



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

FOURTH SECTION

CASE OF RYDZ v. POLAND

(Application no. 13167/02)

JUDGMENT

STRASBOURG

18 December 2007

FINAL

02/06/2008

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 Rydz v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 27 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 13167/02) against the Republic of Poland lodged on 1 March 2002 with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Mr H. Rydz, (“the applicant”).

2. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołsiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged that the length of his detention was excessive and that the length of the criminal proceedings in his case exceeded a “reasonable time” within the meaning of the Convention.

4. On 27 March 2006 the President of the Fourth Section of the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1976 and lives in Brzeg.

6. On 14 May 1999 the applicant was arrested on suspicion of having committed multiple gang rape (including statutory rape), of inducing the victims to take intoxicants and of persuading the victims not to inform the police about those crimes.

7. On 17 May 1999 the applicant was remanded in custody by the Brzeg District Court. The decision was based on a reasonable suspicion, confirmed by testimonies of the victims and of other suspects, that the applicant had committed the offences with which he had been charged, the severity of the sentence he faced and the need to secure the proper conduct of the investigation. The court pointed to a serious risk that the applicant, if not detained, might attempt to influence the co-accused and the victims.

8. Subsequently, twelve other persons were charged with participation in the crime and eight of them were remanded in custody.

9. On 22 July 1999 the prosecutor decided to obtain an expert opinion on the mental state of two witnesses, who were minors, and on their ability to appreciate and recollect things they had witnessed. The psychologist submitted his opinions on 6 and 11 October 1999.

10. On 5 August 1999 the public prosecutor decided to prolong the investigation.

11. The applicant's detention was extended on 11 August, 5 November and 13 December 1999, 24 May 2000, 12 June and 13 November 2000, 14 March, 27 April, 10 May, 28 June and 7 November 2001, 13 February, 8 May, 13 July and 13 November 2002, 11 February and 8 May 2003. The court found that the grounds for detention on remand were still valid and owing to the fact that the crimes had been committed in co-operation with other persons, there remained a high risk that the applicant might interfere with the course of justice and exert pressure on witnesses and victims. The courts also pointed to the necessity of separating the suspects. As the investigation continued, the court stated that there had been exceptional circumstances which precluded the termination of the preparatory proceedings, such as the complexity of the case, the need to obtain further evidence and the multiplicity of plots, accused and charges. The court also found that the applicant's case had not disclosed any of the grounds for release provided for by Article 259 of the Code of Criminal Procedure.

12. On 19 and 29 September 1999 the prosecutor decided to include in the case file the case files of other proceedings conducted against the suspects.

13. In October 1999 the public prosecutor ordered expert opinions on the kind of injuries the victims had suffered and whether these might have resulted from the circumstances described by them, and on the ability of the suspects to understand the meaning of their acts and to control their behaviour at the time when the offences had been committed. The opinions were submitted on 6 and 15 October 1999.

14. On 11 October 1999 the Opole Regional Prosecutor charged the applicant, in addition to the previous charges, with participation in an organised criminal gang.

15. By decision of 29 October 1999 the investigation was prolonged until 31 December 1999.

16. The preparatory proceedings, during which the prosecutor examined a total of 66 witnesses and obtained over 150 other items of evidence, were closed on 3 December 1999. On the same date the public prosecutor lodged a bill of indictment comprising 59 charges and five victims. The applicant was charged with seven offences: participation in an organised criminal gang, gang rape (including statutory rape) committed with extreme cruelty and in conjunction with deprivation of liberty, and with threatening the victims and persuading them not to inform the police about the crimes.

17. In 2000 the first-instance court held 11 hearings during which the evidence of the witnesses and defendants was heard: on 26 April, 24 May, 12 June, 10 and 28 July, 31 August, 17 November, 14, 15, 18 and 23 December. Seven other hearings scheduled in 2000 were cancelled or adjourned for reasons not attributable to the court, in particular the absence of the defendants, including the applicant, or their representatives. The court remanded in custody one of the defendants who had failed to appear at a hearing and lifted the detention of another. It also dismissed from his function a legal-aid lawyer who had failed to appear and appointed a new one in his place. The court also decided to examine the case against one of the co-accused separately since it was felt that his psychiatric observation could lead to a delay in the proceedings.

18. At the hearing of 24 May 2000 the court prolonged the applicant's detention until 15 November 2000. The court emphasised that the absence of one of the defendants prevented the hearing of the other accused and that detention was the only preventive measure which could in those circumstances secure the proper conduct of the proceedings.

19. The hearing scheduled for 30 January 2001 was adjourned in order to have one of the victims heard with the assistance of a psychologist. On 26 February 2001 the psychologist submitted an opinion in which he considered that it was inadvisable to hear the victim, since this would oblige her to re-live her traumatic experience.

20. In 2001 nineteen hearings were held and three had to be adjourned or cancelled because of the illness of a judge, the absence of a witness or the fact that the case file was with the Court of Appeal which was deciding on the prolongation of the detention. The court requested the police to determine the whereabouts of nine witnesses. Fines were imposed on eleven absent witnesses.

21. From 11 April 2001 until 10 April 2002 the applicant served a one-year prison sentence imposed in separate proceedings.

22. On 28 June 2001 the Wrocław Court of Appeal prolonged the applicant's detention until 15 November 2001. It held that there had been a serious risk that the applicant might try to hinder the proper course of the proceedings. It was proved that two of the defendants had exerted improper pressure on witnesses and thus caused them to alter significantly their versions of the events. The court noted that the case involved thirteen

defendants and sixty-six witnesses. Owing to the considerable amount of evidence to be taken, it was inevitable that the proceedings had been prolonged, given the need to ensure that the right to a fair trial was fully respected. At this point the court emphasised that the defendants had been making extensive use of their rights to question witnesses. Several witnesses had changed their testimonies and the reading out of their earlier statements had been justified. Almost thirty witnesses remained to be heard at that stage of the proceedings and there was a need to summon further witnesses and to cross-examine them.

23. On 7 November 2001 the Wrocław Court of Appeal prolonged the applicant's detention until 15 February 2002. The court endorsed the reasoning of the first-instance court in the latter's decision of 28 June 2000. In addition, it dealt with the length of the proceedings. The court noted that, since June 2000, the first-instance court had held seven hearings and examined ten witnesses. The absence of other witnesses was the major reason for the prolongation of the proceedings; however, the trial court had taken proper measures to speed up the trial. The appellate court also pointed to the fact that the examination of the witnesses had been very time-consuming owing to the complexity of the case and the mental state of the victims. The parties had also requested additional witnesses to be heard.

24. Three hearings were held in January 2002, despite the absence of some of the defendants at one of the hearings. A number of absent witnesses were ordered to be brought to court.

25. Two further hearings were held in February 2002. The third hearing, scheduled for 26 February 2002, had to be adjourned because of the absence of a key witness. The court fixed a time-limit for submission of the parties' motions for evidence. Consequently, the defendants (among them the applicant) made almost twenty applications for the examination and cross-examination of witnesses, the ordering of expert opinions and inspections of the crime scene.

26. On 13 February and 8 May 2002 the Wrocław Court of Appeal decided to prolong the applicant's detention. The court held that the considerable length of the proceeding was due to the complexity of the case coupled with the large number of accused and witnesses. The court concluded that the prerequisites for detention provided for by Article 263 § 4 of the Code of Criminal Procedure applied in the particular circumstances of the case.

27. On 5 March 2002 the court held a hearing despite the absence of two defendants. A witness was ordered to come to the hearing. The court also obliged the defendants to specify their reasons for requiring the cross-examination of witnesses.

28. Two further hearings were held in March 2002 and four in April 2002. The court dismissed eight motions for evidence, having found them irrelevant for proving the facts alleged.

29. From 10 April 2002 until 9 December 2002 the applicant was serving a prison sentence imposed on him in separate proceedings.

30. Up to 31 July 2002 nine hearings had been held during which the court took evidence from further witnesses and an expert. One witness was examined at his place of residence and the testimonies of four other witnesses, who were abroad, were read out. The court dismissed the defendant's request to summon other absent witnesses, having found that their examination would not add anything to the case. The police were ordered to determine the whereabouts of two defendants.

31. On 31 July 2002 the Opole Regional Court found the applicant guilty as charged and sentenced him to nine years' imprisonment and a four-year period of deprivation of his civic rights. The time spent in pre-trial detention was deducted from the sentence. All the accused appealed.

32. On the same date the court prolonged the applicant's detention until 15 November 2002.

33. On 2 June 2003 the Wrocław Court of Appeal upheld the judgment with respect to the applicant. The applicant appealed.

34. On 14 February 2005 the Wrocław Court of Appeal rejected the applicant's complaint of 25 January 2005 about the excessive length of the proceedings before the Opole Regional Court, finding that it had been lodged after the termination of the proceedings.

35. On 24 February 2005 the applicant lodged a new complaint about the undue length of the proceedings, referring to his application pending before the Court. On 29 April 2005 the Court of Appeal dismissed the complaint as ill-founded. The court admitted that the proceedings had lasted a considerable period of time but stated that this fact alone could not lead to the conclusion that the applicant's right to a trial within a reasonable time had been violated. The court examined solely the part of the proceedings conducted before the Opole Regional Court.

36. On 11 March 2005 the Supreme Court dismissed the applicant's cassation appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

37. The relevant domestic law concerning the imposition of detention on remand (*aresztowanie tymczasowe*), the grounds for its prolongation, release from detention and rules governing other so-called “preventive measures” (*środki zapobiegawcze*) is set out in the Court's judgments in the cases of *Golek v. Poland*, no. 31330/02, §§ 27-33, 25 April 2006, and *Celejewski v. Poland*, no. 17584/04, §§ 22-23, 4 August 2006.

38. The judgment *Bak v. Poland*, no. 7870/04, §§ 38-40, 16 January 2007, addresses more specifically the issue of domestic practice in the area of pre-trial detention and organised crime.

39. For the relevant domestic law and practice concerning the available remedies against excessive length of proceedings, see *Ratajczyk v. Poland* (dec.), no. 11215/02, ECHR 2005; *Rybczyński v. Poland*, no. 3501/02, judgment of 3 October 2006, and *Białas v. Poland*, no. 69129/01, judgment of 10 October 2006.

THE LAW

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

40. The applicant complained that the length of his pre-trial detention had been in breach of Article 5 § 3, which in so far as relevant provides:

“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

41. 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. Submissions of the parties

42. The Government submitted that the applicant's detention was based cumulatively on all the prerequisites of detention listed in the Code of Criminal Procedure as applicable at the material time.

43. The Government pointed out that the charges against the applicant had concerned several serious sexual crimes which had been committed in co-operation with other persons. Some of the crimes had been committed with extreme cruelty and involved minors. The applicant faced a heavy sentence and there existed, in the Government's opinion, a genuine public-interest requirement which, notwithstanding the presumption of innocence, outweighed the rule of respect for individual liberty and justified the applicant's continued detention. They noted that the applicant was eventually sentenced to 9 years' imprisonment and temporary deprivation of his civic rights.

44. The Government also argued that the applicant's detention had been aimed at securing the proper conduct of the investigation as there had been a risk that he would obstruct the proceedings and influence witnesses, in particular since he had been charged (and later sentenced) with threatening the victims. The Government emphasised that the case concerned rape and the victims – women, some of whom were minors – were especially vulnerable to violence and required adequate protection. They concluded that only the detention of the main perpetrators could secure the proper conduct of the proceedings since in cases of that kind victims often refrained from reporting the offence.

45. The Government submitted that the above-mentioned circumstances had remained valid during the whole period of the applicant's detention. Moreover, in the course of the proceedings the prolongation of his detention had been justified by the need to extend the scope of the investigation. Further, the Government observed that the courts had stressed on several occasions that it was necessary to prevent the accused from contacting the victims, regard being had to the fact that investigations concerning crimes committed by a group of criminals were especially complex and required the isolation of the alleged perpetrators.

46. The Government also submitted that the courts did not apply detention on remand automatically but based their decisions on a careful consideration of each individual case and indicated specific investigatory or procedural steps which were to be taken. The courts had decided to release one of the defendants as soon as they had found that the reasons justifying his detention had ceased to persist.

47. The applicant argued that the reasonableness of his detention had not been sufficiently confirmed during the preparatory proceedings and that the length of his detention had been excessive.

48. As to the complexity of the case, the Government argued that it was very complex. They pointed out that both the prosecutor and the trial court had conducted extensive evidentiary proceedings. In the course of the investigation over 150 applications to hear evidence had been made and a considerable number of witnesses had been interviewed. The Government stated that the hearings of the victims before the court had been very time-consuming and had lasted for many hours. Bearing in mind the fear and stress suffered by the victims, the trial court had to show special diligence and patience and to make exceptional efforts in order to obtain detailed and adequate testimonies. The victims were usually heard in the absence of the accused. Even then, obtaining evidence had been extremely difficult.

49. The complexity of the case was, in the Government's opinion, increased by the fact that at the same time other courts had conducted separate proceedings against the applicant and six other defendants and the courts had to co-operate in scheduling the hearings in their cases. However, throughout the proceedings hearings had been held regularly and had been

fixed at reasonable intervals. Only a few scheduled hearings had had to be cancelled, and on grounds for which the courts could not be held responsible. In the Government's opinion the proceedings had been concluded with reasonable speed and without any undue delays. The courts had also taken proper measures to secure the speedy progress of the proceedings, for example by requesting the police to determine the witnesses' addresses and, if necessary, ordering their appearance; by deciding to examine the case of one of the co-accused separately since the need for his psychiatric observation could have contributed to delays; by imposing fines on absent witnesses; or by detaining one of the defendants who had failed to attend the hearings.

50. The applicant disagreed with the Government's opinion and stated that the authorities had failed to display due diligence in dealing with his case.

51. Lastly, the Government concluded that the applicant's pre-trial detention in the present proceedings had lasted from 14 May 1999 until 31 July 2002, when the first-instance court had given its judgment. Meanwhile, the applicant had been serving two prison sentences imposed on him in separate proceedings. He had been imprisoned from 11 April 2001 until 10 April 2002 and from 11 April 2002 until 9 December 2002. Therefore, the Government were of the opinion that the applicant had effectively been detained only from 14 May 1999 until 10 April 2001 - that is, for 1 year and eleven months.

52. The applicant argued that the fact that his prison sentence had overlapped with his detention in the present proceedings should have been regarded as a factor which militated in favour of applying a more lenient preventive measure.

2. Principles established under the Court's case-law

53. Under the Court's case-law, the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty (see, among other authorities, *W. v. Switzerland*, judgment of 26 January 1993, Series A no. 254-A, p. 15, § 30).

54. It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set

them out in their decisions dismissing the applications for release. It is essentially on the basis of the reasons given in these decisions and of the established facts mentioned by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *McKay v. the United Kingdom*, [GC], no. 543/03, § 43, 6 October 2006).

55. The persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were “relevant” and “sufficient”, the Court must also ascertain whether the competent national authorities displayed “special diligence” in the conduct of the proceedings (see *Labita v. Italy*, (no. 26772/95, § 153, ECHR 2000-IV).

3. *Application of the principles to the circumstances of the present case*

(a) **Period to be taken into consideration**

56. The Court considers that the applicant's pre-trial detention can be divided into the two following periods:

- (a) the first period, lasting from 14 May 1999 until 11 April 2001;
- (b) the second period, lasting from 12 April 2001 until 31 July 2002 (the date on which the first-instance judgment was given), during which the applicant's detention coincided with the prison sentences imposed in separate criminal proceedings.

The Court recalls that, in view of the essential link between Article 5 § 3 of the Convention and paragraph 1 (c) of that Article, a person convicted at first instance cannot be regarded as being detained “for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence” and that the detention coinciding with detention after conviction in separate criminal proceedings cannot be considered on the same footing as a situation of a person in custody awaiting his trial (see *Wemhoff v. Germany*, judgment of 27 June 1968, Series A no. 7, pp. 23-24, § 9, *B. v. Austria*, judgment of 28 March 1990, Series A no. 175, pp. 14-16, §§ 36-39, *Bąk v. Poland*, no. 7870/04, judgment of 16 January 2007, § 54).

57. The Court consequently finds that the period to be taken into consideration in the present case lasted from 14 May 1999 until 10 April 2001 and amounted to almost 1 year and 11 months.

(b) Reasonableness of the length of detention

58. The Court notes that detention pending trial was imposed on the applicant in view of the severity of the charges against him, the fact that he had committed the crime in co-operation with other persons and the risk that he would obstruct the proceedings and exert unlawful pressure on witnesses, in particular since he had been charged with threatening the victims.

59. The Court observes that in their decisions to remand the applicant in custody the judicial authorities relied on the following principal grounds: the reasonable suspicion against the applicant, the serious nature of the offences with which he had been charged, the severity of the penalty to which he was liable, the risk of his influencing the testimonies of witnesses and of the co-accused and the need to obtain extensive evidence (see paragraphs 7, 22 and 23 above). Furthermore, the Government stated that the particular complexity of the case, since it concerned gang rape, was an additional justification for the applicant's detention.

60. The suspicion that the applicant had committed the offences was confirmed in particular by the testimonies of the victims and the co-accused and initially warranted his detention. Therefore, the only question which remains is whether and when the continuation of his detention ceased to be warranted by “relevant” and “sufficient” reasons.

61. The Court considers that the authorities were faced with the difficult task of determining the facts and the degree of alleged responsibility of each of the defendants. In these circumstances, the Court also accepts that the difficulties in obtaining evidence from victims, some of whom were minors, coupled with the existence of a risk of exerting pressure on them by the perpetrators of the rapes, constituted relevant and sufficient grounds for prolonging his detention during the time necessary to complete the investigation, to draw up the bill of indictment and to hear evidence from the victims, the witnesses and the accused.

62. As regards the risk of pressure being brought to bear on witnesses or of the obstruction of the proceedings by other unlawful means, the Court notes that this risk stemmed from the fact that the applicant had been charged with persuading the victims not to report the crimes to the police. In addition, the victims were especially vulnerable to violence and required special protection. The subsequent decisions to prolong the applicant's detention pending trial underlined the fact that these fears were well-founded, since it had been proved that two of the defendants had exerted pressure on witnesses and caused them to alter significantly their version of events (see paragraph 22 above). The Court accepts that, in the special circumstances of the case, the risk of collusion actually existed and justified holding the applicant in custody for the relevant period.

63. It must be noted that the domestic courts when ordering the prolongation of the applicant's remand referred to the continuing need for

that measure and did not merely rely on the grounds previously given (see paragraphs 11, 18, 22 and 26 above).

64. The foregoing considerations are sufficient for the Court to conclude that the grounds given for the applicant's pre-trial detention were "relevant" and "sufficient" to justify holding him in custody for the entire period at issue. That being said, the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the criminal proceedings against the applicant.

65. In assessing the conduct of the authorities in the present case, the Court will take into account the special circumstances deriving from the fact that it concerned charges of rape committed by a group of criminals.

66. The Court observes that the applicant was convicted on 31 July 2002. The case was of considerable complexity, regard being had to the number of defendants, the need to separate them during the extensive evidentiary proceedings and to implement special measures required by the victims' vulnerability. Nevertheless, the hearings in the applicant's case were held regularly and at short intervals. The courts also took proper measures to ensure the speedy progress of the proceedings (see paragraphs 17, 20, 24 and 27 above). The Court further notes that the trial court took all necessary steps to resolve difficulties in hearing witnesses in the course of the proceedings and applied adequate measures to discipline them. It decided to examine the charges against one of the accused in separate proceedings, having considered that it would contribute to a prompt examination of the case (see paragraph 17 above). The Court therefore concludes that the national authorities displayed special diligence in the conduct of the proceedings. The length of the investigation and of the trial was justified by the exceptional complexity of the case. It should not be overlooked that, while an accused person in detention is entitled to have his case given priority and conducted with particular expedition, this must not stand in the way of the efforts of the judges to clarify fully the facts in issue, to provide both the defence and the prosecution with all necessary facilities for putting forward their evidence and stating their case and to give judgment only after careful reflection on whether the offences were in fact committed and on the sentence to be imposed.

67. Having regard to the foregoing, the Court considers that there has been no violation of Article 5 § 3 of the Convention.

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

68. The applicant complained of a violation of his right to a trial within a reasonable time. He relied on Article 6 § 1 of the Convention, which in so far as relevant provides:

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

A. Admissibility

69. The Government admitted that the applicant had exhausted remedies available under Polish law.

70. The Court notes that the applicant could not avail himself of any remedy with respect to the pre-trial proceedings, such proceedings not being covered by the 2004 Act.

71. The Court further notes that the applicant filed an unsuccessful complaint under the 2004 Act on 24 February 2005 about the length of the proceedings before the Opole Regional Court. The Wrocław Court of Appeal examined the conduct of the proceedings before the Opole Regional Court from 3 December 1999 (the date on which the bill of indictment was submitted to the trial court) to 31 July 2002. It dismissed the complaint on the ground that the proceedings had not lasted an unreasonable time.

72. The Court can but note that it would have been open to the applicant to use the 2004 Act with respect to the length of proceedings before the Court of Appeal or the cassation proceedings before the Supreme Court (see *Becova v. Slovakia*, no. 23788/06 (dec.)). The Court observes that the domestic courts should have the possibility under the 2004 Act to examine the conduct of the proceedings before all judicial instances which dealt with the case. However, in the present case the Government have not pleaded the applicant's failure to exhaust the 2004 remedy with respect to the phase of the proceedings after 31 July 2002 and it is not for the Court to consider this matter of its own motion (see *Urbanczyk v. Poland*, no. 33777/96 (dec.)).

It follows that this part of the complaint cannot be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

73. Having regard to the above considerations, the Court concludes that that the complaint about the length of the proceedings 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. Submissions of the parties

74. The Government submitted that in the particular circumstances of the applicant's case there had been no violation of Article 6 § 1 of the Convention.

They repeated the submissions they had made with regard to the allegedly unreasonable length of the applicant's detention (see paragraphs 47-49 above) and argued that the case had been very complex. They recalled that the case had concerned multiple charges of gang rape

(including statutory rape) committed with extreme cruelty and in conjunction with deprivation of liberty, and that the perpetrators had threatened the victims and attempted to exert pressure on them not to inform the police about the crimes.

75. As to the conduct of the domestic authorities, the Government further argued that, regardless of the total length of the proceedings, there had been no delays attributable to the State. The proceedings had been concluded swiftly and the judicial authorities had shown due diligence in ensuring their proper conduct.

76. As to the conduct of the applicant, the Government were of the opinion that he had significantly contributed to the length of the proceedings. In particular, the applicant and other defendants had lodged various applications and appeals, which had to be dismissed on several occasions owing to their irrelevance or lack of justification. The Government argued, relying on *Malicka-Wąsowska v. Poland* ((dec.), no. 41413/98, 5 April 2001), that in exercising his procedural rights, the applicant must have been aware that such applications and appeals might contribute to delays in the proceedings.

77. The applicant contested these arguments and argued that the length of the proceedings had been excessive.

2. The Court's assessment

(a) Period to be taken into consideration

78. Having regard to its considerations set out in paragraphs 70-72, the Court recalls that the period under examination for the purposes of Article 6 § 1 of the Convention lasted from 14 May 1999 to 11 March 2005 and amounts to 5 years and 9 months for three levels of jurisdiction.

(b) Reasonableness of the length of proceedings

79. The Court will examine the reasonableness of the length of proceedings in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII, and *Humen v. Poland* [GC], no. 26614/95, § 60, 15 October 1999).

80. As regards the nature of the case, the Court observes that, having regard to the seriousness of the crimes and their sexual character, as well as the mental state of the victims and the number of witnesses and accused, it was of considerable complexity. The Court's attention has particularly been drawn to the significant number of witnesses and victims questioned by the first-instance court, as well as to the number of defendants. The Court also

refers to its above findings in respect of the complaint under Article 5 § 3 of the Convention (see, in particular, paragraphs 61 and 66 above).

81. With regard to the conduct of the authorities and of the applicant, the Court reiterates that only delays attributable to the State may justify a finding of a failure to comply with the "reasonable time" requirement (see, among other authorities, *Proszak v. Poland*, judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, § 40) and that in civil proceedings the parties too must show "due diligence" (see the *Pretto and Others v. Italy* judgment of 8 December 1983, Series A no. 71, pp. 14-15, § 33).

82. The evidence before the Court does not disclose any significant period of inactivity that could be attributable to the domestic courts. During the period under consideration the case was heard by courts at three instances. The hearings were held regularly and the trial court made efforts to conduct the proceedings promptly and swiftly (see paragraphs 17, 20, 24 and 27 above). The trial court also took all necessary steps to resolve difficulties in hearing witnesses in the course of the proceedings and applied adequate disciplinary measures, given the fact that when the hearings were adjourned it was, on many occasions, as the accused or their representatives failed to attend them for various reasons (see paragraph 17 above). The Court observes the absences must have contributed to their overall length of the proceedings in the present case at the hearings and could be regarded as delaying tactics.

83. The Court also observes that the Wrocław Court of Appeal thoroughly analysed the proceedings after the applicant had lodged a complaint under the 2004 Act on the breach of the right to a trial within a reasonable time. In that court's opinion, the proceedings had not breached the reasonable-time requirement. The court pointed to the extreme complexity of the case and to the applicant's attitude with respect to the proceedings. It noted that the number of the applicant's belated, ill-founded or meaningless motions filed by the applicant had contributed significantly to the length of the proceeding (see paragraph 35 above).

84. Having regard to the fact that the national courts are in principle better placed than the international judge to assess the particular circumstances of the case before them, in particular the complexity of the case or the applicant's attitude towards the proceedings, the Court will not depart from the Wrocław Court of Appeal's finding that the applicant's right to a trial within a reasonable time had not been violated, there being no evidence that its conclusion was without reasonable foundation.

85. Having regard also to its findings under Article 5 § 3 above as to the conduct of the criminal case against the applicant, the Court concludes that the proceedings complained of did not exceed the "reasonable time" requirement within the meaning of Article 6 § 1.

There has accordingly been no breach of that provision.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 5 § 3 of the Convention;
3. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 18 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T. L. EARLY
Registrar

Nicolas BRATZA
President