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Meeting: 1318th meeting (June 2018) (DH)

Item reference: Action report (04/04/2018)

Communication from Poland concerning the case of Kacki v. Poland (Application No. 10947/11)

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Réunion : 1318^e réunion (juin 2018) (DH)

Référence du point : Bilan d'action

Communication de la Pologne concernant l'affaire Kacki c. Pologne (requête n° 10947/11)
(anglais uniquement)

DGI

04 AVR. 2018

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDHACTION REPORT¹Information on measures aiming at execution of the judgment
in the case of *Kącki against Poland*

Case description

Kącki against Poland, application no. 10947/11, judgment of 04/07/2017, final on 04/10/2017.

The case concerned violation of the applicant's freedom of speech (Article 10) due to finding him criminally responsible for the defamation of a politician.

In December 2006, the applicant – a journalist, published an interview entitled “Payment for sex, the choice is yours” (*Płaca za seks, wybór należy do pani*), which concerned the “sex scandal” story that has broken earlier in 2006. In the interview a political party describes how she was offered a paid position in the office of a Member of the European Parliament in exchange for sexual favours, but was later told that the position was given instead to this MEP's daughter. The MEP filed a private bill of indictment against the applicant, claiming that he should be made criminally liable for his allegations of nepotism. The domestic courts ruled the indictment partially accurate – they discontinued the proceedings for a probationary term of one year and ordered Mr Kącki to pay a fine to a charity.

Mr Kącki complained that his right to freedom of expression was breached due to finding his criminally liable for defamation.

The Court found in the applicant's favour. It stated that although the interference in the applicant's free speech was undoubtedly prescribed by law, namely Article 212 § 2 of the Criminal Code, and it pursued the legitimate aim of protecting the reputation or rights of others, it was nevertheless not proportionate and the domestic courts overstepped the margin of appreciation afforded to member States and that there was no reasonable relationship of proportionality between the measures applied by them and the legitimate aim pursued. Therefore, the Court concluded that the domestic courts failed to strike a fair balance between the relevant interests – the MEP's reputation and the applicant's right to freedom of expression, especially on the issues of public interest.

The Court awarded to the applicant 5000 euro in respect of just satisfaction.

I. Individual measures

1. Just satisfaction

Pecuniary damage	Non-pecuniary damage	Costs and expenses	Amount
-	5 000 EUR	-	5 000 EUR
Due on: 04/01/2018		Paid on: 17/11/2017	

¹ Information submitted by the Polish authorities on 4 April 2018

2. Individual measures

The Code of Criminal Procedure (hereinafter "the CCP") provides for the possibility to reopen criminal proceedings. Article 540 § 3 of the CCP stipulates that the proceedings are reopened where it is required by a decision of an international body acting pursuant to an international agreement. Proceedings may be reopened on a request of a party (Article 542 of the CCP). The applicant has not applied yet for reopening of the proceedings.

In this situation, execution of the judgment in respect of individual measures comes down to the payment of the just satisfaction awarded by the Court.

In these circumstances, no other individual measures appear necessary.

II. General measures

The Court did not question Polish provisions concerning defamation, but found that in the case at hand the narrow margin of appreciation given to the states was overstepped and that no reasonable balance was struck between the measures taken and the legitimate aim they were designed to pursue.

Having in mind the above, a number of educational and dissemination activities were undertaken in order to avoid similar violations in the future. Therefore, the judgment in the *Kqcki* case was translated into Polish and published at the Ministry of Justice's website (www.ms.gov.pl). Information about the judgment was also sent to the Presidents of the relevant courts.

In addition, on the Ministry of Justice's website (in the tab "Human Rights") a report concerning violations of Article 10 of the Convention that occur in the Polish courts' jurisprudence is published. The report contains the European Court's standards in respect of freedom of expression.

Moreover, information about the Court's judgments is posted in the "News" section on the Ministry of Justice's website, as well as in the newsletter. Also the information about the judgment in the *Kqcki* case, together with its summary, was published therein on 6 July 2017.

The issues of freedom of expressions and criminal proceedings interfering with this freedom were also the subject of trainings for judges organised by the National School of Judiciary and Public Prosecution. Between 9 May 2012 and 30 October 2015 - 35 such trainings on *Criminal proceedings as a form of interference i with freedom of expression and the conditions of its admissibility in the light of the European court of Human rights' case-law concerning Article 10 of the Convention* were held. The time devoted to this topic on each training session was 4 hours (in 2012 and 2013), 8 hours in 2014 and 6 hours in 2015.

Although in the case of the applicant a probationary measure of discontinuation of the proceedings was applied, it should nevertheless be mentioned that by the amendment of 5 November 2009 to the Criminal Code, Code of Criminal Procedure, Code of Execution of

Criminal Sentences, Fiscal Criminal Code and other acts (Journal of Laws No. 206, item 1589), which entered into force on 8 June 2010, Article 212 § 1 was changed in that defamation is in principle no longer punishable by a prison sentence, but only by a fine or a limitation of liberty (such as obligatory community service). As far as the aggravated form of defamation is concerned– defamation through means of mass communication (Article 212 § 2), the criminal sanction is, alternatively, a fine, limitation of liberty or deprivation of liberty, however the maximum prison sentence has been decreased from two years to one year. The above indicates that State aims to minimize the level of criminalization of the defamation to a possible extent.

In this situation, no other general measures seem necessary.

III. Conclusions of the respondent state

The Government is of the opinion that no other individual and general measures are necessary in this case and that the measures already adopted are sufficient to conclude that Poland has fulfilled its obligations under Article 46 § 1 of the Convention.