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

FOURTH SECTION

DECISION

Application no. 38759/12
Noel YOUNG
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 6 May 2014 as a Chamber composed of:

Ineta Ziemele, *President,*
Päivi Hirvelä,
George Nicolaou,
Nona Tsotsoria,
Paul Mahoney,
Krzysztof Wojtyczek,
Faris Vehabović, *judges,*

and Françoise Elens-Passos, *Section Registrar,*

Having regard to the above application lodged on 23 April 2012,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Noel Young, is a British national born in 1976. He is currently detained at HMP Frankland. He is represented by Mr C. Marsh-Finch, counsel, of the Creed Lane Law Group.

A. The circumstances of the case

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

1. The applicant's trial and the subsequent confiscation proceedings

3. The applicant and five others (including his wife and sister) were charged with conspiracy to defraud and money laundering offences arising out of the importation into the United Kingdom of high value motor

vehicles. On the first day of the trial the applicant pleaded guilty to one count of conspiracy to defraud Her Majesty's Customs and Excise (HMCE)[1] by evading the liability to pay VAT on imported vehicles between 1 April 2003 and 2 February 2005 and to a further count of concealing criminal property during the same period. Guilty pleas from his co-defendants followed the next day. On 9 June 2006 the applicant was sentenced to twenty-eight months' imprisonment on each count.

4. The prosecution's case was that the applicant had been the organiser of, and driving force behind, a scheme to import high-value motor vehicles from other European Union countries and to sell them on while evading VAT. The scheme worked as follows. On first registration in the United Kingdom the imported vehicles became subject to VAT. However, the vehicles were registered by the applicant using false or fraudulently obtained documentation and false names. The vehicles, once falsely registered, would be sold on. The purchasers of the vehicle would pay VAT to the applicant, which – as a result of the false registration – would not be passed on to HMCE. The applicant and his co-conspirators would thus profit from the sale of the vehicles and the VAT they had not passed on to HMCE. Bank accounts were opened through which the proceeds of the conspiracy were channelled.

5. The conspiracy was said by the prosecution to cover a large number of motor vehicles but for the purposes of the criminal trial it limited the number of vehicles upon which it would rely to prove its case.

6. Thus, when the applicant entered his guilty pleas he did so on the basis that he was party to a conspiracy to evade liability for the payment of VAT on the importation and registration of fifteen motor vehicles. These fifteen vehicles were particularised in a written document recording the factual basis upon which the applicant had pleaded guilty. It was the applicant's case, as set out in that written "basis of plea", that in pursuit of the conspiracy he had passed money through his own and other people's bank accounts and that he had taken advantage of his wife and sister by using their bank accounts to pass monies related to the sale and purchase of specific vehicles.

7. That basis of plea was accepted by the court and the prosecution for the purposes of sentencing. However, it was not accepted by the prosecution for the purpose of the intended confiscation proceedings which were to follow the criminal trial.

8. Those confiscation proceedings started in the Crown Court on 4 March 2008. The judge heard evidence over eight days. The prosecution relied on a schedule which set out the value of (and the VAT payable on) the vehicles the applicant had dealt with in pursuance of the conspiracy.

1. HMCE was merged with the Inland Revenue to form HM Revenue and Customs (HMRC) in April 2005.

A further schedule set out details of lodgements into six bank accounts which were either in the name of the applicant or were known to have been used by him in furtherance of the conspiracy. The applicant himself gave evidence over two days.

9. The judge gave his ruling on 18 April 2008. He noted that the applicant had admitted that all the vehicles referred to by the prosecution (more than two hundred vehicles) had "passed through his hands" when he was engaged in the buying and selling of them. The applicant maintained, however, that he had only received a commission of between GBP 500 and GBP 100 per vehicle from others on whose behalf he had acted. The applicant said that he had not acted dishonestly in relation to the motor vehicles. This was despite his guilty pleas and the fact that, prior to being sentenced, he had written a letter to the judge stating that he had taken a leading role in the conspiracy and expressing his regret for committing the offences.

10. The judge rejected the applicant's account and concluded that "he was the driving force, organiser, architect and brain behind this conspiracy ... [and] that he ran it for the purposes of making vast profit". The judge also found that the applicant was "a manipulative, deceitful person who cannot distinguish fact from fiction and will lie to anyone at any time if he perceives that it is to his advantage and that it will suit his own ends". Examples were given by the judge, including the fact that the applicant had lied at the sentencing stage of proceedings by telling the court that he had a young child when he did not and acquiring assets – including his house – under false names. The judge concluded:

> "...I regret to say that in my judgment the [applicant] is the sort of man who cannot lie straight in bed at night. Indeed, in my judgment, he would not recognise the truth if it stood up and bit him."

11. The judge proceeded to calculate the amount of benefit that the applicant had obtained from his criminal conduct, as required under the 2002 Act ("the benefit figure").

12. He arrived at a benefit figure of more than GBP 10.5 million. This was based on:

- the value of the motor vehicles which were the subject of the indictment and the VAT evaded (more than GBP 2.8 million);
- the value of other motor vehicles transferred to the applicant and the VAT evaded (more than GBP 5.1 million);
- credits into known bank accounts (over GBP 1.9 million);
- other vehicles seized (almost GBP 300,000);
- personal assets, including the applicant's home, jewellery and a GBP 36,000 watch (more than GBP 223,000 when added together); and
- three further vehicles (GBP 150,000).

13. The judge then determined the recoverable amount. By section 7 of the 2002 Act the recoverable amount was equal to the benefit from the criminal conduct unless the defendant could show that the available amount was less than the benefit amount.

14. In determining the recoverable amount the judge first identified that the realisable assets in the applicant's possession were worth over GBP 446,000 (based on his motor vehicles, half a share in his home, his jewellery, watch and other items recovered from the home). The judge declared himself satisfied that the applicant also had appreciable and significant hidden assets and that he had provided the court with no assistance whatsoever in identifying them. However, the judge said that he would stand back and take a broad view to try to assess justly the value of the property that the applicant had failed to disclose. He put that value at GBP 6.5 million. Adding that to the realisable assets, the judge determined the recoverable amount to be GBP 6.9 million. He accordingly made a confiscation order for that sum. The applicant was ordered to pay the sum within six months, failing which he would be given a sentence in default of ten years' imprisonment.

2. The appeal to the Court of Appeal

15. The applicant appealed against the confiscation order to the Court of Appeal. His main ground of appeal was that, in arriving at the benefit figure, the judge and the prosecution had double counted. They had done so by taking into account the value of each individual vehicle upon which VAT had been evaded. The approach they had taken meant that the benefit figure included the initial price for which each vehicle had been bought, the value of the vehicle itself, the value of the sale of the vehicle, and the amount of VAT evaded on that particular vehicle. However, the charge had been evading VAT so the only benefit was the VAT amounts proven to have been evaded.

16. The Court of Appeal heard the following explanation from the prosecution. They had been very aware of the dangers of double accounting when assessing the benefit arising from transactions relating to the vehicles. Initially the benefit figure they had arrived at was in the region of GBP 64 million. This was recognised as unjust and the figures ultimately relied upon by the prosecution and accepted by the judge included only the value of the vehicle transferred to the applicant and the VAT relating to it. As to the bank accounts where the proceeds had been channelled, in order to avoid complexity and to adopt a pragmatic approach, the prosecution had ignored all transactions under GBP 5,000. Moreover, the prosecution relied only upon lodgements into known bank accounts of the applicant, disregarding, for instance, a transfer of GBP 250,000 out of a bank account in the Isle of Man.

17. As to the recoverable amount that had been set by the judge, namely GBP 6.9 million, the prosecution reminded the Court of Appeal that the judge had rejected the evidence given by the applicant and found that there was significant evidence of the applicant dealing with assets in different names. The prosecution had invited the judge not to treat the benefit figure as the recoverable amount but to take a pragmatic approach based on an assessment of the evidence and the justice of the case. In the event, the judge had determined the recoverable amount to be approximately two-thirds of the benefit figure.

18. Having heard the applicant's and the prosecution's submissions, the Court of Appeal was satisfied that neither the approach of the judge nor the conclusion he reached was susceptible to proper criticism and dismissed the appeal.

19. The Court of Appeal also heard submissions from the applicant's counsel that the confiscation proceedings had been unfair because some of the judge's comments during the hearing would have indicated to a reasonable onlooker that the applicant had not received a fair hearing because of the court's annoyance at having been misled in relation to his personal circumstances at the time of sentencing. It was not suggested that the judge was intentionally biased but that subconsciously he might not have given the applicant a sufficiently fair hearing. However, having considered the transcript of the hearing and the judge's ruling, the Court of Appeal was satisfied that there had been no unfairness.

3. The application for leave to appeal to the Supreme Court

20. On 16 June 2011 the applicant sought leave from the Court of Appeal to appeal to the Supreme Court. By letter of 3 August 2011 the applicant was notified that on 29 July 2011 the Court of Appeal had granted leave to appeal. However, on 9 September 2011 the applicant was notified that the previous directions had been given in error and that the Court of Appeal had in fact not given leave to appeal. A hearing was set for 10.30 a.m. on 25 October 2011 for the Court of Appeal to formally hand down its decision to refuse leave to appeal to the Supreme Court. The applicant asked to be able to make representations at that hearing. When his counsel arrived at 10.15 a.m. on that date he was informed that the court had decided to sit early and had delivered its decision. There was therefore nothing more that could be done.

B. Relevant domestic law and practice

1. Confiscation proceedings

21. Confiscation proceedings are governed by the Proceeds of Crime Act 2002 ("the 2002 Act"). Section 6(4) sets out the approach to be followed by the court:

> "(a) it must decide whether the defendant has a criminal lifestyle;
>
> (b) if it decides that he has a criminal lifestyle it must decide whether he has benefited from his general criminal conduct;
>
> (c) if it decides that he does not have a criminal lifestyle it must decide whether he has benefited from his particular criminal conduct."

22. Section 6(5) provides that where the court decides that the defendant has benefited from the conduct referred to, it must decide the recoverable amount and make a confiscation order requiring him to pay that amount. Section 6(7) requires any question arising under subsections (4) or (5) to be decided on the balance of probabilities.

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

> "(1) If the court decides under section 6 that the defendant has a criminal lifestyle it must make the following four assumptions for the purpose of —
>
> (a) deciding whether he has benefited from his general criminal conduct, and
>
> (b) deciding his benefit from the conduct.
>
> (2) The first assumption is that any property transferred to the defendant at any time after the relevant day was obtained by him —
>
> (a) as a result of his general criminal conduct, and
>
> (b) at the earliest time he appears to have held it.
>
> (3) The second assumption is that any property held by the defendant at any time after the date of conviction was obtained by him —
>
> (a) as a result of his general criminal conduct, and
>
> (b) at the earliest time he appears to have held it.
>
> (4) The third assumption is that any expenditure incurred by the defendant at any time after the relevant day was met from property obtained by him as a result of his general criminal conduct.
>
> (5) The fourth assumption is that, for the purpose of valuing any property obtained (or assumed to have been obtained) by the defendant, he obtained it free of any other interests in it.
>
> (6) But the court must not make a required assumption in relation to particular property or expenditure if —
>
> (a) the assumption is shown to be incorrect, or

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

24. The "relevant day" referred to in subsections (2) and (4) is normally the day six years before proceedings were started against the defendant (section 10(8)). Thus, any property transferred to the defendant at any time in the six years before his conviction will be assumed to have been obtained by him as a result of his general criminal conduct.

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

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

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

(a) the available amount, or

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

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

2. Appeals in criminal cases from the Court of Appeal to the Supreme Court

27. Section 33 of the Criminal Appeal Act 1968 provides:

"**Right of appeal to [Supreme Court]**

(1) An appeal lies to the Supreme Court at the instance of the defendant or prosecutor from any decision of the Court of Appeal on an appeal to that court ...

(2) The appeal lies only with the leave of the Court of Appeal or the [the Supreme Court]; and leave shall not be granted unless it is certified by the Court of Appeal that a point of law of general public importance is involved in the decision and it appears to the Court of Appeal or the [the Supreme Court] (as the case may be) that the point is one which ought to be considered by [the Supreme Court].

(3) Except as provided for by this part of this Act ... no appeal shall lie from any decision of the Criminal Division of the Court of Appeal."

C. Relevant international instruments

28. The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime 1990 entered into force in September 2003. It aimed to facilitate international co-operation and mutual assistance in investigating crime and tracking down, seizing and confiscating the proceeds thereof. Parties undertake in particular to criminalise the laundering of the proceeds of crime and to confiscate instrumentalities and proceeds (or property the value of which corresponds to such proceeds).

COMPLAINTS

29. The applicant complains that the domestic proceedings in his case were unfair and in violation of Article 6 for three reasons.

30. First, the calculation of the amount of the confiscation order had been unfair. The evidence relied on by the prosecution to establish the benefit figure had included evidence which was outside the terms of the applicant's guilty plea. To suggest that a benefit was obtained merely from a vehicle passing through the applicant's hands without having to prove any VAT offence was artificial and misleading. It was also artificial to take the benefit figure as the entire value of the vehicle when the only offence was VAT evasion and the purchase price had been paid to another person. Furthermore, when the vehicle was sold, the profit was used to buy another vehicle where VAT was sometimes paid. To count each vehicle's value without accounting for the purchase price was to establish a notional benefit figure which had no bearing on the truth of the case. Moreover, this notional benefit figure was translated into a recoverable amount by reference to hidden assets in the full knowledge that the money never existed independently because it was a cumulative figure. This was to place an impossible burden on the applicant. The procedure was therefore manifestly unfair and in effect added ten years to the applicant's sentence, notwithstanding that the offence only merited a substantive sentence of twenty-eight months.

31. Secondly, the applicant maintained that the confiscation proceedings had been unfair. Some of the judge's comments during the hearing would have indicated to a reasonable onlooker that the applicant had not received a fair hearing because of the court's annoyance at having been misled in relation to his personal circumstances at the time of sentencing.

32. Thirdly, he complains that the procedure before the Court of Appeal (when he was wrongly told he had leave to appeal to the Supreme Court and was denied the chance to make representations when later told of the error) was unfair.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION REGARDING THE CALCULATION OF THE CONFISCATION ORDER

33. Article 6 § 1 of the Convention provides:

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

A. General principles and *Minhas v. the United Kingdom*

34. In *Minhas v. the United Kingdom* (dec.), no. 7618/07, 10 November 2009, which also concerned a complaint that confiscation proceedings brought under the 2002 Act were unfair, the Court stated that the general principles applicable to the case were the following:

> "The Court has previously held that the making of a confiscation order under the Drug Trafficking Act 1994 was analogous to a sentencing procedure. Article 6 § 1, which applies throughout the entirety of proceedings for 'the determination of ... any criminal charge', including proceedings whereby a sentence is fixed, was therefore applicable (see *Phillips v. the United Kingdom*, no. 41087/98, § 39, ECHR 2001-VII; and *Grayson and Barnham v. the United Kingdom*, nos. 19955/05 and 15085/06, § 37, 23 September 2008). The provisions relating to confiscation orders in the 2002 Act merely update and consolidate the previous legislation. Accordingly, Article 6 § 1 under its criminal head applies to the confiscation proceedings in the present case.
>
> Although it is clear from the Court's case law that Article 6 § 2 is not applicable to such proceedings (as the protection offered by that Article ceases once an accused has been proved guilty of an offence), the presumption of innocence is inherent in the notion of a fair trial guaranteed by Article 6 § 1 (*Phillips*, cited above, §§ 35 to 36).
>
> The presumption of innocence and the notion of a fair trial require that the burden of proof must generally fall on the prosecution in criminal proceedings (see *Barberà, Messegué and Jabardo v. Spain*, 6 December 1988, § 77, Series A no. 146). However, once discharged it may be transferred to the accused when he is seeking to establish a defence (see *Lingens and Leitgeb v. Austria*, no. 8803/79, Commission decision of 11 December 1981, Decisions and Reports 26, p. 171). In *Phillips*, the Court emphasised that the right to the presumption of innocence is not absolute, since presumptions of fact or of law operate in every criminal law system (cited above, § 40). Accordingly, the Convention does not prohibit presumptions of fact or law that may operate against an accused, but any such presumptions must be confined within reasonable limits which take into account the importance of what is at stake and maintain the rights of the defence (see *Salabiaku v. France*, 7 October 1988, § 28, Series A no. 141-A). The Court's review of the application of presumptions is limited to determining whether the way in which they were applied in the particular proceedings offended the basic principles of a fair procedure inherent in Article 6 § 1 (*Phillips*, cited above, § 41; and *Grayson and Barnham*, cited above, § 42). As a general rule, it is for domestic courts to assess the evidence before them and it is not within the province of the Court to substitute its own assessment of the facts for that of the domestic courts. The Court's task is to ascertain whether the proceedings in their entirety, including the way in which evidence was taken, were fair (*Edwards v. the United Kingdom*, judgment of 6 December 1992, Series A no. 247-B, § 34; and *Grayson and Barnham*, cited above, § 42)."

35. Those principles will guide the Court's examination of the present applicant's complaint about the fairness of the confiscation proceedings in his case (see paragraphs 42 – 46 below).

36. In *Minhas*, the applicant was one of three men to have taken part in the robbery of jewellery worth over GBP 600,000. He was the only one convicted (one other man was tried but acquitted) and so the only one in respect of whom confiscation proceedings were brought. At the confiscation

hearing he continued to deny his involvement in the robbery and gave no evidence as to the identities of the other two men. In the absence of evidence from the applicant, the judge found that he had benefited from the whole sum of GBP 600,000 and that an "apportionment approach" (dividing the benefit into three to reflect the three participants in the robbery) was inappropriate in determining the benefit figure, which was simply GBP 600,000. The judge also found that, in the absence of evidence from the applicant to the contrary, the recoverable amount was the same as the benefit amount.

37. In assessing the complaint made by Mr Minhas that the confiscation proceedings were unfair the Court noted that they consisted of two separate stages: the calculation of the benefit figure and the calculation of the recoverable amount.

38. At the first stage, the Court considered that it was appropriate, in light of the applicant's conviction and once the value of the jewellery had been established, for the burden to pass to him to demonstrate, on a balance of probabilities, that the proceeds of the robbery had been apportioned and that his benefit was therefore less than the full value of the jewellery. Such information fell within his particular knowledge and the burden on him would not have been difficult to meet. Instead of providing such evidence he continued to deny his participation in the robbery, refused to reveal the identities of the two other men involved, and declined to say what had happened to the proceeds of the robbery.

39. At the second stage, the Court was satisfied that it would not have been unduly burdensome on the applicant to demonstrate, once the amount of the benefit had been assessed, that his assets were insufficient to meet a confiscation order made out for that sum. It had been open to the applicant to give evidence as to how he had disposed of the jewellery and to provide full disclosure as to the assets that he held. However, he did not even attempt to explain what had happened to the proceeds of the robbery.

40. The Court concluded that throughout the confiscation proceedings the rights of the defence had been protected by the safeguards built into the system. These included that:

- The assessment of the confiscation sum was carried out by a court with a judicial procedure, including a public hearing and advance disclosure of the prosecution case.
- The applicant was represented by junior and leading counsel of his choice. He gave oral evidence at the hearing and had the opportunity to adduce documentary and oral evidence in order to support his counsel's submissions that the value of the benefit or the recoverable amount was less than the full value of the stolen jewellery.
- It was compatible with Article 6 to place the onus on the applicant to provide credible information as to the identities of other recipients and the destination of the proceeds of the robbery.

– It was not incompatible with the notion of a fair hearing in criminal proceedings to place the onus on the applicant to give a plausible account of his current financial situation if he wished to argue that the recoverable amount was less than the full value of the benefit.
– The application of the relevant provisions of the 2002 Act, including the reversal of the burden of proof, was confined within reasonable limits given the importance of what was at stake for the applicant.

41. For these reasons, the Court found that Mr Minhas' complaint under Article 6 was manifestly ill-founded.

B. The present case

42. The Court's reasons for finding the complaint in *Minhas* to be manifestly ill-founded apply with the same – if not greater – force to the present application.

43. As in *Minhas*, the assessment of the confiscation sum to be paid by the applicant was carried out by a court with a judicial procedure including a public hearing and advance disclosure of the prosecution case. Again, as in *Minhas*, at that hearing the applicant was represented by junior and leading counsel of his choice, he gave oral evidence over two days and he had the opportunity to adduce documentary and oral evidence (see paragraph 8 above). Just as in *Minhas*, it was fair to place the onus on the applicant to give a plausible account of his current financial situation if he wished to argue that the recoverable amount was less than the full value of the benefit.

44. It is true that, as the applicant has submitted, the evidence relied on by the prosecution to establish the benefit figure had included evidence which was outside the terms of his guilty plea. Nonetheless, it would have been quite clear to the applicant, both at his trial and afterwards, that the charges against him (evading VAT for fifteen vehicles) were representative ones which revealed a far larger criminal undertaking. Indeed, it would have been clear that his guilty plea to the evasion of VAT on these fifteen vehicles – which was accepted by the court and the prosecution for the purposes of sentencing – had not been accepted by the prosecution for the purpose of the intended confiscation proceedings (see paragraph 7 above). The applicant was therefore quite aware that the confiscation proceedings would not be confined to the fifteen vehicles in respect of which he had pleaded guilty. Indeed, in the course of those confiscation proceedings the applicant came to accept that some two hundred vehicles had "passed through his hands" when he was engaged in the buying and selling of them (see paragraph 9 above).

45. The Court is also not persuaded that the benefit figure calculated by the judge was, as the applicant has claimed, artificial, misleading or notional. The Court is prepared to accept that a benefit figure that was the

result of an arbitrary calculation could be unfair within the meaning of Article 6, especially if that benefit figure ultimately led to the defendant serving a sentence of imprisonment because it produced a confiscation sum that was, as a matter of logic, impossible for him to pay. However, that is not the case here. As the prosecution explained to the Court of Appeal, they had been well aware of the dangers of double counting and for that reason had only counted the value of the vehicles transferred to the applicant and the VAT relating to them. They had also ignored all transactions under GBP 5,000 and relied only upon lodgments into known bank accounts of the applicant, disregarding, for instance, a transfer of GBP 250,000 out of a bank account in the Isle of Man (see paragraph 16 above). These entirely understandable decisions reduced the benefit figure from GBP 64 million to GBP 10.5 million (see paragraph 11 above).

46. It is noteworthy that in his application to the Court the applicant has simply reiterated the submissions he made against the confiscation order before Court of Appeal; he has not taken issue with the prosecution's explanations to the Court of Appeal or otherwise alleged that those explanations were incorrect. In the absence of any submissions to that effect, the Court sees no reasons to depart from the Court of Appeal's conclusion that that benefit figure had been calculated fairly.

47. Finally, the Court does not accept the applicant's submission that the translation of the benefit figure into the recoverable amount by reference to hidden assets placed an impossible burden on him. If the recoverable amount was assessed on the basis of hidden assets, this was because the judge was satisfied that the applicant had appreciable and significant hidden assets and that he had provided the court no assistance whatsoever in identifying them (see paragraph 14 above). In any case, the benefit figure was not simply translated into the recoverable amount as the applicant has alleged. As a result of the judge's decision to stand back and take a broad view of the property that the applicant had failed to disclose, the recoverable amount (and thus the confiscation amount) was set at GBP 6.5 million, just over two-thirds of the benefit figure (see again paragraph 14 above). In view of the judge's prior findings as to appreciable and significant hidden assets, that final figure was not only fair to the applicant but generous to him.

48. For that reason, the applicant's complaint relating to the calculation of the confiscation order is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION REGARDING THE JUDGE'S BIAS

49. For similar reasons to those given above, the Court can find no reason to depart from the Court of Appeal's conclusion that the judge conducted the confiscation proceedings fairly. Despite providing both the

transcript of the hearing and the transcript of the judge's ruling on confiscation in support of his application, the applicant has not taken the Court to any passage in either transcript that would indicate objective or subjective bias on the judge's part. The judge's findings as to the applicant's credibility were expressed in strong terms, but they had to be: the judge had been lied to by the applicant in the course of the proceedings. It was despite those lies, and despite the applicant's failure to disclose his hidden assets, that the judge "stood back" and set a confiscation order that was only two-thirds of the benefit figure. That alone is sufficient for the Court to conclude, first, that any annoyance at having been misled did not cause the judge to act unfairly; and, secondly, that the judge's objectivity cannot be impugned.

50. For that reason, this complaint is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION REGARDING THE PROCEEDINGS BEFORE THE COURT OF APPEAL

51. The nub of the applicant's complaint under this heading is that he was not given an opportunity to make representations at the hearing at which the Court of Appeal formally gave its decision to refuse leave to appeal to the Supreme Court. This was because the Court of Appeal had decided to sit earlier than expected. The Court is satisfied that the Court of Appeal caused no unfairness to the applicant. The hearing was a purely formal one for the purposes of handing down its decision. The applicant's representations, had his counsel been given the opportunity to make them, could only have been that it would be unfair both to refuse to certify a question of general public importance and to refuse him leave to appeal when he had previously been led to believe that those requests had been granted. Even if the Court of Appeal had been persuaded by that submission as to unfairness, it was not within its power simply to certify a question. To so certify, the Court of Appeal had to be persuaded that the criterion for certification – that a point of law of general public importance had been involved in its decision to dismiss the applicant's appeal against the confiscation order – had been met. The Court of Appeal had already indicated that it was not prepared to do so because the applicant's case had been decided on its facts and thus no such point of law had been involved in its decision. There was little likelihood that submissions at the hearing would have changed the Court of Appeal's view on that point. As such, the Court of Appeal's decision to sit earlier than expected had no bearing on the fairness of the proceedings before that court.

52. Therefore, this complaint is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Françoise Elens-Passos	Ineta Ziemele
Registrar	President