

## **The Statutory Definition of the Press and a Journalist in Poland.**

### **Notes on the Phenomenon of the Citizen Press**

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#### **I. Preface**

The development of electronic media allowed the creation of new forms of journalistic activities. The citizen press, which can be practiced by people who are not licensed journalists, is one of them. This new situation, caused by the development of the Internet and the growing need for information within modern society, has blurred the outlines of a hitherto functioning, statutorily defined, concept of “press” and “journalist”. The goal of the present study is to determine, on the basis of the law in force, the situations in which the citizen press can be regarded as the press, within the meaning of the Article 7 Section 2 Point 1 of the Press Law<sup>1</sup>, and whether a non-licensed journalist – a citizen journalist, can, in specific situations, be regarded, as far as his rights and obligations are concerned, as the journalists mentioned in the Article 7 Section 2 Point 5 of the Press Law.

#### **II. General characteristics of the citizen media**

The term “citizen media” is often used as a synonym for social media. For the present article it is necessary to distinguish these two types of media. Social media are strictly formatted to a specific

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<sup>1</sup> The Press Law Act of January 26, 1984, the Journal of Laws of 1984, No. 5, Item 24 with amendments, further referred to as the Press Law

recipient, social group or society. Such media are defined by the National Broadcasting Council<sup>2</sup> in “Strategy of the Polish State in the Field of Electronic Media for the years 2005-2020” as the media “focused on creating community or local ties, fulfilling the needs of specific social groups, and, at the same time, representing them in social information circulation and public debate. The goal of this sector of radio and television broadcasting is to enhance the pluralism of the programmatic framework and allow different minorities to create their own electronic media”.<sup>3</sup> The receivers of the electronic media can be divided into two categories: local communities and interest communities. Due to this, it can be considered that the social media cover: catholic radio stations (e.g. Radio Maryja), student radio stations (e.g. Radio Centrum), local commune - oriented radio stations (e.g. Commune Radio), radio stations broadcasting in the languages of minorities. Social media operate legally on the basis of a concession right granted by the country's relevant authority (in Poland it is the NBC). The concession grant is followed by obligations which are placed on the non-commercial broadcaster. It must fulfill the concession requirements, clearly indicate the group of people whom the program will address and precisely specify the programmatic framework catering for the needs of a given group.

The citizen media are a natural continuation of the social media. The advent of the Internet has created a possibility for all the media to exist also in the virtual (e.g. dziennik.pl, tvn24.pl, polityka.pl). The Internet was the first medium to become so interactive that the boundary between the sender and the receiver has blurred. “For the first time in the history of communication the receiver is not an object to which given information is been transmitted, but he has become active.”<sup>4</sup> New media create a quality change in both the receiver and the sender. “It can be described by the cybernetic feedback mechanism which shows how, within the sender – receiver arrangement, the message received by the former (...) becomes the basis for a further, modified communication.”<sup>5</sup> It means that everything that is published by commercial, public and social media, as well as individual entities,

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<sup>2</sup> Further referred to as NBC.

<sup>3</sup> National Broadcasting Council, *Strategy of the Polish State in the Field of Electronic Media for the Years 2005-2020*, page 22.

<sup>4</sup> R. Tadeusiewicz, *Społeczność internetu (An Internet Community)*, Academic Publishing House EXIT, Warsaw 2002, page 8.

<sup>5</sup> M. Hetmański, *Internet jako środek tworzenia i komunikowania wiedzy (The Internet as a Means of Creation and Communication of Knowledge)*, [in]: *Internet. Fenomen społeczeństwa informacyjnego (The Internet. The Phenomena of an Information Society)*, edited by T. Ząsepa, Saint Paul's Edition, Częstochowa 2001, page 80.

may become a seed of information transmitted to further circulation by another object operating within the media society.

The Internet is used more and more frequently as a tool that allows a virtual community to take part in a public debate, supplement news that appears in traditional media (commercial and public), create an alternative way for the transfer of information and interpret the events that are happening in the country and abroad. In other words, the Internet has made each person a self-appointed journalist.

Citizen journalism is a new phenomenon, hence the lack of a precise definition. Wikipedia describes it accordingly: "Citizen journalism is a type of journalism practiced by non-professional journalists in the social interest. Its creation and development is linked to the Internet which, unlike press, radio or television, is an interactive medium that permits a co-creation and mass distribution of its contents by each and every individual. The Internet gives a possibility to create and publish articles in real time and allows a virtual cooperation of journalists from all over the world."<sup>6</sup> Web portals which enable a co-creation of their contents are especially connected to citizen journalism. The beginnings of this kind of journalism can be linked to the service called the Independent Media Center, known also as Indymedia, developed in 1999, before the World Trade Organization summit in Seattle. The portal is based on an "open publishing" rule: there is no censorship and the only interference from the publisher comes in the form of a graphic display of the most interesting texts. The service which gave impulse for the creation of citizen media was the South-Korean *Ohmynews*, which started operating in 2000. It was there that the term of a citizen reporter was used for the first time. It operates on the principle of general availability, but, unlike in Indymedia, there is editorial and social supervision over the published materials, which means that users confirm the credibility of the texts and correct false information. The first social portal in Poland was iThink.pl, which started operating in April 2006, and then Wiadomości24.pl service.

Citizen media perform a lot of functions within a society. First of all, they are regarded by their creators as media alternative to the mainstream media. Citizen journalists baldly enter into competences which, so far, have been reserved for the graduates of journalism schools and those

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<sup>6</sup> *Dziennikarstwo obywatelskie (Citizen Journalism)*, Wikipedia, [http://pl.wikipedia.org/wiki/Dziennikarstwo\\_obywatelskie](http://pl.wikipedia.org/wiki/Dziennikarstwo_obywatelskie), 23.07.2007.

with a long-term practice in the profession. They comment, express opinions, take part in a discussion, complement information already known from the mainstream.

By the use of the Internet, the reach of the contents as an integrating factor is nearly unlimited. It not only influences a wide spectrum of receivers, but also allows a further transmission of the said contents among them. A unification and, at the same time, an integration takes place as various receivers from different cultures carry out an exchange of meanings, which facilitates a cultural diffusion. As a democratizing factor, the citizen media favor an uninhibited exchange of opinions as well as an exchange of information that are often omitted by the mainstream media.

The citizen media become a repercussion of a man's constant hunger for information and the need to share one's knowledge with others. The Internet and new inventions facilitate this communication. The receiver does not remain passive but becomes the creator of the media which, on one hand, teach him how to make use of new technologies and, on the other, allow him to actively participate in a social life. This is the cause of another important function; that is the stimulation of a citizen. He takes part in a wide social dialogue, expresses his political and cultural opinions, broadens his media competence. Thus, he learns how to use the media effectively and not succumb to manipulation. It also stimulates the activity in the search for information. Furthermore, the citizen media favor pluralism. They create a sense of freedom from authority, political connections, dominant opinions, believes or stereotypes that function within a society.

The public media, due to the politically influenced manner in which their authorities are elected (management, supervisory board) and the commercial media, due to their profit-orientation and dependence on sponsorship, may be regarded as not objective and the journalists working for them may be viewed as confined by an invisible censorship. The report created by the Parliamentary Assembly Council of Europe, in which it has been stated that media freedom in Poland is being violated, is a proof of validity of the above claims.<sup>7</sup>

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<sup>7</sup> Cf. Report of Committee on Culture, Science and Education, *Freedom of Expression in the Media in Europe*, <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta01/EREC1506.htm>, 25-03-2008, The report points to the limits of and censorship among the journalists hired by editorial offices, who try to reveal the connections between media and politics, as well as huge companies that sponsor the media activity.

In the age of globalization, the traditional media treat information as a strictly commercial product. The promoted “freelance” journalism patterns influence the decreasing sense of responsibility among the journalists, who do not feel bound to any editorial office and are predominantly driven by financial gain. It seems that the citizen media, because of the participation of volunteers, are more objective and independent than the other media. The lack of honorarium eliminates the problem of rivalry for the widest-ranging topic, as well as the issue of “playing to the crowd” or writing only on trendy topics.

Finally, as Peter Dahlgren has noticed, the social media, and currently also the citizen media, not only become a competition for the dominant media, but constitute a source of information for the above mentioned.<sup>8</sup>

Unfortunately, linked to the citizen journalism is a danger of succumbing to excessive ideological involvement. Numerous news writers, especially on pages devoted to a specific subject area like ecology, protection of human rights or local news, are actively engaged in promoting certain values or a given community. Therefore, a threat of partiality, subjectivity or even fanaticism, exist among some authors. This accusation is diminished by the fact that the citizen media are defined by a wide range of perspectives, standpoints and opinions, also non-objective or extremely radical in character. However, this feature should not be regarded as a disadvantage of such news, but rather as a possibility to recognize the criticism and opinions predominant in the society and enter into polemics with them. The diversity, both thematic and ideological, as well as autonomy from political or financial pressure, makes the citizen media, on one hand, an immensely important guarantor of democratization of the social life and, on the other hand, a competitor for the functioning traditional media.

### **III. The role of the citizen media in a democratic state of law**

Through a wide participation of citizens in the creation of media and the forming of their content, the citizen media conduce to the formation of an information society<sup>9</sup> and a citizen society.<sup>10</sup>

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<sup>8</sup> Cf. P. Dahlgren, C. Sparks, *Komunikowanie i obywatelskość. Mass media w społeczeństwie, czyli atak na system nadawców publicznych. Plotki, sensacje, doniesienia (Communication and Citizenship: Journalism and the Public Sphere)*, Astrum Publishing House, Wrocław 2007, page 26.

The right to obtain information on the activity of public authorities as well as the people holding public office<sup>11</sup> has been mentioned in the Constitution of the Republic of Poland<sup>12</sup>, among the political rights and liberties enumerated in Chapter II Article 61. Access to information is considered one of the fundamental values of a democratic state of law and a prerequisite for an effective functioning of a democratic system.<sup>13</sup> The regulation of Article 61 of the Constitution of the Republic of Poland is supplemented by guarantees such as the freedom of expression, which also includes the freedom to acquire information (Article 54 Section 1 of The Constitution of the Republic of Poland) and the right to be informed of the quality of the environment and its protection (Article 74 Section 3 of The Constitution of the Republic of Poland), as well as the regulation of an act on the access to

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<sup>9</sup> An information society is, first and foremost, characterized by the fact that it treats information, considered as a non-material value of a special sort, as its most precious commodity. A majority of the authors who try to define the notion of an information society highlight the fact that this entity is characterized by a close connection to new technologies which are the source of changes in the surrounding world. Cf. J. Gołaczyński, *Wymiar sprawiedliwości w warunkach społeczeństwa informacyjnego (Justice in an Information Society)* [in:] Ł. Bojarski (editor), *Sprawny sąd. Zbiór dobrych praktyk, Część druga (An Efficient Court. A Collection of Good Practices, Part Two)*, Warsaw 2008, page 84.

<sup>10</sup> According to Wikipedia, a citizen society is a society characterized by activeness and self-organizational capability as well as the ability to determine and achieve specified goals without an impulse from the state government. A citizen society can function independently from state institutions. Independence does not need to mean a competition between the society and the government that usually occurs in states where the political system is contrary to the will of the majority of a society. The main feature of a citizen society is the awareness of its members concerning the necessities of a community and a pursuit of their fulfillment, which means an interest in the matters of the society and responsibility for its welfare. The concept of a citizen society first appeared in the works of Aristotle and was developed by J.J. Rousseau, who introduced the notion of self-determination and social contract, and then further by Lock. A citizen society is very often identified with a well organized and effective sphere of the third sector. Wikipedia, [http://pl.wikipedia.org/wiki/spoleczeństwo\\_obywatelskie](http://pl.wikipedia.org/wiki/spoleczeństwo_obywatelskie), 10.02.2010.

<sup>11</sup> The access to information principle should not be confused with the freedom of expression, for the latter is one of the freedom rights. Its content consists of two aspects: positive, according to which an individual can shape his own behavior, and negative, which covers the state's obligation to refrain from interference in the personal sphere of an individual. The right to public information, which covers the state's obligation to provide a requested information, is different in character. Cf. K. Wojtyczek, *Granice ingerencji ustawodawczej w sferę praw człowieka w Konstytucji RP (Boundaries of Legal Interference into the Sphere of Human Rights in the Constitution of the Republic of Poland)*, Cracow 1999, pages 24-27.

<sup>12</sup> The Constitution of the Republic of Poland of April 2, 1997, Journal of Laws of 1997, No. 78, Item 483 with amendments.

<sup>13</sup> Cf. W. Skrzydło, *Konstytucja Rzeczypospolitej Polskiej. Komentarz (The Constitution of the Republic of Poland. A Commentary)*, Zakamycze 2002, page 26; T. R. Aleksandrowicz, *Komentarz do ustawy o dostępie do informacji publicznej (Commentary to the Access to Public Information Act)*, Warsaw 2002, pages 7-10; A. Piskorz-Ryń, *Czy prawo do uzyskania informacji od władz administracyjnych jest publicznym prawem podmiotowym? (Is the Right to Receive Information from Administrative Authorities a Subjective Public Right?)* [in:] *Administracja i prawo administracyjne u progu trzeciego tysiąclecia, Materiały Konferencji Naukowej Katedr Prawa i Postępowania Administracyjnego (Administration and Administrative Law on the Verge of the Third Millennium, Materials from the Scientific Conference of the Faculties of Law and Administration)*, Łódź 2000, page 379 and the following; Cf. also A. Piskorz-Ryń, *Prawo do informacji podmiotów wykonujących administrację publiczną w polskim porządku prawnym (The Right to Information of the Subjects Performing Public Administration in the Polish Law)*, Territorial Government of 2000, No. 7-8, page 88 and the following.

public information. This access is considered to be a consequence of the acceptance of a principle expressed in Article 4 Section 1 of The Constitution of the Republic of Poland, which states that supreme power shall be vested in the Nation. Citizens who are not in possession of information concerning the progress of public affairs, also on a local scale, are incapable of implementing their rights as members of a community to which the supreme authority belongs.<sup>14</sup>

Before the Constitution of the Republic of Poland and the Access to Public Information Act<sup>15</sup> have been passed, the right to acquire information was entitled only to the participants of legal or administrative proceedings and, on a wider scale, journalists, members of social organizations, councilors and members of the parliament.<sup>16</sup> Currently, this law has been added to the human rights catalogue and granted, on the same basis, to every man, including citizens of other states and stateless people. Undoubtedly, such a solution has a positive impact on the development of the citizen journalism as people of this profession can, thanks to the above mentioned human rights law, gain access to all information concerning public matters that have not been classified as secret by a relevant act. It has been highlighted in literature that mass media which inform us extensively about the activities of state authorities, broadcast the course of their debates and inform of their outcome, have a beneficial impact on the realization of the right to information, which is, evidently, carried out also thanks to the functioning of the citizen journalism and conditions a conscious participation of citizens in the social life. The role of a citizen does not end with the casting of his vote during election in which an authority unit (e.g. President, Sejm, Senate, Territorial Self-government) is being chosen. If these authorities represent the society, were chosen due to an election program that had been

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<sup>14</sup> P. Winczorek, *Prawo obywatela do informacji (A Citizen's Right to Information)*, Rzeczpospolita, February 24, 2000, No. 46.

<sup>15</sup> The Access to Public Information Act of September 6, 2001, Journal of Laws of 2001, No. 112, Item 1198 with amendments.

<sup>16</sup> Cf. M. Jaśkowska, *Dostęp do informacji publicznych w świetle orzecznictwa Naczelnego Sądu Administracyjnego (The Access to Information in the Light of Supreme Administrative Court Case-Law)*, Toruń 2002, page 15; B. Kudrycka, S. Iwanowski, *Prawo obywateli do informacji o działaniach organów administracji publicznej (The Citizens' Right to Information on the Activities of the Public Administration)*, State and Law of 1999, No. 8, page 70; Cf. also verdict of the Supreme Court – Chamber of Administration, Occupation and National Insurance of June 1st, 2000, III RN 64/2000, OSNAPIUS 2001, No. 6, Item 183, in which it was stated that “the Constitution of the Republic of Poland sets higher standards for the protection of freedom of speech than those provided in article 10 of the Convention on the Protection of Human Rights and Basic Liberties of November 4, 1950, that was drawn up in Rome (Journal of Laws of 1993, No. 61, Item 284). It is in the interest of the Republic of Poland to guarantee the press the widest possible access to the information that the authorities and public institutions are in possession of, understood as the right to acquire information.”; Cf. also the verdict of the Supreme Court - Chamber of Administration, Occupation and National Insurance of April 6, 2001, III RN 87/00, OSNAPIUS 2001, No. 24, Item 704.; Verdict of the Supreme Administrative Court of October 12, 1999, II SA 220/99, II SA 925-937/99, Court Calendar of 2000, No. 7, page 41.

previously reported and presented to the electorate, then the citizens who supported the program have a keen interest not only in its realization, but also in the activities taken up by these authorities and their outcome. That is why the right to the information on the activities of authorities is such an important element of the public life and of the social control over their actions<sup>17</sup>. Due to their particularity, the citizen media not only deal with the control of the public life, but also react to it actively and, in principle, allow each citizen to refer to a given problem and participate in a public debate. In a democratic state of law the citizens' participation in the process of governing the state is one of the fundamental rules. Therefore, the access to information on the activities of public authorities must have a real character. Should there be a shortage of proper information or a lack of free access to the activities of state authorities, the actions taken by these authorities will not be socially understood and accepted.<sup>18</sup>

In the aspect presented above, the citizen media should be regarded as an omnidirectional channel (as opposed to unidirectional traditional media) in the process of communication between individuals, groups of people, institutions and the state. The citizen media functioning formula favors the idea of informing about the diversity of viewpoints existing within a given society. This necessity for an open and broad political discussion in the media, which should be guaranteed by the state, was repeatedly highlighted in the decisions of the European Court of Human Rights.<sup>19</sup>

#### IV. The citizen journalism and the statutory definition of work

According to an encyclopedic definition, the press is defined as publicly distributed printed periodicals which mirror versatile realities, especially current processes and political, social, economic, scientific and cultural events.<sup>20</sup>

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<sup>17</sup> W. Skrzydło, *Konstytucja... (The Constitution ...)*, page 86.

<sup>18</sup> G. Tylec, *Dostęp do informacji publicznej jako przejaw zasady jawności działania organów państwa (The Access to Public Information as a Manifestation of the Principle of Overt Activities of the State Authorities)*, [in:] K. Miskowska-Daszkiwicz, R.M. Pal (editor), *Standardy wykonywania władzy publicznej (Standards in Functioning of the Public Authority)*, Stalowa Wola 2007, page 89 and the following.

<sup>19</sup> Cf. the verdict of the European Court of Human Rights of July 1st, 1997 in the *Oberschlick vs. Austria* case, No. 20834/92, Reports 1997-IV, <http://cmiskp.echr.coe.int/tkp197>.

<sup>20</sup> Cf. J. Maślanka (editor), *Encyklopedia wiedzy o prasie (Press Encyclopedia)*, Wrocław-Warsaw-Cracow-Gdansk 1976, page 168. Cf. also J. Skrzypczak (editor), *Popularna encyklopedia mass mediów (Mass Media Encyclopedia)*, Poznan 1999, page 427.



“The term 'press' is used, by the nature of things, by press experts, lawyers, political scientists, sociologists, cultural studies scholars, historians, psychiatrists, but also economists and theologians, who make it their subject of study and give the term a meaning proper for the conceptual grid of their fields of study. However, beside the above term, there are other names which exist in both the scientific and colloquial workflow: mass media, social media, mass communication, social communication, mass information, mass informing, publications, or simply media.”<sup>21</sup>

The term was defined in Article 7 of the Press Law of January 26, 1984<sup>22</sup> (Journal of Laws of 1984 No. 5, Item 24). It follows from the above regulation that all publications, both written and broadcasted via radio frequencies or TV waves, periodic in character and not a closed, homogenous entirety, that come out no less than once a year, with a fixed title or name, a current number and date and are, in particular, newspapers and magazines, agency bulletins, fixed transfer messages, bulletins, radio or TV programs or newsreels, are considered as the press. Moreover, regarded as the press by the legislator are all mass media that are either existing or coming into existence as a result of the technological development, including broadcasting stations and TV and radio company broadcasting centers which popularize periodic publications through the use of press, vision, sound or another popularizing technique. According to Article 7 of the Press Law, the term press encompasses also groups of people and individuals who practice journalistic activities.

The press are not only publications containing current information and aimed at a mass reader, but also specialized publications including: popular-science and scientific, medical, hobby-oriented, religious, literary, for kinds, fashion journals, etc..<sup>23</sup> It was also stated in one of the Supreme Court decisions that the publications for a mass, unsophisticated reader, which favor primitive tastes and satisfy a plebeian desire for sensation, are also considered as the press, and consequently, the mass communication. Taking this into account, tabloids are also the press. Neither the Press Law, which describes the rights and obligations of journalists, nor any other legal act makes any distinctions between standards that need to be fulfilled by serious publications which address a refined, educated reader and the requirements that must be met by popular, sensation seeking journals,

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<sup>21</sup> J. Sobczak, *Radiofonia i telewizja. Komentarz (Radio and Television Broadcasting. A Commentary)*, Zakamycze 2001, A Commentary to Article 1 of The Broadcasting Act of December 9, 1992, Lex Omega 2008.

<sup>22</sup> Journal of Laws of 1984, No. 5, Item 24 with amendments, further referred to as the Press Law

<sup>23</sup> J. Sobczak, *Prawo prasowe. Komentarz (The Press Law. A Commentary)*, A commentary to Article 7 of the Press Law of January 6, 1984, Lex Omega 2008.

including tabloids.<sup>24</sup> A Kamińska notices that in the regulations of, for example, the Copyright Law there is a clear distinction between press, radio and television, but the distinction is not mirrored by the definition created by the Press Law as all three types of media are covered by the term press.<sup>25</sup>

The Internet is a means of mass communication. What's more, all the means which function as a mass transmission of diverse contents are considered as the mass media. Included should not only be the printed press and radio and television broadcasts, but also books, posters, films and the Internet transmission. Freedom of press and other means of social communication, guaranteed by Article 14 of the Constitution of the Republic of Poland, includes in its scope also mass media.<sup>26</sup> Generally speaking, to consider the Internet as the press seems to be incorrect, as opposed to electronic versions of TV and radio programs or printed materials (newspapers, magazines, etc.). Article 25 of the Copyright Law<sup>27</sup> creates the temptation to treat the Internet as a form of press. However, it is only possible when the Internet is used in the domain of the press function, not when it comes to fulfilling the requirements of the definition of the press as included in the Press Law<sup>28</sup>. J. Taczowska claimed that the Internet is a mass medium, just like a paper ream. The Internet is not, however, the press, but may be used, just like a paper ream, to publish press. Thus, the refusal of a request to register a press title based only on a type of mass medium or the publication distribution technique seems to be – in the light of the Press Law – unacceptable<sup>29</sup>.

There is a commonly accepted viewpoint in the doctrine that “materials, periodically introduced and distributed online, being an electronic equivalent of what comes out at the market in a traditional form, may be regarded as the press within the meaning of the Press Law. Such a categorization should also be acknowledged in cases when the above mentioned equivalent is missing, but certain attributes of the press are preserved: periodicity, online publication, a fixed title (name), proceeding numbers, and visible dates. It concerns, among other things, online bulletins published regularly,

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<sup>24</sup> Cf. the verdict of the Supreme Court of May 29, 2008, II KK 12/08, Lex Omega 448953.

<sup>25</sup> A. Kamińska, *Internet – pozaumowne korzystanie z utworów (The Internet – Non-contractual Use of the Works)*, *Economical Legislation Review* of 2002, No. 5, page 28.

<sup>26</sup> Cf. the decision of the Supreme Court of May 7, 2008, III KK 234/07, *Criminal Law Bulletin* 2008, No. 10, Item 33.

<sup>27</sup> The Copyright Law of February 4, 1994, *Journal of Laws* of 2006, No. 90, Item 631 with amendments.

<sup>28</sup> S. Jankiewicz, *Prowadzenie reklamy w Internecie (Online Advertising Marketing)*, *Radca Prawny* 2001, No. 2, page 40.

<sup>29</sup> J. Taczowska, *Gloze to a decision of the Supreme Court of July 6, 2007, IV KK 174/07, OSP* 2008, No. 6, Item 60.

information bulletins and other periodicals.”<sup>30</sup> It seems that this question was prejudged by the Supreme Court verdict of July 26, 2007, in which it was stated that an online storefront, updated at least once a year, is the press and, in accordance with Article 20 of the Press Law, constitutes a subject to the legal press registration obligation. According to Article 45 of the Press Law,<sup>31</sup> a fine sanction or a penalty of restricted liberty can be bestowed, should this obligation remain unfulfilled. It has been stated in a verdict by the Regional Administrative Court in Warsaw that the purpose of the publication should be taken into account when deciding if an online publication has the characteristics of the press. If the role and task of the press is distribution of information, then a cyclic transmission of social, economic, administrative, political, educational, cultural, from the field of music, film and arts, etc. information to the public, under a given title, address or even link, will indicate the goal achieved by the editor, publisher or author of a given electronic publication, on a specially created web page.<sup>32</sup> It has been demonstrated in literature that a request which states that all the Internet publications are encompassed within the norms of the statutory definition of the press is unjustified. Particular doubts may arise with the categorization as the press of, for example, a newsletter distributed via e-mail to people who have not ordered it.<sup>33</sup> M. Wojtasik observed that the frequency of online publications (newspapers and journals) is very diverse. Even publications that seem periodical (e.g. online versions of “paper” weeklies) contain news that are updated several times a day. Therefore, it appears that in such cases, the predominant quality of the published material should be examined and should constitute the basis for deciding whether a given

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<sup>30</sup> J. Barta, R. Markiewicz, *Postęp techniczny w mediach (Technical Development in Media)* [in:] J. Barta (editor), *Prawo mediów (The Media Law)*, Warsaw 2005, page 189.

<sup>31</sup> Cf. the decision of the Supreme Court of July 26, 2007, IV KK 174/07, Prokuratura i Prawo – supplement, 2008, No. 2, page 4 and the following, in which it was stated that: “It is indisputable that newspapers and magazines, due to the fact that they are published in an online form, do not lose the markings of a press title. Neither if the online broadcast is accompanied by a transmission fixed on paper, printed, constituting a different, electronic form in an on-line system, nor when the broadcast exists only in an electronic form, on the Internet, but is published only periodically, fulfilling the requirements of Article 7 Section 2 of the Press Law. A person who distributes a newspaper or a magazine on the Internet without a registration in a proper district court, regardless of whether such a broadcast is accompanied by a transmission fixed on paper, constituting a different, electronic form in an on-line system, or whether the broadcasts exists only in the electronic form on the Internet, fulfills the markings of a crime, based on Article 45 of the Press Law; Cf. also a verdict of the Constitutional Tribunal of February 20, 2007, P 1/06, OTK-A 2007/2/11, which states the consistency of the legal regulations, which place a sanction for the nonfeasance of the legal registration of the press, with the Constitution.

<sup>32</sup> Cf. the decision of the Regional Administrative Court in Warsaw of April 24, 2008, II S.A./Wa 1536/0, Lex Omega No. 479025.

<sup>33</sup> R. Nogacki, *Prawne aspekty internetowej reklamy banku cz. I. Poczta elektroniczna (Legal Aspects of Online Advertising of Banks, Part I - Electronic Mail)*, the Bank Law 2005, No 10, page 68.

publication is periodical or not. However, it is impossible to agree with the opinion that all online publications should be considered as the press.<sup>34</sup>

Therefore, if publications specified as the citizen press fulfill the above mentioned statutory prerequisite, which, taking into account portals such as iThink.pl or Wiadomości24.pl, seem to be the rule in most cases, they should be considered as the press in the light of the Press Law.

If it turns out that, in an actual specified condition, given citizen publications do not fulfill the prerequisites specified by the statutory definition of the press, a regulation from Article 54b of the Press Law should be taken into account. This regulation broadens the rules concerning legal responsibility and press proceedings onto all violations of law connected to transmission of human thoughts through mass media other than the press, regardless of the transmission technique applied. The responsibility of e.g. book editors, film makers, game makers, videocassette makers and record makers as well as CD and DVD publishers, will be based on these rules. It should be noted that the disposition of Article 54b of the Press Law - in relation to an appropriate specific provision, obviously – may become the responsibility basis for individuals who publish materials that may libel, insult or infringe personal rights on the Internet.<sup>35</sup>

In reply to the changing situation at the media market and the rapid development of mass media that operates with the use of the Internet, the Minister of Culture and National Heritage prepared a project aimed at modifying the Press Law Act of October 14, 2009<sup>36</sup>. Its main purpose was to adjust the rules of the Press Law to the technological and constitutional changes that had taken place since the act came into force in 1984. It was stated in the substantiation to the project that due to a rapid development and diversity of forms of the electronic press, the definition of the press written from a negative aspect, which would exclude from its legal regime all the forms of press activities that might be considered similar to the press even though, de facto, they are not, should be introduced in the

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<sup>34</sup> M. Wojtasik, *Naruszenie dóbr osobistych w internecie (Violation of Personal Rights on the Internet)*, Radca Prawny 2001, No. 6, page 40.

<sup>35</sup> J. Sobczak, *Prawo prasowe. Komentarz (The Press Law. A Commentary)*, A commentary to Article 54b of the Press Law of January 26, 1984, Lex Omega 2008.

<sup>36</sup> <http://bip.mkidn.gov.pl/pages/projekty-aktow-prawnych/projekty-ustaw.php> 20.12.2009; When it comes to the previous Press Law projects see K. Skubisz-Kępką, *Sprostowanie i odpowiedź w prasie. Studium z zakresu prawa polskiego na tle prawnoporównawczym (Correction of an Opinion and a Replay in the Press. A Case Study of the Polish Law Against the Legal-Comparative Background)*., Oficyna Publishing House 2009, Chapter III.6, Lex Omega 2009.

draft amendment to the Press Law. The initiative to supplement the definition of the press with a literal indication of press publications that are published in an electronic form was renounced in the draft amendment. The project took into account the existing standpoint, according to which magazines and newspapers do not lose the hallmarks of a press title in case they are published in an electronic form. It was suggested that broadcasts without editorial preparation should not be regarded as the press. Therefore, according to the project creators and in the light of new propositions, blogs, electronic mails, message boards and social networks used for an exchange of user-created contents as well as private web pages, would lose the attribute of the press. As it comes out from the project substantiation, the aim of its creators is to prevent the regulations of the Press Law from being applicable to these forms of transmission. By proposing the above solutions, the project designer aims at eliminating the interpretative doubts, currently present in practice, which are connected to the existing, broad definition of the press.

Postulates for a change in the definition of the press, currently defined in Article 7 of the Press Law, were submitted, among others, by The Polish Chamber of Information Technology and Telecommunications, The Polish Journalists Association, The New Media Foundation, The Helsinki Foundation for Human Rights, Human Rights Defender, National Union of Journalists and Press Freedom Monitoring Center. It was postulated by The Polish Chamber of Information Technology and Telecommunications, The Chamber of Press Publishers and Blogmedia24pl Association to exclude various kinds of the Internet entries, published online by the users of news bulletins, from the concept of “press material”.

It is worth pointing out that the discussed law project assumes an introduction of a voluntary registration system for press titles (newspapers or magazines) that are published in an electronic form. The creators of the draft amendment accepted the solution according to which the editors of the electronic press, who decide to register their press title in the Regional Court, will be able to run their press activity according to the rules defined by the Press Law. Therefore, only after the completion of the registration requirement will the Internet press journalists be able to enjoy the same rights as the printed press journalists. A publisher who renounces the registration procedure of his or hers press title that appears in an electronic form will, according to the new proposals, be running an off-press activity.

It was suggested in the project that the publishers of the Internet press will not carry full responsibility for the content of the materials placed by web portal and message board users and the content of the Internet posts. In this way, the proposed amendment assumes that a publisher of the Internet press title will be responsible solely for the self-generated content and will not be held accountable for the materials placed online by an external entity. Therefore, the responsibility for a possible violation of personal rights will be put directly on the people publishing the law violating materials.<sup>37</sup>

Despite the fact that community consultations regarding the described draft amendment are still taking place, it is possible to state that these propositions which are, after all, so very important from the point of view of further development of the citizen press, were evaluated critically. The proposed solutions arouse a lot of doubts. It seems that the amendment of the act will not cause an exclusion, from the definition of the press, of various social networking communities due to the fact that their content is very often moderated. This is a specific process of editorial preparation. What is more, the solution, according to which a journalist who single-handedly and individually establishes and runs an Internet periodical (blog) and thus creates it without any editorial preparation should function outside the legal framework of the statutory definition of the press, seems unjustifiable. M. Zaręba noticed that the removal of broadcasts which are not subject to editorial preparation, especially blogs and web pages of private users, from the definition of the press is contrary to the recommendations of the Council of Europe.<sup>38</sup> Additionally, P. Waglowski sees the ministry propositions as an attempt to limit the scope and institutional protection of freedom of speech in Poland.<sup>39</sup> Moreover, the Chamber of Press Publishers has criticized the proposition of the voluntary character of legal registration of the electronic press. According to this institution, the indicated regulation will cause an open inequality between the subjects who print newspapers or magazines on paper and those who do it electronically, which may result in a complaint to the Constitutional

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<sup>37</sup> Cf. Justification to the alternation of the Press Law Act of January 14, 2009. At present, the act has been sent for community consultation to the following subjects: Chamber of Press Publishers, Polish Journalists Association, Association of the Journalists of the Republic of Poland, Media Ethics Council, Helsinki Foundation for Human Rights, Free Word Association, Book Institute, Media Pro Bono Foundation, Catholic Press Association, Association of Citizen Journalists, Journalists Syndicate, Polish Press Agency, Polish Confederation of Private Employers "Lewiatan", Catholic Information Agency, Human Rights Defender. What is more, the amendment of the Press Law has been sent for consultation to major publishing houses in Poland as well as National Union of Journalists, Confederation of Polish Employers and Marketing Communication Association. Once the community opinion becomes known, the act will be sent for further modifications.

<sup>38</sup> Cf. S. Wikariak, *Bloger nie zasłoni się tajemnicą dziennikarską (A Blogger Will Not Hide Behind the Journalists' Right to Secrecy)*, Rzeczpospolita 2009, No. 260, Section C1.

<sup>39</sup> Ibidem.

Tribunal. The discussion on the new legal regulations in the Press Law was aptly summarized by R. Markiewicz who said that: “voices of protests are heard which claim that a proposition to include the Internet publications into the Press Law and, accordingly, also an obligatory registration, is an attempt against freedom of speech. However, once they are excluded from the Press Law, similar voices are heard claiming that journalists are been deprived of the benefits they are entitled to (...). We are, without a doubt, on the eve of a serious discussion on the subject of endangerment of the traditional press by the Internet. Therefore, within this context, the very regulations on whether or not a blog is the press, may become third-rate.”<sup>40</sup>

#### **V. A definition of the term “journalist.”**

Generally speaking, a journalist is a person who informs the society of the state of public affairs.<sup>41</sup> Three concepts of the journalist profession have been presented during the preparations of the Press Law that is currently in force. In the first one, the condition for being considered a journalist was to be in a work relation with an editorial office. According to the second, a journalist is someone who actually practices the journalistic profession, whereas the third one listed the membership in the Journalists Association as an indispensable requirement. The Press Law Act of January 26, 1984, was based on the first and the second concept. Therefore, a normative definition of the term “journalist” is enclosed in the Press Law in force. According to Article 7 Section 2 Point 5 of the Press Law, “a journalist is a person responsible for the edition, creation or preparation of press materials and remains in a work relation with an editorial office or a person who takes up such an activity for an editorial office and with its authorization.”

There are three prerequisites which can be pointed out in this definition and which, when fulfilled, allow a given person to be treated as a journalist and the Press Law to be applicable to him/her. These are:

1. creating or preparing of press materials
2. remaining in a work relation with an editorial office or
3. doing activities mentioned in point 1 and 2 for an editorial office and with its authorization.

<sup>40</sup> R. Markiewicz, *Opinia (An Opinion)*, Rzeczpospolita 2009, No. 260, Section C1.

<sup>41</sup> P. Szustakiewicz, *Ochrona powszechnego dostępu do informacji (Protecting the Public Right to Information)*, Prokuratura i Prawo 2003, No. 5, page 78.

The prerequisites enumerated in points 1 and 2 or in points 1 and 3 must be fulfilled cumulatively.

The first part of the definition, according to which a journalist is a person performing intellectual work that entails the creation of the press and remaining in a work relation with an editorial office, should not raise any doubts.

Similarly, there is no question that the materials prepared by a citizen journalist should be qualified as the press material. The concept of the press material was defined in Article 7 Section 2 Point 5 of the Press Law. From this act it follows that the main goal of a journalist is the preparation of the press materials and that his/her activity must be strictly connected to the functioning of the press, as it must be referred to the creation or preparation of the press materials that are to be published in the press. Article 7 Section 2 Point 5 of the Press Law constitutes that “every text or picture that is, by nature, informative, journalistic, documentary or other, and that is either printed or handed over for printing, is considered a press material regardless of the mass medium, type, form, usage or authorship.” Therefore, if a citizen journalist prepares or creates materials with the intention of online publication on a web page that, within the meaning of the act, is considered to be the press, they should be specified as the press materials. It was stated in the verdict of the Supreme Court of September 28, 2000 that letters to the editor constitute the press material in the meaning of Article 7 Section 2 Point 4 of the Press Law, under the condition that they were sent to the editorial office with a printing purpose. The publication of the press material coming from a citizen journalist, as well as of the above mentioned letter to the editor, must be preceded by a thorough and solid verification of the information contained within the material, as required by Article 12 Section 1 of the Press Law. The publication of a letter to the editor as well as of the material coming from a citizen journalist is not regarded as a quotation of a statement by a third party and, therefore, does not excuse the editor in chief from responsibility.<sup>42</sup>

As J. Sobczak points out, it is impossible to include people who are, by no means, connected to any editorial office and collect information strictly for themselves with the aim of publishing them as a book or a series of articles, into the circle of journalists.<sup>43</sup>

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<sup>42</sup> Cf. the verdict of the Supreme Court of September 28, 2000, V KKN 171/98, OSNKW 2001, No. 3-4, page 31 and the following.

<sup>43</sup> J. Sobczak, *Prawo prasowe. Komentarz (The Press Law. A commentary)*, A commentary to Article 7 of the Press Law of January 26, 1984, Lex Omega 2008.



The part of the discussed definition that constitutes the source of disputes and debates is the section which claims that a person who performs characteristic journalistic activities and does this “for an editorial office and with its authorization”, should also be considered a journalist. Having this notation in mind, every person who is legally connected to an editorial office and authorized to act for it will be considered a journalist. According to literature, it may be: a job performance contract, a contract for a specific task, activities of a newspaper intern or even a permanent cooperation with an editing office which aim is to gather materials for this specific office.<sup>44</sup> A person working for an editorial office and with its authorization is also a person who has informed the office of some irregularities and has undertaken himself to deliver materials.<sup>45</sup> According to E. Ferenc-Szydełko, in the light of the above statement, every person who, even extemporaneously, was involved in the preparation of press materials, e.g. a copy-typist copying a text, can be a journalist.<sup>46</sup>

People who perform citizen journalism usually do this on their own web pages or on specially created web portals mentioned above like iThink.pl or Wiadomości24. Undoubtedly, a provider of a free Internet service cannot, within the meaning of Article 7 Section 2 Point 6 and 7 of the Press Law, be considered as an editor or editor in chief, as he does not have the privilege to decide what materials get published or decide on the overall activity of an “editorial office”.<sup>47</sup> Therefore, a question arises if a citizen journalist is a journalist mentioned in Article 7 Point 5 of the Press Law. The answer to this question has serious consequences when it comes to the evaluation of rights and obligations of citizen journalists.

When evaluating the status of citizen journalists who operate via the Internet it is worth paying attention to the regulations of the Act on Rendering Electronic Services.<sup>48</sup> This act regulates, among other things, the obligations of an Internet service provider that is the obligations of an object who makes his web pages available for publication of civil press materials. As it results from the content of Article 8 of the Act on Rendering Electronic Services, it is the duty of the service provider to define the terms and conditions concerning electronic services which would regulate the rights and

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<sup>44</sup> Ibidem.

<sup>45</sup> P. Szustakiewicz, *Ochrona powszechnego dostępu do informacji (Protecting the Public Right to Information)*, Prokuratura i Prawo 2003, No. 5, page 78.

<sup>46</sup> Cf. E. Ferenc-Szydełko, *Prawo prasowe. Komentarz (The Press Law. A commentary)*, A commentary to Article 7 of the Press Law, Oficyna Publishing House 2008, Lex Omega 2009.

<sup>47</sup> M. Wojtasik, *Naruszenie dóbr osobistych w internecie (Violation of Personal Rights on the Internet)*, Radca Prawny 2001, No. 6, page 40.

<sup>48</sup> The Act on Electronic Services of July 18, 2002, Journal of Laws of 2002, No. 144, Item 1204.

obligations of the provider and receiver of the electronic service. It is an intrinsic requirement for logging into a web portal with the aim of publishing one's materials. The acceptance of electronic services regulations is the source of a legal contract between a service provider (the object running the web portal) and a service receiver (a citizen journalist).<sup>49</sup> The accepted regulations shape the rights and obligations concerning the use of the web portal for both parties.

It follows from the analysis of the regulations governing the provision of electronic services and functioning in legal circulation that, except for obligatory elements such as the description of the type and scope of electronic services, service conditions (that is, among other things, technical requirements necessary for a cooperation with teleinformatic system of the service provider, a prohibition against providing illegal materials by the service provider, the terms and conditions of entering into a contract and terminating a contract by electronic means, and the complaint handling procedure) which, according to Article 8 Section 3 of the Act on Rendering Electronic Services, are obligatorily inscribed into the regulations, the rules of web portals contain: regulations that allow the user to publish materials (texts, pictures, links), statements and comments; regulations concerning the protection of personal data; detailed rules on the service usage; regulations concerning intellectual property rights and the rules of gratification for them.<sup>50</sup> Most of the various rules inscribed in the regulations state that a user who makes a registration becomes obliged to follow the rules of the prevailing law as well as the Journalists Code of Ethics, good customs,<sup>51</sup> or the Journalistic Code of Conduct.<sup>52</sup> In the regulations there are also annotations according to which the user takes upon himself the obligation to cover for possible damage in the provider's property, should it take place due to the publication of illegal materials by the user.<sup>53</sup> As a sanction for breaking the described rules and regulations, the account will be blocked and the content published by the user will be

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<sup>49</sup> Cf. Article 384 § 1 of the Civil Code states that: "a contract model established by one of the parties, especially the general prerequisites of the contract, contract model, terms and conditions, binds the other party if it was delivered to them before the contract was signed."

<sup>50</sup> Cf. regulations of the iThink.pl web portal available at <http://www.ithink.pl/tekst/regulamin/>, 19.II.2010; regulations of the Wiadomosci24.pl web portal available at [http://www.wiadomosci24.pl/regulamin/?sesja\\_gratka=db2992aa0773eb8a54b6d7e568db66b2](http://www.wiadomosci24.pl/regulamin/?sesja_gratka=db2992aa0773eb8a54b6d7e568db66b2), 19.II.2010; regulations of www.doorg.info web portal available at <http://www.doorg.info/wp-login.php?action=register>, 19.II.2010; regulations of www.slashdot.com web portal available at <http://geek.net/index.php/terms-of-use/>, 19.II.2010; regulations of the citizensmedia.com web portal available at [http://thecitizensmedia.com/misc/terms\\_and\\_conditions](http://thecitizensmedia.com/misc/terms_and_conditions), 19.II.2010.

<sup>51</sup> Cf. Point IV Sub-point 1 and 2 of the regulations of www.wiadomosci24.pl.

<sup>52</sup> Cf. Point II Sub-point 1 of the regulations of www.goorg.info.

<sup>53</sup> Cf. Point III Sub-point 17 of the regulations of www.wiadomosci24.pl.

removed. For instance, the provider for the Wiadomosci24.pl portal has reserved the right to refuse the publication of certain materials and to their shortening without justification or notice.<sup>54</sup>

It is worth noticing that, regardless of the fact that operators make users follow the rules of the Press Law, they themselves, in certain situations, try to omit some of the prevailing rules of that act, e.g. point II Sub-point 11 of the regulations of Wiadomości24.pl gives only some of the users the right to publish, with the consent of an operator, under a pseudonym.<sup>55</sup>

Therefore, if, in a specific factual situation, it is possible to deduce from the content of particular regulations concerning electronic service that a service receiver, a citizen journalist, has been given permission to act for an editorial office and with its authorization, which should be a rule on web portals dealing with the citizen press, then such a journalist, in as far as his rights and obligations are concerned, according to Article 7 Section 2 Point 5 of the Press Law, should be treated equally to other journalists who perform their job based on an employment contract in the traditional press.

Therefore, in such situations when a citizen journalist has, firstly, published his materials on a web page, which fulfills the requirements of the definition of the press and, secondly, has attended to the preparation and creation of the press materials for an editorial office and with its authorization, which means that he accepted the regulations of electronic services, then such a journalist should be recognized as the journalist mentioned in Article 7 Section 2 Point 5 of the Press Law.

“To define the profession of a journalist seems to be becoming a grand necessity. It has become visible in the discussion on the matter of vetting, but other contemporary realities of social life also require a precise indication of who is a journalist and, therefore, can adduce to the prerogatives connected with the profession, e.g. the right to journalistic secrecy. The definition of the profession should be clearly and concretely stated.”<sup>56</sup> It is indicated in literature that the establishment of criteria for obtaining the status of a journalist, e.g. a clearly described legal situation with an editorial office, a creative character of work, adequate qualifications, is absolutely necessary. The membership in a journalist corporation should not be obligatory. However, the registration of

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<sup>54</sup> Cf. Point 18 of the regulations of [www.wiadomosci24.pl](http://www.wiadomosci24.pl).

<sup>55</sup> Article 15 of the Press Law states that an author has the right to conceal his real name.

<sup>56</sup> Cf. E. Ferenc-Szydełko, *Prawo Prasowe. Komentarz (The Press Law. A commentary)*, A commentary to Article 7 of the Press Law, Oficyna Publishing House 2008, Lex Omega 2009.

journalists, according to the Polish and European classification of professions, seems to be necessary. Such changes would enforce the position of a journalist in relations to editors, as they would grant him a stable, permanent work status.<sup>57</sup>

## VI. Conclusion

From the above analysis of the rules and regulations of the prevailing Press Law, it can be concluded that in many situations electronic web portals should be treated in the same way as the electronic press and amateur authors, who publish their materials through this medium, as professional journalists. Such an equalization of the traditional press and new electronic forms of the press activity carried out by citizens seems not to be a good solution. J. Taczkowska noticed that, for an Internet broadcast to be located within the notion of the press and to undergo a mandatory registration, there are different rigors and criteria of legal responsibility for the people publishing there that need to be applied. Currently such people will, undoubtedly, be treated as journalists. Moreover, the penal regulations included in the Press Law are applicable to them, which means that their line of duty is longer than the one of those who do not have the status of a journalist. Therefore, the function, role and operating method of an Internet publisher will be similar or even identical to the ones applied to a traditional publisher and the current differentiation of their legal status seems to be unauthorized.<sup>58</sup>

The presently prevailing state of things is the consequence of the law's inability to follow the changing reality. The numerous propositions of amendments to the Press Law made by different journalistic communities and mentioned in the above article are a proof of that. Interpretative doubts concerning the prevailing laws, multiple penal proceedings against web portal publishers who did not fulfill the obligation of legal registration of the press,<sup>59</sup> the Council of Europe Report which states the legal limitations of the freedom of press in Poland, should become the cause of a

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<sup>57</sup> Ibidem.

<sup>58</sup> J. Taczkowska, *Gloze to a decision of the Supreme Court of July 26, 2007, IV KK 174/07, OSP 2008, No. 6, page 60.*

<sup>59</sup> Cf. S. Wikariak, *Grzywna za prowadzenie serwisu internetowego (Fines for Managing a Web Service)*, Rzeczpospolita 2009, No. 138, Section C1; S. Wikariak, *Ministerstwo idzie na wojnę z internautami (Ministry Goes to War with Internet Users)*, Rzeczpospolita 2009, No. 140, Section C1.

constructive discussion on the benefits and perils that come from the use of different forms of electronic news transmission.

K. Skubisz-Kępa stated that “regardless of the actions taken, the passing of a new Press Law is, as it seems, currently impossible. This testifies not only to the high difficulty level of the creation a proper legal act, but also to the lack of an authentic political will when it comes to the fulfillment of such a procedure.”<sup>60</sup>

There is nothing left to do but to remain hopeful that the reality of legal actions will enforce a creation of new legal solutions and will cause a change in the Press Law and its tailoring to the modern methods of an electronic transfer of information.

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<sup>60</sup> K. Skubisz-Kępa, *Sprostowanie i odpowiedź w prasie. Studium z zakresu prawa polskiego na tle prawnoporównawczym (Correction of an Opinion and a Replay in the Press. A Case Study of the Polish Law Against the Legal-Comparative Background)*, Oficyna Publishing House 2009, Chapter III.6, Lex Omega 2009.

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