CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

## THIRD SECTION

## DECISION

## AS TO THE ADMISSIBILITY OF

Application no. 41661/98
by Francis John BUTLER
against the United Kingdom

The European Court of Human Rights (Third Section), sitting on 27 June 2002 as a Chamber composed of

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Sir Nicolas BRATZA,
Mr P. KŪRIS,
Mr B. ZUPANČIČ,
Mr J. HEDIGAN,
Mrs M. TSATSA-NIKOLOVSKA, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 2 April 1998 and registered on 11 June 1998,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

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

Having deliberated, decides as follows:

# THE FACTS

The applicant is a British national, born in 1956 and living in London, England. He is represented before the Court by Mr Keir Starmer, barrister-at-law, instructed by Messrs Hughmans, Solicitors, London. The respondent Government are represented by their Agent, Mr C. Whomersley, Foreign and Commonwealth Office, London.

## A. The circumstances of the case

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

The applicant is a heavy gambler on horses and often held large sums of money in cash for this purpose. Apart from his winnings, the applicant also inherited a large sum in cash from his father in 1990 and in 1992 realised a substantial profit on the sale of a house which he bought and had refurbished.

The applicant states that he has never been convicted of any drugs-related offences and maintains that he was wrongly prosecuted and convicted in relation to the handling of cash stolen from a post office in 1985. He was given a five-year prison sentence and was released in 1988.

In July 1994, and in order to avoid off-course betting duty, the applicant decided to open an account under a pseudonym with a specialist bookmaker who conducted business inside racetracks. The applicant on occasions attended race meetings carrying large sums of money. According to the applicant, in July 1994 he had, mainly through his winnings, over GBP 600,000 available to him for betting.

The applicant also used his bookmaker's account for placing bets over the telephone. Such bets were deemed to be off-course bets and were thus subject to tax. Having ascertained that he could avoid tax on off-course betting by gambling off-shore as a non-resident, the applicant decided to buy property in Spain and contacted a lawyer in Spain to this end.

The applicant arranged a meeting with the lawyer in Spain for 23 September 1996. After the meeting the applicant intended to go to a race meeting in Paris.

Having discovered that his partner's brother, H, was intending to take a holiday in Spain, and being nervous about taking the money himself, the applicant enlisted H's help in taking GBP 240,000 to Spain as a favour. According to the applicant, he wanted to look at properties in southern Spain in the price range GBP 40,000 to GBP 150,000 and required the rest for the race meeting in Paris. The applicant arranged to meet H in Spain.

On 17 June 1996 H, who was driving a hired car, was stopped at Portsmouth by a Customs and Excise Officer. When asked how much cash he was carrying, H replied GBP 500. A subsequent search of the boot of the

car revealed GBP 240,000 in a green hold-all. H stated that the sum in question belonged to a friend who was meeting him in Spain.

H was subsequently questioned about the money by Customs and Excise officials. H stated that the money belonged to the applicant, that he was taking it out of the country for the applicant, that the latter wanted to use it to buy an apartment in Spain and that he was travelling to Madrid and Barcelona.

The money seized was sent for forensic testing and the sum of GBP 239,010 was deposited with the Midland Bank on 20 September 1996.

The applicant contacted the Customs and Excise authorities to reclaim the money and attended voluntarily for interview on 4 October 1996 together with his solicitor. On that occasion the applicant was told that he was not under arrest. He answered the questions put to him and gave permission to examine his bank accounts as well as his account with his bookmaker.

An order for the detention of the applicant's money was granted by Portsmouth Magistrates' Court on 19 September 1996 on application of the Customs and Excise authorities pursuant to section 42(2) of the Drug Trafficking Act 1994. A further order was made on 17 October 1996.

In February 1997 the Customs and Excise authorities made an application under section 43(1) of the Drug Trafficking Act 1994 for the forfeiture of GBP 239,010 seized from the applicant on the grounds that its officers believed that the money was directly or indirectly the proceeds of drugs trafficking and/or was intended for use in drug trafficking. On 25 and 26 June 1997 the Portsmouth Magistrates' Court made an order for the confiscation of the sum in question and ordered the applicant to pay the costs of the hearing.

The applicant's appeal was heard before Portsmouth Crown Court on 2 and 3 October 1997. The court upheld the forfeiture order and made an order that the applicant pay a further amount towards costs.

In the applicant's opinion, the Crown Court did not find that he or H were going to use the money to purchase drugs but that it was satisfied, on the civil standard of proof, that some unidentified third party was going to use it for this purpose. The Government draw attention to their view that the Crown Court did find that the cash was intended for use in drug trafficking. According to the Government, the Crown Court noted that the money was contaminated to a limited extent by cannabinoids and that H had with him in the hire car a plan showing a route through Spain to Malaga. The Government further observe that the cash seized included a large proportion of Scottish notes, which are typically used by drug-traffickers to finance drug deals conducted abroad, and that the south coast of Spain is known to Customs officials as the source of a large number of consignments of drugs destined for the United Kingdom. For the Government, and having regard to the strong circumstantial evidence, the Crown Court found the explanations

given by the applicant and H as to why cash was being carried by H to Spain wholly unbelievable. Thus, the Crown Court concluded:

> "We do find it more probable than not that this money was to be used for trafficking."

The applicant observes that the Crown Court would appear not to have commented on precisely who they believed would be responsible for using the money for drug purchase.

The Government also point out that, as regards the applicant's claim that he had over GBP 600,000 available to him for gambling in 1994 (see above), the only documentary evidence produced by him in relation to his finances showed that he had lost approximately GBP 160,000 between 1991 and 1993, a further GBP 500,000 in 1994, and a further GBP 11,000 in 1995. The Government state that the applicant has produced no evidence at all to substantiate his claim that he made substantial winnings on cash bets since 1994. According to the Government, at the time of the forfeiture of his cash the applicant was receiving social security benefits of approximately GBP 47 per week.

## B. Relevant domestic law

Section 42(1) of the Drug Trafficking Act 1994 provides as follows:

> "A customs officer or constable may seize and, in accordance with this section, detain any cash which is being imported into or exported from the United Kingdom if -
>
> (a) its amount is not less than the prescribed sum - and
>
> (b) he has reasonable grounds for suspecting that it directly or indirectly represents any person's proceeds of drug trafficking, or is intended by any person for use in drug trafficking."

The term "exported" has an extended meaning and includes cash "being brought to any place in the United Kingdom for the purpose of being exported" (section 48(1)). The prescribed sum referred to in section 42(1)(a) is GBP 10,000.

Section 42(2) of the same Act states:

> "Cash seized by virtue of this section shall not be detained for more than 48 hours unless its continued detention is authorised by an order made by a justice of the peace...; and no such order shall be made unless the justice ... is satisfied that
>
> (a) that there are reasonable grounds for the suspicion mentioned in subsection (1) above; and
>
> (b) that continued detention of the cash is justified while its origin or derivation is further investigated or consideration is given to the institution (whether in the United

> Kingdom or elsewhere) of criminal proceedings against any person for an offence with which the cash is connected."

The order cannot endure longer than three months (section 42(3)), but further orders can be made by the court provided the total period of detention does not exceed two years from the date of the first order (section 42(3)). These powers may be used even if no criminal proceedings have been instituted (or even contemplated) against any person for a drug trafficking offence in connection with the money seized.

The person from whom the cash was seized, or any person on whose behalf the cash was being exported or imported, may apply to the magistrates' court for the money to be released on the basis that there are no reasonable grounds for suspecting that it directly or indirectly represents any persons' proceeds of drugs trafficking or is intended by any person for use in drug trafficking (sections 42(6)(2) and (1)). Where an application is made to forfeit the money, the cash seized and detained is not to be released until the relevant proceedings have been concluded (and so overrides the two-year restriction set out in section 42(3)).

Section 43 of the Act provides:

> "(1) A Magistrates' court ... may order the forfeiture of any cash which has been seized under section 42 of this Act if satisfied, on an application made while the cash is detained under that section, that the cash directly or indirectly represents any person's proceeds of drug trafficking, or is intended by any person for use in drug trafficking.
>
> ...
>
> (3) The standard of proof in proceedings on an application under this section shall be that applicable to civil proceedings; and an order may be made under this section whether or not proceedings are brought against any person for an offence with which the cash in question is connected."

Direct evidence is not required to establish that cash seized pursuant to section 42 of the 1994 Act is the proceeds of drug trafficking or is intended for use in drug trafficking. The court may draw inferences from circumstantial evidence, so long as the evidence is sufficient to establish the case to the requisite (civil) standard of proof, namely the balance of probabilities. According to domestic case-law, this is a flexible test which is to be adapted to meet the nature and seriousness of the allegations made (see *Re H* [1996] AC 563, *per* Lord Nicholls).

The legal burden of proof rests on the relevant authorities seeking a detention or forfeiture order.

An appeal against the making of a forfeiture order by a magistrates' court lies to the Crown Court. Appeals to the Crown Court are by way of rehearing. A party to proceedings may apply to a magistrates' court for an order permitting the use of cash which has been seized and detained to pay for legal representation on appeal before the Crown Court (section 44(4)).

A party to the proceedings who wishes to appeal the decision of the Crown Court to make a forfeiture order may apply to the High Court by way of case stated. The High Court on an appeal by way of case stated may overturn the decision of the Crown Court if it is erroneous in law or in excess of jurisdiction (section 28(1) of the Supreme Court Act 1981). A party to the proceedings may also apply to the High Court by way of judicial review to have the decision of the Crown Court quashed on established public law grounds including error of law, procedural unfairness or irrationality (section 29 of the Supreme Court Act 1981). A further appeal lies (with the permission of the court) from the High Court to the Court of Appeal and then to the House of Lords.

## COMPLAINTS

1. The applicant complains under Article 6 § 2 of the Convention that the seizure, detention and forfeiture proceedings under sections 42 and 43 of the Drug Trafficking Act 1994 infringed his right to be presumed innocent since he was compelled to bear the burden of proving beyond reasonable doubt (the criminal standard) that the money at issue was unconnected with drug trafficking, whereas the authorities were only required to prove on a balance of probabilities (the civil standard) that the money taken from him directly or indirectly represented any person's proceeds of drug trafficking or was intended by any person for use in drug trafficking.

In connection with the above submissions, the applicant stresses that the proceedings at issue are criminal in nature and, as such, should attract the safeguards of the criminal process.

2. The applicant further contends that the facts of the case also disclose a breach of Article 1 of Protocol No. 1 to the Convention since he, an innocent party, was deprived of the enjoyment of the money which was forfeited in application of the impugned provisions without the benefit of the guarantees contained in criminal law in respect of the burden and standard of proof and in the absence of any public interest justification.

3. The applicant finally states that he has no effective remedy by which to challenge the forfeiture of his money, in breach of Article 13 of the Convention.

## THE LAW

The applicant maintains that the seizure, detention and forfeiture proceedings under sections 42 and 43 of the Drug Trafficking Act 1994

("the 1994 Act") infringed his right to be presumed innocent, in breach of Article 6 § 2 of the Convention which states:

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

## A. The Government's preliminary objection: non-exhaustion of domestic remedies

The Government request the Court to declare the complaint inadmissible on account of the applicant's failure to exhaust domestic remedies. In the Government's submission, if it is the applicant's argument that the burden of proof had been reversed in the Crown Court proceedings, the applicant could have appealed to the High Court by way of case stated on this point. He could also have applied for judicial review. Equally, the applicant could have complained that there was insufficient evidence to allow the court to conclude that the Customs Commissioners had made out their case to the standard of proof required.

The applicant states in reply that the hearing in the Crown Court did not disclose any identifiable error of law which could be challenged by way of an application for case stated or judicial review. He stresses that his complaint is directed at the primary legislation and how its provisions operated to his detriment.

The Court recalls that according to its established case-law the only remedies which Article 35 of the Convention requires to be exhausted are those that relate to the breaches alleged and at the same time are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness; it falls to the respondent State to establish that these various conditions are satisfied (see, among other authorities, the Vernillo v. France judgement of 20 February 1991, Series A no. 198, pp. 11-12, § 27).

The Court observes that the essence of the applicant's complaint is that the relevant domestic law does not treat forfeiture proceedings as involving the determination of a criminal charge, with the consequences which that entails for the operation of the procedural guarantees contained in Article 6 of the Convention, in particular the right to be presumed innocent. Although the remedies mentioned by the Government may have afforded the applicant the opportunity to contest the decision to forfeit his money on the ground that it was against the weight of the evidence or tainted with illegality, the Court is not persuaded that these remedies would have afforded him any prospects of success. In the first place, it is unlikely that the High Court in a judicial review application or on a case stated would have disturbed the facts as found by the Crown Court or the latter's assessment of the evidence.

Secondly, the applicant has stated that the Crown Court proceedings did not disclose any error of law or that the decisions taken were in any way *ultra vires* such as to warrant an application to the High Court by way of judicial review proceedings. Thirdly, and more decisively, the High Court, either in case stated or judicial review proceedings, would not have entertained a challenge by the applicant to the evidentiary scheme of the 1994 Act.

For these reasons, the Court dismisses the Government's preliminary objection.

### B. Applicability of Article 6 of the Convention under its criminal heading

The Government state that proceedings under sections 42 and 43 of the 1994 Act are classified as "civil" in domestic law. This classification is confirmed in the case-law of the domestic courts. They submit that regard must also be had in this connection to the following considerations: the provisions do not confer on Customs officers or on any other authority a power of arrest; their application does not necessarily involve any allegation of criminal conduct and is not made ancillary to or dependent on any criminal prosecution or conviction; the courts have no power to impose a fine or a term of imprisonment; a detention or forfeiture order cannot result in any party to the proceedings incurring a criminal record of imprisonment. The Government find support for their view in the Court's judgments in the cases of AGOSI v. the United Kingdom (judgment of 24 October 1986, Series A no. 108) and Air Canada v. the United Kingdom (judgment of 13 July 1995, Series A no. 316)).

The Government stress that no "offence" is charged against a person from whom cash is seized and forfeited and that there is no offence in domestic law of intending to use money for drug trafficking or that a third party was to use it for that purpose on his behalf. The forfeiture order made against the applicant was a preventive measure. There was no finding by the domestic courts that the applicant had committed a criminal offence and a perceived association between cash forfeited and criminal activity is not sufficient to make forfeiture proceedings determinative of a criminal charge. The forfeiture order cannot therefore be considered a penalty or punishment. Moreover, the fact that a costs order was imposed on the applicant cannot be said to amount to a criminal penalty. Costs orders are an integral part of civil proceedings in the United Kingdom and simply require the losing party to pay a proportion of the successful party's costs in bringing legal proceedings.

The applicant does not dispute the Government's argument that forfeiture proceedings are classified as "civil" in domestic law. He draws attention, however, to the fact that the domestic courts have begun of late to treat certain matters, for example an income tax penalty assessment, hitherto

classified as civil, as constituting a "criminal charge", even though certain of the considerations mentioned by the Government are lacking. The applicant further considers that the factual circumstances underlying the above-mentioned AGOSI and Air Canada judgments are to be distinguished from his case.

In the applicant's submission, even if the Government are correct in their assertion that a forfeiture order can be made independently of any finding of criminal activity, it must nevertheless be the case that a court when considering whether to make a forfeiture order in the circumstances at issue must effectively be asking itself whether the individual concerned was planning at some future stage to use the funds in question for drug-related activity.

The applicant also disputes the Government's view that a forfeiture order is a preventive and not a punitive measure. He recalls in this connection that the Court in *Phillips v. the United Kingdom* (no. 41087/1998, 5 July 2001 (unreported)) found that the confiscation order in that case was part of the sentencing process and therefore punitive in nature.

The Court notes that criminal charges have never been brought against the applicant, nor against any other party. It is the applicant's contention that the forfeiture of his money in reality represented a severe criminal sanction, handed down in the absence of the procedural guarantees afforded to him under Article 6 of the Convention, in particular his right to be presumed innocence.

The Court does not accept that view. In its opinion, the forfeiture order was a preventive measure and cannot be compared to a criminal sanction, since it was designed to take out of circulation money which was presumed to be bound up with the international trade in illicit drugs. It follows that the proceedings which led to the making of the order did not involve "the determination ... of a criminal charge (see the Raimondi v. Italy judgment of 22 February 1994, Series A no. 281-A, p. 20, § 43; and, more recently, *Arcuri and Others v. Italy* (no. 54024/99, inadmissibility decision of 5. July 2001 (unreported)); *Riela v. Italy* (no.52439/99, inadmissibility decision of 4 September 2001 (unreported)). It further observes that the applicant's reliance on the above-mentioned *Phillips* judgment does not improve his argument on the applicability of Article 6 under its criminal head to the forfeiture proceedings. The confiscation order impugned in that case followed on from the applicant's prosecution, trial and ultimate conviction on charges of importing an illegal drug. It did not give rise to the determination of a separate or new charge against the applicant. The confiscation order was found by the Court in the *Phillips* case to be analogous to a sentencing procedure (ibid. §§ 34 and 39), and, to that extent, attracted the applicability of Article 6. As previously noted, the circumstances of the instant case are different.

It also notes that in its *Phillips* judgment the Court attached weight to the facts that the purpose of the confiscation order in that case was not the conviction or acquittal of the applicant and that the making of the confiscation order had no implications for his criminal record (ibid. § 34). For the Court, these are also relevant considerations for concluding that Article 6 under its criminal head does not apply to the forfeiture proceedings in the instant case.

The Court finds further support for this conclusion in the above-mentioned Air Canada and AGOSI judgments. It does not consider it decisive for the outcome of the applicability issue in this case that in the Air Canada case the applicant company had by its negligence exposed itself to the threat of seizure of one of its aircraft or that an offence of drug smuggling had been committed through the use of its aircraft or that, as in the AGOSI case, third parties had been prosecuted and convicted of the criminal offences associated with the property forfeited. The Court in its Air Canada judgment did not attach importance to these considerations, preferring to lay stress on the fact that no criminal charge was ever brought against the applicant company and that the domestic legal provision under which its aircraft was seized provided a process *in rem* against any vehicle used in smuggling (ibid. pp. 19-20, § 52). Similarly, in its AGOSI judgment, the Court considered that the fact that measures consequential upon an act for which third parties were prosecuted affected in an adverse manner the property rights of AGOSI "cannot of itself lead to the conclusion that, during the course of the proceedings complained of, any "criminal charge", for the purposes of Article 6, could be considered as having been brought against the applicant company" (ibid. p. 22, § 65).

It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

The Court notes that the parties have made observations on compliance with Article 6. It considers that these observations are more appropriately dealt with in the context of the applicant's complaints under Article 1 of Protocol No. 1 and Article 13 of the Convention.

### C. Article 1 of Protocol No. 1

The applicant maintains that the forfeiture of his money in breach of his rights under Article 6 infringed his rights under Article 1 of Protocol No. 1 to the Convention, which provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Government state that the interference with the applicant's property right was provided by law, pursued a legitimate aim and struck a fair balance between the general interest and the interest of the applicant. As to the latter factor, the Government note that the applicant was able to challenge in adversarial proceedings the forfeiture order first before Portsmouth Magistrates' Court and then before the Crown Court. For the Government, there can be no breach of the presumption of innocence by applying a standard of proof based on the balance of probabilities, especially as that test is flexible and can be adapted to the circumstances of a given case - even to the point of requiring cogent evidence before finding matters proved on the balance of probabilities. Secondly, the Court's case-law makes it clear that it is permissible to find criminal charges proved by applying presumptions of fact or law, provided those presumptions are kept within reasonable limits. Accordingly, in the Government's view, it must equally be acceptable to depart from the criminal standard of proof by applying within reasonable limits as in the instant case the flexible balance of probabilities standard, the more so since the proceedings at issue were of a civil nature. In this latter connection, the Government stress that the application of that standard is perfectly consistent with the need to combat drug trafficking and to prevent money being generated as profits from drug trafficking and from being used for the purposes of carrying on drug trafficking.

The applicant considers that the forfeiture of money cannot be justified against an innocent party without the criminal guarantees as to the burden and standard of proof and by evidence which would be inadmissible in criminal proceedings. The applicant contends that the scheme of the 1994 Act is such as to lead to an effective shifting of the burden of proof, in breach of Article 6 § 2. As the proceedings are civil, the Crown does not need to adduce direct evidence of the use of the money. It can rely on circumstantial evidence and oblige the defendant to account for its origin and derivation.

The Court notes that the Government do not dispute that the seizure and forfeiture of the applicant's money amounted to an interference with the peaceful enjoyment of his possessions. It further recalls its established case-law on the structure of Article 1 of Protocol No. 1 and the manner in which the three rules contained in that provision are to be applied (see the above-mentioned AGOSI judgment (p. 17, § 48) and Air Canada judgment (p. 15, §§ 29-30). While noting that the applicant has been permanently deprived of his money in application of the forfeiture order, it considers nonetheless that the impugned interference falls to be considered from the standpoint of the

State's right "to enforce such laws as it deems necessary to control the use of property in accordance with the general interest", the so-called "third rule" (see the above-mentioned AGOSI judgment (p. 15, § 51 et seq; and, as regards an indeterminate confiscation measure, the above-mentioned *Riela* decision).

As to whether the interference with the applicant's property rights was in accordance with the requirements of Article 1 of Protocol No. 1, the Court notes that the forfeiture at issue was effected pursuant to and in compliance with the provisions of the relevant sections of the 1994 Act. The interference was thus in accordance with the domestic law of the respondent State. The applicant has not contested this.

Nor has the applicant contested the public interest considerations which led to the making of the forfeiture order. For the Court, having regard to the scheme of the 1994 Act, there can be no doubt that the seizure and ultimate forfeiture of the applicant's money conformed to the general interest in combating international drug trafficking.

The Court will next assess whether there was a reasonable relationship of proportionality between the means employed by the authorities in the instant case to secure the general interest of the community in the eradication of drug trafficking and the protection of the applicant's fundamental right to the peaceful enjoyment of his possessions. It observes that in assessing whether a fair balance was struck between these interests due weight must be given to the wide margin of appreciation which the respondent State enjoys in formulating and implementing policy measures in this area. It is acutely aware of the problems confronting Contracting States in their efforts to combat the harm caused to their societies through the supply of drugs from abroad and has recognised that the administration of severe sanctions to persons involved in drug trafficking including drug couriers is a justified response to this scourge (see the D. v. the United Kingdom of 2 May 1997, *Reports of Judgments and Decisions* 1997-III, p.p. 791-2, § 46).

The Court notes that the powers of the Customs' authorities were confined by the terms of the 1994 Act. They did not have an unfettered discretion to seize and forfeit the applicant's money. The exercise of their powers was subject to judicial supervision, in particular the obligation to satisfy the Magistrates' Court of the soundness of their belief that the applicant's money was connected with the illicit trafficking in drugs. Furthermore, the applicant was able to have a re-hearing of the case against him in his appeal to the Crown Court.

The applicant disputes the fairness of these proceedings given that he, unlike the Customs' authorities, was at all times required to bear the burden of proof. As to this argument, the Court recalls that in criminal proceedings against an accused it is not incompatible with the requirements of a fair trial to shift the burden of proof to the defence (see as regards inferences drawn

from an accused's silence, *Condron v. the United Kingdom, (*no. 35718/97, § 56, ECHR 2000-IX); nor is the fairness of a trial vitiated on account of the prosecution's reliance on presumptions of fact or law which operate to the detriment of the accused, provided such presumptions are confined within reasonable limits which take into account the importance of what is at stake and maintain the rights of the defence (see the Salabiaku v. France judgment of 7 October 1988, Series A, no. 141-A, p. 16, § 28 *in fine*; the Pham Hoang v. France judgment of 25 September 1992, Series A no. 243, p. 21, § 33). These considerations must *a fortiori* apply to the forfeiture proceedings in the instant case, proceedings which did not involve the determination of a "criminal charge" against the applicant.

It is to be noted that the Customs' authorities had to make out their case for the forfeiture of the applicant's money. To this end, they relied on forensic and circumstantial evidence. The applicant, assisted by counsel, was able to dispute the reliability of this evidence at oral hearings before Portsmouth Magistrates' Court and then before the Crown Court. At no stage was the applicant faced with irrebuttable presumptions of fact or law. It was open to the applicant to adduce documentary and oral evidence in order to satisfy the domestic courts of the legitimacy of the purpose of his visit to Spain, the reasons for taking such a substantial amount of money out of the country in the back of a car as well the source of the money. The Court is satisfied that the domestic courts weighed the evidence before them, assessed it carefully and based the forfeiture order on that evidence. The domestic courts refrained from any automatic reliance on presumptions created in the relevant provisions of the 1994 Act and did not apply them in a manner incompatible with the requirements of a fair hearing. The domestic courts did not accept the applicant's explanations. It is not for the Court to gainsay that conclusion.

Having regard to these considerations, the Court considers that the manner in which the applicant's money was forfeited did not amount to a disproportionate interference with his property rights or, bearing in mind the respondent State's wide margin of appreciation in this area, a failure to strike a fair balance between respect for his rights under Article 1 of Protocol No. 1 and the general interest of the community.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

### D. Article 13 of the Convention

The applicant further complains that he was denied an effective remedy, in breach of Article 13 of the Convention, which provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Government contend that the applicant was able to challenge the seizure of his cash before the domestic courts. Had he been successful, the courts had the power to order the release of the cash and its repayment to him together with interest accrued.

The Court has already noted that the proceedings before Portsmouth Magistrates' Court and the Crown Court afforded the applicant ample opportunity to contest the evidence against him and to dispute the making of a forfeiture order. It considers that the manner in which these proceedings was conducted guaranteed the applicant an effective remedy in respect of his complaint under Article 1 of Protocol No. 1.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court by a majority

*Declares* the application inadmissible.

Vincent BERGER
Registrar

Georg RESS
President