Treść roszczenia o usunięcie skutków naruszenia dóbr osobistych w internecie

The content of the claim for the elimination of the consequences of infringement of personal rights on the Internet

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ABSTRACT: The feeling of being anonymous prevalent among Internet users is why personal rights are being infringed very often and with much ease. The outreach of the information published on the Internet brings about far-reaching negative consequences for the injured party, and the elimination of these consequences is extremely difficult and requires the infringing party to submit an appropriate statement, with a big enough outreach so as to effectively reach those recipients who have previously read the content of the defamatory and unlawful entry. The content and the form of such statement are determined by the court in the sentencing part of the judgment. However, before this happens, the claimant must take certain initiative while bringing an action and submit a draft of the statement s/he proposes, together with the manner of its publication. The author of this paper provides guidance on the requirements for publishing such a statement, suggesting what issues should be treated with particular attention during the preparation of the complaint. At the same time, the author does not impose any ready-made solutions, and rather refers to the knowledge in the realm of IT and computer graphics. On the other hand, the author points out to general trends in case law and touches upon the issue of the enforcement of the publication order.

STRESZCZENIE: Poczucie anonimowości użytkowników internetu sprawia, że bardzo często i z wielką łatwością dochodzi do naruszenia dóbr osobistych. Szeroki zasięg informacji publikowanych w internecie niesie dla pokrzywdzonego daleko idące negatywne skutki, których usunięcie jest wyjątkowo trudne i wymaga złożenia przez naruszyciela stosownego oświadczenia, wyeksponowanego na tyle dobrze, by skutecznie dotarło do tego kręgu osób, które zapoznały się uprzednio z treścią oszczerczego i bezprawnego wpisu. Treść i formę tego oświadczenia określa sąd w sentencji wyroku. Zanim to jednak nastąpi, powód musi wykazać się inicjatywą i na etapie składania pozwu wskazać proponowany przez siebie tekst oświadczenia i sposób jego publikacji. Autor niniejszego artykułu udziela wskazówek co do wymogów dotyczących publikacji takiego oświadczenia, sugerując przy tym, na jakie istotne kwestie należy zwrócić szczególną uwagę, sporządzając pozew. Jednocześnie nie narzuca gotowych rozwiązań, odsyłając raczej do wiedzy z zakresu grafiki komputerowej i informatyki. Zwraca za to uwagę na ogólne tendencje panujące w orzecznictwie. Nie pomija również problematyki egzekucji obowiązku publikacji.

KEYWORDS: personal rights, infringement, claim, apology, rectifying

SŁOWA KLUCZOWE: dobra osobiste, naruszenie, roszczenie, przeprosiny, sprostowanie

1. Introduction

The court actions for the protection of personal rights infringed through a publication of a press material (including on the Internet) always involve a conflict between two equivalent goods, i.e. the principle of protecting an individual's personal rights and the right to information (including the freedom of the press)[3]. Since, as far as the existing law is concerned (*de lege lata*), the provisions of the press law[4], do not provide for any special remedies to protect personal rights infringed by a press publication apart from press rectifications[5]. The protection must generally take place in accordance with the provisions of the Act of 23 April 1964 – Polish Civil Code[6]. The prerequisites for the application of remedies under the civil law involve both the infringement of a personal right and the

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4. The Act of January 26, 1984 – Press Law, consolidated text Journal of Laws of 2018, item 1914.
5. See art. 31a of the cited act.
6. Consolidated text Journal of Laws of 2020, item 1740 as amended. With regard to image protection – also pursuant to art. 81 of the Act of February 4th, 1994 on Copyright and Related Rights, consolidated text Journal of Laws of 2021, item 1062.

unlawfulness of the conduct resulting in such infringement. In art. 24 § 1 of the Polish Civil Code, the legislator indicates, in a very general manner, what may be demanded by the entitled party in the event of the infringement of his/her personal rights, and refers to taking any action necessary to eliminate the consequences of the infringement. This may involve, inter alia[7], „publishing a statement of appropriate content and in an appropriate form". The enforcement of legal protection requires the person whose personal right has been infringed upon to be an active litigant, which involves not only gathering convincing evidence, but also including a properly formulated claim in their complaint (art. 187 § 1 point 1 and 2 of the Act of 17 November 1964 – the Polish Code of Civil Procedure[8]). Said claim usually takes the form of a request that the defendant should publish the above-mentioned statement. This is intended to compensate for the consequences of the infringement[9]. This statement is the essence of the claim for the elimination of the consequences of an infringement of a personal right. According to the principle of specification, the claimant is responsible for drafting the so-called self-criticism, which the infringing party is then supposed to publish, but it is not enough that the claimant should draft the content of the statement him/herself, but it is also necessary for the claimant to indicate the form in which the statement is to be published[10]. The term „form" should be understood as the method of publication, including the layout, or even in broader terms – all IT issues. The lack of specification in this respect is a formal defect of a complaint, which results in the claimant being called to remedy this defect or otherwise the complaint is returned (art. 130 § 1 of the Polish Code of Civil Procedure). It is unacceptable for the claimant to expect that the court would draft and specify the form of the requested statement. The adjudicating body should assess a specific wording and form included in the complaint[11]. The court should not substitute the claimant in drafting the statement[12]; the court can, however, interfere with the wording and correct it[13] if the statement does not serve the purpose or is contrary to the principles of social coexistence[14]. It is also unacceptable for the court to say in the sentencing part of the judgment that the wording of the statement is left to be chosen by the defendant infringing party[15].

2. The substance of the statement

The above-mentioned statement usually comes down to a public apology or withdrawal of any allegations formulated (rectification), or to a statement that criticism is unjustified[16]. The exact wording of such statement depends in each case on the nature of the right infringed and on the form of the infringement[17]. It should be considered as insufficient for the claimant to limit him/herself to a general request that the court should order the defendant to apologize or to withdraw false allegations. The wording of the statement should be adequate to the infringement[18], and at the same time precise, transparent and linguistically correct[19]. It should not be worded so as to intentionally humiliate the defendant[20]. The published statement shall not have a repressive function. Its purpose is only to indicate to the public that certain statements and opinions disseminated by the defendant infringed upon the claimant's personal rights[21]. Certain doubts may arise in a situation when the claimant requests for the publication of a statement that the published information is false or infringing on the claimant's goodwill or privacy. Such a statement may not be made if the issue has not been investigated in the course of the trial[22], or if the defendant has not been given the chance to prove the truth[23]. The wording of the requested statement should be formulated so that it does not contain any allegations being the original source of the infringement. Literal repetition could

7. The wording of the provision uses the phrase „in particular" denoting an open catalog (numerus apertus).
8. Consolidated text Journal of Laws of 2021, item 1805 as amended.
9. P. Machnikowski [in:] E. Gniewek, P. Machnikowski (ed.), *Kodeks cywilny. Komentarz*, Wydawnictwo C.H. Beck, Warszawa 2019, p. 65.
10. Decision of the Supreme Court of 10.10.1989, II CZ 167/89, LEX no. 8991, judgment of the Supreme Court of 13.04.2007, I CSK 28/07, LEX no. 407143, judgment of the Supreme Court of 19.10.2007, II PK 76/07, OSNP 2008/21–22, item 316, judgment of the Supreme Court of 11.02.2010, I CSK 286/09, LEX no. 630167.
11. Judgment of the Supreme Court of 22.12.1997, II CKN 546/97, OSNC 1998/7–8, item 119, judgment of the Supreme Court of 11.02.2010, I CSK 286/09, LEX no. 630167.
12. Judgment of the Court of Appeal in Kraków of 12.01.1994, I ACr 314/93, published in: Dobra osobiste. Zbiór orzeczeń Sądu Apelacyjnego w Krakowie, B. Gawlik (ed.), Kraków 1999, p. 100 onwards.
13. P. Machnikowski, *op. cit*. s. 65.
14. E.g. judgment of the Supreme Court of 22.12.1997, II CKN 546/97, OSNC 1998/7–8, item 119, judgment of the Supreme Court of 14.05.2003, I CKN 463/01, OSP 2004/2, item 22, judgment of the Court of Appeal in Warsaw of 26.10.2004, VI ACa 225/04, LEX no. 1642160.
15. Judgment of the Supreme Court of 19.01.1982, IV CR 500/81, OSNC 1982/8–9, item 123, judgment of the Supreme Court of 22.12.1997, II CKN 546/97, OSNC 1998/7–8, item 119, Decision of the Supreme Court of 11.01.2001, V CKN 1852/00, LEX no. 524/02, judgment of the Supreme Court of 14.05.2003, I CKN 463/01, OSP 2004/2, item 22.
16. M. Zaremba, Usunięcie skutków naruszenia dóbr osobistych w internecie – analiza orzecznictwa sądowego, „Przegląd Sądowy" 2020, no. 6, p. 55-68, https://sip.lex.pl/#/publication/151365494/zaremba-michal-usuniecie skutkow-naruszenia-dobr-osobistych-w-internecie-analiza-orzecznictwa...?cm=URELATIONS [access: 3.12.2021].
17. P. Machnikowski, *op. cit.*, p. 65.
18. Judgment of the Supreme Court of 5.06.2009, I CSK 465/08, LEX no. 510611, judgment of the Supreme Court of 19.05.2011, I CSK 497/10, LEX no. 936483.
19. Compare judgment of the Supreme Court of 22.12.1997, II CKN 546/97, OSNC 1998/7–8, item 119, judgment of the Supreme Court of 11.01.2007, II C392/06, LEX no. 276219, judgment of the Supreme Court of 11.02.2010, I CSK 286/09, LEX no. 630167.
20. Judgment of the Court of Appeal in Lublin of 10.07.1998, I ACa 202/98, OSA 2000/2, item 6. See also judgment of the Supreme Court of 13.04.2007, I CSK 28/07, LEX no. 407143.
21. Judgment of the Court of Appeal in Warsaw of 29.11.2018, I ACa 974/17, LEX no. 2691182.
22. Judgment of the Court of Appeal in Warsaw 7.07.2005, I ACa 530/05, LEX no. 1642342.
23. Decision of the Court of Appeal in Kraków of 16.09.1993, I ACr 406/93, B. Gawlik, op. cit., p. 77–84, compare judgment of the Supreme Court of 15.11.2000, III CKN 473/00, LEX no. 51881.

be counterproductive (the so-called boomerang effect[24]).

3. Audience

As stated above, the provision of art. 24 § 1 of the Polish Civil Code also requires for the claimant to specify the manner of publishing the statement. Like the content, the manner of publication should be adequate to the infringement. In general, this means that the statement should reach the same (or as similar as possible) group of recipients who had previously read the information infringing on the claimant's personal rights[25]. Only this form of publication can serve the intended purpose of the protective measure undertaken, i.e. to eliminate the consequences of the infringement.

4. Place of publication

In order for the statement to be read by the same group of recipients who have previously read the defamatory information, the form of publication should be similar to the one used with the publication of the defamatory content being the subject of dispute (the so-called „mirror image" principle)[26]. This requirement may be fulfilled by way of the statement being published in the same place where the defamatory text had been published before[27]. In practice, this is not always an easy task. The Internet is a specific place for publication. The technical circumstances of the online reality may make proper specification of the form of publishing statements a problematic task. The more precisely this is done, the greater is the risk of a technological complication[28]. It is often necessary to adapt the form of the statement and the place of its publication to the editorial and technical standards[29]. The suitability referred to in art. 24 § 1 of the Polish Civil Code means adequacy and proportionality of the form of the statement, which cannot be put on equal terms with mechanical copying of the manner of the defamatory publication[30]. The specific character of the network environment should be considered[31]. Therefore, it seems that the intention to reach the group of recipients who have previously read (or at least could have read) the defamatory publication does not necessarily mean that the statement must be published on the same page where the publication violating the claimant's personal rights was published[32]. In judiciary practice, there is a tendency for the courts adjudicating in cases concerning an infringement of a personal right to order a publication of an apology on the home page of the portal, regardless of where the unlawful content was located in the structure of the website[33]. This facilitates the things for the court, and in addition is motivated by the fact that the home page remains the main page, regardless of what changes occur in the structure of the entire portal (subpages) in the future. The statement published on the home page will always remain well displayed, regardless of the changes taking place during its exposure[34]. In extreme cases, pointing out to a specific subpage in the very judgment (e.g. in the event of a thorough reconstruction of the portal structure), could even result in it being impossible to enforce the judgment. In addition, the content of the apology posted on the home page will grab the attention of those readers who visit the website of this portal and who have read the defamatory publication before. There is a great chance that those readers would not go to the subpage of an article that they had previously read with sufficient attention. This would in fact prevent them from accessing the rectification published later on that same subpage. The statement should be posted on the home page also because of the fact the home page usually contains an announcement of every article, including the one that led to the infringement of personal rights. Thus, the very title (announcement) of the defamatory article (or a link to the subpage with such an article) could depict a negative image of the claimant that, even without it being necessary for the recipients to read the entire article, sufficiently stigmatized him in the eyes of the recipients[35]. A characteristic feature of the home pages of web portals is frequent fluctuation of the content and the fact that the content rapidly becomes outdated. New announcements are being published frequently, which means that earlier publications are positioned „lower" and are less exposed. Therefore, even good positioning of a statement at the time of publication does not guarantee visibility in the next few hours, and even more so within the next days or weeks. This may also happen by the fault of the defendant himself,

24. Judgment of the Court of Appeal in Kraków of 19.05.1998, I ACa 130/98, B. Gawlik, op. cit., p. 305 onwards. See also judgment of the Supreme Court of 10.05.2007, III CSK 73/07, OSNC-ZD 2008/1, item 28, judgment of the Supreme Court of 2.02.2011, II CSK 431/10, LEX no. 784917. See J. Sadomski, *Naruszenie dóbr osobistych przez media*, Oficyna Naukowa, Warszawa 2003, p. 94–95.
25. M. Zaremba, *op. cit.* Compare judgment of the Supreme Court of 10.09.2009, V CSK 64/09, LEX no. 585910, judgment of the Supreme Court of 8.02.2008, I CSK 345/07, LEX no. 448024, judgment of the Supreme Court of 27.03.2013, I CSK 518/12, OSNC-ZD 2014/1, item 13, judgment of the Supreme Court of 11.08.2016, I CSK 419/15, LEX no. 2087104.
26. Compare e.g. judgment of the Court of Appeal in Warsaw of 12.06.2013, I ACa 35/13, LEX no. 1369391, judgment of the Court of Appeal in Warsaw of 11.02.2014, VI ACa 491/13, LEX no. 1515326, judgment of the Court of Appeal in Warsaw of 6.06.2014, VI ACa 1409/13, LEX no. 1504531, judgment of the Court of Appeal in Warsaw of 19.06.2018, V ACa 520/17, LEX no. 2528159.
27. Compare judgment of the Supreme Court of 19.05.2011, I CSK 497/10, LEX no. 936483.
28. M. Zaremba, *op. cit*.
29. Compare judgment of the Supreme Court of 27.03.2013, I CSK 518/12, unpubl., judgment of the Supreme Court of 5.11.2008, I CSK 164/08, unpubl., judg ment of the Supreme Court of 11.04.2006, I CSK 159/05, unpubl.
30. Judgment of the Supreme Court of 5.11.2008, I CSK 164/08, LEX no. 536989, judgment of the Supreme Court of 19.06.2018, V ACa 520/17, LEX no. 2528159.
31. Judgment of the Supreme Court of 18.09.2015, I CSK 813/14, OSNC 2016/7–8, item 93.
32. Judgment of the Court of Appeal in Warsaw of 6.09.2017, VI ACa 636/16, LEX no. 2516046.
33. M. Zaremba, *op. cit.*
34. See judgment of the Court of Appeal in Warsaw of 2.01.2019, VI ACa 1209/17, LEX no. 2706346.
35. Judgment of the Court of Appeal in Warsaw of 2.01.2019 r., VI ACa 1209/17, LEX no. 2706346. Likewise judgment of the Court of Appeal in Warsaw of 23.06.2017, VI ACa 1677/15, LEX no. 2365565.

who usually acts as portal administrator at the same time and has certain decision-making powers as to the structure and the order of information posted there.

Therefore, it is in the claimant's interest that the judgment ordering the publication of the statement requires that it should be maintained on a certain position within the home page and throughout the term indicated in the judgment in order to prevent it from being replaced by other, more current events. Certain websites (e.g. social networking sites) have a functionality of the so-called „pins", which allows to keep the published post at the top of the page[36]. In search of the most reasonable measure, one could propose posting the full statement on a portal's subpage (e.g. on the same page where the text violating the claimant's personal rights was posted), and publishing a link to the full text of the statement on the home page. However, this link would have to be clearly visible and, what is more, properly titled, as an average portal reader does not spend too much time reading information which is insufficiently exposed or whose understanding requires above-average intellectual effort. This form of publication, i.e. a clear link to an internal page (subpage), should give an average Internet user a chance to read the content of the statement[37]. This, in turn, should be considered sufficient, since such a compensatory message is addressed to an average recipient, and not only to those recipients who are particularly interested in the case, especially if the original material was addressed to a „typical" recipient as well. Obviously, this form is not free from the disadvantage of the home page becoming outdated, as indicated above, and this results in less visibility of the referring link. The choice of a given page (subpage) ultimately rests with the court, which does not free the claimant from an obligation to be active while constructing the suggestion contained in the complaint. In addition to selecting the page (or more precisely, the URL) where the statement is supposed to appear, it is also a good thing to determine its location on a given page. Publishing the text of the statement adjacent to other content[38], especially among inappropriate entries, may disturb its reception and significantly devalue its meaning. The same may result from allowing other users to add comments under the statement, especially if they are unflattering to the claimant. The claimant may demand that the statement be placed in a specific location of his/her choice (e.g. at the top of the page or under the main news item on the website), and may demand that the court should prohibit the publication of any comments to the statement, advertisements, announcements or other content in its neighborhood, distracting from the essence of the statement[39].

5. Term of display of the statement

In the sentencing part of the judgment, the court should set a deadline for the defendant to publish the statement[40], and specify how long the statement should be visible on the website. Both of these elements are relevant for the elimination of the effects of the infringement, and their detailed specification should be in the claimant's best interest.

Therefore, the requirements with regard to the time of reaction to the violation and with regard to the duration of exposure should constitute an integral part of the claim contained in the complaint. The length of the time when the statement should be kept on the website should depend on at least two factors, i.e.: 1) the time during which the publication containing illegal content was available for viewing (if possible to determine)[41], 2) whether, despite the defendant becoming aware of the infringement of the claimant's personal rights, the defendant has taken any measures to remove the infringing material or limit access thereto[42]. Culpable delay in blocking access to unlawful content should affect the content of the court's judgment even if one were to assume that the judgment in this respect should not perform a repressive function.

6. Ad frame size

In order to eliminate the effects of the infringement, it is imperative that the statement should be legible and clear. This can only be guaranteed by the statement being published in the form of an advertisement of a proper size. Unlike statements published in printed press, websites are displayed on screens with various technical parameters (diagonal and resolution), and most websites automatically adjust to the characteristics of the device where they are displayed[43], and this often results in a change in the layout of the elements visible on the website depending on the type of device and the need for the user to scroll the content of the page in the vertical or – even worse – horizontal axis. All of this can negatively affect the reader's perception. Choosing the wrong size, the so-called frame (especially when its width is greater than the width of the screen) may reduce the functionality of the website or may look unnatural, and consequently limit the outreach of the message[44]. One solution could be to define the size of the frame as a fraction of the screen size (e.g. that it should occupy no less than a certain part of it), or by relating the frame size to the size of the font with which the statement text is to be written[45]. The initiative of a claimant having at least basic knowledge in the field of computer graphics, may turn out to be invaluable in this respect.

36. Compare decision of the Court of Appeal in Lublin of 11.10.2018, I ACz 1140/18, unpubl. (issued in the election procedure), decision of the Court of Appeal in Warsaw of 12.09.2019, VI ACz 1143/19, unpubl. (issued in the election procedure).
37. Judgment of the Supreme Court of 19.05.2011, I CSK 497/10, LEX no. 936483.
38. M. Zaremba, *op. cit*.
39. *Ibidem.*
40. It is usually from a few to most often 14 days from the date of issuing the final judgment. *Ibid*.
41. *Ibid.*
42. Judgment of the Court of Appeal in Warsaw of 29.11.2018, I ACa 974/17, LEX no. 2691182.
43. M. Zaremba, *op. cit.*
44. *Ibidem.*
45. *Ibidem.*

7. Font and background parameters

The claim contained in the complaint should also specify the parameters of the font, especially its typeface and size.
The shape of certain fonts makes them illegible or funny-looking and thus not suitable for publishing a statement being an enforcement a court judgment, and issued in the majesty of the law and on behalf of the state. The typeface may be specified by indicating a specific font name or by referring to the typeface used in other texts on the page.
The latter solution promotes harmony and makes the receipt of message more pleasing. The claimant's requests may also concern more detailed issues, e.g. bolding, italics, underlining, justification, the use of capital letters, line spacing, the width of the margin between the text and the frame edge[46], as well as the font color etc.
The latter, especially when in juxtaposition with the color of the background against which the statement is to be published, is of great importance when it comes to the contrast and legibility of its content. Improper selection of the color palette, or leaving this aspect to the discretion of the defendant, may result in the publication of the statement in a color that will make it difficult to read.
The font size should not differ significantly from the font size used in other texts on the same page, and it certainly cannot be significantly smaller[47]. Sometimes the courts define the required size as „standard and readable", which is not a sufficiently precise formulation[48].
Equally insufficient is requesting that the font size is supposed to make the statement readable by the average user[49].
A mistake is not providing any precise guidelines and leaving any disputes in this regard to be resolved during the enforcement of the judgment.
The court's failure to specify the font size of the statement may persuade the defendant to publish the statement in a font so small that reading its content will be significantly difficult. The font size can be specified in absolute terms (in pixels or typographic points)[50] or relative, referring to the frame size[51] or to the font size in articles adjacent to the statement[52].
It is also possible to use a font of the size and typeface used in the defamatory publication.

8. Counteracting the manipulation of the infringing party

As there is usually a subjective identity between the defendant infringing party and the administrator of the website, it should be expected to take actions aimed at making it difficult for the reader to read the statement. Information technology offers countless possibilities for manipulating the content of websites. The claimant may demand that the court should order the publication of the statement so that every user can read it without taking any additional steps[53], e.g. without the need to install additional software. Also, the software installed on the user's device (e.g. blocking unwanted advertisements) should not prevent the visibility of the statement[54]. Courts, for understandable reasons, avoid delving into technical details, which is why the judgments contain a general requirement that any measures that diminish the meaning and gravity of the text should not be used[55]. However, there is nothing to prevent the claimant from demanding that the content of this general prohibition be clarified.

9. Granting legal protection

The form and the content of non-financial remedies must be adequate to the form and the content of the infringement and necessary to eliminate its effects. The principles of proportionality[56] and purposefulness should apply in this respect. Although the court is not strictly bound by the claimant's claim indicated in the complaint in terms of the text or the form of publication, the court should take those factors into account, if the claim is reasonable enough[57].
Under art. 24 § 1 of the Polish Civil Code, it is possible to infer the court's obligation to control both the content and the form of the requested statement, whether they are appropriate and necessary to eliminate the consequences of the infringement.
The court may interfere with the requested text of the statement by limiting its scope or detailing the wording thereof[58]. The judgment may not be limited to the general prohibition of infringement of the claimant's personal rights[59]. When deciding on the obligation, the court should *ex officio* take into account the costs of publishing the statement, making sure that the implementation

46. *Ibidem.*
47. *Ibidem.*
48. Compare judgment of the District Court of 17.03.2017, IV C 997/15, LEX no. 2300672.
49. See judgment of the Court of Appeal in Warsaw of 23.06.2017, VI ACa 1677/15, LEX no. 2365565.
50. M. Zaremba, *op. cit.*
51. Compare e.g. judgment of the Court of Appeal in Warsaw of 28.03.2018, VI ACa 1751/16, LEX no. 2545154, judgment of the District Court in Warsaw of 9.06.2017, I C 125/16, unpubl.
52. Compare judgment of the Court of Appeal in Warsaw of 14.04.2016, VI ACa 1847/14, LEX no. 2075684.
53. M. Zaremba, *op. cit*.
54. See judgment of the Court of Appeal in Kraków of 19.09.2012, I ACa 703/12, LEX no. 1236715, judgment of the Court of Appeal in Warsaw of 9.12.2015, VI ACa 1772/14, LEX no. 2009536.
55. Compare judgment of the District Court in Lublin of 11.06.2014, I C 23/11, LEX no. 1845367.
56. J. Sadomski, *Postępowanie sądowe...*, LEX/el. 2019.
57. Judgment of the Court of Appeal in Warsaw of 12.12.2012, VI ACa 259/12, LEX no. 1362958.
58. Judgment of the Supreme Court of 22.12.1997, II CKN 546/97, judgment of the Supreme Court of 14.05.2003, I CKN 463/01, OSP 2004/2, item 22.
59. J. Sadomski, *Postępowanie sądowe...*, *op. cit*. Judgment of the Supreme Court of 9.07.1971, II CR 220/71, OSNC 1972/1, item 19, judgment of the Supreme Court of 19.01.1982, IV CR 500/81, OSNC 1982/8–9, item 123, judgment of the Supreme Court z 5.06.2009, I CSK 465/08.

of the legitimate non-pecuniary right of the injured party does not lead to an excessive and unreasonable financial burden on the infringing party[60]. The proportionality of the applied remedies is important because any abuse in that regard discourage journalists from taking up controversial topics, even though they are important from the point of view of public debate (the so-called chilling effect)[61]. The request to eliminate the consequences of infringement of the claimant's personal rights by publishing an appropriate statement may be accompanied by an additional claim for the application of property protection measures, i.e. the payment of monetary compensation or the payment of an appropriate amount of money for a specific public purpose (art. 448 of the Polish Civil Code in conjunction with art. 24 § 1 of the Polish Civil Code). If a damage to property was caused as a result of an infringement of a personal right, the injured party may demand compensation (damages) on general terms (art. 415 of the Polish Civil Code in conjunction with art. 24 § 2 of the Polish Civil Code).

10. Enforcement of the obligation to publish a declaration

The obligation to eliminate the effects of infringement of the claimant's personal rights, meaning that the infringing party is ordered to a statement of appropriate content and in an appropriate form, constitutes the so-called an interchangeable activity that may be subject to a specific type of enforcement by way of substitute performance (art. 1049 § 1 of the Polish Code of Civil Procedure). Anticipating a possible delay on the part of the debtor in performance of the obligation, the claimant may, pursuant to art. 480 § 1 of the Polish Civil Code and in the very complaint, submit a request for authorization for the claimant to publish the statement him/herself, with the content indicated in the judgment and at the expense of the defendant[62], in case the obligation imposed upon the defendant is not fulfilled[63], or in case the fulfillment of the defendant's obligation is improper[64]. It cannot be ruled out that there will be a hypothetical situation where the enforcement of the judgment may prove impossible. This will happen when the ordered form of publishing the statement does not take into account the technological conditions of the Internet, or when the obligation is formulated in too vague words, or is too detailed and inflexible. In such circumstances, the defendant will be released from the obligation imposed on him/her in accordance with the Latin principle of *impossibilium nulla obligatio est*. It is in the claimant's interest that the judgment should be formulated in a sufficiently precise and flexible manner to enable the fulfillment of the obligation in any circumstances. However, it should not be the claimant's intention to impose an obligation that would be too onerus for the defendant[65], because in such circumstances, the defendant could deliberately hinder and delay the performance of the obligation.

11. Summary

When resolving the conflict between the principle of freedom of speech and the principle of protection of the an individual's personal rights in favor of the latter, and thus granting protection to personal rights infringed upon by a press publication, the court imposes an obligation on the defendant to submit an appropriate statement. In order for the judgment to be enforceable and its enforcement not to cause additional problems, it is necessary to provide details of both the substance of the statement and the form in which it is to be published in a sufficiently precise and flexible manner. In order to be adequate, the specification of the method for publishing the requested statement must take into account the technological conditions of the communication technique used, and in addition, must make sure that improperly excessive form does not undermine its substance. Contrary to what may seem, publishing a statement on the Internet may cause more problems than publication in any other medium. It requires the adjudicating panel to know at least the basic issues in the field of computer graphics and the functioning of websites, and in extremely complicated cases to consult an expert with special knowledge (art. 278 § 1 of the Polish Code of Civil Procedure). In this matter, the claimant may significantly facilitate the task for the court if the complaint correctly specifies both the content and the form of the requested statement.

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60. P. Machnikowski, *op. cit*., p. 65, judgment of the Supreme Court of 17.05.2013, I CSK 540/12, Legalis, judgment of the Supreme Court of 18.09.2015, I CSK 813/14 Legalis.
61. See also judgement of European Court of Human Rights of 7.06.2007, Dupuis et al. v. France, application no.1914/02, judgement of European Court of Human Rights of 23.04.2015, Morice v. France, application no. 29369/10.
62. At the request of the creditor, the court will grant him the sum needed to perform the activities (art. 1049 § 1 Polish Code of Civil Procedure).
63. Resolution of the Supreme Court of 28 Jun 2006, III CZP 23/06, OSNC 2007/1, item 11. Compare also judgment of the Supreme Court z 23 May 2013, I CSK 531/12, LEX no. 1383225, resolution of the Supreme Court of 28 Jun 2008, III CZP 23/06, OSNC 2007/1, item 11, resolution of the Supreme Court of 17 Feb 2016, III CZP 106/15, OSNC 2017/2, item 13.
64. Judgment of the District Court in Slupsk of 17 Nov 2016, I C 266/16, LEX no. 2162200.
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7. The Act of November 17, 1964 – the Polish Code of Civil Procedure (consolidated text Journal of Laws of 2021, item 1805 as amended).

8. The Act of January 26, 1984 – Press Law (consolidated text Journal of Laws of 2018, item 1914).

9. The Act of February 4th, 1994 on Copyright and Related Rights (consolidated text Journal of Laws of 2021, item 1062).

10. Internetowy System Aktów Prawnych https://isap.sejm.gov.pl/

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