

March 2015

***Volkov and Adamskiy v. Russia - 7614/09 and 30863/10***

Judgment 26.3.2015 [Section I]

**Article 6**

**Criminal proceedings**

**Article 6-1**

**Criminal charge**

**Fair hearing**

Alleged entrapment leading to conviction for copyright infringement: *inadmissible*

**Article 6-3-c**

**Defence through legal assistance**

**Free legal assistance**

Lack of legal assistance for accused at criminal appeal hearing: *violation*

*Facts* – In the context of police operations aimed at exposing individuals involved in the distribution of counterfeit computer software, the applicants were contacted by two undercover police officers who asked to have some software installed on their computers. The applicants acquired and then installed unlicensed software on the officers' computers. They were subsequently convicted of copyright infringement.

In the Convention proceedings the applicants complained that the police had incited them to commit the offence, in breach of their right to a fair trial (Article 6 § 1 of the Convention).

*Law*

Article 6 § 1 (*both applicants*): The Court reiterated that in cases of alleged entrapment the Court had to first establish whether the offence would have been committed without the authorities' intervention. The applicants had been engaged in a lawful business activity and the police had got in contact with them as ordinary customers would have done. The applicants had spontaneously bought or downloaded, and then installed unlicensed software on the undercover agents' computers, without any explicit request or unlawful incitement on the part of the police. Moreover, they had both openly informed the police officers that the software was counterfeit and that it would have been much more expensive to install licensed software.

The present case was therefore distinguishable from other Russian cases on entrapment because it was the applicants' own deliberate conduct and not the unlawful or arbitrary actions of the police that had been the determinative factor in the commission of their offences.

*Conclusion*: inadmissible (manifestly ill-founded).

Article 6 § 1 in conjunction with Article 6 § 3 (c) (*Mr Volkov*): During his appeal hearing, Mr Volkov had not been assisted by a lawyer as he could not afford to retain his trial lawyer or appoint another one of his choosing.

Given the broad powers of the appellate court to review his case in full, Mr Volkov could have substantially benefitted from legal counsel in order to at least have his sentence reduced. Under domestic law, the right to legal representation extended to appeal proceedings if, *inter alia*, the defendant did not waive it in writing. If the defendant could not afford to pay a lawyer, it was incumbent on the authorities to appoint him one. From the case file it appeared that Mr Volkov had not waived his right to legal assistance in the appeal proceedings. Although he had not requested to have a legal aid lawyer appointed, his conduct could not of itself relieve the authorities of their obligation to provide him with an effective defence.

Bearing in mind that the domestic authorities were aware of the fact that the applicant had no retainer agreement with his trial lawyer, they had been under a duty to appoint a legal aid counsel for the appeal hearing or to adjourn the hearing until such time as the applicant could be adequately represented.

*Conclusion:* violation (unanimously).

Article 41: EUR 4,000 in respect of non-pecuniary damage.

(See for a similar case on police entrapment *Kuzmickaja v. Lithuania* (dec.), [27968/03](#), 10 June 2008; see also the Factsheet on [Police arrest and assistance of a lawyer](#))

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