

European Court of Human Rights: *Brzeziński v. Poland*

IRIS 2019-8:1/1

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In its committee judgment in the case of *Brzeziński v. Poland*, the European Court of Human Rights (ECtHR) unanimously held that there has been a violation of Article 10 of the European Convention on Human Rights (ECHR) with regard to the applicant's right to freedom of expression as a politician at election time. The case concerns in particular a provision in Poland's election law which allows a court, within 24 hours, to consider whether 'untrue information' has been published, and to issue an order prohibiting its further distribution.

In October 2006, during a political campaign for election to municipal and district councils and regional assemblies, Mr Zenon Brzeziński was standing for the post of municipal councillor. In a brochure in which the public was called to vote for the members of his electoral group, Brzeziński criticised the way in which the municipality was run. These criticisms mainly concerned the mayor and the members of the municipal council. Brzeziński implied that the members of the local council had concluded a form of agreement, with the sole aim of taking advantage of the posts that they held. The mayor and a local politician who were targeted in the brochure sued Brzeziński, applying for an injunction to prevent the dissemination of the brochure and obliging its author to rectify the incorrect information 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. Brzeziński did not attend the hearing. By a decision of the same date, the court barred 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 5000 Polish zlotys (PLN) to a charitable organisation and PLN 360 to the complainants for costs incurred. The court noted that Brzeziński had implied that fraud had been committed in the allocation of public grants, although, in the findings of the court, these facts had not been established. It found that the allegations in the brochure were 'untrue', 'malicious' and 'exceeded the permissible forms of electoral propaganda'. The regional court's judgment was later upheld by the court of appeal.

Brzeziński lodged an application before the ECtHR in 2007, claiming a violation of his right to freedom of expression. Twelve years later, in its judgment of 25 July 2019, the ECtHR holds that there has been a violation of Brzeziński's freedom of expression. The ECtHR considers that the election law provision was 'prescribed by law' pursued the legitimate aim of the 'protection of the reputation or rights of

others', while the main question was whether the interference with the right to freedom of expression had been 'necessary in a democratic society'. First, the Court reiterates that under Article 10 ECHR there is little room for restrictions on political and public interest expression, which makes the domestic authorities' margin of appreciation for restricting such expression very limited. The ECtHR does not consider the summary proceedings problematic as it finds Brzeziński had been lawfully summoned to the first-instance hearing, and that his absence from the first-instance hearing and the resultant impossibility of presenting his arguments to the domestic court were not imputable to the national authorities alone. It notes that Brzeziński was expressing himself as a candidate for the post of municipal councillor and as a representative of an electoral group which was distinct from that of the outgoing mayor. However, 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 Brzeziński had acted with 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 ECtHR disagrees with the domestic courts' finding that Brzeziński was required in the present case to prove the truth of his statements, and it holds 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. The ECtHR finds that no fair balance has been struck between the need to protect Brzeziński's rights to freedom of expression and the need to protect the complainants' rights and reputation, and that the reasons provided by the domestic courts to justify Brzeziński's conviction cannot 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, Brzeziński had been ordered to apologise and to rectify the comments that were held to be inexact by having a statement published on the front page of two local newspapers. He had also been ordered to pay a sum of money to a charitable organisation. The ECtHR is of the opinion that the cumulative application of these sanctions would likely have an inhibiting effect on individuals engaged in local political debate and it concludes that there had been a disproportionate interference with Brzeziński's right to freedom of expression, in violation of Article 10 ECHR. The ECtHR held that Poland was to pay the applicant EUR 9 700 in respect of non-pecuniary damage and EUR 100 in respect of costs and expenses.

ECtHR First Section, Appl. no 47542/07, 25 July 2019

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