CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 67537/01
by John James SHANNON
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 6 April 2004 as a Chamber composed of:

Mr M. PELLONPÄÄ, *President*,
Sir Nicolas BRATZA,
Mrs V. STRÁŽNICKÁ,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mr MICHAEL O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 8 March 2001,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr John James Shannon, is a United Kingdom national, who was born in 1971 and lives in London. He is represented before the Court by Mr Andrew Parker, a lawyer practising in London.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicant is an actor and at the relevant time starred in “London's Burning”, a popular British drama series. In or around the end of July 1997, M, a journalist for a tabloid newspaper called “News of the World”, received a telephone call from an informant stating that the applicant had been supplying drugs in 'show business' circles. M's assistant approached the applicant's agent to offer the applicant employment as a celebrity guest at the opening of a night-club in Dubai.

A meeting was arranged at the Savoy Hotel on 13 August 1997 and audio and video surveillance equipment was placed in the hotel room in order to record events. M posed as a sheikh with a number of other newspaper staff posing as his entourage and the plan was to steer the conversation towards the possibility of the applicant supplying drugs to the sheikh. During the meeting, M raised the topic of drugs and extensive conversation ensued about cocaine use. M then said that he required cocaine for a party in Dubai and the applicant stated that he could supply the cocaine. He reconfirmed this offer several times. M's assistant, posing as the sheikh's personal assistant, asked the applicant whether he could supply cannabis for her that evening. The applicant responded affirmatively and stated that he could go and get a sample. The party then went to dinner where the conversation was not recorded.

According to M, the applicant used M's mobile telephone to arrange to collect samples of cocaine and cannabis. The applicant states that he had difficulty in obtaining the drugs and first asked his agent and then a friend. He finally located the drugs through someone that his friend knew. The applicant's agent later gave evidence that the applicant had telephoned him during dinner in an excited state saying that the sheikh wanted him to get some cocaine. The applicant's agent asked the applicant if he knew what he was doing and made it clear that he would not get involved. The applicant got angry and stated that he would arrange it himself. M gave the applicant GBP 300 for the samples and the applicant and his friend went to collect the drugs from the dealer with a car and driver provided by M. The applicant then returned to the hotel and gave the drugs to M. He left without any arrangement being made for a further meeting or further supply of drugs.

On 24 August 1997 a lengthy article by M appeared in the 'News of the World' under the front page headline of “London's Burning Star is Cocaine Dealer”. The article detailed the events of 13 August 1997 and was largely based on the recorded material. At the end of the article, M offered to make the material available to the police. M had previously carried out operations of this type before and later stated (during the criminal proceedings described below) that his actions had led to 89 successful criminal convictions.

The police subsequently took over the investigative material from the newspaper and arrested the applicant on 29 August 1997. The police took witness statements and analysed the drugs provided but relied on the evidence collected by the newspaper. The applicant admitted that he was formerly a cocaine user but stated that he no longer used the drug. He did not have any prior criminal record. On 26 February 2000 the applicant was charged with one count of supplying a Class A controlled drug, one count of supplying a Class B controlled drug and one count of offering to supply a Class A controlled drug (the offer to provide cocaine for the supposed sheikh's party). M refused from the outset to disclose the identity of his informant to the prosecution or the court relying on section 10 of the Contempt of Court Act 1981 which provides, as relevant, that the court cannot require the disclosure of the source of information in a publication unless the interests of justice require.

Before the trial began, the applicant applied under section 78 of the Police and Criminal Evidence Act (PACE) 1984 for the exclusion of the evidence obtained by M on the grounds that it had been obtained by entrapment and therefore its admission would adversely affect the fairness of the trial. Following a *voire dire*, the trial judge refused the application on 3 November 1998 on the grounds that the applicant was not entrapped since he volunteered, offered and agreed to supply drugs without being subject to pressure. Further, even if the applicant had been entrapped, that could not constitute a defence in English law and the admission of the evidence would not adversely affect the fairness of the proceedings under the terms of section 78 of PACE.

Following the ruling of 3 November 1998, the applicant pleaded guilty to all three charges. However, he later changed his plea to not guilty and a trial was held from 19 April to 5 May 1999. The applicant requested the prosecution to disclose any material in its possession regarding the 'News of the World' operation and the original informant, but no further disclosure was made. The applicant then made an oral application for an order requiring M to disclose the identity of his informant on the basis that this knowledge was necessary for the defence to be able to put the best case forward for the exclusion of prosecution evidence according to section 78 of PACE. The applicant believed that the informant may have been someone with a personal grudge against the applicant and therefore the

motive for the exposé could be called into question. The trial judge ruled that it was not relevant or necessary for the identity of the informant to be disclosed on the grounds that there was agreed evidence of the meeting between the applicant and M and that the informant had played no further role in events after the initial telephone conversation with M. The trial judge therefore concluded that the non-disclosure of the identity of the informant did not affect the fairness of the trial as a whole.

On 5 May 1999 the applicant was convicted of supplying a Class A and a Class B controlled drug but was acquitted of the third charge of offering to supply. On 26 May 1999 the applicant was sentenced to 9 months' imprisonment on each count, the sentences to run concurrently. A confiscation order was also made for GBP 300 and the applicant was ordered to pay GBP 3000 towards the costs of the prosecution.

The applicant applied for leave to appeal on the basis that the trial judge erred in refusing to order the disclosure of the identity of M's informant and in refusing to exclude the prosecution evidence according to common law or section 78 of PACE. The application for leave to appeal was refused by a single judge of the Court of Appeal but his renewed leave application was granted by the full Court of Appeal on 12 May 2000 after an oral hearing.

The Court of Appeal dismissed the applicant's appeal on 14 September 2000 on the grounds that the trial judge had not erred in the two rulings. The Court of Appeal agreed that the trial judge was entitled to refuse to order the disclosure of the identity of M's informant since it was not necessary in order to enable the applicant to put forward his defence. The court stated that the applicant's argument that the newspaper may have acted for 'grudge' reasons was “an insubstantial and insufficient basis on which to order immediate disclosure of the identity of the informant ...”.

After reviewing the authorities, the Court of Appeal concluded that the fact of entrapment or enticement would not itself be sufficient to require exclusion of the evidence under section 78 but rather that evidence gained by entrapment would only be excluded if its admission adversely affected the procedural fairness of the trial. The court considered that:

> “... the ultimate question is not the broad one: is the bringing of proceedings fair (in the sense of appropriate) in entrapment cases. It is whether the fairness of the proceedings will be adversely affected by admitting the evidence of the agent provocateur or evidence which is available as the result of his action or activities. So, for instance, if there is good reason to question the credibility of evidence given by an agent provocateur, or which casts doubt on the reliability of other evidence procured by or resulting from his actions, and that question is not susceptible of being properly or fairly resolved in the course of the proceedings from available, admissible and 'untainted' evidence, then the judge may readily conclude that such evidence should be excluded. If on the other hand, the unfairness complained of is no more than the visceral reaction that it is in principle unfair as a matter of policy, or wrong as a matter of law, for a person to be prosecuted for a crime which he would not have committed without the incitement or encouragement of others, then that is not itself sufficient, unless the behaviour of the police (or someone acting on behalf of or in league with

> the police) and/or the prosecuting authority has been such as to justify a stay on grounds of abuse of process".

The Court of Appeal also examined this Court's judgment in *Teixeira de Castro v. Portugal* (judgment of 9 June 1998, Reports *1998-IV*) but did not interpret the case as authority for the proposition that any incitement or instigation of a crime by an agent provocateur rendered any trial by definition "unfair". In the view of the Court of Appeal, the statement in that judgment to the effect that the intervention by the police and the use of the evidence so obtained "meant that, right from the outset, the applicant was definitively deprived of a fair trial" was to be read in its context, as the Court's conclusion on the facts and circumstances of the particular case. If it was not so read, it was not clear how the statement was to be reconciled with the Court's observation that the admissibility of evidence was primarily a matter for regulation by national law and that as a general rule it was for national courts to assess the evidence before them. It was further noted that the judgment in the *Teixeira* case was "specifically directed to the actions of police officers and the safeguards (in the form of judicial controls) properly to be applied to them in the course of their investigations as agents of the State" and made clear that the line was to be drawn at the point of actual incitement. In the present case, the trial judge (who was in any event not dealing with the activities of the police) had correctly found that the evidence fell short of establishing actual incitement or instigation of the offences concerned.

In any event, the Court of Appeal was satisfied that although the applicant was encouraged in a broad sense by the setting and opportunity presented, he voluntarily and readily applied himself to the trick by volunteering to supply the drugs and therefore, there was no entrapment. The court further noted that:

> "... by reason of the appellant's obvious familiarity with the current price of cocaine and his ready advice as to obtaining it in the quantity and to the quality required, he displayed a familiarity with the dealing scene which itself suggested a predisposition to be part of it".

The court pointed out that what was said or done by the newspaper staff at various points may have amounted to enticement but, even so, the applicant had a clear opportunity to withdraw from any enticement and the admission of the evidence did not have an adverse effect on the procedural fairness of the trial. In this regard, the court noted that the telephone call made by the applicant to his agent during dinner showed that:

> "...whatever the truth as to who first raised the question of drugs supply during dinner, the appellant remained eager rather than reluctant to take advantage of the opportunity with which he was presented".

The Court of Appeal noted that the trial judge imposed a lenient sentence "having taken into account in the [applicant's] favour the full circumstances in which the offences were committed".

B. Relevant domestic law and practice

1. Entrapment under English Law

a. Definition of entrapment and agent provocateur

The Royal Commission on Police Powers 1928 (Cmd. 3297) defined an "*agent provocateur*" as:

> "a person who entices another to commit an express breach of the law which he would not otherwise have committed and then proceeds to inform against him in respect of such an offence".

Beyond this statement, there is no clear definition of entrapment in English law but the key factor appears to be acts or words amounting to enticement to commit an offence followed by the passing of information to the police.

b. Exclusion of evidence obtained by entrapment

The principal authorities on entrapment have concentrated largely on entrapment by law enforcement officers but the domestic courts have so far applied the same principles to cases of private entrapment, that is, entrapment by persons who are not agents of the State.

The fact that a defendant would not have committed an offence were it not for the activity of an undercover police officer or an informer acting on police instructions does not provide a defence under English law (*R. v. Sang* [1980] Appeal Cases p.402, House of Lords judgment).

There are, however, two ways in which it is possible to prevent evidence obtained by entrapment from forming the basis of criminal proceedings. First, a trial judge has a discretion at common law to order a stay of the prosecution on the grounds of abuse of process where it appears that evidence was obtained by entrapment, as the House of Lords affirmed in *R. v. Loosely; Attorney-General's Reference (No. 3 of 2000)* ([2001] UKHL 53), a judgment which followed and approved the case-law as it stood at the time of the applicant's trial, including the judgment of the House of Lords in *R. v. Latif* ([1996] vol. 1 Weekly Law Reports p.104). In *Loosely*, Lord Nicholls of Birkenhead explained:

> "My Lords, every court has an inherent power and duty to prevent abuse of its process. This is a fundamental principle of the rule of law. By recourse to this principle courts ensure that executive agents of the state do not misuse the coercive, law enforcement functions of the courts and thereby oppress citizens of the state.

> Entrapment ... is an instance where such misuse may occur. It is simply not acceptable that the state through its agents should lure its citizens into committing acts forbidden by the law and then seek to prosecute them for doing so. That would be entrapment. That would be a misuse of state power, and an abuse of the process of the courts. The unattractive consequences, frightening and sinister in extreme cases, which state conduct of this nature could have are obvious. The role of the courts is to stand between the state and its citizens and make sure this does not happen".

Similarly, in *Nottingham City Council v. Amin* ([2000] 1 Cr.App.R. 426 at p.431), Lord Chief Justice Bingham stated that domestic courts:

> "recognised as deeply offensive to ordinary notions of fairness if a defendant were to be convicted and punished for committing a crime which he had only committed because he had been incited, instigated, persuaded, pressurised or wheedled into committing it by a law enforcement officer. On the other hand, it has been recognised that law enforcement agencies have a general duty to the public to enforce the law and it has been regarded as unobjectionable if a law enforcement officer gives a defendant an opportunity to break the law, of which the defendant freely takes advantage, in circumstances where it appears that the defendant would have behaved in the same way if the opportunity had been offered by anyone else".

In *Looseley,* their Lordships agreed that it was not possible to set out a comprehensive definition of unacceptable police conduct or "state created crime". In each case it was for the judge, having regard to all the circumstances, to decide whether the conduct of the police or other law enforcement agency was so seriously improper as to bring the administration of justice into dispute. The court stated that the police should act in good faith to uncover evidence of criminal acts which they reasonably suspected the accused was about to commit or was already engaged in committing. In the cases cited above, the courts were concerned with allegations of an abuse of power by agents of the State.

The second way in which evidence obtained by entrapment may be excluded from criminal proceedings is under section 78 of the Police and Criminal Evidence Act 1984 which provides as relevant:

> "In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, and including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it."

In *Loosely* (cited above), the House of Lords stated that courts may use section 78 to exclude evidence obtained by an undercover police officer where, *inter alia,* the defendant would not have committed the offence without the police incitement. This confirmed the position set out by the Court of Appeal in *R. v. Smurthwaite; R. v. Gill* ((1994) vol. 98 Criminal Appeal Reports p. 437) that section 78 did not change the rule that while entrapment or the use of an *agent provocateur* does not constitute a defence in English law, evidence obtained from entrapment might in appropriate cases be excluded under the terms of that section.

In the Court of Appeal judgment in *Loosely*, Lord Justice Roch stated that:

> "if an accused person's involvement in an offence is due to that person being incited by a law enforcement officer to commit the offence, or by that person being trapped into committing the offence by a law enforcement officer, then the evidence of the law enforcement officer should be excluded by the trial judge exercising his power under section 78 of the 1984 Act".

As regards the effect of Article 6 of the Convention on the domestic law on entrapment, in *Nottingham City Council v. Amin* (cited above), the Divisional Court considered the judgment in *Teixeira de Castro* and concluded that Article 6 did not provide a ground for the exclusion of evidence of an undercover officer who had merely afforded an accused the opportunity to commit an offence without exerting any pressure upon him to do so. In *Loosely* (cited above), the House of Lords considered that there was no appreciable difference between the requirements of Article 6 of the Convention and current English law.

c. Cases concerning "private entrapment"

The domestic courts have not so far drawn a clear distinction between entrapment by police officers and entrapment by private persons including journalists. In *R. v. Morley and Hutton* ((1994) Crim.L.R. 919, a journalist bought counterfeit currency from the appellants and then handed the evidence to police. In upholding the trial judge's decision not to exclude the evidence under section 78 of PACE, Lord Taylor CJ stated that:

> "Although one might dislike the activities of certain informants or journalists, the criterion for admissibility did not depend on this or that motive of a newspaper to sell a story or make money. It was clear that there was no defence in English law of entrapment, and it made no difference whether an undercover police officer or a journalist was involved. The question under section 78 of the Police and Criminal Evidence Act was one of fairness."

In *R. v. Tonnessen* ((1998) 2 Cr.App.R.(S.) 328), the Court of Appeal indicated that the fact of entrapment may be relevant to the sentence imposed. In that case, journalists approached the appellant and requested her to obtain heroin on behalf of the sheikh for whom they worked. The court stated:

> "We cannot ignore the fact that the appellant was set up to commit the offence. She was tempted by the journalists to obtain and to supply the drug to them ... The element of entrapment by journalists [should have been] properly reflected in the sentence that was imposed".

A case which was decided after that of the present applicant departed from previous cases in suggesting that a distinction should be drawn between entrapment by law enforcement officials and entrapment by journalists. In *R. v. Hardwicke and Thwaites* ((2001) Crim.L.R. 218), the appellants were approached by a journalist and invited to meet his

employers, two 'wealthy Arabs', and supplied cocaine during the meeting. The appellants submitted that the proceedings should have been stayed for abuse of process. In dismissing the appeals, the Court of Appeal stated:

> "... it is of some importance to note that what the court seeks not to condone is "malpractice by law enforcement agencies" which "would undermine public confidence in the criminal justice system and bring it into disrepute". Obviously that is not a consideration which applies with anything like the same force when the investigator allegedly guilty of malpractice is outside the criminal justice system altogether ...
>
> ... [The trial judge] made one discernible error favourable to the defence in that he seems to have accepted that commercial lawlessness and executive lawlessness should be treated in the same way ... that is not correct ...".

The Court of Appeal therefore indicated that a more flexible test for abuse of process would be applied to entrapment by journalists ("commercial lawlessness") than to entrapment by law enforcement officers ("executive lawlessness").

This approach conforms to the distinction drawn by Lord Justice Auld in *R v. Chalkley and Jeffries* ((1998) 2 Cr.App.R. 69) between exclusion under section 78 and abuse of process, in which he stated that the former was concerned merely with "the fairness of the trial" while the latter had the partial function of "discouraging abuse of power" and "the marking of disapproval of the prosecution's breach".

COMPLAINTS

The applicant complains under Article 6 of the Convention that the admission of and reliance upon the evidence obtained by entrapment by the journalist rendered his trial unfair. In this context, he points out that the operation was wholly unsupervised, intended for commercial gain and that there were no procedural or evidential safeguards. He also submits that the distinction drawn by the domestic courts between enticement and entrapment was illusory and that the interpretation of section 78 of PACE was narrow and restrictive.

The applicant further complains under Article 6 that M was not required to disclose the identity of the original informant and that the domestic courts wrongly assumed that his knowledge of drugs meant that he was involved in dealing.

THE LAW

The applicant complains that his trial was unfair due to the use of evidence obtained through entrapment by a journalist. Article 6 of the Convention, as relevant, provides as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

The Government initially note that, in this case, and, in contrast to that of *Teixeira de Castro v. Portugal*, evidence had been obtained by private individuals and not the police or any other agents of the State (judgment of 9 June 1998, *Reports* 1998-IV). They also note that many offenders commit crimes at the suggestion of other individuals. The Government submit that, even if the *Teixeira* principle could be extended to entrapment by private individuals, it was the applicant who volunteered to supply drugs without being subject to pressure. The crime was not instigated or incited by the journalist; he simply provided an opportunity to commit an offence and the applicant willingly took advantage. The Government further consider that there were fair domestic procedures to challenge the admissibility of the disputed evidence and that the trial judge and Court of Appeal gave detailed rulings as to why the admission of the evidence did not render the applicant's trial unfair.

The applicant submits, *inter alia*, that the fact that he was the victim of private entrapment left him without the procedural safeguards and remedies which would have been available to him had the State instigated his conduct. For example, the newspaper was under no criminal law obligation to keep proper written records of its contact with informants, which could later be disclosed at trial. The applicant further maintains that the fact that he was enticed to commit a crime by someone intending to pass the material onto law enforcement agencies was sufficient to constitute instigation and therefore entrapment irrespective of whether he acted willingly or reluctantly. The applicant also complains that the domestic courts unfairly assumed that his familiarity with cocaine demonstrated that he was a 'dealer'.

A. Complaint regarding the alleged entrapment

The Court reiterates that the admissibility of evidence is primarily a matter for regulation by national law and, as a general rule, it is for the national courts to assess the evidence before them. The Court's task under the Convention is not to give a ruling as to whether evidence was properly admitted but rather to ascertain whether the proceedings as a whole,

including the way in which evidence was taken, were fair (see, *inter alia*, *Van Mechelen and Others v. the Netherlands*, judgment of 23 April 1997, *Reports of Judgments and Decisions* 1997-III, § 50).

The Court recalls that it has previously considered the question of the use in criminal proceedings of evidence gained through entrapment by State agents. In the case of *Teixeira de Castro v. Portugal*, the applicant was requested to supply heroin by undercover police officers and the Court found a violation of Article 6 § 1 on the basis that police officers instigated the applicant's offence and there was nothing to suggest that it would have been committed without their intervention (cited above, § 39). In reaching this conclusion, the Court emphasised that the police had no previous information leading them to suspect that the applicant was involved in drug dealing and that they only came into contact with him by chance due to an operation targeting his acquaintances.

The Court would observe in the first place that, in concluding that the applicant was from the outset deprived of a fair trial, the Court in its *Teixeira* judgment was addressing the facts and circumstances of the case before it. The Court recalls that, as emphasised by the national courts, the *Teixeira* case was concerned with an entrapment operation undertaken by police officers and that the Court's judgment did not address the question of entrapment by individuals other than agents of the State. The operation which was there being examined constituted a misuse of State power, the police officers having gone beyond their legitimate role as undercover agents obtaining evidence against a suspected offender to incite the commission of the offence itself. The Court considers that the principles set out in the *Teixeira* judgment are to be viewed in this context and to be seen as principally directed to the use in a criminal trial of evidence gained by means of an entrapment operation carried out by or on behalf of the State or its agents.

Turning to the present case, the Court notes that the State's role was limited to prosecuting the applicant on the basis of information handed to it by a third party. The applicant was "set up" by a journalist, a private individual, who was not an agent of the State: he was not acting for the police on their instructions or otherwise under their control. The police had no prior knowledge of M's operation, being presented with the audio and video recordings after the event. The Court therefore considers that the situation in the instant case is different from that examined in the Court's judgment in the *Teixeira* case.

However, just as the domestic courts have held that evidence obtained by means of "private" entrapment, rather than entrapment by or on behalf of agents of the State, may give rise to issues of fairness under section 78 of PACE, the Court does not exclude that the admission of evidence so obtained may in certain circumstances render the proceedings unfair for the purposes of Article 6 of the Convention. The Court will thus examine

whether, in the particular circumstances of the present case, the use in the criminal proceedings against the applicant of evidence obtained by M resulted in such unfairness.

The Court notes at the outset that, although M was not an agent of the State and did not undertake the subterfuge at the instigation of the police, the incriminating evidence thereby obtained was handed over to the police and led to the prosecution and conviction of the applicant. Moreover, it appears that on a previous occasion M had engaged in a very similar subterfuge to obtain evidence of drug dealing by other persons, which evidence had likewise led to their prosecution and conviction - see the case of *R. v. Hardwicke and Thwaites* referred to above. In neither case had M. been the subject of a prosecution despite his direct involvement in matters which formed the basis of the criminal charges in question.

However, the Court further notes that in the instant case the circumstances in which the evidence had been obtained was examined by the trial judge in the specific context of an application under section 78 to exclude it on the grounds that it had been obtained by entrapment and that its admission would adversely affect the fairness of the trial. In the course of such application, in which the applicant was represented by counsel, the prosecution witnesses were called to give evidence and were cross-examined and the applicant gave evidence on his own behalf and called a witness in support of his case. After a five-day hearing the trial judge refused to exclude the evidence, holding that its admission would not have an adverse effect on the fairness of any proceedings that might follow. In his ruling, which was based on all the material before him, including the video recording and audio transcripts themselves, the trial judge concluded that the applicant had not been entrapped into committing an offence but had volunteered, offered and agreed to supply drugs without being subjected to pressure. In this regard, reliance was placed by the trial judge both on the applicant's familiarity with the current price of cocaine and drug dealing, as demonstrated by the fact that he was able to arrange a deal within fifteen minutes and the fact that, although the applicant had a number of opportunities to withdraw from the deal, he did not do so, seeing the financial advantages for himself. The conclusion of the trial judge was upheld by the Court of Appeal which, while noting that the applicant had plainly been encouraged in a broad sense to do what he did by the setting in which he found himself and the opportunity which it appeared to present, found that he had voluntarily and readily applied himself to it when faced early on with M's apparent interest in acquiring drugs.

The Court finds no reason to question this assessment of the domestic courts or, on the basis of its own examination of the material before it, to reach a different conclusion. It further notes that the applicant did not at any stage, either in the domestic proceedings or in his application to the Court, allege that the audio or video evidence against him was not genuine or was

otherwise unreliable. Had he done so, it has not been disputed that it would have been open to the applicant in the domestic proceedings to challenge its admission on this ground.

In these circumstances, the Court finds that the admission of the evidence in question did not result in any unfairness and that no appearance of violation of Article 6 is disclosed in this respect.

B. Other complaints under Article 6 § 1

The applicant complains that M was not required to disclose the identity of his original informant or the information initially provided by him or her. However, as the trial judge observed in finding that it was "neither relevant nor necessary" to order the identity of the informant to be disclosed, the case against the applicant was founded almost exclusively on the video and audio recordings of his actions and no reliance was placed at trial on the statements of the original informant. In these circumstances, the Court does not consider that the non-disclosure of this information was prejudicial to the applicant's ability to present a defence or indeed that it had any impact on the fairness of the proceedings.

The applicant also complains that the domestic courts wrongly assumed that his knowledge of drugs meant that he had previously been involved in dealing. The Court notes that the Court of Appeal stated that the applicant's familiarity with the current price of cocaine and his advice as to obtaining it "displayed a familiarity with the dealing scene which itself suggested a predisposition to be part of it". The Court does not consider that this statement, viewed in the context in which it was made, can be said to have rendered the proceedings against him unfair or to have infringed the applicant's right to be presumed innocent.

Given its findings above, the Court concludes that the application is manifestly ill-founded and should be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Matti PELLONPÄÄ
President