



Prison sentence for espionage imposed on Russian scientist Igor Sutyagin followed trial by court which was not independent and impartial

In today's Chamber judgment in the case [Sutyagin v. Russia](#) (application no. 30024/02), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

A violation of Article 5 § 3 (right to liberty and security), and two violations of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights.

The case concerned the complaint by Russian scientist Igor Sutyagin that he had been sentenced in an unfair trial and had been held in detention during proceedings that had lasted for too long.

Principal facts

The applicant, Igor Sutyagin, is a Russian national who was born in 1965. He currently lives in London, the United Kingdom, following his early release from prison in July 2010 in the context of an exchange of prisoners between Russia and the United States.

On 27 October 1999, in the context of criminal proceedings related to a publication which allegedly contained State secrets, Mr Sutyagin's flat was searched and material was seized from it. He was questioned as a witness and became a suspect two days later in separate criminal proceedings brought against him for espionage. He was detained on remand the same day as the prosecutor considered that Mr Sutyagin had gathered, systematised and summarised information of a military and technical nature and then passed it on, for payment, to representatives of a foreign organisation, Alternative Futures, during meetings held outside Russia.

Mr Sutyagin remained in pre-trial detention, which was continuously extended on many occasions, mainly with reference to the gravity of the offence with which he was charged, despite his appeals against it. In September 2003, the case was assigned to a judge Sh. from the Moscow City Court who held a preliminary hearing during the same month and scheduled a hearing on the merits by a jury, as requested by Mr Sutyagin, for 3 November 2003. On 26 November 2003, however, the case was assigned to a different judge – judge K. – who scheduled a hearing in the case for mid-March 2004. Mr Sutyagin tried repeatedly, but unsuccessfully, to find out why the judge was replaced.

On 7 April 2004, the first instance court – the Moscow City Court – adopted a judgment sentencing Mr Sutyagin to 15 years in prison, following a conclusion by a jury that he

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

was guilty as charged. Mr Sutyagin's appeal against it was rejected and the judgment was upheld in August 2004.

Complaints, procedure and composition of the Court

Relying, in particular, on Article 5 (right to security) and Article 6 (right to a fair trial), Mr Sutyagin complained that he had been detained for too long awaiting trial, that the criminal proceedings against him had lasted too long, that the court which had sentenced him had not been independent nor impartial and had not provided him with a fair trial.

The application was lodged with the European Court of Human Rights on 11 July 2002.

Judgment was given by a Chamber of seven, composed as follows:

Christos **Rozakis** (Greece), *President*,
Nina **Vajić** (Croatia),
Anatoly **Kovler** (Russia),
Elisabeth **Steiner** (Austria),
Khanlar **Hajiyev** (Azerbaijan),
Dean **Spielmann** (Luxembourg),
Sverre Erik **Jebens** (Norway), *Judges*,

and also André **Wampach**, *Deputy Section Registrar*.

Decision of the Court

Article 5 § 3 (length of pre-trial detention)

The Court noted that Mr Sutyagin had been detained pending trial for more than four years and five months, between the time he had been arrested and the day when the first instance court had delivered its judgment.

The Court recalled that people charged with criminal offences ought to always be released pending trial unless there were relevant and sufficient reasons to keep them in detention. Particular care had to be taken to respect the presumption of innocence as regards suspects or accused, and all arguments for and against the need to keep people detained had to be examined and set out in the authorities' decisions in respect of continued detention.

The Russian courts had consistently relied on the gravity of the charges against Mr Sutyagin as the sole or decisive factor justifying his prolonged detention. They had disregarded the argument that his visa for a trip abroad had expired in November 1999, and had not considered any measure, other than detention, as a possibility to ensure his appearance at the trial.

Accordingly, the Court held that Mr Sutyagin had been detained for too long awaiting trial, in violation of Article 5 § 3.

Article 6 § 1 (length of criminal proceedings)

The criminal proceedings against Mr Sutyagin for espionage had lasted more than four years and nine months in all, which included the pre-trial proceedings and the court proceedings at two level of jurisdiction. Having had regard to its earlier case law on that question, the Court found that the proceedings as a whole had lasted for too long, in violation of Article 6 § 1.

Article 6 § 1 (court independence and impartiality)

Mr Sutyagin had received no explanation about why the judge presiding at the hearing of the criminal case against him had been changed, despite his numerous requests.

The Court noted that the assignment of a case to a particular judge was up to the discretion of the national authorities who had to take into account in their decision-making process factors like available resources, qualification of judges, conflict of interests and accessibility of the place for hearings for the parties.

Russian law at the time had not indicated the circumstances in which a judge could be replaced and the procedure to follow. The Court observed that it was not up to it to establish the circumstances which called for the replacement of the judge to whom the case had been assigned initially, yet the reasons for that should have been made known to Mr Sutyagin. However, no procedural decision about it had been issued and Mr Sutyagin had been kept in uncertainty until the end of the trial and had thus not had the possibility to challenge the decision replacing the judge.

The Court concluded that Mr Sutyagin's doubts as to the independence and impartiality of the trial court in his case could have been said to be objectively justified given that the presiding judge had been replaced for unknown reasons and without procedural safeguards.

There had, therefore, been a violation of Article 6 § 1 because the trial court had lacked independence and impartiality.

Other Articles

The Court found that no separate issue arose in respect of Mr Sutyagin's complaints about the taking of evidence and the examination of witnesses, and that it was unnecessary to examine separately Mr Sutyagin's other complaints.

Article 41 (just satisfaction)

Under Article 41, the Court held that Russia was to pay Mr Sutyagin 20,000 euros (EUR) in respect of non-pecuniary damage.

The judgment is available only in English.

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Press contacts

echrpess@echr.coe.int | tel: +33 3 90 21 42 08

Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)

Emma Hellyer (tel: + 33 3 90 21 42 15)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Céline Menu-Lange (tel: + 33 3 90 21 58 77)

Frédéric Dolt (tel: + 33 3 90 21 53 39)

Nina Salomon (tel: + 33 3 90 21 49 79)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.