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THE FACTS

The applicant, Mr Huseyin Yildirim, is a Turkish national who was born in 1950. He was represented before the Court by Mr H. Kaplan, a lawyer practising in Istanbul.

The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant was the owner of a bus capable of transporting forty-eight persons. On 23 September 1999 the applicant hired his vehicle for one year to L., a company which was authorised under the rental agreement to take passengers to Turkey and all countries of Europe and Asia. L. further undertook to comply with "all limits and prohibitions imposed by Turkish and international legislation".

On 25 September 1999 the drivers of the bus, X and Y, were arrested in Brindisi (Italy) while illegally transporting thirty-two clandestine immigrants of Iraqi nationality. The applicant's bus was seized and was entrusted to a security guard.

In a judgment of 20 October 1999 the Brindisi District Court imposed on X and Y a sentence, negotiated with the prosecution, of one year and four months' imprisonment, suspended. Under Article 12 of Legislative Decree no. 286 of 25 July 1998, as amended by Article 2 of Legislative Decree no. 113 of 13 April 1999, the court ordered the confiscation of the bus.

On 8 February 2000 the applicant requested the return of his vehicle. He pleaded his good faith, declaring that he was not aware of the fact that X and Y had used his bus to commit an offence.

In a decision of 21 March 2000 the Brindisi District Court rejected the applicant's application. It observed that in the light of the principles of the Constitution and by analogy with what was provided in the general provision on confiscation (Article 240 of the Criminal Code) Article 12 of Legislative Decree no. 286 of 25 July 1998 was to be interpreted as excluding any deprivation of property where the object seized belonged to a person not linked to the offence (*se la cosa appartiene a persona estranea al reato*). It noted that in the case concerned the applicant had produced documents establishing that he was the owner of the bus seized. However, he had not duly proved his good faith, since there was at least a doubt about his participation in the offence committed by X and Y. In that connection the District Court noted that the rental agreement between the applicant and L. indicated that the bus was to be used "to take passengers abroad", a fact which did not exclude the possibility that the owner was aware that the

vehicle might be used for unlawful purposes. Moreover, two dates (23 September and 23 October 1999) appeared at the end of the document, so that it could not be asserted with certainty that the agreement had existed before the date of the offence (25 September 1999). Lastly, the applicant had not proved that vehicle hire was part of his normal occupation. In view of the use that had been made of it, the District Court considered that the vehicle's availability constituted a danger, and that justified its confiscation.

On 12 April 2000 the applicant appealed on points of law. He argued in particular that the District Court had wrongly reversed the burden of proof, obliging him to establish that he did not know about the unlawful use of his bus, with any doubt working to his detriment.

On 14 April 2000 the applicant asked the President of the Brindisi District Court to stay the destruction of his bus pending the decision of the Court of Cassation. That application was allowed on 17 April 2000.

In a judgment of 31 October 2000, deposited with its registry on 29 January 2001, the Court of Cassation dismissed the applicant's appeal. It observed that a person who had obtained pecuniary advantages as a result of the commission of an offence could not be considered to have had nothing to do with it (*estraneo al reato*). However, the case-law of the plenary division of the Court of Cassation protected "non-wrongful trust" (*affidamento incolpevole*) and affirmed the principle that the owner of the confiscated object could always prove his good faith by establishing that by exercising the diligence normally required in such matters he could not have known that his property was to be used illegally, and that he had done everything in his power to prevent such use. But the District Court had correctly taken the view that the applicant had not adduced the evidence in question, regard being had in addition to the fact that the local situation, characterised by frequent cases of clandestine immigration, called for special diligence on the part of the owner of a vehicle intended to take passengers abroad.

On 12 December 2000 the applicant's bus was destroyed.

COMPLAINTS

1. Relying on Article 1 of Protocol No. 1, the applicant complained of the rejection of his application for the return of his vehicle.

2. Relying on Article 6 §§ 1, 2 and 3 of the Convention, the applicant complained that the proceedings concerning the seizure and confiscation of his bus had been unfair and of an infringement of the principle of equality of arms.

3. Relying on Article 7 of the Convention, the applicant complained of the refusal to set aside the confiscation of his vehicle.

THE LAW

1. The applicant submitted that the refusal to return his vehicle amounted to an infringement of his right to the peaceful enjoyment of his possessions, as guaranteed by Article 1 of Protocol No. 1, which provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The applicant asserted in particular that he could not be held responsible for the offences with which the drivers of the bus had been charged.

The Court notes that the confiscation complained of undoubtedly constituted interference with the applicant's exercise of his right to the peaceful enjoyment of his possessions.

It further notes that the confiscation affected a possession which the courts had found to have been used unlawfully and was intended to prevent the applicant's vehicle from being used to commit other offences, to the community's detriment.

Thus, even though the measure in question led to a deprivation of possessions, it was an instance of control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1, which authorises States to enact "such laws as [they deem] necessary to control the use of property in accordance with the general interest" (see *AGOSI v. the United Kingdom*, judgment of 24 October 1986, Series A no. 108, pp. 17-18, § 51, and *Handyside v. the United Kingdom*, judgment of 7 December 1976, Series A no. 24, pp. 29-30, §§ 62-63).

According to the Court's case-law, an interference for the purposes of that paragraph must be prescribed by law and must pursue one or more legitimate aims; in addition, there must be a reasonable relationship of proportionality between the means employed and the aim or aims sought to be realised. In other words, the Court must determine whether a balance was struck between the demands of the general interest and the interest of the individual or individuals concerned (see *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, p. 26, § 69, and p. 28, § 73, and *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, p. 34, § 50). In doing so it leaves the State a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified in the general interest for the purpose of achieving the object of the law in question (see *AGOSI*, cited above, p. 18, § 52).

In that connection, the Court notes at the outset that the confiscation of the applicant's vehicle was ordered pursuant to Article 12 of Legislative Decree no. 286 of 25 July 1998, as amended by Article 2 of Legislative Decree no. 113 of 13 April 1999. It was therefore an interference prescribed by law.

Moreover, it pursued the legitimate aim of preventing clandestine immigration and trafficking in human beings, an aim which serves the general interest (see, *mutatis mutandis*, *Air Canada v. the United Kingdom*, judgment of 5 May 1995, Series A no. 316-A, pp. 17-18, §§ 41-42).

As regards the balance between that aim and the applicant's fundamental rights, the Court reiterates that, where possessions that have been used unlawfully are confiscated, such a balance depends on many factors, which include the owner's behaviour. It must therefore determine whether the Italian authorities had regard to the applicant's degree of fault or care or, at least, the relationship between his conduct and the offence which had been committed. In addition, it must be ascertained whether the procedure in the domestic legal system afforded the applicant, in the light of the severity of the measure to which he was liable, an adequate opportunity to put his case to the responsible authorities, pleading, as the case might be, illegality or arbitrary and unreasonable conduct (see, respectively, *AGOSI*, cited above, pp. 18-19, §§ 54-55, and pp. 20-21, §§ 58-60, and *Air Canada*, cited above, p. 18, § 46; see also, *mutatis mutandis*, *Arcuri and Others v. Italy* (dec.), no. 52024/99, ECHR 2001-VII, and *Riela and Others v. Italy* (dec.), no. 52439/99, 4 September 2001).

The Court notes that in its judgment of 31 October 2000 the Court of Cassation held that anyone who, like the applicant, had obtained pecuniary advantages following the commission of the criminal acts charged could not be considered to have had "nothing to do with the offence" and was therefore not worthy of protection. However, presumptions of fact or of law operate in every legal system and are not prohibited by the Convention, provided that they are reasonable and respect the rights of the defence (see *Arcuri and Others*, cited above, and, in the context of criminal proceedings, *Salabiaku v. France*, judgment of 7 October 1988, Series A no. 141-A, pp. 15-16, § 28 *in fine*; *Pham Hoang v. France*, judgment of 25 September 1992, Series A no. 243, p. 21, § 33; and *Butler v. the United Kingdom* (dec.), no. 41661/98, ECHR 2002-VI).

In the present case, the applicant was able to apply to the Brindisi District Court for the recovery of his vehicle and appeal on points of law against its rejection of his application. These proceedings, which concerned both the legality and the unarbitrary nature of the seizure and confiscation, were conducted adversarially, and the applicant had an opportunity of submitting the evidence and arguments which he thought necessary to protect his interests. Moreover, no irrebuttable presumption was applied to the applicant's detriment. On the contrary, he could have proved his good

faith or his "non-wrongful trust", and that would have led to restitution of his property. Nothing in the file suggests that the Italian courts assessed the evidence submitted to them by the applicant on that point arbitrarily.

That being so, and having regard to the margin of appreciation left to States concerning "the use of property in accordance with the general interest", particularly in connection with a crime-prevention policy, the Court concludes that the interference with the applicant's right to the peaceful enjoyment of his possessions was not disproportionate in relation to the legitimate aim pursued.

It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

2. The applicant contended that the proceedings concerning the seizure and confiscation of his vehicle had not been fair. He relied on Article 6 §§ 1, 2 and 3 of the Convention, the relevant parts of which provide:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> ..."

The Court must first determine whether the provision relied on is applicable in the present case.

It notes that the proceedings complained of concerned the seizure and confiscation of a vehicle that had been used to facilitate clandestine immigration. However, it should be noted that the offence of illegally transporting clandestine immigrants had been committed by others (X and Y) and that criminal proceedings concerning that offence were not brought against the applicant. He had certainly suffered from these measures, as regards his property rights, but that does not suffice to warrant the conclusion that he was "charged with a criminal offence" for the purposes of Article 6 (see *Air Canada*, cited above, pp. 19-20, §§ 52-55; *AGOSI*, cited above, p. 22, §§ 65-66; and, *mutatis mutandis*, *Butler*, cited above).

That provision is therefore not applicable in its criminal branch, and its second and third paragraphs, which concern the rights of persons charged with criminal offences, cannot be relied on in the present case.

It remains to be determined whether the proceedings against the applicant concerned "civil rights and obligations" within the meaning of the first paragraph of Article 6.

The Court observes in that connection that the proceedings complained of affected the applicant's right of property, which according to its case-law is a civil right (see *Sporrong and Lönnroth*, cited above, p. 29, § 79; *Raimondo v. Italy*, judgment of 22 February 1994, Series A no. 281-A, p. 20, § 43; *Arcuri and Others*, cited above; and *Riela and Others*, cited above). Article 6 § 1 is therefore applicable in its civil branch.

As regards the merits of the complaint, the applicant complained that he had not been informed of the seizure of his bus. He further submitted that the principle of equality of arms had been infringed, seeing that X and Y had been given suspended sentences, whereas the confiscation of the vehicle had not been set aside.

On the question of the alleged lack of information, the Court notes that the applicant quite clearly knew of the seizure of his vehicle, given that on 8 February 2000 he asked for its return. As the Court has just found in connection with Article 1 of Protocol No. 1, that application was first examined by the Brindisi District Court, and then by the Court of Cassation in adversarial proceedings in which the applicant had the opportunity of submitting the arguments he considered necessary for the presentation of his case. The fact that those arguments were rejected and that the confiscation complained of was not set aside cannot, in itself, infringe the principles of fair trial and equality of arms. It is not the Court's task to take the place of the domestic courts and it is for them to interpret legislation and assess the facts (see, among many other authorities, *Brualla Gómez de la Torre v. Spain*, judgment of 19 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2955, § 31, and *Edificaciones March Gallego S.A. v. Spain*, judgment of 19 February 1998, *Reports* 1998-I, p. 290, § 33). The Court is therefore not empowered to substitute its own assessment of the facts and domestic law for that of the domestic courts.

It follows that this complaint is partly incompatible *ratione materiae* with the provisions of the Convention and partly manifestly ill-founded, and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

3. The applicant complained of the refusal to set aside the confiscation of his vehicle. He relied on Article 7 of the Convention, whose first paragraph provides:

> "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. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed."

The applicant alleged that, as the confiscation was a "secondary penalty", it should have been suspended on account of the suspension of the principal penalty granted to X and Y.

The Court must first determine whether the confiscation in question constituted a "penalty" within the meaning of Article 7 § 1 of the Convention. The wording of that provision indicates that the starting-point in any assessment of the existence of a penalty is whether the measure in issue is imposed following conviction for a "criminal offence" (see *Welch v. the United Kingdom*, judgment of 9 February 1995, Series A no. 307-A, p. 13, § 28).

In the present case the applicant had not previously been found guilty of any criminal offence by the Italian courts. Moreover, the Court has just found that the proceedings relating to the seizure and confiscation of the bus did not concern a "criminal charge" against the applicant.

Accordingly, it cannot be concluded that the confiscation in issue involved a finding of guilt subsequent to a criminal charge; it therefore did not constitute a "penalty" within the meaning of Article 7 of the Convention (see, *mutatis mutandis*, *M. v. Italy*, no. 12386/86, Commission decision of 15 April 1991, Decisions and Reports 70, pp. 59 and 93-98). That provision is accordingly not applicable in the case.

It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3, and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court unanimously

Declares the application inadmissible.