JUDGMENT OF THE COURT
27 February 1997 *

In Case C-177/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the Consiglio di Stato (Italy) for a preliminary ruling in the proceedings pending before that court between

Ebony Maritime SA,

Loten Navigation Co. Ltd

and

Prefetto della Provincia di Brindisi and Others

on the interpretation of Article 1(1)(c) and (d) and Article 10 of Council Regulation (EEC) No 990/93 of 26 April 1993 concerning trade between the European Economic Community and the Federal Republic of Yugoslavia (Serbia and Montenegro) (OJ 1993 L 102, p. 14) and of Article 1(c) and (d) and Article 10 of Decision 93/235/ECSC of the Representatives of the Governments of the Member States meeting within the Council, of 26 April 1993, concerning trade between the European Coal and Steel Community and the Federal Republic of Yugoslavia (Serbia and Montenegro) (OJ 1993 L 102, p. 17),

* Language of the case: Italian.

THE COURT,

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

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

after considering the written observations submitted on behalf of:

— Ebony Maritime SA and Loten Navigation Co. Ltd, by Pantelis S. Amourgis, of the Athens Bar, Umberto Ferraro, of the Genoa Bar, Giorgio Recchia, of the Rome Bar, Gian Michele Roberti and Antonio Tizzano, of the Naples Bar, and Luigi Volpe, of the Bari Bar;

— the Prefetto della Provincia di Brindisi and the Italian Government, by Umberto Leanza, Head of the Department for Legal Affairs in the Ministry of Foreign Affairs, acting as Agent, assisted by Maurizio Fiorilli, Avvocato dello Stato;

— the French Government, by Jean-François Dobelle, Assistant Head of the Legal Affairs Directorate at the Ministry of Foreign Affairs, Catherine de Salins and Denys Wibaux, respectively Deputy Head and Foreign Affairs Secretary in that Directorate, acting as Agents;

— the United Kingdom Government, by John E. Collins, of the Treasury Solicitor's Department, acting as Agent, and Stephen Richards and Rhodri Thompson, Barristers;

— the Commission of the European Communities, by Lucio Gussetti, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Ebony Maritime SA and Loten Navigation Co. Ltd, the Italian Government, the French Government, the United Kingdom Government and the Commission at the hearing on 22 October 1996,

after hearing the Opinion of the Advocate General at the sitting on 19 November 1996,

gives the following

Judgment

1 By order of 11 April 1995, received at the Court on 6 June 1995, the Consiglio di Stato (Council of State) referred for a preliminary ruling under Article 177 of the EC Treaty three questions on the interpretation of Article 1(1)(c) and (d) and Article 10 of Council Regulation (EEC) No 990/93 of 26 April 1993 concerning trade between the European Economic Community and the Federal Republic of Yugoslavia (Serbia and Montenegro) (OJ 1993 L 102, p. 14, hereinafter 'the Regulation') and Article 1(c) and (d) and Article 10 of Decision 93/235/ECSC of the Representatives of the Governments of the Member States meeting within the Council, of 26 April 1993, concerning trade between the European Coal and Steel Community and the Federal Republic of Yugoslavia (Serbia and Montenegro) (OJ 1993 L 102, p. 17).

2 The questions have been raised in proceedings brought by Ebony Maritime, a company established under the law of Liberia, and Loten Navigation, a company established under Maltese law, for annulment of a decision taken by the Prefetto (Prefect) of the Province of Brindisi on 22 July 1994 ordering the vessel *Lido II* to be seized pursuant to Decree-Law No 144 of 15 May 1993, converted into Law No 230 of 16 July 1993 imposing an embargo on the States of the former Yugoslavia (GURI No 166 of 17 July 1993).

3 According to the recitals in its preamble, the Regulation seeks to implement within the Community certain aspects of the sanctions decided on against the Federal Republic of Yugoslavia by the United Nations Security Council, which, on the basis of Chapter VII of the United Nations Charter, adopted Resolutions 713 (1991), 757 (1992) and 787 (1992) and reinforced those sanctions by Resolution 820 (1993).

4 Article 1(1)(c) and (d) of the Regulation provides as follows:

'1. As from 26 April 1993, the following shall be prohibited:

...

(c) the entry into the territorial sea of the Federal Republic of Yugoslavia (Serbia and Montenegro) by all commercial traffic;

(d) any activity the object or effect of which is, directly or indirectly, to promote the transactions mentioned under (a), (b) or (c);

...'.

5 According to Article 9 of the Regulation, all vessels, freight vehicles, rolling stock, aircraft and cargoes suspected of having violated, or being in violation of, the Regulation were to be detained by the competent authorities of the Member States pending investigations.

6 Article 10 of the Regulation is worded as follows:

'Each Member State shall determine the sanctions to be imposed where the provisions of this [Regulation] are infringed.

Where it has been ascertained that vessels, freight vehicles, rolling stock, aircraft and cargoes have violated this Regulation, they may be forfeited to the Member State whose competent authorities have ... detained them.'

7 According to Article 11, the Regulation is to apply 'within the territory of the Community, including its air space and in any aircraft or vessel under the jurisdiction of a Member State, and to any person elsewhere who is a national of a Member State and any body elsewhere which is incorporated or constituted under the law of a Member State'.

8 In Italy, the measures adopted pursuant to the above Community provisions are contained, in particular, in Article 2(2) and 2(3)(b) of Decree-Law No 144, converted, with certain amendments, into abovementioned Law No 230.

9 Under that provision, the means of transport mentioned in Article 9 of the Regulation may be stopped and inspected for the purpose of investigation by the customs authorities. If, following such an inspection, the Regulation is found to have been breached, the competent authorities are to confiscate both the means of transport and the cargo subject to embargo. If the means of transport is not flying the Italian flag and does not belong to a person holding Italian citizenship or nationality, it must first be impounded and may be declared forfeit only if the State concerned does not reclaim it within a specified period.

10 The *Lido II*, a tanker belonging to Loten Navigation and flying the Maltese flag, set sail from the Tunisian port of La Skhira bound for Rijeka (Croatia) with a cargo of petroleum products belonging to Ebony Maritime.

11 After being inspected in the port of Brindisi (Italy) in surveillance operations for ensuring compliance with the sanctions in force against the Federal Republic of Yugoslavia, the vessel set sail on 30 April 1994 for the port of Rijeka. When, during its journey, the vessel began to take on water, the master sent out distress signals, indicating that he was changing course towards the nearest coastline of Montenegro with the declared intention of running the vessel aground. However, before it entered Yugoslav territorial waters, a helicopter from the NATO/WEU forces landed on its deck and a Dutch military squad took control of the vessel. The vessel was then towed into the port of Brindisi, where it was handed over to the Italian authorities.

12 By decision of 22 July 1994, the Prefect of the Province of Brindisi ordered the vessel to be impounded and the cargo to be confiscated, pursuant to Article 2(3)(b) of Decree-Law No 144, converted into Law No 230.

13 Ebony Maritime and Loten Navigation brought an action for the annulment of that decision before the Tribunale Amministrativo Regionale (Regional Administrative Court) of Apulia. Following dismissal of that action by judgment of 6 December 1994, the companies appealed to the Consiglio di Stato, which decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'1) Must Article 1(c) of Decision 93/235/ECSC of the representatives of the governments of the Member States meeting within the Council of 26 April 1993 concerning trade between the European Coal and Steel Community and the Federal Republic of Yugoslavia (Serbia and Montenegro) and Article 1[1](c) of

Council Regulation (EEC) No 990/93 of the same date concerning trade between the European Economic Community and the Federal Republic of Yugoslavia (Serbia and Montenegro) be interpreted as meaning that only actual entry into the territorial waters of the Federal Republic of Yugoslavia by a ship or other means of transport carrying goods intended for commercial traffic in the said territorial waters constitutes a breach of the prohibition laid down therein, or do those legislative provisions also cover conduct occurring in international waters which, because of the specific way in which it is conceived and put into effect, gives good reason to believe that the ship or other means of transport is on course for the said territorial waters for the purposes of commercial traffic?

2) Do Article 1(d) of the Decision and Article 1[1](d) of the Regulation mentioned above, in so far as they prohibit any activity the object or effect of which is, directly or indirectly, to promote the transactions mentioned in Article 1[1](c), include within their scope navigation in international waters by a ship or other means of transport carrying goods presumably intended for commercial traffic in the territorial waters of the Federal Republic of Yugoslavia?

3) Is a domestic provision which expressly prescribes, in the event of breach of any of the prohibitions contained in the abovementioned Article 1 being ascertained, confiscation — either compulsory or discretionary — of the cargo carried by any of the means of transport indicated in the second paragraph of Article 10 of the abovementioned Community Decision and Regulation compatible with Community legislation, in particular the first and second paragraphs of the said Article 10?'

14 First of all, trade in petroleum products does not come within the purview of the ECSC Treaty. Since the main proceedings, as described in the order for reference, relate exclusively to such trade, Decision 93/235 cannot be applicable. Therefore, only the scope of the Regulation needs to be defined.

The scope of the Regulation

15 The United Kingdom Government and the French and Italian Governments note at the outset that, according to Article 11, the Regulation applies solely within the territory, including the territorial waters, of the Member States to vessels under the jurisdiction of a Member State, to nationals of a Member State, and to companies incorporated or constituted under the laws of a Member State. It is submitted that the Regulation is not therefore applicable in a case such as that before the national court, since the vessel concerned was in international waters when it was taken over by NATO/WEU forces, was flying the flag of a non-member country and belonged, like its cargo, to a non-Community company.

16 In that regard, Article 9 of the Regulation, read in conjunction with Article 1(1)(c) thereof, requires the competent authorities of the Member States to detain, pending investigations, all vessels and cargoes suspected of having breached the prohibition of entry into the territorial sea of the Federal Republic of Yugoslavia for purposes of trade. Under Article 10, the Member State concerned may confiscate vessels and cargoes once it has been established that they have infringed the prohibition.

17 It follows from the wording of those provisions that the detention and confiscation measures apply to all vessels, with no distinction being drawn on the basis of the vessel's flag or owner. Further, the application of those measures is not subject to the condition that the breach of the prohibitions set out in the Regulation should take place within Community territory. In any case, the prohibition on entry into the territorial sea of the Federal Republic of Yugoslavia, set out in Article 1(1)(c) of the Regulation, can be breached only outside Community territory.

18 The competent authorities of the Member State concerned must therefore, under Article 9 of the Regulation, detain all vessels suspected of having breached the sanctions imposed against the Federal Republic of Yugoslavia, even if they are flying the flag of a non-member country, belong to non-Community nationals or companies, or if the alleged breach of sanctions occurred outside Community territory. Likewise, national authorities may, under the second paragraph of Article 10 of the Regulation, confiscate those vessels and their cargoes once the infringement has been established.

19 Since, under Article 11, the Regulation applies within the whole territory of the Community, Articles 9 and 10 are applicable once those vessels are within the territory of a Member State and thus under the territorial jurisdiction of that State, even if the alleged infringement occurred outside its territory.

20 This interpretation is borne out by the wording and purpose of Resolution 820 (1993) of the United Nations Security Council, which, with a view to reinforcing the sanctions already adopted, introduced in Paragraph 28 the prohibition of entry into the territorial sea of the Federal Republic of Yugoslavia (Serbia and Montenegro) for all commercial maritime traffic, and provides in Paragraph 25 that 'all States shall detain pending investigation all vessels ... and cargoes found in their territories and suspected of having violated or being in violation of Resolutions 713 (1991), 757 (1992) and 787 (1992) or the present Resolution, and that, upon a determination that they have been in violation, such vessels ... shall be impounded and, where appropriate, they and their cargoes may be forfeit to the detaining State'.

21 Thus, Paragraph 25, to which Articles 9 and 10 of the Regulation give effect within the Community, expressly provides that all vessels suspected of violations that are found in the territory of a State must be detained and, where appropriate, forfeited to that State.

The first and second questions

22 By its first and second questions, the national court is in substance seeking to ascertain whether Article 1(1)(c) and (d) of the Regulation prohibits only actual entry of commercial traffic into the territorial sea of the Federal Republic of Yugoslavia or whether it also prohibits conduct occurring in international waters which gives good reason to believe that the vessel concerned is on course for that territorial sea for the purposes of commercial traffic.

23 It must be noted in this regard that Article 1(1)(c) of the Regulation prohibits the entry of all commercial traffic into Yugoslav territorial waters.

24 That provision is intended to prevent any entry whatever of commercial traffic into those waters. It was introduced pursuant to Resolution 820 (1993), which was designed to reinforce the sanctions imposed against the Federal Republic of Yugoslavia by previous resolutions of the United Nations Security Council. In order to guarantee that those sanctions would be effective, it was deemed vital to prevent all commercial traffic in Yugoslav territorial waters.

25 Effective prevention of all commercial traffic in Yugoslav territorial waters implies that the prohibition set out in Article 1(1)(c) of the Regulation should apply not only to actual entries, but also to attempted entries into those territorial waters by vessels in international waters. Any other interpretation would risk rendering the prohibition ineffective.

26 Furthermore, Article 1(1)(d) of the Regulation, which prohibits any activity the object or effect of which is, directly or indirectly, to promote the entry of any commercial traffic into the territorial sea of the Federal Republic of Yugoslavia, confirms that a breach of the sanctions laid down by the Regulation may result from conduct occurring in international waters.

27 The answer to the first and second questions must therefore be that Article 1(1)(c) and (d) of the Regulation prohibits not only the actual entry of commercial traffic into the territorial sea of the Federal Republic of Yugoslavia but also conduct occurring in international waters which gives good reason to believe that the vessel concerned is on course for that territorial sea for the purposes of commercial traffic.

The third question

28 By its third question, the national court is seeking to determine whether a domestic provision which, in the event of an ascertained breach of any of the prohibitions laid down in Article 1 of the Regulation, prescribes confiscation of the cargo carried by one of the means of transport indicated in the second paragraph of Article 10 of the Regulation is compatible with the Regulation, in particular with Article 10 thereof.

29 It must first be pointed out that the Italian version of the second paragraph of Article 10 of the Regulation does not provide that cargoes may be forfeited to the Member States.

30 However, as the Court has already indicated on several occasions, the need for a uniform interpretation of Community regulations precludes considering a given piece of legislation in isolation and requires that, in case of doubt, it should be interpreted and applied in the light of the versions existing in the other official languages (Case C-64/95 *Lubella* v *Hauptzollamt Cottbus* [1996] ECR I-5105, paragraph 17).

31 With the exception of the Italian and Finnish versions, all the language versions of the second paragraph of Article 10 of the Regulation provide that, when the breach of the Regulation has been established, cargoes may be forfeited to the Member State concerned. That wording corresponds to the wording of Paragraph 25 of Resolution 820 (1993), cited at paragraph 20 of the present judgment. Apart from means of transport, Paragraph 25 expressly mentions that cargoes may be forfeited in the event of violation of measures adopted by resolutions of the United Nations Security Council. It thus clearly appears that the Italian version of the Regulation, which contains the words 'aeromobili e aerei da carico' instead of the words 'aeromobili e carichi', contains a substantive error.

32 The second paragraph of Article 10 cannot on any view be understood as limiting the Member States' general power under the first paragraph of Article 10 to determine the sanctions to be imposed where the provisions of the Regulation are infringed.

33 The Regulation does not therefore preclude application of a domestic provision prescribing confiscation of the cargo if the Regulation is infringed.

34 However, the applicants in the main proceedings take the view that the domestic provision adopted pursuant to the second paragraph of Article 10 of the Regulation runs counter to the principle of *nulla poena sine culpa* in that it provides for confiscation of the cargo without any proof of fault on the part of the owner of the cargo and thus establishes a system of strict criminal liability. They further contend that it is contrary to the principle of proportionality for the owner of the cargo to be penalized in the same way as the owner of the vessel, regardless of their respective degrees of involvement in the infringement.

35 In this connection, it should be noted that the Court has consistently held that where a Community regulation does not specifically provide any penalty for an infringement or refers for that purpose to national laws, regulations and administrative provisions, Article 5 of the EC Treaty requires the Member States to take

all measures necessary to guarantee the application and effectiveness of Community law. For that purpose, while the choice of penalties remains within their discretion, they must ensure in particular that infringements of Community law are penalized under conditions, both procedural and substantive, which are analogous to those applicable to infringements of national law of a similar nature and importance and which, in any event, make the penalty effective, proportionate and dissuasive (Case 68/88 *Commission* v *Greece* [1989] ECR 2965, paragraphs 23 and 24; Case C-326/88 *Anklagemyndigheden* v *Hansen* [1990] ECR I-2911, paragraph 17; Case C-36/94 *Siesse* v *Director da Alfândega de Alcântara* [1995] ECR I-3573, paragraph 20).

36 The Court has, moreover, already accepted that a system of strict criminal liability penalizing breach of a regulation is not in itself incompatible with Community law (*Hansen*, cited above, paragraph 19).

37 Accordingly, even if it is assumed, as the applicants contend, that the Italian provision prescribing confiscation of the cargo introduces a system of strict criminal liability or fails to take into account the degree of involvement of the various traders concerned, it is for the national court to determine whether that penalty complies with the principles of the abovementioned case-law and, in particular, whether it is dissuasive, effective and proportionate.

38 In making that determination, the national court must take account, in particular, of the fact that the objective pursued by the Regulation, which is to bring to an end the state of war in the region concerned and the massive violations of human rights and humanitarian international law in the Republic of Bosnia-Herzegovina, is one of fundamental general interest for the international community (Case C-84/95 *Bosphorus Hava Yollari Turizm ve Ticaret* v *Minister for Transport, Energy and Communications, Ireland and the Attorney General* [1996] ECR I-3953, paragraph 26).

39 The answer to the third question must therefore be that a domestic provision which, in the event of an ascertained breach of any of the prohibitions laid down in Article 1 of the Regulation, prescribes confiscation of the cargo carried by one of the means of transport indicated in the second paragraph of Article 10 of the Regulation is compatible with the Regulation, in particular with Article 10 thereof.

Costs

40 The costs incurred by the French and United Kingdom Governments and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Consiglio di Stato by order of 11 April 1995, hereby rules:

1) Article 1(1)(c) and (d) of Council Regulation (EEC) No 990/93 of 26 April 1993 concerning trade between the European Economic Community and the Federal Republic of Yugoslavia (Serbia and Montenegro) prohibits not only the actual entry of commercial traffic into the territorial sea of the Federal Republic of Yugoslavia but also conduct occurring in international

waters which gives good reason to believe that the vessel concerned is on course for that territorial sea for the purposes of commercial traffic.

2) A domestic provision which, in the event of an ascertained breach of any of the prohibitions laid down in Article 1 of the Regulation, prescribes confiscation of the cargo carried by one of the means of transport indicated in the second paragraph of Article 10 of the Regulation is compatible with the Regulation, in particular with Article 10 thereof.

Rodríguez Iglesias Mancini Murray Sevón

Kakouris Kapteyn Gulmann Edward

Puissochet Ragnemalm Wathelet

Delivered in open court in Luxembourg on 27 February 1997.

R. Grass G. C. Rodríguez Iglesias

Registrar President