



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

FIRST SECTION

Application no. 24822/09
Viktor Grigoryevich KOVALENKO against Russia
lodged on 17 November 2008

STATEMENT OF FACTS

1. The applicant, Mr Viktor Grigoryevich Kovalenko, is a Russian national, who was born in 1976 and currently serves his sentence in Norilsk, Krasnoyarsk Region.

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 resided until his arrest in Magadan with his mother, partner, and child.

4. On 8 February 2008 the applicant was convicted of aggravated robbery with violence by the Magadanskiy Town Court and sentenced to 10 years' imprisonment in strict regime colony. On 27 June 2008 the conviction and sentence were upheld on appeal by the Magadan Regional Court.

5. On 5 August 2008 a decision was made by the Magadan Regional Department of Federal Service for Execution of Sentences (FSIN) under Article 73, section 2 of the Russian Penitentiary Code (see paragraph 13 below) to transfer the applicant for serving his sentence to Norilsk. The two cities are in the neighbouring regions separated by another region and the direct geographic distance between them is around 3,000 kilometres. The reason advanced for the transfer was that the strict regime colony IK-4 in the Magadan Region had reached its full occupancy and further placement of convicts in it would lead to overcrowding. In the letter of 7 August 2008 the applicant's mother was informed that should a number of convicts serving their sentence in IK-4 reduce the applicant it to be transferred back.

6. In the following two years the applicant lodged a number of complaints with the Prosecutor's Office of the Magadan Region and the

FSIN alleging violation of his right to serve his sentence in the region of habitual residence and seeking transfer to a correctional facility in the Magadan Region.

7. On 25 February 2009 the FSIN sent the applicant a letter informing him about lawfulness of his placement in Norilsk correctional colony. Further the letter stated that his transferred is not possible under Article 81 of the Penitentiary Code (see paragraph 14 below), which restricts transfers from the initially chosen correctional facility subject to exceptional circumstances.

8. On 29 October 2009 the Krasnoyarsk Regional Department of FSIN informed the applicant that his placement in Norilsk colony in no way interferes with his right to family visits, because should his relatives wish to visit him no restrictions would be imposed on the visits. He was once again reminded that his transfer from Magadan Region was necessary due to full occupancy of strict regime colonies in the region. He was also informed that regional departments of FSIN may not decide to transfer a person to another region, because this power lies exclusively with the federal bodies of FSIN.

9. On 28 October 2010 the FSIN refused the applicant's repeated request for transfer to Magadan Region stating that "under Article 81 of the Penitentiary Code there are no reasons preventing [the applicant] from further serving his sentence in the same correctional facility".

10. On 9 November 2010 the Prosecutor's Office for the Magadan Region informed the applicant that since 2008 the IK-4 in Magadan Region remained at its full occupancy, however should the conditions improve there would be a gradual transfer of the convicts to the region.

11. On 29 December 2010 the FSIN repeatedly informed the applicant that decision about him serving his sentence in the Krasnoyarsk Region has been lawful and that there were no grounds under Article 81 of the Penitentiary Code to have him transferred to Magadan Region.

B. Relevant domestic law

12. The Russian Penitentiary Code of 1997 provides for five main types of penitentiary institutions for convicted criminals: colony-settlement, general regime colony, strict regime colony, special regime colony and prison. The difference between the "strict" regime and "ordinary" regime colonies concern such aspects as the amount of money a detainee has the right to spend, the number of letters and parcels a detainee can receive, the length of meetings with relatives, etc.

13. Under Article 73 of the Code persons sentenced to deprivation of liberty must serve their sentences in the federal entity (region) where they had their residence and where they were convicted. Derogations from this rule are possible only on medical grounds or in order to secure the safety of a detainee, or at his or her own request. Article 73, section 2 provides, however, that should there be no appropriate institution within the given region or if it proves impossible to place the convicted person in the existing correctional institutions the convicted person is to be sent to the nearest correctional institutions located on the territory of the said region, or, exceptionally, they may be sent to correctional institutions located on the territory of the next closest region.

14. Section 1, Article 81 of the Code stipulates that as a rule a convict shall serve the whole duration of his sentence in one correctional facility. Section 2 of the Article provides the list of reasons for transfer from initially chosen correctional facility to another one and the list includes sickness, threats to a convict's security, reorganization or liquidation of a facility, and "other exception circumstances".

COMPLAINT

15. The applicant complains under Article 8 of the Convention that his transfer to a correctional facility located in a region distant from his habitual place of residence resulted in disproportionate interference with his private and family life.

QUESTIONS TO THE PARTIES

1. Did transfer of the applicant to a correctional facility located in a region distant from his habitual place of residence result in an interference with his right to respect for his private and/or family life, within the meaning of Article 8 § 1 of the Convention?
2. If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2? In particular, did the national authorities respect the margin of appreciation afforded to them in these matters by the Convention?
3. Given the nature of the applicant's complaints has the applicant exhausted all effective domestic remedies, as required by Article 35 § 1 of the Convention?