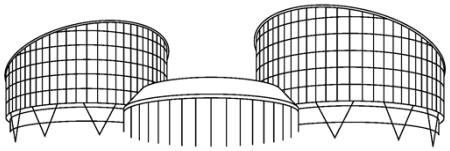

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF THE KARIBU FOUNDATION v. NORWAY

(Application no. 2317/20)

JUDGMENT

Art 1 P1 • Control of the use of property • Inability of applicant organisation to increase ground lease rent for residents of apartments on its property to the desired level due to statutory "rent ceiling" • Applicable legislation enacted after exacting and pertinent review of Art 1 P1 requirements and aimed at remedying shortcomings in domestic legislation identified in *Lindheim and Others v. Norway* • Detailed review and proportionality assessment by the Supreme Court • Fair balance struck between competing interests at stake • Margin of appreciation not overstepped

STRASBOURG

10 November 2022

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of The Karibu Foundation v. Norway,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Síofra O'Leary*, President,*
Mārtiņš Mits*,*
Lətif Hüseynov*,*
Lado Chanturia*,*
Arnfinn Bårdsen*,*
Kateřina Šimáčková*,*
Mykola Gnatovskyy*, judges,*
and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the application (no. 2317/20) against the Kingdom of Norway lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Norwegian organisation, the Karibu Foundation ("the applicant organisation"), on 27 December 2019;

the decision to give notice to the Norwegian Government ("the Government") of the application;

the parties' observations;

Having deliberated in private on 11 October 2022,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The application concerns a complaint under Article 1 of Protocol No. 1 to the Convention from a lessor that was not permitted to increase ground rents as it had proposed.

THE FACTS

2. The applicant organisation is a foundation that was established in 1985 and has its main office in Oslo. The income from its assets is used for international development work, including support for ecclesiastical organisations and projects in southern Africa. The applicant organisation was represented before the Court by Mr E. Bjørge.

3. The Government were represented by their Agent, Mr M. Emberland, of the Attorney General's Office (Civil Matters), assisted by O.S. Rathore, an advocate at the same office.

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

I. BACKGROUND

5. The case concerns a property in Oslo, which the parties referred to by the name "Øvre Ullern terrasse".

6. The property was purchased by a residential contracting company (Olav Selvaag I/S (Mr Olav Selvaag and his children)) in 1956. The same year the company leased it to another company (Selvaaghus AS) and in 1958 the latter company subleased it to a third company (I/S Øvre Ullern Terrasser).

7. In the early 1960s the municipality allowed apartments to be built on the land. Six blocks with a total of fifty-four terraced apartments were built and the apartments were sold to private buyers who had all entered into identical ground lease contracts with the company I/S Øvre Ullern Terrasser.

8. The ground lease contracts had a duration of fifty years beginning on 22 December 1956. The ground rent was set at 1,600 Norwegian kroner (NOK) for forty-nine of the lessees, and at NOK 1,200 for the remaining five lessees, amounting to an annual total of NOK 84,400. It was agreed that upon the expiry of the lease agreements the lessor could choose to either extend the lease by another fifty years or let the lessees redeem the plot at the value applicable at the time of redemption. The lessor was also entitled, under the lease agreements, to adjust the rent every five years in accordance with the wholesale price index.

9. In 1982 ownership of the property was transferred to Ms Cecilie Nustad, daughter of Mr Selvaag.

10. In 1985 Ms Nustad established the applicant organisation.

11. In 1994 the primary ground lease agreement relating to Øvre Ullern Terrasse was transferred from Selvaaghus A/S to Ms Nustad's investment company Mallin Eiendom AS.

12. On 10 June 2004 Mallin Eiendom AS sent a letter to the lessees informing them that the contracts would not be renewed upon their expiry on 22 December 2006 (see paragraph 8 above). The lessees, however, claimed an extension pursuant to the 1996 Ground Lease Act, which had entered into force in 2002, according to which lessees were given the right to extend lease contracts for an unlimited time on the same conditions as previously. The parties did not reach an agreement and Ms Nustad and Mallin Eiendom AS brought the matter before the domestic courts. The proceedings ended with a judgment given by the Supreme Court on 21 September 2007 (*Rt*-2007-1281), finding in favour of the lessees.

II. THE LINDHEIM AND OTHERS CASE

13. On the same day, 21 September 2007, the Supreme Court gave judgment in a similar dispute where another lessor had lost a case against lessees under the provisions of the 1996 Ground Lease Act which gave

lessees the right to extend lease contracts (see paragraph 12 above). Thereafter, that lessor, Ms B. Lindheim, and a group of other lessors lodged applications with the Court claiming that they had been victims of violations of Article 1 of Protocol No. 1 to the Convention. In its judgment in *Lindheim and Others v. Norway* (nos. 13221/08 and 2139/10, 12 June 2012), the Court held that there had been a violation of Article 1 of Protocol No. 1 to the Convention.

14. Having scrutinised the application of the 1996 Ground Lease Act to the facts of that case, the Court found that it did not appear that there was a fair distribution of the social and financial burden involved but, rather, that the burden was placed solely on the applicant lessors (see *Lindheim and Others*, cited above, § 134). The Court also noted that the problem underlying the violation concerned the legislation itself and considered that the respondent State should 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 lessors on the one hand and the general interests of the community on the other hand, in accordance with the principles of protection of property rights under the Convention. It emphasised that it was not for the Court to specify how lessors' interests should be balanced against the other interests at stake and that the Court had already identified the main shortcomings in the domestic legislation in its judgment (ibid., § 137).

15. As part of the execution of the judgment in the *Lindheim and Others* case, the Ground Lease Act was amended by Parliament on 19 June 2015, giving lessors the right to require an adjustment of the annual rent (see paragraph 63 below). The Council of Europe's Committee of Ministers' supervision of the Government's execution of the judgment was then closed on 30 March 2016 (Resolution CM/ResDH(2016)46; see paragraphs 43, 62 and 64-65 below).

III. THE PROCEEDINGS BROUGHT BEFORE THE COURT

16. The amendments to the Ground Lease Act adopted on 19 June 2015 as part of the execution of the Court's judgment in *Lindheim and Others* (cited above; see paragraph 15 above) entered into force on 1 July 2015. They also took effect for ground lease contracts that had already been extended, including that between the applicant organisation and the lessees in the present case.

17. On 1 September 2015 Mallin Eiendom AS sent letters to the lessees notifying them that the ground rent would increase in line with the new legislation.

18. On 18 December 2015 Mallin Eiendom AS sent letters to the lessees notifying them of an increase in the rent. The company estimated the value of the property at NOK 160,248,000 (approximately 16.8 million euros

(EUR) at the time) and asserted that it had the right to demand 2% of that amount as rent (NOK 3,204,960 (approximately EUR 337,000 at the time)). For each of the fifty-four flats, that would amount to NOK 59,259 (approximately EUR 6,200 at the time). Furthermore, the company argued that the "rent ceiling" in the fourth sentence of the fourth paragraph of section 15 of the Ground Lease Act (see paragraph 63 below) would, in accordance with the ninth paragraph of that section, not apply, and that there might be a further violation of Article 1 of Protocol No. 1 of the Convention – that is to say, in addition to the one found by the Court in *Lindheim and Others* (cited above) – if the rent were fixed at a level below 2% of the property's value. However, the company stated that in order to avoid another lengthy and expensive court case, it would accept that the rent be set at 1% of the property's value and accordingly required each lessee to pay NOK 29,675 (some EUR 3,100 at the time) annually.

19. On 23 December 2015 the lessees opposed the claim from Mallin Property AS. They referred to the "rent ceiling" in the fourth sentence of the fourth paragraph of section 15 of the Ground Lease Act, by which rent could not be increased beyond a maximum of NOK 9,000 per decare of land, indexed since 2002 (see paragraph 63 below) – an amount that their ground rents at the time had already surpassed – and argued that the case differed from that of *Lindheim and Others* (cited above). Among other things, they maintained that the situation was different in that (i) the legislature had since examined what balance could be struck between the interests of lessors and lessees; (ii) their case concerned permanent homes, whereas the *Lindheim and Others* case had concerned leisure properties; (iii) the rent could be adjusted again in the future; and (iv) the difference between the rent that could be claimed under the contract and market rent was no longer the same since the market rents had considerably declined. The lessees also variously disputed the company's assessment of the value of the property.

20. On 3 May 2016 Ms Nustad and Mallin Eiendom AS applied to the Oslo City Court (*tingrett*) for an appraisal decision, that is, a decision on the value of the property and an adjustment of the ground rent in accordance with the fifth paragraph of section 15 of the Ground Lease Act (see paragraph 63 below). In their submissions they argued that applying the limit on increasing rent to a maximum of NOK 9,000 per decare of land, indexed since 2002, as set out in the fourth paragraph of section 15, would be in violation of Article 1 of Protocol No. 1 to the Convention and that the City Court therefore had to apply the ninth paragraph of section 15.

21. On 24 January 2017 the Oslo City Court decided in favour of the lessees. It considered, among other things, that the case before it was not fully comparable to that of *Lindheim and Others* (cited above), in so far as that case had concerned holiday houses and not permanent homes. It stated that, while it was undisputed that Article 1 of Protocol No. 1 to the Convention was engaged, the right to respect for one's home as guaranteed by Article 8

of the Convention also meant that there had to be limits to how much rent could be imposed on residents and that competing Convention rights therefore had to be balanced. Taking into account that the rent increase in the case before it was more than three times that which had applied in the *Lindheim and Others* case and that the legislature had established mechanisms to avoid the problems that had arisen with the previous rule according to which ground lease contracts could be continued on the same terms as before, the City Court concluded that applying the relevant domestic rules adopted in the aftermath of the Court's judgment in *Lindheim and Others* led to a proportionate balancing of the interests of the parties to the case before it.

22. Ms Nustad and Mallin Eiendom AS brought the appraisal before the Borgarting High Court (*lagmannsrett*).

23. Ms Nustad died on 11 June 2018 and Øvre Ullern Terrasse was inherited by the applicant organisation, which took over the late Ms Nustad's position as plaintiff in the proceedings.

24. On 9 October 2018 the Borgarting High Court decided in favour of the lessees, emphasising that the process leading to the revision of the Ground Lease Act following the Court's judgment in *Lindheim and Others* (cited above) did not suffer from shortcomings such as those that had been pointed out by the Court in that judgment with regard to the previous provisions that had applied in that case. The result of the legislative process fell, according to the High Court, within the domestic authorities' margin of appreciation and as to the facts of the case, the ground rent was not in its view so low as to entail, on its own, a violation of Article 1 of Protocol No. 1 to the Convention.

25. The applicant organisation and Mallin Eiendom AS appealed against the Borgarting High Court's decision to the Supreme Court (*Høyesterett*).

26. On 24 June 2019 the Supreme Court dismissed the appeal.

27. The Supreme Court first found that the Borgarting High Court had been correct, when 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, in making a deduction for plot value increase brought about by the lessees themselves where the developer of the building complex had invoiced exterior works to them in connection with their purchases. Moreover, the Supreme Court found that the High Court had been correct in assessing the value of the plot in question based on the existing buildings on it, not on a more "modern" development of the buildings that did not correspond to the actual situation.

28. As to Article 1 of Protocol No. 1 to the Convention, the Supreme Court first gave a general overview of that provision, the general principles pertaining to it and its status in domestic law. It also remarked that the ninth paragraph of section 15 of the Ground Lease Act (see paragraph 63 below) was a reminder of the national obligations that followed from the Convention.

29. Turning to the concrete assessment of proportionality, the Supreme Court focused on two aspects: (i) the legislature's reasoning for the rules on adjustment of ground rent in connection with the extension of a lease under section 33 of the Ground Lease Act, including the maximum rent with its limiting effect on the main rule on increase according to plot value, and (ii) the effect of the ceiling in preventing a further increase of the ground rent because of an increase in the value of the land, which the Supreme Court termed "the financial facts".

30. Starting with the legislature's reasoning for limiting the effect of the main rule on rent increases according to plot value, and in particular for setting the maximum rent, and the balancing of the lessor's and the lessee's interests in that regard, the Supreme Court considered that from an overall perspective it was evident that the legislature had conscientiously complied with the instructions given by the Court in *Lindheim and Others* (cited above, § 137). The legislative process had been steered by a clear goal of implementing the necessary amendments to avoid future violations of Article 1 of Protocol No. 1 to the Convention.

31. At the same time, it was clear to the Supreme Court that it had not been an easy task. The Ground Lease Act affected many persons and homes in Norway, and there were strong financial and personal interests involved. This was demonstrated in particular by the discussions in Parliament (see paragraphs 55-61 below). They had been marked by political disagreement and the amendments to the Ground Lease Act were characterised by compromise between conflicting interests. The preparatory works showed that a thorough assessment and balancing of the interests of both the lessors and the lessees had been carried out. The fact that the maximum would affect the owners of expensive plots was obvious, and the consequences were expressly assessed, but with the outcome that the interests of the lessees were deemed more important. The fact that the lessors, and particularly those who owned expensive plots, found this unreasonable could not prevent the legislature from emphasising more social considerations. This did not imply that a measure based on an overall assessment of more general concerns had to be deemed disproportionate.

32. Nor did the Supreme Court consider that the fact that the provisions in the Ground Lease Act did not require regard to be had to the financial position of the specific lessees meant that they set out disproportionate rules. A provision based on individual assessments of the rent levels under each ground lease agreement had been considered in the preparation of the revised provisions, but the Court's judgment in *Lindheim and Others* (cited above) had been interpreted as not requiring such an assessment. Given that there were approximately 170,000 ground leases for permanent homes and holiday homes in Norway, predictability for the contracting parties and the need to limit the risk of disputes had been emphasised. The Supreme Court made

reference to *Lindheim and Others* (cited above, § 125) and *James and Others v. the United Kingdom* (21 February 1986, § 69, Series A no. 98).

33. Turning to the financial aspects of the case, the Supreme Court first noted that the High Court had found that the plot had a value of NOK 110 million (approximately EUR 11.3 million at the time). The annual rent was NOK 658,225 (approximately EUR 68,100 at the time), corresponding to NOK 31,816.75 (approximately EUR 3,300 at the time) per decare and an average of around NOK 12,200 (approximately EUR 1,300 at the time) per flat. The rent thus constituted approximately 0.6% of the plot value per year. In *Lindheim and Others* (cited above), it had constituted less than 0.25% of the plot value per year. If the lessor had been able to increase the rent by an amount equal to 2% of the plot value, this would have given an annual rent of NOK 2.2 million (approximately EUR 228,000 at the time), an annual rent of approximately NOK 107,317 (approximately EUR 11,100 at the time) per decare and approximately NOK 40,740 (approximately EUR 4,200 at the time) per flat.

34. Furthermore, the Supreme Court stated that it was undisputed that the rent at the time of the domestic proceedings was lower than the original rent after adjustment for changes in the general price level since 1963. An adjustment of the rent merely in accordance with changes to the consumer price index to 2016 would have given an annual rent of NOK 963,342. The maximum of NOK 9,000 per decare, after adjustment in accordance with changes to the consumer price index, gave NOK 11,724 at the date of the adjustment. This maximum, assuming a rate of return on capital of 2%, would apply to plots whose value exceeded approximately NOK 600,000.

35. The Supreme Court went on to state that the lessor's financial interest in the plot beyond the rent income had generally to be considered small as long as the lease was current. This was part of the nature of a ground lease: the lessor normally surrendered all control over the plot when a lease agreement was entered into. The lessee, on the other hand, would normally require full rights of use including the capacity to develop the plot and then exploit it.

36. In the case before the Supreme Court, the parties had agreed on a lease period of fifty years, with a right for the lessor then to decide whether to extend the lease or whether to let the lessee redeem the plot. Hence, in isolation, the lessor had to be deemed to have a financial interest in the plot beyond the regular rent income. It was apparent from the provisions of the lease agreement that the rent increase had to be negotiated, and that the actual situation on expiry of the lease after fifty years would give the lessor an advantageous starting-point for negotiations, with the same opportunity to profit from the rise in the plot value. The Supreme Court mentioned at this point that when the lease agreements had been entered into, Selvaag had obtained a relatively high ground rent.

37. The foregoing could, however, only be a starting-point for the Supreme Court. When the lease agreements had been entered into, public rent control was being exercised, and it had to have been apparent to the lessor that the same would also be the case in the future. In what way and to what extent had of course been uncertain, but it ought to have made the lessor expect that future rents would be based on the value of the plots after a possible extension to the leases.

38. According to the Supreme Court, there had been nothing in the Court's judgment in *Lindheim and Others* (cited above) to suggest that the very right to extension had been contrary to the Convention.

39. That had also been the conclusion in the subsequent process of revision of the legislation. Nonetheless, the Supreme Court continued, in an assessment of proportionality, it could not be ruled out that the lessor – at least as a starting-point – might be deemed to have had an expectation that the lease agreement would expire according to its terms after fifty years. Such an expectation had to be recognised as one aspect in an overall assessment, in line with the Supreme Court's interpretation of *Lindheim and Others* (cited above, § 133).

40. The Supreme Court added that the financial consequences for the lessors in the case at hand were considerable, when comparing the actual profit with what they would have obtained if the rent had been adjusted according to the main rule of 2% of the plot value. A maximum rent would necessarily imply that the more valuable the plot, the smaller the profit in relative terms. However, the Supreme Court emphasised that the ground rent was almost risk-free income received by the lessor exclusively in his or her capacity as owner of the land. No other performance was required from the lessor, which made the system comparable to passive money placement. This annual profit would continue in the foreseeable future, with a possibility of adjustment according to the consumer price index and a new revision after thirty years. Such a low risk implied a modest expectation of profit.

41. After an overall assessment of the circumstances, the Supreme Court concluded that, from a financial perspective with regard to the lease, the lessors had not had to carry an individual and excessive burden which created a disproportionate interference in relation to Article 1 of Protocol No. 1 to the Convention.

RELEVANT LEGAL FRAMEWORK

I. REVISION OF THE GROUND LEASE ACT FOLLOWING *LINDHEIM AND OTHERS*

42. The domestic legislation that was in force at the time of the facts leading to the case of *Lindheim and Others* (cited above) was restated in that judgment (ibid., §§ 38-51).

43. Following the delivery of the judgment, the Committee of Ministers, through the Department for the Execution of Judgments, in a letter of 16 January 2013 informed the Government that the *Lindheim and Others* case was eligible for classification under the enhanced supervision procedure. The Government were at the same time informed that the case could be classified under the standard procedure at a later stage, provided that the Committee of Ministers was presented with an action plan that effectively addressed the violations found by the Court.

44. On 15 February 2013 the Government appointed a committee to consider and propose amendments to the provisions of the 1996 Ground Lease Act dealing with the extension of leases of permanent homes and holiday homes "to render them compatible with Norway's international law obligations" under Article 1 of Protocol No. 1 to the Convention ("the Ground Lease Act Committee"). The Ground Lease Act Committee consisted of five members and was chaired by a law professor, and lessors and lessees were represented by one member each. Its mandate further stated that the question of the lessor's right to claim new terms and that of retroactivity had to be broadly assessed, and the proposed new provisions must not give rise to any doubt as to their compatibility with the Convention. Moreover, it was emphasised in the mandate that the proposals for new provisions were to uphold the social housing concerns that formed the basis for the Ground Lease Act and to maintain the lessor's property rights and need for predictability. Within the scope of Norway's obligations under international law, the Ground Lease Act Committee was asked to focus on finding practicable rules that maintained a reasonable balance between the parties' interests while at the same time upholding the necessary considerations of legal policy.

45. On 1 October 2013 the committee delivered its report. Five different possible models for the legal regulation of adjustment of ground rent in connection with extensions to leases were presented, termed a "one-off increase model", a "percentage model", a "combination model", an "equal sharing model" and a "general clause". In all models an option for the lessor to request an adjustment of the ground rent at intervals of at least thirty years had been included. Models referring to maximum or minimum amounts or a certain percentage included a rule according to which the amounts could be changed every twenty years. The Ground Lease Act Committee concluded that, despite their different modalities, none of the five proposed models raised any doubts as to their compatibility with Article 1 of Protocol No. 1 to the Convention.

46. The Ministry of Justice subsequently considered the proposals of the Ground Lease Act Committee and submitted the report for public consultation before submitting the proposed amendments to Parliament on 27 March 2015 (Bill (*Prop.*) 73 L (2014-2015)). In its presentation of the main contents of the Bill, the Ministry stated that the purpose of the proposed

amendments was to secure improved proportionality in the rules on the extension of ground leases for permanent homes and holiday homes to avoid future violations of the Convention similar to that which had been found in the case of *Lindheim and Others*. The Ministry further stated that, in its assessment, the violation found in *Lindheim and Others* had arisen from interaction between several provisions of the Ground Lease Act which had meant that the ground lease, on extension, had become unlimited in time while the rent at the time of extension could not be adjusted except in line with the consumer price index. It emphasised that the proposed new rules, which placed the lessor in a more favourable position than had the rules at the time of the facts in the case of *Lindheim and Others*, had to unite different and partially conflicting considerations, as the public consultation had shown. It stressed that the new rules had to remedy the shortcomings pointed out by the Court in *Lindheim and Others*, yet at the same time regard had to be had to protection of lessees under the Convention and the Constitution. Moreover, it was deemed crucial to establish rules that could provide stability in an area which had been characterised by disputes.

47. The Ministry, furthermore, noted that in the formulation of new rules for the extension of ground leases, regard had to be had to their special nature. Because the lessee had invested in buildings (residential or holiday homes) on the lessor's land, the two parties to the contractual arrangement were bound in such a way that they could not simply opt out of the relationship, including when the contract expired. Normal market mechanisms did not apply and it became the task of the legislature to find solutions that safeguarded the interests of both parties. Regard had also to be had to the fact that the rules on extension had been in force for over ten years at the time and many would have acted with the expectation that ground lease agreements could be extended on the existing terms, which was relevant since the lessee also enjoyed protection under the Convention. In addition, it was not clear from the *Lindheim and Others* judgment how far the legislation had to go in ensuring better terms for the lessor and it was therefore difficult to definitively state the extent of the lessee's protection under the Convention and the Constitution. In the light of the foregoing, it was noted that the legislature was faced with a difficult trade-off which involved making legislative policy decisions within constitutional and international law frameworks that could not be definitively determined. In addition, the different provisions pertaining to lease period, ground rent, redemption and extension were based on one another and were collectively intended to provide an overall, balanced solution to the important legal issues relating to ground leases.

48. The Ministry also reiterated that the Ground Lease Act Commission had estimated that there were approximately 170,000 ground leases in Norway that applied to residential or holiday homes. This large number included different contract types with varied content, entered into at different

times and under different legal regimes. The factual circumstances also varied, including the relationship between the value of the plot and ground rent prior to extension, the relationship between the parties, and the parties' expectations and arrangements. In such long-term contractual arrangements, the parties to the ground lease when it expired would often be different from those who had entered into the original agreement. Since the legislation had been amended along the way, the point in time at which the party in question became a lessee or lessor would thus play a part in the terms this party had reason to expect would apply for his or her ground lease agreement when it was extended. A general statutory provision that would take such variations fully into account could not be formulated without establishing a number of detailed and complicated exemptions and clarifications. The alternative was to set a rule based on a specific assessment of reasonableness for each individual lease. However, such a rule would be unpredictable and cause disputes. The legal rules also had to have a long-term perspective given the very lengthy contractual arrangements that applied with ground leases. A strong emphasis had to be placed on predictability. As formulating legal rules which would provide reasonable solutions far into the future could be difficult, and as it had to be taken into consideration that the rules concerned unpredictable metrics such as land value, the question of whether the rules provided a good balance between the parties' interests had to be considered within a broader timeframe. A rule that might currently appear less reasonable for one party might be assessed differently in the longer term.

49. The Ministry proposed a rule that would give the lessor a right to request a "one-off adjustment" of the ground rent set at 2.5% of the plot value if the lease were extended. It also proposed a maximum amount ("ceiling") that could be charged per decare. During the public consultation, the lessors' side had mainly supported the "one-off model", while the lessees' side had mainly been in favour of a general clause. The Ministry stated that its proposal was based on a general balancing of interests and that, although the suitability of such a general provision to different lease agreements would vary, it was essential to secure predictability for the parties to the lease and to limit the risk of dispute in an area that gave rise to many conflicts.

50. The Ministry also discussed what the relevant "plot value" was when lessors' interests were assessed against other public interests, and considered that the Court, in its judgment in *Lindheim and Others* (cited above), had referred to varying notions of plot values, having referred at times to the "value of the undeveloped plot" and at other times to "the plots' market value" and "the value of the land". The Ministry noted that the market value of the plot and buildings could largely have been created by the lessee and considered it difficult to see that the proportionality assessment should be based on a concept of plot value that included value created by other persons than the lessor. It therefore presumed that the proportionality assessment should be based on the value of the raw (undeveloped) plot. It was specified

elsewhere in the Bill that the raw plot value, which was relevant to various provisions in the Ground Lease Act, referred to the price for which the land could have been sold with permissions to erect exclusively the house or houses already erected on it, and that a deduction had to be made for any increase in the value of the plot brought about by the lessee or by others at the lessee's expense. In the preparatory works to a previous amendment of the Ground Lease Act in 2004 (Bill (*Ot.prp.*) 41 (2003-2004)), it had been indicated that raw plot value would have particular relevance to situations involving large plots of land on which there was only one residential or holiday home, since operating with the raw plot value would prevent the plot from being valued on the basis of the total sales value that the plot would obtain if it were divided into several smaller units with the right to erect residential or holiday homes on each unit.

51. With regard to the proposal of a maximum ground rent (the "rent ceiling"), the Bill introduced by the Government in the aftermath of the *Lindheim and Others* judgment (no. 73 L (2014-2015)) contained the following (p. 44):

> "The Ministry proposes as mentioned that the ground rent cannot be adjusted to more than a maximum amount per year. In the Ministry's proposal, this maximum amount is set at NOK 9,000, adjusted every turn of the year after 1 January 2002 in accordance with changes in the general price level. In 2015 this corresponds to NOK 11,378. The maximum amount applies for each decare or for each plot if the plot is smaller than one decare. The maximum amount in the proposal is the same as in the current second paragraph of section 15 no. 2, but is not limited to agreements entered into on 26 May 1983 or earlier. The maximum is justified by the interests of the lessee. The considerations mentioned above in connection with the percentage issue also suggest that there should be a ceiling for how much the ground rent may constitute. For lessees with particularly valuable plots, the proposed rule that the rent is to constitute 2.5% of the plot value could lead to a significant increase in the rent. This may mean for some lessees that they will not be able to continue the lease. The purpose of a maximum amount is to prevent unreasonable consequences of the rules, and it provides a statutory limitation of the accepted price in an area where normal market mechanisms do not function because of the lessee's attachment to the ground. Such a limitation is incidentally already applicable in the current second paragraph of section 15. And in that respect, it can be mentioned that in the *Lindheim* judgment, the same balancing of interests as is set out in the preparatory works to section 15 is highlighted as something which should also have been done in the adoption of section 33 (paragraphs 126-28 of the judgment)."

52. Other methods for establishing a maximum rent were discussed by the Ministry, such as linking it to the number of housing units on the plot; this was, however, considered liable to have random effects and to lead to unintended consequences. A rule based on plot size in combination with the number of housing units on the plot was considered to be complicated. The Ministry was of the view that the solution it proposed took account of the interests of both parties to the contract.

53. The Ministry further proposed what was termed a "safety valve" by reference to, among other things, the fact that, while it believed that the

proposed legislation would bring the Ground Lease Act into compliance with Article 1 of Protocol No. 1 to the Convention, it considered it somewhat uncertain how far protection of the lessor under the Convention would be based on the grounds set out in the *Lindheim and Others* judgment. The "safety valve" was to cover any extraordinary circumstances where the maximum amounts would result in ground rents not adequately safeguarding the lessor's rights under the Convention, thereby preventing any possible violations (see, as to the legislation ultimately adopted on this point, the ninth paragraph of Section 15 of the 1996 Ground Lease Act, restated in paragraph 63 below).

54. The Ministry summarised the main contents of the Bill by referring to how the proposed changes in the rules on extension of leases and adjustment of ground rent were designed to remedy the legislative weaknesses pointed out by the Court in the *Lindheim and Others* judgment, while maintaining the interests of lessees and their protection under the Convention and the Constitution. It also highlighted its consideration of context in the law and the need for rent control to provide stability in contractual relationships and to reduce conflict. In the Ministry's view, the Bill maintained these considerations, as well as the balance between the parties to the contractual relationship.

55. The Ministry's proposal was debated by Parliament's Standing Committee on Justice, which subsequently adopted its Recommendation to Parliament on 4 June 2015. There had been disagreements along party lines in the Standing Committee's deliberations, but the Standing Committee was united in the following statement in its Recommendation to Parliament (Recommendation (*Innst*.) 349 (2014-2015), p. 4):

> "The Committee notes that the proposed new rules in the Ground Lease Act place the lessor in a more favourable position in connection with extension than under current legislation. The proposal must balance various and partially conflicting interests, which the Committee's hearing clearly demonstrated."

56. The majority of the Standing Committee, which proposed to set the maximum rent at 2% of the plot value, consisted of members from the Conservative Party (*Høyre*), the Progress Party (*Fremskrittspartiet*) and the Christian Democratic Party (*Kristelig Folkeparti*). This majority supported the Ministry's proposal for a one-off increase in the ground lease rent by a percentage of the value of the undeveloped plot but found that 2% would be sufficient. They expressed the view that 2.5% would be too favourable to the lessor compared to what had been the situation in *Lindheim and Others*, and emphasised the need for a fair balance. They also maintained that there was a low risk attached to leased land and therefore a lower rate of return should be expected.

57. The same majority further supported the Ministry's proposal for a maximum ground rent (the "rent ceiling") in connection with the one-off increase and stated that this was justified by the interests of the lessee. For

lessees of valuable plots, a rent of 2% of the plot value could lead to a considerable increase in rent. For some lessees that could mean that they would be financially unable to continue the lease. The purpose of a maximum amount was therefore, the majority stated, to prevent any unreasonable effects of the rules.

58. One of the minority factions, consisting of members from the Labour Party (*Arbeiderpartiet*), considered that the Bill went too far in benefiting lessors and noted that several participants in the public consultation had pointed out that the Ministry's proposal was so disadvantageous to owners of leasehold houses and holiday homes that it could in many instances violate the lessees' rights under Article 1 of Protocol No. 1 to the Convention and Article 8 of the Convention. These committee members were of the view that a right to a rent increase of 1.25% would suffice. Another minority, consisting of a member from the Centre Party (*Senterpartiet*), an agrarian party, considered 2.5% to be appropriate, in line with the Ministry's proposal (see paragraph 49 above).

59. Another majority of the committee, consisting of members from the Conservative Party, the Progress Party, the Christian Democratic Party and the Centre Party, supported the implementation of a right to a new adjustment of the ground rent after a minimum of thirty years, as had been proposed by the Ground Lease Act Committee (see paragraph 44 above) but not included in the Ministry's Bill. The right was, according to the Standing Committee, to be given to both parties, with the following reasons given by that majority:

> "... by allowing a new adjustment of the ground rent after a minimum of thirty years, one will better maintain a 'fair balance' between the parties over time, and have a safety valve reducing the risk that the balance between the parties might once more contravene ... Article 1 of Protocol No. 1 [to the Convention]."

60. Parliament debated and voted on the recommendations of the Standing Committee on 10 and 15 June 2015. The committee majority's proposal of a 2% rent increase was supported by a majority consisting of members from the Conservative Party, the Progress Party, the Christian Democratic Party and the Green Party, with a total of fifty-five votes in favour and forty-three votes against, from members from the Labour Party, the Centre Party, the Socialist Left Party, and the Conservative Party. Proposals to implement a right to an adjustment after a minimum of thirty years and to introduce an express exception for situations where application of the ground rent rules would run counter to Article 1 of Protocol No. 1 to the Convention were supported by a different majority, consisting of members from the Conservative Party, the Progress Party, the Centre Party, the Christian Democratic Party and the Green Party, with 61 votes in favour and thirty-seven votes against, from members from the Labour Party and the Socialist Left Party.

61. During Parliament's second meeting on the matter on 15 June 2015, there were no further comments and the current sections 15 and 33 of the

Ground Lease Act were accordingly adopted that day. The King assented to that decision on 19 June 2015.

62. On 24 June 2015 the Government submitted an update action report to the Committee of Ministers. The Ministers' Deputies, "in view of the progress achieved", decided at their 1236th meeting on 24 September 2015 to continue the supervision of the execution of the *Lindheim and Others* judgment under the standard supervision procedure (CM/Del/Dec(2015)1236/12).

II. THE LEGISLATION ENACTED

63. Sections 7, 15 and 33 of the Ground Lease Act of 20 December 1996, following the amendments adopted in 2015, entered into force 1 July 2015 and read as follows:

Section 7. Term of lease when leasing plots of land for residential buildings and holiday homes

"For new leasehold agreements and agreements that have been extended pursuant to section 33, a leasehold for a residential building or holiday home shall be valid until the agreement is terminated by the lessee or the plot is redeemed.

For leasehold agreements entered into after 1975, but before the present Act entered into force, the term of the lease shall be 80 years, unless a longer term or a leasehold with no time -limitation has been agreed, or if it has been agreed that the leasehold shall lapse when the lessee redeems the plot or terminates the agreement.

Leasehold agreements entered into before 1976 shall be subject to the provisions set out in the agreement on the term of the lease."

Section 15. Adjustment of ground rent

"In connection with the lease of land for residential buildings and holiday homes, each party may demand that the ground rent be adjusted in accordance with changes in the general price level since the leasehold agreement was entered into. If the ground rent has been adjusted, it is the rent that was lawfully collected after the previous adjustment that may be adjusted in accordance with changes in the general price level since that time. If the parties have unequivocally agreed that the ground rent shall remain unchanged, or if they have agreed on a lower adjustment than what follows from changes in the general price level, that agreement shall apply instead.

For leaseholds that do not concern plots of land for residential buildings and holiday homes, each of the parties may demand that the ground rent be adjusted in accordance with changes in the general price level since the leasehold agreement was entered into, unless they have unequivocally agreed that the ground rent shall remain unchanged or that another method of adjustment shall apply.

Unless otherwise agreed, the rent may be adjusted pursuant to the first and second paragraphs every ten years. The agreement may nonetheless not stipulate that adjustment take place more frequently than once a year.

In connection with extension under section 33, the lessor may require a one-off adjustment of the annual rent so that it constitutes 2% of the plot value minus any

increase in value brought about by the lessee or by others at the lessee's expense. The plot value must not exceed the selling price if the existing house or houses are the only buildings allowed on the plot. However, the lessor may not require that the rent be adjusted to an amount exceeding the annual maximum per decare or to the amount that an adjustment in accordance with the general price level would give. The maximum shall be NOK 9,000, adjusted every turn of the year after 1 January 2002 in accordance with changes in the general price level. This maximum shall also apply if the plot is smaller than one decare. The lessor must present his or her claim within three years after the lease has expired. The right to adjust the ground rent in accordance with this subsection shall not apply if a right to extension has been agreed with the lessee and the lessor is not entitled under the lease agreement to adjust the ground rent beyond changes in the general price level.

The parties may demand a new adjustment of the ground rent pursuant to the fourth paragraph when 30 years have passed since the previous adjustment was made pursuant to this provision.

If the parties are unable to reach agreement on a new ground rent, and the parties have not agreed or fail to reach agreement on another method for making the decision, the decision shall be subject to judicial appraisal.

When adjustment of the ground rent is dependent on one of the parties requesting such adjustment, the request may only concern future payments.

When the ground rent – or maximum – pursuant to law or agreement is to be adjusted in accordance with changes in the general price level, the amount shall be adjusted in accordance with developments in the (calculated) consumer price index from Statistics Norway. When the rent is to be adjusted since the leasehold agreement was entered into under a lease that dates from before 1865, the ground rent shall be adjusted based on developments in the consumer price index from 1865.

When the ground rent is to be adjusted pursuant to the fourth paragraph, the rent may exceed the maximum set out in the fourth paragraph, third to fifth sentences, to the extent that this is necessary out of consideration for the lessor's protection under Article 1 of Protocol No. 1 to the European Convention on Human Rights. The same shall apply to adjustment under the fifth paragraph."

Section 33. Extension of leasehold site for residential buildings and holiday homes

"When the term of lease for a residential building or holiday home has expired, and the plot of land is not redeemed pursuant to section 32, the leasehold shall continue to run on the same terms; such, however, that the lessor may demand adjustment pursuant to section 15, fourth paragraph. For leaseholds extended pursuant to the first paragraph, section 7, first paragraph, concerning the term of the lease shall apply."

III. THE COMMITTEE OF MINISTERS' CLOSURE OF THE SUPERVISION OF THE EXECUTION OF THE *LINDHEIM AND OTHERS* JUDGMENT

64. On 8 October 2015 the Government submitted its final action report to the Committee of Ministers on the execution of the Court's judgment in the case of *Lindheim and Others* (cited above), where it described the adopted amendments to the Ground Lease Act. With regard to the maximum rent (the "rent ceiling") the following was stated:

> "The said amendment introduces a mechanism which allows rent increases on extension which reflects the market value of the undeveloped plot. Pursuant to the amendment, section 33 of the Ground Lease Act grants the lessee a right to extension of the ground lease contract when the contract expires. If the lessee chooses to extend the contract, the amendment grants the lessor a one-off upward rent adjustment fixed to 2% of the value of the undeveloped plot. The rent adjustment is modified by a rent 'ceiling' of NOK 9,000 per *decare* of ground, adjusted every turn of the year after 1 January 2002 in accordance with inflation (currently about NOK 11,300, approximately EUR 1,250).
>
> The rent ceiling is founded on the fact that new rent increases compared to existing levels potentially interfere with the lessee's interest in keeping his or [her] immovable property on the rented ground. These interests are, as stated in *Lindheim* § 124, arguably protected by Article 8 of the Convention and by Article 1 of Protocol No. 1. Both the government and the Parliament were concerned that an unlimited upward adjustment of the rent fixed to a given percent of the value of the undeveloped plot would face many lessees with dramatic rent increases. This assumption was partly built on the survey conducted by the committee appointed 15 February 2013, where the average rent in more than 50% of the contracts covered by the survey was estimated to be less than [NOK 3,000]. The Parliament therefore put considerable weight in identifying a solution which respects the lessor's right of ownership without violating the lessee's right of ownership. A one-off [adjustment] on extension fixed to maximum 2% of the market value of the undeveloped plot within a ceiling of NOK 9,000 (currently about NOK 11,300) per *decare*, was considered to be a fair compromise between the parties' conflicting interests.
>
> The ceiling is designed along the lines of the on-off upward adjustment operation for contracts with ground value clauses as in [s]ection 15 of the Ground Lease Act. The purpose of this was partly to get similar 'ceiling'-mechanisms for ground value [adjustments] regardless of whether the regulation occurs in existing contracts or when the contract expires. This is why the new ceiling is adjusted every turn of the year after 1 January 2002. In its proposal, the government also took the view that the former ceiling in section 15 in an average of cases has proven to present a fair maximum amount in an average of cases with ground value regulation, [cf.] also *Lindheim* § 126. The need for a simple and consequent legal regime was also highlighted."

65. The supervision of the Government's execution of the *Lindheim and Others* judgment was subsequently closed on 30 March 2016, when the Committee of Ministers adopted Resolution CM/ResDH(2016)46, in which it stated, among other things, that it had examined the action report and satisfied itself that all the measures required by Article 46 § 1 of the Convention had been adopted.

THE LAW

ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

66. The applicant organisation complained that the refusal of the proposed ground rent increase had violated its right of property as protected by Article 1 of Protocol No. 1 to the Convention, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

67. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

68. The applicant organisation emphasised that its claim was that the Supreme Court had violated Article 1 of Protocol No. 1 to the Convention in its application of the Ground Lease Act to the facts at issue. The Supreme Court should have applied the ninth paragraph of section 15 of that Act but instead had applied the fourth paragraph of that section, thus preventing a fair balance from being struck between the interests of the lessor and those of the lessees.

69. In the present case, the lessees were socially successful and affluent, so social policy aims could not be furthered by applying the fourth paragraph of section 15. Furthermore, the rent/plot value ratio was particularly low and the method for setting the plot value defined in that section, as interpreted by the Supreme Court, including in particular disregarding alternative development opportunities, had had a particularly damaging effect on the applicant organisation's case because of the building technique that had been employed when the blocks were erected, which did not entail what today would be conceived as rational exploitation. References were additionally made to developments in house and land prices and to tenancy values. The applicant organisation also maintained that a heightened scrutiny of the proportionality of the interference should be carried out in the light of Article 9 of the Convention, given the applicant organisation's activities.

70. The Government emphasised that the legislature, in making the legislation applied in the applicant organisation's case, had assessed and balanced the interests involved, under the supervision of the Committee of Ministers and in observance of its Convention obligations. As part of that balancing process, the "rent ceiling" in the fourth sentence of the fourth paragraph of section 15 of the Ground Lease Act had been introduced in order to protect lessees from rent increases that would mean that they would be

unable to maintain the lease, although it was inevitable that this could be to the detriment of lessors with expensive plots.

71. Furthermore, the Government asserted that no excessive individual burden had been placed on the applicant organisation. They pointed out that the organisation received a considerable annual fee as practically risk-free income, that the fee was adjusted in line with the consumer price index and that there could be adjustments every thirty years. In the Government's view, the individual circumstances of the parties to the domestic case – which in their view had been inaccurately presented by the applicant organisation – could not be decisive; the purpose of legislating would suffer if the legislature could only adopt discretionary and generalised clauses.

2. The Court's assessment

(a) General principles

72. Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, among other things, to control the use of property in accordance with the general interest and to secure the payment of penalties. The three rules are not, however, "distinct" in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, among many other authorities, *G.I.E.M. S.R.L. and Others v. Italy* [GC], nos. 1828/06 and 2 others, § 289, 28 June 2018).

73. The Court reiterates that Article 1 of Protocol No. 1 above all requires that any interference by a public authority with the enjoyment of possessions be in accordance with the law: under the second sentence of the first paragraph of this Article, any deprivation of possessions must be "subject to the conditions provided for by law"; the second paragraph entitles the States to control the use of property by enforcing "laws". Moreover, the rule of law, which is one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention (ibid., § 292).

74. Furthermore, since the second paragraph of Article 1 of Protocol No. 1 is to be construed in the light of the general principle enunciated in the opening sentence of that Article, there must exist a reasonable relationship of proportionality between the means employed and the aim sought to be realised: the Court must determine whether a fair balance has been struck between the demands of the general interest in this respect and the interest of the individual concerned. In so determining, the Court

recognises that the State enjoys a wide margin of appreciation with regard to the means to be employed and to the question of whether the consequences are justified in the general interest for the purpose of achieving the objective pursued (*mutatis mutandis*, ibid., § 293). The requisite fair balance will not be struck where the individual concerned bears an individual and excessive burden. In considering whether the interference imposed an excessive individual burden the Court will have regard to the particular context in which the issue arises (see, for example, *mutatis mutandis*, *NIT S.R.L. v. the Republic of Moldova* [GC], no. 28470/12, § 252, 5 April 2022, and the references therein).

(b) Application of those general principles to the facts of the case

75. The Court observes that it is not in dispute between the parties that the measure complained of entailed a lawful interference with the applicant organisation's property rights; that the case must be examined from the angle of the "control rule" in the second paragraph of Article 1 of Protocol No. 1 to the Convention; and, accordingly, that the issue to be addressed is the proportionality of the Supreme Court's decision preventing the applicant organisation from increasing the rent (see paragraphs 26-41 above). The Court agrees.

76. The question is whether the domestic authorities, in deciding that the applicant organisation was not allowed to increase the rent, struck a fair balance between the interests of the lessor and the general interests of the community (see paragraph 74 above). Before turning to the concrete proportionality assessment, the Court will emphasise two aspects that it considers to be of general relevance to that analysis.

77. Firstly, the Court notes that the concrete assessment that it made in *Lindheim and Others* (cited above) is, as such, not directly applicable to the present case, in so far as the present case concerns the application of legislation that was introduced subsequently to the *Lindheim and Others* judgment and in order to execute the latter, under the supervision of the Committee of Ministers (see paragraphs 43, 62 and 64-65 above). Furthermore, it is evident to the Court that the legislature sought to implement fully the Court's findings in *Lindheim and Others* and thoroughly reviewed the Convention requirements in connection with the finalisation of the legislation (see, *inter alia*, paragraphs 44, 45, 46, 47, 53, 56 and 59 above). Moreover, the Convention requirements thereafter underwent an extensive judicial review, not only in general but in the light of the applicant organisation's specific circumstances, by three levels of domestic court (see paragraphs 20-41 above).

78. Secondly, the Court notes the common complexity of ground lease arrangements owing to their normally being very long-term contractual regulations of the individual relationship between parties owning respectively buildings and the land on which the buildings are situated. It takes into

account the considerations of the domestic authorities to the effect that "normal market mechanisms" do not apply when such arrangements have been entered into, so the legislature must focus on other policy choices (see paragraphs 47 and 51 above), and that long-term perspectives also have to be borne in mind when enacting relevant legislation (see paragraph 48 above). For those reasons, among others, the Court finds that cases such as *Bradshaw and Others v. Malta* (no. 37121/15, §§ 60 et seq., 23 October 2018) and *Zammit and Attard Cassar v. Malta* (no. 1046/12, §§ 62 et seq., 30 July 2015), where it focused on market rents, give limited guidance in the present case, where the conflicting interests of two sets of property owners are at stake. In this connection the Court also takes general note of the information that ground leases had been a disputed area and that approximately 170,000 ground lease arrangements relating to residential or holiday homes had been estimated to exist. It observes that the legislation applied to the applicant organisation's case was designed to provide for general regulation of the numerous contracts that exist with variations in the leased properties and the parties to the contracts, including how and when they had become parties to the contracts (see paragraph 48 above). As the Court stated previously in *Lindheim and Others* (cited above, § 127), in view of the very large number of ground lease contracts in Norway it understands the need emphasised in the national legislative process for clear and foreseeable solutions and the need to avoid costly and time-consuming litigation on a massive scale before the national courts (see, for example, paragraphs 46, 47 and 49 above).

79. The two above-mentioned aspects allow the Court to focus primarily on the national parliamentary and judicial reviews of the Convention issues (see, *mutatis mutandis*, *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, §§ 106-11 and 113, ECHR 2013 (extracts)).

80. Proceeding to consider the review carried out in the applicant organisation's case, the Court observes at the outset that the owner of the plot and the main lessor is an organisation, namely a foundation that in 2018 inherited the leased land and accordingly the position of lessor in the disputed proceedings relating to rent (see paragraph 23 above). The Court also observes that the lessees are a large group of individuals who own their homes in the form of apartments in buildings on the plot which were constructed and sold in the 1960s (see paragraph 7 above).

81. Before the Court, a key submission by the applicant organisation was the alleged wealth of the lessees. There are at the same time no indications of the lessor having made any sort of individualised claims to the lessees when requiring the rent rise (see paragraphs 17-18 above), nor does it appear that any of the lessees objected to the rent rise by any express references to individual circumstances. Neither the alleged wealth of the specific persons living on the property nor any questions relating to the specific applicant organisation's financial needs or what legitimate expectations could be attributed to it or the investment company Mallin Eiendom AS at the time of

the domestic proceedings were referred to by the Supreme Court in its reasoning on the questions relating to the rent levels (see paragraph 32 above). In the circumstances of the case the Court does not find it problematic that the individual situation of the parties, including the activities of the applicant organisation, did not play a more prominent role in the balancing of interests as carried out by the Supreme Court. It notes that the case was not pleaded as relating to persons in any particular financial or social need, either on the lessor's or the lessees' side, and considers that the Supreme Court examined the conflicting interests of the parties to the lease contracts in a sufficiently individualised manner by way of its examination of what it termed "the financial facts" of the case (see paragraphs 29 and 33-41 above).

82. The Court observes that in the assessment of proportionality, the rent/plot value ratio must be factored in as one of many elements (see, for example, *Lindheim and Others*, cited above, § 129), and that in accordance with the domestic legislation, the plot value in this particular context of the ground lease rent was assessed on the basis of the current exploitation of the land, not potential alternatives (see paragraphs 27 and 63 above). Where a plot's financial potential was not fully exploited, the figure relevant to the fixing of the ground rent could accordingly be below market value. In that sense, the Supreme Court's examination of the case from the angle of the existing exploitation of the land might at the outset appear to have entailed a balancing of interests on that particular point that weighed in favour of the lessees. It was another key submission by the applicant organisation before the Court that the domestic authorities' having relied on the "raw plot value" in a manner that had precluded taking into account possible more "modern" methods of construction had been particularly damaging to it.

83. The Court notes that it appears from the Supreme Court's judgment that the arguments relating to the finding of the relevant value were pleaded principally as alleged errors in law on the part of the High Court, rather than as grounds for finding that the High Court's conclusions were disproportionate in view of Article 1 of Protocol No. 1 to the Convention (see paragraph 27 above). Nonetheless, the Court observes at this juncture that the choice of the "raw plot value" as the relevant value for ground lease contracts had been a deliberate choice by the legislature in order to impose certain limitations on the upwards adjustment of ground rent according to the value of the undeveloped plot (see paragraph 50 above). In general, the Court finds that considerations relating to matters such as the fact that from the perspective of the lessees the hypothetical exploitation would not always have any particular relevance, that they could not necessarily have any noteworthy impact on the development of the value of the undeveloped plot and that any hypothetical development could vary greatly in nature and likelihood were legitimate concerns to take into account by way of the relevant legislation in one form or another.

84. The Court notes that what was at issue in the case before the Supreme Court was not, for example, large unused areas of land but a substantial building complex integrated in the environment that could, according to the applicant organisation, have been constructed in a different manner: that is, according to the applicant organisation, the buildings could have been designed as blocks of smaller dwelling units. In addition, the Court takes note of the fact that in the circumstances of the present case, it was not the lessees that had decided on the exploitation of the plots: when the property was first developed in the 1950s and 1960s, lessees bought apartments and entered into lease contracts with the property developer for the land on which the apartments were placed, effectively at the same time (see paragraphs 6-7 above). In the light of the foregoing and the particular nature of ground lease arrangements, the Court also finds limited guidance in the applicant organisation's references to the general developments in house and land prices. The same goes for its arguments concerning tenancy values, given the differences between ground lease and tenancy agreements (see, similarly, *Lindheim and Others*, cited above, §§ 120-21, and also paragraph 79 above).

85. In the light of the above, the Court considers that the principles of domestic law for finding the plot value relevant to ground rent adjustments did not contribute to or result in an unfair balance between the parties in the case before the Supreme Court.

86. Turning to the applicant organisation's submission to the effect that the rent/plot value ratio was particularly low, the Court observes that the decision in issue meant that the applicant organisation could continue to receive approximately 0.6% of the property value annually, as that value was set by the domestic authorities in line with the relevant valuation principles in domestic law (see paragraphs 33 and 82-83 above). In that connection, the applicant organisation pointed out that in *Lindheim and Others* (cited above, § 129), the Court was struck by the "particularly low level of rent the applicants received", which it described as "less than 0.25% of the plots' market value".

87. However, the Court notes that the property considered by the Supreme Court in the present case was one of high value – NOK 110 million, approximately EUR 11.3 million at the time – that the yearly rent amounted to NOK 658,225, approximately EUR 68,100 at the time (see paragraph 33 above), and that the factual circumstances relating to the various ground lease contracts at issue in *Lindheim and Others* were in any event different (see *Lindheim and Others*, cited above, §§ 17-37). Moreover, the Court notes that the Supreme Court also emphasised that the lessor organisation would for its part benefit from its ownership by enjoying what was said to be an essentially risk-free, passive investment and that the issue of rent adjustment could be brought up again every thirty years (see paragraph 40 above).

88. In the light of the above-mentioned factors, the Court does not consider that the rent/plot value ratio as such forms a decisive argument in

favour of finding that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

89. Viewing the case overall, the Court notes that the fact remains that the applicant organisation's opportunities to financially exploit its property rights over the plot in question were, the foregoing considerations notwithstanding, limited, given the restrictions that the legislation, specifically the "rent ceiling" provided for therein, imposed on its ability to increase the ground rent.

90. On the point of the overall assessment, the Court finds it appropriate to emphasise the importance of the principles of subsidiarity and shared responsibility. It reiterates its fundamentally subsidiary role in the supervisory mechanism established by the Convention, whereby the Contracting Parties have the primary responsibility of securing the rights and freedoms defined in the Convention and the Protocols thereto (see, for example, *Grzęda v. Poland* [GC], no. 43572/18, § 324, 15 March 2022).

91. In the instant case, the legislation that entailed the restriction on the applicant organisation's possibility to increase the ground rent concerned economic and social policy and was a product of a particularly thorough legislative process where the aim had been to find an appropriate balance between the interests of the parties to ground lease agreements; interests which had both been well represented in the legislative process (see, for example, paragraphs 44 and 49 above).

92. Moreover, in the circumstances of the instant case, the Court must attach considerable weight to the fact that the legislation applied in the applicant organisation's case had been enacted after an exacting and pertinent review specifically of the requirements flowing from Article 1 of Protocol No. 1 to the Convention, but also that there was a further review by the domestic courts at three levels in the applicant organisation's case, and that the domestic legislation gave room for individual exceptions by way of the "safety valve" in the ninth paragraph of section 15 of the Ground Lease Act (see paragraph 63 above; contrast, for example, *Zelenchuk and Tsytsyura v. Ukraine*, nos. 846/16 and 1075/16, § 145, 22 May 2018). The judicial review included that carried out by the Supreme Court, which meticulously examined all the relevant aspects of the case pertaining to Article 1 of Protocol No. 1 to the Convention (see paragraphs 28-41 above). In that context, the Supreme Court concluded that the general rule in the fourth paragraph of section 15 of the Ground Lease Act fell to apply in the case and Convention considerations accordingly did not require application of the "safety valve" in the ninth paragraph.

93. Furthermore, the Supreme Court was faced with competing financial interests between the parties to the case before it, as well as the more general public interest in the case. With regard to the latter, the Supreme Court relied on the social considerations that had been emphasised by the legislature, which, as concerns the maximum ground rent (the "rent ceiling"), included

the consideration that without a provision on maximum rent, some lessees would be financially unable to continue the lease (see paragraphs 31, 51 and 57 above). The general interest in attending to those social policy concerns was coupled with the interest in enacting legislation that would provide for general regulation and take account of the need to limit the risk of disputes (see paragraphs 32, 47-48 and 78 above). The Court has generally held that unless there are shown to be strong reasons for doing so, it is not for it to substitute its own assessment of the merits for that of the competent national authorities where independent and impartial domestic courts have carefully examined the facts, applied the relevant human rights standards consistently with the Convention and its case-law, and adequately balanced the applicant's personal interests against the more general public interest in the case (see, for example, *Advisory opinion on the difference in treatment between landowners' associations "having a recognised existence on the date of the creation of an approved municipal hunters' association" and landowners' associations set up after that date* [GC], request no. P16-2021-002, French Conseil d'État, § 84, 13 July 2022). In the present case, the Court, having reviewed the proceedings in which the applicant organisation was involved (see paragraphs 80-88 above), considers that the domestic courts did precisely that.

94. In conclusion, the Court, having regard to all the above, finds that a sufficiently fair balance between the competing interests was struck and accordingly that the domestic authorities did not overstep the margin of appreciation afforded to them when applying the "rent ceiling" to the applicant organisation's case, thereby preventing it from increasing the ground rent as it had proposed. It follows that there has been no violation of Article 1 of Protocol No. 1 to the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

1. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention.

Done in English, and notified in writing on 10 November 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Síofra O'Leary President