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

Item reference: Action report (27/02/2018)

Communication from Poland concerning the case of Kosc v. Poland (Application No. 34598/12)

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

Référence du point : Bilan d'action

Communication de la Pologne concernant l'affaire Kosc c. Pologne (requête n° 34598/12)
(anglais uniquement)

ACTION REPORT¹Information about the measures to comply with the judgment in the case of
Kość against Poland

Case description

Kość v. Poland, application no. 34598/12, judgment of 01/06/2017, final on 01/09/2017.

The case concerned the infringement of the applicant's freedom of expression.

The applicant, Mr Jarosław Kość, had been sued in the civil proceedings for infringement of personal rights by Z.M., a former local mayor, in relation to the letter send by the applicant to the district mayor in the course of the campaign for the local elections, in which both the applicant and Z.M. participated, concerning Z.M.'s bad management of the local funds. The domestic courts found that the applicant had failed to prove the veracity of his statements contained in the letter and that this amounted to a violation of Z.M.'s personal rights. Mr Kość was obliged to issue an apology.

The Court found that the interference with the applicant's exercise of his freedom of expression was not supported by sufficient reasons in terms of Article 10 and was disproportionate to the legitimate aim of protecting Z.M.'s reputation. The Court agreed with the applicant that the overall purpose of his letter had been to ask for clarification and information on the way in which public funds had been spent and not to personally attack Z.M. and that the issues voiced by the applicant were minor and not devoid of factual basis. What is more, the statements in question were made in a letter addressed to the district mayor with no clear intention to make it public. The Court also underlined that both the applicant and Z.M. were public figures, candidates in the local elections, so according to its case-law the limits of acceptable criticism were thus wider for Z.M. and that opinions and information pertinent to elections which were disseminated during an electoral campaign should be considered as forming part of a debate on questions of public interest.

The Court awarded the applicant with 3 000 EUR in respect of non-pecuniary damage and 1 500 EUR as a reimbursement of costs and expenses.

I. Payment of just satisfaction and other individual measures

1. Just satisfaction

Pecuniary damage	Non-pecuniary damage	Costs and expenses	Total
-	3 000 EUR	1 500 EUR	4 500 EUR
Due on: 01/12/2017			Paid on: 17/10/2017

2. Individual measures

¹ Information submitted by the Polish authorities on 27 February 2018

The applicant is not entitled to any other procedural measures in relation the contested civil proceedings for infringement of the personal rights. In particular, the European Court's judgment does not constitute a legal basis for resuming the civil proceedings, in which the domestic courts of two instances have issued decisions unfavorable to the applicant. Consequently, execution of the present judgment in respect of the individual measures comes down to the payment to the applicant of the sums awarded to him by the Court in respect of just satisfaction and costs and expenses.

In these circumstances no other individual measures appear necessary.

II. General measures

The Court did not question provisions of the Civil Code concerning protection of the personal rights (Articles 24 and 448 of the Civil Code). The reason of the violation found was failure on the part of the domestic courts to take into account standards relating to the freedom of expression of the public figures (in this case: candidates in the local democratic elections), developed by the Court.

In the view of the above, it is not necessary, for the purpose of execution of the present judgment, to introduce legislative amendments.

The educational activities and dissemination of the judgment at hand among the judges, such as publication of the Polish translation of the *Kość v. Poland* judgment on the website of the Ministry of Justice (www.ms.gov.pl) and in the HUDOC database, as well as publication of the summary information about the judgment in the Ministry of Justice's newsletter (edition of 14 June 2017), shall be deemed as sufficient. Polish translation of the *Kość* judgment, together with the review of the Convention's standards concerning Article 10, was sent to the courts of first and second instance which examined the applicant's case.

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 the adopted general measures are sufficient to conclude that Poland has fulfilled its obligations under Article 46 § 1 of the Convention.