CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF KRAWCZAK v. POLAND

(Application no. 17732/03)

JUDGMENT

STRASBOURG

4 October 2005

FINAL

04/01/2006

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 Krawczak v. Poland,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 13 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 17732/03) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Mr Janusz Krawczak ("the applicant"), on 16 May 2003.

2. The applicant was represented by Ms M.M. Sykulska, a lawyer practising in Tczew. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz, of the Ministry of Foreign Affairs.

3. On 4 May 2004 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the excessive length of pre-trial detention 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1950 and lives in Poznań, Poland.

5. On 17 June 1999 the Gdańsk District Court (*Sąd Rejonowy*) remanded the applicant in custody for a period of three months on suspicion that he had committed three counts of armed robbery. It considered that that measure was indispensable in order to secure the proper conduct of the

proceedings, having regard to the serious nature of the offences in question and the severity of the anticipated penalty. Lastly, it considered that, given the way in which the offences in question had been committed, the applicant might attempt to induce witnesses to give false testimony.

6. During the investigation, the applicant's detention was prolonged several times.

7. On 19 August 1999 the Gdańsk Regional Court (*Sąd Okręgowy*) prolonged his detention until 16 December 1999, relying on the grounds originally given for his detention. It further referred to the need to take various investigative measures and obtain expert evidence. It also considered that the complexity of the case justified the prolongation of the applicant's detention with a view to securing the proper conduct of the investigation. The applicant appealed against that decision, relying on his poor health.

8. On 13 October 1999 the Gdańsk Court of Appeal (*Sąd Apelacyjny*) dismissed his appeal, having regard to the medical report of 28 September 1999 which concluded that the applicant could remain in detention.

9. On 8 December 1999 the Gdańsk Court of Appeal prolonged his detention until 16 June 2000, finding that it was highly probable that he had committed the offences with which he had been charged. In that respect, it referred to evidence given by a certain A.Ł., a member of the same criminal group, who acted as a witness against the other suspects. The Court of Appeal further relied on the need to obtain and secure evidence, in particular from experts in ballistics, biology and fingerprints. It stressed that it was also necessary to hold a reconstruction of the crime and to confront the suspects with each other. It also considered that the scale and the nature of the offences in question justified the applicant's continued detention. The applicant appealed against that decision.

10. On 8 February 2000 the Supreme Court (*Sąd Najwyższy*) dismissed his appeal. It had regard to the serious nature of the offences in question and the need to obtain further evidence. It further emphasised the complexity of the case and considered that the applicant's continued detention was the only measure which could secure the proper conduct of the proceedings.

11. On 24 May 2000 the Supreme Court extended the applicant's detention until 15 December 2000, considering that the strong suspicion against him of having committed the serious offences with which he had been charged, the severity of the anticipated sentence and the risk of his tampering with evidence justified holding him in custody. It found that the present case was “particularly complex” within the meaning of Article 263 § 4 of the Code of Criminal Procedure due to, *inter alia*, the nature of the offences and the number of suspects involved.

12. On 13 December 2000 the Gdańsk Court of Appeal prolonged the detention of the applicant and his 8 co-suspects pending investigation until 31 March 2001. On 7 March 2001 it ordered that the applicant be held in

custody until 31 May 2001. It repeated the grounds stated in its previous decisions. It added that the prolongation of the applicant's detention was justified by the need to obtain DNA evidence.

13. On 15 May 2001 the applicant was indicted before the Gdańsk Regional Court on 12 charges, including several counts of armed robbery. The bill of indictment listed 120 charges brought against 19 accused, who were all detained on remand. The case-file comprised 114 volumes. The prosecution asked the court to hear evidence from 366 witnesses. The principal witness was a certain A.Ł., who was indicted together with all the defendants but gave evidence against them.

14. On 17 May 2001 the Regional Court prolonged the applicant's detention until 16 June 2001, reiterating the grounds that had been stated in the previous decisions. It considered that there was a risk that he might abscond or interfere with witnesses, having regard to the serious nature of the offences in question and the connections between the suspects.

15. Since on 16 June 2001 the applicant's detention reached the statutory time-limit of 2 years laid down in Article 263 § 3 of the Code of Criminal Procedure, further prolongation of the applicant's detention was ordered by the Gdańsk Court of Appeal. The Court of Appeal relied on the particular complexity of the case as the ground for extending the applicant's detention beyond the statutory time-limit. The relevant decisions were given on 23 May 2001 (extending the applicant's detention until 31 October 2001), on 24 October 2001 (prolonging that period until 31 March 2002), on 13 March 2002 (ordering his continued detention until 30 September 2002), on 11 September 2002 (prolonging the detention until 31 December 2002), on 18 December 2002 (ordering his continued detention until 30 June 2003), on 25 June 2003 (extending the detention until 31 December 2003), on 17 December 2003 (prolonging it until 30 June 2004), on 23 June 2004 (ordering his continued detention until 31 December 2004), on 15 December 2004 (extending that period until 31 March 2005), on 30 March 2005 (ordering his continued detention until 30 June 2005) and on 22 June 2005 (prolonging his detention until 30 September 2005). As at the latter date, 8 of the 19 accused were still detained on remand and the trial court had heard most of the prosecution witnesses.

16. In all those decisions the Court of Appeal stated that the grounds originally given for the applicant's detention were still valid. It especially relied on the need to secure the proper conduct of the proceedings against any attempt by the applicant to obstruct the process of obtaining evidence. It stressed the exceptionally complex nature of the case and the fact that several hundred witnesses were to be heard.

17. In the meantime, the trial began on 28 December 2001. However, as at April 2002 the reading out of the bill of indictment by the prosecution was still continuing.

18. In its decision of 13 March 2002, the Court of Appeal found that holding the applicant and his seven co-defendants in custody was the only measure which would prevent them from obstructing the trial, having regard to the nature of the offences in question, the severity of the anticipated penalty and the fact that such attempts had been made in the course of the investigation. It also instructed the trial court to increase the number of hearings held per month.

19. In its decision of 23 June 2004, the Court of Appeal observed that up to April 2003 the main reason for the delays during the trial was the obstructiveness of the defendants and the abuse of the rights of the defence.

20. In its decision of 18 January 2005 dismissing the applicant's appeal against the decision of 15 December 2004 prolonging his detention, the Court of Appeal held that Article 258 § 2 of the Code of Criminal Procedure established a presumption to the effect that the likelihood of a severe penalty being imposed on the applicant might induce him to obstruct the proceedings. It added that the risk of absconding or tampering with witnesses which existed in the present case did not have to be supported by any concrete facts, but resulted from the above presumption.

21. On 21 March 2005 the trial court made a severance order with a view to expediting the proceedings, and thereafter four defendants (J.N., G.P., Z.S. and Z.C.), who in the meantime had been released from detention, were to be tried separately from other defendants.

22. During the trial the applicant filed numerous but unsuccessful applications for release and appealed, likewise unsuccessfully, against the decisions prolonging his detention. He maintained that the length of his detention was excessive and unreasonable and that the charges against him lacked a sufficiently strong basis since they were founded on unreliable evidence from A.Ł.

23. It appears that the applicant is still in detention pending trial.

II. RELEVANT DOMESTIC LAW

24. The Code of Criminal Procedure of 1997, which entered into force on 1 September 1998, defines detention on remand as one of the so-called "preventive measures" (*środki zapobiegawcze*). The other measures are bail (*poręczenie majątkowe*), police supervision (*dozór policji*), guarantee by a responsible person (*poręczenie osoby godnej zaufania*), guarantee by a social entity (*poręczenie społeczne*), temporary ban on engaging in a given activity (*zawieszenie oskarżonego w określonej działalności*) and prohibition to leave the country (*zakaz opuszczania kraju*).

25. Article 249 § 1 sets out the general grounds for imposition of the preventive measures. That provision reads:

> "1. Preventive measures may be imposed in order to ensure the proper conduct of proceedings and, exceptionally, also in order to prevent an accused's committing

another, serious offence; they may be imposed only if the evidence gathered shows a significant probability that an accused has committed an offence."

26. Article 258 lists grounds for detention on remand. It provides, in so far as relevant:

"1. Detention on remand may be imposed if:

(1) there is a reasonable risk that an accused will abscond or go into hiding, in particular when his identity cannot be established or when he has no permanent abode [in Poland];

(2) there is a reasonable risk that an accused will attempt to induce [witnesses or co-defendants] to give false testimony or to obstruct the proper course of proceedings by any other unlawful means;

2. If an accused has been charged with a serious offence or an offence for the commission of which he may be liable to a statutory maximum sentence of at least 8 years' imprisonment, or if a court of first instance has sentenced him to at least 3 years' imprisonment, the need to continue detention to ensure the proper conduct of proceedings may be based on the likelihood that a severe penalty will be imposed."

27. The Code sets out the margin of discretion as to the continuation of a specific preventive measure. Article 257 reads, in so far as relevant:

"1. Detention on remand shall not be imposed if another preventive measure is sufficient."

28. Article 259, in its relevant part, reads:

"1. If there are no special reasons to the contrary, detention on remand shall be lifted, in particular if depriving an accused of his liberty would:

(1) seriously jeopardise his life or health; or

(2) entail excessively harsh consequences for the accused or his family."

29. The 1997 Code not only sets out maximum statutory time-limits for detention on remand but also, in Article 252 § 2, lays down that the relevant court – within those time-limits – must in each detention decision determine the exact time for which detention shall continue.

30. Article 263 sets out time-limits for detention. In the version applicable up to 20 July 2000 it provided:

"1. Imposing detention in the course of an investigation, the court shall determine its term for a period not exceeding 3 months.

2. If, due to the particular circumstances of the case, an investigation cannot be terminated within the term referred to in paragraph 1, the court of first instance competent to deal with the case may – if need be and on the application made by the [relevant] prosecutor – prolong detention for a period [or periods] which as a whole may not exceed 12 months.

> 3. The whole period of detention on remand until the date on which the first conviction at first instance is imposed may not exceed 2 years.
>
> 4. Only the Supreme Court may, on application made by the court before which the case is pending or, at the investigation stage, on application made by the Prosecutor General, prolong detention on remand for a further fixed period exceeding the periods referred to in paragraphs 2 and 3, when it is necessary in connection with a stay of the proceedings, for the purpose of a prolonged psychiatric observation of the accused or a prolonged preparation of an expert report, when evidence needs to be obtained in a particularly complex case or from abroad or when the accused has deliberately prolonged the proceedings, as well as on account of other significant obstacles that could not be overcome."

31. On 20 July 2000 paragraph 4 was amended and since then the competence to prolong detention beyond the time-limits set out in paragraphs 2 and 3 has been vested with the court of appeal within whose jurisdiction the offence in question has been committed.

THE LAW

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

32. The applicant complained that the length of his detention on remand had been excessive. He relied on 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."

33. The Government contested that argument.

A. Admissibility

34. The Court notes that the application 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. Period to be taken into consideration

35. The Court observes that the applicant was remanded in custody on 17 June 1999. He is still in detention pending trial before the first-instance

court. Accordingly, the total period of his detention to be considered under Article 5 § 3 of the Convention is nearly 6 years and 3 months.

2. The reasonableness of the length of detention

(a) The parties' arguments

36. The Government argued that the length of the applicant's detention had been reasonable and duly justified in its entire period. They relied firstly on the existence of serious suspicion that the applicant had committed the offences in question.

37. Furthermore, the Government referred to the serious nature of those offences and the severity of the anticipated penalty. They argued that the likelihood that a severe penalty would be imposed could induce the accused to interfere with the proper conduct of the proceedings. They also submitted that the risk of the defendants' obstructing the proceedings or tampering with evidence was increased by the fact that they had been charged with having acted in an organised group. The Government pointed that one of the suspects had attempted to influence the testimonies of witnesses prior to his arrest. Thus, the domestic courts had considered it indispensable to keep the applicant and his co-defendants in custody until the trial court had heard all relevant witnesses.

38. The Government underlined that that the serious nature of the charges brought against the applicant as well as the fact that there were 19 defendants, and that the case concerned a significant number of offences committed in an organised group between 1991 and 1999 in different parts of Poland, required that the applicant be held in custody in order to secure the proper conduct of the proceedings.

39. They also submitted that the prolongation of the detention beyond the statutory time-limit of 2 years had been justified under Article 263 § 4 of the Code of Criminal Procedure by the particular complexity of the case, the need to obtain extensive evidence and the fact that the defendants had significantly contributed to the length of the proceedings.

40. The Government submitted that the defendants, including the applicant, had repeatedly requested the trial court to adjourn trial, to return the case to the prosecution authorities for additional investigation or to transfer the case to another court. The Government stressed that due to that obstructive attitude of the defendants, the trial court could only begin to hear evidence in April 2003. They referred in that respect to the decision of the Court of Appeal of 23 June 2004 which had observed that the main reason for the delays in the proceedings until April 2003 had been the obstructiveness of the defendants and the abuse of the rights of the defence. The Government also submitted that the defendants had made numerous applications to challenge the trial court. In the Government's view the

defendants' actions justified the conclusion that they had resorted to delaying tactics.

41. They considered that the applicant had particularly contributed to the prolongation of the proceedings, by submitting 71 requests for release in the course of the investigation and 23 such requests during the trial, and by appealing against every decision of the prosecuting authorities or the courts. The Government pointed out that an accused was entitled to make use of his procedural rights, but that he should bear the consequences when it led to delays.

42. Lastly, they argued that both the prosecuting authorities and the courts had displayed the requisite diligence in the present case.

43. The applicant submitted that the length of his detention had been excessive and that the grounds for his continued detention had not been relevant and sufficient. He maintained that there had been no evidence that he would induce witnesses to give false testimony or obstruct the proceedings in any other way. The applicant emphasized that there had been no concrete circumstances which would justify the conclusion that such a risk had existed. He further argued that he had not significantly contributed to the delays in the proceedings and that he could not be held responsible for any delays caused by the other defendants.

44. The applicant conceded that he had made frequent use of his procedural rights, but submitted that the number of various applications should be seen against the background of the entire length of his detention. Furthermore, he claimed that he had not made any application challenging the trial court.

(b) The Court's assessment

(i) Principles established under the Court's case-law

45. The Court reiterates that the question of whether or not a period of detention is reasonable cannot be assessed in the abstract. 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 laid down in Article 5 of the Convention (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, §§ 110-111 with further references, ECHR 2000-XI).

46. 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, paying due regard to the principle of the presumption of innocence, examine all the facts arguing for or against the existence of the above-mentioned requirement of public interest justifying a departure from the rule in Article 5 and must set them

out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions and of the well-documented facts stated 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 (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 152, ECHR 2000-IV, and *Kudła*, cited above, § 110).

47. 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. The Court must then 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 be satisfied that the national authorities displayed "special diligence" in the conduct of the proceedings. The complexity and special characteristics of the investigation are factors to be considered in this respect (see, for example, *Scott v. Spain*, judgment of 18 December 1996, *Reports* 1996-VI, pp. 2399-2400, § 74, and *I.A. v. France*, judgment of 23 September 1998, *Reports* 1998-VII, p. 2978, § 102).

(ii) Application of the principles to the circumstances of the present case

48. The Court observes that the judicial authorities relied, in addition to the reasonable suspicion against the applicant, on four principal grounds, namely (1) the serious nature of the offences with which he had been charged, (2) the severity of penalty to which he was liable (3) the risk of pressure being brought to bear on witnesses or obstructing the proceedings by other unlawful means and (4) the need to obtain extensive evidence (see paragraphs 5, 7, 9-12, 14, 16, 18 and 20 above). Furthermore, the Government stated that the particular complexity of the case additionally justified the applicant's detention.

49. The Court accepts that the reasonable suspicion against the applicant of having committed the serious offences may initially have warranted his detention. In addition, it considers that the authorities were faced with a difficult task of determining the facts and the degree of alleged responsibility of each of the defendants, who had been charged with acting in an organised criminal group. In these circumstances, the Court also accepts that the need to obtain voluminous evidence from many sources together with the complexity of the investigation, constituted relevant and sufficient grounds for the applicant's detention during the time necessary to terminate the investigation, to draw the bill of indictment and to hear evidence from the accused.

50. However, with the passage of time those grounds inevitably became less and less relevant. In particular, even if the Court were to accept that the defendants, including the applicant, had contributed to certain delays during the trial by making use of their procedural rights, the Court considers that

those grounds could not justify the entire period of the applicant's detention. In that connection, the Court underlines that the Government did not refer to any particular act of obstruction of the trial by the applicant. It must then establish whether the other grounds advanced by the judicial authorities were "relevant" and "sufficient" to continue to justify the deprivation of liberty.

51. The Court notes that the judicial authorities also relied on the likelihood that a severe sentence might have been imposed on the applicant given the serious nature of the offences at issue (see paragraphs 5, 7, 11, 18 and 20 above). In this respect, the Court recalls that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending. It acknowledges that in view of the seriousness of the accusations against the applicant the authorities could justifiably consider that such an initial risk was established. However, the Court has repeatedly held that the gravity of the charges cannot by itself serve to justify long periods of detention on remand (see *Ilijkov v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001). In the circumstances of the present case, the Court finds that the severity of the anticipated penalty alone, or in conjunction with the other grounds relied on by the authorities, cannot constitute a "relevant and sufficient ground" for holding the applicant in detention for an extremely long period of nearly 6 years and 3 months.

52. 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 cannot accept that those constituted relevant and sufficient grounds for the entire length of the applicant's detention. Firstly, it notes that the judicial authorities appeared to presume the risk of pressure on witnesses or the obstruction of the proceedings based on the likelihood of a severe penalty being imposed on the applicant and the nature of the offences in question. It notes however that the relevant decisions did not put forward any argument capable of showing that these fears were well-founded. The Court considers that such a generally formulated risk flowing from the nature of the offences with which the applicant had been charged may possibly be accepted as the basis for his detention at the initial stages of the proceedings. Nevertheless, in the absence of any other factor capable of showing that the risk relied on actually existed, the Court cannot accept those grounds as a justification for holding the applicant in custody for the entire relevant period.

53. The Court would also emphasise that under Article 5 § 3 the authorities, when deciding whether a person should be released or detained, are obliged to consider alternative measures of ensuring his appearance at trial. Indeed, that provision proclaims not only the right to "trial within a reasonable time or to release pending trial" but also lays down that "release may be conditioned by guarantees to appear for trial" (see *Neumeister v. Austria*, judgment of 27 June 1968, Series A no. 8, p. 3, § 3; and *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000).

54. In the present case the Court notes that during the entire period the applicant was kept in detention, and despite his applications for release on bail, the authorities never envisaged any other guarantees of his appearance at trial. Nor did they give any consideration to the possibility of ensuring his presence at trial by imposing on him other "preventive measures" expressly foreseen by Polish law to secure the proper conduct of criminal proceedings (see paragraph 25 above).

55. What is more, it is not apparent from the relevant decisions why the authorities considered that those other measures would not have ensured the applicant's appearance before the court or in what way the applicant, had he been released, would have obstructed the course of the trial. Nor did they mention any factor indicating that there was a real risk of his absconding or obstructing the proceedings. In that regard the Court would also point out that although such a potential danger may exist where an accused is charged with a serious offence and where the sentence is a long term of imprisonment, the degree of that risk cannot be gauged solely on the basis of the severity of the offence and anticipated sentence (see Muller v. France judgment of 17 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 388, § 43).

56. The foregoing considerations are sufficient to enable the Court to conclude that the grounds given for the applicant's pre-trial detention were not "sufficient" and "relevant" to justify holding him in custody for nearly 6 years and 3 months.

57. There has accordingly been a violation of Article 5 § 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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

59. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

60. The Government argued that the applicant's claim was exorbitant and should be rejected.

61. The Court considers that the applicant has suffered non-pecuniary damage – such as distress resulting from the protracted length of his detention – which is not sufficiently compensated by the finding of a

violation of the Convention. Considering the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant EUR 2,000 under this head.

B. Costs and expenses

62. The applicant was granted legal aid. He did not submit any claim in respect of costs and expenses.

C. Default interest

63. 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

1. *Declares* the application admissible;

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

3. *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 2,000 (two thousand euros) in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the date of settlement, 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;

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

Done in English, and notified in writing on 4 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President