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

Press Release
issued by the Registrar of the Court

ECHR 274 (2012)
26.06.2012

Landowner should not be obliged to tolerate hunting on his premises

In today's Grand Chamber judgment in the case of **Herrmann v. Germany** (application no. 9300/07), which is final[1], the European Court of Human Rights held, by a majority, that there had been:

a violation of Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights.

The case concerned a landowner's complaint about being forced to accept hunting on his land, even though he is morally opposed to hunting.

The Court held in particular that the obligation to tolerate hunting on their property imposed a disproportionate burden on landowners in Germany who were opposed to hunting for ethical reasons. The Court thereby followed its findings in two previous judgments concerning hunting legislation in France and Luxembourg.

Principal facts

The applicant, Günter Herrmann, is a German national who was born in 1955 and lives in Stutensee (Germany). As the owner of two plots of land in Rhineland-Palatinate which are smaller than 75 hectares, he is automatically a member of the Langsur hunting association under the Federal Hunting Law (*Bundesjagdgesetz*) and has to tolerate hunting on his premises. Being opposed to hunting on ethical grounds, he filed a request with the hunting authority to terminate his membership of the association, which was rejected. A request to the same effect was rejected by the administrative court, 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 membership of 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.

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 (protection of property) to the European Convention on Human Rights and, further relying on Article 1 of Protocol No. 1 taken together with Article 14

1 Grand Chamber judgments are final (Article 44 of the Convention).
All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

(prohibition of discrimination) of the Convention, that the Federal Hunting Law discriminated against him. He further alleged a violation of Article 9 (freedom of thought, conscience and religion) 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. In its Chamber judgment of 20 January 2011, the Court, by a majority, declared the complaint under Article 11 taken on its own and in conjunction with Article 14 inadmissible and held that there had been no violation of Article 1 of Protocol No. 1 or Article 14 and no violation of Article 9. On 20 June 2011, the case was referred to the Grand Chamber at the applicant's request. A Grand Chamber hearing was held on 30 November 2011.

The following organisations were given leave to intervene in the written procedure:

Deutscher Jagdschutz Verband (DJV)
Bundesarbeitsgemeinschaft der Jagdgenossenschaften und Eigenjagdbesitzer (BAGJE)
European Centre for Law and Justice (ECLJ)

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

Nicolas **Bratza** (the United Kingdom), *President*,
Françoise **Tulkens** (Belgium),
Josep **Casadevall** (Andorra),
Nina **Vajić** (Croatia),
Dean **Spielmann** (Luxembourg),
Corneliu **Bîrsan** (Romania),
Boštjan M. **Zupančič** (Slovenia),
Khanlar **Hajiyev** (Azerbaijan),
Egbert **Myjer** (the Netherlands),
David Thór **Björgvinsson** (Iceland),
Nona **Tsotsoria** (Georgia),
Nebojša **Vučinić** (Montenegro),
Angelika **Nußberger** (Germany),
Paulo **Pinto de Albuquerque** (Portugal),
Linos-Alexandre **Sicilianos** (Greece),
Erik **Møse** (Norway),
André **Potocki** (France),

and also Michael **O'Boyle**, *Deputy Registrar.*

Decision of the Court

The Court underlined that the Grand Chamber could not examine those parts of the application which had been declared inadmissible by the Chamber, namely Mr Herrmann's complaint under Article 11, taken alone and in conjunction with Article 14. Furthermore, the Court did not have jurisdiction to examine a complaint by Mr Herrmann under Article 8 of the Convention (right to respect for private and family life), which he had not raised before the Chamber.

Article 1 of Protocol No. 1

It was uncontested between the parties, and the Court endorsed that assessment, that the obligation to allow hunting on his land interfered with Mr Herrmann's right to the peaceful enjoyment of his property. Furthermore, the Court considered that the German hunting legislation could be said to constitute a means of controlling the use of property in accordance with the general interest for the purpose of Article 1 of Protocol No. 1.

The Court referred to two other cases in which it had examined whether the obligation to tolerate hunting on one's land was compatible with the Convention. In its Grand Chamber judgment *Chassagnou and Others v. France* it had found that 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 on them which was not justified under Article 1 of Protocol No. 1. Those findings had been confirmed in its Chamber judgment *Schneider v. Luxembourg*.[2] Since the adoption of those two judgments, a number of European States had amended their respective legislation or modified their case-law to the effect that landowners were given the possibility to object to hunting on their land or to terminate their membership in a hunting association under certain conditions.

It remained to be examined whether, as argued by the German Government, the German hunting legislation as applied in Mr Herrmann's case differed in a relevant way from the factual and legal situation in France and Luxembourg at the time.

The Court observed that the aims of the German Federal Hunting Act included the management of game stocks in order to maintain varied and healthy game populations. In that respect, the German legislation did not differ significantly from the relevant French and Luxembourg legislation, which pursued comparable objectives, namely the "rational organisation of hunting, consistent with respect for the environment" and the "rational management of game stocks and preservation of the ecological balance", respectively.

The German Government had emphasised the fact that the German hunting legislation applied nationwide whereas the relevant French legislation only applied to some *départements*. However, the Court noted that following a reform which entered into force in 2006, the German *Länder* have the possibility – of which they had not made use so far - to adopt laws on hunting that differ from federal legislation. Moreover, the nationwide application of the hunting legislation in Luxembourg had not prevented the Court from finding a violation of the Convention in the case of *Schneider*. Furthermore, the legislation in all three countries provided for certain territorial and personal exceptions. For example, nature and game reserves were excluded from hunting districts in France and Germany. The French and Luxembourg legislation excluded State property and private property owned by the Crown, respectively, from hunting districts, while in Germany there was some differential treatment depending on the size of the land. In the Court's opinion, the differences in the scope of the relevant legislation in the three countries could not be considered decisive.

While French legislation did not grant landowners who were opposed to hunting any financial compensation for being obliged to tolerate the hunt on their premises, Luxembourg and German legislation had provided or did provide for members of hunting associations to receive a proportionate share of the profits from the leasehold. In Germany, that compensation was granted only when explicitly requested. The Court considered that requiring an objector to hunting to apply for compensation for the very matter which he opposed did not sit well with the respect for an ethical objection. It was doubtful whether strongly-held personal convictions could be traded against compensation. Finally, the German Federal Hunting Act did not expressly take into account the ethical convictions of landowners who are opposed to hunting.

The Court came to the conclusion that the situation in Germany did not differ substantially from those examined in the cases of *Chassagnou* and *Schneider*. It therefore saw no reason to depart from its findings in those cases, namely that the obligation to tolerate hunting on their property imposed a disproportionate burden on

[2] *Chassagnou and Others v. France* (25088/94, 28331/95 and 28443/95) Grand Chamber judgment of 29 April 1999 and *Schneider v. Luxembourg* (2113/04) Chamber judgment of 10 July 2007

landowners who were opposed to hunting for ethical reasons. There had accordingly been a violation of Article 1 of Protocol No. 1.

Other articles

In view of its findings under Article 1 of Protocol No. 1, the Court saw no need to examine separately the complaints under Article 14 in conjunction with Article 1 of Protocol No. 1 or the complaint under Article 9.

Just satisfaction (Article 41)

The court held that Germany was to pay Mr Herrmann 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 3,861.91 in respect of costs and expenses.

Separate opinions

Judge Pinto de Albuquerque expressed a partly concurring and partly dissenting opinion. Judges Davíd Thór Björgvinsson, Vučinić and Nußberger expressed a joint dissenting opinion. These opinions are annexed to the judgment.

The judgment is available in English and French.

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

Nina Salomon (tel: + 33 3 90 21 49 79)
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)
Denis Lambert (tel: + 33 3 90 21 41 09)