



The Court declares ill-founded complaints about the fairness of proceedings against a man convicted of money laundering

In its decision in the case of [Zschüschen v. Belgium](#) (application no. 23572/07) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned criminal proceedings which led to Mr Zschüschen's conviction for money laundering. He had opened an account in a Belgian bank and, within two months, paid a total of 75,000 euros (EUR) into it. Questioned by the authorities about the origin of the money, he remained silent throughout the proceedings.

Mr Zschüschen complained of a violation of his right to be presumed innocent, his right to remain silent and his defence rights more generally.

The Court found that this complaint was manifestly ill-founded, taking the view that the approach of the trial courts, which did not find it necessary to define the predicate offence in order to convict a person of money laundering, had not had the effect of shifting the burden of proof from the prosecution to the defence. The Court noted in particular that the domestic courts had convincingly established a body of circumstantial evidence sufficient to find Mr Zschüschen guilty, and that his refusal to provide the requisite explanations about the origin of the money had merely corroborated that evidence.

Mr Zschüschen complained of a violation of his right to be informed promptly of the accusation against him, as the predicate offence underlying the money laundering had not been described in the summons to appear before the criminal court.

The Court found this complaint manifestly ill-founded, considering that the summons contained a comprehensive and detailed description of all the suspicious transactions and referred to the legal characterisation of the facts, such as to enable Mr Zschüschen to be aware that he was charged with money laundering and to exercise his defence rights.

Principal facts

The applicant, Steve Mitchell Zschüschen, is a Dutch national who was born in 1970 and lives in Amsterdam.

In March 2003 Mr Zschüschen opened an account in a bank in Belgium and, within two months, paid a total of 75,000 euros (EUR) into it, in five instalments. The bank notified the information processing unit of the payments, and criminal proceedings were brought against Mr Zschüschen for money laundering. When he was questioned about the origin of the money he explained that it came from undeclared work over four years, without giving the name of his employers.

In June 2005 Antwerp Criminal Court gave Mr Zschüschen a suspended sentence of ten months' imprisonment and fined him EUR 5,000. The EUR 75,000 on his account was also confiscated on the grounds that it constituted a pecuniary benefit directly linked to the offence. In its reasoning, the court had regard to the fact that Mr Zschüschen had not explained the origin of the money, that he had a record in the Netherlands of drug-related offences and that he had no income in that country. The judgment was upheld on appeal, and Mr Zschüschen's appeal on points of law was dismissed in November 2006.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 25 May 2007.

Relying on Article 6 §§ 1 and 2 (right to a fair trial/presumption of innocence), Mr Zschüschen submitted that his right to be presumed innocent, his right to remain silent and his defence rights more generally, had been violated, in view of the fact that the domestic courts had not described in detail the predicate offence underlying the money laundering charge and had failed to establish the unlawful origin of the allegedly laundered money. Mr Zschüschen also relied on Article 6 § 3 (a) (right to be informed promptly of the accusation), arguing that the fact that the predicate offence had not been mentioned or described in the summons to appear before the criminal court had prevented him from being informed of its nature and cause; nor had that information been given at a later stage of the proceedings. Lastly, he also relied on Article 1 of Protocol No. 1 to the Convention (protection of property).

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

Robert Spano (Iceland), *President*,
Julia Laffranque (Estonia),
Ledi Bianku (Albania),
Nebojša Vučinić (Montenegro),
Paul Lemmens (Belgium),
Jon Fridrik Kjølbro (Denmark),
Stéphanie Mourou-Vikström (Monaco), *Judges*,

and also Stanley Naismith, *Section Registrar*.

Decision of the Court

[Article 6 §§ 1 and 2 \(right to a fair trial/presumption of innocence\)](#)

The Court noted that Mr Zschüschen had made some initial statements under questioning but that he did not wish to provide any further information on the money in question. He had been able to remain silent throughout the proceedings and had not been under duress. His refusal to answer questions was not a criminal offence in itself.

The Court further stated that the fact that the trial courts had used Mr Zschüschen's refusal to justify his vague and unconvincing statements about the origin of the money, among other evidence, in finding that the money had not been legally obtained, did not constitute in itself a breach of the applicant's right to remain silent and not to incriminate himself. The Convention did not prohibit a court from taking into account the silence of an accused person in finding him or her guilty, unless the conviction was based exclusively or essentially on his silence, which was clearly not the case here. The Court noted that the domestic courts had convincingly established a body of circumstantial evidence sufficient to find Mr Zschüschen guilty. His refusal to provide the requisite explanations about the origin of the money had merely corroborated that evidence. In this connection the Court reiterated that it was not incompatible with the notion of a fair criminal trial that the persons concerned should be obliged to give credible explanations about their assets. If Mr Zschüschen's account about his financial transactions had corresponded to the truth, it would not have been difficult for him to prove the origin of the money. The Court thus took the view, having regard to the evidence against Mr Zschüschen, that the conclusions drawn from his refusal to give a convincing explanation about the origin of the money deposited in his Belgian bank account had been dictated by common sense and could not be regarded as unfair or unreasonable.

The Court further took the view that the approach of the trial courts, which – in line with the settled case-law of the Court of Cassation – did not find it necessary to define the predicate offence in order

to convict a person of money laundering, had not had the effect of shifting the burden of proof from the prosecution to the defence, in breach of the principle of the presumption of innocence.

The Court dismissed this complaint, finding it manifestly ill-founded.

[Article 6 § 3 \(a\) \(right to be informed promptly of the accusation\)](#)

The Court noted that, in accordance with the requirements of domestic case-law, the summons of 17 February 2004 had contained a comprehensive and detailed description of all the suspicious transactions and had also referred to the legal characterisation of the facts. In the Court's view, Mr Zschüschen had been charged with money laundering and the fact that the summons merely described the transactions which served to establish the existence of this offence sufficed to enable the accused to exercise his defence rights. The Court, moreover, explained that no obligation to additionally explain the unlawful activities from which the proceeds had subsequently been laundered could be derived from Article 6 § 3 (a) of the Convention, as those activities did not constitute the object of the accusation. Consequently, the Court found that the summons served on Mr Zschüschen had enabled him to be informed, in a sufficiently detailed manner, of the nature and cause of the accusation against him. **This complaint was thus manifestly ill-founded.**

[Article 1 of Protocol No. 1 to the Convention \(protection of property\)](#)

As this complaint had not been raised before the national courts, **the Court dismissed it for failure to exhaust domestic remedies.**

The decision is available only in French.

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