



Limitations on ground-rent increases did not violate lessor's property rights

In today's **Chamber judgment**¹ in the case of [The Karibu Foundation v. Norway](#) (application no. 2317/20) the European Court of Human Rights held, unanimously, that there had been:

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

The case concerned the authorities' limiting of ground rents, in accordance with legislation that had been introduced to deal with previous violations of the Convention, on property in Oslo owned by The Karibu Foundation.

The Court found in particular that the application of the "rent ceiling" by the authorities had been within their discretion and had involved a careful balancing of the competing interests of the lessors, lessees and society.

A legal summary of this case will be available in the Court's database HUDOC ([link](#))

Principal facts

The applicant, The Karibu Foundation, is a Norwegian foundation that was set up in 1985 and is based in Oslo. It is involved in international development work, including support for ecclesiastical organisations and projects in southern Africa.

In 2012 the Court adopted the [Lindheim and Others v. Norway](#) (nos. 13221/08 and 2139/10) judgment. It found a violation of Article 1 of Protocol No. 1 to the Convention (protection of property) on account of rules allowing lessees to extend leases without an increase and without a time-limit under the Ground Lease Act 1996, which placed a disproportionate burden on the lessors.

As a result of this judgment, the Norwegian Parliament amended the Ground Lease Act in 2015, giving lessors the right to require an adjustment of the annual rent, but with a maximum overall ground rent (known as the "rent ceiling").

In 2018 a property in Oslo, known as "Øvre Ullern terrasse", was inherited by the Karibu Foundation from a Ms Nustad following her death. As a result it also became the plaintiff in proceedings alongside Mallin Eiendom AS seeking a ground rent increase in accordance with the Ground Lease Act. The estimated value of the property was 160,248,000 Norwegian kroner (approximately 16.8 million euros). They sought 1% of its value in ground rent instead of the 0.6% the authorities found would be the ceiling.

The domestic courts had previously ruled against the plaintiffs, with the Oslo City Court in 2017 citing the Court's judgment in *Lindheim and Others* and the need to balance differently the Article 1 of Protocol No. 1 rights of the plaintiff with the Article 8 (right to protection for private and family life) rights of those living permanently in the homes (as opposed to the holiday homes at issue in *Lindheim and Others*).

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.

That decision, with the Karibu Foundation now as the plaintiff, was upheld in 2018 by the Borgarting High Court, which held that the ground rent was not so low as to entail a violation of Article 1 of Protocol No. 1, and that in any case the decision fell within the authorities' discretion.

In 2019 the Supreme dismissed the Karibu Foundation's appeal. In a detailed judgment, it held, among many other things, that:

legal certainty was important for the many homes in this situation in Norway;

the High Court had been correct in finding the value of the property for the purposes of the application of the rules relating to rent increases in section 15 of the Ground Lease Act, that is to say based on the existing buildings on it, not on a more "modern" development that did not correspond to the actual situation; and

from a financial perspective, the lessors in this case did not have to bear an excessive individual burden in relation to their Article 1 of Protocol No. 1 rights.

Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1 to the Convention (protection of property), the applicant company complained that the refusal of the proposed ground rent had violated its property rights.

The application was lodged with the European Court of Human Rights on 27 December 2019.

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

Síofra O'Leary (Ireland), *President*,
Mārtiņš Mits (Latvia),
Lətif Hüseynov (Azerbaijan),
Lado Chanturia (Georgia),
Arnfinn Bårdsen (Norway),
Kateřina Šimáčková (the Czech Republic),
Mykola Gnatovskyy (Ukraine),

and also Martina Keller, *Deputy Section Registrar*.

Decision of the Court

It was not disputed between the parties that the application of the "rent ceiling" was an interference with property rights in line with the relevant legislation.

The Court observed that the ground rent was assessed on the basis of current – not potential – use of the land. Furthermore the lessees' contracts for ground rents had been agreed at the same time as they had bought the apartments in the 1950s and 60s. The general developments in housing and rents since were thus not particularly relevant to the case, which concerned a ground lease involving two sets of property right holders. The principles of domestic law for finding the plot value relevant to ground rent adjustments had not contributed to or resulted in an unfair balance between the parties in the case before the Supreme Court. The lessors had continued to receive 0.6% of the property value annually, about 658,225 Norwegian kroner or about 68,100 euros.

The Court emphasised that the legislative process that had led to the amendments to the Ground Lease Act in 2015 in reaction to the Court's *Lindheim and Others* judgment had been thorough and exacting, and the applicant organisation had also been able to secure a judicial review and meticulous examination by the Norwegian Supreme Court. The Court was satisfied that the competing interests had adequately been taken into account in these various stages, with the courts applying the relevant human-rights standards in line with the Convention and the Court's case-law.

The Court held that the application of the “rent ceiling” by the authorities had been within their discretion and had involved a careful balancing of the competing interests. There had been no violation of Article 1 of Protocol No. 1 to the Convention.

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.