



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

FIRST SECTION

Application no. 56510/11
Beslan Zalimkhanovich DADAYEV
against Russia
lodged on 8 August 2011

STATEMENT OF FACTS

1. The applicant, Mr Beslan Zalimkhanovich Dadayev, is a Russian national, who was born in 1975 and currently serves his sentence in Petrozavodsk, Karelia Republic.

A. The circumstances of the case

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

3. The applicant is a practicing Muslim observing the five daily prayers and fasting during Ramadan.

4. He was convicted of unspecified crimes on 26 May 2003 by the Supreme Court of Ingushetia Republic and on 19 November 2003 by the Mozdokskiy District Court of North Ossetia – Alania Republic and sentenced to twenty years' imprisonment in a correctional colony. Since January 2011 he serves his sentence in a correctional facility FBU IK-9 in Petrozavodsk, Karelia Republic (IK-9).

5. It is alleged that while IK-9 has an Orthodox Church on site there are no facilities for prayers provided to 150 Muslims serving their sentences there. Consequently, the applicant and other practicing Muslims must perform their five daily prayers in the dormitory surrounded by other inmates.

6. The inmates' daily schedule set the wake up for 6 a.m. and bed time for 10 p.m. However, in summer on the geographic latitude of IK-9 the duration of daylight is exceptionally long and it pre-determines the time of the first Islamic prayer at 3.00 a.m. and of the last prayer at 11.30 p.m. It is alleged that the administration of IK-9 imposed disciplinary sanctions on persons attempting to pray before the wake up and after bedtime prescribed by the daily schedule.

7. The only place where the inmates of IK-9 were permitted to consume food was the food service room. The consumption of food in the food service room outside of periods determined by the daily schedule was prohibited.

8. It appears that after 1 August 2011 (with the beginning of Ramadan) the applicant stopped eating and drinking during the daylight as prescribed by his religious beliefs. Further he kept observing the five daily prayers. Unable to eat or drink in the food service room during the night, the applicant kept food in the cabinet next to his bed in the dormitory.

9. On 8 August 2011 when it had been discovered by the administration that the applicant kept food in the dormitory he was placed in the disciplinary ward (*штрафной изолятор*) for the period of fifteen days. He was not allowed to keep his prayer mat and to follow his prayer schedule in the disciplinary ward.

10. On that day he submitted an explanatory note to the administration of the correctional facility. The full text of the note read as follows:

“In exercise of my constitutional rights to life, health and freedom of religion I had to keep water and foodstuffs (bread) [in my bedside cabinet], because the administration of the IK-9 prohibited me night-time use of the food service room during the holy for all Muslims month of Ramadan (August), during which I, as a faithful Muslim, must not eat and drink during the daylight hours.”

11. On the same day he informed the administration in writing that he would be on hunger strike until restrictions imposed on his freedom of religion would be lifted.

12. Further on the same day he sent a complaint regarding inability to perform Islamic rituals to the Prosecutor’s Office of Karelia Republic and Federal Penitentiary Service (*Федеральная служба исполнения наказаний*).

13. On 30 September 2011 the Federal Penitentiary Service sent a letter to the applicant informing him that following an inquiry his complaint was considered unfounded. The letter stated that Article 14 of the Russian Penitentiary Code (*Уголовно-исполнительный кодекс*) guaranteed religious freedom as long as it did not violate the correctional regime or the rights of others. The inquiry established that the administration of the IK-9 did not restrict the possibility to perform religious rituals and acted in compliance with the legislation in force.

14. On 14 October 2011 the Prosecutor’s Office sent a letter to the applicant that following an inquiry no violation of religious rights was established. The daily schedule imposed by the internal regulations of the IK-9 was found to be in compliance with the legislation in force and it provided for prayers during the free time of the inmates. Further, the letter stated that unfounded refusals to eat and performance of religious rituals outside of time prescribed by internal regulations should be considered by the administration as a breach of established correctional regime.

15. The applicant lodged a civil action against the IK-9 alleging inability to perform prayers, ablutions and to consume food during night-time as prescribed by his religion.

16. On 30 September 2011 the Petrozavodskiy Town Court of Karelia Republic dismissed his civil action. The relevant parts of the judgment read as follows:

“... According to Article 14 of the Penitentiary Code freedoms of thought and religion are guaranteed... However, the exercise of the freedom of religion is voluntary and shall not breach the correctional regime and the rights of others ...

The internal regulations of correction facilities and inmates' daily schedule prescribe the place and time for consumption of food, night rest, free time of the inmates. [These regulations] relying on the voluntary nature [of the exercise] of the freedom of religion permit religious rituals, including prayers, precisely during [the free time]. During night-time these rituals and consumption of food do not take place in correctional facilities.

Accordingly, the defendant's refusal to provide for [the applicant's] claims and insistence on compliance with the established in the IK-9 regime ... are lawful ...”

17. The applicant appealed alleging breach of his constitutional freedom of religion. Further he stated that performance of religious rituals (prayers five times per day and consumption of food during the night) does not harm public order, health, morals and does not infringe upon the rights of others. The applicant requested the appeal court to ensure his presence during the hearing.

18. On 3 July 2012 the Supreme Court of Karelia Republic held a hearing in absence of the parties and upheld the lower court's judgment. The relevant parts of the judgment read as follows:

“... The plaintiff Mr Dadaev was duly informed about the date and place of the hearing, he serves a sentence in a correctional facility. The nature of the dispute does not require his attendance of the hearing ...

The [lower] court properly considered that having regard to the plaintiff's status (an inmate) his exercise of the freedom of religion is voluntary and must not breach rules of correctional regime and the rights of others. Therefore there are two basic conditions [in the exercise of this freedom], and they may not be regarded as violating the freedom of religion.

Thus the arguments of the appellant that the administration of the IK-9 prevents the his prayers five times per day during the times prescribed for it by his religious beliefs and consumption of food after dusk during fasting period do not serve as grounds for annulment or alteration of the [lower court's] judgment.

The arguments about absence of violation of rights of others may not be considered, since the Penitentiary Code prescribes compliance with correctional regime and deviations [from this rule] are not possible ...”

COMPLAINTS

19. The applicant complains under Article 9 of the Convention that the national authorities interfered with his freedom of religion by preventing him from worship and practice of Islamic rituals in the correctional facility. Further the applicant complains that his rights under Article 6 § 1 of the Convention were violated by the failure of the domestic court to ensure his presence during the appeal hearing on 3 July 2012.

QUESTIONS TO THE PARTIES

1. Has there been an interference with the applicant's freedom of religion, within the meaning of Article 9 § 1 of the Convention?

If so, was that interference prescribed by law and necessary in terms of Article 9 § 2?

In particular, were restrictions imposed on the applicant's five daily prayers and daytime fasting during the month of Ramadan prescribed by law and necessary in a democratic society? Were the abovementioned restrictions proportionate to the aim pursued?

2. Did the daily schedule imposed by the internal regulations of the IK-9 in conjunction with Article 14 of the Russian Penitentiary Code (*Уголовно-исполнительный кодекс РФ*), which guaranteed religious freedom, comply with the requirements of Article 9 of the Convention? Did they provide for a possibility of exceptions from the general regulation based on religious convictions of an inmate?

3. Was Article 6 § 1 of the Convention under its civil head applicable to the proceedings in the present case?

If yes, 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, did his absence during an appeal hearing on 3 July 2012 undermine the fairness of the proceedings?