



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

FIRST SECTION

Application no. 38074/07
Yevgeniy Rifkhatovich MUKHAMADEYEV
against Russia
lodged on 18 July 2007

STATEMENT OF FACTS

The applicant, Mr Yevgeniy Rifkhatovich Mukhamadeyev, is a Russian national, who was born in 1972. He is currently serving a prison term in penitentiary colony UM-220/1 situated in Nadvoitsy, the Republic of Kareliya.

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

A. The background information

On 24 August 1998 the Supreme Court of the Republic of Kareliya found the applicant guilty of a number of serious crimes and sentenced him to twenty years of imprisonment.

Some time later the applicant was sent to penitentiary colony UM-220/1 in Nadvoitsy, the Republic of Kareliya.

It appears that the applicant had numerous conflicts with the administration of the colony. Thus, he alleges that in 2004 he was beaten by prison guards, whom he later attempted to prosecute. Having collected and examined various pieces of evidence in the course of an investigation which lasted for two years between 2004 and 2006, a local prosecutor established that the applicant was hurt after he had misbehaved and resisted the prison guards who had to use physical force to subdue him. The prosecutor concluded that the use of force was not excessive and refused to open criminal proceedings in this connection. The applicant challenged the original decision not to institute criminal proceedings of 23 August 2004, as

well as subsequent decisions before the courts, which in March 2007 confirmed them as lawful and well-reasoned.

B. Court proceedings concerning the applicant's detention in the PKT

On 15 December 2010 the applicant was punished for violating the colony's internal regulations and placed for eight days in a punishment cell (*помещение камерного типа*, the PKT).

On 17 December 2010 the applicant brought civil proceedings against the prison administration. He alleged that the conditions of detention in the PKT were inhuman and degrading and claimed compensation for non-pecuniary damage. In the lawsuit the applicant expressed the wish to give a personal account of the conditions in the cell and sought leave to appear in court.

On 2 February 2011 the Segezhskiy Town Court of the Republic of Kareliya (the Town Court) rejected the applicant's claims in full. A representative of the colony was present at the hearing and made oral submissions. As to the applicant's request, the Town Court noted that:

"The applicant is not delivered at the hearing, [as he] serves [his] sentence in a penitentiary facility, [and] he was duly informed of the day of hearing."

On 24 February 2011 the applicant appealed. He complained about his absence from the first instance hearing and alleged that the proceedings were not adversarial.

On 8 April 2011 the Supreme Court of the Republic of Kareliya upheld the judgment of the Town Court, finding as follows:

"The argument that the examination of the applicant's case in his absence violated his rights is unsubstantiated. Neither the Code of Civil Procedure of the Russian Federation nor [any] other federal law grant persons serving sentence in custodial facilities the right to personal participation in court hearings of their civil cases. The Code on the Execution of Sentences of the Russian Federation allows the possibility to transport convicts from penitentiary facilities to remand prisons only with a view to ensuring their participation in trials. Thus, [the Supreme] Court is not under an obligation to ensure the applicant's presence in these civil proceedings."

It appears from the appeal judgment that both the applicant and the representative of the colony were absent from the hearing.

C. Other court proceedings brought by the applicant

Simultaneously to the above set of proceedings, the applicant brought three further sets of proceedings against the prison administration. Two of them concerned alleged unlawfulness of the administration's actions in respect of the applicant. By means of the third one the applicant sought compensation for allegedly inadequate medical assistance in the colony.

By final judgments of 14 January and 23 August 2011 the Supreme Court of the Republic of Karelia examined and rejected these claims in full.

COMPLAINTS

1. The applicant complains that the refusal to bring him to hearings in his civil case violated Article 6 of the Convention, in particular, the principle of equality of arms.

2. He further complains of ill-treatment by prison guards, ineffective investigation into these allegations.

3. Lastly, the applicant also complains that the other sets of civil proceedings against the prison administration were unfair, contrary to the requirements of Article 6 of the Convention.

QUESTIONS TO THE PARTIES

1. In relation to the civil proceedings which ended with the first instance judgment of 2 February 2011, was the applicant put at a substantial disadvantage vis-à-vis the defendants given that he was unrepresented and his leave to appear in person was rejected while the respondent took part in the proceedings?
2. Was the applicant afforded a reasonable and effective opportunity to adduce evidence, as well as challenge the evidence produced by the other parties to the proceedings?
3. In the light of answers to the above questions, did the applicant have a fair hearing in the determination of his civil rights and obligations, in accordance with Article 6 § 1 of the Convention? In particular, was the principle of equality of arms respected?