

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

THIRD SECTION

CASE OF STARIKOV v. RUSSIA

(Application no. 35890/17)

JUDGMENT

STRASBOURG

11 January 2022

This judgment is final but it may be subject to editorial revision.



In the case of Starikov v. Russia,

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

Peeter Roosma, *President,*
Dmitry Dedov,
Andreas Zünd, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 35890/17) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 13 May 2017 by a Russian national, Mr Aleksey Alekseyevich Starikov, born in 1980 and living in Moscow ("the applicant") who was represented by Mr A.S. Surzhin, a lawyer practising in Strasbourg;

the decision to give notice of the complaints under Article 6 §§ 1 and 3 (a), (b) concerning the reclassification of criminal charges to the Russian Government ("the Government"), represented by Mr M. Galperin, the Representative of the Russian Federation to the European Court of Human Rights, and lately by Mr M. Vinogradov, his successor in that office, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 30 November 2021,

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

SUBJECT-MATTER OF THE CASE

1. On 7 June 2016, the Taganskiy District Court of Moscow found the applicant guilty of the use of malicious computer programmes, an offence under Article 273 § 1 of the Criminal Code. The court found that the applicant, working as a computer specialist in a private firm, used three such programmes on various office computers. The court sentenced the applicant to one year imprisonment and suspended the sentence. Pursuant to an amnesty act, the applicant was released from serving the sentence.

2. On 9 February 2017, the Moscow City Court modified the conviction on appeal. It considered that the computer programmes used by the applicant were not malicious within the meaning of Article 273 § 1 of the Criminal Code. The court requalified the applicant's conviction to Article 272 § 1 (unlawful access to computer information entailing its copying). It considered that the programmes used by the applicant permitted him to access the information stored on several computers in the firm unlawfully. It reduced the sentence to eight months' imprisonment and suspended the sentence.

3. Relying on Article 6 §§ 1 and 3 (a) and (b) of the Convention, the applicant complained that the requalifying of the criminal charges against him

by the appellate instance breached his right to be informed of the nature and the cause of the accusation and the right to prepare his defence.

THE COURT'S ASSESSMENT

4. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other ground. It must therefore be declared admissible.

5. The general principles concerning the right to be informed of the nature and the cause of the accusation and the accused's right to prepare his or her defence have been summarized in *Pélissier and Sassi v. France* [GC], no. 25444/94, §§ 51-54, ECHR 1999-II, and *Penev v. Bulgaria*, no. 20494/04, §§ 33-44, 7 January 2010.

6. The Court notes that, prior to rendering a new judgment in the criminal case against the applicant, the appellate instance did not inform him of the possibility to requalify the initial charges. The elements of the latter offence were never debated throughout the applicant's trial and it was only through the final appeal judgment that he became aware of the new legal characterisation of the facts. While the Court accepts that the appeal court had the competence to requalify the offence, it should have afforded the applicant the possibility of exercising his defence rights on that issue in a practical and effective manner and, in particular, in good time. The appeal hearing was not adjourned for further argument and the elements of the new offence were not debated in court. Contrary to the Government's argument, the Court considers that the scope of the charges initially brought against the applicant did not encompass those that were finally retained by the appellate instance. The Court cannot speculate as to the merits of the defence the applicant could have relied on had he had an opportunity to make targeted submissions on the offence of which he was eventually found guilty. However, he should have been afforded an opportunity to do so.

7. In view of the above findings, the Court concludes that the applicant's right to be informed in detail of the nature and cause of the accusation against him and his right to have adequate time and facilities for the preparation of his defence were infringed.

8. There has accordingly been a violation of Article 6 §§ 1 and 3 (a) and (b) of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

9. The applicant claimed 5,000 euros (EUR) in respect of pecuniary damage representing lost wages, EUR 10,000 for non-pecuniary damage and EUR 16,409.06 in respect of costs and expenses.

10. The Government asked the Court to dismiss the claim in respect of pecuniary damage as speculative and in respect of non-pecuniary damage as

unjustified. They further indicated that the cost and expenses' claim was not supported by relevant documents.

11. The Court does not discern any causal link between the violation found and the pecuniary damage alleged, it therefore rejects this claim. The Court further refers to its settled case-law to the effect that when an applicant has suffered an infringement of his rights guaranteed by Article 6 of the Convention, he should, as far as possible, be put in the position in which he would have been had the requirements of that provision not been disregarded, and that the most appropriate form of redress would, in principle, be the reopening of the proceedings, if requested (see, *mutatis mutandis*, *Öcalan v. Turkey* [GC], no. 46221/99, § 210 *in fine*, ECHR 2005 IV, and *Popov v. Russia*, no. 26853/04, § 263, 13 July 2006). The Court notes in this connection that Article 413 of the Code of Criminal Procedure provides the basis for the reopening of the domestic proceedings if the Court finds a violation of the Convention (see *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 112, 2 November 2010). It therefore considers that its finding of a violation constitutes sufficient just satisfaction and makes no award under this head.

12. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 850 covering costs under all heads.

13. The Court further considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (a) and (b) of the Convention;

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, 850 EUR (eight hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (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* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 January 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Peeter Roosma President