



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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

**Application no. 40169/05
by Björn Guðni GUDJONSSON
against Iceland**

**The European Court of Human Rights (Fourth Section), sitting on
2 December 2008 as a Chamber composed of:**

Nicolas Bratza, *President*,

Giovanni Bonello,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having regard to the above application lodged on 27 October 2005,

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

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Björn Guðni Guðjonsson, is an Icelandic national who was born in 1950 and lives in Kaldrananeshreppur. At the material time, in April and May 2003, he was registered as being domiciled at Bakkagerði, in the neighbourhood of Dranganes, a village in the north-western corner of Iceland. He was represented before the Court by Mr Ragnar Aðalsteinsson, a lawyer practising in Reykjavik. The Icelandic Government were

represented by their Agent, Mr Thorsteinn Geirsson, of the Ministry of Justice and Ecclesiastical Affairs.

A. The circumstances of the case

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

The present application has its background in criminal proceeding brought against the applicant on account of his having fished lumpfish on certain dates in April and May 2003 in the net zone of the Bjarnarnes farm in Kaldrananeshreppur in the western part of Iceland. At the time he was one of six co-owners of the farm. His sister, two brothers – including Gudmundur Heidar Gudjonsson (GHG) - and the applicant each owned 12.5% of the property; the remaining half was owned by two other individuals. The applicant and his siblings had acquired their shares in the property as a result of a gift from their father, GG, according to a Deed of Transfer to this effect dated 16 August 1999.

GG at one time owned the vessel Sæfinnur ST 34, a boat which had been allocated a catch permit for lumpfish on the basis of the Fisheries Management Act and the Regulation applying to such permits. GG had used the boat Sæfinnur ST 34 for catching lumpfish since 1987, and on 1 January 1991 a catch permit for lumpfish was issued in respect of the vessel under the new system when the Fisheries Act came into force. On 1 April 1999 this catch permit for lumpfish was transferred from the Sæfinnur ST 34 to another boat, the Díva ST 18 (6715), also owned by GG. On 18 January 2002, he sold the Díva to the company Innra-Nes, together with all its fishing permits; in addition, it was stated specifically that all the boat's catch experience was to be the property of the purchaser. The purchase price was ISK 3 million. The Deed of Transfer identified GHG as the owner of all the share capital in Innra-Nes.

The lumpfish catch permit in question was assigned yet again on 12 March 2002, and is currently attached to the boat Sævar Guðjóns ST 45 (2032), which is also owned by GHG's company Innra-Nes.

In the spring of 2003 the applicant was working in Reykjavík. As the volume of his work there declined and his income dropped, he acquired a new 5.60 m long boat and started fishing for lumpfish from the Bjarnarnes farm in April 2003.

On 10 June 2003 a check by fisheries inspectors of the fish-processing plant Fiskvinnslan Drangur ehf. in Drangsnes revealed entries in the company's weight records showing that the boat Sæfinnur ST 34 had landed nearly two tons of lumpfish roes in April and May, which the processing plant had purchased from it. On 11 June, the fisheries inspectors visited the applicant at Bakkagerði. It was then found that the boat, Sæfinnur ST 34, which belonged to the applicant's father, lay upside down on dry land, and

had been replaced by the plastic boat that the applicant had bought in the spring.

On 8 March 2004, the Hólmavík District Commissioner issued an indictment against the applicant for violations of the fisheries legislation by having, on specified dates in April and May 2003, caught lumpfish from his unregistered boat without a general commercial fishing permit and without a permit to catch lumpfish; these catches of lumpfish produced 1,880.5 kg of lumpfish roes, which he had sold to Fiskvinnslan Drangur ehf. in Drangsnæs, in violation of section 4 of the Fisheries Management Act No. 38/1990, section 7 of the Act No. 79/1997 on Fishing in Iceland's Fishing Jurisdiction (hereinafter "the 1997 Act") and section 1 of Regulation No. 129/2003 on Lumpfish Fishing. The Public Prosecutor requested that the applicant be sentenced for these violations and be made to suffer confiscation of the proceeds obtained through them.

The applicant, for his part, maintained that the owners of land adjacent to the sea had an exclusive right to fish lumpfish within the net zone as it was an inseparable part of the farm and the owners had not been deprived of their property rights in the net zone. In his view, the provision concerning fisheries jurisdiction (section 2 of the Act on Fishing in Iceland's Fisheries Jurisdiction, No. 79/1997, hereinafter "the 1997 Act") extending from the water's edge to the outer limits of the economic zone ought to be interpreted with reference to the rights that already existed and which had not been overruled despite a definition in ordinary legislation. Section 7 of the 1997 Act ought to be interpreted with consideration being given to the more extensive rights of other parties which were valid before the Act took effect; otherwise, it would have been necessary to state that the Act was intended to prevail over rights of ownership that were protected under Article 72 of the Constitution.

It was undisputed that on the dates indicated in the indictment the applicant had been fishing lumpfish without a permit within the net zone of the Bjarnarnes farm. Nor was it disputed that he was co-owner of the farm and that he had obtained the permission of other co-owners to fish lumpfish within the net zone of the farm.

On 28 September 2004 the West Fjords District Court convicted the applicant of the offences and sentenced him to pay a fine of ISK 400,000 to the Treasury, failing which he was to serve 45 days' imprisonment. It further ordered the confiscation of ISK 730,320 corresponding to the value of the 1,880.5 kg lumpfish that the applicant had caught. In addition, he was ordered to pay the entirety of the court costs.

The District Court's judgment contained the following reasons:

"In the absence of any proof to the contrary, the accused's assertion that he caught all the lumpfish within the net zone of the property in question will be used as a basis for this judgment.

Ever since ancient times, there have been legal provisions on the rights of landowners to make catches within net zones in Iceland. *Grágás* [the ancient law code of Iceland] states that all men have the right to catch without incurring a penalty outside the net zone, the outermost boundary of the net zone being where a seal-net, from mainland or skerry, touches the bottom at a depth of twenty meshes with the floats on the surface at low tide, with the footline touching bottom. Article 2 of the Chapter on Drift Rights in the *Jónsbók* law code [from the year 1281] stated that all men had the right to catch without incurring a penalty outside the net zone, the outermost boundary of the net zone being where a seal-net touched bottom at a depth of twenty meshes with the floats on the surface.

The most recent provisions in Icelandic law regarding net zones are to be found in Act No. 81/2004. Pursuant to section 2, the outermost boundary of the net zone means, for the purposes of the Act, 115 m out from the shore of a lake to which a property is adjacent, and the sea-floor 115 m out from the high-water mark of a property during spring tides. Net zones are defined in the same way in section 1 of the Act No. 64/1994. Its section 8 states that only landowners have the right to hunt animals on their land. Under the same article, persons other than the landowners do not have the right to hunt animals in Iceland's economic zone except outside the net zones.

A judgment by the Supreme Court of Iceland, reported in Court Reports 1996 p. 2518, describes how section 1 of the Decree on Hunting issued in 1849 stated that from that time forth, only landowners in Iceland had the right to hunt animals and birds unless otherwise stated in the Decree. Furthermore, section 21 stated that all statutory articles on fishing and whaling that were not amended by the Decree were to remain unchanged for the time being. The Court took the view that it could not be considered that the provisions of section 3 of the Decree, on the landowners' right to make catches up to 60 fathoms out to sea from the high-water mark at spring tides, involved a different and more ample right for the landowners regarding catches than the right provided for in section 1 of the Decree.

The same judgment went on to say that it could not be seen, from the ancient laws, that net zones in the sea had been regarded as being subject to the same authority of ownership by land owners as the land above them. Nor had the land owners, under the legislation of recent times, been granted all the same ownership rights over net zones in the sea that they enjoyed regarding the properties that were adjacent to them. Under legislation postdating the aforementioned Decree, property owners had not been unequivocally granted an exclusive right to catch marine fish in net zones based on a distance out from the high-water mark during spring tides. Nor had the provisions of the Chapter of *Jónsbók* concerning the definition of net zones based on the depth of the sea been repealed by any act of the legislature, though they were not incorporated in the 1919 edition, or subsequent editions, of the statute book.

Although it is therefore not clear in law whether land owners possess all the same rights in the net zones as they do on the land above them, and whether their right to catch marine fish should be based on a distance out from the land or on the depth of the sea, it must be considered that it is not evident that the accused caught lumpfish at a greater depth than is specified in the Article 2 in the Chapter on Drift Rights in the *Jónsbók*. In this judgment, the provision of that Chapter stating that the landowner owns all fishing rights in the net zone and catch rights on the beach will be taken as a basis.

Under section 2(2) of the 1997 Act, the marine area from the water's edge to the outer limits of Iceland's economic zone is considered as constituting its fisheries

jurisdiction. Thus, the net zone is included in the fisheries jurisdiction. The same definition can be found in section 2 of Act No. 38/1990.

Section 1 of the 1997 Act states that its aim is to promote the prosperity and efficient utilisation of the economically exploited stocks within Iceland's fisheries jurisdiction and so to ensure firm employment and human settlement in the country. The same aim on the part of the legislature can be found in section 1 of Act No. 38/1990, which also states that the commercially exploited stocks in Icelandic waters are the common property of the Icelandic people.

Notwithstanding the aforementioned rights of landowners in the net zone, and taking into account the Supreme Court's judgment in case no. 12/2000 (Court Reports 2000 p. 1534), the Court is not able to concur with the view that the legislature may not protect the commercially exploited stocks in the fisheries jurisdiction and promote their efficient utilisation by prohibiting landowners from making catches from these stocks, both within the net zone and outside it, except with special permits. The accused, who had the permission of the landowner to catch lumpfish within the net zone, was therefore nevertheless obliged to respect the prohibition contained in section 7(1) of the 1997 Act on the catching of lumpfish without a special permit from the Fisheries Agency. Section 2 of Regulation No. 129/2002 on Lumpfish Fishing states that the condition for obtaining a special permit is the possession of a commercial fishing permit.

Accordingly, the accused violated the provisions of section 4 of the Act No. 38/1990, which prohibits fishing for commercial purposes off Iceland's coasts by persons other than those who have received a general fishing permit, and has incurred punishment under section 25 of the same Act (see section 12 of Act No. 85/2002 and section 27 of Act No. 57/1996). Furthermore, his actions constitute a violation of section 7 of the 1997 Act and section 1 (see section 12) of the Regulation No. 129/2002 (see section 17 of the 1997 Act)."

The applicant appealed to the Supreme Court, which on 28 April 2005 upheld the District Court's judgment *in extenso* and ordered the applicant to pay the entirety of the legal costs in the appeal.

B. Relevant domestic law and practice

Icelandic law concerning the rights of landowners in respect of the catching or hunting of fish, birds, whales and seals and ownership of driftwood in their net zones may be found in the provisions set out below (the different legislative definitions of the net zone boundaries are not in issue in the present case).

The ancient Icelandic law code, *Jónsbók*, dating from 1281, stated in Chapter 2 of the Drift Rights Section:

"The landowner shall also own [a whale in which a missile or a marked harpoon is fixed ...] and all drift materials, and all those whales which swim ashore fleeing from men and all catches in the net zone and on the beach."

The Decree on Hunting in Iceland of 20 June 1849 provided:

Article 1

Landowners in Iceland shall henceforth own exclusive rights to catch animals [and birds] unless other provisions are made in this Decree. Furthermore, the catch rights they have acquired by law outside their properties shall remain completely intact.

Article 3

... the owner shall own the right to make catches in an area extending 60 fathoms out into the sea from the low spring tide mark; this is his net zone

Under Article 11 of the Decree, hunting animals on the land properties of other persons without their permission, or making catches in their net zones, is a criminal offence that is punishable by a fine.

Section 8(1) and (2) of Act No. 64/1994 on the Conservation, Protection and Hunting of Wild Birds and Wild Mammals read:

"All Icelandic citizens, and also foreign nationals who are domiciled in Iceland, may hunt animals on common land, on pastureland lying outside the property boundaries of legally-defined farms, providing that no one is able to demonstrate his right of ownership over them, and also in Iceland's economic zone outside the net zones of land properties. They shall have obtained licences for this purpose under this Act and regulations issued hereunder.

Landowners shall have an exclusive right to hunt animals on their properties and dispose of such rights unless other provisions are made in law."

According to the Government, the above-mentioned provisions, in particular that of *Jónsbók*, had been interpreted to the effect that ownership of the net zone in the sea conferred on the landowner an exclusive right to make catches of all types, including fish. However, in so far as relevant for the present case, such rights were restricted by the statutory provisions referred to below.

The Fisheries Management Act, No. 38/1990 (hereinafter referred to as "the 1990 Act"), Iceland's first comprehensive piece of legislation covering fisheries management, as in force at the material time (later replaced by Act No. 116/2006, without substantive amendments) contained the following provisions of relevance:

Article 1

"The exploitable marine stocks of the Icelandic fishing banks are the common property of the Icelandic nation. The objective of this Act is to promote their conservation and efficient utilisation and thus to ensure stable employment and settlement throughout the country. The allocation of harvest rights provided for by this Act endows individual parties neither with the right of ownership nor irrevocable jurisdiction over harvest rights."

Article 2

"For the purposes of this Act, exploitable marine stocks shall include marine animals and marine plants found within the Icelandic exclusive fishing zone which are or may be exploited commercially and are not covered by special laws.

Iceland's exclusive fishing zone includes the ocean area extending from the low-water line to the outer limits of Iceland's exclusive economic zone (EEZ) as defined

by Act No. 41, of 1 June 1979, concerning the Icelandic territorial sea, exclusive economic zone and continental shelf.”

Article 4

“No one may pursue commercial fishing in Icelandic waters without having a general fishing permit. Fishing permits shall be issued for a period of one year at a time.”

Article 5

“Commercial fishing permits may only be granted to fishing vessels holding certificates of seaworthiness and registered in the Registry of Vessels of the Directorate of Shipping or the special registry of the Directorate for boats shorter than 6 metres in length. Their owners and operators must fulfil the requirements to pursue fishing in Iceland’s exclusive fishing zone, as provided for in the Act on Investment by Foreign Parties in Industrial Operations and the Act concerning Fishing and Processing by Foreign Vessels in Iceland’s exclusive fishing zone. A fishing vessel may, however, only be issued one type of commercial permit for a single fishing year, i.e. a fishing permit with general catch quota, fishing permit with cod catch maximum, cf. Temporary Provisions I of this Act, a fishing permit with catch quota awarded in accordance with Temporary Provisions II of this Act (hook catch quota) or fishing permit with pursuit days.”

Article 6a

“Leisure fishing for personal consumption is authorised without special permit. Such fishing may only be pursued with handline without automatic jigger. Any catch obtained as provided for by the provision of this paragraph may not be sold nor used for financial gain by any other means. [...]”

Article 25

“Violations of the provisions of this Act, or of rules issued hereunder, and of the conditions stated in permits, shall be punishable by fines, irrespective of whether they were committed intentionally or through negligence. In the case of gross or repeated violations committed intentionally, they shall also be punishable by up to six years’ imprisonment.”

The other principal piece of legislation, the Act on Fishing in Iceland’s Fisheries Jurisdiction, No. 79/1997 (hereinafter referred to as “the 1997 Act”), included the following provisions:

Section 1

“The objective of this Act is to promote the well-being and efficient utilisation of the exploitable stocks within Iceland’s fisheries jurisdiction, so ensuring reliable employment and settlement in the country.”

Section 2

“For the purposes of this Act, the term ‘exploitable stocks’ shall include marine animals, and also marine plants, which are exploited, or may be exploited, within Iceland’s fisheries jurisdiction and which are not covered by separate legislation.

Iceland’s fisheries jurisdiction includes the ocean area extending from the low-water line to the outer limits of Iceland’s exclusive economic zone (EEZ) as it is defined in the Act No. 41 of 1 June 1979 on the Icelandic Territorial Sea, Exclusive Economic Zone and Continental Shelf.”

Section 7

"Catches of lumpfish shall be subject to special permits issued by the Fisheries Agency, and only those vessels which were entitled to permits during the lumpfish season of 1997, according to the rules applying thereto, shall qualify for such permits. The Minister shall issue regulations containing further provisions on the arrangements regarding lumpfish catches and the fishing season according to this paragraph. Amongst other things, the Minister may determine that permits will be confined to a specific area and that permits for fishing in a particular area will be granted only to vessels registered in that area. The Minister may also set rules authorising the transfer of lumpfish fishing permits between vessels."

Section 17

"Violations of other provisions of this Act, or of regulations issued hereunder, or of the conditions of fishing permits, shall be punishable by fines of not less than ISK 400,000 and not exceeding ISK 4,000,000, depending on the nature and scope of the violation."

The Government submitted that the requirement in section 7 of a special permit for commercial fishing of lumpfish had formerly been contained in and transferred from the 1990 Act. According to an explanatory note the rationale for the special rule in section 7 was:

"It is proposed in the first paragraph of this Article that catches of lumpfish be subject to special permits and that only those who were entitled to such permits under the current rules will qualify for permits. Regulation No. 58 of 18 January 1996, on catches of lumpfish, contains provisions on lumpfish fishing in Iceland, specifying what vessels will qualify for lumpfish catch permits. The issue of permits has been limited for many years, and is restricted to those parties who made catches during a particular period of years. It should be pointed out here that marine biologists have not proposed that lumpfish catches be limited; on the other hand, it has been felt that there is reason to impose limits on these catches, first and foremost because the number of small fishing boats is now so great that without limits, catches could get completely out of control in a short time. In this context, attention must also be given to conditions on the market and the right of those persons who have engaged in catches of this species and as a result of doing so have smaller quotas in other fish species. The Regulation on catches of lumpfish was issued under the second paragraph of Article 4 of the ... 1990 Act; here it is proposed that it be stated clearly that these catches are to be subject to permits, and also that provisions be laid down authorising the Minister to control these matters in the way that this has been done up to now."

The Regulation on lumpfish catches, No. 129/2002 (hereinafter referred to as "the 2002 Regulation"), stated *inter alia*:

Article 1

"All catches of lumpfish within Iceland's exclusive fishing zone are forbidden without prior special permits from the Fisheries Agency."

Article 2

"Permits for lumpfish catches may only be granted to those vessels which were entitled to such permits in the 1997 fishing season according to the Regulation No. 58/1996, providing that they hold commercial fishing permits (see the 1990 ... Act). Vessels larger than 12 GRT may not be granted permits for lumpfish catches if they did not hold permits for lumpfish catches during the previous fishing season. The

issue of permits, and permits for lumpfish catches, may be made subject to such conditions as are considered necessary, including conditions regarding the submission of reports on the catches.”

Article 4

“When a vessel which has held a permit for lumpfish catches is sold, the permit shall accompany the vessel unless other provisions are made in the purchase contract.”

Under other provisions of the Regulation on lumpfish catches, the fishing grounds around Iceland were divided into seven catch areas, and each permit was restricted to a particular catch area and catch period. In most of these areas, the catch period lasted from 20 April to 10 July. The regulation contained further rules on the maximum number of lumpfish nets that permit-holders could lay in the sea, and rules on the minimum mesh size of lumpfish nets.

Section 1 of the Act on the Treatment of Commercial Marine Stocks, No. 57/1996 stated that its object was to improve the treatment of commercial marine stocks and to promote their renewable utilisation so as to ensure maximum productivity for the benefit of the Icelandic nation in the long term. The Act laid down rules on catch gear, the monitoring of the utilisation of catch quotas and the weighing and recording of marine catches; it also states that the application and supervision of fisheries legislation is to be in the hands of a special institution, the Fisheries Agency.

COMPLAINTS

The applicant complained that as a result of the District Court's judgment, which was upheld by the Supreme Court, he had been deprived of his exclusive right within the farm's net zone to fish lumpfish and other species covered by administrative permit requirements in breach of Article 1 of Protocol No. 1 to the Convention. Moreover, the applicant submitted, the interference amounted to discrimination in breach of Article 14 of the Convention taken together with the aforementioned provision and of Protocol No. 12.

THE LAW

A. Complaint under Article 1 of Protocol No. 1

The applicant complained that as a result of the Supreme Court's judgment of 11 May 2006 he had been prevented from peacefully enjoying his possessions, in violation of 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 Government disputed this contention and invited the Court to declare the complaint inadmissible as being incompatible *ratione materiae* or, in any event, as being *manifestly ill-founded*.

1. The Government's arguments

The Government pointed out that the statutory requirements to hold both a general fishing permit and a specialised one in order to pursue commercial fishing of lumpfish had been in operation for more than eight years before the applicant in 1999 became owner of part of the Bjarnarnes farm. It was also clear that his father, GG, in compensation for the introduction of restrictions under the Fisheries Management Act 1990, had been allocated such a permit on the basis of his catch experience when the Act had entered into force. GG could dispose of the permit and had transferred it to the applicant's brother, GHG, together with a fishing vessel by way of a pre-death legacy valued at ISK 3 million. At no time could the financial value of GG's fishing rights have formed part of the applicant's ownership rights. Accordingly, no abridgement of his right of ownership had occurred when he was punished for illegal fishing in the net zone. Accordingly, he was not a victim of a violation of Article 1 of Protocol No. 1, which provision was therefore inapplicable to the instant case. Therefore the Government requested the Court to reject the complaint as being incompatible *ratione personae* with the provisions of the Convention and the Protocol.

Should the Court reject the above request, the Government invited it to dismiss the complaint on the ground that it was manifestly ill-founded. While accepting that landowners' rights to utilise resources in the net zones of their properties constituted an asset covered by the term "possession" in Article 1 of Protocol No. 1, the Government argued that the matter

complained of constituted control of the use, not deprivation, of a possession in the sense of this Article.

The disputed interference had a legal basis in national law and the law in question was both accessible and foreseeable.

Moreover the aim of the restrictions at issue ought to be considered legitimate as they fell within the general aim of Iceland's fisheries management legislation, namely to promote the conservation and efficient utilisation of fish stocks and thereby ensure stable employment and settlement throughout the country. Under Articles 61 and 62 of the United Nations Convention on the Law on the Sea, Iceland had undertaken to ensure the rational utilisation of these resources. Measures to prevent over-fishing were a necessary element in the protection and rational utilisation of fish stocks. Thus the public interest demanded that restrictions be imposed on the freedom of individuals to engage in commercial fishing. Making such activities subject to fishing permits and registration of fishing vessels reflected the necessity of active monitoring of catches and systematic recording of catch performance of Iceland's fishing fleet. In this respect, two methods were applied, quota restrictions or, as in the case of lumpfish, effort restrictions limiting fishing to certain periods. The special fishing permits for lumpfish were attached to specific registered vessels and could be transferred from one vessel to another, making it possible to prevent uncontrolled growth in the number of fishing vessels used for this purpose. This arrangement made it possible to limit the uncontrolled growth of the number of fishing vessels used to catch lumpfish. While one of the major aims of the fisheries management system was to limit catches on certain fish stocks, this was not the only one; limiting the size of the fishing fleet was also a necessary means of ensuring future protection and rational utilisation of fish stocks.

The Government emphasised that the catch control mechanism for the stock would collapse were landowners permitted to carry out unrestricted commercial fishing of lumpfish in the net zone, without special fishing permits and from unregistered boats, or were able to authorise other individuals to practice such fishing in their net zones, irrespective of whether the latter held fishing permits. The success and efficiency of Iceland's fisheries management system depended on its comprehensiveness, leaving no room for applying different sets of rules for commercial fishing inside and outside the net zone.

When assessing how special lumpfish permits were to be allocated, the legislature had adopted a pragmatic method whereby permits had been allocated according to certain premises to those parties who had been fishing lumpfish and who, unlike most coastal property owners, could demonstrate a catch performance of a certain level during a preceding period. It was in this way that the applicant's father, like many other coastal property owners engaged in catching lumpfish, had been compensated for

the restrictions placed on the utilisation of his possession. In contrast, the applicant had never shown that he had been made to suffer an erroneous abridgment of his rights or that he had based his living on commercial fishing of lumpfish or that the restrictions had entailed particularly serious consequences for him. He had not been treated arbitrarily, unfairly or in a manner that was disproportionate to the legitimate aims pursued.

2. The applicant's arguments

The applicant maintained that he, like other owners of net zones, held an exclusive right to fish within the zone which constituted a possession protected by Article 1 of Protocol No. 1. The fact that he had not been an owner of the Bjarnarnes farm when the Fisheries Management Act came into force in 1991 was irrelevant. What was relevant was that at the material time, in 2003, he was a co-owner with due permission by other co-owners to fish in the net zone of the farm. Contrary to what the Government suggested, he was a victim of an interference with his possessions in that he as a co-owner of the property in question had been deprived of his exclusive right to fish and to dispose of fishing rights within its net zone.

The applicant disputed that the interference had a legal basis. Neither the 1990 Act nor any other legislation contained any mention of curtailing the rights of landowners to pursue their economic interests by catching lumpfish or other fish within the net zone. Neither the 1997 Act nor the 2002 Regulation directly or indirectly mentioned fishing within the net zones. Nor was there any mention of the net zone in the preparatory works. Had it been the legislator's intention to interfere with landowners' property rights within the net zones, this should have been stated clearly in the relevant statutes and regulations and in the fishing permits. However, this was not done.

In any event, the fisheries legislation did not satisfy the requirements of precision and foreseeability implied by the notion of lawfulness within the meaning of the Convention. Thus owners of vessels who held the relevant permits could, without prior authorisation by the owners, catch fish free of charge within the farm's net zone. In the event of sale of the farm, the applicant would have to make reservations to the effect that the fishing rights in the net zone no longer belonged to the farm as it had done for 800 years and that others no longer could be excluded from fishing within the net zone. The Bjarnarnes farm had been renowned for its lumpfish fishing, a resource that had certainly been reflected in the value of the farm. Its owners had been taxed accordingly but after the loss of exclusive fishing rights the value had diminished.

The applicant disagreed that the deprivation of land owners' fishing rights had pursued any public interest. There had been no public interest in limiting the catches of lumpfish within the net zones as the species had not

been endangered by over-fishing and since such measures had not served the purpose of conservation of the stock.

The applicant disagreed with the Government's contention that under the provisions of the 1990 Act persons in the same situation as the applicant had been treated equally. In this connection the applicant referred to the conclusions in the "Views" of the United Nations Human Rights Committee, dated 24 October 2007, concerning a communication (no. 1306/2004) lodged by a group of fishermen complaining of having to buy or rent fishing quotas from a group of fishermen who had been granted them free of charge as they had in the past been engaged in fishing of the species in question for a given period (1980 to 1983). In view of the fact that allocated quotas no longer used by their original holders could be sold or leased at market prices instead of reverting to the State for allocation to new quota holders in accordance with fair and equitable criteria, the UN Committee had found a violation of Article 26 of the 1966 International Covenant on Civil and Political Rights and had concluded that the State party was under an obligation to provide the "authors" with an effective remedy, including adequate compensation and to review its fisheries management system.

The applicant disputed the Government's submission that the grant of a permit to his father had been intended to compensate the latter for the introduction of restrictions on fishing lumpfish within the net zone. Like any other fishermen, his father had been granted a permit on the ground of his fishing experience during the reference period and he had not been privileged in any way. The applicant added that he had applied for a permit to catch lumpfish but the competent authority had rejected his application. He had also taken steps to have his boat registered with the same name and number as his father's boat, but the same number was not feasible as it was decided to keep the old boat for historical reasons.

In the year 2003 the applicant had to a considerable degree based his living on the fishing of lumpfish. While such fishing in the net zone had been limited to a relatively short period during the year and could not of its own constitute an adequate source of income for anyone, this fact should not give the respondent Government a right to deprive the property owner of the fishing rights in question. In the absence of any need to take measures to conserve the lumpfish stock the Government had not shown that a fair balance had been struck between the demands of the general interests of the community and the requirements of the protection of individual rights.

What was more, the applicant had been criminally sanctioned for having exercised his fishing rights, by the fine and the confiscation order and the order to pay legal costs. This was despite the absence of need to protect lumpfish from over-fishing and that the legislative premise of the necessity of conservation of the fish stock had not applied.

Therefore, in the applicant's view, there had been an unjustified interference with his right to peaceful enjoyment of his possessions in violation of Article 1 of Protocol No. 1.

3. *The Court's assessment*

The Court observes from the outset that according to longstanding rules of Icelandic law the applicant enjoyed fishing rights linked to the net zone of the coastal property of the Bjarnarnes farm of which he was a co-owner. Under the 1990 Act and the 1997 Act all commercial fishing of lumpfish had become conditional upon administrative authorisation by way of grant of a general fishing permit and of a specialised fishing permit attached to a registered fishing vessel. In the Court's view the applicant was personally affected in his enjoyment of his fishing rights by those conditions and by the sanctions imposed on him for failure to observe them.

Accordingly, the Court rejects the Government's argument that the applicant was not a "victim" of the matter complained of in the sense of Article 34 of the Convention.

Moreover, the Court finds that the applicant's right to engage in fishing in the net zone adjacent to the coastal property in question constituted a "possession" within the meaning of Article 1 of Protocol No. 1. The limitation on that right resulting from the conditions to obtain permits for commercial fishing of lumpfish and from the sanctions imposed for failure to do so constituted a control of the use of those possessions within the meaning of the second paragraph of this Article (see *Alatulkkila and Others v. Finland*, no. 33538/96, § 66, 28 July 2005; *Posti and Rahko v. Finland*, no. 27824/95, § 76, ECHR 2002-VII, both dealing with fishing rights; see also *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 74, ECHR 1999-III, dealing with hunting rights). It did not, as suggested by the applicant, amount to a deprivation of property rights in the sense of the first paragraph.

As to whether the conditions laid down in the second paragraph were complied with the Court finds no reason to call into doubt the findings made by the Icelandic courts that the disputed interference had a legal basis in domestic law, notably sections 4 and 25 the 1990 Act and sections 7(1) and 17 of the 1997 Act. It reiterates in that connection that it is in the first place for the domestic authorities, notably the courts, to interpret and apply the domestic law (*Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 86, ECHR 2005-VI; *Wittek v. Germany*, no. 37290/97, § 49, ECHR 2002-X; *Forrer-Niedenthal v. Germany*, no. 47316/99, § 39, 20 February 2003; and *The former King of Greece and Others*, cited above, § 82). Moreover, the law in question was not only accessible but also sufficiently clear to be foreseeable for its users.

The Court is further satisfied that the disputed conditions for commercial fishing of lumpfish and the sanctions imposed on the applicant for failure to

observe these conditions pursued legitimate aims, namely the overall fishing management aims of ensuring conservation and efficient utilisation of fish stocks in Icelandic waters.

The Court finds no reason to call into doubt the choice made by the Icelandic authorities of so-called effort restrictions, as opposed to quota restrictions, and preventing uncontrolled growth in the number of fishing vessels as a means for achieving the over all fishing management aims stated above. These considerations are not undermined by the applicant's argument that a risk of overfishing was absent and that there was no need to limit lumpfish catches.

In this connection, the Court notes that the applicant has drawn its attention to the "Views" of the UN Human Rights Committee in relation to a Communication No. 1306/2004 in another case. While it is not clear to what extent the applicant seeks to rely on findings made by the UN Committee, the Court observes that it concerned a discrimination complaint by a group of professional fishermen with regard to quota restrictions, where one group was confined to purchasing rights from another group. However, that is not the situation in the present instance, which concerned the application of effort restrictions and requirements of fishing permits and registration of fishing vessels, applying to all fishermen wishing to pursue commercial fishing of lumpfish. The applicant has not maintained before the Court that in order to be able to obtain a specialised permit to fish lumpfish on a commercial basis he would have to purchase one or a vessel for which such a permit had been issued. In any event, the Court's findings in the present case should not be regarded as the pronouncement of any view on those made by the UN Committee in the other case.

Moreover, it should be borne in mind that the impugned conditions for commercial fishing of lumpfish had been introduced a number of years before the applicant in 1999 acquired co-ownership in the Bjarnarnes farm from GG. At around that time GG, who then held the necessary permits, had transferred his commercial fishing permit for lumpfish with the relevant registered fishing vessel to a company owned by the applicant's brother GHG. The applicant could therefore not derive from his own acquisition of rights in the property any direct entitlement to catch lumpfish on a commercial basis. Nor did he work as a professional fishermen until he pursued commercial fishing of lumpfish for a period in April-May 2003.

In these circumstances the Court finds that, in subjecting the applicant to the relevant statutory conditions applicable to commercial lumpfish fishing and to the sanctions imposed on him for his failure to observe those conditions, the authorities of the respondent State struck a fair balance between the demands of the general interest of the community and the need to protect requirements of individual fundamental rights. Having regard to the wide margin of appreciation enjoyed by Contracting States in such matters (see *Alatulkkila and Others*, cited above, § 67; *Chassagnou and*

Others, cited above, § 75), the Court finds that there was a reasonable relationship of proportionality between the means employed and the aims pursued. Accordingly there is no appearance of a violation of Article 1 of Protocol No. 1.

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

B. Complaint under Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1

The applicant complained that the interference amounted to discrimination in breach of Article 14, taken together with Article 1 of Protocol No. 1 interpreted in light of Protocol No. 12 even though the latter had not been ratified - only signed - by Iceland. The Icelandic fisheries legislation had been applied to the applicant because his land had been adjacent to the sea. Had it been adjacent to a lake or a river, he would not have been subjected to an interference with his fishing rights which would have remained the same as before the introduction of the fisheries legislation.

Article 14 of the Convention provides as follows:

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, origin, association with a national minority, property, birth or other status."

The Government disputed that the position of owners of properties adjacent to sea waters was comparable to those adjacent to rivers and lakes. The species in question were completely different and the fishing methods applied differed greatly, which state of affairs had led to different solutions to issues of management and regulation. What mattered in the present instance was that the applicant had been treated equally with other owners of coastal properties in respect of the conditions for commercial fishing of lumpfish in the sea.

The Court, for its part, having regard to the material in its possession and to its findings above in relation to the complaint under Article 1 of Protocol No. 1, finds that the complaint under this provision and Article 14 together does not disclose any appearance of a violation.

The Court sees no need in this context to consider the matter from the angle of Protocol No. 12, which has not been ratified by Iceland and on which the applicant at the present stage no longer seeks to rely separately.

It follows that this part of the application must also be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.



Fatoş Aracı
Deputy Registrar



Nicolas Bratza
Nicolas Bratza
President

