CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF MALININAS v. LITHUANIA

(Application no. 10071/04)

JUDGMENT

STRASBOURG

1 July 2008

FINAL

01/10/2008

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 Malininas v. Lithuania,

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

Françoise Tulkens, *President*,
Antonella Mularoni,
Ireneu Cabral Barreto,
Danutė Jočienė,
Dragoljub Popović,
Nona Tsotsoria,
Işıl Karakaş, *judges*,
and Sally Dollé, *Section Registrar*,

Having deliberated in private on 10 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 10071/04) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr Sergejus Malininas.

2. The Lithuanian Government ("the Government") were represented by their Agent, Ms Elvyra Baltutytė.

3. The applicant alleged that, in breach of Article 6 § 1 of the Convention, he had been subjected to entrapment, and had thus been unfairly convicted of drug dealing. He further complained that certain essential evidence had not been disclosed at his trial.

4. On 12 December 2006 the Court decided to give notice to the Government of the applicant's complaints under Article 6 § 1 of the Convention. On the same date, the Court decided to apply Article 29 § 3 of the Convention and to examine the merits of the complaints at the same time as their admissibility.

5. The applicant and the Government each filed observations on the admissibility and merits of the application (Rule 54A of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1980 and, at the time of lodging his application, he had been serving a custodial sentence at Pravieniškės prison.

7. On 19 February 2003 the Kaišiadorys District Court convicted the applicant - together with an accomplice - of attempted drug dealing in large quantities (Articles 16 § 2 and 232-1 § 5 of the Criminal Code as then in force). The court established that the offence had been disclosed using a "Criminal Conduct Simulation Model" ("the model"), which had been authorised by the Prosecutor General on 29 May 2002.

8. The court found that on 4 June 2002 V, a policeman acting as an undercover agent under the model, had met the applicant and, during their conversation on various topics, asked where he could get psychotropic drugs. The applicant had said that he could procure and sell samples to the policeman straight away, and more thereafter if the samples were good. The samples would cost between 15 to 21 LTL per gram, depending on the quantities required. He refused to lower the price for the first transaction, but suggested that it might be cheaper thereafter if V needed a regular supply. However, the officer replied that he could not wait and they agreed to telephone each other on the matter. V had to undergo a hospital intervention. Thereafter it was the applicant who contacted V, suggesting a meeting so that he could provide V with drug samples. On 21 June 2002, the applicant sold V some drugs.

9. On 23 June 2002 V had telephoned the applicant, requesting more drugs for a total sum of USD 3,000. On 25 June 2002 the applicant provided V with 250 grams of amphetamines. He said that he had around 5 kilos of drugs (amphetamines) and that the price would be lower next time. The applicant and his accomplice were arrested immediately. The applicant pleaded guilty to the attempted drug offence.

10. The court questioned V as an anonymous witness, outside the courtroom via an audio relay. His identity was not disclosed in order to protect him and the proper functioning of the police drug squad. At that stage the defence did not put any questions to V. After his testimony had been read out by the trial judge, the defence formulated some supplementary questions which were put to him by the judge and answered. The other evidence examined by the court included the transcripts of the conversations between V and the applicant, the testimony of another police officer who acted as V's back up during the operation, their supervising officer, the testimony of the applicant and his co-accused and an expert's conclusions.

11. The documents relating to the authorisation of the model were classified as secret and were not disclosed to the defence because they would have disclosed the identity of the police officers involved and the operational methods of the drug squad. The Government contended that the applicant was not, however, denied access to information about the execution of the model. In their submissions to the Court, the Government provided further information about it. The police had information about the applicant's continued large scale drug dealings in Lithuania and abroad under the nickname of "Malina". Two police officers were authorised to

contact the applicant and his associates and, should their suspicions prove to be founded, they were authorised to procure drugs from him. The steps to be taken and the equipment to be used to obtain proof were set out in the model, which was authorised for a year.

12. Defence counsel, in his final submissions to the trial court, contended that the applicant had been incited to commit the offence by the undercover police officer, who had acted unlawfully. Consequently, the latter's evidence could not be relied on. Counsel requested that the applicant's acts be qualified as an attempted offence, for which a milder sentence would be appropriate.

13. The trial court concluded that the use of the model in the case had been lawful. It observed *inter alia* as follows:

> "[T]he Criminal Conduct Simulation Model is used to collect evidence about the criminal activities of a particular person. That is what happened in the present case. Having obtained information that the defendant ... was selling psychotropic substances, the police officer - whose identity was concealed - expressed his wish to get some drugs. The subsequent activities of [the applicant], i.e., the selling of a large quantity of drugs, were in part determined by the conduct of the police officer."

14. The court acknowledged that the applicant's conduct had been influenced by Officer V from the outset, and commented at the sentencing stage that it had not been established the applicant had sold or tried to sell drugs to anyone other than this officer. The applicant was convicted of the attempted offence and sentenced to three years and six months' imprisonment, as well as to the confiscation of 3000 Lithuanian Litai ("LTL"; about 857 euros ["EUR"]).

15. The applicant appealed, complaining *inter alia* that V had overstepped the legitimate limits of investigation by influencing and inciting him to sell a large quantity of drugs. In his view, this warranted a lesser penalty. The Government contended that he did not dispute the finding of the first instance court that the authorisation of the model had been lawful and, consequently, that he had been involved in drug dealing previously. The parties did not request that the evidence be re-heard *de novo*.

16. On 10 June 2003 the Kaunas Regional Court upheld the conviction, considering that the applicant was guilty of a completed offence, not a mere attempt. The court thus re-classified the conviction under Article 260 § 2 of the new Criminal Code and increased the sentence to nine years' imprisonment. With respect to the applicant's entrapment allegations, the court noted:

> "[I]n establishing the persons involved in drug-dealing, [the officers] did not overstep the limits of the Criminal Conduct Simulation Model. ... [T]he police have only uncovered the ring of persons committing crimes and have discontinued their criminal activities. The officers joined in the crime that was already taking place ... Having established the group of accomplices, the officers discontinued their criminal activities, but did not influence or incite them."

17. The applicant lodged a cassation appeal. He alleged that the actions of V had been unlawful. He could have discontinued the crime on 21 June 2002, when the applicant had handed over the drug samples. However, V had offered to buy more drugs for a price significantly higher than their market value. The applicant alleged that V had thus provoked him into selling drugs in large quantities. According to the Government, the aim of this appeal was thus to receive a reduction in sentence.

18. The Supreme Court partially dismissed the applicant's cassation appeal on 14 October 2003. It held, *inter alia*, as follows:

> "In the present case, the Criminal Conduct Simulation Model ... was applied in order to protect society and the State from the challenges posed by the consumption and illegal circulation of drugs and psychotropic substances. The model was sanctioned by the Prosecutor General, in view of the possession of information about [the applicant] selling narcotic substances. Such data ... is a lawful ground for the use of the model.
>
> By entering into contact with the applicant and offering to buy psychotropic substances from him..., V only joined in the criminal activity of [the applicant] and uncovered his accomplice. Such actions cannot be considered to be entrapment (*nusikaltimo provokavimas*): it appears from the case file that [the applicant] was not subject to any pressure ... [The applicant's] allegation that the police undercover agent induced (*paskatino*) a person who had never offended before to commit a serious crime is unsubstantiated. On the contrary, the use of [the model] helped stop the criminal activity."

19. The applicant's conviction was again re-classified as an attempt to sell drugs in large quantities (Articles 22 § 1 and 260 § 2 of the new Criminal Code), but the sentence of nine years' imprisonment was retained.

II. RELEVANT DOMESTIC LAW AND PRACTICE, AND RELEVANT INTERNATIONAL LAW

20. The relevant domestic law and practice, as well as the relevant international law, concerning police undercover activities and criminal conduct simulation models, have been summarised in the judgment of 5 February 2008 in the case of *Ramanauskas v. Lithuania* ([GC] no. 74420/01, §§ 31-37).

THE LAW

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

21. Under Article 6 of the Convention, the applicant complained that he had been subjected to entrapment and thus had been unfairly convicted of

drug-dealing. He further complained about the non-disclosure at his trial of certain evidence relating to the authorisation and use of the Criminal Conduct Simulation Model. The applicant had also invoked Article 8 of the Convention – the right to respect for private and family life – in this respect, but the Court will limit its examination to the key issue under Article 6 § 1.

22. Article 6 § 1 of the Convention provides, insofar as relevant, as follows:

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

A. The parties' submissions

1. The Government

23. The Government submitted that the complaint was inadmissible as being manifestly ill-founded. They pointed out the difficulties in elucidating drug offences. Hence the use of criminal conduct simulation models was an essential tool to prevent the spread of such crimes which pose a dangerous threat to society. The model had a clear legal basis and its execution was strictly controlled by the authorities (see, *a contrario*, *Teixeira de Castro v. Portugal*, judgment of 9 June 1998, *Reports of Judgments and Decisions* 1998-IV, § 38). The persons concerned by such models had more guarantees for the protection of their rights and lawful interests under the Lithuanian system than disclosed in the cases previously examined by the Court (cf. *Vanyan v. Russia*, no. 53203/99, 15 December 2005; *Khudobin v. Russia*, no. 59696/00, §§ 128-137, ECHR 2006-... (extracts)).

24. There had to be preliminary information about the preparation or execution of a serious crime, put in the form of a reasoned, written request for the authorisation of a criminal conduct simulation model from the police narcotics department to the institutionally independent Prosecutor General or his/her Deputy, who were obliged to supervise the legality of the operation. The preliminary operational information - that the applicant was selling drugs - had been verified by Officer V. On that basis, he applied to the Prosecutor General to authorise the simulation model.

25. The model was confidential, albeit disclosed to the trial court, until the close of the criminal proceedings, whereupon certain information about the written request could be revealed, whilst excluding police investigative methods or the identities of the officers involved in the operation. The Government contended that the applicant had not shown how such non-disclosure of the model and the identity of Officer V could have assisted his defence. The evidence gathered in the present case confirmed the preliminary information gathered by the police and was acquired in strict accordance with the authorised model. Officer V had not made a specific

request to be supplied with drugs directly from the applicant, but the latter had offered his services. The Government emphasised, in particular, that at the first meeting between the applicant and Officer V, the latter had only asked where he could get drugs from. He had not asked the applicant to sell him drugs on that occasion. The applicant had not required persuasion and no threats or pressure had been brought to bear on him. He had had no problem supplying the drugs. Indeed, he had offered to get them speedily on V's first contact with him and thereafter on a regular basis. He was thus clearly active and experienced in the drug "business".

26. The Government stressed that the applicant's conviction was not based solely on the testimony of the undercover, anonymous police officer, which anyway the applicant had been able to challenge by putting questions through the trial judge. There had been other convincing evidence on the arrest of the applicant and his accomplice, their confessions at that time and their testimony in court, the testimony of the other back-up officer in the operation, the supervising officer and an expert's conclusions. They refuted the applicant's allegation that the preliminary operational information about his previous drug dealings had been the basis of his conviction. The trial and conviction had been limited to his transaction with Officer V. The Government contended that the applicant had not suffered any entrapment, provocation or incitement to commit an offence, elements prohibited by the domestic law. In particular, they contested the suggestion that V had offered to buy drugs from the applicant at a much higher price than their market value which was between 15 to 21 LTL per gram (see paragraph 8 above). The sum proposed was well within the market price range. Thus the partial influence exerted by Officer V, as found by the first instance court, did not amount to illegal pressure.

27. The authorisation and execution of the model were subject to judicial scrutiny. Any illegality in either of these aspects would have rendered inadmissible the evidence obtained thereby. However, unlawful incitement was not raised by the applicant before or during the trial, only in his counsel's closing submissions. Nevertheless, the trial court examined the question when considering the lawfulness of the model. It assessed the respective roles of the officer and the applicant and held that the latter had the deliberate intention to sell the drugs at their current market value. Accordingly, the officer's behaviour did not amount to a provocation or incitement (cf. *Calabro v. Italy and Germany* (dec.), no. 59895/00, ECHR 2002-V). The applicant would have sold the drugs, whoever the client.

28. As to the second aspect of the applicant's complaint under Article 6 § 1 of the Convention, the Government submitted that, despite Officer V's anonymity, the defence had had a full opportunity to question him, but his testimony had not been contested. Moreover, only part of the criminal conduct simulation model was withheld from the defence, pursuant to the Law on State and Service Secrets: the operational information about the

applicant's prior involvement in drug dealing and the written request by the police to the Prosecutor General for its authorisation. This was because it was necessary to protect the identity of the police officers involved in such undercover operations, as well as their working methods and sources, for future activities. However, these materials were not the basis of the applicant's conviction. All evidence about the execution of the model was in the criminal case file and available to the defence. The applicant was convicted solely on the basis of the evidence presented at the trial and which was open to challenge by the defence.

2. The applicant

29. The applicant pleaded his innocence based, *inter alia*, on a lack of prior involvement in drug dealing, as well as the absence of any prior convictions. He had known the price of the drugs in question through his friends, but would not have committed any offence if he had not been induced by Officer V to do so with the promise of payment well above the market value of the merchandise - USD 3,000. The latter had not recorded their first conversation in which inducements were proffered, so as not to show that it was he who had taken the initiative in the transaction, not the applicant. This element of inducement (also referred to as incitement or provocation) was borne out by the fact that the court of first instance acknowledged the influence exercised by the officer and did not find it established that the applicant had been selling drugs to other people (paragraphs 13-14 above).

30. However the appeal and cassation courts reached the opposite conclusion - that the applicant had had prior involvement in drug dealing, presumably based on the operational information in the criminal conduct simulation model which was not disclosed to the defence, and therefore could not be challenged. These appeal instances did not indicate if and how they had verified the accuracy of this confidential information. The applicant had only become aware of it during the present proceedings before the Court. He denied its veracity and submitted that its disclosure at trial would in no way have impaired any State secrets.

31. If there had been any truth in this preliminary material, the applicant should have been prosecuted on that basis; the police would not have needed authorisation for a test purchase. Moreover, as Officer's V's identity was not disclosed to the defence, it was not possible to make inquiries about him and thereby assist the court in determining his general credibility. In sum, there had been a breach of the principles of adversarial proceedings and equality of arms (cf. *Edwards and Lewis v. the United Kingdom* [GC], nos. 39647/98 and 40461/98, § 46, ECHR 2004-X).

32. The applicant refuted the purported independent role of the Prosecutor General in his case, given that this office was a party to the criminal proceedings, drew up the indictment, sought the applicant's severe

punishment and contested the applicant's appeals. Moreover, it did not verify the accuracy of the operational information submitted by the police. The relevant law did not even envisage the possibility of the refusal by the Prosecutor General of a proposed criminal conduct simulation model. The procedure was modified as of 1 May 2003 by the new Code of Criminal Procedure which only allows the courts to authorise such models in the context of a pre-trial investigation. The applicant expressed scepticism about the use of simulation models instead of normal investigation methods.

B. Admissibility

33. In the light of the parties' submissions, the Court finds that the application cannot be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention. The Government's arguments concern the merits of the case, which the Court will now proceed to examine. Accordingly, the application must be declared admissible.

C. The merits

34. The Court recalls its recent *Ramanauskas* judgment (*loc. cit.*, §§ 49-74) in which it elaborated the concept of entrapment in breach of Article 6 § 1 of the Convention, as distinguished from the use of legitimate undercover techniques in criminal investigations. In respect of the latter, there must be adequate safeguards against abuse, as the public interest cannot justify the use of evidence obtained as a result of police incitement (cf. the aforementioned *Teixeira de Castro v. Portugal* judgment, §§ 34-36). The Court has established that its function under Article 6 § 1 is to review the quality of the domestic courts' assessment of the alleged entrapment and to ensure that they adequately secured the accused's rights of defence, in particular the right to adversarial proceedings and to equality of arms (cf. the aforementioned *Edwards and Lewis v. the United Kingdom* judgment, §§ 46-48). Moreover, the Court recalls that the admissibility of evidence is primarily a matter for regulation by national law and for assessment by the domestic courts (cf. *Windisch v. Austria*, judgment of 27 September 1990, Series A no. 186, § 25).

35. As regards the issue of entrapment, the Court held as follows at § 55 of its *Ramanauskas* judgment:

> "Police incitement occurs where the officers involved – whether members of the security forces or persons acting on their instructions – do not confine themselves to investigating criminal activity in an essentially passive manner, but exert such an influence on the subject 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 *Teixeira de Castro v. Portugal*, [judgment of 9 June 1998, Reports of Judgments and Decisions

1998-IV], ... p. 1463, § 38, and, by way of contrast, *Eurofinacom v. France* (dec.), no. 58753/00, ECHR 2004-VII)."

36. To ascertain whether or not the police confined themselves to "investigating criminal activity in an essentially passive manner" in the present case, the Court has had regard to the following considerations. There was no evidence that the applicant had committed any drug offences beforehand. No objective, judicially verified materials have been presented to the Court to demonstrate that the authorities had had good reason to suspect the applicant of drug dealing or of being pre-disposed to commit such an offence until approached by Officer V. The Government did not contend that the applicant had a previous criminal record and no testimony was presented at the applicant's trial to show prior involvement in this illegal trade. In particular, it appears that the criminal conduct simulation model before the trial court was not fully disclosed to the applicant, particularly regarding the purported suspicions about the applicant's previous conduct (paragraphs 11 and 25 above). This relevant evidence was thus not put openly before the trial court or tested in an adversarial manner.

37. The Court observes that it was Officer V who took the initiative when he first approached the applicant, asking where he could acquire illegal drugs. The applicant then offered to supply them himself. As the transaction progressed, the applicant was offered a significant sum of money – USD 3,000 – to supply a large amount of narcotics. This obviously represented an inducement to produce the goods. The first instance court recognised the determinative part played by the police (see the extract of the judgment quoted at paragraph 13 above.) These elements in the present case, in the Court's view, extended the police' role beyond that of undercover agents to that of "*agents provocateurs*". They did not merely "join" an on-going offence; they instigated it. The necessary inference from these circumstances is that the police did not confine themselves to investigating the applicant's criminal activity in an essentially passive manner, but exercised an influence such as to incite the commission of the offence (cf. the aforementioned *Teixeira de Castro v. Portugal* judgment, §§ 37-39).

38. In the light of the foregoing considerations, the Court concludes that the aggregate of these elements undermined the fairness of the applicant's trial.

39. Consequently, there has been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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."

41. The applicant claimed EUR 10,000 in non-pecuniary damage and EUR 1,710 in costs and expenses, for which certain bills and receipts were provided. The Government contended that there was no causal link between the violation found and the applicant's claim for non-pecuniary damage. Otherwise, the finding of a violation would constitute sufficient just satisfaction in the matter. As to legal costs and expenses, the Government submitted that they were not fully substantiated, as the lawyer's bill did not contain a breakdown of the number of hours worked, the hourly rate to be charged, etc. Thus the amount paid by the applicant had not been shown to have been reasonably incurred, and was anyway excessive.

42. In the light of the parties' submissions and the material in the case file, the Court considers that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage suffered by the applicant. However, an award for costs and expenses is called for in the present case. Accordingly, it grants this aspect of the applicant's claim in full, i.e. EUR 1,710.

43. Furthermore, the Court is of the view that, where an individual, as in the instant case, has been convicted by a court in proceedings which did not meet the Convention requirement of fairness, a retrial or a reopening of the case, if requested, represents in principle an appropriate way of redressing the violation (see *Öcalan v. Turkey*, no. 46221/99 [GC], § 210, *in fine*, ECHR 2005 – IV; *Kahraman v. Turkey*, no. 42104/02, § 44, 26 April 2007).

C. Default interest

44. The Court considers it appropriate that the default interest 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

1. *Declares* the application admissible by a majority;

2. *Holds*, by 6 votes to 1, that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*, by 6 votes to 1, that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage suffered by the applicant;

4. *Holds*, by 6 votes to 1,
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,710 (one thousand seven hundred and ten euros) in respect of costs and expenses, plus any taxes that may be chargeable to the applicant;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé Registrar	Françoise Tulkens President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following dissenting opinion of Judge Cabral Barreto is annexed to this judgment.

F.T.
S.D.

DISSENTING OPINION OF JUDGE CABRAL BARRETO[1]

I regret that I cannot follow the approach adopted by the majority of the Chamber in the present case.

1. The distinction between an « agent provocateur » and an undercover agent raises delicate questions of factual evaluation rather than principal.

The principles were examined in the aforementioned *Ramanauskas* judgment (§§ 54 and 55) as follows:

> "...while the use of undercover agents may be tolerated provided that it is subject to clear restrictions and safeguards, the public interest cannot justify the use of evidence obtained as a result of police incitement, as to do so would expose the accused to the risk of being definitively deprived of a fair trial from the outset (see, among other authorities, *Teixeira de Castro*, cited above, pp. 1462-64, §§ 35-36 and 39; *Khudobin*, cited above, § 128; and *Vanyan v. Russia*, no. 53203/99, §§ 46-47, 15 December 2005).
>
> Police incitement occurs where the officers involved – whether members of the security forces or persons acting on their instructions – do not confine themselves to investigating criminal activity in an essentially passive manner, but exert such an influence on the subject 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 *Teixeira de Castro*, cited above, p. 1463, § 38, and, by way of contrast, *Eurofinacom v. France* (dec.), no. 58753/00, ECHR 2004-VII)."

2. Therefore the question to be determined is whether the officers involved in the operation exerted such an influence on the applicant that it amounted to an incitement to commit the crime for which the latter was convicted.

It seems to me that the police in the present case, especially Officer V, did not exert this kind of pressure on the applicant who was predisposed to sell drugs well before that officer arrived on the scene. Indeed, the Government informed the Court that the police had grounds to suspect that he was a large-scale dealer known by the name of "Malina".

Once he became known to the police, the decision was taken to organise an operation to bring him to justice. This operation was envisaged by the law and authorised by the Prosecutor General.

Accordingly, on 4 June 2002, Officer V made initial contact with the applicant with a view to procuring drugs. Subsequently, it was the applicant – and I would stress the applicant – who telephoned the officer to fix an appointment, which took place on 21 June 2002 when he actually sold drugs to V. On the 23rd, V telephoned the applicant, requesting more drugs, in the sum of 3,000 USD. On the 25th, the applicant sold V 250 grams of amphetamines, at which point he was arrested along with his accomplice.

[1] Translated from the original French text.

I find the following elements particularly striking in the present case:

- the fact that the applicant was a drug dealer already well known to the police (the absence of any previous criminal conviction at that stage not invalidating this conclusion);

- it was the applicant who took the initiative, after the initial encounter, actually to sell drugs;

- it is true that the police offered to purchase drugs for the sum of 3,000 USD which, as the majority said, was a "significant" inducement, but, for me, this offer came after the transaction was well underway; at that point the applicant had already decided to push drugs, and 3,000 USD or a smaller sum would not have influenced his commitment to the deal.

The present case is to be distinguished from that of the aforementioned *Teixeira de Castro*. In the latter, the police took the initiative without any prior investigation regarding a person wholly unknown to their services. However, in the present case, the police gathered information about the applicant, as a result of which the formal investigation was opened, and an operation prepared under the control of the Prosecutor General, a judicial officer, which was limited in time by a year.

I cannot see how the police should have acted differently to avoid criticism.

In my view, there has been no violation of the Convention in the present case, either in respect of the police role or in respect of the ensuing criminal proceedings against the applicant.