

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

THIRD SECTION

CASE OF MASLENNIKOV v. RUSSIA

(Application no. 42301/11)

JUDGMENT

STRASBOURG

8 December 2020

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Maslennikov v. Russia,

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

Darian Pavli, *President,*
Dmitry Dedov,
Peeter Roosma, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 42301/11) 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 Sergey Borisovich Maslennikov ("the applicant"), on 25 June 2011;

the decision to give notice of the application to the Russian Government ("the Government");

the parties' observations;

Having deliberated in private on 17 November 2020,

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

INTRODUCTION

1. The case concerns the lack of a public hearing owing to the classification of some of the documentary evidence as "secret".

THE FACTS

2. The applicant was born in 1968 and lives in Barnaul. The applicant was represented by Mr Davydov, a lawyer practising in Barnaul.

3. The Government were initially represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. The applicant held the post of head of the Barnaul Internal Affairs Department ("the Department").

6. On 10 November 2009 the head of the Main Internal Affairs Department for the Altay Region ordered an inspection of the Department's accounting documents, in particular, the documents containing information on the Department's expenses for police activities and investigations, contracts and other documents in line with the Ministry of Internal Affairs' decrees. It was established that the applicant had authorised contracts with and subsequently payments to some police informers, in breach of the law.

7. On 5 August 2010 the applicant was dismissed from his post for repeated disciplinary violations. He challenged the decision before a court.

8. On 24 August 2010 a judge of the Altay Regional Court held that the applicant's dismissal related to investigating activities and that, in accordance with the Code of Civil Procedure, a preliminary hearing should be held.

9. On 12 November 2010 the Altay Regional Court dismissed the applicant's claim in camera.

10. On 4 February 2011 the Supreme Court of Russia held a hearing in camera in the applicant's and the opposite party's presence and upheld the decision of 12 November 2010 on appeal.

11. On 27 July 2011 a judge of the Supreme Court of Russia refused to refer the applicant's request for supervisory review to the Presidium of the Supreme Court.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

12. Article 123 of the Russian Constitution provides that court hearings should be held in public, except in cases established by federal law.

13. Article 10 of the Code of Civil Procedure provides that court hearings can be held in camera in cases concerning State secrets or secrecy of adoption, and in other cases established by federal law. Private hearings are also allowed upon the request of a party to the proceedings who pleads for the confidentiality of commercial and other data protected by law, privacy and other circumstances, the public discussion of which is capable of impeding the proper administration of justice or entailing a breach of secrecy or a breach of the legitimate interests and rights of individuals. A decision to hold hearings entirely or partly in camera must be reasoned.

14. Section 5 of the State Secrets Act (Law no. 5485-1 of 21 July 1993) provides as follows:

> "The following information may be classified as a State secret:
>
> 1. information in the military field ...
>
> 2. information in the field of the economy, science and engineering ...
>
> 3. information in the field of foreign policy and trade ...
>
> 4. information in the field of intelligence and counter-intelligence and investigation of crimes and anti-terrorist activities:
>
> on means, sources, methods, plans and results of the intelligence, counter-intelligence, investigating and anti-terrorist activities and data on financing of the above-mentioned activities if such data disclose information relating to them;
>
> ...
>
> on persons collaborating on a confidential basis with intelligence, counter-intelligence and investigating authorities ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

15. The applicant complained under Article 6 of the Convention that the appeal hearing held on 4 February 2011 had been conducted in camera. The relevant part of Article 6 reads as follows:

> "1. In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ... Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

A. Admissibility

16. The Government submitted that the applicant had failed to exhaust domestic remedies because he had not complained to a supervisory-review court about the hearing that had been held in camera.

17. The applicant stated that he had not had any effective remedies to be exhausted in his case.

18. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges those seeking to bring a case against a State to use first the remedies provided by the national legal system, thus allowing States the opportunity to put matters right through their own legal systems before being required to answer for their acts before an international body. In order to comply with the rule, applicants should normally use remedies which are available and sufficient to afford redress in respect of the breaches alleged (see, among other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999‑V, and *Kocherov and Sergeyeva v. Russia*, no. 16899/13, § 65, 29 March 2016).

19. In the context of Russia, the Court has held that under the legislative framework in force at the material time, the applicants were not required to submit their cases for re-examination by higher courts by way of a supervisory review procedure, which constituted an extraordinary remedy due to various defects (see *Denisov v. Russia* (dec.), no. 33408/03, 6 May 2004, and *Martynets v. Russia* (dec.), no. 29612/09, 5 November 2009). There is no reason to depart from this approach in the present case.

20. Accordingly, the Court dismisses the Government's objection as to the alleged non-exhaustion of domestic remedies.

21. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

22. The applicant submitted that the domestic court had not issued a decision on holding the hearing in camera, in breach of the Code of Civil Procedure, which set out the requirement of a reasoned decision in the event of a judge deciding to close a hearing to the public. There had not been any need for a hearing in camera, other options having been available to protect "secret" information. The allegedly secret information had concerned financial data relating to police informers whose names had not been disclosed at the hearing.

23. The Government submitted that the court had examined secret information at the hearing within the meaning of the State Secrets Act. Therefore, the decision to hold the hearing in camera had been justified and based on the law. Pursuant to the Code of Civil Procedure, the court was obliged to hold hearings in camera where State secrets were involved, and there had therefore been no need for a separate decision in this respect. In such cases the hearings were automatically closed to the public.

24. The Court observes that it is a fundamental principle enshrined in Article 6 § 1 that court hearings should be held in public. This public character protects litigants against the administration of justice without public scrutiny; it is also one of the means whereby people's confidence in the courts can be maintained. By rendering the administration of justice transparent, publicity contributes to the achievement of the aim of Article 6 § 1, namely a fair trial, the guarantee of which is one of the principles of any democratic society (see *Khrabrova v. Russia*, no. 18498/04, §§ 48-49, 2 October 2012, with further references).

25. Article 6 § 1 does not prohibit courts from deciding, in the light of the special features of the case submitted to them, to derogate from this principle: in accordance with the actual wording of this provision, "... the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice"; holding proceedings, whether wholly or partly, in camera must be strictly required by the circumstances of the case (ibid.; see *Chaushev and Others v. Russia*, nos. 37037/03 and 2 others, § 23, 25 October 2016).

26. In the present case, the appellate court held the hearing in camera without adopting any reasoned decision in this respect even though it was obliged to do so by the Code of Civil Procedure (see paragraph 13 above). The only reason why the proceedings were closed to the public may be deduced from the decision of 24 August 2010 relating to the preliminary hearing at the first instance court (see paragraph 8 above), in which the court referred to the fact that the applicant's case related to investigating

activities, and from the parties' submissions referring to "secret" documents relating to payment for services of police informers and expenses for investigating activities in Barnaul (see paragraphs 22 and 23 above).

27. Bearing in mind the nature of the documents in question, the authorities could be said in principle to have had a legitimate interest in preserving their confidentiality. There is no evidence in the present case to suggest that the classification of the documents concerned was carried out in an arbitrary or improper manner or with any aim other than the legitimate interest pursued (see *Welke and Białek v. Poland*, no. 15924/05, § 63, 1 March 2011, and *Nikolova and Vandova v. Bulgaria*, no. 20688/04, § 73, 17 December 2013).

28. However, the Court does not concur with the Government's submission that the mere presence of classified information in a case file automatically implies a need to close a trial to the public, without balancing openness with national-security concerns. It may be important for a State to preserve its secrets, but it is of infinitely greater importance to surround justice with all the requisite safeguards, of which one of the most indispensable is publicity. Before excluding the public from a hearing, courts must make specific findings that closure is necessary to protect a compelling governmental interest and limit secrecy to the extent necessary to preserve such an interest (see, for similar reasoning in the context of criminal trial, *Belashev v. Russia*, no. 28617/03, § 83, 4 December 2008, and *Pichugin v. Russia*, no. 38623/03, § 187, 23 October 2012).

29. There is no evidence to suggest that either of the two conditions was satisfied in the present case. In the absence of a reasoned decision to close the hearing to the public, the domestic court did not have an opportunity to elaborate on the reasons for holding the hearing in camera. It did not indicate what documents in the case file were considered to contain State secrets or how they were related to the nature and character of the applicant's case. There were no measures taken to counterbalance the detrimental effect that holding the hearing in camera must have had on public confidence in the proper administration of justice for the sake of protecting the State's interest in keeping its secrets. The Government did not argue – and there is no indication to the contrary in the documents submitted by the parties – that it was not open to the court to hold the hearing publicly, subject to the possibility of clearing the courtroom when the judge had to read out classified documents.

30. The domestic court therefore failed to strike a proper balance between the applicant's right to a public hearing, on the one hand, and other important interests at stake, on the other.

31. In view of the foregoing considerations, the Court finds that there has been a violation of Article 6 § 1 on account of the lack of a public hearing in the proceedings in issue.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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."

33. The applicant claimed 10,000 euros in respect of non-pecuniary damage.

34. The Government submitted that the applicant's claim was excessive and unreasonable.

35. The Court considers that that the applicant has suffered non-pecuniary damage on account of his exclusion from the proceedings to which he was a party. Making its assessment on an equitable basis, the Court awards the applicant EUR 1,950 in respect of non-pecuniary damage, plus any tax that may be chargeable.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 1,950 (one thousand nine hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, 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 December 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova	Darian Pavli
Deputy Registrar	President