

JUDGMENT OF THE COURT
30 July 1996

In Case C-84/95,

REFERENCE to the Court under [Article 267 TFEU] by the Supreme Court of Ireland for a preliminary ruling in the proceedings pending before that court between

Bosphorus Hava Yollari Turizm ve Ticaret AS

and

Minister for Transport, Energy and Communications, Ireland and the Attorney General

on the interpretation of Article 8 of Council Regulation (EEC) No 990/93 of 26 April 1993 concerning trade between the European [Union] and the Federal Republic of Yugoslavia (Serbia and Montenegro) (OJ 1993 L 102, p. 14),

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, C. N. Kakouris and D. A. O. Edward (Presidents of Chambers), G. F. Mancini, J. C. Moitinho de Almeida, P. J. G. Kapteyn (Rapporteur), J. L. Murray, H. Ragnemalm and L. Sevón, Judges,

Advocate General: F. G. Jacobs,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

- Bosphorus Hava Yolları Turizm ve Ticaret AS, by James O'Reilly SC, Daniel O'Keeffe SC and F. Rory Brady, Barrister at Law, instructed by John F. Doyle, Solicitor, of Dillon Eustace, Solicitors,

- the Minister for Transport, Energy and Communications, Ireland and the Attorney General, by Michael A. Buckley, Chief State Solicitor, acting as Agent, John D. Cooke SC and Roderick F. O'Harlon, Barrister at Law,

- the Danish Government, by Peter Biering, Legal Adviser, acting as Agent,

- the Austrian Government, by Dr Wolf Okresek, Ministerialrat, acting as Agent,

- the Commission of the European [Union], by Eric White, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Bosphorus Hava Yolları Turizm ve

Ticaret AS, represented by James O'Reilly and F. Rory Brady SC, the Minister for Transport, Energy and Communications, Ireland and the Attorney General, represented by Richard Nesbitt SC and Roderick F. O'Hanlon, the Danish Government, represented by Peter Biering, and the Commission, represented by Eric White, at the hearing on 27 March 1996,

after hearing the Opinion of the Advocate General at the sitting on 30 April 1996,

gives the following

Judgment

- 1 By order of 12 February 1995, received at the Court on 20 March 1995, the Supreme Court of Ireland referred to the Court for a preliminary ruling under [Article 267 TFEU] a question on the interpretation of Article 8 of Council Regulation (EEC) No 990/93 of 26 April 1993 concerning trade between the European [Union] and the Federal Republic of Yugoslavia (Serbia and Montenegro) (OJ 1993 L 102, p. 14).
- 2 That question arose in proceedings between Bosphorus Hava Yollari Turizm ve Ticaret AS ('Bosphorus Airways') and the Minister for Transport, Energy and Communications, Ireland and the Attorney General ('the Minister'). Bosphorus Airways is a Turkish company which operates principally as an air charterer and travel organizer. By a lease agreement of 17 April 1992 it leased for a period of four years two aircraft owned by the Yugoslav national airline JAT. The agreement, known as a 'dry lease', provided for the leasing of the aircraft only and excluded cabin and flight crew, who were provided by Bosphorus Airways. That company thus had complete control of the day-to-day management of the aircraft for that period. However, JAT remained the owner of the aircraft.

- 3 The file in the main proceedings shows that the transaction between Bosphorus Airways and JAT was entered into in complete good faith and was not intended to circumvent the sanctions against the Federal Republic of Yugoslavia which had been decided by United Nations resolutions and implemented in the [Union] by Regulation No 990/93. Furthermore, in application of those sanctions, the rent due under the lease was paid into blocked accounts, and was thus not paid to JAT. Finally, the aircraft were used exclusively by Bosphorus Airways for flights between Turkey on the one hand and several Member States and Switzerland on the other.
- 4 When one of the aircraft was preparing to take off following maintenance operations at Dublin Airport, the Minister directed it to be impounded under Article 8 of Regulation No 990/93 on the ground that it was an aircraft in which a majority or controlling interest was held by a person or undertaking in or operating from the Federal Republic of Yugoslavia.
- 5 The first paragraph of Article 8 of Regulation No 990/93 provides:

'All vessels, freight vehicles, rolling stock and aircraft in which a majority or controlling interest is held by a person or undertaking in or operating from the Federal Republic of Yugoslavia (Serbia and Montenegro) shall be impounded by the competent authorities of the Member States.'

- 6 The Supreme Court of Ireland stayed the proceedings and referred the following question to the Court for a preliminary ruling:

'Is Article 8 of Regulation No 990/93/EEC to be construed as applying to an aircraft which is owned by an undertaking the majority or controlling

interest in which is held by an undertaking in the Federal Republic of Yugoslavia (Serbia and Montenegro) where such aircraft has been leased by the owner for a term of four years from 22 April 1992 to an undertaking the majority or controlling interest in which is not held by a person or undertaking in or operating from the said Federal Republic of Yugoslavia (Serbia and Montenegro)?'

- 7 In the light of the facts of the main proceedings, that question must be understood as seeking to ascertain whether Article 8 of Regulation No 990/93 applies to an aircraft which is owned by an undertaking based in or operating from the Federal Republic of Yugoslavia (Serbia and Montenegro), even though the owner has leased it for four years to another undertaking, neither based in nor operating from that republic and in which no person or undertaking based in or operating from that republic has a majority or controlling interest.

Regulation No 990/93 and the resolutions of the Security Council of the United Nations

- 8 Bosphorus Airways submits, in the first place, that Article 8 of Regulation No 990/93 does not apply to aircraft whose day-to-day operation and control are entrusted for four years, under a dry lease, to an undertaking which is not based in or operating from the Federal Republic of Yugoslavia, even if an undertaking in or operating from that republic may have a reversionary interest as owner of the aircraft.
- 9 In support of its argument, it submits that the aim of the regulation in question is to penalize the Federal Republic of Yugoslavia and its nationals as well as to apply sanctions against them, but is certainly not to extend those sanctions unnecessarily to wholly innocent parties pursuing their activities from a neighbouring State, with which, moreover, the [Union] has friendly relations.

- 10 That argument cannot be accepted.
- 11 As the Court has stated in its case-law, in interpreting a provision of [Union] law it is necessary to consider its wording, its context and its aims (Case 337/82 *St. Nikolaus Brennererei v Hauptzollamt Krefeld* [1984] ECR 1051, paragraph 10; Case C-83/94 *Leifer and Others* [1995] ECR I-3231, paragraph 22).
- 12 Nothing in the wording of the first paragraph of Article 8 of Regulation No 990/93 suggests that it is based on a distinction between ownership of an aircraft on the one hand and its day-to-day operation and control on the other. Nor is it anywhere stated in that provision that it is not applicable to an aircraft owned by a person or undertaking based in or operating from the Federal Republic of Yugoslavia if that person or undertaking does not have day-to-day operation and control of the aircraft.
- 13 As to context and aims, it should be noted that by Regulation No 990/93 the Council gave effect to the decision of the [Union] and its Member States, meeting within the framework of political cooperation, to have recourse to a [Union] instrument to implement in the [Union] certain aspects of the sanctions taken against the Federal Republic of Yugoslavia by the Security Council of the United Nations, which, on the basis of Chapter VII of the Charter of the United Nations, adopted Resolutions 713 (1991), 752 (1992) and 787 (1992) and strengthened those sanctions by Resolution 820 (1993).
- 14 To determine the scope of the first paragraph of Article 8 of Regulation No 990/93, account must therefore also be taken of the text and the aim of those resolutions, in particular Paragraph 24 of Resolution 820 (1993), which provides that all States shall impound all vessels, freight vehicles, rolling stock and aircraft in their territories in which a majority or controlling interest is held by a person or undertaking in or operating from the Federal Republic of Yugoslavia (Serbia and Montenegro)¹.

- 15 Thus the wording of Paragraph 24 of Resolution 820 (1993) confirms that the first paragraph of Article 8 of Regulation No 990/93 is to apply to any aircraft which is the property of a person or undertaking based in or operating from the Federal Republic of Yugoslavia, and that it is not necessary for that person or undertaking also to have actual control of the aircraft. The word 'interest' in Paragraph 24 cannot, on any view, exclude ownership as a determining criterion for impounding. Moreover, that word is used in that paragraph in conjunction with the word 'majority', which clearly implies the concept of ownership.
- 16 That conclusion is borne out by the fact that most of the language versions of the first paragraph of Article 8 of Regulation No 990/93 use terms with explicit connotations of ownership. Moreover, the second paragraph of Article 8 of that regulation provides, in implementation of Paragraph 26 of Resolution 820 (1993), that the expenses of impounding aircraft may be charged to their owners.
- 17 Furthermore, the impounding of any aircraft owned by a person or undertaking based in or operating from the Federal Republic of Yugoslavia, even if an undertaking such as Bosphorus Airways has taken over its day-to-day operation and control, contributes to restricting the exercise by the Federal Republic of Yugoslavia and its nationals of their property rights and is thus consistent with the aim of the sanctions, namely to put pressure on that republic.
- 18 By contrast, the use of day-to-day operation and control, rather than ownership, as the decisive criterion for applying the measures prescribed by the first paragraph of Article 8 of Regulation No 990/93 would jeopardize the effectiveness of the strengthening of the sanctions, which consist in impounding all means of transport of the Federal Republic of Yugoslavia and its nationals, including aircraft, in order further to increase the pressure on that republic. The mere transfer of day-to-day operation and control of means of transport, by a lease or other method, without transferring ownership would allow that republic or its nationals to evade application of those sanctions.

Fundamental rights and the principle of proportionality

- 19 Bosphorus Airways submits, in the second place, that to interpret the first paragraph of Article 8 of Regulation No 990/93 as meaning that an aircraft whose day-to-day operation and control are carried out under a lease by a person or undertaking not based in or operating from the Federal Republic of Yugoslavia must nevertheless be impounded because it belongs to an undertaking based in that republic, would infringe Bosphorus's fundamental rights, in particular its right to peaceful enjoyment of its property and its freedom to pursue a commercial activity, in that it would have the effect of destroying and obliterating its air charter and travel organization business.
- 20 That interpretation, according to Bosphorus Airways, would also infringe the principle of proportionality, since the owner of the aircraft in question has already been penalized by the rent being held in blocked accounts and the impounding of the aircraft was therefore a manifestly unnecessary penalty, disproportionate with respect to a wholly innocent party.
- 21 It is settled case-law that the fundamental rights invoked by Bosphorus Airways are not absolute and their exercise may be subject to restrictions justified by objectives of general interest pursued by the [Union] (see Case 44/79 *Hauer v Land Rheinland-Pfalz* [1979] ECR 3727; Case 5/88 *Wachauf v Bundesamt für Ernährung und Forstwirtschaft* [1989] ECR 2609; and Case C-280/93 *Germany v Council* [1994] ECR I-4973).
- 22 Any measure imposing sanctions has, by definition, consequences which affect the right to property and the freedom to pursue a trade or business, thereby causing harm to persons who are in no way responsible for the situation which led to the adoption of the sanctions.

- 23 Moreover, the importance of the aims pursued by the regulation at issue is such as to justify negative consequences, even of a substantial nature, for some operators.
- 24 The provisions of Regulation No 990/93 contribute in particular to the implementation at [Union] level of the sanctions against the Federal Republic of Yugoslavia adopted, and later strengthened, by several resolutions of the Security Council of the United Nations. The third recital in the preamble to Regulation No 990/93 states that 'the prolonged direct and indirect activities of the Federal Republic of Yugoslavia (Serbia and Montenegro) in, and with regard to, the Republic of Bosnia-Herzegovina are the main cause for the dramatic developments in the Republic of Bosnia-Herzegovina'; the fourth recital states that 'a continuation of these activities will lead to further unacceptable loss of human life and material damage and to a further breach of international peace and security in the region'; and the seventh recital states that 'the Bosnian Serb party has hitherto not accepted, in full, the peace plan of the International Conference on the Former Yugoslavia in spite of appeals thereto by the Security Council'.
- 25 It is in the light of those circumstances that the aim pursued by the sanctions assumes especial importance, which is, in particular, in terms of Regulation No 990/93 and more especially the eighth recital in the preamble thereto, to dissuade the Federal Republic of Yugoslavia from further violating the integrity and security of the Republic of Bosnia-Herzegovina and to induce the Bosnian Serb party to cooperate in the restoration of peace in this Republic'.
- 26 As compared with an objective of general interest so fundamental for the international [Union], which consists in putting an end to the state of war in the region and to the massive violations of human rights and humanitarian international law in the Republic of Bosnia-Herzegovina, the impounding of the aircraft in question, which is owned by an undertaking based in or operating from the Federal Republic of Yugoslavia, cannot be regarded as inappropriate or disproportionate.

27 The answer to the Supreme Court's question must therefore be that Article 8 of Regulation No 990/93 applies to an aircraft which is owned by an undertaking based in or operating from the Federal Republic of Yugoslavia (Serbia and Montenegro), even though the owner has leased it for four years to another undertaking, neither based in nor operating from that republic and in which no person or undertaking based in or operating from that republic has a majority or controlling interest.

Costs

28 The costs incurred by the Danish and Austrian Governments and the Commission of the European [Union], which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the question referred to it by the Supreme Court of Ireland, by order of 12 February 1995, hereby rules:

Article 8 of Council Regulation (EEC) No 990/93 of 26 April 1993 concerning trade between the European [Union] and the Federal Republic of Yugoslavia (Serbia and Montenegro) applies to an aircraft which is owned by an undertaking based in or operating from the Federal Republic of Yugoslavia (Serbia and Montenegro), even though the owner has leased it for four years to another undertaking, neither based in nor

operating from that republic and in which no person or undertaking based in or operating from that republic has a majority or controlling interest.

Rodriguez Iglesias

Kakouris

Edward Mancini

Murray

Moitinho de Almeida

Kapteyn

Ragnemalm

Sevon

Delivered in open court in Luxembourg on 30 July 1996.

R. Grass
Registrar

G. C. Rodriguez Iglesias
President

Robert Schütze European Union Law Lisbonise Case