CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF MASLOVA AND NALBANDOV v. RUSSIA

(Application no. 839/02)

JUDGMENT

STRASBOURG

24 January 2008

FINAL

07/07/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Maslova and Nalbandov v. Russia,

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

Loukis Loucaides, *President,*
Nina Vajić,
Anatoli Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 3 January 2008,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 839/02) 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 two Russian nationals, Ms Olga Yuryevna Maslova ("the first applicant") and Mr Fedor Vartanovich Nalbandov ("the second applicant"), on 10 July 2001. They were represented before the Court by Ms Y. Kirsanova and Ms O. Shepeleva, legal experts practising in the town of Nizhniy Novgorod.

2. The Russian Government ("the Government") were initially represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative, Mrs V. Milinchuk.

3. The applicants alleged, in particular, that they had been subjected to ill-treatment by State officials on 25 November 1999 and that there had been no effective investigation into the events, in breach of Articles 3, 6 and 13 of the Convention.

4. By a decision of 12 December 2006 the Court declared the application partly admissible.

5. The applicants and the Government each filed further written observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1980 and 1982 respectively and live in the town of Nizhniy Novgorod.

A. Background information

7. Between 4 and 24 November 1999 the first applicant had the status of witness in a murder case conducted jointly by the police and the prosecution.

8. It appears that these authorities repeatedly summoned her to give evidence to the Nizhegorodskiy District Department of Internal Affairs (*Нижегородское районное управление внутренних дел* – "the police station").

9. It also appears that at some point during the investigation suspect B. stated that the first applicant had been in receipt of the murdered person's belongings.

10. According to the first applicant, investigator Zh. summoned her to appear on 25 November 1999 at 12.30 p.m. The Government submitted that the first applicant was summoned by policeman K. and not by investigator Zh.

B. Events of 25 November 1999

11. The applicants submitted the following account of events. The Government did not make any specific comments in this respect.

1. Interrogation by policemen Kh. and K.

12. The first applicant arrived at the police station on time and was questioned. The interrogation was initially conducted by policemen Kh. and K. and took place at office no. 63 of the police station.

13. The policemen requested the first applicant to acknowledge that she had received property belonging to the murdered person. When the first applicant refused to do so, they started shouting and threatened to bring criminal proceedings against her. They took her soccer scarf and administered several blows with the scarf to her face.

14. Then K. left the office and Kh. stayed there with the first applicant in private. He locked the door from the inside and went on with physical and psychological coercion. Kh. fettered the first applicant's hands with thumbcuffs and administered blows to her head and cheeks. He raped her using a condom and then forced her to perform oral sex with him.

15. Kh. was interrupted by noise in the corridor and knocking on the door. The first applicant was allowed to go to the lavatory and tidy herself up.

2. Confrontation with suspect B and events over the next three hours

16. At around 2 p.m. the first applicant was confronted with suspect B. In his presence, she yet again denied her involvement in the murder.

17. Thereafter Kh. and K. fettered the first applicant's thumbs and repeatedly hit her in the stomach. They put a gas mask over the first applicant's face and made her suffocate by shutting off access to air. Kh. and K. also ran electricity through wires connected to the first applicant's earrings. The above actions were coupled with attempts to obtain a confession.

18. It appears that eventually the first applicant admitted having received the property in question and agreed to write her confession down on paper. Since the first applicant was in an agitated state and failed to write properly, she had to try twice. The confession was addressed to a local district prosecutor.

19. Kh. and K. then suggested that the first applicant's mother should bring the notebook containing the phone numbers and addresses of the applicant's friends and acquaintances.

20. The first applicant called her mother and at 4.40 p.m. the latter and the second applicant came to the police station and brought the required notebook. The first applicant's mother and the second applicant stayed in a lobby near office no. 63.

21. At 5 p.m. S., an investigator from a local prosecutor's office, came to office no. 63. He learned from the first applicant that she was a CSKA Moscow soccer fan and started to insult her and administer blows to her head with the second applicant's own scarf, requiring her to curse this club.

3. Interrogation of the first applicant by investigator Zh.

22. Some time later Kh. brought the first applicant to office no. 3 of the prosecutor's office for the Nizhegorodskiy District of the city of Nizhniy Novgorod (*Прокуратура Нижегородского района г. Нижний Новгород* – "the local prosecutor's office") which was situated in the same building as the police station.

23. Zh., an investigator of the local prosecutor's office, interrogated the first applicant in connection with her confession.

24. In order to put additional pressure on her the investigators simultaneously arrested and detained her mother. It appears that the first applicant's mother spent two hours in detention.

4. Events between 6.30 p.m. and 7 p.m.

25. According to the second applicant, around 6.30 p.m. investigator S. was in the lobby and saw the second applicant. S. rudely demanded the second applicant to leave the building, kicked him on the hip, pushed him towards the exit, then caught up with him and forced him into office no. 54 in which there were two unidentified policemen.

26. Then S. locked the door from the inside, hit the second applicant in his trunk several times and dealt a few blows to the second applicant's head and trunk with his own CSKA Moscow soccer scarf.

27. S. brought the second applicant to office no. 7 and, in presence of Kh. and investigator M., went on beating the second applicant, requiring him to curse the CSKA Moscow soccer club. When the second applicant refused, S. put the scarf around his neck and started to suffocate the applicant, simultaneously hitting him on the trunk. The second applicant eventually capitulated.

28. Thereafter M., Zh. and Kh. sent the second applicant to a nearby shop to buy alcohol, cigarettes and food and upon his return he was expelled from the building.

5. Events between 7 p.m. and 10.30 p.m.

29. Around 7 p.m., S. and M. came to office no. 3 in which investigator Zh. was finalising the interrogation of the first applicant. They did not let the first applicant out after the questioning was over and started to drink alcohol. According to the first applicant, her requests to leave were denied.

30. Upon her request, the first applicant was escorted to the lavatory on the third floor of the building where she unsuccessfully tried to cut the veins of her left wrist.

31. She returned to office no. 3 and for the next two hours she was raped by Zh., S. and M. It appears that they used condoms and that following the rape they cleaned the place with wipes. It appears that Kh. had left the office upon the first applicant's return from the lavatory and had not taken part in the rape.

32. At 9 p.m. S. left and during the next hour Zh. and M. went on raping the first applicant. Around 10 p.m. they released her.

6. Events after 10.30 p.m.

33. At 10.30 p.m. the first applicant reached the place of her acquaintance RB. Shortly later she was joined by IA and EA. After a talk, EA called the first applicant's parents and told them that RB and IA would follow the first applicant to a hospital.

34. At 1.20 a.m. on the next day they arrived at hospital no. 21 and the first applicant told an assistant nurse that she had been raped in the police station. The nurse and the doctor did not examine the applicant and advised her to address herself to a bureau of forensic examination. The applicant

refused because the bureau was located too close to the police station. She was then advised to go to a bureau in a different district. It does not appear that the first applicant did so.

C. Criminal investigation

35. It appears that on 26 November 1999 the first 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. The second applicant had the status of crime victim in this case.

36. 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.

37. 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.

38. The bill of indictment stated that Kh. was accused of having tortured and raped the first applicant, ill-treated the second applicant, abused the office and discredited the authority (see the episodes described in paragraphs 12-15, 16-21, 25-28 and 29-32 above). Zh. was charged with having raped and sexually abused the first applicant, abused the office and discredited the authority (see paragraphs 22-24 and 29-32). As to S., he was accused of having ill-treated the first and second applicant and abused and discredited the authority (see paragraphs 16-21 and 25-28), raped and sexually abused the first applicant and abused and discredited the authority (see paragraphs 29-32). M. was charged with having raped and sexually abused the first applicant and abused and discredited the authority (see paragraphs 29-32). 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.

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

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

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

42. There were also statements of witnesses RB, EA and IA, the assistance nurse and the doctor, the parents of the first applicant, the mother

of the second applicant and an employee of the shop who had sold the food and alcohol to the second applicant (see paragraph 28 above).

43. 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 first applicant's handwritten statement of a self-incriminating character which had been described by an expert as having been written by "a shaking hand" (see paragraph 18), the medical confirmation of the first applicant's attempts to cut her veins (see paragraph 30), 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.

44. 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 first applicant's. The investigation also established that Kh. and his spouse had a different antigen group.

45. 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.

46. 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 first applicant and spermatozoids and cells of male urethra.

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

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

D. Proceedings at first instance

49. 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.

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

51. 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.

52. 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.

E. Appeal and supervisory review proceedings

53. 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.

54. On an unspecified date in September 2001 the first 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.

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

56. 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.

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

F. Discontinuation of criminal proceedings

58. On 12 January 2001 the Regional Prosecutor's Office (*Нижегородская областная прокуратура*) examined the case, found that the charges were essentially based on the first 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.

59. 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 first applicant and the

accused were to be notified and that the decision could be appealed against to a higher prosecutor's office.

60. By a letter of 19 June 2001 (No. 15/1-1018-99) the Regional Prosecutor's office responded to the first 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.

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

62. 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. It mentioned the lack of legal characterisation of the acts committed in respect of the second applicant as a drawback of that decision.

63. 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.

64. 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.

65. On 19 September 2004 the first 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.

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

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

68. 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.

69. 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.

70. The outcome of these proceedings remains unclear, but no further steps appear to have been taken in respect of the criminal case against the policemen and investigators.

II. RELEVANT DOMESTIC LAW

A. Applicable criminal offences

71. 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.

72. 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.

73. 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.

B. Interrogation of witnesses (Code of Criminal Procedure of 1960, as in force at the relevant time)

Article 155

"A witness shall be called for interrogation by a written notice served on him personally or, in his absence, on an adult member of his family...

The notice shall contain the name of the person called as a witness, indicating where, before whom, on what date and at what time he is required to appear and the consequences of failure to appear. A witness may also be called by means of telephone or cable."

Article 157

"The interrogation of a witness shall be conducted at the place of the investigation. An investigator may decide to interrogate a witness at the location of that witness."

C. Official investigation of crimes

74. 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.

75. 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.

76. 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.

77. 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.

78. 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.

79. Section 42 of the Law on Prosecution Authorities and Decree No. 44 of the Prosecutor General of 26 June 1998 sets out a special procedure for bringing administrative and criminal proceedings against officials of the prosecution authorities. In particular, the officials who have the right to initiate such proceedings are exhaustively listed.

D. Civil-law remedies against illegal acts by public officials

80. The Civil Code of the Russian Federation, which entered into force on 1 March 1996, provides for compensation for damage caused by an act or failure to act on the part of the State (Article 1069). Articles 151 and 1099-1101 of the Civil Code provide for compensation for non-pecuniary damage. Article 1099 states, in particular, that non-pecuniary damage shall be compensated for irrespective of any award for pecuniary damage.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

81. The Government informed the Court that the criminal proceedings against the alleged perpetrators of torture were still pending at the domestic level and refrained from giving any comments on the case.

82. In so far as this submission could be understood as an objection regarding the applicants' failure to exhaust domestic remedies, the Court notes that the respondent Government did not argue that the domestic avenues chosen and employed by the applicants to bring their grievances to the attention of the domestic authorities were ineffective or otherwise inappropriate.

83. It further notes that the first applicant initially complained about the events of 25 November 1999 on the next day, 26 November 1999. Thereafter the case was closed and reopened several times. On 22 August 2005, that is five years and almost nine months after the date of the first complaint, the criminal proceedings were yet again resumed and on 14 February 2007, the date on which the respondent Government filed their additional observations, they were still pending at the investigation stage. In the absence of any indication to the contrary, the Court finds that the Government had sufficient time at their disposal to address the applicants' grievances by means of the domestic investigation. In addition, the applicants duly participated in the proceedings and there is nothing in the case file to suggest that they did not avail themselves of all available domestic remedies to appeal against the unfavourable decisions in that case.

84. In view of the above, the Court finds that the applicants complied with the requirement to exhaust domestic remedies and rejects the Government's objection.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN RESPECT OF THE FIRST APPLICANT

85. Under Article 3 of the Convention the first applicant complained that she had been repeatedly raped and ill-treated by the policemen and prosecution officers on 25 November 1999. The first applicant also complained that the authorities had failed to carry out a proper investigation in this connection. Article 3 of the Convention provides as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. The parties' submissions

86. The Government disagreed with the first applicant's complaints and allegations and submitted that on 29 April 2005 the Regional Prosecutor's Office had resumed a criminal investigation into the events of 25 November 1999. They considered that it was not possible to comment further on the allegations for the time being. In their additional observations, they also refrained from commenting on the merits of the complaints.

87. The first applicant maintained her complaints. In particular, she claimed that the case file contained sufficient evidence of ill-treatment and torture in respect of the first applicant and that the ensuing investigation had fallen short of the requirements of Article 3 under its procedural head.

B. The Court's assessment

88. The Court finds it appropriate to begin by examining the first applicant's submissions in so far as they raise an issue under the procedural head of Article 3 of the Convention and then to turn to the examination of the substantive issue under this Convention provision.

1. Alleged inadequacy of the investigation

(a) Existence of an arguable claim of ill-treatment

89. At the outset the Court notes that the first applicant complained about the events of 25 November 1999 on the following day. The investigative bodies carried out searches of the location of the incident, leading to the discovery of two used condoms and two wipes bearing traces of sperm. On 25 April 2000 four allegedly implicated officers were formally charged and on 5 July 2000 the bill of indictment was ready and the case was transferred to the trial court for examination on the merits.

90. In view of the body of evidence collected by the investigative authorities at the initial stage of investigation and the fact that the domestic authorities considered these items of evidence sufficiently serious to lay the basis of criminal charges against the allegedly implicated officers and to refer the case for trial, the Court finds that the first applicant has an arguable claim that she was seriously ill-treated by the State officials.

(b) General principles relating to the effectiveness of the investigation

91. The Court reiterates that where an individual raises an arguable claim that he or she has been seriously ill-treated by the police in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official

investigation. The Court finds further that rape is for its victim an offence of manifestly debasing character and thus emphasises the State's procedural obligation arising in this context (see *S.W. v. the United Kingdom*, judgment of 22 November 1995, Series A no. 335-B; *C.R. v. the United Kingdom*, judgment of 22 November 1995, Series A no. 335-C; and *M.C. v. Bulgaria*, no. 39272/98, § 153, ECHR 2003-XII). The effective official investigation should be capable of leading to the identification and punishment of those responsible (see *Assenov and Others v. Turkey*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3290, § 102, and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV). The minimum standards as to effectiveness defined by the Court's case-law also include the requirements that the investigation must be independent, impartial and subject to public scrutiny, and that the competent authorities must act with exemplary diligence and promptness (see, for example, *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, §§ 208-13, 24 February 2005).

(c) Application of those principles

92. The issue thus arises whether the authorities complied with their obligation to carry out an effective official investigation into the matter.

93. The Court observes in this connection that the investigation into the first applicant's allegations commenced as soon as she brought the matter before the competent authorities and that, at least on the face of it, the authorities appeared to have acted with diligence and promptness. Thus, the investigative bodies searched the location of the incident, resulting in the discovery of two used condoms and two wipes bearing traces of sperm (see paragraphs 45 and 47). It also questioned possible witnesses and ordered necessary forensic examinations of the items of evidence gathered (see paragraphs 41, 42, 43 and 46). On 25 April 2000, only five months after the incident, four allegedly implicated officers were formally charged and as soon as 5 July 2000 the bill of indictment was ready and the case was referred to the trial court for examination on the merits (see paragraph 37).

94. The Court notes, however, that following a preliminary examination of the case on 16 August 2000 the trial court discovered several serious violations of domestic procedural rules, breaching the rights of the accused, including disregard of a special procedure for opening an investigation in respect of prosecution officers and the fact that the allegedly implicated officers had not enjoyed the procedural status of accused persons until 25 April 2000, which rendered all previously collected evidence in the case inadmissible (see paragraph 52). The case was remitted for fresh investigation and later discontinued by the prosecution for, among other things, the acknowledged inability to remedy the breaches of the domestic procedure committed by the investigators during the first five months of the inquiry (see paragraphs 58 and 59). Owing to the nature of the evidence declared inadmissible by the trial court, it could not apparently be re-used after remittal of the case for additional investigation, and in these

circumstances it is not surprising that the criminal proceedings were ultimately discontinued for lack of evidence of a crime.

95. Having examined the circumstances of the case, the Court considers that it may indeed be accepted that the authorities undertook appropriate steps towards the identification and punishment of those responsible for the incident and, had it not been for breaches of domestic procedural rules by the authorities in the first five months following the opening of the case which, as acknowledged by the domestic courts, rendered the principal body of evidence inadmissible (see paragraphs 49, 51-52 and 58-59), the proceedings might arguably have complied with the requirements of the procedural aspect of Article 3. The fact remains, however, that the competent authorities committed procedural errors of an irremediable nature leading to the ultimate stalemate in the criminal proceedings against the allegedly implicated officers.

96. In the absence of any other plausible explanation for these mistakes by the Government, the Court finds that the principal reason for these errors lay in the manifest incompetence of the prosecution authorities which conducted the investigation between 26 November 1999 and 5 July 2000.

97. Accordingly, the Court finds that there has been a violation of Article 3 of the Convention on account of the lack of an effective investigation into the first applicant's allegations of ill-treatment.

2. Alleged ill-treatment by State officials

98. The Court will now turn to the question whether the first applicant was subjected to ill-treatment in breach of Article 3 of the Convention.

(a) General principles

99. The Court has observed on many occasions that Article 3 of the Convention enshrines one of the fundamental values of democratic societies and as such prohibits in absolute terms torture or inhuman or degrading treatment or punishment (see, for example, *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports* 1996-VI, p. 2278, § 62, and *Aydın v. Turkey*, judgment of 25 September 1997, *Reports* 1997-VI, § 81). The Court further indicates, as it has held on many occasions, that the authorities have an obligation to protect the physical integrity of persons in detention and that in assessing evidence it has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention.

100. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, § 34, and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII). The Court further reiterates that, being sensitive to the subsidiary nature of its role and cautious in taking on the role of a first-instance tribunal of fact, it is nevertheless not bound by the findings of domestic courts and may depart from them where this is rendered unavoidable by the circumstances of a particular case (see, for example, *Matyar v. Turkey*, no. 23423/94, § 108, 21 February 2002; by contrast *Edwards v. the United Kingdom*, judgment of 16 December 1992, Series A no. 247-B, p. 12, § 34, and *Vidal v. Belgium*, judgment of 22 April 1992, Series A no. 235-B, pp. 32-33, §§ 33-34).

(b) Assessment of the evidence

101. In the present case the initial criminal investigation in respect of the events of 25 November 1999 led to the discovery of evidence, such as the used condoms, one of which, with a very high probability of 99.9999%, bore traces of the first applicant's vaginal cells (see paragraph 46), and two wipes bearing traces of sperm (see paragraph 47), as well as the clothes with traces of sperm which the first applicant had allegedly been wearing at the relevant time (see paragraph 48), the clothes belonging to policeman Kh. with the traces of vaginal epithelium of the same antigen group as the first applicant's (see paragraph 44), the medical certificate confirming an attempt by the first applicant to cut her veins and the first applicant's handwritten statement of a self-incriminating character (see paragraph 43), which all very strongly supported the first applicant's account of events, as regards both the alleged repeated rape and various acts of coercion and ill-treatment by the State officials. Indeed, regard being had to the fact that the bill of indictment of 5 July 2000 was based on, among other things, the above items of evidence, and also in view of the number of decisions resuming and discontinuing the case (see paragraph 58-70), it can be said that the authorities conceded that the allegations had been credible.

102. The Court next takes note of its conclusions made in respect of the procedural aspect of Article 3 of the Convention (see paragraph 92-97) and the fact that the domestic courts declared the above-mentioned evidence inadmissible solely on the ground of procedural defects (see paragraphs 51 and 52) and that neither the Government nor the domestic authorities ever challenged it as erroneous as such.

103. Accordingly, the Court accepts the description of the events of 25 November 1999 as presented by the first applicant.

(c) Assessment of the severity of ill-treatment

104. The Court notes that it has accepted the facts as presented by the first applicant, namely that she was detained by the State officials and while in custody was repeatedly raped and subjected to various other forms of ill-

treatment, such as beatings, suffocation and electrocution (see paragraph 105 above and paragraphs 12-34 in the facts section).

105. The Court observes that according to its settled case-law a rape of a detainee by an official of the State must be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of his victim. Furthermore, rape leaves deep psychological scars on the victims which do not respond to the passage of time as quickly as other forms of physical and mental violence. The victim also experiences the acute physical pain of forced penetration, which leaves her feeling debased and violated both physically and emotionally (see *Aydın*, cited above, § 83).

106. In view of the above, the Court is satisfied that the accumulation of the acts of physical violence inflicted on the first applicant (see paragraphs 13, 14, 17, 21 and 31-32) and the especially cruel acts of repeated rape to which she was subjected (see paragraphs 14 and 31-32) amounted to torture in breach of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION IN RESPECT OF THE FIRST APPLICANT

107. The first applicant also complained about the failure of the authorities to carry out a proper investigation in connection with the events of 25 November 1999, relying on Articles 6 and 13 of the Convention.

108. In view of its above finding about the breach of the procedural aspect of Article 3, on account of the lack of an effective investigation into the events of 25 November 1999 (see paragraph 97), the Court considers that no separate issue arises under Articles 6 and 13 of the Convention in the circumstances of the present case.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN RESPECT OF THE SECOND APPLICANT

109. The second applicant also complained about ill-treatment by the State officials on 25 November 1999 and the alleged lack of an effective investigation in this connection. He relied on Article 3 of the Convention.

A. The parties' submissions

110. The Government disagreed with these complaints. Their observations were essentially the same as those in respect of the first applicant (see paragraphs 86 and 87).

111. The second applicant maintained his complaints.

B. The Court's assessment

1. Alleged inadequacy of the investigation

112. The Court notes that the second applicant had the status of crime victim in the case initiated upon the complaint of the first applicant on 26 November 1999 (see paragraph 35). Furthermore, the investigative authorities considered the evidence in the case sufficient not only to bring charges against Kh. and S. for abuse of office and ill-treatment of the second applicant, but also to prepare the bill of indictment in this connection and to send the case for trial (see paragraph 37).

113. In view of these factors, the Court finds that the second applicant has an arguable claim that he was ill-treated by the State officials.

114. The Court reiterates that where an individual raises an arguable claim that he or she has been seriously ill-treated by the police in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation (see earlier citations in paragraph 91). The issue thus arises whether the authorities complied with their obligation to carry out an effective official investigation into the matter.

115. The Court notes that it has made a finding of a violation of Article 3 of the Convention on account of various deficiencies and errors committed by the investigative authorities in the same criminal case in so far as it concerned the first applicant (see paragraphs 92-97). In view of this finding and since the reasons indicated in paragraph 95 hold true in respect of the second applicant, the Court finds that there has been a violation of Article 3 of the Convention on account of the lack of an effective investigation into the second applicant's allegations of ill-treatment as well.

2. Alleged ill-treatment by the State officials

(a) Assessment of the evidence

116. The Court again reiterates its settled case-law that the authorities have an obligation to protect the physical integrity of persons in detention and that in assessing evidence it has generally applied the standard of proof "beyond reasonable doubt". The proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see earlier citations in paragraphs 99-100).

117. Turning to the circumstances of the present case, the Court notes that the second applicant complained of having been beaten and strangled between 6.30 and 7 p.m. on 25 November 1999 by the police officers (see paragraphs 25-28). The Court observes that any ill-treatment inflicted in the

manner alleged by the applicant would have left marks on his body which could have been seen and attested by a doctor. It further notes that the materials in its possession do not contain any such medical evidence and do not allow it to confirm "beyond reasonable doubt" the second applicant's account of events in this respect.

118. The Court notes, however, that on 12 December 2006 it requested the Government to submit a copy of the entire investigation file opened into the events of 25 November 1999, since it regarded the evidence contained in that file as crucial to the establishment of the facts in the present case in particular in so far as the second applicant's mentioned allegations were concerned. In reply, the Government produced only copies of procedural decisions suspending and reopening criminal proceedings and refused to submit any other documents.

119. Since the Government failed to submit any plausible explanation for this refusal (see paragraphs 128-31 below) and bearing in mind the principles cited above, the Court finds that it can draw inferences from the Government's conduct in this respect.

120. The Court considers that throughout the domestic proceedings the second applicant has presented a coherent and convincing account of events of 25 November 1999 which was furthermore supported by the evidence collected by the investigative authority. The material collected by the investigative authority was deemed sufficient to lay basis of criminal charges against officers Kh. and S. for abuse of authority and ill-treatment of the second applicant and to present the criminal case in this respect to the trial court (see paragraphs 38-48). The Court also notes that it reviewed no material which could cast doubt on the credibility of the second applicant's statements or the information submitted by him. Furthermore, no alternative account of events was advanced by either the domestic authorities or the Government in these proceedings.

121. In view of the above and regard being had to its earlier conclusions concerning the flaws in the investigation and the decision to accept the description of the events of 25 November 1999 as presented by the first applicant (see paragraphs 102-05), the Court accepts the description of the events of 25 November 1999 as presented by the second applicant.

(b) Assessment of the severity of ill-treatment

122. The Court notes that it has accepted the facts as presented by the second applicant, namely that he was detained by the State officials and while in custody was punched, kicked and suffocated (see paragraphs 25-27).

123. Having regard to all the circumstances of the case, such as the duration of the treatment and its physical or mental effects, the Court concludes that, taken as a whole and having regard to its purpose and severity, the ill-treatment at issue amounted to inhuman and degrading treatment in violation of Article 3 of the Convention.

V. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION IN RESPECT OF THE SECOND APPLICANT

124. The second applicant further complained about the lack of a proper investigation, relying on Articles 6 and 13 of the Convention.

125. In view of its above finding about the breach of the procedural aspect of Article 3 on account of the lack of an effective investigation into the events of 25 November 1999 (see paragraph 117), the Court considers that no separate issue arises under Articles 6 and 13 of the Convention in this connection.

VI. COMPLIANCE WITH ARTICLE 38 § 1 (a) OF THE CONVENTION

126. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted under Article 34 of the Convention that States should furnish all necessary facilities to make possible a proper and effective examination of applications (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 70, ECHR 1999-IV). This obligation requires the Contracting States to furnish all necessary facilities to the Court, whether it is conducting a fact-finding investigation or performing its general duties as regards the examination of applications. Failure on a Government's part to submit such information which is in their hands, without a satisfactory explanation, may not only give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 § 1 (a) of the Convention (see *Timurtaş v. Turkey*, no. 3531/94, § 66, ECHR 2000-VI). In a case where the application raises issues of the effectiveness of the investigation, the documents of the criminal investigation are fundamental to the establishment of facts and their absence may prejudice the Court's proper examination of the complaint both at the admissibility stage and at the merits stage (see *Tanrıkulu*, cited above, § 70).

127. The Court observes that on 12 December 2006 it requested the Government to submit a copy of the file of the investigation opened into the events of 25 November 1999. The evidence contained in that file was regarded by the Court as crucial to the establishment of the facts in the present case. In reply, the Government produced only copies of procedural decisions suspending and reopening criminal proceedings. They refused to submit any other documents.

128. The Court notes that the Government did not provide any explanation to justify withholding the key information requested by the Court.

129. Having regard to the importance of cooperation by the respondent Government in Convention proceedings and the difficulties associated with the establishment of the facts in cases such as the present one, the Court

finds that the Russian Government fell short of their obligations under Article 38 § 1 (a) of the Convention on account of their failure to submit copies of the documents requested in respect of the events of 25 November 1999.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

130. 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

131. The first applicant claimed 70,000 euros (EUR) and the second applicant claimed EUR 30,000 in respect of non-pecuniary damage.

132. The Government argued that the finding of a violation in the case would constitute sufficient compensation.

133. The Court observes that it has found above that the authorities subjected the first applicant to repeated rape and ill-treatment, in breach of Article 3 of the Convention. Under this provision it has also found that there was no effective investigation in respect of the events of 25 November 1999 as regards the first applicant. Having regard to the seriousness of the violations of the Convention as well as to its established case-law (see *Aydın*, cited above, §§ 126-31, *Mikheyev v. Russia*, no. 77617/01, § 163, 26 January 2006, and *Selmouni v. France* [GC], no. 25803/94, § 123, ECHR 1999-V), the Court awards the first applicant the entire amount claimed, i.e. EUR 70,000 for non-pecuniary damage, plus any tax that may be chargeable on that amount.

134. As regards the second applicant, it has been established that the authorities subjected the second applicant to inhuman and degrading treatment, in breach of Article 3 of the Convention, and that there was also no effective investigation in breach of that provision. In view of these considerations, the Court awards the second applicant, on an equitable basis, EUR 10,000 for non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

135. The applicants did not submit any claims under this head and the Court accordingly makes no award in respect of costs and expenses.

C. Default interest

136. The Court considers it appropriate that the default interest 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. *Dismisses* the Government's preliminary objection;

2. *Holds* that there has been a violation of Article 3 of the Convention in respect of the first applicant on account of the lack of an effective investigation into the events of 25 November 1999;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the first applicant's repeated rape and ill-treatment at the hands of State officials;

4. *Holds* that no separate issue arises under Articles 6 and 13 of the Convention as regards the first applicant's complaints about the lack of an effective investigation;

5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the second applicant on account of the lack of an effective investigation into the events of 25 November 1999;

6. *Holds* that there has been a violation of Article 3 of the Convention on account of the ill-treatment of the second applicant at the hands of State officials;

7. *Holds* that no separate issue arises under Articles 6 and 13 of the Convention as regards the second applicant's complaints about the lack of an effective investigation;

8. *Holds* that there has been a failure to comply with Article 38 § 1 (a) of the Convention in that the Government refused to submit the documents requested by the Court;

9. *Holds*
(a) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 70,000 (seventy thousand euros) in respect of non-pecuniary damage, to be converted

into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(b) that the respondent State is to pay the second applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

10. *Dismisses* the remainder of the second applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Loukis Loucaides
President