



**WYDZIAŁ PRAWA
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Summary

***Penal protection of freedom of press
(Karnoprawna ochrona wolności prasy)***

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SUMMARY

Presented dissertation is focused on the problematics of penal protection of the freedom of press realized at the basis of selected regulations taken from the polish Press Act.

Question which is expressed in the title of the dissertation has not been a point of the detailed analysis until today. Legal and media science reflections made on showcased sphere typically are the subject of an articles and commentaries to the Press Act. Importance of the penal protection of the freedom of press derivates from the character of freedom of press considered as a legal good in a context of a hierarchy of a legal goods founded in a constitutional and international law. Preparing a legal analysis of presented problematics, defined as a penal protection of a legal good mentioned above realized by non – Criminal Code regulations, stays an actual and necessary question.

Essence of the carried out researches was to state the factual limits of the protection given to the freedom of press by penalising a selected acts which violates such a legal good. Those researches includes especially questions of: freedom of press as a legal good normalised in a particular branches of law, a person of journalist functioning as a part of a structure of an offense, limits of protection given to publicising a press materials and preparing an interventions by a press. System of regulations which founds an institution of criticism realized by a press referred to its guaranties ensured in a legal system have become a separated part of an analysis. Pointed problems suggests to ask if the regulation present in a Press Act might be described as actual and effective in relation to the question shown in the title of a dissertation. Results of the researches allowed to formulate a number of novelizations adapting mentioned Act to the challenges sourced in a market situation of a press and in a progress in area of communication technologies.

Structure of a dissertation contains of three chapters preceded by an Introduction. An Introduction presents assumptions and theses of a dissertation, supplemented by a description of a legal and factual situation of a press. Additionally Introduction contains of detailed abstract of matters presented in each of the chapters and characteristics of a bibliography of literature, judgements and another sources citated in a dissertation.

Chapter I features an analysis of a crime of coercion in a base type and in modified

types (Article 191 of a Criminal Code). Legal analysis of an offence regulated in an article 191 § 1 of the Criminal Code appears necessary for later analysis of a crime of coercion of a journalist regulated in an article 43 of the Press Act. Researches conducted in a chapter I showcased how to define a freedom understood as a legal good protected by a norms of a criminal law. They have also shown a correct way to interpretate semantic areas of terms like: violence, violence against a person, unlawful threat and coercing to an act, resignation of an act or to endure, used in a construction of a described prohibited act. Presentation of a historical aspects of a crime of coercion fulfilled the analysis both with short characteristics of modified types of a crime of coercion, regulated in an articles 191 § 1a – 2 of a Criminal Code.

In the chapter II of a dissertation has been characterised protection of freedom of press realized by penalising an act of coercing a journalist to publicise or resign from publicising a press material or to conduct or resign from conducting an intervention by a press, regulated in an article 43 of a Press Act. At the beginning of a chapter II it has been explained how to define a press crimes and classify prohibited acts which belongs to this category of crimes. Moreover it has been answered if a discussed offence might be recognize as a press crime. Further analysis concentrates on a question of a freedom of press occurred as a legal good protected by an offence regulated in an article 43 of a Press Act. Freedom of press was then characterised from the theoretical point of view, especially focusing on its philosophical and communicational origins. Mentioned legal good has been also analysed at the basis of norms taken from a constitutional and international law and from the legislation, furthermore on a basis of judgements of state and international organs of justice.

Chapter II presents a detailed study about the person of a journalist. Most important issue disclosed there shows the differences between the ways of defining a journalist in a Press Act, in a media science, in a social sense and how to describe such a person in a context of an analysed prohibited act. Publicising a press materials and conducting a press interventions have been presented from the point of the factual character of such an actions protected under the limitations of an article 43 of a Press Act. Analysis of a mentioned offence has been completed by a characteristic of a perpetrator and his mental features, noticing the fact that such a person might be located within the professional sphere of a journalism. Moreover analysis contains an overview of a situations in which an act of coercing of a journalist would be qualified on the basis of the rule of concurrence

of provisions.

Beginning of a chapter III introduces into a question of a press criticism by reviewing a number of regulations presented in a Press Act which are creating an institution of a press criticism. Versatile characteristic of a press criticism has been preceded by an analysis of theoretical aspects of a criticism itself. Describing a press criticism as a legal good required a presentation of a guarantees for such a good provided both in a constitutional and international law and in the legislation. Showcased judgements of state and international organs (especially European Court of Human Rights) have to be recognized necessary for an analysis of mentioned legal good and means of its protection.

Press criticism has been also considered from the point of its formal requirements, like reliability and compliance with rules of a social conduct, and associated with them limitations of its protection. Moreover characteristic of a mentioned institution includes problematics of following the journalist professional secrecy and obligation to response to a press criticism in context of a press right to an information. Satire and caricature seen as a special figures of a press criticism, particularly their limitations and protection, became additional issue studied in a dissertation. Analysis of a press criticism considered as a legal good protected under the criminal regulations has been completed by describing actions that involves its obstructing or suppressing and also defining formal character of an offence regulated in article 44 clause 1 of a Press Act. The last part of chapter III focuses on an act of retaliation due to a press criticism, penalised in an article 44 clause 2 of a Press Act. Analysis of a mentioned offence mainly concerns: abuse of position or fulfilled function, acting to harm another person and publicising a press criticism in a social justified interest, which are being a features of a described prohibited act.

In Conclusions, founded as the final section of a dissertation, it has been defined factual character and limits of penal protection of freedom of press analysed on the basis of presented regulations included mostly in a Press Act. Conducted researches allowed to disclose an authentic meaning of terms such as: journalist, press material, publication, intervention realized by a press and press criticism, used as a features of described prohibited acts. Furthermore results of an analysis have shown essential differences that occurs between the ways in which those terms appears in a common discourse, in a media science, in a Press Act and within a boundaries of penalization of characterised offences. Therefore it has to be

considered to redefine a juridical meaning of freedom of press in reference to specified features of penal protection of freedom of press.

Moreover in conclusions of conducted researches has been given an answer to the question whether a legal protection of a freedom of press realized by a regulations included in a Press Act might be defined as adequate and effective. Legislation proposals stated in the last part of a dissertation have been formulated in response to a presented issue. Adaptation of a Press Act to the contemporary conditions, related especially with a political and market situation of a press and a modern achievements of a communication technology, has to be found as the main purpose of mentioned proposals. Suggested novelizations concentrates on a regulations in areas of: a person of a journalist, realizing an interventions by a press and conducting a press criticism.

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