

RIGHT TO PROTECTION OF REPUTATION OF LEGAL PERSONS IN CYBERCULTURE. THE CASE OF CHRISTIANITY

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Summary. The aim of the present article is to demonstrate how the current legislation is not adapted to protect personal interests in cyberspace, in particular with regard to reputation. The article analyses the title of an online text in which the expression ‘perverts’ was used with regard to Catholic clergymen. The aim of the article is to analyse legislation and case law. It turns out that it is virtually impossible to protect the right to reputation of Christianity or its officers when it is infringed online. The chief hypothesis of the study is that the lack of supervision over the publication and distribution of content, including anti-Christian content, online may adversely affect the emerging cyberspace. The doctrinal and the descriptive methodology were employed in the study. As a result, it is demonstrated that a communication cyberspace needs to be created, among others with the aid of codes of good practices.

Key words: personal interests, cyberspace, threats, defamation, press law, Christianity, clergy

INTRODUCTION

One of the characteristic features of the early 21st century in Europe is the arguably all-out attack against Christianity, also over the media and on the Internet. It takes various forms, from destroying religious symbols, mostly crucifixes, through wrecking facilities, including chapels, and profaning cemeteries, ending with anti-Christian media campaigns, films or derogatory press or online articles.¹ Events of that sort happen in numerous European countries, including Germany, Ireland, the UK, and also Poland. They have even sparked a response in the form of the European Parliament resolution 2012/C 136 E/11 of 20 January 2011 on the situation of Christians in the context of freedom of religion.²

The aim of this paper is to present the role of articles published online whose purpose is indubitably to defame Christianity, and in particular Catholicism. The content of those texts as well as their number and methods of dissemination very swiftly create a negative image of Christianity in society. The key element are the headlines, which do not always reflect the content. The narration is developed in such a manner that it is difficult to specify the victim and the perpetrator. This,

¹ In the article *Irlandia Północna: niepokojący wzrost ataków na obiekty kultu religijnego*, <https://www.pch24.pl/irlandia-polnocna--niepokojacy-wzrost-atakow-na-obiekty-kultu-religijnego-,70823,i.html> [accessed: 3.01.2020].

² O.J. EU C 136 E/53, 11.05.2012. Cf. Bąba 2006–2007, 391–95.

however, is of no major importance, since most readers or Internet surfers read only headlines. The fact that the debate, or rather the world view dictate has moved into the virtual, globally omnipresent space has the result that it becomes increasingly difficult to specify the victim and the perpetrator as well as the latter's true intent.

Hence, the basic research hypothesis of the study is that the possibility of essentially unsupervised broadcast and distribution of content, including anti-Christian content, can adversely affect the emerging cyberculture and that it creates and preserves negative opinions and actions of some social groups against others [Sitek and Such-Pyrgiel 2018, 201–15]. The situation is difficult in so far as the current legal solutions provided for in the Civil Code or even in the Polish Constitution are adapted solely to conduct typical for the real, i.e. not virtual world.

The aim of the present study is to analyse the phenomenon of damaging reputation, repute or honour with the use of virtual instruments. An example of that phenomenon is an article whose title contains derogatory content that defames Christianity. The author will analyse provisions of law, case law, views presented in the doctrine and the description of the events.

1. HEADLINES OF ONLINE ARTICLES (TEXTS) AS A POTENTIAL INSTRUMENT OF DISCREDITATION

The motivation to deal with the fairly widespread and organised activity aiming to defame Christianity was the article by A. Szulc titled '*I Don't Let In Perverts. How Do Poles Welcome Priests' House Calls?*' The article was published on the website of the widely-read weekly *Newsweek*.³ The phrase containing the unambiguously negative, that is defaming expression, namely 'pervert,' with regard to Catholic clergymen is not a statement by the author of the article, but a quotation of a person who refused to let into their flat or house a priest with a traditional Christian visit to parishioners [Dullek 2017, 139–44].

The quotation in this form placed in the title of the text plays a vital role in the message. Those who read texts online or rather browse the Internet most frequently read only headlines. Few people read the text as a whole and analyse it critically. It is namely still believed that texts published online, and formerly texts printed in press, are thought to be accurate, and often also scientific in character.

According to A. Sadowska, titles play a communicative and impressive function, thanks to which the sender, or nowadays the author, of the text convey their feelings. The aim of the author and the purpose of the title is to increase the text's popularity and the number of the so called page visits. The words used in the headline are supposed to be simple and understandable for as wide a group of recipients as possible. The author or publisher use the title not to convey new con-

³ The text online: <https://www.newsweek.pl/poljska/spoleczenstwo/po-co-polacy-przyjmuja-ksiedzapo-koledzie-ksiadz-i-chodzenie-po-koledzie/sn9mwqp> [accessed: 3.01.2020].

tent, but to express their opinion. One of the roles the headline plays is to inform the potential reader of the individual experiences and remarks, and not of the majority's views. The purpose of press headlines such as the one quoted from *Newsweek* is *to shock the reader, to leave a mark in their consciousness*. The recipient has to take a stance to the outlined problem based on the headline alone [Sadowska 2007, 402–406]. The headlines of articles, texts or reportages published online play such a role, as well.

Modern communication takes place predominantly online. Ever fewer persons use traditional newspapers or even television [Sitek 2017, 257–70]. According to the *Digital 2019* report from *Hootsuite*, a typical person spends on average 6 hours 42 minutes per day online (data for 2019). The most frequently used tools are mobile devices.⁴ A considerable portion of this time is devoted to running business or carrying out commercial activities – e-commerce.

A substantial part of activities online involve looking for various types of information on websites. The characteristic feature of this communication is that the users are not only readers, but also content creators, for instance by means of commenting. A dysfunction of this communication method is the lack of possibility to confront the published content with reality. It is not uncommon that the communicated views are *a priori* associated with properties such as scientific character, accuracy, or progressivism. They can also be accompanied by the rather vague expression ‘some people say.’ However, it is not clear what the basis for deeming particular views accurate or scientific is. This argumentation was employed also by the leaders and ideologists of the two totalitarian regimes of the 20th century – fascism and communism. Furthermore, science can never achieve absolute certainty. Otherwise, further research would make no sense. On principle, scientific progress builds upon uncertainty. Current results are in a reasonably near future improved or deepened. That is why the debate of today is centred not so much on scientific certainty as on innovation. Objectively speaking, scientific certainty would halt research. It is precisely uncertainty which lends sense to science [Białynicki-Birula 2014, 7].⁵

Unquestionably, human activity online carried out with the use of telecommunications devices engenders a new dimension of human culture, called cybersculture. P. Le'vy maintained that cybersculture is a set of tangible and intangible elements, practices, customs, ways of thinking and values [Lévy 2001, XVI]. The hallmark of cybersculture is its superculturality. Evidently, a new global social order is emerging. Thanks to the Internet, people communicate with each other regardless of their real cultural background.

⁴ *Digital 2019: Global Internet Use Accelerates*. Special Reports, <https://wearesocial.com/blog/2019/01/digital-2019-global-internet-use-accelerates> [accessed: 4.01.2020].

⁵ Science was given two objectives ever since the Enlightenment, that is to achieve certainty and find out the truth. Over time, however, this belief eroded. Many twentieth-century thinkers began to criticize this perception of the sense of research, particularly in the area of social sciences.

Yet the ease of communicating with others online entails numerous threats, including the possibility to create and distribute content which infringes natural and legal persons' personal interests [Rybak and Dudczyk 2019, 124–40]. As A. Rogacka-Łukasik rightfully remarks, cyberspace offers unlimited possibilities to infringe all types of personal interests [Rogacka-Łukasik 2012, 236–38]. In the case of the right to reputation, an important phenomenon is that of hating, that is using abusive language, expressing disdain for various phenomena or defaming interlocutors or institutions online. Such utterances are often filled with hatred. Another manifestation or form of hating are also articles, often with relatively neutral content, yet whose headlines demonstrate hate [Juza 2015, 29]. An example from this category could be an article headline containing the utterance of a chance, anonymous person which is presented as a meaningful statement. This is the case of the above quoted headline: 'I Don't Let In Perverts,' which clearly refers to Catholic clergymen.

2. THE LEGAL BASIS FOR THE PROTECTION OF REPUTATION OF CHRISTIANITY/CATHOLICISM

The legal ground for the protection of personal interests is Art. 23 of the Civil Code as well as some other provisions, including the Polish Constitution, the Penal Code and standards of international or EU law. Following P. Machnikowski, it can be said that personal interests are associated with the individual, and some of them also with legal persons or organisational units without legal personality. Personal interests are non-property and objective rights. A personal interest is recognised and protected by legislation and case law [Machnikowski 2019, 57–60]. Personal interests are related to human dignity, yet they are inferred not from the inherent human dignity, but from statutory law (the objectification of personal interests). It is believed that the list of personal interests included in Art. 23 of the Civil Code is not closed. Therefore, further types of personal interests can be found in case law [Nazaruk 2019, 98].

One of such personal interests is the right to reputation, which is enjoyed by both natural and legal persons. Art. 23 of the Civil Code does not expressly list reputation as a personal interest. It does, however, include honour. Reputation as a personal interest is listed alongside honour in Art. 47 of the Polish Constitution, pursuant to which “[e]veryone shall have the right to legal protection of his private and family life, of his honour and good reputation and to make decisions about his personal life.” So what is the relation between honour and good reputation? Looking at the construction of Art. 47 of the Constitution, these are two separate concepts. According to K. Riedel, honour can be enjoyed by individuals alone, while reputation concerns both individuals and legal persons [Riedl 2017, 138]. According to the judgement of the Appeals Court in Warsaw of 17 October 2014, ref. no. I ACa 519/14, “honour (dignity, a person's reputation) are concepts which cover all areas of personal, professional and social life. Thus, a person's

honour can be damaged in that they are accused of negative conduct in personal and family life, in that they are accused of inappropriate conduct in professional life with the result of damaging the person's reputation and potentially exposing them to the loss of trust necessary to practise their profession or other activity (the external element – reputation, confirmed by the Supreme Court in its judgement of 9 October 2002, ref. no. IV CKN 1402/00, P. Książak in commentary to the Civil Code" Lex 2014), and in that they are insulted, treated offensively.

Reputation with regard to legal persons, in turn, is tantamount to 'renown' and 'good fame.' The loss of reputation or renown in the case of legal persons which carry out business activity may manifest itself in the loss of profit caused e.g. by decreased sale of products or services. According to P. Granecki, damage to reputation occurs also when clients lose trust to a particular legal person [Granecki 2002, 12, 15].

The Appeals Court in Warsaw stated expressly in its judgement of 31 March 2015 (ref. no. VI A Ca 558/14), that the expression 'pervert' is pejorative. In the common understanding, it refers to a person with a sexual disorder. Further, the court ruled that establishing that the defendant infringed the complainant's personal interests in that she cried at them in this manner without other persons being present does not necessarily make the defendant liable under Art. 24 or Art. 448 of the Civil Code. Whether an unlawful infringement of personal interests occurred in a particular case depends also on many other factors, including the place, form, time, purpose, context and type of content of the utterance in question. An analogous stand was presented by the Appeals Court in Warsaw in its judgement of 22 January 2015 (ref. no. VI A Ca 232/14). According to the court, such inclinations and conduct may be attributed to someone only with exceptional consideration and restrain so as to preclude any undue interference in someone's life.

In the case of the headline discussed in this article, referring to Catholic clergymen as 'perverts' evidently undermines the trust enjoyed by them and by the institution they represent.

3. POSSIBILITIES VS EFFICIENCY OF DEFENCE OF THE REPUTATION OF CHRISTIANITY/CATHOLICISM

The legal basis for the protection of personal interests are Art. 24, sect. 1 and Art. 3 of the Civil Code. Pursuant to Art. 24, sect. 1 of the Civil Code, any person whose personal interests are threatened by another person's actions is entitled to demand that the actions be ceased unless they are not unlawful. Certainly, describing Catholic clergymen en masse as 'perverts' may be objectively deemed an infringement of personal interests. This is where the first complication arises. The aggrieved has to be specifically individualised as a natural or legal person. In the discussed article, however, no specific person or church institution are meant. Therefore, it is difficult or even impossible to unmistakably identify the aggrieved person.

The impersonal character of the utterances published in online media precludes identifying the victim unambiguously. In the case of negative content which damages the reputation of Christianity construed as a certain ideology, and particularly Catholicism and its officers, the impersonal character of the utterances renders it impossible to seek protection of the right to reputation by both individual officers (clergymen), because they are not able to prove individual damage, and the institutional collective. In the latter case, the difficulty stems from the structure of the Catholic Church. Pursuant to Art. 6, sect. 1 of the Act of 17 May 1989 on the relations between the State and the Catholic Church in the Republic of Poland,⁶ the Church itself is not a legal person. Legal persons are its organisational units, that is the Episcopal Conference, and under Art. 7, sect. 1 also among others metropolis, dioceses, or parishes. It is hardly imaginable that any of those legal persons of the Catholic Church could prove damage.

An action brought by any clergyman or Church institution may be dismissed by the court, since it is hard to prove that any person was harmed by such an utterance. It is highly probable that the court will take into consideration that numerous articles describing clergymen who had committed acts of paedophilia have been published by the media, including online. It will not matter that these publications many times cite or discuss the same cases in order to exaggerate the dimensions of the negative acts committed by clergymen in the readers' eyes. In addition, the court may decide that such tactics in media publications justify such accusations and therefore lift the unlawfulness of the infringement of personal interests, which is the prerequisite of enjoying legal protection under Art. 24, sect. 1 of the Civil Code.

Another factor which precludes efficient defence against defamation of clergymen or Church institutions is the fact that the headline 'I Don't Let In Perverts.' How Do Poles Welcome Priests' House Calls? Includes a quotation of an anonymous person whose personal data are covered by journalist's privilege.⁷ Thus, the author cannot be claimed to have acted intentionally, and consequently – cannot be attributed guilt or negligence. Nevertheless, the Appeals Court in Łódź decided in its judgement of 7 June 2013 (ref. no. I ACa127/13), that pursuant to Art. 24 of the Civil Code, the prerequisite of liability for an infringement of personal interests is the unlawfulness of the perpetrator's action. What is meant here is not only unlawfulness as an objective statutory concept, that is an illegal action, but also an action which violates the principles of social co-existence, irrespective of the perpetrator's guilt. Following the view established in the Supreme Court's case law, unlawful is any action which infringes a personal interest if none of the detailed grounds of justification are present, the latter being: acting in compliance with the legal order, exercising a subjective right, acting with the aggrieved person's consent, and acting in defence of a legitimate interest (judgement of the

⁶ Journal of Laws of 2019, item 1347.

⁷ Art. 15 of the Act of 26 January 1984, the Press Law, Journal of Laws of 2018, item 1914.

Supreme Court of 19 October 1989, ref. no. II CR 419/89, II CR 419/89, Lex 8996). In view of the presumption established by Art. 24, sect. 1 of the Civil Code, the complainant does not have to prove unlawfulness when claiming that their personal interests have been infringed.

The key element of the judgement is the statement that the aggrieved does not have to prove the unlawfulness of the defamer's action. Unlawfulness is presumed when the court establishes that defamation took place. Furthermore, an act is unlawful also when it violates the principles of social co-existence, regardless of the perpetrator's guilt. This interpretation of Art. 23 and 24 of the Civil Code resulted in the judgement of the Supreme Court of 6 April 2004 (ref. no. I CK 484/03), in a case brought by Rev. Z. Peszkowski, who felt offended when the leftist daily Trybuna called Pope John Paul II 'a common vicar from Niegowic' in 1997. The Supreme Court held that insulting the pope could infringe the personal interests of a clergyman, as clergymen have a close relationship and special emotional bond with the pope. Calling clergymen 'perverts' may be a reason for bringing action only by secular persons who feel an emotional bond with clergymen on account of their faith.

This fairly optimistic forecast based on the analysis of the legislation and case law is undermined by the content of Art. 24, sect. 3, pursuant to which the above provisions remain without prejudice to the rights stipulated in other provisions, in particular in copyright law and law on inventions. This stipulation refers principally to press law. Art. 1 of the Press Law Act guarantees the press freedom of expression and implementation of the citizens' right to reliable information, transparency of public life as well as supervision and social criticism. According to G. Kuczyński, critical remarks – and the discussed headline may be counted among them – may in principle cause indignation among the readers. They namely constitute an intellectual provocation combined with exaggeration.

A chance to mitigate the tone of the article 'I Don't Let In Perverts' could be offered by Art. 31 of the Press Law Act, which was repealed by a judgement of the Constitutional Tribunal in 2012.⁸ Pursuant to that provision, the editor-in-chief at the request of an involved natural or legal person was obliged to publish free of charge a matter-of-fact correction of or a matter-of-fact response to a statement which could have infringed personal interests. In turn, pursuant to Art. 31a, which was introduced as a result of an amendment in 2012,⁹ the editor-in-chief is obliged to publish free of charge a matter-of-fact correction of imprecise or untrue information in a press release. This legislative solution does not give grounds to seek any correction, because the title of the article is a true utterance by an unknown person.

⁸ In its judgement of 1 December 2010 (Journal of Laws of 2010, No. 235, item 1551), the Constitutional Tribunal decided that Art. 31 was incompatible with Art. 2 and with Art. 74, sect. 1 of the Polish Constitution, because it did not meet the criterion of required precision in specifying the features of a criminal offence. The provision lost its binding effect on 14 June 2012.

⁹ Journal of Laws of 2012, item 1136 as amended.

4. FINAL CONCLUSIONS

The major part of human activity at the beginning of the 21st century takes place in cyberspace. Many believe that this phenomenon entails numerous threats or dangers. A great number of publications on cyberthreats can be found online. At the same time, the current and future generations will function mostly in the virtual world. The only thing that can hinder this development could be the shortage of energy. However, it is evidently necessary to look at human activity in cyberspace from the positive side, that is not at the threats, but at the development of a normative and social order. The emerging cyberspace needs not so much fighting or restricting but rather ordering. It was similar with automobile traffic: it could not be fought, as some at first intended, but it was ordered by legal provisions and standards of road traffic culture.

Cyberspace likewise needs to develop standards of culture, or in other words – cyberspace culture. Yet a positive approach to cyberspace requires noticing certain dysfunctions, which call for some changes or an adaptation of the current legal regime and culture of human communication to the new reality. One of such areas is the room for uncontrolled infringement of personal interests, in particular in the sphere of slander and accusations, which damage natural and legal persons' reputation. Conclusions from watching human communication in cyberspace force us to not only think, but also act intensely towards introducing legal restrictions, or at least towards granting protection against such infringements. The task is, however, not an easy one, because in the world of conflicted values, they are subject to an a priori hierarchisation in the case law of national courts, and predominantly in the judgements of the ETPC or the CJEU. In the context of the discussed title '*I Don't Let In Perverts*', the freedom of religion and the protection of the rights of believers lose against the right to freedom of speech and journalistic freedom.

It seems that the key to resolve the conflict between various values as well as between the majority and the minority is tolerance. It seems necessary to introduce tolerance as a fundamental principle of IT law or codes of ethics in cyberspace.

Yet the concept of tolerance has no unambiguous interpretation, especially in the religious and political (ideological) dialogue. Universalism or globalisation with the World Wide Web as their foundation support well-organised minorities equipped with new technologies and often backed by big business [Haarscher 2004, 118]. When referring to values such as tolerance, these minorities change them into a tool in their fight to gain ever more room or rights in society at the costs of the majority or tradition. With this end in view, they take actions aiming to discredit values that are fundamental to the majority, including religion and groups of its officers. In contrast, the activists of minority groups are described as progressive or as social avant-garde. Thus, they create asymmetrical divisions within local societies, which can in consequence destabilise them. That is why many countries introduce far-reaching restrictions on the use of the Internet, wit-

ness China, Russia, Syria, Cuba, or Ethiopia. Many countries introduce intensified and at the same time discriminating supervision of the websites visited by the citizens, including websites with religious content, which contain information incompatible with the ideology proclaimed by the majority.¹⁰ This phenomenon only further deepens social asymmetry.

The analysis of legislation and case law indicates that it is necessary to adapt the current provisions of the law to the new virtual reality. An important element of cyberspace are codes of good online practice. They are created by various associations or foundations or even drafted by the Internet industry itself. One of the examples could be the code drafted and promoted by ISPA (The Internet Services Providers' Association), which is based on principles such as honesty, transparency, safety, self-responsibility, and legality of actions.¹¹ Only actions based on those principles can guarantee that the views of others will be respected online without employing methods of quoting shocking utterances in order to discredit specific professional groups – in our case clergymen, but the same method of attack could be used against physicians, professors, or politicians [Florek and Eroglu 2019, 27–36].

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¹⁰ The data come from the report Freedom on the Net 2014, https://freedomhouse.org/sites/default/files/FOTN_2014_Full_Report_compressedv2_0.pdf [accessed: 4.01.2020].

¹¹ Text of the code online: <https://www.ispa.org.uk/about-us/ispa-code-of-practice/> [accessed: 6.01.2020].

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PRAWO DO OCHRONY DOBREGO IMIENIA OSÓB PRAWNYCH W CYBERKULTURZE. KAZUS CHRZEŚCIJAŃSTWA

Streszczenie. Przedmiotem jest ukazanie braku dostosowania obecnie przepisów prawa dotyczących ochrony dóbr osobistych w cyberprzestrzeni, w szczególności dobrego imienia. Artykuł oparty jest na analizie jednego z tytułów tekstów zamieszczonych w Internecie, w którym został użyty termin „zboczeńcy” w odniesieniu do duchownych Kościoła katolickiego. Celem artykułu jest analiza przepisów prawa i orzecznictwa, z którego wynika, że obrona dobrego imienia chrześcijaństwa czy jego funkcjonariuszy w przypadku naruszenia ich w Internecie właściwie nie jest możliwe. Podstawową hipotezą pracy jest twierdzenie, według którego brak kontroli przekazu i dystrybucji treści w Internecie, w tym antychrześcijańskich, może negatywnie wpływać na ciągle tworzącą się jeszcze cyberkulturę. W pracy została zastosowana metoda prawno-dogmatyczna oraz opisowa. Efektem pracy jest wykazanie potrzeby budowania cyberkultury komunikacji m.in. poprzez kodeksy dobrych praktyk.

Slowa kluczowe: dobra osobiste, cyberkultura, zagrożenia, zniesławienie, prawo prasowe, chrześcijaństwo, duchowni

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