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Genre of journalism as a determinant of journalist's responsibility

Selected legal aspects

Section one

KEY WORDS

forms of journalism, journalism genres, plagiarism, self-plagiarism, dignity, personality rights

ABSTRACT

From a legal point of view, assignment of a message to any of the journalistic or literary genres does not matter. Journalistic material, whatever genre it is, may expose the writer to criminal or civil liability. Disciplinary liability cannot be forgotten, although enforcing compliance with ethical codes is extremely difficult, if not impossible. Journalists should also not forget about the requirements of copyright and to avoid plagiarism. Regardless of the genre to which journalists are concerned, it is important to respect the right to authorise, to protect the honour and dignity of the concerned persons.

Choosing the form of journalism, deciding under which genre it falls, may be conscious, but sometimes is random, as a journalist, while undertaking specific issue or topic, not always immediately decides whether it is going to be an information, report, reportage or commentary. He leaves this to the recipient, who, while reading the text or listening to the radio and watching tv, usually – unless he is a professional – does not think about the genre it belongs to. He can usually distinguish the column from the reportage and commentary, although not always, and is not quite aware of the existing genre differences. Additionally, it is worth to note that most recipients treat all messages very seriously and literally, not noticing the irony, satire or other subtle means of expression in their content, not to mention stylistic conventions, derivational measures, semantic transformation, metaphors, metaphorical epithets, allegories, syntactic means, prosaisms. The recipient most usually does not notice that he/she is dealing with a pastiche or a persiflage. It is not a time and place to

think about the reason for this state of affairs, but we can state with a high degree of probability that the reason is the low level of education in general, where the Polish language is marginalised and the reading list is being constantly limited – so the youth is not overloaded with allegedly unnecessary knowledge. This fits in the overall trend of over-representation of Polish, mainly seen as a means of communication, and not the language to perceive literature. According to the decision-makers shaping the university programmes, English, in general, should be used to formulate scientific texts, regardless of whether they relate to the medical, biological, technical, social or legal science or the humanities. It is this language, according to some, we should use to write scientific texts analysing the Polish literature. Thus, it is only a very narrow group of people who study the issues of classification of different communications under journalistic or even literature genres.

From a legal point of view, assignment of a message to any of the journalistic or literary genres does not matter. The one exception is the satirical message or caricature, as well as criticism of both scientific and artistic works, and of creative, professional or public activity. Regarding these forms, the legislator in art. 41 of the Act of 26 January 1984 Press Law (hereinafter “PP”) clearly formulated the legal justification for the exemption of illegality of actions falling within the framework defined by the contents of this provision. At this point, we should note that, as apparent from numerous trials pending against journalists, neither them, nor – more understandably – their opponents, pay attention to the content of the said justification, although in many cases this would enable them to avoid criminal liability. In legal awareness of the journalists’ environment, the justification of allowable criticism formulated in art. 213 of the CC, mentioned in further considerations, seems more embedded. However, it is not usually noted that the latter justification was quite a serious transformation and in the past the content was differently articulated in the Criminal Code of 1969, and even at the time of the Criminal Code of 1997, there were serious changes made to the said justification.

We must also note that the law, while protecting an image of a person, poses particular requirements before the creators of visual messages, those fitting within the frameworks of photographic, television or movie genres of journalism. This relates to special regulations on reports from court trials, especially in the field of possibility to present the image of the defendants and witnesses.

Generally, journalistic material, whatever genre it is, may expose the writer to criminal or civil liability. Journalists should be fully aware of this fact, just as e.g. doctors should be aware that they are responsible for malpractice or treatment failure. Obviously, we must skip

disciplinary liability at this point, as, unfortunately, in Polish conditions it is only superficial, and existing ethic codes formulated by various journalistic associations and environments, rather create the outside image of the press and promote the journalistic environment than actually adjust their behaviour. We can see a mechanism that is supposed to convince the public that journalists need no supervision, as they hold high moral standards and well-developed self-control methods¹. Emergence of various types of journal codes seems to result from the fact that declared morality does not translate into practical morality, and moral declarations can be exposed without risk, while communicating unrealistic slogans and making promises about obligations that cannot be fulfilled². Those, who create the codes, are more or less aware that it is extremely difficult to implement the content of those codes, and responsibility for promises and declarations is impossible to enforce. It is sometimes stressed out that codes reduce the ethical sensitivity and the sense of individual responsibility, fostering conformity among the society³.

The danger of plagiarism

Journalists must also not forget about the requirements of copyright and to avoid plagiarism. The danger of committing plagiarism threatens all creators, including journalists, regardless of the area in which their work is situated and regardless of the journalistic genres and forms of communication. Plagiarism is a violation of the author's personal rights, or the designation of another person's work by one's name⁴. Plagiarism is also the reworking of the work and presenting it as one's own work, and even the use of only some parts of somebody else's work⁵. Plagiarist, by his/her actions, violates the intellectual property. Plagiarism is done by

¹ T. Laitila, *Journalistic codes of ethics in Europe*, in: *Communication theory & research: An EJC anthology*, eds. D. McQuail, P. Holding, E.D. Bens, London 2005, p. 194; D. Pritchard, M. Peroni Morgan, *Impact of ethics codes in judgements by journalists: A natural experiment*, "Journalism Quarterly" 1989, no 66, p. 47. See also J. Sobczak, *Manowce i złudzenia normatywnej etyki dziennikarskiej* [Wastelands and illusions of normative journalistic ethics], in: *Etyka w mediach. Wybrane problemy teorii i praktyki* [Ethics in media. Selected problems of theory and practices], vol. 1, eds. R. Kowalczyk, W. Machura, Poznań 2009, pp. 17–19; J. Jastrzębski, *Na rynku wartości. O mediach i etyce dziennikarskiej* [Market of values. On media and journalistic ethics], Wrocław 2009, p. 107 et seq.

² A.D. Gordon et al., *Controversies in media ethics*, New York 1999, p. 58.

³ Ch. Frost, *Media ethics and self-regulation*, Harlow 2000, p. 95.

⁴ As J. Błęszyński notes, effective law on copyright and related rights does not use the term "plagiarism". See J. Błęszyński, *Wątpliwości dotyczące pojęcia plagiatu* [Doubts about the term of plagiarism], in: *Dziennikarz, utwór, prasa. Księga jubileuszowa z okazji pięćdziesięciolecia pracy naukowej prof. dr hab. Bogdana Michalskiego* [Journalist, work, press. Jubilee book for the 50th scientific work anniversary of prof. doc. Bogdan Michalski], eds. T. Kononiuk, Warszawa 2014, p. 103 et seq. The author notes that, according to the comparative dictionary of copyright, developed by World Intellectual Property Organization, "plagiarism usually involves an act of presenting or showing as own the work of another person in full or in part, with smaller or larger changes". *OMPI Glossaire du droit d'auteur et des droits voisins*, Genève 1981, p. 192.

⁵ Judgement of 18 November 1960, I CR 234/60; OSN CP 1961, .o 4, item 124.

those, who sign another person's work with own name and those who unlawfully adapt another person's work, as well as those who include in their work the unprotected layer of another person's work. The literature emphasises that publishing another person's work without giving names or marks of the real author is not plagiarism, but a violation of copyright. Creator of one of the typologies of plagiarism, Bogdan Michalski, distinguishes *simple, complex* (occurring in the form of editorial, incorporation plagiarism) *adaptive, joint authorship and informative plagiarism* (quasi-plagiarism). *Simple plagiarism* is based on signing of someone else's work or its part with one's own name. In the case of appropriation of the entire work, it is called the overall plagiarism. In the event it covers only part of a work, it is partial plagiarism. A variation of simple partial plagiarism – in the typology proposed by Michalski – is *quote plagiarism*, the essence of which is for the plagiarist to present fragments of someone else's work as a result of own creation. *Complex plagiarism* is, according to Michalski, the “creative processing of plagiarised content, or incorporating them into one's own work”. *Editorial plagiarism*, being a form of complex plagiarism, is a specific *collage* of fragments of someone else's works, while the plagiarist presents them as own work, even though the formal structure of the protected work has not been changed and no content has been introduced by the plagiarist. Another form of complex plagiarism is *incorporation plagiarism* involving, as stated by Michalski, incorporating into one's own work larger or smaller fragments of the works of other authors “without giving the source and the author's name and without quotation marks that would show it is not the own content”. This, however, according to Michalski, is not a summary of the works of other authors. *Adaptive plagiarism* is the “unlawful and unmarked development of someone else's work in the form of translation, movie adaptation, etc.”. *Joint authorship plagiarism* consists of “inseparable combination of one's own and others' creative elements”. As a result of the activities of the plagiarist, a work is created, showing complete fusion of the appropriated content and the plagiarist's creation. Regardless of the said typology, Michalski distinguishes *total plagiarisms* involving the appropriation of the entire work and *partial plagiarisms*, focused only on a part of the protected work. *Informative plagiarism* (quasi-plagiarism) is appropriation of unprotected informative, methodological or factographic layer and developing it⁶.

⁶ B. Michalski, *Podstawowe problemy prawa prasowego* [Basic problems in press law], Warszawa 1998, p. 160 et seq. See also on this subject A. Szewc, *Plagiat* [Plagiarism], “Monitor Prawniczy” 1966, no 2, p. 43 et seq.; J. Górski, *O plagiaty i plagiatorach* [On plagiarism and plagiarists], ZNUJ PWiOWI 1973, no 1, p. 296; G. Soltysiak, *Plagiat. Zarys problemu* [Plagiarism. Overview of the issue], Warszawa 2009, pp. 7–26.

Michalski's views cannot be accepted without reservation. It seems that the activities referred to by him as adaptive or joint authorship plagiarism cannot be regarded as plagiarism, even though they constitute unlawful copyright infringement. Such use of the informative layer unprotected by law will not be plagiarised information if the creator using it gives the sources of such data.

Despite these reservations, it must be said that Michalski's position is supported by several rulings of the Supreme Court, especially in the grounds of the judgment of 20 May 1983⁷ in which the exemplification of evident and hidden plagiarism was made, as well as partial and overall plagiarism; and in the grounds of the judgment of 15 June 1989, which stated that "transferring to the work a content or exceptions from someone else's work without giving explicit source is plagiarism"⁸. In this situation, the perpetrator may commit misdemeanour wilfully with direct intent, when he/she commits *appropriation* of authorship, and with direct or presumptive intent in case of *mislead* as to the authorship. This position is presented in the literature by Zbigniew Ćwiąkalski⁹, and on the basis of civil law, with some palpable concerns about its fairness, in an excellent monograph on the author's personal rights by Elżbieta Wojnicka¹⁰.

In the literature, however, there are doubts whether the phenomenon of plagiarism "should apply only to those activities which objectively constitute an infringement of authorship in a situation where we can blame someone, or only in cases where authorship of entire or part of someone else's work is appropriated"¹¹. It is not a plagiarism to appropriate the results of other people's research, concepts and ideas of a non-creative nature¹². It is

⁷ I CR 92/93, unpublished.

⁸ I CR 191/71, OSNCP 1972, no 7-8, item 133 from glossary of A. Wiśniewski, NP. 1973, no 5, p. 781 et seq.

⁹ Z. Ćwiąkalski, in: J. Barta, R. Markiewicz, *Prawo autorskie. Komentarz* [Copyright. Commentary], eds. 3, Warszawa 2013, p. 475.

¹⁰ E. Wojnicka, *Ochrona autorskich dóbr osobistych* [Protection of moral claims], Łódź 1997, p. 136 et seq.

¹¹ J. Błęzyński, *Wątpliwości dotyczące pojęcia plagiatu...* [Doubts about the term of plagiarism], op. cit., p. 104. The author draws attention to the problems resulting from the evaluation of the actions of *ghost-writers*, creating works on the order of certain persons, mostly politicians, who then assume the authorship of the resulting works. Additionally, it is worth to mention the issue of "inverted" plagiarism, involving the false assignment of the authorship to another person, concerning the work, fragment of the work or an opinion. This kind of act does not constitute infringement of the copyright of another person, but it may violate his/her personal rights. See J. Barta, R. Markiewicz, *Prawo autorskie* [Copyright], eds. 3, Warszawa 2013, p. 114. An interesting phenomenon is the problem of *honorary authorship* – it is based on the indication as a co-author of the person who did not bring creative contribution to the development, but due to his/her academic position, was credited to other authors, sometimes with his/her permission, sometimes, rarely – without it. Formally speaking, such a person usurps the authorship of another person's work, whereby it is irrelevant that the actual creator not only accepts it, but actually leads to such a situation. Obviously, such conduct is contrary to the principles of ethics. See K. Gienas, in: *The Copyright Act. Commentary*, eds. E. Ferenc-Szydełko, eds. 2, Warszawa 2014, pp. 846–848.

¹² R. Markiewicz, *Dzieło literackie i jego twórca w polskim prawie autorskim* [Literature work and its author in Polish copyright], "Rozprawy Habilitacyjne Uniwersytetu Jagiellońskiego" 1984, no 81, p. 116–117.

emphasised that authorship or joint authorship is determined by the factual circumstances concerning the creation of the work. Creative activities do not include consultation, assessment, technical, financial or organisational assistance, as well as assumptions for the created work¹³. One problem here may be doctoral or master's theses, in which the promoter's involvement is sometimes decisive in the shaping of the work, which in practice often comes to deep editorial changes¹⁴. There is no doubt that buying works prepared by others and then assuming their authorship is appropriation, as well as a mislead as to the authorship of another person's work, and so – it is plagiarism¹⁵. Obviously, allowed use of protected works is not plagiarism¹⁶. In this situation, plagiarism may be the violation of rules of allowed use¹⁷.

Appropriation of authorship or mislead as to the authorship regarding the whole or part of someone else's work or artistic performance, constitutes an offense classified in art. 115 para. 1 of the Act on Copyright and Related Rights (hereinafter the p.a.p.p.). A problem here may be that the essence of appropriation of copyright consists of both appropriation of those rights as financial benefits flowing from control over the work without the author's knowledge or intent, and of appropriation of those rights as personal rights non-related to

¹³ J. Błaszcyński, *Twórczość jako przesłanka ochrony w polskim prawie autorskim w świetle doktryny i orzecznictwa* [Creation as a premise of protection in Polish copyright against the doctrine and case-law], in: *Współczesne problemy prawa prywatnego. Księga pamiątkowa ku czci Profesora Edwarda Gniewka* [Contemporary problems in private law. commemorative book for prof. Edward Gniewek], eds. J. Gołaczyński, P. Machnikowski, Warszawa 2010, pp. 27–40.

¹⁴ In the literature, Błaszcyński strongly advocates the thesis that the performance of the promoter's function is not a basis to assume that the person is effective in forming such a work. See J. Błaszcyński, *Wątpliwości dotyczące pojęcia plagiatu...* [Doubts about the term of plagiarism], op. cit., pp. 110–111. In practice, it may turn out that in certain cases the impact of the promoter on the final shape of the work was so decisive, that in fact he/she is at least a co-author of the thesis or dissertation content. Such situation poses a number of doubts of evidence and organisational and administrative nature. The latter come down to the question whether it is possible to grant master's degree or doctorate to a person who in fact is only a co-author of the work, which is the basis for such granting. According to art. 29 para. 2 of the Act of 14 March 2003 on Academic Degrees and Title and Degrees and Title in the Arts (i.e. Journal of Laws 2016, item 882 as amended), prerequisites for the resumption of process of conferring the degree of a doctor, habilitate doctor or a title of professor may be disclosure of circumstances indicting that such degree or title were granted based on works resulting from a violation of law, including copyright or good practices in science. See E. Szewczyk, *Weryfikacja ostatecznej decyzji w sprawach stopni naukowych* [Verification of the final decisions on scientific titles], "Zeszyty Naukowe Sądownictwa Administracyjnego" 2011, no 5 (38), p. 55; J.P. Tarno, *Rola odpowiedniego stosowania przepisów k.p.a. w postępowaniach w sprawach stopni naukowych (selected issues)* [The importance of proper use of k.p.a. provisions in scientific titles], "Zeszyty Naukowe Sądownictwa Administracyjnego" 2011, no 6 (39), p. 19 et seq.

¹⁵ Consent of the person who prepared the commissioned work is legally ineffective. See Z. Cwiągalski, in: J. Barta, R. Markiewicz, *Prawo autorskie i prawa pokrewne. Komentarz* [Copyright and related rights. Commentary], eds. 5, Warszawa 2011, p. 726. Por. także J. Błachut, *Prawne konsekwencje tworzenia prac dyplomowych na zlecenie* [Legal consequences of creation of ordered diploma theses], "Prokuratura i Prawo" 2005, no 5, p. 153 et seq.

¹⁶ See J. Sobczak, *Prawo autorskie i prawa pokrewne* [Copyright and related rights], Warszawa–Poznań 2000, pp. 111–113.

¹⁷ Błaszcyński here indicates situations in which, based on the wording of article. 29 para. 1 of the p.a.p.p., it is allowed to quote someone else's work without the need to obtain consent and payment of wages. Zob. J. Błaszcyński, *Wątpliwości dotyczące pojęcia plagiatu* [Doubts about the term of plagiarism]..., op. cit., p. 111.

financial benefits, but only related to personal benefits¹⁸. Art. 115 para. 1 of the p.a.p.p. states that appropriation of authorship is penalised, while appropriation of copyrights is not.¹⁹ Literature indicates that plagiarism may be a result of intentional or unintentional acting. There are, however, doubts whether it can result from unconscious actions²⁰.

The literature shows the position where plagiarism – both understood as a crime, as well as a civil offence – should be characterised by wilful misconduct of the perpetrator²¹.

The object of protection may also be a derivative work, e.g. translation. Marking by quotes that particular fragment does not come from the author, while not indicating the exact source, constitutes mislead as to the authorship. However, it is not a crime, according to art. 115 of the p.a.p.p., not to separate the fragments of someone else's work by quotes if the source is given immediately after, in a note²².

A separate issue is the crime of distribution without giving a name or pseudonym of the author of other work in the original version, or in the form of development, as well as artistic performance, or public distortion of such artistic performance, phonogram, videogram or broadcast (art. 115 para. 2 of the p.a.p.p.). The doctrine suggests that the crime under art. 115 para. 2 of the p.a.p.p. has many variations. The offender may commit several of them within one action²³.

¹⁸ See the position of M. Siewierski, in: J. Bafia, L. Hochberg, M. Siewierski, *Ustawy karne PRL. Komentarz* [Criminal acts in PRL. Commentary], Warszawa 1965, p. 360.

¹⁹ M. Mozgawa, *Prawnkarne aspekty prawa autorskiego i praw pokrewnych* [Legal and punitive aspects of copyright and related rights], in: *System prawa karnego* [Criminal law system], eds. A. Marek; vol. 11 *Szczególne dziedziny prawa karnego. Prawo karne wojskowe, skarbowe i pozakodeksowe* [Specific categories of criminal law. Military, fiscal and non-code criminal law], eds. M. Bojarski, Warszawa 2014, p. 1075.

²⁰ J. Bleszyński, *Wątpliwości dotyczące pojęcia plagiatu...* [Doubts about the term of plagiarism], op. cit., p. 113. Mozgawa also stresses that a crime under art. 115 para. 1. Of the p.a.p.p. consisting of the mislead as to authorship, may be committed with the direct intent, as well as presumptive, while accidental mislead does not constitute a crime. See M. Mozgawa, *Prawnkarne aspekty prawa autorskiego...* [Legal and punitive aspects of copyright], op. cit., p. 1076. On the other hand, crime under art. 115 para. 2 of the p.a.p.p. for both distribution and distortion has a universal and formal nature, and may be committed either with direct and presumptive intent. See M. Mozgawa, *Prawnkarne aspekty prawa autorskiego...* [Legal and punitive aspects of copyright], op. cit. p. 1080. Different view is presented by K. Gienas, in: *The Copyright Act...*, op. cit., p. 849.

²¹ E. Wojnicka, B. Giesen, *Prawo do autorstwa utworu oraz prawo do decydowania o jego oznaczeniu* [Authorship right and right to decide on its indication], in: *System prawa karnego* [Criminal law system], eds. Z. Radwański, B. Kordasiewicz, no 13, eds. 4; *Prawo autorskie* [Copyright], eds. J. Barta, Warszawa 2017, p. 345.

²² Z. Cwiakalski, in: J. Barta, R. Markiewicz, *Prawo autorskie...* [Copyright], op. cit., p. 729.

²³ Cwiakalski points out that under art. 115 para. 2 of the p.a.p.p., we can distinguish eleven types of forbidden acts, which include: distributing someone else's original work without giving the author's name, distributing someone else's original work without giving the author's pseudonym, distributing someone else's work in form of development without giving the author's name, distributing someone else's work in form of development without giving the author's pseudonym, distributing artistic performance without giving the author's name, distributing artistic performance without giving the author's pseudonym, public distortion of someone else's work, public distortion of artistic performance, public distortion of a phonogram, public distortion of a videogram, public distortion of a broadcast. See Z. Cwiakalski, in: J. Barta, R. Markiewicz, *Prawo autorskie...* [Copyright], op. cit., p. 730.

Another problem is the issue of self-plagiarism. This concept does not occur in Polish legislature, but it is used by doctrine, also Polish²⁴. Generally, self-plagiarism means the re-use of previously distributed work. This is especially true for scientific works, but applies also to journalistic works²⁵. When defining self-plagiarism, it is stressed out that it is unlawful, unauthorised use of one's previous work and referring to the previously created work, or re-use of own, already published work or its fragment and scientific research in a new work, without giving reference to the earlier publication²⁶. This last statement is very important, because in scientific work, but also – though to a lesser extent – in journalism, the authors return to their earlier findings, expanding the arguments, introducing new elements, along with discovering, e.g. new sources. There is nothing blameable, provided that the authors properly indicate the parts they are using again. On the other hand, it is blameable for the author not to indicate that he/she is using previously published work in whole or part in a new work. This phenomenon may be used to expand academic achievements. Moreover, it is particularly dangerous and completely contradictory with ethics to present previous considerations, made e.g. in the doctoral thesis, as developments in the habilitation thesis.

The tasks of a journalist. Authorisation

Journalists, regardless of which press species their messages belong to, should note that they must comply with the requirements set forth in the art. 10 para. 1, art. 12 para. 1 and 2 of the Press Law, which means that their task is to serve the state and the public, and they should act in line with professional ethics and rules of social conduct and within the limits provided for by law. They also have an obligation, regardless of the genre in which they formulate the message, to show special care and integrity with the collection and use of press materials, check the correctness of the obtained information and provide their source. They should protect the personal rights and the interests of bona fide whistle-blowers and others, who trust

²⁴ See broad consideration in this regard with reference to the foreign literature: J. Sieńczyło-Chlabicz, *Autoplagiat a wolność badań naukowych i ogłaszanie ich wyników* [Auto-plagiarism and freedom of scientific research and publication of its results], in: *Dziennikarz, utwór, prasa...* [Journalist, work, press], op. cit., p. 121–133. See also J. Sieńczyło-Chlabicz, J. Banasiuk, *Pojęcie i istota zjawiska autoplagiatu w twórczości naukowej* [Definition and essence of auto-plagiarism in scientific work], „Państwo i Prawo” 2012, no 3, p. 11; also J. Barta, *Plagiat muzyczny* [Music plagiarism], „Zeszyty Naukowe Uniwersytetu Jagiellońskiego. Prace z Wynalazczości i Ochrony Własności Intelektualnej” 1978, p. 58.

²⁵ The literature indicates that self-plagiarism includes: similar use of own work in a later work, re-use of a fragment of own work in a later work, republishing already published work, acquisition of a fragment of work in a new work, re-use of own work and publishing a text with fragments of or whole paragraphs taken from an already published work, quoting own, previously created works or their arts in later works, re-use of substantial portions of previously published works without references. See J. Sieńczyło-Chlabicz, *Autoplagiat...* [Auto-plagiarism...], op. cit. p. 126.

²⁶ J. Sieńczyło-Chlabicz, J. Banasiuk, *Pojęcie i istota...* [Definition and essence...], op. cit., p. 13.

the journalist, as well as take care of the correctness of language and avoid profanity. A journalist must serve the truth and truly present discussed phenomena. It should also be remembered that publishing or distributing in any way information created using audio and visual records requires the consent of the persons providing such information. Contrary to the popular belief of journalists, especially popular after the judgment of the ECtHR in Strasbourg on Wizerkaniuk, a journalist cannot refuse the person providing the information to authorise the literally quoted statement, unless it has been already published before²⁷.

The right to information and the need for protection of personal rights

In the journalist's activity, regardless of the journalistic genre, there is a clear antinomy between the journalist's right to information, freedom of expression that he/she uses and the need to protect personal rights and the right to privacy of persons concerned in the journalistic messages. Contrary to the formulaic belief in the journalist environment, freedom of the press and freedom of expression guaranteed by the normative acts of international law, e.g. by art. 10 of the ECHR, art. 11 of the Charter of Fundamental Rights of the European Union, art. 19 of the ICCPR, art. 19 of the Universal Declaration of Human Rights; and within Polish law: e.g. including by art. 14, 54 and 73 of the Constitution, is not absolute or parent over the other freedoms, also expressed in the content of these documents²⁸.

²⁷ Wizerkaniuk vs. Poland, application no/ 18990/05, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-105557> [accessed: 14.07.2017]. See also: http://www.google.pl/#output=search&sclient=psy-ab&q=wizerkaniuk+przeciwno+polsce&oq=wizerk&gs_l=hp.1.1.012j0i3014j0i5i3014.1323.4548.1.6611.13.10.3.0.0.0.250.1782.0j8j2.10.0....0...1c.1.19.hp.siqIE3pwCYI&psj=1&bav=on.2,or.r_qf.&bvm=bv.48705608,d.ZWU&fp=21f0d71b1c68de42&biw=1260&bih=683 [accessed: 14.07.2017]. In support of the decision, The European Court of Human Rights in Strasbourg found that "criminal proceedings instituted against the applicant journalist and a criminal sanction imposed on him, without concern for accuracy and subject of the published text, and despite his unquestioned diligence to ensure that the published text corresponds to actual statements of the parliamentarian, was disproportionate to the circumstances". The Court, while deciding on the case, did not generally question – just as the Constitutional Court before - the authorisation requirement. The Court stated that art. 14 para. 1 and 2 of the Press Law is consistent with art. 54 para. 1 in connection with art. 31 para. 3 of the Constitution. See also Constitutional Court's judgment of 29 September 2008, file ref. no SK52/05; OTK-A 2008, no 7, item 125.

²⁸ In the literature, on the background of art. 10 of the ECHR, it is stressed that this article should be construed in conjunction with article 17 of the ECHR, which precludes interpretation of freedom of expression as allowing anyone to undertake any activity or perform any act aimed at the destruction of the rights and freedoms set forth in the Convention. See L. Garlicki, in: *Convention for the Protection of Human Rights and Fundamental Freedoms. Commentary*, vol. 1, eds. L. Garlicki, Warszawa 2010, pp. 596–597. It is also noted that the statement of the journalist is to protect the reputation and rights of others (art. 10 para. 2 of the ECHR), which means the need for protection against defaming or insulting statements. It is also strongly emphasised that it is necessary to harmonise the wording of art. 10 of the ECHR with its art. 8 protecting the right to respect for a private life. Noting that statements whose sole purpose is to satisfy the curiosity of a certain group of consumers by giving them information about the details of the private life of some – even commonly known – person, cannot be considered as contributing to any debate on public issues. See ECHR judgments in cases: Leempoel S.A. eds. *Cine Revue vs. Belgium*, application no 64772/01, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-77921> [accessed: 14.07.2017]; *von Hannover against Germany*, application no

Too often journalists, especially cultivating such species as news, a report, as well as reportage or commentary column, may, in their messages, commit the crime of defamation, demonstrating all statutory features of a crime in line with art. 212 § 1 and 2 of the CC. The good protected by art. 212 of the Criminal Code is reverence, conceived as dignity, good name, good reputation, awareness of self-worth, self-respect, honour, reputation and pride. The definition of reverence, still used in legal language, particularly on the ground of civil law in terms of one of person's rights, may sound a bit old-fashioned and anachronistic for a contemporary audience.

The term "reverence" seems to be synonymous to "dignity". In Polish, "dignity" is the consciousness of self-worth, self-respect, honour and pride. "Dignified" means to be worth something or someone, deserving something, appropriate, relevant. At the same time, dignity can be an honourable position, office or title²⁹. In common language, reverence is the same as respect, esteem and recognition³⁰. It is also stated that it is a "great respect, esteem, worship, praise (...) honour, good name, personal dignity"³¹. It should be noted that Polish judicature tends to treat the concepts of "reverence" and "dignity" synonymously. An example would be the Supreme Court's judgment of 29 October 1971³², which states that "the reverence and dignity are the values enjoyed by every human being", and moreover, that "the reverence, good name and good reputation of a person are concepts covering all areas of his/her life". However, the literature indicates that reverence belongs to the group of personal rights, the scope of which is not precisely defined. No definition of the scope is also characteristic for the freedom of conscience and the right to privacy. It is emphasised here that the lack of precise definition of the scope of those rights is due to their nature, the variability of their understanding in society and diversity of assessments in different societies and due to the fact of using different concepts for their definition, which are blurred, drawn from everyday language with a very stretchable and shaky content³³. Regarding the reverence and dignity,

59320/00, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61853> [accessed: 14.07.2017]; Hachette Filipacchi Associates against France, application no 71111/01, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-81066> [accessed: 14.07.2017]. See also: J. Sobczak, in: *EU Charter of Fundamental Rights. Commentary*, eds. A. Wróbel, Warszawa 2013, pp. 439–450.

²⁹ *Słownik języka polskiego* [Polish language dictionary], vol. 1, eds. M. Szymczak, Warszawa 1988, p. 673; *Uniwersalny słownik języka polskiego* [Universal Polish language dictionary], no 1, eds. S. Dubisz, Warszawa 2003, p. 1039.

³⁰ *Słownik języka polskiego* [Polish language dictionary], op. cit., p. 337.

³¹ *Słownik języka polskiego PWN* [Polish language dictionary of PWN], eds. E. Sobol, Warszawa 2005, p. 112.

³² II CR 455/71, OSNCP 1972, no 4, item 77.

³³ J. Wierciński, *Niemajątkowa ochrona czci* [Non-financial protection of reverence], Warszawa 2002, p. 58; P. Sut, *Problem twórczej wykładni przepisów o ochronie dóbr osobistych* [Problem of creative interpretation of personal rights protection provisions], "Państwo i Prawo" 1997, no 9, p. 33.

such concepts include: good name, reputation, honour, personal dignity – which are sometimes used interchangeably, but not always can be treated as synonyms³⁴.

The doctrine emphasises that reverence is a normative category, relating to the “presumption of honesty” to which every person is entitled, to proceedings against other people compliant with accepted standards of social coexistence, as well as to having qualifications required from persons exercising a particular profession, holding specified position, etc.”³⁵. The literature also stresses out that the content of the concepts of “reverence” and “dignity” is not only defined by legal standards, but also by moral norms adopted in a given society³⁶. In the literature, it is clearly emphasised that the aforementioned indistinctness of the concept of reverence, and, consequently, the indistinctness of certain constituent elements of types of offences referred to in section 27 of the Criminal Code, “resulting from the necessity to relativize the behaviour of perpetrators to social assessments, differentiated in a variety of environments and changing in time, “raises many concerns about the interpretation of those provisions. It is also noted that the use of criminal law to protect the reverence and dignity often requires balancing conflicting interests, because bringing the perpetrator to liability may conflict with the need to respect freedom of expression and the right to criticize³⁷. In science of the civil law, it is assumed that reverence of a man is manifested in two aspects: as an external part – a good name, good reputation, opinion of other people, image of a man in the eyes of others, where the good name of a man is a concept covering all areas of his personal life, professional and social life, and an internal part –

³⁴ A. Szpunar, *Zadośćuczynienie za szkodę niemajątkową*, Bydgoszcz 1991, p. 101. The doctrine notes that distinction between separate personal rights in the form of reverence and dignity is not accurate, as in fact it comes to one right in the form of reverence, see J. Wierciński, *Niemajątkowa...* [Non-financial...], op. cit., p. 60; Z. Bidziński, J. Serda, *Cywilnoprawna ochrona dóbr osobistych w praktyce sądowej* [Civil and legal protection of personal rights in Polish civil law], in: *Dobra osobiste i ich ochrona w polskim prawie cywilnym* [Personal rights and their protection in Polish civil law], Wrocław 1986, pp. 49–50; Judgement SN of 4 May 1982, ref. no II CR 105/82. Another position is presented by M. Grzelka, who states that reverence and dignity are not one, but two personal rights, each of which refers to a different kind of experience of the victim and is governed by different criteria when assessing whether there was a violation, see. M. Grzelka, *Ochrona dóbr osobistych w orzecznictwie Sądu Apelacyjnego w Gdańsku* [Protection of personal rights in judgements of appellate court in Gdańsk], Sopot 1997, pp. 9–10.

³⁵ W. Kulesza, *Zniesławienie i zniewaga (ochrona czci i godności osobistej człowieka w polskim prawie karnym – zagadnienia podstawowe)* [Defamation and insult (protection of reverence and dignity in Polish criminal law – basics)], Warszawa 1984, p. 35; G. Artymiak, *Niektóre problemy przestępstwa zniesławienia. Uwagi de lege lata i de lege ferenda* [Selected problems of defamation. The law as it stands and as it should stand], “Rzeszowskie Zeszyty Naukowe” 1992, vol. 11, p. 41 et seq.

³⁶ M. Surkont, *Cześć i godność osobista jako przedmiot ochrony prawnokarnej* [Reverence and dignity as subjects to criminal law protection], NP, 1980, no 4, p. 49.

³⁷ P. Hofmański, J. Satko, *Przestępstwa przeciwko czci i nietykalności cielesnej. Przegląd problematyki*. [Crimes against reverence and bodily integrity. Selected issues review] (SN 1918–2000). Reference, Kraków 2002, pp. 15–16.

personal dignity, unit's self-image as to its value that is an essential part of the human psyche and shaped by many circumstances³⁸.

However, a question raises: what is the ratio of human dignity to personal dignity concentrated in a sense of self-worth. It should be noted that this sense is not persistent and is shaped by external circumstances. It seems that human dignity is wider than the personal dignity related to the sphere of personality.

The concept of "human dignity" in recent times has become extremely popular in lawyers' considerations, particularly those who devote attention to the European law, mainly the community law (EU), and in the environment of theologians and philosophers. The reasons for this are twofold. On the one hand, this seems to be the result of attention to "human dignity" in the Charter of Fundamental Rights of the European Union, which sees not only a fundamental right in it, but also the source of all human rights³⁹. Secondly, the social science of the Catholic Church began to refer to this concept in its documents⁴⁰.

In Poland, the concept of dignity appeared first in the case-law of the Supreme Court. In its judgment of 25 April 1989, I CR 143/89 OSPiKA 1990 No 9 item 330, the Supreme Court stated that "personal dignity is the sphere of personality, which focuses on self-esteem of man and the expectation of respect from other people. This sense, which is an important part of the human psyche, is shaped by several different external circumstances. It is not persistent. As a product of the development of human nature, it is conditioned historically and culturally. Its "forms" or "sizes" significantly depend on other characteristics of the human psyche and overall personality. Therefore, there are different measures of self-esteem of man and violation of his dignity". According to the Supreme Court in assessing whether human dignity has been violated, objective criteria are decisive, and not subjective feelings of a

³⁸ A. Szpunar, *Ochrona dóbr osobistych* [Protection of personal rights], Warszawa 1979, p. 129 et seq.; id., *Zadośćuczynienie za szkodę niemajątkową* [Remedy for non-financial damage], Bydgoszcz 1999, pp. 101–113. This position, previously made in the literature, found support in the resolution of the composition of the seven judges of the Supreme Court of 28 May 1971, OSNCP, item 188. This, and the adopted terminology (breakdown into internal and external part) was questioned by S. Grzybowski, *Ochrona dóbr osobistych według przepisów ogólnych prawa cywilnego* [Protection of personal rights according to general civil law], Warszawa 1957, p. 87, and, from a bit different perspective, J. Panowicz-Lipska, *Majątkowa ochrona dóbr osobistych*, Warszawa 1975, p. 57. The breakdown into external and internal part, established in civil law, refers directly to the terminology and scheme of the criminal law, see J. Wierciński, *Niemajątkowa...* [Non-financial...], op. cit., p. 60; S. Grzybowski, *Ochrona dóbr...* [Protection of...], op. cit., p. 86; A. Szpunar, *Ochrona dóbr...* [Protection of...], op. cit., p. 128. The boundaries between internal and external reverence are not clear, as they constitute the elements of one, inseparable whole that is reverence, see A. Szpunar, *gloss to the decision of the Supreme Court from 25 April 1989, I CR 143/89, OSP 1990, no 9, item 330*, p. 710; S. Grzybowski, *Ochrona dóbr...* [Protection of...], op. cit., p. 87.

³⁹S. Hambura, M. Muszyński, *Karta Praw Podstawowych* [Chart of Fundamental Rights], Bielsko-Biała 2001, p. 38–39.

⁴⁰J.W. Gałkowski, *Jan Paweł II o godności człowieka* [Jan Paweł 2 on dignity], in: *Zagadnienie godności człowieka* [Human dignity problematics], eds. J. Czerkawski, Lublin 1994, p. 108 et seq.

person requesting legal protection. Public opinion is not a meter to determine whether a person's dignity has been violated⁴¹. In conclusion, the Supreme Court stated in the judgment cited that not every deprivation of human powers violates his dignity and justifies the use of civil-legal means of personal protection. The position of the Supreme Court met with approval of Adam Szpunar, glossing the judgement, stating that among the objective criteria, views of people thinking reasonably and honestly are the most important⁴². Four years later, the term "dignity" is referred to by the Constitutional Court in its resolution of 17 March 1993, by noting that the admission of research experiment without the consent of the person concerned infringes the principle of a democratic state ruled by law due to violation of human dignity, reduced in this way to the role of experimental subject⁴³. In another judgment of 17 July 1993, the Constitutional Court held that the state has an obligation "in the sphere of its social activities to provide an unemployed individual with the conditions for the implementation of his/her right to existence and freedom due to the inalienable, inherent human dignity"⁴⁴.

After the Constitution of 1997 entered into force, the rule on inherent and inalienable dignity of the human being as the source of rights and freedoms of man and citizen is included in the wording of art. 30, opening the catalogue of freedoms, rights and duties of man and citizen. Art. 30 of the Constitution states that the human dignity is an innate characteristic, so its source is not a constitutional norm, but the legal and natural standard. Therefore, dignity is both postulate (axiological purpose) and at the same time becomes a standard-principle which is a necessary element of the state of law, without which no state could exist⁴⁵.

⁴¹See M. Jabłoński, *Pojęcie i ochrona godności człowieka w orzecznictwie organów władzy sądowniczej w Polsce* [The term and protection of dignity in judgement of judicial bodies in Poland], in: *Godność człowieka jako kategoria prawa* [Human dignity as category of the law], eds. K. Complak, Wrocław 2001, pp. 295–298.

⁴²OSPika 1990 no 9 item 330.

⁴³Resolution of 17 March 1993, W. 16/92, OTK 1993 part I, p. 165.

⁴⁴Constitutional Court's ruling of 17 July 1993, P7/92 OTK 1993 part II, p. 266; see also M. Kordela, *Zarys systemu aksjologicznego w orzecznictwie Trybunału Konstytucyjnego* [Overview of axiological system in judgements of the Constitutional Tribunal], "Studia Prawnicze" 2000, no 1–2, p. 78 et seq.; M. Wyrzykowski, *Zasada demokratycznego państwa prawnego* [Principle of democratic legal state], in: *Zasady podstawowe polskiej konstytucji* [Basic principles of the Polish Constitution], eds. W. Sokolewicz, Warszawa 1998, p. 66 et seq.; J. Zajadło, *Godność i sprawa człowieka* [Human and dignity], "Gdańskie Studia Prawnicze" 1998 vol. III, p. 61 et seq.; Z. Ziemiński, *Wartości konstytucyjne* [Constitutional values], Warszawa 1993, p. 14; J. Krakowski, *Godność człowieka podstawą konstytucyjnego katalogu praw i wolności jednostki* [Human dignity as the basis for constitutional catalogue of rights and freedoms of an individual], in: *Podstawowe prawa jednostki i ich sądowa kontrola* [Basic rights of an individual and their judicial control], eds. L. Wiśniewski, Warszawa 1997, p. 39 et seq.

⁴⁵M. Wyrzykowski, *Zasada demokratycznego państwa prawnego* [Principle of democratic legal state], in: *Zasady podstawowe polskiej konstytucji* [Basic principles of the Polish Constitution], op. cit., p. 66 et seq.; J. Zajadło, *Godność i sprawa człowieka* [Human and dignity], "Gdańskie Studia Prawnicze" 1998, vol. III, p. 61 et seq.; Z. Ziemiński, *Wartości konstytucyjne* [Constitutional values], op. cit., p. 14; J. Krakowski, *Godność człowieka podstawą konstytucyjnego katalogu praw...* [Human dignity as the basis for constitutional catalogue of

It is worth noting that the human dignity in the light of sentence 2 of art. 30 of the Constitution is inviolable, and therefore cannot be subject to limitations provided for in art. 31 para. 3 of the Constitution⁴⁶.

rights...], op. cit., p. 39 et seq. Human dignity in the light of the Constitution is both a source of other freedoms and rights, as well as it is itself a separate freedom. However, it is probably not – because of systematics – the principle of the political system. In the literature, it is disputed whether the dignity belongs to the subjective rights of the individual. According Garlicki, the principle of dignity would be unjustly reduced if we find the elements of dignity only in individual rights and freedoms, since dignity belongs to the subjective rights of an individual, see L. Garlicki, *Commentary on art. 30 of the Constitution*, in: *The Constitution of the Republic of Poland. Commentary*, vol. III, eds. L. Garlicki, Warszawa 2003, pp. 14–15; L. Urbanek, *Pojęcie godności człowieka w Konstytucji RP z 1997 r. a problem definicji* [Human dignity in the Polish Constitution of 1997 and the problem of definition], “Prawa Człowieka” 2000, no 7, p. 67; M. Jabłoński, *Rozważania na temat znaczenia pojęcia godności w polskim porządku konstytucyjnym* [Considerations over the meaning of dignity in the Polish Constitution], in: *Prawa i wolności obywatelskie w Konstytucji RP* [Rights and freedoms of citizens in the Polish Constitution], eds. B. Banaszak, A. Preisner, Warszawa 2002, p. 92 et seq.; D. Dudek, *Konstytucyjna wolność człowieka a tymczasowe aresztowanie* [Constitutional freedom of a man and temporary detention], Lublin 1999, p. 89 et seq.; K. Complak, *Uwagi o godności człowieka oraz jej ochrona w świetle nowej Konstytucji* [Remarks on human dignity and its protection against the new Constitution], “Przegląd Sejmowy” 1998, no 5 (28), pp. 41–51; id., *O prawidłowe pojmowanie godności osoby ludzkiej w porządku RP* [For proper understanding of human dignity in Poland], in: *Prawa i wolności obywatelskie w Konstytucji RP* [Rights and freedoms of citizens in the Polish Constitution], op. cit., p. 66.

⁴⁶Art. 233 para. 1 of the Constitution clearly confirms that the law specifying the scope of limitation of the freedoms and rights of persons and citizens in times of martial law and states of emergency cannot limit the freedoms and rights specified in art. 30. The subject of dignity is always a man, entitled to it throughout the period of life from birth to death. Most authors agree that *nasciturus* (unborn) cannot use it, see L. Garlicki, *Commentary...*, op. cit., p. 16. After the death, the cult of the deceased shall be subject to legal protection, but not his/her dignity, see A. Wojciszek, *Katalog dóbr osobistych w świetle przepisów Konstytucji i kodeksu cywilnego* [Catalogue of personal rights against the provisions of the Constitution and civil law], “Gdańskie Studia Prawnicze” 2000, vol. VII, p. 666. A. Rybak seems to present a different view, *Prawnokarna ochrona godności zwłok człowieka* [Criminal law protection of dignity of human remains], “Palestra” 2004, no 1-2, p. 99 et seq. One cannot lose dignity in a result of the offending conduct, loss of legal capacity, legal incapacity or a specific personal situation. Therefore, even a convict serving imprisonment, soldier, prisoner of war, the patient, they all have their dignity. Obviously, actual or legal situation in which those individuals are, may influence the scope and use of their other freedoms and rights. However, their dignity cannot be violated. It is worth noting that the disposition of art. 30 of the Constitution imposes on public authorities the obligation to respect the dignity of every person and, regardless, the obligation to protect such dignity. The literature usually presents the positive and negative aspect of this obligation of respect. In the negative aspect, “respect to human dignity” means the prohibition to take any actions that could violate this dignity. On the other hand, the positive aspect is the order to take such measures as to protect the human dignity against violation. The content of the obligation to protect the human dignity is based on the need to take such actions, which contradict real or possible violations of human dignity. Clearly, all public authorities are the addressees of these obligations. Disposition of the art. 30 of the Constitution of Poland should be considered in connection with the content of art. 47 of the Constitution, which guarantees to everyone the right to the protection of private life, family, reverence and good name. In the disposition of art. 47 of the Constitution of Poland, perhaps accidentally, there is a distinction between private life, family life and personal life, and beside those – as not falling into these spheres – reverence and good name. P. Sarnecki focused on the scope of terms “personal life”, “private life” and “family life” in his commentary to art. 47, thesis 5-7, p. 2-3 id., in: *The Constitution of the Republic of Poland. Commentary*, op. cit. The Constitution distinguishes “private life” and “family life”, but in fact much of the events of family life have at the same time “private nature”, see P. Winczorek, *Commentary on the Constitution of the Republic of Poland dated April 2nd, 1997*, Warszawa 2000, p. 66.

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