

Press release issued by the Registrar

**CHAMBER JUDGMENT IN THE CASE OF:
HATTON AND OTHERS v. THE UNITED KINGDOM**

The European Court of Human Rights has today notified in writing judgment in the case of *Hatton and Others v. the United Kingdom* (application number 36022/97). The Court held:

- by five votes to two that there had been a **violation of Article 8** (right to respect for private and family life and home) of the European Convention on Human Rights;
- by six votes to one, that there had been a **violation of Article 13** (right to an effective remedy) of the Convention.

Under Article 41 (just satisfaction) of the Convention, the Court decide, by six votes to one, to award each applicants 4,000 pounds sterling (GBP) for non-pecuniary damage and a total of GBP 70,000 for legal costs and expenses. (The judgment, which is not final¹, is only available in English.)

1. Principal facts

The eight applicants, all British citizens, live or lived in properties in the area surrounding Heathrow Airport, London. They are: Ruth Hatton, born in 1963 and living in East Sheen; Peter Thake, born in 1965 and living in Hounslow; John Hartley, born in 1948 and living in Richmond; Philippa Edmunds, born in 1954 and living in East Twickenham; John Cavalla, born in 1925 who, from 1970 to 1996, lived in Isleworth; Jeffray Thomas, born in 1928 and living in Kew; Richard Bird, born in 1933 and living in Windsor and Tony Anderson, born in 1932 and living in Touchen End.

Before October 1993 the noise caused by night flying at Heathrow had been controlled through restrictions on the total number of take-offs and landings; but after that date, noise was regulated through a system of noise quotas, which assigned each aircraft type a "Quota Count" (QC); the noisier the aircraft the higher the QC. This allowed aircraft operators to select a greater number of quieter aeroplanes or fewer noisier aeroplanes, provided the noise quota was not exceeded. The new scheme imposed these controls strictly between 11.30 p.m. to 6 a.m. with more lenient "shoulder periods" allowed from 11-11.30 p.m. and 6-7 a.m. Previously, strict controls had been imposed during a longer period.

¹ Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its Protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

Following an application for judicial review brought by a number of local authorities affected, the scheme was found to be contrary to section 78 (3) of the Civil Aviation Act 1982, which required that a precise number of aircraft be specified, as opposed to a noise quota. The Government therefore included a limit on the number of aircraft movements allowed at night. A second judicial review found that the Government's consultation exercise concerning the scheme had been conducted unlawfully and in March and June 1995 the Government issued further consultation papers. On 16 August 1995 the Secretary of State for Transport announced that the details of the new scheme would be as previously announced. The decision was challenged unsuccessfully by the local authorities.

2. Procedure and composition of the Court

The case was lodged with the European Commission of Human Rights on 6 May 1997 and transmitted to the European Court of Human Rights on 1 November 1998. A hearing on the admissibility and merits of the case was held on 16 May 2000. The case was declared partly admissible the same day.

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

Jean-Paul **Costa** (French), *President*,
Loukis **Loucaides** (Cypriot),
Pranas **Kūris** (Lithuanian),
Françoise **Tulkens** (Belgian),
Karel **Jungwiert** (Czech)
Hanne Sophie **Greve** (Norwegian), *judges*,
Brian **Kerr** (British), *ad hoc judge*,

and also Sally **Dollé**, *Section Registrar*.

3. Summary of the judgment¹

Complaints

The applicants complained, among other things, that, following the introduction of the 1993 scheme, night-time noise increased, especially in the early morning, which interfered with their right to respect for their private and family lives and their homes, guaranteed by Article 8.

They also claimed that judicial review was not an effective remedy within the meaning of Article 13, as it failed to examine the merits of decisions by public authorities and was prohibitively expensive for individuals.

1. This summary by the Registry does not bind the Court.

Decision of the Court

Article 8

The Court noted that the Government had acknowledged that, overall, the level of noise during the quota period (11.30 p.m. to 6 a.m.) had increased under the 1993 scheme.

The Court also observed that, as Heathrow airport and the aircraft which used it were not owned, controlled or operated by the Government or by any agency of the Government, the United Kingdom could not be said to have “interfered” with the applicants’ private or family life.

However the State had a positive duty to take reasonable and appropriate measures to secure the applicants’ rights under Article 8 and to strike a fair balance between the competing interests of the individual and of the community as a whole. In the particularly sensitive field of environmental protection, mere reference to the economic well-being of the country was not sufficient to outweigh the rights of others. States were required to minimise, as far as possible, the interference with these rights, by trying to find alternative solutions and by generally seeking to achieve their aims in the least onerous way as regards human rights. In order to do that, a proper and complete investigation and study with the aim of finding the best possible solution which would, in reality, strike the right balance, should precede the relevant project.

The Court observed that while it was, at the very least, likely that night flights contributed to a certain extent to the national economy as a whole, the importance of that contribution had never been assessed critically, whether by the Government directly or by independent research on their behalf.

As to the impact of the increased night flights on the applicants, the Court noted that only limited research had been carried out into the nature of sleep disturbance and prevention when the 1993 scheme was put in place.

In determining the adequacy of the measures to protect the applicants’ Article 8 rights, the Court noted that the 1993 scheme represented an improvement over the proposals made in the 1993 Consultation Paper. Further, in the course of the challenges by way of judicial review to the 1993 scheme, an overall maximum number of aircraft movements was set, and the Government did not accede to calls for large quotas and an earlier end to night quota restrictions. However, the Court did not accept that these modest steps at improving the night noise climate were capable of constituting “the measures necessary” to protect the applicants’ position.

In conclusion, the Court considered that, in implementing the 1993 scheme, the State failed to strike a fair balance between the United Kingdom’s economic well-being and the applicants’ effective enjoyment of their right to respect for their homes and their private and family lives. There had accordingly been a violation of Article 8.

Article 13

The Court noted that judicial review proceedings were capable of establishing that the 1993 scheme was unlawful because the gap between Government policy and practice was too wide. However, it was clear that the scope of review by the domestic courts was limited to the classic English public law concepts, such as irrationality, unlawfulness and patent unreasonableness, and did not allow consideration of whether the increase in night flights under the scheme represented a justifiable limitation on the right to respect for the private and family lives or the homes of those who lived in the vicinity of Heathrow airport.

The Court considered that the scope of review by the domestic courts in the present case was insufficient and that there had therefore been a violation of Article 13.

Judge Costa expressed a separate opinion, Judge Greve a partly dissenting opinion and Sir Brian Kerr a dissenting opinion, which are all annexed to the judgment.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.