



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

FIRST SECTION

Application no. 29762/09
Vladimir Danilovich MIKHALCHENKO
against Russia
lodged on 3 April 2009

STATEMENT OF FACTS

The applicant, Mr Vladimir Danilovich Mikhhalchenko, is a Russian national, who was born in 1957 and lives in Kuragino, a village in the Krasnoyarsk Region.

The applicant, a high ranking tax officer, stood trial for abuse of office.

On 5 December 2008 the Kuraginskiy District Court of the Krasnoyarsk region found him guilty of several counts of abuse of office, sentenced him to four years' imprisonment and conditionally released him on three years' probation. In the proceedings before the trial court the applicant was represented by counsel L.

The applicant and his counsel appealed against the judgment of 5 December 2008. They complained, in particular, that the trial court had given wrong legal qualification to the applicant's actions, had not properly informed him of the charges against him, refused to appoint expert examinations. They also claimed that the trial court's conclusions regarding the applicant's guilt in the abuse of office had not been supported by the evidence submitted at the trial.

On 26 February 2009 the Krasnoyarsk Regional Court held an appeal hearing in the applicant's case. Neither the applicant nor his counsel were present at that hearing. The court heard the prosecutor who requested that the applicant's conviction be upheld. Having studied the materials of the case, the appeal court upheld the applicant's conviction. It does not appear from the decision of 26 February 2009 that the appeal court verified whether the applicant and his counsel had been duly informed of the hearing and if they had not, whether the appeal hearing should have been adjourned.

COMPLAINTS

The applicant complains under Article 6 of the Convention that neither he nor his counsel were duly notified of the appeal hearing of his criminal case and as a result he was not provided with an opportunity to defend himself effectively before the appeal court.

He also complains under Article 6 of other shortcomings in the criminal proceedings against him (he was not properly informed of the charges against him; the trial court refused to appoint a number of expert examinations; the trial court was not impartial and wrongly convicted him of abuse of office).

QUESTIONS TO THE PARTIES

Did the applicant have a fair hearing in the determination of the criminal charges against him, in accordance with Article 6 § 1 of the Convention? Were the appeal proceedings before the Krasnoyarsk Regional Court on 26 February 2009 compatible with the requirements of Article 6 §§ 1 and 3 (c) of the Convention?

(a) Was the applicant able to defend himself in those proceedings in person? Was he notified of the appeal hearing of 26 February 2009 in such a way as to have an opportunity to attend it and effectively present his case before the appeal court?

(b) Was the applicant able to defend himself in those proceedings through legal assistance? In case if the applicant was represented by counsel of his own choosing, was his counsel notified of the appeal hearing of 26 February 2009 in such a way as to have an opportunity to attend it and effectively present the applicant's case? If the applicant had not sufficient means to pay for legal assistance, did the interest of justice require that he be provided with free legal assistance for the appeal proceedings in question?

(c) Was the applicant able to present his case to the appeal court under the same conditions as the prosecution and to comment on the submissions made by the prosecutor to the appeal court?