



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

FIRST SECTION

Application no. 39703/07
Yevgeniy Valeryevich DANILIN
against Russia
lodged on 25 June 2007

STATEMENT OF FACTS

The applicant, Mr Yevgeniy Valeryevich Danilin, is a Russian national, who was born in 1986 and lives in Novoulyanovsk, the Ulyuanovsk Region.

The circumstances of the case

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

1. Circumstances leading to the arrest of the applicant

In June 2006 the applicant became an injecting heroine user.

(a) Events of 17 July 2006

In July 2006 the Leninskiy District Department of the Interior of Ulyanovsk (the district police department) received unspecified operative information on the applicant's involvement in drug trafficking and on 17 July 2006 carried out an operational-search activity "test purchase".

The official account of the events is that Mor., a police officer, provided Mus., also a policeman, with banknotes marked with a special substance. Mor. and two lay witnesses accompanied Mus. to the meeting point and waited for him in a car. Mus., acting as an undercover agent, went to the applicant with F., the applicant's acquaintance, and purchased a sachet of heroin from the applicant. He returned to the car and gave Mor. the drugs in the presence of the lay witnesses.

According to the applicant, on 17 July 2006 he had received a phone call from F., who had wished to purchase some heroin for Man., the applicant's acquaintance. The applicant met F. who came to the meeting point together with Mus., and F gave him money. Then he went to Man., purchased heroin from him and gave it to F., who shared a portion of the drug with Mus.

The applicant remained at liberty and no criminal proceedings were brought against him immediately after these events.

(b) Events of 14 August 2006

The official version of the events is that on 14 August 2006 the applicant sold another portion of heroin to Man. On the same date the police arrested Man. and discovered heroin on him. Man. confessed of having bought it from the applicant and voluntarily agreed to participate in a “test purchase” operation in respect of the applicant in future.

According to the applicant, at some point between 1 and 16-17 August 2006 he received medical treatment from drug addiction. On 14 August 2006 he stayed at home and had not met Man.

The applicant was not arrested or prosecuted.

(c) Events of 25 August 2006 at 1 p.m.

The official version of the events is that at 1.00 p.m. on 25 August 2006 the applicant sold heroin to A., a private person. Immediately after the purchase A. was arrested by the police.

The applicant denies his involvement in that count of drug sale.

2. The applicant’s arrest and alleged ill-treatment and subsequent detention in the IVS.

(a) The applicant’s apprehension

According to the applicant, at some point on 25 August 2006 Man. called him and invited the applicant to buy some heroin from him. The applicant met Man., told him that he did not have money and asked him to borrow him some heroin. Man. agreed and took out seven sachets of heroin. He dissolved the contents of one half of a sachet with water, put the solution in two syringes and gave one to the applicant. The applicant immediately used the drug, whilst Man. had kept his syringe. Then both the applicant and Man. were apprehended by the police. Immediately after the apprehension the applicant was searched. No prohibited items were discovered on him.

The official account of the events is that at about 1.20 p.m. the applicant sold a portion of heroin to Man., a police informant acting as an undercover agent upon the police instructions within the operative-search activity “test purchase”. The case-file does not contain a reference to operational information constituting the basis for the decision to carry out the test purchase.

At 2.30 p.m. on 25 August 2006 the applicant was apprehended by the policemen. Then the policemen put a jacket over his head and transferred him to the district police office where officers B., Mus. and Mor. again searched him in the presence of lay witnesses. The police officers discovered heroin on the applicant and seized it.

According to the applicant, the policemen had planted drugs on him.

(b) Alleged ill-treatment at the police station

The applicant remained at the police station overnight. He submits that officers B. and Mor. ill-treated him for about four hours in order to extract a

confession from him. Officer B. handcuffed him and attached a dumb-bell to the handcuffs. The policemen were drinking alcohol. B. hit the applicant in the head and a shoulder with an empty bottle. Then he crushed a bottle over the applicant's knee. He forced the applicant on the knees and ordered him to gather the pieces of glass. The applicant refused to obey; then B. beat him up with a crow-bar in the knees and the right shoulder. He administered about six blows on him. Then the policemen ordered him to go to the corridor. The applicant, still having the dumb-bell attached to the handcuffs, went out of the office and squatted down. Mor. and B. screamed at him. Then those two officers and another man, apparently the acquaintance of the policemen, continued hitting him in various parts of his body, in particular, in the ribs and the legs. B. and Mor. invited their acquaintance to "practice combat skills" on the applicant, and the three men beat him up for two more hours.

Then at some point, apparently on 26 August 2006 in the morning, they brought him to the investigator and told him that he should not complain about the events of the night.

(c) The applicant's confession of 26 August 2006 and the arrest order

On 26 August 2006 investigator Mat. of the Leninskiy district prosecutor's office of Ulyanovsk opened criminal proceedings against the applicant on suspicion of drug trafficking and ordered his arrest for two days. The investigator questioned the applicant in the presence of a State-appointed lawyer.

The applicant confessed of having sold drugs to A. and Man. on 25 August 2006 (see below for details).

On the same date he was transferred to a local temporary detention centre ("the IVS").

On 28 August 2006 an unspecified court charged the applicant with illicit sale of narcotic drugs, authorised his arrest in relation to those charges, and ordered his placement into custody pending investigation. It follows from the first-instance judgment in the applicant's criminal case (see below) that the applicant confessed during the examination of his case on that date that he had sold drugs to Man. The applicant did not submit copies of the respective documents.

According to the statement by the investigator during an inquiry into the duress allegations (see below), on the same date the applicant was transferred from the IVS to a remand prison.

According to the summary of the results of the applicant's medical examinations of 13 October 2006 held in the IVS (see below), the applicant had remained in the IVS until 7 September 2006 and had taken part in the investigative activities between 28 August and 6 September 2006.

3. *The applicant's injuries*

On 27 August 2006 the applicant was examined by the IVS doctor. It follows from the medical certificate issued at 0.15 a.m. on that date, as well as from the extract of the IVS record of the inmates' arrivals of 27 August 2006, that he was diagnosed with multiple bruises of the right shoulder and the right hip, hematomas of the left shoulder and the left hip and an old abrasion on the left forearm. According to the medical certificate issued on

that date, the applicant informed the doctor that the injuries had been inflicted on him during his arrest. He was further diagnosed with bruises of the soft tissues of the chest, arms and legs and received painkillers.

According to the summary of the results of the applicant's medical examinations of 13 October 2006 produced by the IVS doctor, on 28 August 2006 the applicant complained about severe pain in his body and also developed withdrawal syndrome; he was given painkillers. On 31 August 2006 he was vomiting with blood and had insomnia. On 7 September 2006, the date of his transfer to the remand prison, he did not have any complaints.

4. Inquiry into the ill-treatment allegations and two refusals to prosecute the policemen

On 31 August 2006 the applicant's mother lodged an application with the Ulyanovsk Department of the Interior in which she complained that the applicant had been beaten and requested to carry out an inquiry and prosecute the guilty.

On 15 September 2006 a police officer interviewed the applicant's mother in respect of the complaint. She submitted that on 26 August 2006 she had called the Leninskiy Department of the Interior in order to establish the applicant's whereabouts and had learned that the applicant had not been detained at the police station. She stated, with reference to her son's sayings, that he had been beaten with a crow-bar and handcuffed. The policemen had attached a dumb-bell to the handcuffs. They had been drinking alcohol and had crushed a bottle over the applicant's head.

On 28 September 2006 investigator S. of the Leninskiy district prosecutor's office of Ulyanovsk refused to bring criminal proceedings against the policemen. The investigator referred to the applicant's account of the events, as well as the medical certificate by the IVS doctor. He also cited the testimony of officers B. and Mor. who submitted, by two identical statements, that on 25 August 2007 they had arrested the applicant during the operative-search activity "test purchase". The applicant had attempted to escape. Then running away from the police he had fallen down on the ground several times. The policemen had not used handcuffs. They had brought the applicant to the police station, had searched him there and had found a sachet of heroin on him. They had not planted the evidence on the applicant, nor had they used violence against him. It had been established that the applicant had been under influence of drugs. On the same date the applicant's arrest had been recorded. The applicant had agreed to the arrest and had not raised any complaints against the policemen. They had specified that K., their acquaintance, had come to the police station at the time of the events and had seen the applicant there unharmed.

The decision also contained a reference to K.'s testimony who submitted that he had come to the police station to obtain consultation of the police officers on an issue unrelated to the applicant's case. He had seen the applicant in one of the offices and confirmed that B. and Mor. had not used violence against him, but had only talked to him.

Finally, the decision referred to the record of an interview of investigator Mat. of the Investigative Department of the Leninskiy District Department of the Interior. He confirmed that on 25 August 2006 the applicant had been arrested during the "test purchase" operation and that a doze of heroin had

been discovered on him. Mat., in charge of the investigation since 26 August 2007, had arrested the applicant as a suspect on that date and had questioned him in the presence of a lawyer. He had not received any complaints from the applicant and had not seen any injuries on his body. On 28 August 2007 a court had ordered the applicant's arrest and placement into custody pending investigation, and the applicant had been transferred to the remand prison.

In a one-paragraph-long conclusion the investigator established that the applicant had agreed to be arrested as a suspect, he had been questioned in the presence of a lawyer and had not raised any complaints against the policemen at that stage. Therefore, he rejected the applicant's mother's allegations as unfounded, for the lack of any evidence of unlawful actions by B. and Mor.

On 29 September 2006 the applicant's mother complained about the decision to the Prosecutor of the Leninskiy District of Ulyanovsk.

By letter of 30 September 2006 the Department of the Interior of the Ulyanovsk Region informed the applicant's mother that an inquiry had been held in respect of officers B. and M. and no evidence of any unlawfulness or a violation of the disciplinary rules had been established in respect of them.

By letter of 28 November 2006 the Chief Inspector of the Ministry of the Interior of the Russian Federation informed the applicant's mother that an additional inquiry had been held and it had not revealed any violation of the disciplinary rules or domestic law by officers B. and M.

It appears that at some point the decision of 28 September 2006 was set aside by a higher-ranking prosecutor.

On 2 November 2006 a medical expert examination was held. According to the medical expert report no.8593 (a copy has not been submitted), the injuries on the applicant's body could have been inflicted by a blunt solid object and had not caused harm to the applicant's health. The expert found it impossible to decide on the origin and exact date of the injuries, since their description in the IVS medical certificate had not been sufficiently detailed.

It appears that on 12 December 2006 the applicant lodged a new complaint with the Leninskiy district prosecutor's office.

On 14 December 2006 investigator S. of the Leninskiy district prosecutor's office of Ulyanovsk by a new decision refused to bring criminal proceedings against the policemen. The investigator cited the medical expert examination report of 2 November 2006 and also referred to an interview of V., lay witness of the test purchase, who averred, in particular, that the applicant had run away from the police and had several times fallen on the ground. The witness had not seen the applicant ill-treated or threatened. Otherwise, the investigator reproduced *verbatim* his earlier decision and reached the same conclusions as on 28 September 2006.

It appears that the applicant and his mother kept complaining about the refusal to bring criminal proceedings against the policemen.

On unspecified dates the applicant's mother on several occasions requested to grant her access to the inquiry file in respect of the duress complaint.

By letters of 10 August 2007 and 11 October 2007 the Leninskiy district prosecutor's office informed her that the file had been sent to the regional prosecutor's office, and therefore her request could not be granted.

5. Criminal proceedings against the applicant

(a) Relevant information on the pre-trial stage of the proceedings against the applicant

On 26 August 2006 the applicant was questioned in the presence of a legal-aid lawyer. The applicant submitted that he had usually procured heroin from O., a private person, and that he had on several occasions sold drugs to various unspecified individuals, including “Dima” and “Oleg”, his acquaintances since July 2006. On 25 August both “Dima” and “Oleg” had called the applicant and asked him to supply them with heroin. He had sold drugs to both of them and received RUB 1,400 from “Dima” and RUB 1,200 from “Oleg”. Given that only RUB 200 had been found on him, he submitted that the remaining banknotes must have been fallen on the ground through a hole in his bag.

At some point a pre-trial confrontation between the applicant and Man. was held.

On an unspecified date the applicant’s lawyer, Mr Sh., requested to admit medical documents concerning the applicant’s injuries to the case-file. On 7 November 2006 the investigator of the Investigative Department of the Leninskiy District Department of the Interior, referring to the refusal to bring criminal proceedings of 28 September 2006 (see above), rejected the motion as unrelated to the criminal case.

(b) The first instance judgment

On 7 February 2007 the Leninskiy District Court of Ulyanovsk convicted the applicant of illicit possession of drugs without an intent to sell, as well as of four counts of attempted sale of particularly large quantity of narcotic drugs (Article 228.1 §§ 1 and 2 (b) of the Criminal Code of the Russian Federation, episodes of 17 July, 14 August 2006 and two episodes of 25 August 2006) and sentenced him to six years’ imprisonment. The court further held that the applicant’s detention since 26 August 2006 should be counted toward his prison term.

The conviction in respect of the episode of 17 July 2006 was based on the court testimonies of Mor. and Mus. and the documents concerning the operative-search activity “test purchase”.

The court’s findings in respect of the events of 14 August 2006 were made on the basis of Mor. and Man.’s testimonies. The court also heard three defence witnesses (the applicant’s mother, a friend and a relative) who submitted that the applicant had remained at home on that date, and rejected them with reference to a detailed record of the phone calls between the applicant and his mother. The court established that the applicant and his mother had been actually exchanging phone calls at the time of the events, which was in contradiction with the mother’s submissions that she remained at home together with her son.

Turning to the sale of drugs to A. on 25 August 2006, the trial court referred to the applicant’s confession, A.’s pre-trial testimony and to the submissions he had made during the “operative experiment” at the pre-trial stage. Witness A. did not appear before the court. The applicant opposed the reading out of his depositions, but the court rejected the objection and admitted A.’s pre-trial statement to the file. The conviction in respect of that

episode was also based on the statements of police officers B. and Mor. who had arrested the applicant; lay witnesses V. and R.; and policemen Mus. and Mustan. who had arrested A. on that day and discovered a syringe on him.

Finally, the conviction of illicit sale of drugs to Man. on 25 August 2006 was based on the applicant's confession, the submissions by Mor., B., V., R., Mus. and Mustan. made in open court, as well as on the documents concerning the "test purchase". In particular, the lay witnesses submitted that they had been present at the applicant's search at the district police station. The court also referred to the applicant's submissions made during the hearing of 28 August 2006 concerning his arrest and pre-trial detention.

The court further took into account the results of the physical and chemical expert examination of the drugs seized and various other documents and items of material evidence in respect of all the above counts of drug sale.

The applicant submitted to the trial court that he had been ill-treated at the police station and had confessed under duress. The court rejected his allegations as unfounded. The court established that on 26 August 2006 the applicant had testified in the presence of a lawyer and therefore his confession could be admitted. As regards the medical certificate concerning his injuries, the court decided, with reference to Mor. and B.'s testimonies, that the injuries could have been inflicted during the arrest and that the actions of the policemen had been lawful.

(c) The parties' grounds for appeal

The applicant appealed against the conviction. He submitted, in particular, that on 17 July 2006 and 25 August 2006 he had been involved in drug sale as a result of police incitement and that he would not commit the impugned offences without the authorities' interference. The police had not had grounds to suspect the applicant of drug trafficking until 17 July 2006, and the trial court had failed to analyse the operative information underlying the decisions to proceed with the two test purchase operations.

The applicant further argued that the court had incorrectly established the facts of the case. In particular, on 17 July 2006 he had sold drugs to F. and not to Mus.; on 14 August 2006 he had not sold drugs to Man.; and on 25 August 2006 Man. had sold drugs to him but not *vice versa*.

He claimed that the conviction was mainly based on the submissions of the policemen, that the lay witnesses' testimonies had been self-contradictory, the prosecution case had been weak and the evidence had been insufficient. He stressed that he had been unable to question witness A.

Finally, he complained that on 25-26 August 2006 he had been unlawfully detained overnight in the absence of an apprehension record, that the policemen had severely tortured him and that they had refused to provide the applicant's mother with any information on the applicant's whereabouts for thirty hours after the actual apprehension. The State-appointed lawyer representing him on 26 August 2006 did not pay attention to the applicant's situation and was inefficient.

The prosecutor's office also appealed against the judgment.

(d) The appeal judgment

On 28 March 2007 the Ulyanovsk Regional Court examined the parties' statements of appeal. It admitted the record of the phone calls by the applicant's mother to the police station made on 25-26 August 2006. The appeal court established that the applicant had been arrested on 25 August 2006 and amended the operative part of the sentence so that his detention since 25 August 2006 be counted toward his term of imprisonment.

The court further upheld the remainder of the trial court's findings having reached, in particular, the following conclusions.

It found that the applicant's account of events had been duly verified by the trial court, that the district court had heard witnesses and had given due assessment to their submissions, and that the statements by the policemen had been corroborated by other witnesses' depositions.

In reply to the applicant's complaint that he had not had an opportunity to question A. at any stage of the proceedings, the appeal court noted, without further details, that A.'s pre-trial statement had been read out in accordance with law.

The regional court rejected as unfounded the applicant's argument that he had had to produce a self-incriminating statement under duress. The appeal court noted that those submissions had been examined by both the prosecutor's office and the trial court and rejected as unsubstantiated. The appeal court reiterated that the applicant had confessed in the presence of the lawyer, had not objected to the interrogation record and had not raised any complaints at that point. The applicant had benefitted from legal assistance by L. who had represented him upon the applicant's own request. Accordingly, the trial court had lawfully admitted the confession.

Turning to the plea of entrapment, the court rejected it as unfounded, having noted, without further details, that the decisions to proceed with covert operations had been based on the operative information concerning the applicant's involvement in drug trafficking. According to the court, this information was available, in particular, from statements by Mor., B., Mus., Mustak., various records made in the course of the respective covert operation, as well as from unspecified "reports on obtaining the operative information".

On 9 July 2007 the Ulyanovsk Regional Court rectified the appeal judgment of 28 March 2007 in order to correct a clerical error in the first instance court's name.

6. Other developments

At some point in August 2007 Man. was convicted of illicit sale of narcotic drugs in 2007.

At some point in 2007 police officer B. was convicted in several proceedings of abuse of power and attempted fraud. In particular, an unspecified domestic court established that in 2007 B. and other co-accused had planted drugs on private individuals.

None of these proceedings were related to any aspect of the applicant's case.

The applicant requested the authorities to review his sentence, as well as to reopen the inquiry into the duress allegations on the basis of the information concerning the conviction of Man. and B.

By letters of 19 June and 11 September 2008 the prosecutor's office rejected his request as unfounded. It further disallowed the ill-treatment complaint, since all relevant circumstances had already been examined by the trial court.

COMPLAINTS

The applicant complains under Article 3 that he had been subjected to torture by police officers of the Leninskiy District Department of the Interior of Ulyanovsk, and in particular that he had been beaten by police officers B. and Mor., and that the investigation into his allegations of ill-treatment was ineffective.

He complains under Article 5 about his unrecorded detention for about 35 hours after his apprehension on 25 August 2006. He avers that the court detention order of 28 August 2006 was unfounded and largely based on his self-incriminating statement obtained as a result of physical and moral pressure.

The applicant complains under Article 6 that the judgment in the criminal proceedings against him was based on the confession obtained under duress and that the domestic courts rejected his request to declare the confession inadmissible, incorrectly applied domestic law to his case and incorrectly established the facts. He complains about the police incitement in so far as the episodes of 17 July and 25 August 2006 (second episode) are concerned. He avers that he was unable to question witness A., as well as other unspecified witnesses, and submits that the testimony of witness Man. who had acted as a police agent in his case, was unreliable and was not corroborated by the facts of the case.

The applicant complains under Article 13 of the Convention that the authorities rejected all his appeals in order to remedy various violations of his rights in the criminal proceedings against him.

He also refers to Articles 1 and 17 in respect of his application.

QUESTIONS TO THE PARTIES

1. Did the applicant exhaust domestic remedies in respect of his complaint of ill-treatment under Article 3 of the Convention?

2. Was the applicant subjected to treatment contrary to Article 3 of the Convention following his arrest on 25-26 August 2006? The Government are invited to address, in particular, the following factual questions.

(a) Once in the hands of the police:

(i) Was the applicant informed of his rights? If so, when, and what rights was he informed about?

(ii) Was he given the possibility of informing a third party (family member, friend, etc.) about his detention and his location and, if so,

when? In particular, when was the applicant's mother provided information about the applicant's whereabouts?

(iii) Was he given access to a lawyer and, if so, when?

(iv) Was he given access to a doctor and, if so, when?

(b) What activities involving the applicant were conducted at the premises of the Leninskiy District Department of the Interior of Ulyanovsk on 25-26 August 2006, and at which times of the day? If they were carried out at night, was this lawful? What was the applicant's procedural status? Where was the applicant held on those dates? What confessions and/or statements did the applicant give during that period (please submit relevant documents, in particular, records containing the applicant's statements/confessions)? Was the applicant given access to a lawyer before and during each such activity?

The Government are requested to submit relevant documents in response to each of the above questions.

3. Have the authorities complied with their positive obligation under Article 3 of the Convention to carry out an effective investigation into the applicant's allegations of ill-treatment on 25-26 August 2006? In particular:

(a) Were the investigators (investigating authority) who carried out the inquiry into the applicant's allegations of police ill-treatment independent from the investigators (investigating authority) who were responsible for investigating the criminal case against the applicant?

(b) Which officers from which police department(s) were involved in the inquiry into the applicant's complaint of police ill-treatment? What operational and other activities did they carry out in the course of the inquiry?

(c) Did the absence of instituted criminal proceedings prevent investigative measures, which could correspond to the notion of an effective investigation, as required by the Court's case-law under Article 3 of the Convention (see, *mutatis mutandis*, *Taraburca v. Moldova*, no. 18919/10, § 57, 6 December 2011, and *Shanin v. Russia*, no. 24460/04, § 69, 27 January 2011)? Which of the investigation methods employed for a preliminary investigation under Articles 150-226 of the Code of Criminal Procedure (CCrP) could be and were employed, in the present case, in the course of the inquiry under Article 144 of the Code?

(d) Were persons from whom explanations («объяснения») were taken liable for false statements or a refusal to testify?

4. Did the applicant have at his disposal an effective domestic remedy for his complaints under Article 3 of the Convention as required by Article 13 of the Convention?

5. Did the applicant exhaust domestic remedies in respect of his complaint under Article 5 of the Convention? In the affirmative, was the applicant's apprehension and alleged detention in the premises of the Leninskiy District Department of the Interior of Ulyanovsk between 25 and 28 August 2006 compatible with the requirements of Article 5 § 1 of the Convention? What was the legal basis for the applicant's detention on 25-28 August 2006? Was an apprehension record drawn up in respect of the applicant? Was there a violation of Article 5 on account of the alleged delay in compiling the arrest record and the unavailability of legal assistance on 25-26 August 2006? Were the alleged shortcomings in breach of Russian law and/or did they amount to "gross and obvious irregularities" (see for comparison *Boris Popov v. Russia*, no. 23284/04, §§ 70-77, 28 October 2010)? The Government are requested to produce all the documents pertaining to the applicant's apprehension and/or arrest and detention 25-26 August 2006 (the apprehension record (*протокол задержания*), the detention order of 28 August 2006, reports by the policemen, extracts from the relevant logbooks concerning the applicant's presence at and his departure from the police station etc), as well as to submit information on the exact time of the applicant's apprehension and his transfer to the IVS on the relevant dates.

6. Having regard to the applicant's specific allegations, did he have a fair hearing in the determination of the criminal charges against him, in accordance with Article 6 §§ 1 and 3 of the Convention? The parties are invited to address, in particular, the issues outlined in Questions 7-9 below:

7. On what self-incriminating statements did the domestic courts rely in convicting the applicant? Were all those statements obtained in the presence of a lawyer? Was the fairness of the applicant's trial undermined in view of the courts' admission in evidence of his self-incriminating statements concerning produced on 26 August 2006, allegedly obtained under duress, so as to be in breach of Article 6 §§ 1 and 3 (c) of the Convention (see *Gäfgen v. Germany* [GC], no. 22978/05, §§ 165-66, ECHR 2010; see also, in so far as relevant, *Salduz v. Turkey* [GC], no. 36391/02, § 55, ECHR 2008)?

8. With regard to the events of 17 July 2006 and the episode of the sale of drugs to Man. at 1.20 a.m. on 25 August 2006 (referred to in the Statement of Facts as "the second episode of 25 August 2006"):

(a) Did the undercover technique used to investigate the drug offence in the present case amount to an entrapment (see *Ramanauskas v. Lithuania* [GC], no. 74420/01, § 51, ECHR 2008)?

(b) Did the "test purchases" in question target the applicant? The Government are requested to submit copies of the decisions ordering the test purchases in question, as well as other relevant documents concerning the two test purchases.

(c) In respect of the episodes referred to above, and, in particular, the events of 17 July 2006: before the applicant was approached by the undercover agent/police informant, did the investigative authorities possess preliminary information pointing to the applicant's prior criminal intent? Did this information come from a verifiable source unconnected with the individuals involved in the undercover operation (see *Vanyan v. Russia*, no. 53203/99, § 49, 15 December 2005, and *Khudobin v. Russia*, no. 59696/00, § 134, ECHR 2006-XII (extracts))? Did the authorities have good reasons for mounting the covert operation (see *Ramanauskas*, cited above, §§ 63 and 64, and *Malininas v. Lithuania*, no. 10071/04, § 36, 1 July 2008)? What other investigative activities were carried out as regards the applicant prior to the test purchase?

(d) In respect of each of the above episodes, did the undercover agent exert such an influence on the applicant as to incite the commission of an offence that would otherwise not have been committed? Was the applicant subjected to any pressure, either through prompting, persuasion, pleading for compassion or otherwise on the part of the undercover agent to commit the offence (see *Malininas v. Lithuania*, cited above, § 37; *Vanyan*, cited above, §§ 11 and 49; and *Ramanauskas*, cited above, § 67)?

(e) In respect of each of the above episodes, was the procedure authorising the test purchase clear and foreseeable (*Vanyan*, cited above, §§ 46 and 47, and *Khudobin*, cited above, § 135)? Did the decisions authorising them refer to the information as to the reasons for and purpose of the planned test purchases?

(f) Were the test purchases carried out in the present case subject to any judicial control or other independent supervision (see *Miliniene v. Lithuania*, no. 74355/01, § 39, 24 June 2008)?

(g) Was the applicant afforded adequate procedural safeguards enabling him to raise a complaint of entrapment before the national courts (see *Ramanauskas*, cited above, §§ 69-70)?

(h) Was the issue of entrapment examined in an adversarial, thorough and comprehensive manner? Was all relevant information, particularly regarding the purported suspicions about the applicant's previous conduct, put openly before the trial court or tested in an adversarial manner (see *V. v. Finland*, no. 40412/98, §§ 76 et seq., 24 April 2007; *Malininas*, § 36, cited above; and *Bulfinisky v. Romania*, no. 28823/04, 1 June 2010)?

(i) Did the courts assess the reasons why the operation had been mounted, the extent of the police's involvement in the offence and the nature of any incitement or pressure to which the applicant had been subjected?

(j) Were the undercover agent and other witnesses who could testify on the issue of incitement heard in court and cross-examined by the defence (see *Lüdi v. Switzerland*, 15 June 1992, § 49, Series A no. 238; *Sequeira*

v. Portugal (dec.), no. 73557/01, ECHR 2003-VI; *Shannon v. the United Kingdom* (dec.), no. 67537/01, ECHR 2004-IV; *Bulfinsky*, § 45, cited above; and *Kuzmickaja v. Lithuania* (dec.), no. 27968/03, 10 June 2008)? Was the evidence related to the two test purchases subject to adversarial proceedings?

9. Given that witness A. was absent from the trial and that his pre-trial written statement was read out instead, did the applicant have an effective opportunity to question the witness for the prosecution, as required by Article 6 §§ 1 and 3 (d) of the Convention? The Government are requested to address the following points:

(a) Was the applicant's conviction in respect of the above episode based solely or to a decisive degree on the statements of witness A. absent from trial (see *Lucà v. Italy*, no. 33354/96, § 40, ECHR 2001-II)?

(b) Did the competent national courts assess the impact of the absence of witness on the fairness of the proceedings?

(c) Was the applicant able to examine the witnesses against him during the pre-trial proceedings? Specifically, was he able to put questions to these witnesses and to submit his objections? In the affirmative, was he assisted by a lawyer in examining the witnesses? Did the confrontation procedure conducted by the State officials meet the requirements of independence and impartiality? (see *Melnikov v. Russia*, no. 23610/03, § 80, 14 January 2010)

(d) Was there a good reason for the absence of witness A. during trial?

(e) Did the national authorities make reasonable effort to secure presence of witness A. during trial as requested by the applicant? Were these efforts duly reviewed by the domestic courts? (see *Bonev v. Bulgaria*, no. 60018/00, § 43 with further references, 8 June 2006)