



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

1959 · 50 · 2009

FOURTH SECTION

DECISION

Application no. 58049/08
by Maciej FLIS
against Poland

The European Court of Human Rights (Fourth Section), sitting on
1 September 2009 as a Chamber composed of:

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having regard to the above application lodged on 10 November 2008,

Having regard to the formal declarations accepting a friendly settlement
of the case,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Maciej Flis, is a Polish national who was born in 1977 and lives in Otrębusy. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

The facts of the case, as submitted by the parties, may be summarised as follows.

A. Criminal proceedings against the applicant

On an unspecified date the applicant was charged with burglary.

On 30 August 2005 a bill of indictment against the applicant and two other suspects was lodged with the Warsaw District Court.

A first hearing was held on 27 November 2006.

A hearing scheduled for 3 July 2007 was cancelled due to the judge rapporteur's illness.

In February 2008 the case was referred to the Piaseczno District Court. It appears that the trial has re-commenced.

The proceedings are still pending before the first-instance court.

B. Proceedings under the 2004 Act

On an unspecified date in 2008 the applicant lodged a complaint with the Warsaw Regional Court about a breach of his right to a trial within a reasonable time in respect of the criminal proceedings against him and asked for just satisfaction. He relied on the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki* – “the 2004 Act”), which entered into force on 17 September 2004.

On 7 August 2008 the Warsaw Regional Court dismissed his complaint on the ground that there had been no undue delay in the proceedings. The Regional Court noted that the first hearing had been held more than one year after the bill of indictment had been lodged. However, the trial court had faced difficulties establishing the place of residence of one of the accused. It further held that the trial court had heard several witnesses and that every decision adjourning a hearing had been justified by the need to call witnesses or to request experts' opinions. The court also noted that a hearing scheduled for 3 July 2007 had been cancelled due to the judge rapporteur's illness. It concluded that the trial court's hesitation in referring the case to another judge during the judge rapporteur's illness had been justified in the light of the advanced state of the proceedings. It noted, however, that the case was eventually referred to a different judge rapporteur.

COMPLAINT

The applicant complained under Article 6 § 1 of the Convention about the unreasonable length of the proceedings.

THE LAW

On 22 June 2009 the Court received the following declaration from the Government:

“I, Jakub Wołosiewicz, Agent of the Polish Government, declare that the Government of Poland offer to pay PLN 10,000 (ten thousand Polish zlotys) to Mr Maciej Flis with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights.

This sum, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable and will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the case.”

On 15 June 2009 the Court received the following declaration signed by the applicant:

“I, Maciej Flis, note that the Government of Poland are prepared to pay me the sum of PLN 10,000 (ten thousand Polish zlotys) with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights.

This sum, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable and will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. 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.

I accept the proposal and waive any further claims against Poland in respect of the facts giving rise to this application. I declare that this constitutes a final resolution of the case.”

The Court takes note of the friendly settlement reached between the parties. It is satisfied that the settlement is based on respect for human rights as defined in the Convention and its Protocols and finds no reasons to justify a continued examination of the application (Article 37 § 1 *in fine* of the Convention). In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President