

Press release issued by the Registrar

GRAND CHAMBER JUDGMENT
“BOSPHORUS AIRWAYS” v. IRELAND

The European Court of Human Rights has today delivered at a public hearing a judgment¹ in the case of *“Bosphorus Airways” v. Ireland* (application no. 45036/98). The Court held unanimously that there had been **no violation of Article 1 of Protocol No. 1** (protection of property) to the European Convention on Human Rights. (The judgment is available in English and French.)

1. Principal facts

The case concerns an application brought by an airline charter company registered in Turkey, Bosphorus Hava Yollari Turizm ve Ticaret Anonim Şirketi (“Bosphorus Airways”).

In May 1993 an aircraft leased by Bosphorus Airways from Yugoslav Airlines (“JAT”) was seized by the Irish authorities. It had been in Ireland for maintenance by TEAM Aer Lingus, an aircraft maintenance company owned by the Irish State, and it was seized under EC Council Regulation 990/93 which, in turn, had implemented the UN sanctions regime against the Federal Republic of Yugoslavia (Serbia and Montenegro).

Bosphorus Airways’ challenge to the retention of the aircraft was initially successful in the High Court, which held in June 1994 that Regulation 990/93 was not applicable to the aircraft. However, on appeal, the Supreme Court referred a question under Article 177 of the EEC Treaty to the European Court of Justice (ECJ) on whether the aircraft was covered by Regulation 990/93. The ECJ found that it was and, in its judgment of November 1996, the Supreme Court applied the decision of the ECJ and allowed the State’s appeal.

By that time, Bosphorus Airways’ lease on the aircraft had already expired. Since the sanctions regime against the Federal Republic of Yugoslavia (Serbia and Montenegro) had also been relaxed by that date, the Irish authorities returned the aircraft directly to JAT. Bosphorus Airways consequently lost approximately three years of its four-year lease of the aircraft, which was the only one ever seized under the relevant EC and UN regulations.

2. Procedure and composition of the Court

The application was lodged with the European Commission of Human Rights on 25 March 1997 and transmitted to the Court on 1 November 1998. Following a hearing on the admissibility and merits, it was declared admissible on 13 September 2001. On 30 January 2004 the Chamber relinquished jurisdiction in favour of the Grand Chamber.

¹ Grand Chamber judgments are final (Article 44 of the Convention).

A public hearing before the Grand Chamber took place in the Human Rights Building, Strasbourg, on 29 September 2004. Written submissions were received from the Governments of Italy and the United Kingdom and from the European Commission and the “*Institut de Formation en Droits de L’Homme Du Barreau de Paris*”, which were given leave by the Court’s President to intervene. The European Commission also obtained leave to participate in the oral hearing.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Christos **Rozakis** (Greek), *President*,
Jean-Paul **Costa** (French),
Georg **Ress** (German),
Nicolas **Bratza** (British),
Ireneu **Cabral Barreto** (Portuguese),
Françoise **Tulkens** (Belgian),
Viera **Strážnická** (Slovakian)
Karel **Jungwiert** (Czech),
Volodymyr **Butkevych** (Ukrainian),
Nina **Vajić** (Croatian),
John **Hedigan** (Irish),
Matti **Pellonpää** (Finnish),
Kristaq **Traja** (Albanian),
Snejana **Botoucharova** (Bulgarian),
Vladimiro **Zagrebelky** (Italian),
Lech **Garlicki** (Polish),
Alvina **Gyulumyan** (Armenian), *judges*,

and also Paul **Mahoney**, *Registrar*.

3. Summary of the judgment¹

Complaint

Bosphorus Airways complained that the manner in which Ireland implemented the sanctions regime to impound its aircraft was a reviewable exercise of discretion within the meaning of Article 1 of the Convention and a violation of Article 1 of Protocol No. 1.

Decision of the Court

Article 1

It was not disputed that the impoundment of the aircraft leased by Bosphorus Airways was implemented by the Irish authorities on its territory following a decision by the Irish Minister for Transport. In such circumstances Bosphorus Airways fell within the “jurisdiction” of the Irish State.

¹ This summary by the Registry does not bind the Court.

Article 1 of Protocol No. 1

Legal basis for the impoundment of the aircraft

The Court observed that, once adopted, EC Regulation 990/93 was “generally applicable” and “binding in its entirety” (under Article 189, now Article 249, of the EC Treaty), so that it applied to all Member States, none of whom could lawfully depart from any of its provisions. In addition, its “direct applicability” was not, and in the Court’s view could not be, disputed. The Regulation became part of Irish domestic law with effect from 28 April 1993, when it was published in the Official Journal, prior to the date of the impoundment and without the need for implementing legislation.

The Court considered it entirely foreseeable that a Minister for Transport would implement the impoundment powers contained in Article 8 of EC Regulation 990/93. The Irish authorities rightly considered themselves obliged to impound any departing aircraft to which they considered Article 8 of EC Regulation 990/93 applied. Their decision that it did so apply was later confirmed, among other things, by the ECJ

The Court also agreed with the Irish Government and the European Commission that the Supreme Court had no real discretion to exercise, either before or after its preliminary reference to the ECJ.

The Court concluded that the impugned interference was not the result of an exercise of discretion by the Irish authorities, either under EC or Irish law, but rather amounted to compliance by the Irish State with its legal obligations flowing from EC law and, in particular, Article 8 of EC Regulation 990/93.

Was the impoundment justified?

The Court found that the protection of fundamental rights by EC law could have been considered to be, and to have been at the relevant time, “equivalent” to that of the Convention system. Consequently, a presumption arose that Ireland did not depart from the requirements of the Convention when it implemented legal obligations flowing from its membership of the EC. Such a presumption could be rebutted if, in a particular case, it was considered that the protection of Convention rights was manifestly deficient. In such cases, the interest of international co-operation would be outweighed by the Convention’s role as a “constitutional instrument of European public order” in the field of human rights.

The Court took note of the nature of the interference, of the general interest pursued by the impoundment and by the sanctions regime and of the ruling of the ECJ, a ruling with which the Supreme Court was obliged to and did comply. It considered it clear that there was no dysfunction of the mechanisms of control of the observance of Convention rights.

In the Court’s view, therefore, it could not be said that the protection of Bosphorus Airways’ Convention rights was manifestly deficient. It followed that the presumption of Convention compliance had not been rebutted and that the impoundment of the aircraft did not give rise to a violation of Article 1 of Protocol No. 1.

Judge Ress expressed a concurring opinion and Judges Rozakis, Tulkens, Traja, Botoucharova, Zagrebelsky and Garlicki expressed a joint separate opinion, both of which are annexed to the judgment.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. Since 1 November 1998 it has sat as a full-time Court composed of an equal number of judges to that of the States party to the Convention. The Court examines the admissibility and merits of applications submitted to it. It sits in Chambers of 7 judges or, in exceptional cases, as a Grand Chamber of 17 judges. The Committee of Ministers of the Council of Europe supervises the execution of the Court's judgments. More detailed information about the Court and its activities can be found on its Internet site.