



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

FIFTH SECTION

DECISION

Application no. 13166/08
Carsten SCHOLVIEN and others
against Germany

The European Court of Human Rights (Fifth Section), sitting on 12 November 2013 as a Committee composed of:

Ganna Yudkivska, *President*,

Angelika Nußberger,

André Potocki, *judges*,

and Stephen Phillips, *Deputy Section Registrar*,

Having regard to the above application lodged on 4 March 2008,

Having regard to the declaration submitted by the respondent Government on 10 May 2013 requesting the Court to strike the application out of the list of cases and the applicants' reply to that declaration,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. A list of the applicants is set out in the appendix.
2. The German Government ("the Government") were represented by their Agent, Mr H.-J. Behrens, of the Federal Ministry of Justice. The applicants were not represented by counsel in the proceedings before the Court.
3. The applicants complained under Article 1 of Protocol No. 1 of the Convention taken on its own and in conjunction with Article 14 and under Articles 9 and 11 of the Convention about the obligation to tolerate the exercise of the hunt on their property and about their compulsory membership of a hunting association.
4. The complaint under Article 1 of Protocol No. 1 to the Convention was communicated to the Government.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

5. The applicants complained about their obligation to tolerate the exercise of the hunt and about the erection of hunting appliances on their property. They relied on Article 1 of Protocol No. 1 to the Convention.

6. After the failure of attempts to reach a friendly settlement, by a letter of 10 May 2013 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by this part of the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

7. The declaration provided as follows:

“1. By way of this unilateral declaration, the Federal Government recognises that Article 1 of the First Additional Protocol to the Convention has been violated.

2. The Federal Government is prepared to pay compensation in the amount of € 7,000 to the Applicants if the Court, on condition of payment of the amount, strikes the Application out of the list pursuant to Article 37 (1) (c) of the Convention. This would be deemed to settle all of the Applicants’ claims in connection with the above mentioned Application against the Federal Republic of Germany and the Land of Berlin.

3. The amount is payable within three months of notification of the Court’s decision to strike the case out of its list.”

8. By a letter of 7 June 2013, the applicants indicated that they were not satisfied with the terms of the unilateral declaration on the ground that payment of a lump sum was not sufficient to remedy the on-going violation of their Convention rights.

9. The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

“for any other reason established by the Court, it is no longer justified to continue the examination of the application”.

10. It also recalls that in certain circumstances, it may strike out an application under Article 37 § 1(c) on the basis of a unilateral declaration by a respondent Government even if the applicants wish the examination of the case to be continued.

11. To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey*, [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Spółka z o.o. v. Poland* (dec.) no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.) no. 28953/03).

12. The Court has established in a number of cases, including one brought against Germany, its practice concerning complaints about the obligation to tolerate the exercise of the hunt on private property (see *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, ECHR 1999-III; *Schneider v. Luxembourg*, no. 2113/04, 10 July 2007 and *Herrmann v. Germany* [GC], no. 9300/07, 26 June 2012). In the light of this case-law, the Court considers that payment of 5,000 euros constitutes adequate compensation for the applicants' non-pecuniary damage (compare *Herrmann*, cited above, § 123).

13. Having regard to the nature of the admissions contained in the Government's declaration the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1(c)).

14. Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

15. Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration or with their general undertakings submitted to the Committee of Ministers concerning the case of *Herrmann v. Germany* (document no. DH-DD(2013)), the application could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

II. ALLEGED VIOLATION OF OTHER CONVENTION RIGHTS

16. The applicants also complained about a violation of their rights under Article 14 in conjunction with Article 1 of Protocol No. 1 and under Article 9 of the Convention. Given the Court's ruling in the *Herrmann* case (see *Herrmann*, cited above, §§ 105 and 119), the Court has examined these rights in the context of Article 1 of Protocol No. 1.

17. The applicant further complained under Article 11 about their obligatory adherence to a hunting association. Having regard to its findings in the *Herrmann* case (see *Herrmann v. Germany*, no. 9300/07, § 79, 20 January 2011 and *Herrmann* [GC], cited above, § 38, 26 June 2012), the Court considers that this part of the complaint is incompatible *ratione materiae* with the provisions of the Convention and must be rejected in accordance with Article 35 § 3(a) and 4 of the Convention.

III. APPLICATION OF RULE 43 § 4 OF THE RULES OF COURT

18. The applicants, relying on documentary evidence, submitted that costs and expenses incurred in attempting to forestall the alleged violations of the Convention in the proceedings before the domestic courts amounted to 6,223.05 euros plus interests and thus exceeded the sum offered by the Government.

19. The Government left the decision whether the sum proposed in their unilateral declaration constituted an adequate settlement of the case to the Court's discretion.

20. The Court observes that, when an application has been struck out in accordance with Article 37 of the Convention, the costs shall be at the discretion of the Court. The Court reiterates that when making an award under Rule 43 § 4 of the Rules of Court, the general principles governing reimbursement of costs are essentially the same as under Article 41 of the Convention (see *Pisano v. Italy* (striking out) [GC], no. 36732/97, §§ 53-54, 24 October 2002, *Voorhuis v. the Netherlands* (dec.), no. 28692/06, 3 March 2009 and *Youssef v. the Netherlands* (dec.) no. 11936/08, 27 September 2011). In other words, in order to be reimbursed, the costs must relate to the alleged violation, have been actually and necessarily incurred and be reasonable as to quantum.

21. The Court observes that the Government's unilateral declaration contains the award of 2,000 euros for costs and expenses. Under the exceptional circumstances of the instant case, the Court considers it reasonable jointly to award the applicants an additional sum of 4,223.05 euros for costs and expenses before the domestic courts. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration under Article 1 of Protocol No. 1 to the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike this part of the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention;

Declares the remainder of the application inadmissible;

Holds

(a) that the respondent State is to pay jointly to the applicants, within three months, in addition to the sum contained in the unilateral

declaration submitted by the Government on 10 May 2013, EUR 4,223.05 (four thousand two hundred and twenty-three euros and five cents) for additional costs and expenses before the domestic courts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the overall amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Stephen Phillips
Deputy Registrar

Ganna Yudkivska
President

APPENDIX

1. Sonja KLEIN is a German national who was born in 1968 and lives in Bad Kreuznach.
2. Hildegund Berta Mathilde SCHOLVIEN is a German national who was born in 1943 and lives in Fischbach.
3. Carsten SCHOLVIEN is a German national who was born in 1969 and lives in Fischbach.
4. Stefan SCHOLVIEN is a German national who was born in 1967 and lives in Bad Kreuznach.