FIRST SECTION

**CASE OF SERGEY LEBEDEV AND OTHERS v. RUSSIA**

*(Applications nos. 2500/07, 43089/07, 48809/07, 52271/07 and 54706/07)*

JUDGMENT

STRASBOURG

30 April 2015

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

In the case of Sergey Lebedev and Others v. Russia,

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

Khanlar Hajiyev, President,  
 Julia Laffranque,  
 Dmitry Dedov, judges,  
and André Wampach, Deputy Section Registrar,

Having deliberated in private on 7 April 2015,

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

PROCEDURE

1.  The case originated in five applications (nos. 2500/07, 43089/07, 48809/07, 52271/07 and 54706/07) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by five Russian nationals. The application numbers, the dates of lodging the applications and the dates of their communication, the applicants’ names, their personal details and the names of their legal representatives as well as the information as to the relevant domestic judgments are set out in Appendix below.

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

3.  The applicants each alleged that they had been convicted of drug offences following entrapment by the police in violation of Article 6 of the Convention.

4.  On the dates indicated in the Appendix the President of the First Section decided to give the notice of the applications to the Government. In accordance with Article 26 § 1 of the Convention as amended by Protocol No. 14, the applications were assigned to a Committee of three Judges. It was also decided that the Committee would rule on the admissibility and merits of the applications at the same time.

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASE

5.  The applicants were each targeted in undercover operations conducted by the police in the form of a test purchase of drugs under sections 7 and 8 of the Operational-Search Activities Act of 12 August 1995 (no. 144-FZ). Those operations led to their criminal conviction for drug dealing.

6.  The applicants disagreed with their conviction and argued that the police incited them to commit drug-related offences.

II.  RELEVANT DOMESTIC LAW

7.  The relevant domestic law governing the use of undercover techniques at the material time is summed up in the Court’s judgments in the cases of *Lagutin and Others v. Russia*, nos. 6228/09, 19123/09, 19678/07, 52340/08 and 7451/09, 24 April 2014; *Veselov and Others v. Russia*, nos. 23200/10, 24009/07 and 556/10, 2 October 2012;*Bannikova v. Russia*, no. 18757/06, 14 October 2010; *Vanyan* *v. Russia*, no. 53203/99, 15 December 2005; *Khudobin* *v. Russia*, no. 59696/00, ECHR 2006‑... (extracts).

THE LAW

I.  JOINDER OF THE APPLICATIONS

8.  In accordance with Rule 42 § 1 of the Rules of Court, the Court decides to join the applications, given that they concern similar facts and raise identical issues under the Convention.

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

9.  The applicants complained that that they had been unfairly convicted of drug offences that they had been incited by the police to commit and that their plea of entrapment had not been properly examined in the domestic proceedings, in violation of Article 6 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 ...”

A.  Admissibility

1.  Submissions by the parties

10.  The Government submitted that Mr Lebedev, Ms Cherkasova and Mr Krivda (applications nos. 2500/07, 43089/07 and 54706/07) who were each convicted of two or more episodes of drug sale could no longer claim to be victims of the alleged violation. In particular, the Government argued that the domestic courts had reopened the criminal proceedings in their cases and mitigated the sentences imposed on each of them for the first episode of drug sale. The domestic courts had also vacated each of the applicants’ conviction in relation to the remaining episodes which took place after the first test purchase.

11.  Mr Lebedev, Ms Cherkasova and Mr Krivda acknowledged that the domestic courts had re-examined the cases in their favour in the new proceedings. However, they argued that the domestic courts had not properly addressed their pleas of entrapment and as a result, the conviction on the first episode of drug sale had stayed. Therefore, they had not lost their victim status.

2.  The Court’s assessment

12.  The Court notes from the outset that it has already considered the identical issue of loss of victim status in a recent Russian case concerning entrapment. The Court held that the applicants who were convicted of drug‑dealing and whose criminal cases were later re-examined by the domestic courts had not ceased to be victims of the alleged violation of the Convention because the re-examination of their criminal cases had not been effective and in conformity with the requirements of Article 6 of the Convention and the respective case-law of the Court (see *Yeremtsov and Others v. Russia*, 20696/06, 22504/06, 41167/06, 6193/07 and 18589/07, §§ 17-21, 27 November 2014).

13.  In particular, in the case of *Yeremtsov and Others* the Court found that during the re-examination of the applicants’ cases, the domestic courts simply reiterated the reasoning of the first-instance court in relation to the first episode and held that only remaining episodes of drug sale had amounted to entrapment because they had pursued no legitimate goal, such as crime detection and prevention. The domestic courts did not examine the essential arguments of the applicants’ complaints, namely, that the police had had no valid reasons to mount each of the undercover operations and that they had impermissibly incited the applicants to sell drugs. They did not request any materials concerning the substance of incriminating operational information and accepted just the uncorroborated statements of police officers to that effect(see *Yeremtsov and Others*, cited above, §§ 18-19).

14.  Turning to the facts of Mr Lebedev’s, Ms Cherkasova’s and Mr Krivda’s applications, the Court observes that similarly to the applicants inthe case of *Yeremtsov and Others*, the applicants in the present case did not lose their victim status. The re-examination of their criminal cases by the domestic courts was conducted in an exact same manner as the re‑examination of the applicants’ cases in the case of *Yeremtsov and Others*, and it did not appear to be effective. The domestic courts in the present case did not consider the arguments which lied at the heart of the applicants’ complaints about entrapment and as such, similarly to the domestic courts inthe case of *Yeremtsov and Others*, they were not in the position to assess whether violation, if any, of the applicants’ Article 6 rights took place in the course of undercover operation. Thus, albeit favourable for the applicants in the outcome, the re-examination of their cases nevertheless fell short of the standards developed in the Court’s jurisprudence in the light of Article 6 of the Convention (see *Yeremtsov and Others*, cited above, §§ 12‑16).

15.  Having regard to the above, the Court dismisses the Government’s objection as to the loss of victim status by Mr Lebedev, Ms Cherkasova and Mr Krivda and finds that they remain to be victims of the alleged violation of Article 6.

16.  The Court also finds that the complaints regarding entrapment brought by all five applicants under Article 6 § 1 are not manifestly ill‑founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B.  Merits

17.  The Government claimed that the test purchases conducted in each of the present cases had been lawful and had involved no entrapment by the police. They maintained that the police had ordered the test purchases on the basis of incriminating confidential information and that the applicants voluntarily had agreed to sell drugs. They also submitted that the applicants had their cases reviewed by the domestic courts and that they had been provided with necessary procedural safeguards in the course of proceedings.

18.  Each of the five applicants claimed that the police had no reasons to mount undercover operations and that the actions of the police amounted to entrapment. They further argued that the domestic courts had not properly examined their allegations that the offences they were charged with had been instigated by the police.

19.  The Court reiterates that the absence in the Russian legal system of clear and foreseeable procedure for authorising test purchases remains a structural problem which exposes the applicants to arbitrary action by the police and prevents the domestic courts from conducting an effective judicial review of their entrapment pleas (see *Lagutin and Others*, § 134, and *Veselov and Others*, § 126, both cited above). The present case is identical to other Russian cases on entrapment in which the Court consistently found violation on account of the deficient existing procedure for authorisation and administration of test purchases of drugs(see *Yeremtsov and Others, Lagutin and Others*, *Veselov and Others, Vanyan,* and *Khudobin,* all cited above).

20.  Therefore, the Court finds no reason to depart from its earlier findings on the matter and holds that the criminal proceedings against all five applicants were incompatible with a notion of a fair trial. Having regard to its well-established law on the subject, the Court considers that there has been a violation of Article 6 of the Convention with regard to each of the five applicants.

III.  OTHER ALLEGED VIOLATIONS OF THE CONVENTION

21.  Lastly, the applicants raised additional complaints with reference to various Articles of the Convention and its Protocols. The Court has examined these complaints as submitted by the applicants. However, in the light of all the material in its possession, and in so far as the matters complained of are within its 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 applications is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

22.  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.”

23.  The Court notes that Mr Lebedev’s just satisfaction claim was submitted on 3 August 2013, almost three months after the expiry of the allotted time-limit for so doing. This time-limit was imposed upon the Court’s transmission of the Government’s initial observations. The applicant has therefore failed to comply with Rule 60 §§ 2 and 3 of the Rules of Court and paragraph 5 of the Practice Direction on Just Satisfaction Claims, which, in so far as relevant, provides that the Court “will also reject ... claims lodged out of time”. The applicant’s just satisfaction claim must therefore be dismissed.

A.  Damage

24.  The remaining applicants claimed the following amounts in respect of non-pecuniary damage:

* Ms Cherkasova – 40,000 euros (EUR);
* Mr Makarov – EUR 10,000;
* Mr Platonov – EUR 15,000;
* Mr Krivda – EUR 2,900.

25.  The Government contested claims submitted by as excessive. They considered that the finding of a violation, if any, would constitute sufficient just satisfaction for the applicants.

26.  The Court considers that in the present case an award of just satisfaction must take account of the fact that the applicants did not have a fair trial because they were convicted of drug offences arguably instigated by the police in violation of Article 6 of the Convention. They undeniably sustained non-pecuniary damage as a result of the violation of their rights. However, the sums claimed by Ms Cherkasova, Mr Makarov and Mr Platonov appear to be excessive. Making its assessment on an equitable basis, the Court awards EUR 3,000 to Ms Cherkasova, Mr Makarov and Mr Platonov, each, and EUR 2,900 to Mr Krivda in respect of non‑pecuniary damage, plus any tax that may be chargeable on that amount.

B.  Costs and expenses

1.  Mr Makarov

27.  Mr Makarov claimed EUR 4,000 for the cost of the proceedings before the Court, pursuant to the contractual obligation with his lawyers. He submitted a copy of the agreement on legal services.

.  The Government stressed that the applicant did not provide any evidence in support of his claim to show that those expenses had actually been incurred by him.

.  According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Even if the applicant has not yet actually paid part of the legal fees and expenses, but he is bound to pay them pursuant to a contractual obligation then they were “actually incurred” (see *Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan*, no. 37083/03, § 106, ECHR 2009, and *L.H. v. Latvia*, no. 52019/07, § 68, 29 April 2014).

.  In the present case, regard being had to the documents in its possession, the above criteria and to the fact that the applicant was granted legal aid in the amount of EUR 850 from the Court earlier in the course of the proceedings, it awards the applicant EUR 3,150 under this head.

2.  Mr Krivda

31.  Mr Krivda claimed EUR 1,400 for legal representation in the domestic proceedings and EUR 800 for legal representation before the Court. The applicant submitted no documents in support of his claim for legal costs.

32.  The Government replied that the applicant had not submitted any proof of the costs and expenses he had incurred.

33.  According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see paragraph 29 above). In the present case, having regard to the documents in its possession and the above criteria, the Court will not make any award to Mr Krivda under this head.

C.  Default interest

34.  The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1.  *Decides* to join the applications;

2.  *Declares* the complaints concerning the applicants’ conviction for criminal offences that were incited by the police admissible and the remainder of the applications inadmissible;

3.  *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of all five applicants;

4.  *Holds*

(a)  that the respondent State is to pay Ms Cherkasova, Mr Makarov, Mr Platonov and Mr Krivda, within three months the following amounts,to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i)  EUR 3,000 (three thousand euros) to Ms Cherkasova, Mr Makarov and Mr Platonov, plus any tax that may be chargeable, in respect of non-pecuniary damage plus any tax that may be chargeable on this amount;

(ii) EUR 2,900 (two thousand nine hundred euros) to Mr Krivda

plus any tax that may be chargeable, in respect of non-pecuniary damage plus any tax that may be chargeable on this amount;

(iii)  EUR 3,150 (three thousand one hundred fifty euros) to Mr Makarov in respect of costs and expenses, plus any tax that may be chargeable on this amount;

(b)  that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5.  *Dismisses* the remainder of the applicants’ claim for just satisfaction.

Done in English, and notified in writing on 30 April 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach Khanlar Hajiyev  
 Deputy Registrar President

**APPENDIX**

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| No | Application No | Dates of introduction and communication | Applicant’s name  Date of birth  Place of residence | Represented by | Final Judgment |
|  | 2500/07 | 01/12/2006  09/11/2012 | **Sergey Vladimirovich LEBEDEV**  26/05/1982  Ulyanovsk | Yelena Vyacheslavovna ILYINA | Ulyanovsk Regional Court, 28/01/2013 (re‑examination proceedings) |
|  | 43089/07 | 01/10/2007  13/12/2012 | **Natalya Fedorovna CHERKASOVA**  16/07/1981  Pyt-Yakh | Oleg Ivanovich RODNENKO | Khanty-Mansi Regional Court, 15/03/2013 (re‑examination proceedings) |
|  | 48809/07 | 08/10/2007  13/12/2012 | **Nikolay Borisovich MAKAROV**  01/01/1965  Chelyabinsk | Kirill Borisovich POLOZOV | Chelyabinsk Regional Court, 15/05/2007 |
|  | 52271/07 | 12/11/2007  25/11/2010 | **Anton Viktorovich PLATONOV**  01/03/1987  Chelyabinsk | Yuriy Semenovich TURBIN | Chelyabinsk Regional Court, 08/06/2007 |
|  | 54706/07 | 22/11/2007  16/01/2013 | **Sergey Vikentyevich KRIVDA**  22/10/1980  Tyumen |  | Tymen Regional Court, 13/06/2013 (re‑examination proceedings) |