



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

FOURTH SECTION

CASE OF DYLLER v. POLAND

(Application no. 39842/05)

JUDGMENT
(Revision)

STRASBOURG

15 February 2011

FINAL

15/05/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Dyller v. Poland (request for revision of the judgment of 7 July 2009),

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

Ján Šikuta,

Mihai Poalelungi,

Nebojša Vučinić,

Vincent A. de Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 25 January 2011,

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

PROCEDURE

1. The case originated in an application (no. 39842/05) 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 a Polish national, Mr Zbigniew Dyller (“the applicant”), on 13 October 2005.

2. In a judgment delivered on 7 July 2009, the Court held that there had been a violation of Article 5 § 3 of the Convention on account of the unreasonable length of the applicant's pre-trial detention. The Court also decided to award the applicant 2,000 euros (EUR) for non-pecuniary damage and dismissed the remainder of the claims for just satisfaction.

3. On 30 November 2009 the Government informed the Court that they had learned that the applicant had died on 22 January 2009. They accordingly requested revision of the judgment within the meaning of Rule 80 of the Rules of Court.

4. On 7 December 2009 the request for revision was communicated to the applicant's mother, who was invited to submit her observations on the request. On 13 December 2010 the applicant's mother informed the Court that she wished to be granted the just satisfaction awarded by the Court. She referred to her previous letters addressed to the Court and the Government in which she had confirmed her wish to pursue her son's application before the Court.

THE LAW

THE REQUEST FOR REVISION

5. The Government requested revision of the judgment of 7 July 2009, which they had been unable to execute because the applicant had died before the judgment had been adopted. They were of the view that the applicant's heirs did not have a legitimate interest to obtain payment of just satisfaction awarded to the applicant by the Court.

6. The Court notes that the applicant died on 22 January 2009, and that the applicant's relative, his mother Mrs Józefa Dyller, made a request to pursue the proceedings before the Court. She submitted her comments on the Government's request for revision.

7. In these circumstances, the Court considers that the judgment of 7 July 2009 should be revised pursuant to Rule 80 of the Rules of Court, the relevant parts of which provide:

“A party may, in the event of the discovery of a fact which might by its nature have a decisive influence and which, when a judgment was delivered, was unknown to the Court and could not reasonably have been known to that party, request the Court ... to revise that judgment.

...”

8. The Court first notes that the present case differs from the case of *Gabay v. Turkey* ((revision), no. 70829/01, 27 June 2006). In that case the Court allowed the Government's request for revision of the judgment. However, having regard to the fact that the applicant in that case died during the proceedings and that no relatives expressed the wish to pursue the proceedings, the Court considered that it was no longer justified to continue the examination of the application (*ibid.*, § 8).

In the present case the applicant's mother has made a request to revise the judgment and to continue the examination of the application. The Court, having regard to its established case-law on the matter, concludes that she has standing to pursue the application in the applicant's stead (see *Pisarkiewicz v. Poland*, no. 18967/02, §§ 30-33, 22 January 2008).

9. In view of the circumstances, the Court considers that the award made to the deceased applicant should be paid to his mother, Ms Józefa Dyller. Article 41 of the Court's judgment of 7 July 2009 should be revised accordingly (see *Wypukół-Piętka v. Poland* (revision), no. 3441/02, § 7, 8 June 2010 with further references to the case-law).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the Government's request for the revision of the judgment of 7 July 2009 admissible;
2. *Decides* to revise the judgment as regards the application of Article 41 of the Convention and accordingly;
3. *Holds*
 - (a) that the respondent State is to pay to Ms Józefa Dyller, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, 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 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 February 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President