



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF POLAŃSCY v. POLAND

(Application no. 21700/02)

JUDGMENT

STRASBOURG

7 July 2009

FINAL

07/10/2009

This judgment may be subject to editorial revision.

In the case of Polańscy v. Poland,

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 16 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 21700/02) 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 two Polish nationals, Mrs Krystyna Polańska and Mr Jan Polański (“the applicants”), on 30 November 2001.

2. The applicants, who had been granted legal aid, were represented by Ms Julita Sowińska, a lawyer practising in Bielsko-Biała. The Polish Government (“the Government”) were represented by their Agent, Mr J. Woławsiewicz of the Ministry of Foreign Affairs.

3. The applicants alleged, in particular, that the delay in payment of compensation for their plot of land amounted to a violation of Article 1 of Protocol No. 1 to the Convention.

4. The applicants and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are Polish nationals and live in Bystra.

A. Proceedings concerning compensation for the expropriated plot of land

6. The applicants owned some plots of land in Wieprz, Poland.

7. On 10 July 1989 the applicants signed a friendly settlement agreement with the Public District Roads Office (*Rejon Dróg Publicznych*) and agreed to the expropriation of 120 square metres of their property in return for compensation. The land was to be designated for the widening of a regional road (*droga wojewódzka*). Since then the property has been in the possession of the State Treasury.

8. In 1991 the Public District Roads Office requested the applicants to sign a notary deed confirming their friendly settlement. Subsequently, the representative of the Public District Roads Office refused to sign the deed because a contract of annuity had previously been concluded in favour of the mother of one of the applicants. That contract was registered in the property records of the plot in question. The applicant's mother could not sign the notary deed because she suffered from Alzheimer's disease.

9. In 1999 the applicant's mother died. The right of annuity was removed from the property records.

10. On 15 July 1999 the applicants asked the Żywiec District Roads Authority (*Powiatowy Zarząd Dróg*) for compensation for the expropriated plot or for the restitution of the land. The applicants noted that the matter of compensation had not been resolved for the previous seven years and requested that the matter be given urgent attention.

11. On 11 August 1999 the District Roads Authority informed the applicants that, on 1 January 1999, their plot of land had become *ex lege* the property of the State Treasury and that they would be granted compensation if they applied for it between 1 January 2001 and 31 December 2005. The applicants were also informed that their previous application for compensation would be regarded as an indication that they would lodge another, official application within the statutory time-limit. On 22 January 2001 the applicants filed another request for compensation for the expropriated land.

12. On 16 August 2001 the applicants complained about the lack of compensation to the Śląski Governor. They submitted that for several years they had been seeking compensation for expropriated property and that no appealable decision in their case had been given. On 26 September 2001 the Śląski Governor replied that they should complain and submit their application for compensation to the Mayor of the Żywiec District.

13. On 4 September 2001 the applicants lodged a further application for compensation, this time with the Mayor of the Żywiec District.

14. On 26 September 2001 the Mayor of the Żywiec District replied, informing the applicants that, on 1 January 1999, their plot of land had

become *ex lege* the property of the State Treasury. He did not refer to the applicants' request for compensation.

15. On 1 October 2001 the applicants again complained to the Śląski Governor.

16. On 10 October 2001 the Śląski Governor replied that, although the plot had become the State Treasury's property *ex lege*, a final decision by the Śląski Governor confirming the transfer of ownership was necessary in order to determine and pay compensation. The Governor also mentioned that "the drawing up of the necessary documentation for the plots of land in question" depended on "the financial means at the disposal of the office".

17. On 20 February 2006 the Śląski Governor gave a decision and confirmed the transfer of ownership of the plot of land in question. That was the first decision given in the applicants' case against which they could lodge an appeal.

18. On an unspecified date the applicants appealed, apparently complaining again about unpaid compensation.

19. On 25 April 2006 the Minister of Transport (*Minister Transportu*) upheld the challenged decision. Referring to the question of compensation, the Minister noted that that matter would be determined in separate proceedings before the Mayor.

20. On 29 June 2006 the applicants received a letter headed "notification" from the Mayor of the Żywiec District. The Mayor informed them that "due to financial constraints" their request for compensation would "presumably be examined in the first quarter of the year 2007".

21. On 11 June 2007 the Mayor of the Żywiec District informed the applicants that they could consult the expert report concerning the value of the property (*operat szacunkowy*).

22. On 21 June 2007 the Mayor of the Żywiec District gave a decision, fixed the compensation to be paid to the applicants at PLN 1,265.00 and ordered that this amount be paid to the applicants. The decision became final on 24 July 2007.

23. On 13 September 2007 the compensation was paid to the applicants.

B. Proceedings for reimbursement of expenses incurred by the applicants

24. In 1990 in the course of work on widening the regional road onto the plot of land expropriated from the applicants, the workers removed a boundary along about one hundred metres of the applicants' property, giving rise to a boundary dispute between the applicants and their neighbours.

25. In November 1992 the applicants requested the Kraków Regional Director of Public Roads (*Dyrekcja Okręgowych Dróg Publicznych*) to reimburse the expenses incurred.

26. On 3 December 1992 the Kraków Regional Director of Public Roads replied that work on the demarcation of the applicants' plot and the plot of their neighbours had already been entrusted to a geodesist.

27. However, until 1999 no delimitation was carried out.

28. In 1999 the applicants requested a geodesist to mark the boundaries on their plot of land because they wanted to build houses for their children. The geodesist could not perform his work without marking the boundary between the applicants' plot and that of their neighbours. Therefore, the applicants had to bear the cost of the demarcation themselves.

29. On 15 July 1999 the applicants requested the Żywiec District Roads Authority to reimburse them for the cost of the demarcation and enclosed the invoice issued by the geodesist.

30. On 7 September 1999 the applicants received a letter from the Żywiec District Roads Authority to the effect that the authority did not have the financial means to reimburse them for the cost of the demarcation.

31. The applicants complained to the Mayor of the Żywiec District who referred their complaint back to the Żywiec District Roads Authority.

32. On 7 December 1999 the Żywiec District Roads Authority replied to the applicants using exactly the same wording as in their letter of 7 September 1999.

33. In 2001 the applicants again asked the Żywiec District Roads Authority for reimbursement of their expenses.

34. On 15 March 2001 the Żywiec District Roads Authority refused to reimburse the expenses, referring to the prescription period for lodging a claim.

35. The applicants lodged a complaint with the Supreme Administrative Court.

36. On 23 July 2001 the Supreme Administrative Court rejected their complaint, finding that the letter of 15 March 2001 in respect of which they had lodged their complaint was not a decision of a second-instance administrative authority and that the applicants had not proved that any administrative decisions had been issued in respect of their case.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Relevant provisions of legislation on land expropriation

37. According to paragraph 1 of the friendly settlement between the parties, it was signed on the basis of the Act of 12 March 1958 on Expropriation of Real Property (*Ustawa o zasadach i trybie wywłaszczenia nieruchomości*) which reads as follows:

Section 1:

“Property may be expropriated only for the benefit of the State Treasury”.

Section 7:

“Expropriation shall be carried out against compensation”.

38. However, from 29 April 1985 to 1 January 1998 the rules governing the administration of land held by the State Treasury and municipalities were laid down in the Land Administration and Expropriation Act of 29 April 1985 (“the 1985 Land Administration Act”) (*Ustawa o gospodarce gruntami i wywłaszczaniu nieruchomości*). Thus, at the time of the conclusion of the friendly settlement between the parties (10 August 1998), the Act invoked in the settlement was not in force.

39. On 1 January 1998 the Land Administration Act of 21 August 1997 (*Ustawa o gospodarce nieruchomościami* – “the 1997 Land Administration Act”) entered into force. Under section 112 of that Act, expropriation consists in taking away, by virtue of an administrative decision, ownership or other rights *in rem*. Expropriation can be carried out where public interest aims cannot be achieved without restriction of those rights and where it is impossible to acquire those rights by way of a civil law contract.

40. Under section 113 an expropriation can only be carried out for the benefit of the State Treasury or the local municipality.

41. In accordance with section 128 § 1 of the Act, expropriation can be carried out against payment of compensation corresponding to the value of the property right concerned. Under section 130 § 1 of the Act, the amount of compensation shall be fixed according to the status and value of the property on the day on which the expropriation decision was given. The value of the property shall be estimated on the basis of a report prepared by a certified expert

42. Section 131 provides that a replacement property can be awarded to the expropriated owner, if he or she agrees.

43. Under section 132, compensation shall be paid within fourteen days from the date on which the expropriation decision becomes enforceable.

B. Introductory provisions concerning the right to compensation for expropriated property

44. On 29 October 1998 the Act of 13 October 1998 – introductory provisions concerning acts reforming public administration (*Ustawa - przepisy wprowadzające ustawy reformujące administrację publiczną*) - entered into force.

45. Section 73 of that Act provides as follows:

“Land which as of 31 December 1998 remained in the possession of the State Treasury or local self-government authorities, which is not owned by these entities and has been expropriated for the purposes of constructing roads, shall become *ex lege* the property of the State Treasury or the respective local self-government authorities, against payment of compensation, on 1 January 1999.

..

Compensation ... shall be fixed and paid according to the provisions on compensation for expropriated property, at the request of the property owner, which must be lodged between 1 January 2001 and 31 December 2005. On the latter date the claim for compensation expires.”

C. Inactivity on the part of the administrative authorities

46. The relevant domestic law concerning inactivity on the part of administrative authorities is set out in the Court’s judgment in the case of *Grabiński v. Poland*, no. 43702/02, §§ 60-65, 17 October 2006.

4. The 2006 resolution of seven judges of the Supreme Court

47. On 26 May 2006 seven judges of the Supreme Court, ruling on a legal question referred to it by the Supreme Court, held that section 73 of the Act of 13 October 1998 – introductory provisions concerning acts reforming public administration providing compensation for owners of plots of land expropriated for the construction of public roads – did not exclude the possibility to seek compensation for so-called extra-contractual use of land for the period before 1 January 1999.

In this resolution the Supreme Court acknowledged the need to clarify the issue because of divergences in the domestic case-law.

THE LAW

I. THE GOVERNMENT’S PRELIMINARY OBJECTIONS

A. The applicants’ victim status

48. According to the Government, the applicants ceased to be victims of the alleged breach of the Convention as a result of the payment of the compensation on 13 September 2007. The Government submitted that since the administrative proceedings had meanwhile been terminated and the entirety of the applicants’ claims had been satisfied, the damage to their pecuniary interests, allegedly caused by the non-payment of the compensation in question, had been fully redressed.

49. The applicants did not comment.

50. According to Article 34 of the Convention, “the Court may receive applications from any person ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto ...”.

51. The Court reiterates that it falls first to the national authorities to redress any alleged violation of the Convention. In this regard, the question whether or not the applicant can claim to be a victim of the violation alleged is relevant at all stages of the proceedings under the Convention (see *E. v. Austria*, no. 10668/83, Commission decision of 13 May 1987, Decisions and Reports 52, p. 177).

52. The Court further reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a “victim” unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, for example, *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36, and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI).

53. Turning to the facts of the present case, it may be that the applicants have now been paid the outstanding compensation in accordance with the relevant domestic provisions. Nevertheless, the payment did not involve any acknowledgment of the violations alleged. Nor did it afford the applicants adequate redress having regard to the delay in payment. In this respect, contrary to the Government’s submissions, it does not matter whether the payment of the compensation occurred before or after the notification of the application to the Government.

54. In these circumstances, the Court considers that the applicants may still claim to be victims of a violation of Article 1 of Protocol No. 1 to the Convention.

B. Non-exhaustion of domestic remedies

1. The Government’s submissions

55. The Government submitted that the applicants had not exhausted all available domestic remedies. They relied on three grounds. Firstly, the applicants had lodged their application when the relevant proceedings were pending and thus their complaints were premature. Secondly, they had failed to make use of a complaint about the inactivity on the part of administrative authorities provided for by the provisions of the Code of Administrative Proceedings. Thirdly, the applicants could have lodged a claim for compensation for so-called extra-contractual use of their land by the State Treasury.

2. The applicants’ submissions

56. The applicants submitted that for the whole period between 10 July 1989 and 20 February 2006 the plot had been in the possession

of the State Treasury. They did not refer to the Government's argument that their application was premature.

57. As regards the alleged possibility to lodge a claim for compensation for extra-contractual use of the land, they submitted that at the time of lodging their application, the domestic practice had not been consistent. Some courts dismissed claims for compensation for extra-contractual use of land on the ground that competence in this respect had been granted only to administrative authorities. Only on 26 May 2006 did the Supreme Court adopt a resolution of seven judges and hold that the judicial avenue was possible in this type of case. This resolution was given as a result of a legal question put to the seven judges of the Supreme Court by the Supreme Court taking into consideration inconsistent domestic practice.

3. General principles relating to exhaustion of domestic remedies

58. The Court observes that the rule of exhaustion of domestic remedies contained in Article 35 § 1 of the Convention requires that normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see, among other authorities, *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, § 65).

59. In the area of the exhaustion of domestic remedies there is a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and practice at the relevant time, that is to say, that it was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact used or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement (*ibid.*, § 68).

60. In addition, Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. This means amongst other things that it must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate as well as the personal circumstances of the applicants (*ibid.*, § 69).

4. *The Court's assessment*

61. As regards the first argument, the Court notes that the applicants' application concerned primarily the delay in payment of the compensation and not the outcome of any proceedings. At the date of the lodging of the application (30 November 2001), the applicants had already been waiting for compensation for over ten years. It is the Court's well-established practice that in cases of continuous situations, a category to which a delay in payment of compensation clearly belongs, there is no need to wait until the relevant proceedings are terminated to lodge an application with the Court.

62. As regards the Government's second argument, the Court notes that between 10 July 1989 and 20 February 2006 no administrative decision was given. However, that does not mean that the administrative authorities remained completely inactive. They corresponded with the applicants, replied to their complaints and requests, and informed them several times that they would be granted compensation, referring to the administration's difficult financial situation. By way of example, on 11 August 1999 the District Roads Authority informed the applicants that their plot of land had become *ex lege* the property of the State Treasury and that they would be granted compensation if they applied for it between 1 January 2001 and 31 December 2005 (see paragraph 11 above). Thus, it appears that from August 1999 the applicants had no other solution but to wait until 1 January 2001 to lodge their request for compensation.

63. For these reasons the Court finds that in the circumstances of the present case a complaint about inactivity on the part of administrative authorities cannot be regarded as an effective remedy with a sufficient degree of certainty.

64. As regards the Government's third argument, the Court reiterates that the only remedies which Article 35 of the Convention requires to be exhausted are those that relate to the breaches alleged and at the same time are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, among many authorities, *Mifsud v. France* (dec.) [GC], no. 57220/00, ECHR 2002-VIII).

65. The Court notes that indeed at the time of the lodging of the present application by the applicants the domestic practice was not consistent and well-established (see paragraph 47 above). Only on 26 May 2006 did the Supreme Court give a resolution confirming the possibility of making a claim for compensation for the extra-contractual use of land. The Court further notes that the claim referred to by the Government, even if successful, would enable the applicants to claim compensation for the period before 1 January 1999 only. In this connection, the Court observes that only a remedy capable of addressing the applicants' complaint in its

entirety, and not only selected aspects of it, could realistically redress the applicants' situation.

C. Conclusion as to the admissibility

66. The Court observes that, in the circumstances of the present case, the remedies referred to by the Government were not capable of providing redress in respect of the applicants' complaints. Having regard to the above considerations, the Court dismisses the Government's preliminary objection as to the non-exhaustion of domestic remedies.

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

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION ON ACCOUNT OF THE DELAY IN PAYMENT OF THE COMPENSATION

68. Article 1 of Protocol No. 1 reads as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

69. The Government submitted that there had not been any interference with the applicants' peaceful enjoyment of possessions for which the Government could be held responsible under Article 1 of Protocol No. 1. They further submitted that "although it took some time until the compensation was paid to the applicants, their rights were safeguarded by the civil law and they have already obtained redress at the domestic level for any negative consequences". The Government did not dispute that the payment of the compensation had been delayed. However, in their view it had not led to increased financial loss for the applicants.

70. The applicants did not comment.

71. The Court reiterates that a "claim" can constitute a "possession" within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable (see *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 84, § 59).

72. The Court notes that from at least 29 October 1998, when the Act of 13 October 1998 came into force, the applicants had an enforceable claim and not simply a general right to receive compensation for their property. This right was subsequently confirmed several times by official letters from the administrative authorities. It follows that the prolonged impossibility for the applicants to obtain payment of the compensation constituted an interference with their right to peaceful enjoyment of their possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III).

73. What is more, the payment of compensation was blocked for over two years by the Act of 13 October 1998 itself, under which the application for compensation could only be lodged on 1 January 2001 at the earliest. This was confirmed in the letter of 11 August 1999 which the applicants had received from the District Roads Authority (see paragraph 11 above).

74. Subsequently, after 1 January 2001, even though the payment of compensation was formally possible, it was nonetheless delayed by the lack of funds on the part of administrative authorities (see paragraph 16 above) and was not effected until 13 September 2007.

75. Without examining the details of the circumstances of the present case before the entry into force of the Act of 13 October 1998, it has not been disputed between the parties that the ownership of the applicants' property was transferred to the State on 1 January 1999. The compensation was paid to the applicants on 13 September 2007. Thus the delay in payment lasted at least eight years and nine months. By failing to comply during that period with the statutory obligation to pay the compensation, the national authorities prevented the applicants from receiving the money they were entitled to receive. The Government have not advanced any justification for this interference. Moreover, the Court recalls that a lack of funds cannot justify such an omission (see, *mutatis mutandis*, *Ambruosi v. Italy*, no. 31227/96, §§ 28-34, 19 October 2000). The Court further notes that the compensation granted did not contain any just-satisfaction for the non-pecuniary damage that the applicants must have suffered as a result of the delay.

76. In sum, there has been a violation of Article 1 of Protocol No. 1.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

77. The applicants complained that the administrative authorities' failure to give an appealable administrative decision for a period of several years amounted to a violation of Article 13 of the Convention, which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

78. The Court notes that this complaint is linked to the complaint examined above and must, therefore, likewise be declared admissible.

79. Having regard to its finding of a violation of the applicants' right to peaceful enjoyment of their possessions (see paragraph 76 above), the Court does not consider it necessary to examine the allegation of a violation of Article 13 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION AND OF ARTICLE 13 OF THE CONVENTION

80. The applicants also complained under Article 1 of Protocol No. 1 to the Convention about the authorities' refusal to reimburse the expenses they had borne for the delimitation of their plot of land. They also invoked Article 13, submitting that in this case the administrative authorities had also avoided giving decisions, thus hindering their right to appeal.

81. The Court notes that the applicants failed to lodge a civil claim for payment against the District Roads Authority.

82. Accordingly, this complaint must be rejected under Article 35 §§ 1 and 4 for failure to exhaust domestic remedies.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

83. 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

84. The applicants claimed EUR 8,562 in respect of pecuniary damage and EUR 14,793 in respect of non-pecuniary damage.

85. The Government contested the claims.

86. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. It therefore rejects this claim. On the other hand, it awards the applicants EUR 7,000 jointly in respect of non-pecuniary damage.

B. Costs and expenses

87. The applicants, who were represented by a lawyer, claimed EUR 1,183.97 for costs and expenses.

88. The Government submitted that any award should be limited to those costs and expenses which were actually and necessarily incurred and were reasonable.

89. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court notes that the applicants were paid EUR 850 in legal aid by the Council of Europe. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the whole sum sought by the applicants (EUR 1,183,97) for the proceedings before it, less the amount received by way of legal aid from the Council of Europe. The Court thus awards EUR 334 for costs and expenses.

C. Default interest

90. 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 under Article 1 of Protocol No. 1 to the Convention concerning the delay in payment of compensation for the expropriated property and the related complaint under Article 13 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds* that it is not necessary to examine separately the complaint under Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention,
 - (i) EUR 7,000 (seven thousand euros), plus any tax that may be chargeable to the applicants, in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the date of settlement;

- (ii) EUR 334 (three hundred and thirty four euros) plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be converted into Polish zlotys at the rate applicable at the date of settlement;
- (b) 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 7 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President