



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

FIRST SECTION

CASE OF TYAGUNOVA v. RUSSIA

(Application no. 19433/07)

JUDGMENT

STRASBOURG

31 July 2012

FINAL

17/12/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Tyagunova v. Russia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Nina Vajić, *President*,

Anatoly Kovler,

Peer Lorenzen,

Khanlar Hajiyeu,

Mirjana Lazarova Trajkovska,

Julia Laffranque,

Linos-Alexandre Sicilianos, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 10 July 2012,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 19433/07) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Ms Tatyana Vasilyevna Tyagunova (“the applicant”), on 31 March 2007.

2. The applicant was represented by Mr A. Lobov, a lawyer practising in Chelyabinsk. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that the investigation of her complaint of rape had not been effective.

4. On 3 September 2009 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1975 and lives in Chelyabinsk.

A. The events of 23 June 2005

6. On 23 June 2005 the applicant, a nurse at a private dentist's office at the time, attended a small party with her colleagues to celebrate the approval of an application for a dental practice licence. Then four of them, including the applicant, went to a lake, where they continued to celebrate. They left the lake late in the evening. According to the applicant, on her way home she was stopped by a group of men, who threatened her with a knife and beat her. She was raped and forced to engage in other sexual activities. Thereafter she was taken to a flat, where she was let in by a teenage girl, fourteen or fifteen years old. A man of forty or fifty years of age made her stay in the flat and allowed her to leave only in the morning. When she got home, she discovered that certain clothing was missing. Her jewellery, including a gold chain and a pendant, had also disappeared. Her jeans and T-shirt were covered with dirt, grass and blood. She had bruises and contusions on her body.

B. Ensuing investigation

1. Preliminary inquiry

7. On 24 June 2005 the applicant complained to the prosecutor's office that she had been raped and robbed. She could not recall the events of the previous night in detail. First she alleged that she had been raped by Sh., the man who had taken her to the flat. Then she submitted that it was the group of men she had met near her place of residence who had raped her.

8. The applicant remembered the nicknames the men had used to address each other. She also reported the first name of the girl who had let her into the flat. She could not remember the flat number or its floor. Nor could she provide a detailed description of the flat's interior.

9. On the same day she was examined by a forensic expert, who noted the presence of bruises and contusions on her body, but no injuries in the area of the genitals or the anus. She also had a smear test, which did not detect the presence of spermatozoids.

10. Investigator B. questioned the applicant and her colleagues who had participated in the party. K., another nurse, submitted that the applicant had been drunk and had fallen down several times on the way back from the lake. She doubted that the applicant had been raped, and suggested that the latter had concocted the story for her husband.

11. The investigator also questioned Sh. who denied all the allegations.

12. On 3 July 2005 investigator B. dismissed the applicant's complaint. He found her allegations unsubstantiated, noting that on the night in question she had been drunk and had fallen down several times. He further

concluded that her story was vague and contradictory and was an attempt to exonerate herself to her husband.

13. On 20 July 2005 the Chelyabinsk Leninskiy District prosecutor quashed the decision of 3 July 2005. The prosecutor noted that the inquiry in response to the applicant's complaint had been incomplete. He indicated that the investigator should question further (1) the applicant, to remove the contradictions in her account of the events, (2) her colleagues, and (3) the teenage girl from the flat. The investigator was also to establish the identity of the men whom the applicant accused of having raped her.

14. On 27 July 2005 investigator B. dismissed the applicant's complaint as unsubstantiated. From the text of his decision, it is not clear whether he had conducted new examinations of the applicant and her colleagues, whom he had questioned earlier. He had also interviewed the applicant's husband and some other colleagues of hers, who had provided positive references as to the applicant's character. With reference to the medical report, B. noted that there were several bruises and contusions on the applicant's body, but no injuries in the area of the genitals or the anus. He concluded as follows:

“Regard being had to [the evidence stated above], the additional inquiry conducted in response to the [applicant's] complaint has not led to the discovery of the objective data showing that on the night from 23 to 24 June 2005 [the applicant] was raped. [The applicant] was in an inebriated state of strong intensity, she fell down several times. Nor can she provide a detailed account of the events. She makes contradictory submissions that might suggest that she concocted her story in an attempt to exonerate herself to her husband.”

15. On 24 August 2005 the Chelyabinsk Leninskiy District deputy prosecutor quashed the decision of 27 July 2005 and remitted the matter for further inquiry. The prosecutor noted that the investigator had failed to question the applicant further to elucidate the inconsistencies in her submissions, and had done nothing to identify and question the individuals whose nicknames the applicant had reported.

16. On 12 September 2005 investigator P. dismissed the applicant's allegation of rape for the same reasons as before. According to his findings, when questioned again the applicant said that she had come with Sh. to the flat of her own will, had stayed there for some time and had then left. Referring to the inconsistencies in the applicant's account of the events, the investigator found her submissions unreliable. In particular, he noted as follows:

“Regard being had to [the evidence stated above], the additional inquiry conducted in response to the [applicant's] complaint has not led to the discovery of the objective data showing that on the night from 23 to 24 June 2005 a crime [alleged by the applicant] was committed. All the explanations provided by [the applicant] are not only contradictory, they are not logical or consistent. [The applicant] cannot answer any specific question. Her submissions contradict each other, they also contradict her husband's statements. For example, she told her husband that Sh. had made death threats to her and that he had admitted to having robbed their flat. When questioned in

the prosecutor's office, she said that Sh. had denied his participation [in the robbery]. Furthermore, it was established that if [the applicant] had spent the night in someone's flat, it was not Sh.'s flat. He had seven cats and six dogs living with him and it was impossible to miss them. Nevertheless, the applicant did not notice them."

17. On 6 October 2005 the Chelyabinsk Region deputy prosecutor quashed the decision of 12 September 2005 and ordered a further inquiry into the applicant's complaint. The deputy prosecutor indicated a number of specific actions to be taken by the investigator. In particular, the identity of the teenage girl the applicant had referred to was to be established; the applicant's colleagues were to be questioned as to the allegations that the applicant had fallen down; the clothes the applicant had been wearing on the day in question were to be admitted into evidence and subjected to examination; and the men the applicant accused of raping her were to be identified.

18. On 20 October 2005 investigator K. refused to open a criminal investigation in connection with the applicant's allegations, and dismissed them as unsubstantiated concluding as follows:

"Regard being had to [the evidence stated above], the additional inquiry conducted in response to the [applicant's] complaint has not led to the discovery of the objective data showing that on the night from 23 to 24 June 2005 a crime [alleged by the applicant] was committed. All the explanations provided by [the applicant] are not only contradictory, they are not logical or consistent. [The applicant] cannot answer any specific question. Her submissions contradict the statements made by other persons including her husband. Furthermore, at the beginning [the applicant] alleged that Sh. had raped her. Then she claimed that she had been raped by ten men at the entrance [to a block of flats]. Furthermore, she told her husband that Sh. had made death threats to her and that he had admitted to having robbed their flat. When questioned in the prosecutor's office, she said that Sh. had denied his participation [in the robbery]. Furthermore, it was established that if [the applicant] had spent the night in someone's flat, it was not Sh.'s flat. He had seven cats and six dogs living with him and it was impossible to miss them. Nevertheless, the applicant said that she had not noticed the animals. Accordingly, the applicant's allegations do not correspond to the facts and cannot be viewed as credible."

2. Official investigation

19. On 25 November 2005 the first deputy prosecutor of the Chelyabinsk Region quashed the decision of 20 October 2005, noting that objective data confirming the applicant's allegations existed, and opened an official criminal investigation in connection with the events of 23 June 2005.

20. In November and December 2005 the investigator questioned the applicant, her husband and her former colleagues again. The investigator further obtained the clothes she was wearing at the time of the alleged assault and commissioned a forensic examination.

21. On 22 December 2005 the investigator inspected the alleged rape scene to verify the applicant's allegations. The applicant was also present and gave explanations.

22. On 26 December 2005 expert Zar. conducted a forensic biological examination of the applicant's clothes. The expert detected blood and sperm stains on the applicant's jeans and T-shirt.

23. On 25 January 2006 the investigator joined the investigation of the robbery and the rape.

24. On 19 February 2006 expert Zar. conducted an additional biological examination of the applicant's clothes. She concluded that the blood found on them could have been that of the applicant. The report remained silent as to the preservation or destruction of the DNA evidence or the possibility of its analysis.

25. In February 2006 the investigator questioned Sh., his girlfriend, his niece, and R. and P., who were allegedly present at the crime scene at the relevant time. He organised a confrontation between the applicant and Sh.

26. In March 2006 the investigator questioned Shk., who was also present at the crime scene at the relevant time. The investigator asked the applicant to identify P., R. and Sh. from photographs, which she failed to do. When questioned by the investigator, the applicant's brother-in-law claimed that he had heard that two brothers M. had committed the rape.

27. On 5 April 2006 the investigator questioned Aleksandr M., one of the brothers who had allegedly been involved in the rape. He denied all the allegations. According to the examination record, the investigator did not question the said witness as to his or his brother's whereabouts on 23-24 June 2005.

28. On 12 May 2006 forensic expert Zap. analysed the applicant's clothes. She detected blood and spermatozoids on them. In her opinion, it was possible to use the biological material collected for further genetic examination in order to determine whose sperm it was.

29. On 25 May 2006 investigator G. suspended the criminal investigation, noting as follows:

“Whereas the time-limit established for the preliminary investigation in this case expires on 25 May 2006 and all the investigative activities that could be carried out for establishing the accused have been completed and in compliance with Article 208 § 1 of the Code of Criminal Procedure [impossibility to identify the offenders].

I hereby decide

(1) To suspend the criminal investigation”

30. On 9 June 2006 the first deputy regional prosecutor quashed the decision of 25 May 2006 and ordered further investigation. In particular, he noted as follows:

“The examination of the materials of the case-file shows that [the investigating authorities] have failed to carry out all the investigative activities for establishing the perpetrators.

In particular, when questioned, [the applicant] submitted that the alleged perpetrators had addressed each other by nicknames and names However, no measures have been taken to identify and search for those persons. Furthermore, no action has been taken to identify a person named Dmitry, whom the applicant mentioned during the interview on 15 December 2005 and who might know some of the alleged perpetrators.

[The applicant] also submitted that after the rape an unknown man took her to a flat nearby where he held her until 6 a.m. of the following morning. It was a girl named either Katya or Nastya who opened the door to the flat and subsequently let [the applicant] out. However, these circumstances have not been duly verified. The applicant has not been questioned as to the age of the girl. No action to identify the girl and question her has been taken.

...

... during repeated interviews [the applicant] made confused and inconsistent statements which fact suggests that it is necessary to subject her to polygraph testing.

On several occasions [the applicant] was asked to identify certain persons by photographs. Twice she identified S. According to the investigators, however, he has no connection to the case. However, S. has never been questioned. Nor has there been a confrontation organised between him and the applicant. His possible involvement in the case has not been assessed from the legal standpoint.

According to [the applicant’s husband], during the night [of the events in question] there was a group of young men seen in the yard of the block of flats who participated in the graduates’ party of school no. 55. However, the investigators have failed to verify the information about the graduates’ party..., to identify the graduates and to perform any action in this regard.

Lastly, the investigators have failed to comply with certain rules of criminal procedure. In particular, on 10 May 2006 they commissioned an additional biological forensic examination. The expert’s report has not been included in the case-file. The applicant has not been apprised of the expert’s findings ...”

31. In July 2006 the investigator questioned a number of individuals (approximately thirty-five) who lived in a block of flats near the alleged crime scene. None of them had witnessed or heard anything during the night of 23-24 June 2005. Nor had they heard that a woman had been raped in the neighbourhood.

32. On 28 September 2006 R. was subjected to polygraph testing. He denied any involvement in the rape. The expert concluded that R. had “guilty knowledge” with regard to the applicant’s rape and did not make truthful submissions on the matter.

33. On 15 October 2006 investigator B. dismissed the applicant’s request for genetic examination noting as follows:

“The ... investigating authorities discern no grounds to grant the [applicant’s] request. The sporadic spermatozoids discovered on the applicant’s clothes have been destroyed in the course of the forensic testing. Therefore, it is impossible to conduct genetic examination.”

34. On 1 November 2006 the case concerning the applicant’s rape was disjoined from the case of robbery.

35. On 16 November 2006 the investigation was suspended. In particular, the investigator noted as follows:

“On 16 November 2006 the 11 months’ time-limit established for the preliminary investigation in this case expires. All the investigative activities that could be carried out in order to establish the persons who have taken [the applicant’s] purse and money and raped her have been completed. The possible theories have been verified.

Having regard to the above and in compliance with Article 208 § 1 of the Code of Criminal Procedure [impossibility to identify the offenders].

I hereby decide

(1) To suspend the criminal investigation”

36. The applicant appealed against the decision of 16 November 2006 alleging that the investigators had failed to take all possible measures to identify the alleged perpetrators.

37. On 8 November 2007 the Chelyabinsk Leninskiy District Court allowed the applicant’s complaint and quashed the decision of 16 November 2006. The court noted as follows:

“According to the case-file materials, the acting head of the division for supervision of criminal investigation ... asked in writing that the persons indicated by [the applicant] in her complaint should undergo a polygraph test. Accordingly, the investigator was to subject R., P., Sh., Shk., [brothers] M., and K. to polygraph testing

The investigator questioned only R. It was planned to subject the other persons to polygraph testing However, for reasons unknown, these investigative activities have not been performed.

Having regard to the above, the court considers that the investigator has failed to conduct all the investigating activities that could have been performed pending the establishment of an accused or a suspect and that his decision to suspend the investigation is unjustified.”

38. On 17 January 2008 the Chelyabinsk Regional Court quashed the decision of 8 November 2007 on appeal and remitted the matter for fresh consideration. The court noted as follows:

“The [District] Court’s conclusion [concerning the polygraph testing] is erroneous. The questioning with the use of polygraph is not provided for in the rules of criminal procedure and cannot be used as evidence in the criminal case. Furthermore, as it follows from the materials in the case-file, the prosecutor’s request [to conduct

polygraph testing] was contained in his letter which is not a procedural document and his request ... is merely a recommendation.

In such circumstances, the [District] Court's decision cannot be found lawful and justified. It is to be quashed and the matter is to be returned for fresh consideration."

39. On 12 February 2008 the Chelyabinsk Leninskiy District Court dismissed the applicant's complaint and upheld the validity of the investigator's decision to suspend the investigation. The court reiterated verbatim the reasoning contained in the appeal court's decision of 17 January 2008.

40. On 5 May 2008 the Chelyabinsk Regional Court upheld the said decision on appeal.

C. Civil claim for damages

41. On an unspecified date the applicant brought a civil claim for damages against the authorities' failure to conduct an effective investigation into her complaint.

42. On 19 April 2006 the Chelyabinsk Tsentralniy District Court allowed the applicant's claim in part and awarded her 5,000 Russian roubles (RUB) in damages. The court noted that for five months the investigators regularly dismissed her complaint about the rape while failing to conduct a full inquiry into her allegations. The court found that such a delay infringed the applicant's right of access to court within a reasonable time.

43. On 30 May 2006 the Chelyabinsk Regional Court upheld the judgment of 19 April 2006 on appeal.

44. On 4 October 2006 the Presidium of the Chelyabinsk Regional Court quashed the judgments of 19 April and 30 May 2006 by way of supervisory review, and remitted the matter for fresh consideration.

45. On 25 October 2006 the District Court dismissed the applicant's claims in full. The court held that the applicant's allegations of wilful delays in the inquiry were not substantiated.

46. On 19 December 2006 the Chelyabinsk Regional Court upheld the judgment of 25 October 2006 on appeal.

D. Sh.'s conviction

47. On 31 October 2006 Sh. was charged with robbery in respect of the applicant.

48. During the trial Sh. pleaded guilty. The court questioned the applicant and witness P., the teenage girl the applicant had met on the night of the assault. P.'s testimony was summarised in the verdict as follows:

"During the night of 24 May 2005 someone knocked on the door. She opened the door and saw Sh., her father's acquaintance, and [the applicant], whom she had not

met before. Both of them were in a state of alcoholic intoxication. She let them into the flat. [The applicant] was upset, she was in tears. She was wearing jeans which were inside out. She suggested that she and [the applicant] go into the bathroom to have a smoke, to talk and to get changed. When [the applicant] took off her jeans she saw that [the applicant] had no pants on. She realised that [the applicant] could have been raped. After that [the applicant] and Sh. came into the kitchen to drink vodka. Her father drank with them. She did not hear what they were talking about. But she went into the kitchen to calm [the applicant] down when the latter was crying. [The applicant] left about five a.m. For some reason, Sh. was holding her gold chain on a pendant in his hand. ... [The applicant] asked him to give it back to her, but Sh. refused to do so. Then [the applicant] asked her to open the door, which she did. [The applicant] left. Sh. left some thirty minutes later.”

49. On 14 December 2006 the Chelyabinsk Leninskiy District Court found Sh. guilty as charged and sentenced him conditionally to eighteen months’ imprisonment.

II. RELEVANT DOMESTIC LAW

A. Criminal code of the Russian Federation

50. The Criminal Code defines “rape” as sexual intercourse carried out by force or a threat of force to be used against the victim or another person or by use of the victim’s helpless state (Article 131 § 1).

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

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

B. Investigation of the crimes and victim status as set forth in the Code of the Criminal Procedure of the Russian Federation

53. In response to a complaint of a criminal offence an investigator is under an obligation to look into the complainant’s allegations (Article 144).

54. Should there be sufficient grounds to believe that a crime has been committed, the investigator initiates a criminal investigation (Article 145).

55. The criminal investigation should not normally exceed two months. This time-limit can be extended for up to three months. If the matter is of extreme complexity, the investigation can be extended for up to twelve months (Article 162).

56. The criminal investigation can be suspended if the alleged perpetrator has not been identified (Article 208 § 1).

57. A person who has suffered damage as a result of a crime is granted victim status and may take part in the criminal proceedings. During the criminal investigation, the victim may submit evidence and lodge applications. Once the investigation is completed, the victim has full access to the case file (Article 42).

C. Instruction on the use of polygraph testing for questioning purposes approved by Order no. 437 of the Ministry of the Interior of the Russian Federation of 28 December 1994

58. Polygraph testing is used for questioning purposes (§ 1.1). The information obtained as a result of such testing cannot be used as evidence. It has a probable nature and can be used as guidance only (§ 1.2). The use of polygraph testing helps (1) to gather factual data necessary for prompt investigating activities and prevention and solution of crimes; (2) to search for persons who absconded or disappeared; (3) to verify data communicated by persons subject to questioning; and (4) to establish whether persons questioned are involved in a crime (§ 1.5). The data obtained as a result of polygraph testing can be used as guidance by law-enforcement units in accordance with the Law on operative and investigating activities.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 8 OF THE CONVENTION

59. The applicant complained that the State had failed to properly investigate the alleged rape. The Court considers that the complaint falls to be examined under Articles 3 and 8 of the Convention, which, in so far as relevant, read as follows:

Article 3

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Article 8

“1. Everyone has the right to respect for his private ... life”

60. The Government contested that argument. They submitted that the domestic authorities had conducted an inquiry and a subsequent official investigation into the applicant’s allegations in strict compliance with the

domestic law. The applicant had unlimited access to court and availed herself of all remedies to protect her rights and interests. She had brought her grievances to the attention of the competent court, which had assessed the lawfulness and compliance of the investigation. The investigators had carried out a wide range of actions aimed at identifying the alleged perpetrators. Numerous witnesses had been questioned. Forensic evidence had been collected and analysed. The fact that the perpetrators had not been established could not be interpreted as the authorities' failure to comply with their positive obligations set out in Articles 3 and 8 of the Convention.

61. The applicant maintained her complaint.

A. Admissibility

62. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. General principles

63. The general principles concerning the existence of a positive obligation to punish rape and to investigate rape cases can be summarised as follows (see *M.C. v. Bulgaria*, no. 39272/98, ECHR 2003-XII):

“149. The Court reiterates that the obligation of the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to ill-treatment, including ill-treatment administered by private individuals (see *A. v. the United Kingdom*, judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VI, p. 2699, § 22; *Z and Others v. the United Kingdom* [GC], no. 29392/95, §§ 73-75, ECHR 2001-V; and *E. and Others v. the United Kingdom*, no. 33218/96, 26 November 2002).

150. Positive obligations on the State are inherent in the right to effective respect for private life under Article 8; these obligations may involve the adoption of measures even in the sphere of the relations of individuals between themselves. While the choice of the means to secure compliance with Article 8 in the sphere of protection against acts of individuals is in principle within the State's margin of appreciation, effective deterrence against grave acts such as rape, where fundamental values and essential aspects of private life are at stake, requires efficient criminal-law provisions. Children and other vulnerable individuals, in particular, are entitled to effective protection (see *X and Y v. the Netherlands*, judgment of 26 March 1985, Series A no. 91, pp. 11-13, §§ 23-24 and 27, and *August v. the United Kingdom* (dec.), no. 36505/02, 21 January 2003).

151. In a number of cases, Article 3 of the Convention gives rise to a positive obligation to conduct an official investigation (see *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports 1998-VIII*, p. 3290, § 102). Such a positive obligation cannot be considered in principle to be limited solely to cases of ill-treatment by State agents (see, *mutatis mutandis*, *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, ECHR 2002-I).

152. Further, the Court has not excluded the possibility that the State's positive obligation under Article 8 to safeguard the individual's physical integrity may extend to questions relating to the effectiveness of a criminal investigation (see *Osman v. the United Kingdom*, judgment of 28 October 1998, *Reports 1998-VIII*, p. 3164, § 128,).

153. On that basis, the Court considers that States have a positive obligation inherent in Articles 3 and 8 of the Convention to enact criminal-law provisions effectively punishing rape and to apply them in practice through effective investigation and prosecution.”

2. *The scope of the Court's review in the instant case*

64. The Court observes that, in the instant case, the applicant did not allege that Russian law, as such, did not provide effective protection against rape. Rather, she maintained that the State had not discharged its obligation to carry out an effective investigation of the circumstances of her rape and to identify and punish the perpetrators. The Court's task is accordingly to ascertain whether the domestic authorities applied the relevant criminal-law provisions in practice through effective investigation and prosecution.

3. *Application of the principles*

65. The Court reiterates that, even though the scope of the State's positive obligations might differ between cases where treatment contrary to Article 3 has been inflicted through the involvement of State agents and cases where violence is inflicted by private individuals (see *Beganović v. Croatia*, no. 46423/06, § 69, 25 June 2009), the requirements as to an official investigation are similar. For the investigation to be regarded as “effective”, it should in principle be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible. This is not an obligation of result, but one of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard, and a requirement of promptness and reasonable expedition is implicit in this context (see, among many authorities, *Mikheyev v. Russia*, no. 77617/01, 107 et seq., 26 January 2006, and *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports 1998-VIII*, §§ 102 et seq.). In cases under

Articles 2 and 3 of the Convention where the effectiveness of the official investigation has been at issue, the Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time (see *Labita v. Italy* [GC], no. 26772/95, §§ 133 et seq., ECHR 2000-IV). Consideration has been given to the opening of investigations, delays in taking statements (see *Timurtaş v. Turkey*, no. 23531/94, § 89, ECHR 2000-VI, and *Tekin v. Turkey*, 9 June 1998, § 67, *Reports* 1998-IV) and to the length of time taken for the initial investigation (see *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001).

66. Turning to the facts of the instant case, the Court observes that the authorities did respond to the applicant's allegations of rape. They conducted an initial inquiry to verify her allegations and then opened a criminal case and instituted official investigation. The Court is not convinced, however, that the measures taken by the authorities met the requirements of Articles 3 and 8.

67. The Court notes from the outset that the prosecuting authorities were particularly slow in instituting an official criminal investigation into the circumstances of the case (see paragraphs 7-18 above). The prosecutor opened a criminal case only on 25 November 2005, five months after the applicant's initial complaint. Admittedly, the authorities required a certain time to conduct a preliminary inquiry into the applicant's allegations. They arranged for the applicant to undergo a medical examination, indispensable in rape cases. Her bodily injuries were documented and a smear test was performed. The investigator questioned the applicant and certain witnesses, who provided information on the events preceding and following the alleged rape. Nevertheless, it appears from the materials in the case-file that the investigator attached a significant weight to the applicant's inebriated state at the relevant time and inability to provide a clear account of the events. Four times he rejected her allegations as unsubstantiated. Each time the supervising prosecutor ordered the reopening of the inquiry, consistently referring to the need for further work and a more thorough approach, which was, however, ignored by the investigating authorities.

68. The Court does not lose sight of the difficulties the authorities face when investigating sex crimes, due to the particularly sensitive nature of the experiences sustained by victims. The impact of such a trauma may affect a victim's ability to coherently or fully recount her experience. Indeed, the applicant was confused and provided contradictory statements. There were no eyewitnesses or anyone volunteering information on the issue. In such circumstances, the investigators were confronted with a difficult task. Nevertheless, despite the measures carried out by the authorities to elucidate the facts in the case, the Court cannot accept that the scope of the initial inquiry was satisfactory.

69. In this connection, the Court cannot but notice certain omissions on the part of the investigating authorities in the way they handled the initial

inquiry, when time was of essence to secure the evidence effectively. No one visited or searched the crime scene. Nothing was done to follow up on the information, albeit scanty, provided by the applicant in respect of the alleged perpetrators. The applicant's clothes were not collected for forensic analysis. Nor was she offered psychological counselling or therapy or her mental or emotional condition evaluated. Admittedly, most of these measures were carried out later, during the official investigation, with precious time already lost and producing little result.

70. The Court also takes into account the supervising prosecutor's review of the initial inquiry (see paragraph 19 above). The prosecutor refused to uphold the investigator's dismissal of the applicant's allegations as unsubstantiated. He found the applicant's allegations to be sufficiently serious to open an official criminal investigation in this respect.

71. In this regard the Court observes that the ensuing investigation and judicial review lasted from 25 November 2005 to 5 May 2008. The Court accepts that the investigators proceeded in a reasonably diligent manner and the case was submitted to the judicial review within a year once the criminal case was opened. Nevertheless, the Court discerns a number of serious shortcomings in the investigators' actions which were noted by the supervising prosecutor. No identity parade took place, even though the investigator questioned certain individuals suspected of involvement in the rape. Some of the persons were not questioned despite the prosecutor's indication to do so (see paragraph 30 above). The Court finds it particularly striking that P., a teenage girl who saw the applicant shortly after the alleged rape, was never questioned by the police in this respect even though her identity was known to investigators and she testified at the robbery trial (see paragraph 48 above). Nor was there any follow-up as regards R.'s polygraph test results, which showed that the latter had "guilty knowledge" in connection with the applicant's rape.

72. Lastly, the Court notes that at no time did the investigator, despite the existence of DNA evidence (see paragraphs 22 and 28 above), order its analysis. It was only upon the applicant's initiative that he considered such a possibility. He dismissed her request with a reference to the destruction of the evidence in question (see paragraph 33 above). Without delving into the issue of the validity of that argument furnished by the investigator, the Court cannot but notice that the relevant forensic expert report contained a conclusion to the contrary (see paragraph 28 above).

73. The above considerations coupled with the overall duration of the investigation raise doubts as to the effectiveness of the authorities' response to the applicant's allegations of rape and leave the criminal proceedings in the case devoid of meaning.

74. The Court concludes that the respondent State has failed to meet its positive obligations to conduct an effective investigation and to ensure

adequate protection of the applicant's private life. There has accordingly been a violation of Articles 3 and 8 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

75. Lastly, the applicant complained that the investigation of her complaint about the robbery had not been effective and that her claim for damages had been dismissed.

76. However, having regard to all the material in its possession, the Court finds that the events complained of do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded pursuant to Articles 35 § 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

77. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

78. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

79. The Government considered the applicant's claim excessive.

80. The Court observes that it has found a serious violation in the present case. The authorities failed to comply with their positive obligations to effectively investigate and punish rape. In such circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated for by merely finding a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 12,500 in respect of non-pecuniary damage.

B. Costs and expenses

81. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

82. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the respondent State's compliance with its positive obligations under Articles 3 and 8 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Articles 3 and 8 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 12,500 (twelve thousand and five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable on the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 July 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President