



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

FIRST SECTION

Application no. 49848/10
Aleksandr Vyacheslavovich MANEROV
against Russia
lodged on 25 July 2010

STATEMENT OF FACTS

The applicant, Mr Aleksandr Vyacheslavovich Manerov, is a Russian national, who was born in 1963 and who is currently serving a sentence of imprisonment in correctional colony IK-29 in Bolshoy Kamen, Primorye Region. He used to be a second-rank captain and a head of a military unit.

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

On 28 May 2008 the applicant was arrested on suspicion of fraud.

On 30 May 2008 the applicant was released under an undertaking not to leave his place of residence.

On 1 July 2009 the Military Court of the Vladivostok Garrison convicted the applicant of fraud committed in abuse of office and sentenced him to four years' imprisonment with deprivation of military rank. The applicant was arrested in the courtroom and placed in remand prison.

On 29 January 2010 the Military Court of the Pacific Fleet quashed the conviction on appeal and remitted the case for a retrial. The court held that the custodial measure applied to the applicant should remain unchanged until 1 April 2010 in view of the gravity of the charges against him, and the risk of his absconding and threatening the witnesses, which was confirmed by statements of witness Sh.

On 15 February 2010 the Military Court of the Vladivostok Garrison rejected the applicant's application for release, relying on the gravity of the charges and the risks of the applicant's absconding and exerting pressure on witnesses. The decision mentioned that it could be appealed against within three days' time-limit to the Military Court of the Pacific Fleet. The applicant appealed.

However, on 26 March 2010 the Military Court of the Pacific Fleet discontinued the appeal proceedings against the decision of 15 February 2010. Relying on Article 355 § 5 (2) of the Russian Code of Criminal Procedure, the court held that the refusal of an application for release was not amenable to a separate appeal before the final decision in the case as it

was not in breach of the applicant's right to access to a court and his right to have the case heard within a reasonable time, and did not delay the progress of the proceedings.

In the meantime, on 22 March 2010 the Military Court of the Vladivostok Garrison extended the applicant's detention until 1 July 2010. The court relied on the gravity of the charges against the applicant. It further held, with reference to a medical conclusion, that the applicant's state of health allowed him to participate in the proceedings, and that his previous behaviour in court prompting his removal from the courtroom until the end of the pleadings gave sufficient grounds to believe that, if released, he might influence the witnesses and abscond from justice. The court dismissed the applicant's argument to the effect that the choice of the custodial measure had been intended to put pressure on him and to prevent him from collecting evidence and defending himself. The court noted in this respect that the applicant appointed three representatives to secure his defence, two of them being lawyers, and that none of them claimed to have been prevented from adducing any evidence in the applicant's defence.

On 23 April 2010 the Military Court of the Pacific Fleet granted the applicant's request and adjourned the examination of his appeal against the custody order of 22 March 2010 until 30 April 2010 so as to enable the applicant's presence in the hearing (the applicant claimed to have not been notified about the hearing of 23 April 2010 until he had been convoyed to the videoconference room and to have been unable to follow the hearing owing to his hearing impairment).

On 29 April 2010 the Military Court of the Vladivostok Garrison convicted the applicant of nine counts of fraud committed in abuse of office and sentenced him to four years' imprisonment with deprivation of military rank.

On 30 April 2010 the Military Court of the Pacific Fleet upheld on appeal the custody order of 22 March 2010.

On 2 December 2010 the Military Court of the Pacific Fleet discontinued the appeal proceedings against the judgment of 29 April 2010 since the applicant withdrew his appeal.

COMPLAINTS

The applicant complains, referring to Articles 5 and 13 of the Convention, that the examination of his appeal against the decision of 15 February 2010 rejecting his application for release was discontinued. He further complains that his appeal against the decision of 22 March 2010 extending his detention on remand was not examined speedily.

QUESTIONS TO THE PARTIES

Was the procedure by which the applicant sought to challenge the lawfulness of his detention pending trial in conformity with Article 5 § 4 of the Convention? In particular:

(a) Was the decision of 15 February 2010 rejecting his application for release amenable to appeal? If the above decision could have been appealed against, was the applicant's appeal decided upon in conformity with the requirements of Article 5 § 4 of the Convention (see *Makarenko v. Russia*, no. 5962/03, §§ 122-125, 22 December 2009)?

(b) Was the applicant's appeal against the decision of 22 March 2010 extending his detention on remand examined "speedily"? What is the exact date when the applicant lodged his appeal against the above decision? Did the applicant cause any delays in the examination of his appeal? When was the applicant notified about the hearing of 23 April 2010?