



Nine Russian nationals accused of two terrorist attacks in 2009: violations for lack of public trial and unfairness of proceedings

In today's **Chamber judgment**¹ in the case of [Kartoyev and Others v. Russia](#) (application no. 9418/13) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 1 (requirements of public trial and impartial tribunal) of the European Convention on Human Rights, and

a violation of Article 6 §§ 1 and 3 (d) (equality of arms) of the European Convention.

The case concerned the criminal proceedings against the applicants, nine Russian nationals who were charged with committing two terrorist attacks in 2009. They claimed that they had not had a trial before an independent and impartial court, that they had been deprived of their right to a public trial (the hearings were held behind closed doors) and that the proceedings had been unfair.

The Court took the view that the exclusion of the public from their trial, on grounds of guaranteeing the protection of national security intelligence and of ensuring the safety of the parties, had not been justified in view of the circumstances of the case. It further noted that the Supreme Court, as it too had heard the case in private, had not remedied the previous failure by the Regional Court to conduct the proceedings in public.

As to the fairness of the criminal proceedings against the applicants, the Court found that there had been a failure to ensure an equality of arms between prosecution and defence, which was one of the fundamental aspects of the right to a fair trial.

Principal facts

The nine applicants were all Russian nationals: Mr Murad Mukhazhirovich Kartoyev (born in 1981 and living in Tver), Mr Zelimkhan Yakubovich Aushev (born in 1985 and living in Ognennyy), Mr Beslan Umatgireyevich Kartoyev (born in 1977 and living in Tver), Mr Tatarkhan Umatgireyevich Kartoyev (born in 1973 and living in Sol-Iletsk), Mr Beslan Daudovich Kartoyev (born in 1986 and living in Tver), Mr Idris Alikhanovich Kartoyev (born in 1976 and living in Tver), Mr Ilyas Daudovich Kartoyev (born in 1976 and living in Tver), Mr Magomed Mussayevich Kartoyev (born in 1979 and living in Tver) and Mr Timur Mukhazhirovich Kartoyev (born in 1977 and living in Tver).

On 27 November 2009 the "Nevski Express" train travelling between Moscow and Saint Petersburg was bombed, killing 27 people and injuring 207. On 28 November 2009 a second bombing took place at the scene of the investigation of the previous day's attack. Six people at the scene, including the director of the Federal Security Service (FSB), were slightly injured. Following a special operation in the village of Ekajevo in the Republic of Ingushetia on 2 March 2010, the applicants were arrested on suspicion of having committed the attacks. Biological samples were taken from them and they were remanded in custody in a Moscow prison.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

At the end of the preliminary investigation, during which various inspections, searches and forensic assessments were carried out, all the applicants were charged with membership of an illegal armed group, conspiracy to commit offences against individuals and legal entities, and illegal acquisition and possession of firearms, ammunition and explosives as part of a criminal enterprise. Some of the applicants were also charged with aggravated murder and acts of terrorism resulting in loss of life. The criminal case was then referred to the Tver Regional Court for adjudication.

In a judgment of 22 May 2012 the Regional Court found all the applicants guilty of unlawful acquisition and possession of firearms, ammunition and explosives as part of a criminal enterprise and of belonging to an illegal armed group. Four applicants were also convicted of acts of terrorism resulting in loss of life and sentenced to life imprisonment. The other five applicants were sentenced to between seven and eight years' imprisonment. The applicants appealed against the judgment.

On 25 February 2013 the Supreme Court of the Russian Federation, also in a private hearing, dismissed the applicants' appeal.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (requirements of public trial and impartial tribunal), the applicants complained that the examination of their case in private had infringed their right to a public hearing, that they had not been tried by an independent and impartial tribunal and that the criminal proceedings against them had been unfair, in particular because the principles of the equality of arms and adversarial proceedings had been breached.

The application was lodged with the European Court of Human Rights on 25 January 2013.

Judgment was given by a Chamber of seven judges, composed as follows:

Georges Ravarani (Luxembourg), *President*,
Georgios A. Serghides (Cyprus),
Dmitry Dedov (Russia),
Darian Pavli (Albania),
Peeter Roosma (Estonia),
Andreas Zünd (Switzerland),
Frédéric Krenç (Belgium),

and also Olga Chernishova, *Deputy Section Registrar*.

Decision of the Court

[Article 6 § 1](#)

The Court observed that there was no evidence in the file before it that the applicants had expressed any concern about the independence and impartiality of the court, owing to the alleged presence of prosecutors in the deliberation room, or that they had challenged the record of that hearing. The Court therefore considered that the complaint concerning the independence and impartiality of the Regional Court was manifestly ill-founded and had to be rejected.

With regard to the decision by the Regional Court to hold the proceedings in private, the Court reiterated that the requirement to conduct judicial proceedings in public, under Article 6 § 1 of the Convention, protected citizens against secret justice without public scrutiny and was also one of the means of preserving public confidence in the courts.

In the present case, while the authorities might have had a legitimate interest in preserving the confidentiality of classified documents, the Regional Court should have limited the exclusion of the

public from the proceedings to what was strictly necessary in order to achieve the aim pursued. In addition, the court had not envisaged any alternative measures to limit recourse to such exclusion, for example by restricting access only to classified documents or by holding only certain hearings behind closed doors.

Furthermore, the Court considered that the exclusion of the public from the proceedings against the applicants on the pretext that not all members of the illegal armed group had been arrested at the time of the trial could not be justified, since no factual evidence to demonstrate a real danger had been put forward by the Regional Court.

It further noted that the Supreme Court, by also hearing the criminal case in private, had not remedied the failure to conduct a public trial before the Regional Court

The Court thus found that there had been a violation of Article 6 § 1 of the Convention.

Article 6 §§ 1 and 3 (d)

The Court reiterated that any criminal proceedings had to be adversarial in nature and guarantee an equality of arms between prosecution and defence, this being one of the fundamental aspects of the right to a fair trial. In particular, both the prosecution and the defence should be able to take cognisance of the observations or evidence produced by the other party and the authorities must communicate to the defence all relevant evidence in their possession.

In the present case, the Court considered that, even assuming that the technical information requested by the applicants should not have been included in the criminal file, as the Regional Court had held, the adversarial principle required that the defence be given access to it. The Court concluded that the equality of arms between the prosecution and the defence had not been ensured.

As regards the Regional Court's rejection of the applicants' request to obtain the examination in court of the forensic experts who had examined the substances at issue, the Court considered that this decision ran counter to the principles of adversarial proceedings and equality of arms, since the Regional Court had based its conclusions on the testimony of experts who had never been heard in court. The Court also observed that the defence had attempted to prove that the reports produced by the prosecution were deficient by submitting specialist opinion, but that the Regional Court had refused to admit the latter in evidence, in spite of their prima facie relevance. Furthermore, the Regional Court's refusal to grant the applicants' request for a specialist to be given an opportunity to comment on the forensic reports, on the ground that the specialist in question was not legally entitled to comment on the conclusions of a judicial expert, was incompatible with the principle of equality of arms.

The Court concluded that the domestic courts' approach to the admissibility of expert opinions drawn up at the request of the defence had created an imbalance between the defence and the prosecution, thereby breaching the principle of equality of arms.

There had thus been a violation of Articles 6 §§ 1 and 3 (d) of the Convention on account of a lack of fairness in the criminal proceedings against the applicants.

Just satisfaction (Article 41)

The Court held that the finding of a violation in itself constituted sufficient just satisfaction for any non-pecuniary damage sustained by the applicants and rejected the remainder of their claim.

The judgment is available only in French.

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Press contacts

echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

Denis Lambert (tel : + 33 3 90 21 41 09)

Tracey Turner-Tretz (tel : + 33 3 88 41 35 30)

Inci Ertekin (tel : + 33 3 90 21 55 30)

Neil Connolly (tel : + 33 3 90 21 48 05)

Jane Swift (tel : + 33 3 88 41 29 04)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.