

Russian Espionage Cases Violate International Human Rights Standards

Moscow, 15 February 2002 - The International Helsinki Federation for Human Rights (IHF) is concerned with the fate of a growing number of individuals who, on account of their scientific and journalistic work, have fallen victim of a practice often described in Russia as “spy-mania”.

General concerns

Collecting and disseminating information is one of the fundamental freedoms recognized by numerous international treaties, conventions and documents endorsed by the Russian Federation as a member of the Council of Europe, the United Nations and the OSCE.

However, over the last years, the IHF has observed the emergence of several cases in which the Russian Security Services (FSB) were active in bringing charges of espionage and high treason against journalists, ecologists and researchers who have been cooperating with foreign organizations. Information about the safety and health of the population, the handling of nuclear waste or the relations between the military and civil structures seem to be treated by the FSB as politically sensitive issues that the security agency would rather like being kept secret.

In none of the cases monitored, the accused used classified data. But the FSB claims that the dissemination of research findings by independent researchers on the basis of publicly open information can also constitute a disclosure of state secrets.

The IHF is particularly concerned with violations of due process and denials of the right to a fair trial in all “spy cases” described below. In each case, the investigation period was unduly prolonged, with the accused kept in pre-trial detention during the lengthy periods of investigation. The trials were unduly postponed and prolonged, sometimes lasting for several years.

All requests for release on bail have been rejected. In many instances, judges sent cases “back for additional investigation”, while the accused were kept in the remand prison at all time.

Numerous human rights organizations have described the conditions in which the accused are kept in pre-trial detention facilities in Russia as degrading treatment amounting to torture. We consider abusive that those accused of espionage and disclosure of secret data are subjected to cruel and degrading treatment for prolonged periods of time-- sometimes for years-- simply because the prosecution is unable to collect evidence on the basis of which a guilt verdict could be pronounced.

The IHF has consultative status with the United Nations and the Council of Europe.

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Specific cases

The cases of Grigory Pasko, Igor Sutyagin and Valentin Moiseev all illustrate these concerns.

A. Grigory Pasko, a journalist working for the newspaper “Boyevaya Vakhtha” of the Russian Pacific Fleet, was arrested in November 1997 on charges of “treason through espionage” (art. 275 of the criminal code). He was first acquitted of these charges by the Court of the Russian Pacific Fleet in Vladivostok in July 1999, but nonetheless sentenced to 3 years for “abuse of his official position”. He was then released on the occasion of a general amnesty.

On appeal, in November 2000, the Military Collegium of the Supreme Court sent back the case for retrial before the same court. The new trial was postponed several times in 2001. The new trial lasted six months, at the end of which Pasko was convicted of the crime of espionage and sentenced to 4 years of imprisonment in a colony of strict regime. An appeal was lodged before the Supreme Court. The IHF is concerned not only with the length of the procedures in this case, but also with the fact that the case was heard by a military tribunal, which did not give the guarantee of an “independent and impartial tribunal”, a violation of the right to a fair trial under article 6 of the ECHR.

We are further distressed that in this case, the only “criminal” evidence that led to a conviction was the alleged possession by Mr. Pasko of handwritten notes allegedly containing secret information, which Mr. Pasko was “suspected of intending to pass” to a Japanese journalist. The verdict was further reached on the basis of a secret decree of the Ministry of Defence (although reference to the decree was carefully left out in their written decision, while it was used during the trial), in violation of articles 6 and 7 of the ECHR.

B. The case of Valentin Moiseev, a former deputy director of the department of Asia in the Ministry of Foreign Affairs, also raises concerns. Mr. Moiseev was arrested on 3 July 1998. He was informed only on 13 July of the charges of espionage brought against him. He was kept in detention at all time pending trial, all requests for release on bail having been rejected.

The first hearings of his case before the Moscow City Court took place behind closed doors in 1999, and ended with a conviction on the charge of treason through espionage (article 275 of the criminal code) and a sentence of 12 years in a penal colony of strict regime. On appeal, after the case was sent back for additional investigation, Mr. Moiseev was sentenced in January 2002 to 4,5 years to be served in a penal colony of strict regime.

Mr. Moiseev, his lawyer and all independent monitors of his case continue to claim that he never had access to secret information, and that all documentation found of him was in the public domain. Furthermore, the lengthy procedures were inadmissible, in contradiction with article 6(1) of the ECHR. During all the period the investigations and trials lasted, he was kept in detention in conditions that can be characterized as inhuman and degrading treatment in violation of article 3 of the ECHR. An individual petition was lodged before the European Court of Human Rights.

C. Igor Sutyagin’s case is another example of various human rights violations carried out on account of prosecuting alleged spies. Born in 1965, Mr. Sutyagin was a researcher at the USA and Canada department of the Russian Academy of Sciences. He also took part in an international research on the relationships between military and civil structures.

On 27 October 1999, Mr. Sutyagin was arrested by the FSB department in Obninsk. He has been kept in detention in isolation wards since then. He was accused of high treason for allegedly passing state secrets regarding Russian military capability.

On 27 December 2001, the Kaluga Court was to judge on the validity of the charges. The trial was closed to observers. Although the Court concluded, among others, that the case showed violations of legal procedure and that an invalid Decree of the Ministry of Defence had been used, it did not reach a non-guilt verdict. The case of Mr. Sutyagin was sent back to "further investigation". Furthermore, it was decided that in the meantime, Mr. Sutyagin should remain in detention.

Igor Sutyagin has already spent more than two years in detention. The conditions in which such detention is taking place raise great concerns, and can be labelled as inhuman and degrading treatment-- a violation of article 3 of the ECHR. The fact that the investigators have all that time been unable to build up a case is not a valid reason to submit a person to the inhuman treatment he will continue to suffer over the period that the re-investigation will last. The unjustified prolonged detention of Mr. Sutyagin, as well his treatment in detention, reveal gross violations of the European Convention on Human Rights, including his right to a fair trial in a reasonable time as set forth in article 6 of the ECHR.

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Summary of Relevant International Standards (extracts)

1. On Freedom of Expression:

Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedom (ECHR):

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.

Article 19 of the International Covenant on Civil and Political Rights (ICCPR):

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

The Charter of Paris (OSCE):

“... free flow of information and ideas are crucial for the maintenance and development of free societies and flourishing cultures.”

Par. 36, Chapter VIII of the Budapest Document:

“The participating states reaffirm that freedom of expression is a human right and a basic component of a democratic society...”

2. On the Freedom from Torture and Cruel, Inhuman and Degrading Treatment

Article 3 of the ECHR

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 7 of the ICCPR

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Par. 20, Chapter VIII, Budapest document (OSCE)

« The participating States strongly condemn all forms of torture as one of the most flagrant violations of human rights and human dignity...”

3. Rights of Defendants and Due Process

Article 6 (1) of the ECHR:

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

Article 6 (2) of the ECHR:

Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

Article 7 (1) of the ECHR:

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.

Article 9(3) of the ICCPR

Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It

shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

Article 14 (1) of the ICCPR

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

Article 14 (2) of the ICCPR

Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

Par. 1 to 5.21 of the Copenhagen Document (OSCE)

- (1) The participating States express their conviction that the protection and promotion of human rights and fundamental freedoms is one of the basic purposes of government, and reaffirm that the recognition of these rights and freedoms constitutes the foundation of freedom, justice and peace.
- (2) They are determined to support and advance those principles of justice which form the basis of the rule of law. They consider that the rule of law does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression.
- (5) They solemnly declare that among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings are the following:
- (5.3) - the duty of the government and public authorities to comply with the constitution and to act in a manner consistent with law;
- (5.5) - the activity of the government and the administration as well as that of the judiciary will be exercised in accordance with the system established by law. Respect for that system must be ensured;
- (5.7) - human rights and fundamental freedoms will be guaranteed by law and in accordance with their obligations under international law;
- (5.8) - legislation, adopted at the end of a public procedure, and regulations will be published, that being the condition for their applicability. Those texts will be accessible to everyone;
- (5.12) - the independence of judges and the impartial operation of the public judicial service will be ensured;
- (5.14) - the rules relating to criminal procedure will contain a clear definition of powers in relation to prosecution and the measures preceding and accompanying prosecution;
- (5.15) - any person arrested or detained on a criminal charge will have the right, so that the lawfulness of his arrest or detention can be decided, to be brought promptly before a judge or other officer authorized by law to exercise this function;

(5.16) - in the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone will be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law;

(5.18) - no one will be charged with, tried for or convicted of any criminal offence unless the offence is provided for by a law which defines the elements of the offence with clarity and precision;

(5.19) - everyone will be presumed innocent until proved guilty according to law.