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

THIRD SECTION

CASE OF C.M. v. FRANCE

(Application no. 28078/95)

DECISION

STRASBOURG

26 June 2001

[TRANSLATION]

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THE FACTS

The applicant, C. M., is a French national, born in 1939 and living in Grande Synthe (France). He is represented before the Court by Mr W. Watel, a lawyer practising in Lille.

A. The circumstances of the case

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

The applicant is the owner of a private motor vehicle which he also uses in the course of his professional activities with the permission, granted on 1 October 1991, of the regional director for industry, research and the environment.

On 22 September 1994 the applicant's son, accompanied by a friend, was driving the car when he was stopped for a customs inspection. The customs officers found nineteen grams of heroin, whereupon the applicant's son and his friend admitted that they had been to the Netherlands to acquire drugs for their personal use.

On 23 September 1994 the Lille Criminal Court convicted the applicant's son of drug smuggling and drug use. The Court also ordered that the vehicle used to commit the smuggling offence should be forfeited to the customs authorities. The applicant's son lodged an appeal against the judgment relating solely to the forfeiture of the vehicle.

On 18 January 1995 the Douai Court of Appeal upheld the judgment ordering the forfeiture on the following grounds:

> "The vehicle was lawfully seized under Article 323 of the Customs Code.
>
> Under Article 414 of the Customs Code, any smuggling offence involving prohibited goods results in the forfeiture of the vehicle.
>
> Liability to forfeiture is incurred whenever an offence has been committed (Court of Cassation, Criminal Division – "Cass. Crim.", 1980).
>
> Moreover, it is clear that the vehicle was used to commit the offence.
>
> The case law provides the following clarification of the position:
>
> – The statutory provision requiring the forfeiture of vehicles used for smuggling is general and absolute and makes no exception in respect of vehicles without which it would have been impossible to bring smuggled goods in or out. It suffices that they were used in one way or another. (Cass. Crim. 1956)
>
> – Courts which find that a vehicle was used for smuggling cannot refrain from ordering their forfeiture save where they find extenuating circumstances as provided by Article 369 of

the Customs Code, which makes no reference to Article 463 of the former Criminal Code and is not covered by section 323 of Law no. 92-1336 of 16 December 1992.

Accordingly, this court allows the authorities' application and upholds the judgment of the Lille Criminal Court since, in view of the seriousness of the offences of which he is accused, [the applicant's son] is not entitled to plead extenuating circumstances under customs law."

The applicant was not notified of either the judgment of 23 September 1994 or that of 18 January 1995.

In a letter of 30 September 1994 the applicant's lawyer asked the customs authorities to return the applicant's private vehicle to him along with some personal effects (a pair of gloves, a pair of hunting boots, two knives and a pack of cards).

On 28 October 1994 the applicant's lawyer sent a further letter repeating his request and stating that the applicant refused to pay any sum, however small, to recover his vehicle.

In a letter of 18 November 1994 the interregional director of customs stated that the applicant could recover his personal effects, as he had already been told during a telephone conversation on 26 September 1994. Regarding the vehicle, the director informed him that he was "prepared to accept a friendly settlement for the transfer of the vehicle ... in return for payment in cash of FRF 3,000 (three thousand francs)".

B. Relevant domestic law and practice

1. The Customs Code

The relevant provisions of the Customs Code read as follows:

Article 326

"1. When seized goods are not prohibited an offer to release the vehicle from judicial seizure shall be made subject to security from a reliable guarantor or deposit of the value.

2. That offer and the reply thereto shall be recorded in the official report.

3. The vehicle shall be returned without the need for a guarantor or a deposit to any owner acting in good faith who has entered into a haulage, rental or leasing contract with the offender in accordance with the laws and regulations in force and the normal practice of the profession. However, restitution is subject to the reimbursement of any costs incurred by the customs authorities for the holding and safe keeping of the seized vehicle."

Article 357 bis

"District courts shall adjudicate disputes relating to the payment or reimbursement of duties, applications to set aside an order to pay and other customs cases not falling within the jurisdiction of the criminal courts."

Article 376

"1. Seized or forfeited objects may not be claimed by the owners, nor may the value of the vehicle, whether deposited or not, be claimed by creditors, including secured creditors, save through action against the party who committed the customs offence.

2. Once time limits for lodging appeals, third party applications and sales have expired, all actions for restitution and other actions shall be inadmissible."

2. The Code of Judicial Organisation

The relevant provisions of the Code of Judicial Organisation read as follows:

Article R. 321-9

"District Courts shall hear the following cases, subject to appeal:

(9) Disputes relating to refusal to pay customs duties, applications to set aside an order to pay, failure to discharge liabilities imposed by transit bonds and other customs cases; ..."

3. Case-law

Finance Amendment Law no. 81-1179 of 31 December 1981 amended Article 326 of the Customs Code by adding a third paragraph providing for the establishment of an exceptional procedure where owners have acted in good faith. The reform was intended to resolve problems in applying Article 376 § 1 resulting from the increase in vehicle rental and leasing contracts by allowing the situation of various vehicle rental, leasing and public transport or freight companies to be resolved by absolving them from guarantor and deposit requirements as long as there was proof of good faith and a contract had been negotiated.

This statutory system has been progressively supplemented by case-law. The Court of Cassation has clarified that this was the only legal remedy that an owner acting in good faith could use to have his vehicle restored as a civil claim in criminal proceedings against a person who had committed a customs offence would be inadmissible because the loss or damage complained of was not the direct result of the offences at issue (Cass. Crim., 6 March 1989, Bulletin criminel – "Bull. crim." no. 101).

On 12 January 1987 the Criminal Division also established the principle that paragraphs 1 and 3 of Article 326 should be read separately:

"Under Article 326 § 3 of the Customs Code, the vehicle must be returned without the need for a guarantor or a deposit to any owner acting in good faith who has entered into a haulage, rental or leasing contract with the offender in accordance with the laws and regulations in force and the normal practice of the profession, regardless of the nature of the goods transported." (Bull. crim. no. 8).

Furthermore, in a judgment of 9 April 1991 the Court of Cassation established the principle that the district courts had jurisdiction to hear applications for restitution under Articles 326 and 341 bis-2 of the Customs Code which, when combined with Article 357 of the Code,

> "assign[ed] jurisdiction to rule on the restitution of vehicles seized during these operations to the district court of the place in which the seizure took place. Under these circumstances and provided that the ship-owner was not implicated in the criminal proceedings the impugned judgment rightly upheld the District Court's decision that it had jurisdiction".

In this ruling the Court of Cassation also specified that the provisions of Article 326 applied both to the *seizure* carried out by the customs authorities and to the *forfeiture* ordered by the courts and moreover that the civil courts were under no obligation to defer their decision pending the outcome of the criminal proceedings.

> "Under certain circumstances specified therein, Article 362 § 3 of the Customs Code entitles owners acting in good faith of vehicles seized because they were used for smuggling to have their vehicle returned without the need for a guarantor or a deposit even when a criminal court has ordered their forfeiture. It follows that criminal proceedings during which such orders are issued cannot have any influence on any future decisions in civil proceedings to establish ownership." (Cass. Crim. 9 April 1991, Bull. crim. no. 125; JCP 1991-IV, p. 226).

The jurisdiction of the district courts was reconfirmed in a judgment of 21 February 1995 (Crassat case) in the following terms:

> "District courts hear disputes relating to the payment or reimbursement of duties, applications to set aside an order to pay and other customs cases not falling within the jurisdiction of the criminal courts. Under Articles 356 and 357 of the Customs Code, the criminal courts hear cases relating to petty and lesser indictable customs offences and all customs matters raised as a defence. It follows that the district courts have primary jurisdiction to hear these cases provided that they fall within the jurisdiction of the ordinary courts."

In this judgement, the Criminal Division of the Court of Cassation also extended the scope of Article 326 § 3, taking the view that this provision allowed any vehicle to be returned to owners acting in good faith, without the need for a guarantor or a deposit, even if there was no contract between the owner and the offender who had used the vehicle.

COMPLAINTS

1. The applicant complained under Article 1 of Protocol No. 1 that his vehicle had been seized and then forfeited for offences in which he had not been involved and in the course of proceedings to which he had not been a party.

2. The applicant also complained that he had not been able to take part in the criminal proceedings instituted against his son and, more broadly speaking, that there was no remedy available to him by which he could assert his right to peaceful enjoyment of his possessions. He relied on Articles 6 and 13 of the Convention.

THE LAW

1. The applicant complained that his vehicle had been forfeited for offences in which he had not been involved, in the course of proceedings to which he had not been a party and of which he had not been notified. He considered that the

authorities had infringed his right to peaceful enjoyment of his possessions. He relied on Article 1 of Protocol No. 1 which provides:

Article 1 of Protocol No. 1

> "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."

It is not in dispute between the parties that the acts complained of constituted an interference with the applicant's right to the peaceful enjoyment of his possessions. However there was disagreement as to whether there had been deprivation of possessions under the first paragraph or control of the use of property under the second paragraph.

1. The applicable rule

The Government argued that, in view of the Court's findings in the case of Air Canada v. the United Kingdom, the court order imposing forfeiture of the vehicle to customs did not entail a transfer of ownership but constituted control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1 (judgment of 5 May 1995, Series A no. 316-A, pp. 15-16, §§ 33 and 34).

The applicant submitted that he had been conclusively deprived of his property by the forfeiture to the customs authorities ordered by the criminal courts conducting the proceedings against his son. He argued that the demand for him to pay FRF 3,000 to have his property returned to him proved that there had been an actual transfer of ownership.

The Court observes that Article 1 of Protocol No. 1 guarantees in substance the right of property and comprises three distinct rules. The first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property. The second, in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

However, the three rules are not "distinct" in the sense of being unconnected: the second and third rules are concerned with enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see the AGOSI v. the United Kingdom judgment of 24 October 1986, Series A no. 108, p. 17, § 48, and the Air Canada judgment cited above, p. 15, § 30).

The Court notes that Article 376 of the Customs Code provides that "forfeited objects may not be claimed by the owners". This declaration attests to an actual transfer of ownership – a point conceded by the Government. Under these circumstances the requirement to pay a sum of money to have the possession

returned might be regarded as a way for the former owner to repurchase his possession, which would distinguish the current case from the Air Canada case.

However, although the forfeiture of goods does involve a deprivation of possessions, it is not necessarily covered by the second sentence of the first paragraph of Article 1 of Protocol No. 1 (see the Handyside v. the United Kingdom judgment of 7 December 1976, Series A no. 24, p. 30, § 63, and the AGOSI judgment cited above, p. 17, § 51).

The Government submitted that there was a remedy enabling a vehicle owner to request the unconditional return of his property.

The applicant denied that he had such a remedy.

It is for the Court therefore to verify that there was such a remedy and, if so, what its consequences were with regard to Article 1 of Protocol No. 1. In the instant case, the Court notes that, although Article 376 of the Customs Code imposes a general prohibition on actions by owners to establish their ownership of seized or forfeited goods even if they had nothing to do with the offence committed, Finance Amendment Law no. 81-1179 of 31 December 1981 amended Article 326 of the Customs Code, adding a third paragraph establishing an exceptional procedure in cases where owners have acted in good faith.

Admittedly, Article 326 seems to subject this procedure to restrictions that may prevent the applicant from taking advantage of it. The first paragraph of Article 326 seems to lay down the principle that restitution is reserved for cases in which the "seized goods are not prohibited". However, in a judgment of 12 January 1987 the Court of Cassation held that vehicles should be returned to any owner acting in good faith "regardless of the nature of the prohibited goods". And yet, both that judgment and the third paragraph of Article 326 expressly refer to the existence of a haulage, rental or leasing contract between the owner and the offender, which was most certainly not the position in the case before the Court. However, the scope of Article 326 § 3 was extended beyond any contract negotiated between the owner and the offender by the Court of Cassation's Crassat judgment of 21 February 1995.

Moreover, the Court cannot accept the applicant's objections that district courts do not have jurisdiction where forfeiture is ordered by a criminal court. Apart from the fact that Articles 321-9 of the Code of Judicial Organisation and 357 bis of the Customs Code give the district courts primary jurisdiction, the Court of Cassation ruled, in a judgment of 9 April 1991, that Article 326 § 3 entitled owners acting in good faith to have their vehicles returned "even when a criminal court has ordered their forfeiture".

In the Court's view it follows that the seizure and subsequent forfeiture of the applicant's vehicle did not entail the conclusive transfer of ownership but a temporary restriction on its use.

In view of the foregoing, the vehicle's forfeiture to the customs authorities and the requirement that a sum of money be paid to secure its return were measures

taken under legislation intended to prevent prohibited drugs from being brought into France. As such they constituted a control of the use of property. It is therefore the second paragraph of Article 1 which is applicable in the present case (see the Air Canada judgment cited above, pp. 15-16, §§ 33-34).

2. Compliance with the requirements of the second paragraph

It remains to be decided whether the interference with the applicant's property rights was compatible with the State's right under the second paragraph of Article 1 of Protocol No. 1 "to enforce such laws as it deems necessary to control the use of property in accordance with the general interest".

According to the Court's well-established case-law, the second paragraph of Article 1 must be construed in the light of the principle laid down in the Article's first sentence (see, *inter alia*, the Gasus Dosier- und Fördertechnik GmbH v. the Netherlands judgment of 23 February 1995, Series A no. 306-B, p. 49, § 62, and the Air Canada judgment cited above, pp. 15-16, §§ 33-34). Consequently, any interference must achieve a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 as a whole, including the second paragraph: there must therefore be a reasonable relationship of proportionality between the means employed and the aim pursued (see the Air Canada v. the United Kingdom judgment cited above, p. 16, § 36).

In this connection, the Government said that the customs authorities had accepted the principle that they would return the vehicle on payment of a relatively small sum of money. They submitted that the lack of compensation and the amount of the payment did not exceed the margin of appreciation granted to States, bearing in mind the seriousness of the offences committed and the direct link between their commission and the use of the applicant's car.

The Government also submitted that Article 326 § 3 of the Customs Code and the relevant case-law afforded the applicant a means of getting the District Court to release the vehicle from seizure and forfeiture. Furthermore, Articles 710 and 711 of the Code of Criminal Procedure entitled the applicant to seek an interlocutory ruling from the criminal court.

In short, the Government submitted that the interference with the applicant's right to peaceful enjoyment of his property had achieved a fair balance.

The applicant maintained that the seizure and forfeiture of an item stolen or borrowed from a third party could not in any way serve as a deterrent to drug trafficking. As for achieving a fair balance, he felt that this implied that deprivation of possessions should be offset by reasonable compensation, which had not been the case in this instance because it was in fact the applicant who had had to indemnify the customs authorities in order to recover his vehicle.

Regarding the remedies he could have used, the applicant pointed out that customs seizures, which were carried out by the customs authorities, had been mixed up with forfeiture, which was ordered by a criminal court. In the

applicant's opinion, forfeiture ordered in the final judgment of a criminal court was binding on everyone, including owners acting in good faith, and could not be challenged in the civil courts. Moreover, it was implicit from the wording of Article 326 itself that its three paragraphs were inseparable, which restricted the possibility of goods being returned to cases in which they were not prohibited. For this remedy to be available the owner would have to be informed that his vehicle had been seized. The fact that the courts dealt with such cases very rapidly, ordering forfeiture at an immediate summary trial, prevented owners from availing themselves of any kind of remedy. In particular, the applicant submitted that Articles 710 and 711 of the Code of Criminal Procedure did not empower the courts to rescind a decision ordering "forfeiture" to the customs authorities, as opposed to "seizure" by them.

The applicant concluded from the foregoing that the interference with his right to peaceful enjoyment of his property could not be justified under Article 1 of Protocol No. 1.

The Court notes that the forfeiture of property acquired using the proceeds of illegal activities, in particular drug trafficking, is a necessary and effective means of combating such activities (see the Raimondo v. Italy judgment of 22 February 1994, Series A no. 281-A, p. 17, § 30) and that the same can be said of the forfeiture of property belonging to third parties, since, notwithstanding the fact that the second paragraph of Article 1 says nothing about the subject, the procedures applicable in the instant case afforded the applicant a reasonable opportunity of putting his case to the responsible authorities. In ascertaining whether these conditions were satisfied, a comprehensive view must be taken of the applicable procedures (see the AGOSI judgment cited above, p. 19, § 55).

In the case before the Court, the seizure and subsequent forfeiture were carried out as part of criminal proceedings which had nothing to do with the applicant. Although his son lodged an appeal against his conviction relating solely to operative provisions concerning the seizure of the vehicle, the Court of Appeal's review of the lawfulness of this forfeiture and the grounds for the measure taken could not be binding on the applicant as he had neither been informed about, nor given the right to take part in, the proceedings conducted against his son.

The Court observes however that, when considering which of the rules in Article 1 of Protocol No. 1 was applicable, it found that the applicant could have brought proceedings before the District Court to request the return of his vehicle. The Court noted that the third paragraph of Article 326 of the Customs Code established an exceptional procedure when owners were acting in good faith and that there was no dispute over the applicant's good faith in the present case.

The Court noted that the case-law of the Court of Cassation had provided more details about the scope of this provision, specifying that restitution may be requested by owners acting in good faith even if there was no contract between the owner and the offender and regardless of the nature of the goods transported – namely whether they were prohibited or not.

The Court also observed that the district court of the area in which the seizure took place had special jurisdiction to hear requests for the restitution of objects seized by customs or forfeited by a judicial decision. In so doing it was under no obligation to defer its decision pending the outcome of the criminal proceedings and any forfeiture ordered during the criminal proceedings was not allowed to influence its decision in the civil case.

Consequently, in his capacity as an owner acting in good faith, the applicant had a judicial remedy before a civil court with primary jurisdiction, notwithstanding the criminal proceedings instituted against the offender, under statutory provisions whose apparent restrictions were inapplicable in the instant case in view of the case-law of the Court of Cassation.

The Court finds therefore, without having to examine the other remedies mentioned by the Government, that the judicial review available under the provisions of Article 326 § 3 of the Customs Code satisfies the requirements of the second paragraph of Article 1 of Protocol No. 1.

In view of the foregoing and the States' margin of appreciation in such matters, the Court considers that a fair balance was achieved in the circumstances of the case.

Accordingly, this complaint must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

2. The applicant complained that he had not been able to take part in the criminal proceedings instituted against his son and, more generally, that there had been no remedy whereby he could assert his right to peaceful enjoyment of his possessions. He relied on Articles 6 and 13 of the Convention, the relevant provisions of which provide:

Article 6 § 1

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

Article 13

> "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."

Regarding the alleged infringement of the right to a fair hearing, the Government raised the objection that the application was incompatible with the Convention *ratione materiae* because, despite its severity, forfeiture was not in itself a criminal penalty. As he was a third party to the proceedings conducted against his son, the applicant could not expect his case to be heard by a criminal court especially as liability to forfeiture, a measure which relates to the object not the person, is incurred automatically whenever an offence has been made out. The Government also pointed out that the applicant's son had raised the question of

the lawfulness of the vehicle's seizure before the Douai Appeal Court, which had given due reasons for the refusal to return it.

The Government further submitted that the applicant had failed to exhaust domestic remedies because he had not presented the competent district court with a request for the restitution of his vehicle, in accordance with Articles 321-9 of the Code of Judicial Organisation and 357 of the Customs Code.

Since this remedy existed, the Government maintained that there could have been no breach of Article 13. Moreover, the applicant could have appealed to a higher administrative authority against customs' refusal to return the vehicle and subsequently brought proceedings before the district court or, otherwise, brought an action for damages against his son and the joint perpetrator of the offences resulting in the forfeiture.

The applicant noted that the Government did not dispute that it had been impossible for him to take part in the criminal proceedings. As to the objection that there had been a failure to exhaust domestic remedies, the applicant submitted that the district court was not empowered to rescind the criminal court's decision to forfeit the vehicle.

Regarding the complaint under Article 13, the applicant maintained that he had not had a remedy whereby he could rectify the infringement of his right to peaceful enjoyment of his possessions. In particular, he submitted that an action for damages against the co-principal was not an option because the latter had had nothing to do with the loan of the vehicle to the applicant's son and an action against his son would not have made it possible to remedy the decision to confiscate his property.

The Court observes that in the AGOSI case it held that the domestic court's order that the property in question was to be forfeited was the result of an offence committed by another party and that no criminal charge had been brought against the applicant company in respect of that act. These measures undoubtedly affected the applicant company's property rights but this could not of itself lead to the conclusion that any "criminal charge", for the purposes of Article 6, was brought against the applicant company (judgment cited above, p. 22, §§ 65-66). It came to the same conclusion in the Air Canada case (judgment cited above, p. 20, § 55).

The Court sees no reason to depart from its former position in the instant case and considers therefore that Article 6 of the Convention did not apply to these proceedings in so far as a "criminal charge" was concerned.

Furthermore, since the applicant made no express reference to Article 6 in so far as it related to "his civil rights and obligations", the Court does not deem it necessary to consider this matter of its own motion.

The applicant's final complaint was that there was no remedy under domestic law by which he could assert his right to peaceful enjoyment of his possessions, a complaint that comes under Article 13 of the Convention.

However, bearing in mind the conclusion the Court reached regarding the existence of a judicial remedy satisfying the requirements of the second paragraph of Article 1 of Protocol No. 1, the Court is of the view that the applicant had an effective remedy, within the meaning of Article 13 of the Convention, to have his complaints examined.

It follows that this part of the application must be declared inadmissible, in accordance with Article 35 § 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Declares the application inadmissible.

S. DOLLÉ
Registrar

W. FUHRMANN
President