



European Court of Human Rights rejects as inadmissible case concerning planning permission for Berlin Brandenburg Airport

In its decision in the case of [Büttner and Krebs v. Germany](#) (application no. 27547/18) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned the planning permission for the construction of the Berlin Brandenburg Airport. The applicants, who owned property near the airport, unsuccessfully challenged the planning decision in the German courts. They alleged that the authorities knowingly provided incorrect information about the projected flight paths during the planning approval procedure. In particular, parallel flight paths had been projected in that procedure even though it had been clear that flight paths with a 15-degree divergence would be required in order to ensure simultaneous take-offs. The applicants, whose property is situated on the diverged flight paths, alleged that they had only realised after planning permission had been granted that the noise impact on their properties would be far greater than they had originally thought.

Before the Court, the applicants complained that they had not had access to all the relevant information on the projected flight paths and noise impact of the airport, meaning that they had been unable to effectively challenge the planning decision. They also complained that the German courts had considered as irrelevant certain procedural shortcomings, namely the authorities' failure to display plans in all the municipalities that were going to be affected by aircraft noise from the new airport and to include in the assessment of the airport's environmental impact the areas that would be affected by the revised routes. They relied on **Article 8 (respect for private and family life)** and **Article 6 § 1 (right to a fair trial/right of access to court)** of the European Convention on Human Rights.

The Court agreed with the national courts' assessment of the applicants' case, which had been thoroughly examined in court proceedings that had provided all necessary safeguards. It notably agreed with the courts' finding that the rights at stake had been correctly balanced in the planning decision and that, although there had been certain procedural shortcomings, the outcome would not in any event have been more favourable to the applicants. In particular, although the flight paths ultimately used had been different to the ones outlined in the planning decision, the noise impact affected a broadly similar amount of people.

Principal facts

The applicants, John Büttner and Jutta Krebs, are German nationals who were born in 1967 and 1939 respectively and are homeowners in Zeuthen (Germany). John Büttner lives 7.5 km, and Jutta Krebs 9 km, away from Berlin Brandenburg Airport's southern runway.

In 1996 a decision was taken to consolidate Berlin's three airports into one single airport, now operating as Berlin Brandenburg Airport. In March 1998 an outline plan was released showing the projected flight paths for landings and take-offs from the new airport. The projected flight paths were intended to run in parallel for several kilometres after take-off. It was understood, at the time, that the runways would not be used for simultaneous departures, although this was not expressly stated.

The planned parallel flight paths were kept throughout the planning approval process. They were put on display during the public consultation process in 2000; used to carry out the mandatory health, environmental and noise impact studies required for planning permission; and to calculate

which residents would be able to claim compensation or ask for sound insulation in their homes. Moreover, the parallel flight paths were included in the request for planning permission in 1999, which was subsequently granted.

However, as early as September 1998, *Deutsche Flugsicherung GmbH* (one of the key players involved in planning the new airport) had raised concerns about the parallel flight paths, stating that the flight paths would have to be changed by 15 degrees if the runways were to be used for simultaneous take-offs. According to the planning authority, the need for simultaneous take-offs was one of the main reasons behind the development of Berlin Brandenburg Airport.

It was not until 2010 that the revised flight paths with the 15-degree divergence were made public. The applicants claimed that it was at this time that they realised that the noise impact on their properties, which are situated on these flight paths, would be far greater than they had originally thought. Nevertheless, the predicted noise levels did not meet the threshold for them to be eligible for sound insulation or compensation.

In 2010 the applicants asked the planning authority either to revoke the planning approval, or to prohibit the simultaneous use of both runways. The planning authority rejected the request.

The applicants brought an action in the Federal Administrative Court claiming that the planning authority had knowingly used unfeasible flight paths in the planning approval procedure and had therefore misled the applicants about the noise impact of the project. They alleged that this had rendered the choice of location for the airport flawed. The court dismissed the applicants' action as ill-founded finding that there were no legal errors in the planning decision.

It did find that there had been procedural shortcomings in the public consultation process, namely that the plans had not been displayed in all the municipalities that were going to be affected by aircraft noise from the new airport, and in the assessment of the airport's environmental impact as it had failed to include the areas affected by the diverging departure routes. However, it ruled out that those shortcomings had affected the outcome of the approval procedure to the detriment of the applicants. In coming to those conclusions, the Federal Administrative Court thoroughly examined the noise impact of the diverging flight paths as compared to the parallel flight paths on which the planning documents had been based. It found that the population density in the areas affected by parallel flight paths and flight paths with a 15-degree divergence was broadly similar.

The applicants subsequently lodged a complaint with the Federal Constitutional Court alleging that their fundamental rights had been breached and that the Federal Administrative Court had wrongfully declared the planning decision lawful. The Constitutional Court declined to accept the applicants' complaint. It repeated that the planning authority had correctly balanced the interests at stake and that, even if the public consultation and environmental impact assessment had been carried out correctly, the outcome of the planning decision would not have been more favourable to the applicants.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 8 June 2018.

Relying on Article 8 (right to respect for private and family life) of the Convention, the applicants complained that the German authorities had not given them access to all the relevant information on the projected flight paths and noise impact of the new airport. This meant that they had been unable to effectively challenge the planning decision. Also relying on Article 6 § 1 (right to a fair trial/right of access to court), they complained that the German courts had considered as irrelevant procedural shortcomings identified in the decision-making process, thus disregarding their right of access to court.

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

Gabriele **Kucsko-Stadlmayer** (Austria), *President*,
 Tim **Eicke** (the United Kingdom),
 Faris **Vehabović** (Bosnia and Herzegovina),
 Branko **Lubarda** (Serbia),
 Armen **Harutyunyan** (Armenia),
 Anja **Seibert-Fohr** (Germany),
 Anne Louise **Bormann** (Denmark),

and also Andrea **Tamietti**, *Section Registrar*.

Decision of the Court

Articles 6 § 1

The Court began by noting that the German courts had rejected the applicants' complaints after carefully looking at the facts and legal elements ("the merits") and finding the planning decision to be lawful. The applicants' right of access to court had not therefore been restricted.

It went on to observe that it should not act as a court of fourth instance. It would only question the judgment of national courts if their findings appeared to be arbitrary or manifestly unreasonable. On the contrary, in the present case the German courts had given detailed reasons for finding that the procedural shortcomings identified had not influenced the outcome of the planning decision.

The Court therefore rejected the applicants' complaints under Article 6 § 1 as manifestly ill-founded.

Article 8

The Court began by acknowledging that the applicants' complaint under Article 8 essentially amounted to an allegation that the planning authority had knowingly misled them and other members of the public about the projected flight paths and noise impact of the airport by using unfeasible flight paths as the basis for the planning approval procedure. According to the applicants, this deception had meant that they had been unable to effectively challenge the development of the airport at the planning stage.

The German courts had, however, thoroughly examined the case in court proceedings that had provided all necessary safeguards and come to the well-founded conclusion that, despite the fact that parallel flight paths had been used throughout the planning approval process, the authorities had correctly balanced the competing interests. In particular, even if the diverging flight paths had been presented instead of the parallel paths, the outcome of the planning approval procedure would not have been more favourable to the applicants and therefore the procedural shortcomings did not warrant the revoking of the planning decision. The Court agreed with that assessment.

There was therefore no basis for finding that the planning authorities' failure to mention during the planning approval procedure that it was possible that different flight paths would eventually be used had infringed the applicants' rights under Article 8 of the Convention.

The complaint under Article 8 was therefore also manifestly ill-founded.

The decision is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.