

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

THIRD SECTION

DECISION

Application no. 18471/03
Andrey Anatolyevich RYMANOV
against Russia

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

Luis López Guerra, *President,*
Helena Jäderblom,
Dmitry Dedov,
Branko Lubarda,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides, *judges,*

and Stephen Phillips, *Section Registrar,*

Having regard to the above application lodged on 11 May 2003,

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, Mr Andrey Anatolyevich Rymanov, is a Russian national who was born in 1966 and lived in Podolsk before his arrest. He was represented before the Court by Mr Maksim Rachkovskiy, a lawyer with the Centre of Assistance to International Protection in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyshkin, Representative of the Russian Federation to the European Court of Human Rights.

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

A. Covert Operation

3. In the summer of 2000, the organised crime division of Moscow's police department was investigating the activities of a criminal gang implicated in a series of armed robberies in Moscow and the Moscow Region. Police officer A. was in charge of the investigation. He received certain information concerning the gang's planned targets and its leader, St., through a police informant, S., who had been collaborating with the police since 1996. A. investigated the information and confirmed that St.'s gang was implicated in an armed attack on the manager of an enterprise in the Moscow Region and his driver.

4. During the same period of time, St. came into contact with the applicant, who had been a fellow prisoner with him in the past. St. told the applicant that after he had been released from prison, he had joined a debt-collection business that had been under the informal protection of the police. During their conversation, St. – who was not a police officer – showed a police badge bearing his photo to the applicant. St. also introduced the applicant to S., who was posing as a high-ranking police officer. S. told the applicant that "while you [that is to say the applicant] were serving your sentence, life has changed, and it has become possible and necessary "to do business" under the unofficial protection of the police."

5. In the autumn of 2000 S. informed A. that St. had contacted him with a view to his identifying potential targets for armed robbery. At around that time A.'s subordinate, G., also had an encounter with an informal acquaintance, Ch. Either after being prompted by G. or of his own volition, Ch. confided to G. that he wanted to rob the office of the company where he worked ("company M.") because it allegedly owed him salary in arrears.

6. G. reported to A. that company M. had been targeted for an armed robbery. After this information was received, the commanding police officers decided to infiltrate G. into the gang and A. requested S. to transmit that information to St. and to recruit a team of would-be robbers.

7. On 5 November 2000, acting on instructions from A., S. recruited St., a long-term acquaintance of his, to rob company M. St. was not aware of S.'s collaboration with the police.

8. On 1 December 2000 G., Ch., S. and St. met to discuss the details of the planned robbery. Their meeting took place in a restaurant and it was videotaped and audiotaped by the police. During the meeting, Ch. described the plan for the robbery, drew a plan of company M's office and explained where the cash was stored.

9. On 6 December 2000 St. met with the applicant and asked him "to help collect a debt" from a company in Moscow. He said that the manager of that company had issued a promissory note for money he had received to finance the development of his business and that he had not yet returned the

money. St. told the applicant that only the applicant's presence was needed and that he would pose, together with several other individuals, as creditors of company M. He would be paid 1,500 United States dollars (USD) because the debt was high and because there existed a risk of a conflict with racketeers protecting the company. The applicant agreed and the two planned to meet the next day to carry out the plan.

10. On 7 December 2000 St. and the applicant met with R. and As., who had been recruited by either S. or St., and they all arrived at company M.'s office. After they had arrived S. supplied the group with weapons given to him by G. and they removed the licence plates from their getaway vehicle. Soon afterwards Ch. opened the door to the company's office from the inside and let the applicant, St., R. and As. in. Once inside, they attacked and injured company employees, taking cash and other valuable items from the victims. After the attack, the group left the crime scene in the getaway vehicle. They met G. and S. and divided the takings.

11. Shortly thereafter, the applicant was arrested and charged with armed robbery.

B. The trial and the applicant's conviction for armed robbery

12. On 28 March 2003 the Moscow City Court examined the applicant's case. The videotapes and audiotapes of the meeting between G., Ch., S. and St. on 1 December 2000 were played at the hearing. Ch. confirmed that the tapes were genuine. The City Court further dismissed the applicant's argument that he had only intended to help recover a debt and that he had been incited to commit a crime. The court held that the applicant, St., R., and As. had acted in a well-organised, deliberate and coordinated manner during the robbery, which constituted evidence of a criminal conspiracy between them. It did not find any circumstances indicating that the applicant had been incited by the police to commit a criminal act. Since the applicant had been convicted on two counts of aggravated armed robbery in the past, the City Court convicted the applicant, as an habitual offender, of aggravated armed robbery, as well as of the aggravated unlawful transfer, transport and carrying of firearms, and sentenced him to eight years' imprisonment and confiscation of property. St., R., and As. were convicted in the same proceedings.

13. The Moscow City Court also convicted A. and G. of abuse of power during the undercover operation. The court found, in particular, that at first the infiltration of G. into the gang had been undertaken in accordance with the applicable law on undercover activities. However, the court established that A. and G. had then in essence authorised a robbery with the use of weapons, thereby putting at risk the lives and well-being of both company M's employees and the police officers who had participated in the operation.

14. On 6 November 2003 the Supreme Court of the Russian Federation upheld the judgment.

COMPLAINT

15. The applicant complained that he had been incited to commit a criminal offence by the police, in breach of Article 6 § 1, which reads as follows in the relevant part:

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

THE LAW

16. The Government pleaded that the undercover operation had been lawful, had pursued the legitimate aim of preventing criminal offences by the organised criminal group, and had involved no entrapment. Specifically, they claimed that the police had not been in contact with the applicant before the armed robbery had taken place and in particular that they had not put any pressure on the applicant to participate in the crime. They contended that the applicant had had pre-existing intent to commit armed robbery.

17. The applicant disagreed. He stated that the police had not had good reasons to suspect him of criminal activity and that they had incited him to commit crime through S. and St., who had been their agents. The applicant also claimed that he had only intended to help St. collect a debt from the company and not to participate in armed robbery.

18. The Court reiterates that in several cases against Russia it has found that the applicable domestic law did not provide sufficient safeguards in covert operations and has stated the need for such operations to be subject to 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, §§ 126-28, 2 October 2012; *Lagutin and Others v. Russia*, nos. 6228/09, 19123/09, 19678/07, 52340/08 and 7451/09, 24 April 2014; and *Nosko and Nefedov v. Russia*, nos. 5753/09 and 11789/10, 30 October 2014).

19. The Court also observes, however, that the present situation does not fall within the same category of Russian cases concerning entrapment. In particular, having carefully examined the circumstances and context of the present case, the Court considers that unlike in other "entrapment cases" and notwithstanding the defects identified in Russian law on undercover

operations, the conduct of the applicant in this case was the determinative factor for his conviction and excluded any question of entrapment on the part of the police.

20. The Court has held that when faced with a plea of entrapment it will attempt, as a first step, to establish whether the offence would have been committed without the authorities' intervention. In deciding whether the investigation was "essentially passive" the Court will examine the reasons underlying the covert operation and the conduct of the authorities carrying it out. The Court will rely on whether there were objective suspicions that the applicant had been involved in criminal activity or was predisposed to commit a criminal offence. Closely linked to the criterion of objective suspicions is the question of the point at which the authorities launched the undercover operation, that is to say whether the undercover agents merely "joined" the criminal acts or instigated them (see *Bannikova*, cited above, §§ 37, 38 and 43).

21. Turning to the facts of the present case as set out above and agreeing with the domestic courts, the Court observes at the outset that police officers A. and G. were convicted in the domestic proceedings of abuse of power during the undercover operation. However, their conviction concerned only the use of weapons and the violent manner in which the operation was executed rather than the lack of reasons for carrying it out (see paragraph 13 above). Furthermore, St.'s gang had been under police investigation in connection with other crimes before the undercover operation involving the applicant was launched (see paragraph 3 above). The decision to carry out the undercover operation, infiltrate G. into the gang and to recruit a criminal team was made after St. had contacted S. and asked him to identify potential targets for armed robbery (see paragraph 6 above). Therefore, it appears that the police had good reasons for carrying out the undercover operation.

22. As regards the applicant's role in the undertaking and his claim that he had merely wished to help a former fellow prisoner but instead had been incited to commit a crime, again on the basis of the facts set out above, and agreeing with the findings of the domestic courts, the Court notes the following. When St. first contacted the applicant, he was not aware of S.'s collaboration with the police and was not himself a police informant. Thus, he acted in a private capacity, merely as the applicant's acquaintance and not as the agent of the police. Furthermore, the unlawful nature of St.'s business should have become apparent to the applicant during the conversation. St. presented a fake police badge and mentioned that the police unofficially "protected" his activities. When St. asked the applicant to help him "collect a debt", he noted the possibility of conflict with the racketeers protecting company M. and the need for additional manpower (see paragraph 9 above). It appears from the above that their conversation constituted the planning of a criminal conspiracy between two private persons rather than the planning of a legitimate business venture. It is not

likely that the applicant, who had been convicted on two counts of armed robbery in the past (see paragraph 12 above) could not have understood what was asked of him, and nothing impeded him from refusing St.'s offer at the time or later. Nevertheless he willingly and readily agreed to the criminal plan and enthusiastically proceeded to carry it out with no undue influence being exerted by St. or the police (see paragraphs 9 and 10 above). Neither does it appear that S. influenced the applicant to any decisive extent in his accepting St.'s offer. As can be seen from the case file, S. met the applicant briefly once in the summer of 2000, had had no direct or indirect communication with the applicant since then, and was not present when the applicant agreed to St.'s plan on 6 December 2000.

23. Accordingly, the Court notes that the applicant took a proactive stance in the criminal undertaking, without any intervention from the police, and thus revealed a pre-existing intent to commit crime.

24. Therefore, it follows that the applicant's *agent provocateur* complaint is manifestly ill-founded and must be rejected, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

25. Lastly, the Court has examined the other complaints submitted by the applicant. Having regard to all the material in its possession and in so far as these complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to 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.

Stephen Phillips
Registrar

Luis López Guerra
President