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The Definition of the Press in the Polish Press Law and its Impact on the Functioning of Local Online Media

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Abstract

This article aims to provide evidence that the lack of accurate principles of the application of the Polish Press Law Act (PLA) provisions to online media is a threat to the pluralism of the local communication systems in Poland. The first part of the paper is concerned with the status of online media in Poland in the context of the current PLA. The second part of the article presents the cases of the local officials attempting to use the ambiguous legal status of the local online media to block critical opinions published. The third part of the paper contains the analysis of the recently-tabled proposals concerning the amendment of the PLA.

Keywords

Local online media; local communication system; Polish Press Law Act; definition of “the press;” registration of dailies and magazines

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What has to be acknowledged as an extremely important consequence of popularising the ICT in Poland is a pluralisation of local spaces of public communication both on the subjective (a number of media) and objective (the range of local problems dealt with in media messages) levels. The above-mentioned process is related, on the one hand, to the emergence of commercial local news portals, independent of publishers of the traditional local media, and, on the other hand, to the development of the local citizens' online media operated by NGOs, informal social movements and private individuals. Considering the weakness of the traditional, private local press sector in Poland, the online media are in many locations not only the vital sources of the residents' knowledge of their local communities but they also form the only group of media capable of carrying out the control function over the institutions of the local public life.

While analyzing the functioning of local online media in Poland, the important problem is constituted by the fact that this group of media still has not received a precise legal status which would include rights and obligations concerning those who run them, provide them information or who are mentioned in their publications. In Poland, a special bill - the Press Law Act (hereinafter: the "PLA"), regulates the functioning of widely understood mass media – printed press, radio and television.¹ This bill was implemented in 1984 - five years between the collapse of the communist regime in Poland. During the last three decades it has received some serious modifications, among which the most important is the withdrawal of the entire chapter devoted to censorship. Nevertheless, this legal act still does not reflect the fast progress in the area of information and communication technologies.

This article aims at providing evidence that a lack of accurate principles of the application of PLA provisions to the activities of online media is a real threat to pluralism of the local communication systems in Poland. The first part of the paper concerns the status of online media in Poland in the context of the current PLA, and in particular, in the context of the obligation to register daily newspapers and magazines distributed via the Internet. The second part of the article presents the cases of the local politicians and officials undertaking attempts to use the ambiguous legal status of the local online media for blocking critical opinions published in them. The third part of the paper contains the analysis of the recently tabled proposals concerning the amendment of the PLA, aimed at adapting the Act to the current stage of development of mass media.

I. The online media status from the Press Law Act perspective

While considering the relevance of the PLA for the activities of online media, the fragment of the Act which is most frequently referred to is Article 7(2). It introduces a definition of the press as well as of the two key press formats – a daily newspaper and a magazine. It has to be noted here that while in the colloquial language the notion of the press is reserved for periodical printed publications, the PLA definition of the press includes also publications distributed in a visual and audio formats.

Article 7(2)(1) indicates four essential features of the press, which is defined as "periodical publications that do not form a single and complete entity, are published at least once a year and bear a constant title or name, a number and a date." In particular, the category of the press includes "daily newspapers and magazines, news agencies dispatches, constant telex messages, bulletins, radio and television broadcasts, film chronicles" as well as "all existing and emerging in the course of technological advancement means of mass media [...] that distribute periodical publications via print,

¹ "Ustawa z dnia 26 stycznia 1984 r. Prawo prasowe," [Press Law Act of January 26, 1984] *Internetowy System Aktów Prawnych* [The Online Legal Database], <http://isap.sejm.gov.pl/Download?id=WDU19840050024&type=3> (accessed January 11, 2016)

image, sound or any other means.” It should be emphasized here that the PLA does not impose any restrictions on the content of press materials. Consequently, in spite of specialized topics or limited circulation publication should be regarded as the press as long as it meets the four above-mentioned statutory requirements.

Defining the press, the legislator additionally delineate the categories of “daily newspaper” and “magazine.” Under article 7(2)(2) daily newspaper is “a general-information periodical print or a message transmitted via sound or sound and image, published more frequently than once a week,” while article 7(2)(3) provides that magazine is a periodical print or message transmitted via sound or sound and image published not more frequently than once a week but at least once a year. It should be stressed here that only the publishing of these two aforementioned forms of press is associated with the statutory duty of court registration, provided by article 20(1) of the PLA. Under article 45 of the PLA, anybody who publishes a daily newspaper or a magazine without registration or with registration suspended is subject to a fine penalty.

According to Jacek Sobczak, a judge of the Supreme Court and an author of a commentary to the PLA, under article 7(2)(1) of the PLA the Internet as such cannot be regarded as the press, because it only constitutes means of communication.² This view seems to be justified, regarding the very broad range of applications of global computer network, which, among others, can be used for conducting correspondence, shopping or transferring files. Moreover, web sites also may contain a wide variety of content, including photo albums, music, electronic versions of books, maps, contact details etc. None of these cases can be considered a form of the press in the light of the definition provided in the PLA. Sobczak argues, however, that although the Internet as a whole should not be regarded as the press, it can be used for distribution of the press which - depending on the frequency of publication - may take the form of daily newspaper or magazine.³ Therefore, in his opinion, “periodical publications that do not form a single and complete entity, are published at least once a year and bear a constant title or name, a number and a date,” should be regarded as the press, even if they are distributed only via the Internet.⁴

The aforementioned position seems to be currently dominant in doctrine.⁵ The assumption that a particular online medium might be classified as the press within the meaning of article 7(2)(1) of the PLA, raises very serious consequences. On the one hand it gives this medium, as well as the people preparing its publications, privileges guaranteed by the bill, like wider access to information regarding non-public institutions [article 4(1)] or the protection of confidentiality of information sources [article 15(2)]. On the other hand it might impose on this medium obligations mentioned in the PLA, such as the necessity of court registration [article 20(1)]⁶ or the obligation to indicate the name and address of

² Jacek Sobczak, *Prawo prasowe - komentarz* [Press law: a Commentary] (Warsaw: Wolters Kluwer, 2008), 319.

³ Ibid.

⁴ Ibid.

⁵ Janusz Barta and Ryszard Markiewicz, *Internet a prawo* [Internet and law] (Kraków: Universitas, 1998), 35-41; Janusz Barta, Ryszard Markiewicz and Andrzej Matlak, *Prawo mediów* [Media law] (Warsaw: LexisNexis, 2005), 95; Ewa Nowińska and Michał du Vall, *Komentarz do ustawy o zwalczaniu nieuczciwej konkurencji* [Commentary to the Act on Fighting Unfair Competition] (Warsaw: LexisNexis, 2001), 184; Jacek Sobczak, *Ustawa prawo prasowe. Komentarz* [The Press Law Act. A commentary] (Warsaw: Muza, 1999), 273-274.

⁶ According to the article 20(1) of the PLA only two forms of the press – daily newspapers and magazines – are required to register in court. Nevertheless, Polish courts tend to assume that should a particular online medium be recognized as the press, it automatically ought to be classified as daily newspaper or magazine and – as such – it should be registered. Tomasz Rychlicki and Piotr Waglowski, “Polish Courts Say Websites Should Be Registered As Press,” *Computer and Telecommunications Law Review* 15, no. 1 (2009): 9-14.

the publisher as well as the name of editor-in-chief [article 27(1)]. It should be also noticed that in the case of recognition of the particular online medium as the press, every text or picture published in this medium (or submitted for publication) becomes press material within the meaning of article 7(2)(4) of the PLA. At the same time, any person engaged in preparation of material intended for publication in such online medium, meets the statutory definition of a journalist, contained in article 7(2)(5).

In many cases it is extremely difficult to clearly decide whether the particular online medium should be regarded as the press according to the PLA. This problem is largely due to the fact that the press criteria mentioned in the bill do not fit best to the specifics of the new media. For example, almost all blogs meet the criteria specified in the PLA, including in particular the requirement of periodicity. Their content in many cases clearly suggests, however, that they should rather be treated as some kind of literary work or diary. This problem is also reported by Sobczak, who, in his commentary to the PLA, admits that the existing legal situation is hardly satisfactory, since in many cases the classification of online publication raises serious disputes.⁷

The situation is additionally complicated by a greatly inconsistent judicature. In the recent years, there were cases of both regional courts refusing to enter news portals into registers of daily papers and magazines⁸ and the cases of bringing lawsuits against the persons operating such websites without registration. The latter ones sometimes ended with the guilty verdicts or finding the perpetrator guilty and, at the same time, refraining from imposing punishment due to the low social harmfulness of the offence.⁹ The interpretation of the law in this area was meant to be harmonised by the Supreme Court (hereinafter: the “SC”) ruling of 26 July 2007 in the case of the no longer existing website *Szciepoprzemysku.prv.pl*, which was monitoring the activities of the local politicians and officials in Przemyśl. Then, the SC ruled that “a person who distributes a daily newspaper or a magazine via the Internet without their registration at the appropriate regional court, both when such transmission accompanies the transmission recorded on paper and being its digital version, and when it exists exclusively in a digital format, constitutes a crime under Article 45 of the Press Law Act”.¹⁰ At the same time, the SC indicated that the erroneous rulings of the Regional Court in Krosno and the Court of Appeal in Rzeszów while considering analogous cases could mislead the website’s authors in their understanding of the current legal status and therefore, acquitting them was justifiable.¹¹

This SC ruling stirred up a big commotion among Internet users who interpreted it as an introduction of the mandatory registration of all websites at courts. To dissipate these concerns, the then First President of the SC, Lech Gardocki, declared in a press article that the registration obligation concerned exclusively those online media which – pursuant to the PLA – had features of a daily newspaper or a magazine, i.e., were published on a permanent basis on particular days, carried the current volume number and were signified by the date.¹² In the later rulings, however, courts sometimes recognised the necessity to register the websites which apparently did not fulfil

⁷ Jacek Sobczak, *Prawo prasowe - komentarz*, 320-321.

⁸ Cf. Justyna Balcarczyk, “Prasa internetowa – rejestracja,” [Online press: The problem of registration] *Prawo Mediów Elektronicznych* [Electronic media law], no. 1 (2010): 12.

⁹ Sławomir Wikariak, “Grzywna za prowadzenie serwisu internetowego,” [The fine for running an website] *Rzeczpospolita*, June 15, 2009, C1.

¹⁰ Sąd Najwyższy [SC], “Postanowienie z dnia 26 lipca 2007 r., IV KK 174/07,” [Decision on 26 July 2007 in the Case IV KK 174/07] *Biuletyn Prawa Karnego Sądu Najwyższego* [Bulletin of the Penal Law of the SC] 15 (2007): 35, http://sn.pl/orzecnictwo/Biuletyn_Prawa_Karnego/Biuletyn_Prawa_Karnego_15_2007.pdf (accessed January 10, 2016)

¹¹ *Ibid.*, 40.

¹² Lech Gardocki, “Strona www.sn.pl nie jest dziennikiem ani czasopismem,” [Web page www.sn.pl is not a newspaper or magazine] *Rzeczpospolita*, September 6, 2007, X1.

requirements indicated by Gardocki. In February 2008, for instance, the Regional Court in Słupsk upheld the ruling of the local District Court according to which the website *GazetaBytowska.pl* should have been registered as a daily newspaper or a magazine.¹³ In December 2010, the position of the lower courts were shared by the SC.¹⁴ It did not take into account the fact that the considered local website was not published on a permanent basis on particular days and did not carry volume numbers and thus, – in the light of the aforementioned opinion of a long-time First President of the SC – should not be regarded the press under the PLA.

II. The impact of the Press Law Act on functioning of local online media

Analysing court cases concerning the publication of a daily newspaper or a magazine online without the registration required under the PLA, it seems that the vast majority of them concerned the online media dealing with the problems of the local public life. This situation is a result of the fact that local officials and politicians try to use the unclear legal status of local online media to block critical opinions published in them.¹⁵ This phenomenon can be illustrated by a local, non-commercial blog *lle24.pl* functioning under the title “Łączna bardzo subiektywnie!” [Łączna from a very subjective point of view]. The author of the website launched in February 2013 reported the sessions of the City Council and often sharply criticised the activities of the local authorities and officials. Undertaking interventions in the cases brought to light by the website users, the blogger had frequently called upon the local officials to provide explanations, referring to the right to access public information. It has to be noted that this blog was relatively popular among the local residents. The website devoted to the current affairs of a town of twenty thousand residents claimed about 15 000 unique visits a month.¹⁶

In October 2013, the Municipal Office notified a public prosecutor of the author of the *lle24.pl* operating an online newspaper without the registration required under the PLA. Justifying his act, the Mayor argued that he could not otherwise react to – in his opinion – untrue information published on the blog since it was impossible to identify the author of the posts and get in touch with him.¹⁷ He also claimed that due to the diversified topical material the website contained, it should not be treated as a blog but rather as an online newspaper. Responding to these claims, the author of the blog indicated that he revealed his telephone number in the website and that many residents of the town, the local officials included, were aware that he was the blog owner. In September 2014, the Regional Court for Warsaw-Mokotów did not decide to classify the website *lle24.pl* as a press title requiring registration. Justifying the dismissal of the case the court acknowledged that the website was not of a “strictly

¹³ Marcin Maj, “Strony internetowe jednak do rejestracji?,” [Websites should be registered?] *Dziennik Internautów*, February 8, 2008, <http://di.com.pl/news/19073> (accessed January 2, 2016)

¹⁴ Sąd Najwyższy [SC], “Postanowienie z dnia 15 grudnia 2010 r., III KK 250/10,” [Decision on 15 Dec. 2010 in the Case III KK 250/10] *Biuletyn Prawa Karnego Sądu Najwyższego* [Bulletin of the Penal Law of the SC] 4 (2011): 23-28, http://sn.pl/orzecznictwo/Biuletyn_Prawa_Karnego/Biuletyn_Prawa_Karnego_04_2011.pdf (accessed January 11, 2016)

¹⁵ Sometimes, similar activities are undertaken by the owners of the traditional local media who wish to eliminate the online competition. Such was the case of the *BielskoBiala.pl* website. The public prosecutor was notified on the activities of the website’s creators by the publisher of the local print newspaper. Cf. Wikariak, “Grzywna za prowadzenie serwisu internetowego,” C1.

¹⁶ Sławomir Skomra, “Burmistrz ściga krytyczny blog,” [The mayor prosecutes critical blog] *Gazeta Wyborcza - Lublin*, October 17, 2013, 3.

¹⁷ Monika Filipowska, “Blog, to nie gazeta,” [Blog is not a newspaper] *Pogotowie Dziennikarskie*, October 15, 2013, <http://www.pogotowiedziennikarskie.pl/artykuly/blog-to-nie-gazeta> (accessed December 12, 2015)

generally informative” nature but was a blog, i.e., “private diary” where the author presents “his own comments and opinions on particular events.”¹⁸

The reasoning of the Warsaw court, however, was not shared by the District Court in Szamotuły in its ruling in the case of the WikiDuszniki.pl blog, devoted to the public life in the Duszniki Municipality of the Szamotuły District. The information provided in the website indicated that it was managed by “an informal group of friends active in the local civil society associations.”¹⁹ The blog concerned contains, first of all, subjective, often very emotional comments on the functioning of the Duszniki Municipality. The anonymous posts published in the website are very sharply critical of the local officials and in particular the successive heads of the municipality. In May 2015, the police, acting upon the claims of the then Mayor of the Duszniki Municipality, called upon the Regional Court in Szamotuły to punish the domain’s owner for publishing “the daily newspaper in the format of the online publication under the title www.wikiduszniki.pl without the required registration.”²⁰ In January 2016, the Court found the website’s owner guilty of an infringement of the PLA, refraining, at the same time, from imposing a punishment due to a low social harmfulness of the act.²¹ The defendant questioned the righteousness of the verdict and declared an appeal.

Analysing the case of WikiDuszniki.pl, it has to be noted that the credibility of the information included in the comments posted in the blog as well as the possible insulting character of the language used, still remain an open issue. It has to be underlined, however, that people regarding themselves insulted by the content published in the website had a possibility to claim their rights in civil lawsuits of a libel and protection of personal goods. Using police and the PLA provisions for this purpose seems to be a kind of a substitute repression addressed at the citizens’ online medium criticising the activities of the local authorities. The effectiveness of such pressure increases due to the fact that it is often very difficult to determine whether the particular website fulfils the criteria of the press set out in the Act. The difficulties related to the application of the PLA provisions to online media can be illustrated by the decision of the Regional Court in Łódź of 7 August 2012, refusing to register a blog as the press due to the private, opinion-forming and literary character of that publication. This opinion was not shared by the Court of Appeal in Łódź which in January 2013 came to the conclusion that “a blog is not a form of a publication sufficiently integral and homogenous to justify the *a priori* assumption that as an online communication it never fulfils the statutory features of the definition of the press.”²² In the situation when the nature of a particular online medium is entirely differently interpreted by the courts of various instances, it is difficult to assume that a private individual operating a blog or another website will be capable of making the proper assessment in this field. However, as Marcin Sczaniecki from the Helsinki Foundation for Human Rights rightly observes, from the perspective of the rulings of the European Tribunal of Human Rights, the persons using the

¹⁸ Sandra Michalewska, “Miasto kontra bloger z Łęcznej - sąd umorzył sprawę Łukasza Siegiedy,” [The city vs. blogger from Łęczna: The court dismissed the case of Łukasz Siegieda] *Kurier Lubelski*, September 16, 2014, <http://www.kurierlubelski.pl/artukul/3575209,miasto-kontra-blogger-z-lecznej-sad-umorzyl-sprawe-lukasza-siegiedy,id,t.html> (accessed January 11, 2016)

¹⁹ “Wikiduszniki - bez tajemnic,” [Wikiduszniki without secrets] *WikiDuszniki*, http://wikiduszniki.pl/o_nas.php, (accessed January 2, 2016)

²⁰ Maria Bielicka, “Policja znów ściga znanego opozycjonistę,” [The police again prosecutes a well-known oppositionist] *Gazeta Wyborcza - Poznań*, October 9, 2015, 6.

²¹ Maria Bielicka, “Blogerzy, bójcie się,” [Bloggers, you should be afraid] *Gazeta Wyborcza - Poznań*, January 15, 2016, 3.

²² Sławomir Wikariak, “Publikując w sieci bez formalnej rejestracji, łamiemy prawo,” [We break the law while publishing online without formal registration] *Rzeczpospolita*, March 19, 2014, B12.

freedom of expression in the Internet should not bear negative consequences of unclear national rules.²³

An important aspect of the WikiDuszniki.pl blog's case is also the issue of the citizen's right to an anonymous expression in the Internet. During the session of the District Court in Szamotuły in October 2015, wife of the accused owner of the blog testified that a significant part of the content published on the blog was provided by the residents of the municipality via the electronic mail. She also underlined that running the blog was a collective activity in which people wishing to remain anonymous out of fear of the local authorities' revenge were engaged. Similar situation occurs in the case of many citizens' online media operated by private individuals or informal social groups. The authors of such websites are afraid that revealing their identities might have a negative impact on their everyday vocational activities and expose them to harassment by local officials. In the case of the press, the PLA provisions foresee the possibility of anonymous publication of the press material [Article 15(1)] with a stipulation, however, that it is necessary to provide the data of the entities responsible for the presentation of the content, i.e., the name of the editor-in-chief, and the publisher's name and address [Article 27(1)]. A potential qualification of a blog or another citizens' online medium as the press under the PLA would deprive its author of a possibility to comment online the public problems and maintain a full anonymity at the same time. In this point, it is worth referring to the 2008 decision of the Provincial Administrative Court in Warsaw which declared that a person operating a website on his own can be regarded as an entity performing simultaneously three functions mentioned in the PLA, namely, those of a journalist, an editor and the editor-in-chief while the obligation of revealing the name of the latter one had already been imposed by the above-mentioned Article 27(1) of the PLA.²⁴

Other elements of the PLA provisions being used by local officials as a tool of exerting pressure on local online media are attempts at bringing websites' owners to justice for the comments published in these media by Internet users. It has to be noted that in many cases, the local online portals provide their users with an opportunity to post their opinions. The most frequent form of such posts are comments of the users concerning the articles published in the website as well as comments posted on discussion forums functioning in the portal. There is no doubt that some of the materials published by users can contain libellous and insulting content or the content infringing personal goods. The key issue in this situation is to determine whether these are the authors of the law breaking opinions who are exclusively responsible or whether also the administrators of the portals where those law breaking comments had been posted bear co-responsibility.

This legal problem was raised in the case concerning the already mentioned portal *GazetaBytowska.pl*. In 2006, the then owner of the website published an article containing critical remarks on the activities of a local debt collector. He incited a fervent discussion among the website users. Some of them posted opinions libelling the debt collector and even calling to lynch him. In consequence, the public prosecutor accused the website's owner of an inadvertent publication of the material inciting to crime. Although the first trial at the District Court in Słupsk ended with the conditional depletion of the proceedings against the defendant, he was nonetheless found responsible

²³ Maria Bielicka, "Sprawa WikiDuszniki.pl, czyli policja ściga za bloga," [The case of WikiDuszniki.pl: The police prosecutes blogger] *Gazeta Wyborcza*, October 20, 2015, <http://wyborcza.pl/1,75478,19049200,sprawa-wikiduszniki-pl-czyli-policja-sciga-za-bloga.html> (accessed January 04, 2016).

²⁴ Norbert Nowotnik, "Polskie prawo prasowe jest archaiczne," [Polish press law is archaic] *Lex*, January 1, 2015, <http://www.lex.pl/czytaj/-/artykul/polskie-prawo-prasowe-jest-archaiczne> (accessed December 17, 2015).

for the content of the comments posted in the website he operated.²⁵ The Regional Court, however, had referred the case of the portal for rehearing. This time, the court of first instance acquitted the defendant stating that “it is impossible to have the PLA cover all forms of the website’s activities.”²⁶ The district court also underlined that “presenting opinions in the Internet forums cannot be regarded a purely journalistic activity to which the press law applies and until the opinions under the stories do not become an integral part of these stories there are no grounds to claim that it is the press material published by the website’s administrator.”²⁷ In June 2009, the Regional Court in Słupsk dismissed the prosecutor’s appeal in this case. In the statement of reasons, the court indicated that although the website *GazetaBytowska.pl* was the press in the understanding of the PLA, users’ comments published in the website were not press materials for which the website’s editor-in-chief should be held responsible.²⁸ The court of second instance stated at the same time that the users’ comments were not – as the prosecutor argued – an equivalent of the letters to the editor since they were published automatically and without moderation. Thus, the court had divided two spheres of the website’s activity: the publication of articles for which the person operating the website is responsible as the editor-in-chief, and the publication of the users’ comments for which the responsibility lies exclusively with their authors.²⁹ Hence, the website’s administrator was treated in the latter sphere of the portal’s activity only as a service provider whose responsibility and obligations in this area are regulated by the *Act of 18 July 2002 on Providing Services by Electronic Means* (hereinafter: the “APSEM”).³⁰

Despite a positive ruling, the owner of the *GazetaBytowska.pl* sold his website. He explained his decision by the fact that the long-lasting court trial discouraged him from continuing his activity. The above case proves that inaccuracy of the current PLA provisions can be used as an effective tool of exerting pressure upon citizens critically commenting the problems of the local public life in Internet. It also has to be noted that the position presented by the courts in the *GazetaBytowska.pl* website’s case did not discourage officials from coming forward with similar lawsuits. In 2010, for instance, the Mayor of Kalwaria Zebrzydowska – referring to the PLA provisions – sued the administrator of the *NaszaKalwaria.pl* website who refused to delete the users’ comments allegedly infringing the Mayor’s personal goods.³¹ The Regional Court in Krakow did not decide to treat this website as the press in the understanding of the PLA claiming that it did not fulfil, for instance, the criterion of periodicity prescribed in the Act. In the statement of reasons, the court indicated that the *NaszaKalwaria.pl*

²⁵ Sławomir Wikariak, “Za wpis internauty portal nie odpowiada,” [Web portal is not responsible for user’s comment] *Rzeczpospolita*, June 20, 2009, C1.

²⁶ KRZ and PAP, “Były właściciel serwisu internetowego uniewinniony,” [The former owner of the web portal have been acquitted] *Press*, June 19, 2009, <http://press.pl/newsy/internet/pokaz/19126>, (accessed May 12, 2015).

²⁷ Ibid.

²⁸ Wikariak, “Za wpis internauty portal nie odpowiada,” C1.

²⁹ Ibid.

³⁰ “Ustawa z dnia 18 lipca 2002 r. o świadczeniu usług drogą elektroniczną,” [Act of 18 July, 2002 on Providing Services by Electronic Means] *Internetowy System Aktów Prawnych* [The Online Legal Database], <http://isap.sejm.gov.pl/Download?id=WDU20021441204&type=3> (accessed May 11, 2016). Pursuant to Article 14(1) of the APSEM, the portal administrator is obliged to delete illegal user generated content. He should react when he becomes aware of the illegal nature of the content published in the website or when he receives trustworthy information about it. It has to be underlined, however, that pursuant to Article 15 of this Act, the administrator of the website is not obliged to moderate the content published in it by its users. Cf. Michał Zaremba, *Prawo prasowe. Ujęcie praktyczne* [Press law. Practical approach] (Warsaw: Difin, 2007), 289-290.

³¹ Marcin Maj, “Burmistrz pozywa lokalny serwis za komentarze,” [Mayor sues local web portal for comments] *Dziennik Internautów*, March 9, 2010, <http://di.com.pl/news/30595> (accessed January 2, 2016).

website should be treated as “a wall where people can post their commentaries.”³² Moreover, the court underlined that the purpose of the activities of this kind of online media is, above all, initiating and shaping the local public debate which is carried out in public interest. The court had also stated that the protecting measures applied by the defendant in the form of filtering the comments for vulgarisms had proved sufficient. Dismissing the claim was also justified by the fact that the comments which gave rise to the Mayor’s doubts were rather opinions which by principle were not subject to assessment on the basis of the criterion of truth and falsehood.³³

III. The Press Law Act amendment proposals

In June 2009, the Ministry of Culture and National Heritage (Ministerstwo Kultury i Dziedzictwa Narodowego, hereinafter: the “MKiDN”) presented a proposal of an amendment to the press law.³⁴ One of the main purposes of the modification of the Act was to be its adaptation to “the conditions and technological challenges currently faced by media.”³⁵ In the original proposal, the Ministry wanted to expand the current definition of the press set out in Article 7(2)(1) by including “the publications transmitted in an electronic form” into the category of the press.³⁶ The above-mentioned provision was stigmatised by two principal errors: first, it introduced a logical error into the Act defining *idem per idem*, and second, it used a vague notion of “the electronic form.”³⁷ Objections to the definition of the press proposed by the MKiDN were raised by the Polish Chamber of Press Publishers (Izba Wydawców Prasy, hereinafter: the IWP) and the Polish Chamber of Information Technologies and Telecommunication (Polska Izba Informatyki i Telekomunikacji, hereinafter: the PIIT). Both organisations pointed to its inaccuracy and the lack of references to the *Act of 18 July 2002 on Providing Services by Electronic Means*³⁸. During the interdisciplinary consultations the stakeholders also criticised the Ministry’s proposal of adding Article 20a to the Act, directly introducing the obligation of registration of the press publications distributed entirely in an electronic format.³⁹ The IWP suggested the introduction of a voluntary registration of the online press while PIIT favoured the total dismissal of the obligation of the press registration, the print press included.⁴⁰

³² Helsinki Foundation for Human Rights, “Powództwo o naruszenie dóbr osobistych przeciwko T.B. oddalone,” [An action for infringement of personal rights against T.B. dismissed] *Obserwatorium wolności mediów w Polsce* [The Observatory of Media Freedom in Poland, March 11, 2010, <http://www.obserwatorium.org/index.php?view=article&id=2626> (accessed January 5, 2016)].

³³ Anna Wasilewska-Śpioch, “Odpowiedzialność administratora za posty na forum,” [Administrator’s responsibility for comments published on online forum] *Dziennik Internautów*, May 25, 2010, <http://di.com.pl/news/31770> (accessed December 20, 2015).

³⁴ Cf. MKiDN, “Projekt ustawy o zmianie ustawy Prawo prasowe z dnia 1 czerwca 2009 r.,” [A draft law amending the PLA of 1 June 2009] *Biuletyn Informacji Publicznej MKiDN* [Public Information Bulletin of the MKiDN], June 1, 2009, http://bip.mkidn.gov.pl/media/docs/proj_ustaw/07.pdf (accessed December 12, 2015).

³⁵ *Ibid.*, 9.

³⁶ *Ibid.*, 1-2.

³⁷ Cf. Andrzej Adamski, “Internet a polskie prawo prasowe – stan obecny i propozycje zmian,” [Internet and the Polish Press Law Act: Current state and proposals for amendments] *Kultura i Historia* [Culture and History] 17 (2010), <http://www.kulturaihistoria.umcs.lublin.pl/archives/1686> (accessed January 04, 2016).

³⁸ *Ibid.*, PIIT, *Opinia Polskiej Izby Informatyki i Telekomunikacji do projektu nowelizacji ustawy Prawo prasowe* [The opinion of the PIIT to the draft amendment of the PLA], June 17, 2009, 4, http://www.piit.org.pl/documents/10181/27041/Opinia_PIIT_prawo_prasowe_17.06.2009.pdf (accessed January 5, 2016).

³⁹ MKiDN, “Projekt ustawy o zmianie ustawy Prawo prasowe z dnia 1 czerwca 2009 r.,” 4.

⁴⁰ On the other hand, IWP and PIIT deemed the modification of Article 45 of the PLA proposed by the MKiDN a move in the right direction. According to the modified version, publishing a daily newspaper or a magazine

Confronted with a negative reaction of the journalistic and information circles, the MKiDN had decided to modify its original proposal of the amendment to the PLA. In the new proposal submitted in December 2010 to the Council of Ministers, Article 7(2)(1) of the PLA was to expand the definition of the press by including “all existing mass communication media, and those emerging as a result of the technological development, which distribute periodical publications by means of print, vision, sound or other distribution technologies, an electronic document included.”⁴¹ Thus, the term “electronic document” mentioned in *the Act of 17 February 2005 on the Computerisation of Activities of Entities Performing Public Tasks* was applied. The term “electronic document” was defined in Article 3(2) of that Act as “a set of data constituting a separate meaningful whole, organised within a defined internal structure and recorded on an IT data carrier.”⁴²

The Ministry had also decided to add item 3 to Article 7 of the PLA, excluding the publications which were not subject to editorial proceedings in the understanding of Article 7(2)(8) of the PLA from the press category, and in particular, “blogs, electronic correspondence, social services used for the exchange of user generated content, publications of private users posted in order to provide access or to exchange information within the framework of common interests, and websites of private users.”⁴³ Justifying the necessity of the adoption of the above-mentioned negative definition of the press, the Ministry pointed to the fact that it would not only reduce interpretation doubts concerning publications covered by the PLA but would also clearly limit the responsibility of the electronic press publisher to the content generated by him. As a result, the sole responsibility for comments published by the users of websites, discussion forums, etc., would lie with their authors.

The MKiDN thesis that adding Article 7(3) to the PLA would remove interpretation doubts as to defining the press seems difficult to justify. Firstly, the proposed provision excluded the publications not subjected to the process of editorial preparation from the category of the press while Article 7(2)(8) defined an editorial office as the entity “in which the process of preparing materials to be published in the press is organised.”⁴⁴ Therefore, the solution presented by the MKiDN still contained a logical error, defining *idem per idem*. Secondly, the negative definition of the press included the terms “blog” and “websites of private users” although they were not defined in the Polish legal system and that could lead to significant interpretation problems. It is also worth noting that – contrary to the assumption made by the authors of the amendment proposal – the very fact that a particular website is a blog does not have to mean that its content is not subject to the process of editorial preparation. Such a situation concerns primarily all collective blogs operated by public institutions, commercial entities or non-government organisations.

Some lawyers and media experts were also indicating that the introduction of a negative definition of the press into the PLA would be incompatible with the documents and recommendations of the European Union and the Council of Europe, as well as with the solutions used in the majority of the

would be punished only with a fine and not – as was the case earlier – a fine or restriction of personal liberty. Adamski, “Internet a polskie prawo prasowe”; PIIT, *Opinia Polskiej Izby Informatyki i Telekomunikacji*, 3.

⁴¹ MKiDN, “Projekt ustawy o zmianie ustawy Prawo prasowe z dnia 8 grudnia 2010 r.,” [A draft law amending the PLA of 8 December 2010] *Biuletyn Informacji Publicznej MKiDN* [Public Information Bulletin of the Ministry of Culture and National Heritage], December 8, 2010, 2, http://bip.mkidn.gov.pl/media/docs/proj_ustaw/20101210_projekt_ustawy.doc (accessed December 12, 2015).

⁴² “Ustawa z dnia 17 lutego 2005 r. o informatyzacji działalności podmiotów realizujących zadania publiczne,” [Act of 17 February 2005 on the Computerisation of Activities of Entities Performing Public Tasks] *Internetowy System Aktów Prawnych* [The Online Legal Database], <http://isap.sejm.gov.pl/Download?id=WDU20050640565&type=3> (accessed January 11, 2016).

⁴³ MKiDN, “Projekt ustawy o zmianie ustawy Prawo prasowe z dnia 8 grudnia 2010 r.,” 2.

⁴⁴ *Ibid.* 2.

countries of mature democracies and developed civil societies.⁴⁵ The adoption of the excluding definition of the press would lead, for instance, to the situation when the author of a blog could not rely on reporter's privilege to protect his informer. According to Michał Zaremba, this situation would be incompatible with the recommendations of the Council of Europe, according to which every person gathering information in a professional way for the purpose of their distribution should be entitled to the journalistic protection, the authors of the blogs included.⁴⁶ The MKiDN proposal, however, aimed at narrowing the definition of a journalist set out in Article 7(2)(5) of the PLA. Under the current Act, the journalist means every person dealing with editing, creating or preparing press materials even if he is not employed by the editorial office but carries out such activities "on behalf and by the authorisation of the editorial office." However, according to the Ministry's proposal of the amendment to the PLA people who edit, create or prepare press materials but have not concluded the employment contract or civil law agreement with the editorial office were to be excluded from the category of journalists.⁴⁷ Another element of the PLA amendment proposal of December 2010 worth notifying is the foreseen expansion of Article 9 containing the list of publications which are not covered by this Act. Under the proposed wording of Article 9 of the PLA, the provisions of the Act would not be applicable to any of the websites.⁴⁸ The introduction of this provision would mean that while online magazines distributed in the form of a separate file would be covered by the PLA, its provisions would not be applicable to news portals.

In face of a strong criticism of the journalist and media expert circles, the MKiDN had decided to abandon the idea of incorporating a direct provision into the amended Act concerning the obligation to register the press publications issued exclusively in a digital format. Instead, the proposal of December 2010 foresaw adding Article 20a to the PLA, according to which the registration of dailies and magazines published in the form of an electronic document would be of a facultative character.⁴⁹ The individuals who would decide to register an online magazine would carry out the press activities according to the principles set out in the PLA, i.e., would have the same rights and obligations as publishers and journalists of the traditional media while the entities resigning from the court registration of their online magazines would be carrying out non-press activities, not subject to the PLA regulations. The idea of introducing the facultative registration of the online magazines generated opposition of some publishers of the print press. Reservations in this area were forwarded by the IWP director general, Maciej Hoffman, who claimed that the above-mentioned solution would mean an unequal treatment of online publishers and the publishers of the print dailies and magazines, and that it might result in a complaint to the Constitutional Tribunal.⁵⁰

Ultimately, the government proposal of the amendment to the PLA was not forwarded to the parliament. Its premises, however, were partially incorporated into the parliamentary proposal of the amendment to the PLA submitted to the Sejm in May 2012 by the Polish People's Party (hereinafter:

⁴⁵ Adamski, "Internet a polskie prawo prasowe"; Piotr Wagłowski, "Dalszy ciąg dyskusji na temat pojęcia 'prasa' w erze demokratyzowania się mediów (elektronicznych)," [Continuation of discussion on the concept of 'the press' in the era of democratization of the electronic media] *Vagla.pl*, November 5, 2009, <http://prawo.vagla.pl/node/8731> (accessed December 13, 2015).

⁴⁶ Sławomir Wikariak, "Blogger nie zasłoni się tajemnicą dziennikarską," [Blogger will not claim journalist's privilege] *Rzeczpospolita*, November 5, 2009, C1.

⁴⁷ Cf. MKiDN, "Projekt ustawy o zmianie ustawy Prawo prasowe z dnia 8 grudnia 2010 r.," 2.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*, 4.

⁵⁰ The quoted statement of the IWP director general seems to be contrary to the previous stance of the Chamber which called for the introduction of the facultative registration of the online magazines. Wikariak, "Blogger nie zasłoni się tajemnicą dziennikarską," C1; cf. Adamski, "Internet a polskie prawo prasowe".

the “PSL”) which was then a part of Donald Tusk’s coalition government.⁵¹ The MKiDN supported the PSL’s proposals arguing that had the parliamentary proposal been adopted, the legislation process would be shorter and the amended act would come into force faster.⁵² In comparison to the MKiDN’s proposal of December 2010, the PSL’s proposal contained, among others, small modifications in the area of defining the category of the press.⁵³ In Article 7(2)(1) of the PLA containing the definition of the press, instead of the term “electronic document” the category of the “electronic communication means” was used.⁵⁴ This wording was also incorporated into the statutory definition of the daily [Article 7(2)(2) of the PLA] and of the magazine [Article 7(2)(3) of the PLA]. The parliamentary proposal had maintained the MKiDN’s conception of adding item 3 to the Article 7 of the PLA excluding “the unregistered publications not subject to the editorial preparation in the understanding of Article 7(2)(8) of the PLA” from the category of the press.⁵⁵ The parliamentary proposal of the amendment to the PLA had also upheld the requirement of the court registration of all dailies and magazines [Article 20(1) of the PLA], liquidating at the same time the sanction foreseen in Article 45 for breaking this requirement.⁵⁶ However, the publications mentioned in Article 7(3) of the PLA were excluded from the registration obligation, including “blogs, electronic correspondence, social services used to exchange the user generated content, communications of private users posted in order to provide access or to exchange information between members of the community of people of common interests and websites of the private users.”⁵⁷ Thus, the non-clarified categories of publications in the Polish legal system mentioned in the original proposal of the MKiDN, such as “blog” or “social service” were maintained in the negative definition of the press. This solution evoked objections of some representatives of the legal milieu pointing to a low accuracy of the proposed provisions which would create opportunities to make contradictory interpretations.⁵⁸ The legitimacy of this kind of concerns seems to be confirmed by the remark in the parliamentary proposal assuming a possibility of registration of the online forms of “citizen journalism” and hence, subjecting them to the rights and obligations resulting from the PLA. The condition set out in this area was “a certain professionalism of carrying out the activities” understood as “creating publications subject to the criteria of the editorial preparation in understanding of the Article 7(2)(8) of the PLA.”

In March 2014, the first reading of the parliamentary proposal of the amendment to the PLA was held in the parliamentary Committee of Culture and Means of Communication. However, this document ceased to be further proceeded in the Sejm. In October 2014, Marek Biernacki, a stepping down Minister of Justice, informed that a working draft of the amendment to the PLA had been

⁵¹ Cf. “Projekt ustawy o zmianie ustawy Prawo prasowe z dnia 23 maja 2012 r.,” [A draft law amending the PLA of 23 May 2012] *Sejm.gov.pl*, May 23, 2012, 4, <http://orka.sejm.gov.pl/Druki7ka.nsf/0/C1A63EA8AC33D521C1257A1C0041CD3A/%24File/459.pdf> (accessed December 14, 2015).

⁵² ES, “Nowe prawo dla prasy,” [The new law for the press] *Gazeta Wyborcza*, May 18, 2012, 8.

⁵³ “Projekt ustawy o zmianie ustawy Prawo prasowe z dnia 23 maja 2012 r.,” 4.

⁵⁴ Article 2(5) of the *APSEM* defines the term “electronic communication means” as “technical measures, including teleinformation equipment and software tools cooperating with it, enabling individual distant communication by using data transmission between teleinformation systems, in particular electronic mail”.

⁵⁵ “Projekt ustawy o zmianie ustawy Prawo prasowe z dnia 23 maja 2012 r.,” 5.

⁵⁶ In December 2011, the Constitutional Tribunal decided that the criminal sanction foreseen in Article 45 of the PLA was a too severe measure, disproportionate to the purpose assumed by the legislator, i.e., the fulfilment of the obligation to register dailies and magazines. After the amendment to the PLA of 10 May 2013, the sole sanction for the infringement of the mentioned obligation is a fine.

⁵⁷ “Projekt ustawy o zmianie ustawy Prawo prasowe z dnia 23 maja 2012 r.,” 5.

⁵⁸ Wikariak, “Publikując w sieci bez formalnej rejestracji, łamiemy prawo,” B12.

developed in the Ministry which he headed.⁵⁹ It assumed, inter alia, a facultative registration of the press activity carried out in the Internet and the introduction of a central register of the journalists' identity cards. However, new management of the Ministry gave up further proceedings of this document.

IV. Conclusion

In the last decade, several attempts of adapting the PLA to the modern development of the mass media had been undertaken in Poland. None of the proposals of the amendment to the PLA reflecting the aforementioned issue came into force. In result, the Act adopted in 1984, still does not include the unique character of online media. On the basis of its provisions, it is sometimes difficult to explicitly determine whether a particular online medium should be deemed the press in the understanding of the PLA. The doubts multiply due to a very inconsistent judicial rulings. In the recent years, courts of various instances in various regions of the country had totally differently interpreted the status of the online media of very similar structures and topical profiles. No wonder that in this situation, the entities operating websites are often incapable of determining on their own whether they are covered by the rights and obligations resulting from the PLA. The negative effects of the inaccurate principles of referring the PLA provisions to the online media are particularly troublesome for citizens' online media operated by private individuals, informal social groups or small, local non-government organisations. Participating in a potential, long-lasting court proceedings concerning the infringement of the PLA provisions exceeds the financial and logistic capabilities of such entities.

Analysing court cases concerning the publication of a daily or a magazine in the Internet without the registration required by the PLA, shows that a significant majority of them concern citizens' media commenting the problems of the local public life. This situation results from the fact that local officials and politicians try to use the unclear legal status of these media to block critical opinions published in them. The reported in this article case of the *GazetaBytowska.pl* website proves that, despite of the final court verdict, the attempts at using this kind of pressure may be efficient. This situation has to be deemed negative in the context of a particular significance of the online media in the Polish system of local communication. Following the transformation of 1989, the strong sector of commercial local press, independent of the self-government institutions and companies publishing regional daily newspapers had not been developed in Poland. The scale of this problem can be illustrated by the fact that at the turn of the 20th and 21st centuries, every third local magazine in Poland was published by the self-government institutions and only one fourth of the local titles could be classified as the private commercial press.⁶⁰ At the same time, the residents of about forty percent of the Polish towns and nearly three fourth of the rural municipalities did not have an access to any kind of traditional local media.⁶¹ The relatively low costs of operating websites often enabled these media to successfully enter the local media markets in which the earlier attempts at publishing printed, private local newspapers failed. In this context, one can risk a statement that in the Polish reality, the local online media not only expand the catalogue of the sources of information on the local

⁵⁹ Małgorzata Wyszynska, "Projekt prawa prasowego byłego ministra sprawiedliwości podoba się dziennikarzom," [Journalists welcome draft press law prepared by the former minister of justice] *Press*, October 3, 2014, <http://www.press.pl/newsy/prasa/pokaz/46666> (accessed December 10, 2015).

⁶⁰ Włodzimierz Chorązki, "Polskie media lokalne i sublokalne 1989-1999," [Polish local and sulocal media: 1989-1999] *Zeszyty Prasoznawcze* [Notebooks of Press Studies], no. 1-2 (1999): 64.

⁶¹ *Ibid.*, 66.

communities but in many cases constitute the only group of media capable of breaking the information monopoly of the self-government authorities and caring out the control function over the institutions of the local public life.

In the light of the conducted analysis, the lack of the precise legal status of the online media has to be deemed a real threat to the pluralism of the local communication systems in Poland. From a broader perspective, the current shape of the PLA can be considered an element having a negative impact on the potential of the online media as the platform of a civil debate. The lack of clear principles of referring the PLA provisions to the online media may discourage citizens from making use of the freedom of speech and commenting in the Internet the public problems which they are interested in. While the fastest possible adaptation of the PLA to technological conditions of the functioning of contemporary media has to be regarded highly desirable, the proposals of the amendment to this Act prepared in the recent years seem to be highly ineffective. The arbitrary exclusion of particular kinds of online media from the press category, blogs included, would deprive their authors of a possibility to use the privileges foreseen in the PLA such as the right to protect the sources of information. Such a solution would not only be incompatible with the recommendations of the European Union and the Council of Europe but would also mean abandoning the mechanisms used in the majority of the countries of mature democracies and the developed civil societies.⁶² It has also to be noted that use of such terms as a “blog” or “social service” in the PLA would inevitably evoke new interpretation doubts since these terms have not been defined in the Polish legal system and their factual scope is continuously evolving due to the rapid development of the ICT. Taking the above reservations into account, the best solution seems to be the introduction of the facultative registration of the online media, which was suggested, for instance, by the Helsinki Foundation for Human Rights. The people who would decide to register an online magazine would be carrying out the press activities by the principles set out in the PLA, i.e., they would have the same rights and obligations as publishers and journalists of the traditional media. At the same time, the entities giving up the court registration of their online media would carry out the non-press activity to which the PLA provisions do not apply.

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⁶² Cf. Adamski, “Internet a polskie prawo prasowe”; Wąglowski, “Dalszy ciąg dyskusji na temat pojęcia ‘prasa’ w erze demokratyzowania się mediów”; Wikariak, “Blogger nie zasłoni się tajemnicą dziennikarską,” C1.

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