CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 70518/01
by Uno PIIPPO
against Sweden

The European Court of Human Rights (Second Section), sitting on 21 March 2006 as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr I. CABRAL BARRETO,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM, *judges*,
and Mrs S. DOLLÉ, *Section Registrar,*

Having regard to the above application lodged on 16 March 2001,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Uno Piippo, is a Swedish national, who was born in 1941 and lives in Karungi. The Swedish Government ("the Government") are represented by their Agent, Mr Mattias Falk, of the Ministry of Foreign Affairs.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

In 1983 the applicant agreed to include his agricultural property, Karungi 7:12, in the newly established Karungi Joint Hunting Area ("the JHA"), regulated by the Act on Joint Hunting Areas (*Lagen om jaktvårds-områden*, 1980:894). At the same time the applicant became member of the Karungi Joint Hunting Area Association (*Karungi jaktvårdsområdesförening*; hereinafter "the JHAA") which administered the area.

Thus, the applicant could hunt within the joint area, including his own property, but was obliged to co-ordinate the hunting with the other hunting rights holders**.** Subsequently, the applicant acquired yet another property, Karungi 54:1, which already formed part of the JHA. The JHA's area covered 4,970 hectares, of which the applicant's property covered approximately 542 hectares. In 1995 the JHA's area became part of a larger "elk preservation area" (*älgskötselområde),* which encompassed 19,200 hectares in total.

In the spring of 1997, the applicant requested that his property be excluded from the JHA or, in the alternative, that part of his property be excluded. In support of his request the applicant submitted*, inter alia*, that as a consequence of his profession as a farmer he was unable to participate in the hunt at the times decided by the JHAA, and therefore, in practice, he was excluded from participating in the hunt. Specifically in support of his alternative request, the applicant submitted that it would not cause any detriment to the JHA if only part of his combined property (amounting to approximately 150 hectares) were to remain part of the JHA since allegedly the JHAA had shown little interest in elk hunting on the other part of his property.

The JHAA opposed the exclusion and on 13 August 1997 the County Administrative Board of Norrbotten (*Länsstyrelsen in Norrbottens Län*) refused the applicant's request, finding that the conditions for excluding the applicant's property from the JHA, pursuant to section 29 of the Act on Joint Hunting Areas, had not been met. The Board thus observed that it had not been established that there had been a change in the use of the relevant property, or that it was essentially without significance for game preservation. In reaching the latter conclusion, the Board specifically noted that the two properties in question together constituted 11% of the total area of the JHA. The Board also took into account that the properties were geographically situated in such a way that to a large extent they were surrounded by other parts of the JHA, and that their exclusion therefore would have had a negative impact on the possibility for effective game preservation and would obstruct the hunt. With regard to the balancing of the respective interests involved, the Board observed that it was important

that the landowners' purpose in establishing the JHA - i.e. to enable game preservation to be carried out in an effective manner - should not be undermined. It further noted that game preservation, primarily with respect to the stock of elks, was effective only when it could be carried out over a continuous and uninterrupted area. The Board therefore concluded that the public interest in retaining the land in question as part of the JHA outweighed the applicant's private interest in exercising his right of ownership to its full extent.

The applicant appealed against the decision to the County Administrative Court *(Länsrätten i Norrbottens Län*), before which he submitted that there had been a change of use of his property, as envisaged by section 29 of the Act on Joint Hunting Areas, in that the area under cultivation had increased from 30 hectares to 65 hectares, and that the number of animals kept on the farm [apparently cattle] had increased from 50 to 90.

On 2 October 1997 the County Administrative Court – by two votes to two, the presiding judge having a casting vote – found for the applicant. Assessing the balance between the public and private interests involved, the Court observed that the right to hunt lay within the scope of an owner's natural use of his property, and that great importance therefore had to be placed on the specific circumstances of each individual case. In the Court's opinion, the negative consequences that the exclusion of the applicant's property from the JHA could entail were of lesser importance than the property owner's interest in being able to use his property for the desired purposes. Having made this assessment, the court held that the applicant himself was entitled to decide whether he wanted all of his two properties, or only parts thereof, to be excluded from the JHA.

Two members of the Court disagreed with this conclusion and held that the decision of the County Administrative Board should be confirmed. Noting that the properties were situated within the JHA in such a manner that their exclusion would render the hunt more difficult, if not impossible, the minority concluded that the negative consequences of an exclusion were of considerably greater importance that the applicant's interest in being able to conduct the hunt on his property himself. In the minority's opinion there was, accordingly, a reasonable relationship of proportionality between the public "gain" and the applicant's "loss", if the request for the exclusion of the properties from the JHA was refused.

The JHAA and the County Administrative Board appealed against the judgment to the Administrative Court of Appeal *(Kammarrätten i Sundvall).*

The JHAA emphasised, *inter alia,* that the applicant's properties were split into several parts that affected the entire JHA, and submitted that game preservation and the stock of elks would be disturbed if joint hunting areas were permitted to be broken up in different parts. The JHAA observed that, in order to adapt itself to the different hunters' possibility to participate in the hunt, particularly the hunt for elk, the area had been divided into seven

different sub-areas with five different teams of hunters, without any specific instructions having been issued regarding the times when the different teams should hunt, etc. It was left for the members of each eight-man team to decide on their presence during the hunt. It noted in this context that the applicant – who was vice chairman of the JHAA – had been designated as the leader of one of these teams and had, in fact, participated in that year's hunt. The JHAA also submitted and relied upon an opinion by the Swedish Association for Hunting and Wildlife Management (*Svenska Jägareförbundet*) in which the latter association concluded, *inter alia,* that the reasons invoked by the applicant in support of his request for the exclusion of his properties from the JHA were not of a such a character so as to outweigh the public interest involved.

The County Administrative Board submitted for its part, that the County Administrative Court had underestimated the public interest in maintaining viable stocks of game, an objective that may be achieved *inter alia* through the creation of joint hunting areas. It further stated its opinion that game preservation within a joint hunting area is meaningful only when the area is continuous. Noting that the applicant had not been deprived of his right to hunt, the Board also expressed the view that the limitation that had been imposed upon his right to control fully the use of his property was one that he should be able to accept. In the balance to be achieved between the pressing public interest involved and the applicant's right to decide over his property, the Board had therefore concluded that the former interest was of greater weight.

By judgment of 6 July 1999, the Administrative Court of Appeal, having balanced the interests of the public against the interests of the individual, found against the applicant. In reaching this decision, it found that the conditions for excluding the properties in question from the JHA pursuant to section 29 of the Act on Joint Hunting Areas had not been met. In addressing the issue of whether a denial of the applicant's request for the exclusion of his properties would be in contravention of the Convention, the Administrative Court of Appeal observed that the reason offered by the applicant for his request mainly was that he should be permitted to decide over the hunt on his property. Making an overall assessment, the Court held that the limitations imposed upon the applicant's control of the use of his two properties through their inclusion in the JHA were reasonably proportionate to the pressing public interest of being able to carry out appropriate game preservation, including *inter alia* the hunt for elk, within the JHA. A refusal of the applicant's request for his properties to be excluded from the JHA could not therefore be held to be contrary to the principle of proportionality.

Leave to appeal to the Supreme Administrative Court (*Regeringsrätten*) was refused on 5 October 2000.

In the meantime, on 23 December 1999 the applicant had sold his property, Karungi 54:1, but had then rented it from the new owner for a period of 10 years.

On 1 January 2001 the JHA was transformed into a Joint Game Preservation Area in accordance with the terms of the 2000 Act on Joint Game Preservation Areas.

B. Relevant domestic law and practice

The Instrument of Government

Pursuant to chapter 2 section 18 of the Instrument of Government (*regeringsformen*), the property of every citizen shall be so guaranteed that no one may be compelled by expropriation or other such disposition to surrender property to public institutions or a private subject, or tolerate restrictions by public institutions on the use or land or buildings, other than where necessary to satisfy pressing public interests. A person who is compelled to surrender property by expropriation or other such disposition shall be guaranteed compensation for the loss. Such compensation shall also be guaranteed to a person whose use of land or buildings is restricted by public institutions in such a manner that the ongoing land use in the affected part of the property is substantially impaired, or the value of that part of the property suffers significant depreciation. Compensation shall be determined according to the principles laid down by law.

The Hunting Act

The right to hunt game is attached to the ownership of real property. Thus, section 10 of the 1987 Hunting Act (*jaktlagen*) expresses the general principle that it is the person who owns a piece of property that has the right to hunt on the land belonging to that property. It is, however, possible to convey and let hunting rights, with the result that the ownership of land and the right to hunt may be vested in different persons (sections 14-16). While the term "hunting rights" has no legal definition, it essentially consists of a right to hunt game, i.e. to catch or kill game (section 10 compared to section 2).

The right to hunt may be exercised only to the extent that hunting is acceptable from the viewpoint of game preservation. Thus, all game is in principle protected and may be hunted only if this is permitted under the Act or under other provisions or decisions that allow hunting (section 3). Specifically with respect to the hunt for elk, section 33 of the Act establishes the main rule that this may take place only if licensed by the relevant County Administrative Board and within an area that has been registered by the Board for this purpose ("licensed area"). However,

pursuant to section 3 of the 1987 Hunting Ordinance (*jaktförordningen*), an area that *inter alia* is of a size that permits the preservation of an essentially separate stock of elks may be registered with the relevant County Administrative Board as an "elk preservation area". Within such an area the hunt for elk may be carried out without a licence, and the hunting right holders themselves decide the number of elk to be hunted in accordance with a management plan that shall be adopted for the area. The formation of an elk preservation area is voluntary, and the co-ordination of the hunt within the area is similarly achieved through agreements reached on a voluntary basis.

The right to hunt is connected with a general obligation to preserve and protect the game within one's property. Where the right to hunt has been conveyed or let, this obligation remains with the landowner and hunting rights holder together. Thus, section 4 of the Hunting Act *inter alia* provides that preservation measures shall be taken for the purpose of preserving existing species of wild game and in order to promote an appropriate development of game stocks, taking both public and private interests into account. The preservation of game further includes an obligation to ensure, through specific measures, that the game is provided with protection and assistance, as well as an obligation to adapt the hunt to the availability of game.

The Act on Joint Hunting Areas (1980:894)

As a general rule, the Act on Joint Hunting Areas provided that, for the purpose of promoting the preservation of game and the hunting right holders' common interests through the co-ordination of game preservation, two or more properties or pieces of the same property could be joined to one joint hunting area and that, where this was done, the hunting right holders within that area would form an association to administer the area (section 1).

According to section 3, a person whose land was incorporated in a joint hunting area was a member of the joint hunting area association.

The County Administrative Board would decide on the establishment of a joint hunting area upon an application from one of the property owners concerned. For such an area to be formed, at least two thirds of the owners, representing at least half of the total area, had to agree (section 7). Moreover, the area had to be suitable with regard to the size and geographical position of the land in question, the existing stock of game and other conditions (section 8). However, no property could be included in such an area if, due to its size, use or any other reason, it lacked importance for the preservation of game. Conversely, land belonging to the same owner that appropriately could be retained as a single unit for the purposes of game preservation could not be included in a joint hunting area without the owner's consent (section 9).

The County Administrative Board confirmed the by-laws of the association with regard to certain aspects (section 4). Concerning the conduct of the hunt, section 21 of the Act provided that the by-laws of the association of hunting right holders should specify *inter alia* the extent to which joint hunting was to take place within the area. However, a property owner, who for reasons of conscience was opposed to hunting, was entitled, upon request, to have his property excluded from the hunt (section 11).

The County Administrative Board could decide to dissolve a joint hunting area association under certain conditions (section 26).

The exclusion of an individual property from the joint hunting area was governed by section 29 of the Act. A property could be excluded from the joint hunting area if, as a result of a change in its use or for other reasons, it had lost its essential importance for game preservation. The association itself could decide to exclude the property if it agreed with the property owner. Otherwise, it was for the County Administrative Board to determine the issue.

Decisions made by the general meeting or the board of the association of hunting rights holders were subject to appeal to the relevant County Administrative Board (Section 33). However, the decisions of the Board could in turn be appealed to the relevant County Administrative Court. Subject to the grant of leave to appeal, a further appeal thereafter lay to the relevant Administrative Court of Appeal and, in the final instance, to the Supreme Administrative Court (section 34).

On 1 January 2001 the Act on Joint Hunting Areas was replaced by the 2000 Act on Joint Game Preservation Areas (*lag om viltvårdsområden)*.

COMPLAINT

The applicant complained that the refusal to exclude his properties from the joint hunting area imposed an excessive burden on him, in violation Article 1 of Protocol No. 1 to the Convention.

THE LAW

The applicant complained that the refusal to exclude his properties from the joint hunting area imposed an excessive burden on him, in violation Article 1 of Protocol No. 1 to the Convention, which reads as follows:

> "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 ..."

In the Government's opinion, the interference at issue must be regarded as a measure of control over the use of the property in question, to be examined under the second paragraph of Article 1 of Protocol No. 1, which was explicitly provided for by legislation and in accordance with the general interest. Furthermore, in their decisions both the County Administrative Board and the Administrative Court of Appeal had struck a fair balance between the demands of the general interest and the protection of the applicant's right to property, and the refusal to exclude the applicant's properties from the JHA did not impose an excessive burden on him in violation of Article 1 of Protocol No. 1 to the Convention.

The applicant disagreed and submitted that, due to his profession as a farmer, he was unable to participate in the elk hunt. He had to work at the farm in the mornings between 6 and 9 o'clock, which was exactly when the elk hunting took place, and it was impossible for him to find a replacement. Moreover, he maintained, it would not cause any detriment to the JHA if his property was excluded from it.

The Court finds that the fact that the applicant's property could not be excluded from the joint hunting area constitutes a measure controlling the use of property in the general interest under the second paragraph of Article 1 of Protocol No. 1. According to its well-established case-law, the second paragraph of Article 1 of Protocol No. 1 must be construed in the light of the principle laid down in the first sentence of the Article. Consequently, any interference must achieve a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The search for this balance is reflected in the structure of Article 1 as a whole, and therefore also in the second paragraph thereof: there must be a reasonable relationship of proportionality between the means employed and the aim pursued. In determining whether this requirement is met, the Court recognises that the State enjoys a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified in the general interest for the purpose of achieving the object of the law in question (see *Chassagnou and Others v. France* ([GC], nos. 25088/94, 28331/95 and 28443/95, ECHR 1999-III, 75; Fredin v. Sweden (no. 1), Series A no. 192, p. 17, § 51; *Jonasson v. Sweden* (dec.), no 14444/88, 1 April 1992, and *Johansson v. Sweden* (dec.), no. 25490/94, 17 January 1996).

In the present case, the creation and maintenance of the JHA aimed to promote game preservation and the common interests of hunting right holders. The Court considers this to be a legitimate aim in the general interest.

As to the question whether there was a reasonable relationship of proportionality between the means employed and the aim pursued, the Court recalls its finding in the case *Chassagnou and Others v. France* (cited above, § 85), that notwithstanding the legitimate aims of the Loi Verdeille when it was adopted, the result of the compulsory-transfer system which it laid down had been to place the applicants in a situation which upset the fair balance to be struck between protection of the right of property and the requirements of the general interest. Compelling small landowners to transfer hunting rights over their land so that others could make use of them, in a way which was totally incompatible with their beliefs, imposed a disproportionate burden which was not justified under the second paragraph of Article 1 of Protocol No. 1.

In the present case, under the Act on Joint Hunting Areas of 1980, a JHA could only be established with the agreement of the qualified majority of the property owners involved, and only if the relevant property had significance for game preservation. However, a property owner who for reasons of conscience was opposed to hunting was entitled to have his property excluded from the hunt.

The Act entailed the creation of an association of hunting right holders responsible for achieving the desired co-ordination of the conduct of the hunt and of the necessary measures for the preservation of game. Members of the association possessed the right to vote on these matters, and were thus able to influence the decisions of the association on equal terms.

In the present case, the applicant originally agreed to the inclusion of his property in the JHA. He was himself an active hunter and vice chairman of the JHAA. Subsequently, fourteen years later, he sought the exclusion of his property from the JHA, not on grounds of conscience, but for practical personal reasons as he wished to retain full control over the conduct of the elk-hunt on his property, as he saw fit.

From the domestic proceedings it follows that the applicant's two properties together constituted a significant proportion of the total area of the JHA, and that they were geographically positioned within the JHA in such a way that they, to a large extent, were surrounded by other parts of the area.

In these circumstances, the Administrative Court of Appeal, by judgment of 6 July 1999, found that the limitations imposed upon the applicant's control of the use of his two properties through their inclusion in the JHA were reasonably proportionate to the pressing public interest of being able to carry out appropriate game preservation, including the hunt for elk, within the JHA.

Consequently, the hunt on the applicant's properties continued to be subject to the decisions of the JHAA (and the limitations on the right to hunt pursuant to the Hunting Act of 1987). However, the applicant kept his right to hunt within the JHA, including on his own property, and he remained a

member of JHAA. He thus had influence via his voting right on matters relating to game preservation and the more detailed rules regulating the exercise of the hunting rights. Moreover, any decision taken by JHAA could be appealed to the County Administrative Board and, following its decision, to the administrative courts, in accordance with sections 33 and 34 of the Act on Joint Hunting Areas.

In the light of these considerations, the Court finds that the present case is clearly distinguishable from that of *Chassagnou and Others v. France* (cited above), and having regard to the wide margin of appreciation enjoyed by the Contracting States, the Court cannot find that the decision to refuse to exclude the applicant's properties from the JHA was disproportionate to the aim pursued.

It follows that the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court by a majority

Declares the remainder of the application inadmissible.

S. DOLLÉ
Registrar

J.-P. COSTA
President