

Austria

Constitutional Court

Important decisions

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Keywords of the systematic thesaurus:

3.16 General Principles – **Proportionality**.
 3.17 General Principles – **Weighing of interests**.
 3.18 General Principles – **General interest**.
 5.3.39 Fundamental Rights – Civil and political rights – **Right to property**.
 5.3.39.3 Fundamental Rights – Civil and political rights – Right to property – **Other limitations**.

Keywords of the alphabetical index:

Alpine forests, protection / Hunting rights.

Headnotes:

The legal obligation imposed on landowners in the *Land* of Carinthia to allow hunting on their plots pursues the goal of protecting mountain forests from destruction. As Austria has a duty under international law to protect its mountain forests, the landowners' right to property cannot outweigh the general interest in the effective management of game stocks.

Summary:

I. Under the Hunting Act of the *Land* of Carinthia, hunting rights are inseparable from private ownership of land. However, they may only be exercised either in private hunting districts or in municipal hunting districts. Private hunting districts are plots of at least 115 hectares owned by the same person which can be used for hunting. If the landowner renounces his or her right to exercise hunting in a private hunting district, the district concerned will be included in neighbouring hunting districts. All land in the same municipality which does not belong to a private hunting district constitutes a municipal hunting district if it has an overall surface area of at least 500 hectares. At the request of the landowner or (in

the case of a municipal hunting district) of the person entitled to exercise hunting, the hunting authority is to suspend the hunt on plots that are enclosed by a fence.

The applicant, the owner of landholdings in Carinthia of 6,5 hectares, is opposed to hunting "on fundamental grounds". He therefore filed a request with the hunting authority seeking to exempt his plots from hunting so that neither hunting nor feeding of game nor any other measures of management of game stock could take place on his land. He argued that owing to the systematic feeding of game, game stocks were so abundant that it appeared nearly impossible to grow young trees. In his view, the natural system of self-regulation of wild game should be restored by relocating lynx, wolf and bear and by not feeding game in winter.

The hunting authority dismissed this request on the grounds that the exercise of hunting was governed by the law and that there was no provision for the exemption requested.

In his constitutional complaint, the applicant challenged the Carinthian Hunting Act, claiming that the provisions applied by the hunting authority ran counter to his constitutional right to property. In this respect, the applicant referred to the case-law of the European Court of Human Rights according to which imposing on a landowner opposed to the hunt on ethical grounds the obligation to tolerate hunting on his or her property is liable to upset the fair balance between protection of the right of property and the requirements of the general interest and to impose on the person concerned a disproportionate burden incompatible with Article 1 Protocol 1 ECHR.

II. The Constitutional Court agreed with the applicant that his legal obligation to allow hunting on his property interfered with his right to the peaceful enjoyment of his property. However, it found that the situation in Carinthia differed substantially from that criticised by the European Court of Human Rights in France, Germany and Luxembourg.

In Austria the population and diversity of hoofed game is the highest in Europe. Consequently, the forests, in particular young trees, are heavily affected by game browsing; approximately half of the forest area lacks the requisite natural rejuvenation. It is therefore necessary, in order to safeguard the national forests, that game stocks are subject to an active management including measures to reduce the population of wild game. In Carinthia, the effective protection of the forests is all the more important as most of the forested areas there are suffering from erosion caused by wind, water or gravity. In addition,

there are international law obligations for Austria to protect forests in the alpine areas. According to two protocols to the Alpine Convention, the Contracting Parties undertake to keep game stocks at a level that allows the mountain forests to regenerate. The specific public interest in a systematic management of game stocks extending to the whole territory of Carinthia is also reflected by wildlife aspects being expressly taken into account in spatial planning ("wildlife spatial planning"). This clearly demonstrates that the Carinthian Hunting Act does not serve the leisure interests of those who exercise the hunting rights but imposes obligations on them which serve the general interest.

If the applicant's landholding – and those of other owners who were opposed to hunting – were taken out of the municipal hunting districts, the whole system of management of game stocks would be jeopardised. Since the general interests at stake outweigh the landowner's individual right to property, the Constitutional Court reached the conclusion that a legal obligation to allow hunting (except on enclosed properties) does not impose a disproportionate burden on landowners.

Cross-references:

European Court of Human Rights:

- *Chassagnou and others v. France* (GC), nos. 25088/94, 28331/95, 28443/95, 29.04.1999, *Reports of Judgments and Decisions* 1999-III;
- *Schneider v. Luxembourg*, no. 2113/04, 10.07.2007;
- *Hermann v. Germany* (GC), no. 9300/07, 26.06.2012.

Languages:

German.

