[…]

Overall assessment

In the overall proportionality assessment the Court firstly refers to *Lohuis and others versus the Netherlands*, which both parties have argued is the decision that most resembles our case. In the Dutch case a law relating to the restructuring of pig farming with a maximum number of pigs per farm, based on the number of animals at a given time, 4-5 years prior to the restructuring. In the structural changes exceptions were made for farmers who, for specific reasons, had not fully utilized their capacity at the dates of reference. The exceptions, however, did not apply to persons who at this time had a low production due to own illness. During the trial before the national courts, Lohuis won acceptance for the claim that a loss of 34 % without compensation was in conflict with the principles of PI-1 (Protocol 1), whereas Van den Heuvel's loss of 25 % capacity was not considered a disproportional burden, since he had had the opportunity to compensate for this himself.

Lohuis, nevertheless, was not satisfied with the basis of the trial in the national courts and therefore brought the case before the European Court of Human Rights, but did not succeed. In the reasons for the judgement it appears in paragraph 58-61 that the European Court of Human Rights was of the opinion that the restructuring applied to the whole pig farming industry in a way that did basically not discriminate the plaintiffs. The court, however, observed that the national courts had reached a correct decision in the case, since they had found in favour of Lohuis and concluded that for him an infringement had been committed that constituted a violation of the protection of property.

The Court understands the *Lohuis* case in the way that both the Dutch national court and the European Court of Human Rights are of the opinion that the way the number of animals is regulated will constitute an infringement under PI-1, but on the condition that it affects the individual in a particularly burdensome way.

The Court understands the state's submission in the way that it is of importance that the pig farming regulations had an exclusionary provision and that it was this provision that had disproportionate consequences for those affected. As opposed to this, it was a condition that the reduction of the number of reindeer would affect everybody equally.

With respect to the effect, the relevant topic of assessment will be the actual effect and not, from an isolated point of view, whether the purpose of the regulation has been a formal equality of treatment. There can be no doubt that in practice the reduction of the number of reindeer affects the owners with the smallest numbers of reindeer most strongly. The reason for this is that the number of reindeer becomes so low that conducting reindeer husbandry will be unprofitable. Reference is made to the conclusions drawn by the *Myklevold Committee* that in the short and medium term a difficult situation will arise for many siida shares.

Particularly, the reduction of the number of reindeer will affect young reindeer owners, who are at the establishing stage with a need to increase the number of reindeer to a level making it possible to conduct reindeer husbandry at a profit. It is clear that the plaintiff has been a reindeer owner in such a situation through the fact that his siida share has had an increase in the number of reindeer from 71 in

2010 to about 300 at present. The increase in his number of reindeer appears more as a natural development, for which he received support, rather than a positioning at the expense of other reindeer owners. Based on the adjusted figures of the reindeer number statistics, it appears that the number of reindeer in the Fåla siida increased by 752 reindeer from 2011 to 2012, which corresponds to 31.3 %. Compared to this, the plaintiff's number of reindeer increased by 22 reindeer, corresponding to 22.4 %. In the opinion of the Court, this shows that the plaintiff has not been able to position himself in the same way as the larger reindeer owners in the siida.

When the flaws related to the procedural work and the opportunity of individual reindeer owners to position themselves are taken into consideration, it becomes somewhat arbitrary to base the reduction solely on the number of reindeer in one specific year, particularly since it turned out that the number of reindeer in 2012 was especially high, probably because of the positioning. Using one single reindeer husbandry year as a basis will entail a risk that reindeer owners who are in a special situation will be affected unreasonably hard, for instance young reindeer owners and others who had to slaughter due to a need for liquidity, or reindeer owners who had lost an excessive number of reindeer that year. Reference is made to the decision of 21 May 2002, *Jokela versus Finland,* which was based on an arbitrary valuation.

From the report of *The Myklevold Committee* it appears that in the reindeer grazing district of Western Finnmark, to which the plaintiff belongs, a total of 15 out of 157 siida shares had less than 200 reindeer before the reduction in the number of reindeer. Altogether, these 15 siidas owned 2212 reindeer, about 2.5 % of the total number of reindeer in the district.

On average, the 15 siida shares had 147 reindeer per siida share, whereas the plaintiff at the reference date in 2012 owned 116 reindeer. The plaintiff, thus, belongs to a small number of reindeer owners that are strongly affected by the reduction in the number of reindeer. Based on his number of reindeer at the time the decision was made, he has been ordered to halve his number of reindeer. On the basis of this, the Court believes that the effect for the plaintiff will be more comprehensive than in the *Lohuis case.*

The practice of the European Court of Human Rights shows that importance is attached to whether the purpose may be achieved through alternative solutions, see *James and others against the United Kingdom,* plenary judgement of 21 February 1986. In this case, an obvious alternative solution would have been exclusionary provisions aimed at young reindeer owners at the establishing stage. Since alternative solutions may exist, the Court does not agree with the State that the absence of a flexible set of rules for the reduction of the number of reindeer may be an argument against the existence of a violation PI-1, particularly since the consequences for the affected parties have not been sufficiently clarified in advance. Reference is made to the fact that in the *Lindheim case* it was emphasized that the possibilities of taking individual differences into account were too limited.

The Court agrees to the Sate's submissions that also in connection with the regulation of the number of reindeer there will be a discretional margin in order to take care of the legal purpose pursuant to Section 1.1 of the reindeer husbandry act. Based on an overall proportionality assessment, however, the Court is of the opinion that the greatest importance must be attached to the fact that the

infringement on the plaintiff's right to conduct reindeer husbandry has the effect of infliction an unreasonable and individual burden on him.

There is no doubt that for a young reindeer owner at the establishing stage a reduction in per cent will have a very strong effect, particularly since the reduction entails that the number of reindeer will make it impossible to run the business at a profit and with a turnover that most probably will be below the minimum requirement for obtaining production support. For reindeer owners with a large number of reindeer, a reduction in per cent naturally implies a larger reduction in the numerical number of reindeer, but it will still be possible for them to operate at a profit with the inclusion of an operating grant in accordance with the reindeer husbandry agreement.

When first it has been possible to establish that an infringement towards the individual has taken place, it will normally not be a matter of consequences for the State. Reference is made to the *Lindheim case*, with far-reaching consequences for the whole ground rent scheme, as well as *Asmundson versus Iceland.* In any case, not many reindeer owners will be in the same situation as the plaintiff.
The consequences, therefore, will not be very extensive irrespective of whether the alternative solutions will be a limited increase of the upper number of reindeer of the siida or a solution based on the proposal of the *Myklevold Committee.*

In such cases there can be no reason why rights to conduct reindeer husbandry should have less protection pursuant to PI-1 than other types of rights to property. Reference is made to *Könkäämä and others versus Sweden,* decision of 25 December 1996 that does not seem to be based on an assumption that cases related to indigenous people or reindeer husbandry are to be assessed in a special way. Nor does the assessments in RT-2006-1382 give any reason for this. The Ombudsman's decision of 26 June 2014 is also clearly based on the assumption that there are no special limitations linked to the right of trial in connection with infringements on reindeer husbandry rights.

It is more an open question whether the European Court of Human rights will take related convention provisions into account, but in cases of doubt this cannot be ruled out, in the same way as the Inter-American Court of Human Rights has applied relevant convention provisions, in particular in cases related to indigenous people. As regards the application of Article 27 of the Covenant on Civil and Political Rights in our case, the Court observes that the plaintiff as an active reindeer owner with a siida share will be in a different situation than what was the case in the *Kitok case.* Whether Article 27 should be applied, however, will depend on a number of circumstances that were not thrown much light on during the proceedings, among other things whether real consultations were conducted, particularly with the affected siidas and siida shares.

It is, however, not necessary to discuss this problem any further, since the Court, based on the practice of the European Court of Human Rights, has concluded that in this case a violation of the right to property pursuant to PI-1 exists.

The consequence of this is that the decision of a reduction of the number of reindeer for the plaintiff will be invalid. The way the suit and the claim are formulated makes it unnecessary for the Court to consider the question of what the limit for the number of reindeer that grants the plaintiff his right

pursuant to Pl-1 is. The Court observes, however, that it will be difficult to conclude that limitations in the future development of the number of reindeer is an infringement in itself, even though it is assumed that the plaintiff had a reasonable expectation of this when he took over the siida share in 2010.

As apparent from the grounds, the Court has taken as its starting point that the infringement will consist in the reduction from a reindeer number of 150 and that this is what will here constitute an infringement of Pl-1.

Costs and pronouncement of judgement

The plaintiff has won the case and is thus entitled to the award of costs. Since the plaintiff has assistance by the way of representation, it is not considered necessary to pronounce judgement relating to costs.

The judgement has not been pronounced within the time limit of 4 weeks due to the scope of the case and the work of the professional judge on other cases.

The judgement is unanimous.

DECISION

The decision of the Ministry of Agriculture and Food of 10 March 2014 relating to the number of reindeer in the siida share of Jovsset Ante I Sara is invalid.

Court adjourned.

Finn-Arne Schanche Selfors (signed)

Leif Petter Grønmo (signed)

Solfrid Marie Mindasdatter Jessen (signed)

Guidelines concerning the right of appeal in civil actions are enclosed.