



Russian courts failed to verify complaints of police entrapment by drug-dealing suspects

In today's Chamber judgment in the case of [Lagutin and Others v. Russia](#) (application nos. 6228/09, 19123/09, 19678/07, 52340/08 and 7451/09), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights.

The case concerned allegations by five people convicted of drug dealing that they had been victims of police entrapment.

The Court held in particular that the Russian trial courts had failed to address the allegations of entrapment, which had been inseparable from the determination of the applicants' guilt. The Court also underlined that, given that there were no adequate safeguards against police provocation under Russian law, the judicial examination of an entrapment plea was the only means of verifying whether there had been valid reasons for an undercover operation.

Principal facts

The applicants, Andrey Semenov, Yekaterina Shlyakhova, Ivan Lagutin, Aleksey Zveryan, and Viktor Lagutin, are Russian nationals who were born between 1979 and 1986 and live in Novocheboksarsk (the Republic of Chuvashiya), Zelenchukskaya (the Krasnodar Region), Kochubeyevskoye (the Stavropol Region), Obninsk (the Kaluga Region), and Stavropol (all in Russia), respectively.

Each applicant was the target of undercover police operations, which led to his or her criminal conviction for drug dealing. Ivan and Viktor Lagutin, brothers, were convicted in October 2008 of possessing and selling large quantities of cannabis in a judgment eventually upheld in January 2012. They were eventually sentenced to five years and two months' and five years' imprisonment respectively. Andrey Semenov, a heroin addict, was convicted of the attempted sale of heroin and sentenced to five years and nine months' imprisonment in August 2006. Yekaterina Shlyakhova, also a drug user, was convicted in March 2008 of selling cannabis and sentenced to five years and six months' imprisonment, the judgment being upheld on appeal in April 2008. Aleksey Zveryan, another drug user, was convicted in February 2008 of dealing in ecstasy and sentenced to five years and six months' imprisonment, the judgment being upheld in July 2008.

All the applicants alleged during the proceedings against them that they had never procured drugs prior to the undercover operations in question and would never have become involved in drug dealing without being lured into it by the police and their informants. In the appeal proceedings, the courts either dismissed the applicants' allegations of police entrapment or rejected their appeal without expressly addressing those allegations. In each case, the police testified that they had ordered the test purchases because they had received preliminary "operational information" according to which the applicants had previously been involved in drug dealing.

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

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

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair trial), the applicants alleged that their convictions were unfair and that their plea of entrapment had not been properly examined in the proceedings before the national courts.

The applications were lodged with the European Court of Human Rights on 6 January 2007 (application no. 19678/07), 3 June 2008 (52340/08), 10 October 2008 (7451/09), 17 December 2008 (6228/09) and 14 March 2009 (19123/09) respectively.

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

Isabelle **Berro-Lefèvre** (Monaco), *President*,
Julia **Laffranque** (Estonia),
Paulo **Pinto de Albuquerque** (Portugal),
Linos-Alexandre **Sicilianos** (Greece),
Erik **Møse** (Norway),
Ksenija **Turković** (Croatia),
Dmitry **Dedov** (Russia),

and also **Søren Nielsen**, *Section Registrar*.

Decision of the Court

Article 6 § 1

The Court underlined that in its case-law it had accepted the use of undercover agents as a legitimate investigative technique for combating serious crimes, provided that adequate safeguards against abuse were in place. In particular, in cases where the main evidence originated from a covert operation, such as a test purchase of drugs, the authorities had to be able to demonstrate that they had good reasons for initiating the operation. Moreover, any such investigation had to be conducted in an essentially passive manner.

The Court observed that in each of the applicants' cases the police had referred to preliminary "operational information" according to which the applicants had previously been involved in drug dealing. However, according to the records submitted to the Court, the Russian trial courts had not sought to clarify the content of the allegedly incriminating operational files, and the Russian Government had not provided any further details concerning that "operational information". The Court was therefore unable to determine whether the authorities had had good reasons for mounting the covert operations and whether or not the undercover agents had used pressure to make the applicants commit the offences in question.

As regards the procedural obligation to provide safeguards against abuse in the course of an undercover operation, the Court noted that each applicant's criminal conviction had been based entirely or predominantly on the evidence obtained in the police-controlled test purchase of drugs. In previous cases against Russia, the Court had found that test purchases fell entirely within the competence of the operational search bodies and it had held that this system revealed a structural failure to provide for safeguards against police provocation.²

In this light, the trial courts – confronted with an arguable allegation that undercover police officers and informants had not acted in a passive manner – had been under an obligation to establish in adversarial proceedings the reasons why the operation had been mounted, the extent of the police's

² In particular *Veselov and Others v. Russia* (23200/10 24009/07 556/10), Chamber judgment of 2 October 2012

involvement in the offence and the nature of any incitement or pressure to which the applicants had been subjected. Given the lack of adequate safeguards under Russian law against police provocation, the judicial examination of an entrapment plea was the only means of verifying whether there had been valid reasons for an undercover operation and whether the police or the informants had remained essentially passive.

However, the trial courts had made no attempts to check the allegations of the drug police about the allegedly pre-existing “operational information” and had accepted their unconfirmed statements that they had good reasons for their suspicions against the applicants. The trial courts’ failure to address the allegations of entrapment, which in the applicants’ cases had been inseparable from the determination of their guilt, had compromised the outcome of their trials beyond repair. It had been at odds with the fundamental guarantees of a fair trial, in particular the principles of adversarial proceedings and the equality of arms between the prosecution and the defence. There had accordingly been a violation of Article 6 as regards all five applicants.

Just satisfaction (Article 41)

The court held that Russia was to pay Mr Ivan Lagutin, Mr Viktor Lagutin, Mr Semenov and Ms Shlyakhova 3,000 euros (EUR) each in respect of non-pecuniary damage. Mr Zveryan did not submit any claim for just satisfaction.

Separate opinion

Judge Pinto de Albuquerque, joined by Judge Dedov, expressed a concurring opinion, which is annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.