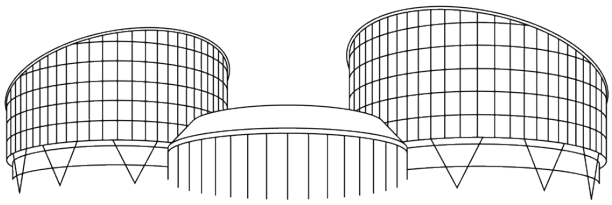

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

Application no. 62807/09
Olga Yuryevna MASLOVA against Russia
lodged on 20 November 2009

STATEMENT OF FACTS

The applicant, Ms Olga Yuryevna Maslova, is a Russian national who was born in 1980 and lives in the town of Nizhniy Novgorod. She was represented before the Court by Mr I.A. Kalyapin, Mr A. Ryzhov and Ms O. Sadovskaya, lawyers of the locally based NGO "Committee against torture".

A. The circumstances of the case

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

1. The background information

In November 1999 the applicant complained of serious assault – including beatings, rape, suffocation and electric shocks – at the hands of police and prosecution interrogators during questioning at a police station as a witness in a murder case. She denied all involvement in the murder but said that she had been forced to make a written confession. She was eventually released after almost 24 hours in custody.

The day after these events the applicant filed a complaint with the prosecutor's office alleging rape and torture. An investigation was immediately opened. Witnesses were interviewed, the police station was searched and evidence, including used condoms and wipes, was sent for forensic examination.

In April 2000 four police officers and members of the prosecution service were formally charged with various offences against the applicant, including rape. However, the trial court subsequently ruled that the

investigating authorities had committed serious breaches of procedure during the investigation which had infringed the rights of the accused and rendered most of the evidence in the case inadmissible. The case was remitted for fresh investigation but later discontinued for want of evidence of an offence.

On 10 July 2001 the applicant complained under Articles 3 and 13 of the Convention about these events to the Court. The case of *Maslova and Nalbandov v. Russia*, no. 839/02, was declared partly admissible on 12 December 2006.

On 24 January 2008 the Court adopted a judgment in the case, in which it found that there had been no effective investigation into the applicant's allegations of ill-treatment, in breach of the procedural aspect of Article 3 of the Convention, that there had been a violation of the substantive aspect of that Convention provision and that the respondent Government had acted contrary to their obligations stemming from Article 38 § 1 (a) in that they had failed to submit the necessary documents from the investigation case file.

In so far as the procedural aspect of Article 3 of the Convention is concerned, the Court established that procedural errors committed by the investigation at the initial stages of the proceedings and mainly attributable to manifest incompetence on the part of the prosecuting authorities had led to a stalemate in the proceedings. The case had later been discontinued as it was not possible to remedy the breaches committed by the investigators and the evidence declared inadmissible by the trial court could not be re-used.

As regards the violation of the substantive aspect of Article 3, the Court took note of an impressive and unambiguous body of evidence supporting the applicant's allegations of rape, coercion and ill-treatment by State officials. Regard being had to the lack of explanation from the Government regarding the origin of that evidence, the Court accepted the applicant's account of the events.

The applicant was awarded 70,000 euros in respect of non-pecuniary damage

On 7 July 2008, the Government's request for the case to be referred to the Grand Chamber having been rejected, the judgment became final.

2. The domestic criminal investigation into the applicant's allegations

(a) Events prior to the delivery of the Court's judgment

1. Criminal investigation

It appears that on 26 November 1999 the applicant applied to the prosecutor's office alleging that she had been tortured and raped. The Nizhniy Novgorod City prosecutor's office (*прокуратура г. Нижний Новгород*) opened a criminal case in this connection and carried out an investigation.

On 25 April 2000 Kh., Zh., S. and M. were charged with commission of crimes punishable under Articles 131, 132 and 286 of the Criminal Code.

On 5 July 2000 the bill of indictment was signed and the case against Kh., Zh., S. and M. was transferred to the Nizhegorodskiy District Court of

the city of Nizhniy Novgorod (*Нижегородский районный суд г. Нижний Новгород* – "the District Court") for trial.

The bill of indictment stated that Kh. was accused of having tortured and raped the applicant, abused the office and discredited the authority. Zh. was charged with having raped and sexually abused the applicant, abused the office and discredited the authority. As to S., he was accused of, among other things, having ill-treated, raped and sexually abused the applicant and abused and discredited the authority. M. was charged with having raped and sexually abused the applicant and abused and discredited the authority. The alleged criminal acts of the accused were characterised under Articles 131-1, 2 (b), 132-1, 2 (b) and 286-3 (a, b), respectively, of the Criminal Code.

It appears that the accused denied their involvement in the crimes in question, kept silent and refused to give urine or sperm for examination.

The findings in the bill of indictment were principally made on the basis of evidence given by the applicant, who had identified the alleged offenders and gave a very detailed account of events.

The bill also referred to the statements of witness B., who heard the screams of Kh. and moans of the applicant and then saw that the applicant was tear-stained and demoralised. B. also cited the statement of Kh. who had allegedly said that the applicant had "cracked" and admitted everything.

There were also statements of witnesses RB, EA and IA, the assistance nurse and the doctor, the parents of the applicant, the mother of the other victim and an employee of the shop who had sold the food and alcohol to the other victims during the events in question.

The other evidence also included the items obtained through searches carried out on the premises of the police station and the prosecutor's office, the applicant's handwritten statement of a self-incriminating character which had been described by an expert as having been written by "a shaking hand", the medical confirmation of the applicant's attempts to cut her veins, the report of the forensic examinations and other evidence. It appears that several other people who had previously been prosecuted and whose criminal cases had been dealt with by the accused gave evidence confirming that the accused had used torturing devices, such as a gas mask, electric wires and a fettering device.

According to forensic examination no. 650 of 31 December 1999, the clothes that Kh. had worn on 25 November 1999 bore traces of cells of vaginal epithelium of the same antigen group as the applicant's. The investigation also established that Kh. and his spouse had a different antigen group.

During the search carried out at the premises on 27 November 1999 the investigative authority discovered two used condoms, one in the yard of the police station and the other on the cornice under the window of office no. 3 of the prosecutor's office.

It appears that only one of the discovered condoms was suitable for forensic examination. The genomic examination revealed the presence of vaginal cells belonging, with a probability of 99.9999%, to the applicant and spermatozoids and cells of male urethra.

The same search also led to the discovery of two wipes in the yard of the police station bearing traces of sperm.

Furthermore, the forensic examination established that the applicant's clothes which she had allegedly worn on that day bore traces of sperm.

2. Proceedings at first instance

During a preliminary examination of the case on 16 August 2000 counsel for the accused pointed to various procedural defects in the investigation and applied to have the case remitted for additional investigation.

On the same day the District Court granted the application and remitted the case for additional investigation.

The court ruled that the investigative authorities had committed serious breaches of domestic procedure during the investigation which had infringed the rights of the accused and rendered most of the evidence in the case inadmissible.

In particular, the decision noted numerous inaccuracies and deficiencies in the handling of the case, including disregard of a special procedure for opening an investigation in respect of prosecution officers and the fact that Kh., Zh., S. and M. had not enjoyed the procedural status of accused persons until 24 April 2000, which meant that almost all investigative actions (searches, interrogations, identification parades, expert examinations, etc.) prior to that date had been carried out in breach of their defence rights and rendered the respective evidence inadmissible.

3. Appeal and supervisory review proceedings

The decision of the District Court of 16 August 2000 was upheld on the prosecutor's appeal by the Nizhniy Novgorod Regional Court (*Нижегородский Областной Суд* – "the Regional Court") on 13 October 2000.

On an unspecified date in September 2001 the applicant's counsel brought an appeal against the decisions of 16 August and 13 October 2000 to the Presidium of the Regional Court, requesting that they be re-examined by way of supervisory review.

On 1 October 2001 counsel lodged a similar appeal with the Supreme Court of the Russian Federation (*Верховный Суд РФ* – "the Supreme Court").

Having examined the case file, on 6 June 2002 the Presidium of the Regional Court declined the applicants' request for re-examination of the decisions by way of supervisory review.

It appears that a similar decision was taken by the Supreme Court on 21 June 2002.

4. Discontinuation of criminal proceedings

On 12 January 2001 the Regional Prosecutor's Office (*Нижегородская областная прокуратура*) examined the case, found that the charges were essentially based on the applicant's incoherent and inconclusive submissions, that the evidence in the case taken as a whole was inconsistent, and concluded that no strong evidence against the accused had been collected during the investigation.

It also had regard to the conclusions in the court decisions of 16 August and 13 October 2000 and noted that "the repetitive breaches of law and, in particular, the failure to respect the procedures and rules governing the

institution of criminal cases in respect of special subjects – investigators of the prosecutor's office – created no judicial perspective [for the case] since it appeared impossible to remedy the breaches committed during the investigation". For these reasons it was decided to discontinue the criminal proceedings. The decision stated that the applicant and the accused were to be notified and that the decision could be appealed against to a higher prosecutor's office.

By a letter of 19 June 2001 (No. 15/1-1018-99) the Regional Prosecutor's office responded to the applicant's appeal against the decision of 12 January 2001 fully deferring to its reasons and conclusions. The letter did not mention the possibility of appeal against the decision in a court.

According to the Government, the investigation in this case was repeatedly resumed and discontinued.

On 30 August 2002 the Regional Prosecutor's Office annulled its decision of 12 January 2001 to discontinue the criminal proceedings and submitted the case for additional investigation.

On 16 October 2002 the local prosecution office terminated the investigation in the criminal case, referring to the lack of evidence of any crime and the failure to prove the involvement of the police and prosecution officials.

It appears that this decision was subsequently annulled, but on 24 February 2002 the local prosecutor's office again terminated the proceedings on the ground of lack of evidence of a crime.

On 19 September 2004 the applicant's counsel challenged the decision of 24 February 2002 before the District Court. In a judgment of 28 September 2004 the District Court upheld the decision, fully deferring to its reasons. The judgment was upheld on appeal on 29 October 2004 by the Regional Court.

On 29 April 2005 the Regional Prosecutor's office yet again decided to resume the proceedings in the case.

According to the applicant, on 28 June 2005 the proceedings were yet again closed.

The Government submitted that on 22 August 2005 the proceedings in the case had been resumed.

This decision was appealed against by the accused. On 22 November 2005 the District Court quashed the decision to resume the proceedings as unlawful. The Regional Court upheld the District Court's decision on 30 December 2005. Thereafter the Deputy Prosecutor General lodged a supervisory review request in respect of the decisions of 22 November and 30 December 2005.

On 1 February 2007 the Regional Court, sitting as a supervisory review instance, examined and rejected the prosecutor's request, but noted that the decision of 30 December 2005 had been adopted by an unlawful composition of judges and remitted the case to the Regional Court for a fresh examination on appeal.

(b) Events after the delivery of the Court's judgment

The Court delivered the judgment in the case of *Maslova and Nalbandov v. Russia*, no. 839/02, on 24 January 2008.

On the next day after the delivery of the judgment, the Regional Prosecutor's office held a press-conference related to the findings of the Court. One of its officials, S.P. indicated that "the case still had chances of success in national courts", that the charges brought against four former officers "had not been unsubstantiated" and, more generally, put the blame on the domestic courts.

On 18 March 2008 the Regional Court examined the applicant's appeal against the decision of 22 November 2005 and remitted the case to the District Court for a fresh examination.

On 6 June 2008 the District Court dismissed the appeals of the accused against the decision of 22 August 2005 to resume the proceedings.

According to the applicant, the accused repeatedly failed to appear before the court in an effort to delay the proceedings.

On 7 July 2008 the Court's judgment in the applicant's case became final.

On 2 December 2008 the decision of 6 June 2008 was upheld on appeal by the Regional Court.

It appears that on 4 December 2008 the investigator suspended the proceedings in the case. It was noted that the investigation had made a request to the District Court concerning the charges against the accused and that no response had been received so far.

On 26 May 2009 the accused appealed against the decision of 22 August 2005 yet again.

On 25 June 2009 the District Court dismissed this complaint.

On 25 November 2009 a ten year statutory time-bar for prosecution of the accused has expired and the criminal investigation has been discontinued as time-barred.

B. Relevant domestic law

Article 131 §§ 1 and 2 (b) of the Criminal Code of the Russian Federation punishes the offence of rape committed by a group, whether or not organised and with or without prior conspiracy, with imprisonment up to fifteen years.

Article 132 §§ 1 and 2 (b) punishes forced sexual acts committed by a group, whether or not organised and with or without prior conspiracy, with up to fifteen years of imprisonment.

Article 286 § 3 (a, b) punishes abuse of office committed with use of force or threat to use force, with or without the use of arms or other special devices with imprisonment up to three years.

Article 78 § 1 sets a ten-year prosecution time-limit in respect of the actions or inactions characterised by the Code as grave crimes.

Under Articles 108 and 125 of the Code of Criminal Procedure, a criminal investigation could be initiated by a prosecution investigator at the request of a private individual or of the investigating authorities' own motion. Article 53 of the Code stated that a person who had suffered damage as a result of a crime was granted the status of victim and could join criminal proceedings as a civil party. During the investigation the victim could submit evidence and lodge applications, and once the investigation was complete the victim had full access to the case file.

Under Articles 210 and 211 of the Code, a prosecutor was responsible for overall supervision of the investigation. In particular, the prosecutor could order a specific investigative measure to be carried out, the transfer of the case from one investigator to another, or the reopening of the proceedings.

Under Article 209 of the Code, the investigator who carried out the investigation could discontinue the case for lack of evidence of a crime. Such a decision was subject to appeal to the senior prosecutors or the court. The court could order the reopening of a criminal investigation if it deemed that the investigation was incomplete.

Article 210 of the Code provided that the case could be reopened by the prosecutor "if there were grounds" to do so. The only exception to this rule was for cases where the time-limit for prosecuting crimes of that kind had expired.

Article 161 of the Code provided that, as a general rule, the information obtained in the course of the investigation was not public. The disclosure of that information might be authorised by the prosecuting authorities if disclosure did not impede the proper conduct of the investigation or go against the rights and legitimate interests of those involved in the proceedings. The information concerning the private life of the parties to the proceedings could not be made public without their consent.

COMPLAINTS

The applicant complained under Articles 3, 13 and 46 of the Convention that the respondent Government had delayed the investigation in her criminal case against the State officials and had finally discontinued it with reference to the expiry of the statutory time-limits for the prosecution.

QUESTIONS

1. Is the Court, in the present case, competent *ratione materiae* to examine the applicant's complaints relating to the execution of the Court's judgment in the case of *Maslova and Nalbandov v. Russia* (no. 839/02, 24 January 2008) having regard to the measures taken so far by the respondent Government to abide by the above judgment and the principles established by the Court in its case-law?

2. If so, having regard to the procedural protection from inhuman or degrading treatment (see *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV) and the comments made by the prosecution authorities at the press-conference dated 25 January 2008 about the domestic prospects of the investigation, was such investigation between 2007 and 2009 in compliance with Article 3 of the Convention taken together with Article 46 of the Convention?

The Government are required to provide information as to the progress of the investigation and as to any criminal proceedings that may have been brought against the officers involved in the applicant's ill-treatment. They are also requested to provide a copy of the full investigation file.