

Marek Chyliński

The obligation of due care and accuracy in the collection and use of press releases with regard to journalistic professionalism

KEY WORDS

journalism, press release, journalistic research process, journalistic professionalism, particular care and reliability in journalism

ABSTRACT

Press law requires that only the truth is presented to the public. However, the law does not apply to journalists. A journalist's responsibilities are defined by the rules and not the results of their actions; results might only be characterized by reliability and accuracy. This apparent dissonance is strongly associated with normative issues of professionalism and broader journalistic culture. The author indicates that the proper assessment of journalistic publications is possible only when taking into account the process of collecting and editing news, not the publication itself. Standards and norms of professional journalism are crucial in this case.

In establishing the right to information, the legislator bound the press to “present the described events fairly” (Art. 6 par. 1 of the Act – Press Law; Pol. *ustawa – Prawo Prasowe – PP*) and the journalists to exercise particular care and accuracy in the gathering and use of press materials, in particular to check the accuracy of acquired information or indicate its source (Art. 12 par. 1 of PP). The requirement of care and accuracy means that a journalist should make every possible effort striving to achieve a fair presentation of events and phenomena and, in the case of press criticism, to gather and divulge truthful information about the facts and to provide their adequate evaluation. However, while the legislator bound the press to present events accurately, in defining the obligations of a journalist, he did not include fair presentation of events in their number. Thus, the obligations of journalists are clearly defined by their rules of conduct (particular care and accuracy) and not by the results of their actions (fair presentation of events). This dichotomy is partially resolved when we take into consideration the subjective definition of the press. Nevertheless, it should draw special attention, since one of its conditions directly stipulates the obligation to convey the

truth, and the other postulates “particular care and accuracy” when trying to ascertain it. The presented article is an attempt to analyze this question from the viewpoint of the norms of journalistic profession. This issue seems to be extremely relevant, as it is more and more often the courts, and not the aforementioned norms, who set the standards and criteria the journalistic care and accuracy are expected to meet.

As properly shown by the legal interpretation, an appropriate assessment of journalistic publications is only possible when one analyzes not just the publication itself but also all activities of the journalist associated with gathering and using press material. While the topic of journalistic care and accuracy has become prominent in literature, especially in the context of the civil liability of the press for violating personal rights¹, there are still not enough references between the topic of particular care and accuracy and the journalistic professional norms. Beyond any doubt, developing the best practices of care and accuracy is more difficult than assessing the results of a journalist’s work. Nonetheless, only confronting the guidelines of professional and editorial practice, examining the means of operation and reaching goals, and performing an epistemological analysis (e.g., whether or not the publication is aimed to serve the public) can make it possible to set the desirable behavioral patterns for journalists, which obey laws, respect quality standards, such as transparency, objectivism, diversification of sources, faithfulness to the facts, and balance, and also incorporate the principles of professional ethics. One cannot accept a situation where, should discrepancies appear in the legal evaluation of the results of journalistic work, the norms of “particular accuracy” would be created ad hoc, without considering their broader relation to the professionalism, culture, and professional ideology of journalists. The jurisprudence should promote the autonomy of journalists and the media in shaping the media content according to the adopted ethics and values. Undoubtedly, this was the very intent of the resolution of the extended Supreme Court panel of seven judges of 18 February 2005 (III CZP 53/04), which resolved the question, crucial to the media people, “whether a false accusation in a press publication can be considered an unlawful infringement of personal rights if the journalist has applied due care and accuracy in gathering and using press materials (Art. 12

¹ To name, above all: B. Michalski, *Podstawowe problemy prawa prasowego* [Fundamental problems of press law], Warszawa 1998; J. Sobczak, *Ustawa prawo prasowe. Komentarz* [The Press Law Act: A commentary], Warszawa 1999; B. Kosmus, G. Kuczyński (eds.), *Prawo prasowe. Komentarz* [Press Law: A commentary], Warszawa 2013; E. Ferenc-Szydelko, *Prawo prasowe. Komentarz*, Warszawa 2013; I. Dobosz, *Wykonywanie zawodu dziennikarza a ochrona dóbr osobistych* [The practice of journalistic profession and protection of personal rights], in: „Zeszyty Naukowe Uniwersytetu Jagiellońskiego”, *Prace z Wynalazczości i Ochrony Własności Intelektualnej* 1977, issue 11; J. Kamieniecki, *Odpowiedzialność prasy za naruszenie dóbr osobistych* [Liability of the press for infringing on personal goods], „Państwo i Prawo” 1984, issue 1; M. Sośniak, *Należyta staranność* [Due care], Katowice 1980.

par. 1 of PP).” This resolution originated from the much-publicized lawsuit following the publication, in August 1997, of articles describing alleged meetings between President Aleksander Kwaśniewski and Russian operative Vladimir Alganov, entitled *Holidays with a Spy* (Pol. *Wakacje z agentem*) in the national daily “*Życie*” [Life] and the regional newspaper “*Dziennik Bałtycki*” [Baltic Journal]. Kwaśniewski sued the authors, editors-in-chief, and publishers of both titles. Courts of first and second instance approved some of the claims of the lawsuit, ordering an apology to Kwaśniewski, and dismissed the request of monetary compensation. The defendants appealed against this decision to the court of cassation, and the Supreme Court, in the judgment of 14 May 2003 in Case I CKN 463/01, approved the cassation and expressed the view that, in the case when the defendants have undertaken due care and accuracy as journalists, they are not liable for asserting a false statement. Since the judgment clearly contradicted the Supreme Court’s own case-law to date, according to which journalists were liable for writing untruth regardless of their care and accuracy, the First President of the Supreme Court raised a question of law, asking the extended Supreme Court panel to state the grounds of the liability of journalists. Recognizing that if a journalist exercises particular care and accuracy in gathering and using of press materials, he is not liable for infringing personal rights – integrity, reputation, and dignity – and cannot be held criminally liable for libel due to providing false information, the Supreme Court stressed that the journalist’s action must be undertaken to protect a legitimate social interest².

The Supreme Court interpretation became the starting point for shaping new case-law in press suits. More importantly, however, it also contributed to reviewing the risks associated with the liability of the press for publications. Journalists were given powerful means to strengthen their freedom, independence, and autonomy. Still, both the logic of democracy and that of media should doubtlessly exclude the possibility that judicature may relieve the journalistic community from, or even replace them in, formulating professional norms, which should include not only the principle of care discussed here but also one saying that should the allegation turn out to be false it has to be revoked. While the case of Kwaśniewski vs. *Życie* helped to formulate a new legal interpretation, in which the fact of a false representation of events does not constitute journalistic misconduct by itself, it also well illustrates the broader issue of care adequate to the gravity of the subject which should accompany documenting, developing, verifying, and selecting data and information.

² See Commentaries to the Supreme Court’s resolution of 18 February 2005; Z. Radwański, III CZP 53/04, in: *OSP* 2005, No. 9; J. Sieńczyło–Chlabicz, “Państwo i prawo” [State and law] 2005, No. 7.

As emphasized in the jurisprudence, “if the author of the report relates an event in a way which contradicts its actual course and ascribes false characteristics to its participants, he acts in an unreliable manner in the meaning of Art. 12 par. 1 item 1 of the Act of 26 January 1984 (Dz. U. No. 5 item 24), especially when he unfairly imputes improper conduct to persons”, which may also give grounds to asking the court to prohibit publication as the means to secure claims in legal cases against the mass media concerning protection of personal rights³.

The notion of due care, that is, an action demonstrating that somebody did everything he could to perform his task as well as possible, is incorporated in the Civil Code, which imposes an obligation to exercise the care generally required in private and professional relations. Nevertheless, it is difficult to define as a notion, although the doctrine shows that it can be associated with precision, diligence, conscientiousness, concern, zeal, attention to details, and using the necessary knowledge, skills, and experience to fulfil a give obligation. Whereas the notion of reliability should be understood as honesty, soundness, solidity, sense of duty, and accountability for words⁴.

By using the words “particular care” (Pol. *szczególna staranność*) in Art. 12 par. 1 item 1 of PP, the legislator demanded that journalists exercise an exceptional, special, and outstanding care, that is, one greater than the care normally required in the civil conduct. The requirement of particular care, as stressed by B. Michalski, is directional as it mostly applies to seeking the truth required by the Art. 6 par. 1 of PP⁵ (fair presentation of persons and phenomena). It means that the gathered information must faithfully reflect the reality and cannot be presented in a manner which may influence the perception of the recipient (prohibition of manipulation). Therefore, the care and reliability in journalistic work, both at the stage of gathering and developing information, should be reflected, above all, by reaching all personal and documentary sources, collecting various statements, versions, and sources, often contradictory to one another, and then confronting them. Asking the opinion of an independent specialist allows the subjectivity of the conclusions to be excluded and the author’s own observations to be critically reviewed. The gathering of material – being the first and fundamental stage of journalistic activity – determines the quality of the subsequent stages of media content production. Whereas at the next stage of journalistic work – i.e.

³ M. Jaślikowski, *Zakaz publikacji jako środek zabezpieczenia roszczeń w sprawach przeciwko środkom masowego przekazu o ochronę dóbr osobistych* [Prohibition of publication as means to secure the claim in cases concerning protection of personal goods against the mass media], Instytut Wymiaru Sprawiedliwości, Warszawa 2012, p. 47–59.

⁴ J. Sobczak, *Ustawa prawo prasowe...*, op. cit., p. 153.

⁵ B. Michalski, *Podstawowe problemy...*, op. cit., p. 80.

during publication – it has to be remembered that the binding decision regarding the value and use of the gathered material is taken not by the author but by an editor (the editor-in-chief). In practice, the full realization of the obligation to exercise due care presents difficulties resultant not only from the form and genre of journalistic publication but also the pressure of time. The pace of work and scope of verification is different in a weekly, different yet in a daily newspaper, while the conditions accompanying an online publication vary even more so. It leads to a surprising conclusion that, in the reality of Polish media, spectacular failures belong to reputable weekly magazines, daily newspapers, and internet portals. Haste, unjustified conviction regarding the strength of gathered evidence materials, and emotional attitudes to described cases are all causes of mistakes. A guideline of extreme importance for journalistic research can be found in the judgment of the Supreme Court of 24 January 2008 (I CSK 338/07). While interpreting Art. 12 par. 1 item 1 of PP, the Supreme Court took the view that the author of an article violates the rule of reliability if he bases his writing on official documents only and does not try to contact the criticized individual (even though it is not required by the Press Law – M.C.). The judges decided that, as a rule, a journalist is bound to ask the person he intends to describe critically to make a statement. This ruling by the Supreme Court is a result of a lengthy lawsuit spurred by the publication in the *Czas Warszawy* [Warsaw time] newspaper of several texts, in which manager Andrzej R. was accused of maladministration and acting to the detriment of the company he led. Seeing himself a victim of unfair evaluation, Andrzej R. lodged a complaint with the court, which found that the authors of the articles, based almost exclusively on fiscal control reports and reports of the Supreme Audit Office (questioned by the Voivodship Administrative Court), did not provide sufficient evidence in support of their claims, accusations, and statements violating the reputation, integrity, and dignity of Andrzej R. as a manager and an honest man. Following the appeal of the publisher of the paper, the court of the 2nd instance changed the verdict, entirely dismissing the demands of the former manager. In turn, Andrzej R. submitted a cassation appeal, and the Supreme Court annulled the judgment and referred the case back to the court, taking the view that the particular care and reliability required by the Press Law demand that the journalist should address the person he wants to write about.

In the light of judicial findings and verdicts, the abovementioned publication should be considered as a typical example of the lack of journalistic care and professional reliability and, perhaps, even intentional and conscious effort to distort the presented reality. By selecting biased sources and avoiding contact with the interested party, the journalists unilaterally shaped the reactions and attitudes of the recipient to the case they described.

As noted by the Court of Appeal in Warsaw in the judgment of 6 July 2005 (ACa 1233/04), it is not a reliable use of press material if one compiles information (even truthful) in such a way that it leads to a mistaken or even false view of the reality, misconceptions, or detrimental judgments. Such a collation, if it was done knowingly and intentionally, can be treated as journalistic manipulation. The charge of misinformation and manipulation is heard particularly often in the cases of infringement of the personal rights of people described in the publication.

What is significant and useful in answering the question of illegality, and therefore criminal liability for making true allegations, is the verdict of the Constitutional Tribunal of 12 May 2008, which examined the constitutional complaint of Marian Maciejewski, editor of a newspaper, regarding the limitation of the freedom of speech, libel offense, and its justification. According to the Tribunal, it is in accordance with the Constitution to exclude criminal liability for raising a defamatory allegation in public or broadcasting it only if the conditions indicated above are met: truthfulness and socially valid interest. According to the Tribunal, the legislator considered the information reflecting the reality and the right of an individual to eliminate all false information about him or her from circulation to be of particular value and in need of protection. When attempting to translate the verdict of the Tribunal to the language of professional obligations of journalists, it has to be said that every negative assessment made by an author has to be based on indubitable facts, and the selection of arguments must follow his professional and ethical qualities: most of all independence, impartiality, rationality, and making balanced decisions when gathering and using press materials. Otherwise, it would be not just a possible violation of law but also lack of professionalism, leading to the decrease in the media offer quality, as well as partiality, which are two of the characteristics determining the nature of the media system.

Professional norms and journalistic culture vs. the self-regulation of the media

It is not an easy task to define the notion of journalistic professionalism, as it includes not only the qualifications which require long preparation (e.g. academic background) but also an even longer professional placement. The assumption, derived from the functionalist paradigm, that professions exist to satisfy certain needs of the community and ensure high quality of services, takes on a new dimension when applied to journalism. For what needs to be taken into consideration includes the relationship between journalism and politics (power), relations

with recipients (public service), and upholding universal social values⁶. According to the subject of this paper, we are going to focus mostly on the technical components of professionalism, particularly the need to base the message on facts and objectivity. According to the concept of Daniel C. Hallin and Paolo Mancini, authors of groundbreaking studies and a comparative analysis of media systems, the professionalism of media is composed of professional autonomy, professional norms, and public service⁷. Such qualities of information can only be achieved thanks to flawless professional skills, where the reliability and truthfulness of words is founded upon research as the instrument allowing the faithful recreation of the course of events and factual accuracy.

It is worth to note that the authors use an objective reference to the “professionalism of the media”, instead of a subjective one to the “professionalism of the journalists” or “professionalism of the media owners, broadcasters, and publishers”. This approach seems to be mostly justified because the media content, that is the media offer, is not autonomously decided neither by the journalists nor the publishers, as it comes to be as a result of the agreement and cooperation between these two circles. What is particularly important, however, is the political and economic independence of journalism, which largely consists of self-determination in the selection of subjects and the ways they are presented based on their own deontology and the needs of the recipients, that is, the ethics of the public service. Quoting the observation of Hallin and Mancini, who claim that the journalistic professional culture is an extension of professionalism, Bogusława Dobek–Ostrowska analyzes the components of this culture. What interests such researchers as Thomas Hanitzsch, David Croteau, and William Hoynes, is the degree to which the media are normally marketed and their focus on profit⁸. Still, besides the institutional and ideological factors (the level of interference in political processes, attitude towards authorities), reliability, honesty, and impartiality of the message are equally important, as they make up the means of activity, the working tools of a journalist. Since the quality of journalistic messages is considered as one of the most important features of the professional culture of journalists, identifying the greatest

⁶ The frontier study on journalistic professionalism in Poland was carried out in the 1980s and 1990s by Prof. Jane Curry, currently affiliated with the Santa Clara University in California. She recalled the main findings of this study during the conference “Zmiana w dziennikarstwie. Profesjonalizm i kultura dziennikarska w Polsce” [Journalism in Change: Professionalism and journalism culture in Poland], held at the University of Warsaw on 5 December 2012.

⁷ D. Hallin, P. Mancini, *Comparing media systems: Three models of media and politics*, Cambridge 2004, p. 35–38.

⁸ See: B. Dobek-Ostrowska, *Polski system medialny na rozdrożu. Media w polityce, polityka w mediach* [Polish media system at a crossroads: Media in politics, politics in media], Wrocław 2011, p. 23–27.

possible number of the component of the quality mentioned above is the focus of the discussion in this article (Fig. 1).

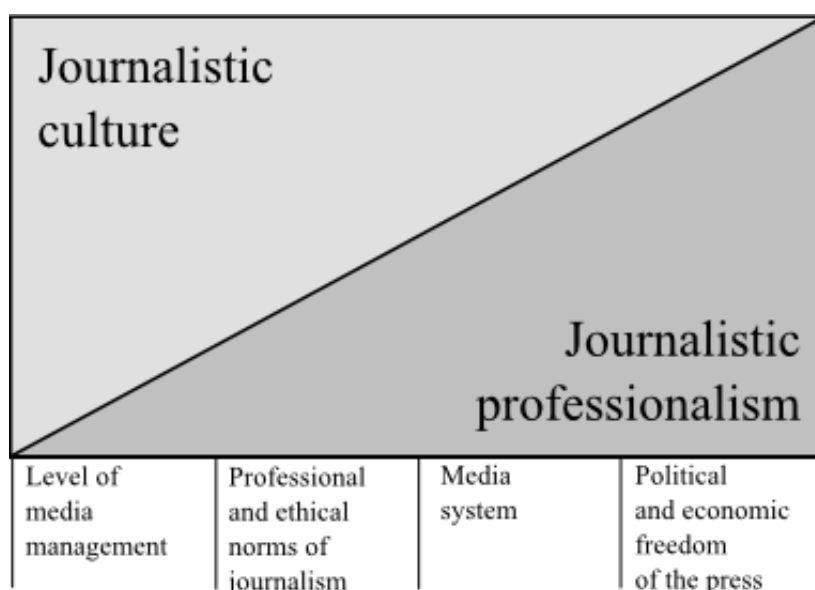


Fig. 1. Journalistic culture and journalistic professionalism

Source: Author's own work

The factors determining the professional culture and professionalism of journalists (Fig. 1) include ethical and professional norms. These are the fundamental components of the system of self-regulation of media and journalism in the countries where there is freedom of speech and freedom of the press. Both in the statutory law and common law systems, the state allows the existence of self-regulation in some areas of social life. Self-regulatory systems are intended to support and complement the judiciary, and their actions and verdicts, while having no legal sanctions, contribute to increased discipline and upholding unified principles not regulated by the law. The Scandinavian countries enjoy an old tradition of self-regulation of the media, resulting from the activities of independent organizations backed by the media themselves. These organs, the Press Councils, are mostly occupied with handling the complaints of recipients about the actions of journalists⁹. If a breach of ethical or professional rules is found, the editors and publishers may be subject to financial penalties.

⁹ L. Kirchner, *Self-regulation done right. How Scandinavia's press councils keep the media accountable*, http://www.cjr.org/the_news_frontier/self-regulation_done_right.php?page=all [accessed: 12 June 2013]; idem, *Seven lessons Scandinavian media can teach us*, http://www.cjr.org/behind_the_news/seven_lessons_scandinavian_med.php?page=all [accessed: 12 June 2013].

Due professional care in journalistic research

While the legislator introduced the category of “particular care” in Art. 12 par. 1 item 1 of PP, he neglected to define it. On the other hand, one can find a five-level classification of types of care¹⁰, where the “particular care” is situated at the fourth level of the hierarchy. This leads to the conclusion that, regarding journalists, the legislator formulated an important postulate of exceptional, special, extraordinary care associated with the work process of journalists. The natural aim of this norm, in the case of journalism, is the respect for the truth and, in consequence, the right of the citizens to reliable information. It means that a journalist should observe the highest quality standards and professional norms, higher than the ones expected in civil conduct, so that the evidence of truth might be replaced with the evidence of good faith. Journalists doing one of the following do not meet the conditions of particular care:

- makes serious allegations based on false, dubious, unverified, or biased materials;
- does not attempt to elicit a statement of the other party, or complementary statements;
- does not take into consideration significant details of the case or omits them, forges or selects information in a specific way, uses ambiguous terms;
- manipulates data.

Many years of journalistic, editorial, and publishing experience allow the author of this paper to assume that journalistic material is gathered in a reliable way if:

- it is preceded by a diligent and thorough research, allowing all the threads in the case to be described;
- the author reaches, or attempts to reach, to all available sources of information;
- materials are gathered and ordered as original documents, their copies, duplicates, certified copies, manuscripts, statement reports, explanations, confessions, photographs, audio documents, audio tapes and disks, video, files, digital (binary) documents, etc.;
- the facts on which the reporter’s findings are based are associated with appropriate means to authenticate or substantiate the circumstances of the case;
- at least two parties speak about the case, and their statements are not abridged or edited in a way that changes their meaning;

¹⁰ M. Sośniak, *Cywilnoprawna ocena staranności zawodowej* [Civil evaluation of professional care], „Nowe Prawo” [New law] 1980, No. 2, p. 23; idem: *Należyta staranność* [Due care], Katowice 1980, p. 178–179, 187–197.

- the facts are clearly separated from assessments and elements of evaluation, in order to avoid the impression that the author mixes his evaluation with the facts, and the recipient cannot distinguish the one from the other¹¹.

An additional criterion facilitating the analysis of care taken in collecting in using materials is the evaluation of consequences which may have or had followed earlier journalistic publications, that is the accountability for words.

Since it is not only in the case of journalism that reliability can be defined using qualitative criteria, such as precision, consistency, concreteness, honesty, objectivism, or accountability for words, these traits are of particular importance during the search for and gathering of materials for a publication. What is important at the stage when the collected materials are used is a comprehensive, and not selective, presentation of information, showing all circumstances, avoiding putting a thesis established in advance into practice, as well as considering the gravity of the allegation, the significance of the information from the point of view of justified social interest, and the need for (urgency of) the publication.

The greater the care and reliability in gathering materials, facts, and evidence, which should lead to more objective knowledge; the more diverse the sources, confronted facts and opinions; the more critical analysis and verification of one's own observations, the fuller the fulfillment of the obligations stipulated in the Press Law will be. The author calls the procedures covering these actions the coherence test, as it involves, to simplify things, in excluding the versions confirmed by just one source without confronting it with other sources or applying expert knowledge. The truth must be objective, and data cannot be presented in a way which may influence its reception through manipulation or misinformation, fragmentation of information, interspersing the information with one's excessive emotions, etc. In view of the above, a journalist is bound to take all possible actions, requiring specialist professional qualifications and associated with achieving a fair, thorough, and conscientious presentation of events, showing criticism and attention to detail. These activities usually refer to both the factual and legal status, and the development form. Professionalism inspires to work intensively, be faithful to facts, verify all circumstances of an event. Nevertheless, many materials show unreliability, negligence, sketchiness, relying on one's own opinions and judgements, often unfounded, which reveals the lack of professionalism and low professional culture. The concern with the credibility of the message, and thus the trust of recipients, led to the birth of precision journalism, which involves using scientific methods in journalistic work,

¹¹ See: M. Chyliński, S. Russ-Mohl, *Dziennikarstwo* [Journalism], Warszawa 2008, p. 311–312.

mostly at the stage of gathering materials, selection and use of sources, methods of analysis and verification of collected data, and ways of selecting information. This type of journalism, promoted by American media scholar Philip Meyer, is also known as scientific journalism since it employs the methodology of historical, sociological, and psychological sciences. The scientific approach is also characteristic of German press scholars, led by journalism professor and theoretician of research Michael Haller¹².

Every research is a process, the essence of which is to draw general conclusions from the collected information. However, methodical research based on science is characterized by observations following the same procedures and identical standards employed regardless of the subject scope and area of research. The number of observations and the logic-based procedures to verify them are important as well. Similarly to scientific research, the results of journalistic research must be subjected to open public evaluation. It means that, revealing the results of our investigation in the publication, we agree to have them verified anytime and anywhere by other researchers, other journalists, or the recipients of the content conveyed. Just as good journalism is a form of mass culture, good research is a condition sine qua non of professionalism in media.

From the point of view of academic and scientific reflection, the obtaining and documentation of journalistic materials are seen as a very practical, artisan-like activity, which is not a decisive factor determining the quality of the media or their professionalism. Whereas this paper is grounded in the conviction that searching for and documenting materials should be considered not only as a fundamental area of the professional culture of journalists but also their social responsibility, as well as a token of respect for the recipient, shown by the very particular care in gathering and using press materials. This respect is reflected by a number of commonly accepted professional norms, such as the pursuit of truth; the awareness that information, pictures, and data cannot be obtained in dishonest ways; that the principle of confidentiality and secrecy of sources has to be upheld; and being aware of one's liability for publishing unsubstantiated claims and passing judgments on the suspected and the accused before a judicial verdict. Should it turn out during the gathering of materials that the journalist's theses or suspicions are not reflected by the evidence and findings of facts, leading him to withdraw his claims or follow new trails, it will signal the level of his professionalism. What is more, it is already at the research phase that a journalist should make a distinction in the level of care according to:

¹² See: M. Haller, *Recherchieren. Ein Handbuch für Journalisten*, Konstanz 2000.

- the credibility of the source of information,
- the urgency of information,
- the type of press material.

The lowest degree is the “normal” care, based on life experience, the ability to draw conclusions, and simple analysis. Next is the “necessary” care, which involves undertaking one’s work and professional activities based on the acquired competence and skills required at a certain post.

“Due” care means performing all routine tasks based on one’s higher competencies and qualifications. The penultimate rank in the classification of the degrees of care belongs to “particular” care, which requires high professional qualifications to be exercised. Finally, the “highest” care is applicable at a very high level of professional qualifications and takes into consideration all risks and difficulties, including the hypothetical ones.

Sources of information and journalistic professionalism

In August 2013, false information that minister of finance Jacek Rostowski had resigned was published on the website of the Polish edition of “Newsweek”¹³. The editors cited two independent sources and repeated that it had been speculated for several days already that prime minister Tusk may dismiss the minister during the reconstruction of the government scheduled later that fall. Late in the evening, the information from “Newsweek” was seized upon by other media, such as the Rp.pl and Fakty.interia.pl portals. The TVP Info channel dedicated an unusual amount of air time to it in the “Dziennik Info” [Info Daily] program. For half an hour, the newscasters asked political scientists and economists about the consequences of Rostowski’s retirement (!). Once the rumor has been denied, the humiliated TVP issued a statement that its journalists cited two sources: the Reuters agency, already cited by the *Newsweek*, and the weekly itself. Thus, they were to act according to the rules of journalistic trade, which is obviously absurd, as any doubts regarding the reliability of information should result in additional activity on the part of the journalist to have the information thoroughly verified. It should be stressed that failure to comply with the obligation of particular care, in the light of the legal interpretation discussed above, did not allow considering the journalists’ actions as a justification to exclude the illegality of violating personal rights by a media publication, and its victim would be entitled to seek damages.

¹³ *Rostowski podał się do dymisji. Tusk dementuje na Twitterze* [Rostowski has resigned, Tusk denies on Twitter], “Gazeta.pl”, http://wiadomosci.gazeta.pl/wiadomosci/1,114871,14468005,_Newsweek___Rostowski_podal_sie_do_dymisji__Tusk_dementuje.html [accessed: 27 Sep 2013].

Simultaneously, the example of the “Newsweek” portal adduced above shows that, in the increasingly complex, multifaceted, and technical reality of today, discovering and verifying the truth is much more difficult than it used to be, and the temptation of easy solutions, brought about by the availability of the computer network and fast search engines, has been growing stronger and stronger. The quality journalism must seek ways to protect itself from mistakes. A professional, scientifically based research, conducted according to the rules of law and ethics, is the best of them. Observing the media in Poland, one may form the impression that the journalists themselves are blind to the issue of the lack of qualifications in obtaining information. Even worse, this is compounded by the fading of the passion for learning, replaced with the passion of publishing! Journalists focus on the means of communication and forms of presentation more than on the message itself, which is supported by the decline in typographical culture, compulsive visualization, and translating data and information to image. The postmodern identification of wisdom with knowledge and knowledge with information is likely to lead nowhere in the case of journalism. It results in superficial publications containing media facts, lacking multiple dimensions, contexts, and the whole complexity of the reality. Insufficient skills lead to fatal errors and mistakes, which affect the journalistic culture and quality of media.

Since in gathering material the type and reliability of the source of information is of utmost importance (a journalist should never rely on a source of dubitable objectivism or credibility), verifying the truthfulness of obtained information by tapping all other available sources and ensuring its accordance with other known facts, as well as allowing the interested party to comment on the gathered information is treated as the standard practice in the profession. A professional evaluates sources according to three essential criteria of availability, diversity, and level of knowledge. It is the easiest to test the credibility of an informant by asking her questions to which we know the answers¹⁴. Let us remark here that the phrase “to indicate its source”, found in the Press Law, belongs to the second clause and refers to the verification of obtained information. Nevertheless, according to the author, the verification of truthfulness of information does not fully satisfy by itself the norm of reliability, which should accompany the gathering and developing of press materials. What is more, the professional norms also include a reliable and impartial presentation of the context of conveyed information, a consideration which properties, and to what extent, may be violated, as well as the obligation to respect the principle of freedom and responsibility, which makes

¹⁴ B. Hennessy, *Dziennikarstwo publicystyczne* [Writing feature articles], Kraków 2009, p. 117.

the journalist responsible for the content and form of the message and its consequences, which has often been expressed by the Media Ethics Council (Pol. *Rada Etyki Mediów*).

It is beyond any doubt that indicating the (personal or documentary) source is not in itself a sufficient indication of professionalism which a journalist could quote to avoid professional and legal liability. The journalism which wants to deserve to be called professional cannot be just a conveyor belt which passes on the content it receives or obtains itself; instead, it is required to assess it critically, verify it, and supplement the missing parts if needed. It is the journalist who has to decide if a given source is reliable, regardless whether it was indicated in the publication or not. While a journalist indicating the source is not bound, *de jure*, to check the information itself, he still has to verify the reliability of the source and – if it raises any doubts – should omit it, according to the old principle of renowned press agencies: “When in doubt, leave it out.” Otherwise the information conveyed by an unreliable source and repeated by a reliable one would be regarded as credible, and the responsibility would become blurred. By an indiscriminate assumption of the concept of responsibility of the original source of information, the requirement of journalistic reliability would become fiction, as the vast majority of conveyed information comes from secondary sources¹⁵.

This leads to a question what the obligation of reliability of a journalist who publishes another journalist’s statement would involve. The simplest answer is verifying sources by oneself and making an effort to evaluate whether or not the gathered material corresponds to facts.

It should also be mentioned here that, according to recent jurisprudence, the courts consider the question of credibility of a source of information in the framework of many interrelated factors, such as the person of the informant, detailed and verifiable circumstances to substantiate the essential information, as well as an objective confirmation of the conveyed message at a later date (Supreme Court in the verdict on the case I CSK 211/07). Such an interpretation makes it highly difficult to answer the question whether there are sources reliable enough to forego additional verification and base a publication solely on them. Some of these doubts may be dispelled by analyzing the casus below.

¹⁵ In 2012 and 2013, the author examined for content twelve national and regional newspapers in Poland, two informational radio programs, two television news services, and a dozen or so web portals. The conducted analysis found that more than a half of informational publications in the press, radio, television, and the internet uses secondary sources, such as press agencies, other media, PR sources, reports, and studies; they cite the websites of institutions and offices, social media, and blogs, and only between 20 and 40 % of all relations are based on primary sources (journalist’s own direct contacts and sources). An exhaustive research report is scheduled for publication in 2014 in a monograph on journalistic research.

In 2003 the District Court in Katowice received a private indictment, in which Andrzej D. claimed the editor-in-chief of “Dziennik Zachodni” [Western Journal] and a journalist of the same daily newspaper of having accused him that, acting in his capacity as the advocate of Henryk M. (the boss of the notorious fuel mafia active in Silesia – M.C.), in collusion with his legal advisor he “cheated the businessman and his ex-wife out of 1 million PLN” and that he was the corrupt lawyer who warned Henryk M. that he was about to be arrested by the Internal Security Agency (Pol. *Agencja Bezpieczeństwa Wewnętrznego – ABW*). As evidence, the prosecutor presented two articles entitled *Zemsta adwokata* [Advocate’s revenge] and *Lepkie ręce adwokata* [Advocate’s sticky hands]. The private prosecutor claimed that by these two publications the defendants put him at a risk of losing the trust necessary to practice the advocate profession and humiliated him before the public opinion. The court dismissed the penal proceedings and deemed that their actions cannot be considered as having the features stipulated in Art. 12 par. 1 of the Penal Code, since according to both the Constitution and Press Law regulations, their activities were directed at the protection of a legitimate social interest. Since in this case, the truthfulness of the accusation is measured by “the journalist exerting particular care and reliability in gathering and using press materials (judgment of the Supreme Court IIRC 269/87 OSNC 1989/4/66), the illegality of the journalists’ actions has been excluded, even more so because they presented the informant and replayed his statements, and the informant was not a party involved in the case.” By their actions, the court argued, the journalists fulfilled the requirement of particular care and reliability. It is worth noting that, in naming the journalists’ actions as reliable and diligent, the court referred to both the stage of gathering information and its publication in daily press.

As already mentioned, the degree of journalistic care should diver according to the credibility of the source of information and the type of press material. The care may be less when the informant is a known authority, someone belonging to the circles of public trust, a central or local government official, or even a member of the judiciary of law enforcement, which was the case in the above case.

In February 2007, the media covered a conference of the Prosecutor General Zbigniew Ziobro about the arrest of Dr. Mirosław G., a cardiac surgeon. Among the titles covering the conference which quoted the minister’s words about the suspicion of a patient’s homicide was the “Super Express” (SE) tabloid, whose editor was sued by the physician. “The author based his writing on the Prosecutor General’s conference, therefore could be convinced that the charge of homicide was supported by evidence; the journalist could not verify it,” explained

the judge. The journalist considered minister Ziobro as a “reliable source”¹⁶. The “SE” was also helped by the fact that the court stated that, by conveying information important for the public sphere it “acted in the public interest” which – as indicated in the doctrine – excludes the legal liability for libel. Therefore, this verdict is fully in accordance with the requirements regarding journalistic care and reliability underlined in the article. It means that a journalist should make every possible effort striving to present events and phenomena in a fair manner, and to obtain and convey facts and justifiable evaluations in the case of press criticism. Still, even though the norms of journalistic profession set the expectance level and criteria of journalistic care and reliability, the question whether or not a journalist met the obligation of particular care and reliability is answered by the courts and not by the norms of the profession and professional culture. Upholding these norms applies, in the first place, to gathering materials and then to their development and use.

The above paper contains examples of publications about complex, ambiguous, and multi-threaded cases, with a conflict background. In such situations, presenting the versions of all parties, that is, all sources which were already available before publication, is the principle of the trade. Neglecting the obligation of due professional care and reliability may not only lead to the author of the publication being assigned the blame or illegality of action, resulting in being held legally responsible; it can and should also be judged in the professional and deontological categories as conduct which either complies with or abandons the model of due journalistic care.

¹⁶ B. Wróblewski, *Ziobro rzetelnym źródłem?* [Ziobro a reliable source?], <http://wyborcza.pl/1,76842,4775503.html#ixzz2WHJ464Vz> [accessed: 12 June 2013].