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

THIRD SECTION

DECISION

Application no. 27405/09
Maksim Sergeyevich KIYAN
against Russia

The European Court of Human Rights (Third Section), sitting on 9 January 2018 as a Committee composed of:

Branko Lubarda, *President,*
Pere Pastor Vilanova,
Georgios A. Serghides, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 16 April 2009,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Maksim Sergeyevich Kiyan, is a Russian national, who was born in 1982 and lives in Omsk, the Omsk Region. His application was lodged on 16 April 2009. He was represented before the Court by Ms M.G. Deryabina, a lawyer practising in Omsk.

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

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

The applicant was in charge of a private warehouse. In June 2008 it turned out that a large sum of money was missing. At 11 a.m. or noon on 25 June 2008 the police arrived at the warehouse and took the applicant to a police station. After some nine hours of questioning, the applicant made a

written deposition acknowledging that he was liable for a part of the missing money and was ready to repay it to his employer. He also made a written acknowledgment of debt to his employer. The applicant left the police station in the evening.

On 27 June 2008 he complained about his allegedly forced admission of liability for the missing money and acknowledgement of debt to the employer. After a preliminary inquiry the investigator refused to institute criminal proceedings on 12 July 2008. On 12 September 2008 the Leninskiy District Court of Omsk upheld the refusal of 12 July 2008 on judicial review. On 16 October 2008 the Omsk Regional Court upheld the first-instance judgment.

The applicant also brought civil proceedings seeking annulment of his acknowledgment of debt. He claimed that he had admitted the debt under duress during his detention in the police station on 25 June 2008. By a judgment of 3 February 2009 the Kirovskiy District Court of Omsk dismissed the applicant's claims. On 25 March 2009 the Omsk Regional Court upheld the judgment on appeal. The courts considered that the applicant's written deposition and the acknowledgment of debt had represented voluntary acts aimed at remedying the damage caused by the applicant to his employer. Relying on the refusal of criminal prosecution against the police, the courts concluded that the applicant had not substantiated his allegation of duress.

COMPLAINTS

The applicant complained under Articles 5 and 6 of the Convention about his unlawful detention on 25 June 2008 and the outcome of the civil proceedings regarding his debt.

THE LAW

In their observations the Government asserted, in particular, that the applicant had failed to exhaust effective domestic remedies available to him in respect of his allegedly unlawful detention.

The Court observes that the applicant's request to open a criminal investigation (even assuming it was an effective domestic remedy) concerned only his allegedly forced admission of liability for the missing funds and acknowledgement of debt to his employer. That request, and, consequently, the authorities' reply to it, did not concern the lawfulness of the applicant's alleged detention on 25 June 2008. In such circumstances the Court considers that the applicant did not raise the issue of his allegedly

unlawful detention before the competent national authorities. The Court concludes that the applicant's complaint under Article 5 § 1 of the Convention is, therefore, inadmissible for the applicant's failure to exhaust domestic remedies as required by Article 35 § 1 of the Convention.

Having regard to all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that the remainder of the applicant's complaints are also inadmissible and must be rejected in accordance with Article 35 §§ 1, 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 1 February 2018.

Fatoş Aracı
Deputy Registrar

Branko Lubarda
President