

EUROPEAN COURT OF HUMAN RIGHTS

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Press release issued by the Registrar

JUDGMENT IN THE CASE OF GAWĘDA v. POLAND

The European Court of Human Rights has today notified in writing a judgment¹ in the case of **Gawęda v. Poland** (no. 26229/95), in which it held, unanimously, that there had been a **violation of Article 10** of the European Convention on Human Rights (freedom of expression). (The judgment is available only in English.)

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 10,000 Polish zlotys (PLN) for non-pecuniary damage and for PLN 6,000 for legal costs and expenses.

1. Principal facts

The applicant, Józef Gawęda, is a Polish national.

On 9 September 1993 the Bielsko-Biała Regional Court dismissed Mr Gawęda's request for the registration of a periodical under the title "The Social and Political Monthly - A European Moral Tribunal" (*"Miesięcznik społeczno-polityczny, europejski sąd moralny"*) to be published in Kęty. The court considered that, in accordance with the 1984 Press Act and the Ordinance of the Minister of Justice on the registration of periodicals - which prohibited registration of periodicals where the title would be "in conflict with reality" - the name of a periodical should be relevant to its contents. The name proposed by the applicant implied that a European institution had been established in Kęty, which was untrue and misleading. On 17 December 1993 the Katowice Court of Appeal dismissed the applicant's appeal against this decision. The court observed that, in the proceedings before the first-instance court, the applicant had been instructed to change the proposed title by deleting the term "European Moral Tribunal", but had refused to do so.

On 17 February 1994 the Bielsko-Biała Regional Court dismissed the applicant's request for registration of another periodical, entitled "Germany - a thousand-year-old enemy of Poland". The court considered that the title proposed was in conflict with reality, in that it unduly concentrated on negative aspects of Polish-German relations, thus giving an unbalanced picture of the facts.

The applicant appealed unsuccessfully against both decisions.

¹ Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its Protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

2. Procedure and composition of the Court

The application was lodged with the European Commission of Human Rights on 30 January 1994 and declared admissible on 13 January 1997. The case was transferred to the Court on 1 November 1998.

Judgment was given by a Chamber of seven judges, composed as follows:

Elisabeth **Palm** (Swedish), *President*,
Wilhelmina **Thomassen** (Dutch),
Gaukur **Jörundsson** (Icelandic),
Jerzy **Makarczyk** (Polish),
Rıza **Türmen** (Turkish),
Josep **Casadevall** (Andorran),
Boštjan **Zupančič** (Slovenian), *judges*,

and also Michael **O'Boyle**, *Section Registrar*.

3. Summary of the judgment¹

Complaint

The applicant alleged, in particular, that, in refusing to register the titles, the Polish courts prevented him from publishing two periodicals. He relied on Article 10.

Decision of the Court

Article 10

Having observed that, under Polish law, a court's refusal to register the title of a periodical was tantamount to a refusal to publish it, the Court examined whether the restriction complained of was prescribed by law.

The Polish courts inferred from the notion "in conflict with reality", contained in Article 5 of the Ordinance, a power to refuse registration where they considered that a title did not satisfy the test of truth, i.e. that the proposed titles of the periodicals conveyed an essentially false picture. The Court observed that, while the terms used were ambiguous and lacked clarity, they suggested at most that registration could be refused where the request for registration did not conform to Article 20 of the Press Act. To require that the title of a magazine embody truthful information was an inappropriate restriction on freedom of the press. A title of a periodical was not a statement as such, since its function, essentially, was to identify the given periodical on the press market for its actual and prospective readers. Such an interpretation by the courts would also need to be authorised clearly by a legislative provision. However, the interpretation given by the Polish courts introduced new criteria, which could not be foreseen from the legal text in question (Article 20 of the Press Act).

1. This summary by the Registry does not bind the Court.

The Court concluded, therefore, that because this law was not formulated with sufficient precision to enable the applicant to regulate his conduct, the restrictions imposed on him were not prescribed by law, within the meaning of Article 10. The Court therefore concluded that there had been a violation of Article 10.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.