



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

FIRST SECTION

CASE OF WYSZYŃSKI v. POLAND

(Application no. 66/12)

JUDGMENT *(Revision)*

Art 41 • Revision of judgment in respect of deceased applicant • Award to be made to heir

STRASBOURG

11 May 2023

FINAL

25/09/2023

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

In the case of *Wyszyński v. Poland* (request for revision of the judgment of 24 March 2022),

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

Marko Bošnjak, *President*,

Péter Paczolay,

Krzysztof Wojtyczek,

Alena Poláčková,

Erik Wennerström,

Raffaele Sabato,

Davor Derenčinović, *judges*,

and Liv Tigerstedt, *Deputy Section Registrar*,

Having deliberated in private on 11 April 2023,

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

PROCEDURE

1. The case originated in an application (no. 66/12) 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 Antoni Wyszyński, on 29 December 2011.

2. In a judgment delivered on 24 March 2022, the Court held that there had been a violation of Article 1 of Protocol No. 1 on account of the domestic authorities’ refusal to grant the applicant compensation in respect of a tenant who had occupied his flat without valid title. The Court also decided to award the applicant 14,600 euros (EUR) in respect of pecuniary and non-pecuniary damage and EUR 5,720 in respect of costs and expenses and dismissed the remainder of the claims for just satisfaction.

3. On 3 August 2022 the Government informed the Court that they had learned that the applicant had died on 5 May 2020. They accordingly requested that the judgment be revised within the meaning of Rule 80 of the Rules of Court and that the application be struck out of the list of cases.

4. On 8 November 2022 the Court considered the request for revision and decided to give the applicant’s son and his only heir, Mr Jacek Wyszyński, four weeks to submit any observations. Those observations were received on 19 December 2022. On 23 January 2023 the Government submitted to the Court their observations in reply.

THE LAW

THE REQUEST FOR REVISION

5. The Government requested revision of the judgment of 24 March 2022, which they had been unable to execute because the applicant had died before

the judgment had been adopted. The Government submitted that the application should be struck out of the list of cases since the applicant's heir had failed to inform the Court of his father's death.

6. The applicant's heir submitted that he had been unaware of his father's case pending before the Court. Therefore, he could not have informed the Court in due time of his father's death. He had found out about the Court's judgment from his father's lawyer. He further submitted that he wished to pursue the application lodged by his father.

7. The Government responded that, in 2016, the applicant had allegedly withdrawn the power of attorney for his lawyer and collected the case file. However, neither the applicant nor his lawyer had informed the Court of this significant change in the mode of representation, although both of them were required to do so. Thus, the applicant, and his heir, should bear the consequences of this omission.

8. The Court notes that it is clear from the documents submitted that Mr Jacek Wyszynski is the son, and only heir, of the applicant Mr Antoni Wyszynski.

9. It further observes that the alleged withdrawal of the power of attorney must have taken place after the exchange of observations had been finalised in April 2016 since the applicant's representative submitted both observations and claims for just satisfaction on behalf of the applicant. While the applicant should have informed the Court of the withdrawal of the power of attorney, this omission in itself cannot be considered of such a gravity as to amount to an abuse of the right to application.

10. In these circumstances, the Court finds that Mr Jacek Wyszynski has standing to receive the sums awarded in the judgment in his deceased father's stead.

11. The Court therefore considers that the judgment of 24 March 2022 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.

...”

12. It accordingly decides to award Mr Jacek Wyszynski the amounts it previously awarded to the deceased applicant, namely EUR 14,600 in respect of pecuniary and non-pecuniary damage and EUR 5,720 in respect of costs and expenses.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to revise its judgment of 24 March 2022 in so far as it concerns the application of Article 41 of the Convention;

and accordingly,

2. *Holds*,

- (a) that the respondent State is to pay Mr Jacek Wyszynski, the heir of Mr Antoni Wyszynski, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 14,600 (fourteen thousand six hundred euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
 - (ii) EUR 5,720 (five thousand seven hundred and twenty euros), plus any tax that may be chargeable, in respect of costs and expenses;
- (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.

Done in English, and notified in writing on 11 May 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Deputy Registrar

Marko Bošnjak
President