



Investigation into Polish presidential plane crash case: exhumations breached rights of victims' wives

In today's **Chamber judgment**¹ in the case of [Solska and Rybicka v. Poland](#) (application nos. 30491/17 and 31083/17) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned the exhumation of the victims killed in the Polish Air Force plane crash in Smolensk in 2010. The Polish prosecuting authorities ordered the exhumations in 2016 as part of the ongoing investigation into the crash, which killed 96 people, including the President of Poland. The authorities wanted to conduct autopsies to establish the cause of the crash, including the possibility of an explosion on board.

The applicants, wives of two of the victims, objected to the exhumation of the remains of their husbands, to no avail. Before the European Court, they complained that their husbands' bodies had been exhumed without their consent and that they had had no possibility of an independent review or appeal against the decision.

The Court found that the requirement of an effective investigation into an incident of unprecedented gravity for the State had to be weighed against the importance of the applicants' interest in having their husbands' remains respected. However, Polish law had not provided a mechanism for a review of those conflicting interests. Therefore the applicants had been deprived of the minimum degree of protection to which they had been entitled as concerned their right to respect for their private and family life.

Principal facts

The applicants, Ewa Maria Solska and Małgorzata Ewa Rybicka, are two Polish nationals who were born in 1937 and 1955. Ms Solska lives in Sopot and Ms Rybicka in Gdańsk.

Their husbands, Leszek Solski and Arkadiusz Rybicki, died in the plane crash in Russia (Smolensk) in 2010 which killed the members of a Polish State delegation who were on their way to attend a ceremony marking the 70th anniversary of the Katyń massacre. The delegation included the President of Poland and many high-ranking officials. Mr Solski was an activist of the Katyń Families Association and Mr Rybicki was a member of parliament. All 96 people on board died.

There were conflicting conclusions about the cause of the crash. The Polish and Russian aviation authorities found in 2011 that the crash had been an accident, caused by the plane descending too quickly below the minimum altitude in bad weather, while a Polish parliamentary group suggested that there might have been an explosion on board.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

In 2016 the Polish prosecuting authorities, which had also opened an investigation in 2010, ordered autopsies on the bodies to determine if the victims' injuries had been caused by impact with the ground or an explosion on board.

The applicants objected to the exhumations, writing letters to the Prosecutor General, lodging interlocutory appeals and seeking an injunction in the civil courts, all to no avail. The prosecutor refused to entertain the interlocutory appeals, finding them inadmissible in law. The civil courts dismissed the application for an injunction, finding that the prosecutor had a duty under the relevant domestic law (namely, Articles 209 and 210 of the Code of Criminal Procedure) to order an autopsy in every case of a suspicious death and, if the corpse had already been buried, to order its exhumation.

The remains of the applicants' husbands were exhumed on 14 and 16 May 2018, respectively.

Complaints, procedure and composition of the Court

The applicants argued that the right to respect for the memory of their relatives fell under the notion of family life protected under Article 8 (right to respect for family life). They claimed in particular that, in order to carry out the investigation, it had not been necessary to exhume the bodies of all the victims. They also deplored the fact that there had been no real consultation with them about the exhumations or judicial review. They relied on Article 8 and Article 13 (right to an effective remedy).

The application was lodged with the European Court of Human Rights on 19 April 2017.

Judgment was given by a Chamber of seven judges, composed as follows:

Linos-Alexandre **Sicilianos** (Greece), *President*,
Aleš **Pejchal** (the Czech Republic),
Krzysztof **Wojtyczek** (Poland),
Ksenija **Turković** (Croatia),
Pauliine **Koskelo** (Finland),
Tim **Eicke** (the United Kingdom),
Jovan **Ilievski** ("the former Yugoslav Republic of Macedonia"),

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

This is the first case in which the Court has had to specifically address the applicability of Article 8 § 1 in the context of an exhumation against the will of the family in criminal proceedings. It found that the case came under the scope of the right to respect for private and family life.

It went on to find that the exhumations, carried out despite the applicants' objections, could be regarded as interfering with their right to respect for their private and family life and that there had been a legal basis in Polish law, namely Article 210 of the Code of Criminal Procedure (CCP), for that interference.

It further held that Polish law had not provided a mechanism to review the conflicting interests at stake in the case, namely the requirement of an effective investigation into an incident of unprecedented gravity for the State and the importance of the applicants' interest that their husbands' remains be respected.

In particular, when issuing his order, the prosecutor had not been required by the CCP to assess whether the aims of the investigation could have been attained through less restrictive means or to evaluate the implications for the applicants. Nor had his decision been amenable to appeal before a

criminal court or any other form of adequate scrutiny before an independent authority. Similarly, the civil courts had not reviewed the necessity of the exhumations or weighed the interests at issue.

The applicants had thus been deprived of the minimum degree of protection to which they had been entitled. Therefore the interference with their right to respect for private and family life had not been “in accordance with the law” since the law had not provided proper safeguards against arbitrariness, in breach of Article 8 of the Convention.

Given that finding, the Court considered that it was not necessary to examine separately the applicants’ complaint under Article 13.

[Just satisfaction \(Article 41\)](#)

The Court held that Poland was to pay each applicant 16,000 euros (EUR) in respect of non-pecuniary damage.

Separate opinion

Judge Eicke expressed a concurring opinion which is annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.