

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

GRAND CHAMBER

**CASE OF BOSPHORUS HAVA YOLLARI TURİZM VE
TİCARET ANONİM ŞİRKETİ v. IRELAND**

(Application no. 45036/98)

Please click on the case title to access the full text of this case.

JUDGMENT

STRASBOURG

30 June 2005

**In the case of Bosphorus Hava Yolları Turizm ve Ticaret
Anonim Şirketi v. Ireland,**

The European Court of Human Rights, sitting as a Grand Chamber
composed of:

(...)

Having deliberated in private on 29 September 2004 and 11 May
2005, Delivers the following judgment, which was adopted on the
last mentioned date:

PROCEDURE

(...)

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The lease agreement between JAT and the applicant company

11. The applicant company is an airline charter company incorporated in Turkey in March 1992.

12. By an agreement dated 17 April 1992, the applicant company leased two Boeing 737-300 aircraft from Yugoslav Airlines (JAT), the national airline of the former Yugoslavia. These were, at all material times, the only two aircraft operated by the applicant company. The lease agreement was a “dry lease without crew” for a period of forty-eight months from the dates of delivery of the two aircraft (22 April and 6 May 1992). According to the terms of the lease, the crew were to be the applicant company's employees and the applicant company was to control the destination of the aircraft. While ownership of the aircraft remained with JAT, the applicant company could enter the aircraft on the Turkish Civil Aviation Register provided it noted JAT's ownership.

(...)

II. THE SANCTIONS REGIME: THE RELEVANT PROVISIONS

(...)

III. RELEVANT COMMUNITY LAW AND PRACTICE

72. This judgment is concerned with the provisions of Community law of the “first pillar” of the European Union.

A. Fundamental rights: case-law of the ECJ¹

73. While the founding treaties of the European Communities did not contain express provisions for the protection of human rights, the ECJ held as early as 1969 that fundamental rights were enshrined in the general principles of Community law protected by the ECJ². By the early 1970s the ECJ had confirmed that, in protecting such rights, it was inspired by the constitutional traditions of the member States³ and by the guidelines supplied by international human rights treaties on which the member States had collaborated or to which they were signatories⁴. The Convention's provisions were first explicitly referred to in 1975⁵, and by 1979 its special significance amongst international treaties on the protection of human rights had been recognised by the ECJ⁶. Thereafter the ECJ began to refer extensively to Convention provisions (sometimes where the Community legislation under its consideration had referred to the Convention)⁷ and

1.

latterly to this Court's jurisprudence¹, the more recent ECJ judgments not prefacing such Convention references with an explanation of their relevance to Community law.

74. In a judgment of 1991, the ECJ was able to describe the role of the Convention in Community law in the following terms²:

“41. ... as the Court has consistently held, fundamental rights form an integral part of the general principles of law, the observance of which it ensures. For that purpose the Court draws inspiration from the constitutional traditions common to the Member States and from the guidelines supplied by international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories ... The [Convention] has special significance in that respect ... It follows that ... the Community cannot accept measures which are incompatible with observance of the human rights thus recognised and guaranteed.

42. As the Court has held ... it has no power to examine the compatibility with the [Convention] of national rules which do not fall within the scope of Community law. On the other hand, where such rules do fall within the scope of Community law, and reference is made to the Court for a preliminary ruling, it must provide all the criteria of interpretation needed by the national court to determine whether those rules are compatible with the fundamental rights the observance of which the Court ensures and which derive in particular from the [Convention].”

B. Relevant treaty provisions³

1. Concerning fundamental rights

77. The case-law developments noted above were reflected in certain treaty amendments. In the preamble to the Single European Act of 1986, the Contracting Parties expressed their determination

“to work together to promote democracy on the basis of the fundamental rights recognised in the constitutions and laws of the Member States, in the Convention for the Protection of Human Rights and Fundamental Freedoms ...”.

78. Article 6 (formerly Article F) of the Treaty on European Union of 1992 reads as follows:

“1. The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.

2. The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.

3. The Union shall respect the national identities of its Member States.

4. The Union shall provide itself with the means necessary to attain its objectives and carry through its policies.”

1. *Accession by the Community to the European Convention for the Protection of Human Rights and Fundamental Freedoms*, Opinion 2/94 [1996] ECR I-1759. 2.

79. The Treaty of Amsterdam of 1997 required the ECJ, in so far as it had jurisdiction, to apply human rights standards to acts of Community institutions and gave the European Union the power to act against a member State that had seriously and persistently violated the principles of Article 6(1) of the Treaty on European Union, cited above.

80. The Charter of Fundamental Rights of the European Union, proclaimed in Nice on 7 December 2000 (not fully binding), states in its preamble that it

“reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case-law of the Court of Justice of the European Communities and of the European Court of Human Rights”.

Article 52 § 3 of the Charter provides:

“In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.”

81. The Treaty establishing a Constitution for Europe, signed on 29 October 2004 (not in force), provides in its Article I-9 entitled “Fundamental Rights”:

“1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes Part II.

2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Constitution.

3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.”

The Charter of Fundamental Rights cited above has been incorporated as Part II of this constitutional treaty.

2. Other relevant provisions of the EC Treaty

...

83. The relevant part of Article 189 (now Article 249) reads as follows:

“A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States. ...”

The description of a regulation as being “binding in its entirety” and

“directly applicable” in all member States means that it takes effect¹ in the internal legal orders of member States without the need for domestic implementation.

84. Article 234 (now Article 307) reads as follows:

“The rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of this Treaty.

To the extent that such agreements are not compatible with this Treaty, the Member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established. Member States shall, where necessary, assist each other to this end and shall, where appropriate, adopt a common attitude.

In applying the agreements referred to in the first paragraph, Member States shall take into account the fact that the advantages accorded under this Treaty by each Member State form an integral part of the establishment of the Community and are thereby inseparably linked with the creation of common institutions, the conferring of powers upon them and the granting of the same advantages by all the other Member States.”

C. The European Community control mechanisms

...

1. Direct actions before the ECJ

...

(b) Actions against member States

89. Under Article 169 (now Article 226) and Article 170 (now Article 227), both the Commission (in fulfilment of its role as “guardian of the Treaties”) and a member State are accorded, notably, the right to take proceedings against a member State considered to have failed to fulfil its Treaty obligations. If the ECJ finds that a member State has so failed, the State shall be required to take the necessary measures to comply with the judgment of the ECJ (Article 171, now Article 228). The Commission can also take proceedings against a member State in other specific areas of Community regulation (such as State aids – Article 93, now Article 88).

(c) Actions against individuals

90. There is no provision in the EC Treaty for a direct action before the ECJ against individuals. Individuals may, however, be fined under certain provisions of Community law; such fines may, in turn, be challenged before the ECJ.

(a) Direct effects

92. The “direct effect” of a provision of Community law means that

it confers upon individuals rights and obligations they can rely on before the national courts. A provision with direct effect must not only be applied by the domestic courts, but it will take precedence over conflicting domestic law pursuant to the principle of supremacy of Community law¹. The conditions for acquiring direct effect are that the provision

“contains a clear and unconditional prohibition which is not a positive but a negative obligation. This obligation, moreover, is not qualified by any reservation on the part of the States which would make its implementation conditional upon a positive legislative measure enacted under national law. The very nature of this prohibition makes it ideally adapted to produce direct effects in the legal relationship between States and their subjects”².

93. Certain EC Treaty provisions are considered to have direct effect, whether they impose a negative or positive obligation and certain have been found to have, as well as “vertical” effect (between the State and the individual), a horizontal effect (between individuals). Given the text of Article 189 (now Article 249), the provisions of regulations are normally considered to have direct effect, both vertically and horizontally. Directives and decisions can, in certain circumstances, have vertical direct effect, though recommendations and opinions, having no binding force, cannot generally be relied on by individuals before national courts.

(b) The principles of indirect effect and State liability

94. The rights an individual may claim under Community law are no longer confined to those under directly effective Community provisions: they now include rights based on the principles of indirect effect and State liability developed by the ECJ. According to the principle of “indirect effect” (*“interprétation conforme”*), a member State's obligations under Article 5 (now Article 10) require its authorities (including the judiciary) to interpret as far as possible national legislation in the light of the wording and purpose of the relevant directive³.

95. The principle of State liability was first developed in *Francovich*⁴. The ECJ found that, where a State had failed to implement a directive (whether or not directly effective), it would be obliged to compensate individuals for resulting damage if three conditions were met: the directive conferred a right on individuals; the content of the right was clear from the provisions of the directive itself; and there was a causal link between the State's failure to fulfil its obligation and the damage suffered by the person affected. In 1996 the ECJ extended the notion of State liability to all domestic acts and omissions (legislative, executive and judicial) in breach of Community law provided the conditions for liability were fulfilled¹.

(c) Preliminary reference procedure

96. In order to assist national courts in correctly implementing Community law and maintaining its uniform application², Article 177

(now Article 234) provides national courts with the opportunity to consult the ECJ. In particular, Article 177 reads as follows:

“The Court of Justice shall have jurisdiction to give preliminary rulings

concerning: (a) the interpretation of this Treaty;

(b) the validity and interpretation of acts of the institutions of the

Community ...; ...

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.”

...

99. Once the reference is made, the ECJ will rule on the question put to it and that ruling is binding on the national court. The ECJ has no power to decide the issue before the national court and cannot therefore apply the provision of Community law to the facts of the particular case in question². The domestic court will decide on the appropriate remedy.

...

THE LAW

I. PRELIMINARY OBJECTIONS

(...)

II. SUBMISSIONS CONCERNING ARTICLE 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

107. The applicant company maintained that the manner in which Ireland had 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. ...

(...)

III. THE COURT'S ASSESSMENT

A. Article 1 of the Convention

135. Article 1 of the Convention ... provides:

“The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention.”

136. The text of Article 1 requires States Parties to answer for any infringement of the rights and freedoms protected by the Convention committed against individuals placed under their “jurisdiction” ...

137. In the present case it is not disputed that the act about which the applicant company complained, the detention of the aircraft leased by it for a period of time, was implemented by the authorities of the respondent State on its territory following a decision made by the Irish Minister for Transport. In such circumstances the applicant company, as the addressee of the impugned act, fell within the “jurisdiction” of the Irish State

...

B. Article 1 of Protocol No. 1

139. Article 1 of Protocol No. 1 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.”

140. It was not disputed that there was an “interference” (the detention of the aircraft) with the applicant company's “possessions” (the benefit of its lease of the aircraft) and the Court does not see any reason to conclude otherwise (see, for example, *Stretch v. the United Kingdom*, no. 44277/98, §§ 32-35, 24 June 2003).

1. The applicable rule

141. The parties did not, however, agree on whether that interference amounted to a deprivation of property (first paragraph of Article 1 of Protocol No. 1) or a control of the use of property (second paragraph). ...

142. The Court considers that the sanctions regime amounted to a control of the use of property considered to benefit the former FRY and that the impugned detention of the aircraft was a measure to enforce that regime. While the applicant company lost the benefit of approximately three years of a four-year lease, that loss formed a constituent element of the above mentioned control on the use of property. It is therefore the second paragraph of Article 1 of Protocol No. 1 which is applicable in the present case

2. The legal basis for the impugned interference

143. The parties strongly disagreed as to whether the impoundment was at all times based on legal obligations on the Irish State flowing from Article 8 of Regulation (EEC) no. 990/93.

For the purposes of its examination of this question, the Court reiterates that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law even when that law refers to international law or agreements. Equally, the Community's judicial organs are better placed to interpret and apply Community law. In each instance, the Court's role is confined to ascertaining whether the effects of such adjudication are compatible with the Convention 144. While the applicant company alluded briefly to the Irish State's role in the Council of the European Communities (see paragraph 115 above), the Court notes that its essential standpoint was that it was not challenging the provisions of the regulation itself but rather their implementation. 145. Once adopted, Regulation (EEC) no. 990/93 was "generally applicable" and "binding in its entirety" (pursuant to Article 189, now Article 249, of the EC Treaty), so that it applied to all member States, none of which could lawfully depart from any of its provisions.

....
It is true that Regulation (EEC) no. 990/93 originated in a UNSC resolution adopted under Chapter VII of the United Nations Charter (a point developed in some detail by the Government and certain third parties). While the resolution was pertinent to the interpretation of the regulation (see the opinion of the Advocate General and the ruling of the ECJ – paragraphs 45-50 and 52-55 above), the resolution did not form part of Irish domestic law (Mr Justice Murphy – paragraph 35 above) and could not therefore have constituted a legal basis for the impoundment of the aircraft by the Minister for Transport.

Accordingly, the Irish authorities rightly considered themselves obliged to impound any departing aircraft to which they considered Article 8 of Regulation (EEC) no. 990/93 applied. Their decision that it did so apply was later confirmed, in particular, by the ECJ (see paragraphs 54-55 above).

...
147. The Court would also agree with the 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, for the reasons set out below.

In the first place, there being no domestic judicial remedy against its decisions, the Supreme Court had to make the preliminary reference it did having regard to the terms of Article 177 (now Article 234) of the EC Treaty and the judgment of the ECJ in *CILFIT* (see paragraph 98 above): the answer to the interpretative question put to the ECJ was not obvious (the conclusions of the Sanctions Committee and the Minister for Transport conflicted with those of the High Court); the question was of central importance to the case ...; and there was no previous ruling by the ECJ on the point. ...

Secondly, the ECJ ruling was binding on the Supreme Court (see paragraph 99 above).

Thirdly, the ruling of the ECJ effectively determined the domestic proceedings in the present case. Given the Supreme Court's question and the answer of the ECJ, the only conclusion open to the former was that Regulation (EEC) no. 990/93 applied to the applicant company's aircraft. ...

...
148. For these reasons, the Court finds that the impugned interference was not the result of an exercise of discretion by the Irish authorities, either under Community or Irish law, but rather amounted to compliance by the Irish State with its legal obligations flowing from Community law and, in particular, Article 8 of Regulation (EEC) no. 990/93.

3. Whether the impoundment was justified

(a) The general approach to be adopted

149. Since the second paragraph of Article 1 of Protocol No. 1 is to be construed in the light of the general principle enunciated in the opening sentence of that Article, there must exist a reasonable relationship of proportionality between the means employed and the aim sought to be realised: the Court must determine whether a fair balance has been struck between the demands of the general interest in this respect and the interest of the individual company concerned. In so determining, the Court recognises that the State enjoys a wide margin of appreciation with regard to the means to be employed and to the question of whether the consequences are justified in the general interest for the purpose of achieving the objective pursued (see *AGOSI*, cited above, p. 18, § 52).

150. The Court considers it evident from its finding in paragraphs 145 to 148 above that the general interest pursued by the impugned measure was compliance with legal obligations flowing from the Irish State's membership of the European Community.

It is, moreover, a legitimate interest of considerable weight. The Convention has to be interpreted in the light of any relevant rules and principles of international law applicable in relations between the Contracting Parties (Article 31 § 3 (c) of the Vienna Convention on the Law of Treaties, and *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, § 55, ECHR 2001-XI), which principles include that of *pacta sunt servanda*. The Court has also long recognised the growing importance of international cooperation and of the consequent need to secure the proper functioning of international organisations (see *Waite and Kennedy*, §§ 63 and 72, and *Al Adsani*, § 54, both cited above; see also Article 234 (now Article 307) of the EC Treaty). Such considerations are critical for a supranational organisation such as the European Community¹. This Court has accordingly accepted that compliance with Community law by a Contracting Party constitutes a legitimate general-interest objective within the meaning of Article 1 of

Protocol No. 1 (see, *mutatis mutandis*, *S.A. Dangeville*, cited above, §§ 47 and 55).

151. The question is therefore whether, and if so to what extent, that important general interest of compliance with Community obligations can justify the impugned interference by the Irish State with the applicant company's property rights.

152. The Convention does not, on the one hand, prohibit Contracting Parties from transferring sovereign power to an international (including a supranational) organisation in order to pursue cooperation in certain fields of activity (see *M. & Co.*, p. 144, and *Matthews*, § 32, both cited above). Moreover, even as the holder of such transferred sovereign power, that organisation is not itself held responsible under the Convention for proceedings before, or decisions of, its organs as long as it is not a Contracting Party (see *Confédération française démocratique du travail v. European Communities*, no. 8030/77, Commission decision of 10 July 1978, DR 13, p. 231; *Dufay v. European Communities*, no. 13539/88, Commission decision of 19 January 1989, unreported; and *M. & Co.*, p. 144, and *Matthews*, § 32, both cited above).

153. On the other hand, it has also been accepted that a Contracting Party is responsible under Article 1 of the Convention for all acts and omissions of its organs regardless of whether the act or omission in question was a consequence of domestic law or of the necessity to comply with international legal obligations. Article 1 makes no distinction as to the type of rule or measure concerned and does not exclude any part of a Contracting Party's "jurisdiction" from scrutiny under the Convention (see *United Communist Party of Turkey and Others v. Turkey*, judgment of 30 January 1998, *Reports* 1998-I, pp. 17-18, § 29).

154. In reconciling both these positions and thereby establishing the extent to which a State's action can be justified by its compliance with obligations flowing from its membership of an international organisation to which it has transferred part of its sovereignty, the Court has recognised that absolving Contracting States completely from their Convention responsibility in the areas covered by such a transfer would be incompatible with the purpose and object of the Convention; the guarantees of the Convention could be limited or excluded at will, thereby depriving it of its peremptory character and undermining the practical and effective nature of its safeguards (see *M. & Co.*, p. 145, and *Waite and Kennedy*, § 67, both cited above). The State is considered to retain Convention liability in respect of treaty commitments subsequent to the entry into force of the Convention (see *mutatis mutandis*, *Matthews*, cited above, §§ 29 and 32-34, and *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 47, ECHR 2001-VIII).

155. In the Court's view, State action taken in compliance with such legal obligations is justified as long as the relevant organisation is considered to protect fundamental rights, as regards both the substantive guarantees offered and the mechanisms controlling their observance, in a manner which can be considered at least equivalent to that for which the Convention provides By "equivalent" the Court means "comparable"; any requirement that the organisation's protection be "identical" could run counter to the interest of international cooperation pursued (see paragraph 150 above). However, any such finding of equivalence could not be final and would be susceptible to review in the light of any relevant change in fundamental rights protection.

156. If such equivalent protection is considered to be provided by the organisation, the presumption will be that a State has not departed from the requirements of the Convention when it does no more than implement legal obligations flowing from its membership of the organisation.

However, any such presumption can be rebutted if, in the circumstances of a particular case, it is considered that the protection of Convention rights was manifestly deficient. In such cases, the interest of international cooperation would be outweighed by the Convention's role as a "constitutional instrument of European public order" in the field of human rights (see *Loizidou v. Turkey* (preliminary objections), judgment of 23 March 1995, Series A no. 310, pp. 27-28, § 75).

157. It remains the case that a State would be fully responsible under the Convention for all acts falling outside its strict international legal obligations. The numerous Convention cases cited by the applicant company in paragraph 117 above confirm this. Each case (in particular, *Cantoni*, p. 1626, § 26) concerned a review by this Court of the exercise of State discretion for which Community law provided. *Pellegrini* is distinguishable: the State responsibility issue raised by the enforcement of a judgment not of a Contracting Party to the Convention (see *Drozd and Janousek v. France and Spain*, judgment of 26 June 1992, Series A no. 240, pp. 34-35, § 110) is not comparable to compliance with a legal obligation emanating from an international organisation to which Contracting Parties have transferred part of their sovereignty. *Matthews* can also be distinguished: the acts for which the United Kingdom was found responsible were "international instruments which were freely entered into" by it (see paragraph 33 of that judgment). *Kondova* (see paragraph 76 above), also relied on by the applicant company, is consistent with a State's Convention responsibility for acts not required by international legal obligations.

158. Since the impugned measure constituted solely compliance by Ireland with its legal obligations flowing from membership of the European Community (see paragraph 148 above), the Court will now examine whether a presumption arises that Ireland complied with the requirements of the Convention in fulfilling such obligations and whether any such presumption has been rebutted in the circumstances of the present case.

(b) Whether there was a presumption of Convention compliance at the relevant time

159. ...

While the founding treaties of the European Communities did not initially contain express provisions for the protection of fundamental rights, the ECJ subsequently recognised that such rights were enshrined in the general principles of Community law protected by it, and that the Convention had a “special significance” as a source of such rights. Respect for fundamental rights has become “a condition of the legality of Community acts” ... and in carrying out this assessment the ECJ refers extensively to Convention provisions and to this Court's jurisprudence. At the relevant time, these jurisprudential developments had been reflected in certain treaty amendments (notably those aspects of the Single European Act of 1986 and of the Treaty on European Union referred to in paragraphs 77-78 above).

This evolution has continued. The Treaty of Amsterdam of 1997 is referred to in paragraph 79 above. Although not fully binding, the provisions of the Charter of Fundamental Rights of the European Union were substantially inspired by those of the Convention, and the Charter recognises the Convention as establishing the minimum human rights standards. Article I-9 of the later Treaty establishing a Constitution for Europe (not in force) provides for the Charter to become primary law of the European Union and for the Union to accede to the Convention (see paragraphs 80-81 above).

160. However, the effectiveness of such substantive guarantees of fundamental rights depends on the mechanisms of control in place to ensure their observance.

...

162. It is true that access of individuals to the ECJ under these provisions is limited: they have no *locus standi* under Articles 169 and 170; their right to initiate actions under Articles 173 and 175 is restricted as is, consequently, their right under Article 184; and they have no right to bring an action against another individual.

163. It nevertheless remains the case that actions initiated before the ECJ by the Community institutions or a member State constitute important control of compliance with Community norms to the indirect benefit of individuals. Individuals can also bring an action for damages before the ECJ in respect of the non-contractual liability of the institutions (see paragraph 88 above).

164. Moreover, it is essentially through the national courts that the Community system provides a remedy to individuals against a member State or another individual for a breach of Community law (see paragraphs 85 and 91 above). Certain EC Treaty provisions envisaged a complementary role for the national courts in the Community control mechanisms from the outset, notably Article 189 (the notion of direct applicability, now Article 249) and Article 177 (the preliminary reference procedure, now Article 234). It was the development by the ECJ of important notions such as the supremacy of Community law, direct effect, indirect effect and State liability (see paragraphs 92-95 above) which greatly enlarged the role of the domestic courts in the

enforcement of Community law and its fundamental rights guarantees.

The ECJ maintains its control on the application by national courts of Community law, including its fundamental rights guarantees, through the procedure for which Article 177 of the EC Treaty provides in the manner described in paragraphs 96 to 99 above. While the ECJ's role is limited to replying to the interpretative or validity question referred by the domestic court, the reply will often be determinative of the domestic proceedings (as, indeed, it was in the present case – see paragraph 147 above) and detailed guidelines on the timing and content of a preliminary reference have been laid down by the EC Treaty provision and developed by the ECJ in its case law. The parties to the domestic proceedings have the right to put their case to the ECJ during the Article 177 process. It is further noted that national courts operate in legal systems into which the Convention has been incorporated, albeit to differing degrees.

165. In such circumstances, the Court finds that the protection of fundamental rights by Community law can be considered to be, and to have been at the relevant time, “equivalent” (within the meaning of paragraph 155 above) to that of the Convention system. Consequently, the presumption arises that Ireland did not depart from the requirements of the Convention when it implemented legal obligations flowing from its membership of the European Community (see paragraph 156 above).

(c) Whether the presumption in question has been rebutted in the present case

166. The Court has had regard to the nature of the interference, to the general interest pursued by the impoundment and by the sanctions regime and to the ruling of the ECJ (in the light of the opinion of the Advocate General), a ruling with which the Supreme Court was obliged to and did comply. It considers 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 cannot be said that the protection of the applicant company's Convention rights was manifestly deficient, with the consequence that the relevant presumption of Convention compliance by the respondent State has not been rebutted.

4. Conclusion under Article 1 of Protocol No. 1

167. It follows that the impoundment of the aircraft did not give rise to a violation of Article 1 of Protocol No. 1.

FOR THESE REASONS, THE COURT

UNANIMOUSLY 1. *Dismisses* the preliminary objections;

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

Done in English and in French, and delivered at a public hearing
in the Human Rights Building, Strasbourg, on 30 June 2005.

Christos ROZAKIS
President

Paul MAHONEY
Registrar

[The joint concurring opinion of Mr Rozakis, Mrs Tulkens, Mr Traja,
Mrs Botoucharova, Mr Zagrebelsky and Mr Garlicki and the
concurring opinion of Mr Ress are omitted.]

C.L.R.
P.J.M.