

Russian Federation

Joint Statement on the case of Igor Sutiagin

By Amnesty International, Human Rights Watch, the International Helsinki Federation for Human Rights, the Moscow Helsinki Group, and the Public Committee for the Protection of Scientists

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On April 5, 2004, the Moscow City Court found Igor Sutiagin, a thirty-nine-year-old Russian scientist with the Institute for U.S.A. and Canada Studies of the Academy of Sciences, guilty of high treason in a closed trial. Two days later, the court sentenced him to the longest prison term for high treason since Soviet times—fifteen years in a strict regime colony. Violations of international fair trial standards have marred proceedings against Igor Sutiagin throughout the investigation and trial, and raise serious concern that the case may have been brought for political reasons. This concern is compounded by a series of other politically motivated prosecutions in the past decade against independent scientists, journalists, and environmentalists, such as Alexander Nikitin and Grigorii Pasko, for their cooperation with foreigners on sensitive issues.

The signatories to this statement are deeply troubled by the Moscow City Court's conviction of Igor Sutiagin. We call for a prompt retrial, to be conducted in accordance with international fair trial standards. We call for the release of Igor Sutiagin from prison pending retrial. We urge the international community to consistently express concern about Igor Sutiagin's case at the highest level in contacts with the Russian government. We urge the Parliamentary Assembly of the Council of Europe to actively investigate the case.

Case Information

Background

Igor Sutiagin was arrested on October 29, 1999, and subsequently charged with thirty-eight counts of high treason through espionage. Russia's Federal Security Service (FSB) accused him of collecting materials on a variety of issues relating to Russia's weapons systems and other military issues, and passing them on to U.S. military intelligence officers. Igor Sutiagin has acknowledged that he provided information on these topics from his archives and additional research to a U.K.-based consultancy firm, Alternative Futures, on the basis of a legal freelance contract to supplement his meager academic salary. However, he maintains that he gathered information only

from publicly available sources and that, to his knowledge, the consultancy firm was neither linked to any foreign intelligence agency nor involved in hostile activity against Russia. The FSB has repeatedly publicly asserted Igor Sutiagin's guilt prior to any court verdict, in violation of his right to the presumption of innocence.

In December 2001, a regional court in Kaluga, 150 kilometers (ninety miles) southwest of Moscow, cited procedural violations as grounds for sending the case back to the FSB for further investigation. After hearing witnesses for both the prosecution and defense, as well as Ministry of Defense experts who had assessed whether the materials Igor Sutiagin passed on to his foreign interlocutors were classified, the court also concluded that "it was impossible to understand [from the charges] what concrete information he had passed on" and that they therefore violated "Igor Sutiagin's right to defense." The court's opinion stated that if, after the new investigation, the prosecution "conclude[s] that there is sufficient evidence to indict Igor Sutiagin," the charges must be worded with sufficient precision.¹

The Additional Investigation

During the additional investigation, the FSB ordered a new expert assessment of all thirty-eight counts of the previous indictment. Experts from various Ministry of Defense departments examined the materials Igor Sutiagin had provided to his foreign interlocutors to determine whether they contained state secrets. They also compared these materials to a set of publicly available documents prepared by the defense to verify whether Igor Sutiagin could have obtained the information from these documents, as he maintained. In July 2002, the experts concluded that twenty-nine of the thirty-eight materials did not contain state secrets. Four materials did contain information which had been classified as state secrets but the experts found that the information could also be obtained from public sources. With regard to the remaining five materials, the experts concluded that they did contain classified information and that the pertinent information could not have been obtained from the publicly available documents examined. These materials related to the following themes:

- The composition and condition of Russia's early warning system for rocket attacks;
- Possible structures of strategic nuclear forces of the Russian Federation in around 2007;
- The failure of the Ministry of Defense of the Russian Federation to fully realize plans to create permanent readiness units in 1998;

¹ Decision of the Kaluga Province Court of December 27, 2001. A copy of the decision can be found at: <http://www.sutyagin.ru/doc/sud011227.html> (retrieved on May 11, 2004).

- Possible directions of development of domestic guided air-to-air missiles;
- Peculiarities of the construction and military abilities of the airplane MiG-29SMT, and the military abilities of the modernized MiG-29.

Mismatching of Public Documents and Experts

According to Igor Sutiagin's lawyers, the experts who examined these five materials did not review all the pertinent publicly available documents, as, in each instance, the FSB sent some of the public documents to the wrong experts. The conclusions of the five experts—that Igor Sutiagin could not have obtained the information he prepared for his foreign interlocutors from the public documents reviewed—thus do not reflect the absence of the relevant information from the public domain at the time of the alleged crime but rather reflect the experts' failure to review the right documents.

For example, Igor Sutiagin had told investigators that he had obtained part of the information about Russia's early warning system for rocket attacks from a book called "The Strategic Nuclear Forces of the Russian Federation," which was published before Igor Sutiagin provided information on this topic to his foreign interlocutors and which, incidentally, continues to be publicly available. Yet the Ministry of Defense expert who examined the materials related to this topic apparently never examined the book, which was sent to an expert who was examining one of the other materials. In another example, the expert who examined the materials related to the projection of Russia's strategic nuclear forces in about 2007 received only twenty-six of the forty-four publicly available documents Igor Sutiagin had identified as sources for his material on the topic. The remaining eighteen materials were sent to experts examining other materials.

On the basis of this flawed expert assessment, according to the lawyers, the FSB issued a new indictment charging Igor Sutiagin with five counts of high treason by means of espionage.² It accused him of "safe keeping and gathering classified information from various sources including classified ones for the purpose of handing them over, and handing that information over to representatives of U.S. military intelligence."³

² The signatories to this statement did not have access to the indictment as the FSB classified the document as top secret.

³ Igor Sutiagin was charged under article 275 of the Criminal Code of the Russian Federation, which defines the crime of "high treason by means of espionage" as espionage committed by a Russian citizen. Article 276 of the Criminal Code defines espionage as:

The handing over of information that constitutes state secrets to a foreign state, foreign organization or their representatives...for the use of damaging the national security of the

A New Court, a New Judge

In September 2003, the case returned to court. However, it did not return to the court of first instance, as is usual practice in Russia. Instead, it was transferred to the Moscow City Court. Believing it would give him a better chance of receiving a fair trial, Igor Sutiagin requested to be tried by a jury. His request was granted.

The Moscow City Court initially appointed Judge Petr Shtunder, one of its leading experts on jury trials, to hear the case. The hearings started in November 2003 but were subject to several extensive delays. One of them occurred because, according to the court, Igor Sutiagin needed to be quarantined as his cellmate had hepatitis. However, in that same period prison officials told Igor Sutiagin's family that he was not in quarantine. In February 2004, Judge Shtunder was replaced by Judge Marina Komarova. The fact that Igor Sutiagin's defense team never received a full explanation for the change in judges raises concern regarding the independence and impartiality of the court. Marina Komarova, a judge without previous jury trial experience, had earlier convicted diplomat Valentin Moiseev of treason in a trial that failed to meet international standards.⁴ The Russian human rights community considers Moiseev to be another victim of the above-mentioned pattern of politically motivated espionage cases.

Other Violations of Fair Trial Standards and Domestic Legislation

Against the backdrop of these developments, the trial started again on March 15, 2004. Members of the public were not able to monitor the trials proceedings, as

Russian Federation, as well as gathering, stealing and safe keeping [such information] for the purpose of handing [it] over.

Or:

The handing over or gathering of other information [ie., information that is not classified] at the request of a foreign intelligence service for the use of damaging the national security of the Russian Federation.

According to his lawyers, Igor Sutiagin was only charged with providing classified information to a foreign state, foreign organization, or their representatives.

⁴ In its World Report 2002, regarding the events of 2001, Human Rights Watch expressed concern about the conviction of Valentin Moiseev. It stated: "The espionage conviction of former diplomat Valentin Moiseev also raised fair trial concerns. The Moscow City Court found Moiseev guilty after erratic court proceedings in which three different judges started hearing the case before being removed from it without clear explanation. A fourth judge eventually sentenced Moiseev to a four-and-a-half-year prison term in August." "RUSSIAN FEDERATION," Human Rights Watch, *World Report 2002* (New York: Human Rights Watch, 2002), p. 344.

hearings were closed to the public for reasons of state security. However, detailed information provided by Igor Sutiagin's lawyers convinces us that there is reason to believe that the proceedings were marred by violations of fair trial standards and domestic procedure. In particular, the judge barred the jury from hearing relevant exculpatory evidence, excluded key questions of fact from its deliberations, and omitted certain issues from the interrogatory questions that the jury used in formulating its verdict.

In court, the defense focused on demonstrating to the jury that the information Igor Sutiagin had provided to his foreign interlocutors had been in the public domain at the time of the alleged crime. For this purpose, Igor Sutiagin submitted to the jury a detailed explanation about which publicly available documents he had used to prepare which materials for his foreign interlocutors. Although he was allowed to give lengthy oral testimony on the issue, the lawyers said the judge refused to allow Igor Sutiagin to use a series of graphs he had prepared to make his highly technical testimony more accessible to non-specialists, ruling that they were not relevant to the case.

Using a list that specified which public documents had been sent to which experts, the defense team also showed that, because of the mismatching of public documents and experts, the five experts who found that Igor Sutiagin's materials contained state secret information had not received and reviewed all the relevant public documents. It was thus practically inevitable, the lawyers argued, that the experts concluded that Igor Sutiagin could not have obtained the information from the public documents they had individually reviewed.

The defense furthermore pointed out that neither Igor Sutiagin, nor the institute for which he worked, ever had a security clearance and thus had no access to state secrets. It stressed that the prosecution had not provided any evidence to the court as to where Igor Sutiagin had obtained the classified information. In formulating its verdict, the jury was required to respond to a number of specific interrogatory questions. Notably, the judge refused to put a question to the jury about the origin of the information Igor Sutiagin gave to his foreign interlocutors. Instead, the jurors were asked to provide their findings on issues that Igor Sutiagin himself never disputed. For example, the jury was asked whether Igor Sutiagin had had meetings with his foreign interlocutors in London and Birmingham in the United Kingdom during the period in question;⁵

⁵ This question also explicitly asked whether Igor Sutiagin's foreign interlocutors were connected to U.S. military intelligence, a claim that Igor Sutiagin had disputed. However, the main thrust of the question pertained to whether Igor Sutiagin had meetings with his foreign interlocutors during the period indicated. Under Russian criminal law, it was not necessary for the prosecution to prove that the

whether Igor Sutiagin had gathered the information referred to in the five counts in Moscow and Obninsk (his home town) at the request of his foreign interlocutors, and passed this information on to them; and, whether Igor Sutiagin had received financial compensation in return for the information.⁶

Igor Sutiagin's defense lawyers filed a motion for the inclusion of a question regarding the origin of the information. The judge denied the motion, citing the provision in the criminal procedure code that stipulates that a jury may only be asked to consider questions of fact, not of law. In the judge's opinion, the question of whether the information in the materials prepared by Igor Sutiagin for his foreign interlocutors could be obtained from publicly available documents was apparently one of law. By stripping the jury of its prerogative to decide this key question of fact, the judge usurped the jury's role.

According to the lawyers, the judge also failed to put two other important questions to the jury: whether it had been proven that Igor Sutiagin had the intent to provide his foreign interlocutors with state secrets, and whether his actions had caused damage to Russia's national security—both of which are requirements for a high treason verdict under Russian law. The lawyers also sought to have these questions included but the judge denied their motion.

The lawyers furthermore complain that the judge arbitrarily excluded exonerating evidence from the case. They told the signatories of this statement that they tried to invoke two earlier expert assessments that had found that the materials related to Russia's early warning system for rocket attacks and its permanent readiness units did not contain state secrets. However, the judge excluded the assessments from the case, accepting the prosecution's argument that the assessments did not meet procedural requirements, as they lacked a section that explained how the experts had conducted their assessment. Igor Sutiagin's lawyers subsequently filed a motion to exclude the incriminating July 2002 expert assessment, which, according to them, also lacked that section. The judge denied the motion.

foreign interlocutors were linked to U.S. military intelligence (see footnote 3 for the text of the relevant provision).

⁶ This question is odd as the issue whether or not a person received compensation for providing state secrets is not an element of the crime of high treason under Russian law, and therefore not relevant to the jury's deliberations.