



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

FOURTH SECTION

CASE OF WOOLLEY v. THE UNITED KINGDOM

(Application no. 28019/10)

JUDGMENT

STRASBOURG

10 April 2012

FINAL

10/07/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Woolley v. the United Kingdom,

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

Lech Garlicki, *President*,

Nicolas Bratza,

Päivi Hirvelä,

George Nicolaou,

Ledi Bianku,

Nebojša Vučinić,

Vincent A. De Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 20 March 2012,

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

PROCEDURE

1. The case originated in an application (no. 28019/10) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a British national, Mr Raymond Woolley (“the applicant”), on 15 April 2010.

2. The applicant was represented by Garstangs Solicitors, a firm of lawyers based in London. The United Kingdom Government (“the Government”) were represented by their Agent, Ms A. Sornarajah, of the Foreign and Commonwealth Office.

3. The applicant complained, under Articles 5 § 1 and 6 § 1, that there had been a breach of the rule of specialty in the context of his extradition from Switzerland to the United Kingdom and that the subsequent enforcement of a default term of imprisonment, pursuant to a confiscation order, and his ensuing detention were accordingly unlawful.

4. On 3 January 2011 the President of the Chamber decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1953 and is currently detained at HMP Dovegate, Uttoxeter.

A. Background facts

6. On 19 December 2002 the applicant was convicted at Birmingham Crown Court of an offence of conspiracy to cheat the public revenue. On 20 December 2002 he pleaded guilty to two offences of concealing proceeds of criminal conduct to retain them or to avoid prosecution; and removing property from the jurisdiction to retain proceeds of criminal conduct or to avoid prosecution. On the same date, he was sentenced to nine years' imprisonment in respect of the conspiracy offence, with no separate penalty imposed for the other two offences.

7. On 14 December 2003 the Court of Appeal dismissed the applicant's appeal against sentence.

8. On 23 February 2005 the applicant walked out of HMP Sudbury, an open prison, and fled to Switzerland. At that time he had served 41 months and 12 days of the sentence. A total of 66 months and 18 days remained to be served. On 3 March 2005 a warrant for the applicant's arrest in respect of the offence of escape from lawful custody was issued by Birmingham Magistrates' Court.

9. Also on 3 March 2005, Birmingham Crown Court made a confiscation order in respect of the applicant's conviction for conspiracy to cheat the public revenue in the sum of GBP 9,497,784.02. The amount specified in the order was to be paid by the applicant by 3 April 2006, with four years' imprisonment to be served in default of payment, consecutively to the nine-year term of imprisonment already imposed. Although the applicant was not present, he was represented by senior counsel.

10. On 4 April 2005 the applicant was refused leave to appeal against the confiscation order. In February 2007 the full court of the Court of Appeal refused the applicant's renewed application for leave to appeal against the confiscation order.

11. On 3 April 2007 an enforcement and receivership order was made against the applicant in order to seek to recover the sums specified in the compensation order, as only GBP 195,000 had been recovered by the Official Receiver.

B. Extradition proceedings

12. On 6 February 2008 the United Kingdom Government issued a request to the Swiss Government for the applicant's extradition, pursuant to the European Convention on Extradition 1957 ("the ECE"), as a convicted person and as an accused person. The request was made on the basis that the applicant had been convicted of conspiracy and money laundering offences and was accused of an offence of escape from lawful custody.

13. An accompanying witness statement by a Revenue and Customs Prosecutor set out the offences of which the applicant had been convicted, together with the relevant law. It noted that the applicant's return was sought in order to serve the remainder of the sentence of nine years' imprisonment imposed on him. It referred to the confiscation order and concluded:

"... It is established law that a default sentence so imposed constitutes part of the overall penalty. [The applicant's] return to the United Kingdom is therefore sought in respect of any activation of the default sentence which may become necessary."

14. In diplomatic notes dated 31 March 2008 and 18 April 2008, the Swiss Federal Office of Justice asked the British authorities for further information relating to the acts committed by the applicant. On 1 April 2008 and 3 June 2008 the British Embassy replied to the questions.

15. On 12 June 2008 an arrest warrant was issued by the examining magistrate in Vaud Canton, Switzerland. The applicant was arrested pursuant to that warrant on 19 June 2008.

16. By diplomatic note dated 13 August 2008, the Swiss Federal Office of Justice asked the following question of the United Kingdom authorities:

"... whether the extradition of the [applicant] is also being requested for charges of evasion and for non-payment of the confiscation sum ordered by Birmingham Crown Court on 3 March 2005."

17. By diplomatic note of 28 August 2008 to the Swiss Federal Office of Justice, the British Embassy in Berne enclosed the response of Her Majesty's Revenue and Customs Prosecution Office ("Prosecutor's Office"). The response was in the following terms:

"It is important to make clear that there is no charge, in existence or proposed, for evasion or non-payment of the order. The extradition of Mr Woolley is not sought in respect of non-payment of the confiscation order which was made against him; it is sought in respect of one charge of escape from lawful custody and to finish serving the term of imprisonment passed on him in respect of the offence of conspiracy to cheat.

The confiscation order was part of the sentence passed on Mr Woolley. The effect of the relevant legislation is that such orders are treated in the same way as fines. When a Crown Court imposes a fine on any person, they may allow that person time to pay the fine but they must make an order fixing a term of imprisonment which that person must serve as a last resort if the sum they owe has not been paid or recovered. The

confiscation order in this case was made on 3 March 2005, the judge allowed Mr Woolley time to pay until 3 April 2006, and set a term of imprisonment in default of 4 years. The order remains outstanding and this office has been taking steps to enforce it.

Activation of a default sentence is one of the many means available to the court to enforce outstanding orders. The court can initiate activation of its own volition or the prosecutor can invite the court to do so. Before activating the default sentence, judges are under a duty to enquire into the defendant's proposals for payment and to determine whether any of the other methods of enforcement might be effective. [The applicant] would have the opportunity to make representations throughout this process. [The applicant] still has the option to pay the confiscation order at any time and if his assets are insufficient to meet the confiscation order he may apply to the High Court for a certificate of inadequacy. If one is granted, he may then apply to the Crown Court to reduce the amount of the confiscation order ..."

18. On 26 September 2008 the Swiss Federal Office of Justice issued its decision on extradition. The decision noted:

"1. On 21 April 2005, Interpol London requested the arrest and extradition of the party concerned to serve the remainder of a prison sentence of nine years handed down by Birmingham Crown Court on 20 December 2002 for fraud and money laundering.

2. In a diplomatic note of 6 February 2008, the British Embassy in Bern requested the extradition of the party concerned."

19. It continued:

"13. In a diplomatic note of 28 August 2008, the British Embassy informed the FOJ [Federal Office of Justice] that the extradition of the party concerned was not being requested for non-payment of the amount of the confiscation ordered by way of the decision of 3 March 2005 of Birmingham Crown Court, but was being requested for the absconding."

20. The decision noted that for extradition to be ordered, the offence for which it was sought had to be an offence in both countries. As regards the offence for which the nine-year sentence was imposed, the Federal Office of Justice considered in some detail the facts behind the offence. It noted the applicant's objection that the request for extradition was not clear regarding whether it was also requested for the offence of absconding and for non-payment of the amount confiscated which were not punishable under Swiss law.

21. The Federal Office of Justice ruled that since the Swiss Criminal Code did not punish a person who absconded, the extradition would not be granted for the act of absconding. It noted that the extradition was not requested for the non-payment of the confiscation order and that there was no need to ask the British authorities to give any guarantees, as nothing suggested that they would not adhere to the rule that a person could only be tried for the offence for which he had been extradited.

22. It granted the extradition for the acts described in the extradition request of the British Embassy of 6 February 2008 and its additional documents of 1 April and 3 June 2008, excluding the acts of absconding.

23. On 29 October 2008 the applicant appealed to the Swiss Federal Criminal Court. On 5 February 2009 the Federal Criminal Court upheld the decision of the Federal Office of Justice. It summarised the facts of the case, and noted that the British Embassy had declared that extradition was only being sought for the acts of absconding, and not for non-payment of the confiscation order.

24. In response to the applicant's criticism of the decision of the Federal Office of Justice for failing to exclude extradition for the purpose of initiating proceedings regarding the non-payment of the confiscation order, the court noted that the British authorities had expressly stated that extradition was not requested for non-payment of the amount in the confiscation order and held that this statement was sufficiently clear and appropriate for the purposes of removing the applicant's doubts.

25. On 10 February 2009 the applicant appealed to the Swiss Federal Supreme Court. On 26 February 2009 the Federal Supreme Court ruled that the appeal was inadmissible. In its judgment, it summarised the findings of the Federal Criminal Court:

“... The applicant authority had clearly waived the right to apply for extradition for the sentence relating to non-payment of the confiscation [order] ...”

26. On 10 March 2009 the applicant was extradited to the United Kingdom and returned to prison to complete his sentence.

C. Enforcement proceedings

27. In April 2009 the Prosecutor's Office applied to Birmingham Magistrates' Court to enforce the four-year term of imprisonment imposed on the applicant in default of payment of the confiscation order.

28. On 5 May 2009 the head of the Swiss Federal Office of Justice sent an email to the Prosecutor's Office stating that this would amount to a violation of the rule of specialty.

29. On 29 July 2009 the Prosecutor's Office wrote to the Swiss authorities indicating that it intended to proceed with an application to enforce the four-year term of imprisonment. It noted that the extradition request concerned the offence of conspiracy to cheat the public revenue (“the extradition offence”), of which the applicant had been convicted, and the offence of escape from lawful custody, of which the applicant was accused. The request for extradition in respect of the latter offence was refused. As regards the non-payment of the confiscation order, the letter indicated:

“While the extradition request was under consideration, a question was put by the Swiss authorities ... as to whether [the applicant’s] ‘extradition is also being requested for charges of evasion and for non-payment of the confiscation sum ordered by Birmingham Crown Court on 3 March 2005’.

In our response we sought to explain that there were no charges for the non-payment of the order, the order was part of the sentence for the extradition offence and if the order were not to be satisfied this would result in the activation of the default sentence.

As the sentence for non payment was part and parcel of the sentence imposed for the extradition offence, it was not possible, or necessary, to seek his extradition in relation to it; as part of the sentence for the extradition offence it was covered by the terms of the extradition request.

It appears from the documentation that we have had sight of that Mr Woolley was returned on the basis that the default sentence referred to above may not be imposed. This decision appears to be made on a misunderstanding of the requesting State’s position as is set out in the documents provided to the Federal Office of Justice in support of the extradition request.”

30. Referring to section 50 of the Criminal Appeal Act 1968 (see paragraph 55 below), the Prosecutor’s Office explained that the sentence for the extradition offence was made up of more than one component, and covered the prison sentence for the wrongdoing, the financial penalty in the confiscation order and the custodial penalty that flowed from the non-payment. The letter concluded:

“I take this opportunity to assure the Government of the Swiss Confederation that the UK is committed to its international obligations and has no intention of dishonouring the principle of specialty.

However, for reasons which I trust are apparent from what is set out herein, imposition of the default sentence in these circumstances cannot be considered to be a breach of the UK’s specialty obligations, either as set out in the Convention or in UK domestic legislation.”

31. On 24 August 2009 the Federal Office of Justice wrote to the British Embassy indicating that if the UK authorities intended to ask for the extension of the extradition to include the non-payment of the confiscation order, they would have to proceed in accordance with Article 14 of the ECE (see paragraph 67 below).

32. On 4 September 2009 the Prosecutor’s Office’s application to enforce the default term came before the Magistrates’ Court. The applicant argued that the proceedings were barred by the rule of specialty, which restricts prosecution or punishment of an extradited person to the offence for which extradition was granted. The District Judge considered the applicant’s claim to be arguable but was of the view that only the High Court had jurisdiction to consider an abuse of process argument. He

therefore adjourned the proceedings to allow the parties to bring judicial review proceedings.

33. On 18 September 2009 the applicant lodged a claim for judicial review seeking an order that the District Judge be prohibited from proceeding to examine the Prosecutor's Office's application because the proceedings were an abuse of process; and an order that the District Judge be prohibited from proceeding to examine the Prosecutor's Office's application because it constituted a breach of section 151 of the Extradition Act 2003 ("the 2003 Act" – see paragraphs 60-63 below).

34. On 25 September 2009 the Prosecutor's Office lodged a claim for judicial review seeking, *inter alia*, a declaration that the application to enforce the default term did not constitute an abuse of process and a declaration that the application to enforce the default term did not constitute a breach of section 151 of the 2003 Act.

35. On 5 October 2009 the High Court granted leave in respect of the Prosecutor's Office's application. The two claims were later joined and consideration of the applicant's request for leave was adjourned for consideration by the full court at the substantive hearing in the Prosecutor's Office's claim.

36. On 19 November 2009 a hearing took place in both claims. The court heard argument from counsel for both parties. At the conclusion of the hearing, the High Court granted the Prosecutor's Office's application for judicial review, refused the applicant's application for permission to apply for judicial review and indicated that it would hand down a reasoned judgment in due course.

37. On 12 January 2010 the Magistrates' Court resumed the hearing of the Prosecutor's Office's application. The District Judge ordered the applicant to serve the four-year term.

38. On 15 January 2010 the High Court handed down its reasoned judgment in the judicial review claims. It noted that this was not a case where it was being suggested that there had been "a deliberate abuse" of the extradition proceedings or that the Swiss authorities were deliberately misled or that the extradition proceedings were improperly manipulated.

39. The court held that it was entirely satisfied that the default term formed part of the original sentence, since it was an integral part of the confiscation order which, it was common ground, was unarguably part of the original sentence. It considered the argument that enforcement of the default term involved proving the commission of a further separate offence to be wholly artificial and had no hesitation in rejecting it.

40. As to the applicant's alternative argument that if the default term did form part of the original sentence and proceedings to enforce it were a process in which the applicant would be dealt with for the original offences, then there should be a mechanism for dealing with the express reservation of the Swiss authorities, the court was again satisfied that there was no

substance in this submission, and held that the Swiss reservation was the result of their misunderstanding of the extent of the United Kingdom's "clearly expressed request".

41. The court summarised the various exchanges between the Swiss and British authorities prior to the applicant's extradition and agreed with counsel for the Prosecutor's Office that the British diplomatic note of 28 August 2008, read as a whole, made it perfectly clear that extradition was not required in respect of any charge of non-payment of the confiscation order, since there was no such actual or proposed charge because the order in question formed part of the sentence imposed for the offences of which the applicant had been convicted and in respect of which his extradition was being sought. It continued:

"In other words, it was not necessary to seek extradition specifically for the non-payment because the confiscation order was merely part of the sentence for the offences for which he was to be extradited and was not a separate charge in its own right."

42. It concluded that the imposition of the default term would offend neither the rule of specialty in section 151 of the 2003 Act nor under Article 14 of the ECE.

43. As to the argument that the enforcement of the default term constituted an abuse of process, the court found:

"33. ... In the light of our decision that there is no infringement of the rule of specialty in this case, we have come to the firm conclusion that there is no abuse of process involved in proceeding to enforce the default term against Mr Woolley in the circumstances of this case, notwithstanding the misunderstanding of the position by the Swiss authorities and their expressed reservation."

44. It concluded that the decisions and comments of the Swiss courts in respect of the default term for non-payment of the confiscation order were simply not binding on the courts of the United Kingdom and the rule of specialty had not been infringed. For the reasons given, the court was satisfied that the United Kingdom had not deliberately misled the Swiss authorities, that it had always made its intentions clear and that there had been no improper or unfair manipulation of the processes of extradition or for the enforcement of the default term.

45. On 4 February 2010 the applicant applied to the High Court for certification of points of law of general public importance and for leave to appeal against the judgment of the High Court. On 16 February 2010 the court refused the applications.

46. On 19 March 2010, by letter to the British Embassy, the Swiss Federal Office of Justice reiterated:

"By means of the diplomatic note dated 28 August 2008, the Embassy sent the DFJP [Swiss Federal Department of Justice and Police] a letter from the British authorities showing that extradition was not required for the non-payment of the confiscation order. In accordance with this letter, this aspect has been withdrawn from the

extradition proceedings and has not been dealt with in the decision. Therefore, extradition has not been granted for the non-payment of the confiscation order.”

47. The Federal Office of Justice indicated that if the British authorities had enforced the four-year default term of imprisonment for non-payment of the confiscation order, this would amount to a breach of the rule of specialty.

48. In April 2010, as a result of early release provisions, the applicant reached his release date in respect of the nine-year term of imprisonment imposed for the extradition offence. He is currently in detention pursuant to the default term of imprisonment imposed in respect of the non-payment of the confiscation order.

49. On 26 June 2010 the British Embassy in Berne forwarded a Diplomatic Note to the Swiss Government reiterating its contention that the activation of the default term did not violate the principle of specialty.

50. On 14 September 2010 the Swiss Federal Department of Justice responded to the Note. It indicated that it disagreed with the interpretation of the British authorities and courts of the rule of specialty and reiterated that in its view subjecting the applicant to the default term of imprisonment violated that rule. It requested the British authorities either to request an extension of their extradition request pursuant to Article 14 of the ECE (see paragraph 67 below) or to release the applicant.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Confiscation orders

1. The United Kingdom

51. At the relevant time, section 71 of the Criminal Justice Act 1988 (“the 1988 Act”) provided for the making of confiscation orders. It imposed a duty on the court where the possibility of imposing a confiscation order arose to act as follows before sentencing:

“(1A) The court shall first determine whether the offender has benefited from any relevant criminal conduct.

(1B) ... if the court determines that the offender has benefited from any relevant criminal conduct, it shall then—

(a) determine ... the amount to be recovered in his case by virtue of this section, and

(b) make an order under this section ordering the offender to pay that amount.”

52. The effect of section 75 of the 1988 Act and section 139 of the Powers of Criminal Courts (Sentencing) Act 2000 was that if the Crown Court imposed a confiscation order, it could make an order allowing time for the payment of the amount of the fine. It was also required to make an order fixing a term of imprisonment which the subject of the fine was to undergo if any sum which he was liable to pay was not duly paid or recovered.

53. Section 75(5A) of the 1988 Act provided:

“Where the defendant serves a term of imprisonment or detention in default of paying any amount due under a confiscation order, his serving that term does not prevent the confiscation order from continuing to have effect, so far as any other method of enforcement is concerned.”

54. The provisions on confiscation orders in the 1988 Act were repealed and replaced on 24 March 2003 by the Proceeds of Crime Act 2002. The changes are not relevant to the present case.

55. Section 50 of the Criminal Appeal Act 1968 (as amended) deals with the meaning of “sentence”. It provides:

“(1) In this Act ‘sentence’, in relation to an offence, includes any order made by a court when dealing with an offender including, in particular–

...

(e) a confiscation order under Part VI of the Criminal Justice Act 1988 ...”

56. Section 76 of the Magistrates’ Court Act 1980 gives the Magistrates’ Court the power to issue a warrant of commitment to activate the default sentence imposed by the Crown Court in the event of non-payment.

2. Switzerland

57. Under Swiss law, an obligation on an individual to pay a certain sum of money can arise in civil, administrative or criminal law.

58. In the context of such obligations arising under civil or administrative law, no penalty can be imposed on a debtor in default other than ordinary enforcement proceedings to obtain the forced sale of the debtor’s assets in order to extinguish the debt and any applicable interest.

59. In the context of criminal law, a person may be required to pay a sum of money by way of a fine following conviction for a criminal offence. If the fine is unpaid, the party in default will receive an equivalent prison sentence, which extinguishes the fine. If a convicted person has financially benefited from a criminal offence, a compensatory claim equivalent to the benefit can be imposed. In case of default, the relevant sum is recoverable under Swiss law on debt enforcement and bankruptcy. There is no provision for a term of imprisonment to be served in default.

B. Extradition

60. At the relevant time, the applicant's extradition was governed by section 151 of the Extradition Act 2003. Section 151 applied if a person was extradited to the United Kingdom from certain States (including Switzerland). Section 151(2) provided:

"The person may be dealt with in the United Kingdom for an offence committed before his extradition only if–

(a) the offence is one falling within subsection (3), or

(b) the condition in subsection (4) is satisfied."

61. Subsection (3) defined relevant offences as:

"(a) the offence in respect of which the person is extradited;

(b) an offence disclosed by the information provided to the [extraditing] ... territory in respect of that offence;

(c) an offence in respect of which consent to the person being dealt with is given on behalf of the [extraditing] territory."

62. The condition set out in subsection (4) was that:

"(a) the person has returned to the territory from which he was extradited, or

(b) the person has been given an opportunity to leave the United Kingdom."

63. Section 151(5) clarified that a person is "dealt with" in the United Kingdom for an offence if he is tried there for it or he is detained with a view to trial there for it.

64. As of 25 January 2010, section 151 of the 2003 Act was replaced by section 151A, in similar terms.

III. THE EUROPEAN CONVENTION ON EXTRADITION

65. The European Convention on Extradition 1957 ("the ECE") governs extradition between Switzerland and the United Kingdom. Under Article 1 of the Convention:

"The Contracting Parties undertake to surrender to each other, subject to the provisions and conditions laid down in this Convention, all persons against whom the competent authorities of the requesting Party are proceeding for an offence or who are wanted by the said authorities for the carrying out of a sentence or detention order."

66. Article 2 deals with the need for dual criminality and provides that extradition is to be granted in respect of offences punishable under the laws of both the requesting Party and the requested Party.

67. Article 14 deals with the principle of specialty:

“1. A person who has been extradited shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order for any offence committed prior to his surrender other than that for which he was extradited, nor shall he be for any other reason restricted in his personal freedom, except in the following cases:

a. when the Party which surrendered him consents. A request for consent shall be submitted, accompanied by the documents mentioned in Article 12 and a legal record of any statement made by the extradited person in respect of the offence concerned. Consent shall be given when the offence for which it is requested is itself subject to extradition in accordance with the provisions of this Convention;

b. when that person, having had an opportunity to leave the territory of the Party to which he has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it.

...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

68. The applicant complained that the imposition of the four-year term of imprisonment in default of payment of the confiscation order was not lawful as it was in breach of the rule of specialty and was arbitrary as the District Judge acted beyond his powers in ordering the enforcement of the default term. He relied on Article 5 § 1 of the Convention, which reads as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

...”

69. The Government contested that argument.

A. Admissibility

70. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

a. The applicant

71. The applicant contended at the outset that detention in breach of the rule on specialty was capable of violating Article 5 § 1 of the Convention. As to whether that rule had been breached in his case, he insisted that, contrary to the findings of the High Court, he was not only dealt with for the offences for which he was extradited. He considered that this Court could reach its own judgment as to whether specialty had been breached in his case, emphasising that this Court was the final arbiter of Convention rights and that even where there was a question of compliance with domestic law, the Court was required to exercise a power of review.

72. In particular, the applicant disputed that *Phillips v. the United Kingdom*, no. 41087/98, ECHR 2001-VII, was authority for the proposition that the enforcement of a confiscation order was part and parcel of the original sentence imposed. He pointed out that *Phillips* was concerned with the making of the confiscation order itself, and not the proceedings to enforce the term of imprisonment in default of payment. The applicant noted the Court's judgment in *Crowther v. the United Kingdom*, no. 53741/00, 1 February 2005, to the effect that the entirety of the proceedings from the criminal charge until the enforcement of the confiscation order were to be considered as one set of proceedings for the purposes of Article 6 § 1. However, he asked the Court to consider this finding afresh in the context of his case.

73. The applicant further argued that the United Kingdom was not permitted to ignore the reservations expressed by the Swiss authorities when granting the extradition request. It was clear that extradition was granted on the basis that the default sentence could not be imposed. The applicant did not accept that there had been any misunderstanding. Even if there had been a genuine misunderstanding as regards the true intent of the Prosecutor's Office, the fact remained that the decisions of the Swiss courts were unambiguous and remained in force. The appropriate remedy for the Prosecutor's Office was to seek consent for the enforcement proceedings under Article 14(1)(a) ECE and section 151(3)(c) of the 2003 Act.

b. The Government

74. The Government emphasised that the rule of specialty set out in Article 14 ECE was given full effect in domestic law by the 2003 Act. They argued that the applicant was only dealt with for the offence for which he was extradited, namely conspiracy to cheat the public revenue, and was not proceeded against or sentenced in respect of any other offence. They

maintained that the confiscation order was a financial penalty in respect of the offence of conspiracy to cheat the public revenue and that the custodial term in default involved no accusation or enquiry into any other offence. Both were part of the original sentence imposed on the applicant. They considered this analysis to be consistent with the Court's judgments in *Phillips*, cited above, § 32, and *Crowther*, cited above.

75. The Government further observed that the applicant's submissions had been fully argued before the domestic courts and had been rejected. The High Court had delivered a fully reasoned judgment which had looked carefully at the relevant domestic legal provisions and the particular facts of the applicant's case. It found that there had been no breach of the rule of specialty. The Government pointed out that it was not the Court's function to substitute its own judgment for that of the national courts or to act as a fourth instance appeal.

76. As regards the position of the Swiss authorities, the Government made two points. First, they considered that the High Court was correct to hold that the Swiss authorities had misunderstood the basis of the extradition request. Second, they argued that any difference of understanding between the Swiss and British authorities had no bearing on the specialty rule as it applied in the applicant's case. It was a matter of domestic law, involving the application of section 151 of the 2003 Act to the facts of his case.

2. *The Court's assessment*

a. **General principles**

77. Where the "lawfulness" of detention is in issue, the Convention refers essentially to national law but may also refer, where appropriate, to other applicable legal standards, including those which have their source in international law (see *Medvedyev and Others v. France* [GC], no. 3394/03, § 79, ECHR 2010). In all cases, it establishes the obligation to conform to the substantive and procedural rules of the laws concerned (see *Öcalan v. Turkey* [GC], no. 46221/99, § 83, ECHR 2005-IV; *Saadi v. the United Kingdom* [GC], no. 13229/03, § 67, ECHR 2008; and *Medvedyev and Others*, cited above). It is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, even when that law refers to international law or agreements, and it is for the Court to assess whether the effects of such adjudication are compatible with the Convention (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 143, ECHR 2005-VI). However, since under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention, it follows that the Court can and should exercise a certain power to review whether this law has been complied with (see *Benham v. the United Kingdom*, 10 June 1996, § 41, *Reports of Judgments and Decisions*

1996-III; *Öcalan*, cited above, § 84; and *Schönbrod v. Germany*, no. 48038/06, § 82, 24 November 2011).

78. It is further clear that compliance with the law is not sufficient in order for a deprivation of liberty to be considered “lawful”. Article 5 § 1 also requires that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see *Bouamar v. Belgium*, 29 February 1988, § 47, Series A no. 129; *Chahal v. the United Kingdom*, 15 November 1996, § 118, *Reports* 1996-V; *Saadi*, cited above, § 67; and *Medvedyev and Others*, cited above, § 79). The Court has not set out an exhaustive list of what types of conduct on the part of the authorities might constitute arbitrariness for the purposes of Article 5 § 1, but it has indicated that detention will be “arbitrary” where, despite complying with the letter of national law, there has been an element of bad faith or deception on the part of the authorities (see *Bozano v. France*, 18 December 1986, § 59-60, Series A no. 111; *Čonka v. Belgium*, no. 51564/99, §§ 40-42, ECHR 2002-I; and *Saadi*, cited above, § 69).

b. Application of the general principles to the facts of the case

79. The applicant’s complaint is directed at the alleged breach of the rule of specialty following his extradition from Switzerland and its consequences in respect of the lawfulness and freedom from arbitrariness of the enforcement of the default term and the ensuing detention. The Court will therefore examine whether his detention pursuant to the default term of imprisonment fixed under the confiscation order is compatible with Article 5 § 1 in light of the arguments he has raised.

80. As to whether the applicant’s detention pursuant to the default term is lawful, the Court emphasises at the outset that the detention is based on an order of the Magistrates’ Court (see paragraph 37 above). The Court further observes that section 76 of the Magistrates’ Court Act 1980 gives the Magistrates’ Court the power to issue a warrant to activate the default sentence in the event of non-payment of a confiscation order (see paragraph 56 above).

81. Concerning the applicant’s specific complaint that a breach of the rule of specialty occurred in his case, the Court notes that this rule is set out in Article 14 of the ECE (see paragraph 67 above), the treaty pursuant to which the applicant was extradited from Switzerland to the United Kingdom. At the relevant time, it was reflected in domestic legislation in section 151 of the 2003 Act, which governed extradition from Switzerland (see paragraphs 60-63 above). The Court reiterates that it was for the domestic courts in the first instance to interpret and apply the relevant provisions of domestic and international law, including the requirements of the rule of specialty, subject to the review of this Court. It will therefore turn to consider the conclusions of the High Court on the question of compliance with the rule of specialty in the applicant’s case, and to examine whether

those conclusions were, in the circumstances, reasonable and free from arbitrariness.

82. In the context of the judicial review proceedings, the High Court considered the compatibility of the enforcement proceedings against the applicant with Article 14 of the ECE and section 151 of the 2003 Act. It concluded that as a matter of domestic law, the default term of imprisonment formed part of the original sentence for the offence of conspiracy to cheat the public revenue. It reached this conclusion because it found the default term to be an integral part of the confiscation order which, as was common ground between the parties, was unarguably part of the original sentence (see paragraph 39 above). On this basis it found that the imposition of the default term did not offend against Article 14 of the ECE or section 151 of the 2003 Act (see paragraph 42 above).

83. The Court sees no reason to disagree with the findings of the High Court on the question of the interpretation and application of the rule of speciality in the context of confiscation orders and, in particular, the enforcement of default sentences of imprisonment, under sections 71 and 75 of the 1988 Act (see paragraphs 51-52 above). It observes that the applicant was legally represented in the enforcement proceedings and had the opportunity to make oral submissions (see paragraph 36 above). At the conclusion of the hearing, the High Court gave detailed reasons for its findings (see paragraphs 38-42 above). The Court notes that the finding that the default term was an integral part of the confiscation order, which was in turn part of the original sentence, does not appear to be unreasonable or arbitrary, and refers in this regards to its own finding in the case of *Crowther*, cited above, to the effect that the enforcement of a confiscation order by imposition of the default term of imprisonment did not involve the bringing of any new “criminal charge” for the purposes of Article 6 § 1 (see § 25 of the Court’s judgment). In so far as there exists a dispute between the two States concerned regarding whether the specialty rule has been breached, the Court observes that the ECE does not contain a dispute resolution mechanism and considers that it is not for this Court to resolve what is essentially a diplomatic dispute.

84. As to the applicant’s argument that his detention was arbitrary as a result of the failure of the courts to take into account the reservations of the Swiss authorities, the Court emphasises that he does not allege bad faith or an intention to deceive in respect of the United Kingdom authorities (see paragraph 38 above). Indeed, the High Court specifically found that the United Kingdom had not deliberately misled the Swiss authorities, that it had always made its intentions clear and that there had been no improper or unfair manipulation of the processes of extradition or for the enforcement of the default term (see paragraph 44 above). At most, the applicant relies on a misunderstanding by the Swiss authorities of the position of the United Kingdom in the extradition proceedings. The Court considers that any such

misunderstanding did not render the applicant's detention arbitrary in all the circumstances of the case. It reiterates in this regard that the applicant's detention was based on the provisions of the 1988 Act and on a lawful order handed down by a court competent to make such an order. In the context of the enforcement proceedings and, subsequently, the judicial review proceedings, he was able to argue his case fully before the judge (see paragraphs 32 and 36 above). The High Court concluded that the extradition request made by the United Kingdom authorities was expressed in a clear manner (see paragraphs 40-41 above).

85. In view of the above, the Court is satisfied that the applicant's detention was lawful pursuant to Article 5 § 1 (a) of the Convention.

86. There has accordingly been no violation of Article 5 § 1 of the Convention.

II. ALLEGED VIOLATIONS OF OTHER ARTICLES OF THE CONVENTION

87. The applicant complained that the breach of the specialty rule rendered the enforcement proceedings against him unfair. He relied on Article 6 § 1 of the Convention, which provides in so far as relevant:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ...”

88. He further complained that it was wholly unfair and arbitrary for a State having obtained personal jurisdiction over an individual by means of extradition on one ground to seek to use it for another purpose. He relied on Article 18 of the Convention, which provides:

“The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.”

89. The Court has accepted the finding of the High Court that the decision to impose the default term of imprisonment did not involve a breach of the rule of specialty. Accordingly, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols arising from these complaints. They must therefore be declared manifestly ill-founded and therefore inadmissible pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning Article 5 § 1 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 5 § 1 of the Convention.

Done in English, and notified in writing on 10 April 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Lech Garlicki
President