FOURTH SECTION

CASE OF LINDHEIM AND OTHERS v. NORWAY

(Applications nos. 13221/08 and 2139/10)

JUDGMENT

STRASBOURG

12 June 2012

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 Lindheim and Others v. Norway,

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

Nicolas Bratza, *President,*
Lech Garlicki,
Päivi Hirvelä,
Ledi Bianku,
Zdravka Kalaydjieva,
Vincent A. De Gaetano,
Sverre Erik Jebens, *judges,*
and Lawrence Early, *Section Registrar,*

Having deliberated in private on 21 June 2011 and 22 May 2012,

Delivers the following judgment, which was adopted on the last mentioned date:

PROCEDURE

1. The case originated in two applications (nos. 13221/08 and 2139/10) 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 six Norwegian nationals ("the applicants") on 14 March 2008 and 21 December 2009. Ms Berit Mogan Lindheim, Mr Knut Heian, Ms Ellinor and Mr Georg Nilsen and Ms Nina Titten Brandt-Kjelsen lodged the first application. Mr Dagfin Bonde Henriksen lodged the second application.

2. The first five applicants were initially represented by Mr F. Elgesem and by Mr S.O. Flaaten; therafter all six applicants were represented by the latter and by Mr G. Hika. The three lawyers were practising in Oslo. The Norwegian Government ("the Government") were represented by Mr M. Emberland of the Attorney General's Office (Civil Matters) as their Agent.

3. The applicants were landowners who, as lessors, had entered into ground lease agreements regarding their plots of land, for either permanent homes or holiday homes. They complained that, in breach of Article 1 of Protocol No. 1, under new legislation the lessees had been entitled to demand, and had demanded, an unlimited extension of the contracts on the same conditions as applied previously, once the agreed term of lease had expired.

4. On 4 June 2009 and 18 May 2010, respectively, the Court decided to give notice of the applications to the Government. It also decided to rule on the admissibility and merits of the applications at the same time (Article 29 § 1). On 9 May 2011 the Court decided to join the two applications and to invite the parties to a hearing on the admissibility and merits of the case.

5. A hearing took place in public in the Human Rights Building, Strasbourg, on 21 June 2011 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Mr M. Emberland, Attorney-General's Office, *Agent*,

Ms A. Syse, *Adviser*;

(b) *for the applicants*
Mr S. O. Flaaten, *Advokat*, *Counsel*;

Mr G. Hika, *Advokat*, *Counsel*.

The Court heard addresses by Mr Emberland, Mr Flaaten and Mr Hika.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants are:

1) Ms Berit Mogan Lindheim, born in 1953, who lives in Gvarv;

2) Mr Knut Heian, born in 1953, who lives in Åsgårdstrand;

3-4) The spouses Mrs Ellinor Nilsen and Mr Georg Nilsen, born in 1943 and 1940, who live in Larvik;

5) Ms Nina Titten Brandt-Kjelsen, born in 1956, who lives in Nesoddtangen; and

6) Mr Dagfin Bonde Henriksen, born in 1956, who lives in Åsgårdstrand.

A. Factual background

7. The applicants are landowners and lessors who concluded ground lease contracts regarding their plots of lands for permanent homes or holiday homes prior to 1 January 1976. On that date, upon the entry into force of the Ground Lease Act 1975 (*Tomtefesteloven*), for the first time under Norwegian law, the rental or leasing of plots of land for permanent homes and holiday homes became the subject of special statutory regulation.

8. Prior to 1 January 1976 such agreements were governed by the general rules (statutory and other) on contracts. Ordinarily such contracts were concluded for a period of 99 years and often contained clauses giving the lessee a right to extension of the contract upon expiry. According to legal doctrine, where such clauses had not expressly been set out in the contract, there was a custom or implicit assumption that the lessee had a right to extension of the contract unless the lessor had an objective ground for refusing renewal. Some lease contracts contained clauses which gave the lessor a right to increase the rent at intervals, in order to compensate for inflation. However, pursuant to two Supreme Court judgments of 1988, such a right was granted even in the absence of any explicit contract clause to that effect.

9. In 1996 a new Ground Lease Act was enacted with effect from 1 January 2002.

10. Under both the 1975 Act and the 1996 Act the lessee was entitled to have the ground lease contract extended but the lessor had the right to introduce new conditions into the contract.

11. With effect from 1 November 2004 the Ground Lease Act was amended anew; *inter alia*, from that date its section 33 granted all lessees of plots for permanent homes and holiday homes the right to claim extension of their lease on the same conditions as previously and without limitation in time, when the agreed term of lease between the parties expired. The reason was a strongly felt concern across Parliament (*Stortinget*), with only one exception – the Progress Party (*Fremskrittspartiet*), that lessees who were not able to afford the price of redemption would need the legislator's protection in order to be able to extend the lease. The introduction of the disputed provision of section 33 of the Ground Lease Act was essentially motivated by social policy considerations (see paragraphs 47-51 below).

12. In order better to understand the rationale behind this amendment, it is important to bear in mind the underlying socio-economic factors in Norway. In the post-war area, limited resources for the purchase of real estate was one factor that made ground lease arrangements attractive for people who wanted to own a permanent home or a holiday home. For property owners, it was an expedient way of obtaining a steady income from their land without making any investments and an attractive alternative to selling the land, in a country with a small population on a vast territory and with moderate price levels. This might explain why such arrangements became so popular. There exist between 300,000 and 350,000 ground lease contracts (sixty percent for permanent homes and forty percent for holiday homes) in a population of 5 million people, the majority of contracts being for private homes (Proposal No. 41 to the *Odelsting* (2003-2004), p. 11).

13. From 1950 until 1980 the price level of the real-estate market developed more or less at a similar pace to general price inflation. However, this began to change around 1980, when real-estate prices started soaring. This was especially the case from the second half of the 1980s for property around the larger cities and in popular areas for recreation, but prices have continued to rise, in all parts of the country. A number of lessors then used the opportunity under the law to demand redemption, which resulted in many lessees being put in a difficult financial position (paragraph 46 of the Supreme Court's judgment of 21 September 2007 in the leading case referred to at paragraph 16 below). Because of the dramatic increase in pressure on real-estate prices the legislator thought it necessary to intervene to protect the lessees' interests. This was done in 2004 by regulating the level of possible rent increases so that they could only reflect general inflation, not the rising cost of land.

B. The leading case brought before the Supreme Court

14. In consequence thereof a lessor, who is not one of the applicants, lodged civil proceedings before the Oslo District Court (*tingrett*) against fifty-four lessees who had leased plots of land for permanent homes, claiming that the amended section 33 of the Ground Lease Act contravened Articles 97 or 105 of the Constitution, concerning respectively the prohibition of retroactive laws and the right to full compensation in case of expropriation, or Article 1 of Protocol No. 1 to the Convention.

15. On 10 January 2007, the Oslo District Court passed judgment in favour of the lessor, finding that section 33 of the Ground Lease Act contravened both Article 97 and Article 105 of the Constitution.

16. On appeal, the case was brought directly before the Supreme Court (*Høyesterett*), which by judgment of 21 September 2007 (HR 2007-1593-P, case no. 2007/237) found against the lessor. It considered that section 33 of the Ground Lease Act should be examined exclusively in the light of Article 97 of the Constitution, with which it was compatible, and that there was no infringement of Article 1 of Protocol No. 1 to the Convention. In his reasoning, approved in the main by the other six Justices sitting in the case, the first voting judge, Mr Justice Matningsdal, stated in so far as relevant:

"(88) The lessee's submission that the right to extension of the lease 'on the same terms as previously' represents a restriction can in my opinion not succeed. Ever since the judgment in the Concession Act case in the Supreme Court's law reports (*Norsk Retstidende* - "*R.t.*") 1918 I p. 403, the Supreme Court has taken as its point of departure that if, as stated by Assessor Siewers in *Rt.* 1914 p. 205, there is 'a ceding on the part of the owner and an acquisition on the part of the State which wholly or in part transfers the owner's disposal of the property to the State or others for further enjoyment for the same or other purposes', it will follow from Article 105 that full compensation must be paid. Conversely, there will be a restriction on the use of property if 'there is no ceding and acquisition but rather provisions that for the promotion of public interest considerations and in the interest of society aim to regulate the owner's disposal of the property, without any transfer to third parties'.

(89) The right to extension provided for in section 33 must clearly be distinguished from a regulation of the owner's disposal of the property. Section 33 grants the lessee a right to lease the plot for a longer period than provided for in the agreement. In other words, there is a transfer of rights in the property beyond the agreed period of time - which viewed in isolation could indicate that the situation is directly regulated by Article 105. In this context, I should note that the requirement as to 'full compensation' in Article 105 also applies in the case of expropriation of limited rights ...

(90) Although section 33 of the Ground Lease Act entails a transfer of the owner's disposal of the property, I nevertheless have no doubt that the constitutionality of the right to an extension on unchanged conditions must be assessed in relation to Article 97 of the Constitution, rather than Article 105. This was also the view of the legislators, see Proposal No. 41 to the *Odelsting* (2003-2004), p. 55, quoted above, which assumes that the question of constitutionality must be decided by reference to Article 97. A central point in this context is that the rules on extension intervene with a regulatory effect in a situation created by the parties themselves through the contract of ground lease. The agreement makes it necessary for the lessees to be permitted to maintain their buildings on the plot for a very long period of time after the agreed term of lease has expired. The statutory provision represents a regulation – with retroactive effect – related directly to the agreement, or, more precisely, to the restrictions contained in the agreement. In our legal tradition a subsequent regulation of this nature relating to a contractual relationship between the parties is assessed in relation to Article 97 of the Constitution, not in relation to Article 105. This is the case even where a regulation has resulted in a transfer of rights and obligations between the parties. This view must also be applicable in a case such as ours, even though the intervention in the agreement entails a transfer of disposal.'

...

(98) The concrete assessment in relation to Article 97 of the Constitution

(99) ... An assessment must be made in full of the consequences of the act. In this assessment, on the one side weight must be accorded to the considerations of the lessees. The latter must be balanced against the act's consequences for the lessors, and how protection-worthy their interests are.

(101) When it comes to a ground lease it is fundamental that one is confronted with a conflict of interests between two parties. The landowner owns the land, while the lessee owns the building or buildings which have been erected on the land. When balancing, it is of central importance that almost without exception the lessee's economic interest is greater. Even if the example is not representative for buildings constructed for individual habitation or for holiday purposes, I note nevertheless that in the sales project regarding the fifty-four apartments in the present case, the prices were set at between NOK 140,000 and NOK 395,000 depending on size and position. The price for one of the most expensive apartments was thus higher than the price paid a few years previously for the whole plot of land. But also as regards buildings constructed for individual habitation and for holiday purposes, normally the lessee has paid the more significant financial contribution.

(102) In respect of a lease for permanent homes, the lessee's essential right to housing for himself and his family must be protected – which was the principal reason behind the amendment of the act. In addition, for the majority of lessees it concerns their single largest investment. They have a well-founded expectation that the legislators will protect their factual situation. Moreover, this is illustrated by the fact that besides the area of ground leasing, we have several examples where the legislators have found it justified to protect rights of this kind, even when such interference may mean a certain form of transfer of rights:

(103) Firstly I note Act of 23 July 1920 no. 1 ...

(104) Secondly I note Act of 16 July 1939 concerning rent ...

(105) The regulation of rent is a third example, which illustrates the legislation's endeavour to protect the right to housing ...

(106) The right to continue the lease contract on 'the same terms as before' has first and foremost significance for the lessor's possibility to increase the rent. The examination above [103-105] shows that for a long time considerable legislative efforts have been made to protect the right to housing. This area of law has been strongly legislated, and the market mechanisms have to a large extent not been the deciding factor. Already, therefore, lessors must have been prepared for the law makers to follow developments closely and if necessary intervene in the ongoing lease relations in order to safeguard the lessee's need to protect his home and his investments.

(107) Furthermore, as regards long-term agreements, like ground lease contracts, the parties must be prepared for developments to take a direction which increases the legislator's need to intervene with legislation to secure a proper balance between the parties. This has not only benefited the lessees: the enactment of section 36 of the Agreement Act in 1983 gave lessors the possibility to adjust the lease upwards in contracts which did not contain a regulation clause, and where the rent had become unreasonably low because of a significant decrease in the value of money...

...

(109) [The lessors] have emphasised that as the contracts were entered into during a period of index linkage, they anticipated that price regulation would be lifted [at the expiry of the contract] and that, when extending the contract, they would be able to charge a rent which reflected the real value of the land. I note in this connection that it is questionable how strong this anticipation could have been. ... I refer to [a Supreme Court judgment, *Rt.* 2006 p.1547, in which the court stated among other things about the parties' expectations] ... '[the lessors] have attached great weight to the fact that a clause was inserted in the contract stipulating that disputes as to the regulation of ground rent were to be decided in the light of an expert opinion. They maintain that the insertion of such a clause would have been unnecessary had they anticipated that price regulation would follow index linkage. In my view, however, much weight cannot be attached thereto. In the 1960s it was difficult to predict that the prices of plots of land for holiday houses would increase considerably more than general inflation would indicate. It is most likely that when entering into the contract, the parties did not have any clear conception of what the material basis for regulating the ground rent should be.'

(110) In addition to the quotation above, I note that in so far as the lessors had anticipated that price regulation would be lifted, they could not have had any legitimate anticipation that the legislator would accept an increase in ground rent which deviated significantly from the general price trend. Had the legislator not intervened, the price increase in recent years would almost have amounted to an 'accidental profit' – see *Ot.prp.nr.41 (2003-204)* p. 51, second column. Accordingly, it was not realistic to anticipate that the legislators would not intervene in the price increases we have had in recent years.

(111) Moreover, I observe that the present case concerns long-term contracts under which the landowner has received contractual ground rent for forty-five years. This also has its importance under Article 97 of the Constitution.

(112) The lessors have maintained that it is unreasonable that at the expiry of the contracts they will be in a [worse] position than lessors who enter new leasing contracts. In these situations, it follows that under section 11 of the Ground Lease Act the freedom of agreement is significant in that the agreed ground rent is valid as long as it is not 'unreasonably high in relation to what is customarily paid in the locality on new leases on similar plots on similar contractual terms'. In my view, however, there is a crucial difference between the two situations: I refer to the elements already emphasised. In this connection, I especially note that concerning ground leases, such as those in question, where the life span of the building clearly exceeds the duration of the ground lease contract, the lessor has all along been aware that the extension of the contract would become an issue. When negotiating the terms of the extension of the contract, a lot would be at stake financially for the lessee. Despite the authority to expropriate in the Expropriation Act, there was a risk, as also indicated in *Ot.prpr. no. 41 (2003-2004)*, p. 54, second column, that the lessor would impose some quite oppressive conditions on the lessee. In such cases the lessors could not expect the legislator to refrain from price regulation when renewing ground lease contracts. I recall that when the ground lease contracts at issue were entered into, the establishment of ground lease contracts was price-regulated, and an increase in the ground rent required approval from the Price Board [*prisnemnda*].

(113) Taking the [above circumstances into consideration,] there is a strong case for concluding that the provision which gives lessees the right to continue the ground lease on the same terms as before is not affected by the prohibition of retroactive laws set out in Article 97 of the Constitution. It is true that the provision means that the entire increase in the value of

the land – to the extent that it exceeds increases in the consumer price index – can be said to accrue to the lessees after the extension of the lease. In other words, there is no apportioning of the increase in value that led to the legislative amendment. Nevertheless, I find that, given the situation which existed, it must lie within the freedom granted to the legislator under Article 97 of the Constitution to regulate matters in this way.

(114) When assessing [compliance with the constitution] the question arises whether the retroactive provision safeguards objective considerations of equality. [...]

(115) It is section 15 on the adjustment of the ground lease rent which in particular raises the question of whether considerations of equality have been sufficiently preserved. As a result of this provision the former provision on adjustment of the ground lease rent was repealed. Section 15 (1) provides:

...

(116) With regard to the one-off adjustment upon the entry into force of the Act on 1 January 2002, section 15 (2) provides:

...

(117) Section 15 of the Ground Lease Act thus provided for a possibility to factor into the calculation of the ground lease rent an increase in the value of the plot beyond the general inflation rate. But the possibility is limited to instances where such adjustments have 'unequivocally' been agreed to, and the requirement that the agreement be clear is particularly strict – see *Norsk Rettstidende* '*R.t.*' 2006, at p. 1547. In view of this requirement as to clarity, and of the information available about adjustment clauses in ground lease contracts in general, a minority of contracts is covered by this provision. There are in addition important limitations also on the situations which are covered by the right under section 15 (2)(2) to include in the calculation an increase in values as mentioned. There is only provision for a one-off adjustment and there are limitations as to the amount.

(118) In my view, even though Article 97 of the Constitution hardly requires the exception provided for in section 15(2)(2), there is arguably an objective ground for giving these ground lease agreements a special status with regard to the possibility to adjust the ground lease rent. The basis for so doing is precisely that adjustment in accordance with the ground value here has been directly expressed and has therefore created a safer and closer expectation about adjustment on that ground. In the light of that I cannot see that the provision in section 15(2)(2) infringes the condition of equality and thus provides a ground for setting the section 33 right aside as being incompatible with Article 97 of the Constitution.

(119) I add that the fact that the redemption rules can offer a better financial result for the lessor than those on extension of the lease on unaltered conditions is not a ground for holding that section 33 is incompatible with Article 97 of the Constitution. Redemption is left to the lessee's choice. The legislator should be free to decide that if the lessee wishes to avail himself or herself of this right, he or she will have to pay compensation beyond the constitutional minimum.

...

(121) Hereafter my conclusion is that section 33 of the Ground Lease Act does not contravene Article 97 of the Constitution. The provision is justified by weighty housing/social considerations. There was a clear need to protect a number of lessees and the lessors had no justified expectation to profit from the quite extraordinary increase of the value of plots of land for leasing.

...

(123) Finally, it is necessary to assess whether section 33 leads to results that contravene Article 1 of Protocol No. 1 to the Convention ...

(125) The question is whether the fact that in the event of an extension the lessor does not have the right to regulate the ground lease upwards to an amount that reflects the actual land value means that the arrangement contravenes this Convention provision.

(126) The central decision in this context is the judgment by the European Court of Human Rights in Plenary Session of 21 February 1986 in *James and Others v. the United Kingdom*, 21 February 1986, Series A no. 98. The case was occasioned by the enactment by the UK Parliament of a statute 'The Leasehold Reform Act 1967' which granted residents the right to redeem contracts for 'building lease' and 'premium lease'. The former types of agreement had major similarities with Norwegian ground leases, the difference being that under these contracts, the house too belonged to the landowner. However, the residents had defrayed the cost of erection and paid a charge for the plot to the landowner. The new act provided that in the event of redemption, the residents should pay only for the value of the land. The plot would not be valued as a plot where a right of title to the house and land were grouped, but rather on the basis of what the landowner could be expected to sell it for with the encumbrance of a leasehold of at least 50 years' duration, should anyone else purchase the plot. This amount was far lower than the market value of a released plot, and the plaintiffs claimed that they suffered a loss in the region of NOK 1.500.000 on individual conveyances. The Court did not find for the applicants.

(127) The applicants contended firstly that the 'public interest' test was satisfied only if the property had been taken 'for a public purpose of benefit to the community generally' (see *James and Others*, cited above, paragraph 39). This argument did not succeed (ibidem, paragraph 45):

'For these reasons, the Court comes to the same conclusion as the Commission: a taking of property effected in pursuance of legitimate social, economic or other policies may be 'in the public interest', even if the community at large has no direct use or enjoyment of the property taken. The leasehold reform legislation is not therefore *ipso facto* an infringement of Article 1 (P1-1) on this ground. Accordingly, it is necessary to inquire whether in other respects the legislation satisfied the 'public interest' test and the remaining requirements laid down in the second sentence of Article 1 (P1-1).'

(128) In paragraph 46 the Court further underlines that the national courts 'are in principle better placed than the international judge to appreciate what is 'in the public interest'. The national authorities accordingly enjoy 'a certain margin of appreciation'.

(129) The Court then discussed whether the aims sought to be pursued by the British Parliament were legitimate. In this regard, the Court held, *inter alia* (ibidem, paragraph 47):

‘Eliminating what are judged to be social injustices is an example of the functions of a democratic legislature. More especially, modern societies consider housing of the population to be a prime social need, the regulation of which cannot entirely be left to the play of market forces. The margin of appreciation is wide enough to cover legislation aimed at securing greater social justice in the sphere of people’s homes, even where such legislation interferes with existing contractual relations between private parties and confers no direct benefit on the State or the community at large. In principle, therefore, the aim pursued by the leasehold reform legislation is a legitimate one.’

(130) Thereafter, the Court emphasised that it would not be sufficient that the legislation pursue a ‘legitimate aim’ but ‘there must also be a reasonable relationship of proportionality between the means employed and the aim sought to be realised’ (ibidem, paragraph 50). On the proportionality assessment in the concrete case, the Court stated (paragraph 51):

‘According to the applicants, the security of tenure that tenants already had under the law in force ... provided an adequate response and the draconian nature of the means devised to give effect to the alleged moral entitlement, namely deprivation of property, went too far. This was said to be confirmed by the absence of any true equivalent to the 1967 Act in the municipal legislation of the other Contracting States and, indeed, generally in democratic societies. It is, so the applicants argued, only if there was no other less drastic remedy for the perceived injustice that the extreme remedy of expropriation could satisfy the requirements of Article 1 (P1-1).

This amounts to reading a test of strict necessity into the Article, an interpretation which the Court does not find warranted. The availability of alternative solutions does not in itself render the leasehold reform legislation unjustified; it constitutes one factor, along with others, relevant for determining whether the means chosen could be regarded as reasonable and suited to achieving the legitimate aim being pursued, having regard to the need to strike a ‘fair balance’. Provided the legislature remained within these bounds, it is not for the Court to say whether the legislation represented the best solution for dealing with the problem or whether the legislative discretion should have been exercised in another way ... .

The occupying leaseholder was considered by Parliament to have a ‘moral entitlement’ to ownership of the house, of which inadequate account was taken under the existing law ... . The concern of the legislature was not simply to regulate more fairly the relationship of landlord and tenant but to right a perceived injustice that went to the very issue of ownership. Allowing a mechanism for the compulsory transfer of the freehold interest in the house and the land to the tenant, with financial compensation to the landlord, cannot in itself be qualified in the circumstances as an inappropriate or disproportionate method for readjusting the law so as to meet that concern.’

(131) As to whether it is permissible to adopt legislation which does not guarantee full compensation, the Court held in paragraph 54:

‘The Court further accepts the Commission’s conclusion as to the standard of compensation: the taking of property without payment of an amount reasonably related to its value would normally constitute a disproportionate interference which could not be considered justifiable under Article 1 (P1-1). Article 1 (P1-1) does not, however, guarantee a right to full compensation in all circumstances. Legitimate objectives of ‘public interest’, such as pursued in measures of economic reform or measures designed to achieve greater social justice, may

call for less than reimbursement of the full market value. Furthermore, the Court's power of review is limited to ascertaining whether the choice of compensation terms falls outside the State's wide margin of appreciation in this domain ... .'

(132) I cannot see that the Court has departed from the fundamental conclusions in this judgment in subsequent case-law. When the circumstances of the case and the considerations underlying the English legislation are compared with our case, it is clear to me that the application of section 33 of the Ground Lease Act does not contravene Norway's obligations under international law."

C. The specific circumstances underlying the applicants' individual complaints

1. The first applicant

17. The first applicant, Ms Lindheim, owned agricultural property and had leased nine plots of land for holiday home purposes, all of which had been built upon. One of the leasing contracts was signed in September 1968 with the original ground rent amounting to NOK 200. The lease provided for adjustment of the ground rent in accordance with the Consumer Price Index every tenth year. The lease had a term of 40 years and accordingly expired in 2008. At the time of lodging the application the ground lease rent amounted to 1,622 Norwegian Krone (NOK) (approximately 200 euros (EUR)) per year. Since the applicant and the lessees could not reach an agreement as to an extension of the lease pursuant to section 33 of the Ground Lease Act, the first applicant brought the case before the Hallingdal District Court claiming that in the event of an extension of the lease, she should have the right to require the ground rent to be adjusted to the lawful market price. By a judgment of 3 February 2007, the Hallingdal District Court found in favour of the lessees.

18. The first applicant appealed against the judgment, and the case was brought directly before the Supreme Court, which heard it together with the leading case mentioned above. By a judgment of 21 September 2007 the Supreme Court found against the first applicant. In his reasoning, approved in the main by the five Justices sitting in the case, the first voting judge, Mr Justice Utgård, stated in so far as relevant:

"(13) I have arrived at the conclusion that the appeal cannot succeed on the grounds given in the [leading judgment] earlier today.

(14) It is true that this case concerns a holiday home property, whereas the case decided earlier today concerned leases for permanent home purposes. On some points, the Ground Lease Acts of the past have made distinctions between these purposes. The current section 32 does not distinguish between plots for permanent homes and plots for holiday homes. It must accordingly be assumed that the legislators intended that extensions of leases should be treated equally, irrespective of which of these purposes the plots were used for. This must carry considerable weight in our assessment here. Reference is made to the first voting judge's comments [the leading judgment above] on the weighing of the political considerations by Parliament. I would nevertheless add that, although it is probably the case that social considerations would be of particular importance to permanent homes, having a holiday home also has considerable benefits in terms of well-being and welfare. It is illustrative of the assessment on this issue that counsel in the case has not attached noteworthy weight to distinctions regarding purpose."

2. The second applicant

19. The second applicant, Mr Heian, owns agricultural property, of which the outlying fields have been parcelled out as plots. One plot was leased out for housing purposes for ninety-nine years, from 14 April 1909 to 14 April 2008. On 15 March 2007 the annual ground rent amounted to NOK 589 (approximately EUR 75). The contract did not provide for a right to claim an extension of the lease and was silent on the question of future adjustments of the ground lease rent. The leased plot is located in an area containing several housing properties and is approximately 2.3 *dekar* in size. The plot has a shoreline adjoining the Oslo Fjord. It appears that the lessee resides outside Norway and uses the property as a holiday home. Originally she claimed the right to redeem the plot with effect from the expiry of the agreed term of lease. For the purpose of determining the amount payable in redemption, the parties agreed that they should each appoint an assessor. Based on the values determined by these assessors, the amount payable in redemption would be fixed at forty per cent of the undeveloped plot value, as provided for in section 37 of the Ground Lease Act.

20. Each of the parties accordingly arranged for the plot to be valued. On 6 June 2007 the assessor appointed by the lessor estimated the market value of the undeveloped plot to be NOK 3,750,000 (approximately EUR 468,750), whereas the assessor appointed by the lessee on 20 September 2007 estimated the market value of the undeveloped plot to be NOK 3,400,000 (approximately EUR 425,000).

21. Subsequent to the Supreme Court passing judgments in the leading case and the case involving the first applicant on 21 September 2007, the lessee informed counsel for the second applicant that she was no longer in favour of redemption at forty per cent of the market value of the undeveloped plot. Instead, redemption was offered in an amount equal to the capitalised value of the ground rent based on a five per cent rate of interest on capitalisation, in other words compensation for redemption equal to twenty times the ground rent, rounded off to a total of NOK 14,000 (approximately EUR 1,750). On 23 October 2007 the lessee gave notice claiming an extension of the lease on the same conditions as previously, pursuant to section 33 of the Ground Lease Act. In a letter of 22 November 2007, the second applicant disputed the claim, referring to his intentions to bring the case before the Court.

3. The third and fourth applicants

22. The third and fourth applicants, Mrs and Mr Nilsen, own an agricultural property with few agricultural resources. The property has no fields and the outlying areas make up a total of 145 *dekar*, of which most consists of forest with little or no productivity. On 26 November 1956, the applicant spouses concluded a ground lease contract for fifty years in respect of a plot of land consisting of 990 sq. m, which had its own shoreline. It contained no clause regulating the future adjustment of the ground lease rent. The lessee built a holiday home on the plot. When the contract expired on 26 November 2006, the annual ground rent amounted to NOK 500 (approximately EUR 60).

23. It appears that the rent was the main regular source of income on the property. The third applicant receives a disability pension.

24. The contract contained no right to extension of the lease, but referring to the amended section 33 of the Ground Lease Act, the lessee claimed an extension of the lease on unchanged conditions. Since the applicants objected, the lessee brought civil proceedings

against them before Larvik City Court on 23 November 2006, which on 29 January 2007 stayed the proceedings pending the outcome of the leading case before the Supreme Court.

25. By a judgment of 3 April 2008, the City Court upheld the lessee's claim that she was entitled to extend the ground lease contract on the same terms as before. It observed inter alia:

"The question whether section 33 of the Ground Lease Act must be considered to lead to results which violate Article 1 of Protocol No. 1 was decided by the Supreme Court in *Rt.* 2007/284. The Supreme Court held that section 33 of the Ground Lease Act does not violate the Convention with regard to permanent homes. Further, the Supreme Court in *Rt.* 2007/1306 established that the same applied with respect to holiday homes.

Subordinate courts must rely on the interpretations made by the Supreme Court and the City Court cannot therefore uphold the [third and fourth applicants'] submission."

26. On 11 August 2008 the Agder High Court (*lagmannsrett)* found it clear that the third and fourth applicants' appeal would not succeed and that it should therefore not be admitted for examination (section 29-13 (2) of the Code of Civil Procedure (*tvisteloven*).

27. In the meantime, on 11 February 2008 the applicant spouses had arranged for a valuation of the undeveloped plot, which was found to have an estimated value of NOK 2,500,000 (approximately EUR 312,500).

4. The fifth applicant

28. The fifth applicant, Ms Brandt-Kjelsen, is the landowner and lessor of twenty-one plots for permanent housing which were leased out with effect from 31 December 1947. The plots are located in one of the most expensive areas in Oslo. By way of illustration, she stated that in January 2007 a permanent home and the lease on one of the plots of land had been sold for NOK 10,250,000 (approximately EUR 1,281,250). The agreed term of lease is sixty years with a right for the lessees to claim an extension for thirty years on new conditions. Pursuant to the amended section 33 of the Ground Lease Act, however, all lessees have claimed extensions of their leases on unchanged conditions and unlimited in time.

29. On 31 October 2007 the fifth applicant initiated a conciliation complaint before the Oslo Conciliation Board, claiming that the lessees in question did not have the right to enjoy the same conditions as previously after extension of their leases. She submitted valuations of the undeveloped value of the various leased plots made on 4 December 2007, an overview of ground rents at the time of extension, as well as details of plot sizes, valuation amounts and ground rents as a percentage of the value of the individual plots. The values of the various undeveloped plots ranged from NOK 1,900,000 (approximately EUR 237,500) for the lowest to NOK 6,000,000 (approximately EUR 750,000) for the highest. The ground rents range from NOK 1,376 (approximately EUR 170) per year to NOK 7,116 (approximately EUR 900) per year.

30. On 14 February 2008 the Oslo Conciliation Board ruled that the dispute should be referred to the Oslo City Court.

31. By a judgment of 29 April 2009 the City Court found in favour of the lessees and against the fifth applicant and, on 27 August 2009, the Borgarting High Court refused to admit her

appeal for examination, for similar reasons to the Larvik City Court and the Agder High Court in their respective judgment and decision mentioned above (see paragraphs 25 and 26 above)

5. The sixth applicant

32. The sixth applicant, Mr Henriksen, owns agricultural property of which the outlying fields have been parcelled into plots for several permanent homes and holiday homes. They are situated close to Oslo Fjord, over which they have a view.

33. The lessees of three plots for holiday homes and seven plots for permanent homes, with contracts entered into in the late 1950s which were about to expire, initiated proceedings against the applicant before the Tønsberg City Court claiming extension of the lease on the same conditions as previously and with no limitation in time, pursuant to section 33 of the Ground Lease Act. All the ground lease contracts in question had been entered into in 1950 for a term of 50 years. One of the contracts contained a provision for indexed regulation of the ground lease rent.

34. The values of the undeveloped plots ranged from NOK 1,200,000 (approximately EUR 150,500) to NOK 1,750,000, (approximately EUR 218,750). The ground rents ranged from NOK 1,900 (approximately EUR 240) per year to NOK 3,205 (approximately EUR 400) per year.

35. The applicant maintained that the real market value of the ten plots of land was NOK 13,900,000 (approximately EUR 1,737,500) and that as a consequence of section 33 of the Ground Lease Act, the total economic value of his legal position related to the ten plots in question would be NOK 526,760 (approximately EUR 65,850), which is the capitalised present value of the unchanged total ground rent of NOK 26,338 (approximately EUR 3,300).

36. Against this background, the applicant disputed the lessees' claim and submitted that section 33 of the Ground Lease Act contravened Article 1 of Protocol No. 1 to the Convention.

37. By a judgment of 14 October 2009 the City Court found in favour of the lessee and against the sixth applicant and, on 18 January 2010, the Borgarting High Court refused to admit his appeal for examination, for similar reasons to the Larvik City Court and the Agder High Court in their respective judgment and decisions mentioned above (see paragraphs 25 and 26 above)

II. RELEVANT DOMESTIC LAW

A. The Ground Lease Act

38. The conclusion of ground lease contracts and the contractual relationship between the landowner/lessor and the lessee was regulated for the first time in a statute from 1975, which entered into force on 1 January 1976.

39. A new Ground Lease Act was enacted in 1996 and entered into force on 1 January 2002. Its section 15 contained rules on the regulation of rent for ground lease which were mainly based on changes in the consumer price index but allowed increases based on other parameters in some situations (see paragraph 43 below). The new Ground Lease Act also

contained provisions granting the lessee the right to claim an extension when the agreed term of the lease expired (former section 32 for lessees of plots used for permanent homes and former section 33 for lessees of plots used for holiday homes), and the lessor the right to introduce new conditions into the extended contract of lease.

1. The provisions of the revised 1996 Act referred to in the present case

40. In its amended version as applicable at the material time, the 1996 Ground Lease Act read in so far as relevant:

Section 11

"A ground rent that is unreasonably high in relation to what is customarily paid in the locality on new leases on similar plots on similar contractual terms cannot be agreed or demanded."

Section 15

"In a ground lease agreement concerning a main residence or a holiday home each party may require that the rent be adjusted in accordance with changes in the general price level [*pengeverdien*][1] since the conclusion of the agreement. If the rent has been adjusted, it is the rent that has been lawfully charged since the last adjustment that may be adjusted in accordance with the changes in prices that have occurred since that time. If the parties unequivocally agreed that the rent should remain unchanged, or agreed to a lower adjustment than that suggested by changes in the general price level, this agreement shall apply instead.

If a ground lease contract concerning a plot of land to be used for a main residence home or a holiday home was concluded before 1 January 2002, the following provisions apply for the first adjustment after 1 January 2002:

1. If the adjustment is to be made in accordance with changes in the general price level, the lessor may require that it be made in accordance with changes that have occurred since the ground lease contract was concluded, even if the rent has been adjusted before.

2. The lessor may require that the rent be adjusted in accordance with what has unequivocally been agreed upon. Nonetheless, if the lease contract was concluded on or before 26 May 1983, the lessor may not require that the annual rent be adjusted upwards beyond a maximum amount per *dekar* of ground or to an amount corresponding to inflation. The maximum amount according to the second sentence is NOK 9,000, adjusted every turn of the year after 1 January 2002 in accordance with inflation. This maximum also applies if the size of the plot is smaller than one *dekar*.

..."

Section 16, subsection 1, first sentence

"In the case of leases on plots for permanent homes and holiday homes, the lessee has the same physical enjoyment of the leased plot as an owner for use within the purposes of the lease, unless otherwise stipulated in what has been agreed between the parties. ..."

Section 17, subsection 1

“The lessee has the right to transfer the right to lease the plot to a third party unless otherwise stipulated in the agreement or the purpose of the lease.”

Section 18, subsection 1

“The lessee has the right to mortgage the lease and the buildings existing now or in the future on the plot, unless otherwise stipulated by statute or under an agreement limiting the right to transfer. The mortgage must apply both to the right to lease the plot and to present and future buildings.”

Section 19, subsection 1

“The lessee may establish any specific rights of disposal of the plot for third parties that with regard to type of use, scope and limitations in time lie within the lessee’s own right of disposal, save as otherwise agreed.”

Section 32

“The lessee may claim redemption of a plot for a permanent home or for a holiday home when thirty years of lease have passed, unless a shorter time has been agreed upon, or when the term of the lease expires. After thirty years of lease have passed, the lessee may then claim redemption of a plot for a permanent home at two-year intervals, and redemption of a plot for a holiday home at ten-year intervals.

On expiry of the lease for such a plot that has been leased for the life of the lessee, the following may claim redemption:

a) the spouse of the lessee, b) heirs to the lessee, c) a foster child who has the same position as an heir, d) someone who for the previous two years has shared the same home as the lessee. ...”

Section 33

“Instead of claiming redemption of a plot for a permanent home or a holiday home pursuant to section 32 when the term of the lease expires, the lessee, or those encompassed by section 32 second paragraph, may claim an extension of the lease on the same conditions as previously. In the case of leases thus extended, section 7, first paragraph, concerning the term of the lease, shall apply.”

[The reference to section 7, first paragraph, on the term of the lease, entails that an extension of the lease on the same conditions as previously will be without restrictions in terms of time.]

Section 37

“Upon redemption of a plot for a permanent home or a holiday home, the payment should be set at thirty times the yearly ground rent at the time of redemption, unless a lesser amount has been agreed upon. If nothing else has been agreed upon, the parties may nevertheless claim that the redemption sum should amount to forty per cent of the sales value of the undeveloped plot at the time of redemption, after deduction of any increase in value brought about by the

lessee or others. The value of the plot must not be set higher than the price for which the land could have been sold, had it been permitted exclusively to erect the house or houses already erected on it.... "

2. The preparatory work relating to section 15

41. At Parliament's request to the Government, an assessment of the Ground Lease Act 1996 was carried out, notably its section 15, two years after its entry into force on 1 January 2002. The Ministry of Justice received various submissions from private individuals who had experienced, or had been notified of, considerable increases in the annual rent payable. There had also been media coverage of rent increases following the entry into force of the Act. In the public review processes various organisations had pointed to the fact that a large number of plots were leased for a very low rent. A number of organisations had noted that the Act was difficult to understand and generated a high level of conflict. The need for a simpler legal regime was highlighted.

42. In 2002 the Ministry of Justice collected statistical material, the findings of which were summarised in the Bill (*Ot.prp. nr. 41 (2003-2004)* p.11), and carried out a survey aimed at lessees and lessors to establish sufficient facts for the proposed legal amendment (to section 15). The following findings were highlighted as being some of the most important:

"The ground lease rent is adjusted according to changes in the consumer price index in the majority of ground lease contracts.

Somewhat fewer than 30 per cent of the ground leases for permanent homes and between 10 and 20 per cent of the holiday home ground leases contain clauses providing for other means of rent adjustment. In most cases this involves adjustment according to changes in the value of land. The figures provided by the Norwegian Association of Commons show that 20 per cent of permanent home leases and more than 40 per cent of holiday home leases are subject to adjustment in other ways than by linkage to changes in the consumer price index.

Section 15 has resulted in a dramatic increase in rent in contracts with ground value clauses. The average annual level of rent in permanent home lease contracts containing such clauses, revised after the Act came into force, has increased from NOK 2,500 to around NOK 8,000-10,500 per ground lease contract. For holiday home ground leases the average increase is somewhere between NOK 5,000 and NOK 10,000 per contract (the figures provided by lessors and lessees are inconsistent). The figures provided by the Norwegian Association of Commons show an increase from approximately NOK 900 to NOK 3,800 per plot leased for holiday home purposes.

Somewhat more than 40 per cent of permanent home leases are subject to an annual rent below NOK 1,000, while 30 to 40 per cent are around NOK 1,000-3,000, and some 6 to 7 per cent are between NOK 3,000 and NOK 6,000. Between one and eleven per cent pay annual rent in excess of NOK 9,000 per *dekar* [1000 m²]. The figures from the Norwegian Association of Commons are incomplete in this regard, yet they suggest that approximately 70 per cent of ground leases are subject to annual rent of less than NOK 1,000. The average level of rent must, however, be seen in the light of the fact that a large number of contracts with ground value clauses are due to be adjusted in the coming 8 years (adjustment, as a rule, occurring every tenth year).

25 to 30 per cent of holiday home ground leases are subject to annual rent of less than NOK 1,000, while approximately 50 per cent are between NOK 1,000 and NOK 3,000. Somewhat less than ten per cent are between NOK 3,000 and NOK 6,000, and less than five per cent between NOK 6,000 and NOK 9,000. Approximately 0.5 per cent of lessees pay more than NOK 9,000 per *dekar*. In the main bulk of contracts reported to the Norwegian Association of Commons the rent lies between NOK 1,000 and NOK 6,000. Here, too, the figures must be read in light of the fact that a great number of contracts with ground value clauses are due to be adjusted in the coming 8 years.

Approximately 80 per cent of permanent home leases and more than 50 per cent of holiday ground leases were entered into prior to 1976. This has particular impact on the rules of redemption, as the conditions for redemption are linked to the time when the contract was entered into.

3.5 Main impressions from the assessment

Approximately 300,000 households in Norway lease ground for permanent or holiday home purposes. Approximately 75 per cent of permanent home leases are found in cities or other densely populated areas. These leases, and the holiday home leases in popular coastal areas, are increasingly marred by conflicts between lessees and landowners. A lot of the contracts are old and were entered into at a time when ground lease was a viable alternative for those individuals who were unable to finance the purchase of property, and prior to social development that forced real-estate prices in densely populated areas to unforeseen levels. Today leased plots must be considered as permanently restructured due to the lessees' work on the land and their considerable investment in housing on the plot. Lessors comprise traditional lessors, for instance in agriculture, but ground is also leased by professional real-estate investors, who own a number of leased plots.

The Ministry is of the opinion that the assessment has shown, importantly, a clear need for making the rules of redemption simpler. ..."

43. Former section 15, which entered into force on 1 January 2002, contained a main rule enabling upward rent adjustment in accordance with changes in the consumer price index and an exception where it had unequivocally been agreed that there should be no adjustment of the rent, or where rent was to be adjusted by other means than by reference to the consumer price index. In such cases adjustment was to be done on the basis of the terms of the agreement in question. This applied in full for contracts entered into after 26 May 1983. For contracts entered into prior to 26 May 1983 the new rule was subject to the modification that a rent "ceiling" of NOK 9,000 per *dekar* was introduced for upward adjustment based on other parameters than correspondence with the consumer price index.

44. In the context of the revision of section 15, the Ministry of Justice considered eight alternative options, including whether to re-introduce a mandatory consumer-price-index-regulated adjustment system for ground lease contracts for permanent and holiday home purposes. There were several arguments in favour of this. After the former rent control system was repealed on 1 January 2002, many lessees had been faced with dramatic unexpected rent increases. Although the contracts had initially been entered into on the basis of possible upward adjustment of the ground lease rent to reflect increases in the value of the property, the long period with a system for public rent control in force had led to a situation where lessees were used to a gradual increase in rent in accordance with the consumer price index.

The increasing discrepancy between ground lease rents subject to rent control and those indexed to the increase in property prices made dramatic inroads into the household budgets of numerous families and single people, subject to the regime introduced on 1 January 2002. This price trend was also seen in the rental market, but in the rental market the increase was more gradual, and there was at any rate a difference between the ordinary rental market and the ground lease market in that the lessee had built his or her own house upon the ground in question for his or her own use.

45. It was further observed that a minority of the contracts provided for adjustment by reference to factors other than the consumer price index and were concerned by this problem. For most of the contracts covered by the survey the rent level could be said to be high. Then the report went on to consider the arguments for and against introducing mandatory all-round rent control based on the consumer price index (*Ot.prp. nr. 41 (2003-2004)* pp. 21-22):

"What first and foremost militates against a compulsory scheme for rent adjustment in correspondence with the consumer price index is the principle of the freedom of contract. Limitations to the freedom of contract principle will be more noticeable in those older contracts containing ground value clauses. In most such contracts, which have been the subject of public regulation since the entry into force of the new Ground Lease Act 1 January 2002, the aforementioned proposed amendment to the act will entail downward adjustment of payable ground rent, bringing the rent back to its level at the time of the rent control scheme prior to 1 January 2002. A downward adjustment would undoubtedly be noticeable for lessors who have already adjusted the rent upwards to reflect the increase in property prices and also made arrangements accordingly. It should also be part of the overall consideration that section 15 of the Ground Lease Act has enabled more lessors to make profit on property that for years has accrued very low income in terms of ground lease rent because of the previous rent control scheme. The Ministry would also like to add that the survey undertaken in 2003 shows that the average level of rent charged, including rent subject to adjustment after 1 January 2002, corresponds to what was foreseen when section 15 was amended in 2000. The Ministry will therefore not support the introduction of a mandatory adjustment scheme linked to the consumer price index for older contracts on the basis of the rent charged at the time the contract was entered into.

At the same time the assessment of section 15 of the Ground Lease Act demonstrates that clauses linking rent adjustment to the increase in property prices are often conducive to disputes, and they may have ramifications unforeseen by the parties when the contract was entered into. Since the Ground Lease Act entered into force a number of disputes have arisen regarding the interpretation of adjustment provisions in ground lease contracts. Part of the problem seems to be that many contracts were entered into without any party having envisaged the possibility of the dramatic increase in property prices that has been seen in recent decades, and its consequences for rent levels. In older contracts entered into by non-professional parties in particular, the wording of the contracts appears often to be haphazard and imprecise and thus of little use in determining questions that were not anticipated at the time. Such cases can naturally be left to the decision of the judiciary, but from the perspective of social economics it seems unfortunate to allocate such substantial resources to the settlement of such disputes, in terms of free legal aid and the workload on the courts. As the cases concern a significant social asset, namely the permanent or holiday homes of the lessees, considerable uncertainty may also be a source of unnecessary personal strain.

In the Ministry's opinion, the third option mentioned in the letter carrying the proposal submitted for public review (consumer price index regulation only in cases after the last adjustment has been made) covers aspects related to foreseeability and the avoidance of legal disputes. [...] Such random effects can be avoided by introducing a provision that entitles the lessor to adjust the rent upwards once in accordance with the original contract and subject to limitations already in force under section 15, before the consumer price index adjustment scheme comes into effect. In this way the rent charged in the transition period is brought, by way of a one-off operation, to a level higher than that established under the prior rent control scheme repealed when the Ground Lease Act entered into force 1 January 2002. For more recently agreed ground lease contracts it will still be possible to agree upon a rent that reflects the value and appreciation of the land, but rent adjustment will subsequently be linked to changes in the consumer price index. Such a provision for older contracts will respect what has been agreed upon, while at the same time helping to achieve a uniform system of rent adjustment based on the consumer price index over time. This, it must be assumed, will result in fewer legal disputes and not give rise to unforeseen radical upward adjustments of ground rent.

The Ministry proposes, then, this solution for ground lease contracts for permanent and holiday home purposes. The main rule of the proposal is a system of rent control linked to changes in prices. For the older contracts mentioned above, however, the Ministry proposes introducing a one-off operation in which what has been agreed upon between the parties will represent one factor. Any subsequent adjustment after this one-off operation should reflect price trends.

This solution does not, however, address the fact that ground lease rent has risen and will continue to rise in some ground lease contracts containing ground value clauses. This must be seen in context. The Ministry proposes the expansion and simplification of the rules of redemption. It is suggested that the price to be paid for redemption should be calculated having regard to the ground lease rent. **A balancing of the interests** of the lessors and the lessees suggests in the Ministry's opinion that there should be no intervention in rent adjustment clauses in existing contracts more than what will follow from this proposal." [Emphasis added.]

46. Chapter 6, on the "Calculation of the compensation for redemption", included the following observations (*Ot.prp. nr. 41 (2003-2004)* p. 46):

"The Ministry of Justice considers that the provision on calculating compensation upon redemption must be seen in the light of the provisions on rent adjustment, the general conditions for redemption and the right to extend the lease. The Ministry assumes at the outset that these provisions, seen as a whole, must not substantially alter the **present balance of interests** in ground lease contracts. Several instances that have taken part in the public review process have also stressed this. In section 5.4 the Ministry proposes a considerable simplification of the conditions for redemption. At the same time, the Ministry favors the introduction of a one-off upward adjustment operation for contracts with ground value clauses, followed by the introduction of an adjustment scheme linked the consumer price index (see section 4.4). This gives due regard to what has been agreed between the parties. With this point of departure in mind, the Ministry considers that it is possible to introduce a balanced provision for the calculation of compensation for redemption." [Emphasis added.]

3. The preparatory work relating to section 33

47. The proposal for the existing section 33 concerning the right for the lessee to claim an extension on the same conditions as previously without limitations in time was presented by the Ministry of Justice and Police Affairs (*Det Kongelige Justis- og Politidepartement* – hereinafter referred to as the Ministry of Justice) in the spring of 2004 (*Ot.prpr. nr. 41 (2003-2004)* - proposal no. 41 to the *Odelsting*, which is the larger division of Parliament), stating inter alia (at p. 54):

"The Ministry draws attention to the fact that the main aim of the proposal is to make it easier for more people to acquire ownership of the leased plots. In certain cases redemption would be such a heavy financial burden that the lessee should have other alternatives than terminating the lease agreement. Lessees who are not able to redeem the plot should, in the Ministry's view, be secured a lasting right to dispose of the plot. This issue has not been of great interest until now, but this can be expected to change in the years to come as more lease contracts expire. In the absence of absolute rules, the lessors will be faced with the choice between redemption, termination or continuation [of the ground lease contract]. As the Ministry sees it, this is an untenable legal situation and it is therefore proposed that the lessee should have a right to prolong the ground lease agreement. The Ministry has considered whether the landowner should have a right to set new conditions in the agreement, but has found that the lessee should be able to continue the lease agreement on the same terms. According to the Ministry's assessment, social policy considerations on the side of the lessee should be decisive. If the lessor were to have the possibility to adjust the ground lease rent up to the market level, the lessees would in principle find themselves in the same financial straits as in the event of redemption where the costs of a loan exceed the annual ground lease rent."

48. As regards the issue of constitutionality of the provision in section 33, the Bill to Parliament stated (p. 55):

"The Bill entails some retroactive effect particularly for landowners who concluded ground leases before 1976, when no such right to extension existed. The Ministry has reasoned that the social considerations on the lessee's side weigh heavier than those on the landowner's side, and concludes that the proposal is consistent with Article 97 of the Constitution. The proposal is not considered to be more intrusive than the proposed rules on redemption, and on this point reference is made to Rt.1990-284 and the discussion of the relationship to the Constitution in para. 6.5. The Ministry also stresses, *inter alia*, the social considerations that will apply, and that these are rules that relate to a long-term contractual relationship between the parties."

49. The Bill proposed that payment upon redemption should be set at thirty times the ground rent at the time of redemption, although the lessor should be able to claim a minimum of NOK 50,000, equal to EUR 6,250, for the plot (section 37), which was to apply to all ground lease contracts irrespective of the value of the plot, of when the contract had been concluded, and of whether the contract was limited or unlimited in time. In this connection the Ministry of Justice stated (p. 50):

"As noted above, the fundamental purpose of the rules on redemption is already to ensure that lessees of plots for permanent homes and holiday homes are secured a lasting right to use the plot. It is probably the case that many lessees will not be in a position to redeem the plot if the costs of borrowing are significantly higher than the annual ground rent. As noted above, the Bill will entail some increase in the expenses of the lessee, depending on the prevailing level

of interest rates, but it is estimated that it nevertheless lies within what most lessees with limited economic means should be able to afford."

50. The proposal concerning the minimum compensation of NOK 50,000 was later amended by Parliament to forty per cent of the sales value of the undeveloped plot at the time of redemption.

51. As regards the grounds given by Parliament in 2004 for supporting the proposed section 33 in the Bill granting the right for lessees to claim an extension on unchanged conditions instead of redemption, the recommendation presented to Parliament by the Standing Committee on Justice (Recommendation no. 105 to the *Odelsting* (2003-2004) p. 18) contained the following:

"The Committee majority, all except the members from The Progress Party, agree with the Ministry that lessees who are unable for financial reasons to purchase their plots under section 37 of the new Ground Lease Act should be secured a lasting right of disposal of the plot. The majority view is that a right of extension should be granted on the same conditions as referred to in the contract of lease. In assessing these matters, the majority has attached considerable weight to considerations of social policy in housing [*boligsosiale hensyn*]. The majority support the Ministry's assessment of the situation with regard to the Constitution on this point as on other points, and also refer to the comments above on the subject of the relationship to the Constitution."

B. The Constitution

52. The Norwegian Constitution read as follows, in so far as relevant:

Article 97

"No law must be given retroactive effect."

Article 105

"If the welfare of the State requires that any person shall surrender his movable or immovable property for public use, he shall receive full compensation from the Treasury."

THE LAW

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

53. The applicants complained that by virtue of the amendments to section 33 of the Ground Lease Act 1996 that entered into force on 1 November 2004, when the agreed term of their leases expired, lessees had been entitled to demand, and had demanded, an extension of their contracts for an indefinite period on the same conditions as applied previously. This amounted to an unjustified interference with the applicants' right of property as protected by Article 1 of Protocol No. 1, which reads:

"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."

54. The Government contested that argument.

A. Admissibility

55. Initially the Government only accepted that the first applicant, Ms Lindheim, had exhausted domestic remedies, and maintained that the second to fifth applicants had not done so since they had failed to pursue the matter as far as the Supreme Court.

56. In reply, the third to fifth applicants referred to city court and high court rulings in their cases making it clear that they had no prospects of success, and the second applicant argued that a judicial appeal would have been futile in his case.

57. At a later stage, when faced with the same line of argument from the sixth applicant, the Government affirmed that they did not dispute that he had exhausted domestic remedies. At the oral hearing held on 21 June 2011 the Government did not dispute the admissibility of the applications.

58. The Court is satisfied in light of the clear terms of section 33 of the Ground Lease Act 1996 and of the national courts' rulings (see paragraphs 18, 25, 26, 31, 37 and 40 above) that a judicial appeal by the second applicant and an appeal by the third to sixth applicants to the Supreme Court would have had no prospects of success and that, accordingly, all six applicants have exhausted domestic remedies for the purposes of Article 35 § 1 of the Convention. The Court further considers that the applicants' complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

59. It was not disputed that there had been an interference with the applicants' possessions attracting the application of Article 1 of Protocol No. 1 to the Convention. Nor was it contested that the interference had been "lawful" for the purposes of this provision. On the other hand, the parties were in disagreement as to which of the rules embodied in the Article applied, whether and the extent to which the interference pursued a legitimate aim in the public or general interest and whether there was a reasonable relationship of proportionality between the interference and any such aim.

1. The applicable rule

60. The Court reiterates that under its case-law, Article 1 of Protocol No. 1, which guarantees in substance the right of property, comprises three distinct rules (see, for instance, *James and Others v. the United Kingdom*, 21 February 1986, §§ 37-38, Series A no. 98; *Sporrong and Lönnroth v. Sweden*, 23 September 1982, §§ 61-65, Series A no. 52; *Immobiliare Saffi v. Italy*

[GC], no. 22774/93, § 44-46, ECHR 1999-V; and *Hutten-Czapska v. Poland* [GC], no. 35014/97, § 157, ECHR 2006-VIII). The first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions. The third, contained 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. The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, must be construed in the light of the general principle laid down in the first rule (see *Iatridis v. Greece* [GC], no. 31107/96, § 55, ECHR 1999-II).

(a) The applicants' submissions

61. The applicants argued that the compulsory extension of the relevant leases, without limitation in time and on the same terms as previously, constituted an interference amounting to expropriation or *de facto* expropriation. They referred to paragraph 89 of the Supreme Court's judgment of 21 September 2007 in the parallel leading case (Case no. 2007/237 quoted at paragraph 16 above) and to a statement by the Ministry of Finance of 15 August 2008.

62. The Court had previously held that a restriction on an applicant's right to terminate a tenant's lease constituted control, for instance in *Amato Gauci v. Malta* (no. 47045/06, § 52, 15 September 2009), where the forced extension of a lease had been found to constitute a violation of Article 1 of Protocol No. 1.

63. The applicants contended that there was, however, one significant difference between *Amato Gauci* and the present cases, which should have a decisive bearing as regards the applicable rule. Whereas in *Amato Gauci* there was uncertainty as to when the forced extension of the lease would end, in the present case there was no such uncertainty because the extension of the lease would never end – the lease was extended in perpetuity. Consequently, it was in reality not a restriction on the lessors' rights but rather a deprivation of property.

64. Moreover, section 33 referred to section 7 of the Act, according to which the extension constituted a new lease contract which remained in force for ever. The underlying purpose was expressed in the preparatory work: "The leasing of land should as far as possible correspond to the sale of the plot."

65. The view that section 33 entailed *de facto* deprivation was further substantiated by the following four arguments.

66. Firstly, the plenary Supreme Court had concluded that "[t]he right to extension provided for in section 33 must clearly be distinguished from a regulation of the owner's disposal of the property", and that the provision "entail[ed] a transfer of the owner's disposal of the property" (see paragraphs 89 and 90 of the Supreme Court's judgment of 21 September 2007 in the parallel leading case (Case no. 2007/237) quoted at paragraph 16 above).

67. Secondly, subsequent to the Supreme Court judgments, in order to have the tax legislation correspond with the underlying realities, the Ministry of Finance had made the lessee liable for the payment of net worth tax and real-estate tax on the plots. The political

leadership at the Ministry of Finance had defended this change to the tax rules by simply stating that the lessee's possession of the property was so long-term that it was tantamount to ownership. Nonetheless, in their submissions to the Court, the same Government had argued that the deprivation rule did not apply. Considerations of consistency suggested that the deprivation rule did apply.

68. Thirdly, in 1996, when the new Ground Lease Act had been enacted, the Government and a unanimous Parliament had explicitly expressed the view that forced extension constituted expropriation, which ought to give the lessor the right to require a new contract to be concluded reflecting market conditions. This was the state of the law from 1 January 2002 onwards.

69. Fourthly, in sum the Ground Lease Act granted the lessee all the essential rights of an owner, including the same physical disposal of the plot and the right to transfer the lease to third parties. The property rights of the landowner – the lessor – were in fact extinguished by virtue of the extension, the only rights remaining to the lessor being the formal title to the land and the right to receive the ground rent. An overall examination of the realities ought to lead to the conclusion that it was the second rule – the deprivation rule – that applied, even though the title had not formally been transferred to the lessee. As stated *inter alia* in *Sporrong and Lönnroth* (cited above, § 63): "the Court ... must look behind the appearances and investigate the realities of the situation complained of."

70. In any event, should the Court not uphold this argument, the applicants maintained that there had been a violation of the rule on control of use or of the principle of peaceful enjoyment of possessions.

(b) The Government's submissions

71. In the Government's opinion, the rule on control of use was applicable to the present case. While the applicants continued to be able to sell the plots of land and to receive income from the land, the transfer of some rights did not entail a transfer of the property right as such. Not all meaningful use had been taken away and there had been no formal or even *de facto* dispossession. The Government relied on *Hutten-Czapska*, cited above, § 160; *Mellacher and Others v. Austria*, 19 December 1989, §§ 42-44, Series A no. 169; and *Fredin v. Sweden (no. 1)*, 18 February 1991, §§ 43 and 45, Series A no. 192.

72. On this point, notwithstanding the many similarities between the present case and that of *James and Others* (cited above, § 38), the Government distinguished the former from the latter, where it had been the act of acquisition permitted by the disputed legislation that had prompted the Commission to conclude that deprivation had taken place (the matter had not been disputed before the Court).

73. Whereas the leasehold reform laws in *James and Others* had concerned extensions as well as acquisitions of leases, only the rules that involved the transfer of property from the landlord to the leaseholder had been at issue. The situation in the present case was the reverse, in that the complaints under the Convention concerned the provisions of the Ground Lease Act that dealt with extensions of the lease, not those contained in section 32, for example, which provided for the transfer of property rights from the landowner to the lessee by way of redemption of the lease.

74. Should the Court not find the "control of use rule" applicable, the Government submitted that the interference complained of had in any event complied with the deprivation rule. In their view, the first rule (peaceful enjoyment of possessions) did not come into play.

(c) Assessment by the Court

75. The Court observes that the case under consideration concerns limitations imposed by law on the level of rent that the applicant property owners could demand from the ground lease holder and the indefinite extension of the ground lease contract on the same terms. The applicants continued to receive rent on the same terms they had freely agreed to when signing the ground lease contract, and, being at all times owners, were free to sell their plots of land, albeit subject to the lease attaching to the land.

76. The Court found the deprivation rule applicable in *James and Others* (cited above, 38) and in *Urbárska Obec Trenčianske Biskupice v. Slovakia* (no. 74258/01, § 116, ECHR 2007-... (extracts) – in so far as transfer of ownership of the applicants' plots of land was concerned). It held the rule on control of use applicable in *Mellacher and Others* (cited above, § 43), *Hutten Czapska* (cited above, §§ 160-161), *Urbárska Obec Trenčianske Biskupice* (cited above, § 140, in so far as compulsory letting of land was concerned) and also in *Amato Gauci* (cited above, § 52). The circumstances in the case now under review are more comparable to the latter situations.

77. The Court shares the applicants' view that the low level of annual rents in their case (less than 0.25% of the plots' alleged market value) and the indefinite duration of the impugned rent limitation interfered to a very significant degree with their enjoyment of their possessions. However, for the reasons stated above, the Court is not persuaded by their arguments that the application of section 33 of the Ground Lease Act to them amounted to expropriation or *de facto* expropriation, or that it meant that "all meaningful use" had been taken away (see *Fredin* cited above, § 45).

78. In light of these considerations, the Court finds that it is the rule on control of the use of property that applies in the present case.

2. Compliance with the conditions in the second paragraph

(a) Aim of the interference

(i) The applicants' submissions

79. Although the State enjoyed a wide margin of appreciation, the applicants could discern no real "public interest" that could reasonably be held up as a justification for the contested interference with their property right.

80. From the preparatory work it appeared that, while the general level of compensation for redemption of ground lease contracts under section 37 was set at a level that should be affordable for lessees with limited financial means, the aim of section 33 had been to secure to lessees who did not even have such means a lasting right of disposal over the plot – a right of extension on the same conditions as in the lease contract. Weight had allegedly been attached to social policy considerations in housing aimed at protecting the latter group of lessees.

81. However, despite this alleged targeting of social housing needs, the provision had been made applicable to all of the approximately 300,000 lessees in Norway, in a society with a high degree of social equality and among a population which was generally particularly well off. It had repeatedly received the highest score (notably in terms of purchasing power) of the 182 countries in the United Nations Human Development Index. In other words, there was no ground for maintaining that lessees in general had such needs as stated in the justification given for the extension provision in section 33. Indeed, the Government did not argue the contrary. In fact, with very few exceptions, the lessees in the present case enjoyed a higher or considerably higher income than the average income in Norway.

82. In the applicants' view, section 33 could not be said to have been aimed at correcting a defined and existing injustice, unlike the situation in such cases as, for instance, *James and Others* (cited above). They disputed the Government's contention that "[s]ocial problems on a massive scale would probably have been the result had the legislature not intervened ...". The entire Norwegian economy had evolved immensely over the last decades, and there had been a significant increase in the standard of living. As a result, the need for social housing schemes had decreased steadily, as illustrated, for instance, by the repeal in 2000 of the former Rent Control Act that provided for below-market-level rent for persons with special financial or social needs. This cast serious doubts over whether the social housing arguments presented in support of the Ground Lease Act were genuine. There was no reason to fear that applying a market ground rent would lead to the lessees' losing their permanent homes or holiday homes.

83. In particular, no strong public interest could be said to apply to holiday homes since owning a second home by definition meant that the person's need for accommodation had been fulfilled.

84. On this basis, it could be forcefully argued that section 33 in reality did not pursue a legitimate aim in the public interest.

85. Furthermore, whilst accepting in general that the margin of appreciation was wide in cases involving social and economic policies within housing, the applicants pointed to several considerations which in their opinion militated in favour of circumscribing the Norwegian authorities' margin of appreciation in the present case. Unlike the cases of *Urbárska Obec Trenčianske Biskupice* and *Hutten-Czapska*, the present case was not one where fundamental changes in the respondent State's political system formed a backdrop. Moreover, from *Hirst v. the United Kingdom (no. 2)* ([GC], no. 74025/01, ECHR 2005-IX) it could be deduced that the margin of appreciation would be narrower when Parliament had not analysed and carefully weighed the competing interests or assessed the proportionality of blanket rules. Nor had Parliament assessed section 33 in the light of the European Convention.

86. In reality section 33 only pursued a legitimate aim in the public interest in respect of a minority of lessees. Simply tagging a piece of legislation with the label "public interest" could not be deemed sufficient if that label did not correspond to the underlying reality.

87. The applicants concluded that, in any event, the public interest, should there be any, was weak and, bearing in mind the far-reaching scope of section 33, could not be given significant weight in the balancing of interests involved under the proportionality test (below).

(ii) The Government's submissions

88. The Government pointed to the social considerations behind section 33 of the Ground Lease Act and invited the Court to find that the "public interest" requirement in Article 1 of Protocol No. 1 was satisfied in the present case. This applied not only to permanent homes but also to holiday homes, as pointed out in the Supreme Court's judgment of 21 September 2007 in Mrs Lindheim's case.

89. The Government considered that social problems on a massive scale would probably have been the result had the legislature not intervened to secure an appropriate regulation of ground lease contracts. A number of amendments to the Ground Lease Act had been proposed prior to the enactment of the current section 33. Underlying all the proposals had been the recognition of the need, in the face of socio-economic changes, to approach the matter of the ground lease system with due regard for both parties to the lease agreements and the relevant social issues and the need to find technically appropriate legislative solutions that did not generate large numbers of new ground lease disputes.

90. Referring to the Court's ruling in *James and Others* (cited above), the Government argued that in implementing social and economic policies the national authorities enjoyed a wide margin of appreciation with regard both to the existence of a problem of public concern and to the remedial action to be taken. The Court should further "respect the legislature's judgment as to what was in the 'public interest' unless that judgment was manifestly without reasonable foundation". Accordingly, the Court should approach the question of satisfaction of the legitimate aim criterion with considerable restraint. That this held particularly true in the present case, and regardless of the purpose of the lease and the leaseholder's financial or social situation, was supported by the Grand Chamber judgment in *Hutten-Czapska* (cited above):

"The notion of 'public' or 'general' interest is necessarily extensive. In particular, spheres such as housing, which modern societies consider a prime social need and which plays a central role in the welfare and economic policies of Contracting States, may often call for some form of regulation by the State. In that sphere decisions as to whether, and if so when, it may fully be left to the play of free-market forces or whether it should be subject to State control, as well as the choice of measures for securing the housing needs of the community [...], necessarily involve consideration of complex social, economic and political issues."

91. It was further supported by the Grand Chamber judgment in *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], no. 44302/02, § 71, ECHR 2007-III), where the Court (referring to *James and Others*) had acknowledged an important additional reason for allowing a wide margin of appreciation with regard to the public interest criterion: when the issue to be subject to regulation involved "longstanding and complex" issues which also entailed regulation of contractual matters between individuals, the margin necessarily ought to be extensive.

92. In the Government's view, this was so because such matters involved social, economic and political questions about which there would never be one 'right' solution in terms of chosen ends and means since the issues themselves were intrinsically contestable. The Court's deference to domestic democratic discourse in such areas clearly called for a wide margin of appreciation with regard to the general interest criterion also in this case.

93. In its recommendation to Parliament the Standing Committee on Justice had referred to social policy considerations in the area of housing ("*boligsosiale hensyn*") as one important

rationale for the provision in section 33 and had agreed with the Ministry as to its constitutionality (see Recommendation no. 105, p. 18 cited above). As could be seen from these discussions, the aim of section 33 had been at least three fold: (1) to secure the position of "lessees who [were] unable for financial reasons to purchase their plots [under the redemption clause]", thus securing "social justice in housing" (see paragraph 51 above); (2) to enact an all-embracing system for dealing with the increasing number of expiring ground lease contracts in order to minimise the impending flux of legal disputes that would otherwise be foreseeable when the leases expired by the lot (see the extract quoted at paragraph 51 above); (3) to treat on equal terms plots for holiday homes and permanent homes, as it was a social task to secure the possibility of leisure and because the boundaries in present times were increasingly blurred between the two types of homes, as also observed by the Supreme Court in its examination in 2007 of section 33's compatibility with Article 1 of Protocol No. 1 to the Convention (see paragraph 18 above).

94. The Government maintained that these aims – social justice in housing, the avoidance of legal disputes, and the acknowledgment of leisure in contemporary society – were all legitimate under the Convention. The Government also maintained that section 33 was a permissible means to realise those aims, especially having regard to the wide margin of appreciation afforded.

95. Finally, the Government pointed out that the lessees' interests were also protected by Article 1 of Protocol No. 1.

(iii) The Court's assessment

96. As to the question whether the disputed interference was "in accordance with the general interest", the Court reiterates the principles in its case-law as summarised in *Hutten-Czapska* (cited above):

"165. Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the 'general' or 'public' interest. Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures to be applied in the sphere of the exercise of the right of property. Here, as in other fields to which the safeguards of the Convention extend, the national authorities accordingly enjoy a margin of appreciation.

166. The notion of 'public' or 'general' interest is necessarily extensive. In particular, spheres such as housing, which modern societies consider a prime social need and which plays a central role in the welfare and economic policies of Contracting States, may often call for some form of regulation by the State. In that sphere decisions as to whether, and if so when, it may fully be left to the play of free-market forces or whether it should be subject to State control, as well as the choice of measures for securing the housing needs of the community and of the timing for their implementation, necessarily involve consideration of complex social, economic and political issues.

Finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, the Court has on many occasions declared that it will respect the legislature's judgment as to what is in the 'public' or 'general' interest unless that judgment is manifestly without reasonable foundation. [...] (see *Mellacher and*

Others, cited above, § 45; *Scollo v. Italy*, 28 September 1995, § 27, Series A no. 315-C; *Immobiliare Saffi*, cited above, § 49; and, *mutatis mutandis*, *James and Others*, cited above, §§ 46-47, and *Broniowski*, cited above, § 149)."

97. The Court observes that from the Parliamentary debates that preceded the adoption of the impugned provision in section 33 of the Ground Lease Act, it can be seen that the aim was to secure to lessees, who were financially unable to purchase their plots under section 37, a lasting right of disposal over the plot. The method adopted was the one set out in section 33 granting the lessee a right of extension of the lease contract indefinitely, on the same conditions as applied previously. It further appears that in adopting this solution Parliament attached considerable weight to social policy considerations in the area of housing.

98. Moreover, the Court notes that the Government also referred to the justifications presented in the Government Bill to Parliament with respect to section 15 of the New Ground Lease Act. That provision placed limitations on the lessors' right to impose upward adjustments of the ground lease rent in those instances where it unequivocally followed from the ground lease contract – so-called ground value clauses that were not in issue here – that adjustments were to be made in accordance with developments in price levels in the property market. From a survey carried out by the Ministry of Justice and Police Affairs in 2002, it emerged that the repeal on 1 January 2002 of the rent control system under the former version of section 15 had resulted in many lessees seeing a dramatic, unexpected increase in the rent payable under contracts with ground value clauses. This had made drastic inroads into a number of families' and single persons' household budgets. It was further observed that clauses linking rent adjustment to the increase in property prices had often been conducive to conflict and might have ramifications unforeseen by the parties, hence the interest in avoiding legal disputes and ensuring foreseeability. Presumably, this experience in relation to section 15 was also capable of shedding light on the social policy considerations militating in favour of the introduction of section 33.

99. It is true, as the applicants pointed out, that section 33 was generally applicable to lease contracts among the estimated 300,000 to 350,000 lease contracts in Norway that were of a certain age and were up for renewal, irrespective of the financial means of the lessee concerned or of whether the land was used for a permanent home or a holiday home. It most likely had a much wider reach than merely addressing situations of potential financial hardship and social injustice and rather reflected social policy in a broad sense (compare *James and Others*, cited above, §§ 48-49; and *Hutten-Czapska*, cited above, § 178).

100. Nonetheless, having regard to the above-mentioned observations made in the preparatory work, the Court does not find manifestly unreasonable the Norwegian Parliament's view that, on grounds of social policy considerations, there was a legitimate need to protect, in the way provided for by section 33 of the Ground Lease Act, the interests of lease holders who lacked the financial means to exercise their right of redemption under section 37, whether the plots were used for permanent homes or for holiday homes. The Court concludes that the impugned interference may therefore be deemed to be in accordance with the general interest.

(b) Proportionality of the interference

(i) The applicants' submissions

101. In arguing that the impugned interference was disproportionate, the applicants stressed that it was "extensive and perpetual". The lease could not be terminated by the lessor and the effects of section 33 of the Ground Lease Act by far exceeded what could be deemed necessary in order to safeguard any alleged "considerations of social justice within housing". The public interest at stake had been stronger and the impugned interference less intrusive in other cases previously dealt with by the Court.

102. The applicants claimed that they found support in *James and Others* (cited above) for the argument that full market value should be paid for the plot. *Urbárska Obec Trenčianske Biskupice* (cited above, § 144) underlined in their view the importance of whether compensation was reasonably related to the real value of the property concerned, and that if the compensation bore no relation to the actual value of the land there would be a violation of Article 1 of Protocol No. 1. In *Hutten-Czapska* (cited above, § 225) the Court had held that the "*burden cannot [...] be placed on one particular social group, however important the interests of the other group or the community as a whole*". The importance of market value was once again emphasised in *Amato Gauci* (cited above, §§ 58, 61-63), where "amounts of rent allowing only a minimal profit" was a situation found to exceed the State's wide margin of appreciation.

103. The level of rents in the applicants' cases – less than 0.25% of the land's market value – was certainly low, in stark contrast with the market value of the plots, and was either equal to or lower than the statutory level of the real-estate tax on the plots (0.2%-0.7%), even though it was for the lessee to pay the tax, as if he or she owned the property.

104. The statutory right of redemption further added to the imbalance. The lessee might opt to redeem the plot in future – every other year for a main residence and every tenth year for a holiday home – at 40% of the undeveloped plot value. The lessee might then resell the plot at market price immediately thereafter and thus reap the benefit of the increase in market value. Similarly, if the lessee opted to sell the house with the lease-hold contract, he or she would also profit from the increase in market value of the plot.

105. The applicants also disputed the Government's argument that nothing suggested that the applicants' income from the ground lease had been reduced, which in the applicants' view was clearly formalistic. The key point was that the landowners' rights had been violated because the ground rent remained the same beyond, and despite the expiry of, the contracted period.

106. The Government's argument that the price increase of the leased property was predominantly a result of the lessee's and not the lessors' efforts was untenable. It was rather the market value of the undeveloped plot that should be reflected in the new ground rent.

107. Contrary to what was argued by the Government, the applicants had borne an individual and excessive burden. They should be entitled to compensation for the full market value of the undeveloped plot.

108. The absence of any distinction between holiday homes and permanent homes in the disputed rules was a clear expression of the fact that social injustice and social problems did not constitute a genuine reason for those rules. The applicants disputed the Government's argument that it lay within the margin of appreciation of the State to operate a general arrangement that did not distinguish between lessees who were in financial or social need and

those who were not. With regard to holiday homes, it was especially clear that the "necessity test" had not been fulfilled.

109. Weight should be given to the fact that section 33 of the Ground Lease Act intervened in a situation already created by the parties themselves. A fundamental feature of that situation was that the lease contracts were limited in time. Had the parties proceeded as agreed, a new contract of lease would have been required in order for the lessee to lease the plot in the future, on new terms including market ground rent. Alternatively, the lessee could have purchased the plot at an agreed market price.

110. By having intervened in a situation already created by the parties section 33 had undermined legal certainty. The parties could not have foreseen that the contracts were to be compulsorily extended on the same terms as had been agreed upon at the outset. In view of the agreed limitation on the contract period, both the lessees and the lessors ought to have been able to expect that at the expiry of the lease contracts new contracts would be negotiated to reflect a fair market rent.

111. Finally, the law did not provide for procedural safeguards aimed at achieving a fair balance between the interests of the lessors and those of the lessees. It was a blanket law taking no account of individual circumstances and favouring to a large degree lessees in no pressing social need of housing protection.

112. In sum, the impugned legal scheme was so far-reaching as to exceed what was necessary in order to secure the public interest, and thus overstepped the State's margin of appreciation.

(ii) The Government's submissions

113. In the Government's opinion the authorities of the respondent State had struck a fair balance (*James and Others*, cited above, §§ 46, 47, 50, Series A no. 98; *Immobiliare Saffi*, cited above, §§ 49, 59): there was no "excessive and individual burden", the State enjoyed a wide margin of appreciation and the Court should respect the legislature's judgment as to what was in the general interest unless that judgment was manifestly ill-founded. The disputed legislation had been enacted in full awareness of obligations under the Convention, which also formed part of national law, and was the result of lengthy and continuing debate in Parliament and other bodies, including the Supreme Court. This was an area of great complexity with fluctuating social and market conditions (*markt intern Verlag GmbH and Klaus Beermann v. Germany*, 20 November 1989, Series A no. 165). The Ground Lease Act was "justifiable in principle and proportionate". The applicants' income from the ground lease contract had not been reduced and their income would remain the same as before.

114. That section 33 did not distinguish between ground lease for permanent homes and holiday homes should clearly fall within the margin of appreciation. The Government stressed the importance of respecting the legislature's judgment as to what was in the general interest, and that that judgment in the instant case could not be viewed as manifestly unreasonable. In this regard, the Government relied on the Grand Chamber rulings in *Mellacher* and *Immobiliare Saffi*, both cited above.

115. While the Court had not explicitly stated the same with regard to policies affecting holiday homes, the Government did not see why the same very lenient standard of scrutiny ought not to apply here: the regulation of land to secure housing for leisure ought surely also

to “play a central role in the welfare and economic policies of modern societies” within the meaning of that phrase as used by the Court in *Immobiliare Saffi* (cited above, § 49). It should be added, in this connection, that in *Chassagnou and Others v. France* [GC] (nos. 25088/94, 28331/95 and 28443/95, § 108, ECHR 1999-III) the Grand Chamber observed, as regards the value, under Article 1 of Protocol No. 1, of protecting pure leisure activities such as hunting, that “the organisation and regulation of a leisure activity might also be a matter for which the State bore responsibility ...”.

116. The Government further invited the Court to have regard, in accordance with its own case-law, to the legitimate expectations of parties to ground lease agreements and to what had been reasonably foreseeable for the applicants. In the proportionality assessment, weight should be given to the fact that section 33 intervened in a situation already created by the parties themselves. The ground lease arrangement appeared to be a singular Norwegian legal phenomenon. It had come into being because Norway, at the time, was one of the poorest countries of Europe and a particularly rural society. Many individuals, who predominantly did not live in city dwellings, simply did not have the financial means to acquire real property as well as to erect houses on such land. The ground lease system had provided for long-term lease of land for a reasonable price, and had enabled the lessees to build houses on that land and to retain those buildings as their homes for the foreseeable future. Landowners received income in the form of rent from the lessees.

117. As the years passed, the market value of real property had increased dramatically in Norway – comparatively more so than in other Western European countries. This had surely not been anticipated by either party when concluding any ground lease contract; otherwise the contracts would have provided for a mechanism for continuous rent adjustment. That the authorities would eventually have to intervene and regulate an arrangement which had been created by the parties could not have been unforeseeable for the landowners. Upon the expiry of a ground lease, the lessee – who owned the house but not the ground on which it was built – could not simply terminate the lease and move the house. Faced with an exceptional increase in the value of real estate, the lessee might not even have the financial means to redeem the lease and acquire the ground. Nor could the landowners have legitimately expected that they would be the party to gain from the windfall profit that accrued because of the increase in property prices. The Court should bear in mind what the Grand Chamber had stated in *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd* (cited above, § 83), namely:

“In *James and Others*, the possibility of ‘undeserving’ tenants being able to make ‘windfall profits’ did not affect the overall assessment of the proportionality of the legislation (*James and Others* judgment, referred to above, § 69), and any windfall for the Grahams [the third party in *Pye*] must be regarded in the same light in the present case.”

118. Finally, the Government recalled the Court’s deference to democratic processes. The issue of what should be done with the expiry of ground lease contracts established long ago had been the subject of at least eleven proposed amendments to the 1996 Ground Lease Act. There had been heated debate for many years among the leading political parties. In 2004, however, all but one of the parties represented in Parliament finally found a middle ground. Section 33 of the Ground Lease Act was one important part of that middle ground, the democratic bargain made in the Norwegian Parliament in 2004. In the Government’s submission, this significant political compromise should be taken into account by the Court, it being an example of democratic deliberation wholly in line with the ideal of an effective political democracy, which according to the Court in its 1998 judgment in the *United*

Communist Party of Turkey and Others v. Turkey, (30 January 1998, § 45, *Reports of Judgments and Decisions* 1998-I) was "the only political model contemplated by the Convention, and, accordingly, the only one compatible with it".

(iii) The Court's assessment

119. The Court reiterates that in the above-cited Grand Chamber judgment in *Hutten-Czapska*, it stated the following principles:

"167. Not only must an interference with the right of property pursue, on the facts as well as in principle, a 'legitimate aim' in the 'general interest', but there must also be a reasonable relation of proportionality between the means employed and the aim sought to be realised by any measures applied by the State, including measures designed to control the use of the individual's property. That requirement is expressed by the notion of a 'fair balance' that must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole. In each case involving an alleged violation of that Article the Court must therefore ascertain whether by reason of the State's interference the person concerned had to bear a disproportionate and excessive burden (see *James and Others*, cited above, § 50; *Mellacher and Others*, cited above, § 48; and *Spadea and Scalabrino v. Italy*, 28 September 1995, § 33, Series A no. 315-B).

168. In assessing compliance with Article 1 of Protocol No. 1, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are 'practical and effective'. It must look behind appearances and investigate the realities of the situation complained of. In cases concerning the operation of wide-ranging housing legislation, that assessment may involve not only the conditions for reducing the rent received by individual landlords and the extent of the State's interference with freedom of contract and contractual relations in the lease market, but also the existence of procedural and other safeguards ensuring that the operation of the system and its impact on a landlord's property rights are neither arbitrary nor unforeseeable. Uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is a factor to be taken into account in assessing the State's conduct. Indeed, where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, in an appropriate and consistent manner (see *Immobiliare Saffi*, cited above, § 54, and *Broniowski*, cited above, § 151)."

120. In the Court's view, the above principles, although they were enunciated with regard to the particular situation governing tenancy agreements imposed by law (ibidem, § 152), are also pertinent for its assessment of the issue of proportionality in the present case. Like an ordinary tenancy agreement, a ground lease agreement of the kind in issue here would normally be entered into voluntarily at a rent reflecting the market level at the time when the agreement was concluded.

121. However, when considering the proportionality issue the Court will also have regard to the differences in nature between a ground lease contract and a tenancy contract with regard to both performance and duration. Whilst under the latter type of contract the tenant would pay a rent to occupy premises financed by the landlord, in the former type the situation would

most frequently be the reverse: it would be the lessee who had invested in the buildings and constructions on the land. The landowner, the lessor, would do little more than make the ground available to the lessee against payment of a rent. In so doing the lessor would renounce the possibility of using the property for financial gain by any other means than by receiving the said rent. As a result of these differences, a ground lease contract would ordinarily be of a much longer duration than an ordinary tenancy agreement, usually 99 years, and in the present case between 40 and 60 years.

122. At the heart of the conflict of interests in the case under consideration is a contract of long and definite duration that once reflected the mutual interests of the contracting parties and which at its expiry was no longer perceived as being in their mutual interest.

123. From the lessor's point of view, the ground rent he or she received, adjusted in keeping with inflation, had with time lost touch with price increases in the property market generally and the market for undeveloped properties specifically, and was out of tune with the drastic price increases in the real estate market generally since the 1980s. Had the lessor been free to negotiate the level of the rent of a new contract, the new rent, reflecting the market level, would have been far higher.

124. From the lessee's point of view, because of the investments that he or she or their predecessors had made on the property, the lessee had a strong interest in maintaining the status quo of the contractual relationship at the expiry of the ground lease contract. Unlike a tenant, who could leave the rented premises with his or her movable property, the lessee would have a strong interest in preserving the possibility of keeping his or her immovable property on the rented ground. These were interests, it may be added, that were arguably also protected by Article 1 of Protocol No. 1, as pointed out by the Government, and by Article 8 of the Convention. For this reason, at the end of the lease period, the lessee would not be on an equal footing with the lessor in any negotiations about the rental terms of a new lease.

125. As can be seen from the above, the interests at stake on each side were markedly different in nature and difficult to reconcile and the issues with which the Norwegian Parliament was confronted were particularly complex. In view of the very large number of ground lease contracts in Norway, the Court further 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. This is the background against which the Court will examine whether in the instant case the national authorities acted within the wide margin of appreciation accorded to them under Article 1 of Protocol No. 1.

126. Turning to the concrete circumstances of the applicants' case, the Court notes that when Parliament considered the disputed amendment to section 33 granting the lessee the option, upon expiry of the lease, to renew it indefinitely on the same conditions, a survey and assessment had been carried out with regard to the implementation of the Ground Lease Act 1996 after its entry into force on 1 January 2002, in particular its section 15 governing the adjustment of the ground lease rent. That version, like its successor, contained a general rule, according to which adjustments to the rent should take into account developments in the consumer price index, and an exception to that rule (for lease agreements concluded on or before 26 May 1983) providing for upward adjustment according to other factors, notably the value of the land (so-called ground rent clauses), where this had been expressly agreed on between the parties, and fixing ceilings to such upward adjustment. Experience had shown

that, in the period thereafter, many lessees had seen a drastic upward adjustment of their ground lease rents for which they were unprepared. As mentioned above, as the gap between rents subject to rent control and price increases in the housing market widened over time, this (partial) lifting of rent control had made substantial inroads into the household budgets of many families and single persons. In the Bill to Parliament special attention was given to the particular provision in section 15 governing rent adjustment under contracts containing ground value clauses, which, it was observed, concerned a minority of ground lease contracts. The solution favoured by the Ministry and adopted by Parliament was a rule permitting a one-off upward adjustment for contracts with ground value clauses, followed by the introduction of an adjustment scheme linked to changes in the consumer price index. In the Ministry's opinion balancing the interests of the lessors and those of the lessees required that there should be no intervention in rent adjustment clauses in existing contracts other than what would follow from this proposal.

127. In dealing with the provisions governing the calculation of compensation upon redemption, the Ministry of Justice suggested that these ought to be seen in the light of the provisions on rent adjustment, the general conditions governing redemption and the right to extend the lease. The Ministry considered that these provisions, seen as a whole, should not be framed in such a way as to substantially alter the balance of interests in the ground lease contracts. The aim of the above-mentioned solution, as expressed by the Ministry, had been to pay due regard to what had been agreed on between the parties and to make it possible to introduce a balanced provision on the calculation of compensation for redemption.

128. However, the Court has not been made aware, nor does it appear from the material submitted, that any specific assessment was made of whether the amendment to section 33 regulating the extension of the type of ground lease contracts at issue in the applicants' case achieved a "fair balance" between the interests of the lessors, on the one hand, and those of the lessees, on the other hand.

129. The Court is further struck by the particularly low level of rent the applicants received under the terms of the various ground lease agreements as extended pursuant to section 33 of the Ground Lease Act. As quantified by the applicants, and as was undisputed by the Government, the level amounted to less than 0.25% of the plots' market value and was either equal to or lower than the statutory level of the real-estate tax chargeable on the plots (0.2%-0.7%). Although it was for the lessee to pay the tax, as if he or she owned the property, the comparison nonetheless illustrates the striking contrast. Any adjustment to the rent would be limited to taking into account changes in the consumer price index. In the applicants' case, there seem to have been no general interest demands sufficiently strong to justify such a low level of rent, bearing no relation to the actual value of the land (see *Urbárska Obec Trenčianske Biskupice*, cited above, § 144).

130. Indeed, as stated above, section 33 was generally applicable to contracts of a certain age that were up for renewal, irrespective of the financial means of the lessee concerned. It most likely had a much wider reach than merely addressing situations of potential financial hardship and social injustice and reflected social policy in a broad sense.

131. Moreover, the extension was for an indefinite duration without any possibility of upward adjustment in the light of factors other than the consumer price index (section 15(2)(1)), which excluded the possibility of taking account of the value of the land as a relevant factor. The same terms would continue in the event of transfer of the lease by the

lessee to a third party or by the lessor to a third party. Only the lessee could opt to terminate the lease agreement, either by rescinding the contract or, more typically, by redeeming the plot in accordance with section 37. But for the lessee, continuing the lease would often be more attractive financially, as illustrated by the experience of the second applicant (see paragraph 21 above).

132. In the event that the lessee should sell the lease with dwellings to a third party, any increase resulting exclusively from changes in the value of the land, buildings exempted, would be reflected in the selling price and would accordingly accrue to the lessee. The same would not apply if the applicant lessor were to sell his or her rent entitlements according to the lease contract to a third party, in which case the price would reflect that the controlled rent would be kept at a low level indefinitely.

133. The Court accepts however that the applicants could entertain a legitimate expectation that the relevant lease contracts would expire as agreed according to their terms, independently of the intervening discussions on and adoption of legislative measures.

134. In these circumstances, it does 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, *mutatis mutandis*, *Hutten-Czapska*, cited above, §§ 222, 224-225). The Court is therefore not satisfied that the respondent State, notwithstanding its wide margin of appreciation in this area, struck a fair balance between the general interest of the community and the property rights of the applicants, who were made to bear a disproportionate burden.

135. The Court appreciates the fact that the Norwegian Supreme Court has assessed the present case also from the angle of Article 1 of Protocol No. 1 to the Convention (see paragraphs 125 to 132 of the judgment quoted at paragraph 16 above). However, in the first place, it is unable to share the latter's view that the following question ought to be taken as the starting point for this assessment: "[W]hether the fact that in the event of an extension the lessor does not have the right to regulate the ground lease upwards to an amount that reflects the actual land value means that the arrangement contravenes this Convention provision" (paragraph 125 of the judgment). While this reflected a demand put forward by lessors in negotiations with lessees prior to the amendment of section 33 of the Ground Lease Act, it did not reflect the contents of this provision. This was so because section 33 in effect prohibited any rent increase (beyond what followed from consumer price index regulation in accordance with section 15). The lack of proportionality in this case was caused by the various factors highlighted in the Court's reasoning in paragraphs 128 to 134 above, not by the fact that the lessors could not claim market rent in the case of an extension of the lease contract. Secondly, the Supreme Court's analysis seems to have been based essentially on the Court's judgment in *James and Others* (cited above). However, that judgment dealt with a situation which in many respects was different from that at issue in the instant case. In its reasoning above, the Court has relied on it only in so far as it has deemed it relevant to the concrete circumstances of the case and has had regard also to several more recent rulings referred to from its case-law, representing jurisprudential developments in the direction of a stronger protection under Article 1 of Protocol No. 1.

136. There has accordingly been a violation of Article 1 of Protocol No. 1.

II. ARTICLES 46 AND 41 OF THE CONVENTION

A. Article 46 of the Convention

137. Whilst in reaching the above conclusion the Court has focused on the particular circumstances of the applicants' individual complaints, it adds by way of a general observation that the problem underlying the violation of Article 1 of Protocol No. 1 concerns the legislation itself and that its findings extend beyond the sole interests of the applicants in the instant case. This is a case where the Court considers that the respondent State should take appropriate legislative and/or other general measures to secure in its domestic legal order a mechanism which will 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 is not for the Court to specify how lessors' interests should be balanced against the other interests at stake. The Court has already identified the main shortcomings in the current legislation (see paragraphs 128 to 136 above). Under Article 46 the State remains free to choose the means by which it will discharge its obligations arising from the execution of the Court's judgment (see, *mutatis mutandis*, *Hutten-Czapska*, cited above, §§ 237 and 238).

B. Article 41 of the Convention

138. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

1. Damage

(a) Compensation for loss of income

139. The applicants sought compensation equal to the market value of the undeveloped plots, less the capitalised value of the rent that was actually payable according to section 33 of the Ground Lease Act, claiming the following amounts:

1) Ms Lindheim, 617,560 Norwegian Krone (corresponding to approximately 80,875 euros (EUR));

2) Mr Heian, NOK 3,563,220 (approximately EUR 466,650);

3-4) The spouses Mrs and Mr Georg Nilsen, NOK 2,490,000 (approximately EUR 326,100);

5) Ms Brandt-Kjelsen; NOK 62,339,540 (approximately EUR 8,164,000);

6) Mr Henriksen NOK 15,048,240 (approximately EUR 1,970,700).

140. The Government disputed the above claims, requested the Court to rule in equity and considered that it would be appropriate for the Court to reserve the matter for separate proceedings, under Rule 75 § 1 of the Rules of Court.

141. The Court refers to its considerations above as to the particular complexity of the issues with which the Norwegian Parliament was confronted (see paragraph 125 above), to its

finding that the respondent State should take appropriate legislative and/or other general measures to secure compliance with Article 1 of Protocol No. 1 (see paragraph 137 above) and also to the principle of legal certainty inherent in the law of the Convention (see, *mutatis mutandis*, *Marckx v. Belgium*, 13 June 1979, § 58, Series A no. 31, and *Henryk Urban and Ryszard Urban v. Poland*, no. 23614/08, § 65, 30 November 2010). In the particular circumstances of the instant case, the Court finds that the respondent State should be dispensed from liability with regard to legal acts or situations that antedate the present judgment (ibid.) and accordingly dismisses the applicants' above-mentioned claims for compensation for pecuniary damage.

(b) Compensation for judicial costs

142. Mrs and Mr Nilsen, Ms Brandt-Kjelsen and Mr Henriksen further requested compensation for amounts totalling NOK 171, 475 (NOK 61,050, plus NOK 37,425, plus NOK 73,050), corresponding to approximately EUR 22,460, that they had been ordered to pay to the adversary parties for the latter's costs in the domestic proceedings.

143. The Government stated that they had no comments to make on these claims and that they would leave the matter to the Court's discretion.

144. The Court is satisfied that there is a causal link between the damage claimed and the violation of the Convention it has found, and awards Mrs and Mr Nilsen EUR 8,000, Ms Brandt-Kjelsen EUR 4,900 and Mr Henriksen EUR 9,570 under this head.

2. Costs and expenses

145. The applicants further sought the reimbursement of legal costs and expenses, totalling NOK 2,960,525 (approximately EUR 387,700), in respect of the following items:

(a) NOK 648,249 incurred for their own legal costs before the domestic courts;

(b) NOK 1,153,298 for the lawyers' work in the proceedings before the Court until 21 December 2009;

(c) NOK 558,500 for the lawyers' work for the period from 21 December 2009 to 29 May 2011;

(d) NOK 453,125 for the lawyers' work to prepare and attend the oral hearing in Strasbourg on 21 June 2011;

(e) NOK 14,353 for travel expenses for counsel to attend the hearing;

(f) NOK 125,000 for translation costs;

(g) NOK 8,000 for estimated additional expenses for the translator.

The above amounts included value added tax ("VAT").

146. The Government stated that they had no comments to make to these claims and that they would leave it to the Court's discretion.

147. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award EUR 100,000 in respect of items (a), (e) and (f), whilst item (g) must be rejected as it is does not appear that it was actually incurred. The Court is not convinced that all the costs incurred in the Strasbourg proceedings were necessarily incurred and were reasonable as to quantum. Making an assessment on an equitable basis, the Court awards the applicants EUR 75,000 for item (b) and EUR 25,000 for items (c) and (d) (inclusive of VAT).

3. Default interest

148. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the applications admissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;

3. *Holds*

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 8,000 (eight thousand euros) to Mrs and Mr Nilsen, EUR 4,900 (four thousand nine hundred euros) to Ms Brandt-Kjelsen and EUR 9,570 (nine thousand five hundred and seventy euros) to Mr Henriksen, plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 200,000 (two hundred thousand euros) to the applicants, plus any tax that may be chargeable to the applicants, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 12 June 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Nicolas Bratza
Registrar President

1. Normally assessed with reference to the consumer price index.

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