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

THIRD SECTION

CASE OF ISLAMIC REPUBLIC OF IRAN SHIPPING LINES v. TURKEY

(Application no. 40998/98)

JUDGMENT

STRASBOURG

13 December 2007

FINAL

13/03/2008

In the case of Islamic Republic of Iran Shipping Lines v. Turkey,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Boštjan M. Zupančič, *President*,
Corneliu Bîrsan,
Rıza Türmen,
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele,
Isabelle Berro-Lefèvre, *judges*,
and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 22 November 2007,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 40998/98) against the Republic of Turkey lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Iranian shipping company registered in Teheran (Iran), the Islamic Republic of Iran Shipping Lines ("the applicant company"), on 18 December 1997. Following the entry into force of Protocol No. 11 to the Convention on 1 November 1998 and in accordance with Article 5 § 2 thereof, the case was examined by the Court.

2. The applicant company was represented by Mr T. Marshall, Mr D. Lloyd Jones and Ms J. Stradford, lawyers practising in London. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant company alleged that the seizure by the Turkish authorities of the cargo aboard a Cypriot-owned vessel of which it was time charterer had constituted an unjustified control of the use of property within the meaning of Article 1 of Protocol No. 1.

4. On 10 April 2003 the Court declared the application partly inadmissible and decided to communicate to the Government the complaints concerning the allegedly unjustified control of the use of property and the alleged denial of the right to a fair trial. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

A. Background to the case

6. By a charter of 12 September 1991, the applicant company chartered a Cypriot-owned vessel called the *Cape Maleas* ("the vessel"). The charter party was on an amended New York Produce Exchange time-charter form, and was for a time-charter voyage to the south Iranian ports. The duration of the voyage was stated to be fifty days and the purpose to carry general cargo, steels and commercial containers.

7. By agreement between the parties, namely the applicant company and the owner of the vessel, Seabeach Shipping Ltd, on 18 September 1991 the charter party became subject to "Addendum No. 1". This provided that the applicant charterer could load 2,500 cubic metres of "IMCO 1" cargo. "IMCO 1" denotes cargo which falls within the "Class 1 – Explosives" category of the International Maritime Dangerous Goods Code.

8. The applicant company ordered the vessel to proceed to the port of Burgas in Bulgaria and, on 8 October 1991, further cargo commenced loading. This consisted of general cargo but also arms, ammunition and military spare parts which fell within the "IMCO Class 1" category ("the arms cargo").

9. The applicant company's agent in Burgas drew up bills of lading in respect of the cargo, including the arms cargo ("the bills of lading"). These bills of lading described the arms cargo as "special equipment", followed by a reference to a numbered contract. The port of discharge for the "special equipment" was specified as Tartus in the Syrian Arab Republic. The shipper was stated to be "Socotrade" and the consignee as "to order".

10. The applicant company's agent in Burgas also prepared a manifest of cargo. Like the bills of lading, this described the arms cargo as "special equipment", and gave the port of discharge as Tartus. The applicant company at all times intended that the arms cargo should be discharged at the port of Bandar Abbas in Iran. The vessel sailed from Burgas at 7 p.m. on 21 October 1991 and was ordered to proceed to Setúbal in Portugal in order to load further cargo. In order to reach Setúbal from Burgas, the vessel had to transit through the Bosphorus.

B. The seizure of the vessel

11. On 22 October 1991, at about 3.30 p.m., the vessel was about to commence transit through the Bosphorus. Before entering the Straits the master of the vessel requested the assistance of a pilot for navigation through the Bosphorus. The vessel was flying the international signal flag to indicate that it carried dangerous cargo.

12. As a result of information received by the Turkish customs authorities from a Turkish vessel which had recently arrived from Bulgaria, the Turkish authorities believed that the arms cargo on board the vessel was bound for Cyprus, from where it would be smuggled into Turkey.

13. According to the Turkish authorities, the vessel was first sighted when it was ten miles outside the Straits. After the vessel had entered the Straits, a pilot went on board and invited the master to declare any hazardous materials which were on board. The master duly did so, and the vessel proceeded for a few minutes through the Straits before the pilot instructed the master to stop the engines.

14. The Turkish coastguard and other Turkish authorities boarded and seized the vessel. Since the waters were rough at the point where the vessel was stopped, it was towed by a military boat to the Turkish port of Büyükdere. All parties to the case subsequently proceeded on the basis that the seizure of the vessel had taken place in the Straits, governed by the Montreux Convention of 20 July 1936.

15. At Büyükdere the vessel was searched and the bills of lading and manifest of cargo examined. The Turkish authorities discovered the arms cargo and questioned the master of the vessel. The statement entitled "Protocol of Facts", in which the Turkish authorities summarised their allegations and the actions which they had taken in respect of the vessel, was prepared and signed by all the officials who were present at the seizure and search of the vessel. The master, the first officer and the radio operator of the vessel were taken into custody by the Turkish authorities.

16. On 24 October 1991 statements were taken from the master and first officer in the form of affidavits. These formed part of the file which was submitted by the public prosecutor to a single judge of the Istanbul State Security Court.

C. The proceedings before the Istanbul State Security Court

17. On 28 October 1991, having examined the file and citing, *inter alia,* Articles 5 and 6 of the Montreux Convention, a single judge of the Istanbul State Security Court approved the arrest of the vessel and the detention of its crew, namely the master, the first officer and the radio operator. The judge referred in his decision to "systematic weapon smuggling" and stated

that the "evidence confirmed that the above-mentioned smuggled weapons could be used against the security of the Republic of Turkey".

18. On 30 October 1991 that decision was served on the lawyer instructed on behalf of the vessel and the master. The following day, the lawyer filed an objection against the decision, setting out the relevant provisions of the Montreux Convention and noting that Turkey was not in a state of war with any country within the meaning of the provisions of its Constitution and that there was neither a threat nor a risk of war.

19. On 4 November 1991 the Istanbul State Security Court dismissed that objection.

20. On 5 November the Chief Public Prosecutor at the Istanbul State Security Court indicted the master, the first officer and the radio officer of the vessel, charging them with organised transportation of firearms and ammunition. In the public prosecutor's view, Turkey was at war with Cyprus. He cited various decrees of the Turkish parliament which had authorised the sending of troops to Cyprus, and stated that:

> "... notwithstanding the ceasefire achieved through the efforts of the United Nations putting an end to the armed conflict, no treaty having yet been signed, the state of war is ongoing from a legal point of view. Consequently, it has become necessary to enforce Article 5 of the Montreux Convention. ...
>
> Pursuant to [Article 5 of the Montreux Convention], the commercial vessels of countries at war with Turkey do not enjoy free passage through the Straits. Therefore, there being no right of unrestricted passage through the Straits of a ship flying the Cypriot flag and laden with weapons, the Turkish Government may exercise, for its own security and based on its sovereign rights and Article 5 of the said Convention, control over that ship and the weapons contained therein."

21. Since the vessel was registered as a Cypriot ship and flew the Cypriot flag, the Turkish authorities concluded that they had been entitled under Article 5 of the Montreux Convention to seize the vessel and to launch proceedings for arms smuggling.

22. During November and December 1991 the government of the Islamic Republic of Iran sought the release of the vessel and its cargo through high-level diplomatic meetings. The issue was raised at presidential level and, on 11 November 1991, the Iranian ambassador to Turkey visited the Deputy Minister for Foreign Affairs to deliver copies of one of the bills of lading and of the Montreux Convention. This was intended to establish that the arms cargo was in fact being carried on behalf of the Iranian State.

23. On 12 November 1991 the Turkish Minister for Foreign Affairs wrote to the Ministry of Justice, giving an account of the meetings which had taken place, enclosing copies of the bill of lading and the Montreux Convention and offering to obtain further information on the "special equipment" listed on the bill of lading.

24. On 13 November 1991 the lawyer acting on behalf of the owners and the master of the vessel pointed out to the Istanbul State Security Court that

the assumption that Turkey and Cyprus were at war with each other was the "crucial point" of the case. He requested the Istanbul State Security Court to enquire immediately of the Ministry of Foreign Affairs whether a state of war existed. He also submitted that the Presidency of the Parliament should be asked whether there had been a declaration of war.

25. On 18 November 1991 the lawyer filed another application with the court reiterating that Turkey was not at war with any country (Cyprus included) and seeking the release of the master on bail.

26. On 25 November 1991 the lawyer submitted a petition to the Istanbul State Security Court asking the court to rephrase the question which it had put to the Turkish Ministry of Foreign Affairs. He objected to the question which had been put, namely "whether the peace operations in Cyprus have ended with a treaty of peace ...", and submitted that the proper question to be asked was "whether the Republic of Turkey is in a state of war or not with the State of Cyprus".

27. In another communication, dated 29 November 1991, the applicant company's lawyer sent the Istanbul State Security Court translations of the charter party and the bills of lading. He explained that the nature of a time charter was similar to a lease, and that charterers had control over the cargo and its documentation.

28. The Turkish Ministry of Foreign Affairs responded to the questions posed by the Istanbul State Security Court in two letters of 13 and 26 December 1991. The letters stated:

> "... as there is no 'state of war' between Turkey and any other country, including the Greek Cypriot Administration, it is obvious that the seizure of the ship cannot be based on Articles 5 and 6 of the Montreux Convention. In fact, ships carrying the flag of the Greek Cypriot Administration have always traversed the Straits freely.
>
> 2. In the Note sent to our Ministry by the Iranian embassy in Ankara, it was stated that the arms found on the ship belonged to Iran. This had been certified by the Iranian authorities on several occasions.
>
> On the other hand, the Bulgarian authorities stated that the said arms had officially been sold to Iran by an agreement signed between Bulgaria and Iran in 1989 and that the arms had been loaded in Burgas.
>
> 3. Except for the limitations set out in Articles 4 and 5 of the Montreux Convention in 'time of war', commercial ships flying foreign flags enjoy full freedom of transit passage at times of peace, whatever their flag and cargo may be. As stated above, it is impossible to invoke the 'time of war' provisions of the Montreux Convention in this case because no state of war with the Greek Cypriot Administration exists. Moreover, in accordance with customary international and treaty laws, ships have the 'right of innocent passage' through the territorial waters of other countries ..."

29. On 16 December 1991 the Istanbul State Security Court issued a decision for the release of the master on bail, but ordered the seizure and

confiscation of the vessel and its cargo on suspicion of their being intended for use for the commission or preparation of a crime.

30. On 10 January 1992 the public prosecutor filed his observations on the merits. He maintained his earlier position, relying upon Article 5 of the Montreux Convention, contending that the vessel and the arms cargo should be seized and the master imprisoned.

31. By January 1992 the applicant company had concluded that attempts to secure the release of the vessel and its cargo through diplomatic negotiations were unlikely to succeed. The applicant company applied through its Turkish lawyer, Mr Aydın, to intervene in the proceedings before the Istanbul State Security Court. In its application, the applicant company set out its interest in the case as the owner of the cargo and stressed that the arms cargo was being carried as part of a normal and legal commercial transaction and that Turkey was not at war with any country. It therefore asked for the unconditional release of the vessel and its cargo. The court ordered that the applicant company be joined as an intervening party in the proceedings.

32. On 22 February 1992 the then Prime Minister of Turkey, Mr Süleyman Demirel, issued a certificate which stated:

> "The Republic of Turkey is not in a state of war with any country, Southern Cyprus included ..."

33. By a judgment of 12 March 1992, the Istanbul State Security Court acquitted the first officer and the radio operator, but convicted the master of the vessel of importing arms into Turkey without official permission and sentenced him to five years' imprisonment and a fine of 50,000 Turkish liras (TRL). The court ordered that the arms cargo and the vessel be confiscated pursuant to the final paragraph of section 12 of Law no. 6136, that all the cargo other than the arms be returned to the applicant company and that the master bear the costs of the court hearing. With reference to a judgment of the Court of Cassation in a similar case[1], the Istanbul State Security Court held that in the present case there was bad faith on the part of the applicant company since the bill of lading gave inaccurate information as to the contents of the cargo and the route of the vessel. It noted that there was no justification for not informing the Turkish authorities of Iranian weapons passing through the Straits. The court further considered the following in relation to the Montreux Convention:

> "The second question is whether the Turkish authorities were entitled to seize the munitions and weapons. Pursuant to the relevant Article of the Montreux Convention, the passage of ships carrying firearms and owned by any State with which Turkey is in a state of war is forbidden.

1. By a decision of 19 June 1978 (no. 978/8-189-245) in the *Vassoula* case, the General Criminal Panel of the Court of Cassation held that the state of war had not yet ended following the Cyprus Peace Operation which started on 20 July 1974.

> The other important issue is whether Turkey is in a state of war with the Greek Cypriot State, or in other words, whether a peace agreement has been reached after the war. It is known that Turkey has engaged in war with the Greek Cypriot State, as a result of which Cyprus has been divided into two sections, that the Turkish Republic of Northern Cyprus has been established, that the Greek Cypriot State has not recognised the Turkish Republic of Northern Cyprus and until now no agreement has been reached, and that inter-State negotiations are in progress.
>
> Therefore, the letter of the Ministry of Foreign Affairs ... and the letter of the Prime Minister ... were disregarded."

34. The judgment went on to refer to the *Vassoula* case[1], concerning another vessel, and concluded that "the existence of a state of war has been confirmed".

35. Following the judgment of the Istanbul State Security Court, the applicant company paid the hire charge and expenses due to the owner and the charter party in the sum of 1,161,374.50 United States dollars (USD). Although the judgment of the Istanbul State Security Court had ordered the return of the non-arms cargo to the applicant company, it was not returned and, by an order of 29 May 1992, the Istanbul Court of Commerce granted an injunction to the owner of the vessel which imposed a lien of TRL 4,111,168,608 over the cargo to secure the unpaid hire. The owner of the vessel, Seabeach Shipping Ltd, then commenced enforcement proceedings for encashment of the lien over the cargo which belonged to the applicant company.

D. The appeal

36. On 13 March 1992 the applicant company appealed against the judgment of the Istanbul State Security Court. The applicant company disputed the court's conclusion that a state of war existed between Turkey and Cyprus. The ground of appeal also questioned the legitimacy of the court's reliance on the earlier *Vassoula* case, and pointed out that the arms cargo had only been in transit through the Straits.

37. By a decision of 3 June 1992, the Court of Cassation quashed the Istanbul State Security Court's judgment. It held that there was no material evidence in the file indicating that the arms would be discharged from the vessel in Turkey. As regards the applicability of the provisions of the Montreux Convention, the Court of Cassation held:

> "... that the state of war mentioned in Article 4 of the Convention did not exist as also evidenced by the letters of the Ministry of Foreign Affairs and the Prime Minister which explicitly state that 'Turkey is not at war with any country, including the Southern Greek Cyprus Administration' ... and that there is no room for application of Article 6 of the Montreux Convention. ..."

1. Ibid.

38. The case was remitted to the State Security Court for retrial.

39. In an application of 3 September 1992, pending the retrial of the master of the vessel before the Istanbul State Security Court, the applicant company sought removal of the lien which had been imposed by the Istanbul Court of Commerce over the cargo.

40. On 8 September 1992 the Istanbul Court of Commerce refused the applicant company's request, so on 18 September 1992 the applicant company agreed to pay the owner some of the hire charges, without prejudice as to liability. In return, the owner agreed to relinquish its lien on the non-arms cargo. Under that agreement the applicant company had to pay 80% of the hire charge in respect of the period from 14 March 1992 to 13 September 1992 inclusive (USD 1,118,074.40). The applicant company also agreed to pay 100% of future charges, as and when the payments fell due. The owner provided the applicant company with a guarantee to repay the sum of USD 1,118,074.40. The applicant company considered that it was obliged to pay the hire charges due, otherwise the Istanbul Court of Commerce and the owner would not have released the vessel and its cargo.

41. On 30 September 1992 the Istanbul State Security Court acquitted the master on retrial. An appeal by the public prosecutor against that judgment was dismissed by the Court of Cassation in a decision of 12 November 1992, which was approved on 13 November 1992.

42. On 18 November 1992 the Istanbul State Security Court ordered the release of the vessel and the arms cargo. The vessel left Turkey on 8 December 1992 and was returned to the owner by the applicant company under the terms of the charter party on 9 March 1993.

E. The compensation proceedings

43. In a written application of 22 July 1993, the applicant company brought an action before the Istanbul Court of Commerce claiming TRL 38,087,249,964 (equivalent to USD 3,386,598.98) plus interest against the Ministry of Finance and Customs, with reference to the Ministry of the Interior and the Ministry of Defence. The applicant company based its claim on Article 41 of the Code of Obligations and submitted that the seizure and detention of the vessel and its cargo had been unjustified. It argued in this connection that the arms and ammunition had belonged to the Islamic Republic of Iran, that the vessel had been wrongfully impounded for 413 days, 2 hours and 30 minutes and, as a result, it had had to pay USD 3,263,522.92 to the owner, USD 81,978.86 in fuel charges and USD 41,097.20 in harbour fees.

44. The application went on to distinguish this case from the *Vassoula* case, and to explain the circumstances in which the applicant company had been forced to pay the hire charges and other expenses to the owner of the vessel.

45. On 28 September 1994 a first expert report was submitted to the Court of Commerce following its interlocutory order of 9 March 1994. The experts advised that the applicant company's claim should be declared inadmissible, principally on the basis that the applicant company had chosen voluntarily and without legal compulsion to pay the hire charges under the charter party.

46. The applicant company objected to the first report and the Court of Commerce ordered the preparation of a second expert report on 11 November 1994.

47. On 3 April 1995 the second expert report was submitted to the court with the conclusion that the applicant company's claim should be dismissed. This second panel of experts considered that the owner of the vessel, but not the applicant company, might in appropriate circumstances claim compensation from the Turkish State. They expressed the opinion that the applicant company's claim might succeed in relation to dock and fuel expenses incurred, as well as supplementary losses under Article 105 of the Code of Obligations, but that the claim in respect of hire charges should fail.

48. On 13 June 1995 the applicant company filed an objection against the second report and requested the court to rule on the case without obtaining a further report, or alternatively to order a third expert report.

49. By a decision of 20 September 1995, the Istanbul Court of Commerce dismissed the applicant company's claim for compensation, holding that the vessel was not a merchant vessel since it was carrying, in part, a cargo of arms. It considered that the security authorities had merely carried out their statutory duty to investigate serious allegations of arms smuggling. The court therefore ruled that there had been no breach of the Montreux Convention or of Turkish law, in particular Article 41 of the Code of Obligations.

50. On 6 November 1995 the applicant company appealed.

51. On 27 December 1996 the Court of Cassation dismissed the appeal and upheld the judgment of the Istanbul Court of Commerce. A request by the applicant company for rectification of that decision was rejected by a new decision of the Court of Cassation of 22 May 1997, served on the applicant company on 22 June 1997.

F. The London arbitration

52. The charter party provided, *inter alia*, that any dispute arising under it should be referred to arbitration in London. As a result of the seizure and subsequent detention of the vessel and its cargo by the respondent government, a dispute arose between the applicant company and the owner of the vessel concerning the hire charges and other expenses paid by the applicant company.

53. Following arbitration proceedings in London, on 20 September 1995 the arbitration panel decided that the charter party had been frustrated by the Istanbul State Security Court's decision of 12 March 1992. The applicant company therefore recovered from the owner of the vessel the hire charges and other expenses which had been paid in respect of the period after 12 March 1992, but was unable to recover USD 1,300,403.83 which it had paid or which it thereupon had to pay to the owner in respect of the period between the seizure on 22 October 1991 and 12 March 1992.

G. The proceedings instituted by the owner of the vessel and the cargo receiver

54. Meanwhile, the owner of the vessel, Seabeach Shipping Ltd, brought an action in the Beyoğlu Commercial Court in Istanbul seeking a lien on the cargo for the hire charges. In a decision of 29 May 1992 the Beyoğlu Commercial Court accepted the owner's claim on the ground that it was owed freight charges.

55. The cargo receiver, the Mobarakeh Steel Complex, also brought an action in the Beyoğlu Commercial Court claiming USD 2,236,208 in damages from the Ministry of Finance on behalf of the Ministry of the Interior and the Ministry of Defence. It submitted that it had lost revenue as a result of the detention of its merchandise carried on the vessel and that new commercial goods had been purchased in order to replace the seized merchandise.

56. In a judgment of 17 January 2000, the Beyoğlu Commercial Court dismissed that claim on the grounds that the seizure of the vessel had been lawful since the arms cargo was not clearly indicated on the bill of lading. On appeal by the plaintiff, the Court of Cassation quashed the judgment. Relying on the outcome of the criminal proceedings, the Court of Cassation noted that the goods in question were not contraband or of a kind requiring them to be confiscated. It accordingly held that the defendant must be liable for the damage resulting from the wrongful confiscation of the goods.

57. In a judgment of 15 December 2000, the Beyoğlu Commercial Court confirmed its earlier judgment and held that the plaintiff's claim must be dismissed on the grounds that the seizure and detention of the vessel had been in compliance with domestic law and the Montreux Convention governing the Straits. Taking into account the fact that the vessel had been sailing under the Cypriot flag, and the inconsistency between the cargo and the documents, the court considered that the seizure of the vessel had been lawful. The court further noted that the State of Turkey had acted with the aim of preventing activities designed to undermine it. The plaintiff again appealed against that judgment.

58. On 21 November 2000 the Court of Cassation sitting as a full civil court upheld the judgment of the Beyoğlu Commercial Court and dismissed

the action. It considered that while under the Montreux Convention merchant ships were entitled to innocent passage, this did not outweigh Turkey's sovereign rights. That being so, any arms trafficking would adversely affect Turkey and would thus mean that the passage was no longer innocent. It further stated the following:

> "... On the other hand, the bill of lading described the 2,131 boxes opened as containing 'Special Equipment'. The Turkish Commercial Code specifies in Articles 1098 and 1114 the points to be included in the bill of lading. The cargo received or loaded onto the vessel for transportation must be described on the bill of lading in order for the acknowledgment of receipt and the delivery contract to be complete ... This description, which is an essential element of the bill of lading, must be such as to allow the cargo to be distinguished at all times from the other cargoes on the vessel and must be complete. The carrier is obliged to indicate on the bill of lading the amount, brand and external appearance as well as the characteristics of the cargo ... Clearly, as is apparent from the bills of lading in the case file, these indications, some of which are mandatory, were not included on the bill of lading and invited suspicion.
>
> A country may purchase the arms it needs for its defence from another country, or may secure them by means such as aid or donations. In other words, arms trading between States is a normal and lawful procedure. Transportation of these arms is also normal and lawful. Arms purchased and transported must be indicated clearly as such on the bill of lading and other documents, in accordance with international rules. There should be no need to conceal them or make use of other channels. The file did not include a sales contract to the effect that the party sending these arms had purchased them lawfully, nor did it include any evidence to the effect that a letter of credit had been opened by banks. Given the manner in which the arms were loaded onto the vessel, it was essential from the point of view of Turkey's security to inspect the vessel. In the matter of innocent passage, the coastal State has the right to impose sanctions on the vessel and cargo in accordance with the rule on the prevention of non-innocent passage which stems from customary law and the Montreux Convention. The Montreux Convention, customary law and the principle of *ex aequo et bono* do not prevent Turkey from exercising this right. For these reasons, the trial court's decision to dismiss the action must be upheld on the grounds that it is in conformity with the law and with statutory procedure."

II. RELEVANT LEGAL MATERIALS AND DOMESTIC LAW

A. The Montreux Convention of 20 July 1936

59. The former signatories to the Treaty of Lausanne (1923), together with Yugoslavia and Australia, met at Montreux, Switzerland, in 1936 and abolished the International Straits Commission, returning the Straits zone to Turkish military control. Turkey was authorised to close the Straits to warships of all countries when it was at war or threatened by aggression. Merchant ships were to be allowed free passage during peacetime and, except for countries at war with Turkey, during wartime. The convention

was ratified by Turkey, Great Britain, France, the USSR, Bulgaria, Greece, Germany and Yugoslavia, and – with reservations – by Japan. The preamble to the convention stated that the desire of the parties was "to regulate transit and navigation in the Straits of the Dardanelles, the Sea of Marmara and the Bosphorus, comprised under the general term 'Straits', in such manner as to safeguard, within the framework of Turkish security and of the security, in the Black Sea, of the riparian States, the principle enshrined in Article 23 of the Treaty of Peace signed at Lausanne on the 24th July, 1923".

The relevant provisions of the convention read as follows:

Article 1

"The High Contracting Parties recognise and affirm the principle of freedom of transit and navigation by sea in the Straits.

The exercise of this freedom shall henceforth be regulated by the provisions of the present Convention."

Article 2

"In time of peace, merchant vessels shall enjoy complete freedom of transit and navigation in the Straits, by day and by night, under any flag and with any kind of cargo, without any formalities, except as provided in Article 3 below. No taxes or charges other than those authorised by Annex I to the present Convention shall be levied by the Turkish authorities on these vessels when passing in transit without calling at a port in the Straits.

In order to facilitate the collection of these taxes or charges merchant vessels passing through the Straits shall communicate to the officials at the stations referred to in Article 3 their name, nationality, tonnage, destination and last port of call (provenance).

..."

Article 3

"All ships entering the Straits by the Aegean Sea or by the Black Sea shall stop at a sanitary station near the entrance to the Straits for the purposes of the sanitary control prescribed by Turkish law within the framework of international sanitary regulations. This control, in the case of ships possessing a clean bill of health or presenting a declaration of health testifying that they do not fall within the scope of the provisions of the second paragraph of the present Article, shall be carried out by day and by night with all possible speed, and the vessels in question shall not be required to make any other stop during their passage through the Straits.

Vessels which have on board cases of plague, cholera, yellow fever exanthemic typhus or smallpox, or which have had such cases on board during the previous seven days, and vessels which have left an infected port within less than five times twenty-four hours shall stop at the sanitary stations indicated in the preceding paragraph in order to embark such sanitary guards as the Turkish authorities may direct. No tax or

charge shall be levied in respect of these sanitary guards and they shall be disembarked at a sanitary station on departure from the Straits."

Article 4

"In time of war, Turkey not being belligerent, merchant vessels, under any flag or with any kind of cargo, shall enjoy freedom of transit and navigation in the Straits subject to the provisions of Articles 2 and 3.

..."

Article 5

"In time of war, Turkey being belligerent, merchant vessels not belonging to a country at war with Turkey shall enjoy freedom of transit and navigation in the Straits on condition that they do not in any way assist the enemy.

..."

Article 6

"Should Turkey consider herself to be threatened with imminent danger of war, the provisions of Article 2 shall nevertheless continue to be applied except that vessels must enter the Straits by day and their transit must be effected by the route which shall, in each case, be indicated by the Turkish authorities.

..."

Article 24

"The functions of the International Commission set up under the Convention relating to the regime of the Straits of the 24th July 1923, are hereby transferred to the Turkish Government.

The Turkish Government undertake to collect statistics and to furnish information concerning the application of Articles 11, 12, 14 and 18 of the present Convention.

They will supervise the execution of all the provisions of the present Convention relating to the passage of vessels of war through the Straits.

As soon as they have been notified of the intended passage through the Straits of a foreign naval force the Turkish Government shall inform the representatives at Angora of the High Contracting Parties of the composition of that force, its tonnage, the date fixed for its entry into the Straits, and, if necessary, the probable date of its return.

The Turkish Government shall address to the Secretary-General of the League of Nations and to the High Contracting Parties an annual report giving details regarding the movements of foreign vessels of war through the Straits and furnishing all

information which may be of service to commerce and navigation, both by sea and by air, for which provision is made in the present Convention."

Article 25

"Nothing in the present Convention shall prejudice the rights and obligations of Turkey, or of any of the other High Contracting Parties members of the League of Nations, arising out of the Covenant of the League of Nations."

B. The United Nations Convention on the Law of the Sea of 10 December 1982

60. The relevant provisions provide as follows:

Article 35

"Nothing in this Part affects:

(a) any areas of internal waters within a strait, except where the establishment of a straight baseline in accordance with the method set forth in Article 7 has the effect of enclosing as internal waters areas which had not previously been considered as such;

(b) the legal status of the waters beyond the territorial seas of States bordering straits as exclusive economic zones or high seas; or

(c) the legal regime in straits in which passage is regulated in whole or in part by long-standing international conventions in force specifically relating to such straits."

Article 37

"This section applies to straits which are used for international navigation between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone."

Article 38
Right of transit passage

"1. In straits referred to in Article 37, all ships and aircraft enjoy the right of transit passage, which shall not be impeded; except that, if the strait is formed by an island of a State bordering the strait and its mainland, transit passage shall not apply if there exists seaward of the island a route through the high seas or through an exclusive economic zone of similar convenience with respect to navigational and hydrographical characteristics.

2. Transit passage means the exercise in accordance with this Part of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone. However, the requirement of continuous and expeditious transit does not preclude passage through

the strait for the purpose of entering, leaving or returning from a State bordering the strait, subject to the conditions of entry to that State.

3. Any activity which is not an exercise of the right of transit passage through a strait remains subject to the other applicable provisions of this Convention."

Article 39
Duties of ships and aircraft during transit passage

"1. Ships and aircraft, while exercising the right of transit passage, shall:

(a) proceed without delay through or over the strait;

(b) refrain from any threat or use of force against the sovereignty, territorial integrity or political independence of States bordering the strait, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;

(c) refrain from any activities other than those incident to their normal modes of continuous and expeditious transit unless rendered necessary by force majeure or by distress;

(d) comply with other relevant provisions of this Part.

2. Ships in transit passage shall:

(a) comply with generally accepted international regulations, procedures and practices for safety at sea, including the International Regulations for Preventing Collisions at Sea;

(b) comply with generally accepted international regulations, procedures and practices for the prevention, reduction and control of pollution from ships.

..."

C. The Turkish Code of Obligations

61. This provides as relevant:

Article 41

"Any person who causes damage to another in an unjust manner, be it intentionally or negligently, shall afford redress for that damage."

62. The civil courts are not bound by either the findings or the verdict of the criminal court (Article 53).

D. Law no. 6136 of 15 July 1953 (as amended by Laws nos. 2249 and 2478 of 12 June 1979 and 23 June 1981 respectively)

63. Section 12 makes it an offence to smuggle, to attempt to smuggle or to assist in smuggling firearms or ammunition into the country.

E. Article 36 of the former Turkish Criminal Code

64. Article 36 of the Turkish Criminal Code which was in force at the relevant time prescribed the seizure and confiscation of objects which were used for the commission or preparation of a crime.

F. Article 90 § 5 of the Turkish Constitution

65. The relevant parts of Article 90 § 5 provide:

> "International agreements duly put into effect bear the force of law ... In the event of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

66. The applicant company complained that the seizure by the Turkish authorities of the vessel and its cargo had constituted an unjustified control of the use of property within the meaning of Article 1 of Protocol No. 1, which reads as follows:

> "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."

A. Admissibility

1. The Government's submissions

67. The Government alleged that the applicant company did not have *locus standi* and that it was therefore not entitled to lodge an application under Article 34 of the Convention. They contended, in the alternative, that the applicant company had failed to comply with the six-month rule in respect of the complaint.

68. The Government submitted that the applicant company was a State-owned corporation which could not be considered to be distinct, *de jure* or *de facto*, from the government of the Islamic Republic of Iran. At the time this application was lodged, all of the applicant company's shares had been owned by the State.

69. However, in January 2000, 51% of the company's shares had been transferred to the Social Security Organisation and the State Pension Fund, which were public-sector organisations under the control of the State. According to Articles 9, 10 and 13 of the memorandum of association of the applicant company, three-fifths of the members of the board of directors were appointed by the State, which owned Class A shares. Any Class A share conferred the right to vote, equal to two votes of Class B shares (owned by the Social Security Institution and the State Pension Fund), in the extraordinary general meeting held for the modification of the memorandum of association. Furthermore, Article 18 of the memorandum provided that all decisions of the board should be taken by a majority of the members present. Thus, bearing in mind that three members of the board were representatives of the State, it was impossible to pass an adverse resolution against the instructions of the State. Accordingly, the present application had been lodged by a State which was not a party to the Convention.

70. Furthermore, the established case-law of the Convention institutions indicated that public corporations were not entitled to bring an application under Article 34 of the Convention (see *Radio France and Others v. France* (dec.), no. 53984/00, ECHR 2003-X; *Ayuntamiento de M. v. Spain*, no. 15090/89, Commission decision of 7 January 1991, Decisions and Reports (DR) 68, p. 209; and *Sixteen Austrian Communes and some of their Councillors v. Austria*, nos. 5767/72, 5922/72, 5929-5931/72, 5953-5957/72, 5984-5988/73 and 6011/73, Commission decision of 31 May 1974, Yearbook 17, pp. 338-52).

71. The Government lastly asserted that the applicant company had not filed the complaints within six months of the deposition of the final decision with the registry of the Istanbul Court of Commerce. Referring to the Court's decision in *Tahsin İpek v. Turkey* ((dec.), no. 39706/98, 7 November 2000), they claimed that the six-month period had started to run from 12 June 1997, the date on which the Court of Cassation's final

decision had been deposited with the registry of the Beyoğlu Commercial Court, and that the application had been lodged on 18 December 1997, which was more than six months later.

72. In sum, the Government argued that, given that the applicant company lacked *locus standi* as it was a government corporation, the application should be declared inadmissible as being incompatible *ratione personae*. Alternatively, it should be declared inadmissible for failure to comply with the six-month rule.

2. The applicant company's arguments

73. The applicant company disputed the Government's submissions. It claimed that it was a company limited by shares, with a salaried board of directors and articles of association. At all material times it had been registered as an independent entity under the applicable Iranian trade law. It was run as a commercial business and operated in a sector that was open to competition. In no sense did it have a monopoly or a special position in that sector. Thus, just as in the *Radio France and Others* case (cited above), the applicant company was essentially subject to the legislation on incorporated companies, exercised no powers which were not subject to ordinary law in the exercise of its activities and was subject to the ordinary courts. It was therefore in law and in fact a separate legal entity distinct from the government of Iran, as was provided by Article 3 of the memorandum of association. Since January 2000, 51% of the shares in the applicant company had been owned by private shareholders.

74. Furthermore, the fact that the applicant company was incorporated in Iran, a State which was not a party to the Convention, was of no relevance. There was no requirement that an applicant should be a citizen of the respondent State or indeed of any Council of Europe member State.

75. As regards the Government's reliance on cases concerning the standing of communes and municipalities, the applicant company pointed out that it was in no sense such an organ of local or central government. Rather, it was a separate corporate body at the time of the unlawful and unjustified arrest of the vessel.

76. In view of the above, the applicant company claimed that it was not, at the time of the arrest of the vessel or the subsequent court proceedings, a "governmental organisation" in the relevant sense. It accordingly had *locus standi* to bring an application under Article 34 of the Convention.

77. Finally, the applicant company submitted that the Court of Cassation's final decision had been served on its lawyer on 22 June 1997 and that the application had been lodged on 18 December 1997, that is, within the six-month time-limit.

3. The Court's considerations

78. As regards the first limb of the Government's objections, the Court observes that a legal entity "claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention and the Protocols thereto" may submit an application to it (see, for example, *Agrotexim and Others v. Greece*, 24 October 1995, Series A no. 330-A, and *Société Faugyr Finance S.A. v. Luxembourg* (dec.), no. 38788/97, 23 March 2000), provided that it is a "non-governmental organisation" within the meaning of Article 34 of the Convention (see *RENFE v. Spain*, no. 35216/97, Commission decision of 8 September 1997, DR 90-B, p. 179).

79. The term "governmental organisations", as opposed to "non-governmental organisations" within the meaning of Article 34, includes legal entities which participate in the exercise of governmental powers or run a public service under government control. In order to determine whether any given legal person other than a territorial authority falls within that category, account must be taken of its legal status and, where appropriate, the rights that status gives it, the nature of the activity it carries out and the context in which it is carried out, and the degree of its independence from the political authorities (see *Radio France and Others*, cited above).

80. In the light of the above principles, the Court notes that the applicant company is a corporate body which carries out commercial activities subject to the ordinary law of the Republic of Iran. It neither participates in the exercise of governmental powers nor has a public-service role or a monopoly in a competitive sector (see, in this connection, *The Holy Monasteries v. Greece*, 9 December 1994, § 49, Series A no. 301-A, and more recently, *Österreichischer Rundfunk v. Austria*, no. 35841/02, §§ 48-54, 7 December 2006). Although at the time of the events giving rise to the present application the applicant company was wholly owned by the State and currently an important part of its shares still belong to the State and a majority of the members of the board of directors are appointed by the State, it is legally and financially independent of the State, as transpires from Article 3 of the memorandum of association. In this connection the Court notes that in the *Radio France and Others* case, which was relied on by the Government, it found that the national company Radio France was a "non-governmental organisation" within the meaning of Article 34 of the Convention despite the fact that the State held all of the capital in Radio France, its memorandum and articles of association were approved by decree, its resources were to a large extent public, it performed "public-service missions in the general interest", and it was obliged to comply with terms of reference and to enter into a contract with the State setting out its objectives and means. Therefore, it follows that public-law entities can have the status of a "non-governmental organisation" in so far as they do not

exercise "governmental powers", were not established "for public-administration purposes" and are completely independent of the State (see *The Holy Monasteries*, cited above, § 49).

81. That being so, it is true that governmental bodies or public corporations under the strict control of a State are not entitled to bring an application under Article 34 of the Convention (see *Radio France and Others*; *Ayuntamiento de M.*; *Sixteen Austrian Communes and some of their Councillors*; and *RENFE*, all cited above). However, the idea behind this principle is to prevent a Contracting Party acting as both an applicant and a respondent party before the Court. The circumstances of the present case are therefore different from those cited by the Government and the fact that the applicant company was incorporated in a State which is not party to the Convention makes no difference in this respect. Furthermore, the Court finds that the applicant company is governed essentially by company law, does not enjoy any powers beyond those conferred by ordinary law in the exercise of its activities and is subject to the jurisdiction of the ordinary rather than the administrative courts. Having regard to the foregoing, the Court considers that the applicant company is run as a commercial business and that therefore there is nothing to suggest that the present application was effectively brought by the Islamic Republic of Iran, which is not a party to the Convention.

82. It follows that the applicant company is entitled to bring an application under Article 34 of the Convention and that therefore the first part of the Government's objection should be dismissed.

83. As regards the second part of the Government's objection, namely the alleged failure of the applicant company to comply with the six-month rule, the Court notes that the Government relied on its decision in the *Tahsin İpek* case, which concerned the failure of the applicant to procure the judgment of the Court of Cassation for more than six months after it had been deposited with the registry of the assize court. In this connection, it observes that its findings in the *Tahsin İpek* case applied solely to criminal proceedings since, according to the established practice of the Court of Cassation, the latter's decisions in criminal cases are not served on the defendants. In civil-law cases, however, the Court of Cassation's decisions are served on the parties when payment of the postage fee has been made in advance. Given that the proceedings in the instant case are of a civil nature and that the applicant company lodged its application within six months of the service of the Court of Cassation's final decision, it must be considered to have complied with the six-month rule laid down in Article 35 § 1 of the Convention.

84. Accordingly, the Government's objection concerning the alleged failure to observe the six-month rule must also be dismissed. The Court finds furthermore that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and that it is not inadmissible on any other grounds. This complaint must therefore be declared admissible.

B. Merits

85. The Court notes that the parties did not contest that the matters complained of constituted an interference with the peaceful enjoyment of the applicant company's possessions. Accordingly, it must next determine the applicable rule in the instant case.

1. The applicable rule

86. The Court reiterates that Article 1 of Protocol No. 1 comprises three distinct rules. The first rule, which is set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property. The second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions. The third rule, stated in the second paragraph, recognises that the Contracting 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. However, the rules are not "distinct" in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see *AGOSI v. the United Kingdom*, 24 October 1986, § 48, Series A no. 108).

87. The Court notes that the parties did not comment on the rule applicable to the case. It considers that in this case there was neither a confiscation nor a forfeiture as the applicant company regained possession of the cargo following a temporary detention of the vessel. It therefore amounted to control of the use of property. Accordingly, the second paragraph of Article 1 is applicable in the present case (see *Air Canada v. the United Kingdom*, 5 May 1995, § 34, Series A no. 316-A).

2. Compliance with the conditions in the second paragraph

88. It remains to be decided whether the interference with the applicant company's property rights was in conformity with the State's right under the second paragraph of Article 1 of Protocol No. 1 "to enforce such laws as it deems necessary to control the use of property in accordance with the general interest".

(a) Lawfulness and object of the interference

(i) The Government's arguments

89. The Government submitted that the authorities had searched the vessel on suspicion of organised arms smuggling into Turkey. The arms cargo had thus been seized in accordance with section 12 of Law no. 6136 and Article 36 of the former Turkish Criminal Code as well as Articles 2 and 25 of the Montreux Convention and Article 19 § 2 and Article 39 of the United Nations Convention on the Law of the Sea of 10 December 1982. The above-mentioned provisions of the Montreux Convention and the Convention on the Law of the Sea empowered the Government to limit the transit passage of commercial vessels through the Straits if the vessels posed a threat to the sovereignty, territorial integrity or political independence of the State or in any other manner violated the principles of international law embodied in the Charter of the United Nations. In this connection, arms smuggling was a threat to international peace and order and in violation of the principles of international law and customs. Thus, the provisional seizure of the arms cargo was necessary for the prevention of crime and the protection of public safety in accordance with the general interest.

(ii) The applicant company's arguments

90. The applicant company contended that the arrest and detention of the vessel and its cargo had been unjustified since there was no evidence indicating that an offence had been committed or would have been committed. Nor were they in accordance with the principles of international law within the meaning of Article 1 of Protocol No. 1. The Montreux Convention, which was a *lex specialis* in the instant case, conferred in its Articles 1 to 3 complete freedom of transit and navigation on merchant vessels in the Straits. In particular, Article 3 made it clear that merchant vessels should not be required to make any stop during their passage through the Straits, with the exception of sanitary control which might be imposed by Turkish law within the framework of international sanitary regulations.

91. As regards the Government's reliance on the Convention on the Law of the Sea, the applicant company pointed out that Turkey was not a party to it and that, in any event, it could not have any application to the Bosphorus or the Dardanelles, passage through which was regulated by the Montreux Convention. The latter convention had been incorporated into the domestic law of Turkey. In view of the Court of Cassation's ruling that there was no evidence to suggest that the arms were to be introduced into Turkey and unloaded there, and that the Turkish authorities' reliance on Articles 5 and 6 of the Montreux Convention was untenable, the seizure of the vessel and its cargo had been contrary to the domestic law of Turkey.

(iii) The Court's considerations

92. The Court notes that the parties admitted that there was some legal basis for the interference with the applicant company's property rights; they disagreed, however, on the exact meaning and scope of the applicable law. It further notes that during various stages of the national proceedings their views also differed on the degree of applicability of the Montreux Convention, rules of customary international law governing transit passage through straits and provisions of national law prohibiting arms smuggling. Although in the early stages of the proceedings the national courts relied on Article 5 of the Montreux Convention in justifying Turkey's right to seize the arms cargo because of the continuing state of war with Cyprus, in their observations before the Court the Government's arguments hinged upon the application of the legislation prohibiting arms smuggling, which undermines international peace.

93. The Court accepts that the Montreux Convention is a *lex specialis* as concerns the transit regime through the Bosphorus. In this connection, it notes the points of conflicting interpretation of this convention raised by the parties. The Court considers, however, that it is not its role in the circumstances of this case to pronounce on the interpretation and application of the Montreux regime by Turkey, as there was arbitrary interference with the applicant company's property rights for the following reasons.

(b) Proportionality of the interference

94. The Court reiterates that an interference, particularly one falling to be considered under the second paragraph of Article 1 of Protocol No. 1, must strike a "fair balance" between the demands of the general interest and the requirements of the protection of the individual's fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 as a whole, and therefore also in its second paragraph. There must be a reasonable relationship of proportionality between the means employed and the aim pursued. In determining whether this requirement is met, the Court recognises that the State enjoys a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified in the general interest for the purpose of achieving the object of the law in question (see *Air Canada*, cited above, § 48).

95. The Court notes that neither the applicant company nor the Government commented on the proportionality of the interference. They limited themselves to comments on the lawfulness and purpose of the interference.

96. Be that as it may, in order to assess the proportionality of the interference, the Court has to examine the degree of protection from arbitrariness that is afforded by the proceedings in this case and whether a

total lack of compensation can be considered justifiable under Article 1 of Protocol No. 1.

97. In the present case, the vessel carrying the cargo belonging to the applicant company was arrested on 22 October 1991 and detained until 8 December 1992, the date on which the vessel left Turkey by order of the Istanbul State Security Court. As noted above, the authorities' suspicion that the vessel was involved in international arms smuggling provided the justification for the arrest of the vessel. However, that suspicion was dispelled by the Minister for Foreign Affairs' letter of 12 November 1991, which informed the Istanbul State Security Court, via the Ministry of Justice, that the arms cargo belonged to the Islamic Republic of Iran (see paragraphs 22-23 above). The prosecuting authorities, however, also attached fundamental importance to the fact that there was an ongoing state of war between Turkey and Cyprus and that therefore the vessel was not entitled to free passage through the Straits within the meaning of Article 5 of the Montreux Convention (see paragraph 20 above). Yet that assertion was also disputed by the Ministry of Foreign Affairs, which responded to the Istanbul State Security Court's questions in letters of 13 and 26 December 1991, and by the then Prime Minister's certificate of 22 February 1992 (see paragraphs 28 and 32 above). Despite this information, the Istanbul State Security Court instead relied on an old and isolated precedent, the *Vassoula* case, which had been decided in 1978 and concerned very different circumstances, in concluding that there was a state of war between Turkey and Cyprus and that, therefore, the detention of the vessel and arms cargo should be continued (see paragraphs 33-35 above). It gave no reasons for rejecting the statements and certification from the relevant State officials and representatives that there was no state of war.

98. In view of the above, the Court considers that the vessel and its cargo should have been released, at the latest, on 12 March 1992, when the State Security Court issued its decision, and that their detention from the above-mentioned date onwards was arbitrary since there was no basis for suspecting an arms-smuggling offence or general power to seize the ship on account of a state of war between Turkey and Cyprus.

99. Furthermore, the Court observes that the compensation proceedings are also material in determining whether the contested interference in this case respected the requisite fair balance and, notably, whether it imposed a disproportionate burden on the applicant company. In this connection, the arbitrary control of use of a property for a prolonged period of time without justification will normally constitute a disproportionate interference, and a total lack of compensation can be considered unjustifiable under Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *The Holy Monasteries*, cited above, §§ 70-71, and *Papachelas v. Greece* [GC], no. 31423/96, § 48, ECHR 1999-II).

100. In that regard the Court notes that the applicant company's claim for compensation for the damage it had sustained was dismissed by the Beyoğlu Court of Commerce, which held that the vessel was not a merchant vessel since it was carrying, in part, a cargo of arms and that its passage was therefore not innocent within the meaning of the Montreux Convention (see paragraphs 49 and 58 above).

101. The Court observes that the Court of Cassation had already found that there was no offence of arms smuggling and that Article 6 § 1 of the Montreux Convention did not apply (see paragraph 37 above). Accordingly, even though the civil courts were not bound by the findings of the criminal courts (see paragraph 62 above), the reasons given by the Beyoğlu Commercial Court were not capable of justifying its decision to deprive the applicant company of its claims for compensation for damage suffered from 12 March 1992 (see paragraph 99 above).

102. The foregoing considerations are sufficient to enable the Court to conclude that the authorities' interference with the applicant company's rights is disproportionate and unable to strike a fair balance between the interests at stake.

103. There has accordingly been a violation of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

104. The applicant company also complained that the initial seizure and subsequent detention of the vessel the *Cape Maleas* and the exercise of criminal jurisdiction over the officers and the vessel had constituted an infringement of public international law, the Montreux Convention and Turkish law. It relied on Article 6 § 1 of the Convention, which provides:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

105. The Government contended that this complaint had been brought outside the six-month period since the criminal proceedings had become final by virtue of the Istanbul State Security Court's judgment of 13 November 1992 and the application had been lodged on 18 December 1997.

106. The applicant company contested the Government's submissions. It argued that the harm it had suffered as a result of the initial seizure and subsequent detention of the vessel had potentially entitled it to damages. Accordingly, the applicant company had brought compensation proceedings before the Turkish courts and the Strasbourg application had been lodged only after the conclusion of those proceedings.

107. The Court notes that it is not required to determine whether the applicant company complied with the six-month rule since this part of the application is inadmissible for the following reasons.

108. It reiterates that, according to Article 34 of the Convention, it may receive applications from any person claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. This provision requires that an individual applicant should claim to have been directly and actually affected by the violation he alleges (see *Ireland v. the United Kingdom*, 18 January 1978, §§ 239-40, Series A no. 25).

109. The Court notes that in the circumstances of the present case, criminal proceedings were brought only against the crew of the vessel. The applicant company has not demonstrated that any criminal proceedings were brought against it. Furthermore, the applicant company has successfully appealed to the Court of Cassation and secured the release of the cargo, which belonged to it. Accordingly, the applicant company cannot claim to be a victim, within the meaning of Article 34 of the Convention, of a violation of the Convention provision on which it relies.

110. This part of the application is therefore incompatible *ratione personae* with the provisions of the Convention and must be rejected under Article 35 § 3 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

111. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

112. The applicant company claimed 1,195,429.17 United States dollars (USD) (approximately 879,270 euros (EUR)) in respect of pecuniary damage. This amount comprised:

– USD 1,043,900 (EUR 766,885) for the hire charge paid to the owners of the vessel during the period of detention between 22 October 1991 and 12 March 1992;

– USD 76,862.50 (EUR 56,470) for the cost of fuel used by the vessel while in detention; and

– USD 74,666.67 (EUR 54,860) paid to the owners of the vessel, following London arbitration, in respect of the agency fees incurred by them for the period between 22 October 1991 and 12 March 1992

(USD 12,166.67) and in respect of the reimbursement of Turkish legal fees incurred by the owners (USD 62,500).

113. The Government submitted that no award should be made under this head since the alleged damage had been caused by the applicant company, which had given untrue information about the nature of the cargo. They further claimed that the amounts claimed were unsubstantiated.

114. The Court reiterates that there must be a clear causal link between the damage claimed and the violation of the Convention (see, among other authorities, *Barberà, Messegué and Jabardo v. Spain* (Article 50), 13 June 1994, §§ 16-20, Series A no. 285-C).

115. The Court accepts that the applicant company suffered damage as a result of disproportionate interference by the authorities with its rights under Article 1 of Protocol No. 1. However, it notes that the applicant company has already recovered the losses it sustained in respect of the period after 12 March 1992 in the London arbitration proceedings (see paragraph 53 above). The applicant company's claim for damages thus relates only to the period between the date of the vessel's arrest and 12 March 1992. In this connection, the Court refers to its finding that the vessel and its cargo should have been released, at the latest, on 12 March 1992 and that their detention from that date onwards was arbitrary (see paragraph 98 above). It considers therefore that no award should be made under this head for the period before 12 March 1992. It follows that the applicant company's claims in respect of pecuniary damage must be dismissed.

B. Costs and expenses

116. The applicant company also claimed 31,060 pounds sterling (GBP) (approximately EUR 45,870) for the costs and expenses incurred for the preparation and presentation of its case before the Court. This sum included fees for work done by its representatives in the proceedings before the Court.

117. The Government contended that the amount claimed was excessive and unjustified.

118. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, the Court is not satisfied that all the costs and expenses were necessarily and actually incurred. It considers that part of the amounts claimed by the legal representatives for consultations between themselves is exaggerated. The Court also considers excessive the total number of hours of legal work and the hourly rate claimed in respect of the applicant company's lawyers. It therefore finds that it has not been proved that all those legal costs were necessarily and reasonably incurred. Having regard to the details of the claims and vouchers submitted by the applicant

company, the Court considers it reasonable to award the sum of EUR 35,000 for costs and expenses before the Court.

C. Default interest

119. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 1 of Protocol No. 1 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;

3. *Holds*
   (a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 35,000 (thirty-five thousand euros) for costs and expenses, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant company's claim for just satisfaction.

Done in English, and notified in writing on 13 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Deputy Registrar

Boštjan M. Zupančič
President