



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

FOURTH SECTION

CASE OF YAŞAR v. ROMANIA

(Application no. 64863/13)

JUDGMENT

Art 1 P1 • Peaceful enjoyment of possessions • Confiscation of applicant's vessel used by third person for illegal fishing • Applicant's bad faith established by domestic courts in adversarial proceedings • No excessive burden

STRASBOURG

26 November 2019

FINAL

26/02/2020

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Yaşar v. Romania,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Jon Fridrik Kjølbro, *President*,

Iulia Antoanella Motoc,

Branko Lubarda,

Carlo Ranzoni,

Georges Ravarani,

Jolien Schukking,

Péter Paczolay, *judges*,

and Andrea Tamietti, *Deputy Section Registrar*,

Having deliberated in private on 15 October 2019,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 64863/13) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Turkish nationals, Mr Kadir Dikmen and Mr Erol Yaşar (“the applicants”), on 7 October 2013.

2. The applicants were represented by Mr Matei Ilie Lieanu, a lawyer practising in Bucharest. The Romanian Government (“the Government”) were represented by their Agent, most recently Ms Simona-Maya Teodoroiu, from the Ministry of Foreign Affairs.

3. Mr Erol Yaşar alleged, in particular, that the confiscation of his vessel was in breach of Article 1 of Protocol No. 1 to the Convention.

4. On 18 November 2014 the Government were given notice of Mr Erol Yaşar’s complaint concerning the confiscation of his vessel; the complaints introduced by Mr Kadir Dikmen (hereinafter K.D.) as well as the other complaints lodged by Mr Yaşar were declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court. The name of the case has consequently been changed from *Dikmen and Yaşar v. Romania* to *Yaşar v. Romania* and hereinafter the term “the applicant” refers to Mr Yaşar.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant lives in Çayırlı (Turkey).

A. Search and seizure of the applicant's vessel

6. On 2 April 2010 K.D. was sailing with his crew on the Black Sea on a vessel rented from the applicant. The vessel displayed a Romanian flag.

7. The Romanian coastguard asked them to stop at a distance of approximately 42 nautical miles from Sf. Gheorghe and 68 nautical miles from Gura Portiței. Since the crew initially refused to stop, the Romanian coastguard formally ordered them to do so, by threatening to open fire. The crew obeyed the order to stop and the vessel was subsequently subjected to border controls.

8. Further to the search conducted on the deck of the vessel, the coastguard did not find any fish, but found unauthorised fishing equipment which showed signs of having been recently used. They also ascertained that the vessel was not authorised to perform fishing activities in the Romanian exclusive economic zone in the Black Sea, that K.D. did not have a fishing permit and that the vessel did not possess a fishing journal in which its fishing activities should have been recorded. It seemed that the activities had been ordered by K.D. as commander of the vessel and performed by the members of the crew, without the latter being aware of the failure to comply with the statutory fishing requirements and of the illegal display of the Romanian flag.

9. The crew were accused of having committed criminal offences relating to the fishing regime in Romanian territorial waters.

10. The vessel was escorted to the Constanța harbour and the goods and the vessel were seized. According to the applicant, the value of the vessel was 800,000 euros (EUR), since it was equipped with new Volvo-type engines and electronic maps using the latest technology.

B. First set of proceedings and the criminal conviction of K.D.

11. By a bill of indictment of 9 June 2010, K.D. was sent for trial before the Constanța District Court for having committed the criminal offences punishable by Government Emergency Ordinance no. 23/2008 on fishing and aquaculture (“GEO 23/2008”) since it was held that he did not have a fishing permit for the vessel, that he possessed and had used fishing equipment without authorisation, that he had performed illegal fishing activities and that he had unlawfully displayed the Romanian flag.

12. K.D., represented by a lawyer of his choice, namely Mr Lieanu, opted to fully acknowledge his guilt and thus to follow a simplified procedure, in accordance with Article 320¹ of the Code of Criminal Procedure (see paragraph 35 below).

13. On 24 May 2011 K.D. declared before the court that he used the vessel on the basis of a verbal agreement with the applicant, who was its owner. He further stated that even though he did not notify the applicant

whenever the vessel left Turkish territorial waters, upon returning from foreign territorial waters the crew always informed the applicant where they had caught any fish from, and despite the fact that the applicant usually got upset about this information, he still gave them a bonus for catching fish.

14. The applicant submitted to the court a written statement, given before a notary public in Istanbul on 27 January 2011. In it he stated that the vessel, which was his property, had been “caught without his knowledge within Romanian territorial waters”. He asked the court to return all the equipment on the ship to him (including the fishing nets). He gave an undertaking never to enter Romanian territorial waters or to act against Romanian laws. He also submitted a copy of his title to the vessel, as well as a permit for fishing within Turkish territorial waters.

15. Despite several requests from the court asking it to state its position in the case, the National Agency for Fishing and Aquaculture did not reply or formulate any civil claims.

16. By a judgment of 13 July 2011 the Constanța District Court sentenced K.D. to two years’ imprisonment, suspended. It also ordered the seizure of the fishing equipment and ordered the return of the vessel to the applicant since there was no clear evidence that K.D. had used the vessel in Romanian territorial waters with the applicant’s knowledge.

17. The prosecutor’s office attached to the Constanța District Court (“the prosecutor’s office”) lodged an appeal on points of law (*recurs*) against that judgment, arguing that K.D. should also be sentenced to the payment of a fine of 6,000 Romanian lei (RON) on account of his prior criminal conviction for offences relating to the fishing regime and that the applicant’s vessel should be seized as a security measure as per Article 66 of GEO 23/2008 (paragraph 33 below).

18. By a final judgment of 30 March 2012 the Constanța Court of Appeal allowed the prosecutor’s office’s appeal on points of law and partially quashed the lower court’s judgment. The court rejected the request to impose a criminal fine in relation to K.D.; however, noting that the applicant had not been summoned to appear during the proceedings, the court ordered the lower court to re-examine the case solely in respect of the measure of special confiscation of the applicant’s vessel, and to summon the applicant to appear in court, since the measure in question might substantially affect his property rights.

C. Second set of proceedings: examination of the special confiscation measure

19. During the new set of proceedings, K.D. was represented by Mr Lieanu, the applicant’s lawyer in the proceedings before the Court (see paragraph 2 above); the applicant was legally summoned to appear.

However, neither K.D., nor the applicant was present during any of the hearings before either the first-instance or the appeal court.

20. During its last hearing on 21 March 2013 the Constanța District Court firstly established the scope of the case, holding that it had jurisdiction to examine only the security measure imposed in respect of the applicant's vessel, the remainder of the case having already been adjudicated, in respect of both its criminal and its civil limbs. K.D.'s lawyer accepted those conclusions.

Nevertheless, he argued that the vessel had not been caught within Romanian territorial waters, and that this implied that the criminal offence giving rise to the security measure fell outside Romania's jurisdiction.

21. By a judgment of 8 April 2013 the Constanța District Court ordered the confiscation of the vessel belonging to the applicant, relying on Article 66 of GEO 23/2008 (paragraph 33 below). It noted that the length of the fishing nets deployed in the deep seas indicated that the vessel had necessarily been used to commit the criminal offence of illegal fishing of which K.D. had been convicted, and that without the vessel, fishing activities in the Black Sea would not have been possible. It held that it was of no relevance whether the applicant had or had not been aware of the purpose of the use of the vessel by K.D, because by virtue of Article 66 of GEO 23/2008, the confiscation measure was not conditioned by the subjective attitude of the owner of the vessel, in the event that the owner was not also the perpetrator; from that respect, Article 66 represented the special norm, thus departing from the general norm (that is, Article 118 of the Criminal Code, hereinafter "the CC"; see paragraph 34 below).

22. K.D. and the applicant, both represented by Mr Lieanu, appealed against that judgment.

23. In the appeal lodged on behalf of K.D., his representative Mr Lieanu raised the following arguments.

24. Firstly, he argued that the definition of the Romanian exclusive economic zone was in dispute, since, in the absence of a specific regulation in the United Nations Convention on the Law of the Sea, it should have been decided upon by the relevant coastal States, which had not happened in the present case.

25. He also invoked Article 118 § 6 of the CC (see paragraph 34 below), which provided that goods that served to ensure a person's subsistence or were used for the practice of a profession should not be confiscated. He argued that the applicant derived his only income from the rental of the vessel and the associated fishing activities. He further stated that a special confiscation measure should be applied when the goods in question would serve as potential compensation for the injured parties; he contended that in similar cases where the special confiscation measure was applicable, the domestic courts had ordered that the forfeiture be carried out in the form of a monetary equivalent (see domestic practice, paragraph 36 below).

26. The record of the last hearing of 20 June 2013 mentions that K.D. as well as the applicant contested the imposition of the special confiscation measure and invoked the provisions of Article 118 § 1 (b) of the CC (see paragraph 34 below) which stated that the items used to commit a criminal offence should not be confiscated if they belonged to another person than the perpetrator, who was not aware of the purpose of their use. They stated that the vessel and the fishing equipment were the applicant's property and that the latter had not been aware of the use made of the rented items by K.D. in the Romanian exclusive economic zone. According to them, the confiscation of the vessel was disproportionate to the nature and gravity of the offence, given the significant value of the vessel and the absence of any proven damage. They argued that no harm had been caused and that no civil or injured parties had joined their complaints to the proceedings. In that connection, they requested that if any confiscation measure was necessary, it should be taken in accordance with Article 118 § 2 of the CC, in the form of a monetary equivalent amounting to EUR 10,000.

27. By a final judgment of 26 June 2013 (drafted on 15 July 2013) the Constanța Court of Appeal dismissed the applicant's appeal on points of law and upheld the lower court's judgment.

28. Without referring in any way to the arguments brought on behalf of K.D. relating to jurisdiction (see paragraph 24 above), the appellate court considered the provisions of the *lex specialis* GEO 23/2008 to be those applicable to the case, making the confiscation of the vessel mandatory in accordance with its Article 66. The court nevertheless assessed the applicant's good faith and awareness, within the meaning of Article 118 of the CC, of the unlawful purpose of the use of his vessel.

29. The court thus found that the existence on board of several instruments used specifically for illegal fishing was an indication of the applicant's bad faith. Furthermore, at the time of the seizure, the vessel had not had either a fishing permit or any authorisation for using fishing equipment. The court therefore stated that the applicant's innocence could not be ascertained ("*nu se poate susține inocența reclamantului*"), while his statement before the notary public to that end (see paragraph 14 above) did not suffice to prove his good faith since it was not corroborated by other evidence.

30. The court also held that forfeiture in the form of a monetary equivalent was not acceptable in the present case in view of the fact that the confiscation measure applied was proportionate to the gravity of the criminal offence and the extent of the consequences that might have been caused from an economic and ecological standpoint, namely the potential damage to protected fish stocks in the Black Sea. In this context, the court referred to the frequent injuries to dolphins and other species caused by this particular type of criminal activity.

D. Subsequent developments

31. The Government submitted that in 2013 the value of the vessel had been assessed by a special valuation commission, which had found in its report of 14 November 2013 that the vessel had an 81% degree of depreciation.

32. Several calls for a public auction had been issued. The vessel had finally been sold to a private party on 8 August 2016 for the price of RON 8,500 (approximately EUR 1,900), which reflected the severe depreciation of the value of the vessel. The money was collected by the State Treasury on 27 September 2016.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Domestic law

33. Article 66 § 1 of Government Emergency Ordinance no. 23/2008 on fishing and aquaculture (“GEO 23/2008”) reads as follows:

Article 66

“(1) Fishing vessels and equipment, animals, transportation means, firearms and any other items that have served to commit a criminal offence shall be seized for the purpose of confiscation.”

34. The relevant provisions of Article 118 of the Criminal Code (“CC”), as in force at the time of the events, read as follows:

Article 118

“(1) The following shall be subject to special confiscation:

...

(b) goods that have been used in any way to commit a criminal offence, if they belonged to the perpetrator or if they belonged to a third party and the latter had been aware of the purpose of their use ...

(2) In the case provided for by paragraph 1 (b), if the value of the goods subject to confiscation is clearly disproportionate with reference to the nature and gravity of the offence, partial forfeiture in the form of a monetary equivalent may be ordered, taking into consideration the outcome of the criminal offence and the contribution of the goods to its commission.

...

(6) The court may not order the confiscation of goods if they serve to ensure the subsistence, or are intended for the daily use or for the practice of the profession of the perpetrator or of the person whom the confiscation measure may affect.”

35. Article 320¹ of the Code of Criminal Procedure, as in force at the relevant time, provided for a simplified procedure for the situation when the accused fully acknowledged his or her guilt and accepted that the court

would rely exclusively on the evidence adduced during the investigation stage, in exchange for a more lenient sentence, reduced by up to one-third, in the event of a conviction.

B. Domestic practice

36. The domestic practice referred to by the applicant showed that, on the one hand, the measure of special confiscation should only be applied when the goods would serve as potential compensation (judgment no. 717/16 September 2003 by the Constanța Court of Appeal). On the other hand, judgments no. 963 of 18 October 2012 and no. 1017 of 3 November 2011 by the Constanța Court of Appeal revealed that the courts had instead ordered forfeiture in the form of a monetary equivalent amounting to EUR 10,000 in accordance with Article 118 § 2 of the CC, in view of the fact that the pecuniary value of the vessel in question was many times higher than any damage potentially caused.

37. The Government submitted a viewpoint formulated by the domestic courts within the Constanța Court of Appeal's territorial jurisdiction. The courts had indicated that their consistent approach in relation to the subject matter of the case was always to make an assessment on the applicability of Article 118 § 2 of the CC in conjunction with Article 66 of GEO 23/2008, based on whether the value of the vessel was disproportionate compared to the nature and gravity of the offence, the consequences of the offence and the role played by the vessel in committing the offence. This approach was clear and foreseeable in the sense that the confiscation measure applied on the basis of Article 66 was not automatic, but was always assessed in the particular circumstances of each case. Relevant case-law in which the courts had ordered the confiscation of other Turkish vessels was submitted, the courts pointing to the frequency of offences similar to those in the present case committed by fishing crews cruising under the Turkish flag. The courts had also indicated that there was a frequent practice of dissimulating the real owner of a vessel by having it registered in the name of a different person from its commander, so as to prevent its potential confiscation from a third party from being ordered.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

38. The applicant complained that the confiscation of his vessel amounted to an unlawful and disproportionate interference with his right to the peaceful enjoyment of his possessions. He invoked Article 1 of Protocol No. 1, which reads as follows:

“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. Admissibility

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

B. Merits

1. The parties' submissions

(a) The applicant

40. The applicant argued that the confiscation of his vessel had been unlawful with reference to the fact that his actions had not been subject to Romania's jurisdiction, in so far as at the moment of the seizure, the vessel had not been within the Romanian exclusive economic zone. In this connection, he underlined that no bilateral treaties establishing the respective exclusive economic zones had been concluded between the relevant coastal States.

41. He further argued that the measure of confiscation had been disproportionate in view of the value of the vessel in relation to the damage actually incurred through the perpetration of the criminal offence – damage which, he claimed, was in fact non-existent, in the absence of any civil claims by any injured party in the criminal proceedings.

42. Furthermore, the Romanian authorities had failed to apply the relevant provisions of Article 118 § 2 of the CC, which allowed forfeiture in the form of a monetary equivalent, as illustrated by the case-law of the Constanța Court of Appeal (see paragraph 36 above).

(b) The Government

43. Concerning the matter of jurisdiction, the Government contended that in view of the geographical coordinates indicating the position where the vessel had been confiscated (see paragraph 7 above), namely within the Romanian exclusive economic zone, Romania's jurisdiction was undisputable. They pointed out that the vessel's specific position had been of such a nature as to be capable of raising potential jurisdiction issues only in relation to Ukraine, and even in such a situation, Romania's jurisdiction

had become clear following the International Court of Justice's judgment of 3 February 2009, which had established the zones of exclusive jurisdiction in respect of the two countries. Furthermore, the Government argued that K.D. and his crew had been aware of the whereabouts of the vessel, namely that they were within the Romanian zone, in view of the fact that when approached, the vessel had displayed the Romanian flag, even though the vessel was registered with the Turkish authorities.

44. The Government further contended that the impugned measure was lawful, having its basis in Article 66 of GEO 23/2008, in conjunction with the provisions of Article 118 of the CC (see paragraphs 33 and 34 above). The relevant law had been clear, accessible and applied in a foreseeable manner, as proved also by the relevant jurisprudence of the domestic courts within the Constanța Court of Appeal's territorial jurisdiction (see paragraph 37 above). The measure had been necessary for the control of the use of property, in accordance with the second paragraph of Article 1 of Protocol No. 1, in the general context of the fight against illegal fishing and of the attempt to protect the biological resources of the Romanian exclusive economic zone.

45. The Government further submitted that the measure taken against the applicant had been proportionate, in view of the nature and the gravity of the offence committed. They also mentioned that the applicant had failed to produce before the domestic courts or the Court any document or report relating to the value of the vessel and its equipment, or to the fact that the vessel represented his only source of income, within the meaning of Article 118 § 6 of the CC. In ordering the confiscation of the vessel belonging to the applicant, the domestic courts had assessed not only the relevance of Article 66 of GEO 23/2008, but also aspects relating to his own conduct in relation to the criminal offence committed by K.D. Following an adversarial procedure in which the applicant, represented by a lawyer of his choice (see paragraph 22 above), had had the opportunity to adduce evidence and submit arguments, the courts had found that his good faith was not supported by sufficient evidence, and hence the exceptions to confiscation provided for by Article 118 of the CC could not be applied.

2. The Court's assessment

(a) The applicable rule

46. The Court notes that the confiscation complained of constituted interference with the applicant's exercise of his right to the peaceful enjoyment of his possessions. This was not contested by the parties.

47. It further points out that Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the

second sentence of the first paragraph, covers the deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties. The three rules are not, however, “distinct” in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, among many authorities, *AGOSI v. the United Kingdom*, 24 October 1986, § 48, Series A no. 108, and *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 185, ECHR 2012)

48. In the present case, the confiscation affected a possession which the courts had found to have been used unlawfully, and was intended to prevent the applicant’s vessel from being used to commit other offences, to the community’s detriment.

49. The Court notes that the confiscation of the applicant’s vessel was a permanent measure which entailed a conclusive transfer of ownership (see *Andonoski v. the former Yugoslav Republic of Macedonia*, no. 16225/08, § 30, 17 September 2015; and to a converse effect, *JGK Statyba Ltd and Guselnikovas v. Lithuania*, no. 3330/12, §115, 5 November 2013; and *Hábenczius v. Hungary*, no. 44473/06, § 28, 21 October 2014). The Government did not argue that there was any possibility for the applicant to seek restoration of his possession (see, conversely, *C.M. v. France* (dec.), no. 28078/95, ECHR 2001-VII). The Court therefore considers that the measure amounts, in the circumstances of the present case, to a deprivation of property (see *B.K.M. Lojistik Tasimacilik Ticaret Limited Sirketi v. Slovenia*, no. 42079/12, §§ 37-38, 17 January 2017 and *S.C. Service Benz Com S.R.L. v. Romania*, no. 58045/11, § 30, 4 July 2017).

(b) Compliance with Article 1 of Protocol No. 1 to the Convention

(i) General principles

50. The Court reiterates that in order to be compatible with Article 1 of Protocol No. 1, an interference with the right of property must be effected “in the public interest” and “subject to the conditions provided for by law and by the general principles of international law”. The interference must strike 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 (see *Sporrong and Lönnroth v. Sweden*, 23 September 1982, §§ 69 and 73, Series A no. 52, and *S.C. Service Benz Com S.R.L.*, cited above, § 28).

51. In so determining, the Court recognises that the State enjoys a wide margin of appreciation with regard to the means to be employed and to the

question of whether the consequences are justified in the general interest for the purpose of achieving the objective pursued (see *G.I.E.M. S.r.l. and Others v. Italy* [GC], nos. 1828/06 and 2 others, §§ 292-93, 28 June 2018, with further references, and *B.K.M. Lojistik Tasimacilik Ticaret Limited Sirketi*, cited above, § 39). The requisite balance will not be found if the person or persons concerned have had to bear an individual and excessive burden (see, *Sporrong and Lönnroth*, cited above, § 73, and *Waldemar Nowakowski v. Poland*, no. 55167/11, § 47, 24 July 2012).

(ii) *Application to the present case*

(α) In accordance with the law

52. As to the question whether the interference with the applicant's right of property was lawful, the Court notes that the impugned confiscation took place pursuant to the relevant provisions of GEO 23/2008, read in conjunction with the provisions of Article 118 of the CC (see paragraphs 33 and 34 above).

53. Inasmuch as the applicant alleged a violation of the legality principle, by referring to the lack of jurisdiction of the Romanian courts (see paragraph 40 above), the Court observes that during the first set of proceedings, K.D. implicitly and the applicant expressly accepted that the offence had taken place within Romanian territorial waters, thus rendering Romanian legislation applicable (see paragraphs 12 and 14 above).

54. Furthermore, the criminal proceedings ended on 30 March 2012 with K.D.'s conviction for the offence which had triggered the application of the security measure in respect of the applicant's vessel. The conclusions drawn by the court to that effect became *res judicata*, the case being sent for retrial solely in relation to the need to examine the confiscation measure in adversarial proceedings in which the applicant would also be legally summoned to appear (see paragraph 18 above).

55. Lastly, the Court notes that according to the documents in the file, the question whether the applicant raised the plea of lack of jurisdiction before the domestic courts within the second set of proceedings remains in doubt (see paragraphs 23 and 26 above). While it is true that the same plea was raised by K.D., the Court notes that it appears to have been implicitly dismissed by the courts once they established the scope and limits of the retrial proceedings (see paragraphs 20 and 27 above).

56. The Court reiterates that, in any system of law, it is for the domestic courts to interpret the provisions of substantive criminal law in order to determine, by reference to the structure of each offence, if all the ingredients of the offence are present (see *Plechkov v. Romania*, no. 1660/03, § 70, 16 September 2014). It also underlines that it is not its role to examine and define the existence or the limits of the Romanian exclusive economic zone,

or the obligations incumbent on Romania in relation to such a zone (see, *mutatis mutandis*, *Plechkov*, cited above, § 67).

57. In view of the above, the Court sees no sign of arbitrariness in the interpretation in question concerning the applicable domestic law (see, *mutatis mutandis*, *Beyeler v. Italy* [GC], no. 33202/96, § 108, ECHR 2000-I), which remained reasonably foreseeable within the meaning of the Court's case-law (see *Lekić v. Slovenia* [GC], no. 36480/07, § 95, 11 December 2018; and, albeit in the context of Article 7 of the Convention, *Previti v. Italy* (dec.), no. 45291/06, § 283, 8 December 2009).

58. The Court concludes therefore that the interference was in accordance with the law.

(β) Legitimate aim

59. The Court accepts that the interference complained of pursued the legitimate aim of preventing offences relating to illegal fishing in the Black Sea; since such activities pose a serious threat to the biological resources in the area, this aim serves the general interest.

(γ) Proportionality

60. As regards the striking of a fair balance between the means employed by the domestic authorities for the purpose of preventing criminal activities relating to illegal fishing in the Black Sea and the protection of the applicant's property rights, the Court reiterates that such a balance depends on many factors, and the behaviour of the owner of the property is one element of the entirety of circumstances which should be taken into account (see *AGOSI*, cited above, § 54). The Court must consider whether the applicable procedures in the present case were such as to enable reasonable account to be taken of the degree of fault or care attributable to the applicant or, at least, of the relationship between his conduct and the breach of the law which occurred; and also whether the procedures in question afforded him a reasonable opportunity to put his case to the relevant authorities (*ibid.*, § 55). In ascertaining whether these conditions were satisfied, a comprehensive view must be taken of the applicable procedures (see *B.K.M. Lojistik Tasimacilik Ticaret Limited Sirketi*, cited above, § 43).

61. Turning to the facts of the case before it, the Court firstly notes that the vessel was confiscated in the context of the criminal proceedings against K.D., who declared that he was using it on the basis of a verbal agreement with the applicant (see paragraph 13 above). The latter was not accused in those proceedings, in which K.D. was convicted following a simplified procedure based on his acknowledgment of guilt (see paragraphs 12-18 above). In so far as the domestic courts considered that the confiscation measure had not been taken following an adversarial procedure because the applicant had not been summoned to appear in court, the proceedings started

anew, in order to allow the owner of the vessel to submit any arguments and evidence he considered appropriate in relation to the measure in question (see paragraph 18 above).

62. The new set of proceedings, which related to whether the seizure and confiscation were both lawful and free from arbitrariness, and in which the applicant was legally summoned and represented by a lawyer of his choice, were conducted adversarially, and the applicant had an opportunity to submit the evidence and arguments which he considered necessary to protect his interests. Moreover, no irrebuttable presumption was applied to his detriment. On the contrary, he could have proved his good faith, and that could have led to the restitution of his property (see, for instance and *mutatis mutandis*, *Yildirim v. Italy* (dec.), no. 38602/02, CEDH 2003-IV). Indeed, according to Article 118 § 1 (b) of the CC (see paragraph 34 above), whose provisions were eventually considered applicable by the Constanța Court of Appeal (see paragraph 28 above), goods belonging to a third party could be confiscated only if the latter had been aware of the purpose of their use by the perpetrator.

63. At the close of those proceedings, it was established by the domestic courts that the applicant must have been aware that the vessel had been used to commit the offence. In order to reach that conclusion, the appeal court attached relevance to the fact that the vessel did not have either a fishing permit or any authorisation for using fishing equipment. The presence on board of several instruments used specifically for illegal fishing, which were claimed by the applicant as his own possessions, constituted another indication of his bad faith (see paragraph 29 above). Nothing in the file suggests that the Romanian courts acted arbitrarily in their assessment of the evidence submitted to them by the applicant on that point.

64. Furthermore, in balancing the rights at stake, the domestic courts referred to the gravity of the crime committed using the confiscated vessel, and held that forfeiture in the form of a monetary equivalent would not be an appropriate measure (see paragraph 30 above). In this context, the Court considers it relevant that the applicant failed to adduce proof before the domestic courts as to the value of the vessel, which allegedly was many times higher than any damage potentially caused (see paragraphs 10 and 41 above) and of the fact that the rental of the vessels was his only source of income (see paragraph 25 above). In connection with this, the Court cannot but observe that, due to its severe degree of depreciation, the vessel was ultimately sold for approximately EUR 1,900 (see paragraphs 31-32 above).

65. The foregoing considerations are sufficient to enable the Court to conclude that, in view of the wide margin of appreciation enjoyed by the domestic authorities in this area, the confiscation of the applicant's vessel did not impose an excessive burden on him.

66. Accordingly, there has been no violation of Article 1 of Protocol No. 1 to the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention.

Done in English, and notified in writing on 26 November 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti
Deputy Registrar

Jon Fridrik Kjølbro
President