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

FORMER SECTION I

CASE OF WIERZBICKI v. POLAND

(Application no. 24541/94)

JUDGMENT

STRASBOURG

18 June 2002

This judgment is final but it may be subject to editorial revision.

In the case of Wierzbicki v. Poland,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mrs E. Palm, *President*,
Mrs W. Thomassen,
Mr J. Makarczyk,
Mr R. Türmen,
Mr B. Zupančič,
Mr R. Maruste,
Mr J. Casadevall, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 23 October 2001 and on 27 May 2002,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 24541/94) against Poland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Mr Piotr Wierzbicki ("the applicant"), on 20 January 1994.

2. The case was referred to the Court by the European Commission of Human Rights on 2 November 1999, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention. The Commission's request referred to former Articles 44 and 48 and to the declaration whereby Poland recognised the compulsory jurisdiction of the Court (former Article 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 § 1 of the Convention.

3. The applicant was represented by Mr A. Grot, a lawyer practising in Warsaw. The Polish Government ("the Government") were represented by their Agent, Mr K. Drzewicki, of the Ministry of Foreign Affairs.

4. On 13 December 1999 the panel of the Grand Chamber determined that the case should be decided by one of the Sections (Rule 100 § 1 of the Rules of Court). It was thereupon assigned to the First Section.

5. The applicant and the Government each filed a memorial.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. In issue No. 4 of a newspaper *"Gazeta Polska",* of which the applicant was an editor-in-chief, a list of informants of the communist secret police was published. This list had been submitted to Parliament (*Sejm*) in June 1992 by the Minister of Internal Affairs, following a resolution of the Parliament. The list was originally meant to remain strictly confidential, but its contents were subsequently immediately leaked to the public. In the same issue of the newspaper, apart from the list, the following text, entitled "Deleted at the Last Minute" ("*Wykreśleni w ostatniej chwili*"), was published: "[The Minister of Internal Affairs] was until the last minute verifying data which he had to submit to Parliament, pursuant to its resolution. A few hours before the list was submitted to [Parliament] he had deleted several names from the list, for lack of conclusive evidence. It transpires from our information that these names were: [...]".The names of three well-known politicians followed.

7. In issue No. 5 of the same newspaper, a text entitled "The List of Informants - a Supplement" ("*Lista konfidentów - uzupełnienie*") was published, which read as follows: "As a result of a misunderstanding, we did not include the following name in the list of persons deleted at the last minute from the Minister of Interior's document, which was published in issue No. 4 of the *Gazeta Polska*: S.N, and belonging to a category of TW (an informant), with a pseudonym [...,] who had been recruited [by the secret police] during his stay in prison." ("*Z wydrukowanej w nr 4 Gazety Polskiej listy <Wykreslonych w ostatniej chwili> wypadło nam w wyniku nieporozumienia nazwisko S.N., kategoria TW, kryptonim [...], który został zwerbowany do współpracy w więzieniu*.")

8. On 30 June 1993 S. N., who was also a candidate for Parliament in elections scheduled for September 1993, brought a court action against the applicant before the Warsaw Regional Court in accordance with Article 139 of the Election Act. He submitted that the newspaper of which the applicant was an editor-in-chief had published information that he had been an informant of the secret police of the former communist regime. He contended that this was false. He demanded that the applicant publicly revoke this statement and apologise for it by placing paid announcements in numerous newspapers.

9. On 1 July 1993 the Warsaw Regional Court declared itself incompetent to deal with the matter and transmitted the case to the Łódź Regional Court.

10. On 22 July 1993 the Łódź Regional Court decided that the case should be considered in ordinary contentious proceedings applicable to claims for protection of reputation under Article 24 of the Civil Code and

transmitted the case to the Warsaw Regional Court. Upon appeal, the Łódź Court of Appeal on 4 August 1993 quashed this decision as it considered that the case should be dealt with by the Łódź Regional Court in special proceedings governed by Article 139 of the Election Act.

11. On 6 August 1993 the Łódź Regional Court summoned the applicant by fax sent to his work address to attend a court hearing scheduled for 7 August 1993. On the same day the applicant's lawyer sent a letter to the court in which he protested against the despatch of the summons to the applicant's place of work instead of to his private address and informed the court that the applicant should be considered as not having been duly summoned. He requested that the hearing be adjourned.

12. At the hearing on 7 August 1993 the Łódź Regional Court summoned the applicant to adduce evidence to show that the information concerning the plaintiff S. N. and his alleged involvement with the communist secret police was true.

13. On 12 August 1993 the applicant submitted a power of attorney in favour of his representative and requested that the case be pursued by way of ordinary contentious proceedings as the proceedings provided for by Article 139 of the Election Act had not led to a decision on the merits within three-day period stipulated in this Act. He requested the court to call as witnesses the former and current Ministers of Internal Affairs as well as J.K., a well-known politician, and to request the Ministry to submit various documents in evidence.

14. On 24 August 1993 the Łódź Regional Court summoned the applicant and his lawyer by notifications sent by fax to their respective work and office addresses to the hearing fixed for 25 August 1993.

15. At the hearing on 25 August 1993 before the Łódź Regional Court the applicant's lawyer was present, but the applicant was not. The court pronounced its decision on the same day. It upheld the plaintiff's claim and ordered the applicant to publicly revoke his statements by placing relevant announcements in numerous newspapers.

16. In reaching this decision, the Łódź Regional Court considered that in the proceedings in question the time-limits for serving summonses set out in the Code of Civil Procedure did not apply. The applicant's lawyer had been aware that the proceedings had been instituted since 6 August 1993; he had been given a power of attorney on 11 August 1993 and had submitted the request to produce evidence on 16 August 1993. Thus, he had had enough time to prepare his arguments. The court indicated that it had requested the Ministry of Internal Affairs to produce the documents requested by the applicant. On 20 August 1993 the Ministry had refused to do so as those documents were subject to official secrecy and could only be produced in court in criminal proceedings, in accordance with the Bureau of State Security Act. The court further observed that it could not call the witnesses proposed by the applicant; they could only have given evidence as to

whether S. N. had been put on the list of informants prepared by the Ministry, but not as to whether S. N had in fact been an informant. Moreover, in view of the serious nature of the allegations advanced against S.N. by the applicant's newspaper, in the absence of any documentary evidence these allegations could not have been considered proved, even if they had been confirmed by the witnesses. Thus, as the applicant had not adduced any other evidence to prove that the information concerning S. N. was true, the court found against him.

17. The applicant appealed against this decision, invoking, *inter alia*, Article 6 of the Convention. He contended that the proceedings were null and void as neither the applicant nor his lawyer had been summoned to the hearing on 25 August 1993 with at least three-days' notice, as provided for by Article 149 § 3 of the Code of Civil Procedure. Furthermore, the applicant's interests could not be protected properly as he did not have sufficient time to prepare his arguments between the date of receipt of the summons and the date of the hearing. The applicant further argued that, as all his requests to call witnesses and evidence had been refused, he had been denied a reasonable opportunity to prove the facts essential for the merits of the decision.

18. On 31 August 1993 the Łódź Court of Appeal dismissed the appeal. The court considered that the complaint concerning the summons was unfounded. Both the applicant and his lawyer had been summoned one day before the hearing, which was justified, given the special nature of the proceedings under Article 139 of the Election Act. The court recalled that, although this provision provided for such cases to be decided within 48 hours, failure to do so did not oblige the court to deal with the case according to the normal procedures for contentious civil proceedings laid down in the provisions of the Code of Civil Procedure. Moreover, the applicant, being aware of the special nature of the proceedings, should have expected that he might be summoned from one day to the next and should have taken effective measures to ensure that the summons reached him in time. These considerations were especially relevant as the applicant was represented by a lawyer who was under a professional obligation to take appropriate measures to this end. In any event, the lawyer received the summons in time to appear at the hearing, even though he contended, unconvincingly, that he had learned about the date of the hearing from a journalist.

As to the merits, the court noted that the lower court had requested the Ministry to submit documents requested by the applicant. However, this request had been refused. In the light of Article 12 of the Bureau of State Security Act, the refusal had to be considered lawful. Moreover, the very fact that an individual's name had been included in the list prepared by the Ministry could not be deemed proof that this person had in fact been an informant. The veracity of information contained in the list had been

repeatedly called into question both by interested parties and, more widely, in numerous press articles. It had been emphasised that the list had been prepared and used as a weapon in a political battle, intended to discredit the persons concerned. Therefore, the veracity of a claim that a particular person had been a police informant could not possibly be established solely on the basis of the list itself and without prior verification of the list and, in particular, without some legally established means whereby the rights of persons branded as police informants could be defended. The court accordingly considered that the burden of proof lay with the defendant, who had failed to demonstrate that, at the time of the publication of the information at issue, he had possessed sufficient evidence that S.N. had been an informant as alleged.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Election Law of 28 June 1991

19. Article 139 of the Election Law of 28 June 1991 provided that a candidate in parliamentary elections could bring a court action seeking rectification of information published about him/her during the election campaign and claiming compensation. The court was required to decide the case within 48 hours. The court could order the publisher of the information to rectify the information immediately and to apologise publicly to the plaintiff, if the information proved to be false or inaccurate. The court could order the defendant to pay compensation to the plaintiff. The provisions of the Code of Civil Procedure were applicable to proceedings brought before the courts on the basis of this provision.

B. Civil Code

20. Article 6 of the Civil Code provides that the person who relies on a fact relevant to his or her case bears the burden of proving that fact. Pursuant to Article 232 of the Code of Civil Procedure, the parties to civil proceedings are under an obligation to adduce evidence to establish the facts relevant to their claim. Under Article 227 of the Code of Civil Procedure, evidence can be taken as to the facts which are of relevance for the outcome of the case.

C. Case-law of Polish courts concerning Article 139 of the 1991 Election Law

21. As regards the burden of proof, the case-law of the Polish courts in proceedings instituted on the basis of Article 139 of the 1991 Election Law

was inconsistent. In certain cases the courts held that an analysis of Article 139 read together with the general principle of Article 6 of the Civil Code led to the conclusion that the burden of proof, in cases in which the information concerning a candidate was harmful to his or her good reputation, lay on the person who had published the information in question. The courts argued that in such cases the approach taken in Article 24 of the Civil Code should be followed, in that there was a presumption that attacks on the personal rights of the plaintiff were unlawful. Consequently, it fell to the defendant to prove their lawfulness, in particular by pointing out that the information published about the plaintiff, and which was deemed to be harmful to him or her, was true. Thus the plaintiff was exempted from the obligation to demonstrate that the allegations against him were untrue (the Kielce Regional Court, I Ns 60/93, Dec. of 11.09.1993; the Krakow Court of Appeal, I Acz 406/93, Dec. of 16.09.1993).

In another decision, the Katowice Court of Appeal held that the plaintiff in Article 139 proceedings could not be required to adduce evidence in order to prove that something had not occurred (the Katowice Court of Appeal, I Acz 590/93, Dec. of 30.08.1993). In a further case in which the court ordered the defendant to prove that statements about the candidate were true, the court emphasised that, in conformity with the principle *ei incumbit probatio qui dicit, non qui negat*, it was not possible to require the plaintiff to produce evidence to prove that certain facts had not occurred (the Gdańsk Court of Appeal, Acz 632/93, Dec. 19.08.1993).

22. On the other hand, in certain decisions given on the basis of Article 139 of the Election Law, the courts held that that provision in conjunction with Article 6 of the Civil Code required the plaintiff to prove that the statements contained in the contested publications were untrue (the Katowice Regional Court, II Ns 88/93, Dec. 10.09.1993; the Katowice Regional Court I Acz 660/93, Dec. 18.09.1993).

PROCEEDINGS BEFORE THE COMMISSION

23. The applicant lodged his application with the Commission, alleging a violation of Article 6 § 1 of the Convention.

24. The Commission declared the application partly admissible on 26 February 1996. In its report of 21 October 1999 (former Article 31 of the Convention) it expressed the opinion, by thirty votes to one, that there had been no violation of Article 6 § 1 of the Convention on account of the fact that the court refused to take all evidence proposed by the applicant.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

25. The applicant first submitted that the facts of the case amounted to a breach of Article 10 of the Convention.

26. The Government did not address this issue.

27. The Court observes that at the admissibility stage of the proceedings before the Commission, the applicant, who was represented by lawyers, never raised even the substance of a complaint under Article 10. The complaints submitted by the applicant were clearly limited to the procedural aspects of the domestic proceedings, which he considered unfair, and he relied throughout the Commission proceedings on Article 6 of the Convention in this connection. The applicant now argues for the first time before the Court that the outcome of the proceedings should be analysed in the light of Article 10 of the Convention and that the decisions of the domestic courts amount to an interference with his right to freedom of expression.

28. The Court reiterates that that the scope of its jurisdiction in cases such as the instant one (see paragraph 2 and 4 above) continues to be determined by the Commission's decision on admissibility, it having no power to entertain new and separate complaints (see, among other authorities, the L.C.B. v. the United Kingdom judgment of 9 June 1998, *Reports of Judgments and Decisions* 1998-III, pp. 1402-03).

It follows that the Court has no jurisdiction to consider the complaint under Article 10.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

29. The applicant complained that in the domestic proceedings he was prevented from adducing evidence based on documents and that the Łódź Regional Court also refused to call the witnesses proposed by him. He was thereby deprived of all means of effectively arguing his case before that court. This, in the applicant's submission, amounted to a breach of Article 6 § 1 of the Convention, which in its relevant part reads:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

A. Arguments before the Court

30. The applicant first emphasised that his newspaper had published information of public interest concerning S.N., who, at the material time, was a candidate for election to Parliament. The information revealed that

S.N. had been in the past an informant of the communist secret police. This information had not originated from any investigation made by the applicant's newspaper into the archives of the secret police. Rather, it was taken from an official document, namely the list of former secret-police informants issued in June 1992 by the Minister of Internal Affairs acting upon a resolution of the Parliament. However, just before the submission of this list to Parliament, A.M., the then Minister of Internal Affairs, deleted S.N.'s name from it. The impugned article in the "*Gazeta Polska*" therefore consisted of two elements: firstly, the information that S.N. had been an informant, which was derived from the list drawn up by the Ministry; secondly, the true information that the Minister at the last moment deleted this name from the list before its submission to Parliament. In the applicant's opinion, the information about S.N. had, beyond any doubt, the status of information contained in an official document. Moreover, the impugned publication contained only information, and not statements of opinion.

31. The applicant stressed that under the relevant provisions of the Press Act of 1984, in particular its Article 34, he was, as an editor-in-chief, under an obligation to publish official communiqués issued by the highest State authorities. Furthermore, he was not to be held responsible for the contents of such communiqués. The applicant further relied on principles established in the case-law of the Convention organs concerning freedom of expression, which constituted one of the essential foundations of a democratic society.

32. The applicant further referred to the Government's submission that in the proceedings at issue in the present case, he was prevented under Article 12 of the Bureau of State Security Act from either submitting evidence based on documents of this State agency or calling as witnesses persons who had been State agents. Given those restrictions, the applicant, who had to bear the burden of proof in accordance with the provisions of the Code of Civil Procedure, was in no position to defend his case. Had he wished to avoid liability for making public the impugned information, the only feasible course of action open to him would have been to refrain from disclosing the information to the public. However, this would not have been compatible with his professional obligations as a journalist and with the constitutional principle of the transparency of public life.

33. The applicant further submitted that the courts refused to call his proposed witnesses. The courts, when doing so, overlooked the fact that these persons, who were under an obligation to respect the confidentiality of information acquired in the course of their functions as State agents, might have agreed, had they been called to testify, to give their testimony in full awareness that they would be in breach of official secrecy rules. The applicant further called into question the relevance of the very notion of a "State secret", in the context of the present case. He insisted that this term could not be legitimately used in respect of documents originating from the activities of the communist secret police, since following the fall of the

communist regime the character of the State had fundamentally changed. It was therefore doubtful whether these documents could legitimately enjoy protection afforded by the mechanisms designed to ensure official secrecy under the laws of the present democratic State. As regards the probative value of these documents, the applicant stated that no convincing arguments had been advanced by the Government to show that they lacked substance.

34. The applicant further submitted that Polish law did not prohibit the taking of evidence from witnesses if there was no documentary evidence available. It was for the courts to assess the evidence before them, including the testimony of witnesses. In the present case, the courts did not take any evidence, either from documents or from witnesses, and had thereby deprived themselves of the opportunity of assessing the evidence in the manner provided by law.

35. The Government submitted that the refusal to take evidence in the proceedings was in compliance with both the relevant requirements laid down by Polish law and with the requirements of a fair hearing within the meaning of Article 6 of the Convention. In the Government's submission, and as regards the evidence of witnesses, the courts refused to call the witnesses proposed by the applicant on the ground that their testimony would not have been relevant for the determination of the case. The courts considered that in the absence of any documentary evidence these witnesses would not have been able to contribute reliably to establishing whether S.N. had been an informant of the secret police. They would only have been able to testify as to whether S.N.'s name had indeed been originally included in the list and later deleted. Under Polish law pertaining to the taking and assessment of evidence, the courts were clearly been empowered to take such a decision.

36. As regards the refusal to take evidence from the documents of the Bureau of State Security, which were covered by official secrecy, the Government asserted that Article 12 of the Bureau of State Security Act made it illegal to impart information acquired in the course of the Bureau's operations to entities other than a court or a prosecutor within the framework of criminal proceedings. The first-instance court requested the Ministry of Internal Affairs to submit relevant documents, but the Ministry, having regard to this provision, was under an obligation to refuse access to such documents for the purposes of the proceedings in the present case, which were clearly of a civil character. Consequently, the courts' conduct in the applicant's case was in conformity with the applicable laws.

37. The Government pointed out that it was in the first place for the national judicial authorities to ensure that the requirements of a fair hearing were satisfied. They submitted that, in the circumstances of the present case, the refusal to take evidence did not amount to a disproportionate restriction on the applicant's ability to defend himself in the proceedings. Accordingly, there was no breach of Article 6 of the Convention.

38. The Commission in its (former) Article 31 report adopted on 21 October 1999 considered that in the circumstances of the present case, in which the applicant was unable to adduce any evidence to substantiate the newspaper's factual allegation that S.N. had been an informant of the secret police, the provisions of Article 12 of the Bureau of State Security Act did not amount to a disproportionate restriction on the applicant's ability to argue his case before the courts.

B. The Court's assessment

39. The Court first reiterates that, as a general rule, the assessment of the facts is within the province of the national courts (*García Ruiz v. Spain* [G.C.] no. 30544/96, § 28 ECHR 1999-I). Article 6 § 1 places the "tribunal" under a duty to conduct a proper examination of the submissions, arguments and evidence adduced by the parties, without prejudice to its assessment of whether they are relevant to its decision (see the Van de Hurk v. the Netherlands judgment of 19 April 1994, Series A no. 288, p. 19, § 59). The Court further observes that the admissibility of evidence, as well as the taking of evidence, are governed primarily by the rules of domestic law and that it is, in principle, for the national courts to assess the evidence before them (see the Sidiropoulos and Others v. Greece judgment of 10 July 1998, *Reports* 1998-IV, p. 1617, § 45).

Article 6 of the Convention does not explicitly guarantee the right to have witnesses called or other evidence admitted by a court in civil proceedings. Nevertheless, any restriction imposed on the right of a party to civil proceedings to call witnesses and to adduce other evidence in support of his case must be consistent with the requirements of a fair trial within the meaning of paragraph 1 of that Article, including the principle of equality of arms. As regards litigation involving opposing private interests, equality of arms implies that each party must be afforded a reasonable opportunity to present his case - including his evidence - under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent (see the Dombo Beheer v. the Netherlands judgment of 27 October 1993, Series A no. 274, pp. 18-19, §§ 31-33).

40. The Court observes that the applicant's newspaper published information about S.N., which could clearly be considered defamatory. It was asserted that his name had originally been included in the list of former informants of the secret police prepared by the Ministry of Internal Affairs, but had been deleted just before this list was disclosed to Parliament. Moreover, it was also stated as a fact that S.N. had been an informant, recruited during his time in prison.

41. However, it was not in dispute between the parties to the domestic proceedings that S.N.'s name had not been included in the list of police informants submitted to Parliament by the Minister of Internal Affairs in

June 1992. Therefore, the Court considers that the applicant, when publishing the information in question, could not have supposed that the information concerning S.N.'s alleged involvement with the communist secret police was simply part of a document issued by public authorities and enjoying official status. That would have been the case only if S.N.'s name had indeed been on that list.

42. The Court further observes that, as a journalist, the applicant was not under an obligation to prove that the statements concerning S.N. which his newspaper published were true. However, it could have been reasonably expected that he had some reliable grounds on which to believe that these statements corresponded to the truth. In that connection, the Court's attention has been drawn to the fact that it was acknowledged in the offending article that the Ministry had decided not to include S.N.'s name in the list for lack of conclusive evidence. The applicant, as the editor-in-chief of the newspaper, must therefore have been aware that there was insufficient evidence in the archives of the Ministry to make it possible to establish that S.N. had been an informant. The Court also notes that the applicant's newspaper failed, in publishing the information, to adduce or to refer to any other evidence in its possession, documentary or otherwise, capable of corroborating the allegation against S.N. Moreover, there is no indication that, had the applicant had at his disposal any documentary evidence capable of supporting the allegation, he would not have been able to adduce such evidence before the courts.

43. The Court has examined whether Article 12 of the Bureau of State Security Act amounted to an undue restriction on the applicant's right to adduce evidence in support of his case. It notes, firstly, that this Article did not impose a blanket prohibition on the disclosure of such information, but limited such disclosure to proceedings of a criminal nature. The applicant was or should have been aware that any documents containing such information were covered by official secrecy and that they could not be disclosed in court in proceedings other than criminal proceedings. Moreover, the Court also observes that the Regional Court did not reject *de plano* the applicant's request for documentary evidence to be admitted, but first requested the Ministry of Internal Affairs to submit the relevant documents to the court. Thus it cannot be held against the court that it had failed to consider the applicant's request to admit evidence.

44. The Court also notes that in his pleadings of 12 August 1993 (see § 13 above) the applicant requested the court to call as witnesses the former and current Ministers of Internal Affairs and J.K., a well-known politician. These requests were subsequently refused. In the first-instance decision of 25 August 1993 the Regional Court observed that it would not call the witnesses proposed by the applicant; they could only have given evidence as to whether S.N. had been put on the list of informants prepared by the Ministry, but not as to whether S. N had in fact been an informant.

Moreover, the court added that in view of the serious nature of the allegations advanced against S.N. by the applicant's newspaper and in the absence of any documentary evidence, these allegations could not have been verified by witness evidence alone. Thus, as the applicant had not adduced any other evidence to prove that the information concerning S. N. was true, the court found against him.

In the appellate proceedings, the Łódź Court of Appeal examined the applicant's complaint concerning the refusal to call witnesses and concluded that in view of the character of the allegations against S.N. and in the absence of any documentary evidence in the applicant's possession, the veracity of these allegations could not have been verified by witness evidence alone.

45. In this connection, the Court reiterates that it is the domestic courts which are best placed for assessing the relevance of evidence to the issues in the case (see, amongst many authorities, the Vidal v. Belgium judgment of 22 April 1992, Series A no. 235-B, pp. 32-33, § 32; the Edwards v. the United Kingdom judgment of 16 December 1992, Series A no. 247-B, § 34). In the circumstances of the present case, the Court is satisfied that the domestic courts examined the applicant's requests to have witnesses called and gave detailed reasons for their refusals, which, in the Court's view, were not tainted by arbitrariness. For these reasons, the refusal to take evidence proposed by the applicant did not amount to a disproportionate restriction on his ability to present arguments in support of his case in the proceedings.

46. Accordingly, there has been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that, it has no jurisdiction to consider the applicant's complaint under Article 10 of the Convention;

2. *Holds* by 6 votes to 1 that there has been no violation of Article 6 § 1 of the Convention.

Done in English and notified in writing on 18 June 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Elisabeth PALM
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Mrs W. Thomassen is annexed to this judgment.

E.P.
M.O'B.

DISSENTING OPINION OF JUDGE THOMASSEN

I do not share the views of my colleagues concerning the finding that Article 6 § 1 is not violated.

The applicant, editor-in-chief of a newspaper, was sued by a politician, S.N., a candidate for Parliament in elections, because S.N. claimed that the newspaper had published the false information that he had been an informant of the secret police of the former communist regime.

The newspaper had published a list of informants of the communist secret police, which was submitted to Parliament by the Minister of Internal Affairs following a resolution of the Parliament. In one of the issues of the newspaper the following text was published: "[The Minister of Internal Affairs] was until the last minute verifying data which he had to submit to Parliament, pursuant to its resolution. A few minutes before the list was submitted to [Parliament] he had deleted several names from the list, for lack of conclusive evidence. It transpires from our information that these names were: [...]". The names of three well-known politicians followed.

In another issue of the same newspaper, a text was published, which reads as follows: "As a result of a misunderstanding, we did not include the following name in the list of persons deleted at the last minute from the Minister of Interior's document [...]: S.N., and belonging to a category of TW (an informant), with a pseudonym [...]".

By way of a defence in these proceedings the applicant had to prove the truth of the statements.

He was however not allowed by the national courts to hear witnesses and documentary evidence asked for by the Łódź Regional Court was not produced by the Ministry of Internal Affairs.

The applicant was required to renounce publicly the statement concerned and apologise for it by placing paid announcements in numerous newspapers.

One reason for the refusal to hear the witnesses proposed by the applicant (the former and current Ministers of Internal Affairs and a politician) was that these witnesses could only give evidence as to whether S.N. had been put on the list of informants prepared by the Ministry but not that S.N. in fact had been an informant.

This refusal deprived the applicant of the possibility of proving the truth of what was the main point in the article, namely that S.N. was placed on the list by the Ministry and that his name was taken off it before the list was finalised.

It deprived him also of the possibility of proving that S.N. in fact had been an informant, for which he bore the burden of truth.

It does not however seem obvious that the hearing of these witnesses could not have greatly assisted in the establishment of the facts asserted by

the applicant, taking into account the position of two of them, the former and current Ministers of Internal Affairs who were responsible for the drawing up and publication of the list.

The applicant was thus placed in an impossible procedural position the more since the Ministry of Internal Affairs had refused to produce the documents requested by the Łódź Regional Court.

Another argument of the national courts for not hearing the witnesses was that the allegations were of such a serious character that their veracity could not have been verified by witness evidence alone.

It is true that this would have made the hearing of any witness sought to be called by the applicant of a rather limited interest for the outcome of his case.

However, I do not find this a persuasive reason for concluding, as the majority of the Court does in § 45, that the national courts were free to refuse to have witnesses called.

On the contrary, it shows that the applicant was deprived of the very essence of his right to present his case effectively before the court.

My conclusion is therefore that the applicant was convicted without having had a fair trial and that Article 6 § 1 is violated.