

## **FREEDOM OF THE PRESS IN THE POLISH LEGAL SYSTEM<sup>1</sup>**

*The notion of freedom of speech is interpreted in many different ways in Poland and it happens to be overused especially by journalists. Hence the author of the article is going to present the definition of this issue on the basis of legal articles and disquisition of the doctrine experts.*

**Key words:** *freedom of speech, press, journalist*

Deep social and political transformations initiated in 1989 in Poland brought about a new understanding of liberties and human rights and affected their position in the normative order of a democratic state under the rule of law. Adoption of the Constitution of the Republic of Poland by the National Assembly on 2<sup>nd</sup> April 1997<sup>2</sup> allowed establishing a catalogue of civil rights and liberties which are not defined by the lawmaker, though.

Freedom, according to the lexicon of Polish means *ability to take decisions in conformity with one's own will*<sup>3</sup>. Colloquially, the term is most commonly understood as independence of a given subject from any limitations. In a broader sense, it is limited to the condition in which a free subject is not affected by violence, impediments or obligation from other entities while pursuing a chosen objective and, moreover, is in the possession of measures to execute their intention (so-called external freedom). Narrowing the definition, it is classified as rights granted to an individual which restrain authority of those who rule over such an individual (so-called political freedom)<sup>4</sup>.

In a democratic society there is a common ground between absolute freedom and total oppression determined by the law<sup>5</sup>. Legally rationed liberties consist in the legislator establishing restrictions within their scope to guarantee equal opportunity to all to use them and also to prevent harming others. They include two spheres: orders and restrictions which must be expressly defined in normative acts and those free from any legal limitations<sup>6</sup>.

L. Wiśniewski, who does not treat the terms *law* and *freedom* as synonyms, shall be agreed with<sup>7</sup>. The difference between them comes down to the way these terms are conceived in the context of the form they have in normative acts. *Law* assumes the form of a claim. A normative act shall specify its content, and guarantee its essence and inviolability. *Freedom*, by contrast, takes the form of a declarative (not creative) norm due to its feature of naturalness. It is an act of human will<sup>8</sup>. Its limitations and guarantees are contained within specific regulations<sup>9</sup>. By principle, the legislator constructs a democratic law system in such a way as to exclude mutual exclusion of norms guaranteeing rights and liberties. They are supposed to correlate for the good of a human being.

### **Dignity, reputation, honour.**

In the Polish legal system, pursuant to article 30 of the 1997 Constitution of the Republic of Poland, dignity is

the source of human rights and liberties<sup>10</sup>. A. Rodziński considers it as a fundamental category<sup>11</sup>. According to K. Complak, it unites everything that is common amongst the people<sup>12</sup>. As an absolute value, it turns out to be a barrier against objectification of a human being and forms the basis of its development. It unites rights and liberties, and seals a democratic system<sup>13</sup>. It is not created by the state, though. It is primary in relation to the state<sup>14</sup>. Consequently, the legislator and the authorities must respect the essence contained in the concept of dignity.

J. Krukowski distinguishes two concepts of dignity resulting from Judeo-Christian religion where a human is assigned the top position in the hierarchy of living creatures. The first – personality-based (empirical) – one treats this conceptual category as a casual attribute. It is the value a human being acquires, develops, or loses. The second is based on four aspects: theological, ethical, metaphysical and ontological. According to the latter, human dignity is expressed in awareness of actions, in taking free decisions. It constitutes the basis for the existence of social norms and the source of a constitutional catalogue of human liberties and rights<sup>15</sup>.

Pursuing answer to the question what dignity is<sup>16</sup>, it is worth referring to the concept of F. F. Mazurek. It differentiates between personal and personality-based dignity<sup>17</sup>. The former is an absolute value which is inborn and inalienable. The latter is not inherent from birth, but is learnt by an individual by upbringing, work on self-development and the environment in which one exists<sup>18</sup>. When looking for an ontic basis for that value, it is necessary to refer to reason, free will and conscience<sup>19</sup>. This is the trinity attributed to a person which makes it possible to distinguish them from other living creatures.

The dispute on human dignity is related to the answer to the question of how and to what extent moral standards affect legal standards<sup>20</sup>. The positivist conception assumes that these are two different and at the time independent orders. Legal norms are binding without regard for the fact that they are wrong from the point of view of morality. The concept of natural law on the other hand excludes binding character of legal norms that are in contradiction with the moral order. This is linked with the premise of the existence of a natural law which is positioned higher in the law hierarchy.

It seems legitimate to state that article 30 of the Constitution should be referred to the latter approach<sup>21</sup>.

As its content reveals, dignity is inherent, an individual deserves it due to the sole fact of being a human being. Every person has dignity, also those who are deprived of civil rights or incapacitated. It is distinguished by inalienability and is attributed to a person for lifetime. Unlike other values, it is inviolable and it cannot be limited. Its observance is the obligation of public authorities<sup>22</sup>. Yet, it must be remembered that protection of dignity is not only limited to the vertical plane between the state and an individual. From the horizontal perspective, it commits public authorities to create a means of protection against violation of dignity between equal entities (as may be the case in civil-law relations)<sup>23</sup>.

Article 30 of the Constitution provides an axiological basis for the notion of *honour* and *reputation*<sup>24</sup>. Listed in article 47 of the Constitution<sup>25</sup> beside private life, family life and deciding on one's personal life, these notions are included into human rights. It is emphasized in the doctrine that violation of any of these has the same effect on the others<sup>26</sup>. It is additionally stated that values listed in the article of the constitution referred to above shall be included in the category of the right to protect privacy<sup>27</sup>. Worth mentioning here is that reputation defined as an opinion a person has within a given environment does not fully allow for such an approach to the problem. Violation of the right to protect private life does not always entail breach of a person's honour.

Honour is regarded in the literature as an institution of social life; hence the term is subject to permanent evolution. On the one hand, as W. Makowski points out, it is based on subjective elements of individual feeling of a person, and on the other hand, on the objective elements of a social institution<sup>28</sup>. Marking out the demarcation line between these two factor types is the most difficult problem. In the literature it is indicated that both of them co-exist within the notion of honour. The first, objective one (so-called external honour), is a positive image related to values of the specific entity, which are added to it based on social criteria by the community within which it functions. In this case honour is identified with the reputation an individual enjoys in the society. The other, subjective one (so-called internal honour), refers to the conviction a human being has about him- or herself (dignity)<sup>29</sup>. In the view of the Constitution of the Republic of Poland, this division is not acceptable due to the fact that Article 47 lists honour next to reputation as a human right. In conclusion, the first notion overlaps the second. Owing to the fact that the term *dignity* is located in another article, there are grounds for concluding that it is not an integral element of honour.

### **Freedom of the Press**

*Freedom of the press and other means of social communication* is one of the principal system founding rules binding in Poland. It is guaranteed by the content of Article 14 of the Constitution<sup>30</sup>. Article 1 of the act - the Press Law, confirms it<sup>31</sup>. Locating this expression in the 1st chapter of the Constitution (under the name *The Republic*) gives emphasis to its significance<sup>32</sup> and relevance in the functioning of a democratic country<sup>33</sup>. The Supreme Court – in one of its sentences – pointed out that freedom of the press is not an absolute value, however<sup>34</sup>. Its limits are determined by legislation of the Republic of Poland.

Combination of the two words: *the press* and *freedom* creates a number of terminological problems for experts on the subject. Within the colloquial meaning, the press means printed publications, distributed periodically, which reflect reality in a number of aspects<sup>35</sup>. Commonly, the press includes printed publications only. In light of the 26<sup>th</sup> March 1984 act – the press law (p.l.) this term is defined differently. According to Article 7 clause 2 point 1 the press refers to *periodic publications which do not form a closed, homogeneous integrity, appear at least once a year, bearing a permanent title or name, current issue number and a date*<sup>36</sup>. The open catalogue of this provision, by use of the expression *in particular* in its later fragment and by a reference to the act of 29<sup>th</sup> December 1992 on radio and television broadcasting (a.r.t.b.)<sup>37</sup> in Article 3 in the normative act above, allows asserting that subjective scope of the concept in question does not refer to printed press exclusively, but also to radio, television broadcasting and some forms of Internet transmission<sup>38</sup>. The press also includes *groups of people and individual persons occupied with journalistic activity*. E. Nowińska, who believes that definition of the press should be regarded in objective categories, provides an accurate argument against the last thesis. Subjective reference to the expression – *group of people and individual persons occupied with journalistic activity* – leads to an incorrect conclusion, for it means that editors-in-chief are to be found outside of the activity. This is why the author supports an interpretation according to which the press is *a collective designation for "press publishing"*<sup>39</sup>. This concept shall be agreed with.

The second expression used as part of Article 14 of the Constitution of the Republic of Poland – *means of social communication* – when faced with other normative acts, such as: the penal law of 1997, where the term *means of mass communicating*<sup>40</sup> is used, the act of 26<sup>th</sup> January 1984 – The Press Law which mentions *means of mass communication*, may lead to terminological chaos and threaten with *lack of cohesion of the Polish legal system*. For the notion *means of social communication* is related to the teaching of the Roman Catholic Church, which in turn may result in a mistaken interpretation that freedom of the press exclusively refers to mass media having a social nature. Consequently, the problem of which press shall be included in this category would arise. The phrase *means of mass communicating* is in turn of liberal provenance. *Mass media* on the other hand raises Marxist connotations. Still, using one of the decisions of the Supreme Court it must be admitted that the objective range of those expressions is synonymous<sup>41</sup>; therefore, their interchangeable use is possible.

Also Article 54 of the Constitution contained in Chapter II therein is indirectly related to freedom of the press<sup>42</sup>: *The Freedoms, Rights and Obligations of Persons and Citizens*<sup>43</sup>. It shows three interrelated rights of a human being: to express ones believes, to acquire and disseminated information. The first one shall be considered as broadly as possible in the form of assessment of the facts, presumptions and opinions<sup>44</sup>. The form in which beliefs are expressed (for example orally, in writing, using images or sound, method of perception, etc.) is not important. It protects forms of expression permitted by the law, allowing one to manifest one's point of view.

Freedom of expression<sup>45</sup> guarantees protection of individual self-development, autonomy in decision-taking and taking actions to pursue, receive, express, disseminate and acquire information<sup>46</sup>. The last two elements do not need to be interrelated, since acquiring information does not always imply its dissemination which involves participation in the social sphere<sup>47</sup>. According to E. Nowińska clause 1 Article 54 of the basic law does not have a press nature, although it is frequently construed as such. Broadly understood in reference to colloquial language, it means *own opinion of the speaker*. It does not refer to communication of private thoughts (article 49 of the Constitutions), but those from an extrapersonal sphere<sup>48</sup>. In turn, the Constitutional Tribunal underlines that execution of freedom of expression in the personal sphere and execution of freedom of expression in public sphere have different dimensions and constitutional meanings. In the latter case freedom of expression is indissolubly related to freedom of the means of social communication<sup>49</sup>.

Surprisingly, freedom of expression, from which freedom of the press is derived, was located as far as in Article 54 of the Constitution. Clause 1 therein remains strictly related to Article 14 of the basic law, however. Freedom of the press consists of the freedom to establish and conduct publishing activities and freedom of journalistic activities, while freedom to initiate them, express opinions and acquire information is its essence. Their protection comes down to prohibition of preventive censorship<sup>50</sup> (Article 54 clause 2 sentence 1 of the Constitution) and limiting licensing of radio and television broadcasting<sup>51</sup> (Article 54 clause 2 sentence 2 of the Constitution). L. K. Jaskuła sees a discrepancy in the legislator's wording for *prohibition of the licensing of the press* as refers to Article 7 clause 2 point 1 of the p.l. From this interpretation, the press in terms of the Constitution means only periodically printed publications<sup>52</sup>. In disagreement to such a statement, it must be recognised that in the content of Article 54 clause 2 of the basic law, the legislator admittedly excludes radio and television programmes from the plane of regulations, which, however, cannot be equal to their elimination from the scope of the term *the press*.

Freedom of the press in the objective aspect indicates freedom of speech<sup>53</sup>. Yet it must be underlined that Article 54 clause 1 of the Constitution is not a reproduction of Article

14 of the normative act in question<sup>54</sup>. Both freedom of the press as well as freedom of expression have a complementary character – they reciprocally fulfil and support one another<sup>55</sup>. The latter emphasizes the significance of the special manifestation of freedom contained in the former. Freedom of the press does not identify the right of freedom to express opinions by journalists, but allows for circulation of information and social criticism. Thereby – as noted by the Constitutional Tribunal – it constitutes an important element of *the rule of the Nation's supremacy* (Article 4 clause 1 of the Constitution), for the citizens may take part in execution of the state authority<sup>56</sup>.

The Constitution of the Republic of Poland does not provide for special restrictions in freedom of speech, and thus in freedom of the press<sup>57</sup>, but it does not exclude them either<sup>58</sup>. As seen in Article 31 clause 3 of the Constitution they can be introduced if their statutory provision is identified. As an additional condition for the application, the necessity to use them must become imperative in a democratic state for: *security or public order, or else for the protection of the environment, health and public morality or freedoms and rights of other persons*. It seems justifiable to state that a threat to its existence itself is sufficient.

Both dignity as well as freedom of the press are protected by the Constitution directly. This explicitly results from the content of Article 8 of the basic law<sup>59</sup>. Individual normative acts and ratified – under Article 90 in connection with Article 87 of the Constitution – international agreements, in force as part of the Polish legal system, constitute grounds for solving disputes on those values.

#### Conclusions:

Freedom of the press in Poland does not have an absolute nature. Actions taken both by editorial staff and individual journalists are limited by legal standards. Due to the fact that Poland is a democratic legal state, those regulations show where the limits of operation of the means of mass communication are. Their transgression (in principal) affects personal rights of specific entities and may entail consequences of a legal nature. This only confirms the statement that freedom, including freedom of the press (in light of Polish legislation) extends as far as where it starts to affect others.

#### ODSYŁACZE:

<sup>1</sup> The academic article was created using excerpts of the author's Ph.D. thesis entitled: "Press Defamation in Poland Between 1984 and 2008" written under the supervision of Prof. Jacek Sobczak, Ph.D.

<sup>2</sup> Journal of Laws No. 78, item 483 as subsequently amended.

<sup>3</sup> "A free man is an individual who can act in accordance with their own will, without subordination to anyone or anything, unrestricted. Free will is a possibility to choose the course of action irrespective of the circumstances or difficulties". See M. Szymczak (Ed.), *Słownik języka polskiego*, vol. 3, (Warszawa 1989), pp. 748-749.

<sup>4</sup> J. Sobczak, *Ustawa prawo prasowe. Komentarz*, Warszawa 2008, p. 27.

<sup>5</sup> J. Giezek, *Kolizja dóbr a prawno-karna ochrona wolności*, in: *Prawno-karne aspekty wolności. Materiały z konferencji Arłamów 16-18 maja 2005 r.*, Zakamycze 2006, pp. 71-72.

<sup>6</sup> In turn liberties which are not legally rationed do not include the sphere of lawfully ordered or restricted activities. Still, law is not neutral towards this category. Admittedly it does not introduce any limitations, yet it protects and guarantees inviolability of the category. See L. Wiśniewski, *Prawo a wolności człowieka – pojęcie i konstrukcja prawna*, in: L. Wiśniewski (Ed.), *Podstawowe prawa jednostki i ich sądowa ochrona*, Warszawa 1997, pp. 55-56.

<sup>7</sup> The concept presented by the author has not been fully accepted in the doctrine. See Z. Kędzia, *Pojęcie „prawa i wolności obywatelskie” (Uwagi na tle ustawy o Rzeczniku Praw Obywatelskich)*, "Państwo i Prawo" 1999, vol. 3, pp. 30-31; K. Wojtyczek, *Granice ingerencji ustawodawczej w sferę Praw Człowieka w Konstytucji RP*, Zakamycze 1999, pp. 31-32.

<sup>8</sup> M. Chmaj, *Pojęcie i geneza wolności i praw człowieka*, in: M. Chmaj, (Ed.), *Konstytucyjne wolności prawa w Polsce. Zasady ogólne*, vol. I, Zakamycze 2002, pp.12-13.

<sup>9</sup> L. Wiśniewski, *Prawo a wolności człowieka*, op. cit., p. 13.

<sup>10</sup> *Amongst the rights originating from article 30 of the Constitution, those with the nature of fundamental rights by direct reference to the substance of human dignity are of elementary importance.* See Sentence of the Constitutional Tribunal of 15<sup>th</sup> November 2000, P 12/99, OTK ZU 2000, No. 7, item 260; See W. Sobczak, *Czy godność człowieka jest zasadą prawną?*, "Środkowoeuropejskie studia polityczne 2008", no. 2, pp. 151-173.

<sup>11</sup> A. Rodziński, *Osoba, moralność, kultura*, Lublin 1989, p.32.

<sup>12</sup> K. Complak, *O prawidłowe pojmowanie godności osoby ludzkiej w porządku RP*, in: B. Banaszak, A. Preisner, *Prawa i wolności obywatelskie w Konstytucji RP*, Warszawa 2002, p. 68.

<sup>13</sup> K. Complak, *Uwagi o godności człowieka oraz jej ochrona w świetle nowej konstytucji*, "Przegląd Sądowy" 1998, no. 5, pp. 49-51.

<sup>14</sup> Sentence of the Constitutional Tribunal of 4<sup>th</sup> April 2001, K 11/00, OTK 2001, part I, item 19.

<sup>15</sup> *It cannot be understood as a feature or group of rights granted by the state. It is primary in relation to the state and in consequence of which both the legislator and authorities applying law must respect the substance contained within the idea of dignity every person is entitled to.* See J. Krukowski, *Godność człowieka podstawą konstytucyjnego katalogu praw i wolności jednostki*, in: *Podstawowe prawa jednostki i ich sądowa ochrona*, L. Wiśniewski, (Ed.), Warszawa 1997, p. 39 i n; M. Chmaj, *Pojęcie*, op. cit., pp. 73-74.

<sup>16</sup> The answer to that question is also pursued by the Constitutional Tribunal. As of the sentence dated 15<sup>th</sup> October 2002 it has indicated dignity of a human being has the capacity of subjective right. Article 30 of the basic law may be defined as an intrinsic constitutional standard when examining conformity with the Constitution as well as in case of constitutional complaint. See Sentence of the Constitutional Tribunal dated 15<sup>th</sup> October 2002, file no. SK 6/02, OTK 2002, part II, item 45.

<sup>17</sup> Sentence of the Constitutional Tribunal dated 5<sup>th</sup> March 2003, file no. K 7/01, OTK-A ZU 2003, No. 3 (56), item 19.

<sup>18</sup> F. J. Mazurek, *Godność osoby ludzkiej podstawą praw człowieka*, Lublin 2001, pp. 18-19; Ossowska, M., *Normy moralne w obronie godności człowieka*, Et. 1969, no 5, p. 8; Eadem, *Normy moralne, próby systematyzacji*, Warszawa 1985, pp. 52- 65; Eadem, *O człowieku, moralności i nauce. Miscellanea*, Warszawa 1983, pp. 315-322.

<sup>19</sup> See L. K. Jaskuła, *Prawo do dobrego imienia a wolność prasy*, Warszawa 2008, op. cit., pp. 5-11.

<sup>20</sup> In one of its sentences, the Constitutional Tribunal points out that the method of human dignity protection is related to customs and moral standards valid in a given society. Should this absolute value be breached, a remedy method for the damage shall be sought in social beliefs. Remedy of the damage is the task assigned to the legislator and authorities of the state. See Sentence of the Constitutional Tribunal dated 7th February 2005, file no. Sk 49/03, OTK-A 2005, no. 2, item 13; See M. Ossowska, *Normy moralne*, op. cit., pp. 61-62.

<sup>21</sup> M. Chmaj, *Godność*, op. cit., pp. 74-75; Sarnecki, P., *Idee przewodnie Konstytucji Rzeczypospolitej Polskiej z 2 kwietnia 1997 r.*, "Przegląd Sądowy" 1997, no. 5, p. 13.

<sup>22</sup> M. Chmaj, *Godność*, op. cit., pp. 84-86.

<sup>23</sup> L. K. Jaskuła, *Naruszenie*, pp. 64 - 65; M. Safjan, *Refleksje wokół konstytucyjnych uwarunkowań rozwoju ochrony dóbr osobistych*, "Kwartalnik Prawa Prywatnego" 2002, vol. 2, pp. 471-486; W. Jakimowicz, *O publicznych prawach podmiotowych*, "Państwo i Prawo" 1999, vol. 1, pp. 36-50.

<sup>24</sup> Sentence of the Constitutional Tribunal dated 12<sup>th</sup> May 2008, file no. K 43/05, OTK-A ZU 2008, No. 4 (110), item 57.

<sup>25</sup> The constitutional Tribunal underlines that article 30 includes guarantees of dignity inviolability, while article 47 secures the right to protect honour and reputation. The conclusion that emerges here is on the one hand that the state cannot interfere in the constitutionally defined sphere of a human life, and on the other hand it is obliged to protect specific rights. See Sentence of the Constitutional Tribunal dated 2<sup>nd</sup> April 2001, file no. SK 10/00, OTK 2001, part I, item 17.

<sup>26</sup> L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu*, Warszawa 2009, pp. 109; L. K. Jaskuła, *Prawo*, op. cit., p. 65.

<sup>27</sup> Cf. J.D. Sieńczyło-Chlabicz, *Naruszenie prywatności osób publicznych przez prasę. Analiza cywilnoprawna*, Kraków 2006, pp. 361-431.

<sup>28</sup> W. Makowski, *Kodeks karny, część szczególna*, Warszawa 1932, p. 569.

<sup>29</sup> The presented opinion was also criticised due to classification of the term of dignity as a value dependent on a given person's self-esteem. This being the case, the subjective factor's contribution to the way one perceives the fact of dignity violation is too powerful. See M. Surkont, *Cześć i godność osobista jako przedmioty ochrony prawnokarnej*, „Nowe Prawo” 1980, no. 4, p. 49; B. Kunicka-Michalska, J. Wojciechowska, *Przestępstwa przeciwko wolności, wolności sumienia i wyznania, wolności seksualnej i obyczajności oraz czci i nietykalności cielesnej*, Warszawa 2001, pp. 245-246.

<sup>30</sup> Content of Article 14 refers to Article 105 of the March 1921 Constitution. See the Act of 17<sup>th</sup> March 1921 – Constitution of the Republic of Poland, Journal of Laws No. 44, item 267.

<sup>31</sup> *The press, in compliance with the Constitution of the Republic of Poland enjoys freedom of expression.* See Journal of Laws No. 5, item 24 as subsequently amended; J. Sobczak, *Ustawa prawo prasowe*, op. cit., pp. 25-172; E. Ferenc-Szydelko, *Prawo prasowe – komentarz*, Warszawa 2008, pp. 21-33.

<sup>32</sup> Such a localisation of the freedom is linked to historical experience. It is not a coincidence that the rule is located next to such rights as: freedom of political parties (Article 11 of the Constitution) and freedom of creation of other associations (Article 12 of the Constitution), rule for decentralisation of public power (Articles 15-16 of the Constitution), since they eliminate non-democratic form of government when functioning together. See Sentence of the Constitutional Tribunal dated 12<sup>th</sup> May 2008, op. cit.

<sup>33</sup> W. Sadurski believes that allocation of freedom of the press in the chapter establishing system founding rules, deprives it of its civil character. L. Wiśniewski presents a different opinion here. See Sadurski, W., *Wolność prasy w systemie praw człowieka. Wybrane zagadnienia*, in: *Obywatel – jego wolności i prawa. Zbiór studiów przygotowanych z okazji 10-lecia urzędu Rzecznika Praw Obywatelskich*, Warszawa 1998, pp. 137; W. Sokolewicz, *Wolność prasy jako konstytucyjna zasada ustroju państwa*, „Ius Novum” 2008, no. 2, pp. 5-14.

<sup>34</sup> *Freedom of the press is one of the ‘political freedoms’ which may be subject to limitations in practice due to the necessity to provide freedom of an individual. Therefore, freedom of the press is not and cannot be of an absolute nature, it cannot have the form*

of unlimited freedom of action, and what is more it cannot be considered as a self-existing source of values. See Decision of the Supreme Court of 12<sup>th</sup> November 2003, IV CKN 52/03, OSP 2004, vol. 3, item 24.

<sup>35</sup> J. Maślanka (Ed.), *Encyklopedia wiedzy o prawie*, Wrocław-Warszawa-Kraków-Gdańsk 1976, p. 168.

<sup>36</sup> Journal of Laws from 1984 No. 5, item 24 as subsequently amended.

<sup>37</sup> Pursuant to Article 3 of a.r.t.b. provisions of the press law shall be applied to radio and television broadcasting, unless it is provided otherwise in the act. See Journal of Laws from 2004 No. 253, item 2531 as subsequently amended.

<sup>38</sup> Those which meet the requirements listed in Article 7 clause 2 point 1. of the p.l. Journal of Laws No. 5, item 24, as subsequently amended; Cf. Decision of the Supreme Court of 7<sup>th</sup> May 2008, III KK 234/07, OSNKW 2008, vol. 9, item 69.

<sup>39</sup> Cf. E. Nowińska. *Wolność wypowiedzi prasowej*, Warszawa 2007, p. 35.

<sup>40</sup> The term *means of mass communication* has not been defined by law. Traditionally, they include radio and television broadcasting. The group also includes those means with the use of which information reaches or can reach a wide circle of audience. The content can also be mass transferred by means of a book, a poster or film. These, however, do not meet the requirements provided for in Article 7 clause 2 point 1 of the 26<sup>th</sup> January 1984 act - Press Law. See Journal of Laws No. 88, item 553; Decision of the Supreme Court dated 7<sup>th</sup> May 2008, op. cit.; E. Czarny-Drożdżewski, *Dziennikarskie dochodzenie do prawdy a przestępstwo zniesławienia w srodach masowego komunikowania*, Kraków 2005, pp. 176-206; M. Sosnkowska, *Uwagi o kwalifikowanym typie przestępstwa zniesławienia*, in: *Nowa kodyfikacja prawa karnego*, L. Bogunia, (Ed.), vol. XI, Wrocław 2002, pp. 87-93.

<sup>41</sup> Decision of the Supreme Court of 7<sup>th</sup> May 2008, III KK 234/07, op. cit.

<sup>42</sup> Relocation of the matter to a secondary position in the hierarchical structure of the 1997 Constitution (as opposed to the Constitution of the Polish People's Republic, where this question was regulated in chapter 8) is a deliberate action. It expresses attachment of the state to the position of an individual. According to the axiology of democratic constitutionalism a man is for the state and not the other way round. See P. Winczorek, *Constitutional Law of the Republic of Poland*, Warszawa 2003, p. 61.

<sup>43</sup> The Constitutional Tribunal had recognised freedom of expression as one of the fundamental human rights already before the present Constitution was introduced. See Resolution of the Constitutional Tribunal dated 2<sup>nd</sup> March 1994, file. W 3/93, OTK 1994, part I, item 17.

<sup>44</sup> See Sentence of the Constitutional Tribunal dated 5<sup>th</sup> May 2004, file no. P 2/03, OTK-A ZU 2004, No. 5 (67), item 39; See P. Sarnecki, *Uwaga 5 do art. 54*, in: *Konstytucja Rzeczypospolitej Polskiej, Komentarz*, L. Garlicki (Ed.), vol. III, Warszawa 2003.

<sup>45</sup> As it appears in the decision of the Constitutional Tribunal of 2008, members of this authority do not differentiate between freedom of speech and freedom of expression. Still, it must be noted that the first is a narrower term than the second and is included as its part. See Decision of the Constitutional Tribunal dated 7<sup>th</sup> May 2008, op. cit.

<sup>46</sup> A. Frankiewicz, *Regulacja wolności wypowiedzi w polskim porządku prawnym*, in: *Prawa i wolności obywatelskie w Konstytucji RP*, B. Banaszak, A. Preisner, (Ed.), Warszawa 2002, p. 362 et al.

<sup>47</sup> Sentence of the Constitutional Tribunal dated 12<sup>th</sup> May 2008, file no. K 43/05, op. cit.

<sup>48</sup> E. Nowińska, *Freedom*, op. cit., pp. 37-38. P. Sarnecki, *Regulacja problematyki środków społecznego przekazu w Konstytucji Rzeczypospolitej Polskiej*, in: *Prawo mediów*, J. Barta, R. Markiewicz, A. Matlak (Ed.), Warszawa 2005, p. 20 et al.

<sup>49</sup> Sentence of the Constitutional Tribunal dated 12<sup>th</sup> May 2008, file no. K 43/05, op. cit.

<sup>50</sup> It is stressed that one of the core elements of freedom of speech is freedom from preventive censorship, that is prohibition of text or image control prior to its publication or broadcasting. Dissemination of opinions cannot be therefore subject to a state authority's consent granted before it is presented to the audience. The state may establish mechanisms of subsequent responsibility for freedom of speech abuse; however, preventive interference may be allowed only exceptionally providing it tends to achieve specific goals by a constitutional state. Such legitimate actions may include prosecution of a crime or provision of correct operations of the system of justice.

<sup>51</sup> H. Lisicka rightly noted that the equality sign cannot not be placed between licensing and censorship. She thinks that the first term results from necessity to maintain order in bandwidths. The second one – related to specific beliefs – is usually tinged with politics, See H. Lisicka, *Prawa i wolności obywatelskie*, in: *System polityczny Rzeczypospolitej Polskiej*, H. Lisicka(Ed.), Wrocław 2005, p. 19; Cf. J. Sobczak. *Prawo do prywatności a wolność słowa i druku*, in: *Wolności i prawa jednostki oraz ich gwarancje w praktyce*, L. Wiśniewski (Ed.), Warszawa 2006, pp. 173-174.

<sup>52</sup> L. K. Jaskuła, *Naruszenie*, op. cit., pp. 40-41.

<sup>53</sup> Sentence of the Constitutional Tribunal dated 12<sup>th</sup> May 2008, file no. K 43/05, op. cit.

<sup>54</sup> E. Nowińska, *Wolność*, op. cit., p. 34.

<sup>55</sup> *Without freedom of the press there can be no complete execution of freedom of expression (the freedom to express one's opinions and acquire as well as disseminate information)*. See Sentence of the Supreme Court dated 29<sup>th</sup> September 2000, V KKN 171/98, not published.

<sup>56</sup> See J. Szymanek, *Konstytucyjna zasada wolności słowa w radiofonii i telewizji*, "Państwo i Prawo" 2007, no. 8, p. 21.

<sup>57</sup> There is an opinion present in the doctrine that freedom of the press is directly limited by the norm contained in Article 13 of the Constitution of the Republic of Poland, which covers propagation of ideology related to totalitarian methods exercised by nazism, fascism and communism, as well as racial or national hatred or application of violence for the purpose of obtaining power or to influence State policy. B. Michalski is not quite convinced by this statement, invoking a grammatical interpretation of Article 13 in the Constitution. The phrase related to *existence of other parties and organisations* does not pertain to the press excluded as an organisational element of such a party or organisation. It is possible to argue with this approach if we assume that freedom of speech represents a wider term which conceptually includes *freedom of the press*. Only then are there grounds to conclude that Article 13 indirectly refers also to Article 14 of the Constitution. See B. Michalski, *Podstawowe problemy prawa prasowego*, Warszawa 1998, p. 17.

<sup>58</sup> *Content of Article 14 of the Constitution imposes on the state the obligation to refrain from interferences violating freedom of the press and other means of social communication. This does not mean, however, that the state is deprived of any possibilities of legal influence on the press. Vesting them in the state is essential, at least to ensure other liberties and rights are executed*. See Sentence of the Supreme Court dated 29<sup>th</sup> September 2000, V KKN 171/98, not published.

<sup>59</sup> Wronkowska, S. *W sprawie bezpośredniego stosowania Konstytucji*, "Państwo i Prawo" 2001, vol. 9, p. 12.

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