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La CEDU su operazioni sotto copertura ed abusi della polizia
(CEDU, sez. III, sent. 20 aprile 2021, ric. nn. 66152/14 et aa.)

La Corte Edu si pronuncia sul caso di nove ricorrenti, condannati per reati relativi allo spaccio di droga, sulla base delle sole denunce presentate da collaboratori/informatori di polizia, configurabili come agenti provocatori, in violazione dell'art. 6 § 1.
In relazione a tutti i ricorrenti, invero, non risultavano effettuate altre operazioni investigative per accertare il sospetto di spaccio di droga; la procedura appariva carente sotto il profilo delle autorizzazioni e le operazioni sotto copertura non erano state sottoposte a controllo giudiziario o di altra autorità di supervisione indipendente. Nel processo i ricorrenti avevano sostenuto di essere stati incitati a commettere reati e tratti in trappola, ma l'accertamento condotto dai giudici nazionali era stato anch'esso carente; in nessuno dei casi in questione le autorità inquirenti avevano dimostrato che l'intenzione di commettere atti criminali preesisteva nei ricorrenti al momento in cui la fonte aveva avviato la collaborazione con la polizia. Tali carenze nelle operazioni sotto copertura e l'incapacità dei tribunali di operare un controllo giurisdizionale effettivo su tali casi, erano il portato della mancanza di un quadro normativo che prevedesse garanzie contro gli abusi nella conduzione di tali procedure, carenze di tipo strutturale che erano già state evidenziate nella giurisprudenza della Corte.
Pertanto, i Giudici di Strasburgo, pur prendendo atto degli sforzi compiuti finora dalle autorità russe, in particolare dalla Corte suprema, per migliorare l'esame di tali casi a livello nazionale, e ribadendo che la scelta degli strumenti è nella discrezionalità del Governo convenuto, ha ritenuto opportuno indicare, ai sensi dell'art.46, la necessità di un'ulteriore riforma del quadro normativo esistente. Secondo la giurisprudenza della Corte, l'autorizzazione a compiere operazioni segrete, sotto copertura, deve essere concessa da una autorità diversa da quella che esegue l'operazione. Il ruolo dell'autorità autorizzante indipendente è quello di verificare l'esistenza di valide ragioni per dare luogo all'operazione prevista, giustificate sulla scorta di osservazioni concrete e dettagliate dell'organismo richiedente. In genere, tali poteri vengono conferiti ad un'autorità giudiziaria. L'autorizzazione giudiziaria aumenterebbe l'efficacia del riesame in entrambe le fasi, durante l'indagine e successivamente, durante il processo penale. Peraltro, per altre attività di ricerca operativa, come le perquisizioni domiciliari e le intercettazioni telefoniche, l'autorizzazione giudiziaria è già necessaria ai sensi del diritto russo, per cui è ragionevole ipotizzare l'estensione di quei poteri giudiziari anche nel caso dell'autorizzazione delle operazioni sotto copertura.
In breve, la Corte ha ritenuto che il quadro normativo russo relativo allo svolgimento delle attività di ricerca operativa debba essere modificato in modo da fornire una procedura chiara e prevedibile per l'autorizzazione delle operazioni sotto copertura da parte di un organo giudiziario che fornisca garanzie efficaci contro gli abusi.

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

THIRD SECTION

CASE OF XXXXX AND OTHERS v. RUSSIA

(*Applications nos. 66152/14 and 8 others – see appended list*)

JUDGMENT

STRASBOURG

20 April 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of XXXXX and Others v. Russia,

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

Paul Lemmens, *President*,

Georgios A. Serghides,

Dmitry Dedov,

Georges Ravarani,

Darian Pavli,

Anja Seibert-Fohr,

Peeter Roosma, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the applications (see the appendix below) 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 nine Russian nationals ("the applicants"), on the various dates indicated in the appendix;

the decision to give notice to the Russian Government ("the Government") of the applications;

the parties' observations;

Having deliberated in private on 23 March 2021,

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

INTRODUCTION

1. This case concerns a recurring problem of police entrapment in the conduct of undercover operations. It addresses the question whether the structural problem identified in Veselov and

Others v. Russia (nos. 23200/10, 24009/07 and 556/10, §§ 88-94 and 126-27, 2 October 2012) and reiterated in Lagutin and Others v. Russia (nos. 6228/09, 19123/09, 19678/07, 52340/08 and 7451/09, § 134, 24 April 2014) persists. The judgment contains an indication under Article 46 of the general measures required to overcome the structural problem, notably to introduce a clear and foreseeable procedure for authorisation of operational-search activities, such as test purchases and operational experiments, by a judicial body.

THE FACTS

2. The applicants' details are set out in the appendix.
3. The Russian Government ("the Government") were represented initially by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.
4. The facts relating to each individual applicant, as submitted by the parties, may be summarised as follows.

The undercover operations and the ensuing criminal convictions of the applicants

A. Ms XXXXX (application no. 66152/14)

5. On 8 February 2013 the Federal Drug Control Service (ФСКН – hereinafter "the FSKN") ordered a test purchase to take place between 8 February and 8 March 2013. The order referred to the existence of information from undisclosed sources about an unidentified person selling amphetamine in nightclubs in Moscow at the price of 1,200 roubles (RUB) per packet containing 0.3-1.0 g of substance.
6. On 9 February 2013 the FSKN received a statement from the applicant's acquaintance Ms K. that the applicant had been selling psychotropic substances in nightclubs in Moscow and that at the time she had agreed with her to purchase 2 g of amphetamine for RUB 2,000. Ms K. agreed to act as a buyer in the test purchase. In the early hours of the following morning, at 3.45 a.m., Ms K. met the applicant and her friend in a nightclub and purchased 0.64 g of amphetamine from them.
7. At trial Ms K. testified that she had never purchased drugs from the applicant before the test purchase, but that they had previously taken drugs together. The police officer who had ordered the test purchase testified that immediately prior to the test purchase Ms K. had been arrested by the FSKN for selling psychotropic substances. Another witness, Ms Z., who had been arrested with Ms K., testified to the same effect. The applicant made a plea of entrapment, but it was rejected on the grounds that she had readily agreed to sell drugs to Ms K. and had been in possession of a larger amount of drugs than she had agreed to sell Ms K. It also stated that Ms K. had been acting on her own initiative and not as a police informant or agent.
8. On 21 October 2013 the Basmannyy District Court of Moscow found the applicant guilty of attempting to illegally sell drugs during the test purchase and sentenced her to ten years' imprisonment. This judgment was upheld by the Moscow City Court on 28 April 2014.

B. Mr XXXXX (application no. 76054/14)

9. On 14 December 2012 the FSKN allegedly received information from undisclosed sources about the applicant's involvement in dealing psychotropic substances. On 18 December 2012 they ordered a test purchase with the applicant's acquaintance "Luchko", whose identity remained concealed, acting as a buyer. According to the applicant, "Luchko" had just been arrested on suspicion of drug dealing and had called him numerous times to get him to sell, complaining of withdrawal symptoms and appealing to his compassion. On the same day she purchased 0.18 g of amphetamine from the applicant.
10. On 20 December 2012 the FSKN ordered that the applicant's telephone be tapped, and subsequently carried out two more test purchases of amphetamine: 0.14 g from the applicant on 18 January 2013, and 1.01 g from another person on 7 February 2013. They also conducted secret surveillance of the applicant on 23 December 2012 and 30 January 2013.
11. On 25 April 2013 the applicant was arrested on suspicion of drug dealing on the basis of the results of the three test purchases.
12. At trial "Luchko" testified that she had previously taken drugs with the applicant and had purchased drugs from him before the test purchase, although on some occasions he had refused to sell to her. She refused to testify in relation to her alleged arrest on suspicion of drug dealing immediately before the test purchase, relying on the privilege against self-incrimination. In particular, she did not answer the questions about her relation with the applicant and with thee police officer in charge of the test purchase. The latter officer testified that prior to receiving information about the applicant's involvement in dealing amphetamine there had been information of him dealing cannabis. Witness K. testified that he had been arrested on 3 October 2013 in possession of drugs and that on that day he had made a statement saying that he had purchased drugs from the applicant in February of that year. Witness V. testified that on 29 November 2013 after his arrest he had confessed to having bought drugs from the applicant in December 2012 and January 2013.
13. On 1 July 2014 the Pravoberezhnyy District Court of Lipetsk found the applicant guilty of attempting to illegally sell drugs during the test purchases and sentenced him to eight years' imprisonment. This judgment was upheld by the Lipetsk Regional Court on 16 September 2014.

C. Mr XXXXX (application no. 77426/14)

14. On 1 December 2012 the applicant was released from prison after serving a sentence for embezzlement.
15. On a date which remained secret the police allegedly received information from an undisclosed source that the applicant was selling desomorphine. On 21 February 2013 they ordered a test purchase in respect of the applicant with "Vlad", who, according to the applicant, had a close relationship with him, but whose identity remained concealed, acting as a buyer. On the same day "Vlad" purchased a syringe containing 0.08 g of desomorphine from the applicant. On the same day criminal proceedings were opened against the "unidentified perpetrator" who had sold the drug during the test purchase.
16. On 24 February 2013 "Vlad" gave his written consent to act in the above-mentioned test purchase.

17. On 26 March 2013 the applicant was arrested on suspicion of drug dealing on the basis of the test purchase results.
18. At trial "Vlad" testified that he had known the applicant for two months, that he was a drug user and that on two occasions in February 2013 he had purchased desomorphine from the applicant which had been prepared by F. The applicant and F. testified that it had been "Vlad" who had introduced the applicant to F. and that they had been taking drugs together, but only F. had known how to prepare them. The police officer in charge of the test purchase testified that the date on which he had received the information in respect of the applicant and the reasons "Vlad" had agreed to act as a buyer constituted classified information and thus declined to answer the questions concerning these points.
19. On 3 March 2014 the Zelenogradskiy Town Court of Krasnoyarsk rejected a plea of entrapment made by the applicant. It found him guilty of attempting to illegally sell drugs during the test purchase and sentenced him to ten years' imprisonment. This judgment was upheld by the Krasnoyarsk Regional Court on 27 November 2014.

D. Mr XXXXX (application no. 15189/15)

20. On 12 November 2013 the applicant's acquaintance, Mr K., was arrested on suspicion of embezzlement. He told the police that he knew a drug dealer and, following a request from the police, called him to arrange to buy drugs. On the same day the police conducted a test purchase with P. acting as a buyer whereby the applicant sold K. 8 g of hashish. According to the applicant, the buyer had first sold him the drugs but then asked him to sell them back. The applicant was arrested on the spot on suspicion of drug dealing.
21. At trial K. testified that he had known the applicant but had not purchased drugs from him before the test purchase. The applicant made a plea of entrapment, but it was rejected on the grounds that he had readily agreed to sell drugs to P., who had been acting on his own initiative as an independent private individual and not as a police informer or agent.
22. On 7 May 2014 the Perovskiy District Court of Moscow found the applicant guilty of attempting to illegally sell drugs during the test purchase and sentenced him to eight years' imprisonment. This judgment was upheld by the Moscow City Court on 16 October 2014.

E. Mr XXXXX (application no. 23497/15)

23. In 2010 the police obtained a court order permitting them to conduct telephone tapping to verify suspected drug dealing activity. They intercepted telephone calls between the applicant and B., the content of which was not disclosed to the Court.
24. On unspecified date in 2013 to 2014 the police received information from an undisclosed source that the applicant was selling cannabis.
25. On 6 January 2014 the police ordered a test purchase of drugs from the applicant, with reference to the information received from an unnamed person who was to act as a buyer in the test purchase. On the same day the police conducted the test purchase with the applicant's acquaintance "Ivanov", whose identity remained concealed, acting as a buyer. The applicant, allegedly tricked by "Ivanov",

sold him 25.97 g of cannabis. Later the same day the police searched the applicant's home, seized 206.69 g of cannabis and arrested him.

26. At trial "Ivanov" testified that he was a drug addict and had purchased drugs from the applicant, his old acquaintance, before the test purchase. Police officer F., who was in charge of the test purchase, testified that it had been ordered on the basis of information from an undisclosed source received in 2013 to 2014 and that they did not attempt to identify anyone other than "Ivanov" to whom the applicant had previously sold drugs. He was unable to clarify the reason for conducting the test purchase. The trial court noted that telephone tapping had been authorised and carried out in 2010, but did not refer to the content of the intercepted calls. The applicant made a plea of entrapment, but it was dismissed on the grounds that the facts surrounding the drugs sale during the test purchase had been sufficiently established.

27. On 25 September 2014 the Starominskiy District Court of the Krasnodar Region found the applicant guilty of attempting to illegally sell drugs during the test purchase and illegal possession and sentenced him to eight years' imprisonment. This judgment was upheld by the Krasnodar Regional Court on 5 November 2014.

F. Mr XXXXX (application no. 23896/15)

28. In November 2013 the FSKN allegedly received information from an undisclosed source that the applicant was involved in drug dealing with a certain H.

29. On 5 November 2013 the FSKN ordered a test purchase, with police officer R. acting as a buyer. On 6 November 2013 the test purchase was carried out, in which the applicant assisted R. in acquiring 7 g of cannabis from H. On 12 November 2013, during a second test purchase, the applicant assisted R. in acquiring 7.2 g of cannabis from H. The applicant claimed that the buyer had called him numerous times asking him to sell.

30. At trial R. testified that the test purchase had been ordered immediately after receiving information relating to suspected drug dealing by the applicant and H., and that no other steps had been taken to verify that information. The applicant made a plea of entrapment, but it was rejected on the grounds that he had readily agreed to sell drugs to R. The latter had been an undercover police officer; he had not entrapped the applicant, but had simply "joined the ongoing criminal activity". The court went on to state that the use of police officers as test buyers was not against the law.

31. On 11 September 2014 the Kirovskiy District Court of Saratov found the applicant guilty of aiding the acquisition of cannabis on two occasions and unlawful possession of 11.2 g of cannabis. He was sentenced to two and a half years' imprisonment. This judgment was upheld by the Saratov Regional Court on 18 November 2014.

G. Mr XXXXX (application no. 28472/15)

32. On an unspecified date in July 2014 the police received information from the applicant's acquaintance "Sergeyev", whose identity remained concealed, that the applicant was selling cannabis. "Sergeyev" gave his consent to act as a buyer in a test purchase.

33. On 8 August 2014 the police carried out a test purchase pursuant to an order issued the same day. During the test purchase "Sergeyev" acquired 0.6 g of cannabis from the applicant. The applicant was charged with drug dealing based on the results of the test purchase.
34. During the investigation "Sergeyev" made a statement that he had taken part in the test purchase because a police officer had asked him to do so. At trial he testified that the applicant had offered to sell him cannabis on multiple occasions in the past, and that after the last occasion he had reported it to the police and given his consent to take part in the test purchase. The applicant made a plea of entrapment. He admitted to having collected wild-growing cannabis for personal consumption; he stated that the buyer, who he had known to have criminal connections, had been pressing him to sell and had made threats; he had ended up giving him some cannabis for free. Police officer Zh. testified that a month before the test purchase he had received information from an unspecified source that the applicant was selling cannabis. Questions about earlier episodes of drug dealing asked during the cross-examination of the police officers were not answered on the grounds of secrecy. The court dismissed the applicant's allegation of entrapment as unsubstantiated.
35. On 24 December 2014 the Kalyazinskiy District Court of the Tver Region found the applicant guilty of attempting to illegally sell drugs during the test purchase and sentenced him to four years' imprisonment. This judgment was upheld by the Tver Regional Court on 11 March 2015.

H. Mr XXXXX (application no. 29068/15)

36. In August 2013 the police received information from their regular informant that the applicant was involved in dealing cannabis. Referring to this information, on 17 October 2013 they ordered a test purchase from the applicant with the participation of "Michael", whose identity remained undisclosed, as a buyer.
37. On 1 November 2013 "Michael" purchased 30.75 g of cannabis from the applicant, who had purchased it from another person immediately before that.
38. The applicant was charged with conspiracy to sell drugs on the basis of the test purchase results.
39. During trial the applicant made a plea of entrapment, claiming that "Michael" had been calling him incessantly, pressing him to sell. "Michael" testified that he had been approached by a police officer, who had asked him to take part in a test purchase from the applicant since he knew him. The police officer in charge of the test purchase testified that it had been ordered because the police had received information concerning the applicant's suspected drug dealing. The court dismissed the entrapment plea on the basis that the applicant's pre-existing criminal intent had been demonstrated during the test purchase. Having established that the buyer had indeed called him numerous times, the court did not consider this fact significant.
40. On 5 December 2014 the Vyselkovskiy District Court of the Krasnodar Region found the applicant guilty of attempting to illegally sell drugs during the test purchase with two co-defendants. He was sentenced to eight and a half years' imprisonment. This judgment was upheld by the Krasnodar Regional Court on 18 February 2015.

I. Mr XXXXX (application no. 30920/15)

41. On 21 April 2014 the police ordered a test purchase from the applicant on the basis of information from an undisclosed source that the applicant was dealing "smoking mix" (herbal tobacco) containing narcotic substances. The test purchase was carried out the same day with the applicant's old friend Sh. acting as a buyer. In the course of the test purchase Sh. contacted the applicant and acquired from him 0.98 g of smoking mix containing narcotic substances.

42. The applicant was charged with drug dealing based on the results of the test purchase.

43. At trial the applicant alleged that it had not been his intention to sell drugs to Sh., but that he had acquired them at Sh.'s request so that they could take them together. He denied any prior involvement in drug dealing and made a plea of entrapment. The police officer in charge of the test purchase testified that the buyer Sh. had been detained with another person in possession of drugs. He had agreed to participate in a test purchase from someone he had identified as his seller. Sh. testified that he had been arrested by the police in possession of drugs while on parole and had been obliged to participate in the test purchase under threat of the parole being revoked. He had called the applicant and suggested that they meet up and smoke together; he had not handed over the money to him, but had put it on the car seat because "he was not a dealer"; there had been no prior agreement that he would take the drugs away. He contested statements he had made during the investigation that he had voluntarily turned up at the police station to report the applicant's criminal activity. The court, however, dismissed his testimony and gave weight to the statements made during the investigation. It dismissed the applicant's plea of entrapment on the grounds that during the test purchase he had readily agreed to Sh.'s request without any pressure, he had demonstrated that he knew the prices of the drug, and there had been more drugs found on him than the amount he had promised Sh.

44. On 12 November 2014 the Leninskiy District Court of Novosibirsk found the applicant guilty of attempting to illegally sell drugs during the test purchase and sentenced him to ten years' imprisonment. This judgment was upheld by the Novosibirsk Regional Court on 17 April 2015.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. Relevant provisions on undercover operations

45. For a summary of the relevant provisions on undercover operations and evidence in criminal proceedings in Russia, see Lagutin and Others v. Russia, nos. 6228/09 and 4 others, §§ 62-66, 24 April 2014.

46. On 27 September 2013 the Ministry of the Interior and other law-enforcement agencies approved a Joint Instruction on the procedure for presenting the results of operational-search activities to the investigating authorities and the courts. Under the Joint Instruction, if the data collected in the course of operational-search activities contains information about the commission of a criminal offence, that information, together with all the necessary supporting material, such as photographs and audio or video-recordings, must be sent to the competent investigating authorities or a court. If the information was obtained as a result of operational-search measures involving interference with the right to the privacy of postal, telegraphic and other communications transmitted by means of a telecommunications network or mail services, or with the right to privacy of the home, it must be sent to the investigation or prosecution authorities together with the judicial decision authorising

those measures. The information must be transmitted in accordance with the special procedure for handling classified information, unless the State agency performing operational-search activities has decided to declassify it.

II. Russian Supreme Court's approach to cases concerning police entrapment

47. On 15 June 2006 the Plenary Supreme Court of the Russian Federation adopted guidelines (Ruling no. 14), amended on 23 December 2010, on criminal case-law involving narcotic drugs or psychotropic, potent or toxic substances. The Plenary ruled, in particular, that charges of attempting to sell should be brought against anyone selling such substances where this was carried out in connection with a test purchase under the Operational-Search Activities Act (Article 30 § 3 in conjunction with Article 228.1 of the Criminal Code). It also sets out the following conditions under which the results of a test purchase may be admitted as evidence in criminal proceedings: (i) they must have been obtained in accordance with the law; (ii) they must demonstrate that the defendant's intention to engage in dealing illegal substances had developed independently of the undercover agent's acts; and (iii) they must demonstrate that the defendant had carried out all the preparatory steps necessary for the commission of the offence.

48. On 27 June 2012 the Presidium of the Supreme Court issued a Review of judicial practice in criminal cases involving narcotic drugs or psychotropic, potent or toxic substances. It gave instructions to the lower courts, in particular, concerning the examination of pleas of entrapment in accordance with the principles set out in the Court's judgments in Vanyan v. Russia (no. 53203/99, 15 December 2005), Khudobin v. Russia (no. 59696/00, 26 October 2006) and Bannikova v. Russia (no. 18757/06, 4 November 2010) (paragraph 7.2 of the Review) and the exclusion of evidence obtained during a test purchase if the order did not comply with the law and the Joint Instruction (see paragraph 46 above).

49. On 15 June 2016 the Plenary Supreme Court adopted Resolution no. 14, containing an extensive report summarising the legal positions of the European Court of Human Rights in cases where a violation of Article 6 § 1 of the Convention had been found in view of the applicants' conviction as a result of police entrapment. It has since issued a number of similar interpretative summaries of the Court's case-law on this subject. In addition, referring to Article 415 § 5 of the Russian Code of Criminal Procedure, the Presidium of the Supreme Court has regularly authorised the reopening of criminal proceedings in view of the fact that the European Court of Human Rights has found a violation of Article 6 § 1 of the Convention following the Russian courts' failure to effectively conduct a review of the defendants' arguments that the criminal offence had been committed as a result of police entrapment (see, for example, the Presidium's decision no. 28-P17 issued on 12 April 2017 in response to the Court's decision in the case of Ulyanov and Others v. Russia [Committee], nos. 22486/05 and 10 others, 9 February 2016).

50. Rulings of the Constitutional Court of 29 September 2011 no. 1257-O-O, 17 November 2011 no. 1586-O-O and 17 July 2012 nos. 1485-O and 1473-O, state that a test purchase may only be carried out after the relevant order has been issued.

III. Relevant international instruments and comparative law

51. The Council of Europe's instruments on the use of special investigative techniques are outlined in Ramanauskas v. Lithuania ([GC], no. 74420/01, §§ 35-37, ECHR 2008).
52. A comparative analysis of the national systems of authorising undercover operations in the Council of Europe member States is summarised in Veselov and Others v. Russia (nos. 23200/10, 24009/07 and 556/10, §§ 50-63, 2 October 2012).

THE LAW

I. JOINDER OF THE APPLICATIONS

53. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

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

54. The applicants alleged that they had been convicted of criminal offences which they only had committed because they had been incited to do so by an agent provocateur. They relied on 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 ..."

A. Admissibility

55. The Court notes that the applications are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits
1. The parties' submissions

(a) The applicants

(i) Individual cases

56. The applicants maintained that they had been unfairly convicted of crimes which the police had incited them to commit. They submitted that prior to the test purchases they had never procured drugs and would not have done so had they not been lured into the transactions by the police and their informants.
57. The applicants claimed that the police had had no good reason to suspect them of planning to sell drugs. According to them, the police had not demonstrated that they had actually been in possession of information suggesting their involvement in drug dealing or indicating any predisposition to commit drugs offences. Their criminal convictions had been based exclusively on the evidence obtained through the test purchases. The police had not taken any other measures to verify the information about the applicants' suspected criminal activity. The applicant in case

no. 23497/15 contested, in this regard, the Government's reliance on the results of the telephone tapping, pointing out that the recordings in question had been made four years prior to the test purchase in an unrelated case.

58. The applicants in all cases alleged that the buyers had not been independent from the police. Several applicants elaborated this complaint as follows.

(i) In case no. 66152/14 the applicant relied on the testimony of the police officer who had ordered the test purchase and stated that Ms K., the buyer, had been arrested in relation to a drug offence shortly before she had agreed to participate in a test purchase against the applicant. According to the applicant, Ms K. had been compelled by the police to participate in the test purchase to avoid criminal prosecution.

(ii) In case no. 76054/14 the applicant also alleged that the buyer, "Luchko", had been arrested shortly before the test purchase, but at trial the latter had declined to testify on this point, relying on the privilege against self-incrimination.

(iii) In case no. 15189/15 the applicant submitted that the buyer Mr K. had testified that he had been arrested as a suspect of an unrelated criminal offence and that the police had asked him to call someone who he knew would sell him drugs. Before Mr K. had called the applicant, the police had had no information about him, but they had not taken any steps to verify Mr K.'s allegation and had proceeded straight to the test purchase.

(iv) In case no. 23096/15 the applicant pointed out that the buyer had been a police officer, while in case no. 29068/15 the order for the test purchase stated that the buyer had been a police informant. The applicant in case no. 23497/15 argued that the concealed identity of the buyer made it impossible to verify whether he or she had been a police informant; accordingly, he or she should be presumed to have been dependent on the police. He submitted that a drug-dependent buyer who enjoyed "secret" status could not operate as an independent source.

59. The applicants claimed that the investigating authorities had not acted in an essentially passive manner, but had taken the initiative to contact them through their agents and persuade them to find drugs. According to the applicants, they had succumbed to the requests of their acquaintances on the understanding that they would only do it once, as an exception. The applicants' specific complaints in this respect were as follows.

(i) In case no. 66152/14 Ms K. had tried hard to persuade her to buy the amphetamine for her, which had amounted to incitement.

(ii) In case no. 76054/14, according to the applicant, "Luchko" had called him insistently and complained of withdrawal symptoms, appealing to his compassion to persuade him to obtain drugs for her.

(iii) In case no. 77426/14 the applicant claimed that "Vlad" had been in a close relationship with him.

(iv) In case no. 15198/15 the applicant alleged that the buyer P. had first sold him the drugs but then asked him to sell them back.

(v) In case no. 23497/15 the applicant alleged that he had been tricked by the buyer "Ivanov".

(vi) In case no. 23896/15 the applicant claimed that the undercover police officer R. who had acted as a buyer had called him numerous times asking him to sell.

(vii) In case no. 28472/15 the applicant alleged that he had sold under pressure and threats from the buyer "Sergeyev".

(viii) In case no. 29068/15 the applicant claimed that "Michael" had been calling him incessantly to make him sell the drugs.
(ix) In case no. 30920/15 the applicant claimed that he had obtained drugs with the intention of taking them with his old friend Sh.
60. The applicant in case no. 28472/15 alleged that the order for the test purchase in his case had been issued after the beginning of the undercover operation. According to the applicant in case no. 29068/15, the order for the test purchase in his case had been registered a week before the same document was issued.
61. The applicants further complained that their entrapment complaints had not been duly examined by the domestic courts. They alleged that during trial certain information had not been disclosed on the basis of confidentiality, such as the identity of the buyers (in cases nos. 76054/14, 77426/14, 23497/15, 28472/15 and 29068/15), or the source of information on the basis of which the police had ordered the test purchase (nos. 66152/14, 76054/14, 77426/14, 23896/15, 23497/15, 29068/15, 30920/15). Moreover, when the police officers and the buyers had been cross-examined, they had declined to answer certain questions, relying on confidentiality. They had refused, in particular, to testify about the reasons for which the police had ordered the test purchase (no. 23497/15), the reasons why the buyer had agreed to take part in the test purchase (no. 76426/14), the nature of the buyer's relationship with the applicant and the police officer in charge of the test purchase (no. 76054/14), and earlier episodes of the applicant selling drugs (no. 28472/15). In one case the buyer had refused to testify, relying on the privilege against self-incrimination, about allegedly being arrested by the police shortly before the test purchase (no. 76054/14).
62. The applicant in case no. 66152/14 also complained that the trial court had not examined the order for the test purchase which she alleged had not identified her as a suspect in drug dealing, and that it had thus omitted an important piece of evidence in support of her plea of entrapment.

(ii) Systemic problem

63. The applicants contended that their cases revealed the presence of the same underlying defect as that identified by the Court in the cases of Veselov and Others (nos. 23200/10 and 2 others, §§ 126-27, 2 October 2012), and Lagutin and Others v. Russia (nos. 6228/09 and 4 others, §§ 93, 115 and 134, 24 April 2014), in particular the absence of a clear and foreseeable procedure for authorising test purchases and operational experiments. They asserted that it amounted to a continuing structural problem as the principles relating to the protection against entrapment set out in the Court's case-law had not yet been reflected in Russian legislation.
64. As regards the general measures referred to by Government, they contested their effectiveness and submitted that in practice the manner of conducting undercover operations and the judicial examination of pleas of entrapment had not evolved.
65. They pointed out that the system of authorising test purchases in Russia by operational-search bodies was out of line with the majority of Council of Europe member States.
66. The applicants agreed with the Government that, under the existing regulations, a review of the lawfulness and manner of conducting a test purchase could only take place at the stage when the

criminal case had reached the court of first instance during the determination of the criminal charges against the defendant.

67. They also contended that judicial supervision of a test purchase during trial did not provide sufficient guarantees. In their cases there had been clear indications of entrapment, which they had relied on in their defence, but the courts had not examined them with the requisite thoroughness. Even after the adoption of the Supreme Court's guidelines, the lower courts had continued to examine criminal cases and pass criminal convictions based on the results of undercover operations in the absence of a proper assessment of whether these operations had involved entrapment.

68. In support of their argument, the applicants submitted that the Court had continued to receive meritorious complaints of entrapment even after the judgments in the cases of Veselov and Others and Lagutin and Others (both cited above), and that it had in several judgments found a violation of Article 6 on account of agent provocateur in cases where the events had taken place subsequent to these two judgments. Those applications had originated from different parts of Russia, demonstrating that the undercover techniques were used in a uniform manner across all regions.

69. In addition to the above arguments, the applicants' observations contained the following submissions.

70. The applicants in cases nos. 77426/14, 15189/15, 23497/15 and 29068/15 stated that, as a general rule, orders for test purchases were not subject to formalities capable of providing safeguards against abuse. In particular, the orders issued in their cases had not contained sufficient information about the reasons for and objectives of the respective test purchases, or a list of other measures taken to verify the suspicion that they had been carrying out illegal activities, because it had not been required by law.

71. The applicant in case no. 66152/14 pointed out that, under the existing procedure for ordering test purchases, it was unclear when the decision to conduct the operation was taken: at the moment when the order was issued or immediately before the start of the test purchase. This lack of clarity allowed for manipulation, such as the use of agents provocateurs and the fabrication of evidence. The applicant contested the Government's arguments that the 2006 and 2010 guidelines of the Supreme Court provided sufficient safeguards and stated that they had not been observed in practice, particularly not in her case. She reiterated that the order for the test purchase conducted against her had not been examined at trial, contrary to those guidelines. She contended that the measures listed in support of the Government's statement that the problem had been addressed had had no practical effect. Entrapment was not being punished despite the legislative prohibition on entrapping, as it did not entail any sanctions or other negative consequences for officials and other individuals responsible for inciting criminal offences. The courts had a propensity to neglect pleas of entrapment and be complacent with the conduct of the investigating authorities. In short, the bodies conducting operational-search activities were not accountable for overstepping the limits of permissible conduct.

(b) The Government

(i) Individual cases

72. The Government contested the allegations of police entrapment. They claimed that in each case the police had had grounds to suspect the applicants of involvement in drug dealing because they had received incriminating information from either undisclosed confidential sources or independent individuals who had turned up voluntarily to report the applicants' criminal activity to the police. The police had thus been under an obligation to verify the reported suspicious activity. In cases nos. 66152/14, 77426/14, 15189/15, 23497/15, 28472/15, 29068/15 and 30920/15 they specified that the buyers had been private individuals independent from the police who had acted at their own initiative in the test purchases. Relying on Vanyan v. Russia (no. 53203/99, § 46, 15 December 2005), they claimed that the buyers in the present cases had to be distinguished from "anonymous informants" collaborating with law-enforcement authorities on a regular basis or from agents of the law-enforcement authorities. In case no. 23896/15, where the test purchase had been conducted by an undercover police officer, they pointed out that the law did not prohibit test purchases by police officers.

73. Based on the above, the Government submitted that the police had acted within their investigative powers and had done so by lawfully carrying out the test purchases.

74. The Government maintained that the present cases involved "sting operations", which were widely acceptable and free from incitement to commit an offence under the criteria set out in the Court's case-law (they referred to Calabro v. Italy and Germany (dec.), no. 59895/00, ECHR 2002-V; Sequeira v. Portugal (dec.), no. 73557/01, ECHR 2003-VI; and Eurofinacom v. France (dec.), no. 58753/00, ECHR 2004-VII). Referring to the facts of the present cases, they claimed that the police officers had limited themselves to investigating the criminal activity in an essentially passive manner and had merely joined the ongoing offences, and that the commission of the crime had been predetermined mostly by the applicants' own behaviour (referring to Malininas v. Lithuania, no. 10071/04, 1 July 2008; also Vanyan, cited above; and Ramanauskas v. Lithuania [GC], no. 74420/01, ECHR 2008).

75. The Government contended that the objectives of the test purchases had been clearly defined in the respective orders signed by the authorised officials.

76. In case no. 76054/14 the Government also claimed that the applicant's involvement in drug dealing had been corroborated by other evidence, such as the results of the interception of his telephone communications.

77. As regards the cases where the buyer's identity or other details about the test purchase had not been disclosed, the Government submitted that it had been permissible to conceal that information for the protection of the informants.

78. The Government stated that the applicants had had their plea of entrapment examined by the domestic courts, which had competence to exclude evidence originating from a test purchase if they found the actions of the police to be unjustified. However, in the present cases the applicants' criminal intent to sell drugs had been sufficiently and clearly established; in each case it had been formed independently of the intervention of the law-enforcement officers and there were no reasons to believe that it had been the result of entrapment. All the relevant witnesses in each case had been examined at trial, including the buyers and the police officers in charge of the test purchases, and the defence could put questions to those witnesses concerning the alleged entrapment.

(ii) Systemic problem

79. The Government denied the persistence of a structural problem relating to the regulation of test purchases and other operational-search activities, claiming that Russian legislation contained the necessary legal safeguards against entrapment. They specified that test purchases were subject to prior authorisation by the chief and deputy chief of the operational-search body, and that these officials supervised the lawfulness of the operations in question. According to the findings of the Constitutional Court on 17 July 2012 (see paragraph 49 above) and the Supreme Court (see paragraphs 48-49 above), the formal requirement for the order to be issued by the competent authority was a necessary condition for a test purchase to be valid under domestic law.

80. After the adoption of the Court's judgment in Veselov and Others (cited above), the Prosecutor General had adopted guidelines for prosecutors supervising test purchases, to ensure that test purchases were ordered on the basis on sufficient and verified information received from different sources, and not solely on the basis of a person's criminal record, as well as to exclude any actions involving entrapment.

81. The FSKN, the agency that had been subsequently abolished and whose functions had been transferred to the Ministry of the Interior, had also issued guidelines to the effect that information from undercover sources had to be corroborated by other lawfully obtained proof from surveillance, telephone tapping and other investigative measures.

82. Also, further to the adoption of the Court's judgments, the Ministry of the Interior and other law-enforcement agencies had issued a joint instruction regulating the content of documents to be produced as a result of a test purchase to be used as evidence in criminal proceedings (see paragraph 46 above). They had to contain, in particular, reference to data allowing the evidence to be verified, including audio and video-recordings of the test purchase and exhibits. According to the Government, the same requirement was also set out in the guidelines of the Prosecutor General and the FSKN.

83. The Government also referred to the practice of the Supreme Court (see paragraphs 48-49 above), which had ruled that the results of a test purchase could only be admitted as evidence if the perpetrator's criminal intent had been formed independently of the operational-search bodies. Proof of such pre-existing intent could come, in particular, from any preparatory acts leading to drug-related offences. According to the Supreme Court's guidelines, any circumstances contributing to the commission of crimes which were identified by the trial court could be the subject of a separate ruling indicating the relevant authority that had been responsible for a breach of the law and calling for measures to be taken in this regard. Furthermore, in its 2012 Review (see paragraph 48 above) the Supreme Court had referred to the principles set out in the Court's case-law and imposed on the lower courts an obligation to verify allegations of entrapment following those principles. It was therefore incumbent on the trial courts to implement the guarantees of a fair hearing, including protection from entrapment in the adjudication of criminal cases.

84. In sum, the Government contended that Russian law and judicial practice provided sufficient legal safeguards against provocation and arbitrariness in the conduct of test purchases and other operational-search activities by law-enforcement authorities. The present cases were therefore not a

manifestation of a continuation of the problem set out in Veselov and Others and Lagutin and Others (both cited above).

2. The Court's assessment

(a) General principles

85. The Court is aware of the difficulties inherent in the police's task of searching for and gathering evidence for the purpose of detecting and investigating offences. To perform this task, they are increasingly required to make use of undercover agents, informers and covert practices, particularly in tackling organised crime and corruption (see Ramanauskas, cited above, § 49). The Court reiterates that while it accepts the use of undercover agents as a legitimate investigative technique for combating serious crimes, it requires that adequate safeguards against abuse be provided for, as the public interest cannot justify the use of evidence obtained as a result of police incitement (see Teixeira de Castro v. Portugal, 9 June 1998, §§ 34-6, Reports of Judgments and Decisions 1998-IV). The use of special investigative methods - in particular, undercover techniques - must be kept within clear limits, on account of the risk of police incitement entailed by such techniques (see Ramanauskas, cited above, § 51; see also Ciprian Vlăduț and Ioan Florin Pop v. Romania, nos. 43490/07 and 44304/07, § 77, 16 July 2015; and Nosko and Nefedov v. Russia, nos. 5753/09 and 11789/10, § 50, 30 October 2014).
86. To distinguish entrapment breaching Article 6 § 1 of the Convention from permissible conduct in the use of legitimate undercover techniques in criminal investigations the Court has developed criteria in its extensive case-law on the subject. Since it is not possible to reduce the variety of situations which might occur in this context to a mere checklist of simplified criteria, the Court's examination of complaints of entrapment has developed on the basis of two tests: the substantive and the procedural test of incitement (see Matanović v. Croatia, no. 2742/12, § 122, 4 April 2017, citing Bannikova v. Russia, no. 18757/06, § 37-65, 4 November 2010).

(i) Substantive test of incitement

87. When examining an arguable plea of entrapment by an applicant, the Court will attempt, as a first step, to establish on the basis of the available material whether the offence would have been committed without the authorities' intervention, that is to say whether the investigation was "essentially passive". In deciding whether the investigation was "essentially passive" the Court will examine the reasons underlying the covert operation, in particular, whether there were objective suspicions that the applicant had been involved in criminal activity or had been predisposed to commit a criminal offence until he was approached by the police (see Furcht v. Germany, no. 54648/09, § 51, 23 October 2014) and the conduct of the authorities carrying it out, specifically whether the authorities exerted such an influence on the applicant as to incite the commission of an offence that would otherwise not have been committed, in order to make it possible to establish the offence, that is, to provide evidence and institute a prosecution (see Ramanauskas, cited above, § 55; Furcht, cited above, § 48; Morari v. the Republic of Moldova, no. 65311/09, § 31, 8 March 2016; and Matanović, cited above, § 123).

88. The authorities must be able to demonstrate that they had good reasons for mounting the covert operation. In particular, they should be in possession of concrete and objective evidence showing that initial steps have been taken to commit the acts constituting the offence for which the applicant is subsequently prosecuted (see Sequeira and Eurofinacom, both cited above; Shannon v. the United Kingdom (dec.), no. 67537/01, ECHR 2004-IV; Ramanauskas, cited above, §§ 63 and 64; and Malininas, cited above, § 36). The Court has stressed that any information relied on by the authorities must be verifiable (see Vanyan, cited above, § 49; Khudobin, cited above, § 134; and Veselov and Others, cited above, § 116). In cases where the police proceeded with the test purchase immediately after a first report incriminating the applicant and without any attempt to verify that information or to consider other means of investigating the applicant's alleged criminal activity the Court found that the undercover operation had involved entrapment (see Vanyan, § 49, and Veselov and Others, §§ 108 and 121, both cited above). By contrast, where the test purchase was preceded by a number of investigative steps, most notably telephone tapping authorised by a court, which secured tangible evidence of the applicant's pre-existing intent, and that evidence was then available for examination in open court, the Court concluded that there had been no entrapment (see Bannikova, cited above, § 69).

89. The Court reiterates that where police involvement is limited to assisting a private party in recording the commission of an illegal act by another private party, the determinative factor remains the conduct of those two individuals (see Milinienė v. Lithuania, no. 74355/01, § 38, 24 June 2008).

90. Lastly, the Court has also emphasised the need for a clear and foreseeable procedure for authorising investigative measures, as well as for their proper supervision. It has considered judicial supervision as the most appropriate means in cases involving covert operations (see Matanović, cited above, § 124, with further references).

(ii) Procedural test of incitement

91. As a second step, when the Government fails to meet the requirement of the burden of proof to demonstrate that the applicant has not been subjected to police entrapment, the Court will examine the way the domestic courts dealt with an applicant's plea of incitement, which is the procedural part of its examination of the agent provocateur complaint (see Bannikova, cited above, §§ 51-65, with further references).

92. As the starting point, the Court must be satisfied with the domestic courts' capacity to deal with such a complaint in a manner compatible with the right to a fair hearing. It should therefore verify whether an arguable complaint of incitement constitutes a substantive defence under domestic law, or gives grounds for the exclusion of evidence, or leads to similar consequences. Although the Court will generally leave it to the domestic authorities to decide what procedure must be followed by the judiciary when faced with a plea of incitement, it requires such a procedure to be adversarial, thorough, comprehensive and conclusive on the issue of entrapment (see Matanović, cited above, § 126).

93. Moreover, the principles of adversarial proceedings and equality of arms are indispensable in the determination of an agent provocateur claim, as well as the procedural guarantees related to the

disclosure of evidence and questioning of the undercover agents and other witnesses who could testify on the issue of incitement (see Bannikova, cited above, §§ 58-65).

94. In that connection, the Court also reiterates that it falls to the prosecution to prove that there was no incitement, provided that the defendant's allegations are not wholly improbable. In practice, the authorities may be prevented from discharging this burden by the absence of formal authorisation and supervision of the undercover operation (ibid., § 48, and Ramanauskas, cited above, §§ 70-71), which may result in a violation of Article 6 of the Convention (see Lagutin and Others, cited above, §§ 124-25; cf. Bannikova, cited above, §§ 73-79).

(iii) Previous findings in respect of Russia

95. In respect of Russia, the Court has previously found that in police-controlled test purchases and similar undercover operations the police are virtually unaccountable for the manner of conduct of their undercover agents and informants because of a systemic failure, namely the absence of a clear and foreseeable procedure for authorising such undercover operations (see Vanyan, §§ 46 and 47; Bannikova, §§ 49-50; Veselov and Others, §§ 106 and 126-27; and Nosko and Nefedov, §§ 73-74, all cited above; and Khudobin v. Russia, no. 59696/00, § 135, 26 October 2006).

96. The Court has reiterated on multiple occasions that this remains a structural problem which exposes applicants to arbitrary action by State agents and prevents the domestic courts from conducting an effective judicial review of their pleas of entrapment. It has consistently found a violation of Article 6 § 1 of the Convention on account of the deficient existing procedure for authorisation and administration of test purchases of drugs in the respondent State and the domestic courts' failure to adequately address the applicant's plea of entrapment by taking necessary steps to uncover the truth and to eradicate the doubts as to whether the applicant had committed the offence as a result of incitement by an agent provocateur (see Veselov and Others, cited above, §§ 126-28; Lagutin and Others, cited above, §§ 124-25; Lebedev and Others v. Russia, nos. 2500/07 and 4 others, §§ 12-16, 30 April 2015; Yeremtsov and Others v. Russia [Committee], nos. 20696/06 and 4 others, §§ 17-21, 27 November 2014; and Kumitskiy and Others v. Russia, nos. 66215/12 and 4 others, § 20, 10 July 2018). The same findings were made in relation to the criminal proceedings involving similar undercover operations used to investigate corruption (see Nosko and Nefedov, cited above, §§ 64-65 and 69-72).

(b) Application of these principles in the present case

97. Based on the criteria set out in its case-law and using the methodology for the examination of complaints of entrapment (see paragraph 86 above) the Court considers that the nine applications in question fall within the category of "entrapment cases". It will therefore proceed with the assessment under the substantive and procedural tests of incitement.

98. With respect, first, to the substantive test, the Court notes that in all of the present cases the Government submitted that the police had acted upon information received from an undisclosed source, except for case no. 15189/15 where they stated that the information had been obtained from a person detained on charges of embezzlement who had then acted as a buyer. The Court notes, however, that in two further cases where the authorities relied on the existence of information from

an undisclosed source the material in the case files suggest that the test purchases were conducted by a police informant or even a police officer (nos. 29068/15 and 23896/15 respectively). In two other cases the material in the case files confirm that the individuals who acted as buyers had been arrested by the police on suspicion of having committed a criminal offence (no. 66152/14 and no. 30920/15), and in one other case the applicant's plausible submission to the same effect remained unrebutted in the domestic proceedings (no. 76054/14). In the remaining cases the applicant's submission that the source of information had been the same person as the buyer was confirmed (nos. 23497/15 and 28472/15) or uncontested (no. 77426/14). The Court further observes that in none of the cases where the applicants argued entrapment by challenging the existence of prior information on their criminal activity were the police required to explain the sources of the initial information relied on or to disclose the sources.

99. The present case follows a pattern whereby the test purchase was ordered on the basis of an allegedly spontaneous contribution of information by a private source who subsequently acted in the test purchase as a buyer and whose independence from the police was not subsequently verified by the trial court. Given the importance of the distinction drawn by the Court between a complaint brought by an individual and information coming from a police collaborator or informant (see Sequeira and Shannon, both cited above; Milinienė v. Lithuania, no. 74355/01, §§ 37-38, 24 June 2008; Malininas, cited above, § 37; and Gorgievski v. "the former Yugoslav Republic of Macedonia", no. 18002/02, §§ 52 and 53, 16 July 2009), the Court concludes that the people acting as buyers in the test purchases in question ran a significant risk of extending their role to that of agents provocateurs, susceptible of leading to a breach of Article 6 § 1 of the Convention.

100. The Court also notes that in all of the present applications the police, having received the information from their sources, proceeded directly to the test purchase without considering other investigative steps to verify the suspicion that the applicants were drug dealers. In case no. 76054/14 an attempt to gather further evidence was not made until after the order for the test purchase had been issued, and it cannot be said that the decision to conduct the undercover operation had been based on the results of other investigation measures.

101. It is difficult to conclude on the basis of the case files that the investigating authorities had good reason to suspect the applicants of drug dealing. The Court considers that the informal and spontaneous way in which the test purchases were ordered and implemented in the present cases, leading it to presume that entrapment did indeed take place, was the result of the deficient procedure for authorising test purchases. The test purchases were ordered by simple administrative decisions of the bodies which later carried out the operations; the decisions contained very little information as to the reasons for and purposes of the planned test purchases, and the operations were not subjected to judicial review or any other independent supervision. There was no need to justify the decision and virtually no formalities to follow. That exposed the applicants to arbitrary action by the police which could undermine the fairness of the criminal proceedings against them (see Veselov and Others, cited above, §§ 126).

102. Turning, secondly, to the procedural step, the Court has previously emphasised the role of the domestic courts in reviewing undercover operations, in particular in a system where the police operation takes place without a sufficient legal framework or adequate safeguards (see Lagutin and Others, cited above, § 119). Taking into account the importance of the covert operations for the

outcome of the criminal proceedings against the applicants and the high risk of provocation, it was incumbent on the domestic courts to verify that the manner in which the test purchases had been ordered and conducted excluded the possibility of abuse of power, particularly entrapment. The Court observes that throughout the judicial proceedings the applicants maintained that they had been incited to commit criminal offences. Accordingly, in each case the domestic courts were under an obligation to examine the plea of entrapment, including, in particular, the reasons why the operation had been mounted, the extent of the police's involvement in the offence and the nature of any incitement or pressure to which the applicant had been subjected (see Ramanauskas, cited above, § 71).

103. However, the courts made only a limited assessment of the applicant's plea of entrapment in each case, failing to examine the reasons for the undercover operation and the circumstances surrounding it and disregarding the applicant's allegations of pressure from the police during the undercover operation. As noted above, in none of the cases in question did the investigating authorities prove, or have to prove, pre-existing intent on the part of the applicants to commit the criminal acts at the time when the source began collaboration with the police (cf. Sequeira and Eurofinacom, both cited above). In the cases where during trial certain information was not disclosed on the basis of confidentiality, the courts did not ensure that all information relevant to the examination of the entrapment be put openly before the trial court or tested in an adversarial manner, or give detailed reasons for the refusal to do so, contrary to the requirements of Article 6 (see Bannikova, §§ 64-65, and Lagutin and Others, § 121, both cited above). It follows that in each of the cases the applicants' pleas of incitement were not adequately addressed by the domestic courts.

(c) Conclusion

104. The Court observes that the above shortcomings in the conduct of the undercover operations and the failure of the trial courts to provide an effective judicial review of the entrapment pleas were a result of the lack of a regulatory framework providing for safeguards against abuse in the conduct of test purchases. The structural nature of this problem has already been established in Veselov and Others (cited above, § 127) and reiterated in Lagutin and Others (cited above, § 115).

105. In the light of the foregoing considerations, the Court concludes that, taken as a whole, these elements undermined the fairness of the criminal proceedings in the present cases, in breach of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLES 41 AND 46 OF THE CONVENTION

106. 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."

107. Article 46 of the Convention provides:

"1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

A. Article 46

108. On 9 June 2016, when notice of the present applications was given to the Government, the Court asked for the parties' views on whether the applications revealed a continuation of the problem highlighted in the judgments of Veselov and Others and Lagutin and Others (both cited above), in particular the absence of a clear and foreseeable procedure for authorising test purchases and operational experiments. It invited the parties to answer whether this situation amounted to a continuing structural problem. The parties submitted their comments, and the Government provided an update on 15 October 2019 at the Court's request. These submissions are summarised in paragraphs 63-71 and 79-85 above.
109. Under Article 46, the Contracting Parties have undertaken to abide by the final judgments of the Court in cases to which they are parties, execution being supervised by the Committee of Ministers. It follows, inter alia, that a judgment in which the Court finds a violation of the Convention or the Protocols thereto imposes on the respondent State the legal obligation not just to pay those concerned the sums awarded by way of just satisfaction pursuant to Article 41 of the Convention but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if necessary, individual measures which it considers appropriate to incorporate into domestic law in order to put an end to the violation found by the Court and to redress as far as possible the effects. It is primarily for the State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used under its domestic law to comply with that obligation. However, with a view to helping the respondent State in that task, the Court may seek to indicate the type of individual and/or general measures that might be taken in order to put an end to the situation it has found to exist (see, among other authorities, Stanev v. Bulgaria [GC], no. 36760/06, §§ 254-55, ECHR 2012; Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania [GC], no. 47848/08, § 158, ECHR 2014; and Simeonovi v. Bulgaria [GC], no. 21980/04, § 149, ECHR 2017 (extracts)).
110. The Court notes that the Russian domestic framework for authorising and supervising test purchases was found to be deficient in the cases of Vanyan (cited above, §§ 46 and 47), and Khudobin (cited above, § 135), adopted in 2005 and 2006 respectively. In view of the continued receipt of applications raising the same issue, in 2012 the Court carried out a detailed analysis of the structural problem underlying entrapment cases and reiterated that the Russian legal system, including the Operational-Search Activities Act and other relevant instruments, did not provide for adequate and effective legal safeguards against arbitrariness (see Veselov and Others, cited above, §§ 106 and 126-27). Two years later, in Lagutin and Others (cited above, § 134), the Court stated the need to adopt general measures in order to reform this system, holding as follows:

"... the failure to conduct an effective judicial review of the entrapment plea which gave rise to the finding of a violation in this case was intrinsically linked to the structural failure of the Russian legal

system to provide for safeguards against abuse in the conduct of test purchases. The Court has already highlighted the structural nature of the problem, indicating that in the absence of a clear and foreseeable procedure for authorising test purchases and operational experiments the system was in principle inadequate and prone to abuse (see paragraphs 93 and 115 above with further references). This situation in principle calls for the adoption of general measures by the respondent State, which remains, subject to monitoring by the Committee of Ministers, free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment ..."

111. Furthermore, addressing the issue of entrapment in the context of "operational experiments", a technique commonly used to expose bribe-taking, the Court found the same structural flaw as the one affecting test purchases (see Nosko and Nefedov, cited above):

"73. The Court reiterates that even though Russian law expressly prohibits entrapment, it nevertheless lacks adequate mechanisms of control and supervision and leaves undercover operations at the sole discretion of officers executing them, as happened in the two cases examined above. While the Court has recognised that judicial supervision would be an adequate safeguard for undercover operations, it notes that in order to exercise judicial control in practice the courts need access to sufficient factual material clarifying the circumstances leading to the conduct of an undercover operation. The Court is mindful of the burden placed on Russian courts to examine pleas of entrapment on the basis of the limited evidence provided to them at the discretion of the bodies that carry out undercover operations. However, it continues to stress that in the fight against drug trafficking, corruption and other criminal offences, considerations of procedural economy and efficiency cannot be allowed to stand in the way of an individual's fundamental right to a fair trial, especially in the light of the successful efforts made by other European countries in this area (see paragraph 35 above and Veselov, cited above, §§ 50-63).
74. The Court has found above that the superficial preliminary investigation combined with the deficiencies in the procedure for authorising the undercover operations in both cases left the applicants unprotected against arbitrary police action and undermined the fairness of the criminal proceedings against them. The domestic courts, for their part, failed to adequately examine the applicants' plea of entrapment and in particular to review the reasons for the test purchase and the conduct of the police and their informants vis-à-vis the applicants."

112. The Court thus called for the adoption of general measures, without however making specific indications under Article 46 of the Convention. However, the finding of new violations on account of subsequent events raises the question whether this is sufficient.
113. In the present cases the Court has found a violation of Article 6 § 1 of the Convention, linking it to the structural inadequacy of the regulatory framework, which failed to provide effective legal safeguards against abuse (see paragraph 104 above). Furthermore, the Court has by December 2020 adopted twenty judgments concerning a total of 121 similar individual applications. It observes that the facts of many of those cases occurred after the adoption of the general measures referred to by the respondent Government (see paragraphs 79-85 above). Several test purchases examined in those cases took place from 2015 to 2017, and the relevant domestic judgments were as recent as 2017 to

2019 (see Bokov and Others v. Russia [Committee], nos. 7779/17 and 5 others, 26 March 2020; Livadniy and Others v. Russia [Committee], nos. 12233/10 and 15 others, 26 March 2020; and Medvedev and Others v. Russia [Committee], nos. 46440/16 and 7 others, 26 November 2020). These examples were by no means exceptional: in 2017 to 2020 the Court continued to receive similar repetitive applications.

114. This problem has multifaceted repercussions beyond compromising a fair hearing. Although the number of entrapments is not counted, the scope of the problem can be inferred from the fact that in 2019, 13.1% of all convicts in Russia were imprisoned for drug-related criminal offences[1]. Despite a steady reduction of this category of offences in the overall number of criminal convictions (by about a third since 2015), this represents a significant number of 78,400 persons in one year, the majority of whom received custodial sentences. This continues to have a significant negative influence on several other human rights problems in Russia, for example the overcrowding of remand prisons leading to violations of Article 3 of the Convention on account of poor conditions of detention and transfer (see, among other examples, Idalov v. Russia (no. 2), no. 41858/08, §§ 109 and 112, 13 December 2016, and Rodionov v. Russia, no. 9106/09, §§ 99, 103 and 107, 11 December 2018).

115. In view of the above, the Court, while noting the efforts made so far by the Russian authorities, in particular the Supreme Court, to improve the examination of entrapment pleas at domestic level, and reiterating that the choice of instruments remains fully at the discretion of the respondent Government, considers it appropriate to indicate under Article 46 that a further reform of the existing regulatory framework is required.

116. The Court has pointed out that the crux of the problem is the absence of a clear and foreseeable procedure for authorising undercover operations, notably test purchases and operational experiments, which eventually undermines the effective examination of entrapment pleas by the trial courts. Under the Court's case-law, the authorisation of test purchases and similar covert operations must be given by a body separate from the body carrying out the operation. The role of the authorising independent body is to verify the existence of good reasons for the planned operation, which must be justified by concrete and detailed submissions of the requesting body. The same body must also supervise the conduct of the operation, or ensure that the file contains sufficient information for another independent body – ultimately the trial court – to conduct a meaningful review in order to exclude entrapment and other breaches of the law.

117. The Court has previously noted that different legal systems may vest these powers on a judicial or prosecution authority, or, more rarely, on another senior official, such as the head of the national interior agency (see Veselov and Others, cited above, §§ 50-63).

118. As to the authorisation of test purchases by prosecutors, the introduction of such a mechanism has indeed resulted in the resolution of similar problems in some countries and the closure of relevant cases by the Committee of Ministers (see for Romania CM/ResDH(2013)40; Lithuania CM/ResDH(2011)231; Latvia CM/ResDH(2016)191; and Moldova CM/ResDH(2018)12)). However, there is no certainty that the reforms carried out in these countries could be successfully replicated in the Russian legal system. The institutional place of the prosecutor's office in a legal system and its functions vary significantly from one member State to another. For example, in Romania, prosecutors belong to the judiciary[2]. Whether or not a prosecutor is capable of securing a Convention-compliant safeguard also depends on the context in which it exercises its supervisory

powers in a particular sphere (see Ananyev and Others v. Russia, nos. 42525/07 and 60800/08, § 215, 10 January 2012, and Roman Zakharov v. Russia [GC], no. 47143/06, §§ 278-79, ECHR 2015).

119. On the other hand, the Court has emphasised the connection between the preliminary review of the reasons for carrying out undercover operations and the courts' subsequent capacity to examine pleas of entrapment effectively (see Veselov and Others, cited above, §§ 110-11). For this reason, it considers that judicial authorisation would enhance the effectiveness of the review at both stages: during the investigation and subsequently, during the examination of the criminal case on the merits. Moreover, the introduction of such judicial authorisation has resulted in the resolution of a similar problem, for example, in Portugal (see the Committee of Ministers' Resolution ResDH(2001)12 adopted in the case of Teixeira de Castro against Portugal on 26 February 2001). In this connection, it may be noted that for some other operational-search activities, such as home searches and telephone interceptions, judicial authorisation is already necessary under Russian law (see section 8 of the Operational-Search Activities Act, quoted in Veselov and Others, cited above, § 44), and no structural flaw has been established by the Court in cases where searches and interceptions were ordered by courts, as opposed to cases where the courts were bypassed through caveats of the urgent procedure which was found to be deficient (see Roman Zakharov, cited above, § 266, and, mutatis mutandis, Kruglov and Others v. Russia, nos. 11264/04 and 15 others, § 124, 4 February 2020). The institutional and procedural rationalities would therefore suggest that judicial powers may be extended to also authorise undercover operations in a similar way. The domestic courts can then carry out proper review of entrapment complaints in conformity with the Convention standards set out in paragraphs 85-96 above.

120. In view of the above, the Court holds that, for the prevention of similar violations in the future, the structural defect previously identified by the Court must be addressed by the Russian authorities. It considers it appropriate to specify that the Russian legal framework pertaining to the conduct of operational-search activities must be amended so as to provide for a clear and foreseeable procedure for authorisation of undercover operations, such as test purchases and operational experiments, by a judicial body providing effective guarantees against abuse.

B. Article 41

121. 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."

122. The Court reiterates that when an applicant has been convicted despite an infringement of his rights as guaranteed by Article 6 of the Convention, he should, as far as possible, be put in the position in which he would have been had the requirements of that provision not been disregarded, and that the most appropriate form of redress would, in principle, be a retrial or the reopening of the proceedings, if requested (see Öcalan v. Turkey [GC], no. 46221/99, § 210 in fine, ECHR 2005-IV). Given the Court's findings in Kumitskiy and Others (cited above, § 17), the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the

applicants in the present cases (see also Zadumov v. Russia, no. 2257/12, §§ 80-81, 12 December 2017).

123. The Court further reiterates that 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. Regard being had to the above criteria and the absence of any objections by the Government, the Court considers it reasonable to award the applicants the amounts indicated in the appendix. The amount awarded in case no. 76054/14 shall be paid to the applicant's representative, as requested by the applicant.

124. Lastly, 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 applications admissible;
3. Holds that there has been a violation of Article 6 § 1 of the Convention;
4. Holds that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants;
5. Holds

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the amounts indicated in the appended table, plus any tax that may be chargeable to the applicants, in respect of costs and expenses;

(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;

6. Dismisses the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 20 April 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova — Deputy Registrar

Paul Lemmens — President