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

FIRST SECTION

CASE OF SACCOCCIA v. AUSTRIA

(Application no. 69917/01)

JUDGMENT

STRASBOURG

18 December 2008

FINAL

04/05/2009

This judgment may be subject to editorial revision.

In the case of Saccoccia v. Austria**,**

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 27 November 2008,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 69917/01) against the Republic of Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a national of the United States of America, Mr Stephen Anthony Saccoccia ("the applicant"), on 27 April 2001.

2. The applicant was represented by Mr J. Hock, a lawyer practising in Vienna. The Austrian Government ("the Government") were represented by their Agent, Ambasssador F. Trauttmansdorff, Head of the Law Department at the Federal Ministry for European and International Affairs.

3. The applicant alleged, in particular, that in proceedings before the Austrian courts concerning the execution of a forfeiture order issued by the United States courts he had not had a hearing and that the Austrian courts' decisions had violated his right to property.

4. By a decision of 5 July 2007 the Court declared the application partly admissible.

5. The Government filed observations on the merits (Rule 59 § 1). The applicant requested the Court to instruct the respondent Government to disclose a complete list of the values of all his Austrian assets at the time of their seizure and at the time when they were forfeited following the judgment by the Vienna Court of Appeal of 7 October 2000 in order to enable him to calculate his just satisfaction claims. Having regard to its decision under Article 41 of the Convention (see paragraphs 98-100 below), the Court dismisses this request.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1958. He is currently serving a prison term in the United States.

A. Background

7. In 1992, in the context of criminal proceedings for large-scale money laundering conducted against the applicant before the United States District Court for the District of Rhode Island ("the Rhode Island District Court"), the Austrian courts were requested under letters rogatory to seize assets which had been found in two safes in Vienna rented by the applicant. On 10 February 1992 the Vienna District Criminal Court ordered the seizure and put the assets, mostly cash and bearer bonds, at the disposal of the Rhode Island District Court as evidence in the criminal proceedings against the applicant, on the condition that the assets were to be returned upon termination of the proceedings.

8. The parties disagree as to whether or not the applicant was the owner of the assets at issue. The applicant claims that the assets stemmed from lawful business activities carried out until 1988, while the Government claim that they stemmed from the money laundering in 1990 and 1991 of which he was convicted (see below) and that he was holding them as a trustee for the drug cartel for which he had worked.

9. In February 1993 the Rhode Island District Court convicted the applicant of money laundering and related charges, finding that he had headed an organisation which had laundered more than a hundred million United States dollars (USD) in 1990 and 1991, and sentenced him to 660 years' imprisonment. Subsequently, on 30 August 1993, the court issued a preliminary forfeiture order.

10. On 28 June 1995 the United States Court of Appeals, First Circuit, dismissed an appeal by the applicant against his conviction and against the forfeiture order. The reasons, in so far as relevant in the context of the present case, were as follows. As to the applicant's claim that he was represented at his trial by counsel (H.) who had a conflict of interest, the court noted that the applicant had been informed of his rights but had insisted on being represented by counsel H. Finally, he had executed a written waiver retaining H. as counsel and confirming that he had been fully advised and had considered the possible adverse consequences for his defence. Since counsel H. had only informed the court in vague terms that he feared being charged or called as a witness in the applicant's case, the District Court was justified in accepting the waiver. In any event, the

applicant was represented by a second, conflict-free counsel, D. As to the applicant's complaint that he had had no hearing in the forfeiture proceedings, the appellate court noted that the applicant, represented by counsel, had waived his right to a jury hearing in the separate forfeiture proceedings on the ground that they purely concerned matters of legal argument. The case had been heard on 26 March 1993 in the presence of the applicant's counsel. The applicant had not been present since he had to appear before another court. Counsel had requested that the applicant be heard but had refused the court's offer to have a further hearing in the presence of the applicant before the delivery of the judgment.

11. On 25 March 1996 the United States Supreme Court rejected an appeal on points of law by the applicant.

12. On 7 November 1997 the Rhode Island District Court issued a final forfeiture order relating to a total amount of USD 136 million, including some USD 9 million in respect of the applicant, "being the proceeds of narcotics money laundering for which the following property has been partially substituted". There followed an enumeration of cash amounts in Swiss francs, United States dollars and Austrian schillings seized in Vienna in 1992 and a list of bearer bonds issued by Austrian banks and, finally a bank account in Vienna.

13. On 9 December 1997 the Rhode Island District Court issued letters rogatory which, so far as relevant, read as follows:

> "... the United States District Court for the District of Rhode Island requests enforcement in Austria of the enclosed Final Forfeiture Order against said cash, bonds and other financial instruments. To the extent possible under Austrian law and consistent with any sharing agreement between the United States and Austria, please convert the cash and the proceeds of the bonds and other instruments into United States dollars and transfer those funds by wire into the above referenced United States Customs Service Account. ..."

14. The United States Department of Justice transmitted this request to the Austrian authorities on 18 December 1997. On 23 January 1998 the Austrian Ministry of Justice requested the Vienna Senior Public Prosecutor's Office to open "*exequatur*" proceedings to enforce the foreign court's decision.

B. The proceedings before the Austrian courts

1. *Preliminary confiscation in order to secure the enforcement of the final forfeiture order of 7 November 1997*

15. On 12 March 1998 the Vienna Regional Criminal Court (*Landesgericht für Strafsachen*), as an interim measure, ordered the confiscation of the applicant's assets, of a total value of about 80,000,000 Austrian schillings (ATS – approximately 5,800,000 euros), in

cash, bearer bonds and a bank account, for the purpose of securing the enforcement of the final forfeiture order of 7 November 1997. It referred to the above request and noted that enforcement proceedings under the Extradition and Legal Assistance Act (*Auslieferungs- und Rechtshilfegesetz* – "the ELAA") were pending.

16. The applicant appealed on 26 March 1998, submitting in particular that the Regional Court's decision amounted to an unlawful interference with his right to property, as it lacked a legal basis. Moreover, an enforcement of the forfeiture order for the benefit of the United States was not admissible in Austria as section 64(7) of the ELAA provided that any fines or forfeited assets obtained by executing a foreign decision fell to the Republic of Austria.

17. Further, the applicant claimed that the final forfeiture order also included "substitute assets", i.e. assets not connected to or derived from criminal activity. Thus the measure requested did not correspond in any way to forfeiture (*Verfall*) or withdrawal of enrichment (*Abschöpfung der Bereicherung*) within the meaning of the Austrian Criminal Code (*Strafgesetzbuch*). In any event these penalties could not be applied in his case, as the relevant provisions had not been in force at the time he committed the offences. Furthermore, he had been convicted of money laundering in the United States, an offence which had not been punishable under Austrian law at the time of its commission.

18. Relying on section 64(1) of the ELAA, the applicant also argued that the forfeiture proceedings had failed to comply with the requirements of Article 6 of the Convention, since the proceedings had not been public and he had not been heard. Moreover, his defence rights had been violated in the underlying criminal proceedings, his defence lawyer having been caught in a conflict of interests.

19. Lastly, the applicant claimed that there was a lack of reciprocity as decisions of Austrian courts were not enforceable in the United States.

20. Meanwhile, on 12 March 1998, the Vienna Regional Criminal Court had made a formal request to the United States authorities to hear the applicant in connection with the request for execution of the final forfeiture order. On 16 April 1998 the United States Department of Justice transmitted the applicant's submissions to the Austrian Ministry of Justice.

21. On 22 May 1998 the United States Department of Justice addressed a note to the Austrian Ministry of Justice concerning reciprocity in providing legal assistance in forfeiture proceedings. The applicant denies that this note contains assurances of reciprocity.

22. On 1 August 1998 the Treaty between the Government of the Republic of Austria and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters ("the 1998 Treaty") entered into force.

23. On 12 October 1998 the Vienna Court of Appeal (*Oberlandesgericht*) dismissed the applicant's appeal against the Regional Court's decision of 12 March 1998.

24. The Court of Appeal found that the Regional Court's decision was based on Article 144a of the Code of Criminal Procedure (*Strafprozeßordnung*). In this connection, the court noted that pursuant to section 9(1) of the ELAA, the provisions of the Code of Criminal Procedure had to be applied *mutatis mutandis* unless explicitly provided otherwise.

25. As to the applicant's assertion that a forfeiture for the benefit of the United States would be contrary to section 64(7) of the ELAA, the court observed that the letters rogatory requested first and foremost that any measures required under Austrian law for the execution of the final forfeiture order be taken. Only as an additional point did they ask for the transfer of the assets, provided that this was admissible under Austrian law or any bilateral treaty. In this connection it referred to Article 17(3) of the 1998 Treaty.

26. As regards the applicant's assertion that the final forfeiture order covered substitute assets which could not be subject to forfeiture under Austrian law, the court observed that it followed from the judgment concerning the applicant's conviction that he had led an organisation which had laundered large sums of money derived from drug dealing and had usually received a 10% commission for each amount laundered. Between 1 January 1990 and 2 April 1991 he had transferred more than USD 136 million of drug-related money from the account of a sham company to various foreign bank accounts. Thus, there were good reasons to assume that the applicant's Austrian assets were monies received for or derived from the commission of a crime and subject to withdrawal of enrichment under Article 20 of the Criminal Code, or monies directly obtained through drug dealing, subject to forfeiture under Article 20b of the Criminal Code, in the version in force since its 1996 amendment. The final forfeiture order made a clear link between the offence of money laundering of which the applicant had been convicted and the forfeiture of all monies obtained thereby.

27. Articles 20 and 20b in the version in force since the 1996 amendment of the Criminal Code were not regarded as penalties under Austrian law, but as measures *sui generis*. The fact that they had not been in force at the time of the commission of the offences was therefore not material.

28. Even if one applied the law in force at the time of the commission of the offences, the requirements for withdrawal of enrichment were met. Article 20a(1) of the Criminal Code, in the version in force at that time, provided that an offender who had unjustly enriched himself could be ordered to pay an amount equivalent to the enrichment if the latter exceeded ATS 1 million. Although there had been no offence of money laundering

under Austrian law at the time, the facts constituted the offence of receiving stolen property (*Hehlerei*) under Article 164(1)(4) of the Criminal Code, which made it an offence to assist the perpetrator of an offence (here, the drug dealers) in concealing assets derived from or received for the commission of the offence or to acquire such assets.

29. As to the applicant's allegation that both the criminal proceedings against him and the proceedings resulting in the final forfeiture order had failed to comply with Article 6 of the Convention, the court referred to the documents of those proceedings contained in its file and noted the following. In the criminal proceedings, the applicant had been present and had been represented by two counsel. It noted that it was the applicant who had insisted on being represented by counsel H. although the latter had voiced concerns, albeit without substantiating them, that he might himself be charged. In any case, the applicant had been represented by a second counsel, who was free from any potential conflict of interests. In the forfeiture proceedings he waived his right to a public hearing before a jury since they only concerned questions of law. On 26 March 1993 the judge had heard the case in the presence of the applicant's counsel but without the applicant being present. The applicant's lawyer had requested that the applicant be heard but had refused the court's offer to hold a further hearing in the presence of the applicant before the delivery of the judgment. In sum, the Vienna Court of Appeal found no indication that the proceedings before the United States courts had failed to comply with Article 6 of the Convention.

30. As regards the alleged lack of reciprocity, the court noted that when the request for enforcement of the final forfeiture order had been made, there had been no bilateral treaty between the United States and the Republic of Austria. Thus, only the provisions of the ELAA had to be applied, section 3(1) of which required reciprocity. The Regional Court had duly investigated the issue in that it had required the United States Department of Justice to submit information as to the possibilities of enforcing an Austrian forfeiture order in the United States. Meanwhile, however, the 1998 Treaty had entered into force. Under Article 20(3) of that Treaty, it applied irrespective of whether the underlying offences were committed before or after its entry into force. Article 17 provided for mutual legal assistance in forfeiture proceedings.

2. The enforcement of the final forfeiture order of 7 November 1997

31. On 25 August 1999 the United States central authority, relying on the 1998 Treaty, made a new request for enforcement of the final forfeiture order of 7 November 1997. According to the applicant, this second request for legal assistance was not served on him.

32. The applicant made submissions on 22 December 1998, on 11 March 1999 and on 11 May 2000.

33. On 14 June 2000 the Vienna Regional Criminal Court, without holding a hearing, decided to take over the enforcement of the final forfeiture order of 7 November 1997 and ordered the forfeiture of the applicant's Austrian assets for the benefit of the United States.

34. Having regard to the 1998 Treaty, the requirement of reciprocity was fulfilled. The submissions by the applicant which disputed this were no longer relevant as they referred to the legal position before the entry into force of the 1998 Treaty. As to the question of the beneficiary of the forfeiture, it noted that Article 17(3) of the 1998 Treaty provided optionally that each State party could hand over forfeited assets to the other party.

35. Referring to the Court of Appeal's decision of 12 October 1998, it noted that the applicant's conduct had been punishable under Austrian law. Thus, the forfeiture was not contrary to Article 7 of the Convention. Finally, the court noted that the applicant had been given an opportunity to comment on the request for legal assistance.

36. The applicant appealed on 7 July 2000. He asserted that the 1998 Treaty provided for legal assistance in pending criminal proceedings, but did not contain a legal basis for mutual execution of final decisions. Even assuming that the 1998 Treaty applied in the present case, the enforcement of the final forfeiture order would violate Article 7 of the Convention as the said Treaty had not been in force in 1997 when the forfeiture order was issued. Moreover, money laundering had not been punishable under Austrian law at the time of the commission of the offences. Consequently, his assets could not be subject to forfeiture or withdrawal of enrichment under Austrian law.

37. Furthermore, the applicant repeated his argument that his Austrian assets were substitute assets and claimed that, at the time of the commission of the offences, such assets had not been subject to forfeiture or withdrawal of enrichment under Austrian law.

38. Relying on expert opinions submitted by him, the applicant maintained that the condition of reciprocity required by section 3(1) of the ELAA was not fulfilled, as United States constitutional law did not permit the enforcement of decisions given by foreign criminal courts. He further submitted that the five-year limitation period for enforcement had started running on 30 August 1993, when the preliminary forfeiture order was issued (as it was, despite its name, a final and enforceable decision), and not only on 7 November 1997, when the final forfeiture order was issued.

39. In addition the applicant alleged that the criminal proceedings and the forfeiture proceedings before the United States courts had not complied with the requirements of Article 6 of the Convention. He submitted the same arguments as in the proceedings relating to the preliminary confiscation of his assets. Moreover, he referred in general terms to the fact that the United States still applied the death penalty.

40. The applicant also complained about a number of procedural shortcomings as regards the proceedings in Austria. He alleged in particular that the Regional Court had refused to take into account the aforesaid expert opinions submitted by him, which showed that United States constitutional law excluded any enforcement of decisions of foreign criminal courts. Moreover, he had not been given sufficient opportunity to advance his arguments as, in his view, that would have required his personal presence in court. Finally, he complained that the Regional Court had failed to hold a public oral hearing and requested that such a hearing be held by the appellate court.

41. The Public Prosecutor's Office also appealed. Its appeal was served on the applicant for comments, which he submitted on 21 September 2000.

42. On 7 October 2000 the Vienna Court of Appeal, sitting *in camera*, dismissed the applicant's appeal. Upon the public prosecutor's appeal, it amended the Regional Court's decision and ordered the forfeiture to the benefit of the Republic of Austria.

43. The court noted at the outset that, pursuant to its Article 20(3), the 1998 Treaty applied irrespective of whether the underlying offences were committed before or after its entry into force. It dismissed the applicant's argument that the said Treaty did not provide a basis for the mutual enforcement of decisions. Article 1, paragraphs (1) and (2)(h) of the Treaty, in conjunction with Article 17, governed legal assistance in forfeiture proceedings. As to the alleged lack of reciprocity, it was sufficient to refer to those provisions. It was therefore not necessary to examine questions of United States constitutional law.

44. Moreover, referring to its decision of 12 October 1998, the court reiterated that the facts underlying the applicant's conviction for money laundering would have been punishable as receiving stolen property under Article 164(1)(4) of the Criminal Code at the time of the commission of the offences. Further, it reiterated that withdrawal of enrichment pursuant to Article 20 of the Criminal Code and forfeiture pursuant to Article 20b, both in the version in force since 1996, were not regarded as penalties, but served the purpose of neutralising proceeds of criminal activities. These measures covered any proceeds of an offence, irrespective of whether they were directly derived from the offence or given for its commission or whether they had already been converted into other assets.

45. With regard to the applicant's complaint that the proceedings in the United States had not complied with the requirements of Article 6 of the Convention, the court referred to the reasons given in its previous decision of 12 October 1998.

46. The court dismissed the applicant's plea that the enforcement of the final forfeiture order was time-barred, noting that the United States Supreme Court, on 25 March 1996, had refused leave to appeal against the provisional forfeiture order, whereupon the final forfeiture order had been

issued on 7 November 1997. Consequently, the five-year limitation period pursuant to section 59 of the Criminal Code had not expired.

47. As to the applicant's procedural rights, the court noted that he had been represented by counsel throughout the proceedings and had had the opportunity to submit extensive written pleadings.

48. Finally, the court considered that the public prosecutor's appeal was well-founded in that section 64(7) of the ELAA provided that forfeited assets fell to the Republic of Austria. Thus, forfeiture to the benefit of the United States under Article 17(3) of the 1998 Treaty was not admissible.

49. The decision was served on the applicant on 30 October 2000.

II. RELEVANT DOMESTIC LAW

A. The Extradition and Legal Assistance Act

50. Section 1 of the Extradition and Legal Assistance Act (*Auslieferungs- und Rechtshilfegesetz*, Federal Law Gazette no. 529/1979) provides that the Act applies where international or bilateral agreements do not provide otherwise.

51. Section 3 carries the heading "reciprocity" and, so far as relevant, provides as follows:

> "(1) Foreign requests may be granted only if it is ensured that the requesting State would also grant an equivalent Austrian request.
>
> ...
>
> (3) If there are doubts regarding compliance with reciprocity, information shall be obtained from the Federal Minister of Justice."

52. Section 64 is situated in the chapter on the enforcement of decisions by foreign criminal courts. It regulates the conditions for taking over the enforcement of such decisions.

> "(1) Enforcement or further enforcement of a decision by a foreign court with final and legal effect, in the form of a monetary fine or prison sentence, a preventive measure or a pecuniary measure (*vermögensrechtliche Anordnung*), is admissible at the request of another State if:
>
> 1. the decision of the foreign court was taken in the course of proceedings in compliance with the principles of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention) (Federal Law Gazette no. 210/1958);
>
> 2. the decision was taken in relation to an act that is punished by a court sentence under Austrian law;
>
> 3. the decision was not taken in relation to one of the offences listed in sections 14 and 15;

4. no time-limit has expired under Austrian law regarding enforceability;

5. the person concerned by the decision of the foreign court regarding this offence is not being prosecuted in Austria, has been finally and effectively convicted or acquitted in this matter or has otherwise been released from prosecution.

...

(4) Enforcement of a decision by a foreign court which results in pecuniary measures is admissible only to the extent that the requirements under Austrian law for a monetary fine, a withdrawal of enrichment or forfeiture apply, and that no corresponding Austrian measure has yet been taken.

...

(7) Fines, forfeited assets or enrichment withdrawn shall fall to the Republic of Austria."

53. The procedure to be followed in cases concerning the enforcement of foreign decisions is laid down in section 67 of the ELAA. It does not make any provision for the holding of hearings.

B. Treaty between the Government of the Republic of Austria and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters

54. The Treaty was signed on 23 February 1995 and, following ratification, entered into force on 1 August 1998 (Federal Law Gazette Part III, no. 107/1998).

Article 1

"(1) The Contracting Parties shall provide mutual assistance, in accordance with the provisions of this Treaty, in connection with the investigation and prosecution of offences, the punishment of which at the time of the request for assistance would fall within the jurisdiction of the judicial authorities of the Requesting State, and in related forfeiture proceedings.

(2) Assistance shall include:

...

(h) assisting in proceedings related to forfeiture and restitution; ..."

Article 17

"(1) If the Central Authority of one Contracting Party becomes aware of fruits or instrumentalities of offences which are located in the territory of the other Party and may be forfeitable or otherwise subject to seizure under the laws of that Party, it may so inform the Central Authority of the other Party. If the other Party has jurisdiction in

this regard, it may present this information to its authorities for a determination as to whether any action is appropriate. These authorities shall issue their decision and shall, through their Central Authority, report to the other Party on the action taken.

(2) The Contracting Parties shall assist each other to the extent permitted by their respective laws in proceedings relating to the forfeiture of the fruits and instrumentalities of offences, restitution to the victims of crime, and the collection of fines imposed as sentences in criminal prosecutions.

(3) A Requested State in control of forfeited proceeds or instrumentalities shall dispose of them in accordance with its law. To the extent permitted by its laws and upon such terms as it deems appropriate, either Party may transfer forfeited assets or the proceeds of their sale to the other Party."

Article 20

"(3) This Treaty shall apply to requests whether or not the relevant offences occurred prior to the entry into force of this Treaty."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

55. The applicant complained about the lack of a public hearing in the proceedings concerning the execution of the Rhode Island District Court's forfeiture order in Austria. He relied on Article 6 § 1 of the Convention which, in so far as material, reads as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ... by [a] ... tribunal ..."

A. Applicability of Article 6 § 1

56. In its decision on admissibility (see paragraph 4 above) the Court held that while the criminal head of Article 6 § 1 did not apply to the proceedings relating to the enforcement of the forfeiture order, they fell under the civil head of Article 6 § 1.

57. In their observations following the admissibility decision, the Government maintained that Article 6 did not apply. In particular they asserted that *exequatur* proceedings did not involve a determination of the applicant's civil rights. The decision on his civil rights regarding the forfeited assets had already been taken in the proceedings before the Rhode Island District Court which had resulted in a final and enforceable forfeiture

order. In contrast the *exequatur* proceedings were international enforcement proceedings. They were a prerequisite for enforcing a foreign decision in Austria and could not entail reopening the question whether the applicant's assets had been legitimately forfeited.

58. The Court does not see a reason to deviate from the view expressed in the admissibility decision but would add the following considerations.

59. The Court refers to its finding in the admissibility decision that the Rhode Island District Court's final forfeiture order involved a determination of the applicant's civil rights and obligations.

60. As far as civil proceedings before domestic courts are concerned, the applicability of Article 6 extends to the execution phase of the proceedings, the reason being that the "right to a court" embodied in Article 6 would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party (see *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II).

61. The Court has, again with regard to domestic proceedings, also found Article 6 to apply in respect of execution proceedings on the ground that it is the moment when the right asserted actually becomes effective which constitutes the determination of a civil right (see, in particular, *Pérez de Rada Cavanilles v. Spain*, 28 October 1998, § 39, *Reports* 1998-VIII, relating to the execution of a settlement agreement, and *Estima Jorge v. Portugal*, 21 April 1998, § 37, *Reports* 1998-II, relating to the enforcement of a notarial deed).

62. The Court sees no need to come to a different conclusion for *exequatur* proceedings, that is, proceedings relating to the execution of a foreign court's decision, provided that the decision in question concerned a civil right or obligation (see *Sylvester v. Austria* (dec.), no. 54640/00, 9 October 2003, and *McDonald v. France* (dec.), no. 18648/04, 29 April 2008, both relating to *exequatur* proceedings for a foreign divorce decree).

63. However, as the Government rightly pointed out, in *exequatur* proceedings the domestic courts are not called upon to decide anew on the merits of the foreign court's decision. All they have to do is to examine whether the conditions for granting execution have been met.

64. In the present case the courts had to examine in particular whether the requirements of the 1998 Treaty and the ELAA were met, including the question whether the proceedings conducted before the Rhode Island District Court had been in conformity with Article 6 of the Convention (see the admissibility decision, paragraph 4 above). However, they were clearly not called upon to examine in substance whether the applicant's assets had been legitimately forfeited.

65. In conclusion, the Court confirms that Article 6 § 1 under its civil head applies to the proceedings at issue.

B. Compliance with Article 6 § 1

1. The parties' submissions

66. The applicant complained that neither the Vienna Regional Criminal Court nor the Vienna Court of Appeal had held a public hearing although there were no special circumstances that justified forgoing a hearing. Moreover, he submitted that he should have been heard in person in order to show that the assets stemmed from lawful business activities.

67. The Government contended that the right to a public hearing or any hearing at all was not absolute. In the present case, the courts had been justified in dispensing with a hearing, since the *exequatur* proceedings had exclusively concerned questions of law.

68. Moreover, a personal appearance by the applicant had neither been necessary, as the issues to be resolved had not required the court to gain a personal impression of him, nor had it been feasible, as he was serving his prison term in the United States. A requirement of personal attendance would severely hamper international cooperation in cases such as the present one.

69. Lastly, the Government argued that the applicant had been sufficiently involved in the proceedings in that he had been informed of all steps taken and had submitted comprehensive statements through counsel.

2. The Court's assessment

70. The Court reiterates that the holding of court hearings in public constitutes a fundamental principle enshrined in paragraph 1 of Article 6. This public character protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts can be maintained. By rendering the administration of justice transparent, publicity contributes to the achievement of the aim of Article 6 § 1, namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention (see, for example, *Diennet v. France*, 26 September 1995, § 33, Series A no. 325-A, and *Werner v. Austria*, 24 November 1997, § 45, *Reports* 1997-VII).

71. According to the Court's case-law, the right to a "public hearing" under Article 6 § 1 entails the right to an "oral hearing" unless there are circumstances which justify dispensing with such a hearing (see *Allan Jacobsson v. Sweden (no. 2)*, 19 February 1998, § 46, *Reports* 1998-I, with reference to *Fredin v. Sweden (no. 2)*, 23 February 1994, §§ 21-22, Series A no. 283-A, and *Stallinger and Kuso v. Austria*, 23 April 1997, § 51, *Reports* 1997-II).

72. In the present case neither the Vienna Regional Court nor the Vienna Court of Appeal held a hearing before taking over the execution of the

Rhode Island District Court's forfeiture order (see paragraphs 33 and 42 above). The Court notes that section 67 of the ELAA does not envisage the holding of a hearing in proceedings concerning the execution of a foreign decision. The fact that the applicant did not request a hearing before the Vienna Regional Criminal Court cannot therefore be interpreted as a waiver of his right to a hearing (see *Werner*, cited above, § 48). Moreover, in his appeal against the Regional Court's decision he complained about the lack of a hearing and requested the appellate court to hold one (see paragraph 40 above).

73. The Court must therefore examine whether there where circumstances of such a nature as to dispense the courts from holding a hearing. The Court has accepted that a hearing may not be required where there are no issues of credibility or contested facts which necessitate a hearing and the courts may fairly and reasonably decide the case on the basis of the parties' submissions and other written materials (see, as a recent authority, *mutatis mutandis*, *Jussila v. Finland* [GC], no. 73053/01, § 41, ECHR 2006-XIV, with further references).

74. It follows from the Court's case-law that the character of the circumstances that may justify dispensing with an oral hearing essentially comes down to the nature of the issues to be decided by the competent national court, not to the frequency of such situations. It does not mean that refusing to hold an oral hearing may be justified only in rare cases (ibid., §42). The overarching principle of fairness embodied in Article 6 is, as always, the key consideration.

75. In particular the Court has had regard to the technical nature of disputes over social-security benefits, which are better dealt with in writing than by means of oral argument. It has repeatedly held that in this sphere the national authorities, having regard to the demands of efficiency and economy, could abstain from holding a hearing since systematically holding hearings could be an obstacle to the particular diligence required in social-security proceedings (see, for instance, *Schuler-Zgraggen v. Switzerland*, 24 June 1993, § 58, Series A no. 263; *Döry v. Sweden*, no. 28394/95, § 41, 12 November 2002; and *Pitkänen v. Sweden* (dec.), no. 52793/99, 26 August 2003). In addition the Court has sometimes noted that the dispute at hand did not raise issues of public importance such as to make a hearing necessary (see *Schuler-Zgraggen*, ibid.).

76. Furthermore, the Court has accepted that forgoing a hearing may be justified in cases raising merely legal issues of a limited nature (see *Allan Jacobsson (no.2)*, cited above, §§ 48-49, and *Valová and Others v. Slovakia*, no. 44925/99, § 68, 1 June 2004) or of no particular complexity (*Varela Assalino v. Portugal* (dec.), no. 64336/01, 25 April 2002, and *Speil v. Austria* (dec.), no. 42057/98, 5 September 2002).

77. Turning to the circumstances of the present case, the Court observes that the courts had to examine whether the conditions laid down in the

relevant provisions of the ELAA and the 1998 Treaty for execution of the forfeiture order were met. The issues to be examined included questions of reciprocity, the question whether the acts committed by the applicant were punishable under Austrian law at the time of their commission, compliance with statutory time-limits and whether the proceedings before the Rhode Island District Court, which had issued the confiscation order, had been in conformity with the standards of Article 6 of the Convention.

78. In the Court's view, the present proceedings concerned rather technical issues of inter-State cooperation in combating money-laundering through the enforcement of a foreign forfeiture order. They raised exclusively legal issues of a limited nature. All the Austrian courts had to establish was whether the conditions set out in the ELAA and the 1998 Treaty for granting the execution of the confiscation order were met. As has already been established (see paragraphs 63-64 above), the proceedings did not involve any review of the merits of the forfeiture order issued by the Rhode Island District Court.

79. The present proceedings did not require the hearing of witnesses or the taking of other oral evidence. Furthermore, the Court agrees with the Government that the courts were not called upon to hear the applicant in person. The proceedings did not raise any issue of his credibility, nor did they concern any circumstances which would have required the courts to gain a personal impression of the applicant. In these circumstances, the courts could fairly and reasonably decide the case on the basis of the parties' written submissions and other written materials. They were therefore dispensed from holding a hearing.

80. Consequently, there has been no violation of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 OF THE CONVENTION

81. The applicant complained that the Austrian courts' decisions violated Article 1 of Protocol No. 1, which reads as follows:

> "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."

A. The parties' submissions

82. The applicant asserted that he was the owner of the assets at issue. He maintained that the Austrian courts' decisions lacked a legal basis, firstly in that the condition of reciprocity was not fulfilled, secondly in that the final forfeiture order was time-barred, and thirdly in that Article 17 of the 1998 Treaty only permitted the forfeiture of "fruits and instrumentalities" of an offence, but not the forfeiture of "substitute assets". Lastly, he argued that the procedure had not given him a reasonable opportunity to present his arguments, in particular as no hearing had been held and as the courts had disregarded the expert opinion submitted by him.

83. The Government argued that the execution of the forfeiture order did not interfere with the applicant's right to peaceful enjoyment of his property. He had failed to show that he was the owner of the assets at issue. It had only been established that the key to the safe in Vienna in which the assets were stored had been discovered in the applicant's flat in London. In the Government's view the applicant had only held the assets as a trustee for the drugs cartel for which he had been laundering money. Even assuming that the applicant was the owner of the assets at issue, there was nothing to indicate that they stemmed from any legal activities.

84. In the alternative the Government argued that an interference with the applicant's "possessions" was in any case justified. The execution of the forfeiture order had a legal basis in Article 17 of the 1998 Treaty and section 64 of the ELAA. Moreover, the Austrian courts had given detailed reasons when finding that the conditions enumerated in these provisions were met. The forfeiture served the legitimate aim of combating international drug-trafficking; the measure was also proportionate, given that the applicant had been found guilty of money laundering for a drugs cartel.

B. The Court's assessment

85. As regards the Government's argument that the applicant was not the owner of the assets, the Court observes that Article 1 of Protocol No. 1 refers to "possessions", a term which has an autonomous meaning. It is not disputed that the applicant had rented the safe in which the assets were found. Nor is it disputed that the Rhode Island District Court's final forfeiture order was directed against him. Without the confiscation and the execution of the final forfeiture order by the Austrian courts, he would have been able to dispose of the cash amounts, the bank account and the bearer bonds deposited in the safe (see, as a comparable case, *Riela and Others v. Italy* (dec.), no. 52439/99, 4 September 2001). Therefore, the measures complained of amounted to an interference with his right to peaceful enjoyment of his possessions.

86. The Court refers to 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 *AGOSI v. the United Kingdom*, 24 October 1986, § 48, Series A no. 108, and *Air Canada v. the United Kingdom*, 5 May 1995, §§ 29 and 30, Series A no. 316-A). In line with that case-law, the Court considers that the execution of the forfeiture order, though depriving the applicant permanently of the assets at issue, falls to be considered under the so-called third rule, relating to the State's right "to enforce such laws as it deems necessary to control of the use of property in accordance with the general interest" set out in the second paragraph of Article 1 of Protocol No. 1 (see *Butler v. the United Kingdom* (dec.), no. 41661/98, ECHR 2002-VI, and *AGOSI*, cited above, § 51).

87. The Court notes that the execution of the forfeiture order had a basis in Austrian law, namely section 64 of the ELAA and Article 17 of the 1998 Treaty. As to the applicant's claim that the requirements laid down in these provisions were not complied with, it has to be borne in mind that the Court's power to review compliance with domestic law is limited (see, among many other authorities, *Jokela v. Finland*, no. 28856/95, § 51, ECHR 2002-IV, and *Fredin v. Sweden (no. 1)*, 18 February 1991, § 50, Series A no. 192). In the present case, the Austrian courts dealt in detail with the applicant's arguments and gave extensive reasons for their finding that the above-mentioned provisions provided a legal basis for executing the final forfeiture order. There is nothing to show that their application of the law went beyond the reasonable limits of interpretation.

88. Furthermore, the Court observes that the execution of the forfeiture order had a legitimate aim, namely enhancing international co-operation to ensure that monies derived from drug dealing were actually forfeited. The Court is fully aware of the difficulties encountered by States in the fight against drug-trafficking. It has already held that measures, which are designed to block movements of suspect capital, are an effective and necessary weapon in that fight (see *Raimondo v. Italy*, 22 February 1994, § 30, Series A no. 281-A). Thus the execution of the forfeiture order served the general interest of combating drug trafficking. However, a fair balance has to be struck between these demands of the general interest and the applicant's interest in the protection of his right to peaceful enjoyment of his possessions. In making this assessment due regard is to be had to the wide margin of appreciation the respondent State enjoys in such matters (see *AGOSI*, cited above, § 52, and *Butler*, cited above).

89. Article 1 of Protocol No. 1 contains no explicit procedural requirements. It follows that they are not necessarily the same as under Article 6. However, the Court has held that the proceedings at issue must afford the individual a reasonable opportunity of putting his or her case to the relevant authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by this provision. In

ascertaining whether this condition has been satisfied, the Court takes a comprehensive view (see, for instance, *Jokela*, cited above, § 45, and *AGOSI*, cited above, § 55).

90. In the present case, two sets of proceedings were conducted before the Austrian courts. The first related to the preliminary confiscation of the assets in order to secure the execution of the forfeiture, the second concerned the decision to take over the execution of the Rhode Island District Court's final forfeiture order. The applicant was represented by a lawyer throughout the proceedings and had the opportunity, of which he made ample use, to submit his arguments. He was therefore in a position to effectively challenge the measures interfering with his rights under Article 1 of Protocol No. 1. Moreover, bearing in mind the respondent State's wide margin of appreciation in this area, the Court finds that the execution of the forfeiture order does not disclose a failure to strike a fair balance between respect for the applicant's rights under Article 1 of Protocol No. 1 and the general interest of the community.

91. Having regard to these considerations, the Court considers that the execution of the forfeiture order did not amount to a disproportionate interference with the applicant's property rights.

92. Consequently, there has been no violation of Article 1 of Protocol No. 1.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been no violation of Article 6 § 1 of the Convention;

2. *Holds* that there has been no violation of Article 1 of Protocol No. 1.

Done in English, and notified in writing on 18 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President