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# **RUSSIA’S “SPY MANIA”**

## **A Study of the Case of Igor Sutiagin**

### **Human Rights Watch Briefing Paper**

EXECUTIVE SUMMARY AND RECOMMENDATIONS.....	2
To the Moscow City Court.....	5
To the Russian government.....	5
To the U.N. Human Rights Committee.....	6
To the Parliamentary Assembly of the Council of Europe.....	6
To the European Union, its member states, and the United States.....	6
BACKGROUND .....	6
“SPYMANIA” .....	8
CASE STUDY: IGOR SUTIAGIN .....	11
Background.....	11
The Arrest.....	11
The Charges.....	12
The Trial.....	13
Appeal and Further Investigation.....	14
Violations of Sutiagin’s Rights .....	14
Charges Vaguely Formulated.....	14
Open Sources Issue.....	15
Use of Secret Decrees.....	16
Violations of Criminal Procedure .....	17
Presumption of Innocence.....	17
Prolonged Pretrial Detention.....	19
ACKNOWLEDGEMENTS .....	20

## EXECUTIVE SUMMARY AND RECOMMENDATIONS

*From the sidelines the work of the security services may primarily seem romantic and heroic. But in fact, it is difficult, scrupulous work in which success is only achieved with great difficulty, any concrete result requires enormous efforts. I remember in my years of education the teachers told us: "If any of you during your entire service—and at that time it was generally accepted that you had to serve twenty-five years in the KGB of the USSR—will participate in the realization of a spy case, a high treason case, you should consider yourself lucky and you indeed did not study for nothing.*

Nikolai Patrushev, head of Russia's Federal Security Service.<sup>1</sup>

*The FSB strictly observes the law and always follows them. Attempts to present these events [the prosecutions of Alexander Nikitin, Grigorii Pasko, and Igor Sutiagin], which were conducted within the framework of the law, as violations of some human rights, [or] ecological [rights] are unfounded.*

Vasilii Stavitskii, deputy head of the public relations department of the Federal Security Service.<sup>2</sup>

On October 27, 2003, arms researcher Igor Sutiagin faces a troubling anniversary: four years will have passed since security service officers detained him at his home. Ever since, Sutiagin has been waiting in a jail cell for a court to decide his fate. The Russian Federal Security Service (FSB) has charged Sutiagin with high treason, accusing him of collecting materials, including classified information, on a variety of issues relating to Russia's weapons systems and other military issues, and passing it on to U.S. military intelligence officers between June 1998 and July 1999.<sup>3</sup> Sutiagin maintains that he did nothing wrong, that he collected information on military issues, from open sources only, for a U.K.-based consultancy firm on the basis of a legal freelance contract. After his

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<sup>1</sup> "My sluzhim Rossii (We serve Russia)," Literaturnaya Gazeta, No. 50-51, December 18, 2002. The article is available on the FSB's official web site <http://www.fsb.ru/smi/liders/patrush7.html> (retrieved October 9, 2003).

<sup>2</sup> RTR television, Vesti (News), October 29, 1999. See: <http://afnet.integrum.ru/artefact3/ia/ia5.aspx?lv=6&si=gEBfdX2R&qu=2&bi=434&nd=1&f=0> (retrieved October 9, 2003).

<sup>3</sup> FSB is the Russian acronym for Federalnaia Sluzhba Bezopasnosti. The FSB is the successor to the KGB. Its functions include, among others, homeland security, the fight against organized crime, foreign intelligence gathering, and counterespionage. It is also responsible for certain categories of criminal investigations, including those related to espionage and treason.

case went to trial, in December 2001 the Kaluga Province Court sharply criticized the FSB's investigation into the case, stating that the indictment was so vaguely formulated that it was impossible to understand the charges against Sutiagin. But rather than acquit the defendant, the court returned the case to the FSB for "further investigation," thus awarding the agency a hardly deserved second chance. A new hearing of the case is expected to start in late 2003.

Sutiagin's protracted legal battle with Russia's security services is not unique. Throughout the past eight years, the FSB has pressed dubious espionage charges against about a dozen scientists, journalists, and environmentalists.<sup>4</sup> Each of the defendants had worked with foreign contacts on issues that, in Soviet times, were under the exclusive control of the FSB's predecessor, the KGB—nuclear waste dumping, environmental degradation, Russia's military preparedness, military technology, and the like—but that became topics of broader public debate during the *glasnost* era. Leading human rights campaigners, who have coined the term "spy mania" (in Russian: *shpionomania*) to describe the series of espionage cases, believe the FSB has intentionally pressed false charges against these individuals to restore what it sees as its exclusive dominion, and to impose new limitations on freedom of expression on these topics. They see these cases as part of the FSB's effort to reassert itself in Russian society and politics after its uneasy transition from the Soviet era. In the words of Liudmila Alekseeva, head of the Moscow Helsinki Group: "...the FSB has found an easy target [in scientists cooperating with foreigners in sensitive areas]. They...need to justify their existence and catching spies is their task."<sup>5</sup>

This report examines Sutiagin's case, setting it in the context of other similar "espionage cases." It details violations of his right to due process and a fair trial. Human Rights Watch has chosen to focus on Sutiagin because he is the only one to still be awaiting his fate in prison.

Human Rights Watch cannot assess whether the FSB indeed pressed intentionally false charges as part of a broader effort to reassert its dominion. The defendants in these cases all provided foreign contacts with materials of a sensitive nature. The FSB may therefore have been well within its rights to look into these contacts and make sure they

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<sup>4</sup> In most of these cases, the FSB charged the defendants under article 275 of the Russian criminal code. This article reads:

State treason—espionage, disclosure of state secrets or other assistance to a foreign state, a foreign organization, or their representatives in the conduct of hostile activities to undermine the national security of the Russian Federation, committed by a citizen of the Russian Federation—is punishable by imprisonment for a term of twelve to twenty years, with or without confiscation of property.

<sup>5</sup> Ekho Moskv, Goriachie interviu (Hot interviews), July 1, 2003. See: <http://www.echo.msk.ru/interview/interview/12648.html> (retrieved on October 9, 2003).

did not compromise Russia's national security. However in prosecuting these cases, the FSB violated the defendants' right to a fair trial: it put forward vaguely formulated charges, refused to verify claims that all information provided to foreign contacts came from the public domain, used secret decrees that the defendants were not allowed to see, and its officials publicly asserted the defendants' guilt. This indicates that the FSB was more interested in convicting the defendants on espionage charges than in establishing the truth in their cases.<sup>6</sup>

In the Soviet era, the KGB was, in practice, above the law. In all but name, it was both prosecutor and judge, and challenges to the KGB's authority were almost unheard of. When Russia became a member of the Council of Europe, it accepted accession conditions requiring it to strip the FSB of its authority to conduct criminal investigations and run detention centers. However these reforms have not happened. The FSB's failure to respect Russian and international fair trial standards in the Sutiagin case and others like it are a worrying sign that the agency still operates on the basis of Soviet-era principles and is still far from accepting the fundamentally different role security services play in societies based on the rule of law—let alone being ready to observe the new rules.<sup>7</sup>

The courts have so far been reluctant to assert their newly won independence when hearing cases that have been investigated by the FSB. When ruling on “spy” cases most courts sought to strike a compromise. A number of courts avoided issuing verdicts by returning the cases to the FSB for “further investigation,” citing serious violations of criminal procedure.<sup>8</sup> Others issued guilty verdicts but, in apparent recognition of the weakness of these cases, imposed sentences that are significantly shorter than the minimum term for treason set out in Russia's criminal code.<sup>9</sup> In one case, a court acquitted the defendant after the case came back from further investigation, with many of the same irregularities as when it was first brought to court.

Although these prosecutions have not led to the reintroduction of Soviet-style, blanket limitations on freedom of expression on the sensitive issues the defendants worked on,

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<sup>6</sup> While it is ultimately up to the courts to weigh the evidence against a defendant and rule on his guilt or innocence, the FSB's refusal to take into consideration obvious facts that could exonerate the defendant testifies to its bad faith.

<sup>7</sup> Opinion No. 193(1996) of the Parliamentary Assembly of the Council of Europe, “On Russia's request for membership of the Council of Europe,” paragraph 10(xvii). See at: <http://assembly.coe.int/documents/AdoptedText/ta96/EOP193.HTM> (retrieved on October 9, 2003).

<sup>8</sup> This happened in, among others, the cases of Valentin Danilov, Alexander Nikitin, Igor Sutiagin, and Vladimir Shchurov.

<sup>9</sup> Under article 275 of the criminal code, treason is punishable by imprisonment for a term of twelve to twenty years, with or without confiscation of property.

“spy mania” appears aimed to have a chilling effect on the wider community of people who work on these issues. Some of the “spy mania” defendants have told Human Rights Watch that colleague journalists and researchers have followed their cases closely and have become reluctant to engage in research or writing that could trigger the FSB’s suspicion. Even though none of the defendants have received long prison terms, most have spent at least a number of months in prison; the cases have paralyzed their lives and those of their families for years; and many of the defendants are still trying to clear their names.

Igor Sutiagin has arguably received the harshest treatment. Unlike the others, he remains in prison to this day. Human Rights Watch believes that the FSB’s failure to conduct a diligent investigation has violated his right to a fair trial.<sup>10</sup> This failure has also drawn out criminal proceedings against Sutiagin to more than four years. Yet the judicial authorities have repeatedly prolonged Sutiagin’s pretrial detention, without requiring the FSB to provide relevant and sufficient grounds for his continued detention, and without carefully examining whether a genuine requirement of public interest justifies his continued detention. Human Rights Watch therefore makes the following recommendations:

### ***To the Moscow City Court***

- Release Igor Sutiagin from pretrial detention at the earliest possible opportunity.
- Ensure that proceedings at Sutiagin’s trial are fully consistent with international fair trial standards.

### ***To the Russian government***

- Bring the FSB “in line with the European principles and standards,” as required by the conditions for Russia’s accession to the Council of Europe, as soon as possible. As part of this reform, the FSB should be stripped of its powers of criminal investigation and its authority to run detention centers.
- Until the FSB’s powers of investigation are removed, the government should clearly instruct the FSB to observe all provisions of criminal procedure law in its investigations, and should publicly encourage the courts to rigorously apply the

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<sup>10</sup> Article 6(1) of the European Convention on Human Rights states that “[I]n the determination...of any criminal charge against him, everyone is entitled to a fair and public hearing within reasonable time by an independent and impartial tribunal established by law.” Article 14 of the International Covenant on Civil and Political Rights contains a similar provision.

criminal procedure standards when hearing criminal cases that have been investigated by the FSB.

- Review all legislation on state secrets, including the federal law and the presidential decree on state secrets as well as ministerial decrees, to ensure that this body of law does not arbitrarily infringe upon freedom of expression. In this review, the government should be guided by standards on freedom of expression and state security that have been developed in the case law of the European Court of Human Rights and the U.N. Human Rights Committee, and by the U.N. Special Rapporteur on Freedom of Expression.

### ***To the U.N. Human Rights Committee***

- Consider the issues raised in this briefing paper during its review of Russia's fifth periodic report on October 23, 2003. Call for the release from detention of Igor Sutiagin pending the outcome of his trial.

### ***To the Parliamentary Assembly of the Council of Europe***

- Appoint a special rapporteur to investigate the case of Igor Sutiagin.
- Call for the release from detention of Igor Sutiagin pending the outcome of his trial.
- Call for respect for judicial guarantees laid down in the European Convention on Human Rights and its case law in proceedings against him.
- Call on the Russian government to reform the FSB, in line with the conditions for Russia's accession to the Council of Europe, as soon as possible.

### ***To the European Union, its member states, and the United States***

- Call for the release from pretrial detention of Igor Sutiagin.
- Call on the Russian government to reform the FSB, in line with the conditions for Russia's accession to the Council of Europe, as soon as possible.

## **BACKGROUND**

The changes of the late 1980s and early 1990s in Russia caused great upheaval for the KGB, the USSR's state security agency and one of the major bulwarks of the Soviet totalitarian regime. The agency quickly became discredited in the eyes of the public, as the *glasnost* process flooded Russia's streets with information about the role it had played in repressing generations of people during the Soviet period. The rise to power of Boris

Yeltsin, known to be very suspicious of the KGB, signified the start of a period of significant loss of influence for the security services. In 1991, the demise of the Soviet Union brought an end to the KGB. In the next four years, the agency's name was changed six times,<sup>11</sup> its budget was significantly cut, and it lost several of its functions, including responsibility for foreign intelligence gathering, the border troops, government communications, and the federal guards service. The security services also gradually lost their aura of an omnipotent institution with an unquestioned right to decide people's fates.

As Russia opted for a democratic transition in the early 1990's, the security services were supposed to accept a fundamentally different role in society. They could no longer be a state within a state, free from real judicial oversight and accountable to no one. When it accepted Russia as a member in 1996, the Council of Europe set basic parameters for reform of the security services. It required that the FSB be stripped of its authority to conduct criminal investigations and run detention centers. These reforms never took place.<sup>12</sup> The FSB continues to lack transparency and real accountability.

However, despite the lack of reform, by the mid-1990s the FSB ceased to be the object of public anathema at the same time as public disillusionment with democracy and its values grew, along with nostalgia for the Soviet era. The security services received a major boost in 1999 when Vladimir Putin, himself a former intelligence officer, was appointed prime minister and then elected president of Russia. Also, with Putin, numerous other security officers rose in the ranks of the government. In 2003, the FSB reacquired control over the border troops and government communications.

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<sup>11</sup> In the four years after the demise of the Soviet Union, the agency's names included: Interrepublican Security Service (MSB), KGB of the Russian Soviet Republic, Agency of Federal Security (AFB), Ministry of Security (MB), Federal Intelligence Service (FSK). Finally, in 1995 the agency received the name by which it is still known: Federal Security Service or FSB. See: official site of the FSB: <http://www.fsb.ru/history/organi.html> (retrieved on October 9, 2003).

<sup>12</sup> See: Opinion No. 193(1996) of the Parliamentary Assembly of the Council of Europe, "On Russia's request for membership of the Council of Europe," paragraph 10(xvii), <http://assembly.coe.int/documents/AdoptedText/ta96/EOP1193.HTM> (retrieved on October 9, 2003). In periodic reports on Russia's implementation of the accession conditions and general observance of Council of Europe principles, the Parliamentary Assembly has criticized Russia for its failure to reform the FSB. See for example the Parliamentary Assembly's Resolution 1277(2002), <http://assembly.coe.int/Main.asp?link=http%3A%2F%2Fassembly.coe.int%2FDocuments%2FAdoptedText%2Fa02%2FERES1277.htm> (retrieved on October 9, 2003).

## “SPYMANIA”

In this atmosphere of changing fortunes, the FSB launched a series of criminal investigations into Russian citizens who were working with foreign contacts on issues that, until recently, had been its exclusive domain. The first of these cases began in September 1995, when the FSB raided the apartments of several employees and the Murmansk office of the Bellona Foundation, a Norwegian environmental group, and confiscated various documents and computers.<sup>13</sup> The Bellona Foundation had been documenting the environmental threat posed by submarines in northern Russia that were taken out of service but have not been decommissioned—research that would have been impossible in Soviet times. Five months later, in February 1996, the FSB arrested Alexander Nikitin, a retired naval officer and employee of the Bellona Foundation, and charged him with espionage.<sup>14</sup>

In subsequent years, a series of other cases followed. In November 1997, customs officials arrested Grigorii Pasko, a military journalist for the military newspaper *Boevaya Vakhota* (Battle Watch) who also worked as a stringer for a Japanese daily newspaper and television station. Charging him with espionage, the FSB alleged he had provided classified information to two Japanese journalists about Russia’s Pacific Fleet. In May 1998, the FSB arrested Valentin Danilov, director of a research center at Krasnoyarsk State Technical University, and charged him with espionage for allegedly passing classified information on aerospace technology to a Chinese company. The arrest of Valentin Moiseev, a Russian diplomat and Korea expert, followed two months later. The diplomat was also charged with espionage—for providing classified information on relations between Russia and North Korea to a South Korean diplomat. In October 1999, the FSB charged Vladimir Shchurov, the head of a research institute of the Russian Academy of Sciences, with disclosing state secrets, after customs confiscated an acoustic device for measuring ocean noises he had sent to China. That same month, the FSB arrested Igor Sutiagin on espionage charges. In July 1999, the FSB found a secret map of a submarine base during a search at the apartment of Vladimir Soifer, a scientist who had for forty years worked on nuclear pollution problems in the Sea of Japan, and accused him of intending to disclose it to a foreign organization. In April 2000, the FSB charged Anatolii Babkin, a university professor, with espionage for providing materials

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<sup>13</sup> The criminal case against scientist Vil Mirzoianov preceded this series of investigations by a few years but is in many respects very similar. In that case, the security services pressed charges of disclosure of state secrets against scientist Mirzaianov, who, together with a colleague, had written several articles in 1991 and 1992 alleging that Russia continued to develop new kinds of chemical weapons in violation of its international obligations. The security services twice jailed Mirzaianov but each time released him after broad domestic and international campaigns. After two and a half years, the case was eventually closed.

<sup>14</sup> For details on this case, see: Amnesty International, “Russian Federation: Federal Security Service (FSB) versus Prisoner of Conscience Aleksandr Nikitin: Return to Soviet Practices,” EUR 46/042/1996, September 1996.



on secret torpedo technology to a U.S. company. In August 2000, FSB officers charged Valerii Kovalchuk with illegal export of military technology.

While the defendants uniformly and vigorously asserted their innocence and their supporters made allegations that the investigations were politically motivated, the secrecy surrounding the investigations and the sensitive nature of the information with which the defendants worked made it difficult to assess whether the FSB had acted in good faith in opening these investigations. Yet, as the criminal investigations progressed, serious violations of criminal procedure in each case demonstrated a consistent pattern. The FSB refused to verify whether materials that formed the basis for the charges had been available in the public domain; grounded charges on secret decrees and refused to let defendants see them; formulated charges in vague terms; refused to appoint independent experts to assess the level of secrecy of materials provided to foreign contacts; committed numerous technical violations of procedural rules, and publicly asserted the defendants' guilt. It became increasingly clear that the FSB was acting in bad faith in these investigations, seeking to have the defendants convicted while ignoring facts that could exonerate them.

Russia's courts have struggled with the spy cases. On the one hand, the violations of the rights of the defendants were so numerous and glaring that they could not be ignored. On the other hand, the charges were brought by the successor to the KGB, the state agency that not so long ago literally dictated verdicts to judges. Courts that heard "spy mania" cases have only in rare cases mustered the courage to acquit defendants. Not yet used to their newly acquired right—and obligation—to independently and objectively rule on cases that have been investigated by the FSB, the courts in most cases sought to strike a compromise. Several courts opted to send cases back for "further investigation" citing serious violations of criminal procedure during the investigation. Others issued guilty verdicts for treason or less serious crimes and sentenced the defendants to terms in prison that are far below the twelve-year minimum term provided for in Russia's criminal code—in apparent recognition of the weakness of these cases.<sup>15</sup> A few courts have, after lengthy proceedings, courageously acquitted defendants. The following examples are illustrative of this pattern:

- In October 1998, the St. Petersburg City Court returned the case against **Alexander Nikitin** to the FSB for further investigation, pointing out that the investigation did not provide any factual evidence of the alleged crime, among other factors. When the case returned to the court eighteen months later with many of the same flaws, the judge acquitted Nikitin of all charges, amid an intense public outcry about the case.

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<sup>15</sup> Article 275 of the Russian criminal code establishes a twelve-year minimum and a twenty-year maximum prison term for treason. Valentin Moiseev and Grigorii Pasko, both of whom were convicted for treason, received four and a half and four year prison terms respectively.

- In July 1999, a military court in Vladivostok dismissed the treason charges against **Grigorii Pasko**, citing a lack of evidence of treason, but found Pasko guilty of the much less serious crime of abuse of office. The court immediately released Pasko under a general amnesty. After Russia’s Supreme Court overturned this ruling, the court in Vladivostok found Pasko guilty of espionage, striking eight of the nine counts, and sentenced him to four years of hard labor. Pasko had already spent twenty months in pretrial detention and was released thirteen months later.
- In February 2003, the Moscow City Court found **Anatolii Babkin** guilty of treason but sentenced him to an eight-year suspended prison term with five years of probation.
- In August 2003, a court in Vladivostok found **Vladimir Shchurov** guilty of disclosing state secrets. The court gave Shchurov a two years suspended sentence and immediately relieved him of the sentence under a general amnesty.

Although all the defendants in “spy mania” cases—with the notable exception of Igor Sutiagin—are no longer in prison, most continue to fight multi-year legal battles in the courts to clear their names. Grigorii Pasko appealed the guilty verdict against him to the Supreme Court and its presidium but to no avail. Having exhausted all domestic remedies, he has now filed an application before the European Court of Human Rights. Valentin Moiseev, who was sentenced in August 2001 to four and a half years in a maximum-security prison for treason, also unsuccessfully appealed his conviction, and is now waiting for the European Court of Human Rights to examine his case. The case against Valentin Danilov is still pending before the Krasnoyarsk City Court. So far, only the names of Alexander Nikitin and Valerii Kovalchuk have been fully cleared.

In each of these cases, the legal battles have paralyzed the defendants’ lives for years. Many spent at least several months in prison. They have spent years defending themselves against charges they regard as wrongful, instead of continuing their regular work. They have been stigmatized in the eyes of relatives and friends. In many cases, they have unwillingly become controversial public figures, often the subject of snide media reports. Finally, all have sustained major legal costs.

While these prosecutions are unlikely to lead to the formal reintroduction of Soviet-style blanket limitations on freedom of speech on sensitive issues, “spy mania” has certainly served as a warning to other journalists, scientists and activists working on sensitive issues. Anecdotal evidence suggests that many of them have started to impose self-censorship to avoid being the FSB’s next victim. According to Oleg Panfilov, director of the Center for Journalism in Extreme Situations in Moscow, since 2000, many Russian newspapers, especially local ones, have become increasingly reluctant to write on the types of sensitive issues the “spy mania” defendants worked on. He believes this

development is directly linked to “spy mania.”<sup>16</sup> On a positive note, these cases caused a considerable outcry in much of the Russian media.

### **CASE STUDY: IGOR SUTIAGIN**

Igor Sutiagin has endured arguably the harshest treatment of those affected by “spy mania.” Although a court has recognized the negligent manner in which his case investigation was conducted, he has, in contrast to most other “spy mania” defendants, remained in pretrial custody throughout the entire investigation and trial period. His future also remains uncertain, as the charges against him are still standing and a new court hearing is imminent.

#### ***Background***

Igor Sutiagin was born January 17, 1965, and lives in Obninsk, a provincial town about seventy miles south-west of Moscow. He is married and has two daughters. Since 1989, he has worked at the Institute of U.S.A. and Canada Studies of the Russian Academy of Sciences, a leading Russian think-tank specializing in Russia’s relations with the United States and Canada, first as a researcher and, since 1998, as head of the subdivision for Military-Technical and Military-Economic Policy. He is the author and co-author of more than one hundred articles and books on military policy, nuclear weapons, and non-proliferation treaties in Russia, the United States, and various countries in Asia. He also co-authored a comprehensive 693-page research report entitled “Russian Strategic Nuclear Forces.”<sup>17</sup> Sutiagin regularly freelanced for a variety of publications and organizations, including for the U.K.-based consultancy firm Alternative Futures, to supplement his salary at the Institute.

#### ***The Arrest***

At about 8:00 a.m. on October 27, 1999, FSB officers came to Igor Sutiagin’s apartment with a search warrant. They searched the apartment, confiscated all his archives, and brought Sutiagin to their office “for questioning as a witness.” That afternoon, FSB officers conducted searches at Sutiagin’s office, at the private apartment of Joshua Handler, an American PhD student, and at the office and apartment of a researcher of the Institute for the Study of Disarmament. Security officers confiscated computers, disks, documents, and books during these searches.

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<sup>16</sup> Human Rights Watch telephone interview, Moscow, October 20, 2003.

<sup>17</sup> Pavel Podvig and others, *Strategicheskoe iadernoe vooruzhenie Rossii* (Moscow: The MIT Press, 1998).

For the next three days, officers forcibly held Sutiagin at the FSB office although he had not formally been detained. According to his relatives, the officers “strongly recommended” that he not leave the building. They repeatedly interrogated Sutiagin in the absence of a lawyer. On October 29, 1999, the FSB formalized Sutiagin’s detention and transferred him to a pretrial detention center in the city of Kaluga. A day later, Russian state television announced Sutiagin’s arrest, saying he was suspected of “collecting and passing on state secret information on the creation of the most recent generation of nuclear submarines.”<sup>18</sup> State television also—incorrectly—reported that Sutiagin had “confessed to everything.”<sup>19</sup>

### ***The Charges***

On November 5, 1999, the FSB charged Sutiagin with treason.<sup>20</sup> He was indicted more than a year later, on December 19, 2000, after the FSB finalized its investigation. Although the charges against Sutiagin remain classified, they can be reconstructed from a court decision that has been made public. The decision paraphrases the indictment as follows:

While in Birmingham (U.K.) from February 19 to 22, 1998 attending an international scientific conference, and also during a personal visit to London between May 11 and 15, 1998, Sutiagin I.V. was recruited, motivated by personal enrichment, by a representative of the military intelligence agency of the U.S., who introduced himself as Sean Kidd and worked under the cover of a consultancy agency, Alternative Futures, which was especially established by a security service of a foreign state for intelligence activities, with the goal of gathering materials by Sutiagin I.V. about Russia of a military-political, economic and military character, and passing it on the foreign intelligence agency to be used to damage the national security of the Russian Federation.<sup>21</sup>

According to the indictment, between June 1998 and July 1999 Sutiagin collected classified information from “unknown sources” that he passed on to Kidd and an associate of his, Nadya Locke. It also alleges that Sutiagin collated and analyzed information from the Russian and foreign press, which he then provided to Kidd and

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<sup>18</sup> RTR television, Vesti (News), October 29, 1999. See: <http://afnet.integrum.ru/artefact3/ia/ia5.aspx?lv=6&si=gEBfdX2R&qu=2&bi=434&nd=1&f=0> (retrieved October 9, 2003).

<sup>19</sup> Ibid.

<sup>20</sup> Article 275 of the criminal code, see footnote 4.

<sup>21</sup> Decision of the Kaluga Province Court of December 27, 2001. A copy of the decision can be found at: <http://www.Sutiagin.ru/doc/sud011227.html> (retrieved on October 9, 2003).

Locke. According to the indictment, Sutiagin was aware that his foreign interlocutors intended to use these materials to damage Russia's national security interests, thus rendering his actions treasonous.<sup>22</sup>

The summary of the indictment lists eight separate episodes when Sutiagin met with Kidd or Locke in the U.K. or a third country. At these meetings, Sutiagin allegedly received new tasks from his interlocutors and provided them with the materials he had gathered in the preceding period. The materials Sutiagin allegedly provided to Kidd and Locke concerned Russia's early rocket warning system; strategic, anti-aircraft and submarine-based rockets; nuclear weapons; new tanks, aircraft, submarines, and communication systems; as well as Russian military plans and budgets.<sup>23</sup>

### ***The Trial***

The initial trial date was set for December 2000. However, as frequently happens in criminal trials in Russia, a number of extensive, and sometimes unexplained, delays dragged the court hearings out to the end of 2001. Although the trial was closed, the eventual court decision was made public and contains some details of the proceedings. From the decision, it is clear that Sutiagin rejected all the charges against him. He confirmed that he had gathered information for the consultancy firm Alternative Futures but said he did so by using exclusively public sources and on the basis of a legal contract. He said that he did not understand how the investigation came to the conclusion that Sean Kidd and Nadya Locke were U.S. intelligence agents or why he is charged with providing them with information "to be used to damage Russia's national security." The court heard witnesses for both the prosecution and defense, as well as Ministry of Defense experts who assessed whether the materials Sutiagin allegedly passed on to his foreign interlocutors were classified. The content of their testimony remains largely unknown.

On December 27, 2001, the court issued a decision to return the case to the FSB. It noted that the FSB committed numerous violations of criminal procedure that "may have influenced the comprehensiveness, completeness and objectivity of the investigation into the circumstances of the case." On that basis, the court decided to send the case back for further investigation. The court observed that the charges and indictment were so vaguely formulated that they "interfered with Sutiagin's right to a defense." With scarcely veiled skepticism, the court added that if, after the new investigation, the prosecution "conclude[s] that there is sufficient evidence to indict Sutiagin," the charges must be worded with sufficient precision. Paradoxically, while

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<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

rebuffing the FSB in such clear terms for a poorly conducted investigation, the court decided to leave Sutiagin in pretrial detention, without properly motivating its reasons.<sup>24</sup>

### ***Appeal and Further Investigation***

Sutiagin unsuccessfully appealed the decision and, in April 2002, the case was returned to the FSB for further investigation.<sup>25</sup> In July, Sutiagin was suddenly moved from the pretrial detention center in Kaluga to the FSB's Lefortovo prison in Moscow. In August, the additional investigation was finalized and Sutiagin began to prepare his defense. However, Sutiagin's deteriorating health and limitations placed by the FSB on access to the case materials dragged this process out to almost a full year. In August 2003, the case went to court again, this time the Moscow City Court. In September 2003, this court granted a request from Sutiagin for his case to be heard by a jury. The new trial is expected to start imminently.

Sutiagin repeatedly appealed to the procuracy and courts to secure his release from pretrial detention, but to no avail. Both the courts and the procuracy invariably refused his requests, each time referring only to the severity of his alleged crime.<sup>26</sup> In October 2002, the Moscow City Court additionally reasoned that a single-entry Italian visa in Sutiagin's passport, issued in 1999, confirmed that Sutiagin might try to abscond.

### ***Violations of Sutiagin's Rights***

Just as in the other "spy mania" cases, the FSB showed little respect for Sutiagin's right to a fair trial: the charges against him were vaguely worded; his assertion that he only used open sources were never verified; investigators based the charges on secret decrees that Sutiagin was not allowed to see; the FSB violated numerous rules of criminal procedure; and officials publicly denounced Sutiagin as a spy prior to and during his trial. The authorities continue to refuse to release Sutiagin from pretrial detention in violation of international standards.

### ***Charges Vaguely Formulated***

The indictment accuses Sutiagin of providing materials (or intending to do so) to his foreign interlocutors on thirty-six themes. However, the indictment did not specify

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<sup>24</sup> In Soviet times, pretrial custody was the norm rather than the exception for criminal defendants. In line with European pretrial detention standards, Russian legislation has been reformed to make non-custodial measures of restraint the norm. However, in practice, little has changed.

<sup>25</sup> The Supreme Court rejected his appeal in March 2002.

<sup>26</sup> The procuracy is the agency that is responsible for prosecuting criminal cases in court as well as conducting criminal investigations in certain categories of crimes.

exactly what materials he was supposed to have handed over. In court, Sutiagin complained that twenty-eight of the themes were so vaguely formulated that he could not understand what kind of concrete materials the prosecution had in mind. As a result, he could not prepare his defense appropriately. In its decision of December 2001, the court agreed with Sutiagin's complaint. It stated that "the formulation of the indictment, which does not allow Sutiagin I.V. to know exactly what he is accused of, violates his right to a defense..."

In its decision, the court listed numerous sections of the indictment that it considered to be too vague. For example, the indictment stated that Sutiagin provided Kidd and Locke with materials on "the battle capabilities of the early warning system for rocket attacks, and its main tactical and technical characteristics." According to the court, "neither in the charges nor in the indictment does the investigator state concretely what materials on this theme, and in what quantity, Sutiagin collected, kept for handover, and handed over to Kidd."

The court further criticized the investigation for failing to "analyze, or even cite the testimony of Sutiagin about the circumstances under which he collected and kept the materials, as well as about the concrete content of the materials." It pointed out that, in accordance with Russian procedural rules, the indictment should contain an analysis of evidence, including the testimony of the defendant.

In conclusion, the court stated:

...the lack of concrete formulation of the charges regarding the contents of the materials [that Sutiagin collected, handed over, or intended to hand over to Kidd and Locke] does not allow the court to verify the arguments of the prosecution and defense, resolve the questions about the sources or how the materials were collected, the accuracy of the materials, whether the materials can indeed be considered to be classified, or investigate the question whether damage could have been done to the national security of the Russian Federation.

### ***Open Sources Issue***

Sutiagin has consistently maintained that all materials he provided to Kidd and Locke had previously appeared in the public domain. In his testimony to the prosecution, Sutiagin listed numerous Russian and foreign publications that he had used to produce the materials for his interlocutors. His lawyers provided the FSB with copies of many of these publications. Yet the investigation neglected to verify these claims.

In its ruling, the court criticized the investigation for this failure. In particular, it noted that Ministry of Defense experts questioned during the trial had confirmed that they had

not verified Sutiagin's assertions that he had received certain pieces of information from English-language publications. It also stated that "Sutiagin repeatedly filed requests in which he asked [the investigation] to verify whether specific information had not been declassified." In these requests Sutiagin had drawn attention to newspaper articles in which top Russian military officials had publicized the information that the prosecution claimed was classified. The court furthermore pointed out that the prosecution had failed to identify any of the sources from which Sutiagin was supposed to have received classified information, and that it did not identify exactly what materials he was supposed to have received from them.

### *Use of Secret Decrees*

As part of the investigation, Ministry of Defense experts carried out several assessments to determine whether the materials provided by Igor Sutiagin to his foreign interlocutors were classified. They conducted these assessments on the basis of secret Ministry of Defense Decree No. 055. Sutiagin, who never had a security clearance, did not know the contents of the decree at the time of his alleged criminal activity. He has also not been allowed to see the decree—including the provisions that have been used in the case against him—to prepare his defense.

A 1993 federal law on state secrets (significantly amended in 1997) and a presidential decree of 1995 classify fairly broadly defined areas of military life as state secrets.<sup>27</sup> Because Decree 055 is secret, its precise nature is not known.<sup>28</sup> The 1995 presidential decree elaborated on what information would be considered a state secret under the more general terms of the 1993 law. It is possible that Decree 055 provides a further, more detailed elaboration. It may also be possible that certain provisions of Decree 055 widen the scope of the law and presidential decree. Charges under such provisions

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<sup>27</sup> For example, the law states that information "on the contents of strategic and operative plans, documents of the battle department for the preparation and conduct of operations, the strategic, operative and mobilizational deployment" is classified. Classifying broad areas of information as state secret and criminalizing their disclosure may also violate freedom of speech standards. Article 19 of the International Covenant on Civil and Political Rights does specifically provide for restrictions on freedom of speech "for the protection of national security." However, according to the U.N. Special Rapporteur on Freedom of Opinion and Expression, the right to freedom of expression and information can be restricted for the purpose of protecting national security only in the most serious cases of a direct political or military threat to the entire nation. 'See: *Report of the Special Rapporteur, Mr Abid Hussein, pursuant to Commission on Human Rights Resolution 1993/45*'. Reference E/CN.4/1995/32, 14 December 1995, para. 48. This briefing paper does not examine whether Russia's state secrets legislation is consistent with this principle.

<sup>28</sup> The text of a few of the decree's provisions became public in the Nikitin and Pasko cases after courts required the FSB to provide the text to the defendants. Human Rights Watch does not know whether any of the provisions that have become public are used as the basis for the charges against Sutiagin.



would be based on secret legislation and therefore violate both Russian and international law.<sup>29</sup>

As neither Sutiagin nor the court have been permitted to see Decree 055, it has not been possible to determine whether the provisions of the decree used in the Sutiagin case provide a more detailed breakdown of the general themes of the law and presidential decree or actually classify new types of information. As the court pointed out in its ruling, the fact that Sutiagin cannot examine these documents, or at least the provisions that are invoked against him, violates his right to prepare a defense.

### *Violations of Criminal Procedure*

Sutiagin has complained of numerous violations of the rules of criminal procedure. In court, he charged that many of the expert assessments were carried out in violation of the law, and that much of the evidence was obtained in violation of established procedure. He asked the court to declare these expert assessments and evidence inadmissible. In its decision, the court indeed noted dozens of violations in the conduct of expert assessments but ruled that, as it was returning the case to the FSB for further investigation, it did not need to resolve the issue of admissibility of evidence. The court did not discuss the alleged violations in obtaining evidence.

### *Presumption of Innocence*

In the course of the investigation, state-run media, the FSB, and other officials repeatedly made public statements asserting Sutiagin's guilt, in violation of the presumption of innocence.<sup>30</sup> These statements included the following:

- On October 30, 1999, several days after his arrest but before charges were brought against him, state-owned television company RTR accused Sutiagin of espionage for U.S. intelligence agencies. It stated that “[a]ccording to the FSB, he [Sutiagin] has

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<sup>29</sup> Article 15(3) of Russia's constitution holds that “any normative acts that affect the rights, freedoms and obligations of people and citizen cannot be applied if they have not been published for general knowledge.” Article 7 of the European Convention on Human Rights states that “no one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense under national or international law at the time when it was committed.” The European Court of Human Rights has held that, in order to be considered a “law” in the sense of article 7, a legal act must be “adequately accessible: the citizen must be able to have an indication that is adequate, in the circumstances, of the legal rules applicable to a given case.” In the *Silver* case, the Court held that legal acts that were not published did not meet this requirement (*Silver* case, judgment of 25 March 1983, para 88.) See also article 15 of the ICCPR.

<sup>30</sup> Article 6(2) of the European Convention on Human Rights states that “everyone charged with a criminal offense shall be presumed innocent until proved guilty according to law.” For a similar provision, see article 14(2) of the ICCPR.

admitted his guilt.” It continued to assert that “[i]t was determined that among Sutiagin's contacts were intelligence officers from the United States and the Great Britain. And recently the researcher met with Joshua Handler, who works at Princeton University. During a search of Handler's Moscow apartment the FSB found materials of an "intelligence" nature. The FSB has no doubts that Handler is also involved in gathering of secret information. What alerted the operatives was the fact that Handler, in addition to everything else, works at the Center for Strategic and International Studies. The FSB has data that this Center is involved in "double-purpose" research. Besides, since 1995, the Russia and CIS division of the Center is headed by Keith Bush, the former U.S. President's nephew and a known intelligence officer.”<sup>31</sup>

- In December 2000, the head of the FSB, Nikolai Patrushev, not only asserted Sutiagin's guilt in a newspaper interview but provided the newspaper with wrong information about the case. Patrushev told the newspaper: “In October 1999, the employee of the US-Canada Institute Sutiagin was detained. In the course of the investigation, evidence was uncovered of espionage activity in his contact with the American Joshua Handler, a specialist on nuclear security who now lives in the United States. It has been preliminarily determined that Handler received secret information from Sutiagin about the Russian armed forces and passed it on to intelligence agencies in the U.S.” At the time of this statement, the FSB had already indicted Sutiagin. The indictment made no reference to Joshua Handler.<sup>32</sup>
- Also in December 2000, soon after the trial began, two Kaluga newspapers *Vest'* and *Obninsk* published a statement by Valerii Loginov, the chief of the Kaluga regional FSB. He boasted that his regional department had uncovered Sutiagin's “espionage activities” and stated that “we do not conceal that all servicemen of Kaluga regional [FSB] department are proud of this result...”<sup>33</sup>
- On December 3, 2001, Anatolii Artamonov, the governor of Kaluga province, stated in an interview that “an analysis of strategic information, even being based on open

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<sup>31</sup> See *RTR, Vesti*, October 30, 1999, at RTR television, *Vesti (News)*, October 29, 1999. See: <http://afnet.integrum.ru/artefact3/ia/ia5.aspx?lv=6&si=gEBfdX2R&qu=2&bi=434&nd=1&f=0> (retrieved October 9, 2003). The FSB indeed conducted a search at Joshua Handler's apartment. However, it never charged Handler with any wrongdoing and his name does not appear in the charges or indictment against Sutiagin.

<sup>32</sup> “*Esli my slomaemsia i uidem s Kavkaza – nachnetsia razval strany* (If we fail and leave the Caucasus – the country will start to fall apart),” *Komsomolskaia Pravda*, December 20, 2000. The full text of the interview can be found on the FSB's official web site: <http://www.fsb.ru/smi/liders/patrush3.html> (retrieved October 9, 2003).

<sup>33</sup> As cited on <http://www.Sutiagin.ru/hron/001220.html> (retrieved October 9, 2003).

sources and selling it abroad” is a crime and that Sutiagin must be found guilty. In the same interview, the governor admitted that he was not familiar with the materials of the case.<sup>34</sup>

- On December 27, 2001, the day the Kaluga court issued its decision, the FSB told ITAR-TASS news agency that Sutiagin passed secret information to a Britain consultancy company and, falsely, that “Sutiagin admitted his guilt even before the trial”<sup>35</sup>

### *Prolonged Pretrial Detention*

One aspect of the Sutiagin case sets it apart from the other spy cases: four years after his arrest, Sutiagin still remains in jail waiting for a court to rule on his innocence or guilt. None of the other “spy mania” defendants spent as much as half of this time in pretrial detention.<sup>36</sup> In certain complex criminal cases, such a long period in pretrial detention may be lawful, provided there are compelling reasons to keep the person in detention and the state exhibits “special diligence” in the conduct of the case.<sup>37</sup> In Sutiagin’s case, the FSB, procuracy, and courts never advanced compelling arguments for Sutiagin’s prolonged

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<sup>34</sup> “*Kaluzhskii gubernator schitaet obviniaemogo v shpionazhe sotrudnika Instituta SSHA I Kanady RAN Igoria Sutiagina vinovatyim ‘pered obshestvom’* (The Governor of Kaluga considers the employee of the Institute of USA and Canada, Igor Sutiagin, who has been charged with espionage, guilty “before the public”),” published on news website Rosbalt.ru, see: <http://www.rosbalt.ru/2001/12/3/main/society/27395.html> (retrieved October 9, 2003).

<sup>35</sup> “*Sutiagin eshche do suda publichno priznalsia FSB v sotrudnichestve s inostrannoi razvedkoi* (Sutiagin publicly confessed his cooperation with foreign intelligence to the FSB before the trial),” Itar-Tass news agency, December 27, 2001. The statement can be found at: <http://www.fsb.ru/smi/remark/2001/011227-1.html> (retrieved October 9, 2003).

<sup>36</sup> Grigorii Pasko spent twenty months in pretrial detention, Valentin Danilov – nineteen months, Valentin Moiseev – seventeen months, and Alexander Nikitin ten months. Vladimir Shchurov and Vladimir Soifer were never held in pretrial detention. Pasko and Moiseev went back to jail after being convicted. They served thirty-three months and four-and-a-half years respectively in prison in total.

<sup>37</sup> In order to determine whether the time a person has spent in pretrial detention is reasonable, the interests of the accused person must be weighed against the public interest, with due regard for the principle of the presumption of innocence. The European Court of Human Rights has formulated a set of two questions to make this determination. First, the grounds given by the national judicial authorities for continued detention must be “relevant and sufficient.” Second, the national authorities must have displayed “special diligence” in the conduct of the proceedings. The Court has accepted four basic reasons for refusing bail: the risk that the accused will fail to appear for trial; the risk that the accused, if released, would take action to prejudice the administration of justice; or commit further offences; or cause public disorder. A state may not advance these reasons in the abstract but has to “examine all the facts arguing in the specific case for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions on the applications for release.” (See: *Smirnova v Russia*, judgment of July 24, 2003, paras. 56 to 64) In determining whether a state observed the “special diligence” requirement, the Court has assessed three factors: the complexity of the case, the conduct of the detainee, and the conduct of the authorities. In cases when the length of proceedings is primarily attributable to the conduct by the authorities, the Court has found a violation of Article 5(3). (See: *Toth v Austria*, judgment of December 12, 1991, para 77).

detention and the FSB's conduct of the case, which caused very significant delays, was far from diligent.

In their repeated decisions to prolong Sutiagin's detention, the FSB, procuracy, local courts, and the Supreme Court of Russia have failed to carefully examine all the relevant facts to determine whether a genuine requirement of public interest existed for Sutiagin's continued detention. Generally, the authorities referred only to the severity of the alleged crime to justify keeping him in detention, even after the court acknowledged the weak grounds the prosecution presented for the charges. In October 2002, in requesting extensions of the pretrial detention term, the prosecution even argued that there was a risk that Sutiagin would abscond since he had an Italian visa in his passport. The court accepted this alleged flight risk at face value. It did not examine whether the visa was still valid or entertain the possibility of withholding Sutiagin's passport to ensure he would not leave Russia.

Even if the decisions to repeatedly prolong Sutiagin's detention had been based on solid grounds, the authorities clearly did not exhibit "special diligence" in the conduct of this case. Although the Sutiagin case is arguably complex and some delays in proceedings may be attributable to the defendant and his lawyers (in particular, a several month long delay that occurred during the first trial due to an illness of one of the defense lawyers), the government's conduct throughout the case has caused the vast majority of the delays. In particular, due to the FSB's poor investigation of the case the Kaluga court decided to send it back to the FSB for further investigation—delaying the case by many months.

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