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**JOURNALIST'S LIABILITY
FOR PERSONAL INTERESTS VIOLATION
IN POLISH LAW**

The subject matter of personal interests violation in mass media is most important while considering the issue of civil liability of the press. Personal interests protection as provided for in civil law is of much wider range than the one envisaged by the Constitution.¹ Personal interests are contrasted with other constitutional interests, especially the freedom of media, the right to express one's opinions freely. We can see here apparent collision of rights and interests that should be considered equal. It is justified by balancing these two rights in concrete cases as to provide appropriate evaluation of the items protected by the Constitution. The most important task of the press is passing information and shaping social attitudes towards matters that are significant for the public interest. Therefore, on the one hand, freedoms necessary to accomplish their tasks should be guaranteed and provided, on the other hand, however, they must accept the fact that due to personal interest of third parties the observation of required rules is subject to special judgment.

Generally, the basis of personal rights protection vary considerably, depending on the sphere of life they refer to. Intrusion into one's private or even intimate sphere of life should be evaluated differently than the reports about one's social or economic activity. A person participating in political and social life or entertainment industry must approve of different evaluation of their actions than those of a person avoiding public appearance. Personal interests violation may occur already in the very publication about a certain person, depending on a report type and a way of its realization. We should

¹ Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. [The Constitution of the Republic of Poland as of 2.04.1997], *Dziennik Ustaw* [Journal of Laws] No. 78, item 483). The Constitution protects personal rights of specified persons in art. 47, 51, 31 par. 1.

pay special attention to humiliating criticism referring to professional, social or artistic activity.

What personal interests can be threatened by the press? The media most frequently violate personal interests such as dignity, privacy, confidentiality of correspondence or surname,² as well as creation, freedom (in its wide meaning adopted by the doctrine, that is freedom from importunate disturbance, threat, fear and anxiety, therefore, both physical and mental overpowering). One's health violation in result of psychological trauma caused by shocking publication is also possible.³ The doctrine and jurisdiction constantly establish new kinds of personal interests protected by civil law. The importance of one's voice, perceived as personal interest, protection against unauthorized publishing (broadcasting)⁴ is also emphasized. Legal persons' personal interests, such as their goodwill, company name, confidentiality of correspondence, may also be subject to violation. With reference to enterprises we can intrude on the enterprise confidentiality, make false information about them public or violate exclusive rights to their trade mark. Violation of subject rights may also include omission, concealment or revelation of a creator's surname against their will. Therefore, do we deal here with copyrights⁵ or industrial property rights?⁶

Publications evoke massive social interest, they frequently reveal incompetence or failure of public authorities organs, besides, they serve a role of a controller leading to institution of criminal investigations. These publications reveal irregularities in institutional operations. What is more, they are made for the sake of social interest. No one doubts an incredible role of mass media. Freedom of speech and freedom to express one's attitudes and opi-

² See: J. Sadowski, *Naruszenie dóbr osobistych przez media* [Personal Interests Violation by the Media], Warszawa 2003, p. 9.

³ J. Kamieniecki, *Odpowiedzialność prasy za naruszenie dóbr osobistych* [Liability of the Press for Personal Interests Violation], "Państwo i Prawo" 1984, No. 11, p. 55. Court jurisdiction examined such cases of health impairment in result of a mental trauma caused by press publication acknowledging the existence of a reason-result relation between trauma triggered by tragic information and loss of health. There are also cases of, e.g., heart attacks caused by the reception of a football match. See: A. Szpunar, *Ochrona dóbr osobistych* [Personal Interests Protection], Warszawa 1979, p. 173–234 and jurisdiction referred to therein; J. Panowicz-Lipska, *Majątkowa ochrona dóbr osobistych* [Personal Interests Financial Protection], Warszawa 1975.

⁴ See: J. St. Piątowski, *Ewolucja ochrony dóbr osobistych*, (in:) *Tendencje rozwoju prawa cywilnego* [Personal Interests Protection Evolution, (in:) *Tendencies in Civil Law Development*], ed. by E. Łętowska, Wrocław 1983, p. 35–36.

⁵ Ustawa z dnia 4 lutego 1994 r. o prawie autorskim i prawach pokrewnych, *Dziennik Ustaw* [Journal of Laws] 2000, No. 80, item 904 with changes.

⁶ Ustawa z dnia 30 czerwca 2001 r. Prawo własności przemysłowej, *Dziennik Ustaw* [Journal of Laws] No. 49, item 508 with changes.

nions in public are commonly treated as one of the basis of human freedoms. However, we should also pay attention to the other side of this situation. An individual attacked by the media practically has no chance for equal means of defence. We cannot talk about even approximately "equal chances" between the media (television, radio, press) and an individual. A person living in a given society depends on the state protection, most of all against abuse by institutions and authorities organs, but against abuse by the mass media as well.⁷ There is a basic difference between the violation of personal interests in a place of limited range of private opinions' impact/effect (so called small public) and those exerted by mass media (massive public), which additionally are usually very well prepared. In such a case a person is confronted with a powerful organizational apparatus. What is more, it depends if they will be granted a chance of getting access to public opinion and presenting their own point of view at all. It seems that in such a situation we can talk about media privileged position. In contemporary society there is a discrepancy between the right of an individual to their personal interests protection and the right of the society to be informed in connection with the freedom of the press. This discrepancy becomes more apparent with reference to public persons' private lives. Maintenance of potential balance of interests is not always an easy task.

Personal interest violation is a factor deciding about adopting presumption of subject right violation.⁸ Personal interest violation does not have to be culpable, it is sufficient to be unlawful. Unlawfulness is a circumstance of proceedings which involves illegality/contradiction with legal norms or principles of community life.⁹ Non-financial liability for threat or violation of personal interests specified in art. 24 § 1 of Criminal Code is excluded if

⁷ See: B. Rüthers, *Konflikt między wolnością mediów a ochroną dóbr osobistych – doświadczenia i zasady w wykładni prawa Republiki Federalnej Niemiec*, (in:) *Kultura i prawo* [Conflict between Freedom of Media and Personal Interests Protection – Experiences and Principles in West Germany Interpretation, (in:) *Culture and Law*], v. 2, *Wolność mediów*, J. Krukowski (ed.), Towarzystwo Naukowe KUL, Lublin 2002, p. 99.

⁸ This concept is negated by B. Gawlik, *Ochrona dóbr osobistych. Sens i nonsens koncepcji tzw. praw podmiotowych osobistych* [Personal Interests Protection. Sense and Nonsense of the Concept of so Called Personal Subject Rights], *Zeszyty Naukowe Uniwersytetu Jagiellońskiego, Prace z Wynalazczości i Ochrony Własności Intelektualnej* (41) 1985.

⁹ K. Pietrzykowski holds an opposite opinion presenting unlawfulness in a narrow meaning as inconsistency of specified behavior with the law. K. Pietrzykowski, *Bezprawność jako przesłanka odpowiedzialności deliktowej a zasady współżycia społecznego i dobre obyczaje*, (in:) *Odpowiedzialność cywilna. Księga pamiątkowa ku czci Profesora Adama Szpunara* [Unlawfulness as Prerequisite of Tort Liability against Principles of Community Life and Good Morals, (in:) *Civil Liability. Book of Memoirs to Commemorate Prof. Adam Szpunar*], Kraków 2004, p. 179.

an offender's action is not unlawful. The principle of presumption of unlawfulness resulting from art. 24 § 1 of Criminal Code is applied here, therefore, it is a journalist who must prove the existence of circumstances justifying his or her action. Then such a presumption will be reversed and his or her liability will be excluded.¹⁰ Moreover, we should be aware of the fact that he or she takes the risk of not proving the above. They are liable in two cases, when, for instance, the information included in their article is false but they are not able to prove it is true,¹¹ and when it is true but other prerequisites of permissible criticism do not exist.

The examination/revision of the circumstances excluding unlawfulness (countertypes) has been analyzed the most on the basis of criminal law, which is applied by civil law.¹² The catalogue of these circumstances is of an open character and can be listed here: action within the area of public order, exercise of subject law, action within the area of justified social interest, self-defence, higher emergency state, self-help/assistance. In the situations we are interested in, that is violations committed by the press, such circumstances excluding unlawfulness will be: the journalist's right to criticize, the authorized person's consent¹³ or action defending interest deserving protection. Norms included in art. 41 (the right to press criticism) and art. 14 paragraph 6 of the Press Law¹⁴ (the right to enter the sphere of privacy) as well as art. 81 of the Copyright Law and Relating Laws¹⁵ (considering dissemination of an image) effect the scope of mass media liability. These regulations (art. 41 of the Press Law in particular), however, have slight impact on courts decisions/jurisdiction, which, in general, results from lack of knowledge in this subject and many-year-long duplication of doctrines

¹⁰ Exclusion of liability on the basis of lack of unlawfulness cannot include reference to lack of subjective elements of the acting person's guilt. Provisions of art. 24 § 1 Civil Code refer only to features of "unlawfulness", as opposed to art. 415 of Civil Code referring to "guilt" of a person inflicting damage. (See: P. Grzybowski, *System prawa cywilnego* [System of Civil Law], t. 1, Część ogólna, p. 302).

¹¹ See Resolution of 7 judges of 18 February, 2005 III CZP 53/04, *Orzecznictwo Sądu Najwyższego Izba Cywilna 2005*, No. 7–8, par. 114 with gloss: Z. Radwański, *Orzecznictwo Sądów Polskich 2005*, No. 9, par. 110; P. Sobolewski, *Orzecznictwo Sądów Polskich 2005*, No. 12, par. 144. SN of 7.11.2002 II CKN 1293/00.

¹² See A. Zoll, *Okoliczności wyłączające bezprawność czynu* [Circumstances Excluding Act's Unlawfulness], Warszawa 1982; A. Gubiński, *Wyłączenie bezprawności czynu* [Exclusion of Act's Unlawfulness], Warszawa 1961.

¹³ In the doctrine we can find an opposite position saying that these two exclusions do not form separate countertypes: as J. Sadowski, *op. cit.*, p. 48.

¹⁴ Ustawa z dnia 26 stycznia 1984 r. – Prawo prasowe (Dziennik Ustaw) [Journal of Laws] No. 5, item 24 with changes), further: Press Law.

¹⁵ Ustawa z dnia 4 lutego 1994 r. o prawie autorskim i prawach pokrewnych (uniform text: Dziennik Ustaw [Journal of Laws] 2006, No. 90, item 631).

position, when issues of press criticism were not regulated by the law. At that time a reference to out-of-legislation countertype of “justified interest” was appropriate. Thus, it is incomprehensible that doctrine and court jurisdiction “create” boundaries of press criticism referring to justified social interest¹⁶ if it is regulated by the law.¹⁷

Assuming that a journalist committed public defamation of a particular person, he or she has to prove that their action was not unlawful, therefore, prerequisites of art. 41 (it applies to the press) have been fulfilled, or in case of criminal liability, they have to prove that the charges were true and the person acted in accordance with/within social interest (art. 212 and 213 of Criminal Code).

I would like to present here the solution adopted by the press law. In Polish law, art. 41 of the press law specifies that negative comments referring to scientific and artistic works, or other artistic, creative, professional or public activity, are not considered unlawful acts if they are reliable and in accordance with the law and principles of community life. Therefore, there are no grounds/bases referring to the additional circumstance, which a justified interest is. This objective should result from art. 1 of the Press Law, that is informative function of the press.

The object of criticism is a work in the meaning of copyright law as a manifestation of creative activity. Another object of criticism is professional or public activity. Each professional activity may become the object of professional criticism as long as it lacks features of privacy but provides professional consideration for third parties. Laws regulating performance of a specified profession are the fundamental basis of such activity. Other acts of professional character that are not defined by the law may be treated as public activity as long as they are not limited to, e.g., a narrow social circle, and are polite in character.¹⁸

Additionally, public activity is subject to negative evaluation provided it lacks features of privacy, or any other public activity which is generally accessible/available.

¹⁶ For application of art. 41 Press Law in press criticism, see B. Michalski, *Ochrona praw osobistych a wolność krytyki* [Personal Rights Protection and Freedom of Criticism], “Jurysta” 1996, No. 1, p. 12 and others, as well as M. Zaremba, *Granice prawa obywateli do informacji o życiu prywatnym osób prowadzących działalność publiczną* [Boundaries of Citizens Rights to Information about Private Life of Persons Conducting Public Activity], “Studia Medioznawcze” 2005, No. 1, p. 40 and other. Advocates of “justified interest” are, e.g., A. Szpunar, J. P. Piątowski, I. Dobosz, P. Dmowski, J. Wierciński, B. Kordasiewicz.

¹⁷ Press Law of 1984 introduced the institution of press criticism included in art. 41.

¹⁸ B. Michalski, *Ochrona praw osobistych...*, op. cit., p. 13.

Therefore, a critical opinion will be protected only if the circumstances envisaged by the Law, such as reliability of evaluations, consistence with principles of community life and the objective of an action included in art. 1 of the Press Law, will be met.

First, permissible criticism must meet objectives of art. 1 of the Press Law, that is realize the right to inform the society, openness of public life and the right to social criticism.¹⁹ Provision of art. 1 of the Press Law is emanation of freedom of speech and informative function of the press.²⁰

Second, a journalist's critical opinion must meet additional condition, it must be reliable, exact and trustworthy. Sometimes, however, if negative evaluations refer to artistic criticism, the assessment of rationality is considerably limited or excluded due to subjective and personal evaluations (e.g. the issue of beauty).²¹

The interpretation of the postulate of care guaranteeing reports' truthfulness instead of recipient manipulation seems equally difficult. The concept of reliability includes in itself journalist's honesty towards a subject he or she presents as well as true presentation of criticized elements of a work. Journalistic practice mainly involves realization of rules of particular professional care when establishing actual grounds for the subject of criticism as well as elimination of informative or evaluative manipulation and use of dishonest ways of action taken as to achieve a specified aim.

Unreliable action also means behavior that lacks objectivism and adopts generally unrecognized a priori assumptions, or subjective ones (excluding criticism in subjective-esthetic categories).²² The doctrine emphasizes that "reliable" means the same as responsible, consistent with principles of art, honest, and not misleading, which is not synonymous to the phrase "consistent with truth".²³ Media credibility should also be identified with the re-

¹⁹ In the meaning of art. 54b of the Press Law, provisions of legal liability and procedure in press cases are applied appropriately to law violation connected with passing human thought by means other than the press that are designated for dissemination regardless of transmission technique, in particular non-periodical publications and other creations of print, vision and sound." This provision extends critical statements to cover any media transmissions (other than the press), such as: books publications, non-periodical publications, so called press-like, videocassettes, CD-ROMs or internet transmissions.

²⁰ See K. Świącka, *Polityka informacyjna organów publicznych w Polsce* [Information Policy of Public Administration Organs in Poland], *Roczniki Nauk Prawnych KUL* 2006, No. 1, p. 411 and other; of the same author: *Prasowe instrumenty informacyjne*, "Studia Medioznawcze" 2006, No. 1, p. 26 and other; of the same author: *Press Instruments of Information*: http://sm.id.uw.pl/Numery/2006_1_24swiec.pdf.

²¹ B. Michalski, *Ochrona praw osobistych...*, op. cit., p. 13.

²² Ibidem, p. 14.

²³ J. Sobczak, *Prawo prasowe*, Warszawa 2000, p. 461.

port's "truthfulness", which, however, is not equally important. Media may manipulate true information in such a way as they may lose their credibility.

Reliability, which is the basis of a journalist profession, seems difficult with reference to criticism, what is more, it is particularly dependent on the character of this evaluation. The scale of rationality spreads from extremely subjective evaluations to objective ones. It depends on the area of the subject of criticism. Our evaluation is different in case of esthetic impressions in art whereas it should by all means be more reliable in case of scientific criticism, where in concrete areas/fields separate rules are observed. That is why in scientific criticism negative evaluation arguments may refer to such factors as, e.g., value, novelty, state of knowledge, professional accuracy, research results and sources evaluation. However, in each situation evaluation should be based on true factual basis.

Third, criticism must be consistent with principles of community life (art. 5 of Civil Code).²⁴ Negative evaluation is deprived of contentious abuses and does not unreasonably/unjustifiably attribute a work with features it fails to possess.²⁵ It must be consistent with good manners. Principles of community life complete the rule of reliability as they may consider a form of criticism deprived of offensive language, of particular care while collecting and verifying data (this is also a statutory obligation – art. 12 of the Press Law), of honesty towards one's informers, and eliminating manipulation assuring better position for the critic than his of her opponent in argument.²⁶

Criticism in the meaning of art. 41 of the Press Law refers to basic/fundamental personal interests. At the same time this is a circumstance excluding legal liability, which is often realized in practice. Therefore, the conclusion drawn should be the following: the scope of the circumstance should not be treated in an extensive way, instead, it should be limited to strictly specified prerequisites such as (apart from the already mentioned objective under art. 1 of the Press Law) not entering in the sphere of privacy, not using the language generally considered offensive, not manipulating information and not using false or wrong information, not violating dignity of a criticized person nor humiliating him or her.²⁷

²⁴ With reference to journalists, internal customs of a particular environment included in, e.g., codes of ethics or morals, or in customs adopted by a particular environment, are important.

²⁵ B. Michalski, *Dziennikarstwo a ograniczenia praw autorskich* [Journalism and Limitations of Copyright Laws], Łódź 1998, p. 41; the same author, *Ochrona...*, op. cit., p. 14.

²⁶ B. Michalski, *Ochrona...*, op. cit., p. 14.

²⁷ Ibidem.

Talking about criticism, there is a difference between information about facts and evaluating opinions. Defining boundaries of permissible criticism, particularly the press one, whose criteria are included in the Press Law, is of the utmost importance, unfortunately, these boundaries are not applied in court practice. They are impossible to be measured precisely because we deal here with a variety of different factors. Each kind of criticism follows its own rules. It does not mean, though, that we should not aim to establish rules of permissible press criticism and separate it from so called general criticism, whose prerequisites civil law should work out, including criminal law scientific output. However, we should not forget that as far as press criticism is concerned, such criteria are already established. They only require explanation and solution of existing problems. At the same time, we should remember that in the field of criticism the criterion of truth partially fails, e.g. with reference to artistic criticism.

It seems obvious that using false facts in order to criticize is unlawful and as such is not protected by the law regardless of the criticizing party's intention, even if this criticism aims at correctly understood social interest.

Journalist protection resulting from art. 41 of the Press Law is of an objective character. Therefore, journalist's good faith and his or her subjective belief that they act according to art. 41 of the Press Law, does not matter. This provision clearly lists the object of criticism and refers to concepts of liabilities included in art. 1 and 6 par. 1 and 12 of the Press Law, or art. 10 of the Press Law referring to journalists' professional ethics,²⁸ whereas a criticizing person must know legal basis of art. 41 of the Press Law. In the situation when criticism goes beyond prerequisites of art. 41 of the Press Law (e.g., it refers only to a person being criticized, it offends him or her when a journalist writes untruth), boundaries of criticism are transgressed and a journalist will not make use of protection provided for in this regulation/provision.

An interested person, that is a person whose activity or work has been criticized, has the right to defend their values. They may make use of correction and response (art. 31–33 of the Press Law) but they may also realize their rights on the basis of claims under art. 24 of Civil Code, where the legislator introduced a general presumption of unlawfulness of action violating personal interests. They may also bring a criminal case for defamation *ad personam* under art. 212 and 213 of Criminal Code. In such a case a counter-type under art. 41 of the Press Law is excluded.

²⁸ Ibidem, p. 14.

The task of legal protection of personal interests is the protection of the victim, therefore, it is necessary to define boundaries/limits causing exclusion of liability. Personal interests remain in a sort of opposition to other constitutional interests, most of all to the freedom of opinion and the freedom of the press. This conflicting relation justifies balancing interests of two parties.

We can venture a statement that possibly the furthest protection of strictly private life of citizens and their family secrets, as well as limitation of possibilities of entering this sphere to cover only incidents/cases when it really becomes necessary, is in public interest.²⁹ Circumstances of private and family life include those spheres of life into which social interest and informative function of the press do not cause the state interference. The sphere of private life makes use of special legal protection. Exceptionally reasonable/justified criticism is permissible on the basis of art. 14 par. 6 of the Press Law, blamed behavior of the criticized person in a given case goes beyond the boundaries of strictly private or family life and in consequence effects the system of social relations.³⁰ As we can see also with reference to private sphere the prerequisite of "justified/reasonable interest" is excluded.³¹ It is possible to make the information about a particular person's life public when they themselves wish to reveal it to others as self-creationism, that is they give consent to this.³² Pursuant to art. 14 par. 6, information referring to private life of a particular person can be published without their consent if this information is directly connected with this person's public activity.

It seems that we should concede to this part of doctrine negating absolute protection of privacy (of intimacy and sensitivity).³³

²⁹ See decision of 3 February 1925, II K 2663 1924, Zbiór Orzeczeń 1925, z. 1, par. 35.

³⁰ See decisions V CKN 440/00, Orzecznictwo Sądu Najwyższego Izba Cywilna 2002 No. 5, par. 68; IV CKN 925/00 Orzecznictwo Sądów Polskich 2003 No. 5, par. 60; II CKN 559/99, Orzecznictwo Sądu Najwyższego Izba Cywilna 2002, No. 6, par. 82.

³¹ Opposite position B. Kordasiewicz, *Cywilnoprawna ochrona prawa do prywatności* [Legal Protection of the Right to Privacy], "Kwartalnik Prawa Prywatnego" 2000, No. 1, par. 30 and other.

³² Comp. theory of M. Wild, according to whom boundaries of a given person's privacy are established by this person himself/herself, *Ochrona prywatności w prawie cywilnym (konceptja sfer a prawo podmiotowe)* [Protection of Privacy in Civil Law (Concept of Spheres and Subject Law)], "Państwo i Prawo" 2001, No. 4, p. 66 and other.

³³ M. Safjan, *Refleksje wokół konstytucyjnych uwarunkowań rozwoju ochrony dóbr osobistych* [Reflections around Constitutional Conditions of Personal Interests Protection Development], "Kwartalnik Prawa Prywatnego" 2002, No. 1, p. 239.; B. Kordasiewicz, *Cywilnoprawna ochrona...*, op. cit., p. 32. Opposite position: P. Sut, *Czy sfera intymności jest dobrem osobistym chronionym w prawie polskim* [Is the Sphere of Intimacy a Personal Interest Protected by Polish Law?], "Palestra" 1995, No. 7-8, p. 54; the same author,

According to M. Zaremba, entering a particular person's privacy should only happen in the situation of influencing the way this person carries out their public activity. It is essential just to show the reason-result relation and not the fact whether the information is of intimate or "less private" character.³⁴

In the countries where there is neither such apparent basis for press criticism as art. 41 nor the right to interfere in privacy – art. 14 par. 6 of the Polish Press Law, "reasonable/justified interest" is the basis deserving public dialogue and criticism with reference to political, social or cultural activity.³⁵

The freedom of the press should not be abused. We should adopt a rule of not interfering in a particular person's private life. An exception can be a situation when a person's private activity is directly connected with public duties. An example here can be professional preparation or the state of health.³⁶ Interfering in the sphere of privacy does not seem reasonable/justified by any public interest. Such should be the rule, which probably cannot go without exceptions, but these should be special deviations. What is more, the way of passing information very often proves that it is not only difficult to talk about social interest but about any principles of decency. Frequently, it is a pursuit of sensation or increase of viewing or reading ratings. However, it is not a problem that is a subject to legal regulations. Perhaps the information referring to love affairs of this or that president is interesting indeed, but, is it really necessary to protect righteous interest? The solution should be searched between the freedom of the press – the right to information, and respect of human dignity. It seems that it is not right to determine a strict boundary/limit. What seems right is to look for harmony

Ochrona sfery intymności w prawie polskim – uwagi de lege lata i de lege ferenda [Protection of the Sphere of Intimacy in Polish Law. Remarks de lege lata and de lege ferenda], "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1994, No. 4, p. 102 and other.

³⁴ M. Zaremba, op. cit., p. 52. B. Kordasiewicz and R. Stefanicki hold a slightly different position: It is not sufficient to prove that a given information was related to public activity, but it is necessary to show that it influenced shaping social opinion and that it justifies such interference in a given person's privacy. The deeper the interference, the more serious the arguments allowing the masses interest must be. Comp: B. Kordasiewicz, *Cywilnoprawna...*, op. cit., p. 33; R. Stefanicki, *Cywilnoprawna ochrona prywatności osób podejmujących działalność publiczną* [Legal Protection of Privacy of Persons Starting Public Activity], "Studia Prawnicze" 2004, No. 1, p. 27.

³⁵ See: Y. Karakostas, *Personality & Press*, AntN. Sakkoulas Publications, Athens 2000; idem: *Media Law*, Ant. N. Sakkoulas Publications, Athens 2003. On the subject of interests balance see: P. D. Dagtoglou, *Constitutional Law, Private Liberties*, v. A, 1991, p. 516 and other.

³⁶ About so called moral competence see the position held by: M. Zaremba, op. cit., p. 52 and other.

and right proportion between those spheres. Although in the Constitution itself we can see a conflict between the right to information and the right of other persons, we cannot omit art. 54 of the Constitution that guarantees the freedom of expressing opinions and collecting and disseminating information.

Regulations of various countries do not refer to reasonable/justified interest as a general circumstance justifying the press interference in personal interests violation. Justified interest appears, though, as one of the prerequisites in special provisions, most often in criminal codes (referring to press criticism and defamation³⁷). Few legal regulations, such as art. 28 § 2 of the Swiss Civil Code, refer to social interest.³⁸ It is just the opposite when we look at other countries' jurisdiction.³⁹ It appears here that connecting justified interest and freedom and social mission of the press is by all means right.

In most countries (Germany, France, Switzerland, Greece and Great Britain) reasonable/justified interest may be (and is) connected with the press. This interest may be connected with any publication of facts and reviews referring to public persons' behavior and conduct. Publications referring to these persons may also include strong criticism or unpleasant remarks.⁴⁰

The interpretation of the postulate of taking care of reasonable/justified interest seems quite difficult. We should consider here the whole of legal regulations. Social interest⁴¹ should be identified with the state interest. On the other hand, it is undeniable that the state interest is nothing more than action in accordance with *raison d'état*, that is the need of binding

³⁷ E.g.: § 193 of German Criminal Code, art. 367 of Greek Criminal Code (GPC).

³⁸ Art. 28 of Swiss Civil Code specifies that "violation is unlawful unless it is justified by the victim's consent, prevailing private or public interest or it results from the law".

³⁹ See, e.g.: in Greece: Athens Court of Appeal, Case 2323/1986 (1986) *Elliniki Dikaiossini* 695; Supreme Court, Case 854/2002, *Nomos Database*, Supreme Court, Case 1177/2002, *Nomos Database*; Piraeus Multimember First Instance Court, Case 4100/2002, *Nomos Database*. (Moreover, in the light of Greek jurisdiction justified interest may also derive from freedom and social mission of the press because they are protected by the Greek Constitution (Art. 14 of the Greek Constitution). In Germany jurisdiction of Federal Tribunal, e.g., BGH, judgment of 17.11.1992, IV ZR 344/91, *NJW* 1993, p. 930; judgment of 30.1.1996, VI ZR 386/96, *NJW* 1996, p. 1131. In Great Britain's jurisdiction, e.g., *Francombe v Mirror Group Newspapers Ltd* (1984) 1 *WLR* 892; *Theakson v MGM Ltd* (2002) *EWHC* 137. On this subject see: M. Tughendhat, I. Christie: *The law of privacy and the media*, Oxford University Press 2002, p. 364 and other.

⁴⁰ See Court of Appeal of Dodoni, Case 98/2002, *Nomos Database*. See: establishment and expiration of unlawful act Karakostas, *Personality & Press...*, p. 51–76; Georghiadis, *General Principles of Civil Law*, p. 129. See M. Tughendhat, I. Christie, *The law of privacy and the media*, Oxford University Press, New York 2000, p. 365.

⁴¹ Comp. art. 7 of the *Kodeks Postępowania Administracyjnego*, *Ustawa z 14 czerwca 1960*. Uniform text *Dziennik Ustaw* [Journal of Laws] 2000, No. 98, item 1071.

regulation of social, economic or cultural relations strengthened by the nation's interest.⁴² In case of press publications this interest is realized by reporting information about important phenomena and events from the sphere of public life, through which the principle of public life openness and social control and criticism is realized (art. 1 of the Press Law). This objective of the press is connected with the right of the society to receive such information and which can only be realized through information and criticism aiming at true presentation of phenomena.⁴³

Balancing between civil rights to personality and the rights to freedom of the press lead us to the conclusion that interest is most of all justified only when it is directly connected with public persons' public and social activity. This activity should be known also because of the constitutional principle of their public life's openness.⁴⁴

Dissemination of certain information should also serve the objective of social interest protection. Other considerations, such as pursuit of sick sensation or financial profit, etc., do not allow reference to such type of activity even though there might be an external appearance of this defence.⁴⁵ It happens that the press take up action in their own interest and not in the interest of other persons.

In case of personal interests violation, on the one hand, and the press reasonable/justified interest, on the other hand, we should balance those two rights. In such a case we should start from personal rights, which exclude any violation thereof by third parties. In case of violation it is examined whether a person committing violation is entitled to interfere. Such right is guaranteed by the legislation (e.g. self-defence or the authorized person's consent) and results in expiration of unlawful character of violation. If the reason for third parties' interference is one of those exhaustively listed in the Act and which justifies such interference, the balance of rights takes place in a self-contained way in the law itself. This is the way in Polish law where the provision of art. 41 of the Press Law includes clear prerequisites of press

⁴² J. Pruszyński, *Odpowiedzialność – fundamentem praworządności (Marcina Jełowickiego koncepcja odpowiedzialności politycznej i jej aktualność*, (in:) *Jakość administracji publicznej. Międzynarodowa konferencja naukowa. Cedzyna k. Kielc, 24–26, wrzesień 2004*) [Liability – the Basis of Law and Order (Marcin Jełowicki's concept of political liability and its topicality, (in:) *Quality of Public Administration (International Scientific Conference 24–26 September 2004)*, Rzeszów 2004, p. 341.

⁴³ Judgments of Supreme Court of 14 May 2003, I CKN 463/01, *Orzecznictwo Sądów Polskich* 2004, no. 2, par. 22; see also the judgment of Supreme Court of 5 March 2002, I CKN 535/00, not published.

⁴⁴ See: K. Świącka, *Polityka informacyjna...*, op. cit., p. 411 and other; P. D.Dagtolou: *Constitutional Law, Private Liberties*, v. A, 1991. p. 517.

⁴⁵ See: judgment of 28 March 1934, 3K 178/34, *Zbiór Orzeczeń* 1934, z. 10, par. 211.

criticism, art. 14 par. 6 of the Press Law, which enables publication from the sphere of private life, or art. 81 of copyright law, which include conditions allowing dissemination of a particular person's image. Apart from this right guaranteed by the legislation there can also be the case of "reasonable/justified interest" through which the constitutional principle of the freedom of the press is expressed. Then, the reason for interfering in other person's interests is relative. In such a situation a judge must balance these rights, of course not having unlimited competence in this respect.⁴⁶ In the widest possible scope a judge must look for criteria, if not general, then at least such that can be applied in the cases he or she is to judge. A judge must take violation (a nature of violated right, violation burden and the effect it may have upon the sufferer) as well as justifying motives quoted by the person who committed violation (their burden and the effect of their exclusion) into consideration.

Talking about preservation of balance between the freedom of the press and personal interests protection, we should consider the fact that in cases in which the freedom of the press allows the press interference in those interests, we should always remember not to violate the very essence of these interests, which would result in humiliation or degradation of human dignity, which is an offence to human values. The point of reference is, therefore, to respect the value of human existence.⁴⁷ Strict protection of the value of human existence is the protection guaranteed by given countries' constitutions.

⁴⁶ Y. Karakostas, *Media Law*, Ant. N Sakkoulas Publication, Athens 2003, p. 251.

⁴⁷ See: P. D. Dagoglou, op. cit., p. 517–518; W. Łączkowski, *Wolność słowa w mediach a poszanowanie godności człowieka w prawie polskim* [Freedom of Speech in Media and Respect of Human Dignity in Polish Law], (in:) "Kultura i prawo" ["Culture and Law"], v. 2, *Wolność mediów*, J. Krukowski (ed.), Towarzystwo Naukowe KUL, Lublin 2002, p. 115 and other.