



Confiscation of a house funded through drug trafficking was justified

In its decision in the case of [Aboufadda v. France](#) (application no. 28457/10) the European Court of Human Rights has, by a majority, declared the application inadmissible. The decision is final.

The case concerned the confiscation of a building which belonged to the applicants and in which they lived, the courts having determined that most of their assets had been obtained through the proceeds of drug trafficking engaged in by their son.

Pointing out that States have room for manoeuvre (“wide margin of appreciation”) in controlling the use of property in accordance with the general interest, the Court interpreted the French courts’ decision to confiscate the applicants’ residence as demonstrating a legitimate wish to punish severely offences which were akin to concealing illegally-obtained assets, and which, in addition, had occurred in the context of large-scale drug trafficking at local level. Given the ravages caused by drugs, the Court understood that the authorities of the member States should wish to treat those who contributed to the propagation of this scourge with great firmness. It also reiterated that the confiscation of assets obtained from the proceeds of crime had assumed a significant role both in the legal systems of several member States of the Council of Europe and internationally.

Principal facts

The applicants, Ahmed Aboufadda and Fatima Aboufadda, are Moroccan nationals who were born in 1946 and 1960 respectively and live in Mulhouse.

A judicial investigation which was opened in 2005 revealed a large drug-trafficking operation organised by the applicants’ son, who sold large amounts of cannabis from the Netherlands to individuals who subsequently sold on the drugs in their turn. Financial checks were conducted into his assets and those of his entourage, in order to establish whether the offences of failure to justify resources and money laundering had been committed.

In June 2008 the applicants and their son were committed for trial before the Mulhouse Criminal Court for, in the son’s case, holding, transporting, acquiring, supplying, selling and illegally importing drugs and, in the case of Mr and Ms Aboufadda, for not being able to demonstrate resources corresponding to their lifestyle¹, while in a habitual relationship with a person engaged in drug trafficking. They were convicted by a judgment of 11 July 2008. The son was sentenced to seven years’ imprisonment and the applicants to three years’ imprisonment, two of which were suspended. In addition, the court ordered, among other measures, the confiscation of a building in Bitschwiller-les-Thann, purchased by Mr and Ms Aboufadda in March 2005. The purchase of this property, for 246,120 euros (EUR), had been financed by a deposit of EUR 96,120 and a 20-year bank loan, some of which had been reimbursed in advance from 2005 onwards.

In particular, the judgment of the Mulhouse Criminal Court pointed out that the applicants’ lifestyle did not correspond to the monthly incomes declared by them. While explanations could be provided for certain amounts, none could be given for others. Thus, for example, a plot of land in Morocco belonging to the couple had indeed been sold, but there was no evidence of a corresponding transfer of the funds to France.

In January 2009 the Colmar Court of Appeal upheld that judgment and, in November 2009, an appeal on points of law by Mr and Ms Aboufadda was dismissed. They had argued that the purchase of their

¹ Article 321-6 of the Criminal Code

building and some of the work carried out in it had been funded from their own incomes and resources, and not from the proceeds of drug trafficking. They further alleged that the confiscation of the building, the family home and residence of their disabled and dependent child, represented an excessive interference with their right to respect for their family life. The Court of Cassation held that, in ordering the confiscation, the court of appeal had found it established that most of the assets had consistently been obtained through the proceeds of drug trafficking and that it had given reasons for its decision, and pointed out that the courts were not obliged to provide particular reasons for their choice of the sanction to be applied, within the legal limits.

The applicants were authorised to remain in the house until 31 May 2011 in exchange for a monthly rent of EUR 900, to enable them to find alternative accommodation.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 18 May 2010.

Relying on Article 1 of Protocol No. 1 (protection of property), the applicants complained about the confiscation of their home, as ordered by the courts. They also alleged that this measure had constituted a violation of their right to respect for their private and family life and their home, protected under Article 8.

The decision was given by a Chamber of seven, composed as follows:

Mark Villiger (Liechtenstein), *President*,
Boštjan M. Zupančič (Slovenia),
Ganna Yudkivska (Ukraine),
Vincent A. de Gaetano (Malta),
André Potocki (France),
Helena Jäderblom (Sweden),
Aleš Pejchal (Czech Republic), *Judges*,

and also Stephen Phillips, *Section Registrar*.

Decision of the Court

Article 1 of Protocol No. 1

The Court reiterated that Article 1 of Protocol No.1 contained a specific reference to “the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties”. It examined whether, in the applicants’ case, confiscation of the property, provided for by the Criminal Code in the event of drug-trafficking offences, had been a measure that was proportionate to the general-interest aim represented by the fight against the concealment of illegally-obtained assets and money laundering.

The implementation of this measure had admittedly had a major impact on the applicants’ assets. Nonetheless, the Court reiterated, in particular, that the confiscation of assets obtained through criminal activities had assumed a significant role, both in the legal systems of several member States of the Council of Europe and internationally, with, for example the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 November 1990.

The Court further emphasised that Mr and Ms Aboufadda could have avoided being convicted had they demonstrated the lawful origin of their resources and assets. The French courts, after having noted that the applicants’ lifestyle did not correspond to the incomes declared by them, had duly assessed their claims, and specifically the submission that their resources were derived from an

inheritance and the sale of a plot of land in Morocco, and had found that they had submitted no evidence that the corresponding funds had been transferred to France. In addition, the Court found nothing excessive in the Colmar Court of Appeal's conclusion that "most" of Mr and Ms Aboufadda's assets had been obtained from the proceeds of the drug trafficking in which their son was engaged (the only resources not concerned were those obtained after 2006).

Moreover, it interpreted the French courts' decision to confiscate the entire house as a penalty as demonstrating a legitimate wish to punish severely offences which were akin to the concealment of illegally-obtained assets, and which, in addition, had occurred in the context of large-scale drug trafficking at local level. Given the ravages caused by drugs, the Court understood that the authorities of the member States should wish to treat those who contributed to the propagation of this scourge with great firmness.

These factors, as well as the wide margin of appreciation available to the States in controlling the use of property in accordance with the general interest, led the Court to consider that the interference in the applicants' right to the peaceful enjoyment of their possessions had not been disproportionate to the general-interest aim pursued in the fight against drug trafficking. It therefore rejected this complaint as manifestly ill-founded.

Article 8

The Court noted that the confiscated property had been the applicants' family home. It followed that this measure, which had obliged them to move house, amounted to interference by a public authority with the exercise of their right to respect for their private and family life and their home.

Such interference would be in breach of Article 8 unless it was in accordance with the law, pursued one or more legitimate aims set out in Article 8 and was "necessary in a democratic society" to achieve those aims. With regard to the first condition, the Court pointed out that the confiscation in question had been provided for by the Criminal Code. Secondly, the disputed interference had been intended to ensure "the prevention of disorder and crime" within the meaning of Article 8, since it had sought to combat drug trafficking and to prevent it by discouraging the concealment of illegally-obtained assets and money laundering. With regard to the third condition, the Court first referred to its findings concerning the applicants' complaint under Article 1 of Protocol No. 1. It further noted that the relevant authorities had taken due account of the applicants' situation with regard to Article 8, by permitting them to remain in their home until such time as they were able to move to other premises, that is, for more than eighteen months after the end of the domestic proceedings.

Consequently, although the margin of appreciation enjoyed by the States was less extensive in the context of the application of Article 8 than in that of Article 1 of Protocol No. 1, the Court concluded that this part of the application was manifestly ill-founded and rejected it.

The decision is available only in French.

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Press contacts

echrpresse@echr.coe.int | tel: +33 3 90 21 42 08

Céline Menu-Lange (tel: + 33 3 3 90 21 58 77)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.