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THE PROBLEM OF TENSIONS BETWEEN THE CONSTITUTIONAL PRINCIPLE OF FREEDOM OF SPEECH AND FREEDOM OF THE PRESS AND THE LIMITS OF ACCESS TO INFORMATION AND PUBLISHING IN POLAND

Abstract: Although freedom of speech and freedom of the press are guaranteed by the norms of the Constitution and confirmed by international obligations, in practice the implementation of these norms encounters numerous difficulties. Practicing the profession of a journalist depends on the conditions of access to information, including public information. Access to public information can be classified as one of public subjective rights, so it is the legislator's duty to shape the legal infrastructure in such a way as to create effective mechanisms that guarantee the transparency of the activities of public authorities, and thus the openness of public life. However, the regulations specifying the work of journalists are multi-level in nature and necessarily provide for numerous restrictions, causing tensions between the freedom of speech and other values guaranteed by the Constitution.

Keywords: constitution, freedom of speech, freedom of the press, journalist, journalism, information, public information, access to information

INTRODUCTION

The year 2022 was a special one for Poland in the context of the constitutional principle of freedom of speech and press — unfortunately not due to any legislative changes or a round anniversary of an important event. The spectacular and dramatic decline of Poland's position in the World Press Freedom Index published by the Reporters Without Borders organization can be considered a particularly significant fact. Poland dropped to an all-time low of 66, and this is the seventh year in a row Poland has dropped from its all-time high of 18 in 2015. This fact is very disturbing, or even alarming, due to the key role of freedom of speech and journalistic freedoms in shaping and functioning of the legal system. Indepen-

dent media are one of the pillars enabling the functioning of democracy, and the implementation of the constitutional principle of a democratic state ruled by law.

According to Reporters Without Borders, the current situation in Poland can be described as "problematic," while the country can be described as "illiberal democracy." The organization also sees the suppression of independent journalism as the government strengthens its control over public media and pursues a strategy of "repolonizing" private media. Repeated attempts to exert pressure on the opposition-leaning TV station TVN (the largest independent media group) by means of "politicized regulations and tailor-made legislation" are also cause for concern. Public authorities also threatened the independence of private media when a state-owned company bought 20 out of 24 regional newspapers. There has been an increase in verbal attacks against journalists and attempts to discourage those dealing with gender or LGBT+ issues. This sad picture is complemented by "regular attacks" by members of the government on "overly critical journalists."[1]

In this context, the problems of the scope of freedom of speech and legal regulations concerning the profession of a journalist take on special significance. Although journalism in Poland is not a regulated profession, its practice is subject to a number of legal restrictions of a multidimensional nature. All of them may constitute obstacles to the full implementation of the idea of freedom of the press in a democratic state ruled by law.

1. CONSTITUTIONAL AND INTERNATIONAL LEGAL GUARANTEES OF FREEDOM OF THE PRESS

Freedom of the press and other means of social communication has already found its place in Art. 14 of the Constitution of the Republic of Poland in the chapter shaping the constitutional principles, which indicates the particular concern of the legislator[2] and it is also a clear interpretive guide. The principle of freedom of the media should be considered in the context of other relevant constitutional provisions. Article 14 as an element of the social order scheme should be read together with the norms defining the role of the existence and functioning of political parties and trade unions. From the wording of Art. 14, namely the wording "Republic of Poland ensures," it can be concluded that the legislator is obliged to properly shape the social and legal infrastructure, thus creating actual conditions for the implementation of freedom of the media, thus taking into account the freedom of economic activity. This provision requires specifying the obligations of public

[1] "Poland falls in World Press Freedom Index for seventh year running," Notes From Poland, 4.05.2022, https://notesfrompoland.com/2022/05/04/poland-falls-in-world-press-freedom-index-for-seventh-year-running/. (accessed: 20.12.2022).

[2] Constitution of the Republic of Poland of 2 April 1997, Journal of Laws of 1997, No. 78, item 483, from 2001 with further amendments.

authorities in order for them to undertake actions that guarantee genuine freedom of speech. In addition to the prohibition of excessive interference, the need for active measures, including enabling the efficient and safe operation of electronic media, can be indicated.

The content of the freedom of the press guaranteed by Art. 14 includes the freedom to establish media, the freedom to disseminate opinions, as well as access to information and the ability to disseminate it. The Constitution does not prohibit the existence of public media, but the doctrine emphasizes that their public character cannot be synonymous with state, government or party character:

> The principle of freedom of the means of social communication excludes the existence of any media (including — and perhaps even above all — audiovisual media) legally subordinated to and controlled by political authorities (primarily the government). Legal regulations aimed at establishing such legal or actual subordination may, *a limine*, raise doubts in the light of Art. 14 of the Constitution. This would violate the principle of balance and free competition of political forces, which are the basis of democratic pluralism.[3]

There is undoubtedly a connection between Art. 14 (in Chapter I), and Art. 54 located in Chapter II of the Constitution, and thus expressing the subjective freedom to express views and to obtain and disseminate information. Regarding the latter, there is also a clear link with Art. 61, which guarantees citizens the right to obtain information on the activities of public authorities and persons discharging public functions, economic and professional self-government bodies, access to documents and access to meetings of collective public authorities.

The placing of Art. 61, i.e., among freedoms and political rights, also manifests the special role that information plays in public life.[4]

At the level of international law, the legal basis of the journalistic profession is regulated primarily by treaties protecting human rights, both at the universal level — through the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights[5] (Article 19); by the European Union — through the Convention for the Protection of Human Rights and Fundamental Freedoms (Article 10) commonly referred to as the European Convention on Human Rights;[6] and at the EU level — the EU Charter of Fundamental Rights[7] (Article 11). Particular practical importance can be attributed to the European Convention on Human Rights. Due to the extensive jurisprudence of the Strasbourg

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[3] See: L. Garlicki, P. Sarnecki, "Komentarz do art. 14 Konstytucji," [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, eds. L. Garlicki, M. Zubik, Warszawa 2016, p. 460.

[4] Ibid., pp. 450–463.

[5] Journal of Laws of 1997, No. 39, item 167.

[6] Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950 (Journal of Laws of 1993, No. 61, item 284, as amended).

[7] Official Journal of the EU, C83/384 of 30.03.2010.

Court, Art. 10 has held an exposed position for years.[8] Freedom of expression has been defined here by three elements: freedom to hold opinions, freedom to impart information and freedom to receive information. The scope of admissible restrictions on freedom of expression and the way they are interpreted and applied is consistent with the general concept of the provisions of the Convention guaranteeing freedoms. The admissibility of introducing restrictions is conditioned by formal legality (by statute), substantive legality (purposefulness) and the criterion of necessity in a democratic society. This leaves national authorities a wide margin of appreciation, taking into account the specific circumstances, needs and conditions of the country concerned.[9]

2. ACCESS TO INFORMATION

The freedom to receive information and ideas is a necessary condition for shaping public opinion and controlling public authority by society. At the same time, it determines the platform for the functioning of the individual in society and the interaction of the individual with the state. The beneficiaries of this freedom are both individuals and collective entities, including broadcasters, publishers and journalists. Against this background, public information plays a special role.

Information rights can be attributed to the category of public subjective rights. Public subjective right can be understood as "such a legal situation of a citizen (collective entity) within which this citizen (collective entity), relying on legal norms protecting its legal interests, may effectively demand something from the state or may, unquestionably, do something by the state."[10] Public subjective rights are vested in an individual in relation to the state and its organs. They concern the possibility of demanding from the state (or an entity performing public tasks) by means of an individual claim, strictly defined by applicable law, behavior consistent with the legal interest of the claimant.[11] One should agree with the view expressed by M. Sakowska-Baryła that the subjective public rights may also include subjective information rights. They provide:

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[8] See: L. Garlicki, "Komentarz do art. 10," [in:] L. Garlicki, P. Hofmański, A. Wróbel, *Konwencja o ochronie praw człowieka i podstawowych wolności. Komentarz*, Warszawa 2010, pp. 588–589. Also A. Demczuk, "Wolność wypowiedzi w orzecznictwie Europejskiego Trybunału Praw Człowieka," [in:] *Europejska konwencja o ochronie praw człowieka*, eds. M. Haczkowska, F. Tereszkiewicz, Opole 2016.

[9] See L. Garlicki, "Komentarz do art. 10," pp. 584–604.

[10] J. Boć, *Prawo administracyjne*, Wrocław 1994, p. 307.

[11] See M. Masternak-Kubiak, P. Kuczma, "Prawo petycji jako publiczne prawo podmiotowe (aspekt podmiotowy i przedmiotowy)," [in:] *Teoretyczne i praktyczne aspekty realizacji prawa petycji*, eds. R. Balicki, M. Jabłoński, Wrocław 2015, p. 262.

an individual as an authorized entity with the possibility of effectively demanding specific behavior from public authorities, enforced by using means provided for by law, especially if we take into account the circumstances in which the regulations governing them are subject to co-application, when the entities obliged under each of these rights are entities belonging to the same group, which can be characterized as public authorities and entities performing public tasks.[12]

Regulations concerning information rights are often shaped by the legislator in such a way that they endow them with a universal character and impose obligations on entities from the public and private spheres to an equal extent.

Public information can also be treated as a category of the common good.

We treat the thing literally as a kind of material substrate and mental construct, and thus "good" in the form of materialized knowledge recorded on various types of media — information referred to in Art. 61 of the Constitution of the Republic of Poland, in Art. 1 sec. 1 of the Act on Access to Public Information and, for example, characterized in Art. 6 sec. 1 of this Act, as well as decoded on the basis of these provisions.[13]

Since the entry into force of the Constitution of the Republic of Poland in 1997, journalists have had access to public information on the basis of the same provisions as other citizens, i.e. pursuant to Art. 54 sec. 1 and 61 and in particular on the basis of the already mentioned Act on access to public information.[14] Pursuant to Art. 3.1., the right to public information includes the right to: 1) obtain public information, including obtaining processed information to the extent that it is particularly important for the public interest; 2) access to official documents; 3) access to meetings of collective public authorities elected by universal elections. In addition, the right to public information includes the right to immediately obtain public information containing up-to-date knowledge of public matters.

The most important category of entities obliged to provide information to journalists are public authorities and other entities performing public tasks, in particular: 1) public authorities; 2) bodies of economic and professional self-governments; 3) entities representing the State Treasury in accordance with separate regulations; 4) entities representing state legal persons or legal persons of local government and entities representing other state organizational units or organizational units of local government; 5) entities representing other persons or organizational units that perform public tasks or dispose of public property, and legal persons in which the State Treasury, local government units or economic or professional self-government have a dominant position within the meaning of the provisions on competition and consumer protection. In addition, trade unions and employers' organizations as well as political parties are obliged to provide public information.

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[12] M. Sakowska-Baryła, *Ochrona danych osobowych a dostęp do informacji publicznej i ponowne wykorzystanie* informacji sektora publicznego, Warszawa 2022, p. 52.

[13] Ibid., p. 358.

[14] Act of September 6, 2001 on access to public information, Consolidated text: Journal of Laws of 2022, item 902.

Chapter 2 contains an exemplary catalog of categories of public information covered by the obligation to disclose. According to Art. 6.1., public information is subject to disclosure, in particular on: 1) domestic and foreign policy, including: a) intentions of the legislative and executive authorities, b) drafting of normative acts, c) programs for the implementation of public tasks, the manner of their implementation, performance and results of the implementation of these tasks; 2) entities performing public tasks, including: a) legal status or legal form, b) organization, c) subject of activity and competences, d) bodies and persons performing functions in them and their competences, e) ownership structure of entities performing public tasks and assets at their disposal as well as the rules of their functioning.

In this respect, the Act provides for the creation and functioning of the Public Information Bulletin and the activity of the minister competent for computerization, who is obliged to create the main page of the Public Information Bulletin containing a list of public authorities and professional and economic self-government bodies, ensuring access to public information and the possibility of searching it in the IT system providing access to the data portal.

It can be assumed that the legislator distinguished two categories of information, i.e. public information and other press information that does not hold such status. Following this distinction, persons authorized to contact the press can also be categorized. These are: 1) spokespersons representing government administration bodies whose work is regulated by the relevant regulation and spokespersons of other public administration bodies and persons responsible for contacts with the press in private entities or other institutions outside the public finance sector, foundations or associations. Information not having the status of public information is provided on the basis of Art. 4 of the Press Law.[15] This provision obliges entrepreneurs and other entities not included in the public finance sector and not operating for profit to provide the press with information about their activities, as long as the information is not secret or does not violate the right to privacy. Information on behalf of organizational units ought to be provided by the heads of these units, their deputies, spokespersons or other authorized persons, within the limits of the duties entrusted to them in this respect. In addition, the managers of these organizational units are obliged to enable journalists to establish contact with employees and freely collect information and opinions among them. As rightly noted by Monika Brzozowska-Pasieka:

> in the activities of companies and entities not included in the public finance sector, there is neither the need nor (often) custom to appoint a separate position for contact with the media. These types of positions — as a rule — are appointed in larger companies or institutions. Also, in some (usually

[15] Act of January 26, 1984, consolidated text Journal of Laws of 2018, item 1914.

small) public administration offices there is no separate position of a person delegated to answer journalistic inquiries or speak in the press on behalf of the office.[16]

It is indicated that this type of press release can be treated as separate from public information, and the journalist has a privileged position in relation to other people. The organizational unit decides who will speak for the press. "It is debatable whether, if a journalist receives an answer to his question from a press officer or other person authorized to contact the press, he can demand a meeting with the head of the unit, director, head or employee of a given unit."[17] According to the Supreme Administrative Court, if the obligation to contact the press has been imposed on an employee, this excludes the obligation to provide information by the superior authority.[18]

Based on Art. 11 sec. 4 of the Press Law, the Council of Ministers, by way of an ordinance,[19] defines the organization and tasks of press officers in the offices of government administration bodies.

Spokespersons in offices of government administration bodies perform tasks in the field of government information policy. Their tasks include in particular: 1) public presentation of the activities of government administration bodies, 2) organizing public contacts between government administration bodies, carried out with the participation or through the mass media. The tasks of press spokesmen also include participation in the implementation of the obligations of government administration bodies under the Act on Access to Public Information.

In order to perform the abovementioned tasks, spokespersons may request information from the heads of organizational units of the office serving the government administration body in which the spokesperson operates, and from the heads of organizational units subordinated to or supervised by a given government administration body. The tasks of the Government Spokesman include in particular: 1) explaining the government's policy, including issuing statements and publicly presenting the activities of the Council of Ministers, 2) commenting on domestic and foreign events concerning government policy, 3) responding to press publications and radio and television broadcasts as well as materials disseminated in other mass media concerning the activities of government administration bodies and organizational units subordinate to them and supervised by them, including in particular criticism and press intervention, 4) forwarding official announcements

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[16] M. Brzozowska-Pasieka, "Prawa i obowiązki dziennikarzy," [in:] E. Ferenc-Szydełko, *Prawo Prasowe. Komentarz*, Warszawa 2013, pp. 171–172.

[17] Ibid.

[18] Judgment of the Supreme Administrative Court, Branch Office in Poznań of May 27, 1991, SA/Po 159/91, Wok. 1992, No. 2, item 17, LexisNexis No. 2119716, after M. Brzozowska Pasieka, "Prawa i obowiązki dziennikarzy," p. 172.

[19] Regulation of the Council of Ministers of 8 January 2002 on the organization and tasks of press officers in offices of government administration bodies, Journal Laws of 2002, No. 4, item 36.

to be published in the mass media, 5) ensuring cooperation of services responsible for the implementation of tasks in the field of government information policy.

The regulations also provide for the appointment of a spokesperson for the minister and a spokesperson for the voivode. The scope of their competences includes in particular: 1) explaining the activities and initiatives and programs undertaken by the minister or voivode, and issuing statements and publicly presenting the activities of the minister or voivode, 2) commenting on domestic and foreign events within the scope of the tasks of a given minister or voivode, 3) responding to press publications and radio and television broadcasts, as well as materials disseminated in other mass media, concerning the activities of the minister or voivode and organizational units subordinated to and supervised by a given government administration body, including in particular responding to criticism and press intervention, 4) forwarding official announcements to be published in the mass media. In justified cases, the Prime Minister or the minister supervising the activities of the head of the central office may order or consent to the appointment of a spokesman for the head of the central office.

In the judgment of the Provincial Administrative Court in Bydgoszcz,[20] the following rules for organizing contacts with the press in a public administration unit were formulated:

1) only persons (entities) listed in the provision of Art. 11 sec. 2 are required to officially take a position in the media on behalf of a specific organizational unit; these are the heads of these units, their deputies, spokespersons or other authorized persons, within the limits of the duties entrusted to them in this respect (Article 11[2]);

2) persons obliged to have official contacts with the press are also obliged to enable journalists to establish contact with employees and freely collect information and opinions among them (Article 11[3]);

3) enabling the collection of information among employees does not imply the obligation of employees (indicated by, for example, a press officer) to speak in the press. It is an employee's right, not his obligation. Therefore, if the employee is not a person listed in Art. 11 sec. 2 (is neither a manager, deputy manager, spokesperson, nor a person authorized to contact the press), then such an employee may refuse to speak to the press. While he may of course do so, it is not his duty and cannot be treated as such. The provision of the order specifying persons "only" authorized to contact the media is of a restrictive nature resulting from Art. 11 sec. 1 titled "The journalistic right to information", i.e. the right of journalists to contact employees of a specific organizational unit, as well as the right of employees of these units to provide the press with information and express opinions on the activities of these units.

[20] Judgment of August 3, 2010, II SA/Bd 511/10 (LexisNexis No. 2473465), cited by M. Brzozowska Pasieka, "Prawa i obowiązki dziennikarzy," pp. 172–173.

Another, almost physical limitation of press access to information turned out to be the prohibition of journalists' entry to the zone under the state of emergency on the border with Belarus. The legal situation was assessed by the Supreme Court, stating that the almost universal ban on entering the zone is contrary to the Constitution and the law on the state of emergency. The state of emergency at the border with Belarus was introduced by the president by order of September 2, 2021. The regulation introduced i.a. the prohibition of "staying at fixed times in designated places, facilities and areas located in the area covered by the state of emergency" and the prohibition of "perpetuation by technical means the appearance or other features of specific places, facilities or areas located in the area covered by the state of emergency." These bans mainly affected journalists. The court emphasized that, in accordance with Article 228 of the Constitution and the requirement to maintain proportionality of restrictions on rights and freedoms, actions taken as a result of the introduction of a state of emergency must correspond to the degree of threat and should be aimed at quickly restoring the functioning of the state. The Council of Ministers has introduced an almost complete ban on entry to the entire zone and around the clock. In its judgment, the Supreme Court justifies that pursuant to Article 18 of the Act on the State of Emergency, the Council of Ministers could introduce a ban on entry to the zone only at points (i.e. only to clearly defined places, e.g. buildings; and at a precisely defined time, e.g. at night)

The Supreme Court also ruled that the introduction of a general ban on entry to the zone for the entire duration of the state of emergency is contrary to the Constitution. In addition,

> the Supreme Court finds no reason why such a severe restriction of freedom — and indirectly affecting the possibility of exercising a number of other rights and freedoms — would be justified in these circumstances. The mere assumption that there is a threat to public order resulting from the presence of certain persons in an area covered by a state of emergency cannot be tantamount to the objective existence of the conditions for a restriction. Moreover, it cannot be presumed *a priori* that the total ban on staying in the area of the entire state of emergency at all times is the result of efforts to minimize the burdens resulting from limiting the space of individual freedom.[21]

The rules of access to information, both public and otherwise classified, described above undoubtedly constitute the implementation of the positive obligations of the state resulting from the guarantee of freedom of the press. However, the very existence of a multi-level and partly decentralized structure responsible for managing access to information causes certain access restrictions. It would be a truism to say that, in the final analysis, the actual intentions of information holders, and in particular the willingness to conduct business in a transparent manner, ultimately determine the effectiveness of the existing legal framework.

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[21] See: M. Jałoszewski, "Sąd Najwyższy. Zakaz wjazdu dla dziennikarzy do strefy przy granicy jest nielegalny," OKO.Press, 19.01.2022, https://oko.press/sad-najwyzszy-zakaz-wjazdu--dla-dziennikarzy-do-strefy-przy-granicy-jest-nielegalny (accessed: 17.12. 2022).

3. THE LIMITS OF PUBLISHING

Freedom of the press — on the one hand limited by the possibilities of obtaining information, is on the other hand limited by the legal conditions of its publication. The Constitutional Tribunal referred to these issues in an interesting way, stating that:

> The freedom to obtain information referred to in Art. 54 sec. 1 of the Constitution, is a broader concept than the right to obtain information (Article 61 of the Constitution). It also includes the freedom to seek information, which is particularly important for those who have access to the means of social communication.
>
> On the other hand, the freedom to disseminate information means both making the collected data available to entities selected individually by the disseminator, and disseminating information, i.e. making it public, i.e. to non-individualized addressees, especially through the mass media. The freedom to disseminate information concerning the sphere of private life has much more extensive limitations than the freedom to obtain information. In the sphere of public life, the freedom to disseminate information "has the same limits as the freedom to obtain such information."[22]

The basic guidelines in this regard are formulated by the Press Law, imposing such restrictions on journalists as the obligation to act in accordance with professional ethics and principles of social coexistence, within the limits set by law, with the principle of reliability, objectivity and professional diligence (Article 10) while maintaining particular diligence and reliability when collecting and using press materials, in particular by checking the truthfulness of the information obtained or providing its source. A journalist should also protect personal rights (including intellectual property rights), as well as the interests of *bona fide* informants and other people who place their trust in him; take care of the correctness of the language and avoid using profanity (Article 12). A journalist is not allowed to express an opinion in the press on the outcome of court proceedings prior to the issuance of a decision in the first instance, nor to publish in the press the image and other personal data of persons against whom preparatory or court proceedings are pending (Article 13). In addition, publishing or otherwise disseminating information recorded by means of audio and visual records requires the consent of the persons providing the information, and the person providing the information may, for important social or personal reasons, reserve the date and scope of its publication. A journalist may not publish information if the person providing it has reserved it due to professional secrecy. It is forbidden to publish information and data concerning the private sphere of life without the consent of the person concerned, unless it is directly related to the public activity of the person concerned (Article 14). A journalist cannot refuse to authorize a verbatim quoted statement (Article 14a). In addition, the journalist is obliged to keep confidential the data enabling the identification of the author of a press material, letter to the editor or other material of this nature, as well as other persons providing infor-

[22] Judgment of February 20, 2007, ref. no. act P 1/06, OTK ZU 2A/2007, item 11.

mation published or submitted for publication, if these persons have agreed not to disclose the abovementioned data and any information, the disclosure of which could violate the legally protected interests of third parties (Article 15).

The provisions of provision 240 of the Penal Code,[23] which provide for imprisonment of up to 12 years for a person who has not informed law enforcement authorities about certain serious crimes, seem inconsistent with the spirit (and provisions) of the Press Law. As indicated by the Commissioner for Citizens' Rights, the catalog of these crimes was formulated in an inconsistent manner, while such a regulation undoubtedly infringes upon the idea of professional secrets, including journalistic secrets.

> The obligation to report a crime repeals medical, journalistic, psychological, attorney, notarial and other confidentiality. This does not apply only to the clergyman (who learned about the crime during confession) and the defense attorney (as part of defense secrecy). But, for example, a psychologist who learns from a patient that he may have been a victim of a crime under Art. 240, must at the current circumstances inform law enforcement authorities about the fact.[24]

Doubts and postulates in this regard formulated by the Comissioner seem to be fully justified, because the order to disclose information formulated in such a way undermines the foundations of public trust in the media.

Against this background, it is worth raising the issue of the so-called "journalistic provocation" or "undercover journalism," in which a journalist takes action using various techniques, including using a false identity:

> A journalist using provocation walks a very thin line that he can easily cross, becoming the perpetrator of a prohibited act. The range of crimes that can be committed during the provocation is rich. As it is emphasized in the doctrine, methods of provocation consisting in violation of regulations by a press representative in order to examine the functioning of law enforcement bodies, demonstrate the irrationality of legal regulations or illustrate the ease of committing a prohibited act are particularly dangerous. Journalistic provocation is undoubtedly an action on the edge of the law, and often a violation of it.[25]

Many problems may arise here, such as delays in notifying the law enforcement authorities of crimes, precisely on the basis of the aforementioned Art. 240 of the Penal Code. The literature also mentions other typical prohibited acts in this context, such as: 1) handing of bribes; 2) persuading the official to abuse his pow-

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[23] Act of June 6, 1997, Penal Code, consolidated text, Journal Laws of 2020, item 1444, 1517; of 2021, item 1023, 2054.

[24] "RPO sugeruje zmiany karalności za niezawiadomienie o groźnych przestępstwach," Biuletyn Informacji Publicznej RPO, 3.12.2008, https://bip.brpo.gov.pl/pl/content/rpo-sugeruje-zmiany-karalnosci-za-niezawiadomienie-o-groznych-przestepstwach#:~:text=Artyku%C5%82%20240%20Kodeksu%20karnego%20przewiduje,o%20tym%20niezw%C5%82ocznie%20organ%C3%B3w%20%C5%9Bcigania (accessed: 26.01.2022).

[25] P. Kosmaty, "Dziennikarz śledczy ma działać zgodnie z prawem," *Rzeczpospolita*, 22.07.2018, https://www.rp.pl/prawo-karne/art1836881-dziennikarz-sledczy-ma-dzialac-zgodnie-z-prawem (accessed: 17.12.2022).

ers or fail to fulfill his duty; 3) purchase or sale of prohibited substances or items; 4) false notification of a crime; 5) impersonating a public official; 6) appropriation of position, title or rank; 7) production and use of a forged document; 8) slandering or insulting another person.[26] It should be noted that this type of activity has no basis (and is even contrary to) the provisions of the Press Law (and its concept) as well as other acts of generally applicable law. When assessing this type of activity, the courts are deprived of the possibility of using countertypes and are forced to adjudicate on the guilt of the perpetrators. In some cases, the liability is not particularly severe, when it is possible to determine negligible social harmfulness in relation to some acts and impose not too severe financial sanctions in relation to others. In the context of access to information, it is important here that "in a trial, a journalist will not be able to rely on evidence obtained through illegal provocation, because the court cannot base its decision on evidence obtained illegally."[27]

CONCLUSIONS

Freedom of speech as a constitutional systemic principle is one of the basic components of a democratic state ruled by law. The press, the so-called "Fourth Estate" acting as the "public watchdog" plays a key role here. Regulations defining the work of journalists have a multi-level character and are well established both in the constitution, acts of international law and in acts of lower rank. In order for the implementation of the media's tasks to be possible, it was necessary to create a legal infrastructure that would ensure effective access for journalists to public information and other information relevant from the point of view of civil society, including defining the competences of public officials and other persons responsible for providing reliable information. However, at each stage of the discussed phenomenon, numerous limitations and tensions between the freedom of speech and other values guaranteed by the Constitution are visible.

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[26] B. Kosmus, Ł. Syldatk, [in:] *Prawo Prasowe. Komentarz*, eds. B. Kosmus, G. Kuczyński, Warszawa 2011, p. 197.

[27] Ibid.

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