



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

GRAND CHAMBER

CASE OF CHASSAGNOU AND OTHERS v. FRANCE

(Applications nos. 25088/94, 28331/95 and 28443/95)

JUDGMENT

STRASBOURG

29 April 1999

In the case of Chassagnou and Others v. France,

The European Court of Human Rights, sitting, in accordance with Article 27 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”), as amended by Protocol No. 11¹, and the relevant provisions of the Rules of Court², as a Grand Chamber composed of the following judges:

Mr L. WILDHABER, *President*,
Mrs E. PALM,
Mr L. CAFLISCH,
Mr J. MAKARCZYK,
Mr P. KŪRIS,
Mr J.-P. COSTA,
Mr W. FUHRMANN,
Mr K. JUNGWIERT,
Mr M. FISCHBACH,
Mr B. ZUPANČIČ,
Mrs N. VAJIĆ,
Mrs W. THOMASSEN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr T. PANTÎRU,
Mr A.B. BAKA,
Mr E. LEVITS,
Mr K. TRAJA,

and also of Mrs M. DE BOER-BUQUICCHIO, *Deputy Registrar*,

Having deliberated in private on 16 December 1998, 6 January and 17 March 1999,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The cases of Chassagnou and Others v. France, Dumont and Others v. France and Montion v. France were referred to the Court, as established under former Article 19 of the Convention³, by the European Commission of Human Rights (“the Commission”) on 15 December 1997 (Chassagnou and Others case) and 16 March 1998 (cases of Dumont and Others and Montion), within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention. They originated in three applications

Notes by the Registry

1-2. Protocol No. 11 and the Rules of Court came into force on 1 November 1998.

3. Since the entry into force of Protocol No. 11, which amended Article 19, the Court has functioned on a permanent basis.

(nos. 25088/94, 28331/95 and 28443/95) against the French Republic lodged with the Commission under former Article 25 by ten French nationals. The first of these applications was lodged by Mrs Marie-Jeanne Chassagnou, Mr René Petit and Mrs Simone Lasgrezas on 20 April 1994, the second by Mr Léon Dumont, Mr Pierre Galland, Mr André Galland, Mr Edouard Petit (now deceased), Mr Michel Petit and Mr Michel Pinon on 29 April 1995 and the third by Mrs Joséphine Montion on 30 June 1995.

The Commission's requests referred to former Articles 44 and 48 and to the declaration whereby France recognised the compulsory jurisdiction of the Court (former Article 46). The object of the requests was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 9, 11 and 14 of the Convention and Article 1 of Protocol No. 1.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of former Rules of Court A¹, the applicants stated that they wished to take part in the proceedings and designated the same counsel to represent them (former Rule 30).

3. On 27 March 1998 Mr R. Bernhardt, the President of the Court at the time, decided to allocate the cases of Dumont and Others v. France and Montion v. France to the Chamber already constituted to hear the case of Chassagnou and Others v. France.

4. On 26 June 1998 the Chamber decided to join the three cases (former Rule 37 § 3).

5. As President of the Chamber which had originally been constituted (former Article 43 of the Convention and former Rule 21) in order to deal, in particular, with procedural matters that might arise before the entry into force of Protocol No. 11, Mr Bernhardt, acting through the Registrar, consulted the Agent of the French Government ("the Government"), the applicants' counsel and the Delegate of the Commission on the organisation of the written procedure. Pursuant to the order made in consequence, the Registrar received the applicants' memorial on 21 July 1998 and the Government's memorial on 30 September 1998.

6. After the entry into force of Protocol No. 11 on 1 November 1998 and in accordance with the provisions of Article 5 § 5 thereof, the case was referred to the Grand Chamber of the Court. The Grand Chamber included *ex officio* Mr J.-P. Costa, the judge elected in respect of France (Article 27 § 2 of the Convention and Rule 24 § 4 of the Rules of Court), Mr L. Wildhaber, the President of the Court, Mrs E. Palm, Vice-President of the Court, and Mr M. Fischbach, Vice-President of Section (Article 27 § 3 of the Convention and Rule 24 §§ 3 and 5 (a)). The other members appointed to complete the Grand Chamber were Mr L. Ferrari Bravo,

1. *Note by the Registry.* Rules of Court A applied to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and from then until 31 October 1998 only to cases concerning States not bound by that Protocol.

Mr L. Caflisch, Mr J. Makarczyk, Mr W. Fuhrmann, Mr K. Jungwiert, Mr B. Zupančič, Mrs N. Vajić, Mr J. Hedigan, Mrs W. Thomassen, Mrs M. Tsatsa-Nikolovska, Mr T. Panțiru, Mr E. Levits and Mr K. Traja (Rule 24 § 3 and Rule 100 § 4). Subsequently Mr Ferrari Bravo and Mr Hedigan, who were unable to take part in the further consideration of the case, were replaced by Mr A.B. Baka and Mr P. Kūris (Rule 24 § 5 (b)).

7. On 10 November 1998 Mr Wildhaber decided to add to the case file written observations and documents filed by the applicants' counsel on 22 October 1998 (Rule 38 § 1).

8. At the Court's invitation (Rule 99), the Commission delegated one of its members, Mr J.-C. Geus, to take part in the proceedings before the Grand Chamber.

9. In accordance with the President's decision, a hearing took place in public in the Human Rights Building, Strasbourg, on 16 December 1998.

There appeared before the Court:

(a) *for the Government*

Mr J.-F. DOBELLE, Deputy Director of Legal Affairs,
Ministry of Foreign Affairs, *Agent*,
Mr B. NEDELEC, *magistrat*, on secondment to the
Human Rights Section,
Ministry of Foreign Affairs,
Mr G. BITTI, Special Adviser, Human Rights Office,
European and International Affairs Service,
Ministry of Justice, *Counsel*;

(b) *for the applicants*

Mr G. CHAROLLOIS, Administrator of the Association for the
Protection of Wildlife (ASPAS) and the National
Society for the Protection of Nature (SNPN), *Counsel*;

(c) *for the Commission*

Mr J.-C. GEUS, *Delegate*,
Ms M.-T. SCHOEPFER, *Secretary to the Commission*.

The Court heard addresses by Mr Geus, Mr Charollos and Mr Dobelle.

THE FACTS

I. INTRODUCTION

10. Given the importance of the historical context of the case, it seems appropriate – exceptionally – to preface the section of the judgment entitled “The circumstances of the case” with a brief introduction, based on the information supplied by the Government.

11. Until the French Revolution of 1789 the right to hunt was a privilege of the nobility. Only nobles could take game, which was regarded as the lord’s property.

During the Revolution there were two schools of thought on the question. The first approach, supported by Mirabeau, was to make the right to hunt the prerogative of the landowner alone; the second, which was advocated by Robespierre, was to give all citizens unconditional freedom to hunt everywhere. The first approach carried the day, as in the night of 4 August 1789 the privilege of hunting was abolished “subject to the sole reservation that landowners alone may hunt” and a decree of 11 August 1789 laid down the principle that “Every landowner has the right to destroy or cause to be destroyed, on his property only, any species of game”.

Subsequently the Law of 3 May 1844, a large part of which is still in force, regulated the right to hunt by introducing hunting licences and laying down fixed hunting seasons. Section 1 of that Law, which was later codified as Article 365 of the Countryside Code and then Article L. 222-1, provided: “No one shall have the right to hunt on land belonging to another without the consent of the owner or any person entitled through or under the owner.”

However, it was made clear by case-law that this consent could be tacit and that it was possible to hunt on another’s land provided that the owner of the hunting rights had not expressly manifested his opposition by means of measures such as signing a lease, swearing in a gamekeeper or putting up “private hunting” notices.

12. Although, in an attempt to organise hunting, associations of hunters were set up spontaneously in the regions north of the Loire where large estates of agricultural land or woodland predominated, the theory of tacit consent derived from case-law led throughout the south of France, where sub-division of landholdings has created a pattern of much smaller properties, to an almost unlimited freedom to hunt, known as “*chasse banale*” (public hunting). With the exception of a few private hunting grounds, hunters could thus hunt wherever they pleased and no one was responsible for the proper management of game stocks; as a result game species in certain regions were decimated.

13. It was in those circumstances that Law no. 64-696 of 10 July 1964, known as the “Loi Verdeille”, was enacted (see paragraphs 41 et seq.

below). This provided for the creation of approved municipal hunters' associations (*Associations communales de chasse agréées* – “ACCAs”) and approved inter-municipality hunters' associations (*Associations inter-communales de chasse agréées* – “AICAs”). Section 1 (which subsequently became Article L. 222-2 of the Countryside Code, see paragraph 41 below) states that their object is “to encourage, on their hunting grounds, an increase in game stocks, the destruction of vermin and the prevention of poaching, to instruct their members in how to hunt without interfering with property rights or crops and in general to improve the technical organisation of hunting so that the sport can be practised in a more satisfactory manner”. To that end, the law requires the owners of landholdings smaller in area than a certain threshold, which varies from one *département* to another, to become members of any ACCA set up in their municipality and to transfer to it the hunting rights over their land in order to create municipal hunting grounds.

14. The Loi Verdeille applies in *départements* of metropolitan France other than Bas-Rhin, Haut-Rhin and Moselle, where there is a special regime inherited from German law (see paragraph 40 below). The creation of an ACCA is compulsory in *départements* on a list drawn up by the Minister responsible for hunting, which designates 29 of the 93 metropolitan *départements* concerned, including Creuse, where Mr Dumont, Mr A. Galland, Mr P. Galland, Mr E. Petit, Mr M. Petit and Mr Pinon live (see paragraph 23 below) and Gironde, where Mrs Montion lives (see paragraph 28 below). In the municipalities of the remainder of these 93 *départements* ACCAs may be set up by the prefect on an application by anyone who can furnish evidence that at least 60% of landowners holding at least 60% of the land in the municipality agree. On 28 February 1996 ACCAs were thus set up in 851 municipalities in 39 different *départements*, including 53 of the 555 municipalities in Dordogne, where Mrs Chassagnou, Mr R. Petit and Mrs Lasgrezas live (see paragraph 16 below).

15. The right to hunt belongs to the owner on his land (see paragraph 36 below), but the creation of an ACCA results in the pooling of hunting grounds within the municipality, so that the members of the association can hunt throughout the area thus formed (see paragraphs 41 and 50 below). Under certain conditions the owners of landholdings attaining in a single block a specified minimum area (60 hectares in Creuse and 20 hectares in Gironde and Dordogne) may object to inclusion of their land in the ACCA's hunting grounds or request its removal from them (see paragraphs 47-49 below).

II. THE CIRCUMSTANCES OF THE CASE

A. Mrs Chassagnou, Mr R. Petit and Mrs Lasgrezas

16. Mrs Chassagnou, Mr R. Petit and Mrs Lasgrezas were born in 1924, 1936 and 1927 respectively. All three are farmers and live in the *département* of Dordogne, Mrs Chassagnou at Tourtoirac and the other two at Sainte-Eulalie-d'Ans.

They own landholdings there smaller than 20 hectares in a single block which are included in the hunting grounds of the ACCAs of Tourtoirac and Chourgnac-d'Ans.

17. In 1985, as members of the Anti-Hunting Movement ("the ROC"), and later of the Association for the Protection of Wildlife ("the ASPAS"), an approved association of recognised public usefulness with regard to the protection of nature, the applicants placed notices at the boundaries of their property bearing the words "Hunting prohibited" and "Sanctuary". The ACCAs of Tourtoirac and Chourgnac-d'Ans then applied for an injunction requiring the removal of these notices. The judge competent to hear urgent applications granted the injunction sought by a decision of 26 September 1985, which was upheld on 18 June 1987 by the Bordeaux Court of Appeal.

18. On 20 August 1987 the prefect of Dordogne rejected an application from Mr R. Petit, Mrs Chassagnou and Mrs Lasgrezas for the removal of their land from the hunting grounds of the Tourtoirac and Chourgnac-d'Ans ACCAs.

They then applied for judicial review of that decision to the Bordeaux Administrative Court, which found against them in a judgment of 26 May 1988.

1. The proceedings in the Périgueux tribunal de grande instance

19. On 30 July 1987 the applicants had brought civil proceedings against the ACCAs of Tourtoirac and Chourgnac-d'Ans in the Périgueux *tribunal de grande instance*.

Essentially, they argued that sections 3 and 4 of the Loi Verdeille were incompatible with Articles 9, 11 and 14 of the Convention and Article 1 of Protocol No. 1, firstly in that they provided that all unenclosed plots of land smaller than 20 hectares in area and situated more than 150 metres from any dwelling were to be included in an ACCA's hunting grounds by means of the transfer of hunting rights to the association from the landowners or holders of the rights, such transfer being deemed to have been effected automatically and without valuable consideration even without the latter's consent, and secondly in that a non-hunting landowner automatically became a member of the association. They asked the court to rule on that account that they were third parties in relation to the ACCAs concerned,

that their land could no longer be included in the ACCAs' hunting grounds and that the ACCAs could not rely on the transfer of their hunting rights. Lastly, they asked the court to declare that they had the right to put up on their property notices enjoining respect for their rights.

20. On 13 December 1988 the Périgueux *tribunal de grande instance* gave judgment in the following terms:

“[As regards the argument concerning Article 1 of Protocol No. 1:]

Admittedly, the Law entails enforced deprivation of the right to hunt, which is one of the elements of the right of property, and obliges the owners of land subject to the ACCAs' control to accept the presence on the land of third parties, namely hunters.

Moreover, the Loi Verdeille appears to lay down special rules derogating from the principle laid down in Article 365 of the Countryside Code that ‘No one shall have the right to hunt on land belonging to another without the owner's consent ...’.

...

[Protocol No. 1] does not exclude restrictions on the right of property ... since Article 1, after stating the principle ‘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’, goes on to say: ‘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.’

Most of the terms employed reflect the very broad nature of the restrictions which may be imposed on the right of property by signatory States in their domestic legislation.

The Loi Verdeille, whose stated aim ... is to encourage, *inter alia*, an increase in game stocks, the destruction of vermin and the prevention of poaching, satisfies the ‘general interest’ criterion laid down in Article 1 of [Protocol No. 1]. Similarly, in attempting to ‘improve the technical organisation of hunting’ Parliament intended to permit democratic participation in hunting and to prevent landowners from reserving exclusive hunting rights over their land, thus restricting the right to use property, meaning in this case the right to hunt, in accordance with the ‘general interest’ referred to in [Protocol No. 1].

Consequently, with regard to the right of property, the provisions of sections 3 and 4 of the [Loi Verdeille] do not appear to be contrary to the Convention ...

[As regards the arguments concerning Articles 11, 14, 9 and 10 of the Convention:]

By providing that owners of landholdings of less than 20 hectares in area shall *ipso facto* be members of an ACCA, section 4 of the Loi Verdeille imposes what amounts to compulsory membership of an association whose aims, as in the present case, are not, for reasons of personal ethics, shared by the members, and indeed are vehemently opposed by them.

Freedom of association must necessarily be interpreted as the ‘positive freedom’ for each individual to join an association of his or her choice, but it also means the negative right not to be compelled to join an association or trade union. To accept that Article 11 of [the Convention] guarantees only the ‘positive’ freedom of association would mean denying the very principle of that freedom, which is based on the free, voluntary choice of any person who wishes to join a group.

Accordingly, by compelling certain landowners to join an ACCA, sections 3 and 4 of the Loi Verdeille violate the very substance of freedom of association, which must be regarded as one aspect of the freedom of conscience, opinion and expression which is likewise guaranteed by [the Convention], and lead not to a restriction of the freedom of association but to the negation of it.

This infringement of the freedom of association appears all the more shocking because the right to object to the transfer of hunting rights is reserved by section 3 of the [Loi Verdeille] exclusively to the owners of properties exceeding 20 hectares in area in a single block.

Thus the Loi Verdeille establishes discrimination between landowners on the basis of the amount of land they own, which is wholly incompatible with Article 14 of [the Convention], whereas the right not to join an ACCA should be uniformly granted to all landowners, whatever the size of their holdings.

Nevertheless, it must be determined whether the interference with exercise of the freedom of association resulting from sections 3 and 4 of the Loi Verdeille can be justified under paragraph 2 of Article 11 of [the Convention].

As it is necessarily out of the question to regard the Loi Verdeille as ‘necessary in a democratic society’ in the interests of national security or public safety, for the prevention of disorder or crime, or for the protection of health or morals, it can be considered compatible with [the Convention] only if it is accepted that the interference with exercise of the freedom of association is justified ‘for the protection of the rights and freedoms of others’, the only restriction in the present case provided for by the above-mentioned Article 11.

It must therefore be determined whether the Loi Verdeille governing the organisation of ACCAs, whose object is ‘in general’ – or mainly, in the plaintiffs’ submission – ‘to improve the technical organisation of hunting so that the sport can be practised in a more satisfactory manner’, can prevail over the right not to join a hunters’ association.

It must be noted in the first place that the Loi Verdeille does not appear to be absolutely necessary, given that it is applied in full in only twenty-eight French *départements* out of seventy-one, that it affects only nine thousand municipalities in France, including seventy-seven in Dordogne and that it is not the only legislation concerning the protection of game and compensation for damage caused by it.

Secondly, the right to hunt is not considered one of the rights protected by [the Convention] (see, to that effect, Cass. Ch. Crim. 15.12.1987 – GP 1988, page 8).

Consequently, mere protection of the exercise of a sport cannot prevail over the fundamental freedom to join or not to join an association. By compelling landowners to become members of ACCAs despite the ethical stance and personal conscience of

those members, as in the present case, the Loi Verdeille inflicts on the persons concerned wrongs that are disproportionate to the aim pursued, namely the self-seeking pursuit of a leisure activity and the organisation of that activity.

This Court therefore finds that sections 3 and 4 of the [Loi Verdeille] do not comply with the binding provisions of Articles 11, 9, 10 and 14 of [the Convention].

Consequently, the plaintiffs are now entitled to resign their membership of the ACCAs concerned and put up notices on their property bearing the text of their choice, in so far as this is consistent with public-order considerations and accepted moral standards.”

2. The proceedings in the Bordeaux Court of Appeal

21. On 23 December 1988 the Tourtoirac and Chourgnac-d’Ans ACCAs appealed to the Bordeaux Court of Appeal.

On 18 April 1991 that court set aside all the provisions of the judgment of 13 December 1988, giving the following reasons:

“It is certain that in seeking to promote the rational exercise of the right to hunt through the pooling of individual rights over properties smaller than the minimum areas laid down in regulations the [Loi Verdeille] derogates to a considerable extent from the principle laid down by the provisions of Article 365 of the Countryside Code that ‘No one shall have the right to hunt on land belonging to another without the consent of the owner or any person entitled through or under the owner’. By that means, however, the right to hunt, which is one element of the right of property, has been detached therefrom in order to ensure that it is exercised in accordance with the general interest, as defined in section 1, which provides that the object of [ACCAs], thus vested with public-authority prerogatives, shall be ‘to encourage, on their hunting grounds, an increase in game stocks, the destruction of vermin and the prevention of poaching, to instruct their members in how to hunt without interfering with property rights or crops and in general to improve the technical organisation of hunting so that the sport can be practised in a more satisfactory manner’.

In asserting that Parliament only took into consideration ‘the self-seeking pursuit of a leisure activity’, and that this did not justify depriving some people of their fundamental rights, the court below evidently disregarded the object of the provisions referred to above, which concern both protection of the environment and wildlife against unregulated hunting, damage of all kinds or anarchic management and the organisation and regulation of the sport itself. Hunting, on account of the very large number of people who take part in it and its corresponding economic importance, must be subject, like any other popular leisure activity, to the constraints inherent in the normal operation of a public service which has in addition been recognised as such by the Constitutional Council and the *Conseil d’Etat* (CE 7/7/1978 – CE 5/7/1985). As such public-interest restrictions on exercise of the right of property are expressly provided for by [the Convention] in Article 1 of Protocol No. 1, the respondents Chassagnou, Petit and Lasgrezas may not validly plead a breach of that provision. Similarly, the pooling of small properties to form hunting grounds of sufficient size, which are accordingly capable of affording as many people as possible access to leisure activities which would otherwise inevitably remain the prerogative of landowners fortunate enough to possess a large estate, deprives of all foundation the

complaint that the [Loi Verdeille] discriminates on the ground of property, in breach of Article 14 of [the Convention].

Lastly, while transfer of rights over their land to an ACCA gives the landowners concerned the status of automatic members, who are thus empowered to participate in the management of the municipal hunting grounds and to defend their interests, these are the only effects of the provisions in issue. Unlike persons whose membership is conditional, *inter alia*, on the payment of subscriptions, automatic members are under no obligation. Still less is there any provision for coercive measures or penalties against them; they are free to hunt or not to hunt, to scrutinise the way the ACCA conducts its business and participate in its work or refrain from any involvement in it.

Whereas, moreover, the creation of ACCAs, and their scope, *modus operandi* and constitution are not only governed by legislation but also subject to prefectural approval, and whereas on that account, and notwithstanding the associative form of these bodies, their public-interest role excludes any contractual relationship between their members, the automatic admission, free of charge, of landowners required to transfer their rights is only consideration for the partial alienation that they suffer, and constitutes in addition an undoubted attenuation of the measures restricting the right of property.

It would appear that the members of the ROC, who are well aware that the general interest imposes certain restrictions on exercise of the right of property and that the [Loi Verdeille] does not in any way erect obstacles to freedom of association, are in fact claiming a right not to hunt, which is neither secured by domestic law nor guaranteed, any more than the right to hunt itself, by international treaties.

...”

3. *The proceedings in the Court of Cassation*

22. By a judgment of 16 March 1994 the Third Civil Division of the Court of Cassation dismissed an appeal on points of law by the applicants, giving the following reasons:

“The provisions of Article 1 of Protocol No. 1 ... recognise 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, and the Court of Appeal held, firstly, that the provisions of the [Loi Verdeille] had to do with protection of the environment and wildlife from unregulated hunting and damage of all kinds or anarchic management as much as with the organisation and regulation of hunting itself, and secondly that the pooling of small landholdings into hunting grounds of sufficient size, which would accordingly be able to afford as many people as possible access to leisure activities that would otherwise be bound to remain the prerogative of large landowners, deprived of all foundation the complaint of discrimination based on property. The argument on that point is therefore unfounded.

...

Having noted that landowners who had transferred their rights to the association, who were automatic members, were under no obligation, that there was no provision for coercive measures or penalties against them, that these members could participate

in the work of the association or refrain from doing so and that, as the public-service role of the association excluded any contractual relationship between its members, the automatic admission, free of charge, of landowners required by law to transfer their rights was only consideration for that transfer, the Court of Appeal, through those reasons alone provided the reasoning required by law for its decision on that subject.”

B. Mr Dumont, Mr A. Galland, Mr P. Galland, Mr E. Petit, Mr M. Petit and Mr Pinon

23. Mr Dumont, Mr A. Galland, Mr P. Galland and Mr E. Petit (who died in June 1995) were born in 1924, 1926, 1936 and 1910 respectively; Mr M. Petit and Mr Pinon were born in 1947. They are all farmers living at Genouillac in the *département* of Creuse. They own landholdings there smaller than 60 hectares in a single block which are included in the hunting grounds of the ACCAs of La Cellette and Genouillac and describe themselves as opposed to hunting on ethical grounds. They too are members of the ASPAS.

1. The proceedings in the Limoges Administrative Court

24. In August and September 1987 each of the applicants requested the prefect of Creuse to remove their land from the hunting grounds of the ACCAs in question. They then applied to the Limoges Administrative Court for judicial review of the implicit refusals constituted by the prefect’s failure to reply, relying on the provisions of the Convention and those of the International Covenant on Civil and Political Rights and the ILO Convention of 1948 on freedom of association.

25. On 28 June 1990 the Limoges Administrative Court dismissed the appeals in six identical judgments, giving the following reasons:

“As regards the complaint of an interference with the freedom of conscience

...

No provision of the Law of 10 July 1994 ... infringes the right of persons opposed to hunting to express that belief or to manifest it, even in public. The mere fact that an ACCA has been set up does not impose on them in that respect any constraint, obligation or prohibition ... The freedom of opinion and expression of persons opposed to hunting is necessarily limited by protection of the rights and freedoms of hunters and those who share their convictions.

As regards the complaint of an interference with the freedom of association

...

Under such provisions citizens cannot be obliged to join an association against their will. However, since, under the very terms of the provisions relied on, freedom of association may be subject to restrictions which are deemed necessary on general-interest grounds, a citizen may be legally required to join an association whose object

is to serve the general interest. Rational exercise of the right to hunt, as organised by the Law of 10 July 1964 is a general-interest ground, notwithstanding the fact that, regard being had to the manner of its implementation, the Law is not in practice applied to the whole of the national territory. The interference thus imposed on individual freedom of association is not excessive in the light of this general interest.

As regards the complaint of a breach of equality before the law

...

In any event, the provisions of the Law ... do not introduce discrimination on the ground of property. Although it lays down a minimum qualifying area for objections and withdrawals, the Law's wording and its drafting history show that these limits were laid down in order to ensure the rational organisation of hunting. Such a general interest justifies a difference in treatment between landowners depending on the area of land they possess without this different treatment constituting a breach of equality before the law.

As regards the complaint of an infringement of the right of property and the right of use

...

Although the provisions cited above protect the right of property and the right to use one's possessions, they do not prevent restrictions being imposed thereon in the general interest. As this Court has already remarked, the organisation of hunting serves a general interest which justifies such restrictions. The landowners whose land is included in the ACCA's hunting grounds receive consideration for the loss of their exclusive right of use in the form of their membership of the ACCA and the services it provides. The fact that [the applicants] stated that they were not interested by such forms of consideration is not capable of rendering them insufficient. Lastly, although [the applicants] maintained that the Law of 10 July 1964 did not ensure fair and prior compensation, contrary to provisions having the status of constitutional law, it is not for the administrative courts to rule on the constitutionality of legislation. Accordingly such a complaint may not be validly raised before the Administrative Court."

2. *The proceedings in the Conseil d'Etat*

26. Relying on Articles 9, 11 and 14 of the Convention and Article 1 of Protocol No. 1, the applicants appealed to the *Conseil d'Etat*.

27. By six identical judgments of 10 March 1985 the *Conseil d'Etat* dismissed their appeals on the following grounds:

"...

No provision of the [Loi Verteille] obliges a non-hunter to take part in or approve of hunting. Consequently, and in any case, the appellant is not entitled to maintain that the Limoges Administrative Court wrongly held that the provisions of the [Loi Verteille] were not contrary to the provisions of Article 9 of [the Convention].

...

The [Loi Verdeille] introduced municipal hunters' associations approved by prefects with the aim of improving the technical organisation of hunting. With a view to enabling these bodies to perform the public-service role entrusted to them, various public-authority prerogatives were conferred on them. Consequently, and in any case, the provisions mentioned cannot be validly relied on to contest the lawfulness of the impugned decision taken by the prefect of Creuse.

...

The fact that land belonging to the appellant was included in the hunting grounds of the [ACCA] and that owners of the hunting rights may come to hunt there has not deprived the appellant of his property but merely restricted his right to use it, in accordance with the rules laid down by the [Loi Verdeille], which are not disproportionate in relation to the general-interest objective pursued. The argument analysed above cannot therefore be upheld.

...

The fact that the [Loi Verdeille] lays down different rules, depending on whether the landholdings concerned are less than or greater than 20 hectares in area, is due to the fact that the situations are different, regard being had to the objectives pursued by that Law, in particular the management of game stocks. These rules do not impose any of the forms of discrimination proscribed ... by Article 14 of [the Convention]"

C. Mrs Montion

28. Mrs Montion was born in 1940 and works as a secretary. She lives at Sallebœuf in the *département* of Gironde.

29. The applicant and her husband, who died in February 1994, were the owners of a landholding of 16 hectares which formed part of the hunting grounds of the Sallebœuf ACCA.

As a member of the National Society for the Protection of Nature ("the SNP") and the ROC, Mr Montion unsuccessfully requested during the procedure to set up the ACCA that his land be designated an ACCA reserve. He then, with no more success, contested in the administrative courts the prefectural decree of 7 December 1979 approving the association.

30. Determined thenceforth to include his property in the SNP's network of voluntary nature reserves, he requested the prefect of Gironde, in a letter of 15 June 1987, firstly to order the Sallebœuf ACCA to remove him from the list of its members, and secondly to remove his land from the list of properties forming the association's hunting grounds. On 29 June 1987 he wrote to the chairman of the ACCA making the same request.

The prefect and the chairman of the ACCA refused in letters dated 25 June and 10 July 1987 respectively.

1. The proceedings in the Bordeaux Administrative Court

31. On 13 August 1987 Mr Montion and the SNPN asked the Bordeaux Administrative Court to set aside the decisions of 25 June and 10 July 1987 as being *ultra vires*. They essentially pleaded violation of Articles 9, 11 and 14 of the Convention and Article 1 of Protocol No. 1.

32. By a judgment of 16 November 1989 the Bordeaux Administrative Court rejected these applications on the following grounds:

“As to the decision of 10 July 1987 by the chairman of [the ACCA]:

... [Mr Montion’s application to the chairman of the Sallebœuf ACCA] must be regarded as a challenge to membership of an association constituted in accordance with the 1901 Act. Although, in order to achieve the objectives laid down by the [Loi Verdeille], [ACCAs] are vested with public-authority prerogatives, they nevertheless remain private-law bodies. The decisions they take outside the context of the exercise of those prerogatives, particularly with regard to granting or withdrawing membership, are private-law acts which are not subject to review by the administrative courts. Consequently, the submissions in the application ... directed against the refusal to remove Mr Montion from the list of members of the Sallebœuf ACCA have been brought before a court which has no jurisdiction to take cognisance of them and must be rejected.

As to the decision of 25 June 1987 by the prefect of Gironde ...:

...

Under the terms of Article 14 of [the Convention]

The right to hunt or not to hunt is not one of the rights and freedoms whose enjoyment is protected by [the Convention]. Consequently, Mr Montion and [the SNPN] may not rely on the Convention in complaining of a breach of equality before the law. However, equality before the law is a general principle of law which the applicants may rely on.

Section 3 of the [Loi Verdeille] reserves to the owners of land attaining an area of at least 20 hectares in a single block the right to object to the inclusion of the land in question in the hunting grounds of an ACCA. That limit, which has not been shown to constitute discrimination on the ground of property, was laid down in order to ensure the rational organisation of hunting through the pooling of hunting grounds of sufficient size and in order thus to guarantee that as many people as possible might exercise the right to hunt. That being so, it cannot be considered to impair equality before the law.

While [the Convention] protects the right of property, it does not stand in the way of interferences with that right in accordance with the general interest. The organisation of hunting, on account of the very nature of that activity, the number of hunters and the social phenomenon it constitutes, is a matter of general interest which justifies an interference with the right of property. A landowner whose property is included in the ACCA’s hunting grounds receives consideration for the loss of his right to private use in the form of a right to use the land of the other landowners, not to mention the other services provided by the association, of which he automatically becomes a member.

Furthermore, Mr Montion is not entitled to rely on his own refusal to accept this consideration in support of his assertion that he has not been fairly compensated for the loss of his right of use.

...

According to Article 9 of [the Convention]

The aim of these provisions is to protect rights and fundamental freedoms to which the right ‘not to hunt’ does not belong. In addition, they provide that the principles they set forth may be subject to restrictions inherent in the concurrent exercise of individual rights and freedoms. Indeed, the restrictions on these rights and freedoms are thus justified, in their principle and manner of application, in the light of the competing interests at issue. The organisation of hunting is made necessary, as pointed out above, by the need to protect public order, public safety and the right of everyone to hunt.

...

Under the terms of Article 11 of [the Convention]

Participation in [the ACCA], for a landowner whose property is included in its hunting grounds, is a right granted in consideration for the loss of the exclusive right to use his land and is intended to enable him to defend his interests within the association. In addition, he has the right to resign subject to the conditions laid down in section 8 of the [Loi Verdeille] and does not have to pay a subscription, transfer of his rights not being capable of being construed as a form of subscription, since advantages are provided to set this off. Consequently, the refusal to allow Mr Montion to resign from the Sallebœuf ACCA did not infringe the freedom of association.

...”

2. *The proceedings in the Conseil d’Etat*

33. Relying on Articles 9, 11 and 14 of the Convention and Article 1 of Protocol No. 1, Mr Montion and the SNPN appealed to the *Conseil d’Etat* on 3 and 11 January 1990 respectively.

34. On 10 May 1995 the *Conseil d’Etat* dismissed the appeals by a judgment giving the same reasons as those it had given on 10 March of the same year in the cases of Mr Dumont, Mr A. Galland, Mr P. Galland, Mr E. Petit, Mr M. Petit and Mr Pinon (see paragraph 27 above).

III. RELEVANT DOMESTIC LAW

35. Article L. 220-1 of the Countryside Code provides:

“The Government shall be responsible for supervising and regulating hunting in accordance with the general interest.”

A. The right to hunt and the right of property

36. Article L. 222-1 (former Article 365) of the Countryside Code provides:

“No one shall have the right to hunt on land belonging to another without the consent of the owner or any person entitled through or under the owner.”

The “right to hunt” therefore belongs to the landowner. It is an exclusive right, although the law gives the lessee of an agricultural tenancy the right to hunt on the property (Article L. 415-7 of the Countryside Code).

The landowner may “let” his hunting rights but cannot sell them separately from the property concerned.

37. Article R. 228-1 of the Countryside Code provides:

“Anyone who hunts on land belonging to another without the consent of the owner of the land or the hunting rights shall be liable to the penalties laid down for Class 5 offences.”

38. Under Article R. 227-5 of the Countryside Code, the Minister responsible for hunting must draw up a list of the species of animals which may be designated vermin pursuant to Article L. 227-8. The list is drawn up after the National Hunting and Wildlife Council has been consulted on the basis of the potential harmful effect of the animals on human activities or biological equilibrium.

Article R. 227-6 provides that in each *département* the prefect must decide which species from those on the list provided for in Article 227-5 constitute vermin in that *département*, having regard to the local situation and on one of the following grounds: to protect public health and safety, to prevent significant damage to agriculture, forestry or aquaculture or to protect flora and fauna.

The prefect takes the relevant decision each year after consulting the Hunting and Wildlife Council for the *département* and the Hunters’ Federation. It is published before 1 December and comes into force on 1 January of the following year.

Under Article R. 227-7 of the Countryside Code, the landowner, person in possession or tenant farmer must either take steps to destroy vermin personally, or have such steps taken in his presence or delegate in writing the right to do so. No one delegating this right may receive payment for delegating it.

It has been established by case-law that the destruction of vermin is not hunting but an inherent part of the right of ownership or enjoyment of land (Paris Court of Appeal, 9 July 1970, D. 1971.16, note by M. B.)

B. Statutory pooling of hunting grounds

39. In certain cases the law makes the “pooling” of hunting grounds compulsory.

1. The rules applicable in the départements of Bas-Rhin, Haut-Rhin and Moselle

40. In the *départements* of Bas-Rhin, Haut-Rhin and Moselle exercise of the right to hunt is governed by a local law of 7 February 1881. It is supervised by the municipality on behalf of landowners. The municipality lets hunting grounds for periods of nine years by public tender. The areas of land concerned may not be smaller than 200 hectares. The rent is either distributed among the various landowners in proportion to the cadastral area of their property or, where at least two-thirds of the owners, possessing at least two-thirds of the rented area, so decide, assigned to the municipality.

The owner of a piece of land larger than 25 hectares in a single block (5 hectares for lakes and ponds) may reserve his hunting rights, but where a qualified majority of the landowners have decided to assign the rent for hunting grounds to the municipality he must pay the municipality a contribution proportional to the size of the holding concerned. Several landowners may not pool their land to make up the statutory minimum areas. The law does not apply to plots of land enclosed by a fence preventing any communication with neighbouring land.

2. The rules applicable in the other metropolitan départements

41. In the other *départements* the applicable rules are laid down by Law no. 64-696 of 10 July 1964, known as the “Loi Verdeille”, which provides for the creation of approved municipal and inter-municipality hunters’ associations (“ACCAs” and “AICAs”).

ACCAs, which are subject to the ordinary law on associations (the Law of 1 July 1901) and the special provisions of the Loi Verdeille (codified as Articles L. 222-2 et seq. of the Countryside Code) and the regulatory provisions codified as Articles R. 222-1 et seq. of the Countryside Code, pool the hunting grounds within their municipalities. Their statutory object is to “encourage, on their hunting grounds, an increase in game stocks, the destruction of vermin and the prevention of poaching, to instruct their members in how to hunt without interfering with property rights or crops and in general to improve the technical organisation of hunting so that the sport can be practised in a more satisfactory manner” (Article L. 222.2 of the Countryside Code).

42. There may not be more than one ACCA in a municipality, but two or more ACCAs in the same *département* may set up an AICA (Articles L. 222-22 and R. 222-70 et seq. of the Countryside Code).

(a) Setting up approved municipal hunters' associations

43. The creation of an ACCA is mandatory only in certain *départements* named on a list drawn up by the Minister responsible for hunting, on a proposal by the prefect of the relevant *département*, supported by the *département* council, and after prior consultation of the Chamber of Agriculture and the Hunters' Federation in that *département* (Article L. 222-6 of the Countryside Code). Twenty-nine of the 93 metropolitan *départements* other than Bas-Rhin, Haut-Rhin and Moselle are concerned, including Creuse and Gironde.

In the remainder of these 93 *départements* the prefect draws up a list of municipalities where an ACCA is to be set up. His decision is taken on an application by anyone who can furnish evidence that at least 60% of landowners holding at least 60% of the land in the municipality agree to set up an association for a period of six years (Article L. 222-7 of the Countryside Code). On 28 February 1996 ACCAs were thus set up in 851 municipalities in 39 different *départements*, including 53 of the 555 municipalities in Dordogne.

44. Altogether, ACCAs have been set up in approximately 10,000 municipalities out of some 36,000 in metropolitan France.

45. In the municipalities concerned the prefect must organise a public inquiry to determine "the properties in respect of which hunting rights are to be transferred to the municipal hunters' association by the owners of such properties or such rights" (Articles L. 222-8, L. 222-9 and R. 222-17 et seq. of the Countryside Code).

Article L. 222-9 of the Countryside Code provides:

"Such transfers shall be automatically deemed to have been made for a renewable period of six years upon a request from the municipal association provided that, within three months from the date on which the notice of formation of the association is posted at the town hall and sent to each landowner or owner of hunting rights fulfilling the conditions laid down in Article L. 222-13 by recorded delivery letter with a prepaid acknowledgement of receipt form, the landowner or owner of hunting rights does not inform the mayor by recorded delivery letter with a prepaid acknowledgement of receipt form that he objects to such a transfer, and on what grounds."

(b) The area of land concerned

(i) *Land in respect of which rights are to be transferred to an ACCA*

46. Article L. 222-10 of the Countryside Code provides:

"A municipal hunters' association may hunt on lands other than those:

1. within a radius of 150 metres of any dwelling;
2. enclosed by a fence as defined in Article L. 224-3 of the Countryside Code [‘continuous and unbroken, forming an obstacle to any communication with

neighbouring properties and incapable of being breached by game animals or by human beings’];

3. forming an uninterrupted area greater than the minimum area referred to in Article L. 222-13 and in relation to which the owners of the land or of the hunting rights have filed objections; or

4. constituting public property belonging to the State, a *département* or a municipality or forming part of a public forest or belonging to the French National Railway Company.”

(ii) *Land in respect of which transfer of rights may be opposed or revoked*

47. The owners of land or hunting rights – or groups of owners – may object, where certain conditions are satisfied, to the inclusion of their hunting grounds in those of the ACCA. Article L. 222-13 of the Countryside Code provides:

“In order to be admissible, an objection ... by owners of land or hunting rights must relate to at least 20 hectares of land in a single block.

That minimum shall be lowered in respect of waterfowl shooting

1. to 3 hectares for undrained marshland;
2. to 1 hectare for isolated ponds;
3. to 50 ares for ponds where, on 1 September 1963, there were fixed installations, shelters or hides.

The minimum shall be lowered in respect of hunting for birds of the family *Colombidae* to 1 hectare for land where, on 1 September 1963, there were fixed structures used for that purpose.

The minimum shall be raised to 100 hectares for land in mountain areas above the tree-line.

Orders made for each *département* under the conditions laid down in Article L. 222-6 may increase the minimum areas thus defined. These increases may not bring the new figure to more than twice the minimum laid down above.”

In *départements* where creation of an ACCA is mandatory the minimum areas may be tripled by a ministerial order (*Conseil d’Etat*, 15 October 1990, de Viry and Others, RFDA 6 (6), November-December 1990, p. 1100).

48. Article L. 222-14 of the Countryside Code adds:

“Any owner of land or hunting rights who has filed an objection shall pay all taxes and levies which may be due in relation to private hunting grounds, see to the keeping of the land, take steps to destroy vermin there and put up signs on the boundaries of the land indicating its status. If a landowner so requests, a hunters’ federation must act as warden in relation to the land.”

49. Where the owner of land or of hunting rights over land of an area greater than the minimum referred to in Article L. 222-13 of the Countryside Code wishes to leave an ACCA, he may do so only on expiry of one of the six-year periods and on two years' notice. The ACCA is then entitled to ask him to pay a sum of compensation to be determined by the relevant court and corresponding to the value of any improvements the ACCA has made (Article L. 222-17 of the Countryside Code).

Where the owner of land smaller than the minimum area mentioned above subsequently acquires further pieces of contiguous land forming with the first piece of land a single block larger than the minimum, he is entitled to ask for the property thus formed to be removed from the ACCA's hunting grounds (Article R. 222-54 of the Countryside Code). Owners of land and/or hunting rights may not combine with each other to obtain the right to withdraw from an ACCA (*Conseil d'Etat*, 7 July 1978, *Sieur de Vauxmoret*, *Recueil Lebon*, p. 295).

(c) Effects of the transfer of hunting rights to an ACCA

50. Articles L. 222-15 and L. 222-16 of the Countryside Code provide respectively:

“The transfer of hunting rights by a landowner or owner of hunting rights shall extinguish any other hunting rights unless the parties have agreed otherwise.”

“Transfer entitles the landowner to be compensated by the association if he suffers any loss of profits caused by deprivation of a previous source of income.

The amount of compensation shall be fixed by the competent court, as shall the sum owed by the association to an owner of hunting rights who has made improvements to the land over which he possesses the right to hunt.”

(d) Members of an ACCA

51. Article L. 222-19 provides:

“The constitution of each association shall provide that any person holding a valid hunting licence may join provided that he:

1. is domiciled in the municipality or has a residence there in respect of which, for the fourth year in succession at the time of his admission, without interruption, he appears on the list of persons liable to pay one of the four forms of direct taxation; or

2. owns land or hunting rights and has transferred his hunting rights; in this case, the spouse, ascendants and descendants of such person may also join; or

3. holds land under an agricultural tenancy where the owner of the land has transferred his hunting rights.

The constitution shall also lay down the minimum number of members required for the association to exist and the minimum percentage of such members who may be hunters not falling within any of the above categories.

A landowner who does not hunt shall be a member of the association automatically and free of charge and shall not be liable to contribute to making up any deficit which the association may have.”

52. Members of an ACCA are entitled to hunt throughout the association’s hunting grounds, in accordance with its internal rules (Article L. 222-20 of the Countryside Code).

(e) Prefectoral supervision

53. An association is approved by order of the prefect after he has verified that it has complied with the procedural requirements and that its constitution and internal rules are compatible with the statutory rules (Articles L. 222-3 and R. 222-39 of the Countryside Code).

The prefect acts as a supervisory authority for the ACCAs. Any changes to the constitution, the internal rules or the hunting regulations must be submitted to him for his approval (Article R. 222-2 of the Countryside Code). Article R. 222-3 further provides that the prefect may issue an order for temporary measures, or even dissolve and replace the executive committee of an ACCA if it has breached any of its obligations under Articles R. 222-1 to R. 222-81.

C. Game reserves

1. Reserves under former Article 373-1 of the Countryside Code and the mandatory reserves of the ACCAs and AICAs

54. Law no. 56-236 of 5 March 1956, codified first as Article 373-1 and then as Article L. 222-25 of the Countryside Code, introduced the mandatory creation of game reserves. The Minister responsible for hunting had power to draw up, on a proposal by the hunters’ federation of each *département*, the list of *départements* where municipal game reserves could be created.

On a proposal by the hunters’ federation of each *département*, and after prior consultation of the municipal council, the council of the *département* and the Chamber of Agriculture, a ministerial order could establish, for each of these *départements*, a list of the municipalities in which creation of a game reserve was compulsory, with an indication of the minimum areas of such reserves. Subject to the exceptions set out in the fifth sub-paragraph of Article 373-1 of the Countryside Code, hunting is prohibited inside these reserves.

55. The Loi Verdeille requires ACCAs and AICAs to create one or more municipal or inter-municipality game reserves. The area of these reserves must be at least one-tenth of the total area of the association's hunting grounds. The list of the pieces of land forming the reserve, as identified in Land Registry records, must be approved by the prefect. They must be set up "in parts of the hunting grounds suited to the species of game to be protected and established in such a manner as to ensure respect for property, crops and various kinds of cultivated plants" (Articles L. 222-21, R. 222-66 and R. 222-67 of the Countryside Code).

2. *Unification of the rules governing game reserves: game and wildlife reserves*

(a) **Unification of the rules governing game reserves**

56. In the new version, as amended by Law no. 90-85 of 23 January 1990, Article L. 222-25 provides:

"The conditions for setting up and operating game reserves shall be laid down by a decree of the *Conseil d'Etat*. This shall determine in particular the conditions for deciding what measures should be adopted to prevent prejudice to human activities, encourage the protection of game and its habitats and maintain biological equilibrium."

57. Decree no. 91-971 of 23 September 1991 (Official Gazette of 24 September 1991) introduced "game and wildlife reserves" and amended Articles R. 222-82 to R. 222-92 and R. 222-65 of the Countryside Code.

The new Article R. 222-65 states that ACCA reserves are subject to the provisions of Articles R. 222-82 to R. 222-92 of the Countryside Code.

Article 4 of the decree further states that game reserves approved by the State before its entry into force are now governed by Articles R. 222-85 to R. 222-92 of the Countryside Code.

(b) **Game and wildlife reserves (Articles R. 222-82 to R. 222-92 of the Countryside Code)**

58. Game and wildlife reserves are set up by the prefect (Article R. 222-82 of the Countryside Code) either of his own motion, "where it appears necessary to lend support to large-scale game protection and management projects carried out in the general interest" (Article R. 222-84 of the Countryside Code), or on an application by the owner of the hunting rights (Article R. 222-83 of the Countryside Code); if the prefect refuses, he must give reasons for his decision (*ibid.*).

A prefect may close down a game and wildlife reserve at any time, on general-interest grounds or on an application by the owner of the hunting rights, particularly at the end of each six-year period after the reserve's creation. If he refuses such an application, he must give reasons for his decision (Article R. 222-85 of the Countryside Code).

59. All hunting is prohibited in a game and wildlife reserve. The order setting up the reserve may however provide for the possibility of implementing a hunting plan where that is necessary in order to maintain biological equilibrium and a balance between hunting, agriculture and forestry. In that case, implementation of the plan must then be authorised each year by the order assigning the quotas (Article R. 222-86 of the Countryside Code). Moreover, the capture of game species for scientific purposes or for the purpose of restocking may be authorised under the conditions laid down by ordinary law (Article 222-87 of the Countryside Code). Other activities likely to disturb game or threaten its habitat may be regulated or prohibited (Articles R. 222-89 to R. 222-91).

D. Nature reserves

1. Nature reserves established by decree

60. Article L. 242-1 of the Countryside Code provides:

“Parts of the territory of one or more municipalities may be designated as a nature reserve where conservation of flora and fauna, the soil, water, deposits of minerals or fossils and the natural environment in general is particularly important or where it is necessary to protect them from any form of artificial intervention which might damage them. Designation may affect maritime public property and French territorial waters.”

The most important factors to be taken into consideration for this purpose are: preservation of animal or plant species or habitats threatened with extinction in all or part of the national territory or possessing unusual features; re-establishment of animal or plant populations or their habitats; conservation of botanical gardens and arboreta which form reserves for rare and unusual plants or species threatened with extinction; preservation of biotopes and unusual geological, geomorphological or speleological formations; and preservation or establishment of intermediate destinations on the major migration routes of wild fauna.

61. A designation decision is made by decree, after all the local authorities concerned have been consulted. Where the landowner’s consent is withheld, the reserve is designated by a decree of the *Conseil d’Etat* (Article L. 242-2 of the Countryside Code). The designation procedure, which is set in motion by the Minister responsible for the protection of nature, is laid down in Articles R. 242-1 to R. 242-18 of the Countryside Code.

By 23 September 1998, 144 nature reserves had been set up under this procedure.

2. Voluntary nature reserves

62. Article L. 242-11 of the Countryside Code provides:

“In order to protect species of wild flora and fauna of scientific and ecological interest occurring on private property, landowners may apply for any such property to be approved as a voluntary nature reserve by the administrative authorities, in consultation with the local authorities concerned.”

63. An application for approval must be sent to the prefect by the landowner, accompanied by a file containing, *inter alia*, the following documents (Article R. 242-26 of the Countryside Code): a letter setting out the aim and scope of the project, and the reasons for it; a report by a qualified person demonstrating a particular scientific and ecological interest which would be served by implementing the project; a list of acts or activities considered to endanger the preservation of the species of scientific and ecological interest and a list of the conservation measures, whether permanent or temporary, which the applicant wishes to have taken; and details of the arrangements the landowner intends to make for surveillance of the reserve and of the facilities and improvements required to protect it.

The prefect submits the file for opinion to the municipal council or councils concerned, to the approved municipal hunters' association – or, where there is none, the Hunters' Federation of the relevant *département* – if there has been a request for the prohibition or regulation of hunting inside the reserve, and to the Countryside Commission of the *département*, sitting as a nature-protection authority (Article 242-27 of the Countryside Code).

64. The decision is taken by the prefect. Where necessary, the decision signifying his approval specifies the boundaries of the reserve, the nature of the conservation measures to be implemented there and the landowner's obligations as regards its surveillance and protection (Article R. 242-28 of the Countryside Code).

65. Approval is given for a period of six years, is renewable by tacit consent and may be revoked at the end of each six-year period if the landowner submits a request to that effect beforehand (Article R. 242-31 of the Countryside Code).

By 7 September 1988, 129 nature reserves had been set up under this procedure.

PROCEEDINGS BEFORE THE COMMISSION

66. Mrs Chassagnou, Mr R. Petit and Mrs Lasgrezas applied to the Commission on 20 April 1994, Mr Dumont, Mr P. Galland, Mr A. Galland, Mr E. Petit, Mr M. Petit and Mr Pinon on 29 April 1995 and Mrs Montion on 30 June 1995.

They maintained that, pursuant to Law no. 64-696 of 10 July 1964 on the organisation of approved municipal hunters' associations, known as the “Loi Verdeille”, they had been obliged, notwithstanding their opposition to hunting on ethical grounds, to transfer hunting rights over their land to

approved municipal hunters' associations, had been made automatic members of those associations and could not prevent hunting on their properties, arguing that this infringed their rights to freedom of conscience and association and to peaceful enjoyment of their possessions, guaranteed respectively by Articles 9 and 11 of the Convention and Article 1 of Protocol No. 1. They further alleged that they were the victims of discrimination based on property, contrary to Article 14 of the Convention taken in conjunction with the above three provisions, in that only the owners of landholdings exceeding a certain minimum area could escape the compulsory transfer of hunting rights over their land to an approved municipal hunters' association, thus preventing hunting there and avoiding becoming members of such an association.

67. The Commission declared the three applications (nos. 25088/94, 28331/95 and 28443/95) admissible on 1 July 1996. In its report (former Article 31 of the Convention) on application no. 25088/94, of 30 October 1997, it expressed the opinion that there had been violations of Article 1 of Protocol No. 1 taken separately (twenty-seven votes to five) and in conjunction with Article 14 of the Convention (twenty-five votes to seven) and of Article 11 of the Convention taken separately (twenty-four votes to eight) and in conjunction with Article 14 (twenty-two votes to ten), but that it was not necessary to examine the case from the standpoint of Article 9 of the Convention (twenty-six votes to six). In its reports on applications nos. 28331/95 and 28443/95, both of 4 December 1997, it reached the same conclusion by twenty-six votes to five (Article 1 of Protocol No. 1 taken separately), twenty-four votes to seven (Article 1 of Protocol No. 1 taken in conjunction with Article 14 of the Convention), twenty-four votes to seven (Article 11), twenty-two votes to nine (Article 11 in conjunction with Article 14) and twenty-four votes to seven (no need to examine the case from the standpoint of Article 9). The full text of the Commission's opinion relating to application no. 25088/94 and of the separate opinion contained in the report is reproduced as an annex to this judgment¹.

FINAL SUBMISSIONS TO THE COURT

68. In their memorial the Government asked the Court to reject the applicants' complaints relating to Articles 9 and 11 of the Convention, firstly because they were incompatible with the Convention *ratione materiae* and in the alternative because there had been no violation of the provisions concerned. They asked the Court to dismiss the complaint under

1. *Note by the Registry.* For practical reasons this annex will appear only with the final printed version of the judgment (in the official reports of selected judgments and decisions of the Court), but copies of the Commission's reports are obtainable from the Registry.

Article 1 of Protocol No. 1 on the ground that there had been no violation thereof. Lastly, with regard to the complaint under Article 14 of the Convention taken in conjunction with Articles 9 and 11 and Article 1 of Protocol No. 1, the Government likewise asked the Court to dismiss it on the ground that there had been no violation of Article 14.

69. The applicants asked the Court to hold that application of the Loi Verdeille had breached Articles 9 and 11 of the Convention, Article 1 of Protocol No. 1 and Article 14 of the Convention taken in conjunction with the other provisions relied on, and to award them just satisfaction.

THE LAW

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

70. The applicants complained that the compulsory transfer of the hunting rights over their land to an ACCA, pursuant to the provisions of the Loi Verdeille, constituted an interference with their right to the peaceful enjoyment of their possessions, as secured by Article 1 of Protocol No. 1, which provides:

“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.”

A. Applicability of Article 1 of Protocol No. 1

71. Those appearing before the Court agreed that the compulsory transfer of hunting rights over land to an ACCA pursuant to the Loi Verdeille was to be analysed in the light of the second paragraph of Article 1 of Protocol No. 1, which reserved to States the right to enact such laws as they deemed necessary to control the use of property in accordance with the general interest. They disagreed on the other hand as to whether there had actually been an “interference” with the applicants’ right to use their property.

72. The applicants submitted that the obligation for them to transfer hunting rights over their land to an ACCA, against their will and without

compensation or consideration, constituted an abnormal deprivation of their right to use their property, firstly in that they were obliged to tolerate the presence of hunters on their land, whereas they were opposed to hunting for ethical reasons, and secondly in that they could not use the land they owned for the creation of nature reserves where hunting was prohibited.

73. The Government, on the other hand, submitted that the interference with the applicants' right of property was minor since they had not really been deprived of their right to use their property. The Loi Verdeille had not abolished the right to hunt, which was one attribute of the right of property, but was only intended to attenuate the exclusive exercise of that right by landowners. The only thing the applicants had lost was their right to prevent other people from hunting on their land. But hunting was only practised for six months of the year and Article L. 222-10 of the Countryside Code expressly provided that land within a 150-metre radius of any dwelling (a total area of 7 hectares) was not to be hunted over by ACCA members.

74. The Court notes that, although the applicants have not been deprived of their right to use their property, to lease it or to sell it, the compulsory transfer of the hunting rights over their land to an ACCA prevents them from making use of the right to hunt, which is directly linked to the right of property, as they see fit. In the present case the applicants do not wish to hunt on their land and object to the fact that others may come onto their land to hunt. However, although opposed to hunting on ethical grounds, they are obliged to tolerate the presence of armed men and gun dogs on their land every year. This restriction on the free exercise of the right of use undoubtedly constitutes an interference with the applicants' enjoyment of their rights as the owners of property. Accordingly, the second paragraph of Article 1 is applicable in the case.

B. Compliance with the conditions laid down in the second paragraph

75. 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. The search for this balance is reflected in the structure of Article 1 as a whole, and therefore also in the second paragraph thereof: 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 the *Fredin v. Sweden* (no. 1) judgment of 18 February 1991, Series A no. 192, p. 17, § 51).

1. Aim of the interference

76. The applicants disputed the legitimacy of the aim of the *Loi Verdeille*. They submitted that it had not been enacted in the general interest but only for the benefit of a specific category of people, namely hunters, since the Law itself stated that the aim of the ACCAs was “to improve the technical organisation of hunting so that the sport [could] be practised in a more satisfactory manner”.

The Law contemplated wild fauna only in the form of “game”, in other words those species which were traditionally hunted. As for the destruction of vermin, which the creation of the ACCAs was also supposed to promote, the applicants submitted that, even where an ACCA had been set up, the right to destroy vermin was the exclusive prerogative of landowners, persons in possession or tenant farmers (Article L. 227-8 of the *Countryside Code*) and could only be delegated, if necessary, to an ACCA.

77. The applicants further submitted that the detailed rules for implementation of the *Loi Verdeille* revealed the lack of any justificatory general interest. The compulsory transfer of hunting rights over land to ACCAs was an exception in French law from the principle that no one had the right to hunt on another’s land without his consent, a right which also implied, in the applicants’ submission, the right not to hunt. But the *Loi Verdeille* flouted individual beliefs since it did not even contemplate the possibility that there could be landowners who did not wish to hunt. Lastly, for the efficient exploitation of game stocks, there was no need whatsoever for a pre-emption mechanism like the one introduced by the *Loi Verdeille*.

They asserted that, more than thirty years after its enactment, out of 36,200 municipalities in metropolitan France only about 9,200 had ACCAs, roughly 8,700 of which had come into being through application of the compulsory scheme, as against only about 500 formed voluntarily with the agreement of a majority of landowners. The *Loi Verdeille* was not applicable in the three *départements* of Bas-Rhin, Haut-Rhin and Moselle or on public property belonging to the State or the local and regional authorities. According to the applicants, the fact that the scheme was not generally applicable proved that there was no general interest, the ACCAs existing merely to manage hunting as a leisure activity.

They submitted that in France the hunters’ lobby, even though it represented only 3% of the population, imposed its policies and forced through rules in breach of European Community law and international law, which afforded better protection to nature. They cited, as evidence of this, the fact that France was the only European country which permitted the shooting of migratory birds during the month of February, in spite of a judgment of the Court of Justice of the European Communities, a judgment

of the *Conseil d'Etat* of 10 March 1995 and more than a hundred judgments from all the administrative courts in the country applying an EEC directive.

78. The Government argued that it would be simplistic to assess the general-interest aspect of the Loi Verdeille only by the yardstick of improvements to hunting for the sole benefit of hunters. Stocks of wild fauna and respect for property and crops all benefited from the proper organisation of hunting.

The Government pointed out that hunting was an activity with very firm roots in French rural tradition. However, the rule that no one had the right to hunt on land he did not own had been disregarded for many years in an area covering well over half of France. One of the main objectives of the Loi Verdeille, therefore, had been the establishment of a unit of management, without which any rational organisation of hunting, consistent with respect for the environment, had become impossible. In addition, the ACCAs played an educational role, thanks to hunters' participation in the running of the association and the formulation of hunting policy and to the self-policing discipline imposed on all members, whether hunters or not, by the rules of the association and the hunting regulations, with penalties to back them up.

The Government likewise rejected the applicants' argument that because the Loi Verdeille was not applied throughout French territory it did not serve any general interest. They maintained that it could be generally applied throughout the country under democratic conditions, namely the compulsory creation of an ACCA only after consultation of the *département* council, the Chamber of Agriculture and the Hunters' Federation in the *département* concerned, and voluntary creation in other cases.

Lastly, the Law could not be applied in every part of France because the need to pool hunting grounds depended on the geography of individual *départements*. For example, there could be no question of setting up ACCAs in mountainous or very built-up regions or in *départements* where hunting was already organised.

79. The Court considers that in view of the aims which the Loi Verdeille assigns to the ACCAs, as listed in section 1 thereof, and the explanations provided on this subject, it is undoubtedly in the general interest to avoid unregulated hunting and encourage the rational management of game stocks.

2. Proportionality of the interference

80. The applicants asserted that the compulsory transfer of hunting rights over their land to an ACCA was a disproportionate interference with the right to the peaceful enjoyment of their possessions. They submitted that they had no means of avoiding this transfer, in spite of the applications they had made to the ACCAs or the prefects to obtain the removal of their properties from the hunting grounds of the ACCAs concerned. They

maintained that there was no need to pre-empt small landholdings for the benefit of hunters' associations in order to rationalise game stocks. In those *départements* or municipalities where there were no ACCAs the fact that some landowners did not wish to hunt themselves and prohibited hunting on their land did not cause any problems, either with regard to the proliferation of certain species or with regard to species designated as vermin, which only the owners of the land had the right to destroy.

81. The Government rejected this argument. They submitted that the Loi Verdeille provided a broad range of means whereby landowners who wished to avoid its application could do so. They referred in that connection to the fact that it was open to the applicants to enclose their properties (Articles L. 222-10 and L. 224-3 of the Countryside Code, see paragraph 46 above), to acquire, in accordance with Article R. 222-54 of the Countryside Code, additional land contiguous with their own forming a single block exceeding the minimum area laid down in Article L. 222-13 of the Countryside Code (see paragraphs 47 and 49 above) or to ask the ACCAs to include their land in the game reserve that each ACCA was required to set up pursuant to Article L. 222-21 of the Countryside Code (see paragraph 55 above).

In addition, the applicants could have asked the Minister or the prefect to include their land in a game reserve or a game and wildlife reserve (Articles L. 222-25 and R. 222-83 of the Code, see paragraphs 56 and 58 above). Similarly, they could have asked for their land to be decreed a nature reserve or applied for it to be designated as a voluntary nature reserve (Articles L. 242-1 and L. 242-11 of the Countryside Code, see paragraphs 60-63 above).

The Government further emphasised that owners were not compelled to transfer their hunting rights to an ACCA without receiving any consideration; they admittedly lost their exclusive right to hunt but this loss was made good by the fact that for their part they could hunt throughout the ACCA's hunting grounds.

Moreover, compulsory transfer entitled landowners to compensation where on that account they had lost profits through deprivation of a previous source of income (Article L. 222-16 of the Countryside Code, see paragraph 50 above).

82. The Court considers that none of the options mentioned by the Government would in practice have been capable of absolving the applicants from the statutory obligation to transfer hunting rights over their land to ACCAs. It notes in particular that the fence referred to in Article L. 224-3 must be continuous, unbroken and incapable of being breached by game animals or human beings, which presupposes that it must be of a certain height and strength. The applicants could not be required to incur considerable expense in order to avoid the obligation to transfer the hunting rights over their land to the ACCAs. Such a requirement seems all

the more unreasonable because the financial viability of using the land in question, apart from Mrs Montion's property, for agricultural purposes would to a large extent be jeopardised by the erection of such a fence.

As to the assertion that it was open to the applicants to ask for their land to be included in a game reserve or nature reserve, the Court notes that neither the ACCAs, nor the Minister nor the prefect are required to grant such requests from private individuals, as shown by the refusals of the applicants' requests in the present case (see paragraphs 18, 24 and 29-30 above). Lastly, it can be seen from the provisions relating to nature reserves (see paragraphs 60 and 62 above) that the applicants could not claim to satisfy the specific conditions for designation.

With regard to the various forms of statutory consideration mentioned by the Government, the Court takes the view that these cannot be considered to represent fair compensation for loss of the right of use. It is clear that it was intended in the Loi Verdeille of 1964 for each landowner subject to compulsory transfer to be compensated for deprivation of the exclusive right to hunt on his land by the concomitant right to hunt throughout those parts of the municipality's territory under ACCA control. However, that compensation is valuable only in so far as all the landowners concerned are hunters or accept hunting. But the 1964 Act does not contemplate any measure of compensation for landowners opposed to hunting, who, by definition, do not wish to derive any advantage or profit from a right to hunt which they refuse to exercise. Similarly, compensation for the loss of profits caused by deprivation of a previous source of income concerns only landowners who, before the creation of an ACCA in their municipality, derived income from exercise of their hunting rights, by renting them out for example; this did not apply to the applicants in the present case.

As they are all owners of properties smaller than the minimum areas required for a valid objection (see paragraph 47 above), the applicants could not therefore avoid the compulsory transfer of the hunting rights over their land to the ACCAs of their municipalities.

83. However, such compulsory transfer is an exception to the general principle laid down by Article 544 of the Civil Code, which provides that ownership means the right to enjoy and dispose of things in the most absolute manner, provided that one does not use them in a way prohibited by law. The compulsory transfer of the right to hunt, which in French law is one of the attributes of the right of property, also derogates from the principle laid down by Article L. 222-1 of the Countryside Code, according to which no one may hunt on land belonging to another without the owner's consent. The Court further notes that under Article R. 228-1 breaches of that rule are punishable by the penalties laid down for Class 5 offences. Lastly, it should be noted that in French law (Article R. 227-7) landowners bear personal responsibility for the destruction of vermin, and that this

responsibility, if necessary, may only be delegated in writing to an ACCA, or to any other person of the owner's choice.

84. The Court further observes that, following the adoption in 1964 of the Loi Verdeille, which excluded from the outset the *départements* of Bas-Rhin, Haut-Rhin and Moselle, only 29 of the 93 *départements* concerned in metropolitan France have been made subject to the regime of compulsory creation of ACCAs, that ACCAs have been voluntarily set up in only 851 municipalities and that the Law applies only to landholdings less than 20 hectares in area, to the exclusion of both large private estates and State land (see paragraph 46 above).

85. In conclusion, notwithstanding the legitimate aims of the Loi Verdeille when it was adopted, the Court considers that the result of the compulsory-transfer system which it lays down 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. There has therefore been a violation of that provision.

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

86. The applicants submitted that the provisions of the Loi Verdeille discriminated against them in two ways, one grounded on property and the other on their opinions and lifestyle. They relied on 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.”

87. They considered themselves victims of one form of discrimination arising, in the system instituted by the Loi Verdeille, from the fact that only the owners of landholdings of 20 hectares or more in area or those having sufficient means to erect a costly, impenetrable fence were exempted from the obligation to transfer their rights to the ACCAs.

They submitted that there was a second discrimination in that hunters had been accorded favourable treatment, since in consideration for their private right to hunt they had been given the right to hunt over 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. In addition, hunters' groups received free of charge, by compulsory transfer, rights over private land, whereas nature conservation associations could no longer receive, by voluntary transfer, rights over the land of their own members.

88. The Government argued that the principle of non-discrimination laid down by Article 14 did not forbid the application of different rules to persons in different situations. In the present case, only properties of some size could be the object of rational management of game stocks, smaller properties having for that reason to be pooled. Accordingly, the different categories of landowner did not form a single category of persons and the distinction between them was objective, so that the existence of different thresholds for the right to object was justified. In that connection, the Government added that although the criterion of an area of 20 hectares was rather approximate it was not arbitrary, and in this sphere the case-law of the Convention institutions left a wide margin of appreciation to States.

Lastly, the Government submitted that the complaint of discrimination based on property, on the ground that the largest landowners could escape the obligations of the Law of 1964, was not serious. In any event, the allegation was false because certain landholdings less than 20 hectares in area might have a much higher economic and pecuniary value than holdings more than 20 hectares in area consisting of heathland or fallow land.

89. The Court reiterates that Article 14 has no independent existence, but plays an important role by complementing the other provisions of the Convention and the Protocols, since it protects individuals, placed in similar situations, from any discrimination in the enjoyment of the rights set forth in those other provisions. Where a substantive Article of the Convention has been invoked both on its own and together with Article 14 and a separate breach has been found of the substantive Article, it is not generally necessary for the Court to consider the case under Article 14 also, though the position is otherwise if a clear inequality of treatment in the enjoyment of the right in question is a fundamental aspect of the case (see the *Dudgeon v. the United Kingdom* judgment of 22 October 1981, Series A no. 45, p. 26, § 67).

90. In the present case the Court must consider the consequences of the *Loi Verdeille* on the creation of ACCAs for enjoyment of the rights secured to the applicants as landowners by Protocol No. 1. The discriminatory treatment alleged by the applicants lies in the distinction drawn between the owners of 20 hectares or more of land in Dordogne and Gironde, or 60 hectares in Creuse, who may object to the compulsory transfer of their hunting rights to an ACCA, in accordance with Article L. 222-13 of the *Countryside Code* (see paragraph 47 above), and those like the applicants owning land smaller in area, who may not. The properties of the various applicants in the present case provide a very good illustration of the various situations that can arise; those of Mrs Chassagnou, Mr R. Petit and

Mrs Lasgrezas are situated in Dordogne, a *département* where the setting-up of an ACCA is voluntary and the threshold for objections is 20 hectares, whereas those of Mr Dumont, Mr P. Galland, Mr A. Galland, Mr M. Petit and Mr Pinon are in Creuse and Mrs Montion's is in Gironde, and in these *départements* the setting-up of an ACCA is compulsory, but the threshold for objections is 60 hectares in Creuse and 20 hectares in Gironde.

91. 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, most recently, *Larkos v. Cyprus* [GC], no. 29515/95, § 29, ECHR 1999-I).

92. The Court observes that the respondent State sought to justify the difference in treatment between small and large landowners by pleading the need to pool small plots of land in order to promote the rational management of game stocks. While accepting that a measure which leads to a difference in treatment between persons placed in comparable situations may be justified in the public interest, the Court considers that in the present case the Government have not put forward any convincing explanation as to how the general interest could be served by the obligation for small landowners only to transfer their hunting rights. At first sight, the rational exploitation of game stocks in a particular municipality is just as indispensable on large properties as on small ones and the Government have not shown the existence of any preponderant interest which could justify use of the criterion of the area of the land as the sole means of differentiation. The Court fails to see what could explain the fact that, in one and the same municipality, large landowners may keep for themselves exclusive hunting rights over their land, particularly with a view to deriving income from them, and are exempted from the obligation to transfer these rights to the community or, not hunting there themselves, may prohibit hunting by others on their land, whereas small landowners, on the contrary, are obliged to transfer the rights over their land to an ACCA.

93. Moreover, while it may appear to be in the interest of hunters who own small plots of land to band together in order to obtain larger hunting grounds, there is no objective and reasonable justification for compelling people who have no wish to band together to do so, by means of a compulsory transfer, on the sole criterion of the area of the land, which, as the Government moreover admitted, is a rather approximate yardstick.

94. Furthermore, in those *départements* where the formation of an ACCA is voluntary, as in Dordogne, where out of 555 municipalities only 53 have ACCAs, application of the Loi Verdeille leads to situations in which some small landowners are obliged to transfer hunting rights over

their land to an ACCA whereas, in a neighbouring municipality with the same type of terrain and the same wildlife species but not affected by the Loi Verdeille, all landowners, whether their holdings are large or small, are free to use their property as they wish.

95. In conclusion, since the result of the difference in treatment between large and small landowners is to give only the former the right to use their land in accordance with their conscience, it constitutes discrimination on the ground of property, within the meaning of Article 14 of the Convention. There has therefore been a violation of Article 1 of Protocol No. 1 taken in conjunction with Article 14 of the Convention.

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

96. The applicants submitted that they had suffered an infringement of their freedom of association on account of the fact that pursuant to the relevant provisions of the Loi Verdeille they had against their will been made automatic members of an approved municipal hunters' association, which the Law did not permit them to leave. They relied on 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.”

A. Applicability of Article 11

97. The applicants maintained that ACCAs indubitably came within the scope of Article 11. They argued that a hunters' association, even though approved by the authorities, remained a purely private-law body, as the Loi Verdeille itself expressly referred to the Law of 1 July 1901 on associations. An ACCA was presided over by a hunter who was elected by hunters. They were not vested with any public-authority prerogative outside the scope of the ordinary law, since the technique of official approval was not sufficient to transform a private-law association into a public administrative body.

98. The Government on the other hand, argued that ACCAs were public-law associations, vested by Parliament with public-authority prerogatives, and accordingly outside the scope of Article 11. An ACCA

could only be set up, for example, with the prefect's approval and did not have a free hand as regards the adoption of either its constitution or its internal rules, the essential parts of which were laid down by Articles R. 222-62 et seq. of the Countryside Code. In addition, the prefect had the power to supervise and impose sanctions on an ACCA, the power of prior approval of any amendment to the rules, and disciplinary powers.

The Government therefore maintained that ACCAs, even though set up in accordance with the Law of 1 July 1901, were public-law para-administrative institutions whose internal governing bodies admittedly resembled those of associations, but whose constitution clearly distinguished them from ordinary associations, since they were subject to a mixed legal regime containing elements of both private and public law. The complaint of a violation of Article 11 was accordingly incompatible *ratione materiae* with the provisions of the Convention.

99. The Court notes that the question whether ACCAs are governed by private or public law is far from a settled issue in French law. The Bordeaux Administrative Court observed, for instance, in its judgment of 16 November 1989 (see paragraph 32 above): "Although, in order to achieve the objectives laid down by the [Loi Verdeille], [ACCAs] are vested with public-authority prerogatives, they nevertheless remain private-law bodies", and went on to say: "The decisions they take ..., particularly with regard to granting or withdrawing membership, are private-law acts which are not subject to review by the administrative courts".

This was also the approach taken by the civil courts dealing with the case of Mrs Chassagnou and Others (see paragraphs 21 and 22 above). On the other hand, in finding against those applicants (Mr Dumont and Others and Mrs Montion) who appealed to the administrative courts against a refusal by the prefect to remove their land from an ACCA's hunting grounds, the courts concerned invoked the public-authority prerogatives supposedly conferred on ACCAs (see paragraphs 27 and 32 above).

100. However, the question is not so much whether in French law ACCAs are private associations, public or para-public associations, or mixed associations, but whether they are associations for the purposes of Article 11 of the Convention.

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 is to protect rights that are not theoretical or illusory but practical and effective (see the *Artico v. Italy* judgment of 13 May 1980, Series A no. 37, pp. 15-16, § 33, and, more recently, the *United Communist Party of Turkey and Others v. Turkey* judgment of 30 January 1998, *Reports of Judgments and Decisions* 1998-I, pp. 18-19, § 33).

Freedom of thought and opinion and freedom of expression, guaranteed by Articles 9 and 10 of the Convention respectively, would thus be of very limited scope if they were not accompanied by a guarantee of being able to share one's beliefs or ideas in community with others, particularly through associations of individuals having the same beliefs, ideas or interests.

The term "association" therefore possesses an autonomous meaning; the classification in national law has only relative value and constitutes no more than a starting-point.

101. It is true that the ACCAs owe their existence to the will of Parliament, but the Court notes that they are nevertheless associations set up in accordance with the Law of 1 July 1901, and are composed of hunters or the owners of land or hunting rights, and therefore of private individuals, all of whom, *a priori*, wish to pool their land for the purpose of hunting.

Similarly, the fact that the prefect supervises the way these associations operate is not sufficient to support the contention that they remain integrated within the structures of the State (see, *mutatis mutandis*, the *Le Compte, Van Leuven and De Meyere v. Belgium* judgment of 23 June 1981, Series A no. 43, pp. 26-27, § 64). Furthermore, it cannot be maintained that under the *Loi Verdeille* ACCAs enjoy prerogatives outside the orbit of the ordinary law, whether administrative, rule-making or disciplinary, or that they employ processes of a public authority, like professional associations.

102. The Court accordingly considers, like the Commission, that ACCAs are indeed "associations" for the purposes of Article 11.

B. Compliance with Article 11

1. The existence of an interference

103. It was not contested by those who appeared before the Court that the obligation to join an ACCA imposed on the applicants by the *Loi Verdeille* was an interference with the "negative" freedom of association. The Court shares that opinion and will accordingly consider the complaint under Article 11 in the light of Article 9, since protection of personal opinions is one of the purposes of the freedom of association, which implies a negative freedom of association (see the *Sigurður A. Sigurjónsson v. Iceland* judgment of 30 June 1993, Series A no. 264, p. 17, § 37).

2. Justification for the interference

104. Such interference breaches Article 11 unless it is "prescribed by law", is directed towards one or more of the legitimate aims set out in paragraph 2 and is "necessary in a democratic society" for the achievement of that aim or aims.

(a) “Prescribed by law”

105. Those appearing before the Court agreed that the interference was prescribed by law, since the obligation for the applicants to join the ACCA of their municipality was imposed by the Loi Verdeille of 1964, and in particular by Articles L. 222-9 and L. 222-19 § 3 of the Countryside Code (see paragraphs 45 and 51 above).

(b) Legitimate aim

106. The Government submitted that the interference complained of had the legitimate aim of protecting the rights and freedoms of others. By providing for the pooling of small plots of land and requiring their owners to join an ACCA the Loi Verdeille sought to ensure democratic participation in hunting in order to give as many people as possible access to a leisure activity which would otherwise have been bound to remain the exclusive prerogative of the owners of large estates.

107. The applicants submitted, on the contrary, that hunting was nothing more than a leisure activity for those who took part in it. Although the applicants did not contest the right of hunters to enjoy and take part in hunting, they considered that it was not for Parliament to impose on those who were opposed to it the obligation to join hunters’ associations of whose aims and policies they viscerally disapproved.

108. The Commission considered that, while hunting was an ancient activity that had been engaged in for thousands of years, it was nevertheless true that with the development of agriculture, urbanisation and the evolution of new lifestyles its main purpose in the present day was to provide pleasure and relaxation to those who took part in it while respecting its traditions. However, the organisation and regulation of a leisure activity might also be a matter for which the State bore responsibility, particularly as regards its duty to ensure, on behalf of the community, the safety of people and property. The Court accordingly considers, like the Commission, that the legislation in issue pursued a legitimate aim for the purposes of paragraph 2 of Article 11 of the Convention.

(c) “Necessary in a democratic society”

109. The applicants submitted that it was not necessary in a democratic society to oblige people opposed on conscientious grounds to hunting as a leisure activity to become members of associations of hunters. Moreover, the fact that they had to join an ACCA prevented them from giving effective meaning to their membership of associations for the protection of nature, opposed to hunting for ethical reasons, since they could not transfer rights over their land to those associations in order to create nature reserves there.

110. The Government submitted that, as ACCAs were associations governed by the 1901 Act, the principles of the ordinary law on associations

were applicable to them. Thus the members could freely decide how their association should be run and there was nothing to prevent non-hunting landowners, who like all other members were entitled to vote at the general meeting, from taking an active part in the life of the association. If they did not wish to do so, the obligation to join the ACCA did not have any coercive consequences, since under Article L. 222-19 of the Countryside Code non-hunters, while admittedly automatic members of the ACCA, were not required to pay a subscription or contribute to making up any deficit which the association might have.

In that respect, the situation of non-hunters was the opposite of the one which had given rise to the Court's decision in the previously cited *Sigurður A. Sigurjónsson* case, since automatic membership of an ACCA was only the consequence of the transfer of rights over the land, not its precondition, whereas membership of the association in the Icelandic case had been the indispensable condition for carrying on an occupation.

111. The Court considers that the distinction the Government sought to draw between a landowner's obligation to transfer rights over his land and his obligation, as a natural person, to join an association against his will seems artificial. It should be pointed out that the French parliament chose to provide for the compulsory transfer of hunting rights over land by means of compulsory membership of an association responsible for the management of the properties thus pooled. It is precisely recourse to the legal technique of the association which raises an issue in this case with regard to the right to freedom of association set forth in Article 11 of the Convention, as the question of the compulsory transfer of hunting rights over land is a matter which falls within the scope of the right to peaceful enjoyment of possessions, guaranteed by Article 1 of Protocol No. 1.

112. The Court reiterates that in assessing the necessity of a given measure a number of principles must be observed. The term "necessary" does not have the flexibility of such expressions as "useful" or "desirable". In addition, pluralism, tolerance and broadmindedness are hallmarks of a "democratic society". Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position. Lastly, any restriction imposed on a Convention right must be proportionate to the legitimate aim pursued (see the *Young, James and Webster v. the United Kingdom* judgment of 13 August 1981, Series A no. 44, p. 25, § 63).

113. In the present case the only aim invoked by the Government to justify the interference complained of was "protection of the rights and freedoms of others". Where these "rights and freedoms" are themselves among those guaranteed by the Convention or its Protocols, it must be accepted that the need to protect them may lead States to restrict other rights

or freedoms likewise set forth in the Convention. It is precisely this constant search for a balance between the fundamental rights of each individual which constitutes the foundation of a “democratic society”. The balancing of individual interests that may well be contradictory is a difficult matter, and Contracting States must have a broad margin of appreciation in this respect, since the national authorities are in principle better placed than the European Court to assess whether or not there is a “pressing social need” capable of justifying interference with one of the rights guaranteed by the Convention.

It is a different matter where restrictions are imposed on a right or freedom guaranteed by the Convention in order to protect “rights and freedoms” not, as such, enunciated therein. In such a case only indisputable imperatives can justify interference with enjoyment of a Convention right.

In the present case the Government pleaded the need to protect or encourage democratic participation in hunting. Even supposing that French law enshrines a “right” or “freedom” to hunt, the Court notes, like the Bordeaux Administrative Court (see paragraph 32 above), that such a right or freedom is not one of those set forth in the Convention, which does, however, expressly guarantee the freedom of association.

114. In order to determine whether it can be justified to require landowners opposed to hunting to join a hunters’ association, the Court has had regard to the following considerations.

The applicants are opposed to hunting on ethical grounds and the Court considers that their “convictions” in this respect attain a certain level of cogency, cohesion and importance and are therefore worthy of respect in a democratic society (see the *Campbell and Cosans v. the United Kingdom* judgment of 25 February 1982, Series A no. 48, pp. 16-17, § 36). Accordingly, the Court considers that the obligation for persons opposed to hunting to join a hunters’ association may appear, *prima facie*, to be incompatible with Article 11.

Moreover, an individual does not enjoy the right to freedom of association if in reality the freedom of action or choice which remains available to him is either non-existent or so reduced as to be of no practical value (see the previously cited *Young, James and Webster* judgment, p. 23, § 56).

115. Contrary to the Government’s assertion, the Court notes that in the present case the applicants do not have any reasonable chance of being able to resign their membership. The fact that their properties are included in the hunting grounds of an ACCA and that they do not own a large enough area of land to lodge an objection is sufficient to make their membership compulsory.

It was further submitted that landowners opposed to hunting were not obliged to take an active part in an ACCA’s activities. Although they did, admittedly, become automatic members, they were not obliged to pay a

subscription or contribute to making good any deficit which the association might have. There had therefore not been the degree of compulsion necessary to justify the conclusion that there had been a violation of Article 11.

The Court considers that the fact that the applicants were only admitted to the ACCAs for form's sake, as it were, solely on account of their status as landowners, takes nothing away from the compulsory nature of their membership.

116. The Court further observes that by Article L. 222-10 of the Countryside Code all public property belonging to the State, a *département* or a municipality, public forests and land belonging to the French National Railway Company are expressly excluded from the ambit of the Loi Verdeille (see paragraph 46 above). In other words, the need to pool land for hunting applies only to a limited number of private landowners, whose opinions are not taken into consideration in any way whatsoever. What is more, the establishment of ACCAs is compulsory in only 29 of the 93 *départements* in metropolitan France where the Law applies, and out of some 36,200 municipalities in France only 851 have chosen to set up associations on a voluntary basis, including, in the present case, the municipalities of Tourtoirac and Chourgnac-d'Ans in Dordogne, where ACCAs were set up in 1977. Lastly, the Court notes that any landowner possessing more than 20 hectares (60 in Creuse) or an entirely enclosed property may object to membership of an ACCA.

117. In the light of the foregoing considerations, the arguments put forward by the Government are not sufficient to establish that it was necessary to compel the applicants to become members of the ACCAs in their municipalities despite their personal convictions. With respect to the need to protect the rights and freedoms of others to ensure democratic participation in hunting, an obligation to join an ACCA which is imposed on landowners in only one municipality in four in France cannot be regarded as proportionate to the legitimate aim pursued. Nor can the Court see why it might be necessary to pool only small properties while large estates, both public and private, are protected from democratic participation in hunting.

To compel a person by law to join an association such that it is fundamentally contrary to 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.

There has therefore been a violation of Article 11.

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

118. The applicants submitted, for the reasons already put forward in connection with the alleged violation of Article 1 of Protocol No. 1 taken in conjunction with Article 14 of the Convention, that they were victims of discrimination, firstly on the ground of property, in that large landowners could avoid any restriction of their right to freedom of association, and secondly as non-hunters, in that the interference with their freedom of association effected by the Loi Verdeille was to the exclusive benefit of hunters.

119. The Government rejected this argument, whereas the Commission accepted it.

120. The Court considers that examination of the complaint under Article 11 read in conjunction with Article 14 is in substance analogous to the examination conducted above with regard to Article 1 of Protocol No. 1 and it sees no reason to depart from its previous conclusion. It will confine itself to the observation that Article L. 222-13 of the Countryside Code does indeed create a difference in treatment between persons in comparable situations, namely the owners of land or hunting rights, since those who own 20 hectares or more of land in a single block may object to the inclusion of their land in the ACCA's hunting grounds, thus avoiding compulsory membership of the association, whereas those who, like the applicants, possess less than 20 or 60 hectares of land may not.

121. The Court considers that the Government have not put forward any objective and reasonable justification for this difference in treatment, which obliges small landowners to become members of ACCAs but enables large landowners to evade compulsory membership, whether they exercise their exclusive right to hunt on their property or prefer, on account of their convictions, to use the land to establish a sanctuary or nature reserve. The Court notes that in the first case there is no explanation why properties of more than 20 hectares are not liable to be included in the ACCAs' hunting grounds if, as the Government argued, the purpose of the ACCAs is to ensure democratic access to hunting.

In the second case, the Court considers that the distinction drawn between small and large landowners as regards the freedom to use their property for a purpose other than hunting has no pertinent justification.

In conclusion, there has been a violation of Article 11 of the Convention taken in conjunction with Article 14.

V. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

122. The applicants complained of an infringement of their freedom of thought and conscience and relied on 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.”

123. The applicants submitted that the right guaranteed by Article 9 could not be reduced to the right to shut oneself away inside one’s own house or on one’s own property without being able to express and give an outward material form to one’s moral stance. The fact, therefore, that they were obliged to tolerate hunting on their land, although they themselves were opposed to hunting, constituted in their opinion an infringement of their freedom of thought.

124. The Government argued, as their principal submission, that this complaint was incompatible *ratione materiae* with the provisions of the Convention because the applicants’ anti-hunting and ecological convictions did not come within the scope of Article 9. In the alternative, they submitted that there had been no violation.

125. Like the Commission, the Court considers that in the light of the conclusions it has reached with regard to Article 1 of Protocol No. 1 and Article 11 of the Convention, taken both separately and in conjunction with Article 14, it is not necessary to conduct a separate examination of the case from the standpoint of Article 9.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

126. Under Article 41 of the Convention,

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

127. The applicants each claimed compensation in the sum of 100,000 French francs (FRF), to cover all heads of damage. They did not

claim reimbursement of costs and expenses, having been represented free of charge by Mr Charollois during the proceedings before the Convention institutions.

128. At the hearing before the Court the Government submitted that as no documentary evidence of the pecuniary damage allegedly sustained had been supplied, any claim under that head could only be rejected. As to the alleged non-pecuniary damage, any finding by the Court that there had been breaches of the Convention would in itself constitute sufficient just satisfaction.

129. The Delegate of the Commission made no observations on this question.

130. The Court notes that the applicants have not supplied any evidence capable of supporting their claims for pecuniary damage, so it is not appropriate to award any compensation under that head. With regard to non-pecuniary damage, the Court considers that on account of the violations found each of the applicants has undeniably sustained non-pecuniary damage, which it assesses, on an equitable basis, at FRF 30,000.

B. Default interest

131. According to the information available to the Court, the statutory rate of interest applicable in France at the date of adoption of the present judgment is 3.47% per annum.

FOR THESE REASONS, THE COURT

1. *Holds* by twelve votes to five that there has been a breach of Article 1 of Protocol No. 1 taken separately;
2. *Holds* by fourteen votes to three that there has been a breach of Article 1 of Protocol No. 1 taken in conjunction with Article 14 of the Convention;
3. *Holds* by twelve votes to five that there has been a breach of Article 11 of the Convention taken separately;
4. *Holds* by sixteen votes to one that there has been a breach of Article 11 of the Convention taken in conjunction with Article 14;
5. *Holds* by sixteen votes to one that it is not necessary to examine separately the complaint under Article 9 of the Convention;

6. *Holds* unanimously that the respondent State is to pay each of the nine applicants, within three months, 30,000 (thirty thousand) French francs for non-pecuniary damage, on which sum simple interest at an annual rate of 3.47% shall be payable from the expiry of the above-mentioned three months until settlement;
7. *Dismisses* unanimously the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 29 April 1999.

Luzius WILDHABER
President

Maud DE BOER-BUQUICCHIO
Deputy Registrar

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) separate opinion of Mr Fischbach concerning Article 9;
- (b) partly concurring and partly dissenting opinion of Mr Caflisch joined by Mr Panțîru;
- (c) partly concurring and partly dissenting opinion of Mr Zupančič;
- (d) partly concurring and partly dissenting opinion of Mr Traja;
- (e) dissenting opinion of Mr Costa.

L.W.
M.B.

SEPARATE OPINION OF JUDGE FISCHBACH CONCERNING ARTICLE 9

(Translation)

I disagree with the majority's opinion that it is not necessary to conduct a separate examination of the case from the standpoint of Article 9.

I consider that the question of respect for freedom of thought and conscience goes to the very heart of the case.

I take the view that "environmentalist" or "ecological" beliefs come within the scope of Article 9 in so far as they are informed by what is a truly societal stance. They are closely bound up with the personality of each individual and determine the decisions he takes about the type of life he wishes to lead.

Moreover, it is undeniable that the question of preservation of our environment, and of wild animals in particular, is now a much-debated one in our societies.

Having said that, I approach Article 9 from the point of view of two quite distinct rules. The first of these, set out in the first phrase of the first paragraph, guarantees the freedom of thought, conscience and religion in absolute terms: in principle, any interference by a Contracting State breaches the Convention. The second is set out in the second phrase of the first paragraph and enshrines the freedom to change religions or beliefs and freedom to manifest one's religion or beliefs: only the freedom to "manifest" is subject to the limitations provided for in the second paragraph.

I consider that the first of these rules applies to the present case, which – essentially – raises the following question: To what extent is it legitimate under Article 9 of the Convention to oblige individuals to take part in an activity incompatible with their beliefs?

I consider that two situations must be distinguished. If the activity imposed is one which unambiguously serves the general interest, it can be accepted that, in certain circumstances, a member State may oblige individuals to take part in it notwithstanding their beliefs. For example, an individual cannot validly rely on his anti-militarist convictions to refuse to pay tax on the ground that part of the revenue it produces is used for the defence budget.

On the other hand, to oblige an individual to take part in an activity which serves essentially private interests manifestly breaches Article 9. But that is exactly what was done in the present case. The applicants are required to assist the practice of a "sport" – the precise term used in the Loi Verdeille – in which only a small proportion of the population takes part and to do so in total contradiction with their most deeply held beliefs.

I therefore conclude that there has been a violation of Article 9.

PARTLY CONCURRING AND PARTLY DISSENTING
OPINION OF JUDGE CAFLISCH JOINED BY
JUDGE PANȚÎRU

(Translation)

Like the majority of the Court, I consider that there have been violations of Article 1 of Protocol No. 1, taken together with Article 14 of the Convention, and of Article 11, likewise read in conjunction with Article 14. On the other hand, I have difficulty finding a violation of Article 1 of Protocol No. 1 or Article 11 of the Convention taken separately.

Under Article 1 of Protocol No. 1, an interference with the use of property, which is in principle incompatible with the Convention, may nevertheless be justified if it is “necessary to control the use of property in accordance with the general interest”. There must also be a reasonable relationship of proportionality between the measure concerned and the objective pursued.

In the present case the legislation complained of has three objectives, namely, to regulate a leisure activity which, if left unregulated, would present a real danger, to democratise hunting and to set up a system for the rational and effective management of game stocks, thus also ensuring the protection of the environment.

The questions which arise next are whether the interference with property resulting from the Loi Verdeille is necessary to regulate hunting in accordance with the general interest and whether that interference is reasonably proportionate to the objectives listed above. Considering those questions is not necessarily a matter of determining whether the respondent State could have achieved its aim by different measures, by giving the authorities the exclusive power to issue hunting licences, for example, since the State enjoys a certain margin of appreciation.

In the case of *Mellacher and Others v. Austria* the Court held: “[T]he legislature must have a wide margin of appreciation both with regard to the existence of a problem of public concern warranting measures of control and as to the choice of the detailed rules for the implementation of such measures” (see the judgment of 19 December 1989, Series A no. 169, pp. 25-27, §§ 45-47). The Court therefore respects the judgment of the national legislature “unless that judgment be manifestly without reasonable foundation”, that is where there is no “fair balance” between the general interest and the need to protect individual rights, i.e. where no reasonable relationship of proportionality exists between the means employed and the aim pursued (*ibid.*, p. 27, § 48). It is true that the *Mellacher* judgment, which also bore on the interpretation of Article 1 of Protocol No. 1, dealt with a subject which was somewhat different from the one considered in the

present case, namely a reduction in rent effected by law to the detriment of landlords. However, the principles set out in *Mellacher* are formulated very broadly and therefore seem to be generally applicable.

Quite obviously the criteria used by the Court to determine whether, in a given case, a State has infringed the freedom guaranteed by Article 1 of Protocol No. 1 – through a “manifestly unreasonable” judgment on the part of the legislature and the lack of a “fair balance” and a “reasonable relationship of proportionality” – involve a considerable degree of subjectivity; it could hardly be otherwise. Thus one may take the view, unlike the majority of the Court, that there has been no breach of the Article in question, taken separately, because of the importance of the objective pursued by the *Loi Verdeille*, which goes beyond the mere regulation of a leisure activity, having economic and ecological aspects, because of the margin of appreciation left to the Government in the choice of means to attain that objective and because of the absence of any obvious disproportion between the objective concerned and the means adopted to attain it.

It remains to be seen whether there has been a violation of Article 1 of Protocol No. 1 taken together with Article 14 of the Convention, which prohibits discrimination. The *Loi Verdeille* distinguishes between large and small landowners. Large landowners are not obliged to surrender their rights to an approved municipal hunters’ association (“ACCA”) and are entitled to control hunting on their property individually, whereas small landowners lose their exclusive right to hunt on their own land. In addition, for months at a time they have to tolerate other members of their ACCA hunting there, which considerably impairs their right of property and creates an undoubted danger.

According to the Court’s case-law (see the *Darby v. Sweden* judgment of 23 October 1990, Series A no. 187, p. 12, § 31, and the case-law cited therein; see also the *Van Raalte v. the Netherlands* judgment of 21 February 1997, *Reports of Judgments and Decisions* 1997-I, p. 186, § 39, and the case-law cited therein), treatment is discriminatory only where it does not pursue a “legitimate aim” and where there is no “reasonable relationship of proportionality between the means employed and the aim sought to be realised”, especially in situations where it is uncertain whether the discrimination is even useful. This seems to be the case here. The Government have not shown that the discrimination imposed is even useful for the purpose of achieving the aim pursued. On the contrary. The French parliament requires small landowners to make considerable sacrifices, which they can avoid only with great difficulty. On the other hand, it leaves it up to large landowners to preserve game stocks on their own land without restricting their property rights in any way (Article L. 222-14 of the *Countryside Code*); the duties it imposes on them are both undemanding and vague, a fact which, moreover, casts doubt on the effectiveness of the

Law as a whole. What is more, it is hard to see how and why landholdings larger than 20 hectares in area could be effectively managed by their owners whereas the opposite is true of smaller areas. It is therefore difficult to argue that there is a reasonable relationship of proportionality in a situation where considerable sacrifices are imposed on some landowners but not on others, especially when the discriminatory system thus established is not, in the final analysis, as effective as desired. The system would perhaps work better if it were applicable to all owners, large and small, and if its geographical scope were more extensive. In the absence of a reasonable relationship of proportionality between the aim pursued and the discriminatory mechanism instituted by the Loi Verdeille, one should conclude, as the Court has done, that there has been a violation of Article 1 of Protocol No. 1 taken together with Article 14 of the Convention.

The issue of the violation of Article 11 of the Convention presents itself in a similar way. Restrictions on the right set forth in that provision, which also protects the negative freedom of association (see the *Sigurður A. Sigurjónsson v. Iceland* judgment of 30 June 1993, Series A no. 264, pp. 15-17, §§ 35-37), are allowed by its second paragraph. The Government argued that although the obligation for some landowners to join ACCAs did indeed amount to an interference by the State with the freedom of association, the aim of this interference was the “protection of the rights and freedoms of others” (Article 11 § 2 of the Convention) and that it accordingly constituted a legitimate restriction.

The objectives of the system set up by the Loi Verdeille, which obliges small landowners to join ACCAs, are to democratise hunting, to regulate this activity and to improve the conservation of game stocks, and can be deemed to fall within the scope of the “protection of the rights and freedoms of others” mentioned in Article 11 § 2. Here again, it seems possible to describe the State’s interference as reasonably proportionate to the aim pursued, which amounts to a finding that there has been no violation of Article 11 taken separately.

Having reached that conclusion, however, it becomes necessary to point to the discriminatory nature of the Loi Verdeille, firstly in that it does not apply uniformly to all landholdings suitable for hunting, and secondly and mainly, in that it is not applicable to all landowners, since large owners remain exempt. The measures instituted by this Law might be justified, even from the angle of the requirement of non-discrimination, if the aim pursued by the Loi Verdeille were reasonably proportionate to its effect. But, as I tried to show in connection with Article 1 of Protocol No. 1, that effect is highly uncertain, precisely because of the discriminatory nature of the measures provided for by that Law.

I have thus reached the conclusion that Article 1 of Protocol No. 1 and Article 11 of the Convention have been breached, but only when read in conjunction with Article 14 of the Convention.

PARTLY CONCURRING AND PARTLY DISSENTING
OPINION OF JUDGE ZUPANČIČ

I.

In my opinion the case has been erroneously circumscribed from the beginning and the central question, which ought to have been the main focus of the inquiry, has thus been diffused into a series of separate issues. Were the issue here defined as one of discrimination *lato sensu*, the question would then have been: “*Has the Loi Verdeille discriminated against landowners who oppose hunting by giving certain, allegedly excessive, rights to hunters?*”

In order to see the issue in a proper perspective it has to be understood, of course, that the purpose of practically every legal norm – whether it is command, proscription or authorisation – is to *distinguish* between different categories (classes) of legal subjects. Even criminal laws “discriminate” in this sense between those who continue to be presumed innocent and those who have been found guilty. Every legal system operates through conceptual distinctions entailing legal consequences – in constitutional, civil, criminal, administrative, international, etc. branches of the law. The meaning of the Latin verb “*discriminare*” is simply to distinguish, to perceive relevant differences, etc.

Even in ordinary language, however, the word “discrimination” acquires its pejorative connotation unless there is reasonable justification for the differential treatment of an individual (or a whole class of individuals)¹. Where such differential treatment, due to prejudice or simply the lack of rational consideration, is coupled with the use of power, we speak of arbitrariness, capriciousness, inconstancy, irregularity, unpredictability ... We intuitively understand that these attributes are wholly irreconcilable with the ideal of the rule of law, *état de droit*, *Rechtsstaat*, etc.

The ideal of the rule of law, on the other hand, presupposes the generality of the laws, i.e., their plain and even applicability (*in abstracto*) and their uniform application (*in concreto*). The reason why laws must be promulgated in advance and why they must be abstract, as opposed to, for example, *leges in privos datae*, lies therein.

The high level of conceptual differentiation, i.e., the constant creation of new normative distinctions is what distinguishes a developed legal system from a primitive one. Thus the developed legal systems are facing one basic

1. Of course, such differential treatment may be either discriminatory (*stricto sensu*) or preferential. In the latter case we speak of privileges. These privileges for one class of legal subjects, however, often (in all zero sum situations) run counter to the interests of another class of legal subjects. What is a privilege for one may be a loss or a nuisance for another.

dilemma: “*How to maintain equality before the law, equal protection of the laws, etc. – while incessantly producing new legal distinctions (“discriminations”), new legal categories, new classes of legal subjects to be treated differently ...?*” Thus the central contradiction of everything legal is the constant oscillation between the imperative of equality on the one hand and the constant need for further discrimination on the other hand.

Since this dialectic is at the bottom of everything legal – the creation of new laws, the uniformity of case-law, the *stare decisis* principle, the non-arbitrary use of executive power – the iron repertory of legal concepts can in the final analysis no longer furnish us with definite and reliable criteria for judgment. Legal systems with their different modes of interpretation of legal norms supply the ready-made criteria for judgments according to law. But when the question is being asked, for example before a constitutional court, as to whether a particular law *as such* may or may not be discriminatory, such criteria are of little use.

Modern constitutional courts and supreme courts (with the power of judicial review) faced with questions of discrimination in one case after another, must resort to the meta-judicial criterion of *reasonableness* when determining whether a particular law, a particular judicial or administrative decision is arbitrary and capricious, unjustifiably discriminatory, etc.

Needless to say, this criterion of *reasonableness* may degenerate into a non-legal policy consideration. Excessive consideration of the validity of the legislature’s intentions will tend to make the court applying it transgress the limits of judicial restraint. Yet the issue is not judicial restraint. The issue is preservation of the autonomy of legal reasoning.

At the other extreme we have the timid and defensive regression to positivistic-formalistic legal formulae characteristic of the new constitutional courts which have not yet established themselves *vis-à-vis* the legislative and the executive branches of power. But as we pointed out above, before the courts of last appeal there can be no simple *praecepta*; these courts must go beyond the mere interpretation of particular laws with which the ordinary courts are charged.

It would seem that we are caught somewhere between these two extremes when interpreting the Convention and its Article 14.

II.

Fortunately, however, it is much easier to say what is *not* reasonable than what *is* reasonable. The particular case before us, if it were defined in terms of discrimination, would raise the single issue of the justification for the differential treatment of landowners opposed to hunting *vis-à-vis* hunters. The case has been sufficiently politicised by the applicants themselves to bring this question of principle into the focus of this controversy. Landowners opposed to hunting in fact allege that the “hunters’ lobby” in

France is a politically privileged interest group. The applicants further maintain, almost ideologically, that they are, as a matter of principle, “viscerally” opposed to the killing of animals as well as to their own pro forma membership of the local ACCAs.

What somewhat obscures the obvious question here is the fact that the landowners concerned derive their standing (*legitimitio activa*) from their *property* right, i.e., their ownership of the land on which hunting takes place. Imagine, however, that they owned no land but were opposed on principle to the killing of game, because they were advocates of animals’ rights, say. They would maintain that the law permitting hunting at all, because of suspect legislative motivation, discriminated against them; they would have to maintain that such a law gave the right to kill animals to hunters, whereas the legislature had unjustifiably ignored their own principled opposition to such a “barbaric practice”.

To put this in the context outlined above we would have to say that the legislature here created the select class of “hunters” together with their allegedly unreasonable privileges. On account of these unreasonable privileges of the hunters, those opposed to hunting would maintain they were placed at a disadvantage, i.e. discriminated against. They would further maintain that there was really no rational basis for the hunters’ privileges since hunting served no identifiable social purpose but was simply an anachronistic continuation of aristocratic prerogatives, the pursuit of pleasure, etc. They would maintain that the granting of hunting rights – irrespective of the property link – was arbitrary because there was no reasonable justification for it whatsoever.

In the case before us one would have to agree, *a fortiori*, that legal privileges granted with no rational basis cause arbitrarily imposed nuisances (*immissiones* in Roman law) to those who are, by the force of law, compelled to tolerate the legal exercise of these privileges on their own land. To say that they have the possibility of escaping this predicament by fencing their 20 hectares of property would seem to add insult to injury. Clearly, therefore, we are dealing here with the issue of discrimination *per se*.

III.

Yet it is not obvious to me that hunting as such has no identifiable social purpose or utility. If it were so there would be countries in which hunting would be categorically outlawed. I know of no such country. I could agree, *arguendo*, that the class of those opposed to hunting may feel discriminated against, especially if they believe that hunting is an abominable practice which involves killing innocent animals.

But it is also clear that the issue then comes down to the question of reasonableness, *vel non*, of hunting as a social practice. Since it is further

clear that it is impossible to say, except in a purely ideological perspective, that hunting is *unreasonable*, the Court is then in a position where it must balance the reasonableness of hunting on the one hand and the necessary *immissiones* to be suffered by those opposed to hunting on their land on the other hand. In equal-protection terms the test is then whether the alleged discrimination is *rationally related to a legitimate legislative interest*.

In this respect the Loi Verdeille is admittedly clumsy, i.e., it could be said that at least in some aspects it is not rationally related to the legitimate societal interest. Yet there are positive aspects to the Loi Verdeille, as persuasively explained in the dissenting opinion of Judge Costa. One must keep in mind that most of the problems derive from the Loi Verdeille's attempt to strike a fair compromise between the right to hunt and the rights of private landowners. If the two aspects were separated, as they are in many countries where the landowners have neither automatic membership of the hunting organisation nor the right or possibility to prevent hunting on their land, the Loi Verdeille's somewhat awkward solutions would not even be necessary. It is thus somewhat inappropriate to penalise the French legislature because it tried to strike a fair balance between hunters' rights and the rights of landowners – and thereby laid itself open to the reproach of discrimination. It is for this reason, too, that I cannot bring myself to maintain that the Loi Verdeille fails the rational relationship test.

It should also be understood, however, that the mild rational relationship discrimination test applies to social and economic issues, hunting versus environmental protection being one of them. If this was a suspect classification in terms of race, alienage or national origin, etc., the strict scrutiny test would apply, i.e. the Convention would be deemed to be violated unless there were a compelling State interest and the law in question would be suitably tailored to serve it. If gender or illegitimacy, etc., were the issue the heightened scrutiny test would be applicable, i.e. the law would be in violation unless it was substantially related to a sufficiently important State interest.

Admittedly, these are tests of equal protection typically applicable in constitutional litigation before constitutional courts. But the only relevant difference here is that we decide *in concreto* and *inter partes*, the abstract *erga omnes* impact of our decision being implicit in deciding the individual claim. Substantially the problem of discrimination is the same.

Apart from that, I concede to the majority that the intended privilege of automatic membership of an ACCA may for certain landowners be a *privilegium odiosum*, i.e. in violation of their freedom of association – for purely subjective, moral and even ideological reasons.

**PARTLY CONCURRING AND PARTLY DISSENTING
OPINION OF JUDGE TRAJA**

I agree with Judge Costa, for the reasons given in his opinion, that there has been no violation of Article 1 of Protocol No. 1, whether taken separately or in conjunction with Article 14 of the Convention, but also agree with the opinion of Judge Cafilisch, in so far as he finds a violation of Article 11 of the Convention taken in conjunction with Article 14.

DISSENTING OPINION OF JUDGE COSTA

(Translation)

1. The majority held that there had been violations of several Articles of the Convention and Article 1 of Protocol No. 1. I cannot agree on any of these points.

2. Apart from the applicants' individual situation, which must of course be examined *in concreto*, there is the more general problem of the compatibility of French legislation on hunting, in particular the Law of 10 July 1964, known as the "Loi Verdeille", with the Convention and its Protocols, since no one has contested the fact that the administrative and ordinary courts which found against the applicants correctly applied the law.

3. Above all, it must be pointed out that the object and result of the Loi Verdeille, which has been applied for some thirty-five years, has been to regulate hunting in France, especially in the south of France where, on account of the subdivision of rural landholdings and a very great freedom to hunt, hunting (known as "public hunting") had become almost a free-for-all. This had a bad effect on game, crops and, in the final analysis, the whole ecosystem. Far from being confined to securing the selfish interests of hunters, the Loi Verdeille pursues a real general-interest objective, namely mitigating the effects of the subdivision of landholdings and preventing poaching, while encouraging the destruction of vermin and making possible the establishment of game reserves.

4. The main plank of this general-interest policy is the establishment of approved municipal hunters' associations ("ACCAs"); these must be created in certain *départements* and may be created in others. The *départements* where creation of ACCAs is compulsory are those where the prefect makes a proposal to that effect, but he also needs the approval of the council of the *département* concerned, which is formed of representatives of the people elected by direct universal suffrage; in *départements* where creation of ACCAs is voluntary they may not be set up except in municipalities where a qualified majority of landowners (representing a qualified majority of the area of the municipal territory) agree. The legislature, to my mind, cannot be faulted for this double concern for democracy, at *département* and municipality level, so that the fact that not quite a third of French municipalities have ACCAs does not in any way mean that the Loi Verdeille does not serve the general interest. Moreover, the areas where hunting is practised are not coterminous with the national territory as a whole, far from it. In an industrial and post-industrial country municipalities where hunting is conceivable, or where it would have any point, do not include anything like all towns or even all villages.

5. Furthermore, the main object of these ACCAs, and this is in fact the heart of the problem, is to manage hunting grounds which are sufficiently large, created by pooling the holdings of the municipality's landowners (for hunting purposes alone, of course).

6. It is necessary to emphasise the need to organise hunting in the public interest both because it seems to have been somewhat underestimated in the present case and because the Court's case-law legitimately attaches great importance to the public interest, particularly for the purpose of applying the Articles relied on by the applicants. In fact, the two main problems raised by this case were interference with the right of property and infringement of the negative right to freedom of association, in both instances to take account of the need to regulate hunting in the general interest.

7. With regard to the right of property, the Court, following the letter and spirit of Article 1 of Protocol No. 1, and particularly its second paragraph, has always accepted that States have the right "to enforce such laws as they deem necessary to control the use of property in accordance with the general interest".

In my opinion, that is exactly what France did. The Loi Verdeille implies that the landowners belonging to ACCAs, even those who do not hunt themselves and even those who are opposed to hunting, agree, *nolentes volentes*, to permit hunters to come onto their land to hunt, not, I repeat, merely to take part in a sport, but in order to participate in a true general-interest task (even though the conduct of certain individual hunters may unfortunately make us lose sight of this).

8. Admittedly, the Court has consistently required interference with the free use of property to be reasonably proportionate and a reasonable balance to be maintained between the general interest and fundamental rights.

9. But my point is, precisely, that this balance does not seem to have been upset in the present case. Of the three attributes of the right of property only one – *usus* – has suffered any interference; *abusus* has not, nor has *fructus* – which is probably of no concern to the applicants, who are viscerally hostile to any form of hunting – since the Loi Verdeille makes provision for compensation to be paid to landowners for the loss of profits caused by deprivation of a source of income they enjoyed before the establishment of an ACCA. Even the interference with *usus* is neither general nor absolute. It is limited to the annual hunting seasons (even then hunters, engaged in what for them is a hobby, can hardly hunt every day) and hunting is prohibited within a radius of 150 metres of any dwelling (which represents an area of 7 hectares, to be compared, as we shall see, with a threshold of 20 hectares normally). There are other ways for those opposed to hunting to "protect" their land (surrounding it with a continuous, unbroken fence, lodging an objection if its area exceeds the threshold, ensuring through collective democratic action that the creation of an ACCA is not supported by a majority of the *département* council or a qualified

majority within the municipality, etc.). I admit that these possibilities are often more formal than real, because a fence is expensive, for example, but it would be wrong not to mention them. In any event, they reflect an undeniable concern on Parliament's part.

10. While a balance has to be struck between the general interest and this limited interference with the use of property, I do not find the second pan of the scales to be any heavier than the first, unless one gives way to the temptation to make a god of the right of property, which to my mind would be wrong. We should not render any town planning, regional development, public works, consolidation of landholdings and the like impossible. One can be wholly in favour of freedom and the rule of law – as the framers of the Convention were – without necessarily making individual freedom an absolute or excluding the general interest from the rule of law – which was manifestly not the intention of those who drafted the Convention. With regard to hunting, an area where each State should have a wide margin of appreciation, and where many European States have laws which restrict the right of private property in order to implement a hunting policy, it seems to me that the Court's judgment goes in a very individualist direction, which will make this type of policy very difficult to conduct. In any event, I have great difficulty in finding in the present case a violation of Article 1 of Protocol No. 1.

11. The second problem concerns freedom of association, and more particularly what is called the negative right to freedom of association. Unlike the Universal Declaration (Article 20), the European Convention on Human Rights does not explicitly lay down the rule that “no one may be compelled to belong to an association” but, very legitimately, the Court inferred it, in a peremptory manner, though not without qualifications (see the Young, James and Webster v. the United Kingdom judgment of 13 August 1981, Series A no. 44).

12. However, if one accepts that Article 1 of Protocol No. 1 was not breached by application of the Loi Verdeille to the applicants, it is not difficult to accept that there was likewise no breach of Article 11 of the Convention.

13. Admittedly, people in the applicants' situation find themselves *de plano* members of associations of whose purpose and even existence they disapprove as a matter of principle. But these associations are of a very special type, and that puts the importance of the issue very much into perspective.

14. In the first place, these associations, classified as such by Parliament, which provided that they were to be governed by the Law of 1 July 1901, very much resemble public-law legal persons. Their object is laid down by the Loi Verdeille. They must be approved by the administrative authorities. There can be only one in any given municipality. They may not be freely set up. Their constitutions contain mandatory provisions. They are required to

set up game reserves of a minimum area laid down by law. Prefects supervise them and have the power to approve their constitutions and rules of procedure, and the hunting regulations. They may also dissolve the executive committee and replace it by an appointed management committee. In short, for Convention purposes, the Court could have taken the view that these were not associations within the meaning of Article 11 but public-law institutions pursuing a general-interest objective, notwithstanding their classification in domestic law; this would have entailed holding Article 11 to be inapplicable. And there are precedents for such an approach; but that is of little consequence, the answer to this question being such a subjective matter. So the majority (not without some persuasive arguments) attached decisive importance to the classification Parliament gave to the ACCAs and accordingly accepted that Article 11 was applicable to them.

15. Secondly, however, although people like the applicants may find themselves members of ACCAs against their will, they have rights as members, particularly the right to influence the ACCAs' decisions, without being subject in return to the normal obligations in such a case; as automatic members they do not have to pay subscriptions and are not required to contribute to making good any deficit the association may have. If it is accepted that, in accordance with Article 11 § 2, restrictions may be placed on the right to freedom of association – even the negative right – particularly in order to protect the rights and freedoms of others, the interference effected by the Loi Verdeille with the negative right to freedom of association of landowners who do not hunt or are opposed to hunting may be considered not to be disproportionate, especially in view of the margin of appreciation which States should be left.

16. In fact, and thirdly, the true interference effected by the Loi Verdeille with rights and freedoms guaranteed by the Convention concerns the right of property. Associations are merely a legal mechanism, of secondary importance in the final analysis, for the inclusion of pieces of land in municipal or inter-municipality hunting grounds. What disturbs the applicants is not the fact of being members of ACCAs but seeing hunters and their dogs on their land. The Court was right, moreover, to consider Article 1 of Protocol No. 1 first. Considering as I do that there was no violation of Article 1 of Protocol No. 1, I cannot for my part find a violation of Article 11 of the Convention.

17. However, even if the rights guaranteed by Article 11 of the Convention and Article 1 of Protocol No. 1, taken separately, have not been infringed, it does not necessarily follow that there has been no violation of those provisions read in conjunction with Article 14. In other words, there may be a third problem, concerning discrimination. Some judges, moreover, were more sensitive to this aspect of the case (see in particular the partly concurring and partly dissenting opinion of Judge Caflisch).

18. I do not share that view either. As regards the right of property, the question is whether the distinction between small landholdings (normally less than 20 hectares, in some *départements* less than 40 or 60) and large landholdings is reasonably justified. I believe that it is. Parliament had no intention of penalising “small” landowners and favouring “large” landowners, which would not in any case have been a wise policy from the electoral point of view (whereas the Loi Verdeille has now survived nine successive parliaments!). Its concern was how to ensure – in the general interest – the creation of hunting grounds sufficiently large to be viable (game is no respecter of property boundaries). It was therefore necessary to fix a reasonable threshold. Like all thresholds, the one in issue has an arbitrary aspect, but what matters is that the distinction between those who are obliged to leave their land “open” (unless they enclose them) and those who may refuse access to it should be compatible with the Convention. For that to be so, it must not be based on property, for example (Article 14); but that is not the case, either according to Parliament’s intention or in fact, since there is no correlation whatsoever between the minimum area and the value of the land (see, for example the *James and Others v. the United Kingdom* judgment of 21 February 1986, Series A no. 98). There must also be a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see the *Darby v. Sweden* judgment of 23 October 1990, Series A no. 187). But the means employed (the threshold) is proportionate to the legitimate aim pursued, as shown by the example of numerous European States which have the same threshold, for the same purpose. As to the discrimination allegedly residing in the fact that small landowners are treated differently from one municipality to another, depending on whether there is an ACCA or not, this is inherent in the nature of a law which, out of a concern to apply democratic principles, was designed not to impose from on high but to organise from below. That precaution, which is perfectly legitimate in a sphere such as hunting, whose emotive and even passionate character is illustrated by the present case, cannot without paradox be used as a weapon against those who took it.

19. Having said that, I can be very brief on the right to freedom of association. Since I consider membership of the ACCAs a secondary issue *vis-à-vis* the question of the use of property, I would find it even harder to discern a violation of Articles 14 and 11 taken together than of Article 1 of Protocol No. 1 read in conjunction with Article 14.

20. I will restrict my final remarks to the observation that the Court’s judgment should oblige the Government and Parliament to rethink the legislation passed in 1964. After all, it is perhaps a good thing, as legislation in such a field depends so much on contemporary social attitudes and it is obvious that society has changed and that social balances in 1999 – between ecologists and hunters, for example – are no longer what they were thirty-five years ago. But one may well wonder what type of legislation will have

to be enacted to comply with the Court's requirements. To paraphrase the Mellacher and Others v. Austria judgment of 19 December 1989 (Series A no. 169, particularly paragraphs 45 and 48, at pages 25 and 26), which is a judgment of the plenary Court, the legislature will have to found its judgment as to what is in the general interest on a reasonable basis and employ means which are reasonably proportionate to the aims pursued. It will not be easy, but it is surely possible ...