



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

FIRST SECTION

DECISION

Application no. 25730/06
Viktor Vasilyevich VALKADOV
against Russia

The European Court of Human Rights (First Section), sitting on 6 May 2014 as a Committee composed of:

Khanlar Hajiyev, *President*,

Julia Laffranque,

Dmitry Dedov, *judges*,

and André Wampach, Deputy Section Registrar,

Having regard to the above application lodged on 5 June 2006,

Having regard to the comments submitted by the Russian Government,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Viktor Vasilyevich Valkadov, is a Russian national, who was born in 1946 and who, prior to his conviction, lived in Mineralnye Vody, the Stavropol Region. He was represented before the Court by Ms O.V. Sadchikova, a lawyer practising in Stavropol.

The Russian Government (“the Government”) were represented by Mr. G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

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

The applicant was working as a traumatologist at the outpatient unit of a municipal hospital. On 7 June 2004 a certain Ms P. came to the applicant’s office. According to the applicant, she complained of pain in her knee and requested a sick-leave certificate. The applicant issued her the certificate.

On 21 June 2004 Ms P. returned and the applicant extended her sick leave upon request. Immediately afterwards, the police entered the applicant's office, searched it and discovered 800 roubles (RUB) (equivalent to about 20 euros (EUR)) in eight banknotes, which were lying under the patient record cards on the applicant's desk. When exposed to UV light, all eight banknotes were marked in luminescent ink with the word "bribe". The applicant contended that the police had filmed the search, had refused his request for the presence of a lawyer during the search, and had not allowed him to make a phone call. The applicant was indicted on charges of bribe-taking and forgery of documents. During the pre-trial proceedings, the applicant confronted Ms P. and questioned her about the substance of the charges against him. She testified that the applicant had solicited a bribe from her for an unfounded sick-leave certificate.

B. The applicant's trial and conviction

On 26 December 2005 the Mineralniye Vody Town Court of the Stavropol Region examined the applicant's case.

The applicant pleaded not guilty to bribe-taking and forgery of documents. He claimed that he had issued the sick-leave certificate to Ms P. in good faith and that Ms P., acting as an agent for the police, had planted the money on his desk. He denied that he had taken the bribe and maintained that the sick leave had been justified. The applicant also alleged that the police had pressured Ms P. to incite him to take the money and to entrap him, supposedly to secure the release of her son from detention ordered in unrelated criminal proceedings.

Ms P. testified in court that the police had invited her to participate in an undercover operation on bribe-taking at a local hospital. She had not known the applicant prior to the police operation. She went to the applicant's office and requested a sick-leave certificate. The applicant agreed to issue her one and she asked him about the price. The applicant said that a two-week sick-leave certificate would cost her RUB 800 and that she should return in a week's time. Ms P. further testified that two weeks later the police had supplied her with marked banknotes and that she had gone to the hospital together with police officers. The money was wrapped in a newspaper, which she gave to the applicant. He took the money out, placed it on his desk and handed her a sick-leave certificate. Later that day, another doctor examined her and found no ailments.

The police officer in charge of the undercover operation also testified at the trial. He indicated that the operation had been launched following the receipt of information from confidential sources implicating the applicant in bribe-taking.

The court found the applicant guilty and convicted him on both counts of his indictment. The applicant received a suspended sentence of four and a half years with two years' probation.

On 9 February 2006 the Stavropol Regional Court heard the applicant's appeal against his conviction. The applicant denied his involvement in the crime. He argued that the police had coerced Ms P. to incite him to take a bribe, that he had not taken it and that the police had in fact framed him. The court dismissed the applicant's appeal and upheld the conviction.

COMPLAINTS

The applicant complained under Article 6 § 1 of the Convention that the police's actions had constituted provocation and also that the police had fabricated the case against him.

The applicant also complained, under Article 6 § 3 (d), of the absence of Ms P. at some of the court hearings.

The applicant complained of various other violations of Article 6 § 1 and Article 6 § 3 (d) in the course of the criminal proceedings.

THE LAW

1. The applicant complained that his conviction for bribe-taking and the forgery of documents was in breach of Article 6 § 1 of the Convention, which reads as follows:

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

2. The Government contested the applicant's allegations and claimed that his complaints were manifestly ill-founded since the undercover police operation and criminal proceedings against him had been carried out in compliance with Article 6 of the Convention.

3. The applicant maintained his complaint. In particular, he contended that the police had incited him to take the bribe and that they also had fabricated a criminal case against him.

4. In several cases against Russia, the Court has found that the applicable domestic law did not provide for sufficient safeguards in covert operations, particularly 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; and

Veselov and Others v. Russia, nos. 23200/10, 24009/07 and 556/10, § 126-28, 2 October 2012). Furthermore, the Court has emphasised the role of the domestic courts in dealing with criminal cases in which the accused alleged that he had been incited to commit an offence. Any arguable plea of incitement places the courts under an obligation to examine it and make conclusive findings on the issue of entrapment, with the burden of proof on the prosecution to demonstrate that there was no incitement (see *Ramanauskas v. Lithuania* [GC], no. 74420/01, §§ 70-71, ECHR 2008).

That being said, the Court is not persuaded that the situation under examination falls within the category of “entrapment cases”, even *prima facie*. Consequently, the defects in Russian law and practice identified by the Court in some previous cases are irrelevant in the case at hand.

5. The Court observes that the applicant seems to have pleaded an *agent provocateur* defence in his case. However, from the outset the applicant denied entirely his involvement in bribe-taking. Throughout the proceedings, he disputed the very fact of having requested or received the money. When he referred to “provocation” he used the term loosely and interchanged it routinely with the term “fabrication”. In his application before the Court and his observations, he maintained the same defence. The Court reiterates that an entrapment complaint must be formulated “clearly and in good time in the domestic proceedings” (see *Trifontsov v. Russia* (dec.), no. 12025/02, § 34, 9 October 2012, and *Bagaryan v. Russia* (dec.), no. 3343/06, 12 November 2013). In the present case, the applicant has not made a plausible *agent provocateur* complaint before the domestic instances. As for his arguments before the Court, they related in essence to the establishment of the facts of the case and did not bear upon the lack of grounds for the carrying out of the undercover police operation.

Accordingly, the Court rejects the applicant’s *agent provocateur* complaint for non-exhaustion of domestic remedies and for being manifestly ill-founded, in accordance with Article 35 §§ 1, 3 and 4 of the Convention.

In so far as the applicant’s claim of fabrication is concerned, in essence it concerns the way the domestic courts have assessed the evidence. The Court has long held that, as a general rule, it is up for national courts to assess evidence before them. At the same time, the Court’s task is not to determine, as a matter of principle, whether particular types of evidence may be admissible but to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair (see *Teixeira de Castro v. Portugal*, 9 June 1998, § 34, *Reports of Judgments and Decisions* 1998-IV; *Trifontsov*, cited above, § 23). The Court is satisfied that the criminal proceedings in the present case were adversarial and that the applicant was afforded ample opportunity to adduce arguments in support of his position, to submit motions and challenge the evidence against him. The domestic courts assessed his case in impartial and non-arbitrary manner.

Therefore, the applicant's complaint of fabrication of his criminal case is also manifestly ill-founded and must be rejected in accordance with Article 35 § 3 (a) of the Convention.

6. The applicant also relied on Article 6 § 3 (d) to complain that Ms P. had not appeared at some of the court hearings, allegedly limiting his possibility to cross-examine her. However, according to the documents on file, the contents of which the applicant does not dispute, he underwent a witness confrontation procedure with her before the trial and he also questioned her before the court on the days when she did attend. Moreover, it appears from the case file that the court issued a subpoena in order to ensure her participation.

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.

7. 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.

André Wampach
Deputy Registrar

Khanlar Hajiyev
President