



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

1959 · 50 · 2009

FIRST SECTION

CASE OF MALKIN v. RUSSIA

(Application no. 67363/01)

JUDGMENT
(Striking out)

STRASBOURG

8 October 2009

FINAL

08/01/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Malkin v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyeu,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 17 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 67363/01) 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 Boris Mironovich Malkin (“the applicant”), on 28 November 2000.

2. The applicant, who had been granted legal aid, was represented by Mr V. An, a lawyer practising in Barnaul. The Russian Government (“the Government”) were initially represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative, Mr G. Matyushkin.

3. The applicant complained, in particular, that he was kept in detention despite a court decision ordering his release.

4. By a decision of 16 December 2008, the Court declared the application partly admissible.

5. The Government, but not the applicant, filed further written observations (Rule 59 § 1).

THE FACTS

6. The applicant was born in 1948 and lives in Barnaul.

7. On 11 January 1999 the Central district police department of Barnaul opened a criminal case in respect of the applicant's alleged misappropriation of funds from the Rosbankstroy building company. The applicant was the president and a majority shareholder of Rosbankstroy.

8. On 24 June 1999 the prosecutor's office of the Altay Region opened a criminal case concerning allegations of bribery. It was alleged that in order for Rosbankstroy to be chosen as a chief contractor for the building of the Russia Central Bank's main computer centre in Moscow the applicant had bribed a Mr K., who was the head of the Central Bank's construction department. On the same day the prosecutor's office joined both criminal cases into a single set of proceedings.

9. On 25 June 1999 the applicant was charged with bribery and his detention pending trial was ordered by the prosecutor of the Altay Region. He was placed in pre-trial detention facility IZ-17/1 in Barnaul.

10. As the investigation into the bribery charge had been completed, on 5 November 1999 the prosecutor's office severed the proceedings concerning that charge from the other proceedings and on 2 December 1999 transmitted that case to court for trial. The remaining part of the case concerning the allegations of the applicant's misappropriation of Rosbankstroy's funds remained with the prosecutor's office for further investigation since there was insufficient evidence to bring charges against the applicant on that account. It was assigned the number 76574.

11. On 1 February 2000, having examined the materials in criminal case no. 76574, the prosecutor's office decided that it had sufficient evidence that funds belonging to the State-owned Central Bank had been misappropriated in the course of the construction of its main computer centre in Moscow by Rosbankstroy. Mr K. and the applicant were alleged to have unlawfully overpriced the construction work. The prosecutor's office decided to open a new criminal case and the next day brought misappropriation charges against the applicant.

12. On 14 March 2000 the Altay Regional Court convicted the applicant of bribery and sentenced him to three years' imprisonment.

13. On 28 March 2000 the new criminal case concerning the misappropriation of the Central Bank's funds was joined with the case concerning the misappropriation of Rosbankstroy's funds. The joined case retained the number 76574.

14. On 11 July 2000 the Supreme Court partly quashed the conviction of bribery, discharged the applicant from the obligation to serve his sentence on the basis of the State Duma's amnesty act and ordered his release. However, the applicant was not released and remained in detention facility IZ-17/1.

15. On 14 July 2000 the prosecutor of the Altay Region ordered the applicant's detention pending trial on the charge of misappropriation of the Central Bank's funds in case no. 76574.

16. The applicant appealed. He argued, in particular, that he had been detained pending investigation since 25 June 1999 and the term of his detention had been extended for up to six months. The case concerning the bribery charge had been examined by a court and the Supreme Court had, in

the decision of 11 July 2000, exempted him from serving his sentence. The new case concerning the alleged misappropriation of the Central Bank's funds had been joined with the earlier case concerning the alleged misappropriation of Rosbankstroy's funds, pending the outcome of which he had already been detained. Accordingly, in the absence of a duly authorised extension, his continuing detention was unlawful.

17. On 14 August 2000 the applicant's appeal was dismissed by a judge of the Barnaul Central District Court.

18. The District Court's decision of 14 August 2000 was appealed against by the applicant and quashed on 21 September 2000 by the Altay Regional Court for failure to state sufficient reasons. The lawfulness of the detention order of 14 July 2000 was re-examined and confirmed on 12 October 2000 by another judge of the District Court. The applicant appealed. On 9 November 2000 the Regional Court upheld the District Court's decision.

19. On 28 June 2002 the Leninskiy District Court of Barnaul convicted the applicant of large-scale fraud in respect of the Central Bank's funds and of attempted large-scale fraud in respect of the property of the Altaymarketcentre Karavan company. The applicant was sentenced to five years and one month's imprisonment and an order was also made for the confiscation of his property. The judgment was upheld by the Altay Regional Court on 31 October 2002.

20. The applicant lodged an application for supervisory review of his case. On 19 October 2004 the Presidium of the Altay Regional Court granted his application, quashed the judgment of 28 June 2002, as upheld on 31 October 2002, and terminated the criminal proceedings for lack of *corpus delicti*.

THE LAW

21. The Court observes that it decided, on 16 December 2008, to declare admissible, without prejudging the merits, the applicant's complaint concerning the State's failure to release him in accordance with the Supreme Court's decision of 11 July 2000 (see paragraph 14 above). It declared the remainder of the application inadmissible. Following the decision on admissibility, in a letter of 19 December 2008 the Court invited the parties to submit their further observations by 27 February 2009. The Government, but not the applicant, filed their observations within the specified time-limit.

22. In the absence of any reply from the applicant, by a registered letter of 16 April 2009 the Court drew the applicant's attention to the fact that the period allowed for submission of his observations and claims for just satisfaction had expired and that no extension of the deadline had been

requested. The applicant was reminded that, in accordance with Article 37 § 1 (a) of the Convention, the Court may strike a case out of its list of cases where the circumstances lead to the conclusion that the applicant does not intend to pursue the application.

23. The Court's letter reached the applicant's representative on 27 April 2009, the latter having signed the advice of receipt to that effect. No reply followed.

24. Having regard to the applicant's failure to communicate with the Court following its decision on admissibility, the Court finds that the applicant does not intend to pursue his application within the meaning of Article 37 § 1 (a) of the Convention. The Court cannot discern any special circumstances regarding the respect for human rights as defined in the Convention which would require a continuation of the examination of the case (see, by way of contrast, *Karner v. Austria*, no. 40016/98, § 28, ECHR 2003-IX) and finds it appropriate to strike it out of the list of cases.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in English, and notified in writing on 8 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Nina Vajić
President