



Romanian legislation on its exclusive economic zone was not sufficiently foreseeable

In today's **Chamber** judgment¹ in the case of **Plechkov v. Romania** (application no. 1660/03) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 7 (no punishment without law) of the European Convention on Human Rights, and

a violation of Article 1 of Protocol No. 1 (protection of property)

The case concerned the sentencing of Mr Plechkov to a suspended prison term together with the confiscation of his boat (including the installations, tools and cargo on board) for allegedly fishing illegally within the Romanian "exclusive economic zone" in the Black Sea.

The Court found that neither the provisions of domestic law nor its interpretation by the courts had rendered Mr Plechkov's conviction sufficiently foreseeable.

The confiscation of the ship with the tools and cargo on board had constituted an interference with Mr Plechkov's right to the peaceful enjoyment of his possessions.

Principal facts

The applicant, Iordan Georgiev Plechkov, is a Bulgarian national who was born in 1975 and lives in Kavarna (Bulgaria).

At the relevant time Mr Plechkov was the captain and owner of a fishing vessel registered in Bulgaria.

On 3 May 2002, while his boat was about 29 nautical miles off the Romanian coast, it was stopped by officers of the Romanian Navy and detained together with its cargo. Mr Plechkov was taken into police custody, then remanded pending trial, on a charge of having illegally engaged in shark fishing using longlines in Romania's exclusive economic zone in the Black Sea and, moreover, during a period when such fishing was closed. The provisional seizure of the ship and its cargo was ordered. On 1 July 2002 Mr Plechkov was released on the posting of security.

Mr Plechkov was sent for trial before the Criminal Division of the Constanța District Court. A diplomatic note from the Bulgarian embassy was adduced in evidence, stating that Romania and Bulgaria had ratified the 1982 United Nations Convention on the Law of the Sea (UNCLOS), which laid down the legal framework for exclusive economic zones, but that no agreement had yet been concluded between the two countries for the delimitation of their respective zones, as diplomatic negotiations in that connection were still pending. Lastly, the note stated that, in accordance with UNCLOS, penalties for violations of fisheries laws and regulations in the exclusive economic zone could not include imprisonment.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

In a judgment of 18 July 2002 the court acquitted the applicant, annulled the seizure measure and ordered the restitution of the security, taking the view that Mr Plechkov had not been arrested in a zone subject to Romanian law. The court found that the applicable law did not stipulate the exact breadth of the Romanian exclusive economic zone but merely indicated that it “could extend up to 200 nautical miles”, that the delimitation of the zone was to be fixed by agreement with the neighbouring States, in compliance with UNCLOS, and that the agreement in question had not yet been reached with Bulgaria.

In a judgment of 30 September 2002, the Constanța County Court quashed that judgment on appeal. It took the view that the law in question had to be construed as effectively creating an exclusive economic zone over a distance of 200 nautical miles and that any agreement with Bulgaria would, in any event, have been unfavourable to Mr Plechkov. The court found that Romania was entitled to exercise criminal jurisdiction in the sector where Mr Plechkov had been arrested and that his actions fell under Romanian criminal law. Mr Plechkov was given a suspended two-year sentence and put on probation for four years, and his vessel was confiscated (with its installations, tools and cargo). His appeal on points of law against that judgment was dismissed.

The vessel and tools were subsequently sold by public auction.

Complaints, procedure and composition of the Court

Relying on Article 7 (no punishment without law), Mr Plechkov alleged that his prison sentence and the confiscation of his boat and tools were unlawful, being incompatible with the United Nations Convention on the Law of the Sea. He further argued that such confiscation entailed a violation of Article 1 of Protocol No. 1 (protection of property).

The application was lodged with the European Court of Human Rights on 20 December 2002.

Judgment was given by a Chamber of seven judges, composed as follows:

Josep **Casadevall** (Andorra), *President*,
 Alvina **Gyulumyan** (Armenia),
 Ján **Šikuta** (Slovakia),
 Dragoljub **Popović** (Serbia),
 Luis **López Guerra** (Spain),
 Johannes **Silvis** (the Netherlands),
 Iulia Antoanella **Motoc** (Romania),

and also Fatoş **Aracı**, *Deputy Section Registrar*.

Decision of the Court

Article 7 (no punishment without law)

The Court found that it was not its role to decide on the interpretation of UNCLOS or the relevant Romanian legislation, or on the application of those instruments by the Romanian courts. It could not therefore rule on the breadth or existence of Romania’s exclusive economic zone within the meaning of UNCLOS or on any rights and obligations that Romania might have with regard to such a zone. However, it had to ascertain that the provisions of domestic law, as interpreted and applied by the domestic courts, had not produced any consequences that were incompatible with the European Convention on Human Rights.

The Court noted that Mr Plechkov’s conviction was not based on UNCLOS but on section 9 of Law no. 17/1990 as amended by Law no. 36/2002, which the domestic courts had had to interpret, and found that the two courts in question had reached totally opposite conclusions.

It found that the legislation did not precisely delimit the Romanian exclusive economic zone and that the determination of the zone's "breadth" had been expressly reserved pending an agreement between Romania and the neighbouring States, including Bulgaria.

The statutory provision in question could not reasonably be regarded as foreseeable in its application. A precise definition of the limits of the exclusive economic zone proclaimed by Romania within the meaning of UNCLOS had been necessary, having regard to the criminal-law consequences that would arise in the event of a violation of the sovereign rights attached to that zone.

Moreover, the Court observed that the courts which had convicted Mr Plechkov had also held that, even if an agreement had been concluded between Romania and Bulgaria, it would not have been favourable to the applicant. However, such an interpretation was not based on any established domestic case-law.

Consequently, the Court took the view that neither the domestic legislation nor the interpretation thereof by the domestic courts rendered Mr Plechkov's conviction sufficiently foreseeable and found that there had been a violation of Article 7.

Article 1 of Protocol No. 1 (protection of property)

Having found that the offence for which Mr Plechkov had had his boat confiscated did not satisfy the conditions of lawfulness for the purposes of Article 7, the Court also took the view that the interference with his peaceful enjoyment of his possessions did not satisfy the similar condition of lawfulness under Article 1 of Protocol No. 1.

There had thus been a violation of Article 1 of Protocol No. 1.

Just satisfaction (Article 41)

The Court held that Romania was to pay the applicant 6,500 euros in respect of pecuniary and non-pecuniary damage.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.