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

Item reference: Action report (27/03/2018)

Communication from Poland concerning the case of WIZERKANIUK v. Poland (Application No. 18990/05)

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

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Communication de la Pologne concernant l'affaire WIZERKANIUK c. Pologne (requête n° 18990/05)
(anglais uniquement)

DGI

27 MARS 2018

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

ACTION REPORT¹
**Information on the measures taken to implement
the judgment in the *Wizerkaniuk case against Poland***

Description of the case.

Wizerkaniuk v. Poland, application no. 18990/05, judgment of 05/07/2011, final on 05/10/2011.

The case concerns sentencing chief editor and co-owner of a local newspaper for the publication in May 2003 interview with a local M.P. without obtaining its prior authorization (violation of the Article 10 of the Convention).

In October 2004, Poznan Regional Court upheld the judgment of the first instance court of April 2004, which stated that the applicant has committed a maleficence of the Article 14 in conjunction with the Article 49 of the 1984 *Press Act* by the publication of the interview despite the refusal of authorization.

The European Court noted that the bill of indictment against the applicant was lodged by the public prosecutor, whereas the domestic law provided for the possibility of lodging private bills of indictment with the courts in cases concerning less serious offences (§ 74 of the judgment). The domestic courts imposed a criminal sanction on the applicant despite the fact that it was not in dispute that there had been no attempt at subterfuge on his part when he had tried to obtain the interview (§ 75 of the judgment).

In addition at no stage of the proceedings was it shown that either the content of what had been said by the M.P. or the form of his remarks published *verbatim* by the applicant's newspaper had been distorted in any way. There is nothing to suggest that the rendering of the interviewee's words was not accurate.

The courts did not refer either to the substance of the statements published by the applicant's newspaper or to that what had been said during the interview. The impugned provisions applied across the board, regardless of the status of the interviewee. As a result, the domestic courts, when examining the criminal case against the applicant, were not required to give any thought to the relevance of the fact that the interviewed person was an M.P. (§ § 77-79 of the judgment).

In the conclusions, the Court noted, that the Act "gives interviewees carte blanche to prevent a journalist from publishing any interview they regard as embarrassing or unflattering, regardless of how truthful or accurate it is." The Court stressed that the Polish "legal provisions (...) could have other negative consequences prior to publication, in that they were capable of making journalists avoid putting probing questions for fear that their interlocutors might later block the publication of the entire interview by refusing to grant

¹ Information submitted by the Polish authorities on 27 March 2018

authorisation, or choose interlocutors known for being co-operative, to the detriment of the quality of the public debate.”

ECHR found criminal sanction, imposed on journalist for publishing the interview without authorisation, disproportionate and excessive. Moreover, ECHR stated that the Act should have specified the time limit to complete the authorisation. According to the Court, *“news is a perishable commodity and to delay its publication, even for a short period, may well deprive it of all its value and interest (...). Consequently, a journalist cannot in principle be required to defer publishing information on a subject of general interest without compelling reasons relating to the public interest or the protection of the rights of others.”* At the same time, the court concluded that *“the criminal proceedings brought against the applicant and the criminal sanction imposed on him, without any regard being had to the accuracy and subject-matter of the published text and notwithstanding his unquestioned diligence in ensuring that the text of the published interview corresponded to the actual statements made by the M.P., was disproportionate in the circumstances.”*

I. Individual measures.

1. Just satisfaction.

pecuniary damage	non-pecuniary damage	Costs and expenses	The sum
256 EUR	4 000 EUR	4 119 EUR	8 375 EUR
Due on 05/01/2012			Paid on 21/12/2011

2. Individual measures.

Article 540 paragraph 3 of the Code of Criminal Procedure provides the resumption of criminal proceedings following a judgment of the Court. The Court granted the applicant just satisfaction for any pecuniary and non-pecuniary damage.

In these circumstances, additional individual measures do not seem necessary.

II. General measures.

1. Legislative measures

In order to execute this judgment a draft law amending the Press Law has been prepared by the Ministry of Culture and National Heritage (form no: 1604). The bill was supplemented by MPs suggestions. On the 27th October 2017, the bill was passed. The amendment of the act entered into force on 12 December 2017.

The aim of this amendment is to change provisions questioned by the European Court of Human Rights. The Court found that the discussed “provisions cannot be said to be

compatible with the tenets of a democratic society and with the significance that freedom of expression assumes in the context of such a society.”

The clarification of the authorization obligation is the most significant change. According to the amended Article 49b, quoting without an authorization is a misdemeanor subject to a fine (not an offence as previously).

The details of authorization are regulated in Article 14a. The current rule has been maintained according to which the journalist cannot refuse interviewee to authorize literally quoted statement. With exception, if the statement has been already published, the authorization is not required. Simultaneously another exception was introduced, according to the amended act the authorization is not required also if the statement has been presented publically, for example during press conference or any other public speech of interviewee. The conduct of journalist and interviewee in the terms of authorization is also clarified in this article. Because ECHR underlined that the Act should have specified the time limit to complete the authorization, the following time limits have been set up:

- 6 hours for daily papers
- 24 hours for periodicals

The time limits could be changed (extended or shortened) by mutual consent.

According to the Article 14a section 6, posing new questions, adding information or changing the chronology of statements shall not be treated as an authorization. In accordance with this provision the journalist is entitled to publish the original statements, even though the interviewee suggested posing new questions, adding information or answers or changing the chronology of the statements after lapse of time limits stated in section 3. This amendment is an execution of the judgement of ECHR, where the court noted that in the current legal state “legal provisions (...) could have other negative consequences prior to publication, in that they were capable of making journalists avoid putting probing questions for fear that their interlocutors might later block the publication of the entire interview by refusing to grant authorisation, or choose interlocutors known for being co-operative, to the detriment of the quality of the public debate”. After the amendment such negative consequences are no longer possible. In case of the lapse of the time limit for making an authorization, making a significant change in the statement, or refusing to authorize the statement, the journalist will be entitled to publish the original statement.

Moreover, due to the fact the criminal sanction set up in the previous *Press Act* was found disproportionate and excessive, the amendment from 12 December 2017 introduced partial depenalization. The criminal liability is replaced by the misdemeanor liability. As provided by Article 49 publication of literally quoted statement without enabling the interviewee to authorize it, accordingly with Article 14a, is punished with a fine. At the same time, the section 2 provide that, whoever publish the statement - identical with already stated by the interviewee - without an authorisation, is not liable to a fine. The section 2 is based on the assumption that the journalist should not be sanctioned for publishing the statement in full accordance with the original statement, even if the journalist infringe an obligation to allow authorization of the statement. The court underlined in its judgement that “*the criminal proceedings brought against the applicant and the criminal sanction imposed on him,*

without any regard being had to the accuracy and subject-matter of the published text and notwithstanding his unquestioned diligence in ensuring that the text of the published interview corresponded to the actual statements made by the M.P., was disproportionate in the circumstances". The proposed solution, of replacing criminal liability with misdemeanor liability, which additionally will be excluded if the journalist exercises due diligence and his/her text will be consistent with the original statement, is an execution of the judgement.

In compliance with the new Article 54c, the act described in Article 49b is classified as misdemeanor and the cases involving the issue will be proceed in accordance with Code of Procedure for Violations (Journal of Laws from 2016, item 1713 as amended). (kodeks postępowania w sprawach o wykroczenia).

2. Translation and dissemination of the Court's judgment

The Court's judgment was translated into Polish and published at the website of the Ministry of Culture and National Heritage: www.mkidn.gov.pl and the Ministry of Justice website: www.ms.gov.pl.

Moreover at the Ministry of Culture and National Heritage's website are published the Convention together with its Protocols and the Court's judgments which concern the subject matter of the Ministry. There are also links to other websites concerning the Convention and the Court's case-law. Furthermore the Ministry organises human rights trainings for its employees.

In accordance with the Heads of the Ministry's order all the Departments shall verify their decisions and draft law amendments in compliance with the Convention and the Court's case-law. Moreover in every organizational unit there is at least one person who systematically browses the Hudoc data-base in order to find new judgments concerning the subject matter of the Ministry of Culture and National Heritage.

Moreover, in May 2012, the Prosecutor General's Office sent out the above judgment to all of the appellate prosecutors asking them to inform all subordinate prosecutors about the essence of the judgment, to consider the possibility of waiving prosecution in similar cases (by refusal to initiate or discontinuance of preparatory proceedings).

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.