

FISHING RIGHTS PROCEDURE AT THE EUROPEAN COURT OF HUMAN RIGHTS: *SPASOV V ROMANIA* (2022)

MEDY DERVOVIC,* STEFAN KIRCHNER,† ANGHARAD DOWNES‡

*In recent years, it has increasingly been recognized that work at sea often raises questions concerning the protection of human rights. This is also the case in the context of fishing. While human rights issues on commercial fishing vessels are gaining attention, fishing activities of individuals and small crews are also connected to human rights—for example, regarding the implementation of fisheries policies. In December 2022, the European Court of Human Rights (ECtHR) ruled in the case of a fisherman from Bulgaria who had worked in Romania’s Exclusive Economic Zone (EEZ) in the Black Sea. Bulgaria and Romania are both members of the European Union (EU), and the EU’s Common Fisheries Policy (CFP) applied to the applicant’s work. He alleged that Romania implemented the CFP incorrectly and, in doing so, violated his human rights. This article analyzes the case of *Spasov v Romania*, which, as of late 2023, is available on the ECtHR’s website in French. The core issues of the case are placed in the context of the CFP and the relationship between the EU and the ECHR. It will be shown that the ECHR remains a potent tool for the protection of human rights at sea as well, including in the EEZ, where the coastal State exercises jurisdiction within the meaning of Article 1 ECHR.*

1 INTRODUCTION

European Union (EU) law creates direct rights for EU citizens and obligations for States. This is also the case in the context of the EU’s Common Fisheries Policy (CFP). In a 2022 case, *Spasov v Romania*,¹ the European Court of Human Rights (ECtHR) ruled on the human rights implications of improper implementation of the CFP by Romania with regard to a citizen of Bulgaria who was engaged in fishing activities in the Black Sea. The ECtHR in particular had to answer the question of whether an incorrect implementation of the CFP resulted in a violation of the applicant’s rights under Article 6(1) of the European Convention on Human Rights² (ECHR) and Article 1 of the (first) Protocol to the ECHR,³ which protect,

* Ph.D. Candidate, Reykjavík University, Reykjavík, Iceland, Visiting Researcher, Arctic Centre, University of Lapland, Rovaniemi, Finland, Researcher, Stefansson Arctic Institute, Akureyri, Iceland

† Government Advisor, Frankfurt/Rhein-Main, Germany, Dosentti (Adjunct Professor), University of Lapland, Rovaniemi, Finland.

‡ University of Akureyri, Faculty of Law, Akureyri, Iceland.

¹ *Spasov v Romania* App no 27122/14 (ECtHR, 6 December 2022) para 5.

² Convention for the Protection of Human Rights and Fundamental Freedoms, adopted 4 November 1950, entered into force 3 September 1953, ETS no 5 (ECHR) <<https://rm.coe.int/1680a2353d>>, consolidated version available at <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 4 December 2023.

³ Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol 11, adopted 20 March 1952, entered into force in the amended version with the entry into force of Protocol 11, European Treaty Series no 155, 1 November 1998, ETS no 9 <https://www.echr.coe.int/documents/d/echr/Library_Collection_P1postP11_ET5009E_ENG> accessed 4 December 2023 (hereinafter: ECHR-P1).

respectively, the right to a fair trial and the enjoyment of one's possessions.

In this article, the interlinkages between human rights and fishing law are outlined. Using the aforementioned judgment of December 2022 as an example,⁴ it is shown that human rights continue to play an important role in maritime activities.

The authors acknowledge that most readers will be well-versed in the European system of human rights protection. However, because of the interlinkages between human rights and fishing law, the analysis of this case is also of interest to a different readership: experts in law of the sea. It is, therefore, appropriate to briefly present the European Convention on Human Rights, the European Court of Human Rights, and their interactions with the European Union.

2 PROCEEDINGS BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS IN *SPASOV v ROMANIA*

2.1 THE EUROPEAN CONVENTION ON HUMAN RIGHTS

The European Convention on Human Rights is an international treaty to which 46 European States are parties. Created within the framework of the Council of Europe (CoE) in the aftermath of World War II, the ECHR was adopted in 1950 and entered into force in 1953. Since then, the system of human rights protection that is enshrined in the ECHR and its Protocols has become the most practically relevant regional human rights system. The focus of the ECHR is on civil and political rights, and it is supplemented by a number of protocols that amend and modify the Convention. Rights that are included in the Protocols enjoy the same legal status as rights that are included in the text of the Convention itself.

2.2 THE EUROPEAN COURT OF HUMAN RIGHTS

While it is up to the States that have ratified the ECHR to implement the Convention in everyday practice, it is the ECtHR that is at the heart of the European human rights system. The ECHR applies to everybody who finds themselves within the jurisdiction of any of the States that are parties to the Convention.⁵ The creation of the ECHR provided a landmark event in the history of international law as it allows individuals to sue States directly in an international court. In order to access the ECtHR, it is in principle necessary to first go through the entire national legal system of the respondent State and to exhaust all judicial remedies that are available there,⁶ up to the highest courts of the land, such as supreme or constitutional courts. After that, the applicant can bring a case to the ECtHR, directly suing the State in question over alleged violations of human rights.

The decisions of the ECtHR are binding on the parties to the dispute, i.e., only *inter partes*, but all States that are parties to the ECHR have to interpret the Convention and its Protocols according to the interpretation provided by the ECtHR.⁷ For this reason, following

⁴ At the time of writing, end of 2023, the judgment was only available in French in the ECtHR's HUDOC database.

⁵ *ibid* Art 1.

⁶ *ibid* Art 35 para 1.

⁷ European Court of Human Rights, 'High Level Conference on the Future of the European Court of Human Rights, Brighton Declaration' (2012) para 10

the jurisprudence of the ECtHR is essential to ensure compliance with the ECHR and also by those States that were not involved in the case decided by the ECtHR.

In its judgments, the ECtHR finds a violation of the Convention and its Protocols – or not. What the Court provides is such a finding and possibly, in case of a violation, a ruling on compensation owed to the victim by the State that violated the Convention.⁸ It is then up to the respondent State to remedy the situation that the ECtHR found to be at odds with the obligations of the State in question under the ECHR. The implementation of judgments is then supervised by the CoE's Council of Ministers. In practice, the rate of compliance with the judgments of the ECtHR is high, although the situation is not uniform among all countries.⁹ As a general rule, States tend to implement judgments of the ECtHR.

2.3 THE ECHR AND THE EUROPEAN UNION

The Council of Europe is entirely independent of the EU, although both institutions share the European flag and the locations of the European Parliament, European Court of Human Rights, and the main building of the Council of Europe are very close to each other in Strasbourg, on different banks of the Ill River. Legally, the ECtHR is independent of the EU – and the EU is independent of the ECtHR. It has been discussed for a long time whether the EU should become a party to the ECHR.¹⁰ However, EU law actually requires the European Union to become a party to the ECHR: Article 6(2) of the Treaty on European Union¹¹ (TEU) States that '[t]he Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the treaties'.¹² This norm is a consequence of the Treaty of Lisbon,¹³ which in turn was a reaction to the failed attempt at creating a Constitution for the European Union.¹⁴ Today, many of the ideas that were contained in the draft Constitution are included in the TEU. Article 6(1) TEU gives the Charter of Fundamental Rights the same legal force as the TEU and the Treaty on the Functioning of the European Union (TFEU),¹⁵ creating a quasi-constitutional triad of EU law. In addition, Article 6(3) TEU states that '[f]undamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the

<https://www.echr.coe.int/documents/2012_brighton_finaldeclaration_eng.pdf> accessed 4 December 2023.

⁸ ECHR (n 2) Art 41.

⁹ Compliance is a particular concern with regard to Turkey and in the past was a concern with regard to the Russian Federation. The latter has been expelled from the Council of Europe in 2022 and the ECHR no longer applies to Russia, see Stefan Kirchner, 'Russia After the European Convention on Human Rights' [2022] Edilex <<https://www.edilex.fi/artikkelit/26747>> accessed 4 December 2023.

¹⁰ On the legal relationship between Charter and Convention, see Stephen Brittain, 'The Relationship Between the EU Charter of Fundamental Rights and the European Convention on Human Rights: An Originalist Analysis' (2015) 11(3) European Constitutional Law Review 482.

¹¹ Consolidated Version of the Treaty on European Union [2012] OJ C326/13 (TEU).

¹² *ibid* Art 6 para 2.

¹³ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community [2007] OJ C306/1.

¹⁴ Draft treaty establishing a constitution for Europe [adopted but not ratified, did not enter into force] [2004] OJ C310/1.

¹⁵ Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/47 (TFEU).

constitutional traditions common to the Member States, shall constitute general principles of the Union's law'.¹⁶ In recent years this discussion on the potential accession of the EU to the ECHR has become less relevant, although Article 6(2) TEU is still binding law (albeit only with the wording 'shall'). The key reason for this shift was the Opinion 2/13 of the European Court of Justice (ECJ) of 18 December 2014,¹⁷ in which the ECJ found that the accession instrument was incompatible with the TEU.

The CoE's European Court of Human Rights and the EU's European Court of Justice have found an elegant solution to this issue through a duplication of norms and a parallel interpretation of said norms: the EU has created its own Charter of Fundamental Rights.¹⁸ Many of the rights contained therein are also protected under the ECHR and its Protocols. In order to advance the effective protection of human rights in Europe, the ECJ and the ECtHR interpret the relevant norms in parallel,¹⁹ meaning that discrepancies between the normative contents regarding the rights that are protected both in the Charter and in the Convention are avoided. Because the same rights are protected under the ECHR and the EU Charter, it is therefore no longer necessary for the EU to become a party to the ECHR in order to ensure a level of human rights protected vis-à-vis the European Union that is 'equivalent'²⁰ to the protections provided by the Convention and its Protocols.

It is because of this practical identity of content between the EU Charter and ECHR that matters of EU law and its implementation on the national level are also a concern from the perspective of the ECHR. This was also the case in the situation that led to the ECtHR's judgment in *Spasov*.

3 FACTS OF THE CASE

3.1 FISHING ACTIVITIES

The applicant, Mr. Hristo Spasov, is a Bulgarian citizen who is the owner and captain of a fishing vessel registered with the Bulgarian authorities, flying the Bulgarian flag,²¹ and in possession of a Bulgarian license and authorization to engage in fishing activities.²² The fishing vessel was crewed by nine other Bulgarian citizens as well as Mr. Spasov, and operated in the European Union waters of the Black Sea.²³ On 13 April 2011, while fishing turbot at

¹⁶ TEU (n 11) Art 6 para 3.

¹⁷ Opinion 2/13 *Adhésion de l'Union à la CEDH* EU:C:2014:2454.

¹⁸ Charter of Fundamental Rights of the European Union [2012] OJ C326/391.

¹⁹ Joint Communication from Presidents Costas and Skouris (*Court of Justice of the European Union*, 24 January 2011) <https://curia.europa.eu/jcms/upload/docs/application/pdf/2011-02/cedh_cjue_english.pdf> accessed 4 December 2023. See also Edita Gruodytė and Stefan Kirchner, 'The Contribution of the European Charter of Human Rights to the Right to Legal Aid' in Tanel Kerikmäe (ed), *Protecting Human Rights in the EU: Controversies and Challenges of the Charter of Fundamental Rights* (Springer 2014) 73; Edita Gruodytė and Stefan Kirchner, 'Legal Aid for Intervenors in Proceedings Before the European Court of Human Rights' (2016) 2(1) *International Comparative Jurisprudence* 36, 38.

²⁰ *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v Ireland* App no 45036/98 (ECtHR, 30 June 2005) para 156.

²¹ *Spasov v Romania* (n 1) para 5.

²² *Spasov v Romania* (n 1) paras 10 and 105.

²³ *ibid.* As per the 2002 Common Fisheries Policy, 'Community waters' ('European Union waters' now) refer to waters under the sovereignty or jurisdiction of the Member States apart from the overseas countries and territories listed in Annex II of the Treaty on the Functioning of the European Union – Council Regulation (EC) no 2371/2002 of 20 December 2002 on the Conservation and Sustainable Exploitation of Fisheries

a distance upward of 20 nautical miles (nm) from the Romanian coast, i.e., in the Romanian exclusive economic zone (EEZ), the ship was controlled by the Romanian coast guard.²⁴ During their control, the Romanian coast guard found onboard two dozen turbot and a fishing net which had mesh smaller than that required by Romanian law regarding turbot fishing in the Black Sea.²⁵ The crew lifted more nets out of the waters at the request of the coast guards.²⁶ The fishing vessel was then escorted to the closest Romanian port.²⁷

3.2 ROMANIAN LICENSE REQUIREMENTS

At the time of the arrest, there were three pertinent pieces of Romanian legislation which were subsequently taken into account during the trials at the Court of Mangalia and then the Court of Appeal. The first was the national legislation No. 36/2002,²⁸ previously national legislation No. 17/1990, which entered into force on 31 January 2002. Article 1 of said legislation states that the jurisdiction over Romanian internal waters, territorial sea, contiguous zone, and exclusive economic zone should conform with the dispositions set out by the 1982 United Nations Convention on the Law of the Sea (UNCLOS).²⁹ According to Article 14(1) of the Romanian law No. 36/2002, Romania can ensure the optimal use of fisheries and other biological resources within its EEZ by taking technical measures or any other measure required to help with the conservation and management of the waters.³⁰ Competent Romanian authorities do this by setting total allowable catch quotas, using satellite observations of fishing activities, inspecting and seizing non-compliant ships, and instigating legal proceedings against offenders.³¹

The Romanian government adopted emergency ordinance No. 23/2008 concerning fishing and aquaculture activities on 10 March 2008.³² The right to fishing in waters under Romanian jurisdiction became contingent on the procurement of a license delivered by the Romanian National Fishing and Aquaculture Agency.³³ Fishing without a license, using fishing nets with mesh that do not meet the minimum requirements, using industrial fishing equipment without authorization, and fishing with illegal equipment became legal offenses punishable with a fine or imprisonment and a temporary fishing ban.³⁴ Fishing vessels and

under the Common Fisheries Policy [2002] OJ L358/59 (2002 CFP). For a more detailed discussion of the geographical scope of the European Union in the implementation of the 1982 United Nations Convention on the Law of the Sea, see Esa Paasivirta, 'The European Union and the United Nations Convention on the Law of the Sea' (2015) 38(4) *Fordham International Law Journal* 1045, 1068 et seq.

²⁴ *Spasov v Romania* (n 1) para 6.

²⁵ *ibid.*

²⁶ *ibid.*

²⁷ *ibid* para 7.

²⁸ Romanian National Legislation no 36/2002 of 31 January 2002 (previously national legislation no. 17/1990), on the Legal Regime of Internal Waters, Territorial Sea and Contiguous Zone of Romania in the Black Sea (reproduced in *Spasov v Romania* (n 1) para 53).

²⁹ *ibid* Art 1.

³⁰ *ibid* Art 14 para 1.

³¹ *ibid* Art 14 para 2.

³² Romanian Emergency Ordinance no. 23/2008 of 10 March 2008 concerning Fishing and Aquaculture Activities (in *Spasov v Romania* (n 1) paras 55-57).

³³ Romanian Emergency Ordinance no. 23/2008 (n 32) Art 16; see *Spasov v Romania* (n 1) para 56.

³⁴ Romanian Emergency Ordinance no. 23/2008 (n 32) Art 64 paras a, i, k and art 65 para 1b; see *Spasov v Romania* (n 1) para 57.

fishing equipment could also be seized if they were utilized in illegal fishing activities.³⁵

Decree No. 36 laid down by Romania's Ministry of Agriculture on 10 February 2011, and in force at the time of the arrest, concerned the fishing of turbot in the Black Sea.³⁶ The possession of a Romanian fishing license obtained from the National Fishing Agency was obligatory, and the specific size of netting to be used for turbot fishing was specified.

3.3 THE APPLICANT'S CLAIMS

The overarching claim of the applicant was that Romanian courts erred in their application of European law vis-à-vis fishing rights within European waters. More specifically, the applicant claimed Romanian courts manifestly interpreted and applied the Common Fisheries Policy in an erroneous manner, which led to a violation of his right to a fair trial.³⁷ He also alleged that the Romanian Court infringed upon his right not to be deprived of his possessions by imposing financial sanctions upon him and prohibiting him (temporarily) from pursuing his fishing activities in Romanian waters.³⁸

Based on the foregoing, it is necessary to analyze the Common Fisheries Policy and Romania's application of its domestic law and European law in this regard.

3.4 INDIVIDUAL RIGHTS UNDER THE EU'S COMMON FISHERIES POLICY (CFP)

The genesis of a common fisheries policy in Europe started in 1970.³⁹ Numerous developments ensued, inter alia, in 1983,⁴⁰ 1992,⁴¹ 2002,⁴² and up to the 2013 reform.⁴³ Considering the temporal elements of *Spasov v Romania*, and as rightly pointed out by the ECtHR,⁴⁴ the appropriate version of the Common Fisheries Policy (CFP) for this case is the Council Regulation (EC) No. 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy.

As its name suggests, the 2002 CFP is a European regulation;⁴⁵ hence, it is a normative

³⁵ Romanian Emergency Ordinance no. 23/2008 (n 32) Art 66; see *Spasov v Romania* (n 1) para 57.

³⁶ Ministry of Agriculture Decree no. 36 of 10 February 2011 regarding Turbot Fishing in the Black Sea (in *Spasov v Romania* (n 1) para 58).

³⁷ *Spasov v Romania* (n 1) para 75.

³⁸ *ibid* paras 100 and 103.

³⁹ Regulation (EEC) no 2141/70 of the Council of 20 October 1970 Laying Down a Common Structural Policy for the Fishing Industry [1970] OJ L236/1. See also Irina Popescu, 'The Common Fisheries Policy: Origins and Development' (2023) Fact Sheets on the European Union <https://www.europarl.europa.eu/erpl-app-public/factsheets/pdf/en/FTU_3.3.1.pdf> accessed 4 December 2023.

⁴⁰ Council Regulation (EEC) no 170/83 of 25 January 1983 Establishing a Community System for the Conservation and Management of Fisheries Resources [1983] OJ L24/1.

⁴¹ Council Regulation (EEC) no 3760/92 of 20 December 1992 Establishing a Community System for Fisheries and Aquaculture [1992] OJ L389/1.

⁴² 2002 CFP (n 23).

⁴³ Regulation (EU) no 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, Amending Council Regulation (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 [2013] OJ L354/22.

⁴⁴ *Spasov v Romania* (n 1) para 67.

⁴⁵ Lorna Woods and Philippa Watson, 'Scope of the EU Treaty: Laws and Lawmaking' in Lorna Woods and Philippa Watson, *Steiner & Woods EU Law* (12th edn, Oxford University Press 2014) 63–64.

act of general application that is entirely binding and directly applicable in all Member States according to Article 288 TFEU.⁴⁶ In parallel, the principle of primacy of EU law over the municipal laws of Member States is a cornerstone of the EU legal order, which originated from case law.⁴⁷ It indicates that in case of a conflict of laws between European and domestic provisions, EU law shall prevail over domestic law.⁴⁸ Based on its case law, the ECtHR reaffirms the primacy of EU law over domestic law.⁴⁹

In its reasoning, the ECtHR mentions Articles 1 on the scope of the CFP, 3 on definitions, 8 on Member State emergency measures, and 17 on general rules as relevant legal provisions of the 2002 CFP in this case.⁵⁰ A clear distinction emerges from these provisions between the individual rights of Member States on the one hand and the individual rights of Community fishing vessels (*i.e.*, vessels flying the flag of a Member State, registered in the European Community, and equipped for the commercial exploitation of available and accessible living marine aquatic species)⁵¹ on the other hand.⁵²

The right of Member States to adopt emergency measures in regard to fisheries in waters under their sovereignty or jurisdiction is not absolute. It is subject to circumstantial and procedural elements described in Article 8 of the 2002 CFP. Paragraph 1 provides that emergency measures can only be taken ‘if there is evidence of a *serious* and *unforeseen* threat to the conservation of living aquatic resources, or to the marine ecosystem *resulting from fishing activities*’ (emphasis added). Moreover, such measures cannot be valid for more than three months.⁵³ Prior to the adoption of an emergency measure, the Member State must communicate its intention to adopt it by notifying the European Commission, other Member States, and Regional Advisory Councils established in 2004.⁵⁴

For ten years and until 31 December 2012, Article 17(2) of the 2002 CFP allowed Member States to restrict access for fishing in their territorial seas to ‘fishing vessels that traditionally fish in those waters from ports on the adjacent coast’.⁵⁵ Annex I of the 2002 CFP lists geographic areas, species, and other conditions, such as fishing seasons.⁵⁶ Romania and Bulgaria are neighboring (or adjacent) States due to their shared terrestrial and maritime

⁴⁶ TFEU (n 15) Art 288. See also Lorna Woods and Philippa Watson, ‘Principles of Direct Applicability and Direct Effects’ in Lorna Woods and Philippa Watson, *Steiner & Woods EU Law* (12th edn, Oxford University Press 2014) 110.

⁴⁷ M Elvira Méndez-Pinedo, ‘Constructing the Supremacy of Union Law: Classic Narrative of the ECJ and the EU Constitutional Perspective’ in M Elvira Méndez-Pinedo and Ólafur Ísberg Hannesson (eds), *The Authority of European Law: Exploring Primacy of EU Law and Effect of EEA Law from European and Icelandic Perspectives* (Bókaútgáfan Codex 2012). See also Lorna Woods and Philippa Watson, ‘Principle of Supremacy of EU Law’ in Lorna Woods and Philippa Watson, *Steiner & Woods EU Law* (12th edn, Oxford University Press 2014) 85–104.

⁴⁸ *Spasov v Romania* (n 1) paras 59–61.

⁴⁹ *ibid* para 93.

⁵⁰ *ibid* para 67.

⁵¹ 2002 CFP (n 23) Art 3 paras (b)–(d).

⁵² Note that the 2002 CFP provides for additional rights not relevant in *Spasov v Romania* case due to the factual elements described above.

⁵³ 2002 CFP (n 23) Art 8 para 1.

⁵⁴ *ibid* Art 8 para 2. On the Regional Advisory Councils, see 2002 CFP (n 23) Arts 31–32; Council Decision 2004/585/EC of 19 July 2004 Establishing Regional Advisory Councils under the Common Fisheries Policy [2004] OJ L256/17; Ronán Long, ‘The Role of Regional Advisory Councils in the European Common Fisheries Policy: Legal Constraints and Future Options’ (2010) 25(3) *The International Journal of Marine and Coastal Law* 289.

⁵⁵ 2002 CFP (n 23) Art 17 para 2.

⁵⁶ *ibid* Annex I.

boundaries. However, neither of the two made use of Article 17(2).

The right to equal access for Community fishing vessels enshrined in the CFP is twofold.⁵⁷ It encompasses both access to Community waters (i.e., waters under the sovereignty or jurisdiction of the Member States apart from the overseas countries and territories listed in Annex II of the Treaty on the Functioning of the European Union)⁵⁸ and access to living aquatic resources therein subject to, inter alia, the carrying on board of a valid fishing license and other requirements.⁵⁹ Furthermore, this right functions within the logic of non-discrimination contained in the founding treaties of the European Union.⁶⁰ In the exercise of these rights, Community fishing vessels shall respect the conditions and measures implemented by Member States in accordance with the 2002 CFP.

3.5 APPLICATION OF EU LAW BY ROMANIA

During Spasov's trial in Romania, the judgments delivered by the Court of Mangalia differed greatly from the judgment made by the Court of Appeal of Constanta. The logic, argumentation, and legislation used showed two opposite approaches to the relationship between Romanian national law and EU law.

The Court of Mangalia was the first to pass judgment on 18 October 2011. The Court acquitted Spasov as he possessed all the necessary documents according to the Common Fisheries Policy.⁶¹ In virtue of this policy, especially Article 17(1) of the 2002 CFP, there was no need for a Romanian fishing license to be authorized to fish in the EEZ.⁶² The Court could not fault the defendant for the use of unauthorized equipment because there was no proof the equipment taken out of the water at the request of the coast guard belonged to the applicant, and the net found aboard fit the requirements for general industrial fishing and was only banned under Romanian law for turbot fishing.⁶³ Due to the conservation status of the species and the low yield, the use of such nets was not a criminal offense and thus only incurred an administrative fine. After an appeal by both parties, the tribunal of Mangalia offered the judgment of 12 February 2013 which stated that the applicable legal regime in Romania's Black Sea EEZ was the Common Fisheries Policy and reminded the parties of the 2002 CFP, which clearly expresses the principle of free access to Member States' fishing areas for all Community vessels holding a fishing license issued by a Member State.⁶⁴ Thus, access to EU Members' fishing areas beyond 12 nm from their coast was authorized for ships of Member States carrying a Member State license, and Spasov was not engaging in illegal activities as he was the owner of a Community vessel and was fishing further than 12 nm from the Romanian coast with the correct documentation.⁶⁵ Spasov was not found guilty of

⁵⁷ *ibid* Art 17 para 1.

⁵⁸ *ibid* Art 3 para (a); TFEU (n 15) Annex II.

⁵⁹ 2002 CFP (n 23) Art 22 para 1.

⁶⁰ TEU (n 11) Art 2; TFEU (n 15) Art 18; Juliette Bouloy, 'L'Exploitation des Ressources Halieutiques (La Pêche)' in Mathias Forteau and Jean-Marc Thouvenin (eds), *Traité de Droit International de la Mer* (Éditions A Pedone 2017) 732.

⁶¹ *Spasov v Romania* (n 1) para 17.

⁶² *ibid*.

⁶³ *ibid* para 18.

⁶⁴ *Spasov v Romania* (n 1) paras 30–31.

⁶⁵ *ibid* paras 33–34.

illegal fishing, but the administrative fine remained.⁶⁶

The Court of Mangalia took both national (Decree No. 36 of the Ministry of Agriculture) and EU law (the 2002 CFP) into consideration but acknowledged that the 2002 CFP is the legal document which should be taken into consideration for this issue, as the initial activities took place within the Romanian Black Sea EEZ, which is a part of the Community waters, and is thus under the EU legal regime.

The Court of Appeal of Constanta took a different approach to the case by contending that national regulations took precedence over EU regulations. On 21 December 2011, the Court of Appeal accepted the appeal of the prosecution on the premise that in the absence of a bilateral treaty between Romania and Bulgaria, the Court should have justified its use of Article 17(1) of the 2002 CFP over the use of national legislation and UNCLOS.⁶⁷

The final judgment of the Court of Appeal of 2 October 2013 invalidated the first judgment of 18 October 2011, arguing that the tribunal of Mangalia had erroneously based their judgment on the EU's Common Fisheries Policy since the Romanian Black Sea EEZ was in fact under the legal regime of UNCLOS and Romanian national jurisdiction.⁶⁸ The Court reasoned that, because Romanian national legislation had established sovereign rights over this maritime area within national legislation No. 36/2002, ships flying the Bulgarian flag in the area were under Romanian jurisdiction and thus obligated to follow Romanian legislation.⁶⁹ As such, Spasov, who did not possess a Romanian fishing license, was guilty of fishing illegally. The Court also refuted the claims of legality under the 2002 CFP, as they claimed these regulations did not offer an obstacle to the Romanian legislation obligating vessels to hold a Romanian license.⁷⁰ According to the Court of Appeal, Article 17 of the 2002 CFP allowed vessels flying a Member State flag to enjoy freedom of equal access to the EU maritime resources, but that the right to fish was neither free nor unlimited.⁷¹ They also argued that the Romanian national legislation regarding turbot met the requirements set by Article 8 of the 2002 CFP.⁷² Leaning on the conclusions of the Romanian Marine Research Institute, the tribunal judged that the fishing undertaken by Spasov was poaching and that it put in danger the balance of the marine ecosystem.⁷³ Spasov was found guilty of illegally fishing with illegal equipment. To dissuade Spasov or others from fishing illegally in the future, he was sentenced to one year of prison with probation for infringement of Article 65(1b) of the Romanian Emergency Ordinance No 23/2008, as well as three fines totaling approximately 4.000 € for infringement of Article 64(a)(i) and (k) of the same ordinance.⁷⁴ Part of the value of his vessel was also confiscated (approximately 2.250 €) and Spasov was prohibited from fishing in the Romanian Black Sea EEZ for one year.⁷⁵

The Court of Appeal based its final judgment on a handful of national regulations and emergency decrees instead of the 2002 CFP because of national legislation No. 36/2002,

⁶⁶ *ibid.*

⁶⁷ *ibid* para20.

⁶⁸ *ibid* para 37.

⁶⁹ *ibid* para 38.

⁷⁰ *ibid* para 40.

⁷¹ *ibid* para 41.

⁷² *ibid* paras 42–43.

⁷³ *ibid* paras 14–44.

⁷⁴ *Spasov v Romania* (n 1) para 45.

⁷⁵ *ibid* para 46.

which acknowledges the legal jurisdiction of Romania over its internal waters, territorial, sea, contiguous zone, and EEZ. As the Court of Appeal's entire argument is based on the fact that Romanian national regulations take precedence over EU regulations, their conclusions for the case noticeably conflict with the judgments made by the Court of Mangalia.

4 VIOLATION OF THE APPLICANT'S RIGHTS

4.1 PROPERTY RIGHTS IN THE EUROPEAN HUMAN RIGHTS SYSTEM

The applicant considered his right to fish to be a property or possession⁷⁶ within the meaning of Article 1 of Protocol 1 to the European Convention on Human Rights (ECHR-P1)⁷⁷ insofar as the fishing license granted by Bulgaria materializes his right.⁷⁸

Article 1 ECHR-P1 provides extensive property rights. The norm itself refers to 'possessions'⁷⁹ and contains

three distinct rules [:] the principle of peaceful enjoyment of property; [...] the second rule [which] covers deprivation of possessions and subjects it to certain conditions [and a] third rule [which] recognizes that the States are entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purpose.⁸⁰

The term 'possessions' is subject to an autonomous interpretation by the ECtHR. This means that the term has a meaning within the framework of the ECHR that is independent of the meaning of the word in national legal systems. The meaning of the term is therefore defined with regard to the European human rights system and does not depend on any national legal system. The material scope of the norm goes beyond material objects and can also include other assets as well as rights, even when those would not be considered possessions in the national law of the respondent State.⁸¹ The right protected by Article 1 of Protocol 1 to the ECHR is far-reaching. Also, business licenses can be protected possessions within the meaning of Article 1 of Protocol 1 to the ECHR.⁸² Only existing possessions are legally protected,⁸³ future income is only protected if it has already been earned.⁸⁴

Human rights that are protected by the Convention and the Protocols also have a procedural dimension. The right to life requires an effective investigation into suspicious deaths, for example. The right that is protected by Article 1 of Protocol 1 to the ECHR, too, can have a procedural dimension. This means that this right needs to be taken into account in procedures, in particular in administrative procedures in domestic law.

⁷⁶ *ibid* para 103. Note that the original version of the judgment refers to 'bien' in French.

⁷⁷ ECHR-P1 (n 3).

⁷⁸ *Spasov v Romania* (n 1) [10].

⁷⁹ ECHR-P1 (n 3) Art 1 para 1.

⁸⁰ *Spörring and Lönnroth v Sweden* App nos 7151/75 and 7152/75 (ECtHR, 23 September 1982) para 61.

⁸¹ *Depalle v France* App no 3404/02 (ECtHR, 29 March 2010) para 68.

⁸² *Tre Traktörer Aktiebolag v Sweden* App no 10873/84 (ECtHR, 7 July 1989) para 53.

⁸³ *Marckx v Belgium* App no 6833/74 (ECtHR, 13 June 1979) para 50.

⁸⁴ *Denisov v Ukraine* App no 76639/11 (ECtHR, 25 September 2018) para 137.

4.2 VIOLATION IN *SPASOV V ROMANIA*

In the present case, the ECtHR unanimously concluded that Romania violated Article 6(1) of the ECHR on the right to a fair trial and Article 1 of Protocol 1 to the ECHR on the protection of property.⁸⁵

The violation of the right to a fair trial of Hristo Spasov results from the denial of justice provoked by the wrongful application by Romanian courts of Romanian law to a situation patently within the scope of the 2002 CFP.⁸⁶ Wrongful because the domestic law contradicted European law, as pointed out to Romanian authorities by the European Commission.⁸⁷ It consequently led the ECtHR to conclude that the Romanian Court of Appeal manifestly erred in law and thereby breached the principle of primacy of European law over domestic law.⁸⁸

Romania based the supplementary sanctions of a financial nature which it imposed on the applicant (*i.e.*, value confiscation and provisional prohibition of fishing in the Black Sea EEZ of Romania)⁸⁹ on Romanian legal provisions included in the emergency ordinance No. 23/2008 as required by Article 1(2) of Protocol 1 to the ECHR.⁹⁰ Nevertheless, the ECtHR explained that because the domestic legal basis was found to be contrary to the 2002 CFP (*i.e.*, EU law), Romania could not justify such sanctions on a manifest error in law.⁹¹ The Court also reaffirmed its jurisprudence on the assimilation of licenses and other permits to operate commercial activities as property protected by Article 1 of Protocol 1 to the ECHR.⁹² In this regard, it concluded that Romania failed to protect the individual rights of Hristo Spasov and did not act in the public interest.⁹³ Therefore, Romania violated Article 1 of Protocol 1 to the ECHR.⁹⁴

5 CONCLUDING REMARKS

Fishing rights, like other permits,⁹⁵ can be protected under Article 1 of Protocol 1 to the European Convention on Human Rights and the very similarly worded Article 17 of the Charter of Fundamental Rights of the European Union. From the perspective of European human rights law, this finding is not surprising, but the case is notable for providing a connection between human rights and fisheries. The role of human rights in the maritime sector is an important issue that has gained more attention in recent years, for example in the context of the rights of seafarers. The fishing industry provides numerous human rights challenges,⁹⁶ many of which exceed the situation described here in terms of severity. The judgment by the European Court of Human Rights, nevertheless, is an important reminder

⁸⁵ *Spasov v Romania* (n 1) paras 99, 120, and p 22.

⁸⁶ *ibid* paras 94 and 98.

⁸⁷ *ibid* para 95.

⁸⁸ *ibid* para 97.

⁸⁹ *ibid* para 116 mentioning paras 45 and 46 respectively.

⁹⁰ *ibid* para 116.

⁹¹ *ibid* paras 117–118.

⁹² *ibid* para 104.

⁹³ *ibid* para 119.

⁹⁴ *ibid* para 120.

⁹⁵ *Tre Traktörer Aktiebolag v Sweden* (n 82) para 53.

⁹⁶ See e.g. Stefan Kirchner, 'Human Rights and Fishing: A Multidimensional Challenge' (2019) 12(1) *Baltic Journal of Law and Politics* 155.

that activities at sea are neither beyond the scope of the courts nor beyond the geographical scope of human rights treaties. This is particularly the case in the framework of the European Convention on Human Rights, which applies to all situations in which a person is under the jurisdiction of one of the 46⁹⁷ States that are parties to the ECHR. The European Convention on Human Rights is part of public international law and in the case discussed here, the European Court of Human Rights once more has shown its holistic approach to human rights as part of public international law.

⁹⁷ Russia has been excluded from the Council of Europe on 16 March 2022. Consequently, the European Convention on Human Rights stopped applying to Russia six months later based on Art 58 para 3 ECHR, read in conjunction with Art 58 para 1 ECHR.

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