



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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 56550/00
by Antoni MÓŁKA
against Poland

The European Court of Human Rights (Fourth Section), sitting on
11 April 2006 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 24 May 1999,

Having regard to the observations submitted by the respondent
Government and the observations in reply submitted by the applicant,

Having deliberated on 28 June 2005 and 11 April 2006, decides as
follows:

THE FACTS

The applicant, Mr Antoni Mółka, is a Polish national who was born in 1957 and lives in Nowy Sącz. He was represented before the Court by Mr P. Sendeki, a lawyer practising in Lublin. The respondent Government were represented by their Agent, Mr J. Wołosiewicz, of the Ministry of Foreign Affairs.

A. The circumstances of the case

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

The applicant suffers from severe dysfunction of the limbs and is confined to a wheelchair.

On 11 October 1998 the applicant was driven by his mother to a polling station in Nowy Sącz where he intended to vote in the elections to municipal and district councils and provincial assemblies (*wybory do rad gmin, rad powiatów i sejmików województw*). The applicant's mother asked the Chairman of the Local Electoral Commission to either show her how the applicant, who was waiting in his wheelchair outside the station, could enter it or hand a ballot paper to him. The chairman informed the applicant's mother that the applicant could not cast his vote because it was not permitted to take ballot papers outside the premises of the polling station and the chairman was not going to carry the applicant inside the station. The applicant returned home without casting his vote.

At 5 p.m. on the same day, i.e. three hours before the polling stations closed, the applicant telephoned the Municipal Electoral Commission (*Miejska Komisja Wyborcza*) and protested about the refusal to allow him to vote. He also asked for help in casting his vote. However, the applicant was informed that the Local Electoral Commission acted in conformity with the Law of 16 July 1998 on Elections to Municipal Councils, District Councils and Regional Assemblies (*Ordynacja wyborcza do rad gmin, rad powiatów i sejmików województw*) ("the Local Elections Act") and advised to arrange for assistance in entering the premises of the polling station.

On 14 November 1998 the applicant lodged an electoral complaint (*protest wyborczy*) with the Nowy Sącz Regional Court (*Sąd Wojewódzki*). He submitted that he had been unlawfully deprived of his right to vote. The applicant pointed out that getting to the polling station had required substantial effort on his part, the assistance of other persons and certain expenses. He ended his submissions with the following statement:

"I would like to stress that the only way I could have been carried in was on a stretcher (which was not available) and anyway no handicapped person would have agreed to that because of the feeling of embarrassment. Carrying me upstairs in a

wheelchair was also impossible as [my] battery-powered wheelchair weighed, together with myself, about 200 kg and was not portable.

As the number of physically handicapped persons in Poland is 5 million, one can assume that my case was not isolated and that making it impossible for handicapped persons to vote by not preparing polling stations for them could have had a fundamental impact on the turnout and the results of the elections.”

In a letter of 20 October 1998 the Nowy Sącz Regional Court asked the applicant whether his complaint concerned the validity of the elections or whether he requested amendments to the relevant law.

On 26 October 1998 the applicant informed the Regional Court that his electoral complaint resulted from the fact that he had been deprived of his right to vote in the elections held on 11 October 1998. The applicant referred to section 5 of the Local Elections Act, which stated that every Polish citizen had a right to vote.

On 30 October 1998 the Nowy Sącz Regional Court refused to consider the applicant’s electoral complaint. The court was of the view that it did not fall within “the scope of the subject matter” of an electoral complaint. On 23 November 1998 the applicant appealed against that decision to the Cracow Court of Appeal (*Sąd Apelacyjny*).

On 5 January 1999 the Court of Appeal allowed the applicant’s appeal, quashed the decision of 30 October 1998 and remitted the case to the Nowy Sącz Regional Court.

On 12 March 1999 the Nowy Sącz Regional Court dismissed the electoral complaint lodged by the applicant. The court observed that the applicant had assumed that a ballot paper would be handed to him and cast by his mother. However, he had been advised by the Chairman of the Local Electoral Commission and the Municipal Electoral Commission that this was not permissible under the Local Elections Act. Moreover, the applicant had not considered the possibility of entering the polling station with the assistance of third persons on a stretcher or in a wheelchair as he had felt that it would have been embarrassing and degrading for him. The court further considered that:

“The complainant’s general claim that ‘the organisers of the elections’ should have provided him with the possibility of entering the polling station ... does not fall within the legal scope of an electoral complaint ... since none of the provisions of the Local Elections Act imposes such an obligation on the electoral commissions – on the contrary, section 46 of the Act excludes such help.

Each disability is in itself restricting in different fields of private and public life. It makes it difficult for a handicapped citizen to enjoy his rights. The public authorities are not in position to eliminate all those difficulties. [There] is no statutory or higher provision requiring such [elimination] – even if those provisions concern handicapped persons (Article 69 of the Constitution of the Republic of Poland and Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ... which is part of our legal system, and Article 3 of Protocol No. 1 to the Convention ...).

The complainant was aware of his disability and therefore had a special duty to acquaint himself with his rights and the restrictions under the Local Elections Act before the date of the elections. Ignorance of the law – in particular one so important – cannot excuse anybody. If the complainant had known the law, he would not have expected that it would be breached in order to allow him to vote. He would have taken steps to obtain the assistance of third persons in casting his vote.... As pointed out above, a disability is always a restriction. Therefore, the complainant's argument that he did not consider the possibility of being carried by third persons to the polling station because it would have been embarrassing for him cannot justify his claim that he could not vote for reasons beyond his control. Since the complainant was put in a car – probably by third persons – he could have been carried by those persons, for instance in a chair....”

The applicant appealed to the Cracow Court of Appeal against the decision of 12 March 1999. In his appeal the applicant submitted that:

“Participation in the elections was the only purpose of my presence at the polling station.... I was not aware of the details of the Local Elections Act, and I thought that I would be able to vote in the way I had done before (i.e. ballot papers are handed to me under the stairs, I mark them and a member of my family puts them into the ballot box). However, this time it turned out that casting a vote by a disabled person would be considered as a violation of the electoral law. ...

The Nowy Sącz Regional Court did not take into consideration my good will and my positive civic attitude and indicated several additional solutions that should have been undertaken by me. [The court] tried to establish that I could, and should, have solved all those problems by myself. ... Under section 5 of the Local Elections Act“... every Polish citizen has a right to vote...”. [It] does not impose on the disabled any additional obligations which should be fulfilled before ... entering a polling station.

I do not know of any institution that would offer “election services” with a stretcher. ... Using a stretcher in the way suggested by the court would make the voting grotesque.

In suggesting that the problem could have been solved with the assistance of third persons, the court did not take into account the fact that such persons could have refused help, or that they might not have managed to help (even using a chair - because of the significant degree of my disability ...), or that there could have been a risk of injuries for those who helped and those who were being helped, or that there could have been no people around to help. The standard solution in similar cases is to provide a ramp or a lift.... Even in the case of the polling station in question, it would have been possible to prepare such a ramp at small (when compared with the electoral campaign) financial cost.

I have read several times with disbelief the reasoning of the Nowy Sącz Regional Court's judgment which states that ‘each disability is in itself restricting in different fields of private and public life. It makes it difficult for a handicapped citizen to enjoy his rights’. I think that this odd reasoning ... compromises the institution which protects social justice. By giving such reasoning the Nowy Sącz Regional Court outlined the position of a disabled person in Polish society. With reasoning like this one can deprive disabled persons of several other civic rights. It contradicts the perception of disability in all other democratic countries. The question arises here: can criminal law, tax law or traffic regulations also be applied to a limited extent in the case of a disabled person?

The Polish State imposes on its citizens a number of obligations.... In return it gives every citizen a right to vote and in this way the possibility of having an influence on public life. It is the fundamental right in democratic states and that is what democracy is all about. ...”

On 29 April 1999 the Cracow Court of Appeal dismissed the applicant’s appeal. The appellate court agreed with the Regional Court’s conclusion that the applicant’s case did not disclose a breach of the Local Elections Act.

B. Relevant domestic and international law

1. Relevant constitutional provisions

Article 10 of the Constitution provides:

“1. The system of government of the Republic of Poland shall be based on the separation of and balance between the legislative, executive and judicial powers.

2. Legislative power shall be vested in the *Sejm* and the Senate, executive power shall be vested in the President of the Republic of Poland and the Council of Ministers, and judicial power shall be vested in the courts and tribunals.”

Article 69 of the Constitution provides:

“Public authorities shall provide, in accordance with statute, assistance to disabled persons to ensure their subsistence, adaptation to work and social communication.”

Chapter III of the Constitution, entitled “Sources of Law”, begins with Article 87, which provides:

“1. The sources of the universally binding law of the Republic of Poland shall be: the Constitution, statutes, ratified international agreements, and regulations.

2. Local laws (*akty prawa miejscowego*) passed by the organs [of local government] shall be a source of universally binding law of the Republic of Poland in the territory of the organ passing the laws.”

The last provision in Chapter III is Article 94, which provides:

“On the basis of and within limits specified by statute, the organs of local government and territorial organs of government administration shall enact local laws applicable to their territorially defined areas of operation. The principles of and procedures for enacting local laws shall be specified by statute.”

Chapter IV, entitled “The *Sejm* and the Senate”, begins with Article 95, which provides:

“1. Legislative power in the Republic of Poland shall be exercised by the *Sejm* and the Senate.

2. The *Sejm* shall exercise control over the activities of the Council of Ministers within the scope specified by the provisions of the Constitution and statutes.”

Chapter VII, entitled “Local Government”, contains the following provisions:

“Article 163

Local government shall perform public tasks not reserved by the Constitution or statutes to the organs of other public authorities.

Article 164

1. The municipality (*gmina*) shall be the basic unit of local government.
2. Other units of regional and/or local government shall be specified by statute.
3. The municipality shall perform all tasks of local government not reserved to other units of local government.

Article 165

1. Units of local government shall possess legal personality. They shall have rights of ownership and other property rights.
2. The independence of units of local government shall be protected by the courts.

Article 166

1. Units of local government shall have direct responsibility for performing public duties aimed at satisfying the needs of a self-governing community.
2. If the fundamental needs of the State so require, units of local government may be required by statute to perform other public duties. The mode of transfer and manner of performance of the duties so allocated shall be specified by statute.
3. The administrative courts shall settle jurisdictional disputes between units of local government and units of government administration.

Article 167

1. Units of local government shall be assured public funds adequate for the performance of the duties assigned to them.
2. The revenues of units of local government shall consist of their own revenues and general subsidies and specific grants from the State budget.
3. The sources of revenues for units of local government shall be specified by statute.
4. Any alterations of the scope of the duties or powers of units of local government shall be made in conjunction with appropriate alterations of their share of public revenues.

Article 168

To the extent established by statute, units of local government shall have the right to set the level of local taxes and charges.

Article 169

1. Units of local government shall perform their duties through law-making and executive organs.
2. Election to the law-making organs shall be by direct universal suffrage and shall be conducted by secret ballot. The principles and procedures for nominating candidates and for conducting the elections, and the requirements for the validity of the elections, shall be specified by statute.

3. The principles and procedures for the election and dismissal of executive organs of units of local government shall be specified by statute.

4. The internal organizational structure of units of local government shall be specified, within statutory limits, by their law-making organs.

Article 170

Members of a self-governing community may decide, by means of a referendum, matters concerning their community, including the dismissal of an organ of local government established by direct election. The principles of and procedures for conducting a local referendum shall be specified by statute.

Article 171

1. The legality of the actions of a local government shall be subject to review.

2. The organs exercising review of the activity of units of local government shall be: the Prime Minister and provincial governors and, regarding financial matters, regional audit offices.

3. On a motion of the Prime Minister, the *Sejm* may dissolve a law-making organ of local government if it has flagrantly violated the Constitution or statutes.

Article 172

1. Units of local government shall have the right of association.

2. A unit of local government shall have the right to join international associations of local and regional communities and to cooperate with local and regional communities of other states.

3. The principles governing the exercise by units of local government of the rights referred to in paragraphs 1 and 2 above shall be specified by statute.”

2. *Local Government in a municipality (Law of 8 March 1990)*

A municipality (*gmina*) is the basic unit of local government in Poland. Section 6(1) of the Law of 8 March 1990 provides:

“A municipality is responsible for all local public matters which are not assigned by statutes to other bodies.”

Section 18(1) provides:

“A municipal council (*rada gminy*) is responsible for all matters falling within the competence of a municipality unless statutes provide otherwise.”

Under section 18(2), the exclusive competence of a municipal council includes, *inter alia*, adopting a budget, a land-use plan, economic plans, taxes and resolutions concerning municipal finances.

3. *Local Government in a district (Law of 5 June 1998)*

A district (*powiat*) constitutes a second tier of local government. Section 4 of the Law of 5 June 1998 provides that a district is responsible for matters which are not within the competence of a municipality and which concern, *inter alia*, education, the public health service, social

security, public transport, culture, protection of the environment, agriculture, public order, consumer protection and defence.

Under section 12, the exclusive competence of a district council (*rada powiatu*) includes, *inter alia*, enacting local laws and adopting a budget, taxes and resolutions concerning district finances.

4. Local Government in a region (Law of 5 June 1998)

There are sixteen regions (*województwo*) in Poland. Section 11 of the Law of 5 June 1998 provides that the regional government shall prepare a development strategy for the region. Under section 18, the exclusive competence of a regional assembly (*sejmik województwa*) includes, *inter alia*, enacting local laws and adopting a land-use plan, a budget and resolutions concerning regional finances.

5. Provisions regarding the exercise of the right to vote by disabled persons

(a) Local elections

Section 46 of the Law of 16 July 1998 on Elections to Municipal Councils, 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:

“A disabled voter may, at his or her request, be assisted in voting by another person, other than members of the [electoral] commission and election monitors (*mężowie zaufania*).”

(b) Parliamentary elections

At the relevant time section 40 of the Law of 28 May 1993 on Elections to the *Sejm* of the Republic of Poland (*Ordynacja wyborcza do Sejmu Rzeczypospolitej Polskiej*) provided:

“A disabled voter may, at his or her request, be assisted in voting by another person, other than election monitors.”

The subsequent Law – of 12 April 2001 – on Elections to the *Sejm* and the Senate of the Republic of Poland (*Ordynacja wyborcza do Sejmu Rzeczypospolitej Polskiej i do Senatu Rzeczypospolitej Polskiej*) contains for the first time specific provisions regarding the exercise of the right to vote by disabled persons. Section 52(2) *in fine* states:

“Premises designated as offices of the regional and local electoral commissions shall be easily accessible to disabled persons.”

Section 53(1) reads as follows:

“The mayor shall provide premises of local electoral commissions that are adapted to the needs of disabled voters.”

It further provides that in each municipality there must be at least one local electoral commission with premises adapted to the needs of disabled persons.

(c) Presidential elections

Section 54 of the Law of 27 September 1990 on Elections of the President of the Republic of Poland (*ustawa o wyborze Prezydenta Rzeczypospolitej Polskiej*) contains a similar provision to section 46 of the Local Elections Act (see above).

6. Construction Act

Section 5 of the Construction Act (*Prawo budowlane*) of 7 July 1994, which entered into force on 1 January 1995, requires, *inter alia*, that public buildings and blocks of flats constructed henceforth must secure the necessary conditions for their use by people with disabilities, in particular those in wheelchairs.

7. Council of Europe texts

(a) Recommendation No. R (92) 6 of the Committee of Ministers, of 9 April 1992, on a coherent policy for people with disabilities urges Member States of the Council of Europe to “guarantee the right of people with disabilities to an independent life and full integration into society, and recognise society’s duty to make this possible” so as to ensure “equality of opportunity” for people with disabilities. The public authorities should aim, *inter alia*, to enable people with disabilities “to have as much mobility as possible, and access to buildings and means of transport” and “to play a full role in society and take part in economic, social, leisure, recreational and cultural activities”.

As regards social integration in particular, Recommendation No. R (92) 6 states:

“Legislation should take account of the rights of people with disabilities and contribute, as far as possible, to their participation in civil life. When people with disabilities are not able to exercise their citizens’ rights fully, they should be helped to participate as far as possible in civil life, by means of appropriate assistance and measures.”

(b) Recommendation 1185 (1992), adopted by the Parliamentary Assembly of the Council of Europe on 7 May 1992, on rehabilitation policies for the disabled, emphasises: “Society has a duty to adapt its standards to the specific needs of disabled people in order to ensure that they can lead independent lives.” In furtherance of that aim, it calls on the governments and agencies concerned “to strive for and encourage genuine active participation by disabled people ... in the community and society” and, to that end, “to guarantee ease of access to buildings”.

(c) The revised European Social Charter, adopted by the Committee of Ministers on 1–4 April 1996 and opened for signature on 3 May 1996¹, provides in its Article 15, entitled “Right of persons with disabilities to independence, social integration and participation in the life of the community”:

“With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:

...

3. to promote their full social integration and participation in the life of the community, in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure.”

(d) Recommendation No. Rec(2006)5 of the Committee of Ministers of 5 April 2006 on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society identifies a comprehensive set of objectives and specific actions to be implemented by Member States in this area.

As regards participation in political and public life, Recommendation No. Rec(2006)5 states:

“The participation of all citizens in political and public life and the democratic process is essential for the development of democratic societies. Society needs to reflect the diversity of its citizens and benefit from their varied experience and knowledge. It is therefore important that people with disabilities can exercise their rights to vote and to participate in such activities.”

It further recommends to Member States, among others, “to ensure that voting procedures and facilities are appropriate and accessible to people with disabilities so that they are able to exercise their democratic rights, and allow, where necessary, the provision of assistance in voting.”

COMPLAINTS

1. The applicant complained under Article 6 of the Convention about the unfairness of the court proceedings.

2. He also alleged that he had been deprived of his right to vote on account of his disability and submitted that the facts of his case disclosed a violation of Article 3 of Protocol No.1 and Article 14 of the Convention.

3. The Court raised of its own motion a complaint under Article 8 of the Convention.

1. Poland signed the revised European Social Charter on 25 October 2005.

THE LAW

A. Alleged violation of Article 6 of the Convention

The applicant complained under Article 6 of the Convention about the unfairness of the court proceedings. Article 6, in so far as relevant, provides:

“1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

The Court notes that the impugned court proceedings involved the determination of the electoral complaint lodged by the applicant, in which he protested about having been deprived of his right to vote in the local elections.

The Court considers that the dispute in question determined the applicant's political rights, not his “civil” rights within the meaning of Article 6 of the Convention (see, in the context of local elections, *Cherepkov v. Russia* (dec.), no. 51501/99, ECHR 2000-I, and, in the context of parliamentary elections, *Pierre-Bloch v. France*, judgment of 21 October 1997, *Reports of Judgments and Decisions* 1997-VI, p. 2223, § 50). Accordingly, Article 6 does not apply in the present case.

It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

B. Alleged violation of Article 3 of Protocol No. 1 to the Convention

The applicant further alleged a breach of Article 3 of Protocol No. 1 to the Convention, which provides:

“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”

1. The Government's submissions

The Government stressed that Article 3 of Protocol No. 1 to the Convention applied only as far as elections to legislatures were concerned. In their view, the municipal councils (*radę gmin*), the district councils (*radę powiatów*) and the regional assemblies (*sejmiki województw*) could not be considered “legislatures” within the meaning of Article 3 of Protocol No. 1.

The Government emphasised that the issue of the applicability of Article 3 of Protocol No. 1 to the election of local government organs had already been examined by the European Commission of Human Rights. They referred, *inter alia*, to the case of *X. the United Kingdom* (no. 5155/71, Commission decision of 12 July 1976 DR 6, p. 13) in which, considering

the status of local authorities in Northern Ireland, the Commission observed that “insofar as these local authorities have a legislative function it is confined to the making of by-laws applicable within their areas and these powers are rigidly limited by statute and they have no powers to make rules other than in accordance with the powers conferred by Parliament”. The Government also relied on the Commission’s decision in the case of *Booth-Clibborn and Others v. United Kingdom* (no. 11391/85, Commission decision of 5 July 1985, DR 43, p. 248) in which the Commission considered that the metropolitan county councils “do not possess an inherent primary rulemaking power and those powers which have been delegated to them are qualified by the Parliament of the United Kingdom and exercised subject to that Parliament’s ultimate control”.

The Government submitted further that although local government organs could not be regarded as “legislatures” within the meaning of Article 3 of Protocol No. 1, the Commission found this provision to be applicable to the elections to local parliaments in federal States in cases concerning Austrian and German Länder (see *X. v. Austria*, no. 7008/75, Commission decision of 12 July 1976, DR 6, p. 120, and *Timke v. Germany*, no. 27311/95, Commission decision of 11 September 1995, DR 82-A, p. 158).

Having regard to the above case-law and bearing in mind that Poland is a unitary State (see Article 3 of the Constitution), the Government considered that the organs of local government in Poland did not form part and parcel of legislative power.

The Government further underlined the derivative and secondary nature of the rulemaking powers of the local government organs. They referred to Article 95 of the Polish Constitution, which clearly provided that legislative power was exercised by the *Sejm* and the Senate, and submitted that no other domestic body was vested with competence to enact statutes. Consequently, under the Polish constitutional structure, the organs of local government could not be considered “legislatures” because they could not enact statutes.

They also pointed out that, under Article 87 § 2 of the Polish Constitution, local government organs could pass “local laws” (*akty prawa miejscowego*). Those laws were binding only in the territory of a given municipality, district or a region and could be passed on the basis of and within the limits specified by statute (see Article 94 of the Constitution). It followed, according to the Government, that any rulemaking powers of local government were based on and restricted by statutory regulations. The Government submitted further that, pursuant to Article 163 of the Constitution, local government organs performed public tasks which were not reserved by the Constitution or other statutes to other public authorities.

They also argued that the limited scope of the rulemaking powers exercised by the local government councils did not allow them to be considered as “legislatures”. In particular, the scope of the rulemaking

powers conferred on the local government was restricted to such an extent that it could never be compared to the legislative power exercised by the *Sejm* and the Senate. The Government pointed out that the derivative rulemaking power of local government was limited territorially to the area of a given municipality, district or region. More often than not, the regulations adopted by local government had no influence on the situation of non-residents in respect of land-development plans, local taxes or budget regulations.

The Government further emphasised that the character and scope of the control exercised over local government organs did not allow them to be classified as “legislatures”. Not only was the legality of actions of local government reviewed by the administrative courts, but – even more importantly – the activities of local government organs were subject to the control of the executive branch of the government, that is, the Prime Minister and the regional governors (*wojewodowie*) who represented the government in the regions. The Government stressed that if the local councils exercised genuine legislative powers, their activities would not be subject to the control of the executive. They placed particular emphasis on the fact that, under Article 171 § 3 of the Constitution, the *Sejm*, acting upon the initiative of the Prime Minister, could dissolve a rulemaking organ of local government (council).

In conclusion, the Government submitted that the local government councils did not form part of the legislature of the Republic of Poland, and accordingly elections to such organs did not fall within the scope of Article 3 of Protocol No. 1.

2. The applicant's submissions

The applicant contested the Government's contention that Article 3 of Protocol No. 1 was not applicable to the present case. He claimed that the municipal councils, district councils and regional assemblies should be considered “legislatures” within the meaning of that provision as they were state organs vested with rulemaking powers at local level. The local laws were binding on the territory of a particular municipality, district or region. Members of such organs were elected in the same way as the central authorities.

The applicant argued further that in his case the State had not ensured the conditions necessary for “the free expression of the opinion of the people in the choice of the legislature”. In that connection, he referred to the ruling of the Nowy Sącz Regional Court of 12 March 1999 in which that court had considered that a disabled person was obliged to ensure for himself such conditions as would enable him to enjoy his rights.

3. *The Court's assessment*

The Court first reiterates that the term “legislature” in Article 3 of Protocol No. 1 does not necessarily mean the national parliament: it has to be interpreted in the light of the constitutional structure of the State in question. In the case of *Mathieu-Mohin and Clerfayt v. Belgium*, the 1980 constitutional reform had vested in the Flemish Council sufficient competence and powers to make it, alongside the French Community Council and the Walloon Regional Council, a constituent part of the Belgian “legislature”, in addition to the House of Representatives and the Senate (see *Mathieu-Mohin and Clerfayt v. Belgium*, judgment of 2 March 1987, Series A no. 113, p. 23, § 53, and *Matthews v. the United Kingdom* [GC], no. 24833/94, § 40, ECHR 1999-I).

On the other hand, the Convention organs have found that local authorities, such as the municipal councils in Belgium, the metropolitan county councils in the United Kingdom and the regional councils in France, did not form part of the “legislature” within the meaning of Article 3 of Protocol No. 1 (see *Clerfayt, Legros v. Belgium*, no. 10650/83, Commission decision of 17 May 1985, Decisions and Reports 42, p. 212; *Booth-Clibborn v. the United Kingdom*, no. 11391/85, Commission decision of 5 July 1985, DR 43, p. 236; and *Malarde v. France*, (dec.) no. 46813/99, 5 September 2000).

Furthermore, the power to make regulations and by-laws which is conferred on the local authorities in many countries is to be distinguished from legislative power, which is referred to in Article 3 of Protocol No. 1 to the Convention, even though legislative power may not be restricted to the national parliament alone (see *Cherepkov*, cited above).

The Court notes that Poland is a unitary State and that legislative power is exercised by the *Sejm* and the Senate (see Articles 3, 10 § 2 and 95 § 1 of the Constitution). Moreover, local government has only those powers which are not reserved by the Constitution or statutes to other public authorities (see Article 163 of the Constitution).

The municipal councils, district councils and regional assemblies are the repositories of powers of an administrative nature concerning the organisation and provision of local services. These powers are granted by statute or other subordinate legislation which defines closely and restrictively their field of application. Consequently, the municipal councils, district councils and regional assemblies do not exercise legislative power within the meaning of the Constitution of the Republic of Poland.

Furthermore, the Court notes that the legality of actions of local government at different levels is subject to control exercised by the Prime Minister and the regional governors who represent the government in each of the sixteen regions. Ultimately, in the case of a flagrant violation of the Constitution or a statute, the *Sejm*, acting on an application of the Prime

Minister, may dissolve any municipal council, district council or regional assembly.

The Court concludes that the municipal councils, district councils and regional assemblies do not possess any inherent primary rulemaking powers and do not form part of the legislature of the Republic of Poland. Accordingly, Article 3 of Protocol No. 1 is not applicable to elections to those organs.

It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

C. Alleged violation of Article 8 of the Convention

In respect of the applicant's allegation that he was deprived of his right to vote on account of his disability, the Court raised of its own motion a complaint under Article 8 of the Convention. This provision reads:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

1. The parties' submissions

The Government argued that in the present case no issue arose under Article 8 of the Convention as the facts of the case did not fall within the scope of that provision. They also submitted that participation in local government elections did not constitute an integral part of the applicant's private life.

The applicant maintained that his right to respect for his private life had been breached.

2. The Court's assessment

The first question which arises is whether the facts of the case, in particular the lack of appropriate access for the applicant to a polling station in local elections, fall within the scope of the concept of “respect” for “private life” set forth in Article 8 of the Convention.

In the present case the Article 8 complaint is related in substance not to an action, but to a lack of action by the State. The Court reiterates that while the essential object of Article 8 is to protect the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this negative undertaking, there may be positive obligations inherent in effective “respect” for private

or family life (see, *inter alia*, *X and Y v. the Netherlands*, judgment of 26 March 1985, Series A no. 91, p. 11, § 23, and *Botta v. Italy*, judgment of 24 February 1998, *Reports* 1998-I, p. 422, § 33).

However, the boundaries between the State's positive and negative obligations under this provision do not always lend themselves to precise definition; the applicable principles are, nonetheless, similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and the community as a whole, and in both contexts the State is recognised as enjoying a certain margin of appreciation (see, among many other authorities, *Von Hannover v. Germany*, no. 59320/00, § 57, ECHR 2004-..., and *Draon v. France* [GC], no. 1513/03, § 105, 6 October 2005). Furthermore, even in relation to the positive obligations flowing from the first paragraph, "in striking [the required] balance the aims mentioned in the second paragraph may be of a certain relevance" (see *Powell and Rayner v. the United Kingdom*, judgment of 21 February 1990, Series A no. 172, § 41).

As the Court has had previous occasion to remark, the concept of "private life" is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person (see *X and Y v. the Netherlands*, cited above, p. 11, § 22). It can sometimes embrace aspects of an individual's physical and social identity (see *Mikulić v. Croatia*, no. 53176/99, § 53, ECHR 2002-I). Article 8 also protects a right to personal development, and the right to establish and develop relationships with other human beings and the outside world and it may include activities of a professional or business nature. There is, therefore, a zone of interaction of a person with others, even in a public context, which may fall within the scope of "private life" (see, *inter alia*, *Peck v. the United Kingdom*, no. 44647/98, § 57, ECHR 2003-I). Likewise, the Court has held that the notion of personal autonomy is an important principle underlying the interpretation of Article 8 guarantees (see *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002-III).

The Court notes that in a number of cases it has held that Article 8 is relevant to complaints about public funding to facilitate the mobility and quality of life of disabled applicants (see *Marzari v. Italy* (dec.), no. 36448/9, 4 May 1999; *Maggiolini v. Italy*, (dec.), no. 35800/97, 13 January 2000; *Sentges v. the Netherlands* (dec.), no. 27677/02, 8 July 2003; and *Pentiacova and Others v. Moldova* (dec.), no. 14462/03, ECHR 2005-...). More generally, the Court observes that the effective enjoyment of many of the Convention rights by disabled persons may require the adoption of various positive measures by the competent State authorities. In this respect, the Court refers to various texts adopted by the Council of Europe which stress the importance of full participation of people with disabilities in society, in particular in political and public life (see "Relevant domestic and international law" above).

The Court further notes that the present case relates to the applicant's involvement in the life of his local community and the exercise of his civic duties. Thus, it may be argued that the situation in the present case touches upon the applicant's possibility of developing social relations with other members of his community and the outside world, and is pertinent to his own personal development.

The Court also considers that it cannot be excluded that the authorities' failure to provide appropriate access to the polling station for the applicant, who wishes to lead an active life, might have aroused feelings of humiliation and distress capable of impinging on his personal autonomy, and thereby on the quality of his private life. The Court underlines in this respect that the very essence of the Convention is respect for human dignity and human freedom (see *Pretty*, cited above, § 65).

The Court recalls that in two previous cases which involved complaints brought by disabled persons it held that Article 8 of the Convention was not applicable to situations in which it found no direct and immediate link between the measures sought by an applicant and the latter's private life (see *Botta*, cited above, § 34, and *Zehnalová and Zehnal v. the Czech Republic* (dec.), no. 38621/97, ECHR 2002-V). The first of those cases concerned the right of the disabled applicant to gain access to a private beach at a place distant from his normal place of residence during his holidays, in which the Court found that such right concerned interpersonal relations of such broad and indeterminate scope that there could be no conceivable direct link between the measures the State was to take and the applicant's private life. The second case concerned a complaint that a large number of public buildings in the applicants' home town were not equipped with access facilities for people with impaired mobility, in which the Court found by a majority that the applicants had failed to demonstrate the existence of a special link between the lack of access to the buildings in question and the particular needs of the first applicant's private life.

Having regard to the above considerations, the Court does not rule out the possibility that, in circumstances such as those in the present case, a sufficient link would exist to attract the protection of Article 8. However, the Court does not find it necessary finally to determine the applicability of the Article in the present case since, for the reasons which follow, the application is in any event inadmissible on other grounds.

In cases such as the present one, which concerns the issue of the State's positive obligations inherent in effective "respect" for private life, the Court reiterates that regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole and to the margin of appreciation enjoyed by States in this area.

The Court observes that in the present case this margin of appreciation is even wider as the issue at stake involves the provision of adequate access for the disabled to polling stations, which must necessarily be assessed in

the context of the allocation of limited State resources (see *O'Reilly and Others v. Ireland* (dec.), no. 54725/00, 28 February 2002; *Sentges*, cited above; and *Pentiacova and Others*, cited above). In view of their awareness of the funds available to provide such access for disabled persons, the national authorities are in a better position to carry out this assessment than an international court.

Moreover, the Court notes that the applicant has not shown, as was pointed out by the domestic courts, that he could not have been assisted in entering the polling station by other persons. The Court also observes that section 46 of the Local Elections Act expressly provides that a disabled voter may be assisted in voting by another person, but not by members of the electoral commission or election monitors.

It is also of relevance for the assessment of the respondent Government's compliance with their positive obligations under Article 8 in the present case that the situation complained of concerned one isolated incident as opposed to a series of obstacles, architectural or otherwise, preventing physically disabled applicants from developing their relationships with other people and the outside world.

Bearing in mind the above considerations, the Court considers that the respondent State cannot be said, in the special circumstances of the present case, to have failed to ensure respect for the applicant's private life.

Furthermore, the Court notes that, pursuant to the Construction Act, which entered into force on 1 January 1995, public buildings and blocks of flats constructed after that date must be provided with facilities which are necessary for their use by people with disabilities, in particular those in wheelchairs. Since 31 May 2001, the date on which the Law of 12 April 2001 on Elections to the *Sejm* and the Senate of the Republic of Poland entered into force, the domestic law has also obliged the relevant authorities to provide adequate access for disabled voters to polling stations during parliamentary elections. Those legislative provisions would indicate that the respondent State has not been oblivious to the plight of disabled voters. The development represented by the Law of 12 April 2001 may also be relevant for the present case in as much as the same polling stations are usually used both for national and local elections.

It follows that the complaint under Article 8 of the Convention is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

D. Alleged violation of Article 14 of the Convention taken in conjunction with Article 3 of Protocol No. 1 to the Convention

The applicant also alleged a breach of Article 14 of the Convention read in conjunction with Article 3 of Protocol No. 1 to the Convention. The former provision provides:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

1. The parties' submissions

The Government argued that Article 14 was not applicable to the present case. They referred to their previous submissions that the organs of local government could not be considered “legislatures” within the meaning of Article 3 of Protocol No. 1 to the Convention and that, consequently, Article 14 could not be relied on in the present case.

The applicant, invoking Article 14 in conjunction with Article 3 of Protocol No. 1 to the Convention, submitted that he had been deprived of his right to vote on account of his disability. He stressed that the only reason he had been unable to vote was the lack of appropriate facilities allowing him access to the polling station. He further maintained that in those circumstances the State had not pursued any legitimate aim in depriving disabled persons of the right to vote and that the margin of appreciation afforded to the State had been exceeded.

2. The Court's assessment

The Court reiterates that Article 14 complements the other substantive provisions of the Convention and its Protocols. It has no independent existence, since it has effect solely in relation to “the enjoyment of the rights and freedoms” safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of one or more of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts of the case fall within the ambit of one or more of the latter (see *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, judgment of 28 May 1985, Series A no. 94, p. 35, § 71, and *Inze v. Austria*, judgment of 28 October 1987, Series A no. 126, p. 17, § 36).

As the Court has concluded that Article 3 of Protocol No. 1 to the Convention is not applicable, Article 14 cannot apply to the present case.

It follows that this part of the application is likewise incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

5. In his observations of 26 July 2004 the applicant alleged for the first time a violation of Articles 13 and 17 of the Convention. However, the Court notes that the final decision in the applicant's case was given by the Cracow Court of Appeal on 29 April 1999. It follows that the complaints under Articles 13 and 17 have been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President