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

THIRD SECTION

DECISION

Application no. 19185/05
Rada Shuuyevna KOROMCHAKOVA
against Russia

The European Court of Human Rights (Third Section), sitting on 13 December 2016 as a Committee composed of:

Helena Jäderblom, *President,*
Dmitry Dedov,
Branko Lubarda, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 19 May 2005,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Rada Shuuyevna Koromchakova, is a Russian national who was born in 1967 and lived in Abakan prior to her arrest. She was represented before the Court by Mr V.V. Kongarov, a lawyer practising in Abakan.

2. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights.

3. The facts of the case may be summarised as follows.

A. The events of 24 and 25 December 2003 leading to the applicant's conviction

4. On 24 December 2003 M., an acquaintance of the applicant, visited the applicant at her house and brought about 4.7 kilograms of hashish with her for sale.

5. On the same day in the evening, Sh., an undercover agent with the Khakassiya branch of the Federal Drug Control Service (UFSKN – *Управление Госнаркоконтроля по Республике Хакассия*) came to the applicant's house and expressed his intention to buy the hashish from M. It appears that M. agreed to sell the hashish to Sh. for a car and 25,000 Russian roubles (RUB).

6. On 25 December 2003 the applicant agreed to accompany M. during the deal with Sh. as M. was allegedly afraid that Sh. might cheat her. On the same day both the applicant and M. were apprehended on the spot after selling 65 bricks of hashish to Sh. The applicant was carrying RUB 25,000 in notes, which had been marked by the police before the undercover operation.

7. Soon afterwards the police searched the applicant's apartment and found 137.8 grams of hashish pre-packaged in eight match boxes there.

8. The applicant was then arrested on charges of drug dealing.

B. Criminal proceedings against the applicant

9. On 16 November 2004 the Abakinsk Town Court examined the applicant's case. The applicant testified at the trial that she had not made any agreements with Sh. and that she had not sold drugs to him. She also claimed that that she had not known that M. had brought drugs with her and stated that M. had given her the RUB 25,000 for safekeeping. The court found the applicant guilty of drug dealing and sentenced her to seven years and three months of imprisonment.

10. The applicant lodged an appeal with the Supreme Court of the Republic of Khakassiya against the conviction, denying that she had participated in the drug sale and challenging the first-instance court's assessment of the evidence. In an amended statement of appeal she also alleged that Sh. had persuaded her to sell the hashish in question and that she would not have committed crime but for Sh. having persuaded her to do so. On 23 March 2005 the Supreme Court examined and dismissed the applicant's entrapment arguments.

COMPLAINTS

11. The applicant complained under Article 6 of the Convention that she had been convicted of criminal offences only after having been incited by the police to commit those offences.

12. The applicant also complained that part of the undercover operation had taken place in her home, in breach of Article 8 of the Convention.

THE LAW

13. The applicant complained that her conviction for drug dealing had been in breach of her right to a fair trial under Article 6 § 1 of the Convention.

14. The Government contested that allegation and claimed that the applicant's complaint was manifestly ill-founded since the undercover police operation and criminal proceedings against her had been carried out in compliance with Article 6 of the Convention.

15. The applicant maintained her complaint.

16. In several cases against Russia, the Court has found that applicable domestic law did not provide sufficient safeguards in relation to test purchases of drugs, and has stated the need for their judicial or other independent authorisation and supervision (see *Vanyan v. Russia*, no. 53203/99, §§ 46-49, 15 December 2005; *Khudobin v. Russia*, no. 59696/00, § 135, ECHR 2006-XII (extracts); *Bannikova v. Russia*, no. 18757/06, §§ 48-50, 4 November 2010; *Veselov and Others v. Russia*, nos. 23200/10, 24009/07 and 556/10, §§ 126-128, 2 October 2012; and *Lagutin and Others v. Russia*, nos. 6228/09, 19123/09, 19678/07, 52340/08 and 7451/09, 24 April 2014).

17. However, the Court is not persuaded that the situation under examination falls within the category of "entrapment cases" in which the Court had identified defects in Russian law and practice in respect of undercover drug sale operations. In particular, the Court considers that the applicant in the present case has not made out a plausible *agent provocateur* complaint before it.

18. The Court observes that the applicant denied throughout the proceedings that she had sold drugs to Sh. and that she had received money in exchange for drugs (see paragraphs 9 and 10 above). At the same time she claimed that Sh. had incited her to commit crime. She maintained the same arguments in her application before the Court.

19. In this regard, the Court finds it factually inconsistent for the applicant to deny that she committed a crime and to simultaneously complain that she had been entrapped into so doing. In the Court's view, the

defense of entrapment necessarily presupposes that the accused admits that the act charged was committed but claims that it happened due to unlawful inducement by the police. However, as can be seen from the applicant's submissions she denied entirely her involvement in the criminal endeavour, which, in the Court's opinion, precluded her from being able to raise a valid *agent provocateur* claim.

20. Accordingly, the Court rejects the applicant's *agent provocateur* complaint for being manifestly ill-founded, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

21. The applicant also complained that Sh. had visited her home, in breach of Article 8 of the Convention.

22. The Government contested these allegations. They stated that the applicant had not exhausted domestic remedies because she had not raised her complaint before the domestic courts.

23. The applicant disagreed, stating that she had exhausted the domestic remedies available to her and that the domestic courts had during the proceedings evaluated the actions of Sh. and found them lawful. She also stated that the decision authorising the test purchase and related operational-search activities had been classified and had not been submitted to the court by the authorities. Thus, she had had no opportunity to challenge it in the domestic proceedings.

24. The Court observes from the documents in the applicant's case file that she has not brought her Article 8 complaint before the domestic courts. The Court also notes the applicant's argument that the non-disclosure of a classified document during the trial in essence had prevented her from raising her complaint in the domestic proceedings. However, the Court will not decide on the issue of exhaustion of domestic remedies by the applicant because it considers that the applicant's Article 8 complaint is in any case not properly substantiated and as such does not require examination on the merits.

25. In particular, the applicant stated in her original application to the Court that "my right to a fair trial was breached by interference by [Sh.] in my private life". She maintained the same one-sentence argument in her observations, without providing any specific factual details in support of her complaint.

26. In this regard, the Court reiterates that pursuant to Rule 47 of the Rules of Court:

> "1. An application under Article 34 of the Convention ... shall ... set out
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> ...
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> (e) a concise and legible statement of the facts;
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> (f) a concise and legible statement of the alleged violation(s) of the Convention and the relevant arguments;
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> ...

> 2. (a) All of the information referred to in paragraph 1 (d) to (g) above that is set out in the relevant part of the application form should be sufficient to enable the Court to determine the nature and scope of the application without recourse to any other document.
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> ...
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> 5.1 Failure to comply with the requirements set out in paragraphs 1 to 3 of this Rule will result in the application not being examined by the Court, unless
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> (a) the applicant has provided an adequate explanation for the failure to comply;
>
> ...
>
> (c) the Court otherwise directs of its own motion or at the request of an applicant."

27. The Court is not satisfied that the applicant in the present case complied with the above requirements, which are not strenuous or unreasonable. The applicant worded her complaint in rather general terms and made a vague reference to "interference in [her] private life". She did not provide any explanation at any stage of the proceedings as to how exactly in her opinion, the undercover operation had adversely affected her rights under Article 8 of the Convention. Nor did she provide any further explanation or amendments to her complaint. In these circumstances, the Court finds that the applicant's complaint is not sufficiently substantiated and does not merit further examination.

28. Accordingly, it follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 19 January 2017.

Fatoş Aracı	Helena Jäderblom
Deputy Registrar	President