

FOURTH SECTION

CASE OF SERAFIN AND OTHERS v. POLAND (No. 2)

(Application no. 51123/07)

JUDGMENT

STRASBOURG

2 December 2008

FINAL

02/03/2009

This judgment may be subject to editorial revision.

In the case of *Serafin and Others v. Poland* (no. 2),

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Ján Šikuta,

Mihai Poalelungi,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*

Having deliberated in private on 13 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 51123/07) 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 nine Polish nationals, Ms Jolanta **Serafin** (born in 1952), Ms Małgorzata Gładysz-Wójcik (born in 1960), Mr Andrzej Zawistowski (born in 1939), Ms Katarzyna Okoniewska (born in 1963), Ms Marta Plamenac (born in 1950), Ms Elżbieta Zawistowska (born in 1937), Ms Teresa Urbanek (born in 1946), Mr Piotr Zawistowski (born in 1962) and Ms Joanna Aleksowicz-Zawistowska (born in 1921) (“the applicants”), on 15 July 2005.

2. The applicants were represented by Mr J. Brzykcy, a lawyer practising in Warsaw. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołásiewicz, of the Ministry of Foreign Affairs.

3. On 12 December 2007 the President of the Fourth Section of the Court decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

I THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1952, 1960, 1939, 1963, 1950, 1937, 1946, 1962 and 1921 respectively and live in Warszawa, Świdnica and Łódź.

1. Facts before 1993

5. The applicants are heirs to a property (a plot of land with a residential building located thereon) situated in central Warsaw on Jana Pawła II Avenue (previously Leszno Steet).

6. The property belonged to Julian Charaziński and after his death on 15 May 1939 was inherited by his daughters: Władysława Zawistowska (legal predecessor of the applicants Małgorzata Gładysz-Wójcik, Andrzej and Piotr Zawistowski), Stefania Onichimowska (mother of the applicant Jolanta **Serafin**), Krystyna Gumulka (mother of the applicant Marta Plamenac), Czesława Paszkowska (grandmother of the applicant Katarzyna Okoniewska), Julia Urbanek (mother of the applicant Teresa Urbanek).

7. By virtue of the Decree of 26 October 1945 on the Ownership and Use of Land in Warsaw (“the 1945 Decree”) the ownership of all private land was transferred to the City of Warsaw.

8. On 13 October 1948 the applicants and/or their legal predecessors requested to be granted the right of temporary ownership (*własność czasowa*) of the property pursuant to section 7 of the 1945 Decree.

9. In 1990 and 1991 the applicants and/or their legal predecessors lodged with different administrative authorities numerous requests for return of the property.

10. On 28 October 1991 the Town Planning Division of the City of Warsaw informed the applicants that their application of 13 October 1948 had not yet been examined, and would be examined now by the Warsaw Municipality on the basis of the 1945 Decree provisions, in force at the relevant time.

11. On 28 April 1993, the Head of the Warsaw District Office rejected the applicants' request of 1948 to be granted the right of perpetual use of the property (previously the right of temporary ownership). The authority observed that the property had already been used for public purposes (or was so designated according to the local land development plan), namely the widening of the Jana Pawła II Avenue and construction of a housing co-operative. Thus, the restitution of the property was impossible.

12. The Head of the Office also declared that compensation for expropriation of the property should be sought in separate proceedings.

2. *Facts after 1993*

13. On 2 November 1993 the applicants requested to be granted the right of perpetual use of land of equal value (as provided by the 1945 Decree) or to be awarded compensation in lieu.

14. On 9 March 1995 the Head of the Warsaw District Office rejected the applicants' request for compensation. He found that according to the Land Administration and Expropriation Act of 1985 (*Ustawa o gospodarce gruntami i wywłaszczeniu nieruchomości*) the applicants' entitlement to compensation had expired on the date of entry into force of this law.

15. The applicants appealed.

16. On 13 November 1995 the Mazowiecki Governor upheld the decision.

17. On 14 December 1995 the applicants appealed against the Governor's decision to the Supreme Administrative Court.

18. On 20 January 1998 the Supreme Administrative Court quashed both the first and second-instance decisions.

19. On 17 March 1999 Aniela Gładysz, on behalf of the other applicants, complained to the Warsaw Regional Office about the inactivity of the administration and lack of any decision in the case. Apparently her complaint was transferred to the Warsaw Starost (local State administration body), as a result of administrative reforms.

20. On 10 July 2000 Aniela Gładysz and on 17 August 2000, jointly with Krystyna Gumułka, complained to the Governor and to the Starost about the inactivity of the administration.

21. On 5 October 2000, as a result of the administrative reforms, the Mazowiecki Governor transferred the applicants' complaint to the Warsaw Local Government Board of Appeal.

22. On 18 June 2001 the Warsaw Starost rejected the applicants' request to be granted the right of perpetual use of another property or compensation in lieu. The applicants appealed.

23. On 23 May 2002 the Mazowiecki Governor upheld the decision. The applicants appealed.

24. On 15 November 2004 the Warsaw Regional Administrative Court dismissed the appeal.

25. On 20 January 2005 the applicants lodged a cassation appeal with the Supreme Administrative Court.

26. On 14 December 2005 the Supreme Administrative Court dismissed the cassation appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. *Inactivity of administrative authorities*

27. For a presentation of the 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*

28. 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 the judgment in the case of *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005-V.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

29. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

30. The Government contested that argument.

31. The Court notes that the proceedings commenced in 1990. However, the period to be taken into consideration began only on 1 May 1993, when the recognition by **Poland** of the right of individual petition took effect. Nevertheless, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time.

The period in question ended on 14 December 2005. It thus lasted twelve years, seven months and seventeen days for three levels of jurisdiction.

A. Admissibility

32. The Government raised a preliminary objection that the applicants had not exhausted the domestic remedies available to them under Polish law, as required by Article 35 § 1 of the Convention.

33. They maintained that the applicants failed to jointly file a complaint alleging inactivity on the part of an administrative body examining their case to a superior authority, as provided by Article 37 § 1 of the Code of Administrative Procedure. In this connection they stressed that none of the three complaints filed and signed by Aniela Gładysz were “on behalf of another applicant”, nor was the complaint filed on 17 August 2000 signed jointly with Krystyna Gumułka. The Government added that neither Aniela Gładysz, nor Krystyna Gumułka were applicants in the present case.

34. The Government also maintained that the applicants had not had recourse to a remedy provided under Article 17 of the Law of 11 May 1995 on the Supreme Administrative Court (which had been in force until 31 December 2003). Lastly, they alleged that as of 17 September 2004 the applicants could have filed a complaint alleging excessive length of pending proceedings before administrative courts under the 2004 Act.

35. The applicants contested the Government’s arguments and stressed that all of them had had recourse to the available domestic remedy, namely, a complaint alleging inactivity on the part of an administrative body, provided by Article 37 § 1 of the Code of Administrative Procedure. In this connection, the applicants submitted that the administrative proceedings in question involved substantive and formal joint participation of the claimants. This meant that actions in the proceedings brought by one or more of the parties, in this case Aniela Gładysz or Krystyna Gumułka, entailed legal effects, both substantive and formal, for the other parties as well, irrespective of whether they had signed the complaints or not. Further, in response to the Government’s allegation that neither Aniela Gładysz nor Krystyna Gumułka are applicants in the present case the applicants demonstrated their legal succession, by enclosing relevant documents showing that they are heirs to the owners of the real estate in question, namely, the applicant Małgorzata Gładysz-Wójcik is Aniela Gładysz’s sole heir, while the applicant Marta Plamenac is Krystyna Gumułka’s sole heir.

36. The Court recalls that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention requires applicants first to use the remedies provided by the national legal system. The rule is based on the assumption that the domestic system provides an effective remedy in respect of the alleged breach. In order to comply with the rule, normal recourse should be

had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2275–76, §§ 51–52).

37. The Court notes that one or two of the applicants, on behalf of the other applicants, filed several complaints alleging inactivity on the part of the administrative authorities with the respective higher authority, as provided by Article 37 § 1 of the Polish Code of Administrative Procedure of 1960 (see paragraphs 19 and 20 above). In this connection the Court further notes that, as submitted by the applicants, the administrative proceedings in question involved substantive and formal joint participation of the claimants. This meant that actions in the proceedings brought by one or more of the parties, in this case Aniela Gładysz or Krystyna Gumułka (to whom the applicants Małgorzata Gładysz – Wójcik and Marta Plamenac are the legal successors) entailed legal effects, both substantive and formal, for the other parties as well (see paragraph 35 above). It follows that the complaints alleging the inactivity of the administrative bodies were successfully filed in compliance with the relevant legal provisions. Consequently, the Court finds that the applicants had recourse to this remedy.

38. With regard to the Government's claim that the applicants failed to use other remedies as provided by the 2004 Act, the Court reiterates that although Article 35 § 1 requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, it does not require that, in cases where the national law provides for several parallel remedies in various branches of law, the person concerned, after an attempt to obtain redress through one such remedy, must necessarily try all other means (see, *mutatis mutandis*, *H.D. v. Poland* (dec.), no. 33310/96, 7 June 2001; *Kaniewski v. Poland*, no. 38049/02, §§ 32–39, 8 November 2005; and *Cichla v. Poland*, no. 18036/03, §§23–26, 10 October 2006).

39. The Court considers therefore that, having exhausted the available remedies provided by Article 37 § 1 of the Polish Code of Administrative Procedure of 1960, the applicants were not required to embark on another attempt to obtain redress by filing complaints under the 2004 Act or the Law of 11 May 1995 on the Supreme Administrative Court. Accordingly, the Court concludes that, for the purposes of Article 35 § 1 of the Convention, the applicants have exhausted domestic remedies. For these reasons, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

40. The Court further notes that the present application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

41. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

42. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

43. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicants claimed pecuniary and non-pecuniary damage without specifying their expectations as to the amounts.

46. In these circumstances the Government left the matter to the Court’s discretion.

47. The Court does not discern any causal link between the violation found and any pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards them EUR 7,200 under that head.

B. Costs and expenses

48. The applicants did not make any claim for costs and expenses incurred in the proceedings.

C. Default interest

49. 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 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amount to be converted into the currency of the respondent State at the rate applicable at the date of settlement: EUR 7,200 (seven thousand two hundred euros) in respect of non-pecuniary damage, 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 applicants’ claim for just satisfaction.

Done in English, and notified in writing on 2 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Nicolas Bratza
Registrar President

SERAFIN AND OTHERS v. **POLAND** (No. 2) JUDGMENT

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