FIFTH SECTION

CASE OF HERRMANN v. GERMANY

(Application no. 9300/07)

JUDGMENT

STRASBOURG

20 January 2011

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Herrmann v. Germany,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Peer Lorenzen, *President,*
Renate Jaeger,
Rait Maruste,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva,
Ganna Yudkivska, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 7 December 2010,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. **9300/07**) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a German national, Mr Günter Herrmann ("the applicant"), on 12 February 2007.

2. The German Government ("the Government") were represented by their Agent, Mrs A. Wittling-Vogel, of the Federal Ministry of Justice.

3. The applicant alleged, in particular, that his automatic adherence to a hunter's association and his obligation to allow the exercise of hunting rights on his property violated his rights under Articles 9, 11 and 14 of the Convention and under Article 1 of Protocol no. 1 to the Convention.

4. On 18 November 2009 the President of the Fifth Section decided to give notice of the application and decided to communicate the complaints to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. The parties replied in writing to each other's observations. In addition, third-party comments were received from *Bundesarbeitsgemeinschaft der Jagdgenossenschaften und Eigenjagdbesitzer* (BAGJE), represented by Mr Reh, legal counsel, and *Deutscher Jagdschutz-Verband, e. V.*, represented by Mr Thies, legal counsel, who had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1955 and lives in Stutensee.

7. Under the German Federal Hunting Law (*Bundesjagdgesetz*), owners of hunting grounds with a surface of less than 75 hectares are *de jure* members of a hunting association (*Jagdgenossenschaft*), while owners of bigger plots of land manage their own hunting district. The applicant owns two landholdings in Rhineland-Palatinate which are smaller than 75 hectares in a single block. He is thus an automatic member of a hunting association, in the instant case of the municipality of Langsur.

8. On 14 February 2003 the applicant, who is opposed to hunting on ethical grounds, filed a request with the hunting authority to terminate his adherence to the hunting association. The authority rejected his request on the grounds that his adherence was prescribed by law and that there was no provision on the termination of adherence.

9. The applicant brought proceedings before the Treves Administrative Court. Relying in particular on the Court's judgment in the case of *Chassagnou and Others v. France* ([GC] nos. 25088/94, 28331/95 and 28443/95, ECHR 1999-III), he requested the court to establish that he was not a member of the hunting association of the municipality of Langsur.

10. On 14 January 2004 the administrative court rejected the applicant's request. It considered that the Federal Hunting law did not violate the applicant's rights. With regard to the *Chassagnou*-judgment the administrative court considered that the situation in Germany differed from the one in France. It observed, in particular, that the German owners of hunting grounds, by way of their adherence to the hunting association, were in a position to influence the decision-making process on how the hunting rights should be exercised. Furthermore, they had a right to receive a share of the profits derived from the exploitation of the hunting rights. All owners of plots which were too small to allow a proper management of hunting rights adhered to a hunting association. The court also considered that the hunting associations did not only serve the leisure interests of those who exercised the hunting rights, but imposed certain specific obligations on them, which served the general interest, in particular the duty to manage the game stock with the aim of maintaining varied and healthy game populations and to avoid damages caused by wild game. They were furthermore obliged to comply with specific quotas set by the administration for the hunting of game. These duties applied in the same way to the owners of hunting grounds more the 75 hectares of area, notwithstanding the fact that these bigger plots were not regrouped in hunting associations.

11. On 13 July 2004 and 14 April 2005 the Rhineland-Palatinate Administrative Court of Appeal and the Federal Administrative Court rejected the applicant's appeals on the same grounds as the administrative court.

12. On 13 December 2006 the Federal Constitutional Court (1 BvR 2084/05) refused to admit the applicant's constitutional complaint for adjudication. It noted, at the outset, that the provisions of the Federal Hunting Law did not violate the applicant's right to the peaceful enjoyment of his property, but defined and limited the exercise of this right in a proportionate way. The relevant provisions pursued legitimate aims, were necessary and did not impose an excessive burden on the landowners.

13. When defining the content and the limits of property rights, the legislator had to weigh the proprietors' legitimate interests against the general interest. He had, in particular, to respect the principles of proportionality and of equal treatment. The limitations imposed on the exercise of property rights must not infringe the core area of the protected right. The margin of appreciation allocated to the legislator depended on the specific context; the stronger the social context, the wider the margin of appreciation.

14. Applying these principles to the instant case, the Federal Constitutional Court considered that the applicant's obligatory adherence to a hunting association did not violate his property rights. The core-area of that right was not infringed. The Federal Hunting Law pursued legitimate aims and limited the property rights in a proportionate way. Encompassed in the notion of "management and protection of the game stock (*Hege)*", it had the aim to preserve the game in a way that was adapted to the rural and cultural conditions, and to ensure a healthy and varied wildlife. Under the Federal Hunting Law, game keeping was not only an instrument to prevent damages caused by wild-life, but also to avoid any impediment to the agricultural, forestry and fishery exploitation of the land. These aims served the general interest.

15. The obligatory adherence to a hunting association was an appropriate and necessary means to achieve these aims. Referring to paragraph 79 of the above-cited *Chassagnou* judgment, the Constitutional Court considered that the Court had acknowledged that it was undoubtedly in the general interest to avoid unregulated hunting and encourage the rational management of game stocks. The obligatory adherence to a hunting association was also a proportionate means. The impact on the property rights was not particularly serious and did not outweigh the general interest in a rational management of game stocks. Furthermore, the Federal Hunting Law endowed every member with the right to participate in the decision-making process and to receive a share of the profits derived from the lease of the hunting rights.

16. The Constitutional Court further considered that there was no violation of the applicant's freedom of conscience. Referring to paragraph 114 of the *Chassagnou* judgment, it accepted that the applicant's convictions attained a certain level of cogency, cohesion and importance and where therefore worthy of respect in a democratic society. Accordingly, the Federal Constitutional Court considered that the applicant's complaint might fall within the scope of freedom of conscience, but that there was, in any event, no violation of that right. The applicant was neither enjoined to exercise the hunt himself, nor to participate in it or to support it. The fact that he had to tolerate the exercise of the hunt on his premises did not result from his own decision, but was the result of the legislator's

legitimate decision. The right to freedom of conscience did not encompass the right that the whole legal order was submitted to one's own ethical standards. If the legal order distributed the right to exploit a certain property to several claimholders, the owner's conscience did not necessarily outweigh the other claimholders' constitutional rights. If the applicant's landholding – and that of other owners who were opposed to hunting – were removed from the hunting association because of their convictions, the whole system of property ownership and of the management of the game stock would be jeopardised. The right to freedom of conscience did not outweigh the general interest in the instant case.

17. The Federal Constitutional Court further considered that the applicant's complaint did not come within the scope of the right to freedom of association, because the German hunting associations were of a public nature. Vested with administrative, rule-making and disciplinary prerogatives, they remained integrated into State structures. There was thus no doubt that the association was not simply qualified as "public" in order to remove it from the scope of Article 11 of the Convention.

18. The Federal Constitutional Court further considered that the applicant's right to equal treatment had not been violated. There was an objective reason which justified drawing a distinction between the owners of landholdings less than 75 hectares in area and those more than 75 hectares in area. Contrary to the situation in France, which had been examined by the Court in the *Chassagnou* judgment, the Federal Hunting Law applied to the whole surface of Germany and was binding on all landowners. The owners of land more than 75 hectares in area had the same duties in game keeping as those adhering to hunting associations.

19. Finally, the Federal Constitutional Court observed that the administrative courts had considered the *Chassagnou* judgment and had accentuated the differences between the German law and the French Law as applicable at the relevant time.

II. RELEVANT DOMESTIC LAW

20. Article 20a of the Basic Law provides:

> "Mindful also of its responsibility toward future generations, the State shall protect the natural bases of life by legislation and, in accordance with law and justice, by executive and judicial action, all within the framework of the constitutional order."

Section 1 § 1 of the Federal Hunting Law *(Bundesjagdgesetz)* provides that the hunting right encompasses the right to manage and protect the game stock on a particular area of land, to exercise the hunt and to take possession of the game. The hunting right is linked to the duty to manage and protect the game stock (*Pflicht zur Hege*).

Under § 2 of that section, the management of the game stock is aimed at maintaining varied and healthy game populations at level compatible with land care and cultural conditions and at avoiding game damage.

§ 3 distinguishes between the hunting right (*Jagdrecht*) and the right to exercise the hunt (*Ausübung des Jagdrechts*). The landowner has the hunting right on his premises. The right to exercise the hunt is regulated by the following provisions:

Section 4 of the Hunting Law provides:

> "The hunt may be exercised either on private hunting districts (section 7) or common hunting districts (section 8)."

Section 6 (enclosed premises, stay of the hunt) reads as follows:

> "The hunt is stayed on surfaces, which do not belong to a hunting district, and on enclosed surfaces (*befriedete Bezirke*). A limited exercise of the hunt may be permitted. This law does not apply to zoological gardens."

Section 7 provides, *inter alia*, that plots of at least 75 hectares of surface which can be exploited on an agricultural, forestry or fishery level and which belong to one single owner constitute a private hunting district.

Section 8 provides that all surfaces which do not belong to a private hunting district constitute a common hunting district if they have an overall surface of at least 150 hectares.

Section 9 § 1 provides as follows:

"The owners of surfaces belonging to a common hunting district form a hunting association. Owners of surfaces on which the hunt must not be exercised do not belong to the hunting association."

Section 10 reads as follows:

"(1) The hunting association generally exploits the hunt by lease-hold. The lease can be limited to the members of the association(...)

(2) The hunting association is allowed to practice the hunt on its own account by chartered hunters. With the agreement of the competent authority, it can decide to stay the hunt (*Ruhen der Jagd*).

(3) The association decides about the use of the net profit of the hunt. If the association decides not to distribute it to the owners of hunting grounds according to the surface they own, each owner who had contested this decision is allowed to claim his share. ..."

Section 20 provides:

"(1) Hunting is prohibited in areas where the practice of the hunt would, under the specific circumstances of the case, disturb public peace, order or security or would endanger human life.

(2) The practice of the hunt in nature and wildlife protection areas and in national and wildlife parks is regulated by the *Länder*."

Section 21 provides:

"(1) The shooting of the game is to be regulated in a way which fully safeguards the legitimate interests of agriculture, fishery and forestry to be protected from damages caused by wild game and which takes into account the necessities of nature protection and landscape conservation. Within these limits, the regulation of the shooting of the game shall contribute to maintain a healthy population of all domestic game in adequate numbers and, in particular, ensure the protection of endangered species."

Section 7 of the Hunting Law of the Land of Rhineland-Palatinate provides, *inter alia*, as follows:

"(1) The Hunting association is a public law corporation. It is subject to State supervision. The supervision is exercised by the lower hunting authority...The hunting association has to issue its own internal statute (*Satzung*). The internal statute has to be approved by the supervising authority unless it is in accordance with a model statute issued by the highest hunting authority; in this case notice of the statute has to be given to the lower hunting authority. If the hunting association fails to issue a statute within one year after the issue of the model statute, the supervising authority issues an internal statute and publishes it...at the expense of the association.

...

(4) Cost orders (*Umlageforderungen*) are to be executed under the provisions of the law on the execution of administrative acts. The execution rights are exercised by the exchequer who executes the claims of the community in which the association is situated...."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TAKEN SEPARATELY

21. The applicant complained that the obligation to tolerate the exercise of hunting rights on his premises violated his right to the peaceful enjoyment of his possessions as provided in 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 or to secure the payment of taxes or other contributions or penalties."

22. The Government contested that argument.

A. Admissibility

23. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions by the applicant

24. The applicant submitted that the limitations imposed on the use of his land by the Federal Hunting Law were disproportionate. He was even deprived of the possibility actively to protect the wildlife on his premises, for example by providing medical care to an injured animal.

25. The German legislator had failed to strike a fair balance between his interest to enjoy the use of his property and the alleged general interest in the hunt. As he was the only landowner within the hunting association who was opposed to the exercise of the hunt, he was factually unable to prevent the lease of the hunting rights.

26. The circumstances of the case resembled those which had been examined by the Court in the cases of *Chassagnou* (cited above) and *Schneider* (*Schneider v. Luxembourg*, no. 2113/04, 10 July 2007). The aims pursued by the German legislator were largely similar to those which had been pursued in France and Luxembourg. In their submissions in the *Schneider* case *(cited above,* § 34), the Government had also emphasised that the hunting law had the primary aim to protect persons and goods, appropriately to manage the game stock and to preserve the ecological balance.

27. The fact that he was entitled to a share of the profits deriving from the lease of the hunt did not in any way compensate his loss, as such compensation was incompatible with his ethical convictions. Furthermore, he had never received any payments, which, having regard to the size of his plots, would, in any event, amount to only a few cents per year.

28. The concept of the "*Hege* (management and protection of the game)" dated back to the third *Reich* and did not serve the protection of the game. Recent scientific research had demonstrated that wild game was able to self-regulate and that excessive hunting even increased the number of certain species. Road accidents involving wild game were in the majority of cases caused by the hunt. Furthermore, the exercise of the hunt did not respect in any way the needs to protect rare and endangered species. A number of European countries did not have hunting associations or had even almost completely prohibited hunting without encountering any damage caused by game stock or other problems relating to the exercise of the hunt.

29. In Germany, the hunt was factually exercised as a leisure activity. Many species, such as birds of prey, were hunted without any ecological or economical necessity. The exercise of the hunt could not be regarded as having a positive impact on issues of general interest. The ethical protection of animals was guaranteed by Article 20a of the German Basic Law, while the right to exercise the hunt was neither protected by the Basic Law nor by the Convention.

30. It was not true that no surfaces in Germany were exempt from the hunt. Under section 6 sentence 1 of the Federal Hunting Law, the hunt was not exercised in areas which did not adhere to a hunting district; as for example in enclaves within a private hunting district. Furthermore, under section 10 of the Federal Hunting Law the hunting authority could authorise a stay of the hunt. The *Länder* were entitled to create areas which were not subjected to hunting rights and had done so, in particular by creating nature reserves in which the exercise of the hunt was prohibited or only permitted under very exceptional circumstances. Furthermore, since the reform of the federal system in Germany in 2006, the *Länder* were free to regulate the practice of the hunt on their own motion or even to abolish hunting altogether.

2. Submissions by the Government

31. The Government conceded that the obligation to tolerate the hunt on his premises, which ran counter to the applicant's convictions, infringed the applicant's rights under Article 1 of Protocol no. 1. It was, however, justified under paragraph 2 of that same Article as being in the general interest and proportionate to the aims pursued.

32. The Government emphasised that, under German law, the exercise of the hunt was not conceived as a leisure activity, but was aimed at globally assuming responsibility for the game stock,

its natural resources and nature, thereby taking into account agricultural and forestry interests.

33. With regard to the principle of proportionality, the Government submitted that the German system struck a fair balance between the protection of property rights and the general interest. The German hunting law substantially differed from the situation in France and Luxembourg. This was evident in the notion of "*Hege*", which transcended the simple management of an orderly hunt and encompassed a general protection of the game stock both quantitatively and qualitatively. The hunting right carried with it the obligation to preserve varied and healthy game stock while at the same time regulating the number of game in order to prevent game damage on agricultural and forest areas. A regulation of the quantity of wild game was particularly important in densely populated Germany, for example in order to avoid the spreading of animal diseases and to avoid damage caused by wild game on other premises. It followed that the hunt not only served ecological interests, but also other general interests and the protection of other landowners' properties.

34. While conceding that the applicant disposed of no effective means to avoid the transfer of the right to exercise the hunt on his premises to the hunting association, the Government considered that the duty to tolerate the exercise of the hunt did not impose an excessive burden on him. Firstly, unlike in France, the applicant received a share of the profits derived from the lease of the hunting rights. While this participation in the profits might be unsatisfactory to the applicant, who was opposed to hunting for ethical reasons, this compensation had to be taken into account when assessing the proportionality of the measure. Within the framework of Article 1 of Protocol no. 1 the Government did not share the concerns expressed by the Court in the *Schneider* judgment (see *Schneider*, cited above, § 49) that ethical convictions could not be compensated by monetary awards. The Convention right protected the enjoyment of one's property without being subjected to external limitations. It did not, however, in any form protect ethical conceptions.

35. Secondly, the Government submitted that the system of hunting associations in Germany covered all surfaces, including State-owned property, and was self-consistent. As the wild game did not stop at district borders, and would retreat into areas which were exempt from hunting, the aims of the hunting law could only be achieved if the hunt was exercised on all appropriate surfaces. There were only rare exceptions to this rule which were all based on overriding, general interests. It was true that the hunt was stayed under section 1, § 1, first alternative of the Federal Hunting Law, on those areas which did not adhere to a hunting district. However, having regard to the wide definition of hunting districts in sections 7 and 8 of that law, only few surfaces fell within the scope of that provision. Furthermore, such surfaces were generally incorporated into other hunting districts. The hunting authority only granted a stay of the hunt under section 10 § 2 sentence 2 of the Hunting Law in exceptional cases and for reasons which related to management and protection of game stock. Even in nature reserves the exercise of the hunt was not generally excluded; the regulation of the hunt depended on the specific conservation purposes. The reform of the federal system had not changed this situation, as all *Länder* had opted for maintaining the system of area-wide hunting.

36. Contrary to the law applicable in Luxembourg, a duty to exercise the hunt also existed on larger plots. Even though the owners of plots more than 75 hectares of surface did not *de jure* adhere to a hunting association, they were obliged to regulate the game stock and thus to exercise the hunt in the same way as owners of plots belonging to a common hunting district. If they did not exercise the hunt themselves, the hunting authority could force them to do so or perform the task at the owner's expense.

37. It was not true that those European States which did not have hunting associations did not suffer from damages caused by game. The natural system of self-regulation of the wild game had ceased to function in the densely populated and exploited regions of Central Europe.

38. The Government further submitted that the German hunting law imposed the duty on persons exercising the hunt to respect the legitimate interests of the land-owners and held them liable for any damage caused through the exercise of the hunt. The limitations imposed on the hunt took into account ethical considerations, for example by prohibiting the use of certain kinds of ammunition.

39. There was no milder means to achieve the intended aim. A system based on voluntary participation could not ensure a solution which covered the whole surface. Furthermore, the obligatory adherence assured that no concerned person was excluded from the system. It further assured that the State could effectively control the management and protection of the game stock.

40. The applicant remained free to take measures to protect wildlife on his premises.

Furthermore, it was appropriate to impose on the person exercising the hunt the duty to catch, take care and, if necessary, kill seriously injured game because only a hunter had the necessary training allowing him to assess the situation and to take the necessary measures.

3. Submissions by the third parties

41. The *Deutscher Jagdschutzverband e. V.* emphasised the high significance of the outcome of the instant proceedings both for the entire hunting system and for the hunters' interests. In order to be allowed to practice the hunt, hunters had to prove extensive knowledge in the relevant areas and had to adhere to the highest ethical standards regarding animal protection and nature preservation. The specific framework conditions in Germany, in particular its dense population and the intensive cultivation of its land, made it extremely difficult to regulate game population.

42. The principle of area-wide hunting was a central element of the obligation to preserve wildlife. It was essential to hunt area-wide on all landed areas in order to be able to follow migrating game. Area-wide hunting was consistently implemented in Germany. Areas excluded from hunting districts under section 6 § 1 of the Federal Hunting Law comprised less than 0.01 % of all landed properties, were only of a temporary nature and compelled hunting authorities to incorporate them rapidly into neighbouring hunting districts. Stays of the hunt under section 10 § 2 of the Federal Hunting Law were subject to a consent by the hunting authority. In practice, the hunting authority only consented to hunting being stayed in very rare and exceptional cases, for example in cases in which the game population of a certain area had been virtually wiped out as the result of a catastrophe, and only for a limited period of time. There was currently no known case in which any such application had been approved by the upper hunting authority of the Federal State of Rhineland-Palatinate, where the applicant's premises were situated.

43. If certain areas were excluded from the hunt, there would inevitably be considerable concentrations of wild animals on those properties where hunting was not permitted. This would entail a considerably enhanced risk of transmission of game diseases and animal epidemics, and considerable stress situation for the game. A further consequence would be increased damage caused by wild game on neighbouring land properties. Fleeing and injured game could not be followed into these areas with the result of an effective practice of the hunt and giving relief to suffering animals would become virtually impossible. Summing up, the third party considered that it would no longer be possible to carry out the proper regulation of game populations, resulting in a severe disruption of the biological equilibrium. Furthermore, hunters would no longer be prepared to assume liability for damage caused by wild game.

44. The *Bundesarbeitsgemeinschaft der Jagdgenossenschaften und Eigenjagdbesitzer* confirmed these submissions and added that there was a great danger that landowners who were interested in eluding a membership in a hunting association for completely different reasons used the ethical objection against the hunt as a mere pretext.

4. Assessment by the Court

45. The Court notes, at the outset, that the Government did not contest that the obligation to allow the practice of the hunt on his premises interfered with the applicant's right to the peaceful enjoyment of his property. The Court endorses this assessment.

46. It follows that it has to be determined whether this interference was in accordance with the second paragraph of Article 1 of Protocol no. 1, which allows the State to enforce such laws as it deems necessary in the general interest.

47. It is well-established case-law that 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, an 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. 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*, cited above, § 75).

48. The Court notes, at the outset, that the aim of the impugned provisions are laid down in Section 1 § 2 of the Federal Hunting Law, providing that the management of the game stock is aimed at maintaining varied and healthy game populations at a level compatible with land care and cultural conditions and at avoiding game damage. The Court accepts that these aims are in the general interest (compare *Chassagnou*, cited above, § 49 and *Schneider*, cited above, § 46).

49. With regard to the proportionality of the interference, the Court takes note of the emphasis the relevant law puts on the maintenance of a healthy fauna in accordance with the ecological and economic circumstances. Even though it appears to be true that the hunt is primarily practiced by individuals during their spare time, the purpose of the hunting law cannot be reduced to merely enabling certain individuals to exercise a leisure activity.

50. As regards the necessity of the measure at issue, the Court takes note of the Government's submissions that the specific 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. The Court further observes that the German law applies nationwide. In this respect, the situation in Germany differs from the situation found in France, where only 29 of the 93 *départements* concerned had been made subject to the regime of compulsory adherence to hunting associations (see *Chassagnou*, cited above, § 84).

51. Furthermore, the Court observes that the German regime does not exempt any public or private owners of property which is *a priori* suitable for the hunt from the obligation to tolerate hunting on their premises. In this respect, the situation has to be distinguished from that examined in the Luxembourg case, where the property of the Crown was excluded from adherence to hunting associations (see *Schneider*, cited above, §§ 18 and 50). Even though plots of at least 75 hectares of surface are not regrouped, this does not dispense the owners of these plots from either exercising the hunt themselves or tolerating it on their premises.

52. The Court notes that the German system of area-wide hunting is subject to the following exceptions: Under section 6 sentence 1 of the Federal Hunting Law, the hunt is stayed on areas which do not belong to a hunting district and in enclosed areas. Furthermore, the hunting association, with the consent of the hunting authority, can decide to stay the hunt (section 10 § 2 sentence 2). Section 20 of the Federal Hunting Law prohibits the exercise of the hunt in places where public peace, order or security would be otherwise disturbed or human life jeopardised. Furthermore, special regulations apply to the exercise of the hunt in nature and wildlife reserves (section 20 § 2).

53. The Court observes that the stay of the hunt in enclosed areas can be justified by the fact that wild game cannot move into these areas. As regards the stay of the hunt in areas which do not belong to a hunting district, the Court observes that these exception are due to the specific setting of the premises, for example as enclaves surrounded by a private hunting district. The Court further takes note of the third party's submissions (see paragraph 41, above), which had not been contested by the applicant, that these stays of the hunt are of a merely temporary nature and concern less than 0.01 % of the landed property. The Court further observes that the hunting association cannot freely decide on a stay of the hunt, but has to obtain the hunting authority's consent (compare *Schneider*, cited above, § 50, for the differing situation in Luxembourg). According to the uncontested submissions by the Government, such consent was only given in rare and exceptional cases, and only for a limited period of time. The Court finally observes that the exceptions under section 20 of the Federal Hunting Law lie in the interest of maintaining public order and security (paragraph 1) and in the interest to afford special protection to nature reserves (paragraph 2).

54. Having regard to the above considerations, the Court considers that the exceptions to the rule of area-wide hunting are sufficiently motivated by general and hunting-related interests and thus do not call into question the principle of area-wide hunting as such. In this respect, the instant case can be clearly distinguished from the situation examined by the Court in the French and Luxembourg cases, in which the Court found exceptions from the application of the principle of area-wide hunting which were not sufficiently motivated and which, according to the Court's assessment, proved that it was not absolutely necessary to subject the whole rural area to the exercise of these rights (see *Chassagnou*, cited above, § 84, and *Schneider*, cited above, § 50).

55. The Court further notes that the applicant, under section 10 § 3 of the Federal Hunting Law, has a claim to a share of the profit of the lease which corresponds to the size of his property. Even though the sum the applicant could claim under this provision does not appear to be substantial, the

Court notes that the relevant provisions prevent other individuals from drawing a financial profit from the use of the applicant's land. The Court further observes that the applicant has a claim to be compensated for any damages which might be caused by the exercise of the hunt on his premises.

56. Having regard to the wide margin of appreciation afforded to the Contracting States in this area, allowing them to take into account the specific circumstances prevailing in their country, the foregoing considerations are sufficient to enable the Court to conclude that the Government struck a fair balance between the competing interests at stake. There has accordingly been no violation of Article 1 of Protocol 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1, TAKEN IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION

57. The applicant submitted that the provisions of the Federal Hunting Law discriminated against him in two ways, one grounded on property and the other on his ethical convictions. He relied on Article 1 of Protocol no. 1 taken in conjunction with Article 14 of the Convention, which provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

58. The Government contested that argument.

A. Admissibility

59. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

B. Merits

1. Submissions by the applicant

60. According to the applicant, the Federal Hunting Law privileged hunters, since in consideration for their private right to hunt they had been given the right to hunt on a wider area, whereas non-hunters had lost, without any compensation or consideration, not only their right of use but also their freedom of thought and the freedom to manifest their beliefs by putting their ethics into practice on their own property. Furthermore, the relevant provisions discriminated against owners of smaller landholdings, as plots more than 75 hectares of area were not included in the districts of the hunting associations.

61. The different treatment was disproportionate and was not suited to serve the general interest. While it was true that the owners of land more than 75 hectare in area could be obliged to regulate the quantities of certain game stock, they could otherwise freely decide which species they wished to hunt and which not. This concerned a large number of animal species. In Germany, many species of wild life were hunted without any economic or ecological necessity. They could also decide to fulfil their shooting quota in a way which was compatible with their ethical convictions, for example, by avoiding hunting during breeding times and by choosing their hunting method. They could even decide to stay the hunt and to contest any order to exercise the hunt before the courts.

62. Furthermore, owners of private hunting districts did neither have to tolerate the erection of hunting appliances nor to tolerate the presence of strangers on their premises. Furthermore, the landowner was deprived of the possibility to observe and to take care of the wildlife in its natural habitat. It followed that the transfer of the right to exercise the hunt went beyond that which was necessary to prevent damages caused by wild game.

63. The applicant further considered that the existence of nature reserves proved that area-wide hunting was not necessary in order to protect and manage the game stock and prevent damages. Finally, he pointed out that owners of enclaves, which fell within the ambit of section 6 sentence 1, first alternative, did not have to tolerate the hunt on their premises. This also constituted a clear violation of Article 14 of the Convention.

2. Submissions by the Government

64. The Government submitted that the applicant had not been treated differently from any other landowner with respect to his rights under Article 1 of Protocol no. 1, as the owners of plots more of 75 hectares in area were also obliged to tolerate hunting on their premises. Even though they retained the right to exercise the hunt, they were not allowed to turn their plots into hunting-free areas. The owner of a private hunting ground either had to hunt himself or to tolerate the hunt. The question whether the owner of a private hunting district had certain discretion as to how to practice the hunt was irrelevant with respect to the applicant's complaint.

65. Insofar as the applicant complained about a discrimination of hunting-objectors as opposed to hunters, the Government submitted that in Germany, unlike in France, the membership in a hunting association did not convey the right to hunt on the whole hunting district.

66. Furthermore, the owner of a larger plot was not free to choose which species of wild game to hunt, as the German law contained strict provisions as to when and which wild game was to be hunted. Under section 21 of the Federal Hunting Law, the shooting of the game had to be regulated in order to ensure that a healthy population of all animal species remained in appropriate number and the legitimate interests of agriculture, forestry and fishery were safeguarded. Thus, shooting was not permitted in an arbitrary way, but had to be planned and exercised in a sustainable way.

67. The erection of hunting appliances such as raised hides served a safe practice of the hunt in conformity with animal protection. An owner of a private hunting district who had leased his right to exercise the hunt had to tolerate the erection of such appliances in the same way as the owner of a smaller plot. The Government finally submitted that any unequal treatment was justified for the reasons set out in connection with the complaint under Article 1 of Protocol no. 1.

3. Assessment by the Court

68. The Court reiterates that a difference in treatment is discriminatory if it "has no objective and reasonable justification", that is if it does not pursue a "legitimate aim" or if there is not a "reasonable relationship of proportionality between the means employed and the aim sought to be realised". Moreover, the Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences between otherwise similar situations justify a different treatment (see, among many other authorities, *Chassagnou*, cited above, § 91).

69. Turning to the circumstances of the instant case, the Court observes that, under German hunting law, the hunting rights of owners of plots less than 75 hectares in area are automatically transferred to a hunting association, which decides on the lease of the hunting rights, whereas owners of larger plots are allowed to chose whether they wish to exercise the hunt themselves or to lease the hunting rights. However, contrary to the situation examined by the Court in the cases of *Chassagnou* and *Schneider* (cited above, § 92 and 50 respectively), owners of larger plots were not allowed to stay the hunt completely, but had to fulfil the same obligations regarding the management of game stock as the hunting associations.

70. The Court considers that there exists a difference in treatment between the owners of smaller plots and those of larger plots in that the latter remain free to choose in which way to fulfil their obligation under the hunting laws, whereas the former merely retain the right to take part in the decisions taken by the hunting association. The Court considers, however, that this difference in treatment is sufficiently justified by the reasons put forward by the Government in respect of the alleged violation of Article 1 of Protocol no. 1, in particular 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 treatment of owners of areas which do not belong to a hunting district and which were not subject to the hunt (section 6 § 1 sentence 1 of the Federal Hunting Law), the Court, having regard to it findings under Article 1 of Protocol no. 1 (see paragraph 52, above), considers that this exception from the general adherence to hunting associations is owed to the specific circumstances of the respective plot, which justifies a difference in treatment.

It follows that there has been no violation of Article 14 of the Convention, taken in conjunction with Article 1 of Protocol no. 1.

III. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION TAKEN SEPARATELY

71. The applicant further complained that his obligatory adherence to a hunting association violated his rights under Article 11 of the Convention, which provides:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

1. Submissions by the Government

72. The Government submitted that the applicant's complaint did not come within the scope of the right to freedom of association, because the German hunting associations were of a public nature. Under section 7 § 1 of the Hunting Law of the *Land* of Rhineland Palatinate, the hunting associations, by the means of supervision by the State, were more closely integrated into State structures than the French or Luxembourg associations. The hunting authority was vested with extensive rights of control, such as the right to object against decisions, to order the association to comply with their legal prerogatives and, should the situation arise, install an administrator. The supervising authority further had the right to consult all case-files and to carry out further examinations. Under specific circumstances, community organs could even serve as directors of a hunting association.

73. Unlike in France and Luxembourg, hunting associations were vested with public law prerogatives. They could issue their own internal statutes and use administrative forms of action such as issuing cost orders by administrative act. The execution of these orders was governed by public law.

2. Submissions by the applicant

74. The applicant submitted that the hunting associations fell within the ambit of Article 11 of the Convention. They were formed by private individuals who convened at regular intervals in order to decide on the lease. If Contracting States were able, at their discretion, by classifying an association as "public" or "para-administrative" to remove it from the scope of Article 11, that would give them such latitude that it might lead to results incompatible with the object and purpose of the Convention, which was to protect rights which were not theoretical or illusory, but practical and effective.

75. The applicant contested that the hunting associations were vested with any public law prerogatives. They did not employ any public officials or civil servants allowing them to take measures belonging to the field of the public law. The supervision exercised by the State was not sufficient to assume a public law character. Private associations were also entitled to issue their own internal statues, and all private associations were subject to State supervision under the Law of Associations. Furthermore, under the present law, the *Länder* were entitled to organise hunting associations in the form of private associations.

3. Assessment by the Court

76. The Court reiterates that the notion of "association" is to be interpreted by the Court in an autonomous way; the qualification given by the Contracting State merely serves as a starting point (see *Schneider*, cited above, § 69). Under the case-law of the Court, elements in determining whether an association is to be considered as private or public are: whether it was founded by individuals or by the legislature; whether it remained integrated within the structures of the State, whether it was invested with administrative, rule-making and disciplinary power, and whether it pursued an aim which was in the general interest (see, *mutatis mutandis*, *Le Compte, Van Leuven and De Meyere v. Belgium*, 23 June 1981, § 64, Series A no. 43).

77. Turning to the circumstances of the instant case, the Court notes, at the outset, that the hunting associations in the *Land* of Rhineland-Palatinate are established by law in the form of public law associations. They are subject to the control of the hunting authority and their internal statutes are subject to the approval of that authority. Furthermore, hunting associations are allowed to issue cost orders by administrative acts, which are executed by the public exchequer.

78. Having regard to these elements, the Court observes that the hunting associations are subject to State supervision which goes clearly beyond the supervision normally exercised over private associations. Furthermore, they are not only obliged to issue their internal statutes, but have the right to issue cost orders by administrative acts which are executed by State authorities. The Court thus considers that the hunting associations are sufficiently integrated into State structures in order to qualify them as public law institutions. Furthermore, they pursue the aim to manage the exercise of the hunting rights and thus to ensure the management and protection of the game stock, which lies in the general interest. There is no indication that the legislator classified the hunting association as "public" or "para-administrative" with the sole aim of removing them from the scope of Article 11 of the Convention (compare, *a contrario*, *Schneider*, cited above, § 100).

79. Having regard to these circumstances, the Court concludes that the hunting associations as established under the hunting law of the *Land* of Rhineland-Palatinate have to be regarded as public law institutions. It follows that Article 11 of the Convention is not applicable in the instant case. Consequently, this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 14

80. The applicant further complained about having been discriminated against with regard to his obligation to adhere to a hunting association.

81. The Court reiterates that it has consistently held that Article 14 of the Convention complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter (see, among many other authorities, *Haas v. the Netherlands*, no. 36983/97, § 41, ECHR 2004-I).

82. The Court has found above that Article 11 was not applicable in the instant case. It follows that Article 14 cannot be relied on and that this complaint is to be rejected as being incompatible *ratione materiae* with the provisions of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

83. Lastly, the applicant complained that the obligation to tolerate the exercise of the hunt violated his right to freedom of thought and conscience under Article 9 of the Convention, which provides:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

84. The Court notes that this complaint is linked to the one under Article 1 of Protocol No. 1 and must therefore likewise be declared admissible.

B. Merits

85. The applicant submitted that his convictions as a hunting opponent attained a level of cogency, cohesion and importance which brought it within the scope of Article 9 of the Convention. The obligatory adherence to the hunting association deprived him of the possibility to act in accordance with his convictions, for example by helping an injured animal on his premises, and was not justified under any of the reasons set out in
paragraph 2 of Article 9.

86. According to the Government, the applicant could not rely on Article 9 of the Convention as an individual could not rely on his rights under that Article if he was obliged to tolerate actions by third parties which lay in the public interest. In any event, any interference with the applicant's rights under Article 9 had to be regarded as being justified for the reasons already set out before.

87. The Court does not find it necessary to determine whether the applicant's complaint falls to be examined under Article 9 of the Convention, as it considers that any interference with the applicant's rights is justified under paragraph 2 of Article 9 as being necessary in a democratic society in the interest of public safety, for the protection of public health and for the protection of the rights of others for the reasons set above (see paragraphs 48 to 55 above). It follows that there has been no violation of the applicant's rights under Article 9 of the Convention.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaints under Article 1 of Protocol No. 1 taken separately and in conjunction with Article 14 and under Article 9 of the Convention admissible;

2. *Declares* by a majority the remainder of the application inadmissible;

3. *Holds* by four votes to three that there has been no violation of Article 1 of Protocol No. 1 to the Convention;

4. *Holds* by four votes to three that there has been no violation of Article 1 of Protocol No. 1 in conjunction with Article 14 of the Convention;

5. *Holds* by six votes to one that there has been no violation of Article 9 of the Convention.

Done in English, and notified in writing on 20 January 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek Peer Lorenzen
Registrar President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) Joint dissenting opinion of Judges Lorenzen, Berro-Lefèvre and Kalaydjieva;
(b) Separate dissenting opinion of Judge Kalaydjieva.

P.L.
C.W.

JOINT DISSENTING OPINION OF JUDGES LORENZEN, BERRO-LEFÈVRE AND KALAYDJIEVA

(Translation)

To our great regret, we do not share the majority's opinion that there has been no violation of Article 1 of Protocol No. 1 in this case.

In support of that conclusion, the Chamber judgment's reasoning sets out numerous arguments demonstrating the existence of several points of divergence with the situations which, in the past, gave rise to the *Chassagnou and Others v. France* ([GC] nos. 25088/94, 28331/95 and 28443/95, ECHR 1999-III) and *Schneider v. Luxembourg* (no. 2113/04, 10 July 2007) judgments, in which violations of this Article were found.

For our part, we find it difficult to differentiate between these three cases.

Under Article 1 of Protocol No. 1, the only question which arises is whether the measure adopted was "necessary to control the use of property in accordance with the general interest", it being understood that there must, of course, be a reasonable degree of proportionality between the measure in question and the aim pursued by it.

In the French, Luxembourg and German cases, the disputed legislation pursued several aims, including that of promoting the rational management of the cynegetic heritage and respect for the ecological balance.

The question must therefore be asked whether the interference with property resulting from the impugned legislation is necessary in order to regulate hunting, in accordance with the general interest, and whether that interference is reasonably proportionate to the objectives pursued.

In this respect, we are obliged to note that the answer has already been given in the French and Luxembourg cases, notwithstanding the qualifications highlighted by the German Government and repeated by the majority of the Chamber.

Thus, as in the above-cited cases, the effective possibilities for the applicant successfully to ensure that hunting rights were not exercised on his land were almost non-existent.

We would also point out that in the *Schneider* judgment, where the facts and context were the most similar to those in this case and which was adopted unanimously, the Chamber considered that the existence of compensation for the landowners concerned did not amount to sufficient legitimation for the compulsory membership of an association, given that the argument of an ethical objection to hunting could not meaningfully be weighted against an annual remuneration as consideration for the loss of the right to use the property, if only on account of the essentially irreconcilable nature of compensation in equivalence with the subjective argument invoked (see *Schneider*, cited above, § 49). Identical reasoning is therefore applicable in this case.

Equally, we are not convinced by the Chamber's analysis in paragraphs 52 to 54, to the effect that there exists a difference in the reasoning given for the exceptions from the mandatory principle of area-wide hunting in the German legislation and that in force in France and in Luxembourg. Here too, independently of the arguments put forward, the only conclusion that can be reached is that those exceptions show that it is not essential to subject the entirety of the non-urban territory to the exercise of hunting rights.

The system put in place in Germany, intended to regulate hunting by ensuring increased protection for the cynegetic heritage, has resulted, as in the two previous cases, in a situation where it is impossible for the applicant to object to the exercise by third parties of their right to hunt on his land.

The conclusion accepted in the *Chassagnou and Others* and *Schneider* judgments was as follows: "notwithstanding the legitimate aims ... the result of the compulsory-transfer system ... has been to place the applicants in a situation which upsets 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 can make use of them in a way which is totally incompatible with their beliefs imposes a disproportionate burden which is not justified under the

second paragraph of Article 1 of Protocol No. 1" (see *Chassagnou*, § 85, and *Schneider*, § 51).

We are unable to see how a different result can be found in the *Herrmann* case. A violation of Article 1 of Protocol No. 1 must therefore be found in this case also.

In consequence, having regard to this finding, we also consider that it is not necessary to examine separately whether there has been a violation of Article 14 (taken in conjunction with Article 1 of Protocol No. 1).

SEPARATE DISSENTING OPIONION OF JUDGE KALAYDJIEVA

I joined the opinion of Judges Lorenzen and Berro-Lefèvre, which expresses our common failure to see how the different result of finding no violation of Article 1 of Protocol No.1 to the Convention was reached in the present case – having regard to the conclusions of the Court in the similar circumstances of the cases of *Chassagnou v. France* (*Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, ECHR 1999-III) and *Schneider v. Luxembourg* (*Schneider v. Luxembourg*, no. 2113/04, 10 July 2007). In my view the same reasons for disagreement are equally valid for the conclusions of the majority on the applicability of Article 11 of the Convention to the circumstances of the present case.

Having agreed that in the present case "the hunting associations [to which the applicant was obliged to adhere] are sufficiently integrated into State structures in order to qualify them as public law institutions", the majority arrived at the conclusion that Article 11 does not apply to the circumstances. Similar objections of the respondent Government in *Chassagnou* did not prevent the Grand Chamber from finding that the fact that the prefect supervised the way the associations operated was not sufficient to support the contention that they remained integrated within the structures of the State. The Court also found that it could not be maintained that the associations enjoyed prerogatives outside the orbit of the ordinary law, whether administrative, rule-making or disciplinary, or that they employed processes of a public authority, like professional associations (see *Chassagnou,* para. 101). The Court concluded that to "compel a person by law to join an association such that it is fundamentally contrary his own convictions to be a member of it, and to oblige him, on account of his membership of that association, to transfer his rights over the land he owns so that the association in question can attain objectives of which he disapproves, goes beyond what is necessary to ensure that a fair balance is struck between conflicting interests and cannot be considered proportionate to the aim pursued" (para. 117). Those findings were confirmed, as recently as in 2007, in *Schneider*.

I see no reason to arrive at different conclusions in the case of *Herrmann v. Germany*.

I also ask myself whether - if correct - the conclusion on the public nature of the associations is also capable of serving as a basis of the majority's view that "it is not necessary to determine whether the complaint [that the applicant's obligatory adherence to the hunting associations deprived him of the possibility to act in accordance with his convictions] falls to be examined under Article 9 of the Convention, as it considers that any interference with the applicant's rights is justified under paragraph 2 of Article 9 as being necessary in a democratic society in the interests of public safety and for the protection of the rights of others."

In particular, I wonder whether mandatory membership of public law institutions aggravates the compulsion an individual suffers when being required to engage in activities contrary to his views. Although mentioned in the views of the Commission, the Court and the Committee of Ministers in the earlier cases of *Chassagnou* and *Schneider* came to no findings as to the right to convictions. Regrettably, the brief reasons offered for the majority's conclusion in the present case provide insufficiently detailed answers to the questions of applicability and respect to the rights under Article 9 of the Convention in the present case.