMISSIBLE, without prejudging the merits of the case, the complaint that the applicant's case was not determined within a reasonable time
and
DECLARES INADMISSIBLE the remainder of the application.

Secretary to the Second Chamber — President of the Second Chamber

(K. ROGGE) — (S. TRECHSEL)