ROCZNIKI NAUK PRAWNYCH
Tom XXVI, numer 3 – 2016
DOI: http://dx.doi.org/10.18290/rnp.2016.26.3-4

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THE RIGHT TO PRIVACY OF CLERGYMAN AS AN ENTITY OF PUBLIC LIFE

INTRODUCTION

The right to privacy is included in the catalogue of rudimentary freedoms and rights of an individual. It is also considered to be an object of legal protection clearly mentioned in the Constitution of the Republic of Poland[1]. According to article 47 of the Polish Constitution everyone shall have the right to legal protection of his private and family life as well as to make decisions about his personal life. There are also the values which are protected directly by the regulations of the Civil code[2] (article 23 of the Civil code) and the Press law[3] (article 14, paragraph 6)[4].

The privacy is commonly thought to be the value most threatened by the media. To a great extent it results from the more and more popular „nosy journalism" which tends to find out information on stories and scandals from the life of the upper classes of the society as well as to spy on well-known people[5]. The clergy-

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[1] Ustawa z dnia 2 kwietnia 1997 r. – Konstytucja Rzeczypospolitej Polskiej, Dz. U. Nr 78, poz. 483 z późn. zm.

[2] Ustawa z dnia 23 kwietnia 1964 r. – Kodeks cywilny, Dz. U. Nr 16, poz. 93 z późn. zm.

[3] Ustawa z dnia 26 stycznia 1984 r. – Prawo prasowe, Dz. U. Nr 5, poz. 24 z późn. zm.

[4] Cf. J. BRACIAK, *Prawo do prywatności*, [w:] *Prawa i wolności obywatelskie w Konstytucji RP*, red. B. Banaszak, A. Preisner, Warszawa: C.H. Beck 2002, s. 347.

[5] A. MATLAK, R. MARKIEWICZ, J. BARTA, *Prawo mediów*, Warszawa: LexisNexis 2007, System Informacji Prawnej Lex Polonica, Rozdział 11, 1.2.

men are also a subject of this process whose public activity arouses interest in their private life. It is worth considering if journalists are allowed to interfere in the life of clergymen and what limits this interference can have.

I. THE RANGE OF INFORMATION INCLUDED IN THE RIGHT TO PRIVACY

The conception of right to privacy was introduced into the Polish law by A. Kopff who included in this conception the circumstances of the private and family life which are known only by relatives and friends. It is presumed that thoughts, political beliefs, feelings of an individual expressed in varied ways, but especially by voting in elections, correspondence in written form addressed to particular people, phone calls, communication by electronic mail when a message of an addresser should not have been sent to third parties, but to one specific addressee, are protected within the right to privacy. The information about practicing any particular religion, being a member of any church or a labor union, association or political party is also thought to be circumstances of the private life[6].

Judicial decisions state that the right to privacy includes among other things all information from the private and family life of an individual. Especially information regarding relations between spouses and other family members, between parents and children as well as the profile of a family and its internal relations[7] belong to family life. Particularly the relations between spouses, information on maltreatment of a wife by a husband, marriage arguments and scenes of jealousy because of infidelity are part of the family life. The information on the features of character were qualified by courts as the circumstances of the private life, such as: greed, rat race, information on the style of life, the behavior and attitude of an individual to other people, the behavior and attitude of an superior to subordinates[8], information on addictions and bad habits, information on inappropriate behavior in public places[9], information on death of a person[10], information on diffi-

[6] Cf. J. SADOMSKI, *Naruszenie dóbr osobistych przez media*, Warszawa: Oficyna Naukowa Instytutu Wymiaru Sprawiedliwości 2003, s. 36 n.

[7] Cf. wyrok Sądu Apelacyjnego w Krakowie z 29 października 1991 r., sygn. akt I ACr 314/91, quote for B. GAWLIK, *Dobra osobiste. Zbiór orzeczeń Sądu Apelacyjnego w Krakowie*, Kraków: Zakamycze 1999, s. 40 n.

[8] Sygn. akt I C 35/86, I CR 171/87, the judgment of database of Press Freedom Monitoring Center (Centrum Monitoringu i Wolności Prasy).

[9] Wyrok Sądu Apelacyjnego w Łodzi z 11 marca 1994 r., sygn. akt I A Cr 282/94, the judgment of database of Press Freedom Monitoring Center (Centrum Monitoringu i Wolności Prasy).

cult life conditions, lack of money, abject poverty, information on somebody's criminal record and committed crimes[11] and information on close interpersonal relations, love affairs or holidays spent together with other person etc.[12] Also information on identity is considered to be an element of privacy, such as: age, name, place of residence, the sex, telephone number, profession, place of work etc.[13] It is worth mentioning that the courts sentenced the infringement of privacy also in case of violation of regulations of the Law of Data Protection[14]. The analysis of Polish courts' rulings shows that the circumstances of the intimacy also belong to the privacy of an individual. The Supreme Court included in privacy the cases concerning intimate relationships and having sex[15]. It was stated that the disclosure of paternity of a conceived child and a fact of sexual intercourse are entering the intimacy of the private life and should be treated as a rule a lawless act. Information on the state of health and applied treatment, condition of mental health, applied psychiatric treatment or a suicide attempt was also included in the sphere of intimacy[16]. Currently the information on the amount of income is classed as the private life in the sight of doctrine and jurisdiction, including the amount of remuneration[17] and information on the amount of debt[18].

[10] Cf. wyrok Sądu Wojewódzkiego w Płocku z 24 czerwca 1986 r., sygn. akt I C 84/85, (SN) I CR 377/86, the judgment of database of Press Freedom Monitoring Center (Centrum Monitoringu i Wolności Prasy).

[11] Cf. wyrok Sądu Apelacyjnego w Krakowie z 14 czerwca 1994 r., sygn. akt I ACr 281/94, quote for GAWLIK, *Dobra osobiste*, s. 131.

[12] Cf. wyrok Sądu Apelacyjnego w Warszawie z 16 marca 1999 r., sygn. akt I ACa 1415/98, the judgment of database of The Department of Scientific Documentation at the Institute of Innovation and Protection of Intellectual Property at the Jagiellonian University (Ośrodek Dokumentacji i Informacji Naukowej Instytutu Wynalazczości i Ochrony Własności Intelektualnej UJ).

[13] Cf. also wyrok Sądu Najwyższego z 19 stycznia 1987 r., sygn. akt II CR 337/86, quote for S. RUDNICKI, *Ochrona dóbr osobistych na podstawie art. 23 i 24 k.c. w orzecznictwie Sądu Najwyższego w latach 1985-1991*, „Przegląd Sądowy" 1 (1992), s. 60.

[14] Cf. wyrok Sądu Apelacyjnego w Warszawie z 6 lipca 2004 r., sygn. akt VI ACa 38/04, the judgment of database of The Department of Scientific Documentation at the Institute of Innovation and Protection of Intellectual Property at the Jagiellonian University (Ośrodek Dokumentacji i Informacji Naukowej Instytutu Wynalazczości i Ochrony Własności Intelektualnej UJ).

[15] Cf. wyrok Sądu Najwyższego z 18 stycznia 1984 r., sygn. akt I CR 400/83, OSN 1984, nr 11, poz. 195.

[16] Cf. wyrok Sądu Apelacyjnego w Krakowie z 29 października 1991 r., sygn. akt I ACr 314/91, quote for GAWLIK, *Dobra osobiste*, s. 40 n.; wyrok Sądu Apelacyjnego w Poznaniu z 19 października 1995 r., sygn. akt I A Cr 328/95, the judgment of database of Press Freedom Monitoring Center (Centrum Monitoringu i Wolności Prasy).

[17] Cf. uchwała składu siedmiu sędziów Sądu Najwyższego z 16 lipca 1993 r., I PZP 28/93, OSNCP 1994, nr 1, poz. 2.

II. A CLERGYMAN AS A PERSON PERFORMING PUBLIC ACTIVITY

One should indicate that the range of freedom of spreading information on a person can depend on the character (type) of the spread information and on the fact if the information concerns persons performing public activity. There are persons who arouse public interest in the social, political and religious life.

There is no clear definition of the notion „public figure" in the literature. This conception is variously explained by different authors. A. Kopff pointed out that the essence of this notion is to fulfil an extraordinary role in the social life or to attract public attention by a particular person[19]. In opinion of A. Szpunar „public figures" are persons „whose political, social or cultural activity attracts special attention of all society"[20]. According to B. Michalski „the most important characteristic of public activity is that an individual or a group of people voluntarily undertakes activity in the field of politics, economy, society etc. in its broadest sense and provides the results for the evaluation of a society as a whole or interested social groups"[21].

It is presumed that the information concerning people's behaviour is not included in the sphere of privacy and can be spread with no restrictions provided that it concerns the publicly available situations, e.g. in public places, in the street, during mass meetings or street manifestations. In principle informing about events included in the second and third sphere, that is to say about events taking place in our private life (the private sphere) or about intimate matters (the intimate sphere)[22] cannot happen without a consent of a person affected by this specific information. The exception is here the possibility of interference in the private sphere of „public figures" or „well-known persons" who must expect the restriction of

[18] Cf. wyrok Sądu Apelacyjnego w Krakowie z 17 listopada 1995 r., sygn. akt I ACr 559/95, quote for GAWLIK, *Dobra osobiste*, s. 179 n.; also wyrok Sądu Apelacyjnego w Białymstoku z 25 stycznia 2001 r., sygn. akt I ACa 4/01, OSA 2001, nr 9, poz. 51.

[19] Cf. A. KOPFF, *Koncepcja prawa do intymności i do prywatności życia osobistego. Zagadnienia konstrukcyjne*, seria: *Studia Cywilistyczne: zbiór rozpraw z zakresu prawa cywilnego, prawa międzynarodowego prywatnego, prawa pracy oraz prawa procesowego cywilnego*, red. S.M. Grzybowski, t. XX, Warszawa-Kraków: Państwowe Wydawnictwo Naukowe 1972, s. 35.

[20] A. SZPUNAR, *O ochronie sfery życia prywatnego*, „Nowe Prawo" 3-4 (1982), s. 7.

[21] B. MICHALSKI, *Podstawowe problemy prawa prasowego*, Warszawa: Elipsa 1998, s. 50-51; cf. also P. SUT, *Ochrona sfery intymności w prawie polskim – uwagi de lege lata i de lege ferenda*, „Ruch Prawniczy Ekonomiczny i Socjologiczny" 4 (1994), s. 104.

[22] SADOMSKI, *Naruszenie dóbr osobistych*, s. 36 n.

their privacy because of the held office or the public attention they attract. This standpoint is accepted by the majority of representatives of legal doctrine[23].

However, it should be emphasised that the right to interfere in the privacy of public figures does not have the absolute character. M. Safjan claimed that the society had the right to the full information on all aspects of the public life. However, it could not lead to removing any barriers of inaccessibility because a public figure could exercise his own right to privacy which should be respected by the press[24].

As it was noticed in the literature, the weak point of the presented point of view is the equivocation of subjective criteria, that is to say the vagueness of notions, such as „well known person" mentioned in article 81, paragraph 2 of the Copyright law[25] or „person performing public activity" used in article 14, paragraph 6 of the Press law[26].

Article 14, paragraph 6 of the currently in force Press law states that: „It is prohibited to publish information and details on the private sphere of life without the consent of the interested party unless it is directly connected with the public activity of this person". On the basis of the current regulation one should assume that if we decide to treat a particular person as person performing public activity, it will result in the restriction of their right to privacy.

As it was rightly presented in court rulings`, we should understand the notion „public activity" provided in article 14, paragraph 6 of the Act – Press Law from 1984 in broader sense. We should know that not only political activity was mentioned here. As it was ruled by the Appeal Court in Gdansk: „According to this Act persons performing public activity can also be, under specific circumstances, other people not from the circle of politics operating in the field of science or art within some institution or not. Their attitude and beliefs contribute to shaping the views of society. These persons attract significant opinion-maker circles and can have great influence on the public life by means of these circles. Both persons holding public functions and those who do not hold public offices but play im-

[23] Cf. SZPUNAR, *O ochronie sfery*, s. 7; Z. BIDZIŃSKI, J. SERDA, *Cywilnoprawna ochrona dóbr osobistych w praktyce sądowej*, [w:] *Dobra osobiste i ich ochrona w polskim prawie cywilnym*, red. J.S. Piątowski, Wrocław: Zakład Narodowy im. Ossolińskich 1986, s. 60; M. SAFJAN, *Prawo do prywatności osób publicznych*, [w:] *Prace z prawa prywatnego. Księga pamiątkowa ku czci sędziego Janusza Pietrzykowskiego*, red. J. Błeszyński, Warszawa: C.H. Beck 2000, s. 255; J. SIEŃCZYŁO-CHLABICZ, *Naruszenie prywatności osób publicznych*, Kraków: Zakamycze, Wolters Kluwer 2006, System Informacji Prawnej Lex Omega, Rozdział 5.6.

[24] SAFJAN, *Prawo do prywatności*, s. 255.

[25] Ustawa z dnia 4 lutego 1994 r. o prawie autorskim i prawach pokrewnych, Dz. U. z 2006 r. Nr 90, poz. 631 z późn. zm.

[26] MATLAK, MARKIEWICZ, BARTA, *Prawo mediów*, Rozdział 11, 1.2.

portant role in other areas of the public life, e.g. the politics, belong to the category „public figures". The access to their privacy without their consent is a result of their public activity or held office. Due to public attention they attract they should be judged or even controlled by the society". It should not raise any doubts that activities of clergymen of different religions and especially their religious, social and political beliefs have significant influence on beliefs of the faithful. What is more, private opinions and beliefs of bishops and sometimes also of ordinary clergymen have impact on the culture and beliefs of society. As a matter of fact that clergymen speaking in public (during religious ceremonies, in scientific, press publications or when conducting educational activity) have influence on shaping the public life, they should be qualified as persons performing public activity according to article 14, paragraph 6 of the Press Law[27].

It is not vital to mention here that the activity of a clergyman of particular religion does not have influence on the general public but only on members of a particular denomination living in some area or in certain place. It was rightly presented in the literature that „an adjective "public" is mostly used to define events or things accessible for all members of the society. This way one should understand this very term when conducting interpretation of notions such as: „public activity" or „public function". However, one should remember that an adjective „public" does not necessarily denote something absolutely accessible for the entire society. An adjective „public" can also refer to persons or events generally accessible under certain circumstances"[28].

The restriction of the range of privacy protection can also result from e.g. „the entering" of a person to the public space by active participation in the social media. A clergyman attracting attention of the media is invited to television or radio programmes, often expresses his views in the media or is in charge of his own television or radio programme. That is why this person can be said to belong to the category of people „performing public activity". The statement above is exemplified in the quoted court`s ruling, as follows: „A person who enters the media, that is to say the public-social sphere, has a somewhat lower status of protection than an anonymous person. When entering the public sphere which consists not only of politics but also of culture and entertainment, a person must agree to reveal information on his private life in public provided that this information is connected

[27] Wyrok sądu apelacyjnego w Gdańsku z dnia 11 kwietnia 2014 r., sygn. akt I ACa 7/14, Lex nr 1544696.

[28] M. KOWALSKI, *Glosa do wyroku SN z dnia 12 września 2001 r., V CKN 440/00*, OSP 2002, nr 12, poz. 160.

with his presence in the media and with broadly defined public debate related to public activity of that particular person"[29].

There is distinction in the literature between two types of well-known persons: absolutely well-known persons and relatively well-known persons. As far as the second type is concerned, these person attract at least only „local attention" (such as a mayor of a village, a local government officer or an artist known only in local area) or attract short-lived general attention which results from extraordinary situation (e.g. causing a disaster, miraculous surviving an accident or causing a scandal at vernissage)[30].

When we take above-mentioned definitions of a person performing public activity into consideration, it can seem that clergymen[31] could be regarded as public figures in many cases. High ranking members of the Catholic clergy should be regarded as absolutely well-known persons due to their functions and office. On the other hand, priests serving in their parish or having other functions, e.g. organising charity work or educational activities will probably be regarded as relatively well-known persons, so they will attract only local attention. There is no doubt that the Christian ministry or other clergymen's activities carried out in order to carry forth Church`s mission influence considerably the public life both in local area and in entire country. This sort of activities becomes the subject of social criticism and evaluation and makes lay members of the Church interest in the private life of priests. This standpoint seems to be approved by the Appeal Court in Warsaw which ruled that a person could be given a status of a public figure, although he did not have any public functions. It was enough to participate actively in public life[32].

The restriction of the range of legal protection of privacy of persons performing public activity is not a term unlimited in time. As it was presented in the literature: „If a person held a public functions and was active in the public sphere in the past, but does not hold these functions anymore, we can consider him to be a public figure as long as there is a publication of historical importance. What is

[29] Wyrok Sądu Apelacyjnego w Krakowie z dnia 23 kwietnia 2015 r., sygn. akt I ACa 161/15, Lex nr 1711406.

[30] MATLAK, MARKIEWICZ, BARTA, *Prawo mediów*, Rozdział 11, 1.2.

[31] The clergymen priest in the sense of the person who has the ministry of spiritual, religious, priest.

[32] Cf. wyrok Sądu Apelacyjnego w Warszawie z dnia 12 lutego 2003 r., sygn. akt I ACa 759/02, the judgment of database of The Department of Scientific Documentation at the Institute of Innovation and Protection of Intellectual Property at the Jagiellonian University (Ośrodek Dokumentacji i Informacji Naukowej Instytutu Wynalazczości i Ochrony Własności Intelektualnej UJ), quote for SIEŃCZYŁO-CHLABICZ, *Naruszenie prywatności*, Rozdział 5.6.

more this person should have played significant role in historical events described in press publications"[33]. When relating above-mentioned standpoint to clergymen we should notice that a clergyman who retired from public activity (because of elderly age, state of health or removal from the status of being a member of the clergy) should not be regarded anymore as a person holding public functions. Interference in the private sphere of such persons can refer only to description of historical events. Under no circumstances can it have any connections with their current situation or occurrences from their life.

III. INTERFERENCE IN THE PRIVATE SPHERE OF A CLERGYMAN PERFORMING PUBLIC ACTIVITY AS IMPLEMENTATION OF CIVIC RIGHT TO INFORMATION

Already in the 70ties of the 20th century the Supreme Court ruled in the sentence from 13th July 1977 if someone decided to start public activity, his activity can be the subject of public information and evaluation without his consent[34].

The Supreme Court issued its ruling in other sentence that pursuant to article 61, paragraph 1 of the Polish Constitution citizens shall have the right to obtain information on the activities of public figures and pursuant to article 14, paragraph 6 of the Press law one can publish information concerning even private sphere of their lives without their consent if this information is directly connected with their public activity. As a result, although these persons are not deprived of the right to protect their private life, in fact this law is considerably limited because of the public character of their activities[35].

A person starting the public activity, including a clergyman, should be aware of the fact that his life, actions and beliefs will be evaluated and verified, because the society has the right to obtain complete information on all aspects of the public life. The range of this information including facts from the private life of clergyman can be limited only by socially legitimate interest while revealing the information on the private sphere of clergyman should serve this interest.

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[33] J. SIEŃCZYŁO-CHLABICZ, *Prawo do ochrony sfery życia prywatnego osób publicznych w świetle polskiej doktryny i orzecznictwa*, „Przegląd Ustawodawstwa Gospodarczego" 2 (2005), s. 6.

[34] Sygn. akt I CR 234/77, judgment unpublished, quote for BIDZIŃSKI, SERDA, *Cywilnoprawna ochrona dóbr osobistych*, s. 70.

[35] Wyrok Sądu Najwyższego z 26 lutego 2002 r., sygn. akt I CKN 413/01, OSNC 2003, nr 2, poz. 24.

Therefore, revealing the information on the private sphere of clergyman's life can take place only when it serves the socially legitimate interest. „This interest in case of press publications must concern openness of the public life and the right of the society to obtain information on persons actively taking part in the forum of public opinion, attracting the interest of society because of their influence on the public life. That is why such persons can be criticised by the entire society and have less protection of personal rights"[36].

IV. CONNECTION OF INFORMATION FROM THE PRIVATE SPHERE WITH THE PUBLIC ACTIVITY OF A CLERGYMAN

Regulation included in article 14, paragraph 6 of the Press law introduced the principle that it is permitted to publish the information and details on the private sphere of life without the consent of the interested party only when it is directly connected with the public activity of this person.

The legislator did not determine what facts or conditions from the private life of public figures can be revealed by the press. One can say that according to judicial decisions such circumstances from the private life of public figures are the subject of the justified interest of the press which are vital for the social role they fulfill[37]. It concerns facts included in the sphere directly connected with their public activity. In order to exclude illegal act infringing the private sphere of life it is necessary to make direct and functional connection between public activity and private life of an individual[38].

For these reasons a publication on the private sphere of a clergyman can concern only such information which refers to the public activity performed by a particular person as well as information which can affect this public activity.

It means that it is necessary to exist connection between the behaviour of a person in the sphere of public activity and his behaviour in the private sphere. As it was presented in judicial decisions: «It is of no importance if it is accidental or formal connection. The disclosure (…) of information should therefore serve to protect specific, socially legitimate interest, because leaving it unsaid could be harmful for the society. Not all information on the private sphere of life can be the subject of publication, even if this knowledge was interesting for the public opi-

[36] Wyrok Sądu Apelacyjnego w Poznaniu z dnia 26 września 2013 r., sygn. akt I ACa 597/13, Lex nr 1381493.

[37] Sygn. akt I ACr 281/94 quote for GAWLIK, *Dobra osobiste*, s. 129.

[38] Cf. MICHALSKI, *Podstawowe problemy*, s. 56.

nion. In each case it is required to point out that publishing this information has a strong and direct connection with public activity of the particular person and that is why belongs to the sphere of "public availability"»[39].

M. Safjan claims rightly that it would not be irrelevant for the public opinion to publish information on e.g. family life of a politician who sent his own offspring to children's homes while he publicly supports the values of family life. The confidence in credibility of statements of public persons one can really evaluate after revealing some information on their private life, justifies the public interest and existence of direct connection between two spheres of activity. However, it seems that revealing information on everyday matters or household errands of a politician could not be allowed without his consent[40].

The above mentioned remarks should be referred to the activities of the clergy. Because of the peculiarity of the priestly functions as well as the educational or even moralising activities of the clergy the credibility of statements of a clergyman can be evaluated by taking facts or conditions from his private life into account. These circumstances and peculiarity of the clergymen's activity contribute to the situation that the sphere of their private life connected with propagating the values they believe can attract justified public attention.

Thus the publishing of information on the private sphere of clergyman's life must be connected with the public function he is holding. As it was presented in the courts' rulings there must be connection between the behaviour of a given person in the public sphere and the published information on the private life[41]. The above mentioned connection regarding a clergyman mostly takes place when such a person is responsible for propagating particular moral, ethical values as well as a lifestyle and some standards of behaviour in the private life. On the contrary, this person contradicts declared values and propagated standards of behaviour. This opinion is exemplified in the jurisprudence which stated that „publishing of information on infringement of certain values in the public activity or in the private life by a person whose public activity is connected with setting an example cannot be considered to be an illegal act"[42].

However, it was emphasised in the literature that presenting the direct connection between the private sphere of life and the public activity is not yet a sufficient

[39] Wyrok Sądu Apelacyjnego w Warszawie z dnia 19 marca 2015 r., sygn. akt I ACa 1362/14, Lex nr 1724157.

[40] Cf. SAFJAN, *Prawo do prywatności*, s. 262.

[41] See wyrok Sądu Apelacyjnego w Katowicach z dnia 3 czerwca 2014 r., sygn. akt I ACa 279/14, Lex nr 1496413.

[42] Wyrok Sądu Apelacyjnego z dnia 3 stycznia 2014 r. w Warszawie, sygn. akt VI ACa 218/13, Lex nr 1500850.

premise which would justify the publishing information and details on the private life. The press publication must be justified by real socially legitimate interest[43]. According to the ruling of the Supreme Court from the 11th October 2001[44] publishing information on private matters should serve to protect specific, socially legitimate interest. As a result only such information on the private sphere of life should be revealed which could be harmful for the society if it was left unsaid.

For these reasons the publication concerning the private sphere of a clergyman can deal with e.g. information on ideas, values or lifestyle propagated by this person if we come to the conclusion that it is required by the common good. In my opinion we should consider e.g. the information on sexual orientation, marital status, financial position, political or ideological views of a clergyman to be connected with his activity as being a public person. Nevertheless, our curiosity or desire to entertain ourselves by harming other person cannot surely justify publishing this sort of information.

In the foreign literature it was clearly pointed out that the affairs concerning religious doctrines, operating of religious organizations, practices and activities of churches and sects are issues included in the category common good can be submitted to critical review. Especially manner of parish management and parish work by a parish priest as well as leading church services belong to the subject of common good. Similarly, affairs concerning religious practices organized by different churches and sects as well as the content of sermons preached by clergymen during meetings with the faithful are included in the broadly defined common good and can be submitted to fair and permitted critical review[45].

In the jurisprudence the question of revealing information on remuneration of well-known persons was deliberated as a special case of infringement of their right to privacy. In one of court rulings concerning the possibility of publishing information on the amount of remuneration of employees of local government (a mayor of a village, a mayor of a city, a deputy mayor, a treasurer or a secretary) it was pointed out that the local society had the right to know what the financial resources of the community were used for. In principle the information on the amount of remuneration is said to belong to the sphere of public access (public sphere), because it is institutionally connected with the public functions[46]. Howe-

[43] Ibidem, s. 258.

[44] Cf. wyrok Sądu Najwyższego z dnia 11 października 2001 r., sygn. akt II CKN 559/99, OSNC 2002, z. 6, poz. 82.

[45] SIEŃCZYŁO-CHLABICZ, *Naruszenie prywatności*, Rozdział 7.5.3.; KOWALSKI, *Glosa do wyroku SN z dnia 12 września 2001 r., V CKN 440/00*.

[46] A. PISKORZ-RYŃ, *Jawność wynagrodzeń osób pełniących najwyższe funkcje w organach samorządu terytorialnego a prawo do prywatności*, „Samorząd Terytorialny" 12 (1997), s. 64.

ver, the information on other sources of income is protected on underlying general principles. It seems that this principle can be also referred to clergymen who belong to the category of well-known persons. The information on the income made from the function they hold will not lead to interfere in their private sphere.

V. INTERFERENCE IN THE INTIMATE SPHERE OF A CLERGYMAN

In the source literature there is no common stance on publishing information and details on the intimate sphere of the public persons by the press. Generally speaking we can distinguish two stances in the doctrine.

In the sight of the first point of view the sphere of the intimate life is absolutely always protected by law. The absolute legal protection is provided not only for private persons, but also for persons participating in the public life. E.g. A. Kopff[47], A. Szpunar[48] and S. Rudnicki[49] support this stance.

Supporters of the second point of view claim that the legal protection should be more intensive when it comes to the intimate sphere of an individual than in case of the right to privacy. However, this protection should not be absolute. In their opinion the press is allowed under certain circumstances to publish information and details on the intimate sphere of life of persons performing public activity[50]. The opinion on relative protection of the intimate sphere was also supported by the Supreme Court in its ruling from 18th January 1984[51].

J. Sieńczyło-Chlabicz noticed that one can point out at least several reasons which justify interference in the sphere of intimacy provided that it can occur only in extraordinary situations. According to her one can mention in particular following reasons:

1) validity of publishing by the press certain information on the intimate life of a person holding the highest functions in the state as this sort of information could influence the public life;

[47] KOPFF, *Koncepcja praw*, s. 33.

[48] SZPUNAR, *O ochronie sfery*, s. 7.

[49] RUDNICKI, *Ochrona dóbr*, s. 59.

[50] Cf. I. DOBOSZ, *Tajemnica korespondencji jako dobro osobiste oraz jej ochrona w prawie cywilnym*, Kraków: UJ 1989, s. 61; M. SAFJAN

, *Refleksje wokół konstytucyjnych uwarunkowań rozwoju ochrony dóbr osobistych*, „Kwartalnik Prawa Prywatnego" 1 (2002), s. 239.

[51] Cf. wyrok Sądu Najwyższego z dnia 18 stycznia 1984 r., sygn. akt I CR 400/83, OSN 1984, nr 11, poz. 195.

2) the confidence of the whole society in certain group of persons justifies publishing intimate information as this sort of information could influence the way they hold public functions;

3) establishment of a certain custom in some countries with systems of statutory and customary law (Poland, Germany, the USA, Great Britain) to publish some information on the intimate life, especially on the state of health, sexual orientation as it has direct influence on the public activity performed by this person[52].

According to B. Kordasiewicz „the correct interpretation of the article 14, paragraph 6 of the Press law allows to introduce very strict, almost absolute protection of the intimate sphere of life, also when we act on the assumption that it is only an element ("secondary sphere") of the private sphere of life. Secondly, there is somehow a false a priori reasoning when by definition the sphere of intimate life is not regulated by the article 14, paragraph 6 of the Press law due to absolute protection which does not allow any interference in any situation"[53].

Taking these considerations into account one should point out that the clergymen similarly like other well-known persons should be aware in certain circumstances of critical or satirical publications about them as well as information in the press revealing possible discrepancies between declared values and their behaviour in the private life. However, one should emphasize that this sort of information should be made known to the public with great caution. In each situation one should decide that the public interest prevails over an individual's when the information from the private life is published. Revealing information from the public life of the clergymen is so dangerous and should be made with extreme caution, because any lack of journalistic accuracy in this case could lead to the situation when clergyman could not fulfill his function in the society any more.

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[52] SIEŃCZYŁO-CHLABICZ, *Naruszenie prywatności*, Rozdział 4.5.3.

[53] B. KORDASIEWICZ, *Cywilnoprawna ochrona prawa do prywatności*, „Kwartalnik Prawa Prywatnego" 1 (2000), s. 19.

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THE RIGHT TO PRIVACY OF CLERGYMAN AS AN ENTITY OF PUBLIC LIFE

S u m m a r y

The article focuses on some legal problems concerning the interpretation of provisions on the right to privacy of a clergyman. The author presents relevant legal regulations and different opinions in the area of interpretation of this issue. The analysis of legal regulations is based on courts' rulings which lend meaning to the term "right to privacy of public person". The article discusses a number of chosen courts' rulings which form the method of determining prerequisite elements of right to privacy of a clergyman seen as a public person. The analysis carried out by author provides evidence that this issue is very problematic and worth further research.

Key words: privacy, moral rights, media, priest

OCHRONA PRAWA DO PRYWATNOŚCI OSÓB DUCHOWNYCH JAKO PODMIOTÓW ŻYCIA PUBLICZNEGO

S t r e s z c z e n i e

W artykule omówione zostały zagadnienia ochrony prawa do prywatności osoby duchownej, która stała się przedmiotem zainteresowania mediów. We wstępie przedstawiono ogólne zasady ochrony dobra osobistego, jakim jest prywatność, następnie wskazano na częściowe wyłączenie prawa do prywatności osób publicznie znanych. Przedstawiono tezę, iż w wielu przypadkach osoby duchowne powinny być traktowane jako osoby powszechnie znane, w związku z czym omówiono sytuacje, które z jednej strony wchodzą w zakres prawa do prywatności osoby duchownej, a z drugiej – jako związane z pełnieniem ich funkcji – mogą być przedmiotem publicznego zainteresowania i swobodnie ujawniane przez prasę.

Słowa kluczowe: prywatność, dobra osobiste, media, ksiądz