



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

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FOURTH SECTION

DECISION

Application no. 3515/07  
by Bogdan SZENK  
against Poland (no. 2)

The European Court of Human Rights (Fourth Section), sitting on 19 May 2009 as a Chamber composed of:

Nicolas Bratza, *President*,  
Lech Garlicki,  
Ljiljana Mijović,  
David Thór Björgvinsson,  
Ján Šikuta,  
Päivi Hirvelä,  
Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having regard to the above application lodged on 21 December 2006,

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

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Bogdan Szenk, is a Polish national who was born in 1929 and lives in Warsaw. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

### A. The circumstances of the case

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

On 17 June 1991 the applicant instituted administrative proceedings for annulment of a decision concerning real estate in Warsaw. It appears that the proceedings are still pending.

On 26 July 2000 the applicant filed an application with the Court alleging excessive length of the proceedings in breach of Article 6 of the Convention (see *Szenk v. Poland*, no. 67979/01, 22 March 2005).

On 22 March 2005 the Court gave a judgment finding a violation of the applicant's right to have his case examined within a reasonable time.

In spite of that judgment the proceedings were still pending.

On 23 June 2006 the applicant filed a complaint with the Warsaw Regional Administrative Court alleging inaction on the part of the President of Warsaw (*Prezydent Miasta Warszawy*).

On 13 October 2006 the applicant filed a complaint with the Ministry of the Interior and Administration (*Ministerstwo Spraw Wewnętrznych i Administracji*) alleging inaction on the part of the Warsaw City Hall (*Urząd Miasta Stołecznego Warszawy*). He referred in his complaint to the Court's judgment of 22 March 2005, where a violation of his right to have his case examined within a reasonable time had been found, and stressed that despite that judgment no final decision had been given in his case.

On 17 October 2006 the Warsaw Regional Administrative Court dismissed the applicant's complaint of 23 June 2006 on formal grounds, namely that the applicant had failed to complain first to a superior administrative authority as provided for in Article 37 § 1 of the Code of Administrative Proceedings.

On 23 October 2006 the applicant filed a complaint with the Warsaw Self-Government Board of Appeal (*Samorządowe Kolegium Odwoławcze*), alleging inaction on the part of the President of Warsaw in the proceedings.

On 12 April 2007 the Board, under Article 37 § 2 of the Code of Administrative Proceedings, requested the President to issue a decision in the applicant's case within thirty days.

On 14 September 2007 the applicant filed a complaint with the Warsaw Regional Administrative Court alleging continued inactivity of the President of Warsaw, despite the Board's decision of 12 April 2007.

By a decision of 8 October 2007 the President of Warsaw suspended the proceedings in the case until the Warsaw City Council (*Rada Miasta Warszawy*) issued a decision in respect of the amount of rent to be paid for the real estate in question.

On 25 January 2008 the applicant's complaint of 14 September 2007 was dismissed by the Warsaw Regional Administrative Court as ill-founded.

The court found that since the President had issued a decision suspending proceedings in the applicant's case, it could not be said that he was inactive.

As it appears the proceedings are still pending.

## **B. Relevant domestic law and practice**

### *1. Inactivity of administrative authorities*

For a presentation of domestic law, see *Kaniewski v. Poland*, no. 38049/02, 8 February 2006, and *Koss v. Poland*, no. 52495/99, 28 March 2006.

### *2. Length of proceedings*

The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings, in particular the applicable provisions of 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"), are stated in the Court's decisions in the cases of *Charzyński v. Poland* no. 15212/03 (dec.), §§ 12-23, ECHR 2005-V and *Ratajczyk v. Poland* no. 11215/02 (dec.), ECHR 2005-VIII, and in the judgment in the case of *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005-V.

## **COMPLAINT**

The applicant complained under Article 6 of the Convention about the excessive length of administrative proceedings in his case. He referred to the Court's judgment of 22 March 2005, stressing that despite a judgment in his favour being issued, the proceedings were still pending and no final decision had yet been given.

## **THE LAW**

On 15 January 2009 the Court received the following declaration from the Government:

"I, Jakub Wołosiewicz, agent of the Government, declare that the Government of Poland offer to pay 6,600 Polish zlotys to Mr Bogdan Szenk 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. It 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 9 April 2009 the Court received the following declaration signed by the applicant:

“I, Bogdan Szenk, the applicant, note that the Government of Poland are prepared to pay me the sum of 6,600 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. It 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.

Lawrence Early  
Registrar

Nicolas Bratza  
President