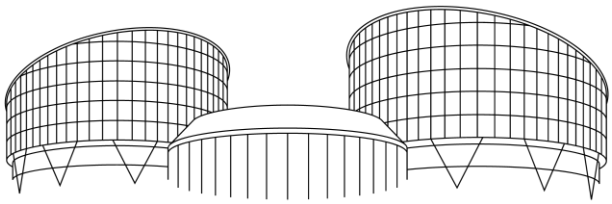

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF PETR SEVASTYANOV v. RUSSIA

(Application no. 75911/01)

JUDGMENT

STRASBOURG

14 June 2011

FINAL

14/09/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Petr Sevastyanov v. Russia**,**

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
George Nicolaou,
Mirjana Lazarova Trajkovska, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 24 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 75911/01) 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") by a Russian national, Mr Petr Aleksandrovich Sevastyanov ("the applicant"), on 30 September 2001.

2. The applicant was represented by Mr S. Belozertsev and Mrs K. Moskalenko, lawyers practising in Moscow. The Russian Government ("the Government") were initially represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative, Mr G. Matyushkin.

3. The applicant alleged, in particular, that he had been tried and convicted by a court which could not be considered to have been established by law and independent.

4. By a decision of 14 October 2010 the Court declared the application partly admissible.

5. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1973 and lives in Moscow.

7. Between July and September 2000 the Nikulinskiy District Court of Moscow ("the Nikulinskiy District Court"), composed of one professional judge, Mr Bobkov, and two lay judges, Ms Matuzova and Mr Rubtsov, examined the charges brought against the applicant in connection with a drug-related offence.

8. On 4 September 2000 the Nikulinskiy District Court found the applicant guilty of illegal acquisition and storage of narcotics on a particularly large scale for the purpose of sale and of illegal sale of drugs and sentenced him to eight years' imprisonment.

9. The applicant and his counsel appealed against the judgment of 4 September 2000 to the Moscow City Court ("the City Court"). They complained, in particular, that lay judge Rubtsov had not been appointed in accordance with the law and had not been independent because he worked as a clerk (секретарь суда) at the Nikulinskiy District Court.

10. On 5 October 2000 the City Court returned the case to the first-instance court and ordered it to look into the applicant's complaints about the competency of lay judge Rubtsov.

11. The results of the inquiry carried out by the Supreme Court Justice Department in respect of the competency of lay judge Rubtsov to sit in the case were summarised in a report of 17 January 2001, which stated as follows:

> "...The inquiry established that the Nikulinskiy District Court had at its disposal a copy of the decision of 24 October 1991 of the Gagarinskiy District Council of People's Deputies of Moscow confirming the results of the additional selection of lay judges of the Gagarinskiy District Court of Moscow as well as a copy of the list of lay judges elected by the staff of the Gagarinskiy District Court, which comprised two persons (Mrs Asharova and Mr Rubtsov) and which had not been properly certified.
>
> According to information obtained from the Administration of Moscow and from the Moscow Archives, the originals of the documents on the election of lay judges of the Gagarinskiy District Court had not been kept.
>
> Nevertheless, lay judge Rubtsov had been in possession of the card [identifying him as a] lay judge of the Gagarinskiy District Court of Moscow, which had been valid until May 1995.
>
> The presidential decrees of 22.03.95 No. 299 and 23.01.97 No. 41, 12.12.98 No. 64, 02.01.00 No.37, and 25.01.00 No.103 extended the terms of office of previously selected lay judges until the adoption of the Federal Law on the selection of lay judges and the compilation of general lists of lay judges."

12. On 3 April 2001 the City Court examined the case on appeal. It held that the applicant's guilt of acquisition of drugs for the purpose of sale and the sale of drugs had been proved by the evidence examined during the trial. Regarding the allegedly unlawful composition of the trial court, the appeal court held that the term of office of lay judge Rubtsov had been extended in accordance with the Presidential decrees. The court also noted that the fact

that lay judge Rubtsov worked for the court as a clerk did not preclude him from being elected as a lay judge. The City Court reduced the applicant's sentence to five years' imprisonment and upheld the remainder of the judgment.

13. On 13 February 2002 the Supreme Court of the Russian Federation ("the Supreme Court") reviewed the case under the supervisory review procedure. The Supreme Court held that the applicant's guilt of acquisition and storage of drugs on a large scale had been established. However, the materials of the criminal case file had not contained any evidence which would allow it to establish with sufficient credibility that the applicant had acquired the drugs for the purpose of sale and that he had sold them. In those circumstances, the applicant's actions should have been classified as illicit procurement and storage of drugs without intent to sell.

14. The Supreme Court amended the judgment of 4 September 2000 and the decision of 3 April 2001, convicted the applicant of illicit procurement and storage of drugs without intent to sell and sentenced him to three years' imprisonment. With reference to the Amnesty Act of 26 May 2000, the court ordered that the applicant be released from serving his sentence and, consequently, from custody.

II. RELEVANT DOMESTIC LAW

A. The Code of Criminal Procedure of 1960 (in force until 1 July 2002)

15. Article 15 of the Code provided that hearings in first-instance courts dealing with criminal cases should, subject to certain exceptions, be conducted by a single professional judge or by one professional and two lay judges. In their judicial capacity, lay judges enjoyed the same rights as professional judges.

B. The RSFSR Law of 8 July 1981 on Election of District (Town) Courts (in force until 10 January 2000)

16. Part III of the Law set out the procedure for the election of lay judges. Elections of lay judges of district (town) courts were called by the Presidium of the RSFSR Supreme Council and were carried out by the executive committees of the district or town Councils of Peoples' Deputies (Articles 56 and 57). Lay judges were elected during general staff meetings, general meetings and gatherings of citizens at their places of residence. A separate, open vote was held in respect of each candidate. Persons who received more than fifty percent of the votes were elected (Article 58). The results of the elections had to be recorded in the minutes of the meetings

(Article 59). The relevant executive committee determined the results of the elections, compiled the list of elected lay judges, approved that list, published the information on the results of the elections and sent the list of lay judges to the district court (Articles 57 and 60).

C. The Constitution of the Russian Federation of 12 December 1993

17. Article 90 of the Constitution provides that the President of the Russian Federation shall issue decrees and orders which shall have binding force on the entire territory of the Russian Federation and which should not run contrary to the Constitution of the Russian Federation and federal laws.

D. Presidential Decrees

18. The Decree of 22 March 1995 provided that lay judges of district (town) courts had to continue their service until the adoption of the respective federal law. Executive authorities of the constituent elements of the Russian Federation had, if necessary, to organise by-elections of lay judges of district (town) courts at general staff meetings, general meetings and gatherings of citizens at their places of residence.

19. The Decree of 23 January 1997 provided, among other things, that lay judges of district courts had to continue their service until the adoption of the federal law on the procedure for appointment (election) of lay judges.

20. The Decree of 25 January 2000 provided that lay judges serving in the courts of general jurisdiction were authorised to remain in office until the courts received new lists of lay judges confirmed by a regional legislative body.

E. The Lay Judges Act of 2 January 2000, in force since 10 January 2000 and applicable to criminal proceedings until 1 January 2004

21. The Act provided in section 1 that citizens of the Russian Federation had a right to take part in the administration of justice in the quality of lay judges. Lay judges were persons empowered by law to hear civil and criminal cases as part of the court panel and carry out their judicial duties on a non-professional basis.

22. Section 2 provided that lists of lay judges for every district court had to be compiled by respective local self-government bodies on the basis of lists of voters in the district. Such lists had to be validated by regional legislative assembly and submitted to the district court. The term of office of lay judges on the list was five years.

23. Section 3 provided that the following persons could not be selected as lay judges: persons who had convictions which had not been quashed, persons fully or partially deprived of their legal capacity by a competent

court, civil servants of category "A" and persons occupying elective posts in local government bodies, prosecutors, investigators and persons registered with either drugs counsellors or psychiatrists.

24. Sections 5 and 6 provided that the president of the respective court had to draw a certain number of lay judges by lot from the list. Lay judges to sit in a particular case were to be drawn by lot by the professional judge who would hear the case from those drawn by lot by the president of the court.

25. Section 9 provided that lay judges could be called to sit in cases heard by a district court for a period of fourteen days, or as long as the proceedings in a particular case lasted. Lay judges could not be called on more than once a year.

F. The Supreme Court's Ruling on the selection of lay judges of 14 January 2000

26. The ruling provided that the president of a given court had to draw by lot from the list of lay judges, 156 names for each judge of the court. The lay judges for a particular case had to be drawn by lot by the professional judge to whom the case had been assigned. The sitting lay judges had to remain in office until new lists of lay judges arrived at the court. The regulation also provided that each court had to keep a record of the results of the selection at random of lay judges.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

27. The applicant complained under Article 6 of the Convention that the criminal proceedings against him had been unfair. In particular, he alleged that:

(a) Mr Rubtsov, who had sat in his case as a lay judge, had had no right to do so, since he had not been on the list of lay judges selected to sit in cases examined by the Nikulinskiy District Court;

(b) lay judge Rubtsov had not been independent *vis-à-vis* the professional judge sitting in his case since he had worked at the Nikulinskiy District Court as a clerk and had not been discharged of his functions during the applicant's trial.

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

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

A. Allegedly unlawful participation of lay judge Rubtsov in the applicant's trial

1. The parties' submissions

29. The applicant firstly argued that Mr Rubtsov had never been selected to sit as a lay judge in the Nikulinskiy District Court. In 1991 he was selected to sit as a lay judge in the Gagarinskiy District Court of Moscow ("the Gagarinskiy District Court"). However, those two courts were two different courts which had two distinct addresses. Therefore, the selection in 1991 of Mr Rubtsov to sit as a lay judge in the Gagarinskiy District Court had not empowered him to sit in cases heard by the Nikulinskiy District Court. Furthermore, it had followed from a letter from the President of the Nikulinskiy District Court that in April 1999 there had been ten lay judges in the Nikulinskiy District Court. A list of those judges had been enclosed. However, Mr Rubtsov had not been on that list. The applicant claimed that the Government had provided no document confirming the selection of Mr Rubtsov to sit as a lay judge in the Nikulinskiy District Court.

30. The applicant further argued that the Government had not provided any document to prove that lay judge Rubtsov had been selected by lot to sit in the applicant's trial.

31. The applicant lastly claimed that lay judge Rubtsov had already started to sit in cases examined by the Nikulinskiy District Court in January 2000. Therefore, by the date of the applicant's trial he had sat in cases for more than fourteen days.

32. The Government submitted that lay judge Rubtsov had been competent to sit in the applicant's case. They referred to the results of the inquiry carried out in 2001 by the Supreme Court Justice Department (see paragraph 11 above) which established that the Nikulinskiy District Court had had at its disposal copies of the decision of 24 October 1991 of the Gagarinskiy District Council of People's Deputies of Moscow which approved the results of the additional elections of lay judges for the Gagarinskiy District Court and the list of lay judges elected by the staff of the Gagarinskiy District Court, which comprised two lay judges, Mrs Asharova and Mr Rubtsov. The Government also informed the Court that the originals of the documents on the election of lay judges of the Gagarinskiy District Court had not been kept. Lay judge Rubtsov's term of office had been valid until May 1995. Subsequently, it had been extended by the Presidential decrees of 22 March 1995, 23 January 1997, 12 December 1998 and 25 January 2000 until the adoption of the Lay

Judges Act, and subsequently until the courts received new lists of lay judges.

33. Furthermore, according to the decision of the Mayor of Moscow, in 1994 the Oktyabrskiy District Court of Moscow had been renamed as the Gagarinskiy District Court and the former Gagarinskiy District Court had been renamed the Nikulinskiy District Court.

34. Between September and November 2000 lay judge Rubtsov had taken part in the examination of criminal and civil cases in the Nikulinskiy District Court for seventeen days, that is, more than the maximum period of fourteen days provided for by law. That had been due to a difficult situation which had existed before new lists of lay judges had been compiled. However, the applicant's case had been the first on the list of cases in which lay judge Rubtsov had sat. Therefore, on the date of the applicant's trial the maximum period of fourteen days had not been attained.

2. The Court's assessment

35. 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 case (see *Buscarini v. San Marino* (dec.), no. 31657/96, 4 May 2000). The Court is therefore required to examine allegations such as those made in the present case concerning a breach of the domestic rules on the appointment of judicial officers. The fact that the allegation in the present case concerned lay judges does not make it any less important as, under the Russian law then in force, in their judicial capacity lay judges enjoyed the same rights as professional judges (see "Relevant domestic law" above).

36. The Court has already found violations of Article 6 § 1 of the Convention in a number of cases against Russia pertaining to the appointment of lay judges. Violations were found on account of the domestic authorities' failure to produce documentary evidence showing that the lay judges had been appointed to the office in accordance with the procedure established by domestic law, combined with the apparent failure to observe the requirements of the Lay Judges Act regarding the drawing of random lots and the maximum length of service per year (see, for instance, *Posokhov v. Russia*, no. 63486/00, §§ 38-44, ECHR 2003-IV, and *Moskovets v. Russia*, no. 14370/03, §§ 96-101, 23 April 2009).

37. Turning to the circumstances of the present case and having regard to the information provided by the Government, the Court is satisfied that in 1994 the Gagarinskiy District Court was renamed and became the Nikulinskiy District Court. Therefore, it has to verify in the first place, whether lay judge Rubtsov had been selected to sit as a lay judge in the cases heard by the Gagarinskiy District Court in accordance with the procedure established by domestic law. In that respect the Court observes that the inquiry carried out in 2001 by the Supreme Court Justice

Department and to which the Government referred, established, among other things, that the list of lay judges elected by the staff of the Gagarinskiy District Court comprising two lay judges, Mrs Asharova and Mr Rubtsov, had not been properly certified and that the originals of the documents on the election of lay judges of the Gagarinskiy District Court had not been kept. The latter information was also confirmed by the Government, who have not provided any other document to prove the selection of lay judge Rubtsov to sit in cases examined by the Gagarinskiy District Court (renamed as the Nikulinskiy District Court). The Court further observes that the Government have not provided any document confirming that lay judge Rubtsov had been drawn by random lot to sit in the applicant's trial as required by the domestic law (see "Relevant domestic law" above).

38. Those findings are sufficient to conclude that the Nikulinskiy District Court, which heard the charges against the applicant between July and September 2000 and which convicted him on 4 September 2000, could not be regarded as "a tribunal established by law". The Court also notes that the Moscow City Court, in the review of the case on appeal and the Supreme Court of the Russian Federation, which examined the case by way of supervisory review, did not eliminate the above-mentioned defects.

39. Therefore, the Court concludes that there has been a violation of Article 6 § 1 of the Convention.

B. Alleged lack of independence of lay judge Rubtsov

40. The applicant maintained his complaint.

41. The Government submitted that section 3 of the Lay Judges Act (see "Relevant domestic law" above) provided an exhaustive list of persons who could not be selected as lay judges. Staff of the registries of district courts were not included on that list. On 5 January 2000 the President of the Nikulinskiy District Court had discharged Mr Rubtsov of his functions in the Nikulinskiy District Court for the period of his participation in the examination of cases as a lay judge. Therefore, he had not lacked independence in relation to the professional judge sitting in the applicant's case.

42. Having regard to its findings in paragraphs 37 - 39 above, the Court considers that there is no need to examine separately the applicant's complaint under Article 6 § 1 of the Convention regarding the alleged lack of independence of lay judge Rubtsov.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

44. The applicant submitted that he had difficulty in calculating the exact amount of the pecuniary damage sustained. Therefore, he asked the Court to determine that amount on the basis of the fact that he had suffered at length as a result of "blatant misrule", while his position had deprived him of any power to resist that situation. He claimed 35,000 euros (EUR) in respect of non-pecuniary damage.

45. The Government considered that the applicant's claim in respect of pecuniary damage should be dismissed since he had failed to duly substantiate it. They argued that his claim in respect of non-pecuniary damage was excessive.

46. The Court reiterates that in accordance with Rule 60 of the Rules of Court an applicant who wishes to obtain an award of just satisfaction must make a specific claim to that effect and submit details of all claims, together with any relevant supporting documents, within the fixed time-limits. The Court observes that in the present case the applicant did not provide any information or supporting documents in respect of his claim under the pecuniary damage head. Therefore, the Court rejects the applicant's claim in that part. On the other hand, the Court considers that the applicant must have suffered distress and frustration as a result of the violation of his right to a fair trial. However, the amount claimed appears to be excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

47. The applicant claimed EUR 1,200 for the fees of his representative Mr S. Belozertsev and EUR 800 for the fees of his other representative, Mrs K. Moskalenko.

48. The Government contested those claims and pointed out that the applicant had not provided any documents in support of his claims.

49. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as

to quantum. The Court observes that the applicant did not provide any documents confirming that the expenses to which he refers have actually been incurred. Therefore, it rejects the applicant's claims for costs and expenses.

C. Default interest

50. The Court considers it appropriate that the default interest 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the unlawful composition of the court which convicted the applicant on 4 September 2000;

2. *Holds* that there is no need to examine separately the applicant's complaint under Article 6 § 1 of the Convention regarding the alleged lack of independence of lay judge Rubtsov;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage, to be converted into Russian roubles 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President