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Sent by email

Warsaw, 10 September 2018

Re: Wizerkaniuk v. Poland (application no. 18990/05)

The Helsinki Foundation for Human Rights (HFHR) addresses the Committee of Ministers in its supervisory capacity, pursuant to Rule 9.2. of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of terms of friendly settlements.

The HFHR is a non-governmental organization established in 1989 in order to promote human rights and the rule of law as well as to contribute to the development of an open society in Poland and the CIS region. One of the activities of HFHR includes participating in legal actions undertaken for the public interest such as representing parties and preparing legal submissions to national and international courts and tribunals. Protection of freedom of expression in Poland and the CIS region is one of our focus areas in our work. We have authored a number of complaints and third party interventions before the European Court of Human Rights concerning freedom of expression (e.g. Rauf Mirqadirov, application no. 62775/14) and human rights defenders in the same country (e.g. Rasul Jafarov, application no. 69981/14). We regularly submit Rule 9.2. submissions to the Committee of Ministers in cases against Poland and incidentally on cases against other Council of Europe members (e.g. Ilgar Mammadov, application no. 15172/13).

This letter aims at providing the Committee with an update on the amendments of the Press law, which entered into force on 12 December 2017. Article 49b of the Press law was amended in a way, that the publication of an interview (particularly a ‘literally quoted statement’) without an authorization became a misdemeanour, punished with a fine. It is, therefore, not considered anymore a criminal offence possibly sanctioned with the penalty of limitation of liberty (it was sanctioned before the amendment by a penalty of up to one year of prison).

Moreover, the law introduced changes in respect of authorisation of a statement made publicly. Authorisation is not required in respect of such statements.

An important change is the introduction of article 14 a comprising time limits for authorisation. The interviewee should provide his authorization within 6 hours if the publication is to be made in a daily newspaper and within 24 hours if it is for magazines. The journalist and the interviewee may mutually consent on different time-limits. After the lapse of time-limits indicated above (and without any reaction from the interviewee), the journalist can proceed with publishing the relevant interview.

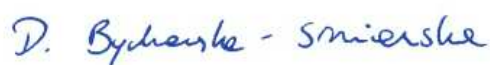
The law introduces an exemption, if a journalist publishes an interview without an authorization but provides the text in full accuracy he may not be held liable.

The HFHR would like to welcome especially the time-limits introduced by the amendments. Those has to be assessed as proper implementation of one of the major points of the judgment. However, we would like to note that the depenalization introduced by the amendment is partial, as there is still a possibility to institute criminal proceeding in case of publication of press interview without authorisation. The current sanction envisaged by the law is a fine, up to 1.000 PLN. It should be however noted, that this was the sanction (1.000 PLN to be paid to charity) imposed on the applicant in the *Wizerkaniuk v. Poland* case. Such sanction was found disproportionate by the Court and resulted in finding a violation of article 10 of the Convention.

Moreover, the amended law provides that a journalists will not be subjected to punishment if he publishes a “literally quoted” statement. However, he can still be prosecuted in such a situation. This would put the burden on journalists to prove that they have published a verbatim text.

The HFHR believes that before closing the execution of the case, in respect of general measures, it is vital to follow the judicial practice in respect of the amendment institution of authorisation. Particularly to assess the prosecution practice and the severity of fines imposed on journalists in such proceedings. Therefore, we would like to recommend the suspension of the closure of the execution of the case, until the judicial practice would be established and proven by the Government to be in conformity with the standards set in the judgment.

On behalf of the Helsinki Foundation for Human Rights,



Dominika Bychawska-Siniarska
Member of the Board
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