CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF KOZŁOWSKI v. POLAND

(Application no. 31575/03)

JUDGMENT

STRASBOURG

13 December 2005

FINAL

13/03/2006

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 Kozłowski 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 29 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 31575/03) 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 Piotr Kozłowski ("the applicant"), on 5 September 2003.

2. The applicant was represented by Mrs E. Lewicka, a lawyer practising in Warsaw. 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 decided to communicate the application 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 1980 and lives in Słupno.

5. On 12 February 2001 the Pruszków District Court (*Sąd Rejonowy*) remanded the applicant in custody until 11 May 2001 in view of the reasonable suspicion that he had committed 5 counts of armed robbery against lorry drivers in an organised armed group of criminals. It also had regard to the likelihood that a severe penalty might be imposed on him and the risk that he might tamper with evidence, especially as some of his

accomplices had not yet been apprehended. The court further stressed that, given the applicant's *modus operandi* – namely, the repeated nature of the offences in question – there was a risk that, once released, he would commit a similar offence.

6. In the course of the investigation, the applicant's detention was prolonged on several occasions. On 10 May 2001 the Płock Regional Court (*Sąd Okręgowy*) ordered that the applicant be held in custody until 19 August 2001. It held that the investigation concerned several dangerous suspects and that some of them were still at large. The court considered that the applicant's detention was necessary in order to prevent him from obstructing the investigation. It also had regard to the need to obtain extensive evidence.

7. On 14 August 2001 the Regional Court prolonged his detention until 19 November 2001. It considered that there was a real risk that the suspects, including the applicant, might obstruct the investigation, having regard to the nature of their criminal activities and the severity of the anticipated penalty. It also referred to the need to collect further evidence. On 13 November 2001 the Płock Regional Court ordered that the applicant be held in custody until 11 February 2002, relying on the same grounds as in its previous decision.

8. On 6 February 2002 the Lublin Court of Appeal (*Sąd Apelacyjny*) prolonged the applicant's detention until 30 March 2002. On 26 March 2002 the Płock Regional Court ordered that the applicant be held in custody until 30 June 2002. In all those decisions the courts reiterated the grounds previously given for the applicant's detention. They added that that measure was necessary to secure the proper conduct of the proceedings.

9. On 15 March 2002 the applicant was indicted on the charge of having committed 5 counts of armed robbery in an organised armed group before the Płock Regional Court. The bill of indictment comprised numerous charges brought against 11 accused. It appears that most charges were based on evidence given by a certain X.Y. who had been granted the status of the State's witness (*świadek koronny*).

10. Subsequently, on 16 April 2002, the Płock Regional Court referred the case to the Warsaw Regional Court, holding that that court had jurisdiction to hear the case. On 10 June 2002 the Warsaw Regional Court disagreed and referred the case to the Warsaw Court of Appeal, in order to obtain a ruling as to which court was competent to deal with it. On 5 July 2002 the Court of Appeal ordered that the case be heard by the Płock Regional Court.

11. On 10 June 2002 the Warsaw Regional Court prolonged the applicant's detention until 30 September 2002. It relied on the reasonable suspicion that the applicant had committed the offences in question. In addition, it held that the prolongation of the applicant's detention was justified under Article 258 § 2 of the Code of Criminal Procedure. In this

respect, the Regional Court observed that the likelihood of a severe penalty being imposed on the applicant might induce him to obstruct the proceedings. In its view, the continued detention was the most effective preventive measure which would secure the proper conduct of the proceedings.

12. On 17 September 2002 the Płock Regional Court ordered that the applicant be kept in custody until 12 February 2003, the date on which his detention was to reach the statutory time-limit of 2 years for pre-trial detention, laid down in Article 263 § 3 of the Code of Criminal Procedure. Consequently, further prolongation of the applicant's detention was ordered by the Warsaw Court of Appeal.

13. The trial started on 28 October 2002. Between the latter date and 15 November 2004 the Regional Court held 89 hearings. On average, it listed 6-8 hearings monthly. Evidence from X.Y. was heard at 20 hearings since he frequently changed his testimony.

14. During the trial the Court of Appeal prolonged the applicant's detention several times. The relevant decisions were given on 7 February 2003 (prolonging his detention until 12 April 2003), on 8 April 2003 (extending his detention up to 12 July 2003), on 11 July 2003 (ordering his continued detention until 12 October 2003), on 7 October 2003 (prolonging that period until 12 January 2004), on 19 December 2003 (extending his detention up to 12 April 2004), on 8 April 2004 (ordering his continued detention until 12 July 2004), on 9 July 2004 (prolonging his detention until 12 October 2004) and on 5 October 2004 (extending that period until 12 January 2005).

15. In all those decisions the Court of Appeal reiterated the grounds previously given for holding the applicant in custody. It also relied on the particular complexity of the case.

16. In its decision of 7 October 2003, the Warsaw Court of Appeal held that the applicant's detention was justified under Article 258 § 2 of the Code of Criminal Procedure. That provision 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. The court further considered that the risk of obstructing the proceedings had also been justified by reference to the nature of the offences at issue. The presumption established by Article 258 § 2 of the Code of Criminal procedure was also relied on by the Court of Appeal in its decision of 9 July 2004.

17. During the proceedings the applicant made numerous but so far unsuccessful applications for release and appealed, likewise unsuccessfully, against the decisions extending his detention. He contested the reasoning for the charge against him and maintained that it was solely founded on unreliable and contradictory evidence from X.Y.

18. It appears that the applicant is still in pre-trial detention.

II. RELEVANT DOMESTIC LAW

19. 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 on leaving the country (*zakaz opuszczania kraju*).

20. 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."

21. 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."

22. The Code sets out the conditions governing 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."

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."

23. 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.

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 an 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 of the first conviction at first instance 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."

24. 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 in 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

25. 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."

26. The Government contested that argument.

A. Admissibility

27. 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

28. The Court observes that the applicant was remanded in custody on 12 February 2001. He is still in detention pending trial before the first-instance court. Accordingly, the total period of his detention amounts to over 4 years and 10 months.

2. The reasonableness of the length of detention

(a) The parties' arguments

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

30. The Government further maintained that the applicant's detention had been justified by the gravity of the charges brought against him. In this respect, they submitted that the applicant had been charged with the commission of a number of armed robberies in an organised criminal group.

31. The Government also invoked the risk of collusion since there had been numerous suspects involved in the offences in question and some of those suspects were being searched for throughout the entire period of the investigation. In this respect they referred to the court's decision to grant to one of the suspects the State's witness status.

32. Furthermore, the Government emphasised the complexity of the case which concerned a number of armed robberies which had been committed by members of an organised criminal group. They submitted that the prosecution had gradually obtained information about those crimes and arrested the suspects. Their number in the subsequent court proceedings reached 20. They Government also argued that the complexity of the case had necessitated that extensive evidence be collected.

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

34. The applicant disagreed with the Government. He submitted that the authorities had not proved that there had been any real risk of his obstructing the proceedings. The applicant also argued that the authorities

had purported to justify his detention by reference to the unsubstantiated risk of his tampering with evidence. Likewise, they had relied unjustifiably on the severity of the anticipated penalty. He maintained that his detention had been routinely prolonged without having regard to his personal circumstances and that, in fact, it had been tantamount to serving the prison sentence.

(b) The Court's assessment

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

35. 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).

36. 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).

37. 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

38. 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 the applicant had been charged, (2) the severity of penalty to which he was liable (3) the risk of tampering with evidence or obstructing the proceedings by other means and (4) the need to obtain extensive evidence (see paragraphs 5-8 and 11, 15 and 16 above). Additionally, the Pruszków District Court on one occasion, in its original detention order of 12 February 2001, held that the applicant's detention had been justified in order to prevent him from committing a similar offence (see paragraph 5 above).

39. Furthermore, the Government stated that the particular complexity of the case additionally justified the applicant's detention (see paragraph 32 above).

40. 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.

41. However, with the passage of time those grounds inevitably became less and less relevant. In particular, the Court considers that those grounds could not justify the entire period of the applicant's detention. It must then establish whether the other grounds advanced by the judicial authorities were "relevant" and "sufficient" to continue to justify the deprivation of his liberty.

42. 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, 8, 11 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 and 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 a considerably long period of over 4 years and 10 months.

43. As regards the risk of tampering with evidence or obstructing the proceedings by other means, the Court cannot accept that they constituted relevant and sufficient grounds for the entire period of the applicant's detention. Firstly, it notes that the judicial authorities appeared to presume the risk of tampering with evidence or the obstruction of the proceedings, based on the likelihood of a severe penalty being imposed on the applicant and on the nature of the offences in question (see paragraphs 5-8 and 11 above). 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 was 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.

44. 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).

45. In the present case the Court notes that during the entire period the applicant was kept in detention, and despite his applications for release, 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 19 above).

46. 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 faced 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).

47. 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 over 4 years and 10 months. In these circumstances it is not necessary to examine whether the proceedings were conducted with special diligence.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. The applicant claimed 50,000 euros (EUR) in respect of pecuniary and non-pecuniary damage. He submitted that as a result of his prolonged detention he could not work or study. Furthermore, he referred to the severe conditions of his detention.

51. The Government argued that the applicant's claim was exorbitant and should be rejected. Alternatively, they asked the Court to rule that a finding of a violation constituted in itself sufficient just satisfaction.

52. 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 1,000 under this head.

B. Costs and expenses

53. The applicant did not submit any claim in respect of costs and expenses.

C. Default interest

54. 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 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 1,000 (one 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 13 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President