

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

THIRD SECTION

CASE OF KHRYAPKO v. RUSSIA

(Application no. 26190/08)

JUDGMENT

STRASBOURG

15 September 2022

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Khryapko v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Darian Pavli*, President,*
Andreas Zünd*,*
Mikhail Lobov*, judges,*
and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 25 August 2022,

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

PROCEDURE

1. The case originated in an application against Russia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 18 February 2008.

2. The applicant was represented by Ms Y. Yefremova, a lawyer practising in Moscow.

3. The Russian Government ("the Government") were given notice of the application.

THE FACTS

4. The applicant's details and information relevant to the application are set out in the appended table.

5. The applicant complained that he had been unfairly convicted of drug offences following entrapment by State agents. He also raised other complaints under the provisions of the Convention.

THE LAW

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

6. The applicant complained principally that he had been unfairly convicted of drug offences which he had been incited by State agents to commit and that his plea of entrapment had not been properly examined in the domestic proceedings. He relied on Article 6 § 1 of the Convention, which reads as follows:

Article 6 § 1

"In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

7. The Court reiterates that absence in the national legal system of a clear and foreseeable procedure for authorising test purchases of drugs remains a structural problem which exposes applicants to an arbitrary action by the

State agents and prevents the domestic courts from conducting an effective judicial review of his entrapment pleas (see *Veselov and Others v. Russia*, nos. 23200/10 and 2 others, § 126, 2 October 2012).

8. The Court has consistently found a violation of Article 6 § 1 of the Convention on account of the deficient existing procedure for authorisation and administration of test purchases of drugs in the respondent State, an issue similar to that in the present case (see *Veselov and Others*, cited above, §§ 126-28; *Lagutin and Others v. Russia*, nos. 6228/09 and 4 others, §§ 124-25, 24 April 2014; *Lebedev and Others v. Russia*, nos. 2500/07 and 4 others, §§ 12-16, 30 April 2015; and *Yeremtsov and Others v. Russia*, nos. 20696/06 and 4 others, §§ 17-21, 27 November 2014).

9. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion as to the admissibility and merits of these complaints. Having regard to its case-law on the subject, the Court considers that in the instant case the criminal proceedings against the applicant were incompatible with a notion of a fair trial.

10. These complaints are therefore admissible and disclose a breach of Article 6 § 1 of the Convention.

II. REMAINING COMPLAINTS

11. The applicant also raised other complaints under various Articles of the Convention.

12. The Court has examined the application and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, these complaints either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

13. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

14. Regard being had to the documents in its possession and to its case-law (see, in particular, *Kumitskiy and Others v. Russia,* nos. 66215/12 and 4 others, § 17, 10 July 2018), the Court considers that the finding of a violation constitutes a sufficient just satisfaction in the present case.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning the entrapment by State agents admissible and the remainder of the application inadmissible;

2. *Holds* that these complaints disclose a breach of Article 6 § 1 of the Convention concerning entrapment by State agents;

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant.

Done in English, and notified in writing on 15 September 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina	Darian Pavli
Acting Deputy Registrar	President

APPENDIX

Application raising complaints under Article 6 § 1 of the Convention (entrapment by State agents)

Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Test purchase date Type of drugs	Specific grievances	Final domestic judgment (appeal court, date)
26190/08 18/02/2008	**Sergey Yuryevich KHRYAPKO** 1970	Yefremova Yekaterina Viktorovna Moscow	27/10/2006 hashish	pressure to sell, repeated calls	27/11/2007 by the Supreme Court of the Khakassia Republic