



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

THIRD SECTION

**CASE OF NIKOTIN v. RUSSIA**

*(Application no. 80251/13)*

JUDGMENT

STRASBOURG

8 January 2019

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



**In the case of Nikotin v. Russia,**

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

Branko Lubarda, *President*,

Pere Pastor Vilanova,

Georgios A. Serghides, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 4 December 2018,

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

**PROCEDURE**

1. The case originated in an application (no. 80251/13) 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 Aleksey Vladimirovich Nikotin (“the applicant”), on 7 October 2013.

2. The applicant was represented by Mr V. Larionov, a lawyer practising in Barnaul. The Russian Government (“the Government”) were represented by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights.

3. On 15 December 2017 notice of the complaint concerning the alleged impartiality of the trial court was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

**THE FACTS****THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1984 and is currently serving a prison sentence in Rubtsovsk, Altai Region.

5. On 2 March 2011 the applicant was arrested. On an unspecified date he was charged with extortion and the murder of Vos.

6. On an unspecified date a trial by jury was opened in the applicant’s case in the Altai Regional Court.

7. On an unspecified date the jury returned a guilty verdict against the applicant and three other defendants. By a judgment dated 17 May 2012 the Regional Court sentenced the applicant to nineteen years’ imprisonment.

8. On 6 September 2012 the Supreme Court of the Russian Federation quashed the verdict on appeal, in view of contradictory conclusions contained in the jury's verdict, and remitted the matter to the trial court for fresh consideration.

9. On 30 January 2013 the jury returned a guilty verdict in respect of the applicant and three other defendants.

10. On 19 February 2013 juror V. made a statement addressed to the trial judge. She alleged that Ch., Vos's mother, had repeatedly talked to the jurors during the adjournments. Ch. had informed the jurors that it was the second trial and that the applicant and other defendants had already been found guilty of her son's murder. Ch. had also advised the jurors to check out the information concerning her son's murder on the Internet. V. had done so and, as a result, had been influenced by this information when finding the defendants guilty. It appears that the trial judge ordered an inquiry in response to V.'s allegations.

11. On 25 February 2013 Ch. submitted a written statement denying V.'s allegations.

12. On 26 February 2013 jury foreperson G. signed a statement in which she indicated that she "had not been aware" of any instances of undue influence on the jury by Ch.

13. On 27 February 2013 the Regional Court sentenced the applicant to nineteen years' imprisonment.

14. On 28 February 2013 the trial judge asked the bailiffs' service to conduct an inquiry in response to the statement made by juror V.

15. On 18 March 2013 the deputy head of the bailiffs' service responded to the trial judge as follows:

"It follows from the reports submitted by the bailiffs ... and the bailiffs' group supervisor that on the relevant dates the jurors were supervised by the bailiff ... while they were in the courtroom or in the jurors' room. None of the jurors contacted [the bailiffs' service] as regards the [jurors'] security or interference with the fulfilment of the jury's duties."

16. Following an appeal lodged by the applicant and two other defendants, on 8 August 2013 the Supreme Court of the Russian Federation upheld the applicant's conviction. As regards the applicant's argument that Ch. had exerted undue influence on the jury, the court stated as follows:

"[The court] rejects as unsubstantiated the argument ... that the jury's verdict was ... a result of unlawful influence exerted by Ch.

According to the trial record, the jury members were selected in compliance with the requirements set out in [the rules of criminal procedure].

The materials in the case file show that ... Ch. did not exert undue influence on the jurors.

[The court] discerns no violations of the rules [of criminal procedure, including those alleged by [the defendants], that would justify the quashing of the verdict."

## I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

17. The applicant complained that Ch. had exerted undue pressure on the jury in contravention of Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

“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.”

18. The Government submitted that the applicant’s allegations had been examined and rejected as unsubstantiated by the national courts and that the criminal proceedings against the applicant had been in compliance with Article 6 of the Convention.

19. The applicant maintained his complaints.

### A. Admissibility

20. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

### B. Merits

#### 1. *General principles*

21. The general principles concerning the impartiality of tribunals are well established in the Court’s case-law (see, for example, *Kyprianou v. Cyprus* [GC], no. 73797/01, §§ 118-21, ECHR 2005-XIII).

#### 2. *Application of these principles to the present case*

22. On the facts, the Court observes that the jury delivered a “guilty” verdict in the applicant’s case. Some three weeks later, pending the sentencing, juror V. came forward with an allegation that Ch., the mother of the victim, had repeatedly communicated with the jury members during the trial trying to influence them. The presiding judge ordered an inquiry into the issue. His findings were subject to review by the appellate court, which rejected the applicant’s complaint about the lack of impartiality of the trial court as unsubstantiated.

23. The Court firstly notes that it is unable, in the circumstances of the present case, to rule on the evidential value of the juror’s statement made after the trial or to decide whether the communications between Ch. and the jurors did take place. Nevertheless, it considers that the allegations made by V. and relied upon by the applicant in his statement of appeal were sufficiently serious to warrant examination. Accordingly, in the Court’s view, it was incumbent on the national judicial authorities to check whether,

as required by Article 6 § 1 of the Convention, the trial court was “an impartial tribunal” within the meaning of that provision. In performing the check, they had a duty to use all the means in their power to dispel any doubts as to the reality and nature of the applicant’s allegations (see *Farhi v. France*, no. 17070/05, §§ 26 and 28, 16 January 2007).

24. The Court takes into account the fact that the trial judge did not dismiss V.’s allegations outright (see, by contrast, *Remli v. France*, 23 April 1996, §§ 43-48, *Reports of Judgments and Decisions* 1996-II). He asked the bailiff to conduct an inquiry. He also obtained written statements from the jury foreperson and Ch. The materials collected by the judge were subject to review by the appellate court.

25. However, in the Court’s view, those actions were not sufficient to dispel any doubts as to the reality and nature of the applicant’s allegations. In its view, only the questioning of the jurors would have been likely to shed any light on the nature of the communications, if any, and the influence they might have had on the jurors, as alleged by V. Furthermore, the text of the bailiff’s letter does not enable the Court to determine the effectiveness of the inquiry conducted by his service. It merely stated, without providing any detail, that none of the jurors had reported any irregularities as regards the fulfilment of their duties.

26. Regard being had to the above factors, the Court considers that the inquiry conducted by the national judicial authorities in the instant case cannot be said to provide the applicant with the possibility of remedying, if proved necessary, a situation contrary to the requirements of the Convention. Accordingly, there has been a violation of Article 6 § 1 of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

29. The Government submitted that, should the Court decide to make an award to the applicant, it should do so in compliance with its well-established case-law.

30. According to the Court’s settled case-law, an applicant, who has suffered an infringement of the rights guaranteed by Article 6 of the

Convention, should, as far as possible, be put in the position in which he would have been, had the requirements of that provision not been disregarded, and that the most appropriate form of redress would, in principle, be the reopening of the proceedings, if requested (see, *mutatis mutandis*, *Öcalan v. Turkey* [GC], no. 46221/99, § 210 *in fine*, ECHR 2005-IV, and *Popov v. Russia*, no. 26853/04, § 263, 13 July 2006). The Court notes, in this connection, that Article 413 of the Russian Code of Criminal Procedure provides the basis for the reopening of the proceedings if the Court finds a violation of the Convention. Accordingly, the Court does not consider it necessary, in the circumstances of the present case, to make an award to the applicant in respect of non-pecuniary damage.

### **B. Costs and expenses**

31. The applicant also claimed 212,566 Russian roubles (RUB) for the cost and expenses incurred before the Court (RUB 200,000 in respect of the legal fee and RUB 12,566 in respect of postal costs).

32. The Government submitted that, should the Court decide to reimburse the applicant's claims, it should do so in compliance with its well-established case-law.

33. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 1,000 covering costs under all heads.

### **C. Default interest**

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months, EUR 1,000 (one thousand euros), plus any tax that may be chargeable to him, in respect of costs and expenses, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 8 January 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı  
Deputy Registrar

Branko Lubarda  
President