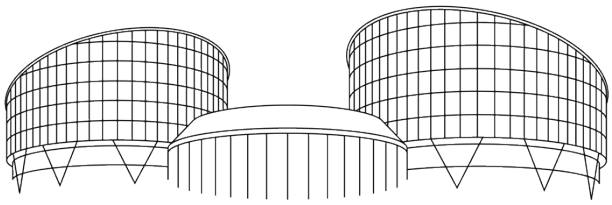

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

Application no. 47017/06
Oleg Viktorovich MAROV
against Russia
lodged on 23 October 2006

STATEMENT OF FACTS

The applicant, Mr Oleg Viktorovich Marov, is a Russian national, who was born in 1964 and lives in Abakan.

A. The circumstances of the case

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

1. Criminal proceedings against the applicant

The applicant worked as a district prosecutor. In 2001 he took over a rape complaint from an investigator and transferred it to another investigator, Mr F.

Later on, F. was charged with abuse of power on account of the refusal to prosecute he had issued in relation to the rape complaint. The applicant was heard as a witness. By a judgment of 5 September 2005 Mr F. was convicted of abuse of power and was prohibited from holding any public office for a period of time. The applicant was mentioned as an "accomplice" in this judgment. Neither Mr F. nor the applicant appealed against the trial judgment.

In the meantime, on an unspecified date the applicant was accused of putting pressure on the rape victim.

By a judgment of 4 July 2006 the Ilanskiy District Court of the Krasnoyarsk Region convicted the applicant of abuse of power and prohibited him from holding any public office for four years. Considering that the applicant's guilt was established by the available evidence, the trial court referred to the judgment of 5 September 2005 in the following terms:

> "...The judgment of 5 September 2005, which is now final, ... confirms the unlawfulness of the refusal to prosecute on the complaint of rape and establishes that [the applicant] exerted pressure over the rape victim ... and obtained from her and her representative a formal withdrawal of the criminal complaint ... Having regard to Article 90 of the Code of Criminal Procedure, the above circumstances have an established legal force."

The text of the trial judgment also indicated that it was amenable to appeal. It contained no information as to whether the convict and/or his lawyer had to request participation in the appeal hearing. Nor did it indicate the procedure, including a time-limit, for making such a request.

Apparently, the applicant was refused access to a copy of the trial verbatim record and could not make comments as regards its accuracy.

The applicant submitted a statement of appeal. It is unclear whether he sought to be assisted or represented by legal-aid or retained counsel, in so far as the drafting of a statement of appeal and participation in an appeal hearing were concerned.

On several occasions, the applicant wrote to the Krasnoyarsk Regional Court asking to be informed of the date of the appeal hearing in his case. In his letters of 21 and 23 August 2006 he asked the District and the Regional Courts to send him a copy of the appeal decision in his case.

On 22 March 2007 the Regional Court held an appeal hearing. The appeal court heard the prosecutor and upheld the trial judgment, without making any findings concerning the application of Article 90 of the Code of Criminal Procedure. The applicant was neither present nor represented at the appeal hearing because, apparently, the defence had not been informed of it. The appeal court made no findings concerning the absence of the defence from the hearing.

In the meantime, the applicant unsuccessfully sought supervisory review of the judgment of 5 September 2005 in respect of Mr F. His applications were turned down due to the absence of standing to represent Mr F. However, in 2009 the applicant's renewed application was processed. On 28 July 2009 the Presidium of the Regional Court granted his claim and ordered that all explicit reference to the applicant should be removed from the judgment of 5 September 2005.

2. Unrelated civil proceedings

By a judgment of 23 November 2004 the Tsentralniy District Court of Krasnoyarsk ordered Mr B. to pay 838,390 Russian roubles to the applicant.

By a judgment of 30 October 2006 another court ordered Mr B. to pay RUB 63,064 to the applicant.

The debtor failed to comply with the judgments.

In 2007 the authorities refused to institute criminal proceedings against the debtor.

B. Relevant domestic law and practice

Circumstances which were established in a final judgment should be accepted by a court in a criminal case without any additional inquiry. However, such final judgment should not prejudge the question of guilt in

respect of the person who did not take part in the earlier case (Article 90 of the Code of Criminal Procedure).

The Constitutional Court considered that the circumstances which were established in a final judgment, should be accepted by a court as "established facts" only vis-à-vis the person whose legal status had been directly at stake in this final judgment. Therefore, the circumstances established in the final judgment should not treated as "established facts" in a subsequent case in respect of another person whose legal status had not been at stake in the earlier case (see Ruling no. 30-P of 21 December 2011 and decision no. 36-O-O of 25 January 2012).

The Constitutional Court also considered that in case of doubt the judge was empowered to carry out an inquiry in respect of "established facts" (see decision no. 504-O of 24 November 2005 and decision no. 1183-O-O of 13 October 2009).

COMPLAINTS

The applicant complains under Article 6 of the Convention about the adverse findings made in respect of him in the judgment of 5 September 2005; and that he was not party to these proceedings.

The applicant also complains under Article 6 of the Convention that the authorities failed to observe the domestic time-limits for informing him of the charges; that F. had slandered him and that the trial court disregarded the testimonies confirming this; that the trial against him was unfair on account of the reliance on the adverse findings made in respect of him in the judgment of 5 September 2005; that he could not obtain access to a copy of the trial verbatim record; that he was not informed of the appeal hearing in advance and thus was neither present nor represented at it.

Lastly, the applicant complains under Articles 6 and 13 of the Convention that the State failed to assist him in obtaining enforcement of the judgments of 23 November 2004 and 30 October 2006 in his favour, for instance by way of criminal proceedings against the debtor.

QUESTIONS TO THE PARTIES

1. (a) Was there a violation of Article 6 § 2 of the Convention on account of the findings made in relation to the applicant in the proceedings relating to Mr F.? Was there a violation of that provision because of the reliance on such findings by the trial court in the applicant's own criminal case?

(b) In addition was there a violation of Article 6 § 1 and § 2 of the Convention because of the trial court's treatment of these findings as "established facts" (Article 90 of the Russian Code of Criminal Procedure) in the applicant's own criminal case? Were the defence rights thereby

restricted to an extent incompatible with the requirements of Article 6 of the Convention?

2. Given that neither the applicant nor a lawyer were apprised of the appeal hearing in advance and were not afforded an opportunity to take part in it, was there a violation of Article 6 § 1 and § 3 (b)-(c) of the Convention? Noting that the prosecutor was present at the appeal hearing, was the principle of equality of arms respected in the present case?