CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF Ž. v. LATVIA

(Application no. 14755/03)

JUDGMENT

STRASBOURG

24 January 2008

FINAL

24/04/2008

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 Ž. v. Latvia,

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

Boštjan M. Zupančič, *President,*
Corneliu Bîrsan,
Elisabet Fura-Sandström,
Egbert Myjer,
David Thór Björgvinsson,
Ineta Ziemele,
Isabelle Berro-Lefèvre, *judges,*
and Stanley Naismith, *Deputy Section Registrar,*

Having deliberated in private on 4 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 14755/03) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Latvian national, Mr Ž. ("the applicant"), on 24 April 2003. The President of the Chamber acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

2. The Latvian Government ("the Government") were represented by their Agent, Mrs I. Reine.

3. The applicant alleged that his detention on remand was excessively long, that the proceedings against him were unreasonably long and that he was denied a fair trial since his requests to examine witnesses against him and to obtain the attendance and examination of further witnesses were refused by the domestic courts.

4. On 26 January 2006 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the applicant's pre-trial detention and the length and fairness of the criminal proceedings against him to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. On 4 January 2007 the applicant was granted legal aid; however, he did not appoint a lawyer to represent him in the proceedings before the Court. By 6 July 2007, when the period allowed for submission of his observations on the admissibility and merits of the application expired, the applicant had confirmed that he maintained his application, without providing any further comments.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1959 and is currently serving his prison sentence in the Jēkabpils Prison.

1. The applicant's arrest and detention on remand

7. On 18 November 2000 the applicant was arrested and taken into custody on suspicion of rape of a minor female, aged fourteen, and unauthorised acquisition, storage and conveyance of narcotic substances.

8. On 21 November 2000, on the application of a police officer in charge of the investigation of the applicant's case, a judge of the Zemgale District Court of the City of Rīga, taking into consideration the oral submissions of the police officer and the applicant's lawyer, decided to detain the applicant on remand. The judge filled in a standard form by writing in the date, her name, the applicant's name and other details of the case. In substantiating the decision, the judge had to select and underline the pre-typed text of the standard form which she considered to be relevant to the case. She took into account the severity of the crime of which the applicant was suspected, his personality, the danger of his absconding and the possibility that he could impede the investigation. It was not indicated in the decision until which date the applicant should remain in detention. According to the copy of the decision, the applicant was not present. He did not appeal against the decision.

9. On 15 December 2000 the applicant's case was transferred to the Rīga Court Regional Prosecutor's Office.

10. On 10 January 2001, on the application of a prosecutor of the Rīga Court Regional Prosecutor's Office, a judge of the Zemgale District Court of the City of Rīga, taking into consideration the oral submissions of the prosecutor, extended the applicant's detention on remand until 15 March 2001. Neither the applicant nor his lawyer appeared before the judge. In substantiating the decision, the judge took into account the severity of the crime with which the applicant was charged, his four previous convictions, the danger of his absconding and re-offending and the possibility that he could impede the investigation. The applicant did not appeal against this decision.

11. On 5 March 2001, on the application of a prosecutor of the Rīga Court Regional Prosecutor's Office, a judge of the Zemgale District Court of the City of Rīga, considering the oral submissions of the prosecutor, the gravity of the crime with which the applicant was charged, the fact that he had a criminal record, the danger of his absconding and continuing criminal offences, prolonged the applicant's detention on remand until 15 May 2001.

Neither the applicant nor his lawyer appeared before the judge. The applicant appealed against this decision, asserting that the case-file contained no proper evidence of his guilt.

12. On 24 April 2001, according to the materials in the case file, the Riga Regional Court dismissed the applicant's appeal, finding that his detention was lawful *inter alia* under Article 77 of the Law on Criminal Procedure. The court considered that the gravity of the crime with which the applicant was charged and the fact that he had four previous convictions confirmed the existence of a risk of his absconding, re-offending and perverting the course of justice. The applicant was present at the hearing. The decision was not subject to a further appeal.

13. On 31 May 2001 the final bill of indictment was presented to the applicant. He was charged with rape of a female minor, aged fourteen, and unauthorised acquisition, storage and conveyance of narcotic substances in large amounts. On the same day the case was transferred to the Rīga Regional Court for adjudication.

14. On 4 June 2001 a judge of the Rīga Regional Court committed the applicant for trial and, considering that the preventive measure had been chosen appropriately, decided that his "remand shall remain unchanged". The decision was not subject to appeal.

15. On 1 November 2002 paragraph 7 of Article 77 of the Criminal Procedure Code entered into force and a judge of the Rīga Regional Court sent the applicant's criminal case to the Senate of the Supreme Court, requesting the extension of the applicant's detention on remand for a further six months.

16. On 1 November 2002 the Senate of the Supreme Court decided to extend the applicant's detention on remand until 1 May 2003. In substantiating its decision, the court took into account the gravity of the crime with which the applicant was charged and the danger of his absconding and re-offending. The decision was not subject to appeal. Neither the applicant nor his lawyer was present.

2. Pre-trial investigation of the applicant's case

17. On 18 November 2000, upon the applicant's arrest, the victim identified him in the presence of two police officers as the perpetrator of the rape. On his arrest, the applicant was searched and five polyethylene pouches with a white powdery substance were seized and sent to a forensic expert. On the same day the victim was questioned and her statement accusing the applicant of raping her was written down. Her underwear was seized as evidence and sent for forensic tests. The applicant was interrogated as a suspect; however, he refused to give any statement in the absence of a lawyer.

18. On 19 November 2000 the victim underwent a gynaecological forensic examination, by which it was established that she could have had

sexual intercourse on the previous day in the alleged circumstances. The expert noted that she had a bruise on her left thigh and vaginal bruising.

19. On 19 November 2000 the applicant was subjected to a forensic and physical examination. It was established that he had several bruises which could be the result of the victim's resistance and could have been inflicted in the circumstances described by the victim (paragraph 32, below). It was also established that the applicant could have had sexual intercourse on 18 November 2000.

20. On 21 November 2000 the applicant was questioned in the presence of a lawyer. He refused to give any statement until the completion of the pre-trial investigation.

21. From 21 to 28 November 2000 the victim, diagnosed as being in a post-traumatic reactive condition, underwent medical treatment in the Child Clinical University Hospital.

22. On 27 November 2000 the State Forensic Expertise Centre delivered the results *inter alia* of the forensic examination of the victim's underwear. Semen was found on them, containing the so-called *A antigen*, which was characteristic to the applicant. The results of the tests did not exclude that it was the applicant's semen on the victim's underwear.

23. On 30 November 2000 the victim was questioned again. She fully confirmed her previous statements, giving further details.

24. On 15 December 2000 the Centre of Forensic Expertise of the Ministry of the Interior delivered the results of the forensic tests on the powdery substance seized from the applicant. It was identified as heroin.

25. On 20 December 2000 the applicant was questioned; however, he refused to give a statement.

26. On 28 December 2000 the applicant was questioned again but he refused to give any statement in the absence of a lawyer.

27. On 23 February 2001, on the request of the prosecutor in charge of the investigation of the case, a psychiatric expert from the Psychiatry Centre examined the victim. It was established *inter alia* that she was able to assess and understand the relevant facts of the case correctly, that she did not have a tendency to imagine or fabricate the events and that the rape had affected her psyche, causing sleep disturbance, disturbing memories and neurotic tensions. The expert confirmed that the victim's appearance before the court would involve a danger to her health, as she had suffered from a psychological trauma and her health would most likely again deteriorate if she were to be confronted with the applicant.

28. On 16 March 2001 the applicant was acquainted with the results of the tests relating to the case. He refused to sign the respective records but he did not submit any petitions or complaints regarding the expert opinions.

29. On 27 April 2001 the applicant was charged with having committed rape of a minor female and unauthorised storage of narcotic substances. He did not plead guilty to having committed the rape and

submitted that he had not been duly acquainted with the relevant materials of the case. He alleged that he had just touched the victim in order to locate his allegedly stolen wallet.

30. On 9 May 2001 the victim was questioned in respect of the applicant's submissions regarding his allegedly stolen wallet. She stated that the applicant had not asked any of the persons present in the car on 18 November 2000 about the wallet.

31. Between 10 and 30 May 2001 the applicant was given the opportunity to take cognisance of the case materials. He was assisted by a lawyer. He refused, without stating any reasons, to examine the case documents on 25, 29 and 30 May 2001.

32. On 31 May 2001 the final bill of indictment was presented to the applicant. It contained the statements given by the victim, according to which her two girlfriends, A.K. and H.K., two men, R.P. and S.G., the applicant and she herself were drinking alcohol in a parked car on 18 November 2000. At some point the applicant told the others, except the victim, to leave the car. After they left, the applicant hit the victim in the face at least three times and raped her. Trying to defend herself, she hit the applicant several times on his head with an empty bottle and on his back with a wooden bar. After the rape, the victim left the car and went to a public phone to call the police. On her way she met R.P. When the police officers arrived, they went with the victim to an apartment where she identified the applicant as the person who had raped her. The following witness statements and the results of the tests were included in the bill of indictment:

(a) According to the witness statement of R.P., he confirmed the consumption of alcohol on 18 November 2000, the persons present and the fact that the victim had told him that she had been raped by the applicant and that he had suggested to her that she should call the police;

(b) H.K. confirmed the consumption of alcohol in the car and the persons present, and stated that the applicant had harassed the victim before he ordered the others to leave the car, after which he had stayed there alone with the victim;

(c) A.K. confirmed the events of 18 November 2000 as stated by the victim; she also stated that the victim had told her that the applicant had hit her several times and that she had told her later that the applicant had raped her;

(d) V.L. stated that on 18 November 2000 he had met the victim near the public phone and she had told him that she had been raped;

(e) one of the policemen confirmed that the victim had, in his and his colleague's presence, identified the applicant upon his arrest as the person who had raped her;

(f) the victim's father testified that he had been told by his daughter that the applicant had raped her and that she had bruises on her face and suffered from post-traumatic stress;

(g) there were statements of a general nature from five other witnesses (including V.B. – the owner of the house next to which the alleged events of 18 November 2000 took place – who stated that she knew the applicant and the victim and had seen them both on 18 November 2000 and that she had been present during the applicant's arrest) relating *inter alia* to the circumstances of the applicant's arrest, the fact that he had consumed narcotic substances, his characteristics and an opinion of the drug expert describing heroin;

(h) the results of the relevant tests (paragraphs 18, 19, 22, 24 and 27, above) were also included.

33. According to the bill of indictment, it was decided not to summon the victim for participation in the court hearing, pursuant to the expert opinion (paragraph 27, above). The list of the persons who had to be summoned included all the persons whose testimonies were included in the bill of indictment, i.e. the victim's father, R.P., H.K., A.K., V.L., the other five witnesses, the policeman and the drug expert who produced the expert opinion. Other experts were not included in the list. S.G. was not included in the list; according to the report of a police officer acting on the prosecutor's order, he had tried to locate S.G. unsuccessfully several times.

34. On 31 May 2001 the case was transferred to the Rīga Regional Court for adjudication.

3. Court proceedings against the applicant

35. On 4 June 2001 a judge of the Rīga Regional Court committed the applicant for trial, without scheduling the trial date.

36. The first hearing was set for 2 July 2002.

37. On 1 July 2002 one of the witnesses in the applicant's case – the drug expert – informed the court that she could not attend the hearing.

38. On 2 July 2002 the Rīga Regional Court opened the hearing of the applicant's case. It examined the applicant's allegations that he was not duly acquainted with the materials of the case and found them manifestly ill-founded, as the applicant had taken cognisance of the case between 10 and 30 May 2000. The hearing was adjourned due to the absence of witnesses; only one of all the summoned witnesses, V.L., had arrived. The court, on the applicant and his lawyer's request, decided to summon the gynaecologist and psychiatrist who had examined the victim and delivered their expert opinions and an additional witness S., who had not given a witness statement during the pre-trial investigation and whose whereabouts and surname the applicant did not know. The applicant did not indicate what facts their testimonies could prove or how they could corroborate the position of the defence.

39. On 7 July 2002 the applicant addressed the Rīga Regional Court, reiterating his motion to summon the witness S. and one of the witnesses questioned during the pre-trial investigation, V.B., as well as the psychiatric expert who had examined the victim, without indicating what facts their testimonies could prove or how they could corroborate the position of the defence.

40. On 9 September 2002 the Rīga Regional Court informed the applicant that the witnesses and the expert requested by him would be summoned for the next hearing.

41. On 17 March 2003 the Rīga Regional Court sent summonses to the witnesses in the applicant's case.

42. On 24 March 2003 the hearing of the applicant's case was resumed. The parties were asked whether in the absence of most witnesses the hearing could take place. The parties left the decision to the court. Two witnesses were heard before the adjournment of the hearing with a view to ensuring the attendance of other witnesses. The Rīga Regional Court ordered the police to ensure the appearance of the remaining witnesses on 25 March 2003. The hearing continued on the next day. According to the case materials, the police established that H.K., the applicant's father and one of the witnesses who had testified during the pre-trial investigation on the drug charges against the applicant had changed their places of residence and their whereabouts were unknown. It remains unclear whether the police tried to locate and to establish the whereabouts of the remaining witnesses.

43. On 26 March 2003 R.P. informed the court that he had left Rīga and moved to another city and therefore could not attend the hearing.

44. On 27 March 2003 the applicant was found guilty of the rape of a female minor, aged fourteen, and unauthorised acquisition, storage and conveyance of narcotic substances in large amounts. He was sentenced to eight years' imprisonment. According to the judgment, the applicant (as established by the court, a person who had previously committed rape), the victim, her two girlfriends and two men were drinking alcohol in a parked car on 18 November 2000. At some point the applicant told the others, except the victim, to leave the car. After they left, the applicant hit the victim in the face at least three times and raped her. The victim had tried to protect herself by hitting the applicant several times on his head and his back. The court also established that the applicant had unlawfully acquired, stored and conveyed 1.5623 grams of heroin. The applicant was represented by defence counsel throughout the proceedings.

45. In finding the applicant guilty of the rape charge, the Rīga Regional Court relied on the incriminating statements of the victim and her father and on the witness statements of R.P., V.L. and A.K. recorded during the pre-trial investigation. The court heard a policeman who was on duty at the material time. He stated that the victim had reported to the police that the applicant had raped her and had identified him upon his arrest. In

establishing the facts, the court further had regard to the expert opinions on the results of the tests carried out during the pre-trial investigation, on-site inspection reports (for instance, according to the police report, the victim's glasses, one of her socks and a wooden bar had been found in the car) and documentary evidence.

46. In finding the applicant guilty of unauthorised acquisition, storage and conveyance of narcotic substances, the court relied on the statements given during the trial by one witness, the applicant's daughter, who testified that she had been aware that the applicant had been using narcotic drugs, and on the written opinion of the drug expert that the powder seized during the applicant's arrest was heroin. The court further referred to the statements of one witness during the pre-trial investigation. According to him, upon the applicant's arrest a powdery substance had been found on him.

47. According to the minutes of the hearing, the court decided that it was not necessary to summon the gynaecologist and psychiatrist who had delivered their expert opinions. It considered that their opinions were detailed enough and the applicant had not stated any additional question he would like to put to the experts. The court also considered it unnecessary to summon the witnesses requested by the applicant on 7 July 2002, as they could not submit any new unknown facts. The court also rejected the proposal of the applicant's lawyer to summon the victim for examination, as she had been recommended not to attend the hearing in the case.

48. On 10 April 2003 the applicant submitted an appeal on points of law, without complaining about the first instance court's refusal to summon the witnesses requested by him and without requesting that any additional witnesses be summoned for examination.

49. On 12 May 2003 the applicant applied to the Senate of the Supreme Court, requesting that the witness V.B. who had testified during the pre-trial investigation be summoned.

50. On 13 May 2003 the applicant applied to the Senate of the Supreme Court, requesting that the victim be subjected to new psychological and psychiatric tests. According to him, the state of the victim's mental health before 18 November 2000 should be established; however, he did not state how it could corroborate the position of the defence.

51. On 13 May 2003 the Senate of the Supreme Court reviewed the case through the procedure of cassation only to the extent that it concerned the alleged violations of the law on criminal procedure and dismissed this part of the appeal. The Senate subsequently referred the case to the Criminal Chamber of the Supreme Court for adjudication of complaints subject to review by way of the appeal procedure.

52. On 2 June 2003 the applicant applied to the Criminal Chamber of the Supreme Court, requesting that unspecified witnesses who could give “concrete” statements concerning his case be summoned and examined.

53. On 11 December 2003, during the hearing, the Criminal Chamber of the Supreme Court heard the applicant and reassessed the evidence obtained during the pre-trial investigation. The appeal court confirmed the judgment of the first instance court, holding it to be lawful, well-founded and sufficiently reasoned. The court established that the first instance court had thoroughly analysed the evidence available and expressly indicated in its judgment which facts it considered to have been established as well as the reasons for its conclusions, which did not need reassessment. The applicant was represented by defence counsel throughout the proceedings.

54. On 3 March 2004 the applicant submitted an appeal on points of law. He alleged various breaches of substantive and procedural law. He complained *inter alia* that his requests to have witnesses and experts summoned had been rejected.

55. On 22 March 2004 the Senate of the Supreme Court dismissed the applicant's appeal on points of law as manifestly ill-founded at a sitting held *in camera*. It considered that the applicant had not demonstrated the existence of arguable grounds which would justify holding a hearing in the cassation proceedings. The Senate concluded that the applicant's guilt had been sufficiently established on the basis of the extensive testimony given by the victim during the pre-trial investigation, which had been corroborated by other evidence confirming his guilt. As to the applicant's complaint about the refusal of the first and second instance courts to summon witnesses, the court noted that he had failed to specify which particular facts would have been clarified by hearing the witnesses. The court considered that the evidence against the applicant was to a large extent based on the incriminating statements of the victim, who rightly had not been summoned due to the psychologist's recommendations. However, these statements were examined and objectively assessed by the courts. In addition, there was sufficient evidence proving the applicant's guilt. The Senate considered that the applicant had asked that circumstances which were not relevant to the case be established. The Senate did not establish any violations of procedural and substantive law which would have hindered the thorough, complete and objective investigation of the case.

II. RELEVANT DOMESTIC LAW

56. The relevant provisions of the Criminal Procedure Code (*Latvijas Kriminālprocesa Kodekss*), applicable at the material time (in force until 1 October 2005), are found in the *Estrikh v. Latvia* judgment (no. 73819/01, 18 January 2007, paragraphs 54, 55, 59 and 62-64). Other relevant provisions of the Criminal Procedure Code stipulate that the testimonies of a victim and a witness given during pre-trial investigation can be read aloud in their absence by a court during a hearing if the victim or the witness is not present at the hearing for a reason, which excludes his/her participation;

if the victim or the witness is avoiding attending the hearing or refusing to testify and if the conclusion of a psychologist or a forensic psychiatric test states that an underage witness should not participate in court hearings (Article 285) and if one of the parties requests that a new witness be summoned or any new evidence be submitted to the court, it must explain to the court the reasons for such a request and, in particular, what it intends to prove through this new evidence. Dismissal of such a request does not prevent the party from resubmitting it during the examination of the case (Article 275 §§ 1 and 2).

57. For Article 92 the Constitution of Latvia (*Satversme*) and the relevant part of the judgment of the Constitutional Court (*Satversmes tiesa*) of 5 December 2001 in case no. 2001-07-0103 see *Kornakovs v. Latvia*, no. 61005/00, §§ 53 and 54, 15 June 2006.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

58. The applicant complained about the length of his pre-trial detention, which was contrary to the requirements of Article 5 § 3 of the Convention, which reads as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Admissibility

1. The parties' submissions

a) The Government

59. The Government submitted that the applicant had failed to exhaust domestic remedies. First of all, he did not appeal, as provided for by Article 2221 of the Criminal Procedure Code, against the decisions of the Zemgale District Court of the City of Rīga. Thus, he did not appeal against the decision of 21 November 2000 on the application of detention on remand or the subsequent decisions of 10 January and 5 March 2001 extending his detention on remand. Secondly, the Government stated that the applicant had not raised, as provided for by Article 226 of the Criminal Procedure Code, the issue of his detention during the preliminary hearing on 4 June 2001. Thirdly, the Government alleged that the applicant had not appealed against the decision of 4 June 2001 to a higher court, as provided

for by Article 237 of the Criminal Procedure Code. As to the remedies provided for by Articles 222^1 and 237 of the Criminal Procedure Code, the Government was of the opinion that "the applicant had as much reasonable prospects of success as a judge whose decisions are being appealed against to the appellate court".

60. Finally, the Government referred to the judgment of 5 December 2001 of the Constitutional Court in case no. 2001-07-0103, where the court found that Article 92 of the Constitution provides for a right to claim compensation in cases of unlawful and lengthy detention, stating that the applicant had not applied to the domestic courts.

61. The Government was of the opinion that these remedies were effective, accessible and offered reasonable prospects of success.

b) The applicant

62. The applicant did not provide any comments as concerns the admissibility of this complaint under Article 5 § 3 of the Convention.

2. The Court's assessment

63. The Court first of all refers to the general principles established by its case-law as regards exhaustion of domestic remedies (see *Estrikh v. Latvia*, no. 73819/01, 18 January 2007, §§ 92-94,). Secondly, the Court dismisses the Government's submissions as concerns non-exhaustion of domestic remedies in that the applicant did not appeal, pursuant to Article 222^1 of the Criminal Procedure Code, against the decisions of 21 November 2000 and 10 January 2001 (see *Vogins v. Latvia*, no. 3992/02, 1 February 2007, § 30, *Čistiakov v. Latvia*, no. 67275/01, 8 February 2007, § 49, and *Estrikh*, cited above, §§ 95-98). The Court further notes that the applicant, contrary to the Government's allegations, appealed against the decision of 5 March 2001 to the Rīga Regional Court which reviewed the detention measure on 24 April 2001 (paragraphs 11 and 12, above). The Court also observes that, according to the case materials, the applicant was not present at the hearing of 4 June 2001 and thus he could not oppose the extension of his detention on remand. The decision of 4 June 2001 was not subject to appeal either under Article 226 or under Article 237 of the Criminal Procedure Code (see *Estrikh*, cited above, § 100).

64. Finally, the Court has already rejected the Government's submissions regarding the judgment of the Constitutional Court of 5 December 2001 as an effective remedy in the case the circumstances of which were similar to the instant case (see *Kornakovs* cited above, § 84).

65. Taking into account the aforementioned, the applicant's complaint concerning the length of his detention on remand cannot be rejected for non-exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention. The Court further notes that it is not inadmissible on any other grounds and must therefore be declared admissible.

B. Merits

1. The parties' submissions

a) The Government

66. The Government rejected the claim that there had been a violation of the applicant's rights guaranteed by Article 5 § 3 of the Convention, noting that the primary reasons justifying the applicant's continued detention on remand remained his personality, the severity of the criminal offences of which he was suspected and later on charged and the sufficient risk that, if at liberty, he could abscond and impede the investigation. The Government pointed out that the applicant had a criminal record. He had been released on probation on 23 October 1998 after having partially served the five-year sentence imposed on him by the Rīga District Court on 21 March 1995 for rape of a minor.

67. The Government drew a distinction between the present case and the case of *Lavents v. Latvia* (no. 58442/00, judgment of 28 November 2002). There it was established by the Court that the national courts had failed to provide sufficient reasons why the applicant's personality threatened the criminal proceedings and that in the course of time the reasons justifying the applied security measure had become less relevant. In the instant case, according to the Government, the weight of the reasons for the applicant's initial detention and its extension did not decrease in the course of the time that the applicant spent in pre-trial detention. The Government also referred to the case *Svipsta v. Latvia* (no. 66820/01, judgment of 9 March 2006); there, as in the instant case, it was necessary to isolate the applicant.

68. The Government did not deny that it took more than one year and one month for the first instance court to commence the adjudication of the applicant's case. In this respect the Government asked the Court to take into consideration that the hearing in the applicant's case was scheduled in the order of the registration of the cases. Further, the hearings on 2 July 2002 and 17 March 2003 were adjourned as several witnesses failed to appear before the court, which, in the Government's point of view, cannot be attributed to the Rīga Regional Court.

b) The applicant

69. The applicant did not provide any comments as concerns the merits of his complaint under Article 5 § 3 of the Convention.

2. The Court's assessment

70. The Court recalls the general principles established by its case-law with respect to the length of detention on remand (see *Estrikh*, cited above, §§ 113, 114 and 118-120, *Smirnova v. Russia*, nos. 46133/99 and 48183/99, §§ 58-64, ECHR 2003-IX (extracts) and *Lavents v. Latvia*, no. 58442/00, 28 November 2002, §§ 70 and 71).

71. The Court notes that the period to be taken into consideration for the examination of this complaint began on 18 November 2000, when the applicant was arrested, and lasted until 27 March 2003, when the Rīga Regional Court delivered its judgment, that is two years, four months and nine days.

72. As to the decisions of 21 November 2000, 10 January, 5 March and 24 April 2001 and 1 November 2002, the Court observes that the reasons given repeated from one decision to the next the same grounds for detention. The Court can accept that in principle, as submitted by the Government, in the specific circumstances of the present case the weight of the reasons for the applicant's initial detention and its extension did not decrease in the course of the time that the applicant spent in pre-trial detention and that it was necessary to keep him in detention in view of his personality, especially having regard to his criminal record and, in particular, the fact that he had committed rape of a minor previously. However, it is up to national courts to provide the reasoning in that respect and this was not done in the decisions at issue (see, *mutatis mutandis*, *Estrikh*, cited above, § 122 and *Smirnova*, cited above, § 70). The reasons given in those decisions remained general and abstract, and were insufficient to satisfy the requirements of Article 5 § 3 since, although the national courts in the impugned decisions referred generally to the applicant's previous convictions and the danger of re-offending, they did not elaborate on how this might constitute a serious social danger justifying the applicant's continued detention or why, notwithstanding the presumption of innocence, the genuine public interest outweighed the right to liberty in the instant case (see *Ječius v. Lithuania*, no. 34578/97, § 93, ECHR 2000-IX). Furthermore, the Court notes that neither the applicant nor his lawyer was summoned on 10 January and 5 March 2001 and they thus could not make any submissions in front of the judge, unlike the public prosecutor, who gave his reasons.

73. Moreover, it took one year, nine months and 23 days for the first instance court to commence adjudication of the case. This contributed considerably to the overall length of detention and it was contrary to the requirements of Article 241 of the Criminal Procedure Code (see *Estrikh*, cited above, § 126 and, *mutatis mutandis*, *Vogins*, cited above, § 42).

74. The remainder of the Government's submissions do not provide a basis to justify the applicant's continuing detention either.

75. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 5 § 3 of the Convention in the instant case on account of the overall length of detention, the insufficiency of the reasons given and the inadequacy of the proceedings in connection with the decisions on continued detention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

76. The applicant complained that the proceedings were excessively long, in breach of Article 6 § 1 of the Convention, which reads, insofar as relevant, as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

A. Admissibility

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

B. Merits

1. The parties' submissions

a) The Government

78. The Government submitted that the applicant's right to a hearing within a reasonable time, as guaranteed by Article 6 § 1 of the Convention, had not been infringed. The Government referred in this respect to their submissions regarding the issue of the length of the applicant's detention on remand.

79. The Government considered that the period in question was not excessive for the purpose of three sets of proceedings.

80. The Government pointed out, in particular, that the appeal and cassation courts had dealt with the applicant's case promptly.

b) The applicant

81. The applicant did not provide any comments as concerns the merits of his complaint under Article 6 § 1 of the Convention.

2. The Court's assessment

82. The Court recalls that the period to be taken into consideration in the present case began on 18 November 2000, when the applicant was arrested (see, *Estrikh*, cited above, § 136). As regards the end of the period, the final judgment was delivered by the Senate of the Supreme Court on 22 March 2004. The period to be taken into consideration thus lasted three years, four months and four days.

83. The Court reiterates the general principles established by its case-law in respect to the reasonableness of the length of proceedings (see, *Estrikh*, cited above, §§ 137 and 138).

84. The Court observes that there was a long period of inactivity of the first instance court in the present case. The court received the case between 31 May and 4 June 2001 but a hearing commenced only on 2 July 2002, i.e. more than one year later. Taking into consideration that the applicant remained in pre-trial detention between 31 May 2001 and 27 March 2003, it was important that the authorities displayed special diligence in ensuring that he was brought to trial within a reasonable time (see, *mutatis mutandis*, *Assenov*, cited above, § 154 and 157, and *Vasilev v. Bulgaria*, no. 59913/00, judgment of 2 May 2006, §§ 73-75). In addition, the court adjourned the hearing on 2 July 2002 but resumed it only on 24 March 2003.

85. The Court also notes that the Rīga Regional Court twice adjourned the examination of the case because the witnesses had failed to appear. However, considering what was at stake for the applicant (see *Tibbling v. Sweden*, no. 59129/00, § 32, 11 October 2005), the Court accepts that the postponements of the proceedings served to ensure the applicant's right to a fair trial. Moreover, the Court acknowledges that the proceedings before the appeal and cassation courts were conducted promptly without any delays.

86. Having examined all the material submitted to it, and having regard to its case-law on the subject, the Court considers that in the instant case the overall length of the proceedings was compatible with the "reasonable time" requirement. There has accordingly been no breach of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 3 (d) OF THE CONVENTION

87. The applicant complained that the domestic courts had refused to summon witnesses for examination and thus breached his rights guaranteed by Article 6 § 3 (d) of the Convention, which reads as follows:

> "...3. Everyone charged with a criminal offence has the following minimum rights:
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ... ."

1. The parties' submissions

a) The Government

88. The Government submitted that this part of the application was manifestly ill-founded.

89. The Government reiterated that "the admissibility of evidence is primarily governed by the rules of domestic law, and that, as a rule, it is for the national courts to assess the evidence before them; the task of the Court is to ascertain whether the proceedings in their entirety, including the way in which the evidence was taken, were fair" (see *Asch v. Austria*, judgment of 26 April 1991, Series A no. 203, § 26).

90. The Government argued that, contrary to the applicant's allegations, the first instance court had not refused to summon the witnesses. It had summoned the witnesses twice, even requesting the police to bring them. Only after it proved to be impossible to locate them were their statements read out during the court hearing, as provided for by Article 285 of the Criminal Procedure Code.

91. The Government drew the Court's attention to the case of *Jan C.R.R. Scheper v. the Netherlands* (no. 39209/02, decision of 5 April 2005), the circumstances of which were similar to the instant case and where the Court found that since "it proved to be impossible to ensure the attendance of the witnesses, it was open to the court to consider their statements to be corroborated by other evidence" and dismissed the application as manifestly ill-founded. The Government referred also to the case *X. v. Germany* (no. 4078/69, Commission decision of July 1970) in this respect and reiterated that Article 6 does not grant to an accused an unlimited right to secure the appearance of witnesses in court; it is normally for the national courts to decide whether it is necessary or advisable to hear a witness (see *S.N. v. Sweden*, no. 34209/96, § 44, ECHR 2002-V).

92. As to the victim's appearance before the court, the Government pointed out that the applicant was not convicted solely on the basis of her statements and that it was recommended by a psychiatric expert that she should not be confronted with the applicant.

b) The applicant

93. The applicant did not provide any comments as concerns the merits of his complaint under Article 6 § 3 (d) of the Convention.

2. The Court's assessment

94. The Court reiterates that the guarantees in paragraph 3 of Article 6 of the Convention represent aspects of the concept of a fair trial contained in Article 6 § 1 (*Doorson v. the Netherlands*, judgment of 26 March 1996, *Reports of Judgments and Decisions* 1996-II, § 66). The Court further

recalls that the admissibility of evidence is primarily governed by the rules of domestic law and that, as a rule, it is for the national courts to assess the evidence before them. It is also normally for the domestic courts to decide whether it is necessary or advisable to hear a witness since Article 6 does not grant the accused an unlimited right to secure the appearance of the witnesses in the court (see *S.N.*, cited above, § 44). The task of the Court is to ascertain whether the proceedings in their entirety, including the way in which evidence was taken, were fair (see *Doorson*, cited above, § 67 and *Gossa v. Poland*, no. 47986/99, § 52, 9 January 2007). All evidence must normally be produced in the presence of the accused at a public hearing with a view to adversarial argument. However, the use in evidence of statements obtained at the stage of the police inquiry and the judicial investigation is not in itself inconsistent with paragraphs 1 and 3 (d) of Article 6, provided that the rights of the defence have been respected. As a rule, these rights require that the defendant be given an adequate and proper opportunity to challenge and question a witness against him either when he was making his statements or at a later stage of the proceedings (see *Asch v. Austria*, judgment of 26 April 1991, Series A no. 203, § 27, and more recently, *Klimentyev v. Russia*, no. 46503/99, § 124, 16 November 2006). Where a conviction is based solely or to a decisive degree on statements that have been made by a person whom the accused has had no opportunity to examine or have examined, whether during the investigation or at the trial, the rights of the defence are restricted to an extent that is incompatible with the guarantees provided by Article 6 (see *Saïdi v. France*, judgment of 20 September 1993, Series A no. 261-C, pp. 56-57, §§ 43-44; *Lucà v. Italy*, no. 33354/96, § 40, ECHR 2001-II and *Solakov v. the Former Yugoslav Republic of Macedonia*, no. 47023/99, § 57, ECHR 2001-X). With respect to statements of witnesses who proved to be unavailable for questioning in the presence of the defendant or his counsel, the Court recalls that paragraph 1 of Article 6 taken together with paragraph 3 requires the Contracting States to take positive steps so as to enable the accused to examine or have examined witnesses against him (see, *Sadak and Others v. Turkey*, nos. 29900/96, 29901/96, 29902/96 and 29903/96, § 67, ECHR 2001-VIII) and – in the event that the impossibility of examining witnesses or having them examined is due to the fact that they are missing – the authorities must take reasonable efforts to secure their presence (see *Rachdad v. France*, no. 71846/01, § 25, 13 November 2003, and *Bonev v. Bulgaria*, no. 60018/00, § 43, 8 June 2006). However, *impossibilium nulla obligatio est*; provided that the authorities cannot be accused of a lack of diligence in their efforts to award the defendant an opportunity to examine the witnesses in question, the witnesses' unavailability as such does not make it necessary to discontinue the prosecution (see, in particular, *Artner v. Austria*, judgment of 28 August 1992, Series A no. 242-A, p. 10, § 21; *Scheper v. the Netherlands* (dec.), no. 39209/02, 5 April 2005; *Mayali v.*

France, no. 69116/01, § 32, 14 June 2005 and *Haas v. Germany* (dec.), no. 73047/01, 17 November 2005).

95. As to the notion of witness, the Court considers that, although the victim and other witnesses, with the exception of two, did not testify at a court hearing, they should, for the purposes of Article 6 § 3 (d) of the Convention, be regarded as witnesses – a term to be given an autonomous interpretation – because their statements, as recorded during the pre-trial investigation, were used in evidence by the Rīga Regional Court (see *Asch*, cited above, § 25).

96. Having regard to the material in front of it, the Court holds that in the instant case the statements given by the victim during the pre-trial investigation had a key place in the proceedings against the applicant. They were, however, corroborated by other evidence in the case (paragraph 45, above). The victim was not summoned by the first instance court because of the statement made by the psychiatric expert, advising against the victim's participation in court hearings and any confrontation with the applicant, due to the possible deterioration in the state of her health (paragraphs 27 and 47, above). The Court notes in this respect that neither the applicant nor his lawyer requested the appeal court to summon the victim, nor did they ask either the first or the second instance court to have the victim examined by the courts or his lawyer in the absence of the applicant. Recalling that under the terms of Article 35 § 1 of the Convention the Court can only deal with the matter after all domestic remedies have been exhausted, it dismisses the applicant's complaint that he could not exercise his right guaranteed by Article 6 § 3 (d) to examine the victim in the instant case for non-exhaustion of domestic remedies.

97. As regards the appearance before the court of other witnesses who had given statements during the pre-trial investigation, the Court observes that, according to the case materials, the applicant requested the first instance court first to summon only the gynaecological and psychiatric experts and the witness V.B. (paragraphs 38 and 39, above). As far as the remaining witnesses who had given the statements during the pre-trial investigation are concerned, the applicant, who was assisted by a lawyer, did not object to commencing the hearing with only two witnesses present. It was not until the next day, following the efforts of the court to summon the witnesses, that the applicant requested the presence of other witnesses. He did not raise this issue in his appeals and he thus failed to exhaust domestic remedies in that respect. The Court further notes that the applicant did not request the appellate court to summon the experts, thus failing to exhaust domestic remedies also in that respect (paragraphs 48 and 49, above).

98. The applicant also requested that an additional witness, S., who had not been questioned during the pre-trial investigation (paragraph 38, above),

be summoned. However, he did not raise this issue in his appeal and therefore failed to exhaust domestic remedies in that respect.

99. Although the applicant complained in his appeal on points of law of 22 March 2004 that his requests to have witnesses and experts summoned had been rejected (paragraph 54), this cannot be considered as satisfying the requirement of exhaustion of domestic remedies. The cassation instance addressed the complaints and responded to them by concluding that the case file did not show what elements the presence of some witnesses at hearings could provide that would corroborate the position of the defence (paragraph 55, above).

100. As regards the refusal of the appeal court to summon the witness V.B., the Court does not see – and it was not submitted by the applicant what facts her testimonies could prove and how she could corroborate the position of the defence – how her statements could have changed the outcome of the case, in particular, since the first and second instance courts did not rely on her statement in convicting the applicant. The Court notes furthermore that the evidence of V.B. was not of a decisive nature.

101. As to the applicant's request to subject the victim to new psychological and psychiatric tests two years after the first tests were carried out (paragraph 50, above), the Court reiterates that Article 6, while it guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (*García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). In the instant case, the refusal of the appellate court in this respect discloses no indication of arbitrariness, in particular, taking into consideration the time element and the fact that the applicant failed to substantiate how these tests could corroborate his defence. Court considers for the aforementioned reasons this part of the applicant's complaint as being manifestly ill-founded.

102. Having regard to the foregoing, the Court reaches the conclusion that the complaints under Article 6 §§ 1 and 3 (d) of the Convention in respect of the questioning of the witness V.B. and new psychology and psychiatric experts are manifestly ill-founded and that the domestic remedies have not been exhausted as regards the questioning of other witnesses.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

103. 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

104. The applicant claimed just compensation in respect of non-pecuniary damage, without indicating a particular amount of money.

105. The Court considers that the finding of the violation of Article 5 § 3 of the Convention in itself does not constitute sufficient just satisfaction in the instant case and decides to award the applicant EUR 500 in respect of non-pecuniary damage.

B. Costs and expenses

106. The applicant did not submit a claim for the costs and expenses incurred before the domestic courts and the Court. Accordingly, the Court considers that there is no call to award any sum on that account.

C. Default interest

107. 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. *Declares* the complaints concerning the length of the applicant's pre-trial detention and the length of the proceedings against him admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

3. *Holds* that there has been no violation of Article 6 § 1 of the Convention;

4. *Holds*

   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with

Article 44 § 2 of the Convention, EUR 500 (five hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
(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;

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

Stanley Naismith	Boštjan M. Zupančič
Deputy Registrar	President