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## **Journalistic provocation. Definition – legal and ethics aspects – typology.**

Key words: provocation, entrapment, hidden camera, bugging, eavesdropping, codes of ethics.

Summary: The author of this article examines journalistic provocation in terms of its legal and ethical aspects. The main point of the analysis is connected with the nature of provocation, its aims, social effects and limitations, as well as problems concerning journalistic freedom and responsibility.

Provocation can be applied only as a part of investigative journalism, if it is used for searching for the truth in vital social interest. It should not be used only for commercial, entertainment, fun and sensationalisation of events purposes.

### 1. Introduction

Journalistic provocation is all the more often used as a method of obtaining information. It should be noted that it is a term which isn't fully defined, is somewhat ambiguous and evokes much controversy from the ethical and legal point of view. In literature on the subject there is no uniform, generally accepted definition of journalistic provocation. Journalists themselves associate it with a type of trick; it could be entrapment, using tapping, hidden cameras or impersonating. Media experts would also add to this list sting operations, changing of identity and dressing up to act under cover<sup>1</sup>. There are no set guidelines on when journalistic provocation can or should be used and when traditional methods of collecting information would suffice. The choice depends on the situation. However, it seems that all the more often journalistic provocation is becoming a habit with some media companies. It has grown to be a sure way to gain quick and attractive information. Nevertheless, there is too little reflection on the nature of provocation itself, its effects and responsibility for its use.

This article will attempt to answer the basic questions on provocation - what it is and what it should be, what are its overt and covert goals, what are its consequences and what are the ethical and legal aspects of using provocation. Last, but not least, discussed will be the boundaries of permissible provocation. Additionally, presented will be select typology on the issue, of the different types of provocation, based on criteria resulting from an inherent analysis of the method.

### 2. Definition of provocation

Based on an analysis of definitions, the author understands provocation as activity undertaken by a person or group with a goal to force someone to some action which will be disadvantageous to him or will prove committing of an offence or crime, abuse of power, pathology or some other socially reprehensible behaviour or action<sup>2</sup>. Provocation

<sup>1</sup> See M.Palczewski, *O problematyczności metod dziennikarstwa śledczego. Próba analizy na wybranych przykładach z USA i Polski*, [in:] *Dziennikarstwo śledcze. Teoria i praktyka w Polsce, Europie i Stanach Zjednoczonych*, Łódź 2006, p. 60-65.

<sup>2</sup> Author's definition, based on Polish language dictionary definitions, based on *Encyklopedia PWN w trzech tomach*, Warszawa 1999, vol. 3., p. 68: "PROVOCATION [latin.] inciting to commit an offence in order to start legal proceedings against the subject". Lech Gardocki, *Różne rodzaje prowokacji*, "Rzeczpospolita", 13.06.2005; ([http://www.rzeczpospolita.pl/gazeta/wydanie\\_050613/prawo/prawo\\_13.html?k=on;...\[dostęp](http://www.rzeczpospolita.pl/gazeta/wydanie_050613/prawo/prawo_13.html?k=on;...[dostęp)

can be directed at an individual person, a group or an institution in order to prove or disprove the existence of some kind of unusual phenomenon.

As mentioned earlier, there is no uniform definition of journalistic provocation. Usually something is considered a provocation when it involves the use of hidden cameras, tapping, entrapment, sting operations or other means of tricking people, such as dressing up to change one's identity. The presented above set of journalist tricks is a collection of methods of investigative journalism rather than a definition of a provocation<sup>3</sup>. It should be noted, though, that provocation is not solely attributed to investigative journalism and, on the other hand, this type of journalism does not necessarily demand the use of such methods.<sup>4</sup>

The goal of provocation is to obtain or confirm information incriminating someone (facts, behaviour, documents) or to find evidence on the existence of pathologies and abnormalities in someone's social or political activity. Journalist activity is geared toward this goal and presumes guilt. Journalistic provocation is supposed to confirm speculations on a certain state of affairs or to gain new, convincing evidence against the people under investigation. This type of activity does have the goal to learn the truth, but this certain 'truth' is a presumed hypothesis which needs to be verified.<sup>5</sup> For many, a provocation is often the only way to disclose corruption or illegal activity or to ridicule politicians or bureaucrats.

### 3. Short history of journalistic provocation in Poland

In Poland, journalistic provocation as a method of obtaining information began to be used on a larger scale in the 1990s. Among the most famous cases are: purchase of TNT from an anti-terrorist group at Okęcie Airport by *Super Express* journalists, Marcin M. (*Super Express*) provocation pretending to be a French citizen and reporting a fictitious theft of documents and money, sale at an auction of a Starowieyski fake painting by *TVN* and *Rzeczpospolita* journalists, a visit in Ostróda of a fake minister of a non-existent ministry (*Fakt* journalists), purchase of a fake ID card and use of it in a bank, to hire a car, sport and construction equipment and to rent a flat (Grzegorz Kuczek from *TVN*)<sup>6</sup>. These are just a few examples of successful journalistic provocations. Other popular methods were mystifications including changing a person's identity and impersonating employees, customers or clients of various firms or institutions, ie. report by Alicja Kos and Wojciech Cieśla, "Wędliny drugiej świeżości" (about the meat plant *Constar*) or by Marek Kęskrawiec and Ola Tudyka, "Gabinety Martwych Dusz". There were also reports by Mirosław Majer, "Mordercy dzieci", Jarosław Jabrzyk, "Prokurator"

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17.04.2007] states that, „In colloquial language the term ‘provocation’ and to ‘provoke; means that someone, with their behaviour (usually by being annoying, offensive or arrogant) consciously or not creates negative reactions in another person”.

<sup>3</sup> In English, different types of provocations include *entrapment*, *sting-operation*, *pretense*, *posing*, *hidden camera (video)*, *eavesdropping*, *masquerade*.. See. H.E. Goodwin, *Groping for Ethics in Journalism*, Iowa State University Press, 1983.

<sup>4</sup> An example are investigations from the US by B. Woodward and C. Bernstein, and in Poland by J. Jachowicz and B. Kitel without using provocation.

<sup>5</sup> *TVN* journalists were not checking whether Beger ‘takes’ but whether Lipiński ‘gives’. The provocation was carried out to compromise Lipiński and Mojzesowicz, not Beger.

<sup>6</sup> See J. Bukowska, *Dziennikarstwo śledcze a prowokacja dziennikarska. Kwestia odpowiedzialności karnej*, [in:] *Dziennikarstwo śledcze*. p. 112n.; M. Zaremba, *Ogólne zasady odpowiedzialności dziennikarzy za naruszenie prawa popełnione na etapie zbierania informacji*, [in:] *Dziennikarstwo śledcze*.p. 91, ftnote. 5.

and Daniel Zieliński, “Kardiochirurg”, where journalists changed their identity and prepared provocations (traps) which disclosed corruption, exposed a paedophile web and scheming against a colleague doctor<sup>7</sup>.

Most of the above mentioned provocations met the requirements of social significance and journalist accuracy. However, there were also some with the only goal to ridicule someone or to play a trick on them and naming them investigative journalism does not seem appropriate<sup>8</sup>.

### 3.1. Pretending to be French

On July 13, 1994 Marcin Masztalerz, a *Super Express* journalist, pretended to be a French citizen and reported to the police a fictitious theft of his documents and money. The policemen, unable to communicate with him, hired a translator. The ‘Frenchman’ was informed of the punishment for providing false testimony. He was also provided with a document which would enable him to apply for duplicates of his papers at the embassy. The whole story was then described in an article, “Na migi”, ridiculing police operations.

Short after the publication the journalist was presented with three charges, informing the police about an incident that did not take place (art. 251 of criminal code from 1969), providing false testimony (art. 247) and obtaining a document confirming theft under false pretences (art. 267)<sup>9</sup>. His trial at the District Court in Warsaw began on February 22 and finished on April 11, 1995. Marcin M. was found guilty and sentenced to six months imprisonment with a suspended sentence for two years and a fine of 1 000 zł.

The court decided that, “a journalist should not be given special treatment and collection of press materials does not excuse his actions (...). Journalists may not break the law and justify themselves with collection of information. Having an enormous influence on public opinion and shaping people’s views, journalists may not be above the law due to the profession they have. It cannot be so that breaking the law by some will not be penalised while it is by others. Freedom of the press and freedom of speech have got to be directly tied to responsibility for what is said”<sup>10</sup>.

The court’s decision was appealed but the court of 2<sup>nd</sup> instance upheld the earlier ruling. In the justification it was noted that a journalistic provocation is acceptable only under three conditions: the motive is creating press material on a significant social issue, the information is obtained legally and there are more advantages than losses to be gained by the experiment.<sup>11</sup>

### 3.2 TNT in *Super Express*

In early 1995 anonymous *Super Express* reporters purchased six sticks of TNT (weighing 4.5 kg) from an anti-terrorist organization at Okęcie Airport. It was at a time of gang wars between the Wołomin and Pruszków organized crime groups for control of

<sup>7</sup> See *GRAND PRESP. Dziennikarskie hity 2002,2004, 2005*, Poznań 2003, 2005, 2006.

<sup>8</sup> These are ‘pretending to be French’, ‘vice-minister’s visit in Ostróda’, and ‘round table of prostitutes’ by weekly *NIE*..

<sup>9</sup> According to new criminal code from June 6, 1997, it would be art. 238, 233 and 272 cc.

<sup>10</sup> Cite from A. Cubała, *Prowokacja dziennikarska*, “Prawo i Życie”, 7.10.1995, nr 40, p.34.

<sup>11</sup> *Ibidem*.

Warsaw. There were frequent explosions, cars were being blown up and bombs were going off in bars and flats. The reporters decided to check where they could buy explosives<sup>12</sup>. Surprisingly, they purchased them from people who claimed to be anti-terrorists working at the airport. The TNT, bought for 50 mln old zlotys, was then placed in a safe at the *SE* office but the journalists did not get the chance to call a press conference and report their purchase as the police first entered the building and confiscated the explosives. The chief editor, Urszula Surmach-Imienińska, and newspaper's publisher, Grzegorz Lindenberg, were questioned by the police and later charged with possession of explosives (art. 143 of criminal code from 1969, presently art. 171 cc. par. 1). They were facing punishment between six months and five years<sup>13</sup>.

The journalists were defending themselves by saying that they were acting for the public good and they simply wished to disclose where such materials could be bought – within police structures<sup>14</sup>. In 2004, the District Court in Warsaw shared their opinion and dismissed the case due to little harm done. In the justification it stated that, “There are plenty of criminals to be chased instead of these journalists”. The prosecutor appealed the verdict and demanded six months imprisonment suspended over two years<sup>15</sup>. The appellate court dismissed the case again, according to art. 2 cc. (“a deed is not a criminal one if there is no social harm done”) the journalists’ actions then could not be considered an offence. For this verdict Grzegorz Lindeberg and Urszula Surmach–Imienińska had to wait nine years (the case was finalised in 2004)<sup>16</sup>.

### 3.3 Dressed up as prisoners

Rafał Misiun and colleague (both from *SE*) decided to dress up as prisoners and walk the streets of Katowice. They rented the clothes and shoes from a theatre and even wore handcuffs. They were out on the town observing people’s reactions, they explained later, “A woman from a newsstand lent us a paper clip so we could uncuff ourselves”<sup>17</sup>. In the end they were spotted by a warden who called the police. He was later awarded a prize for his vigilance.

### 3.4. Anti-paedophile provocation

<sup>12</sup> In 1994, 84 explosives were detonated. In 1995, to mid February – 10, including seven in Warsaw. Some were made of the same TNT as was bought by *SE* reporters. A day after the provocation, the journalists wrote, “our ‘controlled purchase’ was done in order to show how easy it is to obtain explosives and that it is high time that the police do something about it.” (*Super Express*, nr 49, February 27, 1995, p.1.)

<sup>13</sup> “Kupić trotyl – żaden problem!”, „*Super Express*”, nr 49 from 27.02.1995, p.1,5.

<sup>14</sup> “*Wprost*”, 22.03.2004 – <http://www.wprost.pl/ar/?O=58015&print=1>.

<sup>15</sup> After the verdict was appealed, Grzegorz Lindenberg said, “Now you can do anything and the prosecution will not find the guilty ones. Nobody pressed charges against the police who sold the TNT.” (“*Super Express*”, 26.11. 2002 – <http://www.media.f.pl/index.php?kat=24&id=7397> [accessed 19.07.2007].

<sup>16</sup> A. Drożdżak, *Prowokatorzy*, [http://monitoring.pap.com.pl/media/cgibin/start.pl?id\\_publicacji=1092%20%20%20...](http://monitoring.pap.com.pl/media/cgibin/start.pl?id_publicacji=1092%20%20%20...) [10.04.2007]; B. Kozłowski, *Wyrok w procesie “Superekspresu”* - <http://wiadomości.polska.pl/kalendarz/kalendarium/article.htm?id=35314> from 22.03.2004 [accessed 16.04.2007]

<sup>17</sup> Cited from A. Drożdżak, *Prowokatorzy*, “*Press*”, 15.05.2006, p.57 – [http://monitoring.pap.com.pl/media/cgi-bin/start.pl?id\\_publicacji=1092%20%20%20...](http://monitoring.pap.com.pl/media/cgi-bin/start.pl?id_publicacji=1092%20%20%20...) [accessed 10.04.2007].

In 2002, on *TV POLSAT* broadcasted was Mirosław Majeran's report, "Mordercy Dzieci" (Murderers of Children). He, together with Jacek Błaszczyk from *Wprost*, organized a provocation which led to exposing and breaking up of a paedophile gang. Its members were well organized, had contacts in the West and were involved in the production of child pornography. The journalists decided to unmask them. Jacek Błaszczyk went undercover to infiltrate the group. He pretended to have a client in France interested in the film. When serious negotiations took place regarding the film's production, the journalists informed CBS (Central Investigative Office) which joined in on the investigation. For an important meeting with a gang leader "Waga", at a castle in Książ, Błaszczyk wore a hidden microphone. When the police decided that they had enough evidence in order to press charges, in several cities around Poland at the same time CBS officers went into action and stopped different gang members. The paedophiles were arrested in their homes and at the castle during negotiations on the details of the criminal transaction.<sup>18</sup>

### 3.5. Corrupt prosecutor, Jarosław Jabrzyk's reports

In 2003, Jarosław Jabrzyk, a *Superwizjer TVN* reporter, received information from Krzysztof K. who ran over an elderly woman. The prosecutor, Mirosław M., in charge of the case from the district court in Katowice, promised to get back Krzysztof K.'s driver's licence for 1 000 zł. For the following meeting K. took with him a hidden camera and recorded the corrupt offers (prosecutor demanded additional 4 000 zł to dismiss the case). Then, together with TVN journalists, he reported the case to the police. The investigation was first carried out by the corruption unit of the police in Katowice and later it was taken over by the appellate prosecution. During the next visit the prosecutor was caught red handed accepting the bribe. Mirosław M. was not taken into custody as he felt unwell and was transferred into hospital. After the report was broadcasted by *Superwizjer*, two more men, P. and L., also reported that M. made similar offers to them. In the end, M. was arrested and on December 5, 2003 he was sentenced to five years imprisonment<sup>19</sup>.

### 3.6. Grzegorz Kuczek's provocation

In early 2004, Grzegorz Kuczek, a *TVN* reporter, bought at a market a fake ID card. With it he rented skiing, construction and music equipment as well as a car. Then he went into the bank, BGŻ in Warsaw Wesoła, and tried to open a bank account. In the process, the computer informed the bank clerk about problems with the ID card, an incorrect PESEL and a restricted number. However, the bank clerk did not react, she let the man go and did not inform security at the bank or the police. A few days later, the journalist came back to the bank and informed about the provocation. After that, the bank clerk reported the case to the prosecutor's office. A report based on these events was broadcasted by *TVN "Uwaga!"* on February 15, 2004<sup>20</sup>.

Resulting from the provocation was an investigation of the journalist's provocation instead of the purchase of an illegal document. On February 6, 2004, Kuczek was charged with using a fake ID as a real one. The court of 1<sup>st</sup> instance dismissed the

<sup>18</sup> M. Majeran, *Mordercy dzieci*, GRAND PRESP. Dziennikarskie hity 2002, Poznań 2003.

<sup>19</sup> J. Jabrzyk, *Prokurator*, GRAND PRESP. Dziennikarskie hity 2004, Poznań 2005; <http://superwizjer.onet.pl/1161925.archiwum.html>; <http://superwizjer.onet.pl/1164631.archiwum.html>; reports were broadcasted on 4.01.2004 and 15.02.2004.

<sup>20</sup> <http://gazetylikalne.pl/modulep.php?op=modload&name=news&file=article&p...> [accessed 16.04.2007]

case as also did the District Court in Warsaw, stating that journalistic provocations are of public interest. In the justification it was explained that, “[...] in many cases it is thanks to the journalists and their investigative activities that many pathological phenomena are brought to light and criminal activities exposed. Such provocations cannot be deemed as harmful to society as they are carried out in public interest”<sup>21</sup>. Such a justification, as there is no precedent law in Poland, can serve as proof that journalistic provocations are interpreted by the courts in a wider context of their social usefulness<sup>22</sup>.

### 3. 7. Forged paintings

In 2005, in *Superwizjer TVN* and in *Rzeczpospolita*, presented were reports on the trade of painting by the art gallery Polswiss Art., one of the biggest auction houses in Warsaw, owned by Iwona Buchner. The gallery cooperates with historians/experts who guarantee that fake paintings are not sold at auctions. However, in practise it happened so. In 1997, Polswiss Art for 150 000 zł sold a painting “Chłopiec siedzący na krześle” to Mariusz Jańczuk which turned out to be a fake. Iwona Buchner denied that her auction house put up such a painting for an auction. *TVN* journalist, Jarosław Jabrzyk and *Rzeczpospolita*’s Wojciech Cieśla, decided to investigate the case. They convinced a painter to create a fake of a Franciszek Starowieyski and showed it to the author himself. Starowieyski agreed for the fake to be put up at an auction. Another journalist, pretending to be a lawyer, took the fake to Polswiss Art. It was given a name “Zjawa” and entered the auction. A journalists’ man bid on it and eventually bought it for 9 500 zł.

As a result of the provocation, journalists exposed Polswiss Art. experts’, Łukasz and Irena Kossowski, incompetence<sup>23</sup>. The buyer of “Zjawa” met with them after the action and showed them the fake’s expert opinion. Polswiss Art. employees offered to return his money. In the end Łukasz Kossowski once again gave the fake a certificate. Jabrzyk and Cieśla visited him again, taking “Zjawa” with them, they disclosed their identity and proved that the painting was a fake. Kossowski commented, “Perhaps I made a mistake, one-zero you guys”<sup>24</sup>.

After this report was disclosed, Kossowski pressed charges against Janusz Miliszkiewicz, *Rzeczpospolita*’s associate who called Kossowski incompetent in the monthly “*Art&Business*”. Kossowski suspected Miliszkiewicz of initiating the provocation. His attorney, Roman Nowosielski, stated that his client examined a Starowieyski original and provided a correct opinion and that Starowieyski’s testimony needs to be confronted with the painting<sup>25</sup>. So far, there is no verdict on the case<sup>26</sup>.

<sup>21</sup> *Prowokacja dziennikarska w interesie społecznym*, “*Rzeczpospolita*”, 11.07.2005, nr 160, p.A5–  
<http://www.zielonapolska.org.pl/?mid=115mid=255&full> (accessed 16.04.2007)

<sup>22</sup> More on this in chapter 6 on legal aspects of provocation.

<sup>23</sup> W. Cieśla, J. Jabrzyk, *Jak sprzedaliśmy na aukcji “Zjawę”*, “*Rzeczpospolita*”, 07.05.2005.  
Articles were published in *Rzeczpospolita* on May 7-8 and 9, 2005, the report on *TVN*’s *Uwaga* - on May 6, 2005, on *TVN*’s *Superwizjer* – on May 8, 2005, see W. Cieśla, J. Jabrzyk, *Zjawa*, *GRAND PRESP. Dziennikarskie hity 2004*, Poznań 2004.

<sup>24</sup> W. Cieśla, J. Jabrzyk, *Jak sprzedaliśmy ...*, „*Rzeczpospolita*”; M. Domagalski, „*Zjawa*” musi trafić do sądu, “*Rzeczpospolita*” 10.12.2005  
[http://www.rzeczpospolita.pl/gazeta/wydanie/\\_051210/prawo/prawo\\_a\\_9.html?k=on;](http://www.rzeczpospolita.pl/gazeta/wydanie/_051210/prawo/prawo_a_9.html?k=on;)

<sup>25</sup> *Ibidem*.

<sup>26</sup> According to Łukasz Kossowski, the reporters violated the article on personal data from August, 29, 1997 since the expert’s personal data was revealed without his consent. Also they entered a forged painting onto the market

### 3.8. A car for father Tadeusz Rydzyk

On February 6, 2006, *Fakt* journalists, Piotr Chęciński and Marcin Kowalczyk “decided to check whether gossip about Rydzyk’s influence is true”<sup>27</sup>. Kowalczyk called Krzysztof Jurgiel at the Agriculture Minister’s office stating that he is Rydzyk’s assistant and that the father’s car broke down. The minister offered to use the government limousine, he chose it himself and sent it to the designated place. The same day the article about this incident was published, the prime minister, Kazimierz Marcinkiewicz, apologised for the minister’s behaviour<sup>28</sup>. The next day the minister had to pay for the use of the limousine (18.55 zł)<sup>29</sup>.

As a result, some LPR deputies decided that the journalist humiliated the minister (art. 226 cc.). Also, *Nasz Dziennik* accused Kowalczyk of breaking the law, art. 24 cc., on the charge of inciting to commit an offence<sup>30</sup>.

### 3.9. Renata Beger’s tapes

On September 26, 2006, in *TVN*’s programme by Tomasz Sekielski and Andrzej Mrozowski, *TERAZ MY*, broadcasted were fragments of a conversation between Renata Beger (Samoobrona) and Adam Lipiński (PiS) taped by Beger using a hidden camera. The conversations took place after Andrzej Lepper’s dismissal, when the future of the coalition was being decided. PiS wanted to gain some Samoobrona deputies’ support and have them switch parties so that they could have a government without Samoobrona. The taped conversations showed Beger demanding from Lipiński the seat of vice-minister, to take care of the bills of exchange matter and to place Samoobrona people on PiS’s election lists. Lipiński promised to present these demands to prime minister Jarosław Kaczyński. He also proposed to pay off the bills of exchange with Sejm’s money. For *TVN* journalists, this was proof of political corruption<sup>31</sup>.

The ‘tape scandal’ had an imperative influence on what happened on the Polish political scene. It evoked a heated media and social debate regarding ethical standards in politics and journalism.

and provided untrue information that Mariusz Jańczuk bought the Kissling painting at an auction by Polswiss while it was bought at I. Buchner’s gallery. According to Kossowski, “the key evidence of the investigation is out”. (Ł. Kossowski, *Falsyfikatory i prowokatorzy*, “*Tygodnik Solidarność*”, nr 24/2005 – [http://tygodniksolidarnosc.com/2005/24/6d\\_fal.htm](http://tygodniksolidarnosc.com/2005/24/6d_fal.htm) [accessed 16.07.2007]. It is surprising that the expert did no mention his own actions or those of the auction house which mislead the client regarding the painting’s origin, its title and date of creation (!?).

<sup>27</sup> *Rządowa limuzyna dla Rydzyka*, “*Fakt*”, 7.02.2006, p.1,6.

<sup>28</sup> “*Super Express*”, 8.02.2006.

<sup>29</sup> “*Super Express*”, 9.02.2006. That same day (February 8<sup>th</sup>) Rydzyk stated, “I don’t know why the prime minister is apologising” (*Ibidem*).

<sup>30</sup> *Ośmieszili rząd i Kościół* – [http://www.amazon.com/gp/reader/0521006023/ref=sib\\_books\\_ref/102-7417453-234...](http://www.amazon.com/gp/reader/0521006023/ref=sib_books_ref/102-7417453-234...) [accessed 28.04.2007]. According to “*Nasz Dziennik*”, minister Jurgiel’s humiliation was “a primitive trick by a scandalous tabloid”. Krystyna Mokrosińska described *Fakt* journalists as ones looking for ‘cheap sensation’ and was wondering whether to call their actions a provocation or a hoax. Monika Szymborska from *TVN* treats it as a joke and not a provocation as it is used when other means fail. A media expert from UJ OBP, Zbigniew Bajka, called it a journalistic happening (see J.Murawski, *Pułapka nie tylko na ministra*; A. Drożdżak, *Prowokatorzy*).

<sup>31</sup> *Teraz My!*, *TVN*, 26.09.2006; on how the tapes were created, see “*Press*”, nr 10/2006 from 15.10.2006, p. 31; cf. E. Olczyk, *Szukające negocjacje w ukrytej kamerze*, “*Dziennik*”, 27.09.2006, p.1,3.

The ‘tape scandal’ will be further discussed in the latter part of the article. It should be noted, though, that PiS politicians (Lipiński and Mojzesowicz) did not sue the journalists which leads us to believe that they considered the journalists’ actions legal. Also within public discourse, the use of hidden camera and wire tapping in a Sejm room were not discussed. The only exception was Human Rights Spokesperson, Janusz Kochanowski’s stance<sup>32</sup>.

#### 4. Goals and effects of provocation

On the one hand, provocation is a method of investigative journalism and, on the other, it can be used in order to obtain sensational information. In the latter case, it is an element which adds ‘spice’ and ‘colour’ to journalist reports. It is often used to make regular information on unimportant events and subjects more attractive. Examples of such sensational journalism are: Jerzy Urban’s round table of prostitutes, reporters pretending to be prison escapees or a ‘mugged foreigner’. Some of these can also be classified as sting operations (‘round table’ mentioned above), pranks or happenings. What characterizes most sensational journalism is dramatisation of reality and creation of facts. None of these provocations can be considered serious investigative journalism but rather provocations of entertainment character.

A serious journalistic provocation should be well organized and carried out with public interest in mind. Unfortunately, provocations are often abused, especially by tabloids, for insignificant and socially useless purposes. A responsible provocation should be aimed at exposing irregularities in legal, political or social systems, it should unmask abuses of power, misappropriations, corruption, embezzlement, waste, legal loopholes, incompetence of official and experts, abuses in the work place (sexual harassment, discrimination, falsifying expiry dates), expose common and dangerous criminals, and generally serve the public good.

The second type of provocation, the non-serious, joke or entertainment type is done in order to ridicule certain people or to show a phenomenon in a humorous or fun way. It is similar to the American *candid camera* show with a goal to laugh at the observed person in an unusual situation without their knowledge. “Watch out – you’re on candid camera” – finally the person, after the event, finds out. The target person is often ridiculed, mocked, smeared or even insulted. This type of provocation may result in better public interest in the newspaper or programme showing such sensational stories but it is not very professional from a journalist point of view. Provocation, instead of being a form of investigative journalism, becomes a tool for gaining wider audiences and making a show. This type of provocation acts as a magnet while participants of this *quasi-reality-show* begin playing the parts of villains of mass culture.

There is also one more type of provocation, characterized by covert intentions. Its goal is to compromise people, initiatives, projects or political plans. In this case journalists are often unaware that they are tools in the hands of other manipulators. This type of provocation involves a leak of confidential information, the sale of supposedly real documents, planting materials or putting someone on a fake trail. This happened to *Gazeta Wyborcza* journalists who described an inexistent gang within police

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<sup>32</sup> See below, p. 21



headquarters<sup>33</sup>. Such provocations also take place when revealed are contents of confidential tapes, recorded either by journalists or by third parties<sup>34</sup>.

Effects of provocations are inexorably linked to their goals. Directly, they lead to exposing corruption as well as any other types of abuses of power. Indirectly, they are to reform the entire socio-public sphere of life<sup>35</sup>. As far as the ethical sphere, recordings made by Gudzowaty or Beger, regardless their intentions, have resulted in public discussion on the moral standards in politics. Provocations by Jabrzyk, Kuczek and Majeran resulted in arrests of offenders, brought attention to the existent mafia/corruption groups and showed misappropriations in institutions created in order to protect public safety<sup>36</sup>.

## 5. Ethical aspects of provocation

Provocations are overt methods of information collection, therefore, they can be analysed in the context of ethical standards binding journalists in their work and included in the journalist ethics code<sup>37</sup>. Provocations can be justified when they meet the basic standards - are true, honest, reliable, objective, independent, free, responsible and minimise damage and distress<sup>38</sup>.

Most ethics codes around the world have as their basic goal and highest value searching for the truth. In this context, only provocations with this goal make sense; to find, discover, document and verify true information. Searching for the truth via provocation should be accompanied by accuracy. Accuracy as a value should be described in the categories of verifiability, diligence, completeness and precision of the information provided. Provocations should not be constructed based on a preliminary hypothesis regarding a person, event or phenomenon. They should be carried out in order to verify the information possessed when other methods fail. Only then are provocations fair. Of course, complete honesty is impossible in a provocation as its essence is delusion based on thought out manipulation<sup>39</sup>.

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<sup>33</sup> See M.Palczewski, *Przecieki a ochrona źródeł informacji*, "Media.Kultura.Społeczeństwo", nr 1/2006, p. 12.

<sup>34</sup> It's not that journalists are always unaware, they may be co-participants in the manipulation when both sides (journalists and their sources) want to achieve their goals (get information, get more power or destroy someone)..

<sup>35</sup> In the US, investigative journalism by N. Bly, I. Tarbell, L. Steffens or B. Bagdikian resulted in reforms in health care, local government and anti-monopoly law and the prison system (see H.E. Goodwin, *op.cit*; *Shaking the Foundations. 200 Years of Investigative Journalism in America*, ed. Bruce Shapiro, New York 2003).

<sup>36</sup> In many case it was the journalists who first discovered committed offences and then contacted the police or the prosecution.

<sup>37</sup> On Polish journalist ethics codes see W.L. Rivers, C. Mathews, *Etyka środków przekazu*, Warszawa 1995; I. Rutkiewicz, *Jak być przyzwoitym w mediach. Rady dla dziennikarzy telewizyjnych i nie tylko*, 2<sup>nd</sup> edition, Warszawa 2003. Cf. American codes: <http://www.spj.org/ethicscode.asp> - [accessed 19.07.2007]; <http://www.asne.org/kiosk/archive/principi.htm> - [accessed 19.07.2007]; <http://www.rtnda.org/ethics/coe.shtml> - [accessed 19.07.2007].

<sup>38</sup> Cf. American SPJ codes – Sigma Delta Chi, ASNE, RTNDA and CBS as well as Polish - SDP, SDRP, Kartę Etyczną Mediów and Zasady Etyczne TVP.

<sup>39</sup> Magdalena Bajer, writing about the 'tape scandal' stated that, "Distribution of information obtained via tapping or leaks is generally not ethical, just like any other type of lie. There should be no situation which would justify such actions but we know that there are. We should not expect acclaim for disclosing information obtained this way, unless the results are satisfactory." (M.Bajer, *Przeciek, podstuch*,

The category of honesty is comprised of several components which exclude each other. How can a journalist be honest with the subjects of his investigation and at the same time be searching to discover the truth, disadvantageous to that subject? Here, we are dealing with a conflict of values: loyalty and honesty with the public and the subjects of provocation. In this case, journalists have to choose and act in the interest of the public.

Provocations should also be independent, only then they can be considered honest and objective. They need to be independent of external influences (politicians, authorities, media companies, sources of information, etc.) and internal ones (journalist's subjective opinions and prejudices). Provocations need to be autonomous to meet their goals<sup>40</sup>. According to ethical codes, journalists need to be objective in their judgements and not favour any parties in their activity. This is, of course, theoretically. In practise, however, it often happens that journalists presume that they are right in their reasoning and favour that mode of thinking<sup>41</sup>.

The next issue is that of freedom and responsibility for the provocation and its effects. Journalists, acting in the public interest, need to be responsible for their deeds as there could be various outcomes of provocations. The truth may be disclosed and guilty ones exposed or, alternatively, innocent people may be accused and defamation may result.<sup>42</sup> Journalists need to be conscious of the fact that their activities can harm others and may sometimes do more harm than good. If that happens as a result of a provocation, then it must have been unjustified activity.

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*prowokacja – dziennikarskie pokusy*, "Rzeczpospolita", 25.04.2004 – [http://www.rzeczpospolita.pl/dodatki/opinie\\_070425/opinie\\_a\\_3.html?k=on;t=20070...](http://www.rzeczpospolita.pl/dodatki/opinie_070425/opinie_a_3.html?k=on;t=20070...) – [access 15.05.2007].

<sup>40</sup> According to Janina Jankowska, Andrzej Morozowski and Tomasz Sekielski in the provocation with Renatą Beger, "have ceased to be independent when they entered into an agreement with one of the sides of the conflict, and more or less consciously entered this political game. Janusz Maksymiuk was the mastermind, Beger – the script's co-author. Together they created a political Big Brother (J. Jankowska, *Czwarta władza wkracza do polityki*, "Rzeczpospolita", 02.10.2006 – [http://www.rzeczpospolita.pl/gazeta/wydanie\\_061002/publicystyka/publicystyka\\_a\\_1...](http://www.rzeczpospolita.pl/gazeta/wydanie_061002/publicystyka/publicystyka_a_1...) – [access 17.04.2007]. According to Magdalena Bajer, the journalists' intentions were good but "cooperation with a party member casts a shadow on their activity". Bob Steele from American The Poynter Institute when asked about the tape, stated that he does not remember any case in which the media cooperated with a ruling party member in order to make a recording (Renata Gluza, *Teraz Oni*, "Press", nr 10/2006 from 15.10.2006, p. 30.) .

<sup>41</sup> On lack of objectivity in investigative journalism see J.P. Ettema, T. Glasser, *Custodianp. Of Conscience. Investigative Journalism and Public Virtue*, Columbia University Press 1998; cf. C.G. Christians, *The Changing News Paradigm: From Objectivity to Interpretive Sufficiency*, [in:] *Qualitative Research in Journalism. Talking It to the Streets*, ed. P.H. Iorio, Mahwah NJ 2004, p.41-58.

In Poland, there was more discussion on this issue after the 'tape scandal'. Jerzy Jachowicz said, "It would be better if recorded was a politicians' neutral conversation and negotiations or if both sides were unaware that they were being recorded. In this case, one side had the advantage – Beger set out against a generally honest Mr. Lipiński. On the other hand, it was the only way to show how politics work these days. If so, I would justify the journalists' provocation as they were acting in public interest.", *Czy Morozowski i Sekielski postąpili etycznie?*, "Rzeczpospolita", 30.09.2006 – [http://www.rzeczpospolita.pl/gazeta/wydanie\\_060930/publicystyka/publicystyka\\_a\\_3...](http://www.rzeczpospolita.pl/gazeta/wydanie_060930/publicystyka/publicystyka_a_3...) [access 17.04.2007].

The question is whether we are dealing here with investigative journalism as we lack one imperative component – journalist independent activity. Despite their assurances of independence, they could have been manipulated (see M.Palczewski, *News telewizyjny jako czynnik politycznej manipulacji*, on the possibility of co-manipulation.)

<sup>42</sup> Defamed was Kossowski in this case.

The analysis above, based on journalist ethics code, shows in what situations provocations can be carried out. It seems obvious that they should not be done for fun or pure entertainment or without correlation to important public interest. The journalist ethics codes explicitly include the conditions discussed above.

American ethics codes, that of CBS, NBC, RTNDA, ASNE, SPJ, the British BBC or Polish SDP, based on utilitarian philosophy by J. Bentham and J.S. Mills, allow the use of covert methods to collect information (although they do not use the word 'provocation'), hidden cameras and tapping, all with vital public interest in mind, when there is no other way of obtaining imperative information, when it is done with the approval of supervisors and when it is done as part of investigative journalism<sup>43</sup>. The Polish journalist ethics code, by SDP (Association of Polish Journalists), in article 5 (chapter on collection and processing of materials) states, "In the collection of materials it is prohibited to use methods that are against the law or ethically improper. Hidden cameras and microphones are admissible in case of investigative journalism, that is when searching for information for the public good, with approval of one's supervisor, in order to expose crime, corruption or abuses of power"<sup>44</sup>.

Similar phrases are included in the document, *Zasady etyki dziennikarskiej w Telewizji Polskiej SA (Journalist ethics rules for TPSA)*, "It is inadmissible to use methods morally reprehensible such as to mislead someone, to pretend to be someone else, to conceal the real purpose of a recorded conversation, to harass and to intimidate. The only exception is activity carried out for the public good, when there is no other way to obtain the information and the matter needs to be confirmed. This is regarding crime, fraud, or abuses of power. In this case, a journalist needs to have his supervisor's approval [...]. The use of a hidden camera or a microphone is justified only when the activity is in the public interest and with the necessary authorisation"<sup>45</sup>. Polish regulation, in this case, is quite similar to that of BBC and RTNDA<sup>46</sup>.

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<sup>43</sup> See. M. Palczewski, *O problematyczności...*, p. 67-69. Against such ethical relativism are the creators of Rules of Conduct Declaration, International Federation of Journalists; IFJ). Point 4 of the Declaration states, "Journalist should only use honest methods in obtaining information, photographs or documents, cited from P. Kwiatkowski, *Przedsiębiorstwo Apokalipsa. O Etyce dziennikarskiej*, Poznań 2003, p. 270.

<sup>44</sup> *Kodeks Etyki Dziennikarskiej Stowarzyszenia Dziennikarzy Polskich (SDP)*, [in:] I. Rutkiewicz, *op.cit.* Warszawa 2003, p. 78.

<sup>45</sup> *Zasady Etyki dziennikarskiej w TVP SA*- cited from P. Kwiatkowski, *op.cit.*, p. 250-251.

<sup>46</sup> According to BBC regulation, secret recordings can be broadcasted when it is of important public interest. This is also regarding covert recording. The code states such methods can be valuable as they enable the recording of materials that the public would never have a chance to hear otherwise. However, it should be done as a last resort and such practices should not be overused. Recording is prohibited on private grounds, in order to expose an offence or anti-social behaviour by an identifiable individual or a group when there is no clear proof of such behaviour. Recording is prohibited on private grounds without consent of the owner or his agent unless it is done in order to expose a serious offence or crime.

<http://www.bbc.co.uk/guidelines/editorialguidelines/edguide/privacy/secretrecnewp.s...>  
[access 15.05.2007].

American RTNDA ethics codes states that the use of hidden cameras and microphones is justified under these conditions:

- the information obtained is very important,
- it is of imperative public interest, it discloses irregularities at the highest level, it protects an individual from harm,
- there is no other alternative to obtain the information,
- journalists can prove the nature of the used provocation,

From the above analysis we can conclude that ethics codes allow the use of provocations under the following conditions:

- it fulfils an imperative social purpose,
- it regards a serious issue,
- it searches to find the truth, and not to create facts or events,
- there is no other way to obtain the information (via traditional methods),
- there is more good than harm done,
- it intentionally serves public interest and not particular party, organization or social group interests,
- it is part of investigative journalism,
- it is carried out with the knowledge and approval of supervisors, independently and without pressures from outside forces or manipulation attempts.

Despite seemingly simple and straightforward regulation on the use of provocation according to ethics codes, the cases discussed above have resulted in numerous controversies. Journalist codes, with journalists not always being aware of this, do not always take into account press law as well as criminal law regulation. It seems that a provocation can meet the guidelines of the ethics code but not be in tune with legal regulation.

#### Legal aspects of provocation

The above mentioned possibilities of provocation use include ethical guidelines but there is little mention of legal regulation. In Poland, journalist ethics codes do not correspond to our criminal code<sup>47</sup>. The same is true regarding press law. Since, according to both of these legal regulations (criminal and press), any kind of provocation done independently by journalists is illegal<sup>48</sup>. Legal is only provocation that has been previously discussed with the police and the prosecution. Article 10.1 of press law states, “A journalist’s job is to serve society and his country. Journalists have the responsibility to act in accordance with their professional ethics, the rules of social interaction and

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- journalists and their organization are professional, they spend time and money in order to report what they found out,
  - the damage suppressed as a result of disclosing information obtained is greater than that incurred as a result of the deception,

-journalist, before he decided to use provocation, carried out a detailed analysis of the situation, ethical and legal., <http://www.rtnda.org/ethics/hidde.shtml> [access 15.05.2007]

<sup>47</sup> SDP code, in chapter II.5 prohibits use of unlawful methods but, at the same time, allows the use of hidden camera and microphone and phone tapping, regardless the fact that their use may violate the law.

<sup>48</sup> In this case – entrapment, sting-operations, provocations based on inciting, controlled purchase, pretending to be a public official or authenticating falsehoods. Cf. L.Gardocki, *op.cit.*; R.Socha, *Temida i docieklivi żurnaliści*, “Rzeczpospolita”, 25.09.2004 - [http://www.rzeczpospolita.pl/gazeta/wydanie\\_040925/prawo/prawo\\_a\\_16.html](http://www.rzeczpospolita.pl/gazeta/wydanie_040925/prawo/prawo_a_16.html) -[access 17.04.2007].

within legal boundaries”<sup>49</sup>. Obviously, journalists need not break the law. For the purpose of our analysis, imperative is also art. 14.1 which states, “Publishing or distributing visual or sound content requires the approval of people providing that information”. According to this regulation, journalists who use materials obtained via a hidden camera or a microphone have committed an offence.

The analysed above examples of journalistic provocations have broken the law numerous times. As a result of provocations, usually breached are the following articles of criminal code: art. 24 (inciting to break the law), art. 193 (breaching immunity), art. 21 (defamation), art. 216 (assault), art. 226 (defamation of public official), art. 227 (passing off to be a public official), art. 229 (bribery), art. 233 (false testimony), art. 234 (providing a false accusation), art. 235 (false evidence), art. 238 (notification of an offence not committed), art. 241 (distribution of information from preliminary proceedings), art. 263 (trade of fire arms or ammunition), art. 265 (disclosing state secrets), art. 267 (illegal possession of information), art. 270 (falsifying documents), art. 272 (obtaining proof of falsehood under false pretences), art. 273 (use of document proving a falsehood).

Nearly all of the discussed examples in section 3 of this article violate the law. The only exception could be *SE* journalists’ provocation, pretending to be prison escapees. However, its cognitive value was low and hence it is not among the subject of our analysis. *Super Express* provocations, (3.1 and 3.2), on the other hand, have violated the following articles: 233, 235, 238, 263 267 and 272 cc; *POLSAT*’s - art. 24 cc., *TVN*’s - art. 24, 212, 270, 273 cc., and *Fakt*’s - 212, 216 and 226 cc.

Despite the fact the journalistic provocations frequently breach the law, it rarely happens that journalists are convicted by the jurisdiction. It is interesting to see why that happens. Professor Lech Gardocki discussed this issue in *Rzeczpospolita*. He stated that, from the criminal code point of view, the journalists’ actions are assessed based on general regulation. Their actions are then not considered offences due to the little or no social harm caused. It does not mean that they are not held responsible for the provocation or the use of tapping. For the use of bugging devices, they will be held liable under art. 267 cc<sup>50</sup>.

In many cases, the court takes into consideration art. 1 par. 2 of criminal code which states, “An action is not an offence if its social harm is slight”. This happened during the trial of *SE* journalists who bought explosives from an anti-terrorist group. Sometimes the court decides not to convict, justifying its decision by stating that the journalists acted in the public interest (Kuczek’s case). The Constitutional Tribunal’s chairman, Marek Safian, stated, “If a journalistic provocation does not infringe public interest but serves it, then the action will not be considered an offence as it is not

<sup>49</sup> *Prawo mediów*, wybór i przypisy J.A. Żurawski, Warszawa 1997, p. 157.

<sup>50</sup> Fragment of Katarzyna Dudka’s article, *Wszyscy jesteście śledczymi*, <http://www.zielonapolska.org.pl/?=mid=115&nid=255&full>. Cf. L. Gardocki, *op.cit* : “such a provocation, if it incites to commit an offence, is illegal and punishable, unless it turns out that the inciting was not socially harmful. However, such an assessment can not be guaranteed from the start, hence such journalistic provocations risk being held legally liable.”

dangerous to society”<sup>51</sup>. Therefore, *pro publico domo* would be an argument excluding the unlawfulness of a deed<sup>52</sup>.

### 6.1. Hidden camera and tapping.

After R. Beger’s tapes were broadcasted, dr. Janusz Kochanowski, Human Rights Spokesperson, published his stance on sound and image transmission. He cited art. 14 of press law, act 1 (from 26.01.1984) which prohibits the publishing and distribution of sound and image materials without the consent of the author. Such practises are prohibited regardless whether the recording was made with or without the knowledge of the taped person. Violating this regulation, according to art. 49 or press law, in connection to art. 14 act 1 of press law, is punished by imprisonment or a fine<sup>53</sup>.

Distribution of visual or sound recording can also breach art. 14 act 6 of press law which prohibits the publication of private information and data, if it is information not directly related to the subject’s public activity, without the consent of the subject. Breaching this law has got the same consequences as violating the above discussed art. 14 act 1 of press law.

Tapping and use of bugging devices infringe art. 267, par. 2 and 3 cc. Paragraph 2 states that, “he who, in order to obtain information to which he is not entitled, uses tapping devices, or other special equipment” is subjected to punishment by up to 2 years of imprisonment<sup>54</sup>. According to Kochanowski, this regulation does not apply to recording conversations by one of its participants<sup>55</sup>. It should also be noted that paragraph 2 and 3 offenders will be prosecuted upon the motion of the injured party (art. 267 par. 4).

How should, in this context, the ‘tapes of truth’ be viewed? Firstly, it was Beger, one of the participants, who taped the conversations with PiS politicians. Secondly, the subject discussed did not have anything to do with the private sphere but the subjects’ public activity. Thirdly, they were broadcasted by *TVN* journalists in cooperation with Beger. If any accusations were to come out of the provocation, it would have to be put forward by either one of the politicians, that is Adam Lipiński or Wojciech Mojzesowicz.

Regarding the other provocations making use of hidden cameras or tapping discussed above, they were carried out either in cooperation with the police or the prosecution (reports “Mordercy dzieci” and “Prokurator”) or they resulted in exposing some criminal activity, were of important public interest or for the public good or involved little harm done (ie. reports such as “Wędliny drugiej świeżości” or “Gabinety martwych dusz”). The most controversial case seems that with the painting “Zjawa”. After this report was published, the art expert, Łukasz Kossowski, sued another expert

<sup>51</sup> *Dziennikarz przed sądem*, Jolanta Korner’s interview with Marek Safian, TK chairman, „Rzeczpospolita”, 16.06.2005.

<sup>52</sup> R. Socha in the article, “Temida i dociekliwi żurnaliści” states that journalists acting in the public interest should have the right to use provocation in order to expose pathological situations and to fulfil journalist reliability requirements., (“Rzeczpospolita”, 25.04.2005).

<sup>53</sup> [http://www.rpo.gov.pl/index.php?akcja=pokaz\\_strone&id\\_strony=2365](http://www.rpo.gov.pl/index.php?akcja=pokaz_strone&id_strony=2365) [access 19.07.2007].

<sup>54</sup> *Ibidem*.

<sup>55</sup> *Ibidem*.

and *Rzeczpospolita* associate, Janusz Miliszkiewicz. Kossowski accused him of defamation<sup>56</sup>. To this date there is no verdict in the case.

## 7. Journalistic provocation typology.

Based on the above discussion and analysis of journalistic provocations, they can be divided into several categories, according to generally accepted formal criteria:<sup>57</sup>

a) regarding the techniques used there are:

- mistification and „dress ups” (ie. pretending to be French),
- *sting-operations* (ie. prostitutes’ round table),
- entrapment with the use of hidden camera or tapping (R. Beger’s tapes)
- controlled purchase (purchase of TNT).

b) regarding the subject matter:

- serious (as part of investigative journalism),
- entertainment (happenings, jokes, hoaxes).

c) regarding ethical aspects:

- ethically justified,
- unethical

d) regarding legal aspects:

- socially harmful (illegal – punishable),
- socially harmless (unlawful – not punishable),
- activity for the public good (legal).

## 8. Provocation use boundaries - conclusions

The author of this article is convinced, also according to SDP ethics code, that journalistic provocation should only be used as part of investigative journalism. According to general regulation, provocation should never be the starting point of a journalist investigation, rather a last resort, possibly a turning point, or evidence in an investigated case. Provocations can be used when:

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<sup>56</sup> Ł.Kossowski, *op.cit.*

<sup>57</sup>Classification according to content is omitted as it is of little use (ie. provocations to expose corruption or embezzlement, to ridicule officials, etc.)

1. Investigation points to a guilty party but the journalist lacks proof of guilt, a provocation can confirm his presumptions,
2. Thanks to it, the truth can be discovered,
3. It is the last resort, there is no other way of obtaining the same information,
4. It is carried out for important public interest and for noble reasons,
5. Its advantages outweigh the disadvantages,
6. It does not violate the law and is characterised by little or no social harm,
7. It is prepared and carried out in an independent fashion, free of any pressures or influences (also by people taking part in it),
8. It results in the disclosure of offenders and offences, abuses of power by authorities and other people playing significant socio/political functions,
9. It is disclosed to the public and it becomes part of a journalistic account,
10. It takes place with the knowledge and consent of journalists' supervisors,
11. It is in accordance with reality and does not create it<sup>58</sup>.

Additionally, there are a few conditions which exclude the use of provocation. These are:

- in order to amuse the public,
- for sensationalisation, in order to 'spice up' the facts,
- when the same effect can be achieved by traditional methods,
- when it is used to provoke, in order to have something to write about,
- when it pertains to personal/intimate matters of non-public persons.

When the rules outlined above are ignored, criminal and ethics codes are unjustifiably violated and resulting journalists are perceived as unethical people who think they are above the law. Such activity is contrary to values included in journalist ethics code (reliability, honesty, independence).

It undermines journalists in the eyes of public opinion and it does not differentiate between justifiable activity for the public good and activity carried out in order to gain acclaim, fame or material success<sup>59</sup>.

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<sup>58</sup> Cf. J. Iwaniec, M. Szczerba, *Granice dziennikarskiej prowokacji*, "Rzeczpospolita", 07.06.2005 – [http://www.rzeczpospolita.pl/gazeta/wydanie\\_050607/prawo/prawo\\_a\\_26.html?k=on;...](http://www.rzeczpospolita.pl/gazeta/wydanie_050607/prawo/prawo_a_26.html?k=on;...) – [access 15.05.2007].

<sup>59</sup> Silvio.Waisbord in an article from 2004, *Why democracy needs investigative journalism*, "Global Issues Media&Ethics", 2001, April, p. 15n. cited research which proved that use of covert investigative methods undermines public's trust for journalists.