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*The Freedom of the Press and Other Mass Media
as a Constitutional Principle*

KEY WORDS

principles of the constitution, freedom of the press, the mass media, freedom of expression, democracy, obligations of the state, limitation of constitutional freedoms and rights

ABSTRACT

The catalogue of basic principles of the political system has been specified in Chapter I of the Polish Constitution, under the telling title *Rzeczpospolita*. Among them there is the principle of freedom of the press and other means of social communication, which guarantees free flow of information and opinion, constituting the basis of a democratic rule of law. The adopted solution is the legislator's expression of recognition for the role and importance of the press and other mass media in public life. An opportunity to review information and ideas is fundamental for broadening one's knowledge, sharpening critical thinking and opinion shaping, as well as making rational and informed choices.

Essence and meaning of system founding rules

The Constitution of the Republic of Poland¹ is a set of rules containing norms essential for the society organised into the state, which reflect the values appropriate for civil society. The rules of the Polish Constitution, which are the leading ideas of the whole legal system, are known as constitutional principles, leading principles, or principles of the political system. In the encyclopaedic approach, a principle of law is, strictly speaking, a legal norm, binding and particularly important for the given legal system, especially with regards to the hierarchical construction of the legal system (the fundamental character of constitutional norms); the special role of these rules involves defining the direction of legislative actions, influencing the process of interpretation of law and indicating the directions of its application, including the sphere of the so-called discretionary powers, and indicating the ways and limits of exercising rights. These rules can be formulated directly in the normative text, most often, however, they

¹ Konstytucja Rzeczypospolitej Polskiej z 2 kwietnia 1997 r. [The Constitution of the Republic of Poland of 2nd April 1997], *Dziennik Ustaw* [Journal of Laws of the Republic of Poland] 1997 No. 78, item 483 with am. All quotations from: www.sejm.gov.pl/prawo/konst/angielski/kon1.htm [accessed: 25.07.2013].

need to be “reproduced”, decoded. In the widest sense, the principle of law is not a binding legal norm, but only a postulate addressed to the given legal system². Regardless of the nomenclature used to define them, they are characterised by a special relevance in the law, expressed in the following: 1) other constitutional norms result from them; 2) they define important properties of any given institution; 3) they express fundamental constitutional values³. Consequently, they determine the system of the state, shape the legal order and define the modus operandi of state agencies. “Legal principles of the constitution and the system of the state it normalises (in a broad meaning) are, therefore, the first way of expressing values of law previously assumed by the constitutional authority, are a method of transposition, of applying the value from the axiological and moral sphere to the positive law, using the instruments of legal language.”⁴

The political principles are not always delineated directly. Their catalogue is open, which means that they are constantly being “discovered” and specified, both in the judicature and in the doctrine. Therefore, it is possible to say that the decision whether a given constitutional provision is granted the rank of the principle is made “coaxingly” by the doctrine and “decisively” by the judicial decision⁵. Discussing the possibilities of narrowing or expanding the range of these principles, however, about defining them more accurately, as well as about their hierarchy and practical role belong to the science of law⁶.

Legal nature of the norms included in the Chapter I of the Polish Constitution

The basic principles of the political system of the state were determined in the chapter I of the Polish constitution under the meaningful title “The Republic” (Pol. *Rzeczpospolita*). Pointing out the political principles is not art for art’s sake. No normative act, especially the Polish constitution, can be treated as a random set of legal norms. Political principles constitute the basis of the legal system, and thus decide on the nature of the system of the state⁷. The

² See W. Gromski, “Zasada prawa” [Principle of law], in: *Mala encyklopedia prawa* [Small encyclopaedia of law], ed. by U. Kalina-Prasznic, Warszawa 2005, p. 743.

³ More in M. Zieliński, “Konstytucyjne zasady prawa” [Constitutional principles of law], in: *Charakter i struktura norm Konstytucji* [Character and structure of the norms of the Constitution], sci. ed. by J. Trzeciński, Warszawa 1997, p. 63 f.

⁴ D. Dudek, “Pojęcie i klasyfikacja zasad ustrojowych” [Notion and typology of political principles], in: *Zasady ustroju III Rzeczypospolitej Polskiej* [Rules of the system of the 3rd Republic of Poland], ed. by D. Dudek, Warszawa 2009, p. 21.

⁵ See L. Garlicki, “Komentarz do Rozdziału I Konstytucji” [Commentary to the Chapter I of the Constitution], in: *Konstytucja Rzeczypospolitej Polskiej. Komentarz* [Constitution of the Republic of Poland. A commentary], sci. ed. by L. Garlicki, Vol. 5, Warszawa 2007, p. 7.

⁶ See M. Granat, *Prawo konstytucyjne w pytaniach i odpowiedziach* [Constitutional law in questions and answers], Warszawa 2009, p. 58.

⁷ See B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warszawa 2009, p. 12.

principle of the freedom of the press and other mass media is among them, expressed in Art. 14 which ensures that “The Republic of Poland shall ensure freedom of the press and other means of social communication”. The fact that this article was placed in the Chapter I of the Polish Constitution, although at first it was part of the chapter devoted to freedoms and rights of citizens⁸, is not a coincidence⁹. “The placement of this provision in the Chapter I ‘The Republic’ seems to show that the freedom of the press was treated as one of the fundamental principles of the political system of the state, formulating it as one of the leading ideas, on which the legal-political structure of the state and its apparatus was based. This resulted in the brevity and conciseness of contents included in Art. 14. It was later expanded and specified in Articles 54 and 213 of the Polish Constitution”¹⁰ (with regards to the freedom of speech in the former, and of radio and television in the latter). “It is clear, of course, that placing certain provision in the Chapter I stresses their rank, gives grounds for emphasizing them within the functional hierarchy of constitutional norms, assuming that all constitutional norms have identical power, however. The placement of a given regulation within the text of the Constitution allows also to draw certain conclusions about their legal meaning (sense), which follows from the general rules of system interpretation of legal acts.”¹¹ On the other hand, even though all provisions of the Constitution are legally binding and should be likewise observed, they are not all of equal importance, and the Constitution itself is an internally hierarchised normative act. This distinction is significant in the process of both application and interpretation of its norms, especially in the cases where constitutional norms collide. The catalogue and content of political rules are not indisputable; however, it is believed that they should have precedence over the remaining norms of the Constitution because they express

⁸ In the uniform draft Polish Constitution, submitted by the Committee of the National Assembly on 19 June 1996, the content pertaining to the freedom of speech, expression, and press was not included among the political principles defined in Chapter I. They were placed in Chapter II “The freedoms, rights and obligations of persons and citizens” (Pol. *Prawa, wolności i obowiązki człowieka i obywatela*), in the part entitled “Personal freedoms and rights” (Pol. *Prawa i wolności osobiste*) in Art. 43; R. Chruściak *Projekty Konstytucji 1993–1997* [Draft Constitutions 1993–1997], Warszawa 1997, part 2, pp. 18, 93, and 155.

⁹ The fact that the regulations referring to the freedom of media were put by the constitutional legislator in the Chapter I of the Polish Constitution means that this freedom has its own objective justification and constitutes the principle in accordance with which the public debate using free mass media is important for the functioning of the democratic state of law; L. Wiśniewski, “Wolność prasy w świetle Konstytucji RP, ustaw oraz wiążącego Polskę prawa międzynarodowego” [Freedom of the press in the light of the Polish Constitution and the international law binding in Poland], in: *Wolność słowa w mediach. XLV Ogólnopolska Konferencja Katedr i Zakładów Prawa Konstytucyjnego, Spala 2003 r.*, ed. by D. Górecki, Łódź [2003], pp. 20–22; similarly in J. Sobczak, „Prawo do prywatności a wolność słowa i druku” [Right to privacy and the freedom of speech and print], in: *Wolności i prawa jednostki oraz ich gwarancje w praktyce* [Individual freedoms and rights and their guarantees in practice], ed. by L. Wiśniewski, Warszawa 2006, pp. 173–174

¹⁰ Cf. the judgment of the Supreme Court of 28 September 2000, V KKN 171/98, OSNKW 2001, No. 3/4, item 31.

¹¹ See P. Winczorek, *Komentarz do Konstytucji Rzeczypospolitej Polskiej z 2 kwietnia 1997 roku* [Commentary to the Constitution of the Republic of Poland of 2nd April 1997], Warszawa 2000, p. 13.

the most important legal contents of the system and the other constitutional provisions play a more or less subservient role with regards to the former. Although this must not lead to circumventing certain constitutional solutions, the latter must be interpreted according to the fundamental rules of the system, not in isolation¹².

The adopted solution expresses the recognition by the constituent power of the role and importance of the press and other mass media in public life. It also results from a certain conception of organizing the state adopted by the constituent power, certain general assumptions behind which there are political values which, according to said power, deserve emphasis, since it cannot be that “internal arrangement of constitutional matter should be left to the discretion and arbitrariness of the authors of the Basic Law”¹³. This solution suggests that it was the constituent power’s intention to bestow on Art. 14 the nature of a legal and constitutional principle of the system of the state, as this is the nature of most of this chapter’s regulations. Therefore, it is hard to be surprised that Art. 14 lies next to the regulations concerning the freedom for the creation and functioning of political parties, other forms of association, existence of independent churches and religious organisations, as well as the principle of the decentralisation of public power, mainly in the form of local government. All these assumptions are the antithesis of the characteristic features of non-democratic authoritarian and totalitarian states¹⁴. It is not by accident, either, that Chapter I is more difficult to revise in the possible case of changing the provisions of the Polish Constitution¹⁵. “Since it is recognised that the provisions included in Chapters I, II, and XII form the basic principles of the system of the Republic, and a modification in any of them is not insignificant for the whole of the Constitution. Therefore the possibility of making even the slightest change is hedged about with a special difficult procedure”¹⁶. In consequence it has to be assumed that the systematics of the Basic Law, including the matter included in Chapter I, is an “attempt of the constituent power to stress the importance of certain institutions in the life

¹² See the judgment of the Constitutional Tribunal of 29 April 2003, SK 24/02, OTK ZU 2003, No. 4A, item 33.

¹³ Cf. M. Masternak-Kubiak, J. Trzeciński, “System rządów w Konstytucji z 2 kwietnia 1997 r. – analiza kompetencji Sejmu” [System of governance in the Constitution of 2 April 1997: analysis of competencies of the Sejm], *Przegląd Sejmowy* 1997, No. 5, p. 47.

¹⁴ Cf. the judgment of the Constitutional Tribunal of 30 October 2006, P 10/06, OTK ZU 2006, No. 9A, item 128; the judgment of the Constitutional Tribunal of 12 May 2008, SK 43/05, OTK ZU 2008, No. 4A, item 57.

¹⁵ The rules for changing the Polish Constitution are defined in Art. 235, which says, among other things, that a bill changing the Constitution is adopted “by the Sejm by a majority of at least 2/3 of votes in the presence of at least half of the statutory number of Deputies, and by the Senate by an absolute majority of votes in the presence of at least half of the statutory number of Senators.”

¹⁶ A. Frankiewicz, *Regulacja wolności wypowiedzi w polskim porządku prawnym* [Regulation of the freedom of expression in the Polish legal order], in: *Prawa i wolności obywatelskie w Konstytucji RP* [Civil rights and freedoms in the Polish Constitution], ed. by B. Banaszak, A. Preisner, Warszawa 2002, p. 370.

of the state”¹⁷. The provisions of this chapter, therefore, express general principles, which can be used to characterise the system of the state and which have been clarified in the subsequent Chapters of the Polish Constitution.

It is worth stressing that the guarantee of freedom of press and other means of social communication in Art. 14 of the Polish Constitution stems from the historical experiences of the People’s Republic of Poland (Pol. *Polska Rzeczpospolita Ludowa – PRL*) period, when media were strictly controlled, serving to reinforce the communist regime. Yet the freedom of press and other mass media is considered a necessary constituent of a democratic state. One cannot avoid noticing, though, that the fact of including provisions related to the freedom of expression and press in the Constitution does not guarantee by itself that they will be observed. Indeed, the PRL Constitution, adopted in the harshest period of Stalinist terror, also included regulations concerning the freedoms of speech and print¹⁸. These regulations, however, were supplemented with a qualification which stated that these freedoms must serve the purpose of strengthening the socialist state, which virtually eliminated the freedom of speech and print, since all views contrary to the will of the power or its professed ideology did not serve that purpose. Thence the provisions of the PRL Constitution were empty declarations in nature, and the constitution itself was a so-called semantic constitution, that is, one which proclaimed the existence of political principles different from those which found actual application in the state¹⁹. The practice of interpretation and application of law in the PRL effectively cancelled the constitutional guarantees of the freedom of speech and freedom of the press. This is why the behaviour of the organs responsible for the interpretation and application of law in practice, in the ordinary, everyday situations is so important, since it depends on them to what extent it will be possible to enjoy the promised freedoms and rights.

In the doctrine, however, the importance of Art. 14 in regards of its placement in the Chapter 1 of the Polish Constitution is questioned. It is stressed that its legal nature depends not on its place in the systematics of the Polish Constitution but on the wording of the regulations it contains²⁰. It is hard to agree with the presented position, though. Apart from the

¹⁷ Cf. M. Masternak-Kubiak, J. Trzeciński, *System rządów...*, p. 47.

¹⁸ The Constitution of the People’s Republic of Poland of 22 July 1952, *Dziennik Ustaw Polskiej Rzeczypospolitej Ludowej* [Journal of Law of the People’s Republic of Poland] 1976, No. 7, item 36 with am. Art. 83 of the PRL Constitution stated: “1. The People’s Republic of Poland shall ensure to the citizens the freedom of speech, print, assemblies and meeting, march and manifestation. 2. For the realisation of this principle, the workpeople and their organisations are given the use of printing presses, paper resources, public edifices and halls, means of communication, radio, and other necessary material means.” This regulation did not provide for any limitations of the freedom of speech and print, and yet the realisation of its provisions remained a fiction.

¹⁹ See J. Sobczak, *Prawo prasowe. Komentarz* [Press law. A commentary], Warszawa 2008, p. 62.

²⁰ See D. Dudek, “Głos w dyskusji” [Voice in the discussion], in: *Wolność słowa...*, p. 44.

arguments for the special nature of the norms included in the Chapter I of the Constitution, which express the leading concepts of the Basic Law, one cannot ignore the motives which inspired the constituent power in creating the basic principles of the legal order and shaping the basics or the system of the state. Beyond doubt, the purpose was to emphasise the role of the press, in its broad meaning, as the guarantor of democracy, which was a reaction to the period of bondage in the PRL. This reflects the view that inasmuch as the freedom of speech is to serve the self-realisation of an individual, the freedom of the press, in its constitutional sense, serves the democratic organisation of the society and the procedures stabilising this structure²¹. The freedom of expression and freedom of press determine the transparency of social life, the control of the activities of the state and public institutions²². Such reasoning finds its justification in the discussions which took place in the Constituent Committee of the National Assembly during its work on the Polish Constitution, when it was stressed that the freedom of press and mass media, which was also an important achievement of the transformations begun in 1989, is a constitutive element of a civil society²³. Thus, it is necessary to refer to historical interpretation in order to determine the nature and content volume of Art. 14. The historical arguments were of significant importance for the shaping of Chapter I of the Polish Constitution, and as a consequence many political principles, directly or indirectly related to the status of an individual, were included in it. In this sense freedom of the press and other mass media is a guarantee of the democratic state of law, which sees in their existence an important component stimulating the society to assume responsibility for the common good which is the Republic of Poland.

Principle of the freedom of the press and other mass media as the foundation of the democratic state

The freedom of the press and other mass media is the guarantee and the emphasis of the democratic nature of the system of the state. The free flow of information and views, made

²¹ Cf. W. Sokolewicz, "Prawnokonstytucyjne gwarancje wolności prasy (mediów)" [Legal and constitutional guarantees of the freedom of press (media)], in: *Ustroje, doktryny, instytucje polityczne. Księga jubileuszowa Profesora zw. dra hab. Mariana Grzybowskiego* [Systems, doctrines, political institutions. Jubilee book in honour of Prof. Marian Grzybowski], ed. by committee, J. Czajowski et al., Kraków 2007, p. 439.

²² Cf. E. Ferenc-Szydełko, *Prawo prasowe. Komentarz* [Press law. A commentary], Warszawa 2010, p. 20.

²³ More in: "Dyskusja w Komisji Konstytucyjnej Zgromadzenia Narodowego" [Discussion in the Constituent Committee of the National Assembly], *Biuletyn Komisji Konstytucyjnej Zgromadzenia Narodowego* [Bulletin of the Constituent Committee of the National Assembly] No. 39 (1996); J. Sobczak, "Wolność myśli, wypowiedzi, słowa, przekazywania i otrzymywania informacji w projektach konstytucji zgłaszanych w dobie prac ustawodawczych w latach 1993–1997" [Freedom of thought, expression, speech, to disseminate and acquire information in the draft constitutions presented at the time of the legislative works in 1993–1997], in: *W kręgu mediów i polityki* [In the circle of media and politics], ed. by D. Piontek, Poznań 2003, pp. 177 ff.

possible by the press and other mass media, is the foundation of the democratic state of law which the Republic of Poland is by the Art. 2 of the Polish Constitution. It is also crucially important for the realisation of the “principle of the sovereignty of the state, in order to ensure to the citizens conscious and active participation in the realisation of state power, which cannot be achieved in the conditions of limited right to information, impediments in gaining knowledge on the condition of the state, its problems, on the functioning of its organ and government departments”²⁴. Dissemination of information and views is the necessary condition of democracy, since the latter requires that the citizens be guaranteed a possibility of participation in public affairs. Such participation would not be possible if the citizens were deprived of quick access to full and reliable information concerning public affairs and the accompanying opinions and views. And these, necessary for conscious and responsible involvement in public affairs, should be supplied by the media.

The freedom of speech is a measure of the current law and determines if in the country the rules of democracy are observed, based on the principle of information pluralism, which in turn is possible only when there are mass media independent of each other. Democracy respects the plurality and diversity of information and views, considering as acceptable not only those which are socially accepted, enjoyed by the recipients, and are received with satisfaction by the authorities. It also includes the freedom to express views and disseminate information which shock, tease, and provoke objections, which assail recognised values, respected persons, social groups, organisations, or organs of the state²⁵. In this sense, the freedom of speech and democracy are two sides of the same coin. Without the freedom of speech, there is nothing to be said about the existence of democracy, while the democracy cannot exist without the freedom of expression realised by free media, which guarantee the flow of all information and views.

In this sense, the freedom of media has a social dimension and is a *pro publico bono* freedom, which ensures above all else the transparency and pluralism of social life in a democratic state²⁶. Although it is the journalists who benefit first from the freedom of press, it must be remembered that it is to serve the whole society²⁷. Consequently, the realised by the press freedom of expression, which is one of the basic pillars of the democratic society, one of

²⁴ W. Skrzydło, *Konstytucja Rzeczypospolitej Polskiej. Komentarz* [The Constitution of the People’s Republic of Poland. A commentary], Warszawa 2009, pp. 23–24.

²⁵ Cf. W. Szotyga, “Standard Europejski” [European standard], *Materiały Poznańskiego Centrum Praw Człowieka. Instytut Nauk Prawnych PAN* [Materials of the Poznań Human Rights Centre. Institute of Legal Studies of the Polish Academy of Sciences] 1992, No. 1, p. 17.

²⁶ Por. J. Szymanek, “Konstytucyjna zasada wolności słowa w radiofonii i telewizji” [Constitutional principle of the freedom of speech in radio and television], *Państwo i Prawo* [State and Law] 2007, No. 8, p. 21.

²⁷ See the resolution of the Supreme Court of 12 November 2003, V KK 52/03, OSNKW 2004, No. 3, item 24.

the fundamental conditions of its progress and the development of each person, cannot limit itself to the information and views which are received favourably, considered inoffensive or neutral, but pertains to the same extent to those which offend, outrage, or cause disturbance in the state or in some part of the society. These are the requirements of pluralism, tolerance, and being open to other views, without which there is no democracy²⁸. This position was fully approved of by the Constitutional Tribunal, which emphasised that the principle formulated in the Art. 14 of the Constitution ensures to the citizens a possibility of conscious and active participation in the realisation of state power, the guarantee of which is the freedom of press. Without the freedom of press it is not possible to fully realise the freedom of expression, and the freedom of expression is one of the foundations of a democratic society, the condition of its development and of self-realisation of individuals. This freedom cannot be limited to the information and views which are favourably received or seen as innocuous or neutral. It is the role of the journalists to propagate information and ideas concerning the affairs which are the objects of public interest and are of public importance. This remains in a close relationship with the right of the public opinion to be informed²⁹.

In a democratic state, in which there is a collective subject of sovereignty, information and opinions on the functioning of the state and its organs should have a possibly wide material scope. This knowledge should be formed on the basis of varied information coming from many sources independent from each other, a clash of different opinions which allow to see the same issue from different points of view. The confrontation of various information and opinions leads to their verification, thanks to which it is possible to approach the objective truth. "Any limitations in this area will lead to an incomplete, one-sided image of the reality or show one-sided future outcome of decisions suggested in advance. Thus, in a longer perspective, power will belong not to those who are formally bound to judge but to those who provide them with information on which they base their decisions. It is little wonder, therefore, that mass media are sometimes equalled with the three powers of the state and called the fourth power."³⁰ They are to ensure to the free society acquiring and disseminating

²⁸ See the judgment of the European Court of Human Rights of 7 December 1976 on the case *Handyside v United Kingdom*, Application no. 5493/72, in: I.C. Kamiński, *Swoboda wypowiedzi w orzeczeniach Europejskiego Trybunału Praw Człowieka w Strasburgu* [Freedom of expression in the judgments of the European Court of Human Rights in Strasbourg], Kraków 2003, pp. 27–41. The position that the freedom of speech is a foundation of a democratic state and pluralist society was later confirmed and substantiated in the activity of ECHR, which developed this line of judgment: the judgment of 8 July 1986 on the case *Lingens v Austria*, Application no. 8815/82; judgment of 23 April 1992 on the case *Castells v Spain*, Application no. 11798/85; judgment of 1 July 1997 on the case *Oberschlick v Austria*, Application no. 20834/92.

²⁹ See the judgment of the Constitutional Tribunal of 23 March 2006, K 4/06, OTK ZU 2006, No. 3A, item 32; the judgment of the Constitutional Tribunal of 11 October 2006, P 3/06, OTK ZU 2006, No. 9A, item 121.

³⁰ B. Banaszak, *Konstytucja Rzeczypospolitej...*, p. 103

information and opinions without the interference of public authorities and so the capability to control various spheres of life. The possibility acquaint oneself with information and opinions is of fundamental significance for the deepening of knowledge, sharpening the critical sense, shaping one's opinion, and making rational and conscious choices. However, if the access to information and opinions in the public circulation is to be full, it is necessary to publish them, which is best achieved by the press and other mass media. This points to the two-sidedness of the freedom of press and other mass media which, on one hand, create the opportunity for everyone to convey to other people information and opinions coming from them, while on the other they ensure that the recipients have the opportunity to choose their source.

In this context, the regulations referring to the press and other means of social communication show special and, simultaneously, axiologically significant constitutional assumptions, which indicate the democratic nature of the state. "Therefore, if we attempt to relate the freedom of expression and press to the system of values on which the constitution is based, it has to be said that these are freedoms of special significance regarding the constitutional axiology. It is first and foremost a reference to the principle of the democratic state of law, which assumes the possibility of free and open debate on all public affairs which are important to the society. Apart from that, another point of reference is the constitutional principle of political pluralism, unimaginable without the freedom of expression or press."³¹

The freedom of the press and other mass media should be considered in a broader context. In literature, four reasons are pointed out, for which the free press should exist. The first can be reduced to that that it ensures a possibility of realisation of striving for truth. The second reason is that only in the conditions of functioning free press there is a possibility of free communication, which allows the self-expression and self-realisation of an person. Third, free press should exist not because it protects the senders of expressions but because it promotes the correct attitudes of tolerance among its recipients. And fourth, finally, political democracy requires that citizens should have a full capability of receiving any information³².

Dualistic nature of Art. 14 of the Polish Constitution

Two freedoms result from the content of the Art. 14 of the Polish Constitution. One is the freedom of the press, the other freedom of other mass media. The notion of press has been defined in Art. 7 para. 2 subpara. 1 of the Press Law, according to which "press means

³¹ M. M. Cieśliński, I. Kondak, "Postanowienia zabezpieczające a wolność prasy" [Precautionary provisions and freedom of press], *Przegląd Sądowy* 2000, No. 3, p. 7.

³² See W. Sadurski, "Prawo do wolności słowa w państwie demokratycznym. Zagadnienia teoretyczne" [Right to the freedom of speech in a democratic state. Theoretical issues], *Państwo i Prawo* 1992, No. 10, pp. 3 ff.

periodical publications which do not form a closed, unified whole, issued at least once a year, bearing a constant title or name, current number, and date, in particular journals and magazines, news bulletins, radio and television programmes and newsreels; the press also covers all existing and created due to technological progress mass media, including broadcasting stations and corporate radio and TV broadcasting centres, which spread periodical publications with print, vision, sound, or some other disseminating technique; the press also includes groups of people and individual persons engaged in journalistic activity”³³. The notion of other mass media has not been defined anywhere. It is emphasised in the doctrine that the means of social communication are synonymous with the more frequently used designations “means of mass communication”, “mass media”, or, simply, “media”³⁴. It can be assumed, therefore, that this term was used in order to emphasise the independence of the means of social communication from the state and to stress the fact that they ceased to play the role of the propaganda organ of the state and became common good belonging to the whole society and realising the ideas of civil society. Such interpretation, although indubitably true, leaves a feeling of insufficiency and a still open question why the constituent power, in the most important normative act, speaks both of press and of other means of social communication. It seems that such “distinction of the notion of press from other means of social communication by the constituent power is evidence of its traditional understanding of press as printed periodical publications, bearing a title, current number, and date, and not as synonymous with virtually all periodical forms which exist in mass media, including radio and television programmes, newsreels and some forms of Internet communication”³⁵, for which the collective notion of social means of communication is used. This construction of the content of Art. 14 of the Polish Constitution indicates the rationality of the constituent power, who is aware of the permanently occurring progress in the means of communication, which cannot be limited exclusively to the printed press but have to be perceived in far broader context, as all presently known, and those which will come into being in the future, technical means for communicating information and opinions. Obviously, the term “social

³³ Act of 26 January 1984. Press Law, *Journal of Laws* 1984, No. 5, item 24 with am. The “triple division” of the definition of the press leads to the threefold understanding of this notion: 1) the press in the objective sense (which is a message of specific features); 2) the press in institutional sense (equaled with mass media), and 3) the press in subjective meaning (i.e., groups of people and individual persons engaged in journalistic activity); E. Czarny-Drożejko, *Dziennikarskie dochodzenie prawdy a przestępstwo zniesławienia w środkach masowego przekazywania* [Journalistic investigation of truth and the libel offense in mass media], Kraków 2005, p. 195.

³⁴ Similarly in: W. Sokolewicz, “Wolność prasy jako konstytucyjna zasada ustroju państwa” [Freedom of the press as a constitutional principle of the system of the state], *Ius Novum* 2008, No. 2, p. 12, note 39; L. Garlicki, P. Sarnecki, “Komentarz do art. 14” [Commentary to Art. 14], in: *Konstytucja Rzeczypospolitej...*, Vol. 5, pp. 4–6.

³⁵ B. Banaszak, *Konstytucja Rzeczypospolitej...*, pp. 103–104.

means of communication” cannot refer only to the radio and television, since the scale of the semantic span of this notion extends far beyond these media. The other means of social communication indicated in the Art. 14 of the Constitution are, therefore, the result of the development of new tools of communication and constitute a new platform for realisation of the constitutional principle of the freedom of expression.

“It should be emphasised here that it has been indicated, regarding the terminology employed in the discussed regulation of the Constitution, that the wording ‘means of social communication’ causes, intrinsically, a substantial commotion, considering that in scientific literature there has been a dispute for years about the name which should be used for means communication directed for a massive recipient. Some authors advocate the term ‘means of mass communication’ (Pol. *środki masowego komunikowania*), or ‘means of mass transmission’ (Pol. *środki masowego przekazu*), some others accept the American neologism ‘mass media’. Used, though rarely defined, are also the terms ‘means of social communication’ (Pol. *środki społecznego komunikowania*) and ‘means of political communication’ (Pol. *środki komunikowania politycznego*). The term ‘means of social communication’ (Lat. *instrumenta communicationis socialis*) can be found, however, in Title IV Book III (Canons 822–823) of the Code of Canon Law. The Catholic social teaching also makes use of it, stressing the significance and influence strength of these means.”³⁶ Also, it has to be remarked that the notion of the means of social communicating rises some controversy, since it “may lead to misinterpretation, albeit based on semantic interpretation, that ensuring the freedom of the press does not pertain to all means of communication but only these means, of mass character, obviously, that are social in nature. The consequence of this could be to say that not all mass means of communication are social in character, but only some of them. Recognising the wording of ‘social’ as terminological awkwardness, it is proper to support the thesis that Art. 14 of the Polish Constitution ensures freedom not only to the social ones but all means of communication”³⁷.

The isolation of the press relates to the fact that it is the oldest means of communication. Thence it is an acceptable practice to treat the regulation of the press as model regulation, which can be given a broader scope encompassing other media³⁸. In this context, distinguishing the freedom of the press has a special significance, confirmed in Art.

³⁶ E. Nowińska, *Wolność wypowiedzi prasowej* [Freedom of press expression], Warszawa 2007, p. 36.

³⁷ J. Sobczak, *Prawo prasowe...*, p. 72.

³⁸ Cf. B. Szmulik, “Wolność prasy (art. 14, 54, 61)” [Freedom of the press (Art. 14, 54, 61)], in: *Konstytucja Rzeczypospolitej Polskiej. Komentarz encyklopedyczny* [Constitution of the Republic of Poland. Encyclopaedic Commentary], ed. by W. Skrzydło, S. Grabowska, R. Grabowski, Warszawa 2009, p. 656.

54 para. 2 of the Polish Constitution, which prohibits licensing of the press. “It is the only means of mass communication free of technological limitations. Everyone who has sufficient financial means at his disposal can establish his own press organ. Such capability does not exist in the case of electronic means of communication (radio, television).”³⁹ In their case, a statute may require that a permit be received before operating a radio or television station. This solution is justified for organisational and technical reasons, a limited number of frequencies, and the necessity to ensure order in the air.

The principle of the freedom of the press and other mass media and the freedom of expression

The freedom of the press and other means of social communication ensured in Art. 14 emphasises, in essence, the significance of the special case of the freedom stated in Art. 54 para. 1 of the Polish Constitution. The freedom of the press and other mass media is in the range of the “general freedom” to express opinions, acquire and disseminate information, stated in Art. 54. It has to be stressed in this context that the press and other means of mass communication do not only guarantee the freedom of expression but also benefit from it. Without the freedom of expression there is no freedom of the press, even though it can be imagined that there is a freedom of expression, verbal, for example, but no freedom of the press⁴⁰. The freedom of expression, as a constitutional value, may be realised in various ways. Dissemination of information and opinions is not the exclusive attribute of the press and other mass media, it is but one of many possible methods. Thanks to the connection between the freedom of expression and freedom of the press and other means of social communication, each of these freedoms gained a new dimension and a broader area for free realisation. “There is no way to avoid noticing, however, that these regulations are not redundant. Therefore, Art. 14 has a separate, independent meaning, and so the term ‘freedom’ cannot be understood here in the way appropriate for the Art. 54 of the Constitution.”⁴¹ Without the press and other mass media, the freedom of expression, the right to information, which is intrinsically bound to it, and its corresponding right to be informed, would be much diminished. It is not possible nowadays to fully enjoy the freedom of expression without the ability to communicate with the public by using the technical means to disseminate information and opinions. Only the

³⁹ B. Banaszak, *Konstytucja Rzeczypospolitej...*, p. 106.

⁴⁰ See J. Sobczak, *Prawo do prywatności...*, p. 174.

⁴¹ E. Nowińska, *Wolność wypowiedzi...*, p. 34.

joint analysis of the content of these regulations allows the proper reading of the provisions within.

It also seems that, in spite of the fact that Art. 54 does not relate directly to the freedom of the press and only guarantees the freedom of expression in general, their integral relationship is visible in the provisions forbidding the preventive censorship and the licensing of the press, which are the link between the two articles and, at the same time, an interpretational directive for the provisions of Art. 14. The scopes of both regulations partially overlap and partially complement each other. Art. 54 has a broader material scope, is not confined only to the press and means of social communication but pertains also to other subjects, including non-institutional ones, that communicate using spoken and written word, image, sound, and using their carriers, such as print, film tape, electronic recording, the Internet, etc.⁴² In this sense, the position of the Constitutional Tribunal expressed in the judgment of 29 April 2003 becomes clear. The Tribunal stressed that the “[p]rinciples of the system of the Republic of Poland, included in Chapter I, are not regulations of a higher legal rank than other regulations of the Constitution; therefore, they can be of use in situations which are not regulated by other, more specific regulations but cannot ‘replace’ them. They cannot lead to circumventing certain constitutional solutions, although the latter must obviously be interpreted in accordance with the basic rules of the system and not in isolation of them”⁴³. Nevertheless it should be assumed that “the interpretation of constitutional principles should be conducted in accordance with the assumption that if certain issues are regulated by a more specific constitutional norms, ‘closer’ to those issues, it is these norms that are the proper standard to control the constitutionality of statutes pertaining to the issues in question. One should not refer to the chief system building rules which, albeit in a more abstract and less precise way, pertain to the given issues. [...] It has to be assumed that the rational constitutional legislator does not repeat identical norms of constitutional rank in different regulations. Therefore it is not possible to accept the statement that one norm of constitutional rank may be, in the same form, be derived from many separately taken regulations of the Constitution. This would mean that one of these regulations is redundant, at least in part, because its content is but a simple repetition of other constitutional provisions”⁴⁴. In the light of the above, the complementarity of Art. 14 and 54 of the Polish Constitution causes no doubts. While the first is a principle of the state policy, the other is a legal right.

⁴² Cf. P. Winczorek, *Komentarz do Konstytucji...*, p. 76.

⁴³ See the judgment of the Constitutional Tribunal of 29 April 2003, SK 24/02, OTK ZU 2003, No. 4A, item 33.

⁴⁴ *Ibidem*.

Consequently, it does not seem possible to derive an independent legal right from Art. 14, on which a constitutional complaint could be based. In view of the reciprocal relationship between these two articles, there is no doubt that Art. 54 develops the political principle expressed in Art. 14 where the legal rights are concerned, guaranteeing to everyone the freedom to express one's opinions as well as to acquire and disseminate information.

The freedom of expression is erroneously identified with the freedom of the press, in the broad meaning of the word. It is not correct to use these terms interchangeably, since they are neither identical nor synonymous. The freedom of the press belongs to the press, and the freedom of expression to the citizens and other subjects which function in contexts other than these which are related to searching, interpreting, and disseminating information⁴⁵. This distinction has been confirmed by the ruling of the Constitutional Tribunal expressed in the judgment of 12 May 2008, in which the Tribunal stated that the "freedom of the media is a special case, in its objective aspect, of the freedom of speech, guaranteed in Art. 54 para. 1 of the Constitution. Art. 14, however, is not a repetition of the content of Art. 51 para. 1 of the Constitution. Both freedoms are complementary in nature, as the freedom of the media strengthens the freedom of expression (by creating a platform of pluralistic discourse which enables the self-realisation of an individual), and the freedom of expression strengthens the freedom of the media as well"⁴⁶. Moreover, it is stressed in the doctrine that there is a relation between Art. 14 and 15 of the Polish Constitution also in its linguistic aspect, visible in the fact, for example, that both regulations mention the "means of social communication", among other things, and ensure their freedom.

Because of the special significance of Art. 54 para. 1 of the Polish Constitution for the operation of press and other means of social communication, it seems necessary to discuss, albeit cursorily, the issues which relate to it. According to its wording, "[t]he freedom to express opinions, to acquire and to disseminate information shall be ensured to everyone". The freedom to express opinions, acquiring information and the freedom of its dissemination are all components of personal freedom, which means that they apply to each person. The freedom of expression can also be enjoyed by "groups of people and individual persons engaged in journalistic activity", which are included in the notion of the press in its subjective aspect, which are a kind of core of the freedom of the press and a necessary element of its functioning. Consequently, Art. 1 of the Press Law becomes clear, stating that "the press, in

⁴⁵ W. Sadurski, "Wolność słowa i wolność prasy" [Freedom of speech and freedom of the press], *Rzeczpospolita* 1993, No. 179.

⁴⁶ The judgment of the Constitutional Tribunal of 12 May 2008, SK 43/05, OTK ZU 2008, No. 4A, item 57.

accordance with the Constitution of the Republic of Poland, enjoys the freedom of expression and realises the right of the citizens to reliable information, transparency of public life, and social control and criticism”. The regulation of Art. 1 of the Press Law declares the “principle of the freedom of the press, seeing in it the realisation of the right of the citizens to complete, reliable, non-misleading, and responsible information. The freedom of the press is derived from the freedom of thought, from which flows the freedom of beliefs. Important components of the latter freedom are the rights to express political opinions, cultivate national traditions, and profess a religion. The freedom of thought and freedom of beliefs can be manifested only when there is freedom of expression. The freedom of expression is the freedom to present opinions and beliefs in any form, in a way which is perceptible to others (with a word, gesture, sound, or image). The content of the freedom of speech, derived in turn from the freedom of expression, is the right to freely express opinions in the spoken form, as well as to preserve these words and to publish them as handwriting, print, sound record, and record of both sound and image. The freedom of the press to its full extent is possible only in the case when the following freedoms actually exist: of thought, beliefs, expression, speech, information, and publication. It is in the freedom of the press that the above notions are reflected and embodied”⁴⁷. This principle was numbered by the constituent power among personal rights and freedoms, that is, closely related to a person.

It has been stressed in the jurisdiction of the Constitutional Tribunal that in Art. 54 para. 1 of the Polish Constitution, there are three separate, although connected and reciprocally dependent freedoms of an individual: the freedom to express one’s opinions, the freedom to acquire information, and the freedom to disseminate information. The word “opinion” used in the above regulation, should be understood as broadly as possible, not only as expressing one’s judgments about facts and phenomena in all aspects of life, but also as presenting views, suppositions, and predictions, and in particular informing on the facts, both actual and alleged⁴⁸. The regulation of Art. 54 of the Polish Constitution pertains to expressing opinions in any form and under any circumstances. In its subjective aspect, it relates above all to natural persons, as it should be assumed that only this group of the subjects of legal relations can have their own opinions and actually acquire or disseminate information. It cannot be excluded that a certain natural person (or a group of people) performing an expression acts on behalf and for the benefit of a specific institution (a legal

⁴⁷ See the judgment of the Supreme Court of 28 September 2000, V KKN 171/98, OSNKW 2001, No. 3/4, item 31.

⁴⁸ See the judgment of the Constitutional Tribunal of 5 May 2004, P 2/2003, OTK ZU 2004, No. 5A, item 39.

person or an organisational unit without legal personality); however, it should be assumed that the person doing it realises “his own” freedom of expression and is not only the “mouth” of the institution⁴⁹. The freedom to acquire information assumes some activity of journalists, which requires them not only to reach the sources of information in order to learn their content but also to undertake additional activities related to the verification of acquired information. To fulfil a so defined obligation it is not enough to limit oneself to using information already in existence or to wait for information to be delivered by subjects bound to disseminate it. “Whereas the freedom to disseminate information is not making the gathered data available to the subjects individually chosen by the disseminator, but also publicising information, i.e., releasing them to public knowledge, to non-individualised recipients, especially via the mass media.”⁵⁰

The universal in its objective (as pertaining to all forms of expression) and subjective aspect (as belonging to everyone) freedom to express one’s opinions, as well as acquiring and disseminating information, referred to in Art. 54 of the Polish Constitution, is somehow instantiated in the freedom of the means of social communication with the press at the forefront (Art. 14), which is treated as a legal and constitutional principle of the system. It is instantiated, in turn, as the institutional principle of the freedom of speech in radio and television (Art. 213 para. 1)⁵¹, which is a realisation of the former principle, and is guarded by the National Broadcasting Council (Pol. *Krajowa Rada Radiofonii i Telewizji*).

Acceptability of the limitations of the constitutional freedoms and rights

The nature of the freedom of expression and the freedom of the press and other means of social communication is not absolute nor unlimited by anything. Absolutisation of these values would lead to situations in which other values protected by the constitution, as well as the freedoms and rights of the individual, are infringed upon. If the freedom of expression, counted among personal freedoms, cannot be considered as an absolute value, it is even more the case of the freedom of the press and other means of social communication, which belongs to political freedoms. “In the view of Art. 31 para. 3 of the Polish Constitution, there is no grounds to assign to the freedom, and even more so to the freedom of the press, which is only a part of this freedom, the presumption of priority of protection from other constitutional

⁴⁹ See the judgment of the Constitutional Tribunal of 30 October 2006, P 10/06, OTK ZU 2006, No. 9A, item 128.

⁵⁰ Cf. P. Sarnecki, “Komentarz do art. 54” [Commentary to Art. 54], in: *Konstytucja Rzeczypospolitej...*, Vol. 3, sci. ed. by L. Garlicki, Warszawa 2003, p. 5.

⁵¹ W. Sokolewicz, *Prasa i konstytucja* [Press and Constitution], Warszawa 2011, p. 94.

freedoms and rights. A presumption of this kind can be based on a special significance, which the constitutional legislator attaches to a given freedom or right. It should be noted in this scope that goods referred to in Art. 47 of the Polish Constitution are protected by the so-called non-derogable rights, i.e., such rights which cannot be limited even under martial law and in state of emergency (Art. 233 para. 1 of the Polish Constitution). The freedom of expression, however, can be subjected to such limitations. This unambiguously reveals the preferences of the constitutional legislator.”⁵²

Raising the freedom of the press and other mass media to the rank of political principles does not mean that, in the case of collision with the freedoms and rights of the individual, they take precedence each and every time. “The fact of being raised to the rank of constitutional principle does not make this section of the freedom to express opinions a freedom of absolute nature, and therefore it can be subject to limitations, obviously in compliance with the requirements ensuing from Art. 31 para. 3 and Art. 54 para. 2 of the Polish Constitution.”⁵³ A similar position was taken by the Constitutional Tribunal in its ruling of 8 July 2008, in which it reminded that Art. 31 para. 3 is a general principle in nature, which is applied not only when a regulation on which a freedom or right is based clearly provides for the acceptability of its limitation but also when the regulation being the basis of a freedom or right does not mention the possibility of imposing limitations. Art. 31 para. 3 is therefore a necessary supplement to the norms expressed in Art. 14 and Art. 51 para. 1 of the Polish Constitution. Its content would have to be taken into consideration by the Constitutional Tribunal even if this regulation were not indicated as the standard for the control of constitutionality⁵⁴. The acceptability and premises of limitations are stipulated by Art. 31 para. 3 of the Polish Constitution, in the light of which limitations of exercising constitutional freedoms and rights can be imposed only by statute, and only when they are needed in the democratic state for its security or public order, or for the protection of natural environment, health or public morals, or the freedoms or rights of other people. Also, such limitations cannot violate the essence of these freedoms and rights.

What deserves to be emphasised is the fact that the limiting clause included in Art. 31 para. 3 of the Polish constitution requires, in its formal aspect, that the limitations in exercising constitutional freedoms and rights should be introduced as statutes, which excludes

⁵² See the judgment of the Constitutional Tribunal of 30 October 2006, P 10/06, OTK ZU 2006, No. 9A, item 128. According to Art. 47 of the Polish Constitution, “[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”.

⁵³ See the judgment of the Constitutional Tribunal of 12 May 2008, SK 43/05, OTK ZU 2008, No. 4A, item 57.

⁵⁴ See the judgment of the Constitutional Tribunal of 30 October 2006, P 10/06, OTK ZU 2006, No. 9A, item 128; the resolution of the Constitutional Tribunal of 8 July 2008, P 38/07, OTK ZU 2008, No. 6A, item 114.

the possibility of introducing them by lesser acts. Whereas in its material aspect, it permits establishing only such limitations which do not violate the essence of the freedom or right being limited, and only when they need to be introduced in the democratic state because of one of the following premises: security of public order, protection of natural environment, health or public morality, or freedoms and rights of other people. The scope of the imposed limitations should be proportional, that is, as necessary to achieve the proposed goal. Consequently, to assess the validity of a limitation, three criteria are considered, of usefulness, necessity, and proportionality, all of which must be present together⁵⁵. In the light of the current standards, therefore, such an interference is acceptable if it can achieve the proposed results, is necessary for the protection of the public interest to which it is connected, and its results are appropriately proportional to the burdens it imposes⁵⁶.

Role and tasks of the state in the protection of constitutional freedoms and rights

The addressee of the obligations ensuing from Art. 14 and 54 of the Polish Constitution is the state, which is clearly indicated by the wording they contain: “The Republic of Poland shall ensure [...]” (Art. 14) and “[...]shall be ensured to everyone” (Art. 54 para. 1), as well as para. 2 which states, that preventive censorship and licensing of the press are “prohibited”, although “[s]tatutes may require the receipt of a permit [...]”. The constitutional provisions are confirmed in the content of Art. 2 of the Press Law, according to which “Organs of the state, in accordance with the Constitution of the People’s Republic of Poland, shall create for the press the conditions necessary to perform its function and tasks, including such which enable the operation of the editors of journals and magazines varied in program, thematic scope, and presented attitudes”, and Art. 6 para. 1 subpara. 1 of the Broadcasting Law (Pol. *Ustawa o radiofonii i telewizji*), which states that the “National Council stands guard of the freedom of speech in radio and television, independence of the broadcasters and the interests of the recipients, as well as ensures open and pluralistic nature of radio and television”⁵⁷. Neither the Press Law nor the Broadcasting Law precise, however, what these obligations should consist of, they do not formulate ways, in which state organs should enable the press and other mass media to perform their tasks and functions. It would not be possible to

⁵⁵ Cf. K. Wojtyczek, *Granice ingerencji ustawodawczej w sferę praw człowieka w Konstytucji RP* [Limits of legislative interference in the sphere of human rights in the Polish Constitution], Kraków 1999, pp. 150 ff.

⁵⁶ See the judgment of the Constitutional Tribunal of 28 September 2006, K 45/04, OTK ZU 2006, No. 8A, item 111.

⁵⁷ Ustawa z 29 grudnia 1992 r. o radiofonii i telewizji, tekst jednolity z 18 lutego 2011 r. [Statute of 29 December 1992 on Radiophony and Television, unified text of 18 February 2011], Dz.U. 2011, No. 43, item 226 with am.

enumerate such ways anyway. It seems therefore, that these should include all actions available to the state organs which they are able to realise.

Art. 14 was formulated from the point of view of obligations and duties of the state, while Art. 54 states certain subjective rights. Ensuring the freedom of the press and other means of social communication is the obligation of the state, which is realised both by activities of legislative nature and factual actions of the organs of the state. Art. 14 provides also basis to such obligations burdening the state which do not stem from the content of Art. 54 para. 1 of the Polish Constitution. This means that the state is not only to protect that freedom by non-intervention but also by taking decisive action in a situation where this freedom would be endangered⁵⁸. Therefore the obligations burdening the state, related to guaranteeing the full realisation of the principle of the freedom of the press and other mass media are of twofold nature. On one hand, there are positive obligations, which oblige to action, and negative obligations on the other, which require non-action. “The state is obligated to take action to prevent and eliminate threats to the freedom of the press and means of social communication. It also regulates in the statutes the limits [of this freedom] in order not to permit the violation of freedoms and rights of an individual or public interest. They cannot take the form of preventive censorship, however, which would make it impossible to enjoy the freedoms guaranteed by Art. 14, as this would indubitably constitute a violation of the essence of this freedom, inadmissible in the view of Art. 31 of the Polish Constitution. All subjects enjoying this freedom may, at most, be subjected to repressive censorship, i.e., be responsible as stipulated by law for an already committed transgression.”⁵⁹ This is obvious and clear, since not all expressions disseminated by the press and other mass media serve the public good.

The state, realising its obligations, should first and foremost oppose all attempts to monopolise the press market, in the sense of worldview preferences, and care to preserve the idea of press pluralism. The multitude of means of mass communication independent of one another is, in turn, the best guarantee of informational pluralism. For the reliability of information and freedom of public discourse, the lower the number of media owners, the worse. The concentration of media in one hand certainly does not contribute to exercising the freedom of expression. It is easy to imagine a situation where, for his own particular interests, the editor or broadcaster omits information about some issues of public, political, or economic

⁵⁸ Cf. the judgment of the Constitutional Tribunal of 30 October 2006, P 10/06, OTK ZU 2006, No. 9A, item 128.

⁵⁹ B. Banaszak, *Konstytucja Rzeczypospolitej...*, p. 105.

life, or about some momentous event, or if all media speak in one voice. Monopolisation of the press market may, in its extreme form, hinder or even make impossible the operation of the press and other means of social communication, diversified in content, presented attitudes, and systems of values⁶⁰.

Concluding remarks

Regarding the role and significance of the media for the civil society, the statement that they are one of the basic guarantees of modern democracies does not raise any doubt. They ensure to the society not only an opportunity to control the activities of the organs of state authority but also to actively influence the direction of their activities by effecting the shape of the laws being made, the ways of its interpretation and the practice of its application. An argument for the assignment of a special status to the principle of the freedom of the press and other mass media is its placement in the systematics of the Polish Constitution. Because of the hierarchy of constitutional norms, the freedom of the press and other means of social communication is of political significance. The accepted solution indicates, that it was the intention of the constituent power to assign Art. 14 the nature of legal and constitutional principle building the system of the state, since this is the nature of most of the regulations of Chapter I of the Polish Constitution. At the same time, it reflects the view that while the freedom of speech should serve first and foremost the self-realisation of an individual, the freedom of the press, in its constitutional sense, is to serve the democratic organisation of the society and the procedures which stabilise this structure⁶¹. Art. 14, which is a program norm of the state policy, points to a system of values which define its democratic character.

The norm expressed in Art. 14 cannot be discussed in isolation from other constitutional provision, especially Art. 54 which guarantees the freedom of expression, in which the former stays in a logical and functional relationship, widening the scope of the freedoms of persons and citizens. The freedom of the press and other mass media, however, has been treated by the constituent power as a special case of the freedom of expression and therefore was given a sort of autonomy by being included in a separate article. Thanks to the free media, the recipients have an opportunity to familiarise themselves with a broad range of information and opinions, which allow them to take a fully conscious and responsible part in the public life.

⁶⁰ Cf. J. Sobczak, *Prawo prasowe...*, p. 178.

⁶¹ Cf. W. Sokolewicz, *Wolność prasy...*, p. 8.