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Privacy & the media. Traditional and emerging protections in an online world.

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National Report of Poland

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1. Privacy rights

1.1. Are privacy rights statutory rights or are these case-law based ?

In Poland privacy rights are statutory rights regulated in the Constitution of the Republic of Poland (Art. 47 and 51), the Polish Civil Code (Art. 23) and other specific laws such as the Telecommunications Law, Act on the Protection of Personal Data, Act on Press Law. However, the jurisprudence of the Polish Constitutional Tribunal and Supreme Court has played a significant role in development of comprehensive understanding and effective enforcement of privacy rights as well.

In principle, Polish legislation regarding privacy rights has been shaped mainly under the influence of international law, in particular, the International Covenant on Civil and Political Rights (Art. 17) and the European Convention on Human Rights (Art. 8)[1].

1.2. What type of information (including pictures, sounds, etc.) would be covered by the concept of "privacy rights" in the legal system of your country ?

At the constitutional level privacy rights encompass every aspect of private, family and home life, dignity, honor and all decisions about personal life, and therefore all information, which could potentially infringe, in form of picture, sound, video recording or printed material, this fundamental right. Legal doctrine[2] often recalls the definition of the privacy rights created by the Parliamentary Assembly of the Council of Europe: "The right to privacy consists essentially in the right to live one's own life with a minimum of interference. It concerns private, family and home life, physical and moral integrity, honour and reputation, avoidance of being placed in a false light, non-revelation of irrelevant and embarrassing facts, unauthorised publication of private photographs, protection against misuse of private communications, protection from disclosure of information given or received by the individual confidentially"[3].

1.2.1. Would the information included in that concept, or the extent of the privacy rights, depend upon the celebrity of the person, or upon other elements? Please describe briefly.

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[1] Poland is a party to the International Covenant on Civil and Political Rights since 1977 and the European Convention on Human Rights since 1993.

[2] M. Safjan, "Prawo do ochrony życia prywatnego", in: "Szkoła Praw Człowieka. Teksty wykładów", Zeszyt 4, Warszawa 1998.

[3] Resolution 428 (1970) of the Parliamentary Assembly of the Council of Europe; http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=15842&lang=EN

The extent of the privacy rights depends upon the celebrity of the person and upon some other elements, which are specified mainly in statutory acts (in particular the Act on Access to Public Information[4], Act on Press Law[5], Act on Copyright and Related Rights[6]). These acts allow to publish information on persons holding public office or exercising a public activity, or regarded as well known. However, statutory permission for informing the public about "public figures" concerns only situations related to their public activity or knowledge thereof is in the public interest in connection with the performed public function. Above mentioned statutory regulations refer only to truthful information and do not apply to false and inaccurate publication.

The Supreme Court generally assumes that in relation to public figures the scope of acceptable criticism is wider and they benefit from weaker protection in comparison to an average person[7]. However, extended limits of acceptable criticism of public officials do not allow for the publication of false or inaccurate use of the press material[8]. Therefore, the journalist is obliged to demonstrate that he/she acted in the defense of a socially legitimate interest and fulfilled the obligation of due care while collecting and using the press materials[9]. Otherwise the journalist may be held liable e.g. for the personal interests infringement. For example, in case of the couple of Polish celebrities who were constantly followed and pestered by the tabloid's paparazzi in connection with the birth of their child, the court held that the tabloid is liable for infringement of their personal rights and ordered to pay damages in the amount of PLN 75,000, which was one of the highest damages in cases of such an art. In similar cases, despite having the status of „public figures" by such persons, courts generally prohibit publication of press materials which have no reference to their public activity against their will.

1.2.2. Would privacy rights also apply in relation to legal persons (vs. physical persons)?

In light of the Polish Constitution, only a physical person is a subject of privacy rights and within the meaning of the Polish Civil Code, privacy rights, as one of the personal interests, apply to a physical person and not a legal person. However, according to some views of the legal doctrine and jurisprudence, some personal interests may apply to legal persons as well. In this regard, the right to respect trade secrets or the right to protection against defamation may be considered as a component of the privacy rights of legal persons.

1.2.3. Would privacy rights encompass private information made available only to some chosen persons (authorized

[4] Act of 6 September 2001 on Access to Public Information (Journal of Laws of 2001 No. 112 item 1198).
[5] Act of 26 January 1984 on Press Law (Journal of Laws of 1984 No. 5 item 24).
[6] Act of 4 Febraury 1994 on Copyright and related rights (Journal of Laws of 1994 No. 24 item 83).
[7] Judgment of the Polish Supreme Court of 14 May 2009 (I CSK 411/2008).
[8] Judgment of the Polish Supreme Court of 5 April 2002 (II CKN 1095/99).
[9] Resolution of Seven Judges of the Polish Supreme Court of 18 February 2005 (III CZP 53/2004).

recipients). So, for instance, can disclosure to third parties, by one of the authorized recipients of the private information, be part of the privacy rights (e.g. disclosure of private correspondence, private phone calls, information shared on social media, etc.)

Despite the fact that it is separately regulated and protected under the Polish Constitution (Art. 49 - secrecy of communications), it is assumed that any private information made available only to a certain person (e.g. private correspondence) constitutes one of the aspects of privacy rights. The right to respect of the confidentiality of correspondence means the right to maintain the confidentiality of the content of communications sent to a specified recipient and make it available only to that person. It does not matter how the content of a correspondence is transmitted (via email, phone, etc.)

1.3. Is there a specific status for "fictional use" of information related to an individual ? And are disclaimers sufficient to allow such use ?

In our law firm we had recently a high-profile case which involved publishing information related to an individual in form of literary fiction. A famous writer and director wrote a book which spoke strongly unfavorably of a woman called Estera. An actress, who happened to be his ex-lover, recognized herself in the figure of that woman and lodged a claim due to infringement of her personal interests, holding that the content was defamatory and abusive. The court upheld her view, ordered him to apologize the actress and awarded PLN 100,000 compensation. Despite the fact that he declared that all the characters that appear in the book are fictitious, and any resemblance to real people is purely coincidental, the disclaimer was considered to be insufficient and did not constitute a legal defense for such a use.
Therefore, fictional use of information concerning an individual may be considered as defamatory and put an author at risk of liability, even if he/she includes an appropriate disclaimer.

2. Freedom of speech

2.1. Is there a on the one hand a statutory/ treaty based freedom or constitutional recognition of "Freedom of speech" or on the other hand is that freedom based on case-law.

Freedom of speech and related freedom of the press are rights rooted in the Polish Constitution and the European Convention on Human Rights (Art. 10) and the International Covenant on Civil and Political Rights (Art. 19). However, similarly to the

privacy rights, the Polish Constitutional Tribunal and Supreme Court has played an important role in shaping the scope and applicability of both freedoms.

2.2. If it is a statutory/treaty/ constitution based freedom is it based on domestic or supranational law?

As mentioned above, freedom of speech is embedded in both domestic (the Constitution and some specific laws, such as the Act on Press Law) and supranational law (the International Covenant on Civil and Political Rights and the European Convention on Human Rights).

2.3. Describe the main characteristics of the "freedom of speech" as recognized in your jurisdiction:

2.3.1. beneficiaries;

According to the Constitution, every person shall have the freedom to express opinions, to acquire and disseminate information and therefore both physical and legal persons are beneficiaries of this freedom, especially the press and other social media.

2.3.2. extent of the freedom of speech;

The protection provided by the freedom of speech extends to all types of expression, regardless of their content, and how they are communicated, including freedom of artistic, journalistic or scientific expression. The expression includes the views, opinions, information and ideas of all kinds, i.e. any content regardless of the form or manner of its expression.

2.3.3. exceptions;

The freedom of speech is not of an absolute character and is subject to certain limitations. Pursuant to Art. 31(3) of the Constitution, restrictions of the exercise of constitutional freedoms and rights may be imposed only by statute, and only when they are necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, public health or morals or the freedoms and rights of other people. However, these restrictions shall not violate the essence of freedoms and rights.

By way of illustration, publication of information or expressing opinions which aim at promoting fascism or a totalitarian political system, as well as incitement of ethnic, racial or religious hatred is penalized under Polish Criminal Code. Moreover, the Supreme Court stated that the freedom of speech (especially freedom of the press) has certain fixed limits established, on the one hand, by the criterion of truth, and on the other by the need to protect such important values such as dignity, good name, honor, privacy of an individual[10].

[10] Decision of the Polish Supreme Court of 7 February 2007 (III KK 236/06).

For example, the court held that comparing a person to Nazi war criminal does not fall within freedom of speech and constitutes and infringement of personal interests[11].

2.3.4. specific status for press (including online press)?

The press (including online press[12]) is a beneficiary of freedom of speech, which is provided both in the Constitution and the Act on Press Law. Therefore, the press has the right to freedom of expression and embodies the right to provide citizens with reliable information, transparency and control of public life and social criticism. This freedom is reinforced by the fact that the press is not licensed, but only registered on the basis of technical data. State authorities are also obliged to provide the press with the conditions necessary to perform its functions and tasks, including enabling activity of editorial offices of newspapers and magazines, regardless of their program, thematic scope and presented political views (pluralism of the press). The Press Law provides journalists with some other rights and obligations (e.g. reliable and careful presenting of truthful information), which constitute a limitation to the above mentioned freedom.

3. Hierarchy between Freedom of Speech on one side and privacy rights on the other side.

3.1. Under the law applicable in your jurisdiction, is there a clear hierarchy between freedom of speech on the one hand and privacy rights on the other?

There is no clear hierarchy between freedom of speech and privacy rights. Neither freedom of speech, nor privacy rights are absolute rights and therefore it may be said that it is always a question of weighting both values in a particular case. According to a general clause, interference in a constitutional freedom can be justified only when it is necessary for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. However, such limitations shall not violate the essence of freedoms and rights. Despite the fact there is no clear hierarchy, these rules should be always taken into account in judicial review while deciding on the case involving both freedoms.

3.2. What would be the most significant criteria allowing freedom of speech or privacy rights to prevail over the other (e.g. public interest argument) ?

[11] Judgement of the Appelate Court in Katowice of 5 March 2010 (I ACa 790/09).
[12] Art. 7(2)(1) of the Act on the Press Law.

While judging both rights there are several aspects which should be taken into account. First of all, as mentioned before, both freedoms are not absolute and can be limited under the principle of proportionality and under the conditions laid down above. On the one hand, the extent of privacy rights' protection depends upon i.a. the celebrity of the person. Therefore, it may be stated that the more famous the injured person is and the more facts demonstrate his/her celebrity status, the less protected his/her privacy is. The privacy rights of a "public figure" are generally assumed to be more limited in comparison to these of a private person. Moreover, publication of information violating privacy rights can be justified e.g. by the public interest argument, but it is not a rule. Thus, no press releases can be justified by legitimate public interest and the right of journalists to freedom of expression, if they are published in publicly accessible media and are based on insufficiently tested and in fact incorrect information, which undermines the professionalism, achieved professional status and prestige of a person and violates his/her personal interests in the form of good reputation and dignity[13]. Therefore, if information published within the frames of freedom of speech is obviously inaccurate and untrue or violates the law, most probably privacy rights will prevail in these cases. Another aspect which should be taken into account is previous behaviour of a person and whether he/she has sought media attention or not. The Supreme Court held that striving for the media attention by the famous actress by giving interviews and information about her personal life constitutes an implicit consent for the media to inform the public about this area of her life[14].

Another court held that by means of revealing private information to the press a public figure agrees on that it will be further reproduced by the media. However, such an implied consent cover only specific information and does not constitute a consent for the subsequent publication of different information - disclosure of details that he/she does not intend to disclose[15].

4. Remedies available in your jurisdiction to protect individuals against disclosure of information belonging to their privacy

4.1. Are there pre-emptive remedies to avoid disclosure of such information before disclosure occurs ? Describe briefly the main remedies available.

The Polish Civil Code provides for a remedy, an action for an injunction, by means of which any person whose personal interests are threatened (i.e. not infringed yet) by another person's actions (e.g. publication) may demand that the actions be ceased, unless they are not unlawful. For example, infringement of personal interests of the injured person in the past by the same person (e.g. an earlier publication of material that violates his/her

[13] Judgement of the Polish Supreme Court of 28 September 2011 (I CSK 33/2011).
[14] Judgement of the Polish Supreme Court of 24 January 2008 (I CSK 341/2007).
[15] Judgement of the Appelate Court in Warsaw of 16 March 2011 (I ACa 1161/2010).

personal interests) is an important argument confirming the existence of a risk of infringement. Preventive function of this claim can be fully realized by the institution of precautionary measures, allowing for temporary protection of personal interests for the period before the court will decide on the case. The Polish Code of Civil Procedure sets forth that in cases concerning the protection of personal interests the person concerned may be granted a security consisting in a temporary ban on the publication, however, only if it is not precluded by an important public interest. While granting such a security, the court determines the duration of the ban, which may not be longer than one year.

4.2. Are "gagging orders" or "super injunctions" as known in the UK known under the legal system of your country? Describe briefly their main characteristics.

There is no "gagging order" or "super injunctions" as known in the UK in Polish legal system. However, under the Press Law there are provisions which, to some extent, play similar role as both institutions – prohibition to express an opinion on the anticipated outcome of judicial proceedings before issuing the decision in the first instance and prohibition of publishing in the press personal information and image of the persons against whom investigation or prosecution is pending, as well as information on witnesses and the injured (unless they agree on that).

4.3. Are there other post-disclosure remedies, such as for example damage claims, rectification claims, right of answer. Describe shortly

There are several post-disclosure remedies under Polish Law, both of civil and criminal nature. Under the Act on Press Law, at the request of the concerned the person, editor-in-chief of the particular diary or magazine is obliged to publish free of charge a rectification of the inaccurate or incorrect information included in the press release. A rectification is subject to range of specific requirements set forth in the Act.

Under the Polish Civil Code the affected person may demand the abandonment of the infringement and removal of its consequences (in particular by making statement with the appropriate content and in appropriate form). On the terms set forth in the Code, he may also demand monetary compensation or that an appropriate amount of money be paid to a specific public cause. Condition of such claim for adjudication appropriate amount of money to a specific public cause requires qualified fault of the offender of personal interests to be proved- namely intentional fault or gross negligence.

Furthermore, under Polish Criminal Code, anyone who slanders another person, a group of people or a business entity about conduct, or characteristics that may discredit them in the face of public opinion, or result in a loss of confidence necessary to perform in a given position, occupation or type of activity is liable to a fine or the restriction of liberty.

However, if the offender commits the offense through the mass media, he may be liable to a fine, the restriction of liberty or imprisonment for up to 1 year.

4.4. In the case of damages, how are they calculated ?

First of all, courts are not obliged to award compensation in each case of violation of privacy rights. However, when assessing the appropriate amount of compensation for non-pecuniary damage caused by the infringement of privacy rights, the court takes following factors into account: the type and the nature of good that has been violated, severity and duration of negative psychological trauma caused by the violation (harm) and experienced by the person whose right has been infringed. The degree of fault of the infringer, intended purpose to achieve by taking action in violation of the right and the financial benefit, which the person received or expected to receive in connection with this infringement, are also considered[16].

4.5. In case of disclosure of private information, who can be held liable for damages, especially online?

In the first place, both in "real" and online world, the actual infringer (i.e. a person who disclosed private information) shall be held liable for damages. However, in case of publishing industry, it is very unusual to sue an author of the article, as his/her name and address is rarely available and these are indispensable data to file a suit. Therefore, in practice, it is easier to hold editor-in-chief or publisher, who are responsible for the content of the articles prepared within the newspaper and whose data must be printed on the publication. In relation to electronic version of a newspaper, internet service provider, who decides about the whole website and its content, is regarded as an editor-in-chief and therefore may be held liable on the same grounds as mentioned above.

With regard to online publications, which are not affiliated with a specific newspaper, (e.g. in internet forums or other website with the possibility of adding comments), it is even more difficult to establish an identity of an infringer. Therefore, under the Act on Providing Services by Electronic Means[17], it is possible to request the website administrator to delete specific entries from the website and to indicate the authors thereof. If a hosting provider (i.e. a person who makes the resources of a teleinformation system available for the purpose of the data storage by a service recipient, most often website administrator) ignores the request or is informed about unlawful nature of the data stored on his server, he may be held responsible for that data. He may relieve himself from that responsibility by making the access to the data immediately impossible. Thus, he is not obliged to disclose identity of the author of the specific entry. Therefore, in order to pursue the perpetrators

[16] Judgement of the Polish Supreme Court of 11 April 2006 (I CSK 159/2005).
[17] Act of 18 July 2002 on Providing Services by Electronic Means (Journal of Laws of 2002 No. 144 item 1204).

of the infringement (authors of the entry) and establish their identity, it is required to file a suit or submit offence notification to the competent authorities.

4.6. Are there special defences to a cause of action for information disclosed by the press/ media?

4.6.1. As part of your answer please explain what is range of news information organisations is covered by the definitions press/ media?

Under Polish law definition of the press is wide-ranging and encompasses many institutions. According to the Act on Press Law, the press means all periodic publications that do not form a closed, homogeneous whole, appearing at least once a year, bearing a fixed title or name, of current number and date. The press includes in particular: newspapers and magazines, news agencies, fixed telex messages, newsletters, radio and television programs and newsreels. The definition of the press relates also to all mass media, existing and emerging as a result of technical progress, including broadcasting, television and radio, which disseminate periodic publications in print, by vision, sound or other dissemination techniques. This definition includes also teams of people and respective individuals engaged in the journalistic activities. Thus, within the meaning of the press fall all contemporary existing media.

According to the latest Supreme Court judgments[18], the criterion for being recognized as the press (i.e. online newspaper or magazine) is fulfillment of the requirements specified above by the portal or website. Therefore, it is not necessary for an online newspaper or magazine to have its printed version. E-newspapers and e-magazines can exist exclusively online. However, the press published on the Internet cannot in any event be considered as an equivalent to a website.

4.6.2. Is there a specific protection offered to informants/sources?

The Polish Act on Press Law introduced so called journalist's privilege, according to which a journalist is obliged to maintain the confidentiality of information enabling identification of an author of a press release, letter to the editor or other similar material, as well as other persons providing information published or submitted for publication, if these persons reserved non-disclosure of the above data. A journalist may be relieved from this obligation only in certain, very limited and subject to judicial review, range of situation, but in practice it rarely occurs.

[18] Decision of the Polish Supreme Court of 15 December 2010 (III KK 250/2010).

4.7. Are the principles described in your answers above also applicable to the online world ? Is there any specific case-law in your country relating to social media, and if so please summarise this?

Generally, principle described above are also applicable to online world. Remedies available in Polish law to protect individuals against disclosure of information belonging to their privacy apply irrespective of the fact whether publication of that information was made in an ordinary form (written, via television or radio) or online.

However, it is worth noting that universal access to information via internet and the possibility to publish some information anonymously (e.g. in all kinds of online forums, blogs, or social networks) creates many problems if it comes to identification of the actual infringer. However, under Polish law, the service provider (e.g. of online forum or other social media) is obliged to provide specific information at the request of the competent authority (e.g. court or prosecutor) for the purposes of their investigations, among others an IP address and name of the infringer. The Supreme Administrative Court stated that not only the court, the prosecutor or the police, but also the physical and legal persons may require access to personal data (name, IP address) of individuals who posted offensive comments and posts on various online forums or other social media[19]. However, the injured person is obliged to demonstrate a legal interest in access to such data, i.e. for example prove the infringement of his/her personal interests.

4.8. Are there specific remedies against disclosure of information that (could) damage an individual reputation (such as slander or libel) ? Describe these remedies briefly.

Similar remedies as mentioned above in 4.3. may apply to disclosure of information that could damage an individual reputation. The person may demand the abandonment of the infringement and removal of its consequences (in particular by making statement with the appropriate content and in appropriate form), as well as monetary compensation or that an appropriate amount of money be paid to a specific public cause. If as a result of such an activity the person has suffered a financial loss, he may seek damages as well. Beside civil remedies, there are also criminal remedies. Slander and libel constitute crimes which are punishable by a fine, the restriction of liberty or imprisonment for up to one year.

4.9. Forum and applicable law

4.9.1. Describe shortly what rules exist in your jurisdiction for the determination of the forum and the applicable law.

[19] Judgment of the Supreme Administrative Court of 21 August 2013 (IOSK 1666/2012).

As mentioned before, for cases of such an art, both criminal and civil law may apply (it depends which of the legal paths the injured person chooses). As a general rule, in civil cases court competent for solving a specific dispute is determined by the domicile or the habitual residence of the defendant (*forum rei)*. In relation to criminal cases, the most important factor to determine jurisdiction is identification of the place of the offence. According to the Criminal Code, an offence is committed at the place where the offender acts or fails to perform an action that the offender is obliged to perform, or where the results of the prohibited act take place, or are intended by the offender to take place. Generally (there are some exceptions due to Private International Law), in relation to cases where Polish courts are competent, the Polish law is applied.

Some specific Polish laws provide for different scope of regulation with regard to identification of the applicable law. For example, providing services by electronic means is subject to the law of a Member State of the European Union or the European Free Trade Association (EFTA), on whose territory the service provider is a resident or has an establishment. Furthermore, processing of personal data as a part of the business or professional activity by physical or legal persons is subject to Polish law, if they have a seat or are resident on the territory of Poland or in a third country, providing that they are involved in the processing of personal data by technical means located on the territory of Poland.

The Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters plays an important role in determination of the forum and applicable law as well. As a general rule, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State. In case of special jurisdiction, i.e. in matters relating to tort, delict or quasi-delict, a person domiciled in one Member State may be sued in the courts of another Member State, competent for the place where the harmful event occurred or may occur. Furthermore, with regard to a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, the person may be sued in the court seized of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings.

4.9.2. Are there specific rules for breaches caused online (when the information is accessible from different jurisdictions) ?

It could be assumed that an offence or a tort committed via Internet is actually committed everywhere, as the content made available in the Internet may be theoretically accessed in every place with Internet access. However, the legal doctrine considers this statement as too extensive and believes that courts should decide on the basis of the circumstances of each case. Nonetheless, it should be noted that Polish courts (as Poland is a member state of the European Union) shall take into account the existing case law of the CJEU in

resolving disputes. Thus, according to judgment of CJEU[20], in case of violation of personal rights the injured may bring an action:

- Before the court of the seat of the defendant (publisher) - in respect of all material and non-material damage suffered;
- Before the court of the place where the person has his/her center of interests - in respect of all material and non-material damage suffered;
- Before the courts of each Member State in whose territory the content placed on the website is or was available - to decide on harm or damage caused within the territory of that Member State.

4.10. From your experience, what reforms should be made to the legal system of your country to better protect individual privacy, if any ?

5. Interplay between data protection rules and privacy rights

5.1. Summarise how does data protection law in your jurisdiction protects privacy or other personal data being used in online media?

Under Polish data protection law there are several instruments which aim at more effective protection of privacy and personal data of an individual. First of all, the Constitution stipulates that an obligation to disclose personal data related to a specific person must result only from the provision of law and public authorities may process only such data which is necessary in a democratic state ruled by law. An individual has a right of access to data collections concerning himself, as well as a right to demand the correction or deletion of untrue or incomplete information, or information acquired by illegally means.

Secondly, the Act on Personal Data Protection provides for rules of processing of personal data, the rights of individuals whose data are or may be processed, as well as introduces safeguards and principles of personal data protection, the procedure of registration of personal data filing systems, the procedure of transfer of personal data to third countries and imposes penalties for violations of the personal data protection law. The Act also establishes the Inspector General for Personal Data, who as chief personal data protection authority ensures the proper processing of the data by other entities.

In particular, the Act imposes on the data controller, i.e. a person processing personal data and deciding on the purposes and means of the processing of such data, range of duties. The controller performing the processing of data should protect the interests of data

[20] Judgment of the Court in joined cases eDate Advertising GmbH v X (C-509/09) and Olivier Martinez and Robert Martinez v MGN Limited from 25 October 2011., C-161/10.

subjects with due care. It means, in the first place, duty of lawful data processing. Secondly, prohibition of the processing of personal data for the purposes incompatible with the purpose for which the personal data have been collected. The controller is furthermore obliged to ensure the accuracy of the personal data. This obligation includes, inter alia, updating of personal data and recording each change of them. In addition, the data should be stored in a form which permits identification of data subjects no longer than it is necessary to achieve the purpose of processing.

Furthermore, the controller is obliged to implement technical and organizational measures to protect the personal data being processed, in a manner appropriate to the risks and category of data being protected, and in particular to protect data against their unauthorized disclosure, takeover by an unauthorized person, processing with the violation of the Act, as well as any change, loss, damage or destruction. The controller is also obliged to notify a data filing system (i.e. any structured set of personal data which are accessible pursuant to specific criteria) to registration by the Inspector General for Personal Data Protection. The Inspector General then assesses whether the personal data are processed lawfully or not.

The data controller is also obliged to fulfill some information obligations towards the data subject. Therefore, in case where personal data are collected from the data subject, the controller is obliged to provide a data subject from whom the data are collected with the following information:

- the address of its seat and its full name, and in case the controller is a natural person about the address of his/her residence and his/her full name;
- the purpose of data collection and, in particular, about the data recipients or categories of recipients, if known at the date of collecting;
- the existence of the data subject's right of access to his/her data and the right to rectify these data;
- whether the replies to the questions are obligatory or voluntary, and in case of existence of the obligation about its legal basis.

The Act on Providing of Services by Electronic Means, which allows for the processing of personal data in connection with the provision of electronic services, generally provides for similar regulations. However, processing of personal data of a service recipient is protected irrespective of the fact whether the data are processed within data filing system or not (contrary to the Act on Personal Data Protection). Service provider can process only limited number or data (such as name, PESEL number, ID number, address, email address) and only for strictly defined purposes. If he wants to collect more data than the above mentioned, he is obliged to prove that it is indispensable for the purposes of the execution e.g. of an agreement. Furthermore, as a rule, the service provider is not allowed to process the personal data of the service recipient upon termination of the provision of services. The service provider is moreover obliged to ensure to the service recipient an easy

access (by means of the teleinformation system which he/she uses) to up-to-date information on:

- possibility of using the service provided by electronic means anonymously or under a pseudonym;
- technical arrangements made available by the service provider that prevent acquiring and modifying by unauthorized persons personal data transmitted by electronic means;
- the entity, which has been given an order for data processing , the range of data and intended term of their transfer, if the service provider concluded with this entity an agreement on relay of data for processing.

All of the above mentioned principles intend to protect privacy and other personal data which are used in online media.

5.2. Is there an effective a right of opposition to collection of data?

Under Polish law there is no effective right of opposition to collection of data, but in some cases a data subject has a right of opposition to processing of his/her personal data.

Primarily, the data subject has a right to control the processing of his/her personal data contained in the filing systems, and in particular he/she has the right to object to the processing of his/her personal data in case of processing of personal data for marketing purposes or to object to the transfer of the data to another controller (i.e. when the administrator processes personal data of an individual without his/her consent). He/she may make a justified demand for the blocking of the processing of his/her data, due to his/her particular situation.
Furthermore, if the data subject proves that the personal data relating to him/her are not complete, they are outdated, untrue or collected with the violation of the law, or in case they are no longer required for the purpose for which they have been collected, the controller is obliged, without undue delay, to amend, update, or correct the data, or to temporarily or permanently suspend the processing of the questioned data, or to have them erased from the filing system, unless the above refers to the personal data which should be amended, updated or corrected pursuant to the principles determined by other laws. In these cases the controller is obliged to immediately stop the processing of the questioned data.

6. Right to be forgotten

6.1. Is there a statutory or case-law based "right to be forgotten" in your jurisdiction (whether under domestic or supranational law) ? Describe it briefly.

There is no clear statutory or case-law based "right to be forgotten" in Polish jurisdiction. However, the Act on Personal Data Protection provides for an instrument that can be considered as an equivalent thereof. The Act imposes on the data controller an obligation to store data in a form which permits identification of the data subjects no longer than it is necessary for the purposes for which they are processed (so called principle of timeliness of personal data processing). After achieving the purpose (e.g. execution of the agreement, the expiry of the retention period), data should be deleted, anonymised or transferred to an entity authorized by law to adopt them from the controller (e.g. transferred to the state archives). To this end, the data controller is obliged to continuously supervise the content of his data filing systems and check whether he needs to remove unnecessary data or ceased to be authorized for their processing by statute or by contract. As mentioned in 5.2., if the data subject proves that the personal data relating to him/her are not complete, they are outdated, untrue or collected with the violation of the law, or in case they are no longer required for the purpose for which they have been collected, he/she can demand from the controller the data to be completed, updated, rectified, temporally or permanently. If the controller fail to fulfill this obligation, the data subject may apply to the Inspector General to issue a relevant order to the controller.

Furthermore, at a supranational level, Polish courts, while deciding on a case, should comply with CJEU judgments, and the "right to be forgotten" in the meaning of CJEU judgment in the case "Google Spain SL, Google Inc. v Agencia Española de Protección de Datos and Mario Costeja González" (C-131/12) is therefore present in Polish jurisdiction.

6.2. Is there relevant case law in your jurisdiction regarding the right to be forgotten and/or are there other guidelines (whether under domestic or supranational legal procedure) for a successful claim under the "right to be forgotten".

Relevant case law in Polish jurisdiction regarding the right to be forgotten within the meaning mentioned in 6.1. is rather not abundant. The authorities have recognized a prohibition of storage of personal data for unlimited time but have not referred to activity of a search engine acting as a controller within the meaning of Polish data protection law[21].

In relation to guidelines at the supranational level, the Polish Inspector General for Personal Data Protection generally recommends application of the guidelines developed by the Article 29 Data Protection Working Party (Guidelines on the implementation of the Court of Justice of the European Union judgment on "Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González" (C-131/12)). Guidelines provide for procedure and common criteria which shall be taken into account by national European data protection authorities in case of complaints against refusals of de-listing by search engines. In Poland relevant authority is the Inspector

[21] Decision of Inspector General for Personal Data Protection of 15 January 2010 (DIS/DEC-29/1781/10).

General for Personal Data Protection, who is competent to impose administrative sanctions in order to enforce these obligations by means of, among others, fines of up to PLN 50,000 in case of a single violation and up to PLN 200,000 in case of repeated violations.

6.3. Did the view on the right to be forgotten change in your jurisdiction due to the European Court of Justice Case in Google Spain v. AEPD and González (C-131/12)? Is there any case law arising from this decision in your jurisdiction?

Prior to the CJEU judgment there has been no high-profile cases before Polish courts concerning the right to be forgotten and it might be stated that not many individuals claim this right effectively. Currently, according to Google report, about 5 676 motions (solely from Poland) were sent to Google to remove 22 937 search results. Therefore, we can observe that the consciousness of Polish citizens has definitely increased in this regard as a result of the judgment. However, until now there is no respective case law which would relate to the CJEU judgment. There are some cases of appeals against the Google Committee decisions but their results still remain unknown.

7. Are there other aspects to take into consideration in your jurisdiction in relation to freedom of speech, the privacy right and the right to be forgotten?

In my view, the above questions were comprehensive enough to encompass almost all issues related to freedom of speech, the privacy right and the right to be forgotten, and there are no other aspects which should be taken into consideration in Polish jurisdiction.