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## Free Media in Poland – Historical and Contemporary Threats, Questions and Problems

### STRESZCZENIE:

ARTYKUŁ MA CHARAKTER INTERDYSCYPLINARNY. ODNOSI SIĘ DO HISTORII I PRAWA MEDIÓW W POLSCE. NIE MA ON CHARAKTERU ŚCIŚLE PRAWNICZEGO – JEST TO RACZEJ PRZEGLĄDOWA REFLEKSJA NA TEMAT: JAK POLSKIE PRAWO CHRONIŁO WOLNOŚĆ SŁOWA I MEDIÓW NA PRZESTRZENI DZIEJÓW? REFLEKSJA NIE OBEJMUJE LAT 2015-2017.

### SŁOWA KLUCZOWE:

CENZURA, POLSKA LUDOWA, WOLNOŚĆ MEDIÓW, PRAWO PRASOWE, USTAWA O RADIOFONII I TELEWIZJI, POLSKA.

### ABSTRACT:

THIS ARTICLE IS AN INTERDISCIPLINARY REVIEW. IT RELATES BOTH TO THE HISTORY OF MASS MEDIA AND TO THE POLISH PRESS LAW. AUTHOR ATTEMPTS TO ANSWER THE QUESTION WHETHER THE POLISH LAW PROTECTS THE FREEDOM OF SPEECH AND WHAT ARE THE BASIC REGULATIONS IN THE POLISH LEGISLATURE CONCERNING THE PROTECTION OF FREEDOM OF SPEECH, ALSO IN RELATION TO OTHER HUMAN RIGHTS. THE ANALYSIS WILL BE PRECEDED BY A SUMMARY OF HOW THE LAW REGULATED THE FREEDOM OF SPEECH THROUGHOUT THE CENTURIES IN POLAND AND BY A THEORETICAL INVESTIGATION ON THE FUNDAMENTAL ASPECTS OF THE FREEDOM OF SPEECH AND ITS CONNECTION WITH THE FREEDOM OF THE MEDIA. HOWEVER, IT MUST BE CONCERNED THAT THE ARTICLE HAS RATHER CHARACTER OF SOME GENERAL REVIEW THAN DETAILED, STRICTLY LAW-BASED ANALYSIS. THE MAIN GOAL OF THIS TEXT IS A REFLECTION ON THE GENERAL APPROACH TO FREEDOM OF THE SPEECH AND FREEDOM OF THE MASS MEDIA IN POLAND – IN THE PAST AND NOW (BEFORE 2015).

### KEYWORDS:

POLAND, PRESS LAW, BROADCASTING ACT, POLISH PEOPLE REPUBLIC, MEDIA FREEDOM, CENSORSHIP

This article is an interdisciplinary review. It relates both to the history of mass media and to the Polish press law. Author attempts to answer the question whether the Polish law protects the freedom of speech and what are the basic regulations in the Polish legislature concerning the protection of freedom of speech, also in relation to other human rights. The analysis will be preceded by a summary of how the law regulated the freedom of speech throughout the centuries in Poland and by a theoretical investigation on the fundamental aspects of the freedom of speech and its connection with the freedom of the media. However, it must be concerned that the article has rather character of some general review than detailed, strictly law-based analysis. The main goal of this text is a reflection on the general approach to freedom of the speech and freedom of the mass media in Poland – in the past and now<sup>1</sup>.

### Introduction

An encyclopedia defines “freedom of speech” as “the right of people to express their opinions publicly without governmental interference, subject to the laws against libel, incitement to violence or rebellion, etc.”<sup>2</sup>. We can also say, that “free speech and the right to freedom of expression applies to ideas of all kinds including those that may be deeply offensive. But it comes with responsibilities and we believe it can be legitimately restricted”<sup>3</sup>.

It is guaranteed in legislation of all democratic countries and supported by many international documents. The United Nations Charter (1945) was the first document of its kind on the international arena. In December 10, 1948, The United Nations General Assembly adopted the Universal Convention on Human Rights, in which Article 19 states that “Everyone has the right to freedom of opinion and expression; this right includes the freedom to independent opinions, to seek, to receive and to spread information and ideas via any media, with no boundaries”<sup>4</sup>. The UN General Assembly also guaranteed the freedom of speech in the International Covenant on Civil and Political Rights (Art. 19) in December 16, 1966. Besides, the freedom of speech is ensured by the international agreement ratified by Poland – the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>5</sup>.

The governments have agreed that every individual has the right to freedom of opinion and expression, which includes freedom to hold opinions and freedom to seek

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<sup>1</sup> As „now” I understand 2015 – then his article was written. In 2015, after winning parliamentary elections in Poland by Law and Justice party, the media law in Poland has been changed in some points.

<sup>2</sup> Cf. *Freedom of speech*, <http://dictionary.reference.com/browse/freedom-of-speech> (accessed 02.11.2015).

<sup>3</sup> *What is free speech?*, Website of Amnesty International, published 30.06.2013, <http://www.amnesty.org.uk/what-free-speech#.Vjc-UtIve9I> (accessed 02.11.2015).

<sup>4</sup> *Powszechna Deklaracja Praw Człowieka*, dokument na stronach internetowych Helsińskiej Fundacji Praw Człowieka, [http://www.hfhrpol.waw.pl/pliki/Powszechna\\_Deklaracja\\_Praw\\_Czlowieka.pdf](http://www.hfhrpol.waw.pl/pliki/Powszechna_Deklaracja_Praw_Czlowieka.pdf) (dostęp 02.11.2015).

<sup>5</sup> Cf. K. Płonka-Bielenin, *Konstytucja RP wyznacznikiem wolności prasy*, „Roczniki Administracji i Prawa” (XIV), t. 2., s. 35-38.

and spread information and ideas regardless of countries borders, either orally, in writing or in print, in artistic forms or through any other medium<sup>6</sup>.

This law, however, may be restricted due to respect of the rights or reputation of others or for the protection of national security, public order, health or morals. Also forbidden is any war propaganda and promoting hatred in any way due to differences in race, nationality or religion<sup>7</sup>.

Freedom of speech isn't therefore of supreme value and absolute. It is subjected to various kinds of restrictions. They can be ethical, moral or legal. In other words, it may be subject to an internal regulation (self-regulation) that is to regulations of the environment or occupational group (e.g. journalists and media workers) - these regulations are contractual in nature and their violation does not have any legal sanction.

The freedom of the media is closely linked to the freedom of speech and the right of citizens to information. The right of the society to receive information is fulfilled, among others, by the mass media spreading news and ideas, which are desired by the public. The freedom of the press is not only the privilege of journalists, but also the attribute and the mainstay of a democratic society<sup>8</sup>. Therefore, the mass media should be an institution of public discourse. In order to accomplish its purpose, they must be guaranteed privileged and effective means to gather and disseminate the news. They also should show and represent as many points of view as possible. Consequently, it is essential that journalists should enjoy the necessary protection and independence in order to fulfill their functions properly. The mass media and journalists are important parts of democratic society<sup>9</sup>.

At the same time, however, it should be remembered that with all the significance of the freedom of the press, freedom of expression, freedom of getting and spreading information, they do not have an absolute nature, so that they are not strict and devoid of restrictions<sup>10</sup>.

Restrictions to freedom of speech but may also be coming from law regulations - then we are dealing with an external control. In a constitutional state it is a basic law that defines conditions and situations in which other values could be placed over the human rights (including freedom of speech). It also determines the rights and their extent that can be limited by a legislator, guided by the public interest. Nevertheless, each case of the withdrawal of human rights must be justified and constitutional<sup>11</sup>.

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<sup>6</sup> Cf. J. Sobczak, *Prawo prasowe. Komentarz*, Warszawa 2008, s. 32.

<sup>7</sup> Cf. *Article 10 Freedom of expression*, „Liberty”, <https://www.liberty-human-rights.org.uk/human-rights/what-are-human-rights/human-rights-act/article-10-freedom-expression> (accessed 02.11.2015).

<sup>8</sup> Cf. M. Wysocka, *Wolność prasy - wybrane wątki na tle orzecznictwa Sądu Najwyższego w sprawach cywilnych*, „Ius et Lex” 2010 nr 1, p. 98.

<sup>9</sup> Cf. J. Oster, *Media Freedom as a Fundamental Right*, Cambridge University Press 2015, pp. 31-32.

<sup>10</sup> Cf. M. Wysocka, op. cit., p. 98.

<sup>11</sup> Cf. W. Osiatyński, *Wprowadzenie do praw człowieka*, mps na stronach internetowych Helsińskiej Fundacji Praw Człowieka, [http://www.hfhrpol.waw.pl/pliki/WOsiatyński\\_HistIFilo.pdf](http://www.hfhrpol.waw.pl/pliki/WOsiatyński_HistIFilo.pdf) (accessed

The question then arises: who is to supervise and monitor compliance with these restrictions? In a democratic country - an independent court. So how is it in non-democratic countries, totalitarian systems? As a rule, a special office is created. It can carry different names and take different institutional forms, but is commonly referred to as a censor or a censorship office. It is an organ of governmental power, legally acting on its behalf<sup>12</sup>.

Censorship may be preventive (acting prior to publishing) or repressive (following publishing) in its nature. It may involve both - strict control of what is to be published in the media, any public speeches, or documents, and ex post facto punishment of those whose publications and speeches endanger the government.

For the record, I have to mention that censorship can also take extra-legal forms - which are formally prohibited as there is no censorship office - however, there are different forms of external censorship - usually at the level of individuals - managers, editors etc. Very often, they cite an 10th Article of the Polish press law, invoking the so-called "Editorial line", that is, ideologically-political profile of a title which the journalists must comply with. That editorial line is determined theoretically by the editor-in-chief, in practice, the publisher has very much to say here.

### 1. Historical frames

Polish History knows many types and forms of legal restrictions to freedom of speech. Let us now discuss historical issues, starting from the eighteenth century.

#### a. The times of the Partitions

When talking about the development of the Polish media - especially the press - in the beginning, we have to remember one thing: the beginnings of the modern press on Polish territory in the time period when Poland did not exist as a country.

In the years 1795-1918 the Polish lands were under occupation. Thus, the development of the press was conditioned by the laws of each of those who have ruled their parts. The authorities of these countries weren't quite that interested in the development of Polish-language press, and certainly were very sensitive to any content that would promote independence and patriotism ideas, which was prosecuted by the censors with great vigilance.

The repressions intensified or fell with equal reasons (for example, the so-called Russian Church Decree of Tolerance in 1905, where for a short time tsarist censorship virtually didn't function... but it lasted only a few months). Moreover, besides prohibitory actions (when censorship did not allow to publish the unfavorable content from the perspective of a partitioner), there were also actions of a prescriptive nature -

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<sup>12</sup> Cf. A. Adamski, *Ograniczenia wolności słowa w polskim prawie*, „Nowoczesna Firma”, <http://nf.pl/po-pracy/ograniczenia-wolnosc-slowa-w-polskim-prawie,2,43208,295> (accessed 02.11.2015).

when censorship supported propagandistic publications. It was frequently achieved through blackmail, threats, coercion, persuasion or simply conformism<sup>13</sup>. The regaining of independence by Poland in 1918 put an end to that period. It does not change the fact, however, that – despite numerous obstacles – the Polish press still existed in this period. Obviously, there were moments when it flourished, but there were also moments when it was utterly destroyed by the partitioning powers. Generally speaking, a panorama of the Polish press under occupation is heterogeneous and very interesting for those who study the history of the press<sup>14</sup>.

### **b. The Second Republic (1918-1939)**

The regaining of independence brought a drastic change in the Polish press : liberation from the censorship of the invaders, and a single area of appearance (Republic of Poland).

A new, unified press law was instated. Its implementation was necessary because Poland in 1918 had on its territory different legal systems relating to the press, left by the invaders<sup>15</sup>.

The principle of freedom of the press was formulated in Article 105 of the Constitution of 1921. The Constitution also contains articles which guarantee freedom of thought and belief and governmental functions incompatibility with the function of the responsible editor. It also spoke about the possibility of suspension of freedom of the press in the event of war , riots or treason<sup>16</sup>.

Press Law was based on the rejection of preventive censorship, an end to the license system and a guarantee of freedom of distribution. The foundation letter has entitled every citizen who fulfilled certain conditions and had no other legal obstacles to start publishing a title of his own. It was also stated that any crime committed through publishing will be subjected to prosecution<sup>17</sup>.

It should be noted that until 1938, a detailed press law functioned (implementing rules) based on those of the partitioning powers (even if it was contrary to the Constitution). In May 10, 1927 , the President signed the regulation of the Press Law and

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<sup>13</sup> Cf. H. Bałabuch, *Nonkonformistyczne ujęcie problematyki cenzury i wolności słowa (zaborczej i polskiej) w komparatystyce Aleksandra Świętochowskiego*, „Klio” 2011, nr 17, t. 17, pp. 75-76.

<sup>14</sup> The precise description of the existing titles and situations in individual partitions including the chronological division cf. W.M. Kolasa, J. Jarowiecki, *Najważniejsze polskie gazety do wybuchu pierwszej wojny światowej w kontekście zabezpieczenia ich dla potomnych (charakterystyka, badania, zasoby)*, w: *Gazety. Zasoby. Opracowanie. Ochrona. Digitalizacja. Promocja/Informacja (Materiały konferencyjne)*, Poznań 2006, pp. 25-53.

<sup>15</sup> Cf. H. Wojtyśiak, *Jednodniówki jako osobliwy rodzaj wydawnictw ciągłych*, „Biuletyn EbiB” 2012 nr 2(129), [http://www.ebib.pl/images/stories/numery/129/129\\_wojtyśiak.pdf](http://www.ebib.pl/images/stories/numery/129/129_wojtyśiak.pdf) (accessed 02.11.2015), p. 5.

<sup>16</sup> Cf. R. Stawicki, *Prawa i wolności obywatelskie w Polsce po 1918 r. w świetle rozwiązań konstytucyjnych – zarys historyczno-prawny*, Warszawa 2011, p. 6.

<sup>17</sup> Cf. M. Kledzik, *Cenzura w demokracji ( przyczynek do ograniczenia i nadużywania wolności słowa)*, „Media, Kultura, Komunikacja Społeczna” 2013 nr 9, pp. 178-179.

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the regulations of eliminating of false reports, which instated very high penalties for press offenses, which in turn resulted in a voluntary submission to preventive censorship. In February 1930 Parliament repealed the regulation. However, it was possible that the administrative authorities confiscate printed edition before it was distributed, if the offense was committed in print (which struck the material basis of the publishing). This was mainly related to the publishing titles of the opposition, especially the socialists<sup>18</sup>.

After 14 years of the Constitution of 1921, the new Constitution was established in April 23, 1935, which “declared a different model of the state, with the dominant role of the executive branch embodied by the President and the limited role of parliament”<sup>19</sup>.

In the Constitution of 1935, an article stating the freedom of the press was omitted. In November 21, 1938 President signed a press decree. It was very strict and sparked protests from journalists. Increased sanctions, increased repressive powers of the prosecutor's office at the expense of the jurisdiction of administration and courts, required the press to publish so called governmental notes without any change or abbreviations, raised fines to the size that caused the fall of convicted titles and liquidating the position of editor responsible – shifting full responsibility to the author of convicted article or its publisher.

### c. The Second World War

At that time, the Polish lands were under German and Soviet occupation. Titles appearing officially came under the full control of the occupiers. The only fully free publications were published illegally and were issued by the pro-independence, underground organizations. The independent press publications, issued during Warsaw Uprising are an exception<sup>20</sup>. In addition, it should be mentioned that the Polish press also appeared in centers of Polish emigracy both in the West and in the East. The legal issues of these publications are highly complicated - they were partly based on pre-war laws and partly on the basis of current wartime regulations.

### d. Communism (1944-1989)

Central Office of Control of the Press , Publications and Performances was officially established in July 1946, but the institution of censorship operated in Poland since 1944, initially as a Resort, and later the Ministry of Information and Propaganda. As you might guess, censorship began its operations in Poland on the Soviets initiative<sup>21</sup>.

In a very short time a seat of the censor's office in Warsaw was formed, as well as branch offices in the remaining 16 provinces, and their business representatives in the

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<sup>18</sup> Cf. H. Wojtysiak, *op. cit.*, p. 5-6.

<sup>19</sup> R. Stawicki, *op. cit.*, p. 6.

<sup>20</sup> Cf. M. Kledzik, *op. cit.*, pp. 180-182.

<sup>21</sup> Cf. M. Kledzik, *op. cit.*, p. 183.

districts. Naturally, after the administrative reform in 1975, there was a delegation established in the new provincial cities. Head of the Central Office was located in Warsaw at Mysia street.

The Communist Party did not want to rely only on intuition of individual censors, outlining only basis of what type of content should be retained. Therefore a very detailed list of issues that could not be released to the public was created, including the list of authors whose achievements were banned. These guidelines for censorship were defined in the "Book of Records and Recommendations", listed under the "how, what and where to write". In the event that the censor could not find a record relating to the publication in question he was required to consult his superiors. It is evident that the work of this office was subjected to strict control and centralization<sup>22</sup>. The main tasks of censorship included, among others, a preliminary and verifiable control of the press and different publications, giving authorization to issue journals and magazines, conducting the publishing business and control of printing houses<sup>23</sup>.

Censorship takes not only the proactive form (preventive - before printing), but also repressive (following the printing of the text ) and it wasn't so rare that copies were sized after being printed. Decisions of censorship were arbitrary. An author or a publisher had no legal right to appeal against them. No one could leave traces of censorship in the text - declined text or passage was to be replaced by a different one<sup>24</sup>. Marking places in the text that were modified by censorship became legally possible after 1981 - July 31, 1981 - Law on the Control of publications and presentations was passed by the Parliament of the Polish People's Republic. The establishment of this bill was the result of a compromise between the government and the democratic opposition - the "Solidarity"<sup>25</sup>.

In January 26, 1984 - the Act on Press Law was stated. It also included articles talking about censorship. Basically, this means that for a long time censorship operated in Communist-ruled Poland, as it were outside the law<sup>26</sup>.

No less interesting is the fact that the Constitution of the Polish People's Republic of 1952 guaranteed it's citizens freedom of speech, press, usage of printing, paper resources, radio, telecommunications to the "working class"... When we know the reality, this sounds like a grim joke<sup>27</sup>.

Censorship worked quite restrictive. any printed material, speeches , letters , articles, even speeches during the session of the government and... content labels on

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<sup>22</sup> Cf. T. Tokarz, *Cisza w służbie propagandy PRL*, „Kultura i Historia” 2012 nr 21, <http://www.kulturaihistoria.umcs.lublin.pl/archives/3154> (accessed 02.11.2015).

<sup>23</sup> Cf. K. Kamińska, *Koniec cenzury w PRL (1989-1990)*, „Studia Medioznawcze” 2014 nr 3(58), p. 114.

<sup>24</sup> Cf. A. Domska, *Ograniczenia wolności prasy w PRL*, „Studia Prawno-Ekonomiczne” 2011, t. LXXXIV, p. 83.

<sup>25</sup> Cf. P. Kańduła, *Podstawy prawne oraz kompetencje organów cenzury w Polsce Ludowej*, „Disputatio” 2009 t. 8, pp. 86-87.

<sup>26</sup> Cf. A. Domska, op. cit., p. 88.

<sup>27</sup> Cf. R. Stawicki, op. cit., pp. 8-10.

food products were subjected to censorship before being allowed for printing or on-air delivery<sup>28</sup> (though it is really difficult to understand what sort of anti-state content could be found on the label of a jar of jam...).

Summarizing this period we can assume that “freedom of speech, the press, expression, assembly, etc., based on the Constitution, was significantly limited, there existed strong censorship and the press publishing was dependent on the administrative apparatus, which relied on political premises”<sup>29</sup>. In 1989, shortly before the liquidation of censorship in Poland, the censor’s office employed 456 people, of which 96 – in Warsaw headquarters<sup>30</sup>.

June 6, 1990 – by the Law of November 4, 1990 censorship ceased to exist – but Polish state needed a year from ‘89’s elections to remove that relic of restriction to freedom of speech from our law. During the last year of the existence of censorship, the number of censor's interferences in the publications has significantly declined<sup>31</sup>.

## 2. Changes after 1989

After the democratic changes in 1989, the new government faced a difficult task of defining a new kind of legal order in Poland, also in a field of the mass media. They also faced the eternal question of the degree of dependence that the media should have from politics. After all we know that a total independence of the media from the politics is an utopia.

The world of politics affects the world of the media, acting as a formal framework for the existence and functioning of the media. First of all, we are dealing with setting a legislation that directly relate to and regulate the activity of the media in any given country. But it's also a question of regulation of economic laws that determine funding framework of the media. The state has also an impact on the formation and disappearance of institutional forms (supervisory boards, boards of companies, agencies to monitor the media market - such as the Polish National Broadcasting Council, unions, corporations and councils journalistic ethics, etc.).

In theory, all these activities should aim to complete the direct and formal independence of the media from the structures of state power and political subjects (expressed in the freedom from political pressure). They should also defend freedom of expression and information, media diversity, protection and development of the domestic market and audiovisual production and the protection of competition and structural pluralism<sup>32</sup>.

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<sup>28</sup> Cf. A. Frankiewicz, *Wolność w sferze sztuki i nauki według Konstytucji Polskiej Rzeczypospolitej Ludowej z 1952 r. oraz Konstytucji Rzeczypospolitej Polskiej z 1997 r.*, „Studia Erasmiana Wratislaviensia” 2010, nr 4, p. 243.

<sup>29</sup> K. Płonka-Bielenin, op. cit., p. 39.

<sup>30</sup> Cf. K. Kamińska, op. cit., p. 116.

<sup>31</sup> Ibid., pp. 117-123.





There are different opinions on the extent to which the state should intervene in the regulation of media systems. Today the most common view is that a deregulation and liberalization of these systems is preferable, but the dangers and disadvantages of this process are also recognized.

Among the objectives mentioned in the context of the regulatory activity of the state towards the media are also cultural and educational objectives (protection of cultural identity and a wide range of programming, localism and regionalism, education, protection of cultural and ethnic minorities), as well as economic objectives (e.g. competitive market, building the information society, the fight against piracy).

There are different opinions on the extent to which the state should intervene in the regulation of media systems. Today the most common view is that a deregulation and liberalization of these systems is preferable, but the dangers and disadvantages of this process are also recognized. In Poland after 1989 we also had to deal with the deregulation processes, which were defined as a separation of political monopoly from the world of the media. All this was reflected in the end of censorship, the transition from the licensing system to the registration system or the creation of a commercial electronic media (radio and television)<sup>33</sup>.

It should also be noted that the deregulation processes are reflected in the economic situation of the media. After 1989, any medial activity become actually a business endeavor. Journals, magazines, radio and television broadcast have become commodities, which not only provide socially important content, but also bring profit to their publisher or broadcaster. Many newspapers fall out from the market or change owners, as are the radio and television stations. Several times during this period the Constitution was also amended<sup>34</sup>.

Just the number of sold copies of a newspaper or number of recipients of a TV program, are no longer able to provide financial success. The main source of income are profits from advertising, which makes the media somewhat dependent on business subjects and companies. That also raises the possibility of a more or less veiled pressure being placed on publishers.

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<sup>32</sup> Cf. A. Adamski, *Kto i jak na kogo wpływa, czyli o wzajemnym przenikaniu mediów i polityki*, „Cywilizacja” 2011 nr 39, p. 20-28.

<sup>33</sup> Ibid.

<sup>34</sup> Cf. R. Stawicki, op. cit., p. 10-11.

### a. Polish Constitution of April 2, 1997

Articles 14 and 54 are the ones covering the subject of the media.

Article 14 states that "Republic of Poland shall ensure freedom of the press and other mass media." This freedom - as noted by W. Sokolewicz - is a necessary condition for the fulfillment of its mission by the press. Freedom is the very essence of the press. Press must be free to act and be free of duties and guidance received from the outside, especially from the centers of public authority. Only a fully free press can reliably and efficiently monitor the actions of the authorities<sup>35</sup>.

The guarantor of freedom of the press and expression is the state - the Constitution imposes on it specific commitments in this regard. In turn, the Constitution of the Republic of Poland explicitly and completely prohibits the existence of preventive censorship, understood as the right to control the content by the public authorities and other institutions (eg. social organizations) that is to be published in the media<sup>36</sup>.

Article 54 of the Constitution reads as follows (it should be read as it relates directly to the prohibition of censorship): "1. Everyone shall have the freedom to express opinions, to acquire and distribute information. 2. Preventive censorship of the media and the licensing of the press shall be prohibited. Law may require the publisher to hold a license or a permit to operate radio or television broadcasts."

In practice, this means that the system of release of the printed media is regulated by application (or registration), and the system of the electronic media - by licensing, which in part is also dictated by technical considerations (the need for frequency transmitters or digital multiplex space, for the Internet broadcasted radio stations registration or license is not required, and a television station broadcasting linear program on the Internet should be entered in the register kept by the National Broadcasting Council - KRRiT). The National Broadcasting Council also grants licenses for terrestrial broadcasting of radio and television programs. Terrestrial television transmits on digital multiplexes, whereas radio on both, digital and analog.

As you can see, the Polish experience of communist era led to solving the issue of media censorship by typing the ban on censorship to the highest legal act, which is the Constitution. Licensing of the press was also cancelled - in the current system of notification the publisher must only inform the State of his intention to issue a newspaper or a journal - which, in practice, means that it must be registered in court.

### b. Press Law

The Press Law was enacted in January 26, 1984, and a general view today is that a law enacted in very different socio-political realities lags behind reality and should be amended. After 1989, there were more than 15 such amendments, but it is difficult to

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<sup>35</sup> Cf. W. Sokolewicz, *Prasa i Konstytucja*, Warszawa 2011, pp. 17-19.

<sup>36</sup> Cf. K. Płonka-Bielenin, op. cit., p. 42.

speak of a satisfactory form of this legislation. The journalists, publishers and politicians - people interested in the topic - were so far unable to reach agreement on the shape of any new law. Why? We are aware that we are dealing with a conflict of interest: journalists would like to expand their rights and guarantees of freedom, while politicians - contrariwise This strange state was described very vividly by J. Sobczak in the following words: "the existing press law is therefore similar to an old shoe, worn-out, patched, leaking, or even having a hole in it so that you do not wear it to European salons, but you willingly wear it due to its convenience since it does not hurts nor irritate corns"<sup>37</sup>. We can also notice that there is a belief among journalists that the existing press law, although imperfect, it should not be modified as yet because it properly fulfills its role - which is presumably dictated by the fear of the possible restricting freedom of the press by politicians<sup>38</sup>.

However, it should be noted that a significant interference with the content of the press law took place in 1990 and was largely associated with the abolition of censorship.

### c. The Broadcasting Act

Before 1992, the electronic media (radio and television) were owned by the state. The law did not provide for the possibility of radio and television broadcasting by private broadcasters. In 1992, the Broadcasting Act was passed by parliament. The National Broadcasting Council (KRRiT) was established in 1993 as the main regulatory authority for radio and television broadcasting matters. The members of the KRRiT are only nominated by political authorities (Sejm, Senat, The President). It creates a very long chain of political dependencies<sup>39</sup>. One of the main tasks of the National Broadcasting Council is granting of licences for terrestrial radio and television broadcasting. In addition, NBC was also an organ which supervised the digitalization of television in Poland. However, the assignment of channels on the digital multiplex raised numerous controversies and arguments - the issue of the initial refusal to grant space for the Catholic TV Trwam on the digital multiplex triggered many discussions, which resulted in massive social protests. It is significant that among protesters there were people who disagreed with the program line of TV Trwam. Eventually, television was granted a license and began digital broadcasting on the first multiplex (MUX-1) in February 15, 2014.<sup>40</sup>

<sup>37</sup> J. Sobczak, *Ustawa prawo prasowe. Komentarz*, Warszawa 1999, s. 9.

<sup>38</sup> Cf. A. Adamski, *Mieszane uczucia. O proponowanej nowelizacji ustawy Prawo prasowe w odniesieniu do Internetu*, in: Pucek Z., Bierówka J. (Ed.), *Polska w mediach, media w Polsce*, Kraków 2012, p. 138.

<sup>39</sup> Cf. M. Krewel, *Autonomy and Regulatory Frameworks of Public Service Media. Diverging Scenarios in a Europe of Different Levels*, in: K.A. Ibarra, E. Novak, R. Kuhn (eds.), *Public Service Media in Europe. A Comparative Approach*, Routledge 2015, p. 139.

<sup>40</sup> Cf. K. Pędziwiatr, *Church and State Relations in Poland, with Special Focus on the Radio Station Mary*, in: G. Simons, D. Westerlund (eds.), *Religion, Politics and Nation-Building in Post-Communist Countries*, Ashgate 2015, pp. 169-171.

### d. Civil Code and Criminal Code

As already assumed, freedom of speech is not the supreme value. Therefore, there can exist numerous legal regulations that are limiting it in certain situations of conflict between different values (e.g. freedom of expression must not violate the right of another person or group of people to the reputation, dignity, honor). It results from the fact that inviolable, inherent and inalienable human dignity and personal dignity, including honor, reputation and privacy, are of paramount importance. Also personal goods, despite their high status, are not given an absolute protection. Additionally, it must be remembered that the rights to the protection of honor and freedom of speech are equivalent – none of them is entitled to a precedence over the other, none of them is absolute, however, each one can be subject to certain restrictions in different situations<sup>41</sup>.

Therefore, some provisions of the Criminal and Civil Codes contain articles, which can sometimes be perceived as standing in contradiction with the principle of freedom of speech. The fact that there are stormy and multithreaded discussions, as well as heterogeneous Polish judicature shows that such situations are not always clear and unambiguous.

Polish Criminal Code contains the following articles, that could be considered as a partial limitation of freedom of speech:

Article 196, that prohibits insulting of religious feelings – frequently criticized by people of an atheistic worldview. In turn, proponents of maintaining this article assert that the protection of religious feelings is closely linked with the protection of freedom of conscience and religion<sup>42</sup>. Additionally, there is no abuse of this article by the courts – the number of convictions for the offense specified in Art. 196 CC is negligible in comparison to the overall scale of crimes and constitutes from 0.000002 to 0.000032% (approximately 0.000017%) of criminal cases annually<sup>43</sup>. The Constitutional Tribunal RETURNED a verdict in October 6, 2015 (SK 54/13), in which it claimed Art. 196 of Criminal Code as compatible with the Consitution of RP<sup>44</sup>.

Article 212, the shorting ban on libel and slander. This article causes the most controversies and objections from the media representatives who maintain that it is often abused and causes blocking of a public debate and the press critique. It is also pointed out that the European Court of Human Rights in Strasbourg regularly criticizes the Polish courts for abusing this article and many Court cases (though not all of them) ends with awarding compensation by the Court to the unjustly convicted journalists<sup>45</sup>. Over

<sup>41</sup> Cf. M. Wysocka, op. cit., p. 98.

<sup>42</sup> Cf. M. Derlatka, *Zasadność kryminalizacji obrazy uczuć religijnych*, „Prokuratura i Prawo” 2015 nr 10, p. 42.

<sup>43</sup> Cf. M. Poniatowski, *Analiza art. 196 kodeksu karnego z perspektywy 15 lat jego obowiązywania*, „Roczniki Nauk Prawnych” 2013 (XXIII), nr 3, p. 48.

<sup>44</sup> *Judicial decision*: <http://trybunal.gov.pl/rozprawy-i-ogloszenia-orzeczen/wyroki/art/8586-wolnosc-sumienia-i-wyznania/> (accessed 02.11.2015).

<sup>45</sup> Cf. E. Łosińska, *Artykuł 212 przegrywa w Strasburgu*, „Forum Dziennikarzy” 2015 nr 3(117), published 28.09.2015, <http://www.sdp.pl/felietony/11810,artykul-212-przegrywa-w-strasburgu,1443463746>, acces-

the past 5 years, there were 18 such cases in the Tribunal, in half of which the Court claimed that Poland violated Art.10 of the European Charter of Human Rights guaranteeing freedom of expression<sup>46</sup>. It is noticed that disproportionately harsh penalties can cause the chilling effect, i.e., to discourage journalists to carry out public functions of the guardian and the controller. The threat of executing the judgment may prevent journalists from formulating risky statements and opinions and paralyze their activity in the service of society<sup>47</sup>. It should be also remembered that in October 4, 2007, the Parliamentary Assembly of the Council of Europe adopted a resolution number 1577 (2007) titled "Towards Decriminalization of Defamation". It urges the elimination of the penalty of imprisonment from the national regulations concerning the abuse of freedom of speech. It is only allowed in cases of incitement to violence, offensive language and promotion of nationalism. It also postulates the repeal of the regulations that grant the intensified protection to public figures. Additionally, it strives for a more precise definition of defamation and an effective protection of human dignity by the civil law<sup>48</sup>.

In Poland there are organized social campaigns for the abolition of criminal liability for violations of personal rights, while non-governmental organizations issue publications analyzing cases of the abuse of of this article<sup>49</sup>, as well as guidebooks for journalists on how to avoid problems with the law and exposure to criminal liability<sup>50</sup>. On the other hand, it is indicated that keeping the civil procedure as the only possible mechanism of protection of the violated personal rights seems insufficient, in addition, civil proceedings are frequently long-lasting and expensive<sup>51</sup>. As far as modification of Art. 212 and the abolition of imprisonment for its violation should be considered, the total abolition of criminal liability for defamation would lead to inconsistency in the law – because then – taking into account all the personal rights guaranteed in the Constitution – defamation alone would nor be subject to criminal liability<sup>52</sup>.

Article 216, which prohibits insulting other people or groups of people;

The articles that are evaluated as negative in the context of the protection of freedom of speech are: Art. 226, which allows to impose a penalty up to two years of imprisonment for a public insult or humiliation of the constitutional authority of the Republic of Poland, for example, the government and also the Polish president (Art. 135

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sed 02.11.2015.

<sup>46</sup> Cf. A. Żurakowska, *Zasadność utrzymania art. 212 kodeksu karnego*, „Państwo i Prawo” 2015 nr 9, <http://www.lex.pl/czytaj/-/artykul/kara-za-znieslawienie-raczej-do-modyfikacji-niz-likwidacji> (accessed 02.11.2015).

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> Cf. D. Sześciło, *Paragraf 212. Karanie dziennikarzy za zniesławienie w polskiej praktyce*, Warszawa 2009.

<sup>50</sup> Cf. *Praktyczny przewodnik po art. 212 k.k.*, Warszawa 2012.

<sup>51</sup> Cf. J. Kuraś, *Królikowski: art. 212 kk nie będzie zlikwidowany*, „Rzeczpospolita” 17.01.2014, <http://www4.rp.pl/artykul/1079920-Znieslawienie-a-wolnosc-wypowiedzi.html> (accessed 02.11.2015).

<sup>52</sup> Cf. A. Żurakowska, op. cit.

§2); a leader of a foreign state or an accredited head of a diplomatic representation of such state (Art. 136 §3); a person belonging to the staff of a diplomatic representation of a foreign state or a consular officer of a foreign state in regards to their official duties and actions (Art. 136 §4)<sup>53</sup>.

Article 256, which prohibits the promoting of a fascist or other totalitarian system of state and incitement to hatred based on national, ethnic, racial or religious differences;

Article 257, speaks of insulting and discrimination on grounds of nationality, ethnicity, race or religion;

Similar to the above – the Civil Code also incorporates similar articles, giving you the legal possibility to claim compensation for the infringement of personal rights in civil proceedings. We should especially mention the following articles:

Art. 24 and Art. 448 – concerning protection of personal rights and principles of enforcing their protection and reparation in case of violation.

Article 755 of the Code of Civil Procedure also raises many controversies as it says that in cases related to protection of personal rights, the court can establish collateral such as a ban on publication – however, only when it is not against an important public interest. Time of this prohibition cannot be longer than one year.

The invoked article was the subject of the Constitutional Court's judgement in its previous form of wording, which did not contain any time limits regarding a ban on publication. It was repeatedly mentioned in discussions that it is simply a non-constitutional loophole, which allows actions of preventive censorship nature<sup>54</sup>. The Constitutional Court declared this rule unconstitutional in November 9, 2010 –however, in regards to the lack of time limits and not due to the very principle of protection by prohibiting publication – therefore, a temporary ban could turn into a permanent ban<sup>55</sup>. This interpretation also encountered harsh criticism and became the subject of a discussion between lawyers as well as media people. It seems like there are more supporters of a belief that the consequences of publications, which violate personal interests are sometimes irreversible and difficult to remove, because neither adjudicated apology nor compensation cannot eliminate the effects of such publication. Thus, safety procedures do not aim to limit freedom of speech, but to protect freedom and rights of people from the results of publication<sup>56</sup>.

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<sup>53</sup> Cf. A. Biłgorajski, *Oddziaływanie standardów strasburskich dotyczących podmiotowych granic wolności wypowiedzi na polski porządek prawny*, „Przegląd Prawa Konstytucyjnego” 2011 nr 1, p. 239.

<sup>54</sup> Cf. M. Wróblewski, *Zabezpieczenie powództwa przez zakaz publikacji - instrument cenzury prewencyjnej?*, in: A. Bodnar, D. Bychawska-Siniarska (eds.), *Współczesna cenzura?*, Warszawa 2010, pp. 12-16.

<sup>55</sup> *Judicial decision* cf. <http://trybunal.gov.pl/rozprawy-i-ogloszenia-orzeczen/wyroki/art/4865-postepowanie-zabezpieczajace-w-sprawach-przeciwko-srodkom-spoecznego-przekazu-o-ochrone-dobr/> (accessed 02.11.2015). *Justification of judicial decision* cf. A. Bodnar, D. Bychawska-Siniarska (eds.), op. cit., pp. 39-53.

<sup>56</sup> Cf. Z. Zawadzka, *Zabezpieczenie roszczeń polegające na zakazie publikacji w sprawach o ochronę dóbr osobistych*, „Transformacje Prawa Prywatnego” 2014 nr 1, pp. 70-71.

### 3. Freedom of speech in Poland in the opinion of the international community

The activities of the Polish government and jurisdiction concerning actions exhibiting symptoms of restricting freedom of speech, are also frequently criticised by non-governmental organizations. As an example can be given published in 2011 by 'Polska jest najważniejsza' Association 'the report on the dangers of freedom of speech in Poland between 2010-2011', containing numerous cases of such activities<sup>57</sup>.

In the end, it is worth analyzing how Poland is classified on the international arena in regard to freedom of speech.

Several periods of a development of freedom of speech in Poland are mentioned in the publication titled "Historical Guide to World Media Freedom: A Country-by-Country Analysis". During 1948-1997 Polish media were categorized as "Not Free" (interestingly, this classification also refers to the period of 1990-1997). In addition, between 1998-2001 Polish media were evaluated as "Imperfectly Free", and after 2001 as "Free", which the authors of a report justify in the following way: "...the growth of truly independent and free media was much slower than many of the former Soviet Bloc countries. Commercialization began almost immediately after the fall of the Berlin Wall but the extremely gradual loosening of government mechanisms for indirect control that followed can probably be attributed to two factors. First, the media have been firmly on the side of the anticommunist push, and with a quick establishment of a democratic government, the media was seen as a key tool the regime could use to establish and sustain those liberal institutions. This fed into a second reason for the slow process of liberalization: a significant and widespread fear a resurgence of communism from within Poland, which may or may not have been supported by external forces"<sup>58</sup>.

One of the most popular and prominent rankings of freedom of the press in the world is "The Freedom of the Press index". It is an annual survey of the media independence in 199 countries and territories. The research is conducted by Freedom House - a nongovernmental organization located in the United States of America. The annual index contains the most comprehensive data set available on global media freedom. It assesses the degree of print, broadcast, and internet freedom in every country in the world, analyzing the events of each calendar year. Each country and territory receives a numerical score from 0 (the most free) to 100 (the least free), which serves as the basis for a status designation of Free, Partly Free, or Not Free. Country narratives examine the legal environment for the media, political pressures that influence reporting, and economic factors that affect access to information<sup>59</sup>.

In the ranking for 2015, Poland received an index value of 26, which indicates the status of "Free". In the category of "Legal Environment" Poland received note 9 (where 0

<sup>57</sup> *Raport o zagrożeniach wolności słowa w Polsce w latach 2010-2011*, Warszawa 2011, <http://niezalezna.pl/uploads/pdf/raport-o-zagrozeniach-wolnosci-slowa-spjn.pdf> (accessed 02.11.2015).

<sup>58</sup> J. Whitten-Woodring, D. A. Van Belle, *Historical Guide to World Media Freedom: A Country-by-Country Analysis*, SAGE 2014.

<sup>59</sup> Cf. *About 'Freedom of the Press'*, Internet sites of "Freedom House", <https://freedomhouse.org/report-types/freedom-press> (accessed 02.11.2015).

= best, 30 = worst) in 2015. A justification mentions, among others, restrictions introduced by the Polish government concerning the access to public information. It also criticizes paragraphs discussing an insult to religious feelings and to high state officials. Furthermore, it refers to the high level of politicization of the National Broadcasting Council and as an example it brings up an unjustified – as the authors of a report claim – punishment for Lux Veritatis Foundation, a broadcaster of TV Trwam<sup>60</sup>. In turn, a report published in 2014 (in the category of “Legal Environment” Poland also got note 9) mentions lawsuits against journalists for insulting politicians (e.g. repressions that afflicted Robert Frycz, the creator of a website dedicated to satirizing President Bronisław Komorowski), lawsuits for insulting religious feelings, and it also mentions the fact that the National Council of Radio and Television refused to grant a license for digital terrestrial broadcasting for Catholic television Trwam. The report, however, contains some critical and alarming expressions: “Standards accepted by professional media associations emphasize objectivity in reporting, but the culture of journalism in Poland remains highly partisan. (...)The government does not directly censor the media in Poland, and all forms of the media are generally free to investigate and report on political matters. However, indirect censorship does exist, with pressure from political figures—including the potential threat of legal action—leading to self-censorship”<sup>61</sup>.

### Conclusion:

Freedom of speech, like every freedom has its limits. It is not an absolute value. The boundary in this case is the truth and the good – including the rights of others. The limits of freedom are set by conscience, but also by laws that in a democratic country are designed to protect the freedom of individuals. Freedom of speech does not mean freedom to knowingly lie or to offend anyone, for any violation of another person’s dignity. The dignity of a each person is always protected by law.

In Poland and other countries of the former Eastern Bloc this situation is very delicate, since corrupted by the experience of communist oppression and far-reaching restrictions on freedom of expression. It seems that Poland emerged victorious from the difficult times of communism, where freedom of speech was only apparent. You can now experience freedom of speech and freedom of the media in Poland, also in legal terms. Freedom of speech is also guaranteed by the Constitution and is closely linked with freedom of the media. However, there are also alarming signals, such as the politicization of the National Council of Radio and Television, or some actions of the government limiting the right to access to public information. However, it does not change the fact that generally Polish legal system protects the freedom of speech and provides the right balance between the protection of freedom of speech and other human rights. ■

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<sup>60</sup> Cf. *Freedom of the Press 2015 - Poland*, <https://freedomhouse.org/report/freedom-press/2014/poland> (accessed 02.11.2015).

<sup>61</sup> *Freedom of the Press 2014 - Poland*, <https://freedomhouse.org/report/freedom-press/2014/poland> (accessed 02.11.2015).



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