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

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Extension of main runway at Deauville Airport does not amount to violation of right to respect for private and family life of complainants or of right to peaceful enjoyment of possessions

In today's Chamber judgment in the case of **Flamenbaum and Others v. France** (applications nos. 3675/04 and 23264/04), which is not final[1], the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights, and

no violation of Article 1 of Protocol No. 1 (protection of property) to the Convention.

The case concerned the extension of the main runway at Deauville Airport and the resulting disturbance affecting the properties of local residents. Noting that the domestic courts had recognised the public-interest nature of the project and that the Government had established a legitimate aim – the region's economic well-being – the Court held, having regard to the measures taken by the authorities to limit the impact of the noise disturbance on local residents, that they had struck a fair balance between the competing interests. The Court also held that the applicants had not shown that the market value of their properties had dropped as a result of the runway extension.

Principal facts

The 19 applicants are owners or joint owners of homes located in or near the Saint-Gatien forest. These homes are at a distance of between 500 and 2,500 metres from Deauville-Saint-Gatien Airport's main runway which was built in 1931 by the town of Deauville and progressively expanded.

A noise exposure plan, drawn up in 1978 and approved in 1982, distinguished three zones according to their degree of exposure to noise. By a decree of 24 February 1986, the airport was classified as category B (medium-haul services).

In 1987 a draft aeronautical constraints clearance plan was drawn up. The prefects of Calvados and of Eure ordered a public inquiry. A petition bearing over 500 signatures was appended to the registers circulated for observations by the public. The local residents complained, in particular, that the plan did not include an environmental impact assessment or take account of the nuisance factors that might be generated by an increase in air traffic. On 1 June 1988 the inspector appointed to conduct the inquiry recommended approval of the plan.

By a decree of 4 April 1991 the Prime Minister approved the airport's aeronautical constraints clearance plan.

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

In June 1991 the association for the defence of local residents of Deauville-Saint Gatien Airport ("the ADRAD"), of which the applicants are all members, applied to the *Conseil d'Etat* for judicial review of the decree.

The *Conseil d'Etat* dismissed the application on grounds, among other things, that the decree classifying the airport in category B was no longer amenable to appeal and that as the decree was the subject of separate proceedings from those relating to the extension of the runway and those relating to the aeronautical constraints plan, those operations could be carried out separately according to a timetable determined by the authorities. The *Conseil d'Etat* found that there was no evidence that the disadvantages of the constraints plan were excessive having regard to the advantages that it presented for the operation of the airport.

In July 1990 the prefect of Calvados ordered a public inquiry concerning the plan to extend the runway. A firm of experts had previously carried out and completed – in June 1990 – an impact assessment study on the effects of the plans on the physical and biological environment, human activities, town planning, heritage and landscape and on noise disturbance. That impact assessment revealed that the extension of the runway would benefit not only the activity of the airport but also the local – or even regional – economy. With regard to noise disturbance, it found that the levels remained within the limits of the noise exposure plan approved in 1982 and did not recommend compensatory measures.

The public inquiry was carried out over one month in 6 district councils. The inquiry commission submitted its report on 12 October 1990 in which it approved the plan. It considered, in particular, that the extension of the runway would not significantly increase the number of aircraft movements, that there would be no marked increase in noise disturbance and that the extension of the runway would contribute to the economic development of the region. With regard to noise disturbance, it recommended that military training flights be stopped altogether and that there be no take-offs at night.

By decree of 5 March 1991, the prefect authorised the extension of the main runway to 2,550 metres, which was considered sufficient rather than the planned 2,720 metres. An application by the ADRAD for judicial review of that decree was dismissed by the Caen Administrative Court and by the Nantes Administrative Court of Appeal.

The works to extend and reinforce the runway were completed on 5 October 1993. The runway was opened for air traffic on 10 November 1993.

On 1 July 1994 the President of the Administrative Court ordered an expert report in order to determine, among other things, whether the extension of the runway had generated an increase in air traffic and noise disturbance, and to carry out noise measurements. The expert filed his final report in October 1997 in which he recorded the acoustic measurements carried out in August 1996 and in May and June 1997 in the property belonging to the President of the ADRAD. The expert recorded a decrease in air traffic, but an increase in heavy traffic and accordingly drew up a new noise exposure plan and recommended operational measures for the airport.

In August and September 1998, on the basis of the report, the applicants lodged an application with the Administrative Court for compensation for the damage caused by the runway extension. In judgments of 4 May 1999 the Administrative Court dismissed their applications. It held, firstly, that the expert report had been improperly prepared because the expert had carried out noise measurements on a non-adversarial basis and had exceeded his remit, but that the report could be used for information purposes. On the merits, the court found that heavy-tonnage aircraft had already been using the airport before the new runway had come into service and that if, in the worst-case scenario, local residents might be exposed to high-intensity noise during take-off on

some occasions, the increase in noise disturbance on account of the runway extension did not inconvenience the applicants to any greater degree than was generally experienced by inhabitants of localities situated near an airport.

An appeal by the applicants was dismissed by the Nantes Administrative Court of Appeal on similar grounds on 20 December 2000. An appeal on points of law by Mr Flamenbaum was dismissed by the *Conseil d'Etat* on 30 July 2003 and, by a decision of 30 December 2003, it declared the other seventeen appeals inadmissible.

In May and June 2006 the town of Deauville and the regions of Haute-Normandie and Basse-Normandie decided to form a joint union (*syndicat mixte*) of Deauville-Normandie Airport, which was authorised by an order of the prefect of Calvados of 21 July 2006. An appeal by the ADRAD against that order was dismissed by a judgment of the Administrative Court on 18 December 2007 that was subsequently upheld by the Administrative Court of Appeal on 16 December 2008 on the ground, in particular, that the development, planning, management and operation of Deauville Airport, on account of its strategic position, its huge potential in terms of economic and tourist development of the territory of Normandy and the prior existence of developed airport infrastructures, was of benefit to all the participating authorities.

A new noise exposure plan was approved, following a public inquiry, by a prefectoral order of the Basse-Normandie region of 29 September 2008.

Meanwhile, since April 2009, the authorities have put in place "reduced noise" procedures under which the altitude and the approach tracks for landing and take-off have been modified in order to limit the flyover of local residences and reduce noise disturbance.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), the applicants complained about the noise disturbance caused by the extension of the airport's main runway and of shortcomings in the related decision-making process.

Relying on Article 1 of Protocol No. 1 (protection of property), they also complained of the decline in market value of their properties as a result of the runway extension, and about the insulation costs that they had had to bear.

The application was lodged with the European Court of Human Rights on 27 January 2004 (Mr Flamenbaum) and on 21 June 2004 (the other applicants).

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

Mark **Villiger** (Liechtenstein), *President*,
Boštjan M. **Zupančič** (Slovenia),
Ann **Power-Forde** (Ireland),
André **Potocki** (France),
Paul **Lemmens** (Belgium),
Helena **Jäderblom** (Sweden),
Aleš **Pejchal** (the Czech Republic),

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

Decision of the Court

Article 8

The Court noted that the applicants' homes were situated at varying distances from the airport's main runway, the closest being several hundred metres away and the furthest 2.5 km away. The noise to which the applicants were exposed was of a sufficiently high level for Article 8 to be applicable, which the Government did not deny. In order to be compatible with Article 8, the interference must be prescribed by law, pursue a legitimate aim and be necessary in a democratic society. The authorities had to strike a fair balance between the interests of the individual and of the community as a whole, having regard to the wide margin of appreciation afforded to them in this area.

The Court observed first that the administrative courts dealing with the applicants' case found that the decisions taken by the authorities complied with domestic law. Accordingly, the interference in question was prescribed by law.

The Court observed next that the administrative courts had confirmed the economic interest in extending the runway, which was designed to accommodate higher-capacity aircraft. The Court thus concluded that there had been a legitimate aim: the economic well-being of the region.

Contrary to the submissions of the applicants, the Court did not consider it established that the extension of the runway had generated a considerable increase in air traffic. This was confirmed by the new noise exposure plan adopted in 2008. The prefect authorised an extension of the runway to 2,550 metres, instead of the 2,720 metres initially planned, on the ground that this was sufficiently long to meet the aim sought to be achieved. Moreover, the noisiest aircraft were now no longer authorised to fly in France. There was no longer any aerobatic flying or military training flights at the airport; civil training flights were regulated or even forbidden during certain periods or time bands. Furthermore, the Court observed that since 2009 the authorities had set in place "reduced noise procedures" under which the altitude and approach tracks for landing and take-off had been modified in order to limit the flyover of local residences and reduce noise disturbance.

Accordingly, having regard to those factors, the Court considered that the authorities had struck a fair balance between the competing interests.

With regard to the decision-making process, the Court observed that the planned extension of the runway had been preceded by a detailed impact assessment detailing the effects of the project on the physical and biological environment, human activities, town planning, heritage and landscape and also noise disturbance. A public inquiry had been carried out regarding the project during which, the materials having been made available, the public had been able to make observations on the inquiry registers and meet members of the inquiry commission. The impact assessment and the public inquiry file had been sent to the environmental advisory board at which the ADRAD had been represented. The aeronautical constraints clearance plan had also been the subject of a public inquiry in the district councils concerned during which the local residents had been able to make their observations. Lastly, a further public inquiry had preceded the adoption of the radio constraints plan. Consequently, the proper inquiries and studies had been carried out and the public had had satisfactory access to the conclusions.

Moreover, the applicants had had two types of remedy before the administrative courts: an application for judicial review and an application for compensation for damage and had used both those remedies.

With regard to the alleged "fragmentation" of the decision-making process and the fact that the applicants had not been able to have the entire plan examined by one single judge, the Court pointed out that whilst States had a duty to take into consideration individual interests – respect for which it was obliged to secure by virtue of Article 8 – they must in principle be left a choice between different ways and means of complying with that obligation. In any event the applicants had been able to participate in each stage of the decision-making process and submit their observations. Accordingly, the Court saw no flaw in the decision-making process, and there had therefore been no violation of Article 8.

Article 1 of Protocol No. 1

The Court reiterated that Article 1 of Protocol No. 1 did not in principle guarantee the right to keep property in a pleasant environment.

The applicants submitted that the noise disturbance generated by the runway extension had caused a drop in the value of their property. They relied on two expert reports, only one of which had been ordered by the Administrative Court and had subsequently been deemed by the Administrative Court, the Administrative Court of Appeal and the *Conseil d'Etat* to have been improperly prepared. The applicants also relied on another expert report that had been prepared at their request and concerned seven of the properties. The expert, who gave no indication as to the method used to calculate their current market value, concluded that there had been a drop in value of between 25% and 60% on account of the presence of the airport, without, however, indicating which method he had used to arrive at that conclusion and to calculate the decrease in value of the properties. The Court noted that the applicants' complaint did not concern the disturbance generated by the presence of the airport but that caused by the extension of its main runway.

The Court reiterated that the Chamber had asked the parties to specify the updated sale price of their properties, their current market value, and to indicate whether that market value corresponded to the market price of similar properties that were not affected by the noise disturbance complained of. The documents produced by the applicants did not provide the answers requested and some of them contained conflicting information regarding the market value of one and the same property and the decrease in value related to the presence of the airport.

In these circumstances the applicants had not established whether and to what extent the extension of Deauville Airport's main runway had affected the value of their property. Nor could the Court take account of the cost of the soundproofing work, because the applicants had failed to establish a causal link between the extension of the runway and the increase in traffic and because of the measures taken by the authorities to limit the impact of the noise disturbance.

As the applicants had failed to establish the existence of an infringement of their right to peaceful enjoyment of their possessions, the Court concluded that there had been no violation of Article 1 of Protocol No. 1.

The judgment is available only in French.

Press contacts

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

Denis Lambert (tel: + 33 3 90 21 41 09)
Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)
Céline Menu-Lange (tel: + 33 3 90 21 58 77)
Nina Salomon (tel: + 33 3 90 21 49 79)

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.