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**Political Bias Media in the Light of the Provisions  
of the Polish Constitution of 1997**

**Keywords:** press, fourth power, political involvement, apoliticality, Polish Constitution of 1997

**Słowa kluczowe:** media, czwarta władza, stronniczość, apolityczność, Konstytucja RP z 1997 r.

**Abstract**

The political involvement of media may raise doubts, particularly when these are the cases of political bias. Many Polish journalists perceive this phenomenon critically and try to counteract it, creating codes of journalistic ethics. Their impact, however, is not common, so they remain ineffective. This problem should be considered while analyzing the Polish constitutional provisions and laws. None of the provisions of the Polish Constitution of 1997 does prohibit journalists or media political commitment. Media in Poland have but to fulfill an important function of informing the sovereign (nation) about all the activities of public authorities. To this end, the legal standards guarantee media freedom of action. Associated with the position of media power is to serve social objectives, which is to provide information. Legal norms do not require neutrality, nor do they impose political commitment. It should also be remembered that media are a part of the Polish political system.

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**Streszczenie****Polityczna stronniczość mediów w świetle przepisów Konstytucji RP z 1997 r.**

Zaangażowanie polityczne mediów może budzić wątpliwości, zwłaszcza gdy są to przypadki skrajne, charakteryzujące się stronniczością polityczną. Liczni polscy dziennikarze postrzegają to zjawisko krytycznie i starają się temu przeciwdziałać, tworząc kodeksy etyki dziennikarskiej. Skuteczność oddziaływania na środowisko tego rodzaju aktów należy ocenić jako niewielki, co jest zapewne związane z ich niewiążącym charakterem. Wydaje się, iż sygnalizowane postawy – związane z politycznym zaangażowaniem mediów – należy postrzegać uwzględniając polskich przepisy prawne, konstytucyjne i ustawowe. Żaden z przepisów Konstytucji RP z 1997 r. nie zakazuje dziennikarzom ani szeroko rozumianym mediom politycznego zaangażowania. Jednocześnie należy mieć świadomość, że media w Polsce mają do spełnienia istotną ustrojowo funkcję informowania suwerena (narodu) o wszystkich działaniach władz publicznych. W tym celu zostały ustanowione normy prawne gwarantujące mediom wolność działania. Normy prawne nie wymagają przy tym neutralności, ani też nie nakazują politycznego zaangażowania. Oceniając tego rodzaju postawy należy mieć zatem na uwadze społeczną oraz ustrojową rolę mediów, jako istotnego elementu polskiego systemu politycznego.

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The political admissibility of media, especially during the election period, sometimes is controversial. These types of attitudes can take various forms, although usually, we are dealing with favoring one social group while criticizing others. It is not uncommon for journalists or, more broadly, media workers to view such attitudes critically and take steps to limit or reduce them. It should be noted, however, that under various types of media ethics codes (such as the Media Ethics Charter<sup>2</sup>, the Code of Journalism Ethics<sup>3</sup>) or editorial regulations, this issue can be regulated freely. This is a natural phenomenon re-

<sup>2</sup> The text of the Media Ethics Charter is available at: [http://www.dziennikarzerp.pl/wp-content/uploads/2010/06/karta\\_dziennikarzy.pdf](http://www.dziennikarzerp.pl/wp-content/uploads/2010/06/karta_dziennikarzy.pdf) (17.10.2019).

<sup>3</sup> The text of the Code of Ethics of Journalistic Association of Polish Journalists is available at: <http://www.sdp.pl/s/kodeks-etyki-dziennikarskiej-sdp> (17.10.2019).

lated to the lack of a uniform, ethical and moral pattern. The multitude of environmental regulations, and therefore the lack of a unified standard, make the phenomenon difficult to analyze. Therefore, it is worth reaching for a legal norm that has the advantage of being compulsory, general and abstract.

It should be assumed that the general concept of the fourth power may be assigned different meanings. For researchers of political systems, the term “fourth power” carries information about the special importance of the media in the state. For people professionally associated with media, it can be an expression of recognition of their specific social function, while motivating them to be active in this field. Generally, it must be assumed that such power actually exists, because decision-making often is based not so much on facts but on information acquired on a given topic, usually from the media. As a side note – it is hard to imagine a situation in which each time we go to the place of the event and “at source” obtain information to take a specific standpoint. So, it is true to say that whoever has information, or who disseminates it, has power. In this context, the ethical and moral attitude of a media employee, his honesty, reliability, diligence, criticism, and – important in this analysis – political commitment that may result in bias which is particularly important<sup>4</sup>.

Possessing such power is connected with numerous rights, especially when we consider the case of media operating in a legal state that guarantees broadly understood freedom of the press. Such a status cannot raise doubts, on the contrary – it is a kind of civilizational achievement that we should be proud of. However, one should be aware that exercising any power in a democratic state means not only rights but also obligations which the authority should fulfill. This type of legal situation – i.e. the simultaneous possession of complementary rights and obligations – is the foundation for the functioning of each of the authorities. There is also no doubt about the subservient nature of power in a modern state. Therefore, it should be assumed that the fourth authority, which performs a special type of social functions, is subject to legal protection not so much in recognition of its merits or in order to meet the current system trends in Europe, but in order to enable it to fulfill its duties without interruption for the benefit of society.

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<sup>4</sup> R.M. Czarny, *Dyplomacja a media – granice akceptacji i ryzyka*, [in:] *Władza czy służba? Problem dobra wspólnego w polityce*, eds. A. Kasińska-Metryka, K. Bochenek-Cichoń, Toruń 2011, pp. 89–90.

The Constitution of the Republic of Poland of April 2, 1997<sup>5</sup>, two regulates the functioning of the media in Article 14, stating: “The Republic of Poland shall ensure freedom of the press and other means of social communication”. For the purposes of this analysis, the provisions of Article 54: “1. Everyone is guaranteed the freedom to express their views and to obtain and disseminate information. 2. Preventive censorship of the social media and licensing of the press are prohibited. The Act may impose an obligation to obtain a license for operating a radio or television station beforehand”. He notes that the cited provisions are characterized by a high degree of iconicity, leaving the media and their employee’s considerable freedom of action<sup>6</sup>. At the same time, the Constitution does not specify the preferred attitude of the media, whether neutrality or political commitment. In this connection, it should be recognized that the political involvement of the media has not been considered by the constitution-maker as requiring regulation, and therefore it cannot be said that it is a threat to the political system of the state. However, it should be stated that such involvement may take place according with the constitutional provisions in force. The provisions of the Article 14 of the Constitution of the Republic of Poland guarantee freedom of the broadly understood media, and the press remains a specific model of various types of media<sup>7</sup>. Freedom, considered in the context of media activity, means: great ideological freedom, great organizational freedom, no quantitative restrictions, no ownership restrictions, no qualitative restrictions – at least as far as formal and legal restrictions are concerned<sup>8</sup>.

The generality of constitutional regulations on the functioning of the media is undoubtedly purposeful. The provisions of the Article 14 and Article 54

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<sup>5</sup> Dz.U. No. 78, item 483 as amended.

<sup>6</sup> W. Skrzydło, *Konstytucja Rzeczypospolitej Polskiej*, Warsaw 2007, pp. 22, 51–52.

<sup>7</sup> “Admittedly, freedom of the press falls within the general principle of freedom of the means of social communication, but the constitution-maker decided to separate »the press« as the only medium in concreto. The adoption of such a construction is related to the fact that it is the oldest means of such communication. Hence the practice of treating »press« regulation as a model regulation, which may also be extended to other media”. B. Szmulik, *Wolność prasy (art. 14, 54, 61)*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz encyklopedyczny*, eds. W. Skrzydło, S. Grabowska, R. Grabowski, Warsaw 2009, p. 656.

<sup>8</sup> A. Młynarska-Sobaczewska, *Współczesne zagrożenia wolności informacji w prasie*, “Przeгляд Prawa Konstytucyjnego” 2010, No. 1, p. 26.

of the Polish Constitution are sometimes considered insufficient, which is the reason for their “clarification” in various types of environmental codes. Such activities often are disciplinary in the work of specific editorial staff, which aims to guide and maintain the so-called editorial lines. It is worth bearing in mind, however, that establishing constitutional provisions with specific content is never a coincidence. On the contrary, it is preceded by a long preparatory stage. On the basis of constitutional law, there is a discussion about the rationality and autonomy of the legislator (or constitution maker), which means that the content of the provisions is the result of consciously made decisions, often bypassing a number of postulates expressed by individual circles, professional groups or lobbyists.

It is worth paying attention not only to the content of Polish constitutional regulations relating to the functioning of the media, but also to the manner in which art. 14 in the constitution. The functioning of the press and the so-called social communication was regulated in Chapter I entitled “Rzeczpospolita”, and therefore among key political institutions. It is a solution that has no equivalent in modern constitutions, emphasizing the importance of free media for the functioning of the state<sup>9</sup>. Freedom of press in Article 14 indicates its relationship with Article 11 (freedom to create and operate within political parties), Article 12 (freedom to set up and operate in trade unions, socio-professional organizations, and the organizations of the so-called third sector) and Article 13 (restrictions on the activities of political parties and social organizations). The next articles of this “block” concern the territorial division of the country (Article 15), local government (Article 16) and professional one (Article 17). Therefore, it can be concluded that the intention of the constitution-maker was to entrust media with the function of providing information relevant to society, including information on various forms of its organization, the system of constitutional organs, as well as relating to the functioning of the party system. Adopting such an assumption requires free media and their activities to be perceived in the context of use for the functioning of the political system. It should be borne in mind that the provisions of the Article 54 section 1 of the Constitution grant everyone

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<sup>9</sup> L. Garlicki, P. Sarnecki, *Comment to art. 14*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, T. V, ed. L. Garlicki, Warsaw 2005, pp. 1–2.

the freedom to express their views, as well as to acquire and disseminate information. There is no information about specific restrictions accompanying such activities. The Constitution also prohibits (in Article 54 (2)) preventive censorship, which consists in arbitrarily recognizing information as socially harmful and prohibiting its dissemination<sup>10</sup>.

The findings allow to state that in Polish law we are dealing with the principle of open government known from British law. Its elements can also be found in other countries (e.g. in the German political system's transparent *Politik*)<sup>11</sup>. It means that the state authorities must ensure that information is available in such a way that the public has the opportunity to assess the legitimacy of the broadly understood government. The beneficiaries of the open government principle are informed citizens who are aware of their importance and impact on the exercise of public authority. According to the Constitutional Tribunal, "universal and wide access to public information is a necessary premise for the existence of civil society, and thus – the implementation of democratic principles of the functioning of public authority in a Polish legal state"<sup>12</sup>.

In the Polish political system, the principle of open government is significantly strengthened. While in Great Britain there is the principle of parliament's sovereignty, in the Third Republic of Poland the sovereign is the nation. In this situation, media are obliged to carry out information activities in such a way that members of the collective sovereignty have full access to information on the functioning of all areas of life, including full information on the functioning of power (Article 61 of the Polish Constitution). Only in this situation community members can make rational decisions, including political ones<sup>13</sup>.

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<sup>10</sup> P. Sarnecki points out the important attributes of press freedom under Polish law. He claims that "The inadmissibility of introducing such a restriction (i.e. preventive censorship of all means of social communication) has an absolute dimension, which results from the constitutional form of this issue in the commented article. The same applies to the licensing of the press (issuing permits to issue periodicals) by state authorities, but not to radio or television stations where this option is allowed *expressis verbis*." P. Sarnecki, *Comment to art. 54*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, T. III, ed. L. Garlicki, Warsaw 2003, p. 6.

<sup>11</sup> B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warsaw 2012, p. 48.

<sup>12</sup> The judgment of the Constitutional Court of October 15, 2009, sign. K 26/08.

<sup>13</sup> According to B. Banaszak, "In a democratic state in which there is a collective subject of sovereignty, messages [...] should have the widest reach, so that each member of this entity

This is how the obligations of the free press (media) are captured by the provisions of the Press Act of January 26, 1984<sup>14</sup>. In Article 1, they emphasize the relationship between freedom of expression, which the press uses, and the realization of the right of citizens to their reliable information, transparency of public life and with control and social criticism. Therefore, the primary value should be seen as the right of citizens to reliable information, while the privileges enjoyed by the media serve the exercise of citizens' rights. The rights of the fourth power were clearly correlated with its social function. From the point of view of the analysis aimed at assessing media bias under the law, the Article 2 of press law imposes an obligation on state authorities to create the conditions necessary for the press to perform its functions and tasks, and its provision is not subject to restrictions due to ideological attitudes or the degree of commitment. The regulations require that such conditions – including legal conditions – to be created so that the activity of editorial offices of newspapers and magazines diversified in terms of the programme, thematic scope and presented attitudes is possible. The key here seems to be the use of the term 'diverse', referring both to the ideological involvement of the media (or lack thereof) as well as to the freedom in the extent of this involvement.

Therefore, the obligations imposed on free media can be fulfilled – in terms of political commitment – in a number of ways, with Polish law not preferring any of them. It seems, however, that guaranteeing ideological media pluralism creates not only conditions for politically involved and even biased editors, but also for neutral public media. Especially in a democratic state, characterized by a high degree of political culture, guaranteeing authentic freedom of the media, there is a place for politically and ideally neutral, characterized by the high ethical standards of public media. De-

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before taking part in shaping the will of the state has adequate knowledge about the current functioning of the state and its organs, and on the factors determining the development of the state. This knowledge should be formed on the basis of different partial information, clash of different views enabling one to look at the same matter from different points of view, etc. Any restrictions in this area will give an incomplete, one-sided picture of reality or will unilaterally indicate the future effects of suggested decisions". B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej...*, p. 127.

<sup>14</sup> Dz.U. No. 5, item 24, as amended.

termining why the attempts to create this type of media in Poland failed seems to be a separate problem<sup>15</sup>.

Why the law remains neutral when it comes to the degree of political involvement of the media? After all, in the opinion of many Poles, this is a problem, and any problem can be solved by adopting an appropriate law, i.e. introducing a number of orders and bans. Firstly, the question of whether the political bias of the media can be considered harmful should be answered. Secondly, if we think that media should not be biased, then it is necessary to set a precise legal basis separating political commitment from political bias. This task does not seem possible if we want the existence of free media. Of course, the lack of critical remarks regarding political involvement and even cases of free media bias in Poland does not mean that the optimal solution is known from the period of the Polish People's Republic. Domination on the press market of magazines, which are official bodies of specific political parties, does not seem possible today.

It is worth noting, however, that in modern countries of our cultural circle there are numerous titles of recognized renown, which are characterized by permanent or periodic political commitment. Examples include: center-left *Le Figaro*, center-left *Le Monde*, left-wing *Liberation*, right-wing (against declared liberalism) *Die Welt*, conservative *Frankfurter Allgemeine Zeitung*, center-left *Süddeutsche Zeitung*, center-left *Corriere Della Laserva*, right-wing, left-wing liberal *The Daily Telegraph*, liberal-left *The Guardian*, liberal-center-left *The Independent*, center-right (although in 2001 and 2005 supporting the British Labor Party) *The Times*.

Therefore, it should be stated that the phenomenon of political involvement of the media is complex. Such involvement occurs in almost all media, but there are its various degrees. As extreme attitudes – and hence the least fre-

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<sup>15</sup> The very term “public media” is not legally clear. “There is no constitutional ban on the existence of public media, and in the sphere of radio and television broadcasting they are treated as an obvious element of the system. However, one can doubt whether constitutionally healthy would be the wider existence – other than RTV – of public media, especially when it comes to the printed press. In any case, the »public« cannot be understood as a synonym for »state«, let alone »government« [...]. The principle of freedom of the social media excludes the existence of any media legally subordinated to and controlled by the government. This would violate the principle of balance and free competition of political forces, which is the basis of democratic pluralism”. L. Garlicki, P. Sarnecki, *Commentar to art. 14...*, p. 8.



quent ones – one should indicate neutrality and extreme bias. In other cases, we can talk about different degrees of commitment: sympathizing, favoring, supporting, bias, but also scepticism, criticism, questioning. This diversity of attitudes – if we perceive it globally, and not in relation to specific editors – is a phenomenon that should be assessed positively. Thanks to it, the same information can be presented in various ways, provided with a different commentary, embedded in various contexts. This way of informing serves the implementation of the idea of obtaining by citizens information on the activities of public authorities (Article 61 of the Polish Constitution), which requires the functioning of free media in Poland.

A number of questions that arise under the influence of observations of the Polish media market do not require – in view of the findings – answers. There is no alternative to politically involved or even biased media unless we consider such a significant limitation of media freedom in Poland. At the same time, it seems impossible to transmit programme or campaign content of individual political parties without the participation of professional media, especially in the era of the Internet and the multitude of services provided by the global network. Thanks to technological progress, the vision of the information society has come true, in which everyone can receive information, but also to disseminate it, which allows the full exercise of freedom of expression (Article 54 of the Polish Constitution)<sup>16</sup>. Citizens can be reporters, publish information, express views, often agitate for or criticize political parties, sometimes without complying with any standards. In such a perspective, one should not expect the message to stop, but one should doubt its quality.

Demands for the depoliticization of the media seem therefore to be missed. In the name of decreasing media-political involvement, one cannot accept a drastic drop in the quality of publicly disseminated information. It does not

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<sup>16</sup> P. Uziębło points out that freedom of expression means, among others “The freedom to obtain information and disseminate it through the mass media, and thus both the press, electronic media or other available forms of communication, both by means of public and private media. However, this does not mean that the freedom of expression is narrowed down to journalists and journalists. It has a universal character and is vested in every entity”. P. Uziębło, *Wolność wyrażania poglądów (art. 54)*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz encyklopedyczny...*, pp. 666–667.

seem, however, that free but politically engaged media have an important role to play in a modern democratic state.

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