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

SECOND SECTION

DECISION

Applications nos. 49358/22, 49562/22 and 54489/22
Rene CHELLERI against Croatia, Robert RADOLOVIČ against Croatia
and Jan VIRANT against Croatia

The European Court of Human Rights (Second Section), sitting on 16 April 2024 as a Chamber composed of:

Arnfinn Bårdsen*, President*,
Pauliine Koskelo,
Frédéric Krenc,
Diana Sârcu,
Lorraine Schembri Orland,
Saadet Yüksel*, judges*,
Elizabeta Ivičević Karas*,* ad hoc *judge*,

and Hasan Bakırcı, *Section Registrar,*

Having regard to the above applications lodged on 15 October and 16 November 2022, respectively,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having regard to the comments submitted by the Slovenian Government, who exercised their right to intervene in the proceedings in accordance with Article 36 § 1 of the Convention and Rule 44 § 1 (b) of the Rules of Court,

Having regard to the decision of the President of the Chamber to appoint Ms Elizabeta Ivičević Karas to sit as an *ad hoc* judge (Rule 29 § 1 of the Rules of Court), as Mr Davor Derenčinović, the judge elected in respect of Croatia, withdrew from sitting in the case (Rule 28 § 3),

Having deliberated, decides as follows:

INTRODUCTION

1. The three applications concern minor-offence proceedings in which the applicants, Slovenian nationals, were found guilty by the Croatian courts of minor offences with respect to their activities in the maritime waters claimed both by Croatia and Slovenia.

2. These three applications, in which the applicants make a complaint under Article 7 of the Convention, form a part of a large group of cases (451), which fifteen Slovenian nationals and one company lodged against Croatia in respect of minor-offence proceedings conducted against them in that country on account of their activities in the waters in question. Concurrently, there are also over 800 applications on the Court's docket lodged by Croatian nationals against Slovenia, raising complaints under Article 6 of the Convention in respect of minor-offence proceedings conducted against them in Slovenia regarding their activities in the waters concerned.

THE FACTS

3. The applicants, Mr Rene Chelleri ("the first applicant"), Mr Robert Radolovič ("the second applicant") and Mr Jan Virant ("the third applicant"), are all Slovenian nationals who were born in 1993, 1965 and 1998, respectively. They all live in Izola (Slovenia). The first and second applicants were initially represented by Mr I. Senjak, and then by Ms M. Menard. The third applicant was from the outset represented by Ms M. Menard.

4. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

A. Background

1. Border dispute between Croatia and Slovenia

5. On 25 June 1991, Croatia and Slovenia declared their independence from the Socialist Federal Republic of Yugoslavia. Since 1992, the two countries have tried to establish their common border through bilateral negotiations.

6. The negotiations remained unsuccessful in respect of certain segments of the border, including the Bay of Piran (*Piranski zaljev/Savudrijska vala* in Croatian; *Piranski zaliv* in Slovenian) – a shallow bay located in the northernmost part of the Adriatic Sea where the two countries have adjacent coasts. Slovenia claimed sovereignty over the entirety of the Bay, its vital interest being to have access to the "high seas" of the Adriatic, whereas the position of Croatia was that the delimitation must be made along the equidistance line.

7. After Slovenia became a member of the European Union ("EU"), in December 2008 it raised reservations in respect of seven of the negotiation chapters at the Intergovernmental Accession Conference of the EU with Croatia.

8. On 4 November 2009 Croatia and Slovenia signed an arbitration agreement (hereinafter "the Arbitration Agreement") pursuant to which an arbitral tribunal ("the Arbitral Tribunal") was to determine the maritime and land borders between the two countries. Article 7 §§ 2 and 3 of the Arbitration

Agreement stipulated that the arbitration award would be binding on the parties and would constitute a definitive settlement of the dispute; the parties being required to take all necessary steps to implement the award, including by revisiting national legislation, as necessary, within six months after the adoption of the award. The Arbitration Agreement entered into force on 29 November 2010.

9. Following the Arbitration Agreement's entry into force, Slovenia lifted its reservations to Croatia's accession to the EU (see paragraph 7 above). Croatia became a member of the EU on 1 July 2013.

10. In 2014 the Croatian authorities started warning Slovenian fishermen that they were in the territorial waters of the Republic of Croatia and told them to leave. For instance, a note that the Croatian Interior Ministry's Border Management Administration sent to the Croatian Ministry of Foreign and European Affairs on 18 November 2014 reads as follows:

> "On 17 November 2014, when monitoring the technical systems for the surveillance of the maritime space of the Republic of Croatia, at 2 p.m. officers of the Istria Police Administration, in the area of the Bay of Piran, observed the entry of the fishing vessel "J.", [which was] flying the flag of the Republic of Slovenia, into the territorial sea of the Republic of Croatia ..., travelling at a speed of 1.8 knots, which indicated the possibility [that it was engaged in] commercial fishing at sea.
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> The above-mentioned fishing vessel navigated the territorial sea as far as [a point that was] 1.51 nautical miles from the demarcation line, after which the police vessel established contact with the commander of the fishing vessel *via* radio link, and the vessel was warned by the police officer that they were in the territorial sea of the Republic of Croatia and told to leave the same, after which the fishing vessel turned around and left the territorial sea of the Republic of Croatia at 3:30 p.m. ... at a speed of 2.8 knots.
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> In the light of the above, we are sending you this information for your possible further action."

2. Arbitration proceedings

11. In the course of the arbitration proceedings, a procedural issue arose on account of unofficial communications between the arbitrator appointed by Slovenia and that State's agent before the Arbitral Tribunal. According to the extracts from intercepted telephone conversations published in the media on 22 July 2015, the conversations concerned (i) the disclosure of information about the discussions and tentative conclusions of the Tribunal during its deliberations, (ii) possible opportunities to influence Tribunal members during deliberations and privately, and (iii) the provision of documents from the agent to the arbitrator which the arbitrator could present as his own during discussions with other members of the Tribunal. Following the publications of the communications in the press, the arbitrator and agent concerned resigned from their respective positions.

12. By a letter of 24 July 2015 Croatia sent extracts from those communications to the Arbitral Tribunal and, in the light of the fundamental

loss of trust that in its view had been caused by the communications, requested the Arbitral Tribunal to suspend the arbitration proceedings.

13. By a *note verbale* of 30 July 2015, Croatia informed Slovenia that it considered the latter responsible for one or more material breaches of the Arbitration Agreement, for the purposes of Article 60 §§ 1 and 3 of the Vienna Convention on the Law of Treaties ("the Vienna Convention"), and that it was consequently entitled to terminate the Arbitration Agreement. It stated that the *note verbale* constituted a notification, pursuant to Article 65 § 1 of the Vienna Convention, by which it proposed that the Arbitration Agreement be terminated. It explained that, in its view, as a result of the unofficial communications referred to in paragraph 11 above, the impartiality and integrity of the arbitration proceedings had been irrevocably damaged, giving rise to a manifest violation of its rights. On the same day, the member of the Arbitral Tribunal appointed by Croatia resigned.

14. By a letter of 31 July 2015, Croatia informed the Arbitral Tribunal that it had decided to terminate the Arbitration Agreement and stated the reasons for so doing. Thereafter it did not participate in the arbitration proceedings in any way.

15. On 25 September 2015 the president of the Arbitral Tribunal appointed two new arbitrators to the two vacant posts.

16. On 30 June 2016, the Arbitral Tribunal ruled on the procedural issue by means of a partial award. It held, in particular, that Slovenia, by engaging in unofficial contact with the arbitrator that it had originally appointed, had acted in breach of the Arbitration Agreement. The Arbitral Tribunal nevertheless took the view that, in the light of the remedial action subsequently taken, those breaches had not affected its ability, in its new composition, to make a final award independently and impartially on the dispute between the parties, in accordance with the applicable rules, so that the breaches had not defeated the object and purpose of the Arbitration Agreement. The Arbitral Tribunal concluded that Croatia was not entitled to terminate the Arbitration Agreement under Article 60 § 1 of the Vienna Convention and that it therefore remained in force.

17. On 29 June 2017 the Arbitral Tribunal made an award (hereinafter "the Arbitration Award") by which it delimited the maritime and land borders between Croatia and Slovenia. In so far as relevant for the present case, the Arbitral Tribunal delimited the border in the Bay of Piran by allocating approximately three-quarters of the Bay to Slovenia, and one quarter to Croatia – the line in between constituting the boundary between the internal waters of the two countries. Outside the closing line of the Bay (which divided internal waters from the territorial sea), the tribunal established the course of the boundary between the respective territorial seas of the two countries. It also established a connection (junction) between the territorial sea of Slovenia and an area beyond the territorial seas of Croatia and Italy.

3. Reactions to the Arbitration Award

18. On the day that the Arbitral Tribunal made the Arbitration Award (see paragraph 17 above), the Croatian Government published a statement asserting that the Award had no effect for Croatia. They reiterated that Croatia had terminated the Arbitration Agreement after the arbitration proceedings had been irrevocably compromised by Slovenia's unlawful actions (see paragraphs 11-14 above) and invited Slovenia to engage in dialogue with a view to resolving the border issue.

19. To date, Croatia has not incorporated in its domestic law the Arbitration Award. It continues to apply the Rules on borders in the fishing sea of the Republic of Croatia (*Pravilnik o granicama u ribolovnom moru Republike Hrvatske*, see paragraph 63 below) which stipulate that, until the end of the delimitation process between the two countries, the maritime border extends along the equidistance line in the Bay of Piran.

20. Slovenia fully incorporated into its domestic law the border as established in the Arbitration Award.

21. On 27 January 2018 the Croatian Ministry of Foreign and European Affairs sent a note to the Slovenian Embassy in Zagreb, the relevant parts of which read:

> "The Ministry of Foreign and European Affairs of the Republic of Croatia ... with regard to Slovenia's announcement that it shall start to issue penalty notices to Croatian fishermen, would like to express deep dissatisfaction and disagreement with the announced unilateral measures against Croatian fishermen regarding fishing in Croatian maritime areas.
>
> The Ministry is of the opinion that such a step would mean that the Slovenian side is continuing the practice of unilateral actions that run counter to the existing agreement on the avoidance of incidents and invites the Slovenian side to refrain from [taking] the announced measures. The Ministry would like to reiterate that the relevant Croatian authorities have all the information regarding the illegal fishing activities of Slovenian fishing vessels in Croatia's territorial sea, and that the persistence of the Slovenian side [in this matter] will force the authorities to respond with equal measures.
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> The Ministry would also like to point out that the announced unacceptable actions are not a solution to the outstanding border issue but will only further complicate its resolution. Slovenia's announcement furthermore constitutes utterly non-European behaviour by which the Slovenian side seeks to involve the inhabitants and fishermen who live and work in the border area in the resolving of the border issue. The Ministry would like to recall that two EU and NATO members have the obligation and responsibility to resolve any outstanding issues in a peaceful manner, refraining from unilateral actions, and invites the Slovenian side to resume dialogue on the open border issue."

4. Pre-litigation procedure before the European Commission

22. By a letter of 29 December 2017, Slovenia drew the attention of the European Commission to Croatia's rejection of the Arbitration Award and stated that its refusal to implement the Award rendered it impossible for

Slovenia to exercise its sovereignty over sea and land areas which, in accordance with international law, formed part of its territory. Slovenia thus requested the European Commission to bring Croatia's breach of the Arbitration Agreement and of the Arbitration Award to an end, as that breach had to be regarded as a failure by Croatia to comply with its obligations under the Treaties.

23. Following a number of incidents in the waters allocated to Slovenia by the Arbitration Award, Slovenia, by a letter of 16 March 2018, initiated the procedure for a declaration of failure to fulfil obligations against Croatia by bringing the matter before the European Commission, in accordance with the second paragraph of Article 259 of the Treaty on the Functioning of the European Union ("the TFEU").

24. The Commission did not deliver a reasoned opinion within the three-month period laid down in the fourth paragraph of Article 259 of the TFEU.

5. Proceedings before the Court of Justice of the European Union

25. On 13 July 2018 Slovenia brought an action against Croatia in the Court of Justice of the European Union (hereinafter "the CJEU").

26. The relevant part of the opinion delivered by the Advocate General P. Pikamäe on 11 December 2019 in that case reads:

> "146. ... it should be noted that it is not unknown, in the history of international law and even today[,] for one of the parties to arbitration proceedings not to recognise the validity of an award made by an arbitral tribunal or to refuse to implement that award[.] Indeed, even though there is no binding mechanism for reviewing inter-State arbitration awards, a State that disputes such an award can bring a dispute concerning the validity of that award before the [International Court of Justice.]
>
> 147. In that context, it is hardly surprising that the Republic of Croatia, in order to explain its reasons for not recognising the arbitration award at issue, relies on a claim that the arbitral tribunal exceeded its powers merely by issuing that award[.] In practice, when a State disputes an inter-State arbitration award, that award represents in reality merely an attempt to resolve the dispute in question since, in public international law and given the fact that it can be regarded as inherently executory, there is no binding mechanism, independent of the sovereign will of the States, that ensures the implementation of inter-State arbitration awards[.]"

27. In its grand chamber judgment of 31 January 2020 in *Slovenia v. Croatia* (C-457/18, EU:C:2020:65), the CJEU declared that it lacked jurisdiction to rule on the action. The relevant part of the judgment reads:

> "101 It follows from the foregoing that the alleged infringements of primary EU law that are covered by the first and second complaints result, according to the Republic of Slovenia itself, from the alleged failure by the Republic of Croatia to comply with the obligations arising from the arbitration agreement and from the arbitration award made on the basis of that agreement, in particular the obligation to observe the border established in that award. Likewise, the alleged infringements of secondary EU law that are covered by the third to sixth complaints are founded on the premiss that the land and sea border between the Republic of Croatia and the Republic of Slovenia has been

determined in accordance with international law, namely by the arbitration award. The Republic of Croatia's refusal to give effect to the award is said consequently to prevent the Republic of Slovenia from implementing throughout its territory the provisions of secondary EU law at issue and from enjoying the rights which are conferred upon it by those provisions and to prevent, in the sea areas that the dispute concerns, application of the provisions of secondary EU law that make reference to the full implementation of the arbitration award resulting from the arbitration agreement.

102 In that regard, it must be stated that the arbitration award was made by an international tribunal established under a bilateral arbitration agreement governed by international law, the subject matter of which does not fall within the areas of EU competence referred to in Articles 3 to 6 TFEU and to which the European Union is not a party. It is true that the European Union offered its good offices to both parties to the border dispute with a view to its resolution and that the Presidency of the Council signed the arbitration agreement on behalf of the European Union, as a witness. Furthermore, there are links between, on the one hand, the conclusion of the arbitration agreement, and the arbitration proceedings conducted on the basis of that agreement, and on the other, the process of negotiation and accession by the Republic of Croatia to the European Union. Such circumstances are not, however, sufficient for the arbitration agreement and the arbitration award to be considered an integral part of EU law.

103 In particular, the fact that point 5 of Annex III to the Act of Accession added points 11 and 12 to Annex I to Regulation No 2371/2002 and that the footnotes to points 11 and 12 refer, in neutral terms, to the arbitration award made on the basis of the arbitration agreement, in order to determine the date on which the regime governing access to the coastal waters of Croatia and Slovenia under neighbourhood relations will be applicable, cannot be interpreted as meaning that the Act of Accession incorporated into EU law the international commitments entered into by the Republic of Croatia and the Republic of Slovenia under the arbitration agreement, in particular the obligation to observe the border established in the arbitration award.

104 It follows that the infringements of EU law pleaded are ancillary to the alleged failure by the Republic of Croatia to comply with the obligations arising from a bilateral international agreement to which the European Union is not a party and whose subject matter falls outside the areas of EU competence. Since the subject matter of an action for failure to fulfil obligations brought under Article 259 TFEU can only be non-compliance with obligations arising from EU law, the Court, in accordance with what has been stated in paragraphs 91 and 92 of the present judgment, lacks jurisdiction to rule in the present action on an alleged failure to comply with the obligations arising from the arbitration agreement and the arbitration award, which are the source of the Republic of Slovenia's complaints regarding alleged infringements of EU law.

105 It should be added in this regard that, in the absence, in the Treaties, of a more precise definition of the territories falling within the sovereignty of the Member States, it is for each Member State to determine the extent and limits of its own territory, in accordance with the rules of public international law (see, to that effect, judgment of 29 March 2007, *Aktiebolaget NN*, C-111/05, EU:C:2007:195, paragraph 54). Indeed, it is by reference to national territories that the territorial scope of the Treaties is established, for the purposes of Article 52 TEU and Article 355 TFEU. Moreover, Article 77(4) TFEU points out that the Member States have competence concerning the geographical demarcation of their borders, in accordance with international law.

106 In the case in point, Article 7(3) of the arbitration agreement provides that the parties are to take all necessary steps to implement the arbitration award, including by revising national legislation, as necessary, within six months after the adoption of that

> award. Furthermore, the footnotes relating to points 8 and 10 of Annex I to Regulation No 1380/2013 state that, as regards the Republic of Croatia and the Republic of Slovenia, the regime, laid down in that annex, governing access to the coastal waters of those Member States under neighbourhood relations 'shall apply from the full implementation of the arbitration award'. It is not in dispute, as the Advocate General has also observed in essence in point 164 of his Opinion, that effect has not been given to the arbitration award.
>
> 107 In those circumstances, it is not for the Court — if it is not to step beyond the powers conferred upon it by the Treaties and encroach upon the powers reserved for the Member States regarding geographical determination of their borders — to examine, in the present action brought under Article 259 TFEU, the question of the extent and limits of the respective territories of the Republic of Croatia and the Republic of Slovenia, by applying directly the border determined by the arbitration award in order to verify the existence of the infringements of EU law at issue."

6. Other relevant information

28. On 1 January 2023 Croatia became a Schengen Member State. Thereafter the border between Croatia and Slovenia became an internal EU border (see paragraph 72 below).

B. Information regarding the present three applications

1. Application no. 49358/22

29. The application concerns minor-offence proceedings in which Mr Rene Chelleri (the first applicant) was found guilty of fifteen minor offences under section 43(1)(5) of the Croatian State Border Surveillance Act (*Zakon o nadzoru državne granice*, see paragraph 61 below) – namely, entering Croatian territorial sea without complying with border procedures (submitting to the border police the crew list and the passenger list, that is, providing for reference their travel documents), despite being warned by the police that his vessel was in the Croatian territorial sea.

30. The offences were found to have been committed in September and December 2019. The first applicant, the owner of the intercepted Slovenian-flagged vessel and the owner of a fishing trade, was ordered to pay a fine in the amount of 15,000 Croatian kunas (HRK), that is, 2,000 euros (EUR).

2. Application no. 49562/22

31. The application concerns minor-offence proceedings in which Mr Robert Radolovič (the second applicant) was found guilty of ten minor offences under sections 77(1)(5) and (3) and 78(1)(3) and (3) of the Croatian Marine Fisheries Act in conjunction with Article 42 § 1 (a) and Article 3 § 1 (a) and (c) of Council Regulation (EC) no. 1005/2008 and Article 13 of Council Regulation (EC) no. 1967/2006 (commercial fishing without a valid fishing privilege issued by Croatia and using trawl nets in a prohibited area – see paragraphs 62, 73 and 74 below).

32. The offences were found to have been committed in December 2018 and January 2019. The second applicant, a co-owner of the Slovenian-flagged vessel from which fishing had been undertaken and the owner of a fishing trade, was ordered to pay a fine in the amount of HRK 68,000, that is, EUR 9,066.

3. Application no. 54489/22

33. The application concerns minor-offence proceedings in which Mr Jan Virant (the third applicant) was found guilty of six minor offences under sections 77(1)(5) and (3) and 78(1)(3) and (3) of the Croatian Marine Fisheries Act in conjunction with the relevant EU provisions (see paragraph 31 above) – namely, commercial fishing without a valid fishing privilege issued by Croatia and using trawl nets in a prohibited area.

34. The offences were found to have been committed in May, June, and July 2019. The third applicant, at the time the owner of the Slovenian-flagged vessel by which fishing had been undertaken and the owner of a fishing trade, was ordered to pay a fine in the amount of HRK 36,000, that is, EUR 4,800.

4. Features of the three sets of minor-offence proceedings

(a) Procedure followed by the Croatian police

35. With respect to each of the minor offences in question, the procedure was generally as follows. The Croatian maritime police officers would note that a vessel was entering the waters claimed by Croatia as its territorial waters. They would take note of which vessel was involved, verify who its registered owner/user was, establish the vessel's exact geographical position, and observe whether it was engaged in commercial fishing activities. They would issue oral warnings to those on board that they were in Croatian territorial sea and that they should cease their activities and leave. Sometimes they would record events with a video camera. Intercepted vessels would each time be accompanied by the Slovenian police, and on no occasion the Croatian police officers boarded the vessels. The Croatian police would prepare reports with respect to the events, and penalty notices would be issued against the applicants.

(b) Proceedings before the minor-offences courts

36. The applicants, represented by a lawyer practicing in Croatia, lodged objections against the penalty notices, and their cases were forwarded to the minor-offences department of the Pazin Municipal Court (*Općinski sud u Pazinu, Stalna služba u Poreču-Parenzo, Prekršajni odjel*).

37. In each set of proceedings, the Pazin Municipal Court held hearings which the applicants did not attend but at which they were represented by their lawyer. The Croatian police officers who had been present during the

events in question were heard as witnesses. The applicants submitted their written defence statements, and their lawyer gave the closing arguments.

38. By judgments issued on 7 January, 19 November and 7 December 2021 respectively, the Pazin Municipal Court found the applicants guilty of the above-mentioned minor offences under the Croatian State Border Surveillance Act and the Croatian Marine Fisheries Act (see paragraphs 29, 31 and 33 above).

39. By judgments issued on 26 May and 27 December 2021 and 12 January 2022 respectively, the High Minor Offences Court (*Visoki prekršajni sud Republike Hrvatske*) dismissed the applicants' subsequent appeals and upheld their convictions.

(c) Minor offences courts' reasoning

(i) As regards the application of the relevant provisions

40. With respect to the first applicant's argument that the relevant provision of the Schengen Borders Code to which section 43(1)(5) of the Croatian State Border Surveillance Act referred (see paragraphs 61 and 72 below) could not be applied to fishing boats which did not transport passengers, and that in any event not complying with the relevant provision of the Schengen Borders Code did not constitute an offence – the courts held that section 43(1)(5) of the Croatian State Border Surveillance Act precisely defined the minor offence that the first applicant had committed. They further explained that the provision in question was not limited only to the international maritime transportation of passengers, but that it also imposed obligations on masters of fishing vessels.

41. With respect to the second and third applicants' argument that the Croatian authorities had failed to take into account the fact that the applicants held permission to fish issued by Slovenia as the "corresponding coastal state" referred to in section 77(1)(5) of the Croatian Marine Fisheries Act, the courts responded that: (a) foreign natural and legal persons could not obtain a privilege to fish in Croatian fishing seas without there being an international fisheries agreement regulating the principles and rules of conducting fishing activities in an area over which, under Article 7 of the Croatian Marine Fisheries Act, Croatia had jurisdiction, and that undoubtedly no such agreement had been concluded between Croatia and Slovenia and, (b) having regard to the fact that the regime under which Slovenia would have access to Croatian coastal waters under Annex I to the Regulation no. 1380/2013 did not yet apply since the Arbitration Award had not yet been implemented, Slovenia could not be considered to constitute a "corresponding coastal State" under section 77(1)(5) of the Croatian Marine Fisheries Act.

42. As to the applicants' specific argument that the events should have been considered to constitute border incidents and resolved in accordance with section 35 of the Croatian State Border Surveillance Act (see paragraph

61 below), the courts explained that the provisions on border incidents were inapplicable in respect of the cases at hand because such incidents could only be committed by public officials, and the applicants undisputedly did not hold that status.

(ii) As to the applicants' individual liability for the offences

43. With respect to the first applicant (who was found guilty of the offences under the Croatian State Border Surveillance Act – see paragraph 29 above) and his argument that the Croatian police had not established who had been present on board and who the vessel's master was, the courts referred to Articles 5 § 6 and 146 of the Croatian Maritime Code (*Pomorski zakonik* – see paragraph 59 below) and held that, in the event of a failure to appoint a master (the first applicant did not argue that he had appointed another person to act as vessel's master), the owner of the vessel (the first applicant) was to be held liable as the master of the vessel for the offences perpetrated by that vessel, regardless of whether or not being present on the vessel.

44. With respect to the similar arguments made by the second and third applicants, who were found guilty of the offences under the Croatian Marine Fisheries Act (see paragraphs 31 and 33 above), the courts held that the owners of the fishing trade (the second and third applicants) were responsible for ensuring the legality of commercial fishing undertaken within the scope of the trade activities performed by their vessels. In so concluding, the domestic courts relied on section 22(1) of the Croatian Minor Offences Act (*Prekršajni zakon* – see paragraph 58 below), section 4 of the Croatian Trade Act (*Zakon o obrtu*, see paragraph 60 below) and the fact that under the Croatian Marine Fisheries Act, the perpetrator of the offence can also be a trade owner (see paragraph 62 below).

(iii) As to the maritime border

45. The domestic courts dismissed the applicants' arguments that the events in question had occurred in Slovenian, and not Croatian waters, that the applicants had acted in accordance with the Slovenian law which had implemented the border as established in the Arbitration Award, and that they could not have known that they would be held liable for minor offences in Croatia.

46. The courts firstly held that it was a generally known fact that Croatia had terminated the Arbitration Agreement and did not recognise the Arbitration Award.

47. They then referred to the Croatian Parliament's Declaration on the state of inter-State relations between the Republic of Croatia and the Republic of Slovenia (*Deklaracija o stanju međudržavnih odnosa Republike Hrvatske i Republike Slovenije*, see paragraph 66 below), explaining that it stipulated that until a border agreement was reached between the two countries, the

maritime border in the Bay of Piran was to be at the equidistance line, which the applicants had undoubtedly crossed.

48. In the second and third applicants' case, the High Minor Offences Court further referred to the United Nations Convention on the Law of the Sea (see paragraph 79 below) – among the signatories to which numbered both Croatia and Slovenia. It referred in particular to Article 2 (which provides that the sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea, and that the sovereignty over the territorial sea is exercised subject to that Convention and to other rules of international law) and to Article 300 (which provides that States Parties should fulfil in good faith the obligations assumed under that Convention and should exercise the rights, jurisdiction and freedoms recognised therein in a manner that would not constitute an abuse of right).

49. The High Minor Offences Court further referred to the Rules on borders in the fishing sea of the Republic of Croatia (see paragraph 63 below) – issued on the basis of section 7 of the Croatian Marine Fisheries Act, which defined the maritime area over which the Republic of Croatia had sovereignty (see paragraph 62 below). It referred in particular to Article 5 of the Rules, stating that the latter precisely described the course of the maritime border with Slovenia.

50. The High Minor Offences Court also held that – under the rules of the United Nations Convention on the Law of the Sea, and having regard to the fact that thus far no agreement had been reached between Croatia and Slovenia regarding the maritime border – the border between the territorial seas of the two countries was at the equidistance line in the Bay of Piran.

51. The courts lastly held that as persons who engaged in commercial fishing, the applicants had certainly been aware of the situation regarding the border. Further to this, they had been convicted of multiple offences perpetrated on multiple occasions. On each occasion they had been warned by the Croatian police that they were in Croatian waters. Moreover, on every occasion they had been accompanied by the Slovenian police, which would not have been the case had they been unaware of the situation regarding the border.

(d) Decisions of the Constitutional Court

52. The applicants lodged constitutional complaints with the Constitutional Court (*Ustavni sud Republike Hrvatske*) against the judgments delivered by the minor offences courts, alleging violations of Articles 6 and 7 of the Convention in respect of the minor-offence proceedings conducted against them.

53. By decisions rendered on 2 and 29 June 2022, respectively, the Constitutional Court dismissed the constitutional complaints as unfounded. It

established that they were largely identical to the constitutional complaints submitted in two others sets of minor-offence proceedings conducted in respect of similar circumstances, regarding which on 29 March 2022 the Constitutional Court had adopted two leading decisions – namely, no. U-III-3917/2021 (relating to minor offences under the Croatian State Border Surveillance Act) and no. U-III-5534/2021 (relating to minor offences under the Croatian Marine Fisheries Act) (see paragraphs 67-68 below). The Constitutional Court therefore found it appropriate to refer to its findings in those leading decisions.

54. In particular, the Constitutional Court held that the lower courts' decisions had been in line with the relevant domestic law and practice and with international law, that they had been sufficiently reasoned in respect of all the complainants' arguments, and that there had been no arbitrariness in the factual findings. It held that the minor offences for which the complainants had been convicted had been clearly defined in law and that it had been undoubtedly foreseeable for them that their actions would constitute the minor offences in question.

55. The Constitutional Court's decisions were served on the applicants' representative on 15 June and 16 July 2022, respectively.

(e) Other relevant information

56. It appears that none of the fines imposed on the applicants has been paid so far, and that the Croatian authorities are not undertaking any steps to collect them. The statutory time-limit for those fines to become time-barred is three years from the judgment by which they were imposed becoming final (see paragraph 58 below).

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Domestic law and practice

57. The relevant Articles of the Croatian Constitution (*Ustav Republike Hrvatske*, Official Gazette no. 56/90, as amended) read as follows:

Article 2

"...

(2) The sovereignty of the Republic of Croatia extends to its land territory, rivers, lakes, channels, internal maritime waters [and] territorial sea, and the airspace over those areas.

(3) The Republic of Croatia exercises, in accordance with international law, sovereign rights and jurisdiction in the maritime areas and on the seabed of the Adriatic outside the State area up to the borders with its neighbours.

..."

Article 8

"Borders of the Republic of Croatia may only be changed by a decision of the Croatian Parliament."

Article 115(3)

"The courts rule on the basis of the Constitution, laws, international agreements and other valid sources of law."

Article 134

"International agreements which are concluded and confirmed in accordance with the Constitution and are published, and which are in force, form part of the internal legal order of the Republic of Croatia, and [take precedence], by virtue of their legal force, over the [domestic] laws. Their provisions can be amended or quashed only under the conditions and in the manner determined therein, or in accordance with the general rules of international law."

58. The relevant provisions of the Croatian Minor Offences Act (*Prekršajni zakon*, Official Gazette no. 107/07, as amended), as in force at the material time, read as follows:

Section 12

"(1) The minor-offence legislation of the Republic of Croatia applies to anyone who commits a minor offence on its territory.

(2) A special law may prescribe that the minor offences legislation of the Republic of Croatia be applied also in the sea area in respect of which the Republic of Croatia has certain sovereign rights and the right of jurisdiction.

..."

Section 14(1)

"A sanction imposed for a minor offence cannot be enforced after three years have passed since the decision by which it was imposed became final."

Section 17

"A minor offence is committed in the place where the perpetrator undertook an action or was obliged to undertake it, and in the place where the consequence of the offence arose in whole or in part ..."

Section 22(1)

"The perpetrator of a minor offence is a person who commits a minor offence by his or her own action or inaction or through the agency of another person."

Section 29

"(1) A perpetrator is not guilty if, for justified reasons, he or she did not know and could not have known that the act was prohibited.

(2) If the mistake was rectifiable, the perpetrator may be punished more leniently for the offence committed.

(3) A mistake will be considered rectifiable if everyone, including the perpetrator, could have easily recognised the illegality of the act, or if the perpetrator is a person who, owing to his or her profession or service, was obliged to familiarise him/herself with the corresponding regulation."

Section 34

"(1) If the fine, the costs of the minor offence proceedings and the forfeited property benefit are not paid in full or in part within the time limit specified in the decision on the minor offence, they shall be collected by means of enforcement, unless otherwise specified by this Act.

...

(5) When a defendant who does not have domicile [*prebivalište*] or permanent residence [*stalni boravak*] in the Republic of Croatia has not paid the fine within the period determined by the decision on the minor offence, the fine shall be immediately replaced by a prison sentence.

..."

59. The relevant provisions of the Croatian Maritime Code (*Pomorski zakonik*, Official Gazette nos. 181/04, as amended), as in force at the material time, read as follows:

Article 1

"(2) If this Code does not provide otherwise, its provisions apply to vessels that are located or navigate in internal sea waters [and] the territorial sea of the Republic of Croatia."

Article 5

"Unless otherwise specified by this Code, certain terms in the sense of this Code have the following meanings:

...

6. *a disponent owner* [*brodar*] is a natural or legal person who, being in possession of the vessel, is the holder of the maritime venture, with the fact that it is assumed, until the contrary is proved, that the disponent owner is a person who is registered in the register of ships as the owner of the vessel

...

49. *a foreign fishing vessel* is a vessel belonging to a foreign state, which is intended and equipped for catching fish or other living creatures in the sea or on the seabed

..."

Article 6

"(1) The sovereignty of the Republic of Croatia at sea extends to the internal sea waters and the territorial sea of the Republic of Croatia, to the airspace above them and to the bottom and subsoil of those sea areas.

..."

Article 18

"1) The territorial sea of the Republic of Croatia is a strip of sea 12 nautical miles wide, calculated from the starting line in the direction of the economic zone.

..

(3) The starting lines are drawn in the 'Adriatic Sea' nautical chart, published by the Croatian Hydrographic Institute."

Article 19

"The outer limit of the territorial sea is a line, each point of which is 12 nautical miles from the nearest point of the starting line."

Article 20

"All foreign vessels have the right of innocent passage through the territorial sea of the Republic of Croatia."

Article 23

"The passage of a foreign vessel through the territorial sea of the Republic of Croatia is not considered innocent if that vessel performs any of the following activities:

...

9) engages in fishing or catching other sea creatures,

..."

Article 25

"(1) During their passage through the territorial sea of the Republic of Croatia, foreign fishing vessels are prohibited from catching fish or other sea creatures in the sea or on the seabed.

(2) A foreign fishing vessel is obliged to sail through the territorial sea of the Republic of Croatia at a speed of not less than six knots, without stopping or anchoring, unless that is absolutely necessary owing to *force majeure* or suffering distress at sea, and to have fishing vessel markings prominently displayed.

(3) The provisions of paragraphs 1 and 2 of this Article do not apply to a foreign fishing vessel that has permission to fish in the territorial sea of the Republic of Croatia while it is located in the area where fishing is authorised."

Article 146

"(1) The master of the ship commands the crew and all other persons on board.

(2) The master of the ship is appointed and dismissed from his or her duties by the boatman or the company.

..."

Article 147

"(1) The master of the ship is responsible for the safety of the ship and order on board and, within the limits set by this Code and other regulations, has public authority on the ship and represents the company.

..."

60. The relevant provisions of the Croatian Trade Act (*Zakon o obrtu*, Official Gazette, no. 143/13, as amended), read as follows:

Section 2(1)

"A trade, within the meaning of this Act, is the independent and permanent undertaking of permitted economic activities under Article 8 of this Act by natural persons with the purpose of making earning or realising profit generated through production, trade or the provision of services on the market."

Section 4

"A trade owner within the meaning of this Act is a natural person who undertakes one or more activities listed by section 2 § 1 of this Act in his or her own name and on his or her behalf and may also use the work of other persons."

61. The relevant provisions of the Croatian State Border Surveillance Act (*Zakon o nadzoru državne granice*, Official Gazette, nos. 83/13, as amended), as in force until 1 January 2023, when Croatia became a Schengen Member State, read as follows:

Section 2

"(1) This Act determines the bodies in the Republic of Croatia with authority to implement Regulation (EC) no. 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) ... and Regulation (EC) no. 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention ..., and sets out minor offence provisions for behaviour that violates the provisions of the aforementioned regulations of the European Union.

..."

Section 26

"(1) A person who intends to cross or has already crossed the border line must present the documents prescribed for crossing the State border [and] submit to border checks and must not leave the border crossing area until the border checks have been carried out.

(2) The person referred to in paragraph 1 of this section is obliged to explain to a police officer all the circumstances related to fulfilling the conditions for crossing the State border and to act in accordance with the warnings and orders of the officers performing border checks."

Section 29(3)

"The work of measuring, marking, restoring and maintaining the marked State border – as well as keeping records and preparing technical documentation in respect of the land border – is performed by the State Geodetic Administration, and for the maritime border by the Croatian Hydrographic Institute."

Section 35(2)

"Border incidents are actions that violate the provisions of international treaties relating to the borders and laws of the Republic of Croatia, as well as any other threat to the inviolability of the State border committed by the officials of State and of local bodies of neighbouring States."

Section 43

"A natural person shall be fined between HRK 1,000 and HRK 5,000 for a minor offence, if:

...

5. as the captain or operator of a vessel [*zapovjednik ili voditelj plovila*], upon arrival from abroad or before departure abroad, does not hand over to the border police a list of crew members and passengers on the vessel – that is, does not submit their documents [necessary] for crossing the State border (Annex VI. point 3.1. 2 of the Schengen Borders Code)

..."

62. The relevant provisions of the Croatian Marine Fisheries Act (*Zakon o morskom ribarstvu*, Official Gazette, no. 62/2017, as amended), read as follows:

Section 1(1)

"This Act regulates the implementation of the Common Fisheries Policy of the European Union (hereinafter: "the Common Fisheries Policy") and establishes the relevant bodies and their tasks, [and powers of] supervision and oversight, methods of handling and reporting to the European Commission, and minor offence provisions."

Section 3

"(1) Certain terms within the meaning of this Act have the following meanings:

...

5. *the person responsible for carrying out commercial fishing* is the holder of the privilege if he or she carries out fishing him/herself and has passed the examination for carrying out commercial fishing – that is, a person who has passed the commercial-fishing examination, and carries out fishing on the basis of the power of authority of the holder of the privilege

6. *the holder of the privilege for commercial fishing* is a legal or natural person – a trade owner [*obrtnik*] who is registered on the privilege for commercial fishing at sea and who is authorised to carry out fishing in accordance with the rights set in the privilege

...

9. *restricted fishing area* means any area in the fishing sea of the Republic of Croatia where fishing activities are limited or prohibited

...

13. *the privilege for commercial fishing at sea* is a document on the basis of which commercial fishing is carried out and which is issued to the owner of the fishing vessel registered in the privilege

...

28. *the owner of the vessel* is a natural or legal person who is registered as the owner [of that vessel] in the register of ships of the Republic of Croatia or the register of small ships of the Republic of Croatia

29. *the master of a fishing vessel* is the responsible person in respect of the carrying out of commercial fishing on a fishing vessel.

..."

Section 6(1)

"This Act applies to all fishing vessels, as well as to all natural and legal persons fishing in the internal sea waters and territorial sea of the Republic of Croatia, and to vessels of third countries fishing in the Protected Ecological Fishing Zone of the Republic of Croatia."

Section 7(1)

"The fishing sea is a sea area over which the Republic of Croatia has sovereignty, that is, sovereign rights and jurisdiction in accordance with international law, and consists of the internal fishing sea, which includes internal sea waters, and the external fishing sea, which includes the area of the territorial sea of the Republic of Croatia and the protected ecological-fishing zone of the Republic of Croatia, that is, the economic zone of the Republic of Croatia when the Croatian Parliament declares other contents of the exclusive economic zone in accordance with Chapter IV Part Two of the Maritime Code."

Section 15

"(1) Commercial fishing may be carried out by the holder of the privilege for commercial fishing – that is, the holder of the privilege for small-scale coastal fishing, with a vessel, fishing tools [and] fishing-diving equipment and in fishing zones that are registered in the privilege ...

...

(5) During commercial fishing, from departure to return, there must be a person responsible for commercial fishing on the fishing vessel.

..."

Section 77

"(1) Under Article 44 § 1 of Council Regulation (EC) no. 1005/2008 and Article 90 § 2 of Council Regulation (EC) no. 1224/2009, a fine in the amount between HRK 15,000 and HRK 50,000 shall be imposed on a legal entity if:

...

5. it carries out fishing without a valid fishing privilege issued by the Republic of Croatia or the corresponding coastal State in accordance with Article 42 § 1 (a) and Article 3 § 1 (a) of Council Regulation (EC) no. 1005/2008

...

(3) A natural person – trade owner, shall be fined between HRK 10,000 and HRK 15,000 for the [commission of the] offence referred to in paragraph 1 of this section."

Section 78

"(1) Under Article 44 § 1 of Council Regulation (EC) no. 1005/2008 and Article 90 § 2 of Council Regulation (EC) no. 1224/2009, a fine in the amount between HRK 5,000 and HRK 30,000 shall be imposed on a legal entity if:

...

3. it carries out fishing in an area where fishing is prohibited or during the fishing prohibition period, without a quota or after the quota has been exhausted, or at prohibited depths in accordance with Article 42 § 1 (a) and Article 3 § 1 (c) of the Council Regulation (EC) no. 1005/2008.

...

(3) A natural person - trade owner, shall be fined between HRK 2,000 and HRK 4,000 for the [commission of the] offence referred to in paragraph 1 of this section."

63. The relevant provisions of the Rules on borders in the fishing sea of the Republic of Croatia (*Pravilnik o granicama u ribolovnom moru Republike Hrvatske*, Official Gazette nos. 5/2011, 81/2013 and 62/2017), issued on the basis of section 7 of the Croatian Marine Fisheries Act (see paragraph 62 above), read as follows:

Article 2

"The fishing sea of the Republic of Croatia encompasses the external fishing sea and the internal fishing sea, which are separated by a base line."

Article 3

"The external fishing sea encompasses the territorial sea of the Republic of Croatia and the protected ecological-fishing zone of the Republic of Croatia."

Article 5

"The fishing sea of the Republic of Croatia is divided into eleven fishing zones, which are the following:

"– **Fishing zone A** is located in the internal fishing sea and the external fishing sea of the Republic of Croatia, and is bounded by a straight line starting from point A (LAT (φ) 45°28.70' N; LONG (λ) 013°35.14' E) at the mouth of Channel of Saint Odorik and extends along the Bay of Piran along the median/equidistance line (until the end of the delimitation process between the Republic of Croatia and the Republic of Slovenia) to point B (LAT (φ) 45°31.06' N; LONG (λ) 013°32.22' E), which is halfway between Cape Savudrija (Croatia) and Cape Madona (Slovenia). The border continues further perpendicularly from point B to the junction of Cape Savudrija (Croatia) and Cape

> Madona (Slovenia), and intersects the border determined by the Osim Agreements (1975) at point C, which is also the tripoint between the territorial seas of Italy, Slovenia and Croatia. From point C (Italy – Slovenia – Croatia) it continues along the border determined by the Osim Agreements (1975) to the southwest to point 4, and further to point 5 of the territorial border at sea between Italy and Croatia (in a length of 26 km), that is, point 1 of the epicontinental border between Italy and Croatia. From point 5 of the border determined by the Osim Agreements (1975), that is, point 1 of the epicontinental border between Italy and Croatia, it continues along the outer border of the territorial sea of the Republic of Croatia to point X2. In the eastern part, the border of Fishing Zone A continues from point A (LAT (φ) 45°28.70' N; LONG (λ) 013°35.14' E) at the mouth of the Channel of Saint Odorik along the low-water line along the coast of the mainland of the northern and western part of the Istrian peninsula to the point on Cape Kamenjak (south of the Istrian peninsula) from which a line with azimuth 221° is drawn and intersects the straight starting line at point X1 (which separates the inner fishing sea from the external fishing sea) and continues to the outer border of the territorial sea of the Republic of Croatia at point X2, which is also the southernmost point of Fishing Zone A;
>
> ..."

64. Map no. 9 published in the Official Gazette of the Republic of Croatia as an integral part of the Rules on borders in the fishing sea of the Republic of Croatia graphically depicts the delimitation of the Croatian fishing sea as outlined in the above-cited part of Article 5 of the Rules.

65. Maps entitled "Borders of the Republic of Croatia in the Adriatic Sea" (*Jadransko more – Granice Republike Hrvatske na Jadranskom moru*) and "Bay of Piran" (*Savudrijska vala (Piranski zaljev)*) – both accessible on the website of the Croatian Hydrographic Institute – graphically depict the maritime border in the Bay of Piran as defined by Croatia.

66. The relevant part of the Declaration on the state of inter-State relations between the Republic of Croatia and the Republic of Slovenia (*Deklaracija o stanju međudržavnih odnosa Republike Hrvatske i Republike Slovenije*, Official Gazette no. 32/1999), adopted by the Croatian Parliament on 26 March 1999, reads as follows:

> "4. Having regard to the state of affairs on 25 June 1991 and the fact that both the Republic of Croatia and the Republic of Slovenia are contracting parties to the 1982 United Nations Convention on the Law of the Sea, when determining the border at sea between the territorial seas of the two countries, the Croatian representatives (the Government [and] the State Border Commission) are obliged to represent positions in accordance with the provisions of Article 2 of the Convention in question, that is, to advocate that the border line at sea in the Bay of Piran be established according to the criteria of equidistance (equal distance from the coast), in the middle of the bay, and until that line at sea is established, the coastal states are obliged to refrain from any form of exercise of authority over the central line at sea in the Bay."

67. On 29 March 2022 the Croatian Constitutional Court adopted two leading decisions regarding the minor-offence proceedings conducted against Slovenian fishermen for their activities in the maritime waters in question: (i) no. U-III-3917/2021, rendered in relation to proceedings concerning minor offences under the Croatian State Border Surveillance Act, and

(ii) no. U-III-5534/2021, rendered in relation to proceedings concerning minor offences under the Croatian Marine Fisheries Act).

68. In those two leading decisions the Constitutional Court dismissed the complainants' complaints under Articles 6 and 7 of the Convention as unfounded. In particular, the Constitutional Court found that the lower courts' decisions had been in line with the relevant domestic law and practice and with international law, that they had been sufficiently reasoned as to all of the complainants' arguments, and that there had been no arbitrariness in the factual findings. It also held that the minor offences for which the complainants had been convicted had been clearly defined in law and that it had been foreseeable for them that their actions would constitute the above-mentioned minor offences.

69. Two Constitutional Court judges attached a dissenting opinion in which they held that, given that both Croatia and Slovenia claimed the disputed waters as their own, neither of the two countries could exercise full sovereignty over it. Indeed, the two countries held differing positions as to what constituted their territory, while territory (that is, the territorial sea) constituted an essential element of the minor offences in question. The two judges held that Croatia and Slovenia should try to resolve the border issue instead of using their citizens as victims of their (correct or incorrect) perception of the border matter. In that connection the two judges commended the fact that, at the time the Constitutional Court had adopted its two leading decisions on the matter (see paragraph 67 above), the two countries had agreed on setting up of a common fishing zone, mutually ending with minor offence proceedings against the fishermen and annulling the decisions on minor offences which had already been issued.

70. The applicants relied on two judgments of the Pazin Municipal Court (no. Pp-2343/2021 of 4 April 2022 and no. Pp-2896/2021 of 10 August 2022), in which two defendants (Slovenian fishermen) had been acquitted of minor offences under the Croatian Border Surveillance Act and the Croatian Marine Fisheries Acts found to be perpetrated in July, August and September 2018 and August 2019. The two judgments established that the defendants had indeed been fishing in the territorial waters of Croatia, which did not recognize the Arbitration Award. However, having regard to the fact that Slovenia had implemented in its legislation the border as established in the Arbitration Award and that the defendants had acted in accordance with the Slovenian law, they should be deemed as acting in error that they had been in Slovenian waters. The judgments disagreed with the conclusion of the High Minor Offences Court already expressed in the two cases in question and in other comparable cases that the Slovenian fishermen had been aware of the illegality of their actions under Croatian law, deeming that fishermen of both countries should be able to rely on the laws and on the police of their own respective countries.

71. On 18 May and 14 December 2022 respectively, both judgments were quashed by the High Minor Offences Court.

B. European Union law

72. The relevant provisions of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (codification), read as follows:

Article 1
Subject matter and principles

"This Regulation provides for the absence of border control of persons crossing the internal borders between the Member States of the Union.

It lays down rules governing border control of persons crossing the external borders of the Member States of the Union."

ANNEX VI
Specific rules for the various types of border and the various means of transport used for crossing the Member States' external borders

"...

3. Sea borders

3.1. General checking procedures on maritime traffic

3.1.1. Checks on ships shall be carried out at the port of arrival or departure, or in an area set aside for that purpose, located in the immediate vicinity of the vessel or on board ship in the territorial waters as defined by the United Nations Convention on the Law of the Sea. Member States may conclude agreements according to which checks may also be carried out during crossings or, upon the ship's arrival or departure, on the territory of a third country, respecting the principles set out in point 1.1.4.

3.1.2. The master, the ship's agent or some other person duly authorised by the master or authenticated in a manner acceptable to the public authority concerned (in both cases 'the master'), shall draw up a list of the crew and any passengers containing the information required in the forms 5 (crew list) and 6 (passenger list) of the Convention on Facilitation of International Maritime Traffic (FAL Convention) as well as, where applicable, the visa or residence permit numbers:

— at the latest twenty-four hours before arriving in the port, or

— at the latest at the time the ship leaves the previous port, if the voyage time is less than twenty-four hours, or

— if the port of call is not known or it is changed during the voyage, as soon as this information is available.

The master shall communicate the list(s) to the border guards or, if national law so provides, to other relevant authorities which shall forward the list(s) without delay to the border guards.

...

By way of derogation from Articles 5 and 8, no systematic border checks shall be carried out on persons staying aboard. Nevertheless a search of the ship and checks on the persons staying aboard shall be carried out by border guards only when this is justified on the basis of an assessment of the risks related to internal security and illegal immigration.

..."

73. The relevant provisions of Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999, read as follows:

Article 1
Subject matter and scope

"1. This Regulation establishes a Community system to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing.

2. For the purposes of paragraph 1, each Member State shall take appropriate measures, in accordance with Community law, to ensure the effectiveness of that system. It shall place sufficient means at the disposal of its competent authorities to enable them to perform their tasks as laid down in this Regulation.

3. The system laid down in paragraph 1 shall apply to all IUU fishing and associated activities carried out within the territory of Member States to which the Treaty applies, within Community waters, within maritime waters under the jurisdiction or sovereignty of third countries and on the high seas. IUU fishing within maritime waters of the overseas territories and countries referred to in Annex II of the Treaty shall be treated as taking place within maritime waters of third countries."

Article 2
Definitions

"For the purposes of this Regulation:

...

2. 'illegal fishing' means fishing activities:

(a) conducted by national or foreign fishing vessels in maritime waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations;

...

6. 'Community fishing vessel' means a fishing vessel flying the flag of a Member State and registered in the Community;

..."

Article 3
Fishing vessels engaged in IUU fishing

"1. A fishing vessel shall be presumed to be engaged in IUU fishing if it is shown that, contrary to the conservation and management measures applicable in the fishing area concerned, it has:

(a) fished without a valid licence, authorisation or permit issued by the flag State or the relevant coastal State;

...

(c) fished in a closed area, during a closed season, without or after attainment of a quota or beyond a closed depth; or

...

2. The activities set out in paragraph 1 shall be considered as serious infringements in accordance with Article 42 depending on the gravity of the infringement in question which shall be determined by the competent authority of the Member State, taking into account the criteria such as the damage done, its value, the extent of the infringement or its repetition."

Article 42
Serious infringements

"1. For the purpose of this Regulation, serious infringement means:

(a) the activities considered to constitute IUU fishing in accordance with the criteria set out in Article 3;

...

2. The serious character of the infringement shall be determined by the competent authority of a Member State taking into account the criteria set out in Article 3(2)."

Article 44
Sanctions for serious infringements

"1. Member States shall ensure that a natural person having committed or a legal person held liable for a serious infringement is punishable by effective, proportionate and dissuasive administrative sanctions.

2. The Member States shall impose a maximum sanction of at least five times the value of the fishery products obtained by committing the serious infringement.

In case of a repeated serious infringement within a five-year period, the Member States shall impose a maximum sanction of at least eight times the value of the fishery products obtained by committing the serious infringement.

In applying these sanctions the Member States shall also take into account the value of the prejudice to the fishing resources and the marine environment concerned.

3. Member States may also, or alternatively, use effective, proportionate and dissuasive criminal sanctions."

74. The relevant provisions of Council Regulation (EC) No 1967/2006 of 21 December 2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea, amending

Regulation (EEC) No 2847/93 and repealing Regulation (EC) No 1626/94, read as follows:

Article 13
Minimum distances and depths for the use of fishing gears

"1. The use of towed gears shall be prohibited within 3 nautical miles of the coast or within the 50 m isobath where that depth is reached at a shorter distance from the coast.

By way of derogation from the first subparagraph, the use of dredges shall be authorised within 3 nautical miles irrespective of the depth provided that the catch of species other than shellfish does not exceed 10 % of the total live weight of the catch.

2. The use of trawl nets shall be prohibited within 1,5 nautical miles of the coast. The use of boat dredges and of hydraulic dredges shall be prohibited within 0,3 nautical miles of the coast.

..."

75. The relevant provisions of Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC, read as follows:

Article 5
General rules on access to waters

"1. Union fishing vessels shall have equal access to waters and resources in all Union waters other than those referred to in paragraphs 2 and 3, subject to the measures adopted under Part III.

2. In the waters up to 12 nautical miles from baselines under their sovereignty or jurisdiction, Member States shall be authorised, until 31 December 2022, to restrict fishing to fishing vessels that traditionally fish in those waters from ports on the adjacent coast, without prejudice to the arrangements for Union fishing vessels flying the flag of other Member States under existing neighbourhood relations between Member States and the arrangements contained in Annex I, fixing for each Member State the geographical zones within the coastal bands of other Member States where fishing activities are pursued and the species concerned. Member States shall inform the Commission of the restrictions put in place under this paragraph.

..."

76. Annex I to Regulation No 1380/2013, headed "Access to coastal waters within the meaning of Article 5(2)", lays down, in points 8 and 10, access regimes concerning, respectively, the "coastal waters of Croatia" and the "coastal waters of Slovenia". The footnotes to those points specify, in identical terms, that "[the regime governing access to the coastal waters of Croatia and Slovenia under neighbourhood relations] shall apply from the full implementation of the arbitration award resulting from the Arbitration Agreement between the Government of the Republic of Slovenia and the

Government of the Republic of Croatia, signed in Stockholm on 4 November 2009".

77. The relevant provision of Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006, read as follows:

Article 90(2)

"Member States shall ensure that a natural person having committed or a legal person held liable for a serious infringement is punishable by effective, proportionate and dissuasive administrative sanctions, in accordance with the range of sanctions and measures provided for in Chapter IX of Regulation (EC) No 1005/2008."

C. International law

78. The relevant provision of the 1969 United Nations Vienna Convention on the Law of Treaties reads:

Article 60(1)

"A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part."

79. The relevant provisions of the 1982 United Nations Convention on the Law of the Sea read as follows:

Article 2
Legal status of the territorial sea, of the air space over the territorial sea and of its bed and subsoil

"1. The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea.

2. This sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil.

3. The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law."

Article 3
Breadth of the territorial sea

"Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention."

Article 15
Delimitation of the territorial sea between States with opposite or adjacent coasts

"Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith."

Article 17
Right of innocent passage

"Subject to this Convention, ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea."

Article 19
Meaning of innocent passage

"1. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. ...

2. Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in any of the following activities:

...

(i) any fishing activities;

..."

Article 21
Laws and regulations of the coastal State relating to innocent passage

"1. The coastal State may adopt laws and regulations, in conformity with the provisions of this Convention and other rules of international law, relating to innocent passage through the territorial sea, in respect of all or any of the following:

...

(d) the conservation of the living resources of the sea;

(e) the prevention of infringement of the fisheries laws and regulations of the coastal State;

..."

Article 300
Good faith and abuse of rights

"States Parties shall fulfil in good faith the obligations assumed under this Convention and shall exercise the rights, jurisdiction and freedoms recognised in this Convention in a manner which would not constitute an abuse of right."

COMPLAINT

80. The applicants complained under Article 7 of the Convention that the actions and omissions for which they had been convicted could not have constituted minor offences under Croatian law because they had not occurred within Croatian territory. The applicants notably argued that the maritime border between Croatia and Slovenia had been determined by the Arbitration Award, which was binding on both countries in accordance with the Arbitration Agreement concluded in 2009, that the activities for which they had been convicted had occurred to the north of that border, that is, in Slovenian waters, and that they could not have been required to know that Croatia would not respect international law, that is, the Arbitration Award.

THE LAW

A. Joinder of the applications

81. In accordance with Rule 42 § 1 of the Rules of Court, the Court decides to join the applications, given their similar factual and legal background.

B. Alleged violation of Article 7 of the Convention

82. The applicants relied on Article 7 of the Convention which, in so far as relevant, reads as follows:

> "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. ..."

1. Submissions by the parties

(a) The Croatian Government

83. The Croatian Government submitted that the unresolved border dispute between Croatia and Slovenia lay at the heart of this case, notably being the reason behind the fact that the domestic laws of the two countries differently regulated the course of their respective maritime border.

84. That being so, the Croatian Government argued that the Court lacked jurisdiction to rule on the alleged infringement of Article 7 of the Convention. In order to do so, the Court would essentially need to establish the course of the maritime border between two countries, which fell out of its competence. The Court had no jurisdiction to establish what makes a territory of a State. Additionally, the Court could not question the domestic courts' interpretation of laws, unless it found that interpretation to be manifestly arbitrary, which was not the situation in the present case. Likewise, the Court could not rule on the applicant's individual liability for the minor offences in question.

85. The Croatian Government further pointed out that the sole purpose of the present case was to have the border as established in the Arbitration Award (see paragraph 17 above) recognised and applied, which Croatia refused to do. Slovenia had previously applied to the Court of Justice of the European Union (the "CJEU") for the same purpose, and that court had found that it had no jurisdiction to rule on Croatia's alleged breaches of the European Union law, since that would entail ruling on the border issue (see paragraph 27 above).

86. The Croatian Government further invited the Court to declare the applications inadmissible on the grounds that the applicants had suffered no significant disadvantage. The applicants had not suffered any financial consequences arising from the minor-offence proceedings because they had not paid the fines imposed, and the Croatian authorities were not undertaking any steps to collect those fines. Furthermore, the applicants continued to conduct their fishing activities and had not suffered any reduction in their income in that respect. Additionally, after Croatia had become a Schengen Member State on 1 January 2023 (see paragraph 28 above), the border between the two countries had become an internal EU border, and the Slovenian fishermen had no longer been liable for border-crossing-related minor offences in Croatia. Moreover, respect for human rights did not require the examination of the applications, which essentially concerned a bilateral border dispute that should be resolved before a competent body pursuant to the rules of international law, and not before the Court.

87. The Croatian Government submitted that even if the applicants had suffered some kind of disadvantage on account of the minor-offence proceedings, the only country that bore responsibility was Slovenia, which had unilaterally changed its maritime border with Croatia and had led the applicants to committing minor offences in Croatia. In that connection the Croatian Government submitted that no State could unilaterally change its border in order to expand or reduce its territorial jurisdiction and thus affect the application of Article 1 of the Convention (see *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, § 109, 13 February 2020).

88. The Croatian Government contended that, unlike Slovenia, Croatia had held a uniform and clear position regarding the course of its maritime border with Slovenia ever since the two countries had declared their independence in 1991. Notably, given the fact that no agreement had been concluded between the two countries stipulating otherwise, under the relevant international law the maritime border was on the equidistance line in the Bay of Piran.

89. In the event that the Court would consider that it had jurisdiction to examine the applicants' complaint, the Croatian Government submitted that the minor offences of which the applicants had been found guilty were "criminal" in nature and that Article 7 of the Convention was thus applicable.

90. They further contended that those offences were clearly defined in Croatian and EU law and had been foreseeable for the applicants, not least because there also existed uniform, consistent, and non-arbitrary domestic case-law in respect of the matter. The applicants' commission of the offences had been established in proceedings in which the relevant courts had provided detailed reasons for their findings.

91. The Croatian Government gave the following reasons for which they argued that it had been foreseeable for the applicants that their conduct had constituted minor offences in Croatia.

92. Firstly, the bilateral border dispute had been ongoing for more than thirty years. Over that entire time, the topic had been widely discussed in the media in both countries. The applicants, professional fishermen, lived and worked near the border and had certainly been aware of the unresolved border dispute. That was also apparent from their submissions to the domestic courts.

93. Secondly, the applicants had continuously – certainly since 2014 – been warned by the Croatian police that they were entering Croatian waters with their vessels. Therefore, they had been aware that they would be punished for their conduct if it continued.

94. Thirdly, the applicants could not have possibly had any misconceptions about the unlawfulness of their actions given the fact that, when entering the Croatian waters, they had on each occasion been accompanied by the Slovenian police, which could not be considered a normal manner of engaging in fishing.

95. Fourthly, the applicants had been punished on many occasions for the same minor offences ever since 2017. Therefore, they could not argue that their convictions in the three sets of minor-offence proceedings complained of had been unforeseeable for them.

96. Lastly, as already explained above (see paragraph 88 above), Croatia had never misled the applicants about the course of its maritime border with Slovenia.

(b) The applicants

97. The applicants contended that, contrary to the Croatian Government's assertions, in the present case the Court had not been asked to rule upon an allegedly outstanding border dispute between Slovenia and Croatia, much less to determine the maritime border between the two countries.

98. The applicants' case before the Court concerned a violation by Croatia of Article 7 of the Convention with respect to minor-offence proceedings conducted against the applicants in Croatia. Its purpose was thus to have the Court assess a violation of a fundamental right protected by the Convention and to ensure full observance of the engagements undertaken by Croatia, in accordance with Article 19 of the Convention.

99. The applicants submitted that the Court had never refused to examine a case only because it raised questions of international law (see *Demir and*

Baykara v. Turkey [GC], no. 34503/97, §§ 76-86, ECHR 2008). In fact, the Court applies the Convention in accordance with the general rules and principles of international law – including, specifically, any rules of international law applicable in respect of the relations between the States parties (see *G.S.B. v. Switzerland*, no. 28601/11, § 76, 22 December 2015; *Al-Dulimi and Montana Management Inc. v. Switzerland* [GC], no. 5809/08, § 134, 21 June 2016; and *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 118, 8 November 2016).

100. That, however, did not imply that the Court should determine the course of the maritime border between Slovenia and Croatia. In any event, the course of that border had already been determined, in accordance with international law, by the Arbitration Award, which had been rendered in lawfully conducted arbitration proceedings and which was binding on both parties.

101. The applicants explained that in the present case the Court needed to determine whether the provisions of Croatian law underlying the applicants' convictions provided a valid legal basis that was sufficiently accessible and foreseeable for the applicants, in particular in light of the extent and the limits of the territory in which Croatia claimed to exercise jurisdiction in accordance with international law.

102. The applicants noted that the relevant rules of Croatian law specifically referred to international law in respect of territorial jurisdiction and the limits thereof. Yet, neither Croatian law, nor international law to which it referred, determined with the necessary clarity and foreseeability the boundary which the Croatian authorities claimed had been crossed by the applicants. On the other hand, the Arbitral Tribunal had determined the boundary between Slovenia and Croatia in the Arbitration Award, which contradicted, as a matter of international law, Croatia's position.

103. Specifically, neither the Croatian Border Surveillance Act (on the basis of which the first applicant had been convicted for illegal border-crossing) nor the Croatian Marine Fisheries Act (on the basis of which the second and third applicants had been convicted for illegal fishing) contained any determination of the maritime border.

104. As for the Rules on borders in the fishing sea of the Republic of Croatia (see paragraph 63 above), those had been issued on the basis of section 7 of the Croatian Marine Fisheries Act, which defined the Croatian fishing sea as the maritime space over which Croatia had sovereign rights and jurisdiction in accordance with international law (see paragraph 62 above). The Rules could therefore only determine different fishing areas in the Croatian sea within the maritime borders as determined in accordance with international law, that is, the Arbitration Award. Moreover, the equidistance delimitation in the Bay of Piran set out in the Rules was provisional, applicable only until the completion of the process of delimitation between

Croatia and Slovenia. That process had been completed with the adoption of the Arbitration Award.

105. As to the Declaration on the state of inter-State relations between the Republic of Croatia and the Republic of Slovenia (see paragraph 66 above), which was relied on by the Croatian courts as the legal instrument defining the border at sea, that clearly constituted only a negotiation instruction to the Croatian authorities within the context of the border determination negotiations. Such a unilateral declaration could not have any effect on the determination of the border between two sovereign countries under international law; least of all could it have any binding effect on Slovenia. Lastly, under the Declaration, the negotiation position was provisional, pending the determination of the maritime border. The determination of the border had been accomplished by the Arbitration Award.

106. References to the EU legislation in the Croatian legislation were likewise irrelevant because the EU legislation did not determine the Croatian border. Furthermore, the issue of whether the second and third applicants had been entitled to fish in Croatian waters based on their Slovenian fishing permits in accordance with the EU regulation governing access of Slovenian fishermen to Croatian coastal waters (see paragraph 76 above) was irrelevant, since the applicants had never entered or fished in Croatian waters.

107. In any event, the border between the two countries could only be established under international law. The border between Croatia and Slovenia had been established – definitively and in a manner binding on both countries – by the Arbitration Award.

108. Accordingly, given the fact that the acts allegedly committed by the applicants had not occurred on Croatian territory, it had not been foreseeable that those acts would be punishable under Croatian law. The applicants had never crossed the border as validly determined under international law – namely, by the Arbitration Award. The applicants could not have been expected to envisage that Croatia would not abide by international law. No reasonable legal advice would have sufficed for the applicants because the issue of the maritime border had been finally and bindingly resolved by the Arbitration Award. The Croatian Government's political statements regarding their discontent with the arbitration proceedings and their outcome could not have rendered the applicants' convictions foreseeable.

109. Furthermore, the fact that the applicants were professional fishermen did not render them subject to the Court's "special care" standard. In any event, the applicants had relied on the binding Arbitration Award and on the Slovenian domestic legislation. It would be untenable and against the spirit of the Convention to require the applicants to be aware of the intricacies of foreign policy between the two countries and their conflicting views on the Arbitration Award and to adapt their behavior accordingly.

110. In addition, in the applicants' view, it was highly relevant for the assessment of the foreseeability that, prior to December 2017, Croatian

authorities had not conducted any minor-offence proceedings in respect of the same acts and omissions as those at issue in the present case. Yet, according to the Government's own submissions, nothing had changed in 2017 in respect of the course of the border line: no new Croatian legislation had been implemented during that period that would have deemed, from December 2017 onwards, that such acts and omissions constituted minor offences. The authorities' change in position had thus been entirely unforeseeable and had not had any basis in Croatian law.

111. The applicants argued that the foreseeability of their convictions had been further marred by the inconsistent practice of the national courts. Notably, in two sets of proceedings originating in comparable sets of facts, Slovenian fishermen had been acquitted on the grounds that they had legitimately believed that they were in Slovenian waters (see paragraph 70 above).

112. The applicants further argued that the situation in their case had been manifestly different from that of *Yaşar v. Romania* (no. 64863/13, 26 November 2019). The applicant in the *Yaşar* case had expressly accepted that the offence had taken place within Romanian territorial waters, whereas the applicants in the present case had never entered Croatian waters.

113. As to the Croatian Government's no significant disadvantage objection, the applicants submitted that their convictions for minor offences in themselves constituted a significant disadvantage. Secondly, the applicants did not have any assurance that the Croatian authorities would not proceed to collecting the imposed fines and the related costs by force, thereby seriously impacting the applicants' businesses and means of subsistence. Moreover, under section 34(5) of the Croatian Minor Offences Act (see paragraph 58 above), the applicants had run the risk of imprisonment while in Croatian territory. Thirdly, given the fines resulting from their fishing activities, the applicants' creditworthiness had been severely diminished, and any potential professional projects had been rendered impossible. Fourthly, the numerous sets of minor-offence proceedings conducted against them had caused them anxiety, frustration and feelings of injustice and humiliation. What the applicants sought was the confirmation of their innocence, a clean misdemeanor record and the possibility to freely navigate and fish in the maritime waters in question. Ultimately, the present case concerned systemic breaches of fundamental rights involving thousands of minor-offence proceedings against Slovenian fishermen. Croatia thus needed to be induced to resolve such structural deficiencies, which affected other persons in the same position as the applicants.

114. In their applications to the Court, the first and second applicants also brought the following arguments in support of their complaint under Article 7 of the Convention; the first applicant complained that, in the factual description of the minor offences, the domestic courts had failed to cite in its entirety Annex VI point 3.1.2. to the Schengen Borders Code to which section

43(1)(5) of the Croatian State Border Surveillance Act referred; that point 3.1.2 of Annex VI did not apply to fishing boats which did not enter a harbour or transport passengers; and that in any event not complying with it did not constitute an offence. The second applicant complained that he had held a permit to fish issued by Slovenia as the "corresponding coastal State" referred to in section 77(1)(5) of the Croatian Marine Fisheries Act, and that his actions had therefore not constituted an offence under section 78(1)(3).

2. Third-party intervener

(a) The Slovenian Government

115. The Slovenian Government submitted that, contrary to the Croatian Government's assertion, the applicants in the present case were not seeking to vindicate the rights of Slovenia in respect of the border determined in the Arbitration Award. Rather, each of the applicants had been a victim of a violation by Croatia of his fundamental rights set forth in the Convention. Their complaint plainly fell within the Court's jurisdiction.

116. The Slovenian Government found it important to show the larger picture of the present case. Notably, they submitted that at the end of 2017, after the border between the two countries had been settled by the Arbitration Award, Croatia had started to issue penalty notices against Slovenian fishermen in respect of their alleged illegal border crossings and fishing in Croatian waters. No such penalty notices had been issued before the end of 2017, although Slovenian fishermen had pursued the same activities in the area for years.

117. According to the information available, since the end of 2017, the Croatian authorities had issued almost 3,400 penalty notices in circumstances similar to those of the three applications, imposing fines on Slovenian fishermen in a total amount of more than 3 million euros. Those measures continued to have substantial negative effects on Slovenia's fishing industry and the means of subsistence of Slovenian fishermen. Since 2017, marine catches had declined by approximately 16%, and the number of vessels in the Slovenian fishing fleet had dropped by almost 20%.

118. The minor-offence proceedings instituted by the Croatian authorities had not been justified by any legislation implemented by Croatia before 2017, or any new legislation adopted by that country in 2017 or thereafter. Instead, the Croatian courts had started issuing penalty notices against the Slovenian fishermen solely because Slovenia, having duly implemented the Arbitration Award, had started enforcing its relevant legislation against Croatian fishermen.

119. The Slovenian Government argued that the acts and omissions of which the applicants had been convicted had not fallen under the territorial jurisdiction of Croatia. Nevertheless, having regard to the fact that Croatia had acted as if it had sovereignty over the maritime area concerned and had

conducted minor-offence proceedings against the applicants, its actions had fallen within the ambit of the Convention and its Article 1.

120. The Slovenian Government agreed that it was not the Court's role to delimit boundaries or maritime limits between High Contracting Parties. In any event, the Court was not required to do so in the present case; all it had to do was take due account of the fact that the maritime border between Croatia and Slovenia had been established in accordance with international law by the Arbitration Award with binding effect.

121. Indeed, in the Slovenian Government's view, Croatia's maritime border – and thus the limits of its territorial jurisdiction within the meaning of Article 1 of the Convention – was final and binding as a matter of international law. Croatia could not dispute the existence and the validity of the border delimited by the Arbitral Tribunal relying on its termination of the Arbitration Agreement. Any dispute regarding the termination of the Arbitration Agreement had already been settled by the Arbitral Tribunal (see paragraph 16 above).

122. In that connection the Slovenian Government pointed out that all Contracting Parties should abide by the rule-of-law standards and respect their obligations under international law (see *Grzęda v. Poland* [GC], no. 43572/18, § 340, 15 March 2022, and *N.D. and N.T. v. Spain*, cited above, § 109 and 190). A State could not rely on its own legislation or even constitutional rules to limit the scope of its international obligations.

123. In any event, the Croatian Constitution expressly confirmed that international treaties in force could be altered or repealed only under the conditions and in the manner specified therein or in accordance with the general rules of international law (see paragraph 57 above). Hence, even under the Croatian Constitution the Arbitration Agreement remained in force, given the fact that the Arbitration Agreement had not been repealed in accordance with the general rules of international law. It remained in force, and under Article 134 of the Croatian Constitution, it was a component of the domestic legal order and should have primacy over domestic laws.

124. The Slovenian Government further submitted that the maritime border as perceived by the Croatian authorities had not been established in accordance with applicable provisions of international law; those provisions had, on the other hand, been applied by the Arbitral Tribunal, in conformity with its mandate.

125. Notably, the Arbitral Tribunal had established that the Bay of Piran constituted internal waters and found that the delimitation of those waters had to be made by applying the principle of *uti possidetis*. Croatia was therefore simply wrong in asserting that the boundary in the Bay was on the equidistance line in accordance with international law.

126. Furthermore, Article 15 of the United Nations Convention on the Law of the Sea did not set the equidistance line as a default boundary between two countries' territorial seas in the absence of an agreement, as claimed by

Croatia. The second sentence of Article 15 made it clear that the equidistance line principle did not apply where it was necessary by reason of historic title or other special circumstances to delimit the territorial seas of two countries in a manner that was at variance with that principle (see paragraph 79 above).

127. The Slovenian Government further reiterated the applicants' arguments that no legal instrument within the Croatian legal system had validly and specifically determined the maritime border that the applicants had allegedly crossed (see paragraphs 103-105 above).

128. They added that the Croatian courts had relied exclusively on political statements and considerations concerning Croatia's negotiating position on the one hand (the 1999 Declaration – see paragraph 66 above), and the purported termination of the Arbitration Agreement on the other hand. However, it was manifestly arbitrary to construct criminal and minor offences and their essential elements in a self-serving and broad manner by taking into account political considerations and objectives, rather than the rules of domestic and international law and binding case-law (see *Streletz, Kessler and Krenz v. Germany* [GC], nos. 34044/96 and 2 others, §§ 77-89, ECHR 2001-II). Any such interpretation could not be considered to be foreseeable, independently of the fact that the political position of the Croatian Government had been reported in the media. The courts should not be submitted to pressure exercised through political statements.

(b) The Croatian Government's reply to the Slovenian Government's comments

129. The Croatian Government submitted that Croatia had taken all possible measures to resolve the border dispute with Slovenia, and to ensure that no incidents occurred and that no fishermen were sanctioned. However, given that Slovenia had been the first to start sanctioning Croatian fishermen, and had failed to cease that practice even after being urged several times to do so by the Croatian authorities, Croatia had had no choice but to respond with equal measures (see paragraph 21 above).

130. The legal provisions on which the applicants' minor offence convictions had been based had been clear and foreseeable to the applicants. Moreover, the Croatian authorities had not abruptly started sanctioning Slovenian fishermen. From 2014 onwards, the Croatian police had continuously warned Slovenian fishermen that they were unlawfully crossing the State border. On several occasions, the police had issued such warnings to the applicants themselves.

131. The Croatian Government submitted that it was clear from (1) the Declaration on the state of inter-State relations between the Republic of Croatia and the Republic of Slovenia (see paragraph 66 above); (2) the Rules on borders in the fishing sea of the Republic of Croatia, and the maps attached to those Rules (see paragraph 63 above), and (3) the official State maps published on the website of the Croatian Hydrographic Institute (see paragraph 65 above), that the maritime border between Croatia and Slovenia

lay at the equidistance line of the Bay of Piran until otherwise agreed by the two countries.

132. The Croatian Government disagreed that the Arbitration Award rendered by the Arbitral Tribunal on 29 June 2017 was binding and that it constituted a definitive settlement of their land and maritime boundary dispute with Slovenia. Furthermore, the Award, even if valid, could not by itself change the course of the border because it was not self-executing. Article 7 § 3 of the Arbitration Agreement required the parties to take steps to implement the award – including by means of revising national legislation – within six months after the adoption of the award (see paragraph 8 above). Without such implementation, the content of the Award could not have *ipso facto* changed the course of the border, and nor could the mere lapse of the six-month period have had such an effect. In the case at hand, the implementation of the Award had not taken place given the parties' fundamentally divergent views on the legal effects (if any) of the Arbitration Award. The CJEU had also noted that effect had not been given to the Arbitration Award (see paragraph 27 above).

133. Lastly, the Croatian Government disagreed with the assertion that the measures against Slovenian fishermen had had substantial negative effects on Slovenia's fishing industry. The statistical data indicated that the total catch of Slovenian fishermen had been in a decline since 2010/2011. Furthermore, in 2022 the Slovenian fishermen had caught 2% more fish, crabs and molluscs than in 2021.

(c) The applicants' reply to the Slovenian Government's comments

134. The applicants fully endorsed the Slovenian Government's submissions. They added the following in respect of the argument that their convictions in Croatia had not been foreseeable.

135. As to the fact that in 2014 the Croatian authorities had started notifying Slovenian fishermen that they were in Croatian waters, the applicants contended that in those warnings the Croatian authorities had not referred to the course of the State border, and in any event not any border validly determined under international law. More importantly, such notifications had not indicated that the Slovenian fishermen's conduct could constitute any unlawful act under Croatian law (see paragraph 10 above).

136. Lastly, the Croatian authorities had only started issuing penalty notices against the Slovenian fishermen at the end of 2017. The first applicant had received his first illegal border-crossing penalty notice at the end of November 2018 and had received his first illegal fishing penalty notice in late January 2019. The second applicant had received his first illegal border-crossing penalty notice in the first half of February of 2018 and had received his first illegal fishing penalty notice in the end of March 2018. The third applicant had received his first illegal border-crossing penalty notice in early

February 2018 and had received his first illegal fishing penalty notice in early March 2020.

3. The Court's assessment

137. At the outset, the Court notes that there is no disagreement between the parties that the minor offences of which the applicants were found guilty by the Croatian courts were of a criminal character, thus attracting the guarantees of Article 7 of the Convention (see paragraph 89 above). Having regard to its case-law on the matter (see for example, *Pantalon v. Croatia*, no. 2953/14, §§ 25-33, 19 November 2020), the Court sees no reason to hold otherwise.

138. The Court further considers that it is not necessary to examine the Government's preliminary objection that the applicants had suffered no significant disadvantage, since the applications are in any event inadmissible for the reasons set out below.

139. The general principles set out in the Court's case-law under Article 7 of the Convention are summarised in *Del Río Prada v. Spain* ([GC], no. 42750/09, §§ 91-93, ECHR 2013) and, most recently, in *Yüksel Yalçınkaya v. Türkiye* ([GC], no. 15669/20, §§ 237-242, 26 September 2023).

140. The Court's function under Article 7 § 1 of the Convention is therefore to assess whether there was a sufficiently clear legal basis, having regard to the applicable law at the material time, for the applicants' conviction. In particular, the Court will examine whether the applicants' convictions could reasonably have been foreseen by them (see *Vasiliauskas v. Lithuania* [GC], no. 35343/05, § 162, ECHR 2015).

141. The Court notes that the applicants complained under Article 7 of the Convention that their alleged acts and omissions had not constituted minor offences under Croatian law because they had not occurred on Croatian territory (see paragraph 80 above). It notes that, in their applications to the Court, the first and second applicants also advanced certain other arguments in support of their complaint under Article 7 of the Convention, including that the second applicant had held a permit to fish issued by Slovenia as the "corresponding coastal State" referred to in section 77(1)(5) of the Croatian Marine Fisheries Act, and that his actions had therefore not constituted an offence under section 78(1)(3) (see paragraph 114 above).

142. However, the Court notes that the first and second applicants did not pursue those specific arguments, since in all their subsequent submissions before the Court they argued specifically that their alleged acts and omissions had not constituted minor offences under Croatian law solely because they had never crossed the Croatian border or fished in Croatian sea (see paragraphs 97-112 above). Moreover, the applicants expressly confirmed that the issue of whether they had been entitled to fish in Croatian waters based on their Slovenian fishing permits in accordance with the EU regulation governing access of Slovenian fishermen to Croatian coastal

waters was irrelevant, since they had never entered or fished in Croatian waters (see paragraph 106 above). In any event, the Court notes the finding of the CJEU that the regime under which Slovenia would have access to the coastal waters of Croatia under Annex I to the Regulation no. 1380/2013 did not yet apply (see paragraphs 27 and 76 above) and the consequent finding of the domestic courts that Slovenia could therefore not be considered to constitute a "corresponding coastal State" under section 77(1)(5) of the Croatian Marine Fisheries Act (see paragraph 41 above).

143. The Court further notes that it is clear from the applicants' submissions that their complaint under Article 7 of the Convention is based on the premise that the maritime border between Croatia and Slovenia was determined by the Arbitration Award rendered on the basis of the Arbitration Agreement, which the two countries concluded in 2009 (see paragraphs 97-112 above).

144. It is also apparent from those submissions that the applicants are implicitly seeking a finding that a unilateral failure of Croatia to comply with the obligations arising from the Arbitration Agreement and from the Arbitration Award made on the basis of that Agreement, in particular the obligation to observe the border established in that Award, constitutes a breach of Croatia's obligations under international law and its own Constitution, and, consequently, cannot be lawful in the sense of Article 7 of the Convention.

145. The Court notes that the Arbitration Award was made by an arbitral tribunal established under a bilateral arbitration agreement governed by international law (see paragraph 8 above).

146. In that regard, the Court reiterates that the Convention and its Protocols should as far as possible be construed in harmony with the other rules of international law, of which they form a part (see, among other authorities, *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, § 55, ECHR 2001-XI; *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 150, ECHR 2005 VI; and *Hassan v. the United Kingdom* [GC], no. 29750/09, §§ 77 and 102, ECHR 2014).

147. More specifically, account should be taken of any relevant rules and principles of international law applicable in relations between the Contracting Parties (see, among other authorities, *Loizidou v. Turkey* (merits), 18 December 1996, § 43, *Reports of Judgments and Decisions* 1996-VI; *Al-Adsani*, cited above, § 55; *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi*, cited above, § 150; *Demir and Baykara*, cited above, § 67; and *Cyprus v. Turkey* (just satisfaction) [GC], no. 25781/94, § 23, ECHR 2014), which principles include that of *pacta sunt servanda*.

148. However, when referring to the provisions of other international instruments as in the current context, the Court is not seeking to review compliance with them as such; it is still examining the case under the

Convention or its Protocols (see, *mutatis mutandis*, *Tănase v. Moldova* [GC], no. 7/08, § 176 *in fine*, ECHR 2010).

149. In the present case the Court notes that Croatia fiercely contests the applicability and validity of the Arbitration Award in question. Indeed, by a *note verbale* of 30 July 2015, Croatia notified Slovenia that it was terminating the Arbitration Agreement and that the procedure under Article 65 of the Vienna Convention was applicable (see paragraph 13 above). That notification was also given to the Arbitral Tribunal on 31 July 2015 (see paragraph 14 above). Accordingly, from the time of that notification, Croatia withdrew from the arbitration proceedings and no longer took part in them.

150. The Court next notes that Article 7 § 3 of the Arbitration Agreement, which the two countries concluded in 2009, provides that the parties are to take all necessary steps to implement the arbitration award, including by revising national legislation, as necessary, within six months after the adoption of that award (see paragraph 8 above). It is not in dispute, as the CJEU has also observed in point 106 of its judgment (see paragraph 27 above), that effect has not been given to the Arbitration Award. Indeed, although Slovenia fully incorporated in its domestic legislation the border as established in the Arbitration Award (see paragraph 20 above), Croatia considers that the Award has no effect and continues to apply the Rules on borders in the fishing sea of the Republic of Croatia, which stipulate that, until the end of the delimitation process between the two countries, the maritime border extends along the equidistance line in the Bay of Piran (see paragraph 19 above).

151. In such circumstances, it should be noted that it is not for the Court to rule on the validity of Croatia's termination of the Arbitration Agreement, the competence of the Arbitral Tribunal to make the arbitration award, or the validity and legal effects of the Arbitration Award, as these are questions of public international law which do not fall within the Court's competence (see Article 32 of the Convention; see also, *mutatis mutandis, Plechkov v. Romania*, no. 1660/03, §§ 65 and 67, 16 September 2014, and *Ukraine v. Russia (re Crimea)* (dec.) [GC], nos. 20958/14 and 38334/18, § 348, 16 December 2020).

152. The Court notes, for comparison, that in the *Plechkov* case (cited above), the core question was whether or not the applicant had been in the exclusive economic zone of Romania, within the meaning of the United Nations Convention on the Law of the Sea, the parties drawing different conclusions regarding the lawfulness of the applicant's conviction according to the answer given to that question (see *Plechkov*, cited above, § 65). The Court held that it was not up to it to decide either on the interpretation of the United Nations Convention on the Law of the Sea or the relevant Romanian laws or on the application of those instruments by the Romanian courts. It could not have therefore decided on the existence or the extent of any

exclusive economic zone of Romania within the meaning of the relevant UN Convention or on the rights and obligations that Romania would have with regard to such an area (a conclusion reiterated in *Yaşar*, cited above, § 56). Its only task in the *Plechkov* case was to verify that the provisions of domestic law, as interpreted and applied by the domestic authorities, had not produced consequences incompatible with the Convention (see *Plechkov*, cited above, § 67). The Court went on to find a breach of Article 7 on the grounds that the domestic law did not fix with requisite precision the extent of the exclusive economic zone of Romania. Furthermore, there had been no established domestic jurisprudence that would have made the conviction of the applicant sufficiently foreseeable (ibid., §§ 68-76).

153. By contrast, in the present case the Court notes that the extent of the Croatian maritime waters is precisely defined in Croatian law.

154. Notably, the Rules on borders in the fishing sea of the Republic of Croatia, which have been published in the Official Gazette, stipulate that, until the end of the process of establishing the border with Slovenia, the maritime border extends at the equidistance line in the Bay of Piran, as specifically described in Article 5 of the Rules, and graphically depicted in the maps which form an integral part of those Rules (see paragraphs 63-64 above).

155. On the basis of those Rules and maps, as well as the fact that it is common knowledge that Croatia does not recognise that the maritime border was established by the 2017 Arbitration Award, the Court finds no basis for the applicants' argument that they could not foresee the possible legal consequences of their activities in the disputed waters as delimited by Croatia.

156. Furthermore, the Court notes that, unlike in *Plechkov*, the Croatian jurisprudence on the matter is abundant and consistent (see paragraph 68 above). The Court is of the view that the fact that two first-instance court judgments expressed an opinion that Slovenian fishermen were allowed to rely on the laws of their own country in respect of the border is not, in itself, a sign of contradiction (see paragraph 70 above). Namely, both of those judgments were quashed by the High Minor Offences Court (see paragraph 71 above).

157. The Court next notes that the bilateral border dispute has been ongoing for more than three decades, the two countries in the meantime having unsuccessfully resorted to bilateral negotiations and arbitration proceedings. The border dispute in question is undoubtedly a serious political one.

158. The present three applications can therefore by no means be viewed in disregard of that state of the matter, and certainly not as an isolated situation in which a random person engaging in maritime fishing might not have been aware of a border issue between two countries.

159. This argument is further reinforced by the fact that Slovenian fishermen have since 2014 been routinely warned by the Croatian police that

they are entering Croatian waters with their vessels and have been asked to leave (see paragraph 10 above).

160. It is true that the sanctioning of fishermen for illegal border-crossing and illegal fishing in Croatian waters only started in 2017, despite there not having been any change in the course of the maritime border as perceived by Croatia in that year. However, this was apparently so because in 2017 Slovenia implemented the border as established in the Arbitration Award and started sanctioning Croatian fishermen for illegal border-crossing and illegal fishing, leading the Croatian authorities to abandon their practice of tolerating Slovenian fishermen's actions in the disputed waters and to start issuing penalty notices as well (see paragraph 21 above).

161. In any event, the Court notes that each of the three applicants has been convicted of numerous minor offences of illegal border-crossing and illegal fishing. Specifically, the minor offences complained of in the present case were found to have been committed between December 2018 and December 2019 (see paragraphs 30, 32 and 34 above); whereas, according to their own submissions (see paragraph 136 above), the applicants received their first penalty notices as early as November 2018 (the first applicant) and February 2018 (the second and third applicants). Therefore, it could not be said that the applicants' convictions in the three sets of minor-offence proceedings complained of had been unforeseeable for them.

162. Having regard to the above findings, the Court considers that the applicants could have reasonably foreseen that their conduct in the disputed waters would constitute minor offences under the applicable Croatian legislation.

163. In the light of the above, the Court considers that the applications are manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and must accordingly be rejected pursuant to Article 35 § 4.

164. The Court would like to emphasise that this conclusion is without prejudice to any efforts of the two Member States to strive to bring their dispute as to the border matter to an end by using any peaceful means available. In that connection the Court notes that, independently of the border issue, the two countries are apparently seeking to find an agreement for their respective fishermen to be able to freely navigate and fish in the maritime waters concerned (see paragraph 69 above, *in fine*).

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 16 May 2024.

Hasan Bakırcı Section Registrar	Arnfinn Bårdsen President