



## Confiscation of vessel used for illegal fishing in the Black Sea was justified

In today's **Chamber judgment**<sup>1</sup> in the case of **Yaşar v. Romania** (application no. 64863/13) the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 1 of Protocol No. 1 (protection of property)** to the European Convention on Human Rights.

The case concerned the confiscation of Mr Yaşar's vessel because it had been used for illegal fishing in the Black Sea.

The Court found in particular that the confiscation had amounted to a deprivation of property as the vessel had ultimately been sold to a private party and the money from the sale collected by the State. However, the courts had carefully balanced the rights at stake and had found that the demands of the general interest to prevent activities which posed a serious threat to the biological resources in the Black Sea had outweighed Mr Yaşar's property rights.

### Principal facts

The applicant, Erol Yaşar, is a Turkish national who was born in 1971 and lives in Çayırılı (Turkey).

Mr Yaşar's vessel was confiscated in 2010 when criminal proceedings were brought against its captain, Kadir Dikmen, who had been using it on the basis of a verbal agreement with him.

Mr Dikmen was convicted in 2012 following a simplified procedure based on him acknowledging, in particular, that he had been fishing without a permit for the vessel and had used fishing equipment without authorisation. In the proceedings Mr Yaşar had submitted a copy of his title to the vessel, which he said had been "caught without his knowledge within Romanian territorial waters".

The judgment became final as concerned Mr Dikmen, but the case was sent for retrial with regard to the confiscation. The courts considered that the confiscation measure had not been taken following an adversarial procedure as the vessel's owner had not been summoned in the proceedings against Mr Dikmen.

In the second set of proceedings, Mr Yaşar was summoned and represented by a lawyer of his choice who argued that confiscation was disproportionate, given the significant value of the vessel and the absence of any proven damage. However, in a final judgment in 2013, the courts found that Mr Yaşar had to have been aware that the vessel had been used for the offences in question, given the presence on board of equipment used specifically for illegal fishing, which he had claimed as his own. They also referred to the gravity of the crime committed using the confiscated vessel, involving potential damage to protected fish stocks in the Black Sea and frequent injuries to dolphins.

The vessel was ultimately sold to a private party in 2016 for approximately 1,900 euros, its value having in the meantime severely depreciated. The money was collected by the State Treasury.

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](http://www.coe.int/t/dghl/monitoring/execution).

## Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights, Mr Yaşar alleged that the confiscation of his vessel had been unlawful and disproportionate.

The application was lodged with the European Court of Human Rights on 7 October 2013.

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

Jon Fridrik **Kjølbro** (Denmark), *President*,  
 Iulia Antoanella **Motoc** (Romania),  
 Branko **Lubarda** (Serbia),  
 Carlo **Ranzoni** (Liechtenstein),  
 Georges **Ravarani** (Luxembourg),  
 Jolien **Schukking** (the Netherlands),  
 Péter **Paczolay** (Hungary),

and also Andrea **Tamietti**, *Deputy Section Registrar*.

## Decision of the Court

Neither party contested the fact that the confiscation of Mr Yaşar's vessel had constituted an interference with his right to peaceful enjoyment of his possessions. Moreover, the Court considered that the confiscation had amounted to a deprivation of property as it was a permanent measure, entailing a conclusive transfer of ownership in 2016.

That interference had been in accordance with the law, namely the domestic law on fishing and aquaculture, and had pursued the legitimate aim of preventing activities which posed a serious threat to the biological resources in the Black Sea, such as illegal fishing. The confiscation had therefore been in the general interest.

The Court went on to examine whether the interference had struck a fair balance between the demands of the general interest and the protection of the applicant's property rights.

First, the Court noted that Mr Yaşar had been given a reasonable opportunity to put his case to the authorities. In particular, the case had been sent for retrial so that the confiscation measure could be decided in adversarial proceedings. In the new proceedings he had been legally summoned, represented by the lawyer of his choice and given the opportunity to submit the evidence and arguments which he had considered necessary to protect his interests. Nothing in the case file suggested that the Romanian courts had acted arbitrarily in their assessment of the evidence.

Furthermore, the courts had carefully balanced the rights at stake, referring to the gravity of the crime committed using the vessel and holding that forfeiture in the form of a monetary equivalent would not be appropriate.

Nor had the confiscation imposed an excessive burden on Mr Yaşar: he had failed to prove to the courts the value of the vessel or his allegation that renting it had been his only source of income. Indeed, the vessel had ultimately been sold for approximately EUR 1,900.

There had therefore been no violation of Article 1 of Protocol No. 1.

*The judgment is available only in English.*

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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.