CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 45042/98
by Eric Fitzpatrick DANISON
against the United Kingdom

The European Court of Human Rights (Third Section) sitting on 7 September 1999 as a Chamber composed of

Mr J.-P. Costa, *President*,
Sir Nicolas Bratza,
Mr L. Loucaides,
Mr P. Kūris,
Mr W. Fuhrmann,
Mr K. Jungwiert,
Mr K. Traja, *Judges,*

with Mrs S. Dollé, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 12 December 1997 by Eric Fitzpatrick Danison against the United Kingdom and registered on 17 December 1998 under file no. 45042/98;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British national, born in Georgetown and living in Edgware, Middlesex, England.

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

A. Particular circumstances of the case

The applicant was arrested in November 1992 in respect of offences alleged to have been committed between 1 June 1989 and 31 December 1992. He was subsequently charged. On 16 June 1996, he pleaded guilty. On 20 June 1996, he was convicted on indictment of 10 counts of procuring execution of valuable security by deception contrary to section 20 (2) of the Theft Act 1968. On 26 July 1996, he was sentenced to four years' imprisonment. There were 16 other counts taken into consideration. He was also convicted of four counts of obtaining property by deception but received no separate penalty.

Confiscation proceedings were concluded on 3 January 1997. The confiscation order, made under section 71 of the Criminal Justice Act 1988, certified that the value of the proceeds of the applicant's crime was £2.3 million. The amount which could be realised at the making of the confiscation order was less than the amount by which the applicant had benefited from the crime and was set at £314,306 (with four years' imprisonment in default of payment). Further, the certificate stated that the applicant's property, the family home, was relevant in the determination of the court as to the amount that could be realised.

The applicant appealed against his sentence. On 23 April 1997, a single judge of the Court of Appeal refused leave stating:

> "Four years was a proper sentence for <the applicant's> major part in this substantial fraud. The judge was well placed to assess <the applicant's> role and entitled to make the assessment that he did.
> As to the confiscation order, it was agreed that <his> profit exceeded the equity in the house. The judge concluded there was no other asset. It was agreed that he should proceed on the footing that <the applicant was> entitled to the whole of the equity. He was entitled to accept the value placed on the house by the prosecution of £700,000 and, after deducting what was owed on the mortgage, to make a confiscation order for £314,106.
> <The applicant> cannot criticise the period in default."

The full Court of Appeal, Criminal Division, refused the applicant's further appeal for leave to appeal against sentence, and for bail and legal aid on 11 December 1997.

B. Relevant domestic law and practice

The Criminal Justice Act 1988 ("the 1988 Act") Part VI introduced confiscation orders designed to catch the profits of major crime. These provisions were foreshadowed by the confiscation regime in relation to drug trafficking enacted by the Drug Traffic Offences Act 1986. Under the original 1988 Act, a court would have to be satisfied that the offender's benefit from the offence of which he was convicted was at least £10,000 before an order

could be made. Part VI of the 1988 Act, as originally enacted, came into force on 3 April 1989.

After the 1988 Act there were two pieces of amending legislation: the Criminal Justice Act 1993 ("the 1993 Act") and Proceeds of Crime Act 1995 ("the 1995 Act"). The 1993 Act amendments came into force on 3 February 1995 and the 1995 Act came into force on 1 November 1995.

The 1995 Act (section 16(5)) provided that the amendments made to Section 71 of the 1988 Act by Section 1 of the 1995 Act (which, *inter alia*, introduced the civil standard of proof to determine whether an offender had benefited) do not apply in the case of proceedings against any person where any of the offences of which that person is convicted was committed before the commencement of the section (ie before 1 November 1995).

Therefore, in this particular case, the original version of Section 71 of the 1988 Act applied to indictable offences, and stated, so far as is relevant:

> "(1) The Crown Court ... shall ... have power, in addition to dealing with an offender in any other way, to make an order under this section requiring him to pay such sums as the court thinks fit.
>
> (2) The Crown Court may make such an order against an offender where-
>
> (a) he is found guilty of any offence to which this Part of this Act applies; and
> (b) he is satisfied-
>
> (i) that he has benefited from that offence or from that offence taken together with some other offence of which he is convicted in the same proceedings, or which the court takes into consideration in determining his sentence, and which is not a drug trafficking offence; and
> (ii) that his benefit is at least the minimum amount ...
>
> (4) For the purposes of this Part of the Act a person benefits from an offence if he obtains property as a result of or in connection with its commission and his benefit is the value of the property so obtained.
>
> (5) Where a person derives a pecuniary advantage as a result of or in connection with the commission of an offence, he is to be treated for the purposes of this Part of this Act as if he had obtained as a result of or in connection with the commission of an offence a sum of money equal to the value of the pecuniary advantage.
>
> (6) The sum which an order made by a court under this section requires an offender to pay must be at least the minimum amount but must not exceed-
>
> (a) the benefit in respect of which it is made; or
> (b) the amount appearing to the court to be the amount that might be realised at the time the order is made.
>
> whichever is the less.
>
> (7) ... the mimimum amount is £10,000 ..."

Section 102(4) of the Criminal Justice Act 1988 clarifies the offences relevant to Part VI of the 1988 Act:

> "References in this Part of the Act to offences include a reference to offences committed before the commencement of this Part of the Act; but nothing in this Part of the Act confers any power on any court in connection with proceedings against a person for an offence instituted before the commencement of this Part of the Act."

Section 102(11) clarifies when proceedings for an offence are instituted:

> "Proceedings for an offence are instituted-
>
> (a) when a justice of the peace issues a summons or warrant...in respect of that offence;
> (b) when a person is charged with the offence after being taken into custody without a warrant; ...
> and where the application of this subsection would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times".

COMPLAINTS

The applicant complains of the making of a confiscation order against him. He complains that at the time his offences were committed in 1989 there was no law in existence to allow the confiscation of assets in relation to financial benefits other than in drug trafficking cases. The order made against him was therefore in breach of Article 7 of the Convention. In addition the applicant complains that he only obtained minimal financial benefit from the fraud and it would be unjust to confiscate the home of his wife and child.

THE LAW

The applicant complains that his human rights have been violated by the making of a confiscation order against him. He complains that at the time his offences were committed in 1989 there was no law in existence to allow the confiscation of assets in relation to financial benefits other than in drug trafficking cases. The order made against him was therefore in breach of Article 7 of the Convention. In addition the applicant complains that he only obtained minimal financial benefit from the mortgage frauds and it would be unjust to confiscate the home of his wife and child.

Article 7 of the Convention provides:

> "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
>
> 2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

The Court recalls that Article 7 of the Convention seeks to provide safeguards against arbitrary prosecution, conviction and punishment (see C.R. v. the United Kingdom and S.W. v. the United Kingdom, Series A, Nos. 335-B and 335-C, p. 41, § 34). Article 7 also embodies the principle that only the law can define a crime and prescribe a penalty (see C.R. and S.W. v. the United Kingdom judgment, loc. cit., p. 41, § 35 and Kokkinakis v. Greece judgment of 25 May 1993, Series A no. 260-A, p. 22, § 52).

The confiscation order imposed on the applicant was provided for by domestic law, namely, section 71 of the Criminal Justice Act 1988. The confiscation order was imposed following a criminal conviction and, taking into account the punitive effects and elements, it would appear to be a penalty within the meaning of Article 7 of the Convention (see Welch v. the United Kingdom judgment of 9 February 1995, Series A, no. 307-A, pp. 13-15, §§ 30-35). In the Welch case the confiscation order was retrospective because it was made following a conviction in respect of offences which had been committed before the Drug Trafficking Act 1986 had come into force.

The Court notes in this case that at the time the offences were committed, namely between 1 June 1989 and 31 December 1992, section 71 of the Criminal Justice Act 1988 was in force. It came into force on 1 April 1989. This law stated that an offender might be required to pay sums of money after conviction if the court was satisfied that he had benefited from his offence. The law aimed to prevent financial benefit from crime. The Court finds therefore that the penalty in this case was not imposed retrospectively.

The question of whether or not the applicant has benefited from his offence and the extent of or relevance of his wife's interest in the property (if any) falls within the appreciation of the domestic courts. This Court is not a court of appeal and will not intervene on the basis that a domestic court has made a wrong decision. There is no evidence of arbitrariness or other reason which would warrant an investigation by this Court of the order made by the domestic court in this case.

It follows therefore that this application must be rejected as manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

S. Dollé
Registrar

J.-P. Costa
President