



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

FIFTH SECTION

Application no. 3400/07
M.A.
against Slovenia
lodged on 27 December 2006

STATEMENT OF FACTS

The applicant, Ms M.A., is a Slovenian national. The President decided of his own motion not to disclose her identity to the public (Rule 47 § 3). She is represented before the Court by Mr J. Majer, a lawyer practising in Maribor.

A. The circumstances of the case

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

In the evening of 3 November 1983, the applicant, who was eight months pregnant and was returning home from work, was attacked by three men, A.M., T.D. and N.T. They took her into a car, drove to a remote place and consecutively raped her.

Immediately after the incident, the applicant went to the Maribor Police. The police arrested the three men at around midnight. They remained in custody following the investigating judge's order. The applicant was taken to the Maribor Hospital to be medically examined.

On 5 November 1983 the police lodged a criminal complaint against A.M., T.D. and N.T. accusing them of rape. Three days later, the Maribor District Public Prosecutor requested the investigating judge of the Maribor Basic Court to open an investigation.

During the investigation, three reports concerning the examination of the crime scene were prepared, the three accused men and witnesses were heard by the investigating judge. T.D. and N.T. admitted to having had sex with the applicant but denied that any force had been used. A.M. denied having had sex with the applicant.

On 13 March 1984 A.M., T.D. and N.T. were charged with an aggravated rape under section 100 § 2 of the Penal Code of the Republic of

Slovenia. The proceedings that followed were conducted in secrecy in order to protect the private life of those involved.

N.T. was detained due to the risk of fleeing on 24 December 1989. However, he was later released and went missing. On 25 April 1990 a warrant was issued against him, but he has never been found. Consequently, at a hearing of 26 October 1995 the charges against N.T. were served in a separate case-file.

On 7 July 2003 T.D., who was then fifty years old, died. Subsequently, the part of the case concerning the charges against him was separated from the present proceedings.

The Maribor District Court held hearings on 26 May 2004 and on 3 November 2004. The court, *inter alia*, heard A.M., the applicant and her husband, read out statements given by T.D. and N.T. earlier in the proceedings, looked at the report concerning the examination of the relevant car, and a report concerning the applicant's medical examination following the rape. On 3 November 2004 the court issued a judgment finding A.M. guilty of the criminal offence of aggravated rape. He was sentenced to three years in prison. When setting the sentence, which was the minimum sentence prescribed by law, the court referred to the significant lapse of time from the committal of the crime. It noted that the reasons for the delays in the proceedings were predominantly caused by the behaviour of T.D. and N.T.

Following A.M.'s appeal, the Maribor Higher Court quashed the judgment and remitted the case for re-examination. It instructed the Maribor District Court to examine, *inter alia*, whether A.M. had committed the criminal offence in question or had only attempted to commit it and as to whether he had previously known the applicant, which might have raised doubts as to her credibility.

On 15 June, 14 September, 19 October and 6 November 2007, the court held hearings at which it heard the applicant and a number of witnesses. On the latter day, the Maribor District Court issued a judgment finding A.M. guilty aggravated rape under section 100 § 2 of the Penal Code of the Republic of Slovenia. It sentenced him to two years and six months in prison, referring to the extreme distance of the event in time.

Following A.M.'s appeal, the Maribor Higher Court on 10 July 2008 reduced the sentence to one year in prison, referring to the passage of time, A.M.'s young age (namely 21) at the time of the event, the fact that he had later not been convicted of any other criminal offence and his deteriorating health as well as the fact that he had a minor child. It upheld the remainder of the Maribor District Court's judgment.

On 28 July 2009 the applicant instituted civil proceedings against A.M. seeking damages in the amount of 50,000 euros (EUR) for non-pecuniary damage suffered as result of the rape which had been established by the final criminal judgment. On 24 May 2011 the parties reached a court settlement by which A.M. was to pay EUR 15,000 (by means of a number of instalments) to the applicant. The applicant has not received any compensation so far.

B. Relevant domestic law

Section 286 § 2 of the Criminal Procedure Act (Official Gazette no. 63/1994) provides that the presiding judge shall schedule the hearing within two months of the receipt of the indictment. If he fails to do so, he must inform the president of the court thereof, and the latter is required to take the necessary steps to schedule the hearing.

COMPLAINTS

The applicant complains about the length of the criminal proceedings concerning a criminal offence of aggravated rape committed against her in 1983. She invokes Articles 6 § 1 and 13 of the Convention.

She also complains that the respondent state has not provided an effective system of prosecution and trial of her alleged rapists. In this regard, she submits that one of the alleged rapists died in 2003 without being convicted and another has disappeared; only the third one was convicted, however more than twenty three years after the event.

QUESTIONS TO THE PARTIES

1. Is the applicant's complaint concerning procedural obligations under Article 3 and/or Article 8 of the Convention compatible with the provisions of the Convention, *ratione temporis*, given that the assault on the applicant dates back to 1983 (see *mutatis mutandis*, *Šilih v. Slovenia* [GC], no. 71463/01, §§ 147, 159 and 161-163, 9 April 2009)?

2. Was the conduct of the criminal proceedings against A.M. compatible with the procedural obligations inherent in Article 3 and/or Article 8 of the Convention (see, among others, *M.C. v. Bulgaria*, no. 39272/98, §§ 153, 166 and 184, ECHR 2003-XII)?

3. Was the civil limb of Article 6 § 1 applicable to the criminal proceedings against A.M. (see *Perez v. France* [GC], no. 47287/99, § 65, ECHR 2004-I)?

4. Was there a violation of the applicant's right to a trial within a reasonable time, as guaranteed by Article 6 § 1, on account of the length of the criminal proceedings?