



## Breach of the right to freedom of expression in the context of an electoral campaign

In its committee judgment in the case of [Brzeziński v. Poland](#) (application no. 47542/07) the European Court of Human Rights has unanimously held, that there had been:

**a violation of Article 10 (freedom of expression)** of the European Convention on Human Rights.

The case concerned an allegation that the applicant's freedom of expression had been breached, on account of comments made by him in an election campaign brochure.

The Court noted that the contested statements had been made in the context of a debate on issues which were important for the local community. It held that the language used in the brochure had remained within the limits of admissible exaggeration or provocation, having regard to the ordinary tone and register of the political debate at local level.

Furthermore, in addition to the ban on continuing to publish the brochure, the applicant had been ordered to apologise and to rectify the comments that were held to be incorrect, by having a statement published on the front page of two local newspapers. He had also been ordered to pay a sum to a charitable organisation. In consequence, the Court considered that the applicant had been subjected to a penalty that could have an inhibiting effect, although he had been taking part in a political debate.

The judgment is final.

### Principal facts

The applicant, Mr Zenon Brzeziński, is a Polish national who was born in 1954 and lives in Koziegłówek.

In October 2006, during a political campaign for election to municipal and district councils and regional assemblies, Mr Brzeziński, who was standing for the post of municipal councillor, and a certain A.B. issued a brochure, in which they called on the public to vote for the members of their electoral group and criticised the way in which the municipality was run. These criticisms mainly concerned the mayor and the members of the municipal council. Mr Brzeziński implied that the latter group had concluded a form of agreement, with the sole aim of profiting from the posts that they held.

The mayor and a local councillor who were targeted in the brochure sued Mr Brzeziński and A.B., applying for an injunction to prevent dissemination of the brochure and obliging its authors to rectify the incorrect information published and offer a public apology. On the morning of 27 October 2006 Mr Brzeziński was summoned by telephone to a hearing scheduled for 1.30 p.m. on the same date at the Częstochowa Regional Court. Mr Brzeziński did not attend the hearing. By a decision of the same date, the court discontinued the proceedings against A.B. but barred Mr Brzeziński from continuing to distribute his brochure, and ordered him to apologise and to correct the inexact information contained therein. It also ordered him to pay 5,000 Polish zlotys (PLN) to a charitable organisation and PLN 360 to the complainants for costs. The court noted that Mr Brzeziński had implied that fraud had been committed in the allocation of public grants, although, in the court's finding, these facts had not been established.

On 19 April 2007 the court of appeal examined an appeal against the decision of 27 October 2006 and dismissed it. It confirmed that Mr Brzeziński had been lawfully notified of the hearing and held that the evidence available to the regional court corroborated this conclusion.

## Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 24 October 2007.

Relying on Article 10 (freedom of expression), the applicant alleged that there had been a breach of his right to freedom of expression. Relying on Article 6 (right to a fair hearing), he complained about the lack of fairness in the proceedings brought against him on the basis of section 72 of the Local Elections Act before the first-instance and appeal courts. He accused the national courts of failing to allow him to defend himself.

Judgment was given by a Committee of three judges, composed as follows:

Armen **Harutyunyan** (Armenia), *President*,  
Krzysztof **Wojtyczek** (Poland),  
Pere **Pastor Vilanova** (Andorra),

and also Renata **Degener**, *Deputy Registrar*.

## Decision of the Court

### Article 10

The Court reiterated that there was little scope under Article 10 § 2 of the Convention for restrictions on political speech or on the debate of questions of public interest. The limits of acceptable criticism were wider with regard to a politician, in that capacity, than with regard to a private individual.

The Court noted that Mr Brzeziński was expressing himself as a candidate for the post of municipal councillor and as representative of an electoral group which was distinct from that of the outgoing mayor. It did not appear from the reasoning of the domestic courts that they had examined whether the impugned remarks had a credible factual basis, or whether Mr Brzeziński had acted with the requisite diligence. The contested remarks had been immediately classified as lies and regarded as damaging the good reputation and standing of the complainants as candidates in the local elections.

The Court held that there was no doubt that the contested statements had been made in the context of a debate on issues which were important for the local community. However, the Court could not endorse the domestic courts' finding that Mr Brzeziński was required in the present case to prove the truth of his statements. The Court held that the language used in the brochure had remained within the limits of admissible exaggeration or provocation, having regard to the ordinary tone and register of the political debate at local level.

In the light of the above considerations, the Court did not consider that a fair balance had been struck between the need to protect the applicant's rights to freedom of expression and the need to protect the complainants' rights and reputation. The reasons provided by the domestic courts to justify the applicant's conviction could not be considered relevant and sufficient, and did not correspond to any pressing need.

Furthermore, in addition to the ban on continuing to publish the brochure, Mr Brzeziński had been obliged to apologise and to correct the information that had been judged to be inexact, by having a statement published on the front page of two local newspapers. He had also been ordered to pay PLN 360 to the complainants for procedural costs and PLN 5,000 to a charitable body. The Court thus

considered that Mr Brzeziński had been subjected to a penalty that could have an inhibiting effect, although he had been taking part in a political debate.

However, the Court noted that Mr Brzeziński had been lawfully summoned to the first-instance hearing. It noted that the national courts had established that Mr Brzeziński had not informed them of anything preventing him from appearing before them and had not given any reasons for his absence, although he had had the opportunity to do so in the context of his appeal against the first-instance decision. The Court was not therefore persuaded that his absence from the first-instance hearing and the resultant impossibility of presenting his arguments to the domestic court were imputable to the national authorities alone.

The Court concluded that the decisions issued against the applicant amounted to a disproportionate interference with his right to freedom of expression and had not been necessary in a democratic society. It followed that there had been a violation of Article 10.

### Article 6

Having regard to its finding of violation in respect of Article 10, the Court considered that it was not necessary to examine whether there had been a violation of Article 6 in this case.

### Just satisfaction (Article 41)

The Court held that Poland was to pay the applicant 9,700 euros (EUR) in respect of non-pecuniary damage and EUR 100 in respect of costs and expenses.

*The judgment is available only in French.*

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