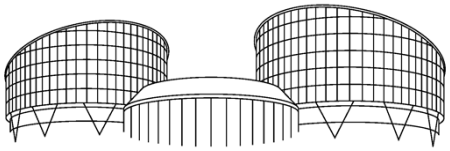

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 88/05
Valentin Vladimirovich DANILOV
against Russia

The European Court of Human Rights (First Section), sitting on 14 April 2015 as a Chamber composed of:

Isabelle Berro, *President*,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar,*

Having regard to the above application lodged on 11 December 2004,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Valentin Vladimirovich Danilov, was born in 1948 and lives in the town of Krasnoyarsk. He was represented by Ms K. Moskalenko and Ms A. Stavitskaya, lawyers from the International Protection Centre in Moscow.

2. The Russian Government ("the Government") were represented by Mr P. Laptev and Mrs V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights, and subsequently by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

3. The applicant is a renowned physicist, whose research deals with the effect of solar activity on satellites.

4. At the relevant time the applicant was employed as head of the Thermo-Physics Centre at the Krasnoyarsk State Technical University ("the University", *Теплофизический центр Красноярского государственного технического университета*).

1. Background of the case

5. In November 1998 the applicant was in correspondence with two Chinese citizens who were acting on behalf of the Lanzhou Institute of Physics of the Chinese Academy of Space Technology, which is part of the Chinese Aerospace Corporation (*Ланьчжоуский институт физики Китайской Академии космической техники Китайской ракетно-космической корпорации*). The applicant was invited to develop a simulator of space radiation, a device to be used in the field of space research. He accepted the invitation and drafted preliminary specifications for such a device. The applicant signed the contract on 11 March 1999 in the city of Lanzhou, China.

6. In late 1999 the applicant continued his partnership with the Chinese citizens. Their correspondence was about "Aquagen", a space simulation system installed in the "Cosmophysics" laboratory belonging to the Krasnoyarsk State University (*отраслевая научно-исследовательская лаборатория «Космофизика» Красноярского Государственного Университета*).

2. Criminal proceedings against the applicant

(a) First round of proceedings

(i) Pre-trial investigation

7. On 18 May 2000 an investigator from the Federal Security Service ("the FSB", *Федеральная служба безопасности РФ*) opened a case on suspicion of disclosure of State secrets by a person with security clearance. The authorities arrested and questioned the applicant in this connection.

8. On 20 May 2000 the applicant gave an undertaking not to leave his usual place of residence and was released.

9. By a decision of 26 May 2000 the authorities charged the applicant with the disclosure of classified information, which had allegedly occurred during the contract negotiation between November 1998 and March 1999 (see paragraph 5 above).

10. On 16 February 2001 the authorities amended the charges in respect of that incident. The applicant was accused of treason in the form of disclosure of a State secret.

11. On the same day the authorities ordered the applicant's detention.

12. On 29 April 2001 the applicant was in addition charged with having defrauded his employer, the University. The authorities accused him of having misappropriated funds received by the University in connection with the contract he had concluded with the Chinese partners.

13. By decisions of 10 May and 17 May 2001, the authorities introduced some minor changes to the charges.

14. On unspecified dates the investigator ordered four expert examinations to ascertain whether the data divulged by the applicant had amounted to a State secret.

15. Expert reports nos. 50/2000-73 DSP of 4 August 2000, B-7/10 DSP of 7 August 2000, 50/2009-93 of 27 October 2000 and 37-51-107 DSP of 1 November 2000 all stated that the information in question had to be considered as "a State secret" within the meaning of the Russian law, including paragraph 5.2.9. of the "Detailed list of information to be classified within the system headed by the Ministry of General and Professional Education of Russia" approved by that Ministry on 16 April 1998.

16. According to the applicant, he was barred from exercising his rights under Article 198 of the Code of Criminal Procedure of Russia ("the CCrP), in particular the right to challenge experts, to request a transfer of the expert examination to another expert institution, to ask the investigator to put additional questions to the experts, and, with the approval of the investigator, to participate in the expert examination and provide comments to the experts involved.

(ii) First-instance decision

17. On 22 October 2001 a lay assessor sitting in the applicant's case made a statement arguing that the applicant had been prosecuted for political reasons. The prosecution challenged the assessor as biased and on an unspecified date the first-instance court upheld the challenge and the assessor was replaced.

18. On 24 January 2002 a number of Russian scientists wrote to the first-instance court in support of the applicant, claiming that the data divulged by him did not contain any secret information.

19. On several occasions thereafter the prosecutor requested the remittal of the case for further investigation.

20. On 6 February 2002 the Krasnoyarsk Regional Court ("the Regional Court") granted that request, noting that the investigator should conduct a more thorough inquiry, especially as to whether any of the information divulged by the applicant had been classified. The court decision of

6 February 2002 was classified. According to the applicant, the relevant part of the decision read as follows:

> "In the context of the investigation [technical experts] carried out several examinations. They concluded that the preliminary specifications of [the applicant's contract] contained all of the technical characteristics of the cosmic radiation simulator. These characteristics, if taken together, constituted 'a State secret' and were to be classified in accordance with paragraph 5.2.9. of the 'Detailed list of information to be classified within the system headed by the Ministry of General and Professional Education of Russia' approved by the Ministry of General and Professional Education of Russia on 16 April 1998 ...
>
> The aforementioned 'Detailed list of information ...' was to be registered by the Ministry of Justice of Russia in line with the provisions of paragraphs 10 and 11 of the 'Rules on drafting and registration of regulations designed by the federal executive authorities', approved by the Ruling of the Government of Russia no. 1009 of 13 August 1997. In accordance with paragraphs 10 and 12 of Presidential Decree no. 763 of 23 May 1996, unregistered rulings of the federal executive authorities have no binding effect and could not have been considered as having entered into legal force. The Ministry of Justice of Russia, by its letter no. 07-2799 dated 28 November 2001, stated that it had not examined and registered the 'Detailed list of information ...'
>
> At the same time [the] charges [of high treason against the applicant] were based only on the 'Detailed list of information ...'
>
> Moreover, the court concludes that during the preliminary inquiry the investigative authorities failed to examine whether the technical characteristics of the device fell under the State Secrets Act and the List of Information classified as State Secret.
>
> The court also concludes that during the additional investigation the competent authorities should have ordered an additional expert examination taking into account the scientists' opinions as submitted by the defence party ..."

21. The applicant lodged an appeal, arguing that the Regional Court should have acquitted him instead of remitting the case for an additional investigation.

22. On 24 April 2002 the Supreme Court of Russia ("Supreme Court") rejected the applicant's appeal and upheld the decision of 6 February 2002.

(b) Second round of proceedings

(i) Pre-trial investigation

23. During the fresh investigation of the case, the investigator ordered four additional expert examinations on the above-mentioned question. It does not appear that the defence was prevented from participating in the preparation of the relevant orders.

24. The additional expert reports dated 6-7 June, 10 June and 10-11 September 2002 indicated that the information concerning the simulator of cosmic radiation and the "Aquagen" cosmic simulation system must be considered as "State secret".

25. By a decision of 24 July 2002 the charges were amended. The applicant was accused of having divulged the description of the "Aquagen" space simulation system to the Chinese nationals.

26. On 24 September 2002 the District Court held that the applicant's pre-trial detention should be changed to another measure of restraint and ordered his release. On 27 September 2002 the applicant was released. On 9 October 2002 he gave an undertaking not to leave his place of residence.

27. On an unspecified date the investigation was terminated. From 15 October 2002 the applicant and his defence were allowed to study the criminal case file.

(ii) Court decisions

28. On 3 December 2002, having received the case file from the prosecution, the Regional Court refused to examine it and returned the case to the investigating authorities for further investigation. The court held that the investigation had been tainted with serious defects. In particular, the bill of indictment had lacked a precise list of the classified information divulged by the applicant or any references to the applicable law. The decision reads as follows:

> "[The applicant] is accused of high treason in the form of the disclosure of a State secret, prohibited by Article 275 of the Criminal Code of Russia.
>
> Article 275 of the Criminal Code of Russia does not contain a definition or a list of secret information. Instead it refers to other legal provisions ...
>
> The State Secrets Act of 21 July 1993 contains a definition of a State secret and a list of data which must be considered as State secret. It also includes provisions concerning liability for the disclosure of State secrets to foreign states.
>
> Moreover, the President of Russia by his Decree no. 1203 of 30 November 1995 approved a List of Information classified as State Secret.
>
> However, in the bill of indictment of 24 July 2002 there is no information concerning the applicability of the aforementioned legal provisions to the device designed by [the applicant].
>
> In the bill of indictment the investigative authorities did not note which part of the disclosed information fell within the notion of a State secret as defined by the aforementioned laws. At the same time this constitutes a *corpus delicti* and the thrust of the charges against the accused.
>
> The investigator's references to [the expert reports], stating that the preliminary specifications constituted a State secret, cannot be considered as the conclusions of the investigative authority on the applicant's offence. They fall outside of the scope of the accusation.
>
> The experts' conclusions should be considered only as pieces of evidence which must be assessed during the examination of the case on the merits. They cannot be seen as an element of the charges against the applicant ...

> Moreover, the bill of indictment contains a list of evidence against [the applicant], including the interview records, cross-examination records, expert reports, and material evidence; but it contains no description of the evidence.
>
> However, according to article 47 §§ 3 and 4 of the Code of Criminal Procedure of Russia, an accused is entitled to be informed of the accusation against him, has the right to defence and to have an adequate opportunity for the preparation of his defence.
>
> The absence of any notice about the essence of the evidence against him deprived the accused of his right to defence, and violated the principle of equality of arms, provided by article 15 of the Code of Criminal Procedure of Russia and article 123 § 3 of the Constitution of Russia.
>
> In accordance with Article 237 of the Code of Criminal Procedure of Russia, these circumstances require the return of the present case to the investigative authorities for additional investigation ..."

29. On 5 February 2003 the Supreme Court, presided by Judge K., upheld the above decision on appeal.

(c) Third round of proceedings

(i) Pre-trial investigation

30. The charge against the applicant was amended and on an unspecified date the case was re-submitted to the Regional Court for examination on the merits. It appears that the charges against the applicant were based on eight expert reports: no. 50/2000-73 DSP of 4 August 2000; no. B-7/10 DSP of 7 August 2000; no. 50/2009-93 of 27 October 2000; no. 37-51-107 DSP of 1 November 2000; an expert report of 6-7 June 2002; two additional expert reports of 10 June 2002; and an additional expert report of 10-11 September 2002. The said reports unanimously stated that the information allegedly communicated by the applicant had been classified as State secret. The parties did not submit copies of the above-mentioned documents.

(ii) First-instance judgment

31. On 16 May 2003 the Regional Court carried out a preliminary examination of the case. By a decision of that date the court held that the investigator had committed various breaches of the domestic procedure and again decided to remit the case for further investigation, citing largely the same reasons as those in the decision of 3 December 2002 (see paragraph 28 above).

32. The prosecution appealed against the decision of 16 May 2003.

33. On 23 July 2003 the Supreme Court, sitting in a composition which included Judge K., granted the appeal and remitted the case to the Regional Court for examination on the merits. It concluded that the charges against the applicant were sufficiently specific. It also held that the defects which had been noted by the court were insufficient to justify the decision to remit the case for additional investigation.

34. On 3 September 2003 the Regional Court decided to have the case heard by a jury. The jury included, among others, jurors L., Ko., S. and Sh.

35. By a verdict of 29 December 2003 the jury acquitted the applicant and on 30 December 2003 the Regional Court rendered a judgment, clearing the applicant of all charges.

(iii) Appeal instance

36. On an unspecified date the prosecution appealed against the applicant's acquittal.

37. On 9 June 2004 the Supreme Court, presided by Judge K., accepted the prosecution's arguments and quashed the judgment for various procedural irregularities, including errors in the procedure for counting and submitting the votes of the jury. The case was remitted for re-trial accordingly.

(d) Fourth round of proceedings

(i) First-instance judgment

(α) Jury selection

38. On 12 July 2004 the Regional Court initiated the jury selection procedure for the hearing of 14 September 2004. During the selection of the jury the court invited the candidates to fill in questionnaires to establish whether there were any circumstances incompatible with the status of juror. Thirty-four names were on the list of candidates.

39. According to the applicant, several jurors in his case failed to disclose relevant information which could have disqualified them from taking part in the trial. In 1995 and 1996 juror Sk. had allegedly been tried for administrative offences. It appears that in 2004 juror B. had been involved in an investigation of drug theft at his place of work. Juror St.'s daughter was married to an FSB official, whilst juror I. had taken part in court proceedings, both civil and criminal, in 2003-04. Moreover, juror Ko. was in constant contact with the FSB at his place of work. Juror Su. was deputy head of a factory and had acted as a witness in an important case involving the factory's management during the examination of the applicant's case. Juror E. indicated a false place of work and juror Shar. failed to mention that her son was on the list of fugitives from justice.

40. On an unspecified date the defence unsuccessfully challenged eleven jurors. One of them was challenged on account of his age, seven on account of their security clearance, two because they had friends among the jurors, and one juror was challenged on account of his employment in the mass media.

41. The court refused to dismiss the jurors who had security clearance, because national law did not prevent such jurors from participating in

criminal proceedings. Candidates L., Ko., S. and Sh., who had security clearance, thus became jurors in the applicant's case (see paragraph 34 above).

42. On 25 October 2004 the defence requested the dissolution of the jury, stating that the lists of candidate jurors had not been published in advance, as required by domestic law.

43. The Regional Court refused the motion. Its decision read as follows:

> "... The issues related to the publication of the lists of candidates for the jury fall within the authority of the local administration. The circumstances of the present case give the court no grounds for interfering with the competence of the local administration.
>
> During the formation of the jury the defence was not barred from enquiring into each candidate's personal information. The court ensured the exercise of the right to lodge a motion for the dismissal of the candidates. Accordingly, the rights of the parties were not violated.
>
> The lists of candidates for the jury give the court no grounds for any doubts as to their lawfulness ..."

44. The general and reserve lists of candidate jurors were published on 9 and 22 November 2004 respectively.

(β) Examination of the case on the merits

45. The examination of the case commenced on 14 September 2004.

46. According to the applicant, during the trial he did not dispute the fact that he had communicated the information in question to the Chinese nationals; the only contentious point was the classified status of the information divulged.

47. During the proceedings the defence requested that the hearing of 6 October be adjourned to 12 October and that the hearing of 21 October be adjourned to 25 October 2004 owing to the applicant's state of health. The trial court allowed the requests.

48. On 25 October 2004 the applicant lodged a motion for the examination of ten experts who had drafted reports in his criminal case and seventeen other experts as witnesses on his behalf. The motion read as follows:

> "... During the trial the prosecution has submitted several expert reports.
>
> In order to ensure the exercise of my right provided for under Article 6 § 3 (c) of the Convention, I request that [the experts] who took part in the preparation of the expert reports be questioned.
>
> I also request the questioning of the following experts on behalf of the defence: [a list of experts]."

49. The prosecution submitted that the applicant had not substantiated his request, but had merely referred to the Convention.

50. Having examined the parties' submissions, the court dismissed the applicant's motion. It held that the expert reports were clear and did not require additional clarification from the experts. It also held that in the circumstances of the present case there was no need to question the defence's experts.

51. On the same day the trial court granted another request from the defence to allow expert Bon. to participate in the proceedings on behalf of the applicant.

52. On 26 October 2004 the applicant's lawyer requested the court to question experts Bel. and Bur.

53. The court invited Bel. to a hearing room and put to him several preliminary questions to check whether he qualified to participate in the trial. During the preliminary interview the expert apparently stated that the charges against the applicant were unsubstantiated. After the interview, the applicant's motion to admit Bel. as an expert was dismissed on the grounds that Bel was biased. The trial court referred to the results of the preliminary interview and the expert's public statements made in December 2003, in which he had mentioned that the accusations against the applicant lacked grounds. The court's decision read as follows:

> "During the trial the defence requested the admission of [expert Bel.] to the proceedings as an expert on their behalf.
>
> While being questioned by the court in the absence of the jury, with a view to verifying his competence and his attitude towards the accused, [Bel.] stated that the charges against [the applicant] lacked grounds.
>
> Moreover, the prosecution submitted documents which showed that in December 2003 he had expressed a similar opinion through the mass media.
>
> The above circumstances indicate that [Bel.] is partial. In accordance with Article 71 § 2 of the Code of Criminal Procedure of Russia, a biased expert cannot take part in criminal proceedings.
>
> Accordingly, the court holds that the defence's motion be dismissed."

54. A request to have Bur. questioned was granted by the court. The expert was subsequently interviewed by the court.

55. During the trial the court heard a total of twenty-nine witnesses.

56. On 27 October 2004 the court granted the prosecutor's request to read out the statements of the applicant's Chinese partners. According to the Government, they were not questioned in court because there was no means of ensuring the attendance of foreign nationals.

57. According to the applicant, the presiding judge explicitly instructed the jury not to consider the questions concerning State secrets or the accessibility of the relevant information in the public domain, having left those questions to his own discretion.

58. On 5 November 2004 the jury unanimously rendered a guilty verdict.

59. On 24 November 2004 the Regional Court convicted the applicant as charged and sentenced him to fourteen years' imprisonment. It appears that the conviction was based on the expert reports drawn up during the pre-trial stage of the investigation.

60. The parties have not submitted a copy of the judgment of 24 November 2004, as it allegedly contained classified information.

(ii) Appeal proceedings

(α) The applicant's appeal statements

61. The applicant appealed against his conviction. He claimed, among other things, that (a) the composition of the jury had been unlawful; (b) the jurors had had security clearance and therefore had been biased; (c) there had been serious breaches of the selection procedure during the preparation of the list of candidate jurors; (d) the jury had been unlawfully precluded from examining the question of the classified nature of the information divulged; (e) the defence had been unable to question the prosecution's experts and submit evidence proving that the information in question had been in the public domain; (f) the conviction had been erroneous and unforeseeable; (g) some pieces of evidence in the case had been inadmissible; and (h) the expert examinations had been erroneous.

(β) Appeal examination

62. On 29 June 2005 the Supreme Court, presided by Judge K., held an appeal hearing.

63. The defence challenged Judge K. on the grounds that she had previously taken part in the examination of the applicant's case. That had allegedly happened on 23 July 2003, when the Supreme Court had granted the prosecutor's appeal against the remittal of the case for additional investigation (see paragraph 33 above) and on 9 June 2004, when the court had quashed the applicant's acquittal and remitted the case for re-trial (see paragraph 37 above).

64. The Supreme Court rejected the challenge. The court held that during the examination of the applicant's case Judge K. had made no statements disclosing any personal interest as to the outcome of the proceedings. The court found no other circumstances which would prevent her participation in the proceedings.

65. On the same day the Supreme Court upheld, for the most part, the judgment of 24 November 2004, having reduced the sentence to thirteen years' imprisonment.

66. Regarding the argument that the lists of candidate jurors had not been published, the court held that that had not curtailed the ability of the defence to verify the identity of the candidates. As to the argument that some of the jurors were biased, the court held that security clearance did not

indicate, as such, a lack of impartiality, and that there was no evidence to conclude that the jurors had withheld any relevant information which could have put their impartiality in doubt. The court upheld the trial court's decision to leave the question of the classified nature of the information in question for the examination of a professional judge and agreed with the way in which the lower court had resolved the issue. The court also held that the trial court's refusal to summon the prosecution's experts had been justified in view of "the specificity of the adjudication". The relevant part of the decision reads as follows:

> "The court is not persuaded by the defence's arguments about the alleged flaws in the formation of the jury.
>
> The case materials show that the candidate jurors were summoned to the court for the formation of the jury in accordance with the lists of candidate jurors which had been prepared in accordance with domestic law.
>
> The fact that the lists of candidates had not been published before the examination of the case on the merits cannot lead to the conclusion that the composition of the court was unlawful. Rules on the publication of lists of candidates are aimed at improving the clarity of their personal data. During the court hearing the parties were not prevented from obtaining information about the candidate jurors. They were provided with the lists of candidates. The jury was formed in accordance with the provisions of Article 328 of the Code of Criminal Procedure of Russia.
>
> The parties questioned the candidates to establish any individual circumstances which might have prevented their participation in the proceedings.
>
> The applicant's argument that candidate no. 14 concealed information about a relative who worked as a police officer has no basis in the case-file materials. The trial court record indicates that this juror stated that his daughter worked as a police officer. However, the applicant challenged this juror on account of his security clearance.
>
> The fact that the said juror did not mention his daughter's husband, who was also working as a police officer, could not be considered as concealment of information ...
>
> The jury included jurors from the general and reserve lists. There is no indication that the summoning of the jury was not random.
>
> The court cannot accept the argument that the invitation for candidate jurors to fill in questionnaires was in breach of domestic law. In accordance with article 326 § 2 of the Code of Criminal Procedure of Russia, a secretary or a judicial assistant must carry out an inquiry into circumstances which might prevent candidate jurors from participating in criminal proceedings. The questionnaire included the list of circumstances which would prevent candidates from participating in the proceedings.
>
> As regards the defence's allegation that members of the jury were biased on the grounds of their security clearance, such an argument has no basis in law. Access to State secrets does not entail partiality for the Federal Security Service ...
>
> The motions challenging the jurors were duly examined by the trial court ...

> [The applicant's dissatisfaction with] the wording of the jury questionnaire is groundless ... since ... the question as to whether the information disclosed by [the applicant] should have been considered as a State secret, or not, is a legal issue. In accordance with articles 334 and 339 § 5 of the Code of Criminal Procedure of Russia it could not be decided by a jury [whose competence covers only questions of fact] ...
>
> The jury verdict is based on a careful examination of the circumstances of the case and the case-file documents. The court cannot accept the defence's argument about the arbitrariness of the trial court's refusal to summon and question witness Gl. and experts ... The case-file materials show that the trial court did examine the expert reports. The interviewing of the experts was incompatible with the nature of the proceedings before a jury. The statements of [Gl.], who had been previously questioned, contained no information about the factual circumstances of the present case. His statements were irrelevant to the accusation against [the applicant] ... Accordingly, the trial court's refusal to question him was well justified ..."

3. The applicant's pre-trial detention during the proceedings

67. During the proceedings the applicant's liberty was initially restricted. He gave a written undertaking not to leave his place of residence, which was approved by the Regional Court on 20 September 2004.

68. On 15 October 2004 the applicant breached the undertaking by leaving the town of Krasnoyarsk for a short period of time.

69. On 21 October 2004 the prosecution requested the court to detain the applicant because of the above incident. By a decision of the same date the Regional Court rejected the request.

70. On 5 November 2004 the applicant gave a telephone interview to a reporter of the *Los Angeles Times* in which he described the circumstances of the criminal case, and the purpose of the device he had designed for the Chinese partners, and listed open sources of its technical characteristics.

71. The applicant's telephone call had been tapped and at the hearing of 10 November 2004 the prosecution again requested that the applicant be detained, referring to the recording of the interview of 5 November 2004 as proof of the risk that he would continue his criminal activity if he remained at large.

72. By a decision of 10 November 2004 the court granted that request, having noted that the applicant had indeed breached his residency undertaking. The court also referred to the applicant's interview of 5 November 2004, stating that he had openly discussed the purpose of the device in question and the sources containing a description of it. It concluded that the applicant had acted in an inadmissible manner and should therefore be detained. The decision read as follows:

> "The motion of the prosecution should be granted for the following reasons:
>
> [The applicant] is accused of very serious offences: high treason in the form of disclosure of a State secret to foreign nationals and fraud.

> On 20 September 2004 the court accepted his written undertaking not to leave his place of residence.
>
> Subsequently he breached the undertaking. He left the town of Krasnoyarsk and visited the town of Zheleznogorsk without court authorisation. In this connection he was informed that such actions were not permitted.
>
> Later, in a telephone conversation of 5 November 2004 with L., who introduced himself as a reporter of the Los Angeles Times, [the applicant] described the circumstances of his criminal case and the purpose of the device he had designed, and listed open sources of the characteristics of the device in question.
>
> The bill of indictment and the case file are marked as secret documents.
>
> The aforementioned circumstances lead the court to believe that there is a high risk that the applicant would further breach his undertaking or continue his criminal activity if the measure of restraint remained unchanged. Accordingly, it finds that the applicant must be detained pending trial."

73. The applicant appealed against that decision.

74. On 7 December 2004 the Supreme Court upheld the decision of 10 November 2004 on appeal, endorsing the trial court's findings.

B. Relevant domestic law

1. Applicable criminal offences

(a) Constitution of the Russian Federation

75. Article 15 § 3 of the Constitution, adopted following the constitutional referendum of 12 December 1993, provides, in so far as relevant, as follows:

> "Laws shall be officially published. Unpublished laws shall not be applied. No regulatory legal act affecting citizens' human rights, freedoms and duties may apply unless it has been published officially for general knowledge."

76. Article 54 of the Constitution reads as follows:

> "1. A law instituting or aggravating liability shall not have retroactive effect.
>
> 2. No one may be held liable for an action that was not recognised as an offence at the time it was committed. If liability for an offence has been lifted or mitigated after its perpetration, the new law shall apply."

(b) Criminal Code of the Russian Federation

77. Article 159 § 3 of the Criminal Code punishes fraud committed by a person through his official position by the deprivation of liberty for a term of two to six years.

78. Under Article 283 § 1 of the Criminal Code, treason, that is, espionage, disclosure of State secrets or any other assistance rendered to a foreign State, a foreign organisation or their representatives in hostile activities to the detriment of the external security of the Russian Federation,

committed by a citizen of the Russian Federation, is punishable by the deprivation of liberty for a term of twelve to twenty years, with or without a fine.

(c) Official Secrets Act

79. Rules governing the information to be classified as officially secret are set out in the Official Secrets Act (*Закон о государственной тайне*) No. 5485-1, dated 21 July 1993. The Act specifies the type of military information which is protected by official secrecy, subject to its specification in a list approved by the President and duly published (sections 5 and 9).

80. Article 5 of Presidential Decree no. 1203 of 30 November 1995 contains a detailed list of information which must be considered as a State secret.

2. Jury trial

81. Article 326 of the Code of Criminal Procedure of the Russian Federation ("the CCrP") provides that a secretary or a judge's assistant may select candidate jurors from the court's annual list of jurors by drawing them at random.

82. The procedure for drawing up lists of candidate jurors was regulated by the RSFSR Judicial System Act of 8 July 1981, as amended on 12 July 2003. The initial lists of candidate jurors were drawn up by the local administrations, informing the public and providing them with access to the lists with a view to enabling them to endorse their inclusion or request their exclusion from the lists. After necessary corrections the lists were amalgamated and further served as the basis for drawing up separate lists of jurors for the various courts. The lists were to be published.

83. Paragraph 14 of the Recommendations of the Minister of Justice of the Russian Federation of 30 September 1993 concerned the procedure for drawing up lists of jurors. It was considered desirable to publish general and reserve lists in the regional press not later than two weeks before sending them to the relevant court. The publication had to explain to citizens their right to request regional councils to include or exclude candidates from those lists.

84. Parties to proceedings can challenge candidate jurors with or without reasons, but only twice in the latter case (Article 327 of the CCrP). The parties can ask them questions for the purpose of revealing circumstances which would prevent them from sitting in a case. The presiding judge explains to candidate jurors their duty to answer questions put to them truthfully (Article 328 of the CCrP).

85. Under Article 330 of the CCrP, before jurors take the oath it is open to the parties to proceedings to plead that the jury as a whole might be unable to deliver an objective verdict in view of the specific features of a

case. After hearing the parties the presiding judge delivers a decision. If the request is found to be justified, the jury will be dismissed.

86. Each juror takes an oath prior to the examination of a case. The oath reads as follows (Article 332 of the Code):

> "In assuming the responsible duties of a juror, I solemnly swear to fulfil them honestly and impartially, to take into consideration all the evidence examined in court, both which incriminates the defendant and which exonerates him or her, to decide the criminal case on the basis of my inner conviction and conscience, not acquitting the guilty and not convicting the innocent, as befits a free citizen and fair person."

87. Under Articles 334 § 1 and 339 of the CCrP, jurors take decisions on the following questions, which are put to them after examining the evidence and hearing the parties: has it been proven that the acts of which the culprit is accused were committed; has it been proven that those acts were committed by the culprit; is the culprit guilty of committing those acts?

88. Issues as to the admissibility of evidence are examined without jurors' participation. After hearing the parties, the presiding judge takes a decision to exclude evidence which he or she has found inadmissible (Article 335 §§ 5 and 6 of the CCrP).

89. If the jury delivers a guilty verdict, the trial continues without the jurors to examine, *inter alia*, circumstances relevant to the legal characterisation of the acts committed by the culprit, sentencing and determination of a civil claim. The parties' submissions may concern any legal issues to be resolved in a judgment (Articles 346-347 of the CCrP) which will be delivered by the presiding judge on the basis of the jury's verdict. The presiding judge may deviate from a guilty verdict and acquit the culprit if he or she finds that the acts committed by the culprit do not contain elements of a crime. The presiding judge may dissolve the jury and order a fresh examination of the case by a new composition of the court if he or she finds that the event of a crime or the culprit's participation in a crime have not been established and that the guilty verdict has therefore been delivered in respect of an innocent person and there are sufficient grounds for his or her acquittal (Article 348 of the CCrP). The jury's opinion that the culprit deserves leniency is binding on the presiding judge (Article 349 of the CCrP).

90. A higher court that examines the case on appeal may not quash or change a judgment delivered as a result of a jury trial on the ground of inconsistency between the conclusions reached by the trial court in its judgment and the facts established by that court. Permissible grounds for quashing or changing a judgment in such a case are violation of procedural law, misapplication of criminal law, and unfairness of the sentence imposed (Article 379 of the CCrP).

3. Security clearance

91. In accordance with section 21 of the Official Secrets Act, security clearance is to be granted on a voluntary basis. It may be granted to State officials and other citizens.

92. The Russian legislation as in force at the material time did not contain an exhaustive list of persons who might obtain security clearance. From the Official Secrets Act and the Rules on Security Clearance approved by the Russian Government on 28 October 1995, it follows that it may be granted to, among others, military officers, crew members, ambassadors, judges, lawyers, members of the Russian Parliament, high officials, employees of private and State companies working with secret information, students and other citizens.

4. Expert reports obtained by the investigation

93. Chapter 27 of the CCrP regulates the obtaining of expert opinions at the investigation stage (namely, before the trial). Article 195 § 2 provides that a "judicial expert examination" (for use in court) must be carried out by "State forensic experts or other experts who have specialist knowledge". Article 193 § 3 stipulates that the investigator must notify the defendant about the decision to order an expert examination. Pursuant to Article 198, the defendant has the right to challenge the expert, request that the examination be entrusted to another expert institution, ask the investigator to put additional questions to the expert and, with the approval of the investigator, participate in the examination of and provide comments to the expert involved.

COMPLAINTS

94. The applicant complained under Article 6 of the Convention that the criminal proceedings against him had been unfair because he had been denied an opportunity to question ten experts for the prosecution and to summon experts on his own behalf.

95. Relying on Article 6, the applicant complained that the composition of the first-instance court in his case had been in breach of the domestic law and that some of the jurors in the first-instance court and the appeal court judge, Judge K., had been biased.

96. Under Articles 7 and 10 of the Convention the applicant complained that he had been convicted for divulging data which was available from open sources, and that the applicable domestic law had been deficient and unforeseeable.

97. Under Articles 5, 6 and 10 of the Convention, the applicant complained that he had been arbitrarily remanded in custody between 10 and 24 November 2004.

98. Under various Convention provisions, the applicant complained that his criminal case had been remitted to the investigating authorities for additional investigation instead of being examined on the merits. He was also dissatisfied with the allegedly limited competence of the jury.

THE LAW

A. Complaint of unfair criminal proceedings

99. The applicant complained that in the course of the trial the defence had been denied an opportunity to question ten experts for the prosecution or to summon its own experts. He relied on Article 6 §§ 1 and 3 (d) 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 ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him ..."

100. The Government stated that there had been no need to question the experts before the trial court. They pointed out that the defence had been granted an opportunity to question several witnesses and two experts for the defence. Accordingly, they asserted that the proceedings, taken as a whole, had been fair.

101. The applicant maintained his complaints. According to him, the high importance of the expert reports as evidence against him had called for their authors to be interviewed. He further argued that the refusal to examine all of the experts on his behalf had been incompatible with the requirements of a fair hearing.

102. In the light of the parties' submissions, the Court finds that these complaints raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It concludes that the complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring them inadmissible have been established.

B. Complaint of unlawful court composition

103. The applicant complained that he had been tried and convicted by a court that had not been composed in accordance with the law. In particular, the lists of candidate jurors had not been published and the jurors had been pre-selected, and not randomly chosen as required by the law. He also complained that the defence had been excluded from the pre-selection procedure.

The applicant relied on Article 6 of the Convention, which reads as follows:

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

1. The parties' submissions

104. The Government referred to the conclusions of the domestic courts, which stated that the jurors had been selected and appointed in accordance with the law. They stressed that the adjournment of the examination of the criminal case before the lists of candidate jurors had been published would have been in breach of the applicant's right to trial within a reasonable time. They also argued that the selection procedure had been random.

105. The applicant maintained his complaints.

2. The Court's assessment

106. The Court reiterates that the phrase "established by law" covers not only the legal basis for the very existence of a "tribunal" but also the composition of the bench in each particular case (see *Buscarini v. San Marino* (dec.), no. 31657/96, 4 May 2000, and *Posokhov v. Russia*, no. 63486/00, § 39, ECHR 2003-IV).

107. The Court notes that it is primarily for the domestic courts to interpret national law, including the rules governing their own constitution and procedure, and that its supervisory role will only come into play in cases of flagrant disregard of the applicable laws (see *Lavents v. Latvia*, no. 58442/00, § 114, 28 November 2002, with further references).

108. The Court further observes that this case is similar to the case of *Pichugin v. Russia* (no. 38623/03, 23 October 2012), where the thrust of the applicant's complaint was that the list of jurors had not been published in its entirety as required by law, which in his opinion made the composition of the jury unlawful (see *Pichugin,* cited above*,* § 178). In that case the Court held that the fact that the list of jurors had not been published did not render the composition of the court unlawful.

109. Since the defence was not barred from inquiring into the candidates' personal information (see paragraph 84 above), the Court sees no reason to reach a different conclusion in the present case. The Court further observes

that it is not contrary to Article 6 § 1 that domestic law does not provide for the participation of the parties in the selection of the jury (see *Kremzow v. Austria*, no. 12350/86, Commission decision of 5 September 1990, and *Pichugin,* cited above*,* § 180).

110. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

C. Complaint that the courts were biased

111. Under Article 6 § 1 of the Convention the applicant complained that the jury had not been independent and impartial. He referred to the fact that four out of seven jurors had had security clearance and that some jurors had withheld certain information which could have cast doubts on their impartiality. He also claimed that the appeal court judge, Judge K., had been personally predisposed against him.

Article 6 of the Convention, in so far as relevant, provides:

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

112. As regards the alleged bias of the jurors, the Government argued that security clearance as such could not be considered as a factor justifying the applicant's fears that the jurors were partial. They further submitted that the case file contained no evidence capable of supporting the applicant's allegation that the jurors had withheld important information which would have allowed the defence to challenge them. The Government lastly pointed out that the defence had not asked the jurors whether any of them had been subject to an administrative prosecution, had relatives who worked with, or had close contacts with, the police or the FSB, or whether any of them had been party to criminal or civil proceedings. As regards the claim that Judge K. had been personally predisposed against the applicant, the Government stated that domestic law did not ban her from participating in the appeal hearing. They also stressed that during the hearings of 23 July 2003 and 9 June 2004 she had not examined the issues predetermining the outcome of the proceedings and had not expressed her opinion in that regard.

113. The applicant maintained his complaints. He submitted a report of an unspecified date drafted by a private person. According to the report, juror Sk. had been subject to administrative punishment in 1995 and 1996; juror B. had been involved in a criminal investigation against a third party; juror St.'s son-in-law worked in the FSB; juror K., while working at a factory, had had contacts with the employees of a department which had been under the FSB's supervision; juror Su. had previously been a witness in criminal proceedings and had had contacts with the FSB; juror E. was

allegedly an undercover agent; juror Shar.'s son had been charged with a criminal offence and had been placed on a wanted list; and juror I. had been recognised as a victim in a set of criminal proceedings which had subsequently been discontinued and had also been involved in a set of civil proceedings in the commercial courts. Moreover, he had allegedly actively cooperated with the FSB.

114. In the light of the parties' submissions, the Court finds that these complaints raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It concludes that the complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring them inadmissible have been established.

D. Complaint of excessively lengthy criminal proceedings

115. Under Article 6 § 1 of the Convention the applicant claimed that the criminal proceedings against him had been excessively long. This provision, in so far as relevant, provides:

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

1. The parties' submissions

116. The Government argued that the length of the examination of the applicant's case had been justified by its complexity. They pointed out that the case file consisted of seventeen volumes and that during the trial the court had heard twenty-nine witnesses. They also contended that the applicant had contributed to the delays in the proceedings, several court hearings having been adjourned owing to his health problems and the failure of witnesses for the defence to appear in court.

117. The applicant maintained his complaints.

2. The Court's assessment

118. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case; the conduct of the applicant and the relevant authorities; and what was at stake for the applicant in the dispute (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II). In addition, only delays attributable to the State may justify a finding of failure to comply with the "reasonable time" requirement (see *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 49, ECHR 2004-XI).

119. The Court observes that the period under consideration in the present case began on 18 May 2000, when the applicant was arrested by the

police (see paragraph 7 above), and ended on 29 June 2005, when the appeal court upheld his conviction (see paragraphs 62-66 above). Accordingly, the proceedings against the applicant lasted five years, one month and twelve days, a period that spanned the investigation stage and the judicial proceedings, in which the case was twice reviewed by the courts at two levels of jurisdiction.

120. The Court accepts that the case was relatively complex since the courts were required to perform several expert examinations and question twenty-nine witnesses (see paragraphs 55 and 59 above). It further notes that the trial was held before a panel of jurors, which usually takes more time than proceedings before a professional judge. It also cannot overlook the fact that the case was examined and then re-examined by the courts of two instances in two rounds of trial proceedings.

121. As regards the conduct of the parties, the Court finds no indication in the case file that the parties' conduct created significant delays in the proceedings, even though a few hearings were adjourned at the request of the defence (see paragraph 47 above). Although a few times the case was remitted for additional investigation and on one occasion the first-instance's judgment was quashed on appeal, there were no significant periods of inactivity.

122. The Court notes that from 18 May 2000 to 9 November 2004 the applicant was under a written obligation not to leave his place of residence and that that measure of restraint was changed to detention on 10 November 2004, that is, quite late in the proceedings (see paragraph 72 above).

123. In view of the above, the Court takes the view that in the circumstances of the case the "reasonable time" requirement of Article 6 § 1 of the Convention was complied with (see, *mutatis mutandis*, *Buldashev v. Russia*, no. 46793/06, §§ 107-113, 18 October 2011).

124. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

E. Complaint about the applicant's conviction for high treason

125. The applicant complained that the information at issue had been available from open sources, that the domestic law defining the notion of a State secret was too vague and remained unpublished, and that he had had no access to State secrets at the time of the communication of the report to the Chinese side.

The applicant relied on Articles 7 and 10 of the Convention, which provide as follows:

Article 7

"1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

Article 10

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

126. The Government submitted that the exercise of the right to freedom of expression carried with it duties and responsibilities and could be subject to formalities, conditions, restrictions or penalties in the interests of national security, territorial integrity or public safety. The circumstances of the case, as established by the domestic courts, showed that the information concerning the simulator of cosmic radiation and about the cosmic simulation system amounted to top secret information. It was established at the trial that the data under examination had not been accessible from open sources and its divulgence may allow China to develop military spacecraft that are resistant to damaging factors of space and nuclear weaponry and thus adversely affect Russia's security and defence. Accordingly, the interference with the applicant's right was compatible with the requirements of the Convention.

127. The applicant maintained his complaints.

128. In the light of the parties' submissions, the Court finds that these complaints raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It concludes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established.

F. Complaint about the applicant's remand in custody

129. Relying on Articles 5, 6 and 10 of the Convention the applicant claimed that his remand in custody between 10 and 24 November 2004 had been arbitrary and had essentially meant to punish him for the interview of 5 November 2004. This complaint falls to be examined under Article 5 § 1 (c) of the Convention, which reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so ..."

130. The Government submitted that the applicant's remand in custody under the order of 10 November 2004 had been lawful and not arbitrary, since he had breached his undertaking and divulged secret information concerning his criminal case.

131. The applicant maintained his complaint.

132. The Court has previously found a violation of Article 5 § 1 of the Convention in cases where national authorities provided no reasons for detention. It has held that the absence of any grounds given by the judicial authorities in their decisions authorising detention for a prolonged period of time was incompatible with the principle of protection from arbitrariness enshrined in Article 5 § 1 (see *Stašaitis v. Lithuania*, no. 47679/99, § 67, 21 March 2002, and *Khodorkovskiy v. Russia*, no. 5829/04, § 160, 31 May 2011). On the other hand, the Court is generally satisfied with detention orders containing at least some reasoning. In particular, in *Khodorkovskiy* (§ 161, cited above) it stated that even if the reasoning had been flawed or, in the applicant's opinion, insufficient, the detention orders could not be characterised by any standard as "arbitrary" (see *Moskovets v. Russia*, no. 14370/03, § 59, 23 April 2009).

133. The Court observes that the detention order under examination contained a certain amount of reasoning. The courts referred to the breach of the undertaking given by the applicant not to leave his place of residence and to the possible communication of confidential information during the interview, which confirmed that he might reoffend (see paragraph 72 above). The Court notes that the applicant did not challenge the accuracy of the factual findings made by the domestic courts in this connection. In view of the above, the Court does not find that, in the circumstances of the case, the reasons referred to the domestic courts were arbitrary or unreasonable.

134. The Court concludes that the present complaint is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, and that it must be rejected pursuant to Article 35 § 4.

G. Other complaints raised by the applicant

135. The Court has examined the other complaints submitted by the applicant concerning the remittal of the case to the investigating authorities instead of its examination on the merits and regarding the limited competence of the jury, which was unable to deal with legal issues.

136. However, having regard to all of the material in its possession, and in so far as these complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

137. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares admissible, without prejudging the merits, the applicant's complaints that the criminal proceedings against him were unfair, his conviction was unforeseeable, arbitrary and in breach of the domestic law and the complaint that the first instance jury in his criminal case was not impartial and that Judge K. of the appeal court was biased;

Declares the remainder of the application inadmissible.

Done in English and notified in writing on 7 May 2015.

Søren Nielsen
Registrar

Isabelle Berro
President