



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

FIRST SECTION

Application no. 53308/09
Y.U. against Russia
lodged on 23 July 2009

STATEMENT OF FACTS

The applicant, Ms Y.U., is a Russian national, who was born in 1988 and lives in St. Petersburg.

A. The circumstances of the case

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

On 6 July 2005 at about 10.30 p. m. the applicant was allegedly raped by Mr A. in his car in St. Petersburg. At the material time she was sixteen years and eleven months old. On the following day the applicant lodged a complaint with the police, seeking criminal prosecution of Mr A. She provided the police with her clothes and underwear with traces of blood and sperm. On the same day the investigation established the suspect – Mr A., who was a police cadet (курсант) at the material time. The police examined his car and sent the applicant to a hospital for medical examination. The examination took place on 12 July 2005 and established that the applicant had a bruise on her left shoulder being between 4 and 10 days old and another bruise on the right elbow being between 7 and 12 days old. A vaginal inspection revealed traces of the applicant's blood but no signs of forced penetration.

On 7 September 2005 the Deputy Prosecutor of the Nevskiy District of St. Petersburg (the Deputy Prosecutor) initiated criminal proceedings against Mr A. On 12 September 2005 the applicant was granted victim status in those proceedings.

On 8 September 2005 the investigator of the Nevskiy District of St. Petersburg in charge of the applicant's case (the investigator) ordered a forensic examination of the applicant's clothes previously seized as real evidence. The examination was carried out between 27 September and

6 October 2005 and confirmed that there were stains of the applicant's blood and human sperm on the applicant's clothes.

On 7 January 2006 the investigation was suspended due to necessity to search for Mr A. The Nevskiy Police Department of St. Petersburg was entrusted with the search by the investigator. The applicant submitted a copy of the police certificate issued by the Police Department on 23 May 2006 confirming that no search file had been opened in respect of Mr A. On 27 November 2006 the Deputy Prosecutor revoked the decision of 7 January 2006 and assigned the case to another investigator.

On 7 March 2007 the investigator decided to discontinue the criminal proceedings against Mr A. due to the absence of the event of a crime. On 15 May 2007 that decision was declared unlawful and unjustified by the Nevskiy District Court of St. Petersburg (the District Court) following the applicant's complaint. The District Court also ordered to remedy some shortcomings of the investigations, *inter alia*, to establish whether the sperm found on the applicant's clothes belonged to Mr A.

On 30 May 2007 the Deputy Prosecutor quashed the investigator's decision of 7 March 2007 on discontinuation of the proceedings against Mr A. The Deputy Prosecutor noted the need to establish whether the sperm found on the applicant's cloths belonged to Mr A.

On 30 May 2007 the investigator again decided to discontinue the criminal proceedings against Mr A. due to the absence of the event of a crime. The investigator also noted that the characteristics of sperm established by the examination were too vague and not appropriate for identification of the perpetrator. On 14 January 2008 the Deputy Prosecutor quashed the decision as unlawful and unjustified. The Deputy Prosecutor noted that the investigator failed to take any investigative measures which were indicated in the former's decision of 30 May 2007.

The applicant appealed to the court, but on 18 January 2008 the District Court found that the applicant's complaint against the investigator's decision of 30 May 2007 did not merit examination since the decision in question had been already quashed by the Deputy Prosecutor on 14 January 2008.

In the meantime, in 2007 the applicant's case was transferred to an investigator with the Nevskiy District Branch of the Russian Investigative Committee (the District Branch).

On 25 June 2008 the investigator issued another decision to discontinue prosecution of Mr A. due to the absence of the event of a crime which was subsequently quashed on 5 August 2008 by the head of the District Branch. The head of the Branch noted that the investigator failed to take necessary investigative measures which were prescribed to him earlier.

On 11 August 2008 the District Court found that the applicant's complaint against the investigator's decision of 25 June 2008 did not merit examination since the decision in question had been already quashed by the head of the District Branch on 5 August 2008.

On 13 November 2008 the investigator decided to discontinue the proceedings due to the absence of the event of a crime once again. That decision was quashed by the head of the District Brach on 16 December 2008, who noted that not all necessary investigative measures had been taken, *inter alia*, obtaining of blood samples from Mr A. and

commissioning of a comparative DNA-examination in respect of DNA samples available on the applicant's clothes.

On 23 December 2008 the District Court found that the applicant's complaint against the investigator's decision of 13 November 2008 did not merit examination since the decision in question had been already quashed by the head of the Branch on 16 December 2008.

On 23 January 2009 it was established by the investigator that some real evidence seized by the investigation, including the applicant's clothes and underwear with traces of blood and sperm, had disappeared from the premises of the District Branch. A report in this regard was drawn up by the officers of the Branch.

Finally, on 24 January 2009 the investigator issued the last decision on discontinuation of the proceedings against Mr A. due to the absence of the event of a crime. The applicant did not appeal against that decision. It appears that no DNA samples were taken from Mr A. during the investigation.

According to a medical certificate issued by St. Petersburg Polyclinic no. 31 (undated) the applicant had been suffering from panic attacks in connection with previous emotional and physical stress (event of rape). According to another medical certificate issued by St. Petersburg Polyclinic no. 100 on 3 June 2009, since 2005 the applicant was under medical supervision by a neurologist and needed medical treatment.

B. Relevant domestic law

Article 131 § 2 (d) of the Criminal Code of the Russian Federation (in force at the material time) punished the offence of rape committed in respect of a minor with imprisonment of up to ten years.

COMPLAINTS

1. The applicant complains under Article 3 that she was raped by Mr A. on 6 July 2005.
2. The applicant also complains under Article 3 that there had been no effective investigation following her complaint of rape.

QUESTION

Was the investigation into the applicant's allegations of rape adequate and effective, as required by Article 3 of the Convention?