

PE1542/A

5 February 2015

c/o Public Petitions Clerks
Room T3.40
The Scottish Parliament
Edinburgh
EH99 1SP

petitions@scottish.parliament.uk

Dear Public Petitions Committee,

CONSIDERATION OF PETITION [PE1542](#)

Calling on the Scottish Parliament to urge the Scottish Government to accept that individual dairy farmers have human rights and that these have been breached by the operating rules of the Scottish ring fencing mechanism attached to the management of milk quotas which should have been carried out in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and avoid market and competition distortion.

Thank you for your letter of 14 January 2015 with regard to petition PE1542. As the Committee notes, the Scottish Human Rights Commission previously provided evidence on this issue in relation to petition PE1263.

The view of the Commission has not changed since its [letter](#) to the Committee dated 5 January 2010.

In summary:

There is an overarching right to the peaceful enjoyment of possessions.

A deprivation of possessions must be in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The State has a wide margin of appreciation in implementing social and economic policies that have the effect of interfering with the right to property, but any interference, even those which are specifically allowed for must be justified.

An interference can only be justified if it is shown to represent a fair and proportionate balance between the rights of the individual and the general interest of the community.

In addressing the issue of whether the milk quota ring fence applied to the Scottish Islands breaches the rights of dairy farmers affected, it would be necessary to consider whether the restriction strikes a fair balance between the protection of the right to property and the requirement of the general interest, which the Scottish Government has expressed as:

“safeguarding the long-term future interests of viability of the dairy industry in the ring-fenced areas” (Scottish Parliamentary Answer S3W-25232).

Such a fair balance will not have been struck where the individual property owner is made to bear “an individual and excessive burden”.

It is ultimately for the courts to consider whether a fair balance has been struck or whether Scottish Ministers acted incompatibly with Convention rights.

We hope that this is helpful to the Committee in its consideration of the petition. Please do not hesitate to contact us if you have any queries.

Yours sincerely,

Bruce Adamson
Legal Officer