



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

COURT (CHAMBER)

CASE OF WELCH v. THE UNITED KINGDOM

(Application no. 17440/90)

JUDGMENT

STRASBOURG

09 February 1995

In the case of Welch v. the United Kingdom¹,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A², as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,

Mr F. MATSCHER,

Mr R. MACDONALD,

Mr J. DE MEYER,

Mr I. FOIGHEL,

Mr R. PEKKANEN,

Sir John FREELAND,

Mr L. WILDHABER,

Mr K. JUNGWIERT,

and also of Mr H. PETZOLD, *Registrar*,

Having deliberated in private on 26 October 1994 and 25 January 1995,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 15 January 1994, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 17440/90) against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission under Article 25 (art. 25) by a British citizen, Mr Peter Welch, on 22 June 1990.

2. The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby the United Kingdom recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 7 (art. 7) of the Convention.

¹ The case is numbered 1/1994/448/527. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

² Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

3. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30).

4. The Chamber to be constituted included ex officio Sir John Freeland, the elected judge of British nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 28 January 1994, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Matscher, Mr R. Macdonald, Mr N. Valticos, Mr I. Foighel, Mr R. Pekkanen, Mr L. Wildhaber and Mr K. Jungwiert (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

Subsequently Mr J. De Meyer, substitute judge, replaced Mr Valticos, who was unable to take part in the further consideration of the case (Rules 22 para. 1 and 24 para. 1).

5. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the United Kingdom Government ("the Government"), the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the Government's memorial on 20 June 1994 and the applicant's memorial on 24 June. On 15 September the applicant's submissions under Article 50 (art. 50) were received. The Secretary of the Commission subsequently informed the Court that the Delegate would make his comments at the hearing.

6. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 24 October 1994. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mr M. EATON, Foreign and Commonwealth Office, *Agent,*

Mr A. MOSES, QC, *Counsel,*

Mr H. GILES, Home Office,

Mr P. VALLANCE, Home Office,

Mr S. JONES, Home Office, *Advisers;*

- for the Commission

Mr Gaukur JÖRUNDSSON, *Delegate;*

- for the applicant

Mr B. EMMERSON, *Counsel,*

Mr R. ATTER, Solicitor,

Mr J. COOPER, *Adviser.*

The Court heard addresses by Mr Gaukur Jörundsson, Mr Emmerson and Mr Moses and also replies to questions put by the President and another judge.

AS TO THE FACTS

I. CIRCUMSTANCES OF THE CASE

7. On 3 November 1986 Mr Welch was arrested for suspected drug offences. On 4 November he was charged in respect of offences concerning the importation of large quantities of cannabis. Prosecuting Counsel advised, prior to February 1987, that there was insufficient evidence to charge Mr Welch with possession of cocaine with intent to supply.

8. After further investigations, including forensic examinations, further evidence came to light and on 24 February 1987 the applicant was charged with the offence of possession with intent to supply cocaine alleged to have been committed on 3 November 1986. Subsequently, on 5 May 1987, he was charged with conspiracy to obtain cocaine within intent to supply in respect of activities which occurred between 1 January 1986 and 3 November.

9. On 24 August 1988, Mr Welch was found guilty on five counts and was given an overall sentence of twenty-two years' imprisonment. In addition, the trial judge imposed a confiscation order pursuant to the Drug Trafficking Offences Act 1986 ("the 1986 Act") in the amount of £66,914. In default of the payment of this sum he would be liable to serve a consecutive two years' prison sentence. The operative provisions of the 1986 Act had come into force on 12 January 1987. The Act applies only to offences proceedings for which were instituted after this date.

10. On 11 June 1990 the Court of Appeal reduced Mr Welch's overall sentence by two years. In addition it reduced the confiscation order by £7,000 to £59,914.

II. RELEVANT DOMESTIC LAW

11. The intended purpose of the 1986 Act was to extend existing confiscation powers to enable the court to follow drug trafficking money which had been "laundered" into legitimate property. In the words of the Secretary of State who introduced the Bill in the House of Commons:

"By attacking the profits made from drug trafficking, we intend to make it much less attractive to enter the trade. We intend to help guard against the possibility that the profits from one trafficking operation will be used to finance others, and, not least, to remove the sense of injury which ordinary people are bound to feel at the idea of traffickers, who may have ruined the lives of children, having the benefit of the profits that they have made from doing so.

...

We need the legislation because the forfeiture powers in existing law have proved inadequate. The courts cannot order the forfeiture of the proceeds of an offence once they have been converted into another asset - a house, stocks and shares, or valuables

of any sort. The Operation Julie case was the most notorious example of the courts being unable to deprive convicted traffickers, as they wished, of the proceeds of their offences ... the Bill is designed to remedy those defects. It will provide powers for courts to confiscate proceeds even after they have been converted into some other type of asset." (Hansard of 21 January 1986, Cols 242 and 243)

A. Drug Trafficking Offences Act 1986

12. The relevant parts of the 1986 Act provide as follows:

"1. Confiscation orders

(1) ... where a person appears before the Crown Court to be sentenced in respect of one or more drug trafficking offences (and has not previously been sentenced or otherwise dealt with in respect of his conviction for the offence or, as the case may be, any of the offences concerned), the court shall act as follows:

(2) the court shall first determine whether he has benefited from drug trafficking.

(3) For the purposes of this Act, a person who has at any time (whether before or after the commencement of this section) received any payment or other reward in connection with drug trafficking carried on by him or another has benefited from drug trafficking.

(4) If the court determines that he has so benefited, the court shall, before sentencing ... determine ... the amount to be recovered in his case by virtue of this section.

(5) The court shall then in respect of the offence or offences concerned -

(a) order him to pay that amount ...

...

2. Assessing the proceeds of drug trafficking

(1) For the purposes of this Act -

(a) any payments or other rewards received by a person at any time (whether before or after the commencement of section 1 of this Act) in connection with drug trafficking carried on by him or another are his proceeds of drug trafficking, and

(b) the value of his proceeds of drug trafficking is the aggregate of the values of the payments or other rewards.

(2) The court may, for the purpose of determining whether the defendant has benefited from drug trafficking and, if he has, of assessing the value of his proceeds of drug trafficking, make the following assumptions, except to the extent that any of the assumptions are shown to be incorrect in the defendant's case.

(3) Those assumptions are -

(a) that any property appearing to the court -

(i) to have been held by him at any time since his conviction, or

(ii) to have been transferred to him at any time since the beginning of the period of six years ending when the proceedings were instituted against him,

was received by him, at the earliest time at which he appears to the court to have held it, as a payment or reward in connection with drug trafficking carried on by him,

(b) that any expenditure of his since the beginning of that period was met out of payments received by him in connection with drug trafficking carried on by him, and

(c) that, for the purpose of valuing any property received or assumed to have been received by him at any time as such a reward, he received the property free of any other interests in it ...

...

4. Amount to be recovered under confiscation order

(1) Subject to subsection (3) below, the amount to be recovered in the defendant's case shall be the amount the Crown Court assesses to be the value of the defendant's proceeds of drug trafficking.

(2) If the court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made ... the court may issue a certificate giving the court's opinion as to the matters concerned and shall do so if satisfied as mentioned in subsection (3) below.

(3) If the court is satisfied that the amount that may be realised at the time the confiscation order is made is less than the amount the court assesses to be the value of his proceeds of drug trafficking, the amount to be recovered in the defendant's case under the confiscation order shall be the amount appearing to the court to be the amount that might be so realised."

B. Discretion of the trial judge

13. In determining the amount of the confiscation order the trial judge may take into consideration the degree of culpability of the offender. For example, in *R. v. Porter* ([1990] 12 Criminal Appeal Reports (sentencing) 377) the Court of Appeal held that where more than one conspirator was before the court the total proceeds of a drug trafficking conspiracy could be unequally allocated as their respective share of the proceeds if there was evidence that the defendants had played unequal roles and had profited to a different extent. Similarly, in the present case, the trial judge made a much smaller order in respect of the applicant's co-defendant in recognition of his lesser involvement in the offences.

C. Imprisonment in default of payment

14. After a confiscation order has been made, the Crown Court decides upon the period of imprisonment which the offender has to serve if he fails to pay. The maximum periods of imprisonment are provided for in section 31 of the Powers of Criminal Courts Act 1973. The maximum period for an order between the sums of £50,000 and £100,000 is two years.

D. Statements by domestic courts concerning the nature of forfeiture and confiscation provisions

15. Prior to the passing of the 1986 Act, Lord Salmon expressed the view that forfeitures of money had both a punitive and deterrent purpose (House of Lords decision in *R. v. Menocal*, [1979] 2 Weekly Law Reports 876).

16. The domestic courts have commented in various cases on the draconian nature of the confiscation provisions in the 1986 Act and have occasionally referred to the orders, expressly or impliedly, as constituting penalties (*R. v. Dickens* [1990] 91 Criminal Appeal Reports 164; *R. v. Porter* [1990] 12 Criminal Appeal Reports 377; *In Re Lorenzo Barretto*, High Court decision of 30 November 1992 and Court of Appeal decision of 19 October 1993).

In the Court of Appeal decision in the last-mentioned case, which concerned the question whether a power to vary confiscation orders introduced by the Criminal Justice (International Co-operation) Act 1990 could be applied retrospectively, the Master of the Rolls (Sir Thomas Bingham) stated as follows (at p. 11):

"While it is true that a confiscation order is made before sentence is passed for the substantive offence, and the term of imprisonment in default is passed to procure compliance and not by way of punishment, these are in a broad sense penal provisions, inflicting the vengeance of society on those who have transgressed in this field."

17. However, the domestic courts have also referred to the confiscation provisions as not being punitive but reparative in purpose (*Re T (Restraint Order; Disclosure of Assets)* [1992] 1 Weekly Law Reports 949).

PROCEEDINGS BEFORE THE COMMISSION

18. Mr Welch lodged his application (no. 17440/90) with the Commission on 22 June 1990. He complained under Article 7 (art. 7) of the Convention that the confiscation order imposed upon him constituted the imposition of a retrospective criminal penalty. He further complained of violations of his rights under Article 6 paras. 1 and 2 (art. 6-1, art. 6-2) of the Convention.

19. On 12 February 1993 the Commission declared the applicant's complaint admissible in so far as it raised issues under Article 7 (art. 7) of the Convention. The remainder of the application was declared inadmissible.

In its report of 15 October 1993 (Article 31) (art. 31), it expressed the opinion that there had been no violation of Article 7 (art. 7) (seven votes to seven with the casting vote of the Acting President being decisive). The full

text of the Commission's opinion and of the two dissenting opinions contained in the report is reproduced as an annex to this judgment³.

FINAL SUBMISSIONS TO THE COURT

20. In their memorial, the Government requested the Court to find that there has been no violation of Article 7 (art. 7) of the Convention in the present case.

21. The applicant submitted in his memorial that his rights under Article 7 (art. 7) have been violated by the application of an enactment which was expressly retrospective in its effect.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 7 PARA. 1 (art. 7-1) OF THE CONVENTION

22. The applicant complained that the confiscation order that was made against him amounted to the imposition of a retrospective criminal penalty, contrary to Article 7 (art. 7) which reads as follows:

"1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article (art. 7) shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

He emphasised that his complaint was limited to the retrospective application of the confiscation provisions of the 1986 Act and not the provisions themselves.

23. He submitted that in determining whether a confiscation order was punitive the Court should look beyond its stated purpose and examine its real effects. The severity and extent of such an order identified it as a penalty for the purposes of the Convention.

In the first place, under section 2 (3) of the 1986 Act the national court was entitled to assume that any property which the offender currently held or which had been transferred to him in the preceding six years, or any gift

³ Note by the Registrar: For practical reasons this annex will appear only with the printed version of the judgment (volume 307-A of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

which he had made during the same period, were the proceeds of drug trafficking (see paragraph 12 above). In addition by seeking to confiscate the proceeds, as opposed to the profits, of drug dealing, irrespective of whether there had in fact been any personal enrichment, the order went beyond the notions of reparation and prevention into the realm of punishment.

Moreover, the fact that an order could not be made unless there had been a criminal conviction and that the degree of culpability of an accused was taken into consideration by the court in fixing the amount of the order also pointed in the direction of a penalty. Indeed prior to the passing of the 1986 Act the courts had regarded forfeiture orders as having the dual purpose of punishment and deterrence (see paragraph 15 above). Finally, confiscation orders had been recognised as having a punitive character in various domestic court decisions (see paragraph 16 above) and in several decisions of the Supreme Court of the United States concerning similar legislation (*Austin v. the United States* and *Alexander v. the United States*, decisions of 28 June 1993, 125 L ed 2d 441 and 488).

24. The Government contended that the true purpose of the order was twofold: firstly, to deprive a person of the profits which he had received from drug trafficking and secondly, to remove the value of the proceeds from possible future use in the drugs trade. It thus did not seek to impose a penalty or punishment for a criminal offence but was essentially a confiscatory and preventive measure. This could be seen from the order in the present case, which had been made for the purpose of depriving the defendant of illegal gains. Had no order been made, the money would have remained within the system for use in further drug-dealing enterprises.

It was stressed that a criminal conviction for drug trafficking was no more than a "trigger" for the operation of the statutory provisions. Once the triggering event had occurred, there was no further link with any conviction. Thus, the court could consider whether a person had benefited from drug trafficking at any time and not merely in respect of the offence with which he had been charged. Moreover, an order could be made in relation to property which did not form part of the subject-matter of the charge against the defendant or which had been received by him in a period to which no drug-dealing conviction related.

Furthermore, the fact that a period of imprisonment could be imposed in default of payment could be of no assistance in characterising the nature of the confiscation order since there were many non-penal court orders which attracted such a penalty in the event of non-compliance. Similarly the harsh effect of the order was of no assistance, since the effectiveness of a preventive measure required that a drug trafficker be deprived not only of net profits but of money which would otherwise remain available for use in the drug trade.

25. For the Commission, the order in the present case was not punitive in nature but reparative and preventive and, consequently, did not constitute a penalty within the meaning of Article 7 para. 1 (art. 7-1) of the Convention.

26. The Court first observes that the retrospective imposition of the confiscation order is not in dispute in the present case. The order was made following a conviction in respect of drugs offences which had been committed before the 1986 Act came into force (see paragraph 11 above). The only question to be determined therefore is whether the order constitutes a penalty within the meaning of Article 7 para. 1 (art. 7-1), second sentence.

27. The concept of a "penalty" in this provision is, like the notions of "civil rights and obligations" and "criminal charge" in Article 6 para. 1 (art. 6-1), an autonomous Convention concept (see, *inter alia*, - as regards "civil rights" - the *X v. France* judgment of 31 March 1992, Series A no. 234-C, p. 98, para. 28, and - as regards "criminal charge" - the *Demicoli v. Malta* judgment of 27 August 1991, Series A no. 210, pp. 15-16, para. 31). To render the protection offered by Article 7 (art. 7) effective, the Court must remain free to go behind appearances and assess for itself whether a particular measure amounts in substance to a "penalty" within the meaning of this provision (see, *mutatis mutandis*, the *Van Droogenbroeck v. Belgium* judgment of 24 June 1982, Series A no. 50, p. 20, para. 38, and the *Duijff and Duijff v. the Netherlands* judgment of 22 May 1984, Series A no. 79, p. 15, para. 34).

28. The wording of Article 7 para. 1 (art. 7-1), second sentence, indicates that the starting-point in any assessment of the existence of a penalty is whether the measure in question is imposed following conviction for a "criminal offence". Other factors that may be taken into account as relevant in this connection are the nature and purpose of the measure in question; its characterisation under national law; the procedures involved in the making and implementation of the measure; and its severity.

29. As regards the connection with a criminal offence, it is to be observed that before an order can be made under the 1986 Act the accused must have been convicted of one or more drug-trafficking offences (see section 1 (1) of the 1986 Act at paragraph 12 above). This link is in no way diminished by the fact that, due to the operation of the statutory presumptions concerning the extent to which the applicant has benefited from trafficking, the court order may affect proceeds or property which are not directly related to the facts underlying the criminal conviction. While the reach of the measure may be necessary to the attainment of the aims of the 1986 Act, this does not alter the fact that its imposition is dependent on there having been a criminal conviction.

30. In assessing the nature and purpose of the measure, the Court has had regard to the background of the 1986 Act, which was introduced to

overcome the inadequacy of the existing powers of forfeiture and to confer on the courts the power to confiscate proceeds after they had been converted into other forms of assets (see paragraph 11 above). The preventive purpose of confiscating property that might be available for use in future drug-trafficking operations as well as the purpose of ensuring that crime does not pay are evident from the ministerial statements that were made to Parliament at the time of the introduction of the legislation (see paragraph 11 above). However it cannot be excluded that legislation which confers such broad powers of confiscation on the courts also pursues the aim of punishing the offender. Indeed the aims of prevention and reparation are consistent with a punitive purpose and may be seen as constituent elements of the very notion of punishment.

31. In this connection, confiscation orders have been characterised in some United Kingdom court decisions as constituting "penalties" and, in others, as pursuing the aim of reparation as opposed to punishment (see paragraphs 16 and 17 above). Although on balance these statements point more in the direction of a confiscation order being a punitive measure, the Court does not consider them to be of much assistance since they were not directed at the point at issue under Article 7 (art. 7) but rather made in the course of examination of associated questions of domestic law and procedure.

32. The Court agrees with the Government and the Commission that the severity of the order is not in itself decisive, since many non-penal measures of a preventive nature may have a substantial impact on the person concerned.

33. However, there are several aspects of the making of an order under the 1986 Act which are in keeping with the idea of a penalty as it is commonly understood even though they may also be considered as essential to the preventive scheme inherent in the 1986 Act. The sweeping statutory assumptions in section 2 (3) of the 1986 Act that all property passing through the offender's hands over a six-year period is the fruit of drug trafficking unless he can prove otherwise (see paragraph 12 above); the fact that the confiscation order is directed to the proceeds involved in drug dealing and is not limited to actual enrichment or profit (see sections 1 and 2 of the 1986 Act in paragraph 12 above); the discretion of the trial judge, in fixing the amount of the order, to take into consideration the degree of culpability of the accused (see paragraph 13 above); and the possibility of imprisonment in default of payment by the offender (see paragraph 14 above) - are all elements which, when considered together, provide a strong indication of, *inter alia*, a regime of punishment.

34. Finally, looking behind appearances at the realities of the situation, whatever the characterisation of the measure of confiscation, the fact remains that the applicant faced more far-reaching detriment as a result of the order than that to which he was exposed at the time of the commission

of the offences for which he was convicted (see, *mutatis mutandis*, the Campbell and Fell v. the United Kingdom judgment of 28 June 1984, Series A no. 80, p. 38, para. 72).

35. Taking into consideration the combination of punitive elements outlined above, the confiscation order amounted, in the circumstances of the present case, to a penalty. Accordingly, there has been a breach of Article 7 para. 1 (art. 7-1).

36. The Court would stress, however, that this conclusion concerns only the retrospective application of the relevant legislation and does not call into question in any respect the powers of confiscation conferred on the courts as a weapon in the fight against the scourge of drug trafficking.

II. APPLICATION OF ARTICLE 50 (art. 50) OF THE CONVENTION

37. Article 50 (art. 50) provides as follows:

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

38. The applicant claimed an unspecified amount of compensation and/or restitution of the sum confiscated. However, in the course of the hearing before the Court he pointed out that the confiscation order had not yet been enforced because of the present proceedings.

The Government, like the Delegate of the Commission, made no observations.

39. The Court considers that in these circumstances the matter is not ready for decision. The question must accordingly be reserved and the further procedure fixed, with due regard to the possibility of an agreement being reached between the Government and the applicant (Rule 54 paras. 1 and 4 of Rules of Court A).

B. Costs and expenses

40. The applicant claimed £13,852.60 by way of costs and expenses in respect of the Strasbourg proceedings.

Neither the Government nor the Delegate of the Commission had any comments to make.

41. The Court considers that the sum is reasonable and that the full amount claimed should be awarded less the sums paid by way of legal aid.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a violation of Article 7 para. 1 (art. 7-1) of the Convention;
2. Holds that the respondent State is to pay, within three months, 13,852 (thirteen thousand eight hundred and fifty-two) pounds sterling and 60 (sixty) pence, together with any value-added tax that may be chargeable, for costs and expenses, less 10,420 (ten thousand four hundred and twenty) French francs to be converted into pounds sterling at the rate of exchange applicable on the date of delivery of the present judgment;
3. Holds that the question of the application of Article 50 (art. 50) of the Convention is not ready for decision as regards damage; accordingly,
 - (a) reserves the said question in that respect;
 - (b) invites the Government and the applicant to submit, within the forthcoming three months, their written observations on the matter and, in particular, to notify the Court of any agreement they may reach;
 - (c) reserves the further procedure and delegates to the President of the Chamber the power to fix the same if need be.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 9 February 1995.

Rolv RYSSDAL
President

Herbert PETZOLD
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of Rules of Court A, the concurring opinion of Mr De Meyer is annexed to this judgment.

R. R.
H. P.

CONCURRING OPINION OF JUDGE DE MEYER

There could be no doubt that the confiscation order inflicted upon the applicant was a sanction following conviction for a criminal offence, and that it had the nature of a penalty.

Taking into consideration factors such as its "purpose", its "characterisation under national law", its "severity", or the elements involved in the making of the order referred to in paragraph 33 of the judgment, could not be "relevant in this connection".

I did not need these "other factors" (see paragraph 28 of the present judgment) to reach a conclusion which was, in my view, self-evident.