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

Press Release
issued by the Registrar of the Court

no. 033
20.01.2011

Mandatory membership of landowner in hunting association found to be justified by public interest

In today's Chamber judgment in the case Herrmann v. Germany (application no. 9300/07), which is not final[1], the European Court of Human Rights held, by a majority, that there had been:

No violation of Article 1 of Protocol No. 1 (protection of property) of the European Convention on Human Rights alone or taken together with **Article 14 (prohibition of discrimination) and no violation of Article 9 (freedom of thought conscience and religion).**

The case concerned the applicant's complaint about being obliged to tolerate the hunt on his premises even though he is opposed to hunting on moral grounds.

Principal facts

The applicant, Günter Herrmann, is a German national who was born in 1955 and lives in Stutensee (Germany).

Mr Herrmann is the owner of two landholdings in Rhineland-Palatinate each of which are smaller than 75 hectares. Under the German Federal Hunting Law (*Bundesjagdgesetz*) he is thereby automatically a member of the Langsur hunting association and has to tolerate the hunt on his premises. Being opposed to hunting on ethical grounds, he filed a request with the hunting authority to terminate his adherence to the association, which was rejected. A request to the same effect was rejected by the Administrative Court Trier in January 2004, whose judgment was upheld by the appeal court and the Federal Administrative Court.

In December 2006, the Federal Constitutional Court declined to consider Mr Herrmann's constitutional complaint, holding in particular that the Federal Hunting Law aimed to preserve game animals in a way that was adapted to the rural conditions, and to ensure a healthy and varied wildlife. In the court's view, the obligatory adherence to a hunting association was an appropriate and necessary means to achieve these aims and did not violate Mr Herrmann's property rights or his rights to freedom of conscience or of association. His right to equal treatment had not been violated either, as the law was binding on all landowners, and the owners of land of more than 75 hectares, while not being automatically members of a hunting association, were equally obliged to either exercise the hunt themselves or tolerate it on their premises.

1 Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Complaints, procedure and composition of the Court

Mr Herrmann complained that the obligation to tolerate the exercise of hunting rights on his premises violated his right to the peaceful enjoyment of his possessions under Article 1 of Protocol No. 1 and, relying on Article 1 of Protocol No. 1 taken together with Article 14, that the Federal Hunting Law discriminated against him. He further alleged a violation of Article 9, and of Article 11 (freedom of assembly and association) alone and taken together with Article 14.

The application was lodged with the European Court of Human Rights on 12 February 2007. The associations *Bundesarbeitsgemeinschaft der Jagdgenossenschaften und Eigenjagdbesitzer* and *Deutscher Jagdschutz-Verband* were given leave to intervene as third parties and submitted written observations.

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

Peer **Lorenzen** (Denmark), *President*,
Renate **Jaeger** (Germany),
Rait **Maruste** (Estonia),
Isabelle **Berro-Lefèvre** (Monaco),
Mirjana **Lazarova Trajkovska** (the Former Yugoslav Republic of Macedonia),
Zdravka **Kalaydjieva** (Bulgaria),
Ganna **Yudkivska** (Ukraine)*, Judges*,

and also Claudia **Westerdiek**, *Section Registrar.*

Decision of the Court

Article 1 of Protocol No. 1

It was common ground between the parties, and the Court agreed, that the obligation to allow the practice of the hunt on Mr Herrmann's premises interfered with his right to the peaceful enjoyment of his property. The Court accepted, however, that the aim of the provisions in question, namely the fact that the management of the game stock was aimed at maintaining varied and healthy game populations and at avoiding game damage, was in the general interest.

The Court took note of the German Government's argument that the situation in Germany as one of the most densely populated areas in Central Europe made it necessary to allow area-wide hunting on all suitable premises. It observed that the law in question applied across Germany, which distinguished the situation from that in another case[2], against France, where only 29 of the 93 *départements* concerned had been made subject to the regime of compulsory adherence to hunting associations. The German legal regime did moreover not exempt any public or private owners of property which was suitable for hunting from the obligation to tolerate hunting on their premises.

The Court further noted that under the law in question, Mr Herrmann had a claim to a share of the profit of the lease corresponding to the size of his property. While the sum he could claim did not appear to be substantial, the relevant provisions prevented other individuals from drawing a financial profit from the use of the applicant's land. He further had a claim to be compensated for any damages which might be caused by the exercise of the hunt on his premises.

The Court concluded from these considerations that there had been no violation of Article 1 of Protocol No. 1.

[2] *Chassagnou and Others v. France*, Grand Chamber (25088/94, 28331/95 and 28443/95) of 29 April 1999

Article 1 of Protocol No. 1 taken together with Article 14

There existed a difference in treatment between the owners of smaller plots and those of larger plots in that the latter remained free to choose in which way to fulfil their obligation under the hunting laws.

However, the Court agreed with the German Government's argument that that difference in treatment was justified in particular by the necessity to pool smaller plots in order to allow for area-wide hunting and thus to assure an effective management of the game stock. As regards the fact that Mr Herrmann was treated differently from owners of land which did not belong to a hunting district, the Court considered that their exemption from the general adherence to hunting associations was owed to the specific circumstances of the respective plot, which justified a difference in treatment.

It followed that there had been no violation of Article 14 of the Convention taken together with Article 1 of Protocol no. 1.

Article 11 alone and taken together with Article 14

The Court noted that the hunting associations in the *Land* of Rhineland-Palatinate were established in the form of public-law associations, being subject to the control of the hunting authority, and that their internal statutes were subject to the approval of that authority. Hunting associations were further allowed to issue cost orders by administrative acts, which were executed by the public exchequer. They were thus subject to State supervision which clearly went beyond the supervision normally exercised over private associations. The Court therefore considered them to be sufficiently integrated into State structures in order to qualify them as public law institutions.

It followed that they did not qualify as "associations" for the purpose of Article 11. The complaint under this Article therefore had to be declared inadmissible. The same applied, consequently, to the complaint under Article 11 taken together with Article 14.

Article 9

The Court did not find it necessary to determine whether Mr Herrmann's complaint fell to be examined under Article 9. With regard to its findings under Article 1 of Protocol No. 1, it considered any potential interference with his rights under Article 9 necessary in the public interest. There had accordingly been no violation of that Article.

Separate opinions

Judges Lorenzen, Berro-Lefèvre and Kalaydjieva expressed a joint dissenting opinion and Judge Kalaydjieva expressed a separate dissenting opinion; these separate opinions are annexed to the judgment.

The judgment is available only in English.

Press contacts
echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Nina Salomon (tel: + 33 3 90 21 49 79)
Emma Hellyer (tel: + 33 3 90 21 42 15)
Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)
Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)
Céline Menu-Lange (tel: + 33 3 90 21 58 77)
Frédéric Dolt (tel: + 33 3 90 21 53 39)