



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

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FIFTH SECTION

Application no. 19191/20
Ishkhan BARSEGHYAN
against Armenia
lodged on 18 April 2020
communicated on 21 September 2026

SUBJECT MATTER OF THE CASE

The applicant, a former judge, was convicted for bribery. The central pieces of evidence in the basis of his conviction were obtained through secret surveillance measures.

In particular, according to the findings of the official investigation, on 27 October 2016 a certain N.H. submitted a report to the National Security Service (“the NSS”) claiming that the applicant had extorted a bribe from him in his capacity as a judge. In particular, N.H. had asked E.Z. – an advocate who had a close relationship with the applicant – to inquire about the progress of a civil dispute pending before him. Following her discussion with the applicant earlier that day, E.Z. had informed him that the applicant had required a bribe of 1,000 USD to resolve the civil dispute in his favour.

On the same day the NSS submitted a number of requests to the First Instance Court of General Jurisdiction of Kentron and Nork-Marash Districts of Yerevan (“the District Court”) for authorisation of the following secret surveillance measures: a simulation of the offence of bribery (“the simulation”), external and internal surveillance of the applicant and E.Z. for two months, interception of E.Z.’s phone calls for two months, as well as requests to declassify those decisions, all of which were granted.

On the same day the NSS provided N.H. with USD 1,000 banknotes pre-marked with a special substance. N.H. called E.Z. and informed her that he had obtained the required amount of money. E.Z. organised a meeting

between N.H. and the applicant. Those conversations were recorded. The applicant and N.H. met at around 7.35 p.m. and the latter handed the money to the applicant. Shortly afterwards, he was arrested by the NSS.

The applicant challenged the above evidence before the trial court on the following grounds:

- it was impossible, within such a short period of time, for the NSS to accept N.H.'s reporting (which had allegedly taken place at around 4 p.m.), prepare and submit the above requests to the court, for the court to examine those requests, and for the simulation to be organised, given that it had commenced at 7.35 p.m. The applicant alleged that it was a previously planned operation of entrapment where N.H. acted as an *agent provocateur*. Moreover, he submitted that the court's authorisation had been obtained *ex post facto*, after the results of the telephone tapping had already been secured. In support of his entrapment plea, the applicant stated that according to the information contained in N.H.'s phone call logs, he had had phone calls with numbers belonging to NSS officers prior to filing his official report with the NSS but the trial court had excluded that information from evidence as irrelevant;

- the video recording of the simulation attached to the case file lasted only 28 minutes while according to the protocol, the entire operation, including the applicant's arrest, had lasted around 3 hours. He alleged that the video recording had been edited;

- although the indictment and other procedural documents mentioned protocols of external and internal surveillance as one of the evidence against the applicant and although those operations had been authorised by the court, the ensuing video recordings had neither been included in the case file nor disclosed to the defence;

- the court had authorised the secret surveillance measures without sufficient grounds, its relevant decisions had lacked adequate reasoning, and the materials submitted in support of the requests for authorisation of those measures had not been made available to the defence. The requests had been submitted by an official who was not legally competent to do so. Along the same lines, he also complained that the decision authorising the simulation did not specify the time or place at which it was to be carried out.

On 6 August 2018 the trial court delivered a judgment finding the applicant guilty as charged. It rejected the applicant's entrapment claim holding that it was evident from the case materials that the applicant had actively demanded the bribe and set a deadline for it without any incitement. In addition, it responded to the applicant's argument concerning the absence of video recordings of the external and internal surveillance, stating that the external surveillance had been combined with the simulation and that, consequently, the video recording of the simulation also represented the results of the external surveillance. As for internal surveillance, although it was mentioned in the indictment as a piece of evidence, no recording had been submitted to

the court or examined by it concerning that operation. Lastly, in reply to the applicant's argument that the video recording of the simulation was significantly shorter than the duration of that operation as described in the protocol, the court stated that not every action recorded in the protocol had to be filmed.

The applicant appealed against the above judgment reiterating his above arguments. On 7 June 2019 the Criminal Court of Appeal upheld the judgment against the applicant endorsing the trial court's reasoning.

The applicant lodged an application on points of law before the Court of Cassation. On 16 October 2019 the court declared the applicant's appeal inadmissible for lack of merit. That decision was served on him on 19 October 2019.

The applicant complains under Article 6 § 1 of the Convention that he had been incited by the NSS to commit an offence and that the domestic courts failed to properly address his arguments in that regard. He further complains under the same provision that the criminal proceedings against him failed short of fairness as he did not have access to the unedited version of the video recording of the simulation, the recordings of external and internal surveillance, the materials submitted in support of the requests for authorisation of the surveillance measures and that his requests in that regard were dismissed with no proper reasoning. The applicant also complains under Article 8 of the secret surveillance measures against him referring to the quality of law as well as to the shortcomings in judicial review.

QUESTIONS TO THE PARTIES

1. Did the applicant have a fair hearing in the determination of the criminal charge against him, in accordance with Article 6 § 1 of the Convention? In particular:

- Was the applicant a victim of an entrapment by *agent provocateur* and did he have appropriate procedural safeguards in that respect, as required under Article 6 § 1 of the Convention (see *Ramanauskas v. Lithuania* [GC], no. 74420/01, §§ 49-61, 5 February 2008; *Miliniene v. Lithuania*, no. 74355/01, §§ 37-39, 24 June 2008; *Bannikova v. Russia*, no. 18757/06, §§ 33-65, 4 November 2010; *Tchokhonelidze v. Georgia*, no. 31536/07, §§ 44-46, 28 June 2018; and *Kuzmina and Others v. Russia*, nos. 66152/14 and 8 others, §§ 85-94, 20 April 2021)?

- Were the principles of adversarial proceedings and the equality of arms respected with regard to the disclosure of the evidence to the defence, and did the applicant have adequate procedural safeguards as regards the use of the

results of secret surveillance measures as evidence during the proceedings? (*Bykov v. Russia* [GC], no. 4378/02, §§ 88-91, 10 March 2009, and *Matanović v. Croatia*, no. 2742/12, §§ 149-59, 4 April 2017)?

2. Has there been an interference with the applicant's right to respect for his private life, within the meaning of Article 8 § 1 of the Convention, as regards the use of secret surveillance measures? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2 (see *Dragojević v. Croatia*, no. 68955/11, §§ 78-84, 15 January 2015, and *Hambardzumyan v. Armenia*, no. 43478/11, §§ 59-62, 5 December 2019)?

The Government are requested to submit the full copy of the criminal case against the applicant with the exception of the materials submitted by the applicant.