CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 51744/99
by Leszek KWIECIEŃ
against Poland

The European Court of Human Rights (Fourth Section), sitting on 15 March 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr G. BONELLO,
Mr K. TRAJA,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 7 April 1999,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Leszek Kwiecień, is a Polish national who was born in 1949 and lives in Dzierżoniów.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant was involved in a number of administrative proceedings before the Dzierżoniów District Office (*Urząd Rejonowy*) related to disputes with his neighbours and planning matters. The applicant considered that decisions of the District Office issued in his cases were incorrect and unlawful as evidenced by the fact that they were often quashed by higher administrative authorities. The Head of the Dzierżoniów District Office was Mr S.L. who stood for election to the district council (*rada powiatu*) in the local elections scheduled for 11 October 1998. On 21 September 1998 the applicant sent to S.L. an open letter in which he called on S.L. to withdraw from standing for election. The applicant sent copies of the letter to the Wałbrzych Governor, the Wałbrzych Regional Assembly, Dzierżoniów Municipal Council, local mayors, the Prime Minister's Office and a number of local newspapers. One thousand copies of the letter were to be available to the inhabitants of the district. According to the applicant none of the newspapers published his open letter.

"Open letter

Mr S.L.
Head of the Dzierżoniów District Office

Dear Sir,

I kindly request that you once again reflect on the suitability of your standing for election to the district council in the local elections of 11 October 1998. My open letter is not motivated by spite, but it only expresses my concern that persons who represent me should be those who want to help others in solving their problems instead of doing harm to them. I consider that as the Head of the Dzierżoniów District Office you carried out your duties ineptly and sometimes even maliciously, frequently breaching the law and basing your statements on falsehood. In order for my opinion not to be groundless I refer to the [following] supporting facts:

- in case no. BA-7355-D/27 a crucial document for that case was lost from the case-file in the administrative authority you are in charge of. The public prosecutor's office in Dzierżoniów made an inquiry into this matter;

- [administrative] decision no. BA-7355-D/27/35/93-96 of 8 March 1996 was issued by the authority you are in charge of on the basis of documents which were forged in the Dzierżoniów District Office;

- in order to intimidate me the administrative authority you are in charge of instituted proceedings no. 7355-D/21 which resulted in the issuing of decision no. BA-7355-D/21/10/96 ordering demolition of a building. Subsequently by virtue of decision no. BA-7355-D/21/24/95-96 the proceedings were discontinued it having been found that the building was erected lawfully;

- for the period of eight months you have maliciously and unlawfully refused to issue a building permit upon my application. This malice was brought to an end by the Wałbrzych Regional Governor who issued a favourable decision no. 145/98;

- while defending your position on the refusal to issue a building permit you have resorted to a lie (newspaper Gazeta Wrocławska of 30 June 1998 in the article "War with decisions");

- you instituted enforcement proceedings in violation of my rights. Having breached the law and exceeding your powers you demanded that I perform a nonexistent obligation. The enforcement proceedings were discontinued by the Dzierżoniów Tax Office by virtue of the decision no. US VIII-924/67/98.

I think that the above few examples should provoke a thought on your part whether it wouldn't be advisable to withdraw. I have only one question: WOULD YOU LIKE THAT A PERSON WHOM YOU ELECT TO LOCAL GOVERNMENT WOULD BE DEALING WITH YOUR CASES AS ILLUSTRATED BY THE ABOVE EXAMPLES?

Yours sincerely

Leszek Kwiecień"

On 6 October 1998 S.L. brought an action against the applicant in the Wałbrzych Regional Court (*Sąd Wojewódzki*) on the basis of section 72 of the Law on Elections to Municipality, District Councils and Regional Assemblies ("the Local Elections Act"). The claimant sought a court order requiring the applicant to rectify untrue information divulged in the open letter and to publish a rectification in the local newspapers "Gazeta Wrocławska" and "Tygodnik Dzierżoniowski" and other newspapers to which the open letter had been originally addressed. S.L. also requested that the court order the applicant to issue an apology. Finally he requested that the applicant be ordered to pay PLN 10,000 for the benefit of a charity run by the Order of St. Elizabeth in Dzierżoniów and to pay PLN 10,000 to the claimant in damages.

On 7 October 1998 the Wałbrzych Regional Court gave its decision. It ordered the applicant to publish in the local newspaper "Gazeta Wrocławska" and in a letter to the claimant a statement that he had included untrue information in his open letter of 21 September 1998 and the following apology:

> "I apologise to Mr. S.L. for defamatory statements about him which were included in my open letter of 21 September 1998 addressed to him".

The court also ordered the applicant to pay PLN 10,000 for the benefit of the charity run by the Order of St. Elisabeth in Dzierżoniów and PLN 10,000 to the claimant in damages.

The Regional Court considered that the impugned open letter contained untrue information about the claimant and the District Office. It noted that it had not been proved that a document had been lost in the District Office as the result of the inquiry by the prosecuting authorities was inconclusive. It further observed that that the applicant had not proved that documents referred to in his open letter had been forged or that the District Office had attempted to intimidate him. Neither had he established that the claimant had violated the rights of the applicant by way of instituting enforcement proceedings. As regards the claimant's statement in the newspaper "Gazeta Wrocławska", the Regional Court accepted that it had not been approved by the claimant prior to publication and thus it could have been flawed. Lastly, it considered that the applicant had not established any impropriety or malice on the part of the District Office and observed that all the administrative proceedings to which the applicant was a party were instituted and conducted on the basis of applicable laws and that the applicant had exercised his right to appeal against any particular decision. Lastly, the Regional Court considered that the applicant's allegations were to be characterised as his impressions, which were unfounded and unsupported by evidence.

On 8 October 1998 the applicant complained to the President of the Wałbrzych Regional Court that he had been refused access to the official record of the hearing of 7 October 1998. He also alleged that he had been refused access to the case-file despite the fact that the claimant had adduced new documentary evidence with a view to rebutting the truthfulness of the applicant's statements. He argued that this refusal had an adverse effect on his rights as a party to the proceedings, having regard in particular to the 24-hour time-limit to file an appeal.

On 8 October 1998 the applicant filed an appeal with the Wrocław Court of Appeal (*Sąd Apelacyjny*) and requested that the decision of the Regional Court be quashed.

The applicant submitted that his open letter did not amount to electoral campaigning. He relied, *inter alia*, on Article 10 of the Convention and submitted that his critical remarks concerned S.L. as the representative and the head of an administrative authority. The criticism was based on shortcomings in the administrative proceedings in which the applicant was involved, as evidenced by numerous documents, relevant administrative decisions and statements of higher administrative authorities and of the Supreme Administrative Court. Furthermore, the applicant contested the Regional Court's finding that the information contained in the open letter

had been untrue. He submitted that the first-instance court had not examined the circumstances of the case and had not assessed thoroughly the evidence before it. Further, he submitted that at the hearing the Regional Court prevented the applicant from making comprehensive submissions in reply to the claimant's lengthy arguments and refused to admit evidence confirming the truthfulness of the statements contained in the open letter.

The applicant disputed the Regional Court's order to pay damages to S.L. and argued that the claimant had not proved that he had suffered any damage. In respect of the order to make payment to the institution run by the Order of St. Elisabeth, he contested the fact that it was a charity. The applicant complained that the Regional Court had allowed the claimant's application in its entirety and made orders to pay damages and to make payment to a charity at the maximum end of the scale provided for by law. Further, the applicant referred to the fact that after the hearing before the Regional Court his access to the case-file had been hindered, despite the fact that an appeal had to be lodged within 24 hours after the first-instance decision had been pronounced. Finally the applicant made detailed submissions with a view to proving the accuracy of the factual statements contained in the open letter.

The local elections took place on 11 October 1998.

On 12 October 1998 the Wrocław Court of Appeal dismissed the applicant's appeal. It considered that proceedings provided for under section 72 of the Local Elections Law were aimed at ensuring the proper conduct of the electoral campaign by preventing infringements of the personal rights of those standing for election, which were capable of affecting the result of the elections. It upheld the findings of the Regional Court that the applicant had plainly infringed such rights of the claimant as a candidate for the local government office by virtue of his open letter addressed to the claimant and sent also to many authorities and natural persons. The Court of Appeal considered that the content of the open letter put the claimant in an unambiguously negative light as a candidate for the local council and was aimed at preventing him from being elected.

The Court of Appeal also upheld the findings of the Regional Court that the applicant had not proved that his allegations directed against the claimant were true, and as such justified his criticism. In fact the applicant's allegations were related to decisions issued by the District Office and they should not have been associated with the claimant as such. The impugned decisions could have been appealed against by the applicant. In fact they were appealed against by him and in most cases successfully.

The Court of Appeal further considered that the applicant's categorically negative assessment of the impugned decisions and the fact that he had attributed them to the claimant as a person in charge of the District Office, combined with public dissemination of this assessment, was unfounded and legally unjustified. The facts of the case, the court considered, appeared to

indicate unequivocally that the applicant's aversion to the District Office resulting from unsatisfactory decisions was equated with the claimant as such and later used in the electoral campaign. The Court of Appeal considered that this amounted to a breach of section 72 of the Local Elections Act. In these circumstances the Court of Appeal found that the decision of the Regional Court was correct.

On 20 October 1998 the applicant requested that the enforcement of the decision given in his case be stayed. He submitted that the financial orders made against him, amounting to PLN 20,000, were disproportionate to his earnings and financial situation. On 27 October 1998 the Wrocław Court of Appeal dismissed the applicant's request.

On 4 December 1998 the applicant filed a cassation appeal against the judgment of the Court of Appeal. On 15 December 1998 the Wrocław Court of Appeal refused to proceed with the cassation appeal, considering that it was inadmissible in law. It observed that section 72 § 3 of the Local Elections Act did not provide for any further appeal against the decision of the Court of Appeal. On 5 January 1999 the applicant appealed against that decision to the Supreme Court. On 3 March 1999 the Supreme Court dismissed the applicant's appeal on the same grounds as those relied on by the Court of Appeal.

On an unspecified later date in 1999 the applicant requested the Wrocław Court of Appeal to reopen the proceedings. He submitted that the claimant had not been properly represented in the proceedings before the Court of Appeal. On 20 September 1999 the Wrocław Court of Appeal rejected the applicant's request. The applicant appealed unsuccessfully. On 31 July 2000 the applicant again requested that the proceedings be reopened. On 8 November 2000 the Wałbrzych Regional Court rejected his request.

On 12 February 2001 the applicant filed a constitutional complaint with the Constitutional Court (*Trybunał Konstytucyjny*). He alleged that section 72 of the Local Elections Act was incompatible with Articles 32, 45 § 1 and 77 § 2 of the Constitution. On 13 May 2002 the Constitutional Court gave judgment. It ruled that section 72 § 3 of the impugned Act, interpreted as excluding a possibility of having the proceedings reopened, was incompatible with Articles 45 § 1 and 77 § 2 of the Constitution.

On 20 May 2002 the applicant requested the Wrocław Court of Appeal to direct the reopening of the proceedings in his case, following the judgment of the Constitutional Court. Later, he submitted three further similar requests. On 17 June 2002 the Court of Appeal rejected his request. The applicant appealed unsuccessfully. On 28 October 2002 the Court of Appeal rejected two of the applicant's further requests for reopening. In respect of the third one, the Court of Appeal considered that it should be examined by the Świdnica Regional Court. On 16 December 2002 the Świdnica Regional Court rejected the applicant's third request for reopening. All the applicant's appeals were unsuccessful.

Having unsuccessfully attempted to reopen the proceedings, on 12 October 2003 the applicant requested the Constitutional Court to provide an interpretation of its judgment of 13 May 2002. On 14 April 2004 the Constitutional Court gave its decision. It ruled that in accordance with Article 190 § 4 of the Constitution its judgment of 13 May 2002 provided for a possibility to reopen the proceedings terminated by a decision (*postanowienie*) given on the basis of a provision which had been declared unconstitutional.

B. Relevant domestic law and practice

1. The Local Elections Act

Section 72 of the Law of 16 July 1998 on Elections to Municipality, District Councils and Regional Assemblies (*Ordynacja wyborcza do rad gmin, rad powiatów i sejmików województw*) ("the Local Elections Act") provided, in so far as relevant:

> "§ 1. If posters, slogans, leaflets, statements or other forms of propaganda and campaigning contain untrue data and information, a candidate standing for local election or a representative of an electoral committee has the right to make an application asking the Regional Court to:
>
> 1) order the confiscation of such materials,
>
> 2) issue an injunction restraining [the defendant] from publishing such data and information,
>
> 3) order rectification of the information,
>
> 4) order [the defendant] to apologise to the aggrieved party,
>
> 5) order [the defendant] to pay to a charity up to PLN 10,000,
>
> 6) order [the defendant] to pay to the claimant up to PLN 10,000 in damages.
>
> § 2. The Regional Court, sitting as a single judge, shall examine the application referred to in § 1 within 24 hours in [civil] non-contentious proceedings. [...]. The court shall serve on the interested party referred to in § 1, the relevant regional electoral commissioner and the person obligated to execute the court's decision, without undue delay, a decision terminating the proceedings in the case.
>
> § 3. The decision of the Regional Court may be appealed to the Court of Appeal within 24 hours from the moment it was pronounced. The Court of Appeal, sitting as a panel of three judges, shall examine the appeal in [civil] non-contentious proceedings, according to the same procedure and within the time-limit referred to in § 2. No appeal shall lie against the decision of the Court of Appeal and such decision shall be enforceable with immediate effect.

On 26 July 2002 Parliament amended section 72 of the Local Elections Act by repealing subsection 6 that allowed a claimant to seek compensation from the person who had divulged untrue information about him/her.

2. Case-law of Polish courts

On 1 October 1998 the Katowice Court of Appeal gave a decision in the case no. I ACz 972/98 in which it stated:

> 1. Section 72 of the Local Elections Act applies to factual statements contained in the materials pertaining to an electoral campaign. It does not apply to conclusions or opinions based on those factual statements. Only factual statements have an objective character. Every opinion is subjective depending on the point of view of the person holding it.
>
> 2. No one can be prevented from expressing his views and making judgments as long as they do not infringe the rights of other person. However, even an infringement of personal rights which does not meet the conditions specified in section 72 cannot be afforded protection under that provision which is an exception [to the general rule] and thus cannot be interpreted extensively.

COMPLAINTS

1. The applicant complains under Article 6 § 1 of the Convention that he was denied a fair hearing in the proceedings before the Wałbrzych Regional Court and the Wrocław Court of Appeal brought against him under section 72 of the Local Elections Act. He refers, in particular, to the time-limits applicable to those proceedings and their adverse effect on his ability to present his case. He further complains that the courts did not consider his argument that the allegations made had been supported by the official decisions. Lastly, he alleges that he was denied access to the case-file following the pronouncement of the Regional Court's decision.

2. The applicant complains under Article 10 of the Convention about an unjustified interference with his right to freedom of expression, referring to the severity of the sanctions imposed on him for having disseminated his opinion on matters of public interest, which were supported by the facts. The applicant also submits that that the Wrocław Court of Appeal gave its decision outside the statutory time-limit, when the proceedings had lost all their relevance for the electoral prospects of the claimant.

3. The applicant also complains under Article 17 of the Convention that section 72 of the Local Elections Act, by providing for a particular level of protection for candidates standing for local elections, amounts to a violation of that provision of the Convention.

4. In his letters of 23 October 1999 and 24 March 2001 the applicant complains under Article 6 § 1 of the Convention about the courts' refusals to

reopen the proceedings terminated by the decision of the Court of Appeal of 12 October 1998, including after the judgment of the Constitutional Court of 13 May 2002.

THE LAW

1. The applicant complains under Article 6 § 1 of the Convention that his right to a fair hearing was not respected in the proceedings brought against him under section 72 of the Local Elections Act on account of the statutory time-limits applicable to those proceedings and their adverse effect on his ability to present his case. He also submits that the courts did not examine the link between his allegations and the official decisions he had relied on in support of those allegations. He also alleges that unfairness was caused as a result of denying him access to the case-file.

The Court considers that it cannot, on the basis of the file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2(b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

2. The applicant further alleges a breach of Article 10 of the Convention. He relies on the severity of sanctions imposed on him by the courts for having imparted his opinion on matters of public interest. He also complains that the judgment of the Court of Appeal was given outside the statutory time-limit, when the proceedings had ceased to serve their aim.

The Court considers that it cannot, on the basis of the file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2(b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

3. The applicant further complains that section 72 of the Local Elections Act as such amounted to a violation of Article 17 of the Convention.

However, the Court considers that this complaint is unsubstantiated. It follows that this part of the application is inadmissible as being manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

4. Relying on Article 6 § 1 of the Convention, the applicant also complains about his unsuccessful attempts to have the impugned proceedings reopened, including after the favourable judgment of the Constitutional Court.

However, the Court recalls that the guarantees of Article 6 of the Convention do not apply to proceedings in which the re-opening of the proceedings terminated by a final decision is sought (see, among many other authorities, *Wierciszewska v. Poland*, no. 41431/98, § 35, 25 November 2003). It follows that this part of the application is incompatible *ratione*

materiae with the provisions of the Convention and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint under Article 6 § 1 of the Convention concerning unfairness of the proceedings brought against the applicant under section 72 of the Local Elections Act and the complaint under Article 10 of the Convention concerning the interference with his freedom of expression;

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President