CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

Application no. 16742/02
by Bogusław MISIEWICZ
against Poland

The European Court of Human Rights (Fourth Section), sitting on 11 January 2005 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 regard to the above application lodged on 21 June 2001,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together;

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

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Boguslaw Misiewicz, is a Polish national who was born in 1930 and lives in Toruń, Poland.

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

On 3 December 1992 the applicant lodged with the Toruń District Court (*Sąd Rejonowy)* an application for division of the matrimonial property.

It appears that his action was returned to him for formal reasons and that on 17 August 1994 the applicant lodged a new application for division of the matrimonial property.

In 1994 and 1995 the applicant complained to the Minister of Justice about a delay in the examination of his case.

In September 1995 the President of the Torun Regional Court informed the applicant that on 20 May 1995 his case had been transferred to the Toruń Regional Court (*Sąd Wojewódzki).* Subsequently, his case-file had been lost and the Regional Court decided to reconstruct it.

On 16 April 1996 the Regional Court held the first hearing at which it ordered an expert opinion.

On 27 July 1996 the expert opinion was submitted to the court.

In January 1996 the case was transferred back to the Toruń District Court.

On 17 October 1996 the Toruń District Court held a hearing.

On 11 May 1998 the Toruń District Court gave a preliminary decision (*postanowienie wstępne*).

The applicant's former wife appealed against this decision.

Subsequently, several expert opinions were prepared and the court held hearings. The proceedings were stayed between 14 January and 28 June 2000.

On 29 January 2001 the parties reached a friendly settlement and on 12 March 2001 the Toruń District Court discontinued the proceedings.

The applicant lodged an appeal against the decision to discontinue the proceedings.

On 3 April 2001 his appeal was rejected because it did not comply with formal requirements.

The applicant appealed against this decision, but it was finally dismissed on 5 July 2001.

COMPLAINT

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

THE LAW

On 27 September 2004 the Court received the following declaration signed by the applicant:

> "I note that the Government of Poland are prepared to pay me the sum of PLN 17,000 (seventeen 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, is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, 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."

On 15 November 2004 the Court received the following declaration signed by the respondent Government:

> "I declare that the Government of Poland offer to pay PLN 17,000 (seventeen thousand Polish zlotys) to Mr Bogusław Misiewicz with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights.
>
> This sum is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, 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."

The Court takes note of the agreement reached between the parties and considers that the matter has been resolved (Article 37 § 1 (b) of the Convention). Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as

defined in the Convention and its Protocols which require the examination of the application to be continued. Accordingly, the application to the case of Article 29 § 3 of the Convention should be discontinued and the case struck out of the list.

For these reasons, the Court unanimously

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

Michael O'BOYLE
Registrar

Nicolas BRATZA
President