

GreenSkies News

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The European Court of Human Rights, Strasbourg

Victory for Heathrow campaigners in European Court



Heathrow campaigners have won a famous victory in the European Court! . Eight residents, who live in the Heathrow area and belong to the Heathrow Association for the Control of Aircraft Noise (HACAN), had brought the case against the UK government over the sleep disturbance they suffered as a result of the night flight scheme at the airport.

The European Court of Human Rights ruled that the Government's 1993 scheme for night flights contravenes Articles 8 and 13 of the 'Convention for the Protection of Human Rights and Fundamental Freedoms'. Article 8 refers to an individual's right to enjoy his or her home and private life. Article 13 refers to the right to remedial action if a person believes those rights have been violated.

The Court said that it is not sufficient for the Government to simply claim "economic well-being" of the nation in order to over-rule the rights of individuals. Detailed evidence of any economic benefits will be needed and, it was suggested by the court, this work must precede the implementation of a scheme. Consequently, the Court felt that the Government had not achieved a "fair balance".

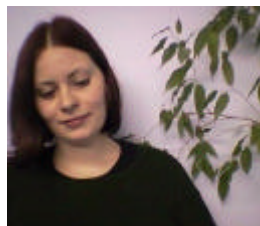
The Court also concluded that the 'Judicial Review' process, which had been originally used to challenge the night flights scheme and which failed to overturn it, was not adequate. The Judicial Review process was considered too limited because it did not examine the key issue of whether the night flights scheme actually caused a justifiable limitation of human rights.

The result is a just reward for the time and effort put in by the appellants and by their legal team, led by solicitor Richard Buxton. It was gratifying that costs (around £70,000) were awarded to the appellants - it is itself a denial of human rights and real democracy when individuals have to pay out large sums of money to defend their rights.

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GreenSkies Relaunches

By Vanja Bjørke



Welcome to this first GreenSkies Newsletter.

First of all, I would like to thank you all for signing up, both those of you who participated in "The Right Price for Air Travel" campaign, and those of you who are new. At the moment we comprise a network of 107 listed members, and a few more are in the pipeline. I am pleased to say that a large majority of the original Network members are still there.

People who have visited our website (www.greenskies.org) have commented that there's not much on it. And this is true; the site is still under construction. However, things are about to change for the better: We are currently creating a page

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on our website with a list of members with links to your home pages. This list also includes any information about yourselves that you sent us. The list will not include contact names and personal details, email-addresses, or private members. Please take a look at our website and click on "Our Members". Also, I ask you to please keep me informed should the information on our page become out-dated.

We also have plans for creating an online activity calendar for the GreenSkies Network. For this we will be requiring your help. Please start sending us information about your work or activities; date, time and location, so that we can post this on our

website. In this way it will be possible for members to see what other groups are up to, and perhaps follow up with their own campaigns, or participate in your group's activity or work. (This web page will also be up and running in the very near future)

I am very much in favour of you all using this network interactively, asking both me and each other for information, as well as getting to know each other if possible. We are all working on the same issues, and the better and closer we can cooperate, the better our work or campaigns may become.

Please tell me if it is *not* OK for me to pass on the email address you have given me to representatives of other organisations who might be interested in contacting you.

As I said, there are now 107 members connected to GreenSkies; 77 of these are NGOs, the others include professionals, academics, journalists, environmental regulators and individuals. They are mainly from Europe, USA, Canada, and Australia. However, the more the merrier, as they say, so please spread the word.

This will be of particular importance during the coming months, when we are going to make our voices heard (yes, there's a campaign coming up!). To introduce you to some of the things that will be happening the coming months, we will be sending you a background paper with information and campaign materials in due course.

Finally, if there are any budding cartoonists out there, please make sure you visit our website for details of our competition.

Court Victory

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Each of the eight residents was awarded £4,000 compensation. The implications beyond this are unclear. Although the UK Government has always abided by previous judgements, the ruling is not legally binding. Furthermore, the ruling simply says that the night flight scheme at Heathrow contravenes Article 8, without really commenting on remedial measures. The Government has 3 months in which to lodge an appeal, but it is more likely that it will prefer to have a public consultation on the necessity for further night-time restrictions at Heathrow (although this is no guarantee that the night flight regime will be changed as a consequence). However, the judgement does mean that, in the absence of any change, further cases are likely to be brought, especially now that cases can be taken to the UK courts.

Reactions to the judgement have, predictably, been mixed. Community groups believe that this is the first step towards a European-wide ban on night flights: after all, Heathrow may be one of the world's busiest international airports but it has relatively fewer flights at night than many other airports in the UK and in Europe. From an opposing viewpoint, the airport's operator, BAA, has warned that further restrictions would threaten the airport's competitiveness, while the airlines are also concerned about more stringent restrictions at a time when "every airline's main concern is financial survival".

Certainly, the implications of the judgement go well beyond the particular night flight scheme at Heathrow. The ruling suggests that it would not be acceptable to allow night flights at any airport where there is a significant impact and where the economic benefits of those flights have not been adequately demonstrated. Furthermore, it suggests that noise nuisance from aircraft could now be challenged in the courts, despite the fact that the Government has specifically excluded aircraft noise from noise legislation.

¹ Announced on 2 October 2001, the judgement, *Hatton and others versus the United Kingdom* (application no. 36022/97), can be downloaded from the European Court of Human Rights' website www.echr.coe.int



**The New GreenSkies
Logo**

News from ICAO's 33rd Assembly

Following events in New York in September it was not surprising to find that issues concerning security and finance dominated the thirty-third Assembly of the International Civil Aviation Organisation (ICAO), held in Montreal between 25 September and 5 October 2001. Nevertheless, environmental issues were discussed, providing an opportunity for environmental NGOs¹ to attend the Assembly as observers for the first time.

It was unlikely that the Assembly was ever going to depart from the recommendations of CAEP's² fifth meeting (CAEP 5) last January, some of which had already been adopted by ICAO's Council. To recap, CAEP 5 had recommended a new noise certification standard that improved on the existing Chapter 3 standard by a cumulative margin of 10 dB (this was adopted by the Council later in the year). CAEP 5 failed to agree on the need for a global phase-out of existing Chapter 3 aircraft, although it did advocate a balanced approach to noise management at airports (to include the benefits of reductions at source, land-use planning, operational improvements, and operational restrictions). In relation to aircraft emissions, specifically carbon dioxide, CAEP's analysis of the application of market-based options supported the view that an open emissions trading system was the most cost-effective way of reducing aircraft CO₂ emissions. Nevertheless, European member states had still advocated a role for levies and voluntary measures in the short-term. While the Assembly was an opportunity for member states and observers to restate their positions on these issues, the important business was to update ICAO's "Consolidated Statement of Continuing ICAO Policies and Practices Related to Environmental Protection" to reflect these recommendations.

As expected, there was a certain amount of political jostling in the discussions. The most contentious issue surrounding the text of the Consolidated Statement related to the interpretation of a balanced approach to noise. The United States, and others, argued that operational restrictions should be applied only after the other elements of a balanced approach had been evaluated, and even then, only on an airport-by-airport basis. This contrasted with the NGO view that gave equal priority to the use of operational restrictions, as well as pushing for operating restrictions to be applied at a regional or national level where appropriate (specifically, a phase-out of Chapter 3 aircraft not compliant with the new Chapter 4 standard). The EU also argued for flexibility, and the eventual outcome permits member

states to act unilaterally and introduce operational restrictions, albeit on an airport-by-airport basis. The latter condition is still a major concern to the NGO's involved: how willing will authorities be to impose restrictions on one airport if it has competitive advantages for another? Equally, from an environmental perspective, such an approach is also likely to result in some airlines switching to an airport that is free of restrictions, forcing a rapid increase in the number of aircraft at the noisier end of the spectrum at that airport. While this may subsequently trigger the need to apply restrictions at that airport as well, measures need to be preventative rather than reactionary.

In relation to greenhouse gas emissions, the Assembly supported further work by CAEP on market-based options. The Consolidated Statement also refers to the polluter pays principle, paving the way for the potential introduction of market-based options although it is likely to be at least 2004 (the next scheduled Assembly) before ICAO seriously addresses the question of targets for emissions. Attempts by the United States to remove references in the Consolidated Statement to the Kyoto Protocol also proved unsuccessful.

¹ *The environmental NGOs were represented by the International Coalition for Sustainable Aviation (ICSA) – a grouping of European and US environmental NGOs working on aviation issues, and coordinated by the European Federation for Transport and the Environment (T&E).*

² *CAEP – ICAO's Committee for Aviation Environmental Protection*

Key Dates and Events

Seventh conference of the Parties to the Convention on Climate Change,
29 October to 9 November 2001
Marrakech, Morocco

UECNA Annual General Meeting 2001
November 9 – 10 2001
Strasbourg, France

SCAN-UK Workshop "The growth of aviation within the regions: Environmental and economic sense"
Newcastle, UK,
January 2002