

Case C-84/95 Bosphorus [1996]

Facts: Bosphorus Airways, a Turkish air charterer, leased in 1992 and for a period of four years two aircraft owned by a Yugoslav airline. When one aircraft was preparing to take off at Dublin, the Minister directed it to be impounded under Regulation No 990/93, which implemented United National sanctions to Yugoslavia. In connection with these proceedings, the Supreme Court of Ireland referred for a preliminary ruling whether the relevant Regulation applied to an aircraft owned by an undertaking based in or operating from Yugoslavia, even though the owner has leased it to another undertaking, neither based in, nor operating or controlled from Yugoslavia.

Held: The relevant Article of Regulation 990/93 applies to any aircraft which is the property of an undertaking based in or operating from Yugoslavia, and it is not necessary for that undertaking to have actual control of the aircraft. The use of a day-to-day operation and control as the decisive criterion for applying such measures would jeopardize the effectiveness of the strengthening of the sanctions. Bosphorus Airways submitted that this interpretation would infringe its fundamental rights to peacefully enjoy its property and to freely pursue a commercial activity, and that the measure would also infringe the principle of proportionality, since the impounding of the aircraft was unnecessary as the owner of the aircraft had already been penalized by the rent being held in blocked accounts. However, these fundamental rights are not absolute and their exercise may be subject to restrictions justified by objectives of general interest pursued by the Community. The importance of the aims pursued by the Regulation, namely to put an end to the state of war in the region and to the massive violations of human rights and humanitarian international law in Bosnia-Herzegovina, is such as to justify negative consequences, even of a substantial nature, for some operators.