



## UK courts should have balanced individual property rights against interests of general public in case concerning confiscation of wages

In today's Chamber judgment in the case of [Paulet v. the United Kingdom](#) (application no. 6219/08), which is not final<sup>1</sup>, the European Court of Human Rights held, by six votes to one, that there had been:

**a violation of Article 1 of Protocol No. 1 (protection of property)** of the European Convention on Human Rights

The case concerned the confiscation of Mr Paulet's wages following his conviction for obtaining employment using a false passport. Mr Paulet complained that the confiscation order against him had been disproportionate as it amounted to the confiscation of his entire savings over nearly four years of genuine work, without any distinction being made between his case and those involving more serious criminal offences such as drug trafficking or organised crime.

The Court found that the UK courts' scope of review of Mr Paulet's case had been too narrow. Notably, they had simply found that the confiscation order against Mr Paulet had been in the public interest, without balancing that conclusion against his right to peaceful enjoyment of his possessions as required under the European Convention.

### Principal facts

The applicant, Didier Pierre Paulet, is an Ivoirian national who was born in 1984 and lives in Leeds (England).

Mr Paulet arrived in the United Kingdom in January 2001 and lived illegally at an address in Bedford. Between April 2003 and February 2007 he obtained three jobs - with a recruitment agency, in a cash and carry business and as a forklift truck driver - using a false French passport.

On applying for a provisional driving licence in January 2007, Mr Paulet's passport was discovered and criminal proceedings were brought against him. In June 2007 he pleaded guilty in Luton Crown Court to, among other offences, obtaining a pecuniary advantage by deception. He was subsequently sentenced to a total of 17 months' imprisonment and a confiscation order was imposed in the sum of 21,949.60 pounds sterling.

Mr Paulet argued on appeal that the confiscation order was an abuse of process as it amounted to the confiscation of his entire savings over nearly four years of genuine work. He submitted in particular that a confiscation order could be described as "oppressive" if it did not pursue the legitimate aim of stripping defendants of the proceeds of crime, reiterating that Parliament had intended the legislation to be compatible with the European Convention of Human Rights. His appeal was dismissed in July 2009 on the ground that the confiscation order had not amounted to an abuse of process as there was not only a link between his earnings and the criminal offences, but

<sup>1</sup> Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

also a wider public interest in confiscation as he had deliberately circumvented the prohibition against him seeking employment in the UK.

Ultimately, in October 2009 the Court of Appeal refused to certify a point of law of general public importance meaning Mr Paulet could not apply for permission to appeal to the Supreme Court.

Enforcement proceedings have since been brought against Mr Paulet.

## Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights, Mr Paulet complained that the confiscation order against him had been disproportionate, submitting that his case should have been distinguished from cases involving more serious criminal offences such as drug trafficking or organised crime.

The application was lodged with the European Court of Human Rights on 4 February 2008.

Judgment was given by a Chamber of seven judges, composed as follows:

Ineta Ziemele (Latvia), *President*,  
George Nicolaou (Cyprus),  
Ledi Bianku (Albania),  
Nona Tsotsoria (Georgia),  
Zdravka Kalaydjieva (Bulgaria),  
Paul Mahoney (the United Kingdom),  
Krzysztof Wojtyczek (Poland),

and also Françoise Elens-Passos, *Section Registrar*.

## Decision of the Court

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

It was not in dispute that the confiscation order against Mr Paulet had amounted to an interference with his right to peaceful enjoyment of his possessions and that such interference by a State was allowed under the second paragraph of Article 1 of Protocol No. 1 to “control the use of property to secure the payment of penalties”. The Court had to consider, however, whether the proceedings as a whole had given Mr Paulet a reasonable opportunity to put his case to the competent authorities so that they could establish a fair balance between the conflicting interests at stake, namely Mr Paulet’s right to protection of his property and the requirements of the general interest.

The Court noted that Mr Paulet had argued before the national courts that a confiscation order would be “oppressive” or an “abuse of process” under domestic law if the benefit figure could properly be described as “disproportionate”, either in the traditional sense used in criminal proceedings or in the language of the Convention. The Court of Appeal held that the confiscation order was not an “abuse of process” as the appropriate link between Mr Paulet’s earnings and his criminal offences, in the context of the wider public interest, was plainly established.

The Court accepted that at the time the applicant brought his complaint before the domestic courts, it had been appropriate for him to argue it as he did. In this regard, it noted that it was only in 2012, while giving judgment in another confiscation case (*R. v. Waya*), that the UK Supreme Court found that it would be preferable under British law to analyse confiscation cases in terms of proportionality under Article 1 of Protocol No. 1 than for complainants to invoke the concept of “abuse of process”.

Nevertheless, the Court found that as domestic law had only permitted the national courts to consider whether or not a confiscation order was “oppressive” or an “abuse of process” at the time Mr Paulet’s case was decided, the scope of review carried out by them had been too narrow. As a result, the Court concluded that, in the circumstances of this case, there had been a violation of Article 1 of Protocol No. 1.

#### Article 41 (just satisfaction)

The Court held, by five votes to two, that the United Kingdom was to pay Mr Paulet 2,000 euros (EUR) in respect of non-pecuniary damage and EUR 10,000 to cover the costs and expenses of Mr Paulet’s lawyer.

#### Separate opinions

Judges Bianku, Kalaydjieva, Mahoney and Wojtyczek expressed separate opinions which are annexed to the judgment.

*The judgment is available only in English.*

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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.