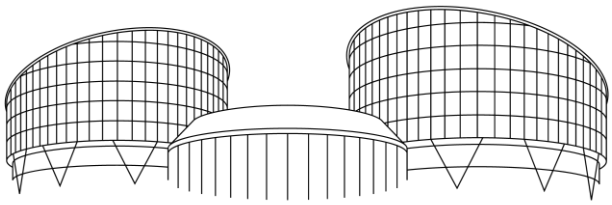

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF CHABAUTY v. FRANCE

(Application no. 57412/08)

JUDGMENT

STRASBOURG

4 October 2012

This judgment is final but it may be subject to editorial revision.

In the case of Chabauty v. France,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Nicolas Bratza, *President*,
Françoise Tulkens,
Josep Casadevall,
Nina Vajić,
Dean Spielmann,
Lech Garlicki,
Boštjan M. Zupančič,
Anatoly Kovler,
David Thór Björgvinsson,
Dragoljub Popović,
Mark Villiger,
Mirjana Lazarova Trajkovska,
Ledi Bianku,
Ann Power-Forde,
Işıl Karakaş,
Angelika Nußberger,
André Potocki, *judges*,

and Vincent Berger, *Jurisconsult*,

Having deliberated in private on 4 July 2012 and on 12 September 2012,

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

PROCEDURE

1. The case originated in an application (no. 57412/08) against the French Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a French national, Mr Camille Chabauty ("the applicant"), on 19 November 2008.

2. The applicant was represented by Mr Carl Gendreau, a lawyer practising in Poitiers. The French Government ("the Government") were represented by their Agent, Mrs Edwige Belliard, Director of Legal Affairs, Ministry of Foreign Affairs.

3. The application was allocated to the Fifth Section of the Court (Rule 52 § 1 of the Rules of Court). On 2 September 2009 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (former Article 29 § 3 of the Convention).

4. On 14 February 2012 a Chamber of the Fifth Section composed of Dean Spielmann, President, Jean-Paul Costa, Boštjan M. Zupančič, Mark Villiger, Isabelle Berro-Lefèvre, Ann Power-Forde and Angelika Nußberger, judges, and Claudia Westerdiek, Section Registrar, relinquished jurisdiction in favour of the Grand Chamber, neither of the parties having objected to relinquishment (Article 30 of the Convention and Rule 72).

5. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24.

6. The applicant and the Government each filed a memorial on the admissibility and merits of the application.

7. On 11 June 2012, after consulting the parties, the President of the Grand Chamber decided not to hold a hearing.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1934 and lives in Airvault.

9. The applicant inherited two plots of land in the municipality of Louin (*département* of Deux-Sèvres) with a total surface area of approximately ten hectares, which are included in the hunting grounds of the Louin approved municipal hunters' association (*association communale de chasse agréée* – "ACCA"). He holds a hunting permit.

10. In France, hunting rights over land belong in principle to the landowner. However, Law no. 64-696 of 10 July 1964, known as the "Loi Verdeille", provides for the pooling of hunting grounds within ACCAs. The creation of an ACCA in each municipality is compulsory in twenty-nine of the ninety-three *départements* of metropolitan France excluding Bas-Rhin, Haut-Rhin and Moselle, including in Deux-Sèvres; in the remainder of those ninety-three *départements* it is optional. Landowners whose property forms part of the hunting grounds of an ACCA in this way automatically become members of the association. They lose their exclusive hunting rights over their own land but have the right to hunt throughout the area covered by the ACCA.

However, the owners of land with a surface area above a certain threshold may object to the inclusion of their land in the ACCA's hunting grounds or request its removal from them (in the *département* of Deux-Sèvres, the threshold is twenty hectares, which corresponds to the statutory minimum area). Since the entry into force of Law no. 2000-698 of 26 July 2000, landowners "who, being opposed to hunting as a matter of personal conviction, prohibit hunting, including by themselves, on their

property" also have this option, irrespective of the surface area of their land (see paragraphs 18-23 below).

11. In a letter of 12 August 2002 the applicant informed the Prefect of Deux-Sèvres that he wished to "object to the practice of hunting by the Louin ACCA on [his] plots of land" "as a matter of personal conviction". On 23 September 2002 the Prefect informed him of the procedure to follow in order to have his land removed from the ACCA's hunting grounds on account of his opposition to hunting for reasons of conscience.

12. On 17 December 2003 the applicant again wrote to the Prefect, applying to have his land removed from the Louin ACCA's hunting grounds. He stated as follows:

> "... My application to have the land removed is not based on personal convictions but on the fact that the European Court of Human Rights, and subsequently the national administrative courts, have ruled ... that 'while different treatment of persons in a comparable situation may be justified by the general interest resulting in particular from the need to ensure coherent and efficient management of game stocks, there does not appear to be any objective and reasonable justification for obliging landowners, by means of compulsory transfer, to join an approved municipal hunters' association against their wishes.' It is clear from these different court rulings that large and small landowners cannot be treated differently on the basis of provisions which are contrary to Article 1 of Protocol [No. 1] taken in conjunction with Article 14 of [the] Convention.
>
> As I own only 10 hectares, 12 ares and 74 centiares, I would kindly request you to grant me permission, by means of a reasoned administrative decision, to immediately remove from the hunting grounds of the Louin ACCA the plots of land entered in section ... of the land register..."

13. On 6 February 2004 the Director of Agriculture and Forestry of the Deux-Sèvres Prefecture informed the applicant that his application had been rejected. Noting that the applicant was no longer citing his original reasons relating to personal convictions, but instead relied on Article 14 of the Convention and Article 1 of Protocol No. 1, the Director wrote as follows:

> "... the provisions of the Law of 26 July 2000 and of the Environmental Code, and in particular Articles L. 422-10 and L. 422-13 thereof, were designed to bring the domestic law into line with the case-law of the Court ... by providing that only landowners who do not hunt and who are opposed to hunting as a matter of personal conviction have a right to raise objections to hunting irrespective of the surface area of their land, while maintaining the requirement for owners of land below a certain threshold (twenty hectares in Deux-Sèvres) to transfer the hunting rights over their land to the ACCA.
>
> Our enquiries have revealed that you are the holder of a valid hunting permit for the current hunting season.
>
> As a result ..., pursuant to Article L. 422-13 of the Environmental Code, I must inform you that I am unable to grant your request and that the land you seek to have removed shall remain within the hunting grounds of the Louin ACCA. ..."

14. On 23 March 2004 the applicant requested the Prefect of Deux-Sèvres to reconsider the decision.

On 6 April 2004, having received no reply, he applied to the Poitiers Administrative Court for judicial review of the implicit refusal constituted by the Prefect's failure to reply, and of the decision of 6 February 2004.

15. On 23 March 2005 the Poitiers Administrative Court allowed the application, in a judgment containing the following reasoning:

> "...while different treatment of persons in a comparable situation may be justified by the general interest resulting in particular from the need to ensure coherent and efficient management of game stocks, there does not appear to be any objective and reasonable justification for obliging landowners, by means of compulsory transfer, to join an approved municipal hunters' association against their wishes. ... thus, the difference in treatment between large and small landowners is contrary to Article 1 of Protocol [No. 1] read in conjunction with Article 14 of [the] Convention. ..."

16. The Louin ACCA applied to the Bordeaux Administrative Court of Appeal to have that judgment set aside, arguing that, as a hunter himself, the applicant could not claim to be a victim of a Convention violation.

The Administrative Court of Appeal rejected the application in a judgment of 18 July 2006. It considered that the Director of Agriculture and Forestry had not been competent to sign the decision of 6 February 2004, which was therefore unlawful, as was the implicit refusal. Accordingly, the court concluded that the Louin ACCA had no grounds for contesting the setting-aside of the decisions in question.

17. On an application by the Louin ACCA, the *Conseil d'Etat*, in a judgment of 16 June 2008, quashed the judgment of the Bordeaux Administrative Court of Appeal. It held that the latter had committed an error of law in ruling that the Director of Agriculture and Forestry had not been competent to sign the decision in question, since he had been properly delegated to sign documents in the sphere concerned.

Ruling on the merits, the *Conseil d'Etat* went on to quash the judgment of the Poitiers Administrative Court of 23 March 2005 and rejected the applicant's application for judicial review. The *Conseil d'Etat* held, *inter alia*, as follows:

> "... The evidence in the file shows that Mr Chabauty, who owns land with a surface area below that specified in paragraph 3 of Article L. 422-10 of the Environmental Code, requested the removal of his land not on the grounds that he was opposed to hunting as a matter of personal conviction, as permitted by the fifth paragraph of that Article, but on the grounds that he wished to reserve the hunting rights over his land for his own use without allowing the members of the ACCA to benefit from them.
>
> The system of approved hunters' associations was devised on general-interest grounds to prevent the unregulated exercise of hunting and promote rational use of game stocks. Landowners who hunt and who transfer the rights over their land are automatically entitled, in accordance with Article L. 422-21 of the Environmental Code, to membership of the hunters' association and, accordingly, to hunt throughout the association's hunting grounds. Thus, the owners of land with a surface area below that specified in the third paragraph of Article L. 422-10 of the Code have a choice between relinquishing their hunting rights on the grounds that they are opposed to hunting as a matter of personal conviction or transferring the hunting rights over their

land to the ACCA in exchange for the compensatory benefits referred to above. Accordingly, the system does not constitute disproportionate interference with the right to property and is not in breach of Article 1 of [Protocol No. 1].

The difference in treatment under the law between small and large landowners was introduced in the interests of hunters who own small plots of land, who can thus band together in order to obtain larger hunting grounds. Thus, this difference in treatment is based on objective and reasonable grounds and, since the owners of small plots remain free to use their land for a purpose in keeping with their conscience, the system in issue is not in breach of Article 1 of [Protocol No. 1] taken in conjunction with Article 14 of [the] Convention. It follows from the above that the Administrative Court incorrectly based its ruling on a breach of [these provisions] in setting aside the impugned decisions..."

II. RELEVANT DOMESTIC LAW

18. In principle, hunting rights over land belong to the landowner. Article L. 422-1 of the Environmental Code states that "[n]o 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, the legislature deemed it necessary for hunting grounds to be "pooled" in some cases. This was the purpose of Law no. 64-696 of 10 July 1964, known as the "Loi Verdeille", which is applicable in the *départements* of metropolitan France other than Bas-Rhin, Haut-Rhin and Moselle and provides for the establishment of approved municipal and inter-municipality hunters' associations ("ACCAs" and "AICAs").

19. The ACCAs pool hunting grounds at municipal level. Under Article L. 422-2 of the Environmental Code, in the version applicable at the material time, they are "designed to ensure sound technical organisation of hunting. They shall encourage, on their hunting grounds, an increase in game stocks and wildlife while preserving a genuine balance between agriculture, forestry and hunting, provide instruction to their members in hunting-related matters and ensure the control of vermin and compliance with hunting plans ... Their role is also to ensure that hunters contribute to the conservation of natural habitats and wild flora and fauna".

The ACCAs are subject to the ordinary law on associations (Law of 1 July 1901) and to the specific provisions of the Loi Verdeille and the regulatory instruments implementing it (Articles L. 422-1 et seq. and Articles R. 422-1 et seq. of the Environmental Code). The prefect issues approval after checking that the requisite formalities have been completed and that the association's constitution and internal rules conform to the statutory requirements (Articles L. 422-3 and R. 422-39 of the Environmental Code). The prefects are responsible for supervising the ACCAs, and any change to their constitutions, internal rules or hunting regulations must be submitted to the prefect for approval (Articles R. 422-1 and R. 422-2 of the Environmental Code). In the event of a breach by the

ACCA of its constitution or hunting regulations or of damage to property, crops or public freedoms, or of a general breach of the relevant regulatory provisions (Articles R. 422-1 et seq. of the Environmental Code), the prefect may also adopt interim measures such as the suspension of hunting on all or part of the association's hunting grounds or the dissolution of its executive committee (Article R. 422-3 of the Environmental Code).

20. The creation of ACCAs is mandatory only in certain *départements* named on a list drawn up by the Minister responsible for hunting on a proposal by the representative of the State in 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. 422-6 of the Environmental Code). Twenty-nine of the ninety-three metropolitan *départements* other than Bas-Rhin, Haut-Rhin and Moselle are concerned. In the remainder of those ninety-three *départements* the representative of the State draws up a list of municipalities where an ACCA is to be set up. The 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 minimum five-year period (Article L. 422-7 of the Environmental Code).

21. Landowners whose land is included in an ACCA's hunting grounds are automatically members of the association (Article L. 422-21 of the Environmental Code). They lose their exclusive hunting rights over the land but, as members, have the right to hunt throughout the association's hunting grounds in accordance with its regulations (Articles L. 422-16 and L. 422-22 of the Environmental Code).

The transfer of hunting rights entitles the landowner to compensation, payable by the ACCA, for any loss of profits caused by being deprived of a previous source of income. The ACCA is also obliged to pay compensation to owners of hunting rights who have "made improvements to the land over which they have hunting rights" (Article L. 422-17 of the Environmental Code).

22. Article L. 422-10 of the Environmental Code provides:

> "A municipal hunters' association shall be established 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. 424-3 [Article L. 424-3 provides that '... the owner of the land or the hunting rights may, at any time, hunt or arrange for the hunting of game animals on his or her land adjoining a dwelling and surrounded by a continuous and unbroken fence, 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. 422-13 and in relation to which the owners of the land or of the hunting rights have filed objections;

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 Rail Network or the French National Railway Company.

5. in relation to which objections have been filed by individual owners, or unanimously by several co-owners acting jointly, who, being opposed to hunting as a matter of personal conviction, prohibit hunting, including by themselves, on their property, without prejudice to the effects of owner liability, and particularly liability for damage caused by game from their lands. ..."

The fifth paragraph was added by Law no. 2000-698 of 26 July 2000 (published in the Official Gazette on 27 July 2000) for the purposes of executing the Court's judgment in *Chassagnou and Others v. France* ([GC], nos. 25088/94, 28331/95 and 28443/95, ECHR 1999-III) (see paragraph 24 below).

Articles L. 422-13, L. 422-14 and L. 422-15 of the Environmental Code further specify as follows:

Article L. 422-13

"I. In order to be admissible, an objection by the owners of land or hunting rights referred to in the third paragraph of Article L. 422-10 must relate to at least twenty hectares of land in a single block.

II. That minimum shall be lowered in respect of waterfowl shooting

1. to three hectares for undrained marshland;

2. to one hectare for isolated ponds;

3. to fifty ares for ponds where, on 1 September 1963, there were fixed installations, shelters or hides.

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

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

V. Orders made for each *département* under the conditions laid down in Article L. 422-6 may increase the minimum areas thus defined. These increases may not bring the new figure to more than twice the minimum laid down above."

Article L. 422-14

"The objections referred to in paragraph 5 of Article L. 422-10 shall be admissible provided that they relate to all the land belonging to the owner or co-owners in question.

Such objections shall entail relinquishment of the exercise of hunting rights on the land ..."

Article L. 422-15

"Persons who have filed an objection shall be required to erect signs on their land to the effect that hunting is prohibited.

Owners of land or hunting rights who have filed an objection shall take steps to destroy vermin and to control the presence on their land of species that cause damage.

The crossing by hounds of land designated as a reserve or which is the subject of an objection under the third and fifth paragraphs of Article L. 422-10 shall not be considered as hunting on a reserve or on land belonging to another, except where the hunter has incited the hounds to enter the land."

23. The Government stated that when an ACCA was being set up the owners of land not attaining the statutory minimum area or of hunting rights over such land could prevent the inclusion of their property in the ACCA's hunting grounds by banding together to create a single block of land which exceeded the minimum area (Articles L. 422-10, third paragraph; R. 422-21; and R. 422-22 I, second paragraph, of the Environmental Code).

III. RESOLUTION OF THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE CONCERNING THE EXECUTION OF THE JUDGMENT IN *CHASSAGNOU AND OTHERS V. FRANCE*

24. On 25 April 2005 the Committee of Ministers of the Council of Europe adopted the following Resolution (ResDH(2005)26):

"The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11 (hereinafter referred to as "the Convention"),

Having regard to the final judgment of the European Court of Human Rights in the case of Chassagnou and others...

...

Having regard to the Rules adopted by the Committee of Ministers concerning the application of Article 46, paragraph 2, of the Convention;

Having invited the government of the respondent state to inform it of the measures which had been taken in consequence of the judgment of 29 April 1999, having regard to France's obligation under Article 46, paragraph 1, of the Convention to abide by it;

Whereas during the examination of the case by the Committee of Ministers, the government of the respondent state gave the Committee information about the individual and general measures taken in particular the amendment of Law No. 64-696 of 10 July 1964 (the so-called "Verdeille Act") which was criticised by the European Court in its judgment, so as to admit conscientious objection to hunting and thus avoid further violations similar to those found by the European Court against persons opposed to hunting (see the appendix to this resolution);

...

Declares, after having examined the information supplied by the Government of France, that it has exercised its functions under Article 46, paragraph 2, of the Convention in this case.

Appendix to Resolution ResDH(2005)26

Information provided by the Government of France during the examination of the case of *Chassagnou and others* by the Committee of Ministers

...

To give full effect to the Court's judgment, Act No. 64-696 of 10 July 1964 ("the Verdeille Act"), impugned by the Court, has been amended, giving those opposed to hunting the right to object to it on grounds of conscience. Act No. 2000-698 on hunting, which introduces this amendment, was adopted on 26 July 2000 and published in the official gazette on 27 July 2000. Under Section 14 of that Act (the present Article L422-10 of the Environmental Code):

'The municipal association [the licensed municipal hunting association – ACCA] shall be established on lands other than those:

...

5. Covered by objections lodged by individual owners, or unanimously by several co-owners acting jointly, who are opposed to hunting for reasons of personal conviction, and who forbid hunting, also by themselves, on their lands, without prejudice to the effects of owner liability, and particularly liability for damage caused by game from their lands.

When the owner is a corporation, the objection may be lodged by the chief executive of its decision-making body, duly authorised by it to do so.'

The government also notes that implementation of the provisions relating to the ACCA, as amended by the said Act of 26 July 2002, appears to have raised certain problems in respect of possibilities of withdrawing from the ACCA open to persons not wishing to plead objections of conscience. These problems have given rise to a number of proceedings which are still pending before the appeal courts, but in which the administrative courts based their first-instance judgments on principles derived from the Strasbourg case-law, and particularly the Chassagnou judgment.

At all events, the government considers, in view of the direct effect in French law of the European Convention on Human Rights and the case-law of the European Court, that there is no longer any risk of further violations of the kind suffered by the anti-hunting applicants according to the Chassagnou judgment.

..."

THE LAW

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

25. The applicant, who owns land included in the hunting grounds of an approved municipal hunters' association, complained of the fact that, as he was not opposed to hunting for ethical reasons and the surface area of his land fell below a certain threshold, he was unable to have the land removed from the association's hunting grounds in order to derive benefit from it by

leasing it for hunting. He alleged discrimination on the ground of property, relying on Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1. These two provisions read as follows:

Article 14

"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."

Article 1 of Protocol No. 1

"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."

26. The Government contested that argument.

A. Admissibility

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

B. Merits

1. The parties' submissions

(a) The applicant

28. The applicant submitted that in its judgment in *Chassagnou and Others* (cited above) the Court had not confined itself to criticising the Loi Verdeille for obliging small landowners who were opposed to hunting on ethical grounds to tolerate hunting on their property. In his view, the Court had taken issue with the very principle of compulsory transfer of hunting rights to the ACCAs, whether or not the landowners in question were opposed to hunting, on the grounds that there was no objective and reasonable justification for compelling only small landowners to transfer their rights, particularly since the system introduced by the Loi Verdeille applied only in some parts of the country. He referred in that regard to paragraphs 89-94 and 120-21 of the judgment.

The applicant further emphasised that the judgment in his favour by the Poitiers Administrative Court had been based on the same interpretation of the *Chassagnou and Others* judgment, and that the Administrative Court's case-law on the subject had been favourably received by legal commentators. Furthermore, the *Conseil d'Etat* had itself adopted the same approach in its *Vignon* judgment of 27 October 2000.

29. In the applicant's view, it was clear that there was no objective and reasonable justification for the distinction between small and large landowners. He observed, in particular, that the French authorities had never demonstrated that the organisation of hunting through ACCAs resulted in better game management or improved safety. While small landowners currently had the option of banding together to create a plot of land with a surface area above the threshold and thus avoid having to join an ACCA, this had not been possible at the time the Louin ACCA had been set up, and the law did not allow landowners to remove their land from the ACCA's hunting grounds *ex post facto*, not even with a view to transferring it to a private entity that was coherent for hunting purposes. The principle of collective management of hunting grounds – which the applicant favoured, as the sole means of ensuring rational management of game stocks – did not necessitate a system of compulsory transfer of the kind provided for by the Loi Verdeille. That system resulted in the creation of collective hunting grounds on which third parties had the right to hunt against the wishes of the landowners, to the detriment of small landowners alone and on a "very small part of the country's hunting land". While he was not opposed to the creation of collective hunting grounds, the criteria applied for that purpose had to be rational. However, that was not the case with the surface area criterion employed by the Loi Verdeille, particularly since it applied to only a "very small part of the country's hunting land", was the sole criterion, was applied automatically and resulted in an irreversible situation.

30. The applicant rejected the argument that the discrimination he complained of was acceptable since, in return for being compelled to transfer their rights, the small landowners concerned were automatically made members of the ACCA and had the right to hunt throughout the ACCA's hunting grounds, thus enjoying the benefits of access to a larger hunting area. This was a purely subjective view which was contradicted by the fact that the members of the ACCA did not necessarily share the same ideas regarding hunting or even the same hunting practices. It was also mistaken in so far as persons with automatic membership had to pay the annual subscription if they wished to hunt and small landowners whose land had been subjected to compulsory transfer of the hunting rights before they acquired it did not obtain automatic membership of the ACCA.

31. The applicant further pointed out that small landowners whose hunting rights had been the subject of a compulsory transfer to an ACCA did not receive compensation unless those rights were being leased at the

time of transfer. He added that, while large landowners retained that option, small landowners were permanently deprived of the possibility of leasing the hunting rights over their property. This not only deprived them of income but also affected the market value of the property. Furthermore, the ACCA was only required to make good any damage to their land caused by game within the limits of its liability for negligence under ordinary law.

Lastly, the applicant conceded that he could remove his land from the Louin ACCA's hunting grounds by erecting a continuous and unbroken fence around his property forming an obstacle to any communication with neighbouring properties and incapable of being breached by game animals and by humans. However, he stressed that this would entail a very high cost, which he estimated at EUR 2,500 per hectare. He produced an estimate prepared at his request by a company in Aubigné-sur-Layon, quoting a price of EUR 36,495.94 including tax for his two plots of land.

(b) The Government

32. The Government submitted that the reason why the Court, in *Chassagnou and Others*, cited above, had found a violation of Article 1 of Protocol No. 1 taken alone and in conjunction with Article 14 of the Convention had been that the system instituted by the Loi Verdeille had not allowed small landowners who were opposed to hunting to avoid the transfer of their hunting rights to an ACCA. The Government referred to paragraphs 85 and 95 of the judgment, pointing in particular to the Court's finding that the difference in treatment between large and small landowners under the Loi Verdeille had been discriminatory and in breach of those combined provisions because the result had been "to give only the former the right to use their land in accordance with their conscience". The legislature had drawn the necessary inferences from that judgment: since the entry into force of Law no. 2000-698 of 26 July 2000, landowners who did not hunt could object to the inclusion of their land if they were "opposed to hunting as a matter of personal conviction", irrespective of the surface area of the land.

33. The Government conceded that there continued to be a difference in treatment between small and large landowners who were not opposed to hunting. However, they took the view that this was not discriminatory since it pursued legitimate aims and the means employed were proportionate to those aims.

34. On the subject of "legitimate aims", the Government observed that the rules governing the ACCAs – in particular the obligation to participate in the system – were designed to ensure the safety of persons and property, the proper organisation of hunting, democratic participation in hunting and an increase in game stocks and wildlife which preserved the balance between hunting, agriculture and forestry. The Court, in *Chassagnou and Others*, cited above, and in its decision in *Baudinière and Vauzelle*

v. France (nos. 25708/03 and 25719/03, 6 December 2007), had held that such aims were not only legitimate but were also in the general interest.

35. As to the issue of proportionality, the Government observed first of all that the restrictions on the use of property were limited, as they related only to the exercise of the right to hunt, which was just one of the rights associated with ownership.

36. They submitted that pooling together small, sub-divided hunting grounds within ACCAs with a view to applying common hunting rules under the prefect's supervision, and exempting landowners not opposed to hunting from the obligation to transfer their rights to an ACCA only if the size of their property exceeded a certain threshold, were necessary in order to achieve the aforementioned legitimate aims.

The establishment of that threshold was at the heart of the system instituted by the Loi Verdeille. It was based on the observation made by the legislature at the time that small plots of land did not allow hunting to be organised satisfactorily. So-called "public hunting", carried out on land belonging to others by virtue of assumed authorisation, had become widespread, especially in the south of France where the land was highly fragmented. No one had been responsible for the proper conservation of game stocks, with the result that certain species had been decimated and there had been extensive damage to crops and ecosystems. The sub-division of hunting grounds had also increased the number of hunting-related accidents.

Furthermore, the creation of ACCAs was based on the following principles: strict cooperation between hunters and landowners, development of the game stock as a whole, protection and improvement of hunting grounds and action to make best use, through the creation of viable and manageable hunting entities, of an immense section of national territory hitherto abandoned and lacking any real organisation.

37. The Government further pointed out that the minimum area of twenty hectares had not been defined at random, but corresponded to the surface area below which land was not generally considered "viable for hunting purposes". The fact that a higher threshold was applied in some areas reflected those areas' particular characteristics in geographical and hunting terms.

38. While they did not receive compensation, small landowners who hunted derived advantages from membership of the ACCA, including the opportunity to hunt on other members' land and to make use of various services (for instance, the upkeep of the land and the destruction of vermin). In addition, the ACCA was required to make good any damage to their land caused by game animals, on the same basis as damage to third parties.

The Government also pointed out that when an ACCA was set up, landowners or holders of hunting rights over land not attaining the statutory minimum surface area could avoid inclusion of the land in the association's

hunting grounds by pooling their land to form a single block that exceeded the minimum threshold. However, they acknowledged that this was not possible *ex post facto*, on account of the need to avoid instability in the size of the ACCAs' hunting grounds.

Articles L. 422-10, L. 424-3 and R. 422-54 of the Environmental Code allowed small landowners to avoid inclusion of their land in the ACCA's hunting grounds, or have it removed from the hunting grounds, by erecting a continuous and unbroken fence around their property, forming an obstacle to any communication with neighbouring properties and incapable of being breached by game animals and by humans. Referring to the cost of a fence erected in 2010 by the National Agronomic Research Institute in the context of a study on damage to forest plants caused by deer, they estimated the price of such an installation at EUR 1,300 per hectare of land in a single block.

39. Lastly, the Government highlighted the fact that, in its decision in *Baudinière and Vauzelle*, cited above, the Court had held that compelling small landowners who hunted to join an ACCA without giving them the option of joining a non-approved hunting association which might achieve the same purpose was not contrary to Article 11 of the Convention.

40. In the Government's view, the few constraints imposed by the Loi Verdeille system on the landowners concerned were not disproportionate to the general-interest aims pursued.

2. The Court's assessment

41. It is apparent from the *Chassagnou and Others* judgment that the Court's findings of a violation were based to a decisive degree on the fact that the applicants were opposed to hunting on ethical grounds and that issues of conscience were at stake for them.

42. In this connection the Court points out that it was called upon in that case to deal specifically with the situation of landowners who were opposed to hunting for ethical reasons and who, prior to the entry into force of the Law of 26 July 2000, had no means of preventing hunting on their land unless the surface area exceeded a certain threshold beyond which objections could be raised.

43. The Court further stresses that, in the conclusion of its reasoning leading to the finding of a violation of Article 1 of Protocol No. 1 taken in conjunction with Article 14, the *Chassagnou and Others* judgment stated that the difference in treatment between large and small landowners constituted discrimination on the ground of property within the meaning of Article 14 "since the result ... [was] to give only the former the right to use their land in accordance with their conscience" (§ 95).

As regards the correct reading of this part of the *Chassagnou and Others* judgment, it is true that, in paragraphs 92-94, the Court expressed doubts as to the aim relied on by the Government (promoting the rational management

of game stocks by pooling small hunting grounds) as justification for the difference in treatment between small and large landowners arising out of the French hunting legislation. However, that was not the basis on which the Court ultimately found a violation of Article 1 of Protocol No. 1 read in conjunction with Article 14 of the Convention. It is clear from paragraph 95 that this finding was based on the fact that, within the category of landowners opposed to hunting for ethical reasons, only small landowners were obliged to tolerate the use of their property against their conscience. It was this fact that made the obligation on small landowners alone to participate in the system of ACCAs, giving rise to the impugned difference in treatment between large and small landowners, disproportionate to the aim pursued. In other words, it was the failure to respect the convictions of the landowners concerned which, in the end, led the Court to conclude that there had been no "reasonable relationship of proportionality between the means employed and the aim sought to be realised" and that there had therefore been a violation of Article 14 of the Convention.

44. The Court's reasoning concerning the other complaints confirms that the fact that the applicants were obliged to participate in a system which went against their convictions was decisive. The Court found a violation of Article 1 of Protocol No. 1 on the ground that compelling small landowners to transfer hunting rights over their land so that others could "make use of them in a way which [was] totally incompatible with their beliefs" imposed a disproportionate burden which was not justified under the second paragraph of that provision (§ 85). It went on to find a violation of Article 11 of the Convention on the ground that to compel a person by law to "join an association such that it [was] 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 owned so that the association in question could attain "objectives of which he disapprove[d]" went beyond what was necessary to ensure that a fair balance was struck between conflicting interests and could not be considered proportionate to the aim pursued (§ 117).

45. The Court observes that this is also what the French legislature and the Committee of Ministers inferred from the *Chassagnou and Others* judgment. With a view to execution of that judgment, Parliament enacted the above-mentioned Law of 26 July 2000, giving landowners "who, being opposed to hunting as a matter of personal conviction, prohibit[ed] hunting, including by themselves, on their property" the opportunity to object on that basis to the inclusion of their land in the ACCA's hunting grounds or to periodically request its removal, irrespective of its surface area (see paragraph 22 above). The Committee of Ministers considered the judgment to have thereby been executed (see paragraph 24 above), and the Court held, in view of these new domestic-law provisions, that persons opposed to hunting on ethical grounds could no longer allege a violation of Article 11

of the Convention or Article 1 of Protocol No. 1 (see *A.S.P.A.S. and Lasgrezas v. France*, no. 29953/08, 22 September 2011, §§ 38-44 and 56-57).

46. Lastly, the decisions in *Baudinière and Vauzelle* (cited above), *Piippo v. Sweden* (no. 70518/01, 21 March 2006) and *Nilsson v. Sweden* (no. 11811/05, 26 February 2008), and the judgments in *Schneider v. Luxembourg* (no. 2113/04, §§ 51 and 82, 10 July 2007) and *Herrmann v. Germany* ([GC], no. 9300/07, § 93, 26 June 2012), in all of which the *Chassagnou and Others* case-law has been applied, confirm – even if the Court does not rule on compliance with Article 14 – the importance which this line of case-law attaches to the issue of respect for the choices made on grounds of conscience by landowners opposed to hunting.

47. Hence, as the applicant is not opposed to hunting on ethical grounds, no violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1 can be inferred in the present case from the judgment in *Chassagnou and Others*.

48. It remains to be determined whether the fact that only owners of land in excess of a certain surface area can avoid its inclusion in the ACCA's hunting grounds in order to retain their exclusive right to hunt on it constitutes, to the applicant's detriment, a source of discrimination between small and large landowners in breach of the Convention.

49. The Court reiterates in this regard that a difference in treatment is discriminatory if it "lacks 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. The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a difference in treatment. The scope of the margin of appreciation will vary according to the circumstances, the subject matter and its background (see, among many other authorities, *Chassagnou and Others*, cited above, § 91, and, for a recent reference, *Konstantin Markin v. Russia* [GC], no. 30078/06, §§ 125-26, 22 March 2012).

50. The Court considers that, in the circumstances of the present case, a significant margin of appreciation should be left to the respondent State. Firstly, the difference in treatment complained of by the applicant in the exercise of the right to property falls within the scope of "control of the use of property" within the meaning of Article 1 of Protocol No. 1 (see *Chassagnou and Others*, cited above, § 71), a sphere in which the Court acknowledges that States have a wide margin of appreciation (see, for example, *Nilsson*, cited above). Secondly, whilst the criterion for making a distinction – "on the ground of property" – may in some circumstances give rise to discrimination prohibited by the Convention, it does not feature among the criteria regarded by the Court either as unacceptable as a matter

of principle (as is the case with racial or ethnic origin; see, for instance, *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 176, ECHR 2007-IV, and *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, §§ 43-44, ECHR 2009) or as unacceptable in the absence of very weighty reasons (as is the case with gender or sexual orientation; see, for example, *Konstantin Markin*, cited above, § 127, and *Schalk and Kopf v. Austria*, no. 30141/04, § 97, ECHR 2010).

51. Against this background, the Court notes that in the instant case the *Conseil d'Etat* found that the system of ACCAs had been devised "on general-interest grounds to prevent the unregulated exercise of hunting and promote rational use of game stocks".

The *Conseil d'Etat* went on to note that small landowners had a choice between relinquishing their hunting rights on the grounds that they were opposed to hunting as a matter of personal conviction, or transferring the hunting rights over their land to the ACCA. In view of the fact that landowners who hunted and who transferred their rights to an ACCA were entitled, by way of compensation, to automatic membership and had the right to hunt throughout the association's hunting grounds, the *Conseil d'Etat* held that this system did not amount to disproportionate interference with the right to property. It also stressed that the difference in treatment between small and large landowners of which the applicant complained was based on "objective and reasonable" grounds since it had been introduced in the interests of hunters who owned small plots of land, who could thus join together to obtain larger hunting grounds. It added that the system was compatible with the requirements of Article 14 of the Convention and Article 1 of Protocol No. 1 since the owners of small plots of land remained free to use their land for a purpose in keeping with their conscience (see paragraph 17 above).

52. The Court notes that this reasoning is in line with its own case-law.

53. It is true, as pointed out earlier, that the Court stated in *Chassagnou and Others* (§ 92) that it was not convinced by the Government's explanation as to how the obligation for small landowners alone to participate in the system addressed the need to pool small plots of land with the aim of promoting the rational management of game stocks.

54. Firstly, however, far from questioning the legitimacy of this aim, the Court acknowledged that it was in the general interest, stating that "it [was] undoubtedly in the general interest to avoid unregulated hunting and encourage the rational management of game stocks" (see *Chassagnou and Others*, cited above, § 79). The Court reaffirmed this assessment in the *Baudinière and Vauzelle* decision, cited above, stressing that "[i]n thus seeking to control the impact of hunting on the ecological balance, the [French legislation] is aimed at the protection of the natural environment, an aim which, as the Court has held on numerous occasions, is indisputably in

the general interest (see, for example, *Lazaridi v. Greece*, no. 31282/04, § 34, 13 July 2006)."

Secondly, there are understandable reasons for pooling the smallest hunting areas in order to create larger hunting grounds governed by common game stock management rules, as this contributes to managing the pressure on game stocks and organising hunting in a sustainable manner. In that regard, the Court finds convincing the explanations furnished in the present case by the Government to the effect that, in establishing the principle of pooling small hunting grounds within ACCAs, the legislature sought to remedy the problem of increasing scarcity of game, particularly in regions where properties were very fragmented. Furthermore, in the *Baudinière and Vauzelle* decision, cited above, the Court acknowledged that the formation of large, regulated hunting entities as the result of the pooling of hunting grounds within the ACCAs was conducive to ecologically balanced game management. As the aim is to ensure better management of game stocks by encouraging hunting over large areas, it is understandable that the legislature should have deemed it unnecessary to impose the pooling of land on landowners who already had a large area enabling this aim to be achieved, even though this resulted in a difference in treatment between small and large landowners.

55. The Court further notes that landowners whose land is included in an ACCA's hunting grounds merely lose the exclusive right to hunt on their land; their property rights are otherwise unaffected. Furthermore, in exchange, they obtain automatic membership of the ACCA, which allows them not only to hunt on the whole of the association's hunting grounds but also to participate in the collective management of hunting throughout that area. Moreover, landowners who previously derived an income from hunting or who made improvements to the land for hunting purposes before joining an ACCA are entitled to compensation on that basis.

56. In these circumstances, and having regard to the margin of appreciation which should be left to the Contracting States, obliging only small landowners to pool their hunting grounds with the aim – which is legitimate and in the general interest – of promoting better management of game stocks is not in itself disproportionate to that aim.

57. In conclusion, as the applicant is not opposed to hunting on ethical grounds, there has been no violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

Done in English and in French, and notified in writing on 4 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent Berger Jurisconsult	Nicolas Bratza President