

# Protection of the Pillars of Electoral Freedom Based on the Case Law of the Common Courts

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**Abstract**— In this article, the focus is on the exercise of the right to freedom of expression during election campaigns. This encompasses the freedom to hold opinions as well as to receive and impart information in the pre election period. Based on an analysis of the case law of Polish district courts and courts of appeal, it has been established that these courts, relying on the provisions of the Electoral Code, safeguard the exercise of freedom of speech and the freedom to express opinions, which together constitute fundamental pillars of electoral freedom. In addition to a review of judicial decisions and, where necessary, the relevant literature, the article also employs the dogmatic legal method (statutory analysis).

**Keywords**— freedom rights, electoral campaigning, election campaign, judicial case law, Electoral Code

## I. INTRODUCTION

Every individual has the right to freedom of expression, including during election campaigns. This right derives primarily from Article 19 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 and amended by Protocols Nos. 3, 5 and 8, and supplemented by Protocol No. 2 (Journal of Laws 1993, No. 61, item 284). The provision states that the freedom of expression includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authorities and regardless of frontiers.

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According to this provision, freedom of expression encompasses the freedom to hold opinions and the freedom to receive and impart information and ideas without interference by public authorities and irrespective of national borders.

The Constitutional Tribunal has also held that freedom of expression in public life is of fundamental importance, owing in particular to its function during elections, namely the free and extensive circulation of views and information from political parties and electoral committees to citizen voters. The Tribunal further clarified that the expression of opinions in the public sphere includes, inter alia, the externalisation of assessments, views and demands relating to the activities of public authorities, public officials and political parties, as well as matters of political and social relevance. This encompasses, among other forms, the posting of election related posters and slogans (Judgment of 20 July 2011, K 9/11, *Legalis* no. 399547).

Restrictions on freedom, including freedom of expression during election campaigns, may be introduced solely by statute (cf. Article 31(3) of the Constitution of the Republic of Poland).

It follows from the above that freedom of speech, freedom to express opinions, freedom to articulate views, freedom of political debate, and the associated freedom to receive and impart information and ideas constitute the foundation—the pillar—of every electoral process (the pillars of electoral freedom).

The purpose of this article is to determine, on the basis of the case law of district courts and courts of appeal competent in electoral cases, how these pillars of electoral freedom are implemented in Poland. The research thesis is as follows: district courts and courts of appeal, acting pursuant to Article 111(2) and (3) of the Act of 5 January 2011 – the Electoral Code, safeguard the realisation of the pillars of electoral



freedom.

The article presents a review of the relevant case law—both that published in various judicial repositories and that remaining unpublished, including decisions of the District Court in Sosnowiec, where the author serves as a judge. The dogmatic legal method has also been applied, in particular through an analysis of Article 111(2) and (3) of the Electoral Code of 5 January 2011. Where necessary, views expressed in the legal literature have been cited. Above all, the analysis of the case law and the applicable statutory framework has enabled verification of the research thesis.

## II. THE DISPUTE RESOLUTION FUNCTION UNDER THE ELECTORAL CODE

Pursuant to Article 111(1) of the Act of 5 January 2011 – the Electoral Code (consolidated text: Journal of Laws 2025, item 365; hereinafter: the Electoral Code), where electoral materials—including those disseminated in the press within the meaning of the Press Law Act of 26 January 1984—such as, in particular, posters, leaflets and slogans, as well as statements or other forms of electoral campaigning, contain false information, a candidate or the election proxy of the concerned electoral committee is entitled to submit an application to the district court for the issuance of an appropriate ruling.

This provision gives concrete expression in Polish law to the protection of free elections and to the freedom of expression, in particular the freedom of political debate (cf. judgment of the ECtHR of 14 October 2021, application no. 20422/15). Moreover, the freedom of expression encompasses the freedom to hold opinions and to receive and impart information and ideas, as guaranteed by the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Freedom is defined as the ability to make autonomous decisions and to act upon them (Augustyniak, 2006, p. 13). According to the Szczecin Court of Appeal (order of 23 October 2018, I ACz 740/18), freedom is the ability to undertake actions of one's own choosing, provided that such actions are not prohibited by the legislature (Górecki, 2016, pp. 117).

In the context of safeguarding free elections and the freedom of expression, the essential function of judicial dispute resolution arising in the course of an election campaign is the protection of the integrity of the electoral process (cf. order of the Szczecin Court of Appeal of 23 October 2018, I ACz 740/18).

According to the Polish Language Dictionary of the Polish Scientific Publishers PWN (<https://sjp.pwn.pl/sjp/rzetelny;2518658.html>; accessed 1 December 2025), the term *rzetelny* (“reliable” or “fair”) denotes someone who “duly fulfils their obligations,” “is as they should be, meeting the required standards,” and “is truthful and credible.” The Supreme Court has likewise explained that the term “*rzetelny*” signifies conduct that is responsible, compliant with professional standards, and honest (judgment of 20 June 2001, I KKN 1135/98, OSNC 2002/2/23).

The objective, therefore, is to ensure that the electoral

process is as it ought to be—meeting the required standards and remaining consistent with the truth. All of this serves to enable voters to make appropriate and informed decisions on the basis of accurate information concerning the realities of public life (cf. order of the Szczecin Court of Appeal of 23 October 2018, I ACz 740/18; order of the Kraków District Court of 20 October 2014, IX GNs 1/14).

The aims of the electoral process are as follows:

- to guarantee voters not only procedural but also substantive freedom of choice;
- to assess the correctness of the conduct of the election campaign, political competition, and the principles of fair electoral contest (the protection of the public interest);
- to protect voters;
- and, indirectly, to protect participants in the election campaign (candidates and electoral committees).

All of these elements form part of the freedom of speech and freedom of expression and thus constitute the pillars of the electoral process.

## III. PROCEDURAL BACKGROUND AND JUDICIAL FINDINGS

Proceedings instituted under Article 111 § 1 of the Electoral Code constitute non ex officio, motion based proceedings. This means that the court does not act on its own initiative. Consequently, even if the court becomes aware of irregularities in the electoral process, it cannot intervene independently; rather, it is required to await the initiative of entities vested with standing—namely, a candidate or the election proxy of an interested electoral committee.

In circumstances where a motion has been filed but cannot receive proper consideration due to non compliance with formal requirements—and the applicant, despite being summoned by the presiding judge to remedy the deficiencies within one week under pain of having the pleading returned (Article 130 § 1 of the Code of Civil Procedure in conjunction with Article 13 § 2 of the Code of Civil Procedure), fails to supplement the missing elements within the prescribed time limit—the motion is returned. Such return produces no legal effects associated with the filing of a motion with the court (Article 130 § 2 of the Code of Civil Procedure in conjunction with Article 13 § 2 of the Code of Civil Procedure).

Only once the motion has been properly submitted does the court have a duty—pursuant to Article 111 § 1 of the Electoral Code—to determine whether the following conditions have been met:

- Whether the matter involves electoral campaigning;
- Whether the disseminated information is connected to the electoral campaign;
- Where the information is being disseminated;
- Whether the disseminated information is false.
- As a first step, the court must assess whether the case involves electoral campaigning.

Pursuant to Article 105 §§ 1 and 2 of the Electoral Code, electoral campaigning constitutes any public activity aimed at inducing or encouraging voters to cast their vote in a particular

manner or in favour of a candidate nominated by a specific electoral committee. Electoral campaigning may be conducted from the date on which the competent authority accepts the notice of establishment of an electoral committee, and only in accordance with the rules, forms, and locations prescribed by the Code.

A form of electoral campaigning includes the dissemination of electoral materials, as well as statements or other forms of communication in the press or through other channels of social communication, whose purpose is either to persuade voters to vote in a particular way or to discourage them from voting in a specific manner.

An example of electoral campaigning is addressing a candidate directly at various campaign meetings or during sessions of the municipal council (I Ns 59/24, unpublished decision). The District Court in Piotrków Trybunalski (I Ns 171/18, LEX No. 2568432) determined that posts published on the candidate's Facebook profile constituted electoral campaigning, as they concerned the campaign and were intended to influence voters. Similarly, in case I Ns 76/24 of the District Court in Sosnowiec (unpublished decision), the dissemination of information about a candidate contained in a video posted on a social media platform was deemed a form of electoral campaigning.

The participants' activities must take place during the electoral campaign and be connected to it. In other words, the disseminated information must have a nexus with the electoral campaign.

Polish law does not provide a statutory definition of an electoral campaign. In the legal doctrine, it is indicated that an electoral campaign is a form of organized activity characteristic of democratic and free elections, undertaken by participants in the political marketplace during the period immediately preceding the elections. Its aim is to achieve specific political benefits—most commonly, securing the election of a candidate to a particular office or representative body. This activity employs instruments of political marketing and various methods of communicating with voters, offering them the opportunity to obtain information about political parties, candidates, and their programmes, as well as to articulate their own needs (Rakowska Trela, 2015, pp. 53–62).

A necessary condition for establishing a connection with the electoral campaign is the temporal and substantive coincidence between broadly construed statements and other forms of communication, on the one hand, and the ongoing electoral campaign and the act of voting, on the other. This includes situations where such statements or communications are disseminated with the aim of influencing the electoral outcome (cf. decision of the Court of Appeal in Łódź of 4 November 2014, I ACz 1695/14).

Electoral campaigning may originate from a rival candidate, an electoral committee, supporters of a particular candidate, or opponents of a particular candidate. Thus, it encompasses all forms of campaigning, irrespective of their source (similarly, see the decision of the Court of Appeal in Szczecin of 3 October 2018, I ACz 694/18, LEX No. 2575169).

Information disseminated within the framework of

campaigning may directly concern the opposing candidate or the candidate themselves, or the persons closest to them (such as family members or collaborators). The information may also relate to the opposing candidate, the candidate, or their close associates only indirectly.

The next issue concerns the place and manner in which the information is disseminated.

Article 111 § 1 of the Electoral Code itself indicates that the provision concerns information disseminated in the press. Pursuant to Article 7(2)(1) of the Act of 26 January 1984 – Press Law (consolidated text: Journal of Laws of 2018, item 1914), press denotes periodical publications which do not constitute a closed and uniform whole, appear no less frequently than once a year, bear a permanent title or name, a current issue number and date, and include, in particular: newspapers and magazines, news agency services, permanent telex transmissions, bulletins, radio and television programmes, as well as film chronicles. The term press also covers all existing and emerging mass communication media resulting from technological progress, including broadcasting stations and in house radio and television networks disseminating periodical publications by means of print, vision, sound or other techniques of distribution. The press furthermore includes groups of individuals and individual persons engaged in journalistic activities.

The provision further refers to information disseminated in electoral materials, in particular posters, leaflets, and slogans, as well as statements or other forms of electoral campaigning. This encompasses not only electoral materials within the meaning of Article 109 of the Electoral Code (thus, not only fixed and publicly distributed communications originating from an electoral committee).

In its decision of 18 October 2018 (I ACz 727/18, LEX No. 2575173), the Court of Appeal in Szczecin emphasized that both statements made by individuals engaged in the electoral campaign and any publications capable of influencing its outcome are regarded as forms of electoral campaigning and electoral propaganda.

It should be emphasized that the provision encompasses all statements or other forms of electoral campaigning disseminated in the press as well as through other channels of social communication. An analysis of the case law allows for distinguishing the following forms (methods) of disseminating information:

- a. articles published in local newspapers;
- b. online editions of local newspapers;
- c. articles in online bulletins;
- d. posts on social media platforms;
- e. comments posted underneath social media entries;
- f. videos recorded with a mobile phone;
- g. videos posted on TikTok;
- h. live broadcasts of municipal council sessions.

Claims brought under the electoral procedure should, in principle, be available with respect to all electoral materials, provided that the factual assertions contained therein (or factual assertions affecting the personal rights of the concerned individual) may, in any way, relate to the personal or property interests of a candidate or an electoral committee (Skubisz

Kęпка, 2015, pp. 22-411; Rakowska Trela, 2011, pp.12-20).

The next task of the court is to determine whether the information at issue is false. Judicial protection under Article 111 § 1 of the Electoral Code extends exclusively to the truthfulness of the data presented during the electoral campaign (cf. the decision of the Court of Appeal in Katowice of 13 October 1998, I ACz 1026/98, OSA 2000, No. 4, item 17).

First, it must be determined whether the statement in question concerns a fact. Only a fact possesses an objective character. Every value judgement, by contrast, is inherently subjective and depends on the viewpoint of the person expressing it. Such an assessment reflects that person's opinion on a given matter, shaped by their education, life experience, beliefs, and convictions. Statements of this nature cannot be evaluated according to the binary criterion of "true" or "false," since it is evident that only facts may be verified in this manner. An evaluative statement—being the author's subjective position—cannot be regarded as unlawful, given that the freedom to express one's views is a constitutionally protected value (Articles 31 and 54 of the Constitution of the Republic of Poland), as well as a right safeguarded under international instruments (Article 10 of the European Convention on Human Rights).

According to the Court of Appeal in Białystok, a fact is "a specific state of affairs, an event—something that has occurred or is occurring in reality" (decision of the Court of Appeal in Białystok of 10 November 2006, I ACz 872/06, OSA 2006, No. 4, item 26).

Statements of fact are descriptive in nature and contain information about specific occurrences. Their purpose is to depict reality and convey to the audience that "this is so" or "this is not so." Such statements may be classified according to the criterion of truth or falsity, and their veracity may be subject to evidentiary verification.

Value judgments (e.g., evaluative opinions, generalisations, conjectures, or theories), by contrast, are non descriptive statements expressing views, assessments, or evaluative opinions regarding a general state of affairs, without purporting to describe it. These statements are not subject to classification under the truth/falsehood dichotomy, nor can their veracity be established through evidence (Kowalski 2021).

The degree or scope of conduct that may be regarded as "adequate" is manifestly a matter of assessment and eludes evaluation according to the "true"—"false" criterion. Each participant—as well as each voter—is entitled to their own view as to whether the efforts undertaken by municipal authorities to secure repairs of county roads are adequate or inadequate. A statement concerning this issue, being a value judgment, does not fall within the scope of protection afforded by the provisions of the Electoral Code of 5 January 2011 (cf. the decision of the Court of Appeal in Katowice of 2 November 2018, I ACz 1198/18, LEX No. 2580296).

The scope of proceedings under this procedure is significantly narrower than in cases concerning the infringement of personal rights. This is because the court does not consider the full range of issues relating to the violation of a personal interest through the dissemination of truthful

information, including the context, the type of expressions used, and the sphere of an individual's life to which the statement pertains. As the Court of Appeal in Rzeszów rightly observed in its decision of 22 October 2014 (I ACz 894/14, online database of the Court of Appeal in Rzeszów), Article 111 § 1 of the Electoral Code does not encompass comments or value judgments concerning a candidate. If such comments or assessments infringe a candidate's personal rights, the candidate may pursue protection under the general civil law regime (Articles 23 and 24 of the Civil Code), rather than under Article 111 § 1 of the Electoral Code.

A politician must accept the broader scope of permissible public and journalistic criticism and is expected to demonstrate a "thicker skin." Freedom of political expression enjoys particularly extensive protection during electoral campaigns. Similarly, in its decision of 9 April 2021 (I ACz 69/21, LEX No. 3163479), the Court of Appeal in Rzeszów held that the scope of Article 111 § 1 of the Electoral Code does not include value judgments, even if they are unfair. It must be remembered that freedom of expression is especially broad where it concerns opinions about public officials. If such an assessment has a sufficient factual basis, it does not fall within the scope of judicial review under the electoral procedure (cf. the decision of the Court of Appeal in Kraków of 25 November 2014, I ACz 2374/14, LEX No. 1656714).

In case I Ns 52/24 (unpublished decision), the District Court in Sosnowiec held that the participant's statement consisted of value judgments—namely assessments and views regarding how the campaign would be conducted—and therefore dismissed the application filed under the electoral procedure. The court emphasised that only facts may be assessed according to the criteria of truth and falsehood, whereas value judgments, comments, opinions, and even rhetorical questions are not amenable to such evaluation.

The second step under this requirement involves determining whether the facts contained in the disseminated information are true. The purpose is to ensure that voters make their decisions based on accurate information and facts (Łapski, 2012, p. 112).

According to the PWN Polish Language Dictionary, true (prawdziwy) means: "consistent with reality, with the truth"; "authentic, not falsified"; and "typical, as usual; also: having the characteristics of the person, state, or object to which it is compared."

When verifying the truthfulness of the information, the court should examine, first and foremost, the content of the statement itself (after determining that it is a statement of fact) and its conformity with the material truth. In making these findings, the court relies, *inter alia*, on legal acts, documents (e.g., documents related to electoral committees, financial records), and facts of which it may take judicial notice. The court may also refer to lexical analysis of particular words or expressions.

Of course, factual determinations may also be made on the basis of witness testimony and the examination of the parties. However, given the special nature of the procedure and the resulting time constraints, courts in practice tend to resort to these evidentiary measures less frequently.

Finally, the court should examine the purpose underlying the

actions of the entity disseminating electoral materials containing false information. In other words, the court must determine why electoral materials containing untrue information are being circulated. Although this requirement is not expressly listed in Article 111 § 1 of the Electoral Code, it may be deduced from the provision.

The intentionality behind the conduct of a person disseminating false information as a prerequisite for protection in proceedings conducted under the electoral procedure has been recognised in the case law. For example, in its decision of 15 October 2018 (I ACz 717/18), the Court of Appeal in Szczecin held that statements of an electoral campaigning nature are those made in connection with an ongoing electoral campaign and related to the act of voting, or those disseminated for the purpose of influencing the election result.

During electoral campaigns, the persuasive function of political speech is intrinsically linked to the very nature of politics, which is the pursuit or retention of power. This occurs through shaping the electoral preferences of citizens in such a way as to secure the intended electoral outcome (Kowalski, 2021, p. 77).

The European Court of Human Rights, in its judgment of 14 October 2021 (application no. 20422/15), addressed the issue of false information capable of influencing the results of a vote. The key question is therefore whether a given statement may objectively affect voters' decisions. Judicial proceedings in this context are intended to prevent the distortion of the electoral outcome through the dissemination of false information.

#### IV. CONCLUSIONS

An analysis of the available case law of district courts adjudicating electoral matters, as well as appellate courts reviewing appeals in such cases, allows the following conclusions to be drawn.

In electoral cases, district courts, during evidentiary proceedings, verify the prerequisites for protection set out in Article 111 § 1 of the Electoral Code. Accordingly, they examine above all whether the disseminated information is connected to the electoral campaign—that is, whether it constitutes electoral campaigning—and whether the disseminated information is false. The courts also assess whether such actions serve a persuasive function, meaning whether their aim is to convince voters or to direct them toward a particular line of thinking.

The cited examples of judicial reasoning in electoral cases demonstrate that the purpose of judicial proceedings is to assess the proper conduct of the electoral campaign, political competition, and the principles of fair electoral rivalry—thus serving the protection of the public interest. The aim is to ensure that voters enjoy freedom of choice, both in procedural and substantive terms. The objective of the specialised procedure is therefore the protection of voters.

In proceedings conducted under Article 111 § 1 of the Electoral Code, the protected values include freedom of expression (the freedom to hold opinions and to receive and

impart information and ideas), the freedom of elections, and the integrity of the electoral process.

Accordingly, the thesis advanced at the outset is confirmed: district courts and courts of appeal, acting pursuant to Article 111 §§ 2 and 3 of the Electoral Code, safeguard the realisation of freedom of speech and freedom of expression—foundational pillars of electoral freedom.

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