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

SECOND SECTION

DECISION

Application no. 8464/23
Linda IWEN
against Germany

The European Court of Human Rights (Second Section), sitting on 26 November 2024 as a Committee composed of:

Péter Paczolay*, President*,
Anja Seibert-Fohr,
Gediminas Sagatys*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 8464/23) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 15 February 2023 by a German national, Ms Linda Iwen, who was born in 1943 and lives in Lindau ("the applicant") and was represented by Mr R. Eisele, a lawyer practising in Stuttgart;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns a refusal to grant a fishing licence for Lake Constance. The applicant is the widow of a professional fisherman who died in 2021 during the domestic court proceedings.

2. Fishing on Lake Constance is regulated by the multinational Bregenz Agreement of 1893. The implementation of the agreement is monitored by the International Lake Constance Fishery Commission (IBKF), which manages fishery in Lake Constance. Decisions made by the IBKF must be implemented in the national legal order and followed by the respective signatory states.

3. In 2015, the IBKF decided to reduce the overall number of fishing licences by 2020 in order to keep fishing economically viable for the holders of fishing licences, which had been endangered by a decrease of fish in the

lake. According to the decision, fishing licences could in principle no longer be granted if an applicant for a fishing licence had reached the age of 70. Afterwards, a so-called old-age fishing licence could be granted, which only permitted fishing in waters closer to the shores of the lake and with one net on the high seas.

4. The applicant's husband had been a fisherman since 1963 and had been granted fishing licences by the competent administrative authority on a yearly basis.

5. In 2015 the administrative authority informed the applicant's husband that it could not grant him a fishing licence for the following year, as he had reached the age of 70 in 2015. However, on 21 December 2015, he was granted another fishing licence for 2016 and later also for 2017 on the condition that he would apply for an old-age fishing licence for the following year. Finally, on 23 December 2017 the administrative authority refused the applicant's husband a fishing licence for 2018.

6. In 2018, the husband sued the State of Bavaria for a fishing licence, for lost earnings and for damages due to discrimination because of his age.

7. In 2019 the Regional Court dismissed the husband's claims, finding that a claim to a fishing licence could neither be deduced from Bavarian Fishing Law nor from decades of issuing practice. The Federal Court of Justice had explained in a judgment of 1960 on the Prussian fishing legislation that the fishing rights holder, being the owner of the water who grants the fishing licence, could not be bound by a previous issuing practice in order to remain able to adapt to changing circumstances. There had also been no obligation to contract with a fisherman and issue a fishing licence on the ground of his occupational freedom. Even though the refusal to issue a licence could be considered an interference with the applicant's husband's occupational freedom, such an interference was justified to protect the water quality, to care for the fish and the fishery. Furthermore, the applicant's husband could not claim damages on the ground of age discrimination, as the administrative authority had not based its decision on the sole reason of age; on the contrary, it had issued fishing licences to the applicant's husband for 2016 and 2017 taking into account his long-term fishing activities; the final refusal had not been based on the applicant's husband's age, but on the fact that he had been able to build up sufficient financial reserves in the previous 55 years.

8. In 2020, the Court of Appeal dismissed the applicant's husband's appeal, holding that the decrease in the amount of fish in Lake Constance and the obligation to care for the fish had required a reduction of fishing licences, which had been decided by the IBKF. Moreover, the applicant's husband's access to his profession as a fisherman had not been thwarted, as he could, admittedly with some efforts, continue his fishing activities in other waters. The argument that the applicant's husband had had the possibility to build up sufficient resources was reasonable and older fishermen could not generally

be favoured when granting licences, as this would result in discrimination against younger fishermen. The IBKF decision had not set up a rigid age limit but had been applied with flexibility by the administrative authority. Lastly, the husband had been offered the possibility of an old-age fishing licence in order to allow a smooth transition to retirement. The husband could not claim the fishing licence on the basis of a previous issuing practice, as the licences had been granted for one-year periods only and the maximum duration of a fishing licence was three years according to the respective law. He had therefore no legitimate expectation of being granted an indefinite fishing licence.

9. In 2021 the applicant's husband died and the applicant continued the proceedings before the Bavarian Supreme Court, which subsequently refused leave to appeal without providing reasons. It also declared the applicant's complaint of a violation of the right to be heard inadmissible for lack of substantiation.

10. On 12 December 2022 the Federal Constitutional Court refused to admit the applicant's constitutional complaint for adjudication without providing reasons (1 BvR 1605/22).

11. The applicant complained that the refusal of the fishing licence violated her husband's rights under Article 1 of Protocol No. 1 to the Convention. The refusal had also violated her and her husband's rights under Article 8 of the Convention and was discriminatory, in violation of Article 14 in conjunction with Article 8 and Article 1 of Protocol No. 1 to the Convention, in view of the age limit for fishing licences. Lastly, she complained under Article 6 of the Convention that the Bavarian Supreme Court had not provided reasons for refusing leave to appeal.

THE COURT'S ASSESSMENT

12. At the outset the Court notes that the applicant's complaints under Article 14, Article 1 of Protocol No. 1 and in parts under Article 8 of the Convention concern the rights of the applicant's deceased husband. The relevant case-law on *locus standi* regarding applications where the direct victim has died before the application was lodged has been summarised in *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* ([GC], no. 47848/08, §§ 98-100, ECHR 2014) and the Court recalled that it had accepted heirs as applicants if they had a legitimate interest in pursuing the application or on the basis of the direct effect on the applicant's own rights. However, if the rights claimed by the applicant belonged to the category of non-transferable rights, such as Articles 14 and Article 8 of the Convention, the legal heir could, in general, not claim to be the victim of a violation on behalf of a deceased relative.

13. The Court finds that the complaints regarding discrimination on grounds of age in the refusal of the fishing licence under Article 14 and under

Article 8, in so far as that complaint has been brought on behalf of the applicant's deceased husband, concern non-transferable rights. The application is therefore incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) in this regard and must be rejected in accordance with Article 35 § 4. The Court accepts, however, in return that the applicant has, as the sole heir of her deceased husband, a material interest in the outcome of the case and therefore standing before the Court in regard to the complaint under Article 1 Protocol No. 1.

14. Regarding the latter complaint the Court notes that the fishing licences had been granted for one-year periods only, that the maximum duration of a fishing licence was, according to the respective law, three years and that the domestic courts concluded that the applicant's husband had no legitimate expectation to be granted an indefinite fishing licence (see paragraphs 7 and 8 above). It considers it therefore already questionable whether the husband's expectation that a fishing licence would be granted was an asset protected by Article 1 of Protocol No. 1. However, the Court can leave this question open because the complaint is in any event inadmissible for another reason.

15. The Court considers that the domestic authorities' refusal to grant the fishing licence following a reduction in the number of available fishing licences amounted to a mere control of the use of possessions, within the meaning of the second paragraph of Article 1 of Protocol No. 1 (see *O'Sullivan McCarthy Mussel Development Ltd v. Ireland*, no. 44460/16, § 104, 7 June 2018, and *Posti and Rahko v. Finland*, no. 27824/95, § 76, ECHR 2002-VII). The interference was based on Section 26 of the Bavarian Fishing Law, as it stood at the relevant time, in conjunction with the publicly available decisions of the IBKF. The refusal of the licence following the reduction in the number of available fishing licences had the aims of protecting the water quality and fish population of Lake Constance as well as keeping fishing economically viable for the holders of fishing licences. The Court considers that these aims, in particular the aim of protecting the environment, fall within the notion of legitimate general interest (see *O'Sullivan McCarthy Mussel Development Ltd*, cited above, § 109, and *Posti and Rahko*, cited above, § 77).

16. To determine whether the interference complained of achieved a "fair balance" between the demands of the general interest and the requirements of the protection of the individual's fundamental rights, the Court would begin by pointing out that the applicant's husband was granted fishing licences for two more years after he had turned 70 and after he was informed, for the first time, that no further 'normal' fishing licences would be granted to him. In addition, the husband was informed that he could apply for an old-age fishing licence, which would have enabled him to continue professional fishing, even if in a more restricted way (see paragraphs 3 and 5 above). The Court therefore considers that the age limit introduced was, as stipulated in the IBKF decision and as applied by the domestic authorities, not a strict age limit

and still enabled the husband to continue as a professional fisherman. It further observes that the domestic courts took into account that the husband, in contrast to younger fishermen, had been able to acquire financial reserves over the previous 55 years, in which he was granted fishing licences (see paragraphs 7 and 8 above).

17. The Court further notes that the husband had not been granted an indefinite fishing licence but that it had been granted on a one-year basis for the previous 55 years (see paragraph 4 above). It also observes that with this practice of annual fishing licences the competent authority had not made use of the possible maximum period, which was three years under the law applicable at the material time. In this context the Court also takes into account the case-law of the Federal Court of Justice, according to which the fishing rights holder, that is the State of Bavaria in the present case, had to remain able to adapt to changing circumstances (see paragraph 7 above).

18. Regarding the legitimate aim pursued (see paragraph 15 above), the Court has often stated in its case-law that in today's society the protection of the environment is an increasingly important consideration. The environment is a cause whose defence arouses the constant and sustained interest of the public, and consequently of the public authorities. Financial imperatives and even certain fundamental rights, such as ownership, should not be afforded priority over environmental protection considerations (see *Hamer v. Belgium*, no. 21861/03, § 79, ECHR 2007-V (extracts)). Environmental protection policies confer on the State a margin of appreciation that is greater than when exclusively civil rights are at stake (see *O'Sullivan McCarthy Mussel Development Ltd*, cited above, § 124).

19. Having regard to the important legitimate aim pursued as well as to the wide margin of appreciation conferred on States in matters relating to environmental protection, the Court considers that the interference complained of was proportionate, and that a fair balance was struck between the general interests of the community and the right of the applicant's husband. In view of the foregoing, the Court concludes that the complaint under Article 1 of Protocol No. 1 is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

20. For the same reasons the Court also concludes that the complaint under Article 8, in so far as the applicant has brought it on her own behalf, is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

21. In so far as the applicant complained that the Bavarian Supreme Court had not provided reasons for its decision to refuse leave to appeal, the Court notes that, according to its established case-law, it is acceptable under Article 6 § 1 for superior courts to dismiss a complaint by mere reference to the relevant legal provisions if the matter raises no fundamentally important legal issue, particularly in cases concerning applications for leave to appeal (see *Harisch v. Germany*, no. 50053/16, § 35, 11 April 2019). It follows that

the applicant's complaint under Article 6 is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 19 December 2024.

Dorothee von Arnim Deputy Section Registrar	Péter Paczolay President