

FOURTH SECTION

**CASE OF SERAFIN AND OTHERS v. POLAND**

*(Application no. 36980/04)*

JUDGMENT

STRASBOURG

21 April 2009

**FINAL**

***21/07/2009***

*This judgment may be subject to editorial revision.*

**In the case of *Serafin and others v. Poland*,**

The European Court of Human Rights (Fourth Section), sitting 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 deliberated in private on 31 March 2009,

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

## PROCEDURE

1. The case originated in an application (no. 36980/04) 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 Polish nationals, Ms Jolanta **Serafin**, Ms Teresa Urbanek, Ms Małgorzata Gładysz-Wójcik, Ms Katarzyna Okoniewska, Ms Marta Plamenac, Mr Andrzej Zawistowski, Ms Elżbieta Zawistowska, Mr Piotr Zawistowski and Ms Joanna Aleksowicz-Zawistowska, (“the applicants”), on 6 October 2004.

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

3. On 10 January 2008 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 live in Warszawa, Łódź, Świdnica and Sochaczew.

5. The applicant Joanna Aleksowicz-Zawistowska died in 2005. The applicant Piotr Zawistowski is her sole heir.

6. The applicant Andrzej Zawistowski died in 2008. His heirs Monika, Rafał and Marcin Zawistowscy declared their intention to pursue the claim.

#### 1. Background of the case

7. The applicants are heirs to a property (a plot of land with a creamery) situated in central Warsaw on Towarowa Street (previously Krochmalna Steet).

8. The property belonged to Julian Charaziński and after his death on 15 May 1939 it was inherited by his daughters: Władysława Zawistowska (legal predecessor of the applicants Małgorzata Gładysz-Wójcik, Elżbieta Zawistowska, Andrzej and Piotr Zawistowski), Stefania Onichimowska (mother of the applicant Jolanta **Serafin**), Krystyna Gumułka (mother of the applicant Marta Plamenac), Czesława Paszkowska (grandmother of the applicant Ms Katarzyna Okoniewska), Julia Urbanek (mother of the applicant Teresa Urbanek). They all worked in the creamery until 1954.

9. 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. The applicants’ creamery was also nationalised.

10. 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.

11. On 16 December 1952 the Board of the Warsaw National Council (*Prezydium Rady Narodowej*) refused the request.

12. On 19 April 1993 the applicants requested annulment of the decision of 16 December 1952.

13. On 22 September 1994 the Minister of Planning and Construction (*Minister Gospodarki Przestrzennej i Budownictwa*) declared the decision null and void, finding that it had been issued in breach of law.

## 2. The administrative proceedings concerning the grant of the right of perpetual use

14. On 20 November 1990 the applicants lodged a request to have their property returned under Article 7 of the 1945 Decree.

15. On 31 January 1992 the Warsaw Deputy Mayor transferred the applicants' request to the Warszawa-Wola Mayor.

16. In letters dated 10 April 1992 and 10 September 1992, Stefania Onichimowska requested the speedy examination of her application.

17. On 3 November 1992 Aniela Gładysz (the niece of Stefania Onichimowska and mother of Małgorzata Gładysz-Wójcik), one of the legal heirs to the property, complained to the Warsaw Deputy Mayor about the lack of response on the part of the Warszawa-Wola Mayor.

18. On 30 December 1992 the Warsaw Deputy Mayor requested the Warszawa-Wola Mayor to deal with the applicants' request by 30 January 1993.

19. Apparently, on 14 September 1995, the applicants were requested to submit relevant documents confirming their rights to the property.

20. On 5 December 1995 and on 15 April 1997, in letters to the Warsaw municipality, Aniela Gładysz demanded that the applicants' request for the return of the property or for compensation be examined.

21. On 28 May 1997 she was informed that, due to the need to confirm the inheritance rights of the alleged heirs to the property and due to Stefania Onichimowska's death in August 1995 and the resulting need to establish the identity of her heirs, the examination of their application could not be undertaken before 15 April 1997 – the date on which Aniela Gładysz had submitted all required documents.

22. On 17 March 1999, Aniela Gładysz complained to the Warsaw-Centre Municipal Council against the Office for Housing and Urban Development about the inactivity of the body and lack of any decision concerning the title to the property.

23. On 18 March 1999, the municipal council informed Ms Gładysz that her complaint had been transferred to the Audit Committee and that, due to the complex nature of her case, it would not be possible to examine her complaint within 14 days.

24. On 24 June 1999 Ms Małgorzata Gładysz-Wójcik, on behalf of Aniela Gładysz, lodged a complaint with the Minister of Internal Affairs against the Warsaw-Centre Municipal Council and the Office for Housing and Urban Development.

25. On 25 June 1999 the Minister transferred the complaint to the Local Government Board of Appeal (*Samorządowe Kolegium Odwoławcze*).

26. On 15 September 1999 the Local Government Board of Appeal, finding that it had lacked competence to deal with the complaint, transferred it to the Mazowiecki Governor.

27. On 15 November 2004 Małgorzata Gładysz-Wójcik and Marta Palmenac complained to the Warsaw Local Government Board of Appeal about the inactivity of the administrative authorities and their failure to issue an administrative decision.

28. On 19 January 2005 the Warsaw Local Government Board of Appeal ordered the Mayor of Warsaw to issue a decision concerning the grant of the right of perpetual use of the property within a period of 2 months.

29. On 11 April 2005 Małgorzata Gładysz-Wójcik and Marta Palmenac lodged a complaint with the Warsaw Regional Administrative Court against the Mayor of Warsaw for failure to issue an administrative decision.

30. On 26 October 2005 the Warsaw Regional Administrative Court informed Ms Małgorzata Gładysz-Wójcik that the court could not rule on the complaint of 11 April 2005 because the

administrative authority in question had not yet submitted their observations on the applicants' complaint.

31. On 14 March 2006 the Warsaw Regional Administrative Court fined the Mayor of Warsaw PLN 2,500.

32. On 14 June 2006 the Warsaw Regional Administrative Court ordered the Mayor of Warsaw to issue within 2 months a decision concerning the perpetual use of the property.

33. On 2 August 2006 the Mayor of Warsaw stayed the proceedings concerning the right of perpetual use pending the outcome of civil proceedings before the Warsaw District Court for acquisition by prescription, instituted by a "Wola" co-operative.

34. On 14 August 2006 the applicants appealed against the decision of 2 August 2006 to the Local Government Board of Appeal.

35. On 17 January 2007 the Local Government Board of Appeal quashed the decision of 2 August 2006 finding that there had been no reason to stay the proceedings and to delay the delivery of the decision on the merits. The Board noted that the co-operative's request to re-open the proceedings terminated by the decision of 22 September 1994 of the Minister of Planning and Construction had been refused on 5 December 2006.

36. On 17 April 2007 Małgorzata Gładysz-Wójcik and Marta Plamenac instituted enforcement proceedings against the Mayor of Warsaw.

37. On 5 July 2007 the Mayor of Warsaw issued a decision granting the perpetual use of the property to the applicants for a period of 99 years, with the exception of a part of the property which had been intended for the building of a road.

38. The "Wola" co-operative appealed to the Warsaw Local Government Board of Appeal. On 5 September 2007 the Board of Appeal discontinued the appeal proceedings due to lack of legal standing on the part of the "Wola" co-operative. The decision of 5 July 2007 issued by the Mayor of Warsaw became final.

### **3. First set of civil proceedings (proceedings for compensation)**

39. On 18 September 1997, Aniela Gładysz and the other heirs lodged with the Office for Housing and Urban Development (*Urząd Mieszkalnictwa i Rozwoju Miast*) an action for damages resulting from the administrative decision of 16 December 1952. At the same time, they demanded from the Warsaw municipality compensation for unlawful use of their property.

40. On 30 September 1998 Aniela Gładysz complained to the Office about their failure to examine her claim of 18 September 1997. On 27 October 1998 the Office for Housing and Urban Development rejected the claim.

41. On 25 November 1998 Aniela Gładysz and the other applicants ("the plaintiffs") lodged with the Warsaw Regional Court a claim against the State Treasury for compensation under Article 160 of the Code of Administrative Procedure. The amount of compensation claimed (PLN 1,000,000) was later modified.

42. The first hearing in the case was scheduled for 31 January 2002. Nine hearings were held up until 10 November 2005.

43. On 15 February 2006 the proceedings were stayed upon the plaintiffs' request and resumed on 23 May 2006.

44. On 29 June 2007 the court delivered a judgment and awarded compensation to the plaintiffs.

45. On 21 August 2007 the Mazowiecki Governor appealed. The appeal hearing was scheduled for 27 March 2008. On 27 March 2008 the proceedings were stayed due to the death of one of the plaintiffs – Andrzej Zawistowski.

46. The Warsaw Court of Appeal rejected the appeal on 10 June 2008.

### **4. Second set of civil proceedings (proceedings aiming at ordering the Warsaw municipality to issue a statement confirming the applicants right of perpetual use of the property at Towarowa Street)**

47. On 6 December 1999 the applicants lodged with the Warsaw Regional Court requested the court to order the Warsaw municipality to issue a statement confirming the applicants' right of perpetual use of the property at Towarowa Street, and to pay compensation for lost profits (*lucrum cessans*).

48. Certain delays in the preliminary phase of the proceedings were due to the fact that one of the

plaintiffs, Aleksandra Czudowska, who lived in the Netherlands, had not signed the claim properly and had not established an address for correspondence in **Poland**; the court had to obtain assistance of the Polish Consul in the Hague to contact the plaintiff and to remedy the shortcomings of the pleadings.

49. The first hearing in the case was held on 9 April 2002.

50. On 12 December 2002 the proceedings were stayed upon request of Małgorzata Gładysz-Wójcik (in relation to her mother's death). The proceedings were resumed on 22 May 2003.

51. On 31 October 2003 the Warsaw Regional Court rejected the plaintiffs' claim in part and stayed the proceedings concerning the remainder of the claim pending the outcome of the administrative proceedings. The plaintiffs appealed.

52. On 18 November 2005 the Court of Appeal quashed the decision of the Regional Court.

53. On 21 December 2006 the Warsaw Regional Court dismissed the claims. The plaintiffs appealed.

54. On 20 February 2009 the Warsaw Court of Appeal quashed the judgment of the Regional Court and remitted the case for re-examination.

55. The case is pending.

#### 5. Proceedings under the 2004 Act

56. On 7 December 2004 Małgorzata Gładysz-Wójcik, Marta Plamenac, Jolanta **Serafin** and Teresa Urbanek lodged with the Warsaw Court of Appeals a complaint under 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"). They complained about the excessive length of the first and second sets of civil proceedings.

57. On 21 January 2005 the Warsaw Court of Appeal issued two decisions.

58. In a decision concerning the first set of proceedings the court acknowledged that the impugned proceedings had been excessively lengthy. The court observed that the applicants' right to a trial within a reasonable time had been breached. However, in the court's view, the plaintiffs had partly contributed to the length of the proceedings and their overall length resulted from objective circumstances which could not be attributable to the Regional Court. The court ordered the Regional Court to accelerate the proceedings and awarded each applicant PLN 1,000 as just satisfaction.

59. In a decision concerning the second set of proceedings the court acknowledged that the impugned proceedings had been excessively lengthy. In particular, the applicants' appeal against the decision of 31 October 2003 had not yet been transferred to the Court of Appeal. However, the Court of Appeal took into account the complexity of the case resulting from the large number of plaintiffs. The court ordered the Regional Court to accelerate the proceedings and awarded each applicant PLN 1,000 as just satisfaction.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

60. For a presentation of the domestic law concerning inactivity of administrative authorities, see: *Kaniewski v. Poland*, no. 38049/02, 8 February 2006, and *Koss v. Poland*, no. 52495/99, 28 March 2006.

61. The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings, in particular the applicable provisions of 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 relevant domestic law and practice relating to administrative proceedings concerning the grant of the right of perpetual use of land can be found in the Court's decisions in the cases *Potocka and Others v. Poland* (dec.), no. 33776/96, 6 April 2000 and *Szenk v. Poland* (dec.), no. 67979/01, 1 June 2004 and the judgment in the case *Koss v. Poland*, no. 52495/99, § 29, 28 March 2006.

## THE LAW

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

62. The applicants complained that the length of the proceedings they were involved in 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...”

63. The Government contested that argument.

64. The Court notes that the administrative proceedings commenced on 31 January 1992. 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 5 September 2007. It thus lasted 14 years and 4 months for three levels of jurisdiction.

65. With regard to the first set of civil proceedings, the period to be taken into consideration began on 25 November 1998 and ended on 10 June 2008. It thus lasted 9 years and 6 months for two levels of jurisdiction.

66. With regard to the second set of civil proceedings, the period to be taken into consideration began on 6 December 1999 and has not yet ended. It has already lasted [on 3 March 2009] 9 years and 2 months for two levels of jurisdiction.

#### A. Admissibility

##### 1. *Compatibility ratione personae*

67. The respondent Government submitted that the application should be declared inadmissible *ratione personae* in respect of Ms Joanna Aleksowicz-Zawistowska and Mr Andrzej Zawistowski because of their death.

68. On 16 June 2008 the applicants’ lawyer informed the Court that the heirs of those applicants wished to support the application and had authorised him to represent them before the Court. The Court accepts that the son of Joanna Aleksowicz-Zawistowska - the applicant Piotr Zawistowski, and children of Andrzej Zawistowski - Monika, Rafał and Marcin Zawistowscy, have standing to pursue the application in their stead.

69. In view of the above, the Government’s objection should be dismissed.

##### 2. *Exhaustion of domestic remedies*

70. The Government raised an 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.

#### a) The administrative proceedings

71. The Government maintained that the applicants had failed to file jointly a complaint alleging inactivity on the part of an administrative body, as provided by Article 37 § 1 of the Code of Administrative Procedure, and to make use of the remedy provided under Article 17 of the 1995 Act on the Supreme Administrative Court. According to the Government, only some of the applicants had availed themselves of those remedies.

72. The applicants submitted that the administrative proceedings in question had involved the substantive and formal joint participation of them all. This meant that actions brought by one or more of the applicants entailed legal effects, both substantive and formal, for all applicants, irrespective of whether they had all signed the complaints or not.

73. 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).

74. 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. Complaints were also filed by them with the Regional Administrative Court according to the Act on Proceedings before Administrative Courts of 30 August 2002 (see paragraphs 22-32 above). The applicants also successfully appealed against a decision of the Mayor of Warsaw to stay the proceedings pending the outcome of civil proceedings (see paragraphs 33-35 above).

The Court further notes that, as submitted by the applicants, the administrative proceedings in question involved the substantive and formal joint participation of the claimants. Consequently, actions brought by one or more of the applicants entailed the same legal effects for all of them (see paragraph 72 above). Therefore, the Court finds that the applicants, as a whole, can be considered to have availed themselves of the abovementioned remedies in compliance with the relevant domestic legal provisions.

75. With regard to the Government's claim that the applicants failed to use other available remedies, namely that they could have challenged the incompatibility of the prolongation of the proceedings with the principle of promptness of proceedings (laid down in Article 12 of the CAP), 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).

76. The Court considers therefore that, having exhausted the available remedies provided by Article 37 § 1 of the Polish Code of Administrative Procedure of 1960, and by the Act on Proceedings before Administrative Courts of 30 August 2002, and having obtained decisions in their favour (see paragraphs 28 and 31-33 above), the applicants were not required to embark on another attempt to obtain the same conclusion through a different legal measure.

77. Accordingly, the Court concludes that, for the purposes of Article 35 § 1 of the Convention, the applicants have exhausted domestic remedies in respect of the administrative proceedings. For these reasons, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

#### **b) The civil proceedings**

*i) As regards the applicants Ms Katarzyna Okoniewska, Mr Andrzej Zawistowski, Ms Elżbieta Zawistowska, Mr Piotr Zawistowski and Ms Joanna Aleksowicz-Zawistowska*

78. The Government argued that only the applicants Małgorzata Gładysz-Wójcik, Marta Plamenac, Jolanta **Serafin** and Teresa Urbanek had lodged a complaint under the 2004 Act (see paragraphs 56-59 above). Accordingly, the remaining applicants failed to exhaust domestic remedies and this part of their application should be rejected in accordance with Article 35 § 1 and 4 of the Convention.

79. The Court observes that the present application was lodged with the Court when the proceedings complained of were pending before the domestic court.

80. It further observes that, pursuant to section 18 of the 2004 Act, it was open to persons whose case was pending before the Court to lodge, within six months from 17 September 2004, a complaint about the unreasonable length of the proceedings with the relevant domestic court, provided that their application to the Court had been lodged in the course of the impugned proceedings and had not yet been declared admissible.

81. The Court has already examined those remedies for the purposes of Article 35 § 1 of the

Convention and found them effective in respect of complaints about the excessive length of judicial proceedings in **Poland**. In particular, it considered that they were capable both of preventing the alleged violation of the right to a hearing within a reasonable time or its continuation, and of providing adequate redress for any violation that has already occurred (see *Charzyński v. Poland* (dec.), no. 15212/03, §§ 36-42). Such compensation can be awarded only to a party to the proceedings who actually lodged the complaint.

82. However, the remaining applicants, despite having been informed by the Registrar of the possibility of lodging a complaint about the length of the proceedings under the 2004 Act, have chosen not to avail themselves of this remedy.

83. It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies, in respect of the applicants: Ms Katarzyna Okoniewska, Mr Andrzej Zawistowski, Ms Elżbieta Zawistowska, Mr Piotr Zawistowski and Ms Joanna Aleksowicz-Zawistowska.

*ii) As regards the applicants Małgorzata Gładysz-Wójcik, Marta Plamenac, Jolanta Serafin and Teresa Urbanek*

84. With regard to the four applicants who had recourse to the remedy provided for by the 2004 Act (see paragraph 78 above), the Court notes that the Government raised an objection that the applicants had not exhausted all remedies available under Polish law. They maintained that they had not lodged a claim with the civil courts for compensation for damage suffered due to the excessive length of the proceedings. Such a claim was provided for by Article 417 of the Civil Code.

85. The Court has already examined and rejected the Government's arguments in this respect on many occasions (see *Cichla v. Poland* no. 18036/03, § 21-26, 10 October 2006; and *Jagiello v. Poland*, no. 59738/00, § 24, 23 January 2007). 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.

86. Accordingly, the Court concludes that, for the purposes of Article 35 § 1 of the Convention, the four applicants have exhausted domestic remedies. It follows that the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

87. Further, the Court notes that the Warsaw Court of Appeal acknowledged a breach of the applicants' right to a hearing within a reasonable time and awarded each of them the equivalent of EUR 244 in respect of the length of the proceedings (see paragraphs 58-59 above). The just satisfaction awarded amounts to approximately 7 per cent of what the Court would be likely to have awarded the applicants at that time in accordance with its practice, taking into account the particular circumstances of the proceedings.

The Court thus concludes that the redress provided to the applicants at domestic level, considered on the basis of the facts of which they complain before the Court, was insufficient (see *Czajka v. Poland*, no. 15067/02, § 56, 13 February 2007). Having regard to the criteria for determining victim status in respect of length of proceedings complaints as set out in the judgment of *Scordino v. Italy (no.1)* ([GC], no. 36813/97, §§ 193-215, ECHR-2006-...), the Court concludes that the complaint cannot be rejected as being incompatible *ratione personae* with the Convention.

88. The Court further notes that this complaint 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

89. 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).

90. As regards the administrative proceedings, the Court, having regard to the available evidence, does not find it established that the applicants substantially contributed to the delays in the proceedings. The Court acknowledges that the applicants lodged several appeals and complaints in the course of the impugned proceedings. However, all of these appeals and complaints proved well-

founded.

In contrast, the Court is struck by the conduct of the relevant administrative authorities and the manner in which they handled the applicants' case. The Court notes that there were long delays in dealing with the case and frequent periods of inactivity, notwithstanding the fact that the Local Government Board of Appeal and the Regional Administrative Court on several occasions instructed the authorities to issue a decision and even fined the Mayor of Warsaw.

91. With regard to the first set of civil proceedings, the Court notes that it 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). 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.

92. As to the second set of civil proceedings, the Court observes that there were certain periods of delay which could not be attributed to the authorities (see paragraphs 48-50). However, the Court finds that the overall period did not comply with the reasonable time requirement.

93. Having regard to its case-law on the subject, the Court considers that in the instant case the length of all three sets of the proceedings was excessive and failed to meet the "reasonable time" requirement.

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

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

94. 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

95. The applicants each claimed PLN 3,000,000 (approx. EUR 643,915) in respect of non-pecuniary damage.

96. The Government contested the claim.

97. The Court considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, and taking into the consideration the number of applicants (see *Arvanitaki-Roboti and Others v. Greece*, [GC], no. 27278/03, 15 February 2008) and the fact that the various sets of proceedings under consideration were interconnected, it awards each of the applicants Małgorzata Gładysz-Wójcik, Marta Plamenac, Jolanta **Serafin** and Teresa Urbanek EUR 9,750 under that head (in respect of the three sets of proceedings), and EUR 4,800 to each of the applicants Katarzyna Okoniewska, Andrzej Zawistowski, Elżbieta Zawistowska and Piotr Zawistowski (in respect of the administrative proceedings).

98. The Court recalls that it has recognised the *locus standi* of Monika, Rafał and Marcin Zawistowscy, heirs of the applicant Andrzej Zawistowski, to pursue the application after the applicant's death. The Court considers that they may also take the applicant's place as regards claims for just satisfaction under Article 41 of the Convention and Rule 60 of the Rules of Court (see, *Malhous v. the Czech Republic* [GC], 33071/96, § 67, 12 July 2001).

### B. Costs and expenses

99. The applicants did not make any claim for costs and expenses.

### C. Default interest

100. 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 complaint concerning the excessive length of the administrative proceedings admissible;
2. *Declares* the complaint concerning the excessive length of the two sets of civil proceedings admissible in respect of the applicants Małgorzata Gładysz-Wójcik, Marta Plamenac, Jolanta **Serafin** and Teresa Urbanek and inadmissible in respect of the remaining applicants;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the above-mentioned administrative and civil proceedings;
4. *Holds*
  - (a) that the respondent State is to pay each of the applicants Małgorzata Gładysz-Wójcik, Marta Plamenac, Jolanta **Serafin** and Teresa Urbanek, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 9,750 (nine thousand seven hundred and fifty euros) in respect of non-pecuniary damage, plus any tax that may be chargeable to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
  - (b) that the respondent State is to pay each of the applicants Katarzyna Okoniewska, Elżbieta Zawistowska and Piotr Zawistowski, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,800 (four thousand eight hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
  - (c) that the respondent State is to pay the heirs of the applicant Andrzej Zawistowski: Monika, Rafał and Marcin Zawistowscy jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,800 (four thousand eight hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
  - (d) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 21 April 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Nicolas Bratza  
Registrar President

SERAFIN AND OTHERS v. **POLAND** JUDGMENT

**SERAFIN** AND OTHERS v. **POLAND** JUDGMENT