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

SECOND SECTION

DECISION

Application no. 25092/12
David GALE and Teresa GALE
against the United Kingdom

The European Court of Human Rights (Second Section), sitting on 1 July 2025 as a Chamber composed of:

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

and Hasan Bakirci, *Section Registrar*,

Having regard to the above application lodged on 16 April 2012,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Mr David Gale and Ms Teresa Gale, are British nationals who were born in 1950 and 1962 respectively. The first applicant, Mr David Gale, lives in Spain and the second applicant, Ms Teresa Gale, lives in Halifax. The applicants were represented by Mr A. Rahman of Rahman Ravelli, a firm of solicitors based in Halifax.

2. The Government of the United Kingdom ("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. Background facts

4. The applicants met in England in 1979 and moved to Spain in or around 1983. They left Spain in 1991 and lived for some time in the United States. In 1992 the Spanish authorities issued an international arrest warrant and indictment against the first applicant in respect of a drug smuggling operation in Spain. Although others were prosecuted in respect of that operation the case against the first applicant was discontinued "on account of prescription".

5. The applicants moved to Portugal in or around 1994. In 1998 the first applicant was arrested in Portugal on drug trafficking charges but he was acquitted of those charges in 2000. The national court said the following:

> "It seems to us that that without a shadow of a doubt there are no proven facts permitting the conviction of the defendant for the three crimes of which he is accused, since the objective elements of each of the types of crimes referred to above have not been proved, much less the subjective elements of each of them."

6. On an unspecified date the applicants returned to the United Kingdom.

7. In 2001, attempts at extradition having failed, the second applicant was tried in Portugal in her absence on charges of money laundering. She was also acquitted.

B. The Proceeds of Crime Act 2002

8. The Proceeds of Crime Act 2002 ("POCA"), as amended by the Serious Organised Crime and Police Act 2005, was designed to prevent the enjoyment of the fruits of criminal activity. Pursuant to Part 2 of POCA a levy could be made upon a convicted criminal's assets if it was proved, in the manner prescribed, that he had benefitted from criminal conduct, regardless of whether those assets were themselves the product of his criminal conduct.

9. Part 5 of POCA concentrated on the fruits of crime. At the relevant time, the Assets Recovery Agency and (subsequently, after its abolition) the Serious Organised Crime Agency ("SOCA") were given the task of tracking down and recovering the fruits of criminal activity. In contrast to proceedings under Part 2 (see paragraph 8 above), the fruits of criminal activity could be recovered under Part 5 whether or not anyone had been convicted of the crimes that had produced them.

10. The relevant provisions of POCA are set out in greater detail at paragraphs 46-52 below.

C. The civil recovery proceedings in the United Kingdom

1. The commencement of the proceedings

11. In 2005 the Assets Recovery Agency commenced civil recovery proceedings, pursuant to Part 5 of POCA (see paragraph 9 above), against the applicants, their son and the first applicant's mother. The civil recovery

proceedings concerned properties and other assets valued at approximately two million British pounds ("GBP") which were owned either by the applicants or by the above-mentioned relatives acting as their nominees.

12. The Assets Recovery Agency was subsequently abolished and its functions taken over by SOCA (see paragraph 9 above).

13. SOCA alleged that the first applicant's wealth had been acquired through money laundering and tax evasion in the United Kingdom, Spain, Portugal and other jurisdictions, and – notwithstanding the discontinuance of criminal proceedings in Spain and his acquittal in Portugal (see paragraphs 4 and 5 above) – there was clear evidence of drug offending in the United Kingdom, Spain and Portugal which had contributed to his wealth. SOCA further alleged that the second applicant had played an important part in the first applicant's money laundering.

14. The applicants contended that the first applicant had acquired wealth by his honest endeavours in building work, property investment and business ventures of varying kinds, which included the sale of cars and boats. The applicants relied on the passage of time and delay to explain the absence of documentary business records and their inability to recall details of bank accounts.

15. A receiver appointed to investigate the allegations prepared a report. The report indicated that between 1989 and 2005 approximately GBP 3 million from unknown sources was paid into bank accounts in the applicants' names, and between 1989 and 1991 over GBP 1.3 million of this money was transferred by the applicants to accounts in their name on the Isle of Man. The receiver was unable to identify any jurisdiction where the first applicant had declared income for tax purposes over the last twenty years. He was also unable to identify any independent documentary evidence of any successful businesses run by the applicants in the United Kingdom or in Spain. The receiver further stated that the pattern and quantum of bank transfers into the Isle of Man accounts did not match the history of asset realisations which the applicants claimed had occurred in Spain prior to their move to the United States in 1991 (see paragraph 4 above). The executive summary of the report concluded:

> "1.19 We have not identified any independent documentary evidence which would support [the applicants'] assertion that the assets they have accumulated have been derived from legitimate activities. We have not identified evidence of declared income (or tax payments) in the UK, Spain, USA and Portugal which would provide evidence of the means to support the family and allow for the significant accumulation of wealth. There is evidence of unlawful conduct and in particular complex financial dealings indicative of money laundering and concealment. As a consequence, though it is for the Court to decide, it is not unreasonable to conclude that the property and assets have been obtained by unlawful conduct and are recoverable property."

16. The receiver identified, as potentially recoverable property, two properties in Spain in the name of the first applicant's mother which were together worth GBP 2,088,000, the proceeds of sale of a property in

Bournemouth amounting to GBP 449,786, GBP 218,302 in five frozen bank accounts, and motor vehicles and a boat under construction together valued at GBP 57,240. The total value was said to be GBP 2,813,328 but this was reduced by withdrawals towards living and legal costs and the fall in property values.

17. SOCA alleged that there were also a number of other assets whose whereabouts and value were unascertainable.

2. The High Court judgment

18. In its judgment of 12 May 2009 the High Court considered whether to make the recovery order sought by SOCA. The judge introduced the case as follows:

> "The claimant's case is that [the first applicant's] wealth has been acquired through money laundering and tax evasion in the United Kingdom, Spain, Portugal and other jurisdictions and that notwithstanding the discontinuance of criminal proceedings in Spain against [the first applicant] for drug trafficking ('the "Hanja" incident') and his acquittal in Portugal of drug trafficking offences ('the Gale Beach incident'), there is clear evidence of drug offending in the United Kingdom, Spain and Portugal which has contributed to his wealth. It is alleged that [the second applicant] has played an important part in his money laundering and that assets in her name or in their joint names or in the names of nominees were acquired as a result of his criminal activities. It is alleged that the overall evidence establishes that [the first applicant] has been leading a life of serial drug trafficking, money laundering and tax evasion; it is alleged that he went to extreme lengths to avoid detection by using:-
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> i) a web of lies, false names, multiple passports, nominees and off-shore corporate fronts;
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> ii) at least 68 bank accounts both on and offshore and in a number of different jurisdictions which together have received millions of pounds from unidentified sources;
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> iii) needlessly complicated bank transfers and
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> iv) fleeing his country of residence (from the UK to Spain, from Spain to the USA and from USA to Portugal via the Bahamas) when he feared the authorities were or maybe interested in his criminal activities.
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> The claimant relies also on evidence of: -
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> v) his criminal record from his youth until when he was 32 years old together with his criminal associates;
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> vi) police intelligence material which reveals that he was suspected of drug trafficking in the United Kingdom before he emigrated to Spain and on his return to the United Kingdom between 2001 and 2005;
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> vii) an attempt to breach the Interim Receiving Order within days of service by opening a new bank account in the name of Mrs Peel with a transfer of €167,000 from a Solbank account;
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> viii) the compromise of proceedings bought in Ireland to restrain funds which were the proceeds of crime;

ix) his access to funds, not identified by the Interim Receiver or disclosed to the Interim Receiver, which he has used to fund his living expenses from July 2005 to date.

It is alleged that the absence – in large part due to his deliberate failure to co-operate with the Receiver's investigation – of any paper trail of records, financial documents, accounts, invoices, receipts, bank statements and tax returns and any detail of business transactions, customers, suppliers and profits establishes that the millions of pounds he acquired could not have been acquired through a legitimate business or businesses.

The case for [the applicants] is that [the first applicant] was at all material times a genuine businessman who acquired wealth by his honest endeavours in building work, property investment and business ventures of varying kinds, which included the sale of cars and boats. It was submitted there is no evidence that [the first applicant] was in Spain when cannabis was brought on the Hanja to Ampuriabrava; that his acquittal in Portugal is conclusive of his innocence of the offending there alleged and the claimant should not be allowed to re-litigate the criminal proceedings in Portugal without access to all the transcripts (some of which are missing or unavailable) and without hearing from the witnesses who gave evidence in those proceedings; that the evidence relied upon in the proceedings in Portugal does not (in any event) establish any drug trafficking by him; that his criminal record is of no relevance and that the police intelligence reports, the details of which he cannot challenge as they are based on untested hearsay, have no evidential weight. Both [applicants] rely upon the passage of time and delay to explain the absence of documentary business records and their inability to recall details of bank accounts."

19. The judge then addressed the burden and standard of proof. He stated that:

"The burden of proof is on the claimant [SOCA] and the standard of proof they must satisfy is the balance of probabilities. While the claimant alleged serious criminal conduct, the criminal standard of proof does not apply, although 'cogent evidence is generally required to satisfy a civil tribunal that a person has been fraudulent or behaved in some other reprehensible manner. But the question is always whether the tribunal thinks it more probable than not' – see *Secretary of State for the Home Department –v- Rehman* [2003] 1 AC 153 at paragraph 55 per Lord Hoffmann. In *In Re D* [2008] 1 WLR 1499 at paragraph 27 Lord Carswell, with whose speech the other Law Lords agreed, said the proper state of the law on the topic had, subject to one qualification, been summarised by Richards LJ in *R(N) –v- Mental Health Review Tribunal (Northern Region)* [2006] QB 468 at paragraph 62:-

'Although there is a single civil standard of proof on the balance of probabilities, it is flexible in its application. In particular, the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability), but in the strength or quality of the evidence that will in practise be require for an allegation to be proved on the balance of probabilities'.

The qualification which Lord Carswell added was, at paragraph 28: -

'It is recognised by these statements that a possible source of confusion is the failure to bear in mind with sufficient clarity the fact that in some contexts a court or tribunal has to look at the facts more critically or more anxiously than in others before it can be satisfied to the requisite standard. The standard itself is, however, finite and unvarying. Situations which make such heightened examination necessary may be the inherent

> unlikelihood of the occurrence taking place (Lord Hoffmann's example of the animal scene in Regent's Park), the seriousness of the allegation to be proved, in some cases, the consequences which could follow from acceptance of proof of the relevant fact. The seriousness of the allegation requires no elaboration; a tribunal of fact will look closely into the facts grounding an allegation of fraud before accepting that it has been established. The seriousness of consequences is another facet of the same proposition; if it is alleged that a bank manager has committed a minor peculation, that could entail very serious consequences for his career, so making it the less likely that he would risk doing such a thing. These are all matters of ordinary experience, requiring the application of good sense on the part of those who have to decide such issues. They do not require a different standard of proof or a specially cogent standard of evidence, merely appropriately careful consideration by the tribunal before it is satisfied with the matter which has to be established.'"

20. With regard to the approach to be taken in the present case, the judge, having examined the relevant domestic authorities, noted that there were two ways in which the Crown could prove in money laundering offences that property was derived from crime – either by proving it derived from unlawful conduct of a specific kind or kinds, or by evidence of the circumstances in which the property was handled, such as to give rise to the irresistible inference that it could only have been derived from crime.

21. The judge then addressed the Portuguese proceedings. He observed:

> "What should the court's approach be to the decision of the Portuguese Court to acquit [the first applicant]? It is not contended that the doctrine of issue estoppel applies and clearly the criminal law principle of *Autrefois Acquit* has no application in civil proceedings. On behalf of [the first applicant], it was submitted that the Portuguese charges cannot be re-litigated without hearing from all the relevant witnesses or considering a full transcript which is not available. However, I do not accept this contention. To consider the evidence adduced in the Portuguese proceedings is not to re-litigate because what is in issue in these proceedings is not the commission of the specific offences alleged against [the first applicant] in Portugal but whether on the evidence before this court of the material considered by the Portuguese Court, together with the evidence available to the Spanish Courts and other material not considered by the courts in either jurisdiction, the claimant has proved on the balance of probabilities that [the first applicant's] wealth was obtained through unlawful conduct of a particular kind or of one of a number of kinds, each of which would have been unlawful conduct: see Section 242 (2) (b) of POCA – that is to say drug trafficking, money laundering and tax evasion."

22. The judge gave detailed consideration to the acquisition of numerous assets by the applicants and their relatives and the explanations proffered to explain how these were funded. He held that both applicants had lied about their business interests and exaggerated their profitability. Contrary to their assertions, he found that while the income from their businesses might have been sufficient to meet their living expenses it had been insufficient to create capital. Similarly, he rejected claims that the first applicant's property ventures had generated any profit, and that his mother had had the financial means to purchase properties in her own name. He therefore concluded that the source of the assets was unlawful conduct. In many instances he specifically stated that his findings were "on the balance of probabilities". At

one point, he indicated that the second applicant's involvement in certain transactions provided "compelling evidence of her direct involvement in money laundering", and that the existence of numerous accounts held by both applicants was "sufficient to demonstrate that the accounts were used for money laundering purposes".

23. The judge then considered the evidence in the criminal proceedings brought against the first applicant in Spain, which had been discontinued, and reached the following conclusion:

> "I am satisfied on the balance of probabilities that [the first applicant], if not a participant in the arrangement for the importation of the cannabis found on the 'Hanja', knew that it was to be used to smuggle cannabis and like many significant drug traffickers had deliberately distanced himself geographically from Spain".

24. He also examined the evidence in the criminal proceedings brought against the first applicant in Portugal, which had ended in an acquittal, and said the following:

> "While [the first applicant] was not directly involved in the smuggling in June/July 1991 or on 10/11 August 1996, I am satisfied on the balance of probabilities there is evidence of his participation in a wider conspiracy to smuggle cannabis."

25. In conclusion, the judge said:

> "... I am in no doubt that [the applicants] engaged in unlawful conduct – in [the first applicant's] case, money laundering and drug trafficking, in [the second applicant's] case, money laundering. There is also evidence of tax evasion in four jurisdictions. They have acquired capital and various assets as a direct consequence of the money laundering and/or drug trafficking but it is not possible to quantify the extent of the tax evasion or to estimate the extent, if at all, that it contributed to their capital wealth ... I am satisfied the Receiver has correctly identified recoverable property. I found [the first applicant] a witness whose evidence, on the central issues, was wholly unreliable. He was so often demonstrably lying. I am not prepared to believe the evidence of [the second applicant] insofar as she purported to confirm his account or to explain her involvement; she too was shown to be a liar about matters of real moment. While I am prepared to accept that [the first applicant] was the moving force behind all criminal conduct, she was hardly ignorant of what he was doing and played her full part in the money laundering ..."

26. The judge made a recovery order in respect of properties and other assets valued at approximately GBP 2 million.

3. The Court of Appeal judgment

27. The applicants appealed, arguing, *inter alia*, that in deciding the factual issues on the balance of probabilities, rather than by application of the criminal standard of proof, the High Court judge had contravened Article 6 of the Convention. They further argued that the judge's conclusions had not been reasonably open to him on the evidence, having regard in particular to the conclusion of criminal proceedings against the first applicant in Spain and Portugal (see paragraphs 4 and 5 above).

28. On 7 July 2010 the Court of Appeal handed down its judgment. With regard to the appropriate burden of proof, it considered the applicants' argument to be "a bold submission", since POCA itself provided that an issue as to whether "matters alleged to constitute unlawful conduct" had occurred was to be decided "on the balance of probabilities". Having regard to the Court's jurisprudence (in particular, in *Geerings v. the Netherlands*, no. 30810/03, 1 March 2007) and that of the national courts, it held that the legislation could not be read in such a way as to permit a criminal standard of proof to be applied. It therefore rejected the first ground of appeal.

29. As to the impact of the acquittal in the Portuguese proceedings, the Court of Appeal paid tribute to the "meticulous and comprehensive judgment" of the High Court judge. His assessment of the relationship between the two sets of proceedings (see paragraph 21 above) could not be criticised. The judge had had to reach a decision on the basis of the evidence before him. The quality or availability of the evidence given to the Portuguese court, whether or not it overlapped with that given before the High Court judge, were not directly material to his decision.

30. Insofar as the applicants sought to argue that the "voicing of suspicion" following a final acquittal was no longer admissible (see *Geerings*, cited above, § 49), the Court of Appeal held that this was not a complete statement of the principle. Instead, it considered that there would be a breach of Article 6 § 2 of the Convention if the later proceedings were sufficiently linked to the criminal proceedings, and a consequence and, to some extent, a concomitant of those proceedings, and if the court in the later proceedings cast doubt on the soundness of the earlier acquittal. For the Court of Appeal, there was no formal link of any kind between the Portuguese criminal proceedings and the recovery proceedings in the United Kingdom under Part 5 of POCA (see paragraph 9 above), and no reason to regard them as "concomitant" in the sense used in case-law of the Court. Furthermore, the High Court judge had been careful to observe the proper limits of his role: unlike the Norwegian court in *Y v. Norway* (no. 56568/00, § 39, ECHR 2003-II), the judge had acknowledged without comment the acquittals in the Portuguese court and distinguished them clearly from the different nature and purpose of the allegations before him.

D. The Supreme Court judgment (Gale and another v. Serious Organised Crime Agency [2011] UKSC 49)

31. The applicants were granted permission to appeal to the Supreme Court, which unanimously dismissed the appeal on 26 October 2011.

32. Lord Phillips (with whom Lord Mance, Lord Judge and Lord Reed agreed) delivered the leading judgment. Of the applicants' case, he said the following:

> "5. Balance of probabilities' is the standard of proof applied in civil proceedings under English law ('the civil standard of proof'). In criminal proceedings guilt has to be proved 'beyond reasonable doubt' ('the criminal standard of proof'). In concluding that the property recovered was the product of criminal conduct on the part of the appellants, [the first instance judge] applied the civil standard of proof, albeit that he used language that suggested that the criminal standard might well have been satisfied. It is the appellants' case, advanced without success in the Court of Appeal, that this was contrary to the Human Rights Act 1998 in that it infringed their right to a fair trial under article 6 of the European Convention on Human Rights ('the Convention'). They urge that, despite the language of section 241(3), we should 'read down' the subsection so as to accord to it the meaning that the court must decide whether it is proved beyond reasonable doubt that matters alleged to constitute unlawful conduct occurred. Alternatively, they submit that the Court should declare the subsection to be incompatible with the Convention pursuant to section 4 of the Human Rights Act."

33. He continued:

> "14. [Counsel for the applicants'] submissions on behalf of the appellants founded upon the fact that an essential stepping stone toward proving that the property owned by the appellants was the product of crime was proof that the appellants had been guilty of criminal conduct, in the form of drug trafficking and money laundering. He submitted that in these circumstances article 6(2) applied. The appellants were entitled to the presumption of innocence afforded by that article. Rebuttal of the presumption of innocence required proof of guilt to the criminal standard, this being implicit in the words 'according to law'. He added to this the submission that once [the first applicant] had been acquitted of drug trafficking by the Portuguese Court no adverse finding could be made that implicated him in the conduct of which he had been acquitted."

34. After reviewing the Court's case-law on the application of Article 6 § 2 of the Convention to proceedings following acquittal, Lord Phillips inclined to the view that all that those cases established was that Article 6 § 2 prohibited a public authority from suggesting that an acquitted defendant should have been convicted on the application of the criminal standard of proof and that to infringe Article 6 § 2 in this way entitled an applicant to compensation for damage to reputation or injury to feelings. In his view, it was

> "perfectly obvious that failure to establish guilt according to the required standard does not demonstrate that the defendant did not commit the criminal act. It demonstrates simply that the evidence adduced against him was insufficient to discharge the enhanced burden of proof. After acquittal, the possibility exists that claims for relief by, or against, the defendant may be brought that are based upon, or involve consideration of, the evidence that was inadequate to establish the defendant's criminal guilt. The resolution of those claims may turn on lesser standards of proof, or different criteria, from those which governed the criminal proceedings."

35. Insofar as the Court had required there to be a procedural connection between the criminal trial and the subsequent proceedings, he opined:

> "35. On no view does this jurisprudence support [counsel for the applicants'] submission that the appellant's acquittal in Portugal precludes the English court in proceedings under POCA from considering the evidence that formed the basis of the charges in Portugal. The link between the Portuguese criminal proceedings and the

English civil proceedings, which Strasbourg would appear to consider so critical, is not there ...”

36. In respect of the applicants' proposition that the criminal standard had to be applied to proof of criminal conduct in proceedings under POCA, Lord Phillips examined the Court's judgment in *Geerings* (cited above). He considered that it could be read as supporting one or more of the following propositions in relation to confiscation proceedings:

“43. i) Where a defendant has been tried and acquitted of an offence no claim can be based upon an assertion that he committed that offence.

ii) In no case can confiscation be ordered unless it is proved to the criminal standard that the defendant committed the offences from which the property is alleged to have been derived.

iii) Where it is not proved by independent evidence that the defendant possesses or possessed property for which there is no innocent explanation, but asserted that this is to be inferred from the fact that he committed a crime or crimes, the latter fact must be proved according to the criminal standard of proof.”

37. He considered the first proposition to be contrary to principle, explaining:

“44. ... If confiscation proceedings do not involve a criminal charge, but are subject to the civil standard of proof, I see no reason in principle why confiscation should not be based on evidence that satisfies the civil standard, notwithstanding that it has proved insufficiently compelling to found a conviction on application of the criminal standard. At all events, insofar as other Strasbourg jurisprudence supports the first proposition, it is only in circumstances where there is a procedural link between the criminal prosecution and the subsequent confiscation proceedings. There was no such link in the present case. The acquittal was in Portugal and the recovery proceedings here in England. Furthermore, the evidence in the latter ranged much wider than the evidence that was relied upon in the Portuguese prosecution.”

38. The third proposition, he noted, would not put the High Court judgment in doubt since that decision was founded on property whose provenance had not been sufficiently explained which was in the hands of the applicants.

39. The critical proposition was the second one since, if it was sound, the appeal would have to be allowed as the High Court judge had applied the civil, and not the criminal, standard of proof. Lord Phillips considered that this proposition was inconsistent with the Court's earlier cases of *Phillips v. the United Kingdom* (no. 41087/98, ECHR 2001-VII) and *Van Offeren v. the Netherlands* ((dec.), no. 19581/04, 5 July 2005) and could not properly be derived from *Geerings*, which did not purport to depart from those earlier decisions. He therefore held that the commission by the applicants in the present case of criminal conduct from which the property that they held was derived had to be established according to the civil, and not the criminal, standard of proof. He concluded:

"55. The starting point in this case is the possession of property by the appellants for whose provenance they were unable to provide a legitimate explanation. There was an abundance of evidence, set out at length by the judge with great care, which implicated them in criminal activity that provided the explanation for the property that they owned. The judge rightly applied the civil standard of proof, but on my reading of his judgment he would have been satisfied to the criminal standard of the appellants' wrongdoing."

40. In a separate opinion, Lord Brown agreed with Lord Phillips and added:

"115. Obviously, in all proceedings following an acquittal the court should be astute to ensure that nothing that it says or decides is calculated to cast the least doubt upon the correctness of the acquittal. But the point to be emphasised is that the acquittal is correct because, and only because, the prosecution failed in the criminal proceedings to establish beyond reasonable doubt that the defendant was guilty. Not having been proved guilty to the criminal standard, the defendant is not thereafter to be branded a criminal and no criminal penalty can properly be exacted from him. But, contrary to widespread popular misconception, acquittal does not prove the defendant innocent.

116. In the result, I too incline to the view expressed by Lord Phillips ... that perhaps the only logical explanation of the Strasbourg case law is that applicants are being compensated for reputational damage when by a court's judgments or statements subsequent to an acquittal it appears nevertheless to be suggesting that the defendant should after all have been found guilty to the criminal standard."

41. Lord Dyson also agreed with Lord Phillips but explained in greater detail why he considered, applying the criteria laid down by the Court in *Engel and Others v. the Netherlands* (8 June 1976, Series A no. 22), that there was no "criminal charge" such as to engage Article 6 § 2 of the Convention:

"122. There can be no doubt that, on the basis of an application of these three criteria, recovery proceedings under Part 5 of POCA are properly to be characterised as civil for article 6 purposes. They are classified as civil under our domestic law: section 240(1)(a) of POCA provides that Part 5 has effect for the purposes of 'enabling the enforcement authority to recover, *in civil proceedings* ... property which is, or represents, property obtained through unlawful conduct' (emphasis added).

123. The essential nature of the proceedings is civil. The respondent to the proceedings is not charged with any offence. He does not acquire a criminal conviction if he is required to deliver up property at the conclusion of the Part 5 proceedings. None of the domestic criminal processes are in play. On the contrary ... 'all the trappings of the proceedings are those normally associated with a civil claim'. These include the express provision that the standard of proof is on the balance of probabilities. The nature of the proceedings is essentially different from that of criminal proceedings. The claim can be brought whether a respondent has been convicted or acquitted, and irrespective of whether any criminal proceedings have been brought at all ... The purpose of Part 5 proceedings is not to determine or punish for any particular offence. Rather it is to ensure that property derived from criminal conduct is taken out of circulation. It is also of importance that Part 5 proceedings operate *in rem.* The governing concept is that of 'recoverable property' which represents both property obtained directly by unlawful conduct and also property which represents the original property."

42. Lord Dyson nevertheless recognised that Article 6 § 2 could apply if the links between the Part 5 proceedings and the criminal proceedings were

sufficiently close. In this regard, he considered the key question to be whether the subject-matter of the civil proceedings was so closely connected with some criminal proceedings that the Convention protections available in the criminal proceedings should also be available in the civil proceedings. In the applicants' case, he said:

> "133. ... I would hold that there is no sufficient link between civil recovery proceedings under Part 5 of SOCA and any criminal proceedings to justify the application of article 6(2) to the Part 5 proceedings. Indeed, there is no link at all. The Part 5 proceedings are not a 'direct sequel' or 'a consequence and the concomitant' of any criminal proceedings. They are free-standing proceedings instituted whether or not there have been criminal proceedings against the respondent or indeed anyone at all."

43. Lord Dyson accepted that the language used might create the necessary link between the criminal case and the civil proceedings where it cast doubt on the correctness of an acquittal. He explained:

> "138. It seems, therefore, that the necessary link can be created by this route only if the court in the civil proceedings bases its decision adverse to the defendant using language which casts doubt on the correctness of an acquittal. The rationale must be that in such a case the court has chosen to reach its decision by explicitly finding that a criminal charge has been committed. If it chooses to reach its decision in that way, then the protections afforded by article 6(2) should be available as if the civil proceedings were criminal proceedings. But if the decision in the civil proceedings is based on reasoning and language which goes no further than is necessary for the purpose of determining the issue before that court and without making imputations of criminal liability, then the necessary link will not have been created. The distinction can be illustrated by reference to the common example of the case where A is acquitted of assaulting B, but B brings a claim for damages in tort. The ECtHR recognises in principle that article 6(2) does not apply to the claim for damages: see, for example, *Ringvold* para 38. Thus the acquittal ought to stand in the compensation proceedings, but it does not 'preclude the establishment of civil liability to pay compensation arising out of the same facts on the basis of a less strict burden of proof'. The fact that the findings of fact in the compensation proceedings may implicitly cast doubt on the acquittal is not enough to import article 6(2). What is required is that the decision in the compensation proceedings contains a 'statement imputing criminal liability' (emphasis added) (*Y v Norway* para 42) for article 6(2) to be imported.
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> 139. The idea seems to be that article 6(2) applies if the court treats the compensation proceedings as if they are proceedings in which the issue of criminal liability falls to be determined. The most obvious way of doing this is to state expressly or, perhaps by necessary implication, that the defendant was wrongly acquitted ...
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> 140. It will be seen that the circumstances in which the necessary link can be created when otherwise it would not exist echo the circumstances in which article 6(2) may be violated where the link is otherwise sufficiently close. In practice, therefore, if the court imputes criminal liability to an individual, article 6(2) will apply whether or not the link between the two proceedings is otherwise sufficiently close. But the analysis adopted by the ECtHR suggests that the issue should be addressed sequentially in the way that I have described."

44. Lord Dyson concluded:

> "141. I can now turn to consider whether [the first instance judge] did impute criminal liability to the appellants or cast doubt on their acquittal. SOCA's case is that the wealth of Mr and Mrs Gale has been acquired through money laundering and tax evasion in the United Kingdom, Spain, Portugal and elsewhere. Criminal proceedings for drug trafficking offences were started against Mr Gale in Spain, but these were discontinued because the relevant time limits had been exceeded. He was acquitted of drug trafficking offences in Portugal after a trial.
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> 142. At para 18 of his judgment, [the first instance judge] said that what was in issue before him was not 'the commission of the specific offences alleged against [the first applicant] in Portugal' but whether on all the evidence (including but not limited to the evidence considered by the Portuguese Court and that which was available to the Spanish Courts) SOCA had proved that the wealth of Mr and Mrs Gale had been obtained through unlawful conduct. Nowhere in his judgment does the judge depart from this view of the case. I accept the submission of [counsel for SOCA] that none of the judge's findings specifically calls into question the correctness of Mr Gale's acquittal in Portugal. As for the drug trafficking proceedings in Spain, these were discontinued. Even if (contrary to my view) the judge had made specific findings that Mr Gale was guilty of the Spanish offences, these findings could not be relied on by [counsel for the applicants]. That is because article 6(2) would only apply if there had been an acquittal on the merits and not one solely based on a time-bar (as the discontinuance in the Spanish proceedings was): see *Leutscher v The Netherlands* (1996) 24 EHRR 181 and *R (Mullen) v Secretary of State for the Home Department* [2005] 1 AC 1 para 10."

45. Lord Clarke agreed with Lord Phillips, Lord Dyson and Lord Brown that the Court's jurisprudence did not support the applicants' contention that the English Court in proceedings under POCA could not consider the evidence that formed the basis of the charges in Portugal. He also agreed with Lord Phillips that the Court's jurisprudence did not support the proposition that confiscation could not be ordered unless it was proved to the criminal standard that the defendant had committed the offences from which the property he held derived. Finally, he agreed with Lord Dyson that the High Court judge did not impute criminal liability to the applicants and his approach to the evidence was correct.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. The Proceeds of Crime Act 2002

46. Part 5 of POCA allows SOCA to commence civil proceedings to recover the fruits of criminal activities. Section 240(1) explains the general purpose of Part 5 as follows:

> "(a) enabling the enforcement authority to recover, in civil proceedings before the High Court or Court of Session, property which is, or represents, property obtained through unlawful conduct,

(b) enabling cash which is, or represents, property obtained through unlawful conduct, or which is intended to be used in unlawful conduct, to be forfeited in civil proceedings before a magistrates' court or (in Scotland) the sheriff."

47. Section 240(2) provides that the Part 5 powers are exercisable in relation to any property whether or not any proceedings have been brought for an offence in connection with the property. Examples are given in the Explanatory Notes:

"290. ... civil recovery and cash forfeiture proceedings may be brought whether or not proceedings have been brought for an offence in connection with the property. Cases where criminal proceedings have not been brought would include cases where there are insufficient grounds for prosecution, or where the person suspected of the offence is outside the jurisdiction or has died. Cases where criminal proceedings have been brought may include cases where a defendant has been acquitted, or where a conviction did not result in a confiscation order."

48. Section 241 defines "unlawful conduct":

"(1) Conduct occurring in any part of the United Kingdom is unlawful conduct if it is unlawful under the criminal law of that part.

(2) Conduct which—

(a) occurs in a country outside the United Kingdom and is unlawful under the criminal law of that country, and

(b) if it occurred in a part of the United Kingdom, would be unlawful under the criminal law of that part,

is also unlawful conduct."

49. Section 241(3) provides that the court must decide on a balance of probabilities whether it is proved that any matters alleged to constitute unlawful conduct have occurred or that any person intended to use any cash in unlawful conduct.

50. Pursuant to section 242(1), a person obtains property through unlawful conduct (whether his own conduct or that of another) if he obtains property by or in return for the conduct. Section 242(2) provides that in deciding whether any property was obtained through unlawful conduct it is not necessary to show that the conduct was of a particular kind as long as it is shown that the property was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct. Thus it is not necessary to prove that individual items of property were derived from specific offences.

51. Section 304(1) provides that property obtained through unlawful conduct is recoverable property. Pursuant to section 305(1), where property obtained through unlawful conduct ("the original property") is or has been recoverable, property which represents the original property (such as property obtained in exchange for the original property) is also recoverable property.

52. If the court is satisfied that any property is recoverable, it must make a recovery order (section 266(1)). Section 266(3) lists exceptions to the provisions that can be included in a recovery order.

B. R v. Briggs-Price

53. *R v. Briggs-Price* concerned confiscation proceedings under the Drug Trafficking Act 1994 for the recovery of the proceeds of crime rather than civil recovery proceedings. Confiscation proceedings 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 the 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 – which would have required the court to make certain assumptions about property held by him, and expenditure made by him, in the six-year period prior to the commencement of criminal proceedings against him – 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.

54. *R v. Briggs-Price* was considered by the House of Lords, which handed down its judgment on 29 April 2009 ([2009] UKHL 19). Lord Phillips considered in some detail the relevant domestic jurisprudence and the Court's jurisprudence regarding confiscation proceedings and the presumption of innocence. He did not consider Article 6 § 2 of the Convention to be applicable, as the allegations that were made in relation to the cannabis offences did not constitute "criminal charges". While Lord Phillips accepted that the guarantees of Article 6 § 1 nonetheless applied to the proceedings in question, he considered that the safeguards in the system satisfied the requirements of that Article.

55. Lord Mance adopted a broadly similar position to that of Lord Phillips. He too found that Article 6 § 2 did not apply to the proceedings in the defendant's case. He also agreed with Lord Phillips that the standard of proof required from the prosecution in proving any relevant drug trafficking was the civil standard. He further considered that no breach of Article 6 § 1 was made out.

56. Lord Rodger also agreed that Article 6 § 2 did not apply to the confiscation proceedings, noting:

> "64. ... Nothing said or done by the prosecution or the court in the course of the confiscation proceedings was designed to convict or acquit the [applicant] of any other drug-related offence. So article 6(2) was not engaged when the court was determining, as part of the sentencing procedure for the trigger offence, whether the [applicant] had benefited from drug trafficking, other than the drug trafficking comprising the trigger offence."

57. Lord Rodger accepted that the presumption of innocence nonetheless applied as part of the guarantees inherent in Article 6 § 1 of the Convention, but considered that the Article was satisfied, noting:

> "74. Although the [applicant] was not 'charged' with the cannabis network offence, evidence of his involvement in the network was led by the prosecution at his trial for the conspiracy count. The [applicant] was represented by counsel. Before trial, he would have been supplied with police statements and other material from which it would have been clear that the prosecution was intending to lead evidence about his involvement in the cannabis distribution network at his trial. The [applicant] has never suggested otherwise. The trial judge held that that evidence was admissible and the Court of Appeal held that there was no arguable appeal against that ruling. Counsel for the [applicant] had every opportunity to cross-examine the relevant witnesses and to lead evidence to counter the prosecution evidence relating to the cannabis distribution network. At the trial, accordingly, any requirements of Article 6(1) and (3) were surely satisfied in respect of the allegations relating to his involvement in that network.
>
> 75. In the context of the confiscation proceedings the judge had regard to this evidence which had been led at the trial and, on that basis, had 'no doubt' that the [applicant] had indeed been involved in running the network. So, in this case, there is no question of the judge proceeding on a presumption that the [applicant] had been involved in the cannabis network – indeed, the judge plainly thought that the [applicant's] involvement had been proved to the criminal standard, beyond a reasonable doubt. On any view, therefore, the presumption of innocence in article 6(1) was fully respected in the confiscation proceedings."

58. Unlike Lords Phillips and Mance, Lord Rodger considered that the relevant standard of proof was "beyond reasonable doubt", observing:

> "77. ... If a presumption of innocence is implied into article 6(1), then it, too, must require that the person be proved guilty according to law. In the context of a criminal trial, the standard of proof, according to our law, is beyond reasonable doubt. Indeed, if that were not the position, the Crown could ask the court to make a confiscation order on the basis of an alleged benefit from a specific offence of which the defendant would have been acquitted if he had been prosecuted for it."

59. On whether that standard had been satisfied, Lord Rodger noted:

> "80. .... In no sense can it be said, in this case, that the court's conclusions as to the benefit derived by the [applicant] from drug trafficking were based on a presumption of guilt: they were based on evidence."

60. Lord Neuberger agreed fully with Lord Rodger as regards the Convention issues arising in the appeal.

61. Lord Brown alone found that Article 6 § 2 did apply in the circumstances of the case. He noted:

> "87. I confess, however, to somewhat greater difficulty regarding the compatibility of the confiscation proceedings here with article 6(2). I cannot regard *Phillips v United Kingdom* (2001) 11 BHRC 280 (which endorsed the Privy Council's decision in *McIntosh v Lord Advocate* [2003] 1 AC 1078) as conclusive of the article 6(2) argument. *McIntosh* ... was based squarely on confiscation proceedings where the benefit of drug trafficking was determined by reference to identified property (a process ... akin rather to tracing than to finding the defendant to have been engaged in criminal conduct). And *Phillips* too was concerned with the statutory assumptions under which benefits are calculated by reference to identifiable property."

62. He then reviewed subsequent case-law of the Court and concluded:

> "91. ... With no less hesitation I have come to a different conclusion [from that of Lord Phillips]. *Geerings* seems to me to stand for more than merely the prohibition against reliance on criminality of which the defendant has actually been acquitted. That was separately identified as the second of the two reasons given by the Court for distinguishing *Phillips* and (rightly or wrongly) *Van Offeren* ... The first reason is that contained in paras 46 and 47 of the Court's judgment ... 'that the applicant [in *Phillips* and *Van Offeren*] demonstrably held assets whose provenance could not be established; that these assets were reasonably presumed to have been obtained through illegal activity; and that the applicant had failed to provide a satisfactory alternative explanation'.
>
> 92. ... [T]he Court stated what was objectionable in the Dutch court's findings in *Geerings* which distinguished it from *Phillips* and *Van Offeren*: 'that the applicant had obtained unlawful benefits from the crimes in question although [he] was never shown to hold any assets for whose provenance he could not give an adequate explanation, [such finding having been reached] by accepting a conjectural extrapolation based on a mixture of fact and estimate contained in a police report'.
>
> 93. That seems to me to describe the present case precisely. Then ... the court ruled out the confiscation of benefit calculated by reference to assets which are not known to have been in the possession of the person affected, the more so if the measure concerned relates to a criminal act of which the person affected has not actually been found guilty... The Court continued, 'If it is not found beyond a reasonable doubt that the person affected has actually committed the crime, and if it cannot be established as fact that any advantage, illegal or otherwise, was actually obtained, such a measure can only be based on a presumption of guilt. This can hardly be considered compatible with article 6(2).'
>
> 94. That again (with one important exception, the standard of proof, to which I shall return) seems to me to describe this case ..."

63. Lord Brown considered the position of the Court to be that the prosecution must either demonstrate that the defendant holds or has held assets the provenance of which he cannot satisfactorily explain, or establish beyond reasonable doubt that the defendant has committed some other offence (or offences) from which it can be presumed that he obtained advantage. In the latter case, he considered, Article 6(2) applied but was satisfied.

64. In the circumstances of the case, Lord Brown observed that, unlike in *Geerings*, so far from having been acquitted of the cannabis offence, the applicant was found by the judge beyond reasonable doubt to have committed it. On this basis and on this basis alone he regarded *Geerings* as distinguishable and Article 6(2), albeit engaged, to be satisfied. He added:

> "... The fact that the cannabis offence was not treated under domestic law as a criminal charge and did not lead to a criminal conviction is not in my judgment a sufficient basis for holding it not to be a charge within the autonomous Convention meaning."

COMPLAINTS

65. The applicants complain under Article 6 §§ 1 and 2 of the Convention that following their acquittal in the Portuguese proceedings there should have been no further State initiated proceedings in which the same allegations were brought. Alternatively, they complain that the presumption of innocence required that the criminal burden of proof be applied in the civil recovery proceedings.

THE LAW

A. Complaint under Article 6 § 2 of the Convention

66. The applicants complain that the civil recovery proceedings breached the presumption of innocence.

They invoked Article 6 § 2 of the Convention, which reads as follows:

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

1. The parties' submissions

(a) The Government

67. Relying on *Walsh v. the United Kingdom* ((dec.), no. 43384/05, 21 November 2006), the Government submitted that Article 6 § 2 (in what has subsequently been referred to as its first aspect) did not apply to the civil recovery proceedings since, on the basis of the criteria set out in *Engel and Others v. the Netherlands* (8 June 1976, §§ 82-83, Series A no. 22) ("the *Engel* criteria"), those proceedings were civil in nature and the applicants could not be said to have been "charged" with a criminal offence. The proceedings were categorised as civil under domestic law, their essential nature was civil, they took place in a civil court, the rules and forms of civil procedure were used, the civil standard of proof was applied, the applicants were not required to plead to a charge, and when they were found liable they did not acquire a criminal conviction. The purpose of the regime under Part 5 of POCA (see paragraphs 9 and 46-52 above) was to ensure that property

derived from criminal conduct was taken out of circulation. In deciding whether property was obtained through unlawful conduct, it was not necessary to prove that individual items of property were derived from specific offences. The proceedings therefore operated *in rem*, unlike criminal proceedings which operated *in personam*.

68. The Government further submitted that Article 6 § 2 did not apply in what is now referred to as its second aspect since the necessary link between the criminal proceedings in Portugal and the civil recovery proceedings in the United Kingdom was not present. First of all, the concept of a "link", as analysed in *Allen v. the United Kingdom* ([GC], no. 25424/09, ECHR 2013), was premised on connections under a single system of law between the criminal proceedings and the subsequent civil proceedings. Secondly, the evidence in the civil recovery proceedings had ranged much wider than the evidence that was relied on in the Portuguese prosecution, as the starting point was the possession of property by the applicants for whose provenance they were unable to provide a legitimate explanation. Thirdly, it was legally possible to bring civil recovery proceedings against the applicants irrespective of whether they had been prosecuted in the criminal courts, making the civil recovery proceedings quite independent in both the manner of their institution and in the procedure followed. They were not a direct consequence of the criminal proceedings in Portugal, and were legally and factually distinct.

69. In the alternative, the Government contended that if the presumption of innocence did apply to the civil recovery proceedings, it had not been breached in this case. The nature of the proceedings under Part 5 of POCA did not show any lack of respect for, or call into question, the acquittal in earlier criminal proceedings. The proceedings were expressly stated to be civil in nature, the legislation expressly provided for proof on the balance of probabilities, and the domestic courts did not cast doubt on the correctness of the acquittal or call it into question. The second aspect of Article 6 § 2 neither required nor even supported the use of anything other than the civil standard, as it required that the subsequent civil proceedings properly respected the acquittal of the former accused.

70. Finally, the Government argued that *Geerings v. the Netherlands* (no. 30810/03, 1 March 2007) had to be considered in light of the reasoning of the Grand Chamber in *Allen* (cited above) and, in any event, it was distinguishable on the facts from the case at hand. The applicant in *Geerings* had not been shown to have held any assets for whose provenance he could not give an adequate explanation. Moreover, in *Geerings* the impugned order had related to the very crimes of which the applicant had been acquitted. In the present case, however, what was at issue was not whether the applicants had committed the specific offences alleged against them in Portugal, but whether, on all the evidence, it had been proved that their wealth had been obtained through unlawful conduct.

(b) The applicants

71. With regard to the first aspect of the presumption of innocence, the applicants contended that they had been "charged" with a criminal offence in the civil recovery proceedings because evidence gathered and used for a criminal trial was reused in those proceedings for the purpose of proving that they had "probably" committed the criminal offences of which they had been acquitted.

72. While the applicants acknowledged that there could not be a procedural link between proceedings which took place in different countries, they argued that a link nevertheless existed in the present case because the use of language by the domestic courts overstepped the bounds of the civil forum and cast doubt on the correctness of the acquittal, and because evidence from the Portuguese proceedings was used in the recovery proceedings. In particular, the civil finding had clearly cast doubt on the applicants' innocence of the very crimes of which they had been acquitted, as the judge had made findings of fact which relied on the applicants' guilt in criminal activities.

73. Furthermore, the applicants argued that the presumption of innocence had been breached by the very institution of the civil recovery proceedings and therefore the entire civil recovery process had been incompatible with Article 6 § 2 of the Convention. Alternatively, they argued that the use of the civil, rather than the criminal, standard of proof had violated Article 6 of the Convention. Having concluded that the Portuguese criminal case was to be an important part of the English civil case, the least protection that could have been afforded to the applicants was the application of a higher standard of proof.

2. The Court's assessment

(a) General principles

(i) Presumption of innocence

74. 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*, cited above, § 82, and *Phillips v. the United Kingdom*, no. 41087/98, § 31, ECHR 2001-VII). 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).

75. 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).

76. 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).

77. In *Allen* the Court held 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).

78. Once Article 6 § 2 is applicable in its second aspect, then regardless of the nature of the subsequent linked proceedings, and regardless of whether the criminal proceedings ended in an acquittal or a discontinuance, the decisions and reasoning of the domestic courts or other authorities in those subsequent linked proceedings, when considered as a whole, and in the context of the exercise which they are required by domestic law to undertake, will only violate Article 6 § 2 of the Convention if they amounted to the imputation of criminal liability to the applicant. To impute criminal liability to a person is to reflect an opinion that he or she is guilty to the criminal standard of the commission of a criminal offence, thereby suggesting that the criminal proceedings should have been determined differently (see *Nealon and Hallam*, cited above, § 168).

(ii) Confiscation and sentencing

79. The Court has acknowledged that in the United Kingdom confiscation orders are part of the sentencing process which follow upon the conviction of the defendant of the criminal offences with which he is charged (see, for example, *Phillips*, cited above, § 32). In *Phillips* the Court held that once an accused had properly been proved guilty of the particular offence with which

he or she was charged, Article 6 § 2 could have no application in relation to allegations made about the accused's 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 (see *Phillips*, cited above, § 35). The Court accepted that the purpose of the confiscation procedure had not been the conviction or acquittal of the applicant for any other drug-related offence, but had rather been to enable the national court to assess the amount at which the confiscation order should properly be fixed. Although the Crown Court assumed that the applicant had benefited from drug trafficking in the past, this was not, for example, reflected in his criminal record, to which was added only his conviction for the particular offence of which he was convicted. In these circumstances, the Court held that he was not "charged with a criminal offence" and, consequently, Article 6 § 2 of the Convention was not applicable to the confiscation proceedings brought against him (see *Phillips*, cited above, § 34).

80. Similarly, in *Van Offeren v. the Netherlands* ((dec.), no. 19581/04, 5 July 2005) the Court treated confiscation proceedings following on from a conviction as part of the sentencing process and therefore not involving the bringing of any new "charge" within the meaning of Article 6 § 2 of the Convention.

81. In *Geerings* (cited above, §§ 45-51), however, the Court held that the presumption of innocence was applicable to and had been breached in confiscation proceedings. 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.

82. 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* ([GC], nos. 32483/19 and 35049/19, 11 June 2024), 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).

(iii) Civil recovery

83. In *Walsh v. the United Kingdom* ((dec.), no. 43384/05, 21 November 2006) the Court considered the application of Article 6 § 2 to civil recovery proceedings. Applying the *Engel and Other* criteria (see paragraph 74 above),

it found that the proceedings were civil rather than criminal. That was because, according to domestic law, recovery proceedings were regarded as civil, not criminal; the domestic courts considered that the purpose of the proceedings was not punitive or deterrent but to recover assets which did not lawfully belong to the applicant; there was no finding of guilt of specific offences and the High Court judge in making the order was careful not to take into account conduct in respect of which the applicant had been acquitted of any criminal offence; and the recovery order was not punitive in nature, even though it involved a hefty sum. As the proceedings fell outside the criminal head of Article 6 § 1, the Court rejected as incompatible *ratione materiae* with the provisions of the Convention the applicant's complaint that he was denied the presumption of innocence in the recovery proceedings.

84. Similarly, in cases against Italy the Court has found that measures which were designed to prevent the commission of offences, and which did not involve a finding of guilt, were not comparable to a criminal "sanction" (see *Riela v. Italy* (dec.), no. 52439/99, 4 September 2001; *Arcuri and Others v. Italy* (dec.), no. 52024/99, 5 July 2001; and *Raimondo v. Italy*, 22 February 1994, § 43, Series A no. 281-A). Consequently, the Court found that they did not involve a "criminal charge".

85. In *Balsamo v. San Marino* (nos. 20319/17 and 21414/17, §§ 73-74, 8 October 2019) the Court was concerned with a provision of the Criminal Code that permitted confiscation, regardless of conviction, even if the items did not belong to the perpetrator of the act in issue. The applicants – two sisters – had been acquitted of charges of money laundering but their father had been convicted of the predicate offence. They complained to the Court under Article 6 § 2, arguing that the confiscation of their assets had violated the presumption of innocence because it raised doubts about their innocence. The Court found their complaint to be manifestly ill-founded. There was no doubt that the applicants had been acquitted of the charges related to money laundering and the order for the confiscation of their assets did not suggest otherwise. The confiscation measure was not based on a judicial finding that the applicants had derived any advantage from offences of which they had been acquitted (see, a *contrario*, *Geerings*, cited above, §§ 46-50) but solely on the basis that, according to domestic law and in the spirit of international standards in the battle against money laundering, those funds should not remain in circulation since they had been found to be illicit and their use – after such provenance had been established – would have been constitutive of an offence. Moreover, quite apart from being preventive and not punitive, the confiscation had concerned funds in the applicants' possession which were found to be illicit as a result of crimes not attributed to the applicants, but to third persons who had committed the predicate offence of the money laundering with which the applicants were also charged. In such circumstances, the applicants' presumption of innocence had not been breached by the imposition of a confiscation order over the illicit assets.

(b) Application of these principles to the present case

86. The Portuguese courts acquitted the first applicant on charges of drug trafficking and the second applicant on charges of money laundering (see paragraphs 4, 5 and 7 above). Consequently, Article 6 § 2 of the Convention could apply to the civil recovery proceedings in its first aspect if those proceedings resulted in the bringing of a criminal charge against the applicants, and in its second aspect if a "link" existed between the concluded criminal proceedings and the subsequent civil recovery proceedings under Part 5 of POCA.

(i) The first aspect of the presumption of innocence

87. The Court has repeatedly emphasised that "charged with a criminal offence" is an autonomous concept which 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*, cited above, § 82). In *Walsh* (cited above) the Court, having applied these criteria, concluded that civil recovery proceedings were civil rather than criminal in nature (see paragraph 83 above).

88. The facts of the present case disclose no basis for reaching a different conclusion. The Part 5 proceedings were regarded as civil, not criminal, under domestic law, and the purpose of the proceedings was not punitive or deterrent but rather the recovery of property and cash which had been obtained through unlawful conduct or which was intended to be used in unlawful conduct (see paragraph 46 above – see also *Walsh*, cited above, together with the Italian cases cited at paragraph 84 above). While the High Court judge had regard to the evidence adduced in the proceedings in both Spain and Portugal (see paragraphs 21, 23 and 24 above), the issue before him was not the commission of any specific offences but whether, on the basis of all the evidence, SOCA had proved on the balance of probabilities that the first applicant's wealth was obtained through unlawful conduct of a particular kind or of one of a number of kinds (see paragraphs 46-52 above; see also paragraph 21 above). Furthermore, any allegations that were made against the applicants in the context of the Part 5 proceedings were not a "prelude to 'criminal proceedings'" against them (see *Deweer v. Belgium*, 27 February 1980, § 45, Series A no. 35), nor were they an official notification of an allegation that they had committed a criminal offence (see *Simeonovi*, cited above, § 110).

89. Consequently, the conduct of those proceedings did not result in the bringing of criminal charges against the applicants and Article 6 § 2 of the Convention is not applicable to those proceedings in its first aspect.

(ii) The second aspect of the presumption of innocence

90. Even though the recovery proceedings were civil in nature, Article 6 § 2 could nevertheless be engaged in its second aspect if there was a link between those proceedings and the concluded criminal proceedings in Portugal. In *Allen* (cited above, § 104), the Grand Chamber indicated that such a link was likely to be present where, for example, the subsequent proceedings required examination of the outcome of the prior criminal proceedings and, in particular, where they obliged 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 also paragraph 77 above). While this test followed on from the Grand Chamber's detailed consideration of a long line of cases, which notably did not include *Phillips*, *Van Offeren* or *Geerings* (all cited above), the Grand Chamber made it clear that the test applies "[w]henever the question of the applicability of Article 6 § 2 arises in the context of subsequent proceedings" (see *Allen*, cited above, § 104).

91. In its subsequent judgment in *Nealon and Hallam* the Grand Chamber emphasised that on numerous occasions the necessary link had not been established (see *Nealon and Hallam*, cited above, § 123). In some cases this was because the outcome of the criminal proceedings was not decisive for the subsequent proceedings and the latter was therefore not a direct sequel to the former (see *Ringvold v. Norway*, no. 34964/97, § 41, ECHR 2003-II, concerning an award of compensation to the victim of an offence; see also *Lundkvist v. Sweden* (dec.), no. 48518/99, ECHR 2003-XI, concerning civil proceedings against an insurance company; and *Moullet v. France* (dec.), no. 27521/04, 13 September 2007, concerning a finding by the *Conseil d'Etat* of a breach of disciplinary rules). For example in *O.L. v. Finland* ((dec.), no. 61110/00, 5 July 2005) the applicant's daughter had been taken into public care because of alleged sexual abuse. Although a criminal investigation against the applicant had ended when the public prosecutor decided not to prefer charges against him on account of insufficient evidence, the Supreme Administrative Court refused to terminate the public care order. The Court observed that the criminal investigations were not decisive for the issue of public care, nor was there any link or dependence between the two. The decision to place the child into public care was legally and factually distinct from the prosecutor's decision not to prefer charges against the applicant. Regardless of the conclusion reached in the criminal investigation against the applicant, the public care case was thus not a direct sequel to the former.

92. Applying the *Allen* test to the facts of the present case, the Court is not persuaded that the requisite "link" existed between the criminal proceedings in Portugal and the subsequent proceedings under Part 5 of POCA.

93. First of all, the criminal proceedings resulting in the acquittal took place in a different legal jurisdiction. In *Ismoilov and Others v. Russia* (no. 2947/06, § 164, 24 April 2008), a case which concerned the first aspect of the presumption of innocence, the Court accepted the existence of a "close link" between criminal proceedings in Uzbekistan and extradition proceedings in Russia. In the later case of *Larrañaga Arando and Others v. Spain* (nos. 73911/16, 233/17, 3086/17 and 5155/17, §§ 47-50, 25 June 2019), which concerned the second aspect of the presumption of innocence, it expressed doubts about whether there could be a link between criminal proceedings in France and compensation proceedings in Spain, but left the question open.

94. In any event, and regardless of any jurisdictional issue, the proceedings under Part 5 of POCA were legally and factually distinct from the preceding criminal proceedings. As observed in paragraph 88 above, the purpose of the Part 5 proceedings was the recovery of property and cash which had been obtained through unlawful conduct or which was intended to be used in unlawful conduct. Under Part 5 of POCA it was not necessary to prove that individual items of property were derived from specific offences (see paragraph 50 *in fine* above), and the fruits of criminal activity could be recovered regardless of whether or not anyone had been convicted of the crime or crimes that had produced them (see paragraph 47 above). Consequently, in the Part 5 proceedings the judge was not required to examine the outcome of any prior criminal proceedings, to analyse any criminal judgment, to engage in a review or evaluation of any evidence in a criminal file, to assess the applicants' participation in events leading to a criminal charge, or to comment on any subsisting indications of the applicants' possible guilt (see *Nealon and Hallam*, cited above, § 122, and *Allen*, cited above, § 104).

95. While in the present case the judge had regard to the evidence adduced against the first applicant in the proceedings in both Spain and Portugal (see paragraphs 21, 23 and 24 above), the evidence before him ranged much wider than the evidence that was relied upon in those proceedings (see paragraph 37 above). Moreover, as noted in paragraph 88 above, the judge clearly reminded himself that what was in issue in the Part 5 proceedings was not the commission of the specific offences alleged against the first applicant in Portugal but whether on the evidence before him, which included the material considered by the Portuguese and Spanish courts, as well as other material not considered by the courts in either jurisdiction, the claimant had proved on the balance of probabilities that the first applicant's wealth was obtained through unlawful conduct of a particular kind or of one of a number of kinds, each of which would have been unlawful conduct (see paragraph 21 above). The present case is therefore readily distinguishable from *Geerings* and *Episcopo and Bassani* (both cited above), in which the confiscation order was based on a finding that the applicants had committed the very crimes of which

they had been acquitted, or in respect of which proceedings had been discontinued.

96. The foregoing considerations are sufficient to enable the Court to conclude that Article 6 § 2 of the Convention was not applicable to the Part 5 proceedings in its second aspect.

(iii) Conclusion

97. Accordingly, the Court finds that the presumption of innocence was not applicable to the civil recovery proceedings in either its first or second aspect. The applicants' complaints under Article 6 § 2 are therefore 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.

B. Complaint under Article 6 § 1 of the Convention

98. The applicants also complained that the civil recovery proceedings breached their right to a fair trial.

They invoked Article 6 § 1, which reads 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 ... by [a]... tribunal ...."

99. Under Article 6 § 1 of the Convention, the applicants rely on the presumption of innocence which also forms part of the general notion of a fair hearing under that Article. In addition, they contend that the appropriate standard of proof in the civil recovery proceedings should have been the criminal standard of "beyond reasonable doubt".

100. The presumption of innocence only forms part of the general notion of a fair hearing in criminal proceedings. Therefore, it can have no application to the civil recovery proceedings which – as the Court has already noted – were civil in nature (see paragraph 89 above).

101. Furthermore, in view of the Court's case-law under Article 6 § 2 of the Convention, it is clear that a statement made in the course of civil proceedings imputing criminal liability to an individual who had been acquitted of a criminal offence or against whom criminal proceedings had been discontinued would violate Article 6 § 2 of the Convention if the necessary "link" existed between the criminal proceedings and the subsequent civil proceedings (see the case-law quoted in paragraph 77 above). While no such link has been found to exist in the present case (see paragraphs 92-96 above), it remains the case that in civil proceedings courts should respect the bounds of the civil forum. The applicants' assertion that the appropriate standard of proof in the civil recovery proceedings should have been the criminal standard of "beyond reasonable doubt" is therefore misconceived.

102. Finally, the applicants have not asserted, and there is no evidence to suggest, that the civil recovery proceedings otherwise breached the fair trial guarantees set out in Article 6 § 1 of the Convention.

103. Accordingly, while the Court considers Article 6 § 1 to be applicable to the facts of the case, those facts do not disclose any appearance of a violation of the applicant's rights under Article 6 § 1 of the Convention.

104. 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.

For these reasons, the Court, unanimously,

Declares inadmissible the application.

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

Hasan Bakırcı Registrar	Arnfinn Bårdsen President