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

SECOND SECTION

DECISION

Application no. 54241/12
Darren John BAGNALL
against the United Kingdom

The European Court of Human Rights (Second Section), sitting on 8 July 2025 as a Chamber composed of:

Arnfinn Bårdsen, *President*,
Saadet Yüksel,
Tim Eicke,
Péter Paczolay,
Oddný Mjöll Arnardóttir,
Gediminas Sagatys,
Juha Lavapuro, *judges*,

and Hasan Bakirci, *Section Registrar,*

Having regard to the above application lodged on 8 August 2012,

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

1. The applicant, Mr Darren John Bagnall, is a British national who was born in 1966. He was represented before the Court by Mr S. Ali of Judge and Partners Solicitors, a firm based in Manchester, and by Mr J. Pickup KC and Mr S. Gurney, counsel.

2. The United Kingdom Government ("the Government") were represented by their Agent, Mr C. Wickremasinghe of the then Foreign and Commonwealth Office.

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

A. The applicant's arrest, trial and conviction

4. On 21 November 2005 the applicant was arrested on suspicion of money laundering by officers of Her Majesty's Revenue and Customs ("HMRC").

5. Upon his arrest HMRC seized a number of documents from his hotel room. One of these documents – later to be known as CL/02 – detailed fifty-two deal chains that the applicant had put together through various companies he owned and through which he had traded in mobile phones and computer processing units.

6. The applicant was charged with entering into or being concerned in an arrangement involving criminal property ("money laundering") contrary to section 328 of the Proceeds of Crime Act 2002 ("POCA"). HMRC also considered prosecuting him for VAT fraud on the basis of the information contained in CL/02. However, on 14 July 2006 HMRC decided not to prosecute him for VAT fraud at that stage as it was not considered to be in the public interest, or a good use of limited resources, to delay proceedings for up to two years to conduct further investigations.

7. The trial commenced on 24 January 2007 and on 6 February 2007 a jury convicted the applicant of the section 328 offence. On 2 March 2007 he was sentenced to fifteen months' imprisonment.

8. CL/02 was not served in evidence at the trial nor did it form part of the prosecution's case.

B. The confiscation proceedings

9. Section 6 of POCA gave the Crown Court the power to make a confiscation order where a defendant was convicted of an offence or offences in proceedings before it. The court was required to determine whether the defendant had a criminal lifestyle, if he had benefited from his criminal conduct and, if he had, the amount to be recovered (see paragraph 46 below).

10. If the court decided that a defendant had a criminal lifestyle, section 10 of POCA required it to make certain assumptions ("the statutory assumptions" – see paragraph 49 below) for the purpose of deciding whether he had benefited from his general criminal conduct unless those assumptions were shown to be incorrect or there would be a serious risk of injustice if they were made. In short, if a defendant was found to have a criminal lifestyle the court had to assume that any property transferred to him at any time after the relevant day was obtained as a result of his general criminal conduct; that any property held by the defendant at any time after the date of conviction was obtained by him as a result of his general criminal conduct; that any expenditure incurred by the defendant at any time after the relevant day was met from property obtained by him as a result of his general criminal conduct; and that, for the purpose of valuing any property obtained (or assumed to have

been obtained) by the defendant, he obtained it free of any other interests in it. The "relevant day" was normally the day six years before proceedings were started against the defendant (section 10(8) of POCA – see paragraph 50 below). Thus, any property transferred to the defendant at any time in the six years before the criminal proceedings started would be assumed to have been obtained by him as a result of his general criminal conduct.

11. Confiscation proceedings were commenced against the applicant following his conviction. When ordered to serve a statement in those proceedings (pursuant to section 18 of POCA – see paragraph 54 below), the applicant contended that he had been conducting a legitimate trade in the wholesale distribution of mobile telephones and computer processing units throughout the relevant period. This was disputed by the prosecution.

12. On 12 July 2007 the prosecution served a statement pursuant to section 16 of POCA (see paragraph 52 below) in which it estimated that during the six years prior to conviction the applicant's benefit from his general criminal conduct had been in excess of 50.9 million British pounds ("GBP"). This calculation was based on the money which had passed through the applicant's personal bank accounts, which the prosecution suspected related in whole or in part to his criminal conduct, particularly VAT fraud and drug trafficking.

13. During the rest of 2007 there were further exchanges of statements, as well as further consideration of whether the applicant should be prosecuted for VAT fraud. However, the view was taken that, bearing in mind the fact that the applicant was likely to receive a custodial sentence in respect of the money laundering offence, it was not worth spending resources on a criminal prosecution for VAT fraud when his benefit could in any event be recovered by way of confiscation proceedings.

14. A further prosecution statement served on 17 December 2007 lowered the applicant's alleged benefit to in excess of GBP 43.3 million. This figure was based on the transfers into the accounts of the applicant and his wife and transfers which could be traced to the applicant's companies. HMRC alleged that the applicant had used the companies as vehicles for substantial and persistent orchestrated fraud.

15. The applicant served three defence statements responding to the prosecution's statements.

16. On 4 February 2008 the prosecution served a "position statement" which said:

> "In order to avoid any risk of 'double jeopardy' or any valid assertion thereof... a policy decision has been taken that this applicant will not face any prosecution for criminal conduct in respect of the apparent [VAT] frauds to which these proceedings now refer. However, this undertaking will not preclude the Crown from naming the applicant as a potential co-conspirator or accomplice in the event of criminal proceedings being instituted against those who are or may be identified as participating with him in the conduct that is asserted to amount to the fraudulent conduct that is now identified in these proceedings."

17. The applicant sought to stay the proceedings on the basis that they were an abuse of process and/or incompatible with his Convention rights. He contended that the application of the various statutory assumptions set out in section 10 of POCA (see paragraph 49 below) would violate his rights under Article 6 §§ 1 and 2 of the Convention. In particular, he argued that the prosecution's section 16 statements (see paragraphs 12 and 14 above) constituted a "criminal charge" with the offence of VAT fraud, in the autonomous meaning given to that term in the Convention. That being so, the application of the statutory assumptions would be incompatible with the presumption of innocence. Instead, there should be a burden upon the prosecution to prove to the criminal standard that he had committed this criminal offence. He also argued that to proceed with the VAT fraud allegations in the context of the confiscation proceedings, rather than by way of a prosecution, was an abuse of process.

18. A hearing began on 16 July 2008 to deal with these issues and the trial judge gave his ruling on 30 July 2008. He observed that the section 16 statement (see paragraphs 12 and 14 above) was designed to assist the court in assessing the extent to which a defendant had benefited from criminal conduct, and the person making the statement was obliged to provide such information which he believed to be relevant to the court's determination of any of the confiscation issues – that is, whether the defendant had a criminal lifestyle, whether he had benefitted from his general criminal conduct and what that benefit was. According to the judge:

> "There are many cases in which the prosecutor does not know whether the defendant has committed other offences which have provided his assets but may have information which may assist the court in determining whether the defendant's contention that he has acquired them honestly or not is true. There may be cases in which more positive information is available to the prosecutor to contend that the defendant's claim of an honest origin is untrue. Is it to be suggested that if a prosecutor has information which strongly undermines the defendant's contention that he has acquired the property honestly, he should not disclose it to the court or if he does so, the court must regard it as making a new charge within the autonomous meaning?"

19. For the judge, if the use of evidence of criminal offending in determining the source of a defendant's assets were to amount to the making of a "new charge" it would severely restrict the scope of the confiscation proceedings in many cases. In the present case, although the terms of the section 16 statements (see paragraphs 12 and 14 above) made it clear that the prosecution believed the defendant had been involved in VAT fraud, the judge did not consider this to be "an official notification" of an allegation that he had committed a criminal offence. It was clearly set out in the context of confiscation proceedings and there was nothing to suggest that the applicant would be prosecuted. The judge therefore rejected the contention that it amounted to a new "charge" which attracted the protection of Article 6 § 2 of the Convention.

20. Having rejected the argument that the section 16 statements constituted a new charge, the judge found that it would not be in breach of the Convention to apply the statutory assumptions (see paragraph 49 below). Regarding the claim that the proceedings were an abuse of process, he considered it to be a matter for the prosecuting authority to decide if it wished to prosecute. That choice was afforded by law and it was impossible to criticize the authorities for choosing a course provided to them.

21. In a further ruling the judge rejected the applicant's submission regarding the appropriate standard of proof. The judge accepted that where there was an allegation of criminal behaviour the standard of proof was the criminal one of beyond reasonable doubt. However, in confiscation proceedings the court was not dealing with such an allegation but instead was investigating the provenance of property. If that involved by implication such allegations, the approach in *R. v. Benjafield* [2002] UKHL 2 (see paragraphs 57 and 58 below) and *Phillips v. the United Kingdom* (no. 41087/98, ECHR 2001 VII) was correct and the lower, civil standard of proof of the balance of probabilities applied.

22. During the remainder of 2008 the parties served further statements in respect of the assessment of benefit.

23. A hearing took place on 20 February 2009 to determine whether the applicant had benefitted from criminal conduct. The trial judge's full written ruling was handed down on 14 August 2009. In that ruling he examined each of the applicant's companies in turn. He found that the applicant had rebutted the statutory assumptions in section 10 of POCA (see paragraph 49 below) in respect of transfers of property related to two of those companies. However, in respect of property obtained by the applicant which was derived from two further companies the judge found that he had not displaced the assumptions because he was satisfied that the transactions set out in document CL/02 (see paragraph 5 above) were not genuine business transactions.

24. On 2 September 2009 the applicant served documents and evidence as to his realisable assets.

25. On 15 September 2009 the prosecution served their fourth statement, with a revised alleged benefit figure of approximately GBP 2.8 million.

26. In December 2009 a hearing took place to determine the available amount (see paragraph 51 below).

27. The trial judge handed down his final ruling on 23 February 2010.

28. The ruling first went through over one hundred items of property the applicant did not accept should be included in the benefit figure. The judge agreed that approximately half of these items should not be included because it would result in double accounting, because they were related to legitimate business, or because there would be a serious risk of injustice pursuant to section 10(6)(b) of POCA (see paragraph 49 below). He concluded that the benefit figure was GBP 1,818,619.97.

29. In determining the recoverable amount (see paragraph 51 below) the judge, on the balance of probabilities, was not satisfied that the applicant had made a full and honest statement of his available assets. He therefore made the confiscation order for the full benefit figure. A period of six years' imprisonment was fixed in default of payment.

30. At the end of his ruling the judge commented on the length of the proceedings:

> "I am sure that all concerned in these proceedings are only too well aware of the time which they have taken. I am bound to point out that the time which this case has taken has been partly due to logistical problems and partly due to the nature of the case. The logistical problems have involved making sure that counsel, solicitors and witnesses (including Mr Bagnall and [a witness from HMRC] have been available). My own availability has produced problems and the judgments have been lengthy. We have all had to work extensively in our own free time. But more especially, the statutory time-scale does not envisage the type of arguments which have been raised in this case. There have been arguments about abuse of process which involved oral evidence. The autonomous meaning of the word 'charge' in European jurisprudence, the burden of proof, the approach to lifestyle cases; the approach to cases of general criminal conduct where it involves consideration of factual situations not prosecuted by the jury, the cases of *R v Briggs-Price* both in the Court of Appeal and House of Lords; all these have featured in these proceedings. This has been a truly exceptional, and arguably a unique case. I therefore make no apology for it."

C. The financial reporting order

31. The judge also imposed a financial reporting order on the applicant, pursuant to section 76 of the Serious Organised Crime and Police Act 2005 (see paragraphs 65-67 below), which required him to produce reports on the particulars of his financial affairs over a period of four years.

32. The judge observed that such an order should not be made lightly or routinely; it was not a tool to be used to assist in the enforcement of a confiscation order, but rather a means of assessing the risk posed by the defendant. According to the judge, it had to be based on evidence and not speculation. The relevant factors to be taken into account included the history of the offender, the circumstances of the offence or offences of which he had been convicted, his behaviour in relation to financial dealings following his arrest and conviction, and other business dealings which demonstrated his attitude towards business transactions. The judge considered that he was entitled to have regard to matters disclosed within the confiscation proceedings and the applicant's attitude to the offence of which he had been convicted and towards the confiscation proceedings and the issues which arose in respect of them.

33. The judge acknowledged that the applicant had been convicted of one offence of money laundering and had no previous convictions of any relevance. Thus by itself there would be no question of making a financial reporting order. However, he sought to balance this fact against the negative

findings made in the confiscation proceedings in respect of the applicant's truthfulness and integrity and considered that he would wish to return as soon as possible to his previous luxurious lifestyle. The risk the applicant presented of committing another offence was therefore considered to be sufficiently high to justify the making of the order.

D. The appeal proceedings

34. The applicant submitted his grounds of appeal on 22 March 2010. On 21 September 2010 he was granted permission to appeal in relation to the making of the confiscation order and the financial reporting order. Permission to appeal was refused on a number of other grounds, including a ground relating to excessive delay in the confiscation proceedings. Permission was refused on this ground since the delay had principally been due to the complexity of the facts and legal issues. The court did not, therefore, consider it arguable that there had been undue delay such as to violate the applicant's Article 6 rights.

35. In January 2011 the applicant's appeal was linked to *R v. Nirmal Sharma*, a case which raised similar issues. On 18 May 2011 the appeal hearing was postponed until the Supreme Court had handed down its judgment in *Gale v. the Serious Organised Crime Agency* (see paragraphs 63-64 below). Judgment in that case was handed down on 26 October 2011. On 25 November 2011 the prosecution filed a supplementary skeleton argument and on 8 January 2012 the applicant filed a response.

36. The applicant's appeal was heard on 13 and 14 March 2012. During the appeal the applicant renewed his application for permission to appeal in respect of one of the grounds on which permission had been refused (see paragraph 34 above). He did not, however, renew his application in respect of the delay ground.

37. On 18 April 2012 the appeal was allowed in part, with the confiscation order being reduced to approximately GBP 1.6 million.

38. However, the Court of Appeal rejected the applicant's grounds of appeal based on Article 6 §§ 1 and 2 of the Convention. The applicant had argued that to pursue the allegations of VAT fraud in the confiscation proceedings whilst declining to prosecute for them had violated his rights enshrined in Article 6 §§ 1 and 2 and, furthermore, amounted to an abuse of process. He also argued that the court ought not to have applied the assumptions set out in section 10 of POCA (see paragraph 49 below) because the prosecution, in the particular circumstances of this case, had "charged" him with a criminal offence other than that of which he had been convicted and was thus required to prove that offence to the criminal standard in order to safeguard his rights enshrined in Article 6 § 2 and, more generally, in Article 6 § 1 of the Convention.

39. According to the Court of Appeal, the mere fact that the prosecution had accused the applicant of specific offences and adduced evidence to make that accusation good did not amount to the bringing of a new charge. The applicant had not been at risk of any further conviction, there was no finding of guilt and the finding reached by the trial judge, on the basis of the statutory assumptions in section 10 of POCA (see paragraph 49 below), merely went to the amount of the order that the court was obliged to make.

40. The court observed that the prosecution had been obliged to make a section 16 statement setting out information in their possession that was relevant in connection with the making by the court of the statutory assumptions under section 10 of POCA (see paragraph 49 below). As the applicant had sought to contend that the source of his assets was lawful trading in mobile phones and computer processing units, the prosecution had been entitled to produce what information and evidence it could in rebuttal of his assertions. It would be perverse if, where the prosecution relied upon the assumptions set out in section 10 (see paragraph 49 below), and there was no evidence to assist the court as to whether the assumptions were correct, the burden remained on the defence to establish that the source of the assets was lawful on the balance of probabilities, whereas if it had evidence to rebut any assertion that the source of the assets was lawful, the prosecution would be compelled to prove that the source was criminal beyond a reasonable doubt.

41. The court also rejected the applicant's claim that it was unfair and contrary to Article 6 § 1 for the prosecution to use the confiscation proceedings as a means of imposing the burden on him of having to disprove his involvement in VAT fraud. As the Court had observed in *Phillips* (cited above), the statutory assumptions were applied not to facilitate a finding of guilt, but rather to assess the amount of the confiscation order. The applicant had been entitled to rebut the assumption that the source of the assets was criminal, on the balance of probabilities, and in *Phillips* the Court had described this as a "principal safeguard". There could therefore be nothing unfair in requiring the applicant to demonstrate that two of the companies through which he was trading were carrying out lawful business.

42. The court did not consider that it was an abuse of process to decline to prosecute the applicant for VAT fraud but rather to pursue him through confiscation proceedings (see paragraphs 13 and 16 above). The application by the prosecution (subject to control by the court and subject to a full right of appeal) to apply primary legislation could not amount to such an abuse, particularly when, under section 10(6)(b) of POCA (see paragraph 49 below), the court could not make any of the statutory assumptions if there would be a serious risk of injustice.

43. Finally, in respect of the financial reporting order (see paragraphs 31-33 above), the applicant argued that the judge should have confined his consideration to the offence of which he was convicted rather

than rely on his view as to the source of the defendant's assets. The Court of Appeal dismissed the applicant's appeal, noting the following:

> "[a financial reporting order] should only be made if there is a sufficiently high risk of the defendant committing another of the specified offences, such as cheating the Revenue. The argument advanced on behalf of the appellant was that the judge should have confined his consideration to the one offence of which Mr Bagnall was convicted, namely, money-laundering, rather than rely upon his view as to the source of his assets. Since this ground of appeal was advanced, this court has ruled that a judge is entitled to have regard to the whole picture of the defendant's lifestyle (see, e.g., *R v Webb* [2011] EWCA Crim 882 paragraph 24 and its citation of *Hancox v The Queen* [2010] EWCA Crim 102 and *R v Bell* [2011] EWCA Crim 2728). Those cases make it clear that the judge was entitled to take into account the defendant's very high standard of living and luxury, and his evasive and dishonest evidence in relation to confiscation. There was a sufficiently high risk to justify the making of an Order. We dismiss the appeal against the Order."

44. On 18 April 2012 the Court of Appeal declined to certify that its decision involved a point of law of general public importance and refused to grant the applicant permission to appeal.

45. Thereafter, the applicant did not make any payments towards the confiscation order and he failed to make any reports during the currency of the financial reporting order. A warrant of arrest was issued but as the applicant had travelled to Dubai before it was made, and apparently remained there, at the date of the parties' final pleadings to the Court (that is, 24 April 2015) he had not been arrested.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Domestic law and practice

1. The Proceeds of Crime Act 2002

46. Confiscation proceedings are governed by POCA. Section 6 provides, insofar as relevant:

> "(1) The Crown Court must proceed under this section if the following two conditions are satisfied.
>
> (2) The first condition is that a defendant falls within any of the following paragraphs—
>
> (a) he is convicted of an offence or offences in proceedings before the Crown Court;
>
> ...
>
> (3) The second condition is that—
>
> (a) the prosecutor... asks the court to proceed under this section, or
>
> (b) the court believes it is appropriate for it to do so.
>
> (4) The court must proceed as follows—
>
> (a) it must decide whether the defendant has a criminal lifestyle;

(b) if it decides that he has a criminal lifestyle it must decide whether he has benefited from his general criminal conduct;

(c) if it decides that he does not have a criminal lifestyle it must decide whether he has benefited from his particular criminal conduct.

(5) If the court decides under subsection (4)(b) or (c) that the defendant has benefited from the conduct referred to it must—

(a) decide the recoverable amount, and

(b) make an order (a confiscation order) requiring him to pay that amount.

...

(7) The court must decide any question arising under subsection (4) or (5) on a balance of probabilities."

47. Pursuant to section 75 a defendant has a criminal lifestyle if an offence is specified in Schedule 2 (which includes offences such as drug-trafficking and money laundering), if an offence constitutes conduct forming part of a course of criminal activity, or if it is an offence committed over a period of at least six months and the defendant has benefited from the conduct which constitutes the offence.

48. Under section 76(4), a person benefits from conduct if he obtains property as a result of or in connection with the conduct. Section 76(7) provides that if a person benefits from conduct, his benefit is the value of the property obtained.

49. Section 10 provides for the making of four assumptions for the purpose of deciding whether a defendant has benefited from his general criminal conduct and deciding his benefit from that conduct. Where relevant, it provides:

"(1) If the court decides under section 6 that the defendant has a criminal lifestyle it must make the following four assumptions for the purpose of —

(a) deciding whether he has benefited from his general criminal conduct, and

(b) deciding his benefit from the conduct.

(2) The first assumption is that any property transferred to the defendant at any time after the relevant day was obtained by him —

(a) as a result of his general criminal conduct, and

(b) at the earliest time he appears to have held it.

(3) The second assumption is that any property held by the defendant at any time after the date of conviction was obtained by him —

(a) as a result of his general criminal conduct, and

(b) at the earliest time he appears to have held it.

(4) The third assumption is that any expenditure incurred by the defendant at any time after the relevant day was met from property obtained by him as a result of his general criminal conduct.

(5) The fourth assumption is that, for the purpose of valuing any property obtained (or assumed to have been obtained) by the defendant, he obtained it free of any other interests in it.

(6) But the court must not make a required assumption in relation to particular property or expenditure if —

(a) the assumption is shown to be incorrect, or

(b) there would be a serious risk of injustice if the assumption were made."

50. The "relevant day" referred to in subsections (2) and (4) is normally the day six years before proceedings were started against the defendant (section 10(8)).

51. Section 7 provides guidance on fixing the recoverable amount:

"(1) The recoverable amount for the purposes of section 6 is an amount equal to the defendant's benefit from the conduct concerned.

(2) But if the defendant shows that the available amount is less than that benefit the recoverable amount is–

(a) the available amount, or

(b) a nominal amount, if the available amount is nil."

52. As regards the conduct of confiscation hearings, section 16 allows the court to order the prosecution to give it a statement of information. Section 16(3)–(5) defines the statement of information in these terms:

"(3) If the prosecutor ... believes the defendant has a criminal lifestyle the statement of information is a statement of matters the prosecutor ... believes are relevant in connection with deciding these issues—

(a) whether the defendant has a criminal lifestyle;

(b) whether he has benefited from his general criminal conduct;

(c) his benefit from the conduct.

(4) A statement under subsection (3) must include information the prosecutor ... believes is relevant—

(a) in connection with the making by the court of a required assumption under section 10;

(b) for the purpose of enabling the court to decide if the circumstances are such that it must not make such an assumption.

(5) If the prosecutor ... does not believe the defendant has a criminal lifestyle the statement of information is a statement of matters the prosecutor ... believes are relevant in connection with deciding these issues—

(a) whether the defendant has benefited from his particular criminal conduct;

(b) his benefit from the conduct."

53. The court may order that a defendant respond to a section 16 statement of information. Section 17 governs the response and, insofar as relevant, provides:

"(1) If the prosecutor ... gives the court a statement of information and a copy is served on the defendant, the court may order the defendant—

(a) to indicate (within the period it orders) the extent to which he accepts each allegation in the statement, and

(b) so far as he does not accept such an allegation, to give particulars of any matters he proposes to rely on.

...

(6) No acceptance under this section that the defendant has benefited from conduct is admissible in evidence in proceedings for an offence."

54. Section 18 empowers the court to first order a defendant to provide information necessary to help it in carrying out its functions. Its terms mirror those set out in section 17. In particular, it includes a guarantee that information given under this section which amounts to an admission by the defendant that he has benefited from criminal conduct will not be admissible in evidence in proceedings for an offence.

2. Case-law in respect of confiscation

(a) *HM Advocate and Another v. McIntosh* [2003] 1 AC 1078

55. In *McIntosh* the Scottish High Court of Justiciary sitting as a court of criminal appeal ("the Appeal Court") had held, by a majority of two to one, that a confiscation procedure similar to that applied in the present case was incompatible with Article 6 § 2 of the Convention. In particular, it found that in asking the court to make a confiscation order the prosecutor was in fact asking it to conclude that the defendant had committed a criminal offence, even though there had been no indictment or complaint, and no conviction. As the allegation against the defendant was unspecific and based on no evidence, his need for the presumption of innocence had been all the greater. The operation of the statutory assumptions had therefore offended against the presumption of innocence.

56. However, on 5 February 2001 the Judicial Committee of the Privy Council, on appeal, held unanimously that Article 6 § 2 of the Convention did not apply, since during the confiscation proceedings the accused was not "charged with a criminal offence" but was instead faced with a sentencing procedure in respect of the offence of which he had been convicted. Even if Article 6 § 2 could be said to have applied, the Privy Council held that the assumption involved in the making of the confiscation order was neither unreasonable nor oppressive.

(b) *R v. Rezvi* [2002] UKHL 1 and *R v. Benjafield and Others* [2002] UKHL 2

57. In *R. v. Rezvi* the House of Lords unanimously held that a similar confiscation scheme under the Criminal Justice Act 1988 was compatible

with Article 6 § 1 of the Convention. Lord Steyn, with whom the other Law Lords agreed, observed:

> "It is a notorious fact that professional and habitual criminals frequently take steps to conceal their profits from crime. Effective but fair powers of confiscating the proceeds of crime are therefore essential. The provisions of the 1988 Act are aimed at depriving such offenders of the proceeds of their criminal conduct. Its purposes are to punish convicted offenders, to deter the commission of further offences and to reduce the profits available to fund further criminal enterprises.
>
> ...
>
> It is clear that the 1988 Act was passed in furtherance of a legitimate aim and that the measures are rationally connected with that aim ... The only question is whether the statutory means adopted are wider than is necessary to accomplish the objective. Counsel for the appellant submitted that the means adopted are disproportionate to the objective inasmuch as a persuasive burden is placed on the defendant. The Court of Appeal [2001] 3 WLR 75, 103 carefully considered this argument and ruled:
>
> > 'The onus which is placed upon the defendant is not an evidential one but a persuasive one, so that the defendant will be required to discharge the burden of proof: see Lord Hope's third category of provisions in *R v Director of Public Prosecutions, Ex Kebilene*, [2000] 2 AC 326, 379. This is therefore a situation where it is necessary carefully to consider whether the public interest in being able to confiscate the ill-gotten gains of criminals justifies the interference with the normal presumption of innocence. While the extent of the interference is substantial, Parliament has clearly made efforts to balance the interest of the defendant against that of the public in the following respects:
> >
> > (a) It is only after the necessary convictions that any question of confiscation arises. This is of significance, because the trial which results in the conviction or convictions will be one where the usual burden and standard of proof rests upon the prosecution. In addition, a defendant who is convicted of the necessary offence or offences can be taken to be aware that if he committed the offences of which he has been convicted, he would not only be liable to imprisonment or another sentence, but he would also be liable to confiscation proceedings.
> >
> > (b) The prosecution has the responsibility for initiating the confiscation proceedings unless the court regards them as inappropriate...
> >
> > (c) There is also the responsibility placed upon the court not to make a confiscation order when there is a serious risk of injustice. As already indicated, this will involve the court, before it makes a confiscation order, standing back and deciding whether there is a risk of injustice. If the court decides there is, then the confiscation order will not be made.
> >
> > (d) There is the role of this court on appeal to ensure there is no unfairness.
> >
> > ... [I]n our judgment, if the discretions which are given to the prosecution and the court are properly exercised, the solution which Parliament has adopted is a reasonable and proportionate response to a substantial public interest, and therefore justifiable.' (Emphasis supplied)

For my part I think that this reasoning is correct, notably in explaining the role of the court in standing back and deciding whether there is or might be a risk of serious or real injustice and, if there is, or might be, in emphasising that a confiscation order ought not be made.

...

In agreement with the unanimous views of the Court of Human Rights in *Phillips v United Kingdom* (Application No 41087/98) 5 July 2001 I would hold that Part VI of the 1988 Act is a proportionate response to the problem which it addresses."

58. In *R. v. Benjafield* the House of Lords unanimously held that the equivalent confiscation scheme under the Drug Trafficking Act 1994 (subsequently considered in *Phillips*, cited above) was also compatible with Article 6 § 1 of the Convention.

(c) *R v. Briggs-Price* [2009] UKHL 19

59. In *R v. Briggs-Price* confiscation proceedings under the Drug Trafficking Act 1994 had commenced after the defendant was convicted on charges of conspiracy to evade the prohibition on the importation of heroin. Originally, he had also been charged with possession of one kilogram of cannabis with intent to supply, but prior to his trial the court acceded to the prosecution's request to lay this charge on the file. In doing so, the prosecution made it plain that it intended to pursue confiscation proceedings in relation to trafficking in cannabis. In addition, it was part of the prosecution's case at trial that the defendant had been brought into the heroin conspiracy because he already had a distribution network for the transportation and distribution of cannabis, and that this same network was to be used for the distribution of heroin. During the confiscation proceedings which followed the defendant's conviction the statutory assumptions were not made. Instead, the prosecution sought to prove that the defendant had trafficked in cannabis and invited the court to estimate the profit that he must have derived from those offences. In making a confiscation order, the judge indicated that he had "no doubt" that the defendant had also been involved in the supply of cannabis.

60. Lord Phillips of Worth Matravers began by emphasising the exceptional nature of the case at hand:

"In confiscation proceedings the prosecution has to satisfy the court that the defendant has benefited from drug trafficking and the extent of such benefit. The normal way of doing this is to prove that the defendant possesses, or has possessed, property and to invite the court to assume that the property in question represents or represented benefit derived from drug trafficking. The Act expressly provides that the court must make this assumption unless it is shown to be incorrect or would involve a serious risk of injustice.

61. Therefore, in that case the Lordships were not concerned with the operation of the statutory assumptions. Relying, *inter alia*, on *Phillips* (cited above), they proceeded on the basis that the operation of the statutory assumptions did not constitute a "new charge" within the meaning of Article 6 § 2 of the Convention, and did not render the confiscation proceedings unfair within the meaning of Article 6 § 1.

62. Furthermore, four of the five Lordships found that on the facts of the case before them the use of direct evidence of criminal offending to prove

that the defendant had benefitted from drug trafficking and to calculate the extent of such benefit did not give rise to a new criminal charge. In this regard, Lord Mance said the following:

> "104. The assumptions required under s.4(2) et seq. are simply one aspect of one and the same overall scheme. The scheme operates by reference to the benefit made from drug trafficking and the value of the proceeds of drug trafficking. The assumptions, where they apply, do no more than assist to prove these matters. It is a fallacy to describe them as some form of separate assets-based recovery. They are means of proving the receipt of proceeds from drug trafficking by pointing to particular property or expenditure and requiring an explanation for its origin. The defendant is entitled to rebut the assumptions in relation to any particular property or expenditure, by showing them to be incorrect in its case. S.4(3)(b) caters for cases where there may be a serious risk of injustice if the assumptions are made – take a defendant suffering from some mental infirmity or whose records have all been destroyed in a fire and s.4(5) specifies cases where the assumptions can never be made.
>
> 105. The assumptions are for the Crown's and so the community's benefit. Parliament's resolve is underlined by the requirement to make them under the 1994 Act, in contrast with the predecessor legislation where they were discretionary (Criminal Justice Act 1988, s.72AA(3)). But the assumptions are no more than one way of proving that a defendant has benefited by drug trafficking and the value of his proceeds of drug trafficking for the purposes of s.2(4), 5(1) and 4(1). That the Crown is entirely free to prove such benefit in other ways or at a time preceding the six year period covered by the assumptions is clear from the general structure of Part I. ... Further, in cases where the assumptions are not permitted to be made either under the statutory provisions or in the interests of justice by the court, the Crown must be able to prove the benefits and proceeds by other means. ...
>
> 106. It is therefore clear, almost beyond sensible argument, that Part I involves a single overall scheme, in which the assumptions play a potential evidential role. But the assumptions are no more than one way of proving certain aspects of the benefit and proceeds at which the scheme aims. They apply only in relation to property held or acquired or expenditure made since a date six years before the institution of proceedings. To the extent that they do not apply, the Crown has to make its case without their assistance. But the essential enquiry is the same: what if any benefit was made and proceeds received? And the ultimate order is always limited to the lesser of the proceeds received and the amount realisable at the date of the order."

(d) *Gale v. the Serious Organised Crime Agency* [2011] UKSC 49

63. In October 2011 the Supreme Court, which in October 2009 had replaced the Appellate Committee of the House of Lords as the highest court in the United Kingdom, gave judgment in a case concerning the applicability of Article 6 § 2 of the Convention to proceedings for the recovery of the fruits of criminal activity. The relevant provisions of POCA permitted the recovery of the fruits of criminal activity irrespective of whether anyone had been convicted of the activity that produced them. Pursuant to section 241(3) of POCA, the court had to decide on a balance of probabilities whether it was proved that any matters alleged to constitute unlawful conduct had occurred or that any person intended to use any cash in unlawful conduct.

64. The appellants in the case before the Supreme Court had been acquitted in Portugal of charges related to drug trafficking and money laundering. Before the Supreme Court they argued that the application of the civil standard of proof in the recovery proceedings, rather than the criminal standard of beyond reasonable doubt, had breached their right to a fair trial under Article 6 of the Convention. However, the Justices were unanimous in finding that the appropriate standard of proof had been the civil standard.

3. Financial reporting orders

65. Financial reporting orders are governed by the Serious Organised Crime and Police Act 2007 ("the 2007 Act").

66. Pursuant to section 76 of the 2007 Act, a court sentencing or otherwise dealing with a person convicted of a "lifestyle offence" specified in Schedule 2 of POCA was entitled to make a financial reporting order in respect of him if it was satisfied that the risk of his committing another such offence was sufficiently high to justify it.

67. Section 79 addresses the effect of such orders. It provides that a person in relation to whom a financial reporting order has effect must make regular reports concerning his financial affairs. A person who without reasonable excuse includes false or misleading information in a report, or otherwise fails to comply with any reporting requirement, is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding fifty-one weeks, a fine not exceeding level 5 on the standard scale, or both.

B. The Council of Europe Conventions

1. The 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141)

68. The 1990 Convention, which entered into force in the United Kingdom on 1 September 1993, proclaimed that one of the "modern and effective methods" in the "fight against serious crime ... consists in depriving criminals of the proceeds from crime" (see the Preamble to the Convention).

69. The Convention called upon the Signatory Parties to "adopt such legislative and other measures as may be necessary to enable it to confiscate instrumentalities and proceeds or property the value of which corresponds to such proceeds" (see Article 2). At the same time, the term "confiscation" was defined as "a penalty or a measure, ordered by a court following proceedings in relation to a criminal offence or criminal offences resulting in the final deprivation of property" (see Article 1).

2. The 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198)

70. This 2005 Convention, which the United Kingdom has signed and ratified, provides, insofar as relevant:

"**Preamble**

...

Considering that the fight against serious crime, which has become an increasingly international problem, calls for the use of modern and effective methods on an international scale;

Believing that one of these methods consists in depriving criminals of the proceeds from crime and instrumentalities;

...

Article 1 – Use of terms

For the purposes of this Convention:

a 'proceeds' means any economic advantage, derived from or obtained, directly or indirectly, from criminal offences. It may consist of any property as defined in sub-paragraph b of this article;

b 'property' includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title to or interest in such property;

...

Chapter III – Measures to be taken at national level

Section 1 – General provisions

Article 3 – Confiscation measures

1 Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate instrumentalities and proceeds or property the value of which corresponds to such proceeds and laundered property.

...

3 Parties may provide for mandatory confiscation in respect of offences which are subject to the confiscation regime. Parties may in particular include in this provision the offences of money laundering, drug trafficking, trafficking in human beings and any other serious offence.

4 Each Party shall adopt such legislative or other measures as may be necessary to require that, in respect of a serious offence or offences as defined by national law, an offender demonstrates the origin of alleged proceeds or other property liable to confiscation to the extent that such a requirement is consistent with the principles of its domestic law.

Article 5 – Freezing, seizure and confiscation

Each Party shall adopt such legislative and other measures as may be necessary to ensure that the measures to freeze, seize and confiscate also encompass:

a the property into which the proceeds have been transformed or converted;

b property acquired from legitimate sources, if proceeds have been intermingled, in whole or in part, with such property, up to the assessed value of the intermingled proceeds;

c income or other benefits derived from proceeds, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled, up to the assessed value of the intermingled proceeds, in the same manner and to the same extent as proceeds."

C. European Union Law

71. EU Directive no. 2014/42 of the European Parliament and of the Council of 3 April 2014, on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, provides, insofar as relevant:

"Whereas:

(1) The main motive for cross-border organised crime, including mafia-type criminal organisation, is financial gain. As a consequence, competent authorities should be given the means to trace, freeze, manage and confiscate the proceeds of crime. However, the effective prevention of and fight against organised crime should be achieved by neutralising the proceeds of crime and should be extended, in certain cases, to any property deriving from activities of a criminal nature.

...

(3) Among the most effective means of combating organised crime is providing for severe legal consequences for committing such crime, as well as effective detection and the freezing and confiscation of the instrumentalities and proceeds of crime.

...

(11) There is a need to clarify the existing concept of proceeds of crime to include the direct proceeds from criminal activity and all indirect benefits, including subsequent reinvestment or transformation of direct proceeds. Thus proceeds can include any property including that which has been transformed or converted, fully or in part, into other property, and that which has been intermingled with property acquired from legitimate sources, up to the assessed value of the intermingled proceeds. It can also include the income or other benefits derived from proceeds of crime, or from property into or with which such proceeds have been transformed, converted or intermingled.

(12) This Directive provides for a broad definition of property that can be subject to freezing and confiscation. ...

...

(19) Criminal groups engage in a wide range of criminal activities. In order to effectively tackle organised criminal activities there may be situations where it is appropriate that a criminal conviction be followed by the confiscation not only of property associated with a specific crime, but also of additional property which the court determines constitutes the proceeds of other crimes. This approach is referred to as extended confiscation. ...

...

(21) Extended confiscation should be possible where a court is satisfied that the property in question is derived from criminal conduct. This does not mean that it must be established that the property in question is derived from criminal conduct. Member States may provide that it could, for example, be sufficient for the court to consider on the balance of probabilities, or to reasonably presume that it is substantially more probable, that the property in question has been obtained from criminal conduct than from other activities. In this context, the court has to consider the specific circumstances of the case, including the facts and available evidence based on which a decision on extended confiscation could be issued. The fact that the property of the person is disproportionate to his lawful income could be among those facts giving rise to a conclusion of the court that the property derives from criminal conduct. Member States could also determine a requirement for a certain period of time during which the property could be deemed to have originated from criminal conduct.

...

Article 1
Subject matter

1. This Directive establishes minimum rules on the freezing of property with a view to possible subsequent confiscation and on the confiscation of property in criminal matters.

2. This Directive is without prejudice to the procedures that Member States may use to confiscate the property in question.

Article 2
Definitions

For the purpose of this Directive, the following definitions apply:

(1) 'proceeds' means any economic advantage derived directly or indirectly from a criminal offence; it may consist of any form of property and includes any subsequent reinvestment or transformation of direct proceeds and any valuable benefits;

(2) 'property' means property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title or interest in such property;

(3) 'instrumentalities' means any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence or criminal offences;

(4) 'confiscation' means a final deprivation of property ordered by a court in relation to a criminal offence;

(5) 'freezing' means the temporary prohibition of the transfer, destruction, conversion, disposal or movement of property or temporarily assuming custody or control of property;

(6) 'criminal offence' means an offence covered by any of the instruments listed in Article 3.

Article 3
Scope

This Directive shall apply to criminal offences covered by:

...

(c) Council Framework Decision 2001/413/JHA of 28 May 2001 on combating fraud and counterfeiting on non-cash means of payment;

(d) Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime;

...

Article 4
Confiscation

1. Member States shall take the necessary measures to enable the confiscation, either in whole or in part, of instrumentalities and proceeds or property the value of which corresponds to such instrumentalities or proceeds, subject to a final conviction for a criminal offence, which may also result from proceedings *in absentia*.

2. Where confiscation on the basis of paragraph 1 is not possible, at least where such impossibility is the result of illness or absconding of the suspected or accused person, Member States shall take the necessary measures to enable the confiscation of instrumentalities and proceeds in cases where criminal proceedings have been initiated regarding a criminal offence which is liable to give rise, directly or indirectly, to economic benefit, and such proceedings could have led to a criminal conviction if the suspected or accused person had been able to stand trial.

Article 5
Extended confiscation

1. Member States shall adopt the necessary measures to enable the confiscation, either in whole or in part, of property belonging to a person convicted of a criminal offence which is liable to give rise, directly or indirectly, to economic benefit, where a court, on the basis of the circumstances of the case, including the specific facts and available evidence, such as that the value of the property is disproportionate to the lawful income of the convicted person, is satisfied that the property in question is derived from criminal conduct.

2. For the purpose of paragraph 1 of this Article, the notion of 'criminal offence' shall include at least the following:

...

(e) a criminal offence that is punishable, in accordance with the relevant instrument in Article 3 or, in the event that the instrument in question does not contain a penalty threshold, in accordance with the relevant national law, by a custodial sentence of a maximum of at least four years."

COMPLAINTS

72. The applicant complains that both the confiscation proceedings and the financial reporting order violated the presumption of innocence in Article 6 §§ 1 and 2 of the Convention, and that the confiscation proceedings breached the "reasonable time" requirement contained in Article 6 § 1.

THE LAW

A. Complaints concerning the confiscation proceedings

1. Complaint under Article 6 § 2 of the Convention

73. The applicant considered that the confiscation proceedings violated his right to be presumed innocent.

He invoked Article 6 § 2 of the Convention, which provides as follows:

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

(a) The parties' submissions

(i) The Government

74. The Government submitted that the confiscation proceedings did not engage Article 6 § 2 of the Convention in its first aspect, as they did not involve the bringing of a new charge. They relied on *Phillips v. the United Kingdom* (no. 41087/98, ECHR 2001-VII), in which the Court held that Article 6 § 2 of the Convention did not apply to English confiscation proceedings as the proceedings and the confiscation order were part of the sentencing process which followed conviction. Although the order was substantial and involved a term of imprisonment in default, the guilt or innocence of the applicant was not at stake.

75. In the present case the court had applied the statutory assumptions (see paragraph 49 above) to credits received into the applicant's bank account. In an attempt to rebut the assumption that those credits were obtained as a result of criminal conduct, the applicant adduced evidence that they were obtained as a result of lawful commercial activity. To meet this contention, the prosecution adduced, and the court considered, evidence that the credits were obtained as a result of VAT fraud. In the Government's view this did not constitute the "bringing of a new charge". The evidence was not used to determine the applicant's guilt or innocence, and he was not in jeopardy of penalty in relation to the alleged VAT fraud. Rather, this evidence was used only to assess whether he had refuted the statutory assumptions and to assist the court in determining the provenance of his property.

76. Insofar as the applicant sought to distinguish between the application of the statutory assumptions where there were assets of unknown provenance, and where there were assets that could be identified as the proceeds of specific criminal conduct, the Government argued that the distinction was illogical and would produce an absurd result – namely, that the stronger the connection between the assets and the criminal offending, the less legitimate it would be for the connection to be assumed.

77. The Government further argued that the second aspect of Article 6 § 2 of the Convention was not applicable in the present case. As the applicant had

not been "charged" with any conduct evaluated during the confiscation proceedings, he could not have been "acquitted" or had those proceedings discontinued.

(ii) The applicant

78. The applicant argued that the present case could be distinguished from that of *Phillips* (cited above) as the accusations of serious criminal offending in the course of the confiscation proceedings (most notably in the prosecution statement of 17 December 2007 – see paragraph 14 above) amounted to the bringing of a new "criminal charge" within the autonomous Convention meaning of that term and therefore engaged (and violated) Article 6 § 2 of the Convention. In particular, he submitted that the confiscation proceedings were founded on disputed evidence of criminal offending which was adduced for the first time at the sentencing stage and which had no connection to the issues or evidence called at trial. The purpose of the proceedings was therefore to determine whether or not he had committed specific criminal offences.

79. In addition, the applicant argued that the proceedings had resulted in the making of a confiscation order in the sum of GBP 1.6 million and, in default of that order, he would have to serve a period of six years' imprisonment. The penalty was both punitive and a deterrent and plainly fell within the type of penalties imposed in the criminal sphere.

80. Finally, the applicant submitted that Article 6 § 2 was also engaged in its second aspect. Having regard to *Allen v. the United Kingdom* ([GC], no. 25424/09, ECHR 2013), he argued that in order for the second aspect of Article 6 § 2 of the Convention to be applicable it was not necessary for an individual to have been tried and acquitted of a criminal offence. All that was required was that criminal proceedings had commenced and been discontinued. In the present case, the applicant had, as already argued, been "charged" with a criminal offence (VAT fraud) by virtue of the prosecution's section 16 statement and in February 2008 a decision had been taken not to proceed with those allegations (see paragraphs 13 and 16 above). The criminal proceedings in respect of VAT fraud had therefore been discontinued, and the subsequent conduct of the confiscation proceedings and application of the statutory assumptions resulted in the applicant being treated as "guilty" of that offence.

(b) The Court's assessment

(i) General principles

(α) Presumption of innocence

81. As expressly stated in the terms of the Article itself, Article 6 § 2 applies where a person is "charged with a criminal offence" (see *Allen*, cited above, § 95). The Court has repeatedly emphasised that this is an autonomous

concept and must be interpreted according to the three criteria set out in its case-law, namely the classification of the proceedings in domestic law, their essential nature, and the degree of severity of the potential penalty (see, among many other authorities on the concept of a "criminal charge", *Engel and Others v. the Netherlands*, 8 June 1976, § 82, Series A no. 22, and *Phillips*, cited above, § 31). A "criminal charge" exists from the moment that an individual is officially notified by the competent authority of an allegation that he has committed a criminal offence, or from the point at which his situation has been substantially affected by actions taken by the authorities as a result of a suspicion against him (see *Simeonovi v. Bulgaria* [GC], no. 21980/04, §§ 110-111, 12 May 2017, with references therein).

82. The presumption of innocence has two aspects. In its first aspect, it is a procedural guarantee in the context of a criminal trial itself, imposing requirements in respect of, *inter alia*, the burden of proof, legal presumptions of fact and law, the privilege against self-incrimination, pre-trial publicity and premature expressions, by the trial court or by other public officials, of a defendant's guilt (see *Allen*, quoted above, § 93, with further references).

83. In its second aspect, its aim is to protect individuals who have been acquitted of a criminal charge, or in respect of whom criminal proceedings have been discontinued, from being treated by public officials and authorities as though they are in fact guilty of the offence charged (see *Allen*, cited above, § 94; see also *Nealon and Hallam v. the United Kingdom* [GC], nos. 32483/19 and 35049/19, §§ 101-109, 11 June 2024).

84. In *Allen* the Court confirmed that whenever the question of the applicability of the second aspect of the presumption of innocence arises, the applicant must demonstrate the existence of a link between the concluded criminal proceedings and the subsequent proceedings. Such a link is likely to be present, for example, where the subsequent proceedings require examination of the outcome of the prior criminal proceedings and, in particular, where they oblige the court to analyse the criminal judgment, to engage in a review or evaluation of the evidence in the criminal file, to assess the applicant's participation in some or all of the events leading to the criminal charge, or to comment on the subsisting indications of the applicant's possible guilt (see *Nealon and Hallam*, cited above, § 122 and *Allen*, cited above, § 104).

(β) Confiscation and sentencing

85. In *Phillips* (cited above, §§ 35-36) the Court held that Article 6 § 2 of the Convention was not applicable to the confiscation proceedings brought against the applicant. Whilst it was clear that Article 6 § 2 governed criminal proceedings in their entirety, the right to be presumed innocent under Article 6 § 2 arose only in connection with the particular offence "charged". Once an accused had properly been proved guilty of that offence, Article 6 § 2 could have no application in relation to allegations made about his

character and conduct as part of the sentencing process, unless such accusations were of such a nature and degree as to amount to the bringing of a new "charge" within the autonomous Convention meaning.

86. In determining whether in the course of the confiscation proceedings the applicant had been "charged with a criminal offence", within the meaning of Article 6 § 2, the Court had regard to the three *Engel and Others* criteria (see paragraph 81 above). As regards the first criteria, the Court considered it to be "clear" that an application for a confiscation order did not involve any new charge or offence in terms of the criminal law. On the contrary, confiscation orders were part of the sentencing process which followed upon the conviction of the defendant of the criminal offences with which he was charged (see *Phillips*, cited above, § 32). Turning to the second and third criteria, the Court noted that the purpose of the confiscation procedure was not the conviction or acquittal of the applicant for any other drug-related offence. Although the Crown Court assumed that he had benefited from drug trafficking in the past, this was not reflected in his criminal record. It could not, therefore, be said that he was "charged with a criminal offence". Instead, the purpose of the procedure had been to enable the national court to assess the amount at which the confiscation order should properly be fixed. This procedure was analogous to the determination by a court of the amount of a fine or the length of a period of imprisonment to be imposed on a properly convicted offender (ibid, §§ 33-34).

87. In *Van Offeren v. the Netherlands* ((dec.), no. 19581/04, 5 July 2005) the applicant had been convicted of having transported cocaine, of having held about 640 grams of cocaine, of having held – in preparation of drug offences – about 535 grams of a substance [mannitol] destined to dilute cocaine, of having unlawfully held firearms and ammunition, and of social security fraud. He was acquitted of the remaining charges, including trafficking cocaine. The prosecutor subsequently asked for an order for the confiscation of illegally obtained advantage, which had been assessed on the basis of a criminal financial investigation at a total amount of 357,059 Netherlands guilders (corresponding to 162,026.31 euros). The applicant argued that as he had not obtained any benefit from the crimes of which he had been convicted, the request for a confiscation order had been based on illegally obtained advantage by or through trafficking cocaine, an offence of which he had been acquitted. A confiscation order was ultimately made for the total sum of the applicant's unexplained assets. In making the order the Dutch Court of Appeal indicated that "there exist sufficient indications that [the applicant] has committed the offence of cocaine trafficking" and, in the absence of any other credible explanation for his assets, that he "derived benefit from this trafficking in cocaine." The Court, following *Phillips* (cited above), found that the confiscation proceedings were part of the sentencing process and therefore did not involve the bringing of any new "charge" within the meaning of Article 6 § 2 of the Convention.

Consequently, the applicant's complaint under that Article was rejected as manifestly ill-founded.

88. In *Geerings v. the Netherlands* (no. 30810/03, §§ 45-51, 1 March 2007), the Court held that the presumption of innocence was applicable to and had been breached in confiscation proceedings at issue in that case. In reaching this conclusion, it distinguished the facts of the case before it from both *Phillips* and *Van Offeren* on the basis that the impugned order related to the very crimes of which the applicant had in fact been acquitted, and he was never shown to have been in possession of any assets for whose provenance he could not give an adequate explanation.

89. More recently, in *Episcopo and Bassani v. Italy* (nos. 47284/16 and 84604/17, §§ 127-141, 19 December 2024), a case decided following the judgment of the Grand Chamber in *Nealon and Hallam* (cited above), the Court found a violation of Article 6 § 2 of the Convention where the domestic courts ordered the confiscation of the first applicant's assets after the criminal proceedings were discontinued, even though under domestic law a criminal "conviction" was a formal requirement for confiscation. The Court found that, in ordering the confiscation of the first applicant's assets, the domestic courts imputed criminal liability to him despite the discontinuance of the proceedings and thereby breached his right to be presumed innocent (see *Nealon and Hallam*, cited above, § 168).

(ii) Application of those principles to the present case

90. According to the case put forward by the applicant, the applicability of Article 6 § 2 in both its first and second aspects depends on whether he was, in the course of the confiscation proceedings, and by virtue of the prosecution's section 16 statement (see paragraph 14 above), "charged" with VAT fraud.

91. Having regard to the three criteria employed in *Phillips* to determine whether this test was met (see paragraph 86 above), the Court notes that the confiscation proceedings in the present case were also part of the sentencing process which followed the applicant's conviction of the criminal offence with which he was charged. The purpose of the confiscation proceedings was the same as in *Phillips* (assessing the amount at which the confiscation order should be fixed), as was the penalty (a confiscation order with a period of imprisonment in default).

92. Furthermore, as was the case in *Phillips*, confiscation was based on the fact that the applicant had not rebutted the statutory assumption that assets shown to be or have been in his possession were obtained as a result of criminal conduct. Nonetheless, the applicant has sought to distinguish his case from that of *Phillips* (which he describes as a "standard confiscation case") on the basis that the prosecution relied on evidence that he had engaged in VAT fraud in order to counter his claim that those assets had been obtained by lawful means.

93. However, the prosecution was entitled to challenge a defendant's assertion that he had obtained assets by lawful means. Regardless of whether they did so by reference to evidence of specific criminal offending or otherwise, they would be asking the court to assume that he had been involved in criminal activity outside the indictment counts.

94. Furthermore, there is no support in the Court's case-law for distinguishing between cases in which the prosecution relied on evidence of specific criminal offending (other than the offence(s) of which the defendant had been convicted), and cases in which it did not. *Phillips* itself does not specifically address the issue. In *Grayson and Barnham v. the United Kingdom* (nos. 19955/05 and 15085/06, §§ 46-49, 23 September 2008), in which the applicants' complaints concerning the breach of the presumption of innocence were considered under Article 6 § 1 of the Convention, the confiscation order made against Mr Barnham was based on conclusions about drug trafficking other than that of which he had been convicted. Nevertheless, the Court accepted that the application of the statutory assumptions did not offend the basic principles of a fair procedure inherent in Article 6 § 1.

95. In *Van Offeren* (cited above) the Dutch Court of Appeal found there to be "sufficient indications" that the applicant had committed the offence of cocaine trafficking, an offence of which he had previously been acquitted (see paragraph 87 above). Nonetheless, the Court rejected the applicant's Article 6 § 2 complaint as manifestly ill-founded. It found there to be no "new charge" since the purpose of the confiscation procedure was not his conviction or acquittal for any other offences, but to assess whether assets held by him were obtained by or through drug-related offences and, if so, to fix the amount of the confiscation order.

96. In *Geerings* the Court appeared to reach the opposite conclusion, finding a violation of Article 6 § 2 where the impugned confiscation order related to the very crimes of which the applicant had been acquitted, and he was never shown to have been in possession of any assets for whose provenance he could not give an adequate explanation. However, in that case the question of the applicability of Article 6 § 2 was conflated with the question of whether that Article had been breached. It is therefore unclear whether the Court considered that the allegations made in the context of the confiscation proceedings amounted to the bringing of a "new charge" or whether Article 6 § 2 was applicable on some other basis. Nonetheless, if *Geerings* were to be decided today, in light of the Court's judgments in *Allen* and *Nealon and Hallam* (both cited above) it would almost certainly be treated as a "second aspect" case as the confiscation order was made on the basis that there were "sufficient indications" that the applicant had committed and benefitted from the crimes of which he had been acquitted (see, for example, the later case of *Episcopo and Bassani*, cited above). This would appear to be borne out by the Court's reliance on *Minelli v. Switzerland*, 25 March 1983, Series A no. 62, *Sekanina v. Austria*, 25 August 1993,

Series A no. 266-A, and *Asan Rushiti v. Austria*, no. 28389/95, § 27, 21 March 2000 (see *Geerings*, cited above, §§ 41, 42 and 49). Unlike the applicant in *Geerings*, and the first applicant in *Episcopo and Bassani*, the present applicant was neither prosecuted for nor acquitted of VAT fraud. While Article 6 § 2 of the Convention may apply in its second aspect following a discontinuance, in order for it to be applicable in the present case the applicant would first have to demonstrate that he was "charged" with VAT fraud.

97. Although the prosecution's section 16 statement (see paragraph 14 above) made it clear that they believed the applicant had been involved in VAT fraud, these allegations were made solely in the context of confiscation proceedings to enable the court to assess whether assets demonstrably held by the applicant were obtained by or through criminal conduct. They were not, in and of themselves, a "prelude to 'criminal proceedings'" against the applicant (see *Deweer v. Belgium*, 27 February 1980, § 45, Series A no. 35), nor – as the trial judge concluded (see paragraph 19 above) – were they an official notification of an allegation that he had committed a criminal offence (see *Simeonovi*, cited above, § 110).

98. As the judge himself observed, to find otherwise would severely restrict the scope of the confiscation proceedings (see paragraph 19 above). The Court has acknowledged that Common European and even universal legal standards now increasingly encourage the confiscation of property linked to serious criminal offences such as money laundering, with or without the prior existence of a criminal conviction; the shifting of the onus of proving the lawful origin of property presumed to have been wrongfully acquired onto the defendants/respondents in both criminal and non-criminal proceedings for confiscation and the recovery of assets; the application of confiscation and civil recovery measures not only to the direct proceeds of crime but also to property, including any incomes and other indirect benefits, obtained by converting or transforming the direct proceeds of crime or intermingling them with other, possibly lawful, assets; and the application of confiscation measures and civil recovery proceedings to any third parties (see paragraphs 68-71 above; see also, *mutatis mutandis*, *Gogitidze and Others v. Georgia*, no. 36862/05, § 105, 12 May 2015). If evidence of specific offending relied on to rebut a defendant's claims concerning the lawful origin of his property amounted to a "new criminal charge", it would impede the operation of domestic confiscation schemes adopted in order to comply with those European and international standards.

99. It would also have the somewhat illogical consequence that the stronger the connection between a defendant's assets and his or her criminal offending, the less acceptable it would be for the court to assume that those assets were obtained as a result of criminal conduct. As the Court of Appeal noted, it would be perverse if, where the prosecution relied upon the assumptions set out in section 10 of POCA (see paragraph 49 above), and

there was no evidence to assist the court as to whether the assumptions were correct, the burden remained on the defence to establish that the source was lawful on the balance of probabilities, whereas if it had evidence to rebut any assertion that the source of the assets was lawful, the prosecution would be compelled to prove that the source of the assets was criminal beyond a reasonable doubt (see paragraph 40 above).

100. The Court therefore finds that the allegations made by the prosecution in their section 16 statement did not amount to a "criminal charge" in the autonomous Convention meaning of that term. Consequently, Article 6 § 2 of the Convention was not applicable to the confiscation proceedings in either its first or second aspect.

101. As Article 6 § 2 was not applicable to the confiscation proceedings in either its first or second aspect, the applicant's complaint under that Article is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected pursuant to Article 35 § 4.

2. Complaints under Article 6 § 1 of the Convention

102. The applicant complained that the confiscation proceedings also violated his right to a fair hearing within a reasonable time.

He invoked Article 6 § 1 of the Convention, which, insofar as relevant, provides as follows:

> "In the determination of his civil rights and obligations or of any criminal charge against him ... everyone is entitled to a fair ... hearing within a reasonable time by [a]... tribunal ...."

(a) The operation of the statutory assumptions

(i) The parties' submissions

(α) The Government

103. The Government submitted that the statutory assumptions within the confiscation scheme were compatible with Article 6 § 1 of the Convention. Relying on *Phillips* (cited above), they argued that Article 6 § 1 did not prohibit the operation of presumptions of fact or law, provided that States remained within certain limits, taking into account the importance of what was at stake and maintaining the rights of the defence. In finding that there had been no violation of Article 6 § 1 of the Convention in Mr Phillips' case, the Court had had regard to the fact that only the amount of the confiscation order, and not the guilt of the applicant, was at stake; the confiscation procedure had provided a number of important safeguards, including a public adversarial hearing, advance disclosure and the opportunity for the applicant to call evidence and make representations; the assumptions could be rebutted on the balance of probabilities and they were of a type which it would not be difficult to rebut if there was an innocent explanation for the possession of

property; and the inferences drawn by the domestic court were reasonable, having regard to the facts of the applicant's case. This reasoning was affirmed by the Court in *Grayson and Barnham* (cited above, § 46), in which it held that it was not incompatible with a fair trial, in principle or in practice, to place the onus on the applicant, once he had been convicted of a criminal offence, to establish that the source of property he had been shown to have possessed in the years preceding the offence was legitimate.

(β) The applicant

104. The applicant submitted that he had not been afforded a fair trial. In this regard, he argued that *Phillips* was not authority for the proposition that the confiscation regime in the United Kingdom was compatible with the Convention. Rather, the Court's task was to determine whether the way in which the assumptions were applied in his case offended the basic principles of fair procedure inherent in Article 6 § 1 of the Convention.

105. In the present case the consequences of the confiscation procedure had been far more severe for the applicant than for Mr Phillips. Moreover, while the applicant had had an opportunity to rebut the statutory assumptions, this was not a simple process as demonstrated by the length and complexity of the hearing in the Crown Court. In any event, the safeguards contained within the confiscation scheme could not overcome the essential unfairness caused by the requirement that the applicant rebut his assumed guilt.

106. Finally, the applicant submitted that it was wholly objectionable as a matter of basic fairness to allow the State, in circumstances where it believed an accused to be guilty of serious identifiable criminal conduct, to pursue the individual in confiscation proceedings rather than criminal proceedings and thus avail itself of statutory proceedings assuming his guilt, and reversing the burden of proof.

(ii) The Court's assessment

107. Article 6 § 1 applies throughout the entirety of proceedings for "the determination of ... any criminal charge", including proceedings whereby a sentence is fixed (see, for example, *Findlay v. the United Kingdom*, 25 February 1997, § 69, *Reports of Judgments and Decisions* 1997-I) or a confiscation order made (see *Phillips*, cited above, § 39). It follows, therefore, that Article 6 § 1 of the Convention applies to the confiscation proceedings in the present case.

108. The Court has acknowledged that, in addition to being specifically mentioned in Article 6 § 2 of the Convention, a person's right in a criminal case to be presumed innocent and to require the prosecution to bear the onus of proving the allegations against him forms part of the general notion of a fair hearing under Article 6 § 1. However, this right is not absolute, since presumptions of fact or of law operate in every criminal law system and are

not prohibited in principle by the Convention, as long as States remain within certain limits, taking into account the importance of what is at stake and maintaining the rights of the defence (see *Phillips*, cited above, § 40). In particular, the Court has held that it is not incompatible, in principle or practice, with the concept of a fair trial under Article 6 to place the onus on a defendant, once he has been convicted of a major offence, to establish that the source of money or assets which he had been shown to have possessed in the years preceding the offence was legitimate (see *Grayson and Barnham*, cited above, § 46).

109. The Court's observations in *Phillips* (cited above, §§ 42-46) are equally applicable to the present case. The statutory assumptions were not applied to facilitate finding the applicant guilty of an offence, but instead to enable the national court to assess the amount at which the confiscation order should properly be fixed. The civil standard of proof was applied and there was no question of the applicant being convicted of VAT fraud. Furthermore, the system was not without safeguards. The assessment of benefit was carried out by a court with a judicial procedure, including a public hearing, advance disclosure of the prosecution case and the opportunity for the applicant to adduce documentary and oral evidence to rebut the statutory assumptions (see paragraphs 9-30 above). The court could not make a required assumption in relation to particular property or expenditure if the assumption was shown to be incorrect, or if there would be a serious risk of injustice if the assumption were made (see paragraph 49 above). In the present case the judge excluded approximately half of over a hundred properties from the benefit figure because it would result in double accounting, because they were related to legitimate business, or because there would be a serious risk of injustice pursuant to section 10(6)(b) of POCA (see paragraph 28 above). If the applicant could have shown that the available amount was less than the benefit the court could have made a confiscation order of a smaller amount (see paragraph 51 above). In addition, the applicant had a right of appeal against the making of the confiscation order, which he not only used in the present case but which resulted in a further reduction of the confiscation order (see paragraphs 34-37 above).

110. Furthermore, while the proceedings in the present case were lengthy and complex, the applicant was ably represented throughout and, had his assets been derived from a legitimate trade in the wholesale distribution of mobile telephones and computer processing units, as he claimed, there is no reason to believe that he would not have been in a position to rebut the statutory assumptions.

111. Finally, the fact that the prosecution could have charged the applicant with VAT fraud, but decided not to (see paragraphs 13 and 16 above), can have no bearing on the fairness of the confiscation proceedings, since, as noted in paragraphs 91, 97 and 109 above, they pursued an entirely different purpose from criminal proceedings. In any event, prosecutorial

decisions are for the prosecution to make. The applicant was able to argue before the domestic courts that it was an abuse of process for the prosecution to pursue confiscation instead of criminal proceedings when it believed him guilty of a criminal offence, but was unsuccessful at two levels of jurisdiction (see paragraphs 17, 20 and 42 above).

112. Accordingly, while the Court considers Article 6 § 1 to be applicable to the facts of the case (see paragraph 107 above), those facts do not disclose any appearance of a violation of the applicant's rights under Article 6 § 1 of the Convention.

113. It follows that the applicant's complaint under that head is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

(b) The length of the proceedings

(i) The parties' submissions

114. In the Government's view, there was no basis for arguing that there had been a breach of the reasonable time requirement. The proceedings involved complex, intricate matters concerning the operation of numerous corporate entities and a large number of financial transactions. The timetable for the proceedings was supervised by a judge, there were no periods of unexplained or unreasonable delay, and the length of the proceedings was neither unreasonable nor unusual in complex and contested litigation of that kind.

115. The applicant submitted that the delay in the confiscation proceedings before the Crown Court and the Court of Appeal had been excessive, unconscionable, and violated Article 6 § 1 of the Convention. The total delay between his conviction and the conclusion of his appeal was five years and two months, and in *Bullen and Soneji v. the United Kingdom* (no. 3383/06, 8 January 2009) the Court had found a violation of Article 6 § 1 on account of a delay of five years and six months between the applicants' conviction and the conclusion of the confiscation proceedings.

116. In the applicant's opinion, the majority of the delay in the Crown Court and the Court of Appeal was attributable to inadequate judicial resources. Further delay was occasioned by the decision to link the applicant's case to that of Mr Sharma, and the decision to await the judgment of the Supreme Court in in *Gale v. the Serious Organised Crime Agency* (see paragraphs 35 and 63-64 above).

(ii) The Court's assessment

117. The reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities and what was at stake for the applicants (see, among many

other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II, and *Çaplik v. Turkey*, no. 57019/00, § 37, 15 July 2005).

118. In the present case the applicant has complained only about the length of the confiscation proceedings (see paragraph 115 above). Therefore, the period to be taken into consideration began on 6 February 2007, when he was convicted of the section 328 offence (see paragraph 7 above), and ended on 18 April 2012, when leave to appeal to the Supreme Court was refused by the Court of Appeal (see paragraph 44 above). Thus, the relevant period lasted little more than five years and two months.

119. The present case was undoubtedly complex. First of all, it is clear that GBP 40-50 million had passed through the bank accounts of the applicant, his wife and his companies (see paragraphs 12 and 14 above). The applicant claimed that these resulted from legitimate trade in mobile telephones and computer processing units (see paragraph 11 above). This was disputed by the prosecution, and resulted in the exchange of a number of statements between the parties and two meticulous rulings by the judge: in the first, dated 14 August 2009, he considered whether the applicant had benefitted from his criminal conduct by examining his various business interests (see paragraph 23 above); and in the second, dated 23 February 2010, he determined the applicant's benefit and available assets by examining over a hundred items of property individually (see paragraphs 27-28 above). In addition, the applicant had sought to stay the proceedings on the basis that they were an abuse of process and/or incompatible with his Convention rights, which required a separate hearing (see paragraph 18 above) and two separate rulings (see paragraphs 18 and 21 above).

120. Turning, then, to the parties' conduct, the Court observes that in the present case an examination of the timeline does not disclose any particular period of unreasonable delay which could be attributed to the State (compare, for example, *Bullen and Soneji*, cited above, §§ 67-69, and *Minshall v. the United Kingdom*, no. 7350/06, § 52, 20 December 2011).

121. In this regard, it notes that the applicant was convicted on 6 February 2007 (see paragraph 7 above). The first section 16 statement was served on 12 July 2007 (see paragraph 12 above) and during the rest of 2007 and in early 2008 there were further exchanges of statements, as well as further consideration of whether the applicant should be prosecuted for VAT fraud (see paragraphs 13-16 above). The applicant sought to stay the proceedings as an abuse of process and a hearing began on 16 July 2008 to hear the parties' arguments on this issue (see paragraphs 17-18 above). On 30 July 2008 the judge ruled on the applicant's abuse of process and Convention arguments (see paragraph 18 above) and thereafter issued a separate ruling on the question of the burden of proof (see paragraph 21 above). During the remainder of 2008 the parties served further statements in respect of the assessment of benefit (see paragraph 22 above). A hearing took place on 20 February 2009 and on 14 August 2009 the judge ruled on the question of

whether the applicant had benefitted from criminal conduct (see paragraph 23 above). In September 2009 further statements were exchanged in respect of the applicant's realisable assets (see paragraph 24-25 above) and in December 2009 a hearing took place to determine the available amount (see paragraph 26 above). On 23 February 2010 the trial judge handed down his final ruling on the confiscation order (see paragraph 27 above) and the applicant was granted leave to appeal on 21 September 2010 (see paragraph 34 above). In January 2011 his appeal was linked to a case which raised similar issues and on 18 May 2011 the appeal hearing was postponed until the Supreme Court had handed down its judgment in *Gale v. the Serious Organised Crime Agency*, which happened on 26 October 2011 (see paragraphs 35 and 63-64 above). On 25 November 2011 the prosecution filed a supplementary skeleton argument and on 8 January 2012 the applicant filed a response (see paragraph 35 above). The applicant's appeal was heard on 13 and 14 March 2012 (see paragraph 36 above), and judgment was handed down on 18 April 2012 (see paragraphs 37-43 above).

122. The judge expressly considered the question of delay at the conclusion of the confiscation proceedings and found no grounds for criticism. While he acknowledged that at times his own availability had "produced problems", he primarily attributed any delay to logistical problems (making sure that counsel, solicitors and witnesses were available) and to the nature of the case (which involved arguments about abuse of process, the autonomous meaning of the word "charge", the burden of proof, the approach to lifestyle cases, the approach to cases of general criminal conduct where it involved consideration of factual situations not prosecuted by the jury, and the cases of *R v Briggs-Price* both in the Court of Appeal and House of Lords). The judgments in the case had been lengthy, and in the words of the judge the arguments raised had made it "a truly exceptional, and arguably a unique case". As such, he made no apology for the length of the confiscation proceedings (see paragraph 30 above).

123. Similarly, permission to appeal on the issue of delay was refused on the basis that any delay had been principally due to the complexity of the facts and the legal issues involved (see paragraph 34 above).

124. As for what was at stake for the applicant, it is clear that he faced a confiscation order for a substantial sum of money and would be liable to a lengthy term of imprisonment in default. However, in confiscation proceedings there is likely to be a correlation between the severity of the consequences for the defendant (in terms of the amount of the confiscation order and the length of sentence in default) and the length of the proceedings, since the greater the defendant's assets, and the more extensive and intricate his criminal conduct, the more complex – and lengthy – the confiscation proceedings are likely to be. Consequently, while the Court's approach in other cases may provide assistance in determining whether the length of proceedings is reasonable, it cannot be determinative. In the present case, for

example, the applicant relies on the fact that the Court found a violation in *Bullen and Soneji* (cited above), where the confiscation proceedings lasted a comparable length of time (see paragraph 115 above). However, in that case there was no suggestion that the applicants' assets were comparable to those of the applicant in the present case, and the resulting confiscation orders were for considerably smaller amounts (GBP 375,000 and GBP 30,284 – see *Bullen and Soneji*, cited above, §§ 21 and 24, respectively – compared to GBP 1.6 million in the present case).

125. Therefore, while the confiscation proceedings in the present case were undoubtedly lengthy, in view of their complexity the Court considers that their overall duration was not unreasonable.

126. The Court therefore considers that the applicant's complaint concerning a breach of the "reasonable time" requirement must also be rejected as manifestly ill-founded pursuant to Article 35 §§ 3(a) and 4 of the Convention.

B. Complaints concerning the financial reporting order

127. The applicant complains that the financial reporting order violated his rights under Article 6 §§ 1 and 2 of the Convention.

1. The parties submissions

128. The Government argued that the applicant's complaints in relation to the financial reporting order was untenable and raised no arguable issues under Article 6 of the Convention. A sentencing court was entitled to evaluate the character of the offender and make judgments concerning the risk he and his offending posed. That was an ordinary and essential aspect of the sentencing exercise, to which Article 6 § 2 was not applicable.

129. The applicant contended that the imposition of the financial reporting order was also in breach of his rights as guaranteed by Article 6 §§ 1 and 2 of the Convention as it was based on the assumption that he had committed a serious criminal offence which had never been proved according to law.

2. The Court's assessment

130. The Court notes, at the outset, that the applicant does not appear to have invoked Article 6 §§ 1 and 2 of the Convention in his domestic appeal against the making of the financial reporting order (see paragraph 43 above).

131. In any case, the applicant's Article 6 complaints are misconceived as the judge, in making the financial reporting order, simply made reference to allegations that the Court has already found did not engage Article 6 § 2 or give rise to an issue under Article 6 § 1 in the context of the confiscation proceedings. It therefore finds that Article 6 § 2 was not applicable to the

making of a financial reporting order. Accordingly, the applicant's complaint under that Article is incompatible *ratione materiae* with the provisions of the Convention and its Protocols within the meaning of Article 35 § 3 (a) and must be rejected pursuant to Article 35 § 4. Likewise, his complaint under Article 6 § 1 must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3(a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 28 August 2025.

Hasan Bakırcı Registrar	Arnfinn Bårdsen President