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Meeting: 1310th meeting (March 2018) (DH)

Item reference: Action report (16/02/2018)

Communication from Poland concerning the case of Malek v. Poland (Application No. 9919/11)

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Réunion : 1310^e réunion (mars 2018) (DH)

Référence du point : Bilan d'action

Communication de la Pologne concernant l'affaire Malek c. Pologne (requête n° 9919/11)
(anglais uniquement)

ACTION REPORT¹
Information on measures aiming at execution of the judgment
in the case of *Matek against Poland*

Case description

Matek v. Poland, application number 9919/11, judgment of 11/01/2018, final on 11/01/2018.

The case concerned the breach of the right of presumption of innocence.

The applicant, Mr Michał Matek, was charged with drug trafficking and robbery. On 16 March 2011 the Court of Appeal in Lublin, during the examination of the applicant's appeal against the Lublin Regional Court's decision on extension of his pre-trial detention, stated in the written grounds of its decision, *i.a.*, that "(...) the probability of a severe prison sentence being served on the applicant is also supported by the circumstances of committing the first two of the above-indicated acts, and in particular by the fact that the applicant committed them together and under arrangement with other persons, in accordance with a preset plan, and with the purpose of gaining financial benefit".

In his application to the Court, the applicant complained of the violation of Article 6 § 2 of the Convention by breaching his right to be presumed innocent due to the above-presented statement made by the Court of Appeal in Lublin in its written reasons, which in his view prejudged his guilt in committing the alleged acts.

The Court accepted the applicant's complaint under Article 6 § 2 of the Convention and stressed the importance of the choice of words used by the representatives of the authorities in their statements formulated before a given person is tried and found guilty of committing a crime. Taking into account the substance and context of the Lublin Court of Appeal's statements, which in the circumstances of the case could be read as a declaration that, despite the absence of a final conviction, the applicant has committed the crimes he was charged of, the Court found violation of Article 6 § 2 of the Convention. At the same time the Court stated that the finding of the violation constituted in itself a sufficient redress to the applicant for his non-pecuniary damage.

I. Individual measures

Having in mind that no just satisfaction has been awarded by the Court for the breach of Article 6 § 2 of the Convention and that this violation was of once-off character, no individual measures appear necessary.

¹ Information submitted by the Polish authorities on 16 February 2018.

II. General measures

1. Dissemination of the judgment

The *Matek* judgment was translated into Polish and published on the website of the Ministry of Justice (www.ms.gov.pl). Moreover, information about the judgment in question was included in the Ministry of Justice's newsletter which is distributed to all courts, public prosecutors' offices and organisational units of the prison service.

In addition, information about the *Matek* judgment was sent on 19 January 2018 to the president of the Court of Appeal in Lublin.

2. Other general measures

The principle of presumption of innocence is expressed in Article 42 § 3 of the Constitution of the Republic of Poland, which provides as follows:

Everyone shall be presumed innocent of a charge until his guilt is determined by the final judgment of a court.

It is also repeated in Article 5 § 1 of the Code of Criminal Procedure, which provides as follows:

The accused shall be presumed innocent until his guilt has been proven under the provisions of this Code.

The above-presented provisions of law are obliging everyone, and in particular organs of the judiciary system, to respect the principle of presumption of innocence.

3. Training activities

Starting from 2014 the judges seconded to the Ministry of Justice provided 40 trainings all around Poland to approximately 1500 judges. The trainings were conducted in the seats of appellate and regional courts. In the course of these trainings the issue of the principle of presumption of innocence and the unconditional obligation of its application, also in the written grounds of the decisions, was also discussed. One of the cases analyzed during these seminars was the Court's judgment in *Finster v. Poland* case, which concerned similar factual circumstances to the present case.

In 2017 the Ministry of Justice, in cooperation with the Norwegian Financial Mechanism, prepared a publication entitled *Reasoning of the courts' decisions and the European Court of Human Rights – how to avoid judgments stating violation of the Convention*. The publication is of a practical character – it presents many general principles stemming from the Court's case-law, explains the terminology and expressions used in the Convention and in the Court's case-law, enumerates criteria and issues that should be examined by the national courts and points to the most common mistakes. It explains the structure of the Court's judgments and how its case-law should be quoted. It also points to the basic requirements of giving reasons of the national courts' decisions, including in the context of the right to fair judicial proceedings. The publication also includes examples of shortcomings found in the grounds for the courts' decisions. The publication in question was prepared in the

framework of international seminars on *Giving reasons for the courts' decisions in the light of the European Convention of Human Rights as an integral part of a judge's working method*, organized in the years 2015-2016. So far, the above-described publication is available only in the paper form, however it is planned to share it also in the digital form on the Ministry of Justice's website.

In these circumstances, no other general measures appear necessary.

III. Conclusions of the respondent state

The Government is of the opinion that no further individual measures are necessary in this case and that measures of a general nature described above, *i.e.* the legal provisions in force, translation, publication and dissemination of the Court's judgment, as well as the training activities, will be sufficient to conclude that Poland has fulfilled its obligations under Article 46 § 1 of the Convention.