

The journalistic genre and civil law journalistic responsibility for breaching dignity

KEY WORDS

good name, dignity, journalistic genre, responsibility, satire

ABSTRACT

Journalistic responsibility for words is one of the most important issues concerning the functioning of modern media. It gains a significant meaning in the context of responsibility for infringing one's reputation, which happens as a result of formulating accusations in press material. It remains unresolved if a media genre chosen by a journalist increases the risk of violating the reputation. From the analyzed statements it seems there is no confirmation in jurisdiction that genre is one of the criteria taken directly into account when judging infringement. However, there are such genres which somehow "impose" greater care in terms of verifying facts, an example of which is the reportage. Other genres, for which opinion and judgment are more constitutive and characteristic, have a greater risk of violating the reputation. It requires mentioning that the satire convention, present in jurisdiction, as a judgmental genre and infringing reputation, can be an argument for removing the unlawfulness of the infringement.

Spanning over twenty years, an extensive development of the press market has resulted in abundant issues, inspiring research in the field of media, also those of an interdisciplinary nature, combining such fields as media studies, linguistics, sociology or law. The herein work is an attempt at a syncretic look at one of the most compelling problems – journalistic responsibility for words. The aim of the authors is to help grasp and define relations between the form of the message in terms of mass media, and the risk of violating a significant value, which is dignity.

Modern media are a collection of different forms of journalistic expression. A multitude of senders, unobstructed stream of messages and growing expectations of more and more demanding audiences mean more innovative message forms in the media. These actions have the purpose of making the media form more attractive and grasping audience attention. Often however, they lead to creating incomprehensible and unclear messages, which apart

from being unclear, create a risk of breaching good name or actually do. A statistical analysis of court cases proves a stable, high level of press lawsuits with a background in breaching dignity. Journalistic activities remain in close relation to the risk of breaching this personal right, especially in their external dimension. Good name or good reputation are terms normally used to describe this value. Internal honor is identified with the term dignity.

Dignity, good name – a few words on defining the term

Studies often underline that dignity is a term that is changeable and culturally dependent. This means that creating a full and exhaustive definition is most likely impossible. Since however this value is subject to legal protection, it is essential to at least in general describe it from the positive side or also, with some precision indicate situations, in which it is breached. It is all the more important that journalists carry the responsibility of not violating personal rights, but also protect them (article 12 paragraph 1 of the Press Law Act¹ – later: press law). In order to comply with it, one has to recognize this value and know, what kind of actions interfere in this legally protected field. An analysis of verdicts reached in cases on the protection of “dignity” suggests the following conclusion: most cases deal with protecting so-called external honor – that is good name – which has been threatened or violated because of the actions of the defendants. Both the prosecutors and the court specifying what the violation was, underlined that the accusation jeopardized the good name of the injured party, due to which his image in the eyes of others has been distorted or that his reputation, necessary for practicing a profession has been harmed. It is true that courts in these types of cases use the notion of dignity and honor interchangeably with good name or good fame. Therefore, in terms of breaching dignity, from the description of the allegations and their consequences, one can argue that the subject of violation was good name. How this value is characterized, results presumably from the mentioned difficulties in defining vague and mainly abstract notions. Probably for this reason, jurisdiction – similarly to studies – rather describes situations, in which the mentioned value is breached, indicating the possible or resulting outcomes. In doctrine, good name is framed from the positive side (which is also used by judicature), yet in the practice of law, it is more useful to frame it from the negative side. In one of the verdicts of the Supreme Court, to which many courts referred to, we read: “honour, good name and the good fame of a person are terms referring to all areas of personal, professional and social life. Breach of dignity can take place both as slander in personal and family life, and also in

¹ Press Law Act of 26 January 1984 (Dz. U. Nr 5, poz. 24 z późn. zm.) [Journal of Laws No. 5, item 24, as amended].

accusing of improper conduct in professional life, breaching that person's good name and jeopardizing the trust necessary to exercise a profession or other activities”².

Studies usually understand “good name” as a collection of positive beliefs about a person in the eyes of others³. Therefore an assault on the good reputation is an attack on the status that a person has in their environment or even in society, and as a result, it causes or could cause a distorted image of the plaintiff in social reception. This harmful image does not however have to result in an actual turbulence in their profession or any other activities. Jurisdiction clearly shows that it is enough for an allegation to be potentially derogatory for a person in a certain environment/circle. Of course, there exists a conjunction between the stated degradation and the loss of trust necessary to practice a profession or activity⁴.

The second of the mentioned values is dignity, described also as an internal element, which is usually associated with self esteem that a person has within, and which is integral for a human being⁵. This value however is outside the realm of this publication.

Criteria of breaching good name in a genre perspective

One of the criteria taken into account by courts in judging if breaching good name took place, is establishing, to what extent the accusation could have potentially threatened the subject to a loss of reputation. An objective measurement is used. Courts see it usually in the reaction of the social⁶ or public opinion, being a reflection of generally approved and accepted social norms at a given place and time⁷. It is especially necessary to examine, in order to judge the breaching, how the press material could have been understood by the reader⁸.

Not less important in claims of violating good name is agreeing how to analyze them - that is, should their context be taken into account, or is it better to isolate the mentioned

² Decision of the SC (Supreme Court) of 29 October 1971, (II CR 455/71, OSNC 1972, No. 4, item 77).

³ See in: I. Dobosz, *Działanie w obronie społecznie uzasadnionego interesu jako okoliczność wyłączająca bezprawność naruszenia dóbr osobistych* [Acting in defense of the socially just interest as a circumstance of justification defense in breaching personal rights], [in:] *Dobra osobiste i ich ochrona w polskim prawie cywilnym. Zagadnienia wybrane*, sci. ed. by J.S. Piątowski, Wrocław–Warszawa 1986, p. 296; *idem*, *Procesy prasowe w Polsce w latach 1960–1975* [Press lawsuits in Poland in the years 1960-1975], Kraków 1979, p. 28 and ff; S. Grzybowski, *Ochrona dóbr osobistych według przepisów ogólnych prawa cywilnego* [Protecting personal rights according to basic regulations of the civil code] , Warszawa 1957, p. 86 and ff.; J. Kamieniecki, *Odpowiedzialność prasy za naruszenie dóbr osobistych* [Press responsibility for breaching personal rights], “Państwo i Prawo” 1984, No. 11, pp. 56–57; A. Szpunar, *Ochrona dóbr osobistych* [Protecting personal rights], Warszawa 1979, pp. 128–129.

⁴ Decision of the SC of 3 December 1986 October 1971 (I CR 378/86).

⁵ See: I. Dobosz, *Działanie w obronie...*, p. 297–299; *idem*, *Procesy prasowe w Polsce...*, p. 28 and ff.; S. Grzybowski, *Ochrona dóbr...*, p. 86 an ff; J. Kamieniecki, *Odpowiedzialność prasy...*, pp. 6–7; A. Szpunar, *Ochrona dóbr...*, p. 128 and ff.

⁶ Decision of the SC of 16 January 1976 r (II CR 692/75); decision of the SC of 28 May 1999 (I CKN 16/98); decision of the AC (Appeal Court) in Kraków of 17 November 1998 (I ACa 710/98).

⁷ In the decision of the SC of 25 April 1989 (I CR 143/89).

⁸ Decision of the SC of 12 November 1974 (I CR 610/74).

accusations from the entire statement, as separate from the settlement. The contents of court verdicts shows that the second choice is completely unfamiliar to judicature⁹. As a result, for a proper qualification of charges, it is essentially accepted to analyze them against the background of the entire publication. Important are the character, undertone and atmosphere surrounding the accusation¹⁰. There are however cases where the statement may not have a slander nature, yet alongside the remaining publication, it assumes such a nature. This may be the result of linguistic or stylistic procedures. The “appropriate order of statements, or using speculation”¹¹ remains important.

One of the genres that gives the journalist a tool to freely create and suggestively juxtapose statements and actions, is reportage. This genre form allows building a picture of the world and person with a certain arbitrariness. The journalist has tools to guide the opinions and emotions of the reader. Selected statements and pictures, suggestive omissions or additional information, although individually true, can have a significant influence on the receiver. That is why only viewing the entire statement, and the mood created by the journalist or the statements and images put together, makes it possible to judge the intentions and the proper context of the statement breaching dignity. This thesis is backed by the verdict of the Appeal Court in Wrocław of 26 September 2006, which was ruled after the broadcast of reportages concerning the event called “Przystanek Woodstock”¹². In its verdict, the court indicated that through selective, one-sided choice of material, using repeated scenes to retain in the viewer only the negative activities during the concert and providing a specific comment, a certain ambience was created. This and the general undertone of the material were to convince the viewer on the inappropriate attitude of the organizers.

Determining the fact of violating or endangering one's dignity in its external aspect is the first, legally anticipated, prerequisite necessary to establish the protection of the mentioned value. According to the uniform approach of studies and jurisdiction in this issue, it is moreover necessary to state that the conducted violation (threat) had an unlawful nature, understood here in the objective sense as being against the law or rules of social conduct¹³. It

⁹ See among others decisions of the SC of 19 September 1968 (II CR 291/68); decision of the SC of 16 January 1976 (II CR 692/75); decision of the SC of 28 May 1999 (I CKN 16/98).

¹⁰ See: Gloss of B. Michalski to the decision of the SC of 7 September 1972 (OSPika 1974 No. 2, item 28 p. 70).

¹¹ B. Kordasiewicz, Gloss to the decision of the SC of 18 January 1984, “Nowe Prawo” 1987, No.4, p. 127.

¹² I ACa 893/06, „Orzecznictwo Apelacji Wrocławskiej” 2007, No.3.

¹³ See: decision of the SC of 19 September 1986 (II CR 291/68); decision of the SC of 16 January 1976 (II CR 692/75); decision of the SC of 19 July 1982 (I CR 225/82); decision of the SC of 25 October 1982 (I CR 239/82); decision of the SC of 10 September 1999 (III CKN 939/98); decision of the SC of 10 January 1997 (II CKN 62/97) and gloss of E. Radomska to the decision of the SC of 29 October 1971, “Państwo i Prawo” 1973, No.6, p. 170–171; gloss of J. Piątowski to the decision of the SC of 16 January 1976 (II CR 692/75, pp. 1145–

remains important, from the point of view of practicing law, that the civil code states the alleged unlawfulness. The role of the plaintiff is therefore to prove that the accusation was actually made and violated dignity, and therefore, could have potentially in the case of good name, caused the risk of losing one's reputation.

The circumstance enabling discharging from unlawfulness is legally admissible criticism. Its legal framework can be found first and foremost in article 41 of the press law, permitting publishing negative opinions of works or actions. This regulation is supplemented by article 1, 6 and 12 of the mentioned act. Jurisdiction clearly refers to them, especially when it directly invokes the rule of special care and reliability (article 12 point 1 of the press law act). Despite the existence of the mentioned normative grounds, press criticism still causes many problems. From the theoretical point, as far as setting boundaries does not seem to be a significant problem, using these regulations in solving specific disputes is not that obvious. This results from difficulties in separating the realm of facts from judgement and opinion. Making this distinction however, is the key to a fair resolution¹⁴. Jurisdiction proves that charges based on facts, if they are to fit the permitted boundaries, should be depicted with regard to truth, accuracy, substance and defending socially justified interests. They should also have an adequate form. Based on these facts, negative judgement can be made, which should equally meet the requirement of accuracy and substance, framed in a proper form and acting in the defense of public interests. In the second case, the truth criterion is not used. Alicja Kędzierska-Cieślak pointed to this many years ago, distinguishing three groups of elements present in critical statements¹⁵. The first are plain, descriptive statements of facts to which the true-false criterium can be used. The next group consists of opinions and generalized facts, in which case we can only as much as state an opinion, that they are exact or not exact enough, accurate or not entirely accurate etc. They are excluded from arguing the truth. The third group is an external form, coined from claims of the two previous groups. The

1146); gloss of S. Grzybowski to the decision of the SC of 25 October 1976 (IV CR 413/76, "Nowe Prawo" 1977, No.12, p. 1685).

¹⁴ See similar topic in: *Media a dobra osobiste* [Media and personal rights], ed. by R. Barta, R. Markiewicz, Warszawa 2009, p. 46 and ff; *Fakt vs. Opinia. Rozważania na kanwie sprawy Michnik vs. Zybertowicz. Materiały z konferencji zorganizowanej przez Obserwatorium Wolności Mediów w Polsce w dniu 26 marca 2009 roku* [Facts vs. Opinions. Thoughts based on the case of Michnik vs. Zybertowicz. Conference material from the Observatory of Media Freedom in Poland on March 26 2009], ed. by A. Bodnar, D. Bychawska-Siniarska, Warszawa 2010; I.C. Kamiński, *Swoboda wypowiedzi w orzeczeniach Europejskiego Trybunału Praw Człowieka w Strasburgu* [Freedom of expression in verdicts of the European Court of Human Rights in Strasbourg], Kraków 2006, p. 105 and ff; R. Tymiec, *Wypowiedzi ocenne a ochrona czci* [Opinion statements and the protection of dignity], „Glosa” 2005, No.1, p. 69–77; J. Wierciński, *Niemajątkowa ochrona czci* [Non-financial protection of dignity], Warszawa 2002, p. 110 and ff; M. Zaremba, *Prawo prasowe. Ujęcie praktyczne* [Press law. Practical approach], Warszawa 2007, p. 181 and ff.

¹⁵ See: Gloss of the decision of the SC of 19 September 1968, "Państwo i Prawo" 1970, No.5, p. 821.

presented outlook became a certain starting point for setting the boundaries of criticism in times, when there was still no normative base for their existence. At the same time, it made representatives of the sciences and courts realize how important it remains to properly qualify a given statement as a fact or opinion. This statement, however rudimentary, does not indicate a lack of complications in the discussed field. In many cases, the mentioned distinction is still difficult to make. The statement that: “facts include states or actions, which can be objectively determined, while opinions express a positive or negative judgment of the work, activity or actions of the criticized person, which results in their not being subject to verification in the categories of true or false, and investigating their content in the categories of rightness, relevance etc. would be devoid of an objective, intersubjectively changeable measurement and – in consequence – lead to a questionable outcome”¹⁶, although significant, does not eliminate the problem.

In literature, it is underlined that opinions should be shaped based on the background of factographic material, collected and used regarding the rules of special care and reliability. Criticism can be perceived as accurate and substantial only when it is based on proven facts and subject to opinion in a cultured manner¹⁷. Only then can the receiver, being able to distinguish these two spheres, has a chance of formulating their own opinion, and therefore accepting or rejecting those presented to him. The first important element constituting the admission of critical judgement is that it is reinforced in the presented factographic material, thus created based on it¹⁸.

Differentiating between factual and opinion statements is only an introduction to adequately determining whether an unlawful violation of good name took place. Regarding the remaining criteria, jurisdiction is not as clear cut, and the emphasis shifts along various sides. Courts begin with investigating the truthfulness of facts, based on which the comments were made (being opinion or general facts). It turns out however, that the outcome of this examination influences admissible judgement. We read in one of the decisions of the appeal court “with regard to press criticism, the primary interest is obtaining true information about the facts and presenting adequate opinions and conclusions”¹⁹.

¹⁶ Decision of the Appeal Court (AC) in Kraków of 12 January 1994 (I ACr 314/93).

¹⁷ A. Kopff, gloss to the decision of the SC of 19 September 1968 (II CR 292/68, “Nowe Prawo” 1970, No.7/8 p. 1188). See also: I. Dobosz, *Działanie w obronie...*, pp. 307–308; A. Cisek, *Dobra osobiste i ich niemajątkowa ochrona w kodeksie cywilnym*, Wrocław 1989, pp. 112–113; B. Michalski, *Ochrona praw osobistych a wolność krytyki* [Protection of personal rights and the freedom of critique], “Nauka” 1996, No.3, p. 136; A. Szpunar, *Ochrona dóbr...*, pp. 167–168.

¹⁸ Among others the decision of the SC of 19 September 1968 (II Cr 291/68).

¹⁹ Decision of the AC in Kraków of 6 February 1992 (I ACr 364/91).

It is worth considering here, how this “adequateness” should be interpreted and if it is not in fact a hidden concept of examining the legitimacy of opinion statements. The procedure seems to have the following scheme. A critical opinion can be viewed as accurate, if the comment is based on facts evoked in the press material (examined in terms of the truth criterion). If they are false, then the opinion formulated based on them should be considered as inadequate with the factographic layer, and therefore as groundless and wrong. Much indicates that the verification of factographic material will influence the decision on the admissibility of judgement. Apart from the above presented approach, jurisdiction bodies are also familiar with a different one. Regarding opinion statements, courts do not try to substitute the truth criterium with another one, they however concentrate on establishing if claims are made in the proper form and if they serve the purpose of the well-founded public interest²⁰. Of course, even in this case, opinions are verified based on the background of the stated events, yet this is done for a different purpose – primarily, because only when opinions are confronted with facts can the criticism be viewed as accurate²¹. Secondly, false facts, on which the charges are based, exclude acting in the interest of the public²².

These two paths operate in Polish jurisdiction, despite far reaching agreement that opinion statements cannot be verified regarding the true-false criterium, and examining their relevance or legitimacy is not within the competences of jurisdiction. Quite often though, courts handling cases in the first instance apply one path, while appeal courts take the other²³. Sometimes both instances use one and the same method²⁴.

Where criticism operates with facts, the true-false criterium is the first influencing judgement on its admissibility. The second is reliability and substance. It remains in close relation with the journalistic responsibility of special care (therefore greater than in other situations) and reliability, not only while collecting, but also in using press material. Based on Polish court decisions in cases concerning libel, a catalogue can be made of situations that will exclude reliability and substance. At the same time, courts, stigmatizing this type of behavior, indicate how the mentioned regulations should be applied from the positive perspective. Based on the contents of decisions, one can claim that facts and critical opinions

²⁰ That was the decision of the AC in Kraków in decisions of: 12 January 1994 (I ACr 314/93); 8 March 1995 (I ACr 80/95); 19 May 1998 (I ACa 130/98); 16 October 1998 (I ACa 612/98).

²¹ See e.g. decision of the AC in Kraków of 16 October 1998 (I ACa 612/98).

²² Decision of the AC in Kraków of 19 May 1988 (I Cr 114/88, OSNCP 1989, No.5, poz. 85).

²³ See e.g.: decision of the AC in Kraków of 19 May 1998 (I ACa 130/98).

²⁴ See: verdict of the AC in Kraków of 12 January 1994 (I ACr 314/93). From the mentioned facts (which however the first degree court sometimes treated also as opinions) the author of the work derived a negative opinion about the work of the plaintiff. Court of both degrees, ruling on the acceptability of opinions, focused on studying first and foremost the form of the statement, completely omitting the question of its legitimacy.

are admissible, if they apply to the framework of reliable and substantial criticism, and this takes place when:

- facts and opinions are set side by side, so the reader can confront them²⁵,
- facts are true, and opinions are adequate to the presented factorgraphic material²⁶,
- facts and opinions had some purpose, for which the criticism was made, this however requires choosing means, that will serve its realization²⁷,
- facts are presented with circumstances that are important and characterize them²⁸,
- data published or spoken by third parties was verified²⁹.

Moreover:

- reliability requires contacting the other side, especially if the source of information is a side in the case³⁰,
- if remarks come directly from the person concerned, then special care calls for restraint and moderation³¹,
- reliability and care should in certain cases, manifest themselves in camouflaged; if the person is recognized, it means that the requirement of diligence has not been met³²,
- substance means that the expression concerns an arguable issue, not motivated by the urge to humiliate the person representing the criticized view³³.

Criticism does not meet the reliability and substance criteria if the mentioned conditions have not been met, and also:

- the author reports events in a way they did not take place and attributes the participant of the event with false features (lack of reliability)³⁴,

²⁵ Decision of the SC of 19 September 1968 (II Cr 291/68).

²⁶ See among others.: decision of the AC in Kraków of 6 February 1992 (I ACr 364/91).

²⁷ See the decision of the SC of 19 September 1968; decision of the AC in Kraków of 19 May 1998 (I ACa 130/98); decision of the AC in Kraków of 16 October 1998 (I ACa 612/98).

²⁸ Decision of the SC of 7 September 1972 (I Cr 374/72).

²⁹ Decision of the SC of 7 September 1972.

³⁰ See among others: Decision of the SC of 7 September 1972; decision of the SC of 3 July 1987 (I Cr 138/87, OSNCP 1989, No.1, item 15); decision of the SC of 8 October 1987 (II Cr 269/87); decision of the AC in Kraków of 6 February 1992 (I ACr 364/91).

³¹ Decision of the SC of 27 December 1991 (I ACr 546/91).

³² See among others: Decision of the SC of 18 January 1984 (I Cr 400/83); decision of the SC of 3 July 1987 (I Cr 138/87); decision of the SC of 6 December 1990 (I Cr 575/90, OSP 1992, No.10, item 214); decision of the SC of 3 April 1997 (I ACa 148/97, *Wokanda* 1998, No.4); decision of the AC in Kraków of 9 December 1993 (I ACr 537/93); decision of the AC in Kraków of 14 June 1994 (I ACr 281/94).

³³ Decision of the AC in Kraków of 17 November 1998 (I ACa 710/98).

³⁴ Decision of the AC in Kraków of 19 May 1998 (I ACa 130/98); decision of the SC of 3 December 1986 (I Cr 378/86).

- the journalist reporting on someone else's opinions and claims does so contrary to the actual intention of the person speaking, or in a way that distorts the meaning of the statement³⁵,
- the sources are biased, so as to present only unfavorable opinions³⁶,
- the interview is fake³⁷,
- the formulated allegation is hidden, based on associations³⁸,
- the quoted information, although true, convey a mocking or insulting comment, aimed at convincing the reader to certain rights, not through independently judged facts, but through the demagogy of words³⁹,
- the general outlook of the press material is inadequate with the overall factographic layer, although certain facts are true⁴⁰,
- in the text, the author uses offensive statements or the criticism is subjectively malicious⁴¹.

In meeting the requirement of special care and reliability, it is not enough to simply differentiate verified and unverified information⁴².

The presented catalogue is not exhaustive, yet its preliminary analysis shows that the notion of journalistic reliability and substance is inseparable from the necessity to strive for the truth in presenting facts, representing a socially justified interest, and also maintaining a proper form.

It is also worth looking at the mentioned circumstances from the perspective of journalistic genres. It seems as though some of them can be assigned a specific format, which means that due to their construction, genre model, and role of the journalist, they are prone to neglect in the discussed features. The first four circumstances, in which criticism did not meet the criteria of reliability and substance, can refer to any genre because they are based on intentional actions of the journalist, who did not meet the requirement of diligence, or concealed those facts which did not fit the previously conceived content of the message. The next feature can be easily used in columns and problem reportages, which as genres, permit

³⁵ Decision of the SC of 23 January 1996 (I ACr 1140/96).

³⁶ Decision of the AC in Kraków of 6 February 1992 (I ACr 364/91); decision of the SC of 3 December 1986 (I Cr 378/86).

³⁷ Decision of the SC of 10 January 1997 (II CKN 62/96).

³⁸ Decision of the AC in Kraków of 9 December 1993 (I ACr 537/93).

³⁹ Decision of the AC in Gdańsk of 16 October 1991 (ACr 520/91).

⁴⁰ Decision of the AC in Kraków of 6 February 1992 (I ACr 364/91).

⁴¹ Decision of the SC of 19 September 1968 (II Cr 291/68).

⁴² Decision of the AC in Kraków of 9 December 1993 (I ACr 537/93).

understatements, subjective choices in creating the message and using rhetorical devices in order to guide the reader to conclusions not outwardly stated. The criterium that follows can be easily used, apart from the column and problem reportage, in a discussion and polemic article. Both serve the purpose of significantly influencing the reaction of the reader through the use of a powerful, and even controversial premise, which then has to be proven by any means possible, often only rhetorical ones, but easily adaptable in mass communication. The next circumstance of the “general outlook of the material” refers to the reportage. This genre allows manipulating reactions and feelings of readers through selective choice of characters and images of their environment and statements. Everything, although individually true, can be easily edited for a certain purpose. Offensive phrases can actually only appear in the column or again – in the reportage. These two forms that balance on the verge of fact and literature, can use vocabulary outside of approved good taste.

Another premise of legally admissible criticism, which courts focus on, is the external form of the statement, both when it is based on facts and when it takes the form of an opinion. Reliable and substantial criticism has to have a proper form. In one of its verdicts, the appeal court in Kraków underlined that it is not referring to the genre form of the publication⁴³. In this case, both studies and jurisdiction focus primarily on terminology used by the journalist. Therefore if the publication contains offensive or insulting phrases, this action – due to its inadequate form (overt harassment) – cannot be viewed as acceptable. It is underlined that the decision concerning the “admissibility of formulated critical claims should be relativized, among others, to the purpose of criticism”⁴⁴.

Studies on form are not limited to just this one aspect. Equally important are issues connected with the composition of the press material. This primarily concerns the necessity to place opinions alongside facts, so that the reader can independently confront them, knowing what is “the sphere of facts and what the critics statement, which the reader too evaluates”⁴⁵. Composition is also concerned with the way of presenting descriptive statements. Through their skillful setting, emphasis, an atmosphere of understatements and insinuations is often created. As a result, press material takes on the form of libel (hidden allegation), although certain facts can be true⁴⁶, and this form of criticism will not pass as accurate.

⁴³ Decision of the AC in Kraków of 12 January 1994 (I ACr 314/93).

⁴⁴ *Ibidem*.

⁴⁵ See A. Kopff, *Gloss...*, p. 1188.

⁴⁶ See: A. Cisek, *Dobra osobiste...*, p. 108.

In light of the prevailing doctrine, such elements as the customs in certain circles, individual temperament of the author of the critique of his writing style should remain indifferent towards reviewing the form⁴⁷.

Press criticism is the basic circumstance overruling the unlawfulness of breaching good name. In many instances however, no possibility of determining the truth of the claim by the journalist will be an obstacle. In this situation, special care and reliability are called upon, which according to the defendant, were carried out. It is probable that up to publishing the press material, everything possible to establish the truth had been done. Then new, unknown facts were brought to light, which undermined the credibility of the published information. To a certain point, the sciences and jurisdiction rejected special care and reliability as an individual premise excluding the responsibility of the journalist. This state has been significantly changed by the resolution of the Supreme Court of 18 February 2005⁴⁸. In it, we read that “indicating by the journalist that while collecting and using press material he was working on defending publicly justified interest and met the obligation of maintaining significant diligence and accuracy, overrules the unlawfulness of the journalist's actions”. However, today it is difficult to claim whether the following justification overruling the unlawfulness of journalistic actions has been fully accepted. One could risk the claim that jurisdiction is still being shaped⁴⁹.

Without doubt, a circumstance excluding legal responsibility is satire and caricature, which are broadly discussed in the later part of the publication.

Genre model in a legal perspective

A journalistic genre is a set of guidelines that determine the construction of a statement published in any medium. It is a certain replicable structure, based on which a unique media piece is created. This uniqueness is linked with current events, therefore the short-term nature of content referring to the described events and with the individual, personal style of the journalist creating the content. A certain stereotype of the basic construct allows the receiver to understand the message. The journalistic genre is also a model of understanding press material enabling the recognition of the nature of the statement, and also reading and understanding its content. There do however exist genres that undergo only small

⁴⁷ *Ibidem*, p. 113; I. Dobosz, *Działanie w obronie...*, p. 308; A. Kopff, *Gloss...*; A. Szpunar, *Ochrona dóbr...*, p. 167.

⁴⁸ III CZP 53/04, OSNC 2005, No.7/8, item 114.

⁴⁹ For more on the subject see: J. Sobczak, *Prawo prasowe. Komentarz* [Press law. Commentary], Warszawa 2008, p. 423 and ff.

modification regarding the basic features of the model. These are fixed schemes, in close relation to theoretical guidelines. The most simple example is a note or message, hence basic information genres, containing so-called canonic models. On the far pole are alternating modifications or genre adaptations. The first modifies familiar statement forms by adding innovative elements, reshaping the construction guidelines. The best example are publicistic genres, such as the article or comment, where the journalist can introduce innovative changes. The second are syncretic forms based on mixing features belonging to certain types of press statements within journalistic genres⁵⁰.

The journalistic genre consists of substance, form and content⁵¹. Each of these fields creates possibilities of modifying the statement. Substance, which is language or image or both of these elements simultaneously, is the most obvious area subject to influence of those preparing journalistic material. Together with the content of the message, it is the most individual part of any genre, which is most easily influenced depending on the need, situation or knowledge enabling the modification of the message. An example can be lexical procedures containing expressions charged with intense emotions or an information surplus. This second one especially influences the receiver because it contains interruptions, which although not directly linked with the described situation, are strongly charged with certain information, and can evoke the association intended for by the sender and emotionally guide the receiver. The form of the genre is multi-factored. Its components are layout and composition, linguistic style, visual shape, way of presenting the topic and role of the journalist. Composition and layout are elements sensitive to manipulation. The choice of time and place of the publication, a certain adjacency, a specific construction are basic factors that enable deliberate influence on the content and character of the message. Through this superficial objectivism, the text theoretically contains all the important information, but its devised construction leads many people to focus just on the facts selected by the sender and not on the entire piece. The treatment of the subject is also an area sensitive to deliberate modification. Distinguishing certain content, omitting other, selecting facts suiting the sender concerning the established premise, omitting context or its fabrication are basic techniques of influencing the message and the receiver, enabling the manipulation of content. The role of the journalist, freedom of certain behavior or stiff rules are elements inscribed to a genre. Practice however shows, that today many changes can be made in this field. All the suggested

⁵⁰ More: M. Wojtak, *Słownik wiedzy o mediach* [Dictionary of media knowledge], Bielsko-Biała 2007, pp. 277–278.

⁵¹ *Encyklopedia wiedzy o prasie* [Encyclopedia of press knowledge], ed. by J. Maślanki, Wrocław 1976, p. 255.

changes, manipulations or intentional persuasive procedures occur with various intensity depending on the genre and are one of the elements undergoing judgement during the analysis of press material.

Selected journalistic genres and the risk of breaching dignity

The basic typology divides journalistic genres into information and opinion journalism. The first inform about facts, the second, apart from informing, also interpret and comment. Bogdan Michalski created a distinct classification of journalist genres referring to law. He decided to chose the “subjective, personal engagement of a journalist towards a subject”⁵² as his variable. This choice was based on the idea that the journalist has the greatest influence on the content of the message and its character. The structure, content, language and approach to the subject depends on him, thus all the elements sensitive to opinions. Within the framework of his classification, prof. Michalski⁵³ distinguished the following genres:

- descriptive-information genres, which transfer knowledge with the minimal presence of the journalist in the described content;
- opinion-review genres (opinion journalism) which contain a personal and involved opinion of the author of the material;
- polemic-discussion genres with the key element being someone's involved statement or discussion based on information;
- literary and satire press genres;
- court reports.

The presented analysis will consist of the first three categories, complemented by photography genres. This is a widely used form of journalistic expression today, which apart from popular use, enables manipulating the image with the use of processing, thus causing breach of dignity of those on the photographs or whom the image directly or indirectly concerned.

The first group are information genres. The basic determinant of information, apart from answering the five basic question and using the inverted pyramid, is separating facts from comments. This rule requires the journalist to present facts without engaging himself in them. A good piece of information should first and foremost be true, faithful, up-to-date,

⁵² B. Michalski, *Gatunki dziennikarskie a prawo* [Journalistic genres and the law], Warszawa 1976, p. 32.

⁵³ *Ibidem*.

comprehensible, graphic, concise, unambiguous and concrete⁵⁴. Using all these features in theory minimizes the possibility of breaching dignity to its reasonable borders. However, assuming after Zbigniew Bauer the accurate statement that “pure information is only a theoretical construct”⁵⁵, information messages that provoke a conflict with the law can be distinguished. Among the above mentioned genres, the trailer and remark must be excluded. These are short forms either preceding an expanded message, or summarizing a certain event. News (or a piece of news) is a longer form, in which the risk of breach of dignity is greater. It appears mainly as a conscious or unconscious distortion of two basic features of information, being truth and faithfulness. Each report of untrue information or an inadequate representation of the described fact creates the possibility of violating the law. The same applies ignoring the remaining features – brevity and unambiguity of the language used. An excessive description, enriched by judgmental words or an unambiguous one can lead to the potential responsibility of the author. The remaining information genres, such as the report, coverage of an event or profile, do not seem to be particularly exposed to the risk of breach of dignity.

Opinion journalism genres, especially those termed by prof. Michalski opinion-review genres, assume an active presence of the journalist through his opinion or reviews. Here features of opinion journalism, among them being: up-to-date, graphic, accessible, stylistically diverse, biased, and impressionism, inquisitiveness⁵⁶ and precision, even in theory, do not exclude the possible situation of breaching dignity. Although inquisitiveness and precision oblige the journalist to be reliable while collecting information and preparing press material, the remaining features and functions of opinion journalism allow him to act subjectively. This kind of message is, apart from information, a subjective opinion expressed by the journalist, his interpretation of events or issues, his individual opinion. One should remember, that the basis of this kind of message is always information, therefore there is the necessity to reliably present the described facts. The opinion of the journalist is an outcome of information statements, giving it an individual character and impressive function. All these elements, entirely consistent with the genre model, increase the risk of responsibility of the author of the material.

A genre that clearly shows the risk of breach of dignity in opinion journalism statements, is the column. It is a form that among the features constituting the given genre

⁵⁴ Confer K. Wolny-Zmorzyński, A. Kaliszewski, W. Furman, *Gatunki dziennikarskie* [Journalistic genres], Warszawa 2009, pp. 27–29.

⁵⁵ Z. Bauer, *Gatunki dziennikarskie* [Journalistic genres], [in:] *Dziennikarstwo i świat mediów*, ed. by Z. Bauer, E. Chudziński, Kraków 2000, p. 152.

⁵⁶ Confer K. Wolny-Zmorzyński, A. Kaliszewski, W. Furman, *Gatunki...*, pp. 29–32.

permits subjectivism, bias, freedom of expression, personal situations, a critical view of reality. All the mentioned internal genre features can easily become the cause of breaching legal interests of the individual. The column is theoretically a light, humorous form, critically presenting reality, yet the personal style of the expressed opinions and great ease in presenting personal opinions can lead to conflict situations. Bias and often directly stated criticism additionally place this genre in a group of high risk in terms of defamation. A comment is similar in its genre structure, which despite the similarity in subjectively presenting facts, evades bias, typical for the column. It is in essence a persuasive expression, graphic and suggestive, yet at once, analytical and precise in its model.

The review is an opinion form, which allows the use of expressions aimed at the person of the author concerning his work. Although the genre model of the review clearly defines, that it cannot be a squib and the expressed opinions should be based on precise, evaluative arguments, the use of words, phrases and opinions, judgmental and expressive elements, creates a situation facilitating the breach of personal rights of the author of the work.

The reportage can be characterized by a richness of journalistic procedures in the message. One can discuss if this is a descriptive-information genre, but taking into account the degree of engagement by the journalist in the described situation and his presence in the work, it can be assumed that it should belong to the later group⁵⁷. The basic task of the reportage is presenting reality through the eyes of the journalist. Its material can serve two functions: it can either have an information or an opinion journalism dominant. In the first type, the journalist has the task of presenting an event and the main hero of the work through imagery, and also give the reader a sense of participating in the presented reality. The second function forces the journalist to analyze facts, judging the hero's actions and the author's subjective opinion. In the second form, the risk of breaching good name is therefore greater, especially since the journalist describing the given conflict situation should stand on one side of the presented parties. His role – from observer, to counselor or prosecutor to judge⁵⁸ – often leads to shaping opinions and judgement, in a broader perspective, undergoing the decisions of civil courts.

The third group are polemic-discussion genres based on conversations or discussions. Here the journalist can have the function of a host, moderator or judge. A talk-show or debate

⁵⁷ In the presented classification, Kazimierz Wolny-Zmorzyński and Andrzej Kaliszewski distinguished the feature, radio and television reportage as information genres and the problem reportage as opinion journalism, *ibidem*.

⁵⁸ *Ibidem*, p. 89.

are forms that consist of a verbal confrontation, because people taking part in them must earlier assume some elements of opinion (debate) or satire (talk show) will definitely take place. Hence the low risk of defamation or offense. Political talk-shows or interviews are genres, which in their model are based on the structure of a questioning journalist and answering guest or guests. In an interview, a journalist should be the background for the speaker; in a talk-show, an equal partner, a host who expresses his opinion. Because more and more often a journalist steps out of his designated role of a spokesperson and is a partner in conversation, a polemist or prosecutor, two sides of the dialogue are confronted. A journalist expresses subjective opinions, and creates a situation of interrogation, which can lead to infringement of the guest's personal rights. Similarly in a political talk-show, a journalist can judge the statements and behavior of the interlocutor, confront them with his own views, criticize them and express emotional opinions. These procedures, inappropriately or excessively used, can lead to conflict situations.

A discussion and polemic article are typically descriptive genres, where there is no direct conversation between the journalist and one or more people, but rather a reaction to someone's published statement or some important event. A discussion article is based on an original, provocative, and even shocking premise. This should be followed by serious argumentation and often, a surprising punchline. A polemic article refers directly to the discussion article, undermines its premise or neglects it, abolishing the earlier presented arguments and presenting its own in order to win over the reader. In practice, it is often a more or less elegant battle between two options or views, which apart from argumentation may contain personally expressed opinions, comments or criticism.

It seems justified to add photography journalistic genres to prof. Michalski's classification⁵⁹. An image is nowadays an important message, which takes up more and more space in media communication. Apart from television and Internet, also printed press widely uses this medium. A properly prepared photo, at the stage of its creation or digital processing, can easily breach legal boundaries. An especially high risk of breach of dignity is in photomontage. This is a technique that creates a false image. It can serve different purposes, which is why it is often used in order to criticize, enhance certain content, mock something or someone, hence undergo the author's subjective judgement. A photomontage which tells a story of an event or person through image, should not be controversial. Yet the suggestive nature of this form of expression, also including the subjective opinion of the author into the

⁵⁹ More on photography journalist genres can be found in the publication by K. Wolny-Zmorzyński, *Fotograficzne gatunki dziennikarskie* [Photography journalistic genres] Warszawa 2007.

image, similarly as in the problem reportage, can lead to breaching personal rights of the people in the message. It seems that the portrait, commonly used by press today, has a small risk of breach of dignity because it is a simple photo of a person connected with the text, yet a certain angle and frame can cause extreme dislike or fascination with the photographed person. An example can be a shot taken from a so-called frog-eye perspective or from above, which can distort reality and evoke extreme emotions in the viewer. The least charged photography genre is the photo-chronicle. This message, a juxtaposition of pictures thematically unrelated, creating a review of different events, does not provide the possibility of judgement, and thus breach of dignity.

Table 1. Relations between journalistic genres and the risk of defamation

Risk	Descriptive-information genres	Opinion-review genres	Polemic-discussional genres	Photography genres
Low risk of breaching dignity	remark coverage report note	opinion journalism article comment feature reportage	<i>talk-show</i> debate	photo-chronicle portrait
High risk of breaching dignity	news	column review problem reportage	discussion article polemic article interview political <i>talk-show</i>	photomontage photo-report

The presented characteristic does not include the full collection of journalistic genres. The most popular nowadays forms of messages have been included, particularly those qualifying for a group breaching good name or devoid of such features in its genre model. Of course, one must bear in mind, that each message, given the proper manipulation, can be subject to the decision of a civil court.

Conclusions based on the analyzed court decisions

■ Primarily, jurisdiction does not confirm that genre is one of the criteria taken into account directly in judging a breach of dignity.

An overall analysis of decisions does not allow a different claim. Even if there do appear single cases in which the court, ruling a verdict, links the issue of breach of dignity with a genre dominant, they should be treated as isolated cases. An example is the case of the Supreme Court (SC) verdict of 19 September 1968. The court underlined that a statement included in the press material, formulated by the critic (Jerzy Waldorff) had a polemic nature,

and in this type of criticism, exaggerations are a norm. What is more, this criticism concerned a field of art, in which subjective expressions are not uncommon. This then justified a broader outline of admissible borders.

Not including the journalistic genre as a premise in breaching good name does not rule out a connection between it and the genre form. This link exists and has an indirect character. It can be seen in two spheres: 1) when opinioning on the adherence of boundaries in criticism, courts analyze its form; 2) when facts and opinions stated in the critical statement are analyzed (only this sphere is connected with pressing charges for creating the danger of breaching good name).

■ Secondly, there are genres which are characterized by operating with facts, which should be true, if they are not to breach good name. These genres “enforce” greater care in terms of verifying facts. There also exist genres in which opinions and judgement are more constructive and characteristic. In these cases, the risk of breaching good name can be greater, especially if the opinion is a claim made *ad personam* and was not based on proven factographic material (which remains in the genre convention).

Referring to this conclusion, while analyzing a breach of good name, courts investigate the form of critical statements. The analysis of press material is then not restricted to expressions considered offensive. Equally important are issues of composition. This means, among others, a requirement of stating opinions based on facts, so that the reader can confront them independently. According to courts, criticism based on opinion statements, without stating facts on which they are formulated, cannot be seen as substantial and constructive. Its aim is not a comprehensive presentation of the problem, but a personal attack on a certain person⁶⁰. Consequently, press material, with its use of opinion in a broader sense, will have a higher risk of breaching the law. Today, journalists are more bold in expressing personal opinions, not always based on facts. Although court decisions often do not refer to claims formulated in a journalistic interview, when such a situation does take place, criticism *ad personam* is characteristic for the genre, a personal expression of opinion or relieving some emotions⁶¹. Lack of numerous court rulings based on statements made in interviews most likely comes from the fact that the genre is seen as a form of conversation, where opinions are natural, which however is not confirmed in the genre model. Similar personal attacks are in reportages, especially the intervention reportage, where the journalist's emotional reaction

⁶⁰ See decision of the AC in Kraków of 8 March 1995 (I ACr 80/95), decision of the AC in Kraków of 21 March 1995 (I ACr 113/95).

⁶¹ See decision of the SC of 8 February 2008 (I CSK 385/07).

appears directly, or in the construction of the message. That is why these forms require greater attention. On the other hand, most of the *ad personam* attacks are visible in talk-shows, both political and social. However, due to its genre model, allowing even subjective opinion forms in the journalist's statements, this type of attack does not commonly appear in court decisions in the field of breach of dignity.

The composition of press material is moreover connected with the form of presenting descriptive statements. Their skilful juxtaposition, and placing emphasis, quite often creates an atmosphere of insinuations. In this case, not certain facts, which can turn out to be true, but the general meaning of the press material will decide on the unlawfulness of the violation⁶². Journalists should remember that in judging the form, the context in which the critical statement was published and the accepted convention can be equally important. In one of the cases, referring to the defamation of a director of a health care clinic, the place of publication had quite the impact on the outcome – it was a column entitled *Śmieć się razem z nami* [Laugh with us], in which the following text was placed directly before the note on the plaintiff: “There is so much stupidity around us, we don't know what to do, we get angry. We, the editorial office, have a different proposal: instead of getting angry and snarling, laugh with us at stupidity, arrogance and rudeness”⁶³. According to the court, the actions of the defendant clearly pointed to the desire to ridicule, excluding a constructive approach at the problem. A similar situation took place in the court verdict of the appeal court in Gdańsk⁶⁴. In reasons for the verdict we read: “quoting in public true information one's own name can be a violation of the law in the understanding of article 24 p.c., if it is followed by a mocking title or comment, offensive or humiliating, aimed at convincing the receiver on certain rights not through facts, but through verbal demagoguery”.

In the context of the topics of publication and formulating conclusions, worth mentioning is the verdict of the appeal court in Warsaw of 23 January 1996, in which the issue of form of expression was applied to the convention used by the author of the publication. A journalist, preparing a report from the elections to the Polish Sejm and Senate, directly quoted a statement of one of the trusted men present in the territorial election committee, and containing the statement, that in the Olsztyn voivodeship there are only 3 per cent of honest people because that was how much voted for the *Koalicja Czystych Rąk* [Clean Hands Coalition]. This information was stated during a casual, social conversation, initiated

⁶² See decision of the AC in Wrocław of 27 September 2006 (I ACa 893/06).

⁶³ Decision of the AS in Kraków of 8 March 1995 (I ACr 80/95).

⁶⁴ Decision of the AS in Gdańsk of 16 October 1991 (ACr 520/91).

by the journalist. It was the general convention for all those present, also the plaintiff. The sentence was later published in a serious press report on election results, omitting the circumstances in which it was formulated. The court of the first instance ruled that the statement of the plaintiff provoked by the journalist, set in an ironic convention, did not have the attributes of a public statement by a politician, but was a joke in the convention of the prior conversation. The second instance appeal court made a similar ruling, underlining that the press article gave the statement a completely different dimension, meaning and character than it had in reality. Manipulating the text lead to omitting the question to the plaintiff, and what follows – taking the expression out of context, not including the character and tone of the conversation. From the above verdict comes a clear conclusion: publishing someone else's statements, omitting the circumstances in which they were formulated, can cause an unlawful breach of dignity. The author of a publication should always have in mind that giving press material a certain shape, he should remain faithful to the earlier convention (i.e. during the conversation). The task of a journalistic genre is arranging the message and allowing the receiver to understand it according to the facts. That is why all the changes in the genre convention or based on a syncretic form can lead to creating a message that will be difficult to understand unambiguously by the reader. This procedure, purposefully used, can serve manipulation. An article with a premise, a purposeful message in the form of a publicistic article or comment, are examples of actions, in which form is inadequate to the actual intentions of the sender.

■ Third is the satirical convention, also present in jurisdiction. Satire, set against opinion genres and breaching good name, can be argued as justification defense. It is justified to claim that satirical press material, created in an opinion genre form, has a smaller risk of breaching the law than material created in the same form, but without a satirical character.

Normative support for satire and caricature stems from press law, which gives reason to claim, that apart from admissible criticism and special care and reliability, it is another legal justification, with a long tradition, excluding the journalist's unlawful actions⁶⁵. There are some issues in the matter that require more attention. The first is whether satire is a separate, special press genre, or does critical material prepared as a reportage, column etc. use the so-called satire convention, understood as operating with certain characteristic forms of expression, especially exaggeration. The analysis of national court decisions points to the

⁶⁵ See P. Wasilewski, *Wolność prasowej wypowiedzi satyrycznej. Studium cywilistyczne na tle porównawczym* [Freedom of satirical press expression. Civil study on a comparative background], Warszawa 2012, p. 284 and ff.

second case⁶⁶. Satire is not a distinct journalistic genre. Its elements are admissible in the genre model of the column. The remaining genres do not define a possibility of a satire form. On the other hand, information genres, even the most elaborate, such as news, should not contain any elements of satire. In practice however, small satire forms appear in television and radio news programmes, as elements of a larger message.

The Supreme Court in a decision of 20 June 2001⁶⁷ underlined, that in referring to satire as a circumstance of jurisdiction defense, there should be no doubt that the reader treated the press material as a “joke”. This is possible only when certain forms of expression are used⁶⁸. Moreover, a satire nature of the piece alone cannot justify defense of the journalist's actions. In conclusion, the court ruled that similarly as claiming that a work is critical does not automatically rule the journalist's actions as legal, then the fact that a work has a satirical character does not rule out that the action will be judged as against the law (the defense will not be justified). In studies, it is underlined that qualifying material as satirical cannot take place overlooking such elements as: place of publication (e.g. a satirical column) or time of publication (e.g. April 1)⁶⁹. On the other hand, circumstances in which a press title (radio or television broadcast) is treated as satirical, cannot be the only prerequisites to claim that the contents of the edition or broadcast also had this nature⁷⁰. Reinforcing this premise are court decisions in cases in which the defendant was editor in chief of the weekly “Nie” or authors who published there. In one of these verdicts, we read: “The nature of the magazine is not an excuse for the obscene form of informing about the private life of the plaintiff. The fact that the weekly “Nie” has this style and specific language of their publications, differentiating it from other magazines does not mean an automatic legalization of such actions. The satirical and mocking nature of the magazine does not entitle it to cross commonly accepted boundaries of decency and good taste”⁷¹.

Article 41 of the press law act states that criticism (therefore, accordingly, satire) should be a reliable negative opinion of a work or action, in accordance with the rules of social conduct⁷². Respecting the obligation of substance, with all its possible consequences,

⁶⁶ Also J. Sobczak, *Ramy prawne satyry politycznej* [Legal framework of political satire], [in:] *Fenomen radości*, sci. ed. by A. Grzegorzczak, J. Grad, P. Szkudlarek, Poznań 2007, p. 210.

⁶⁷ OSNC 2002, No. 2, item 23.

⁶⁸ R. Tymiec also points to the essence of this issue, *Satyra a ochrona czci w polskim prawie cywilnym* [Satire and the protection of honor in Polish civil law], [in:] *Wybrane zagadnienia prawa cywilnego*, Warszawa 2006, p. 321.

⁶⁹ See *ibid.*, p. 321.

⁷⁰ Also J. Sobczak, *Ramy prawne...*, p. 234.

⁷¹ Decision of the AC in Warszawa of 5 June 2006 (VI ACa 1331/2005).

⁷² See E. Nowińska, *Wolność wypowiedzi prasowej* [Freedom of press expression], Warszawa 2007, p. 191 and ff.

can be contradictory with the nature of satire, as it operates with exaggeration, so-called distorted reality, and often uses means of expression which make it impossible to meet this demand. In the case of a joke, there is no intention of substantially referring to its topic. More important – from the legal side – is for the reader not to have any doubt as to whether he's dealing with an intended exaggeration, intentionally distorting the image of the presented event and changing its proportions. Helpful in this case can be, e.g. presenting the publication in a satire column. Contemporary press uses two forms of these sections. Primarily, they are clearly defined column pages. Alongside them are pages with other satirical content, which is a reference to the pre-war tradition of satirical columns in every title. They normally have the form of a comment to current events, written however in a typically satire form. Both the title, and the reference to literary style, clearly point to a specific type of press statement, to which the reader has no doubt, for what purpose it was written.

Another criterium of admissible criticism, which should be adequately used towards satire, is accordance with rules of social conduct. This element to the greatest extent states the discussed justification. Criticism which abides with the mentioned principles, in its form, does not violate the accepted rules, meaning that it does not use means of expression that would cause for the publication to be considered offensive. In satire, it is underlined that it too should have the proper form. What is examined is whether the satire convention was maintained. Its breach will usually be considered an excess resulting in claiming unlawfulness of the journalist's actions. The essence of satire is its characteristic sharpness and exaggeration, greater than in other critical material. Using means that in other situations would be unacceptable is permitted. In the verdict of the Supreme Court of June 2001 we read: “without doubt the satire form justifies accepting a broad degree of freedom of expression. Satire is in its nature a work ridiculing or condemning the events or persons depicted. The aim of the satire is first and foremost ridiculing criticism, hence it often uses exaggeration, caricature and paradox. A typical feature of satire is striving to ridicule that what its author perceives as harmful, worthless or wrong, hence the claim of presenting a distorted reality”. The expressiveness of the means used should therefore be treated as a typical, constructive element of satire, and exaggeration or even aggression as acceptable procedures in the framework of the so-called satire convention. Also for this reason, it is accepted that the expression would need to have a highly offensive, degrading, contemptuous and derogatory form to be recognized as an unlawful action, a so-called satirical excess. In criticism, we can speak of violating the form through including offensive content, and gravely insulting in the case of satire. It is moreover important, that reaching this conclusion by the

court has to be preceded by a statement that the given material (claim, drawing) has such a nature, which was established by taking into account prevailing social opinions. Objectivisation of the level of violation in the field of personal rights is used⁷³.

The next and also the last issue is the criterium of truthfulness, as a result of linking article 41 of the press law act with article 6 of this law, claiming that “the press is obliged to truthfully present events”. In reference to criticism, it is assumed that this criterium refers only to facts because they can be ruled true or false. Opinions made by the journalist should be reliable, which means, based on the presented, verifiable facts. Based on this, one can question if the requirement of truth seems relevant to satire and what would that eventually mean. The jurisdiction of the European Court of Human Rights (the case of *Cumpănă and Mazăre v. Romania*)⁷⁴ entitles to claim that satire is treated rather as opinion content and if it refers to some events, commenting them, then there should be note of the actual circumstances that gave basis to the formulated opinion. Especially if satire (e.g. being a drawing) is an illustration of the critical publication and insinuates some content, it should be treated as an integral part of the material⁷⁵ and evoke the actual circumstances justifying the judgement presented in the satirical convention. Using the truth criterium will not matter in a situation, in which the person is presented in a fictional situation and the reader is not aware of it.

Discussing truthfulness, one can ask about special care and reliability, which according to article 12 of the press law act should guide the journalist in collecting and publishing press material. In practice, using this guideline in the analyzed situation, which has the basic aim of striving for the truth, is limited. In its essence, satire exposes the state of events as a distorted image, that is, a distorted reality. It would therefore be absurd to demand truth, understood as a faithful recreation of facts. Special care and reliability should in this case be present in taking care for the reader to know that he is dealing with a satire convention, and secondly, that the means of expression used not cause an extreme breach of dignity, which would be highly offensive.

Referring to the analyzed issue, the conclusion is that satirical press material present in an opinion genre form has a smaller risk of breaching the law, than works that have the same form, but without a satirical nature.

⁷³ Confer R. Tymiec, *Satyra a ochrona czci...*, p. 321, 369.

⁷⁴ Decision of 17 December 2004, www.echr.coe.int.

⁷⁵ I. Dobosz, Gloss to the decision of the SC of 17 April 2002 (IV CKN 925/00, OSP 2003, No.9, item 60, p. 261).

Concluding remarks

The herein publication referring to the relation between journalistic genre and responsibility for breaching good name is not exhaustive. A separate and worth examining research field, which has not been in detail analyzed in the text is the link between a claim made in a satirical form and journalistic genre. Also underlined should be the fact, brought up in the article, that although a journalistic genre is not a criterium taken into account by courts in passing judgement on breaching good name, the connection is clear and noticeable. Above all, many cases of breaching good name are the outcome of using manipulation techniques. These then correspond to the genre form, which often enforces using a certain method of manipulation in the selected genre. This relation will be analyzed further in a separate study.