

Dobrochna Ossowska-Salamonowicz¹
University of Warmia and Mazury in Olsztyn

Public and Social Interest in Journalistic Activity

1. Introduction

According to Article 10(1) of the Polish Press Law² (hereinafter: the “PL”), the basic task of journalism is to provide service to society and the state. The law makes reference to the service to the public first and then to the state, thus establishing a hierarchy of these tasks, yet fails to define these concepts. The term “service to society” is most often understood as serving the general population of the state as well as smaller regional, local or professional communities³. Theoretically, the legislator does not allow any conflict of interest between the service to the state and the service to the society. In practice, however, such conflicts may arise, even if one were to assume that the objectives of the state in a democratic state of law should not contradict the aspirations of the society (citizens). A journalist who is to serve both the state and the society may face a moral dilemma which of the two sides to take. He or she can also choose, and most often does choose, to be guided by the interest of his or her employer (publisher). Irrespective of these dilemmas, it is the journalist’s primary duty to present the facts in an objective, integral and careful way. The dominant view in the literature on the subject is that a journalist is to serve neither the publisher or the broadcaster, nor any specific person or institution. Instead, he or she should take into account the interests of Polish society and the state⁴.

Even without going into an in-depth analysis of the meaning of the term “service”, it can be asserted with no doubt that service is more than just a job: it is a mission associated with the profession of public trust. The missionary nature of the journalistic profession is deeply rooted in the philosophy of the press law. On the one hand, this means special privileges (e.g. prohibition on limiting the distribution of the press; obligation to provide information to the press by entrepreneurs, entities not belonging to the public finance sector, and non-profit organizations; journalist’s right to obtain information from other entities), as well as greater legal protection. (e.g. criminal liability for blackmailing a journalist or for obstructing or suppressing press criticism). On the other hand, it also means higher requirements: for example, the press has the duty to faithfully reproduce the events of the past

¹ ORCID number: 0000-0002-6617-9096. E-mail: dobrochna.ossowska@uwm.edu.pl

² Press Law of 26 January 1984 (Polish title: Ustawa z 26.01.1984 r. – Prawo prasowe, tekst jedn.: Dz. U. z 2018 r. poz. 1914).

³ J. Sobczak, *Art. 10* [Eng. *Article 10*], in: J. Sobczak, *Prawo prasowe. Komentarz* [Eng. *Press law. A Commentary*], LEX/el. 2008.

⁴ I. Dobosz, *Prawo i etyka w zawodzie dziennikarza* [Eng. *Law and Ethics in the Journalist Profession*], Warszawa 2008, pp. 57–59.

(Article 6 PL). A journalist is also required to: 1) exercise due diligence and accuracy in collecting and using press materials, in particular to check compliance with the truth and specify the source; 2) protect personal rights and interests of bona fide informants and other persons who place trust in the journalist; 3) use proper language and avoid using profanity. The journalist is prohibited from using hidden advertising in order to obtain material or personal benefits from the person or organizational unit interested in the advertising and must obtain consent for publication of information (Article 12 PL). At the request of an interested party, the editor-in-chief of the relevant daily newspaper or magazine must publish, free of charge, factual and substantive corrections of inaccurate or untrue press material. As demonstrated below, journalists are also subject to stricter legal liability for violations, e.g. civil liability for violation of law caused by publication of press materials or criminal liability for disseminating press materials that have been forfeited or secured as evidentiary material⁵.

The press primarily plays a role of a “public watchdog”, as it controls the activities of public authorities and guarantees transparency of public life⁶. It can also play a role (either positive or negative) in various types of conflicts, i.e. social, religious or political. The press does not have to be “polite” or even neutral. It can deploy exaggeration, provocation, as well as present shocking or controversial opinions and content. According to Article 1 of the PL, in accordance with the Polish Constitution⁷, the press enjoys freedom of expression and fulfils the right of citizens to reliable information, transparency of public life, and social control and criticism. Freedom of speech also includes the right to use a specific wording as means of expression. Thus, journalistic freedom involves the possibility of taking advantage of a certain degree of exaggeration or even provocation; in other words – of immoderate speech⁸.

Journalists often invite expressive people to take part in, for example, political debates because those people are the ones who are able to attract viewers, listeners or readers with equally controversial views. Yet, it also often provides a forum for trivial language, rude behaviour or plebeian, low culture. The use of a literary genre within the framework of acceptable press criticism, such as the column (editorial), allows for a greater degree of exaggeration and provocation for the purpose of describing true events, all in a way that does not exceed the standards for this type of texts.

2. Legal liability of journalists

A journalist, especially when exercising his or her right to criticism, must take into account the potential lawsuit. According to Article 24 of the Polish Civil Code⁹ (hereinafter, the “CC”):

⁵ B. Komus, *Art. 10 [Eng. Article 10]*, in: B. Komus, G. Kuczyński (eds.), *Prawo prasowe. Komentarz [Eng. Press Law. A Commentary]*, 3rd ed., Warszawa 2018, p. 157.

⁶ In the literature on the subject one can find the view that journalists not only play the role of “guardians of freedom” or “public controllers”, but can also be “malicious controllers” who abuse the freedom of expression. At present, judicial decisions (especially in Strasbourg) are dominated by the belief that only media that respect the rules of “good journalism” conducted with respect for ethics and social coexistence, should be protected by law. I.C. Kamiński, *Prawa i obowiązki dziennikarskie w orzecznictwie Europejskiego Trybunału Praw Człowieka [Eng. Journalistic Rights and Obligations in the Case Law of the European Court of Human Rights]*, in: W. Lis (ed.), *Status prawny dziennikarza [Legal Status of a Journalist]*, LEX/el. 2014.

⁷ Constitution of the Republic of Poland of 2 April 1997 (Polish title: Konstytucja Rzeczypospolitej Polskiej z 2.04.1997 r., Dz. U. Nr 78, poz. 483 ze zm.).

⁸ Judgment of the European Court of Human Rights of 17 April 2014, *Mladina d.d. Ljubljana v. Slovenia* (20981/10).

⁹ Civil Code of 23 April 1964 (Polish title: Ustawa z 23.04.1964 r. – Kodeks cywilny, tekst jedn.: Dz. U. z 2020 r. poz. 1740). English translation after T. Bil et al., LEX/el. 2020.

Article 24. § 1. A person whose personal interests are jeopardized by another person's action may demand that the action be abandoned, unless it is not illegal. In the case of actual violation, he may also demand that the person who committed the violation perform acts necessary to remove its consequences, in particular that the latter make a statement of a relevant content and in a relevant form. On the basis of the principles provided for by the Code he may also demand pecuniary compensation or a payment of an adequate amount of money for a specified community purpose.

§ 2. If, as a result of a of personal interests damage to the property was inflicted, the injured party may demand it to be redressed on the basis of general principles.

§ 3. The above provisions shall not prejudice the entitlements provided for by other provisions, in particular by copyright law and by patent law.

It can be concluded from Poland's rich case law on journalistic publications that there is a discrepancy of opinion as to whether failure to prove the truthfulness of the allegation means that the violation was unlawful and the author of the publication is liable under Article 24(1) of the CC, or, if certain conditions are met, it is possible to exclude the unlawfulness of the journalist's actions and, therefore, his or her liability. The Court must always answer the question whether an action can be regarded as an unlawful infringement of the right to protection of personal interests (Article 24(1) of the CC), if the journalist has exercised special care and diligence in collecting and using press materials, as stipulated in Article 12(1)(1) of the PL.

The requirement of applying special care when collecting and using materials means that it is the duty of the journalist to verify the information obtained. His or her actions cannot be limited to a faithful presentation of the information obtained, since their mere conviction that the information is true is not sufficient under Article 12(1)(1) of the PL. The degree of diligence can be assessed in a different way depending on the source of information: a greater degree of trust is acceptable if the information comes from reliable sources, such as official documents, government or local government officials or authorities in a given field. Furthermore, the basic principle in assessing special diligence is whether the journalist has given the person concerned an opportunity to comment on the press material¹⁰.

Special care always involves caution, prevention, foresight, prudence, accuracy, attention, sensibility, efficiency, insight, knowledge, forethought, anticipation, criticism, conscientiousness, self-control, objectivity and reliability. Actions of a journalist are reliable if they are truthful and depicting an objective and comprehensive state of facts. The message conveyed by the text should not be selective or biased. Within the meaning of Article 12(1)(1) of the PL, a journalist's special diligence is manifested in the need to validate the accuracy of the information obtained and to verify the reliability of the informant¹¹.

The activity of a journalist that meets the statutory requirements of special diligence and reliability should not be considered unlawful, regardless of whether the allegation made by the journalist in the press material is true or not. Proving the truthfulness of the accusation is not the condition for excluding the unlawfulness of violation of personal interests in a press article. The special care and diligence required by the law involves using reliable materials and the indication of their source, and it cannot be equated with the truthfulness of the allegation but with the truthfulness of the sources cited, their

¹⁰ Judgment of the Supreme Court of 4 April 2017 (I CSK 245/16), Legalis No. 1657003.

¹¹ Judgment of the Warsaw Appeal Court of 10 May 2016 (I ACa 1076/15), Legalis No. 1470141.

fair selection, verification and presentation¹². The conduct of a journalist acting in the defence of the public interest and special diligence and reliability in the collection and use of press material means that a publication is not unlawful even if it is found that the material contains false information¹³. Even though the social function and role of the press necessitates employing great care for the purpose of the collection, evaluation and publication of materials, and the same social role requires a journalist to meet the criteria of reliability, diligence and acting to protect the public interest, it does not entail the need to prove the truth. Thus, in the case of press publications on important social issues, journalists cannot be required to demonstrate full truthfulness of their theses in every aspect, as such a requirement could lead to a breach of the controlling function exercised by the press and its freedom¹⁴.

On the other hand, it is in the interest of the recipients of the press to be provided with truthful information only, regardless of whose interest the journalist is pursuing. Once it is established that the information provided by him or her is false, the journalist should immediately revoke it. This obligation arises under various codes of journalist ethics¹⁵.

3. Public interest and the protection of sources of press information

Public interest in the field of journalism should be understood objectively, as an interest pursued by a publication, and not as a journalist's motive. Public interest calls for specific control of public funds and stigmatizing their non-transparent distribution. The limits of criticism must be broader in case of those who hold public offices.

Limiting the protection of personal rights on grounds of public or social interest is justified, among others, by the public's right to information. Press criticism undertaken in the public interest in a fair and factual manner excludes the unlawfulness of the infringement of personal interests. When assessing the issue of unlawfulness of the infringement of personal rights in a press release, account should be taken of the abovementioned Article 12(1)(1) of the PL. Actions of a journalist will not be deemed unlawful if he or she exercised due diligence and special care in a manner described above and acted in defence of a socially justifiable interest while collecting and using press materials¹⁶. Social interest is only justified if it is related to public and social activities of public persons. The activities of those people should also be known because of the constitutional principle of transparency of public life¹⁷.

Public interest in providing citizens with reliable information may come into conflict with other interests, including interest of public authorities. A very clear example of such a conflict related to journalistic activity is the case of convicting a journalist for violating a ban on entering a forest. The court imposed a fine of 300 Polish zloty (≈ 70 euro) on the journalist for not respecting the entry ban (introduced due to "threats to public safety") despite the fact that he was delegated to the forest as a camera operator by his

¹² Judgment of the Supreme Court of 21 July 2017 (I CSK 375/16), Legalis No. 1651437.

¹³ Judgment of the Kraków Appeal Court of 17 September 2015 (I ACa 665/15), LEX No. 1957382.

¹⁴ Judgment of the Warsaw Appeal Court of 20 January 2017 (I ACa 2139/15), Legalis No. 1657694.

¹⁵ A. Pązik, *Wylączenie bezprawności naruszenia dobra osobistego na podstawie interesu społecznego* [Eng. *Exclusion of Unlawfulness of Violation of a Personal Right Based on Social Interest*], LEX/el. 2014.

¹⁶ Judgment of the Szczecin Appeal Court of 19 November 2019 (I ACa 314/19), LEX No. 2864783.

¹⁷ K. Święcka, *Kryterium społecznie uzasadnionego interesu w ramach dozwolonej krytyki* [Eng. *Criterion of Socially Justified Interest in the Framework of Permissible Criticism*], "Przegląd Sądowy" 2008/5, pp. 101–111.

employer (TV broadcaster) to check some facts concerning events in the forest. Those events aroused a great public interest at that time¹⁸.

The potential conflict between the public interest and the interest of public authorities is particularly evident when protecting journalists' sources of information and when the journalist publicizes information about pending pre-trial or court proceedings. In accordance with Article 15 of the PL¹⁹, not only does the journalist himself or herself have the right to remain anonymous, but they also have the obligation to keep confidential the data which make it possible to identify the author of a press release, a letter to the editorial office or other material of such nature, as well as other persons providing information published or transmitted for publication, if these persons have reserved the right not to disclose the above data²⁰. The latter obligation is more important in practice.

Apart from the press law, journalist's privilege is also governed by the Polish Code of Criminal Procedure²¹ (hereinafter, the "CCP") in the section regulating measures of inquiry. According to Article 180(2)–(5) of the CCP:

Article 180. (...) § 2. Persons bound by the obligation of professional privilege: notaries, solicitors, legal counsels, tax advisers, physicians, journalists, or statisticians, and persons obliged to protect the secrets of *Prokuratoria Generalna Rzeczypospolitej Polskiej* [General Counsel to the Republic of Poland – D.O.-S.] may be questioned about facts covered by such privilege only where this is necessary for the sake of justice and the circumstances cannot be determined on the basis of other evidence. In an investigation, the decision as to questioning or permitting questioning shall be taken by the court, at a session without the participation of the parties, within a period not longer than 7 days as of the date of service of the motion of the public prosecutor. The court's decision may be contested.

§ 3. Releasing a journalist from the obligation to keep a secret may not relate to data enabling the identification of the author of a press material, letter to the editor or another material of the same nature, as well as identification of persons providing information published or passed to be published, if these persons reserved the right to keep the data in privilege.

§ 4. The provision of § 3 shall not apply if the information regards a criminal offence referred to in Article 240 § 1 of the Criminal Code.

§ 5. A refusal of a journalist to disclose the data referred to in § 3 shall not exempt them from liability for a criminal offence they committed by publishing information.

The CCP's provisions on journalist's privilege are *lex specialis* to the PL. The aim of journalist's privilege is primarily to protect the journalist's potential informant and especially the relationship of trust between journalists and their informants. It is obvious that if an informant cannot trust a journalist, he or she will not provide any information.

When considering the consequences of disclosing information constituting journalist's privilege, the journalist must choose between values such as, on the one hand, the informant's security and trust as well as trustworthiness and reliability, and, on the other hand, a certain social or public good²². As a rule, a journalist may be exempted from the obligation of journalistic confidentiality by the provider of the information (the informant). However, the CCP allows a journalist to be questioned about facts covered

¹⁸ Judgment of the Supreme Court of 11 December 2018 (III KK 647/18), LEX No. 2591126.

¹⁹ Article 15(2)(1) of the PL has the same content as Article 180(3) of the Polish Code of Criminal Procedure (see below).

²⁰ A. Kręciszc-Sarna, *Żądanie udostępnienia danych dziennikarza a tajemnica dziennikarska* [Eng. *Demand for Access to Journalist's Data and Reporter's Privilege*], "Informacja w administracji publicznej" 2017/4, p. 74.

²¹ Code of Criminal Procedure of 6 June 1997 (Polish title: *Ustawa z 6.06.1997 r. – Kodeks postępowania karnego*, tekst jedn.: Dz. U. z 2020 r. poz. 30). English translation: LEX/el. 2020.

²² E. Galewska, *Tajemnica dziennikarska w kodeksach etyki zawodowej* [Eng. *Reporter's Privilege in the Codes of Professional Ethics*], "IKAR" 2016/6, p. 7.

by this privilege only if this is necessary for the sake of justice and if the circumstances of the case cannot be established on the basis of other evidence. In order for a journalist to be exempted from professional privilege while giving testimony, it is necessary to establish that there is no other evidence on the basis of which key circumstances can be established. The essence of professional privilege is to protect the interests of the client (informant) who entrusts his or her case to a professional journalist.

In this respect, the ruling of the Katowice Appeal Court of 23 November 2011 is of particular importance. According to the court, journalist's privilege is absolute and a journalist who invokes journalist's privilege must not be questioned, also as regards the circumstances that would allow disclosure of data that would permit the identification of the journalist's informants. A journalist shall be exempt from the obligation to keep confidential the data which makes it possible to identify persons providing the information only if the information relates to an offence referred to in Article 240(1) of the Polish Criminal Code²³ (hereinafter: "the CC"). Therefore, the court stated that if a journalist who was summoned as a witness during court proceedings refuses to give the details of the persons who wrote the letters to the editorial office and provided the information for publication, relying on the argument that these persons reserved their anonymity, cannot be forced to make a disclosure by way of a penalty being imposed on him or her²⁴.

Even if we assume that the court only exempts a journalist from journalist's privilege if the evidence is incomplete without the journalist's testimony, there are doubts as to the facts of the case and other evidence is insufficient, the ever-increasing list of reasons for exempting a journalist from journalist's privilege still gives rise to concerns. The ban on exempting a journalist from journalist's privilege is not tantamount to an absolute non-admissibility of evidence, since Article 180(4) of the CCP provides for the possibility of exempting a journalist from the obligation to keep secret information concerning the offences referred to in Article 240 of the CC, and not only if the offender actually commits the act, but also in cases of a mere preparation or an attempt to commit such an act. This means that in the case of crimes for which there is a statutory obligation to denounce, a journalist cannot invoke journalist's privilege to justify withholding information related to these crimes from law enforcement authorities²⁵. The *ratio legis* of this solution boils down to obtaining full data from the journalist in the most serious of crimes²⁶. Anyone (e.g. journalist) who has reliable information concerning a punishable preparation or attempt, or the commission of a prohibited act specified in Article 240 of the CC, but fails to promptly inform an agency responsible for prosecuting such offences, is liable to imprisonment for up to three years. The information on the above-mentioned crimes must be credible, but not necessarily true.

²³ These offences include: extermination (Article 118), mass attack on people (Article 118a), war crimes, including the use of means of mass extermination (Articles 120–124), coup d'état (Article 127), assassination of the constitutional body of the Republic of Poland (Article 128), espionage (Article 130), attempt of assassination of the President of the Republic of Poland (Article 134), violent attack on a unit of the armed forces (Article 140), murder (Article 148), causing serious bodily harm (Article 156), bringing about an incident which is dangerous for a large number of people or causes mass destruction (Article 163), hijacking a ship or aircraft (Article 166), deprivation of liberty (Article 189), qualified types of rape (Article 197(3) and (4)), taking advantage of vulnerability (Article 198), sexual intercourse with a minor (Article 200), taking of a hostage (Article 252) and terrorist offenses (Article 115(20)) of the Criminal Code of 6 June 1997 (Polish title: Ustawa z 6.06.1997 r. – Kodeks karny, tekst jedn.: Dz. U. z 2020 r. poz. 1444).

²⁴ Judgment of the Katowice Appeal Court of 23 November 2011 (II AKa 155/11), LEX No. 1129774.

²⁵ B. Kurzępa, *Zakazy dowodzenia w procesie karnym* [Eng. *Inadmissible Evidence in Criminal Trial*], "Prokurator" 2002/2, pp. 47–81.

²⁶ Z. Gostyński, *Tajemnica dziennikarska a obowiązek składania zeznań* [Eng. *Reporter's Privilege and the Obligation to Testify*], "Państwo i Prawo" 1997/10, pp. 12–22.

In addition to the problems described above, there is also a question of whether it is acceptable for a journalist to waive professional privilege. It is true that there is an absolute prohibition on exempting a journalist from the obligation of a journalist's privilege with regard to the data referred to in Article 180(3) of the CCP and Article 15(2) of the PL, but this does not necessarily mean that a journalist cannot be questioned in these circumstances if he or she is not covered by journalist's privilege and wants to give such testimony. According to the Polish Supreme Court, although the court may not release a journalist from privilege (at the prosecutor's request) in this respect, it may instead question the journalist as to the circumstances covered by the privilege if the journalist himself or herself wishes to waive the obligation to keep the data secret²⁷. This judgment has been criticized by some scholars²⁸. The main objection was that the journalist is not the "owner" of the privilege referred to in Article 15(2)(1) of the PL, but only its safe keeper, who is obliged to keep the information about the informant confidential²⁹.

The prosecutor who seeks exemption of a journalist from professional privilege and, as a consequence, aims at the disclosure of the journalistic source of information, believes to be thus serving the public. The journalist follows exactly the same goal, although he or she usually refuses to reveal the source of information. Each party therefore believes that it faithfully represents citizens by seeking the truth, for example by examining documents, questioning witnesses (including confidential informants) and assessing their credibility. Both the parties present their findings to the public believing that their work serves the public. However, practice shows how greatly a prosecutor and a journalist, despite pursuing the same goal, may differ in their actions³⁰.

The fundamental principle of the journalist profession is to protect their sources of information. It is thanks to the fact that journalists are able to ensure safety of their informants that the biggest scandals in Poland can be revealed³¹. To date, no comprehensive regulations have been adopted for the protection of whistleblowers (unmaskers).

²⁷ Decision of the Supreme Court of 15 December 2004 (III KK 278/04), OSNKW 2005/3, item 28. According to Article 168a CCP, if, as a result of an operational control ordered by a competent authority in accordance with special regulations, evidence was obtained that a person, against whom the control was ordered, had committed an offence prosecuted *ex officio* or a fiscal offence other than the offence, against which the control was directed, or that such offence was committed by another person, the public prosecutor decides whether this evidence will be used in criminal proceedings. The provision of Article 168a provides for the possibility of admitting evidence obtained in breach of the provisions of the procedure or by means of a prohibited act referred to in Article (1)(1) of the CC (specifying the conditions of criminal liability), except when the evidence was obtained in connection with the performance of official duties by a public official and as a result of murder, wilful damage to health or imprisonment. See also: J. Kudła, *Legalność oraz wadliwość dowodów uzyskanych z wyników czynności operacyjno-rozpoznawczych* [Eng. *Legality and Defectiveness of Evidence Obtained From Results of Operational and Reconnaissance Activities*], LEX/el. 2020; S. Brzozowski, *Dopuszczalność dowodu w kontekście regulacji art. 168a k.p.k.* [Eng. *Admissibility of Evidence in the Context of the Regulation of Article 168a CCP*], "Przegląd Sądowy" 2016/10, pp. 60–74.

²⁸ A. Bojańczyk, *Karnoprosesowe znaczenie zgody dziennikarza na składanie zeznań objętych tajemnicą zawodową, (wokół postanowienia Sądu Najwyższego z 15 grudnia 2004 r.)* [Eng. *Significance of the Journalist's Consent to Testimony Covered by Reporter's Privilege in Criminal Trial (Around the Decision of the Supreme Court of 15 December 2004)*], "Palestra" 2005/9–10, pp. 30–44; D. Szumiło-Kulczycka, *Głosa do postanowienia SN z dnia 15 grudnia 2004, III KK 278/04* [Eng. *A Gloss to the Supreme Court's Decision of 15 December 2004, III KK 278/04*], "Państwo i Prawo" 2005/12, pp. 123–128.

²⁹ J. Sobczak, *Granice prawne tajemnicy dziennikarskiej* [Eng. *Legal Borders of Reporter's Privilege*], "Ius Novum" 2007/1, pp. 48–69.

³⁰ S. Bates, *The Reporter's Privilege, Then and Now*, Research Paper R-23, Cambridge (Mass.) 2000, p. 14, https://shorensteincenter.org/wp-content/uploads/2012/03/r23_bates.pdf, accessed on: 27 August 2020.

³¹ In September 2004, two Polish newspapers, *Rzeczpospolita* and *Gazeta Wyborcza* published articles with behind the scenes information on the detention of lobbyist Marek Dochnal by the Internal Security Agency, as well as his connections with Andrzej Pęczak who took a bribe from him in the form of a luxury Mercedes. As the publication of this information was considered a criminal offence, proceedings were initiated and the District Prosecutor's Office demanded from *Telekomunikacja Polska* (Polish telecommunications provider) and mobile operators billing of calls from business and private telephones of four journalists. J. Sobczak, *Granice...*, p. 65.

Contrary to what may appear, a whistleblower does not compete with a journalist but complements the journalist's work. Whistleblowers can certainly operate more efficiently in the wider public interest without any fear of negative consequences, such as losing their jobs.

4. Coverage of criminal proceedings

According to Article 13(1) of the PL, no opinion may be expressed in the press as to the resolution of a court case before a ruling is passed in the first instance court. Thus, a journalist cannot express his or her subjective belief, judgment or opinion as to the qualification of the act and the resolution of the case. This prohibition is absolute, it applies to all court proceedings and cannot be overridden in the defence of the public interest. The aim of this regulation is to safeguard the presumption of innocence of the suspect or the accused person and to protect the right of citizens to be fairly informed. Yet, a simple press release that a certain person was charged in pre-trial proceedings cannot be considered as the expression of an opinion prohibited by Article 13(1) of the PL³².

The principle of the presumption of innocence which is provided for both in the Polish Constitution and in the CC is strengthened by the regulation of Article 13(2) of the PL. According to this provision, it is prohibited to publish in the press the personal data and image of persons against whom pre-trial or court proceedings are pending, unless they have given their consent thereto. This prohibition ceases to apply also when, on account of an important public interest, a competent prosecutor or court permits the publication of their image or personal data (Article 13(3) of the PL). This is particularly true in cases where the public is particularly upset. However, in any such case, the overlapping interests of the suspect (or the accused), who is protected by the principle of presumption of innocence, must be particularly carefully weighed against the public's right to information³³. Disclosure of personal data or the image of the accused person may be justified only if it was of a significant, and not just any, social benefit. The benefits may include preventing the continuation of the accused's criminal activities through the publication of his or her image, contributing to the possible disclosure of aspects of the accused's criminal activities that have hitherto been unknown to law enforcement authorities, and reassuring the public by ensuring that a particular person suspected and subsequently accused of committing the act is caught and prosecuted³⁴.

However, it should be remembered that Article 13 of the PL is not the same as Article 357 of the CCP³⁵, which regulates the participation of media representatives

³² Judgment of the Warsaw Appeal Court of of 16 November 2017 (V ACa 177/17), LEX No. 2418153.

³³ M. Bransztetel, *Zasada domniemania niewinności a media* [Eng. *Principle of the Presumption of Innocence and the Media*], "Prokuratura i Prawo" 2006/9, pp. 46–54.

³⁴ D. Morgała, *Zezwolenie na ujawnienie wizerunku osoby, przeciwko której toczy się postępowanie przygotowawcze lub sądowe* [Eng. *Permission to Disclose the Image of a Person Against Whom Preparatory or Judicial Proceedings are in Progress*], "Przegląd Sądowy" 2014/2, pp. 106–119; M. Zimna, *Zakaz publikowania wizerunku oskarżonego* [Eng. *Prohibition to Publish the Image of the Accused*], "Ius Novum" 2012/1, pp. 30–38.

³⁵ Until 4 August 2016, this provision stipulated that the court may allow representatives of radio, television, film and press to make video and sound recordings of the proceedings with the use of equipment, if there is a legitimate public interest in doing so, the performance of these activities will not hinder the conduct of the proceedings, and an important interest of the participant in the proceedings does not oppose it. Currently, the provision generally allows for such recordings. Thus, the premise of public interest has been removed from this provision, as it does not need to be fulfilled. D. Drajewicz, *Postępowanie karne przed sądem I instancji w świetle ustaw nowelizujących z 11.3.2016 r. i 10.6.2016 r.* [Eng. *Criminal Proceedings Before the Court of First Instance in Light of the Amending Acts of 11 March 2016 and 10 June 2016*], "Monitor Prawniczy" 2017/2, pp. 75–76.

during a trial. According to these provisions, the court shall determine the conditions for the participation of representatives of the media at the hearing. They are, however, generally permitted to record image and sound during the trial. The permission to make video and audio recordings of the trial does not mean that the publication of personal data and the image of the participants of the trial is also permitted.

5. Final remarks

When resolving a potential conflict between the interest of public authorities and the public interest itself, one should bear in mind that the press fulfils the right of the citizens to reliable information. Yet, this information should be fair, truthful and honest. Even if a critique conducted by a journalist has a noble motivation and promotes public interest, it will not automatically be considered lawful. The Polish Constitutional Court and the Polish Supreme Court have repeatedly confirmed that there is no priority for freedom of speech over other freedoms and rights of those with whom the press comes into contact and collision in their activities³⁶. Nor is there any general principle of subsidiarity of freedom of expression to the rights mentioned above.

Public and Social Interest in Journalistic Activity

Abstract: Freedom of the press is one of the best ways of reflecting and shaping public opinion about the ideas and attitudes of political leaders, public figures or those entrusted with public functions. Freedom of the press is also an opportunity to depict reprehensible phenomena such as corruption, fraud, crime or nepotism. The press may be faced with types of subjects that may cause dilemmas for the journalist. Whose interest should above all be represented: the interest of the society or the state? What is more important: the right to privacy or the right of access to information?

Keywords: interest of the state, freedom of the press, duty to serve the public, journalist

³⁶ Judgment of the Constitutional Court of 30 October 2006 (P 10/06), OTK-A 2006/9, item 128; judgments of the Supreme Court: of 10 September 2009 (V CSK 64/09), LEX No. 585910 and of 25 February 2010 (I CSK 220/09), LEX No. 583722.

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