

Press release issued by the Registrar

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

The European Court of Human Rights has today delivered at a public hearing its judgment in the case of *Hatton and Others v. the United Kingdom* (application no. 36022/97). The Court held

- by twelve votes to five that there had been **no violation of Article 8** (right to respect for private and family life and home) of the European Convention on Human Rights; and
- by sixteen votes to one that there had been **a violation of Article 13** (right to an effective remedy).

The Court held, by fifteen votes to two, that the finding of a violation constituted in itself sufficient just satisfaction for any damage sustained by the applicants. Unanimously, it awarded the applicants 50,000 euros for costs and expenses.

1. Principal facts

The eight applicants, all British citizens, live or lived near 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. and 6 a.m. with more lenient "shoulder periods" allowed between 11 and 11.30 p.m. and between 6 and 7 a.m.

Following an application for judicial review brought by a number of local authorities affected, the scheme was found to be contrary to a statutory provision 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 application was lodged with the European Commission of Human Rights on 6 May 1997 and transmitted to the Court on 1 November 1998. It was declared admissible on 16 May 2000.

In its Chamber judgment in the case, delivered on 2 October 2001, the Court held, by five votes to two, that there had been a violation of Article 8 of the Convention, and, by six votes to one, that there had been a violation of Article 13. Under Article 41 (just satisfaction) each applicant was awarded 4,000 pounds sterling (GBP) for non-pecuniary damage and GBP 70,000 for costs and expenses.

On 19 December 2001 the Government requested that the case be referred to the Grand Chamber¹ and on 27 March 2002 the panel of the Grand Chamber accepted that request. A hearing was held on 13 November 2002.

Judgment was given by a Grand Chamber of 17 judges, composed as follows:

Luzius **Wildhaber** (Swiss), *President*,
Jean-Paul **Costa** (French),
Georg **Ress** (German),
Giovanni **Bonello** (Maltese),
Elisabeth **Palm** (Swedish),
Ireneu **Cabral Barreto** (Portuguese),
Riza **Türmen** (Turkish)
Viera **Strážnická** (Slovakian),
Volodymyr **Butkevych** (Ukrainian),
Boštjan **Zupančič** (Slovenian),
Nina **Vajić** (Croatian),
Snejana **Botoucharova** (Bulgarian),
Anatoli **Kovler** (Russian),
Vladimiro **Zagrebel'sky** (Italian),
Elisabeth **Steiner** (Austrian),
Stanislav **Pavlov'schi** (Moldovan), *judges*,
Sir Brian **Kerr**, *ad hoc judge*,

and also Paul **Mahoney**, *Registrar*.

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.

3. Summary of the judgment¹

Complaints

The applicants alleged that Government policy on night flights at Heathrow airport gave rise to a violation of their rights under Article 8 of the Convention and that they were denied an effective domestic remedy for this complaint, contrary to Article 13 of the Convention.

Decision of the Court

Article 8 of the Convention

In accordance with its supervisory function, the question before the Court was whether, in implementing the 1993 policy on night flights at Heathrow airport, a fair balance had been struck between the competing interests of the individuals affected by the night noise and the community as a whole. Under Article 8 § 2 of the Convention, restrictions on the right to respect for private and family life are permitted in the interests of the economic well-being of the country and for the protection of the rights and freedoms of others. It was therefore legitimate for the Government to have taken into consideration the economic interests of the airline operators and other enterprises and the economic interests of the country as a whole.

In previous cases in which environmental issues had given rise to violations of the Convention, the national authorities had failed to comply with some aspect of domestic law. In the present case, however, the policy on night flights had been found to be compatible with domestic law. Environmental protection had to be taken into account by Governments in acting within their margin of appreciation and by the Court in its review of that margin, but it would be inappropriate for the Court to adopt a special approach to environmental protection by referring to a special status of environmental human rights.

The Court noted that the introduction of the 1993 scheme was a general measure, rather than a particular one aimed specifically at the applicants. The State therefore had to be left a wider choice as to the various ways by which it could fulfil its obligation under Article 8 to give due consideration to the particular interests affected. The Court noted that there were difficulties in establishing whether the 1993 scheme had actually led to an increase in night noise and was unable to reach any firm conclusions on that point. However, there was nothing to suggest that the authorities' decision to introduce a scheme based on the quota-count system was as such incompatible with Article 8.

Regarding the economic interests which conflicted with the desirability of limiting or halting night flights, the Court considered it reasonable to assume that the night flights contributed at least to a certain extent to the general economy. It could be inferred from the studies commissioned by the Government on the economic value of night flights that there was a link between flight connections in general and night flights, and it could readily be accepted that there was an economic interest in maintaining a full service to London from distant airports. It was very difficult to draw a clear line between the interests of the aviation industry and the economic interests of the country as a whole. Airlines were subject to substantial limitations on their freedom to operate, however, including the night restrictions which applied at

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

Heathrow. The 1993 scheme had subsequently been modified, moreover, to restrict operators further.

A further relevant factor in assessing whether a fair balance had been struck was the availability of measures to mitigate the effects of aircraft noise generally. The applicants did not contest that the house prices in the relevant areas had not been adversely affected by the night noise. Since only a limited number of people had been adversely affected by the scheme (2 to 3% according to a 1992 sleep study), the fact that they could move elsewhere without financial loss was significant in assessing its overall reasonableness.

With regard to the procedural aspect of the case, the Government had consistently monitored the situation and the 1993 scheme had been preceded by a series of investigations and studies carried out from as early as 1962. The new measures introduced under the scheme had been announced to the public by way of a consultation paper published in January 1995. The applicants could have made any representations they felt appropriate and challenged subsequent decisions if their representations had not been taken into account.

Accordingly, the Court found that the authorities had not overstepped their margin of appreciation by failing to strike a fair balance. It concluded that there had been no violation of Article 8.

Article 13

The question to be addressed by the Court was whether the applicants had had a remedy at national level to enforce their Convention rights. It was clear, as noted by the Chamber, that the scope of review by the domestic courts had been limited at the material time to examining whether the authorities had acted irrationally, unlawfully or manifestly unreasonably (classic English public-law concepts). Prior to the entry into force of the Human Rights Act 1998, the courts had not been able to consider whether the claimed increase in night flights represented a justifiable limitation on the right to respect for the private and family lives or the homes of those who lived near Heathrow Airport. The Court accordingly held that there had been a violation of Article 13

Judges Costa, Ress, Türmen, Zupančič and Steiner expressed a joint dissenting opinion and Sir Brian Kerr expressed a dissenting opinion, both of which are 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.