

Freedom of the Press? Poland in the 19th and 20th Centuries

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ABSTRACT

This article presents the history of legal regulations concerning the press in the Polish territories. The elements of the freedom of the press included in legal acts, usually of a descriptive character, have been considered. The first chapter deals with the first half of the 19th century and the loss of independence of Poland. In the second part, regulations in force in the second part of 19th century resulting from political and social reforms are described. The third chapter focuses on the difficulties of press regulation in the Second Polish Republic. In the last, fourth, chapter the rebirth of strict censorship in People's Polish Republic is presented.

KEYWORDS

freedom of the press, censorship, press law, Russian/Prussian/Austrian Partitions of Poland, Second Polish Republic, People's Polish Republic.

Presă liberă? Polonia în secolele al XIX-lea și al XX-lea

REZUMAT

Acest articol prezintă istoricul reglementărilor legale privind presa în teritoriile poloneze. Au fost luate în considerare elementele libertății presei incluse în actele juridice, de obicei cu caracter descriptiv. Primul capitol se referă la prima jumătate a secolului al XIX-lea și la pierderea independenței Poloniei. În a doua parte, sunt descrise reglementările în vigoare în a doua parte a secolului al XIX-lea, rezultate din reformele politice și sociale. Cel de-al treilea capitol se concentrează asupra dificultăților legate de reglementarea presei în cea de-a doua Republică Poloneză. În ultimul capitol, al patrulea, este prezentată renașterea cenzurii stricte în Republica Populară Polonă.

CUVINTE CHEIE

libertatea presei, cenzură, legea presei, împărțirile ruse/prusiane/austriace ale Poloniei, a doua Republică Poloneză, Republica Populară Poloneză.

I. INTRODUCTION

The importance of the conception of the role of the press, and words in general, in the struggle for power does not require justification. Strengthening and expanding

dominance over the word is a characteristic factor in gaining significant power, as for example in the case of Napoleon closing publishing houses.¹

In contemporary Polish scholarly thought,² freedom of the press is understood as one of the constituent elements of civil society (along with, for example, freedom of association). It includes the freedom to create printed journals and the ability to freely express one's opinions and communicate information on their pages. The freedom of the press comes with the freedom of speech. Of course, these are not absolute rights, as they are subject to limitations by law after weighing values in accordance with the principle of proportionality.

A phenomenon somewhat opposite to freedom of expression is censorship. In its most extreme form, it is pre-censorship or prior restraint, undertaken before the word appears in print. The other form, called repressive or post-publication censorship, entails the confiscation of the print material or other administrative and judicial mechanisms after the publication of the censored work. Censorship can be formal, as when a special censorship office is appointed to control diverse ways of expression. A second type of censorship (substantial) is also distinguished,³ consisting in protecting by repressive methods other goods and values (defined in a certain way by a state authority) against abuses of the freedom of expression. Elements of substantial censorship are implemented depending on the country-specific and time-specific understanding of its role. Therefore, they also appear in constitutional states.

Apart from censorship, other important mechanisms influencing the existence (or not) of freedom of the press are the way magazines function, their licensing, and formal requirements imposed on them, as well as the responsibility of authors, editors, and publishers to spreading certain and not other words or ideas.

The aim of the following article is to trace the implementation of the elements of freedom of the press in the specific context of 19th and 20th century Poland. Thus, under the specific circumstances of the lack of political independence and numerous transformations, conditions were clearly not favorable to the freedom of the press.

For the above reasons, studies of the freedom of the press in the 19th and 20th centuries are rare in Polish research on the history of law. Rather, the functioning of censorship within the individual partitions under which Poland was ruled in the years 1795–1918 is analyzed; later, restrictions on the operation of the press in the reborn state and the re-functioning of censorship during the existence of the Polish People's Republic have been investigated. These studies take into account to a large extent what is necessary in this case, a multitude of political, social, structural, and personal factors, which were sometimes even stronger than the letter of the law in

1 Andrzej Notkowski, Wiesław Władyka: Państwo–Partie–Prasa w Drugiej Rzeczypospolitej (State–Parties–Press in Second Polish Republic), *Kwartalnik Historii Prasy Polskiej* 21/3–4, 1982 (pp.165–173), p. 165.

2 Ex. Commentary on Article 14 (2016) in Marek Safjan, Leszek Bosek (ed.), *Constitution of the Republic of Poland. Volume I. Commentary on Art. 1–86*, C.H. Beck, Legalis.

3 Andrzej Dziadzio (2012a): *Cenzura prasy w Austrii 1862–1914. Studiumprawno-historyczne* (Censorship in Austria, 1862–1914: A legal and historical study), Księgarnia Akademicka, Kraków, p.31.

influencing the impact of censorship on the press. When it comes to legal considerations, the implementation of the freedom of the press or its lack is influenced by regulations at the constitutional level, regulations of the press law, criminal law, or criminal procedure, and numerous administrative regulations.

It is not the purpose of this short article to present such a complex issue in an exhaustive manner, taking into account the multitude of legal systems in force in Poland and numerous (continuous!) political and social transformations. However, the main legal acts relevant to the issues discussed and the periodization of the interesting history of law in Poland will be highlighted, based on the example of regulations concerning the press.

II. FREEDOM OF THE PRESS AS FIRST STATED (FIRST HALF OF 19TH CENTURY)

The second half of the 18th century was the time when Enlightenment concepts of the state system were created. It was also the period of an intensive development of the press in Poland, which grew in importance as a policy instrument and advocate for social and economic changes. There were major attempts to introduce reforms in the country during the deliberations of the Great Sejm in 1788–1792. Its crowning achievement was an adoption of the *Constitution* of May 3, 1791. Discussions also concerned freedom of speech and the press, the existence of which, in the opinion of the Polish nobility, distinguished the Polish “republican” model from the monarchy.⁴ The Polish elite was therefore attached to freedom of expression, the exercise of which was supposed to be a “civic duty,” along with taking responsibility for what they expressed in certain cases. The need to protect religion, morals, and the honor of the individual was also emphasized. The discussions took place in the absence of any prior regulation. Inspirations for freedom-oriented regulations were provided, for example, by the Declaration of the Rights of Man and of the Citizen adopted in France in 1789.⁵ Prepared by the Great Sejm in 1792, the *Cardinal Laws* guaranteed, among other matters, the freedom of the press. In the earliest such measure in Europe, they banned the use of prior restraint, as printing did not require prior official approval.⁶ However, works on religious and moral topics were subject to prior restraint by church authorities.

Unfortunately, neither the Great Sejm achievements nor any other efforts at the end of the 18th century sufficed to protect the country from loss of independence and

4 Jacek Sobczak (2009): *Dzieje prawa prasowego na ziemiach polskich* (The history of press law in Polish territories), Wydawnictwo Naukowe Wydziału Nauk Politycznych i Dziennikarstwa, Uniwersytet im. Adama Mickiewicza; Poznań, p. 58.

5 Bartłomiej Szyndler (1993): *Dzieje cenzury w Polsce do 1918 roku* (The history of censorship in Poland until 1918), Krajowa Agencja Wydawnicza, Kraków, pp. 50–52.

6 Andrzej Dziadzio (2012b): Polski model „rządów prawa” a europejska wizja „państwa prawa” w XIX wieku (Polish model of the rule of law in comparison with European vision in 19th century) in Piotr Kardas, Tomasz Sroka, Włodzimierz Wróbel (ed.): *Państwo prawa i prawo karne. Księga jubileuszowa profesora Andrzeja Zolla*, vol. I, Wolters Kluwer, (pp. 137–146), p.144.

unity. Poland was divided between Russia, Prussia, and Austria, disappearing from the world map for over 100 years as one sovereign state, as well as becoming a part of the partitioning powers' legal orders.

However, this was not the final division. The Napoleonic Wars, the fall of the Napoleonic regimes, and successive unsuccessful uprisings influenced the changes in the boundaries of the spheres of influence or the creation of new quasi-state structures. Political changes in the individual partitioning countries were also of great importance, influencing the degree of repressiveness of each regime or the effectiveness of the legal provisions in practice.⁷ This also included freedom of speech (and its limitations).

A good illustration of this phenomenon may be the situation in the part of the Russian Partition, known as the Kingdom of Poland (or "Congress" Kingdom), in the first half of the 19th century. This kingdom, established in 1815 as a result of the decisions of the Congress of Vienna, was granted a constitution⁸ (French *la constitution octroyée*) by the Tsar. Its provisions were estimated positively, as the given act is sometimes called "the most liberal constitution of Europe at the time."⁹ As for the freedom of printing, it was guaranteed; measures to counteract its indulgences were to be provided for by law, though a decree on the press law realizing the constitutional provisions was never adopted, despite being under preparation. Almost from the beginning, the existing constitutional provisions were disregarded. In response to the liberal tendencies presented in the press, the dissatisfaction of authorities grew. The freedom of the press was interfered with for political (on the accusation of disseminating untrue, biased, or revolutionary content) and religious reasons.¹⁰ In practice, new restrictions were increasingly introduced without legal proceedings.¹¹ Also, freedom of the press was formally abolished as the first of the freedoms provided for by law, with the introduction of prior restraint in 1819.¹² At that time, arguments were raised about the incompatibility of the existing state of affairs with constitutional guarantees.¹³ Failure to comply with them was one of the reasons for the uprising in November 1830. Although the period of the uprising was short (less than a year), it is very interesting, among others, in terms of press freedom. With the outbreak of the Uprising and the capture of Warsaw on November 30, the freedom of the press came into practice and was formally proclaimed by the

7 In the case of Poland, the agreements between the partitioning powers were also relevant for application of the law, see Jadwiga Teresa Kowalewska: *Cenzura w zaborze austriackim* (Censorship in the Austrian Partition), *Czasopismo Ossolineum* 10 (pp. 159–168), p. 159.

8 Constitutional Charter of the Kingdom of Poland from 27th November 1815, see Tadeusz Kołodziejczyk, Małgorzata Pomianowska (ed.) (1990) *Constitutions in Poland: 1790–1990*, Przemiany, Warszawa, pp. 48–56.

9 Sobczak (2009): p. 63.

10 Szyndler (1993): pp. 63, 74–75.

11 Sobczak (2009): p. 64.

12 Szyndler (1993): p. 66.

13 Szyndler (1993): p. 80.

decree of the insurgent government of December 12.¹⁴ Despite the lack of detailed regulations of the press law, in the insurrectionary conditions, the declared freedom of printing immediately brought about a revival of the press and a publishing movement.¹⁵ Suddenly, a significant and unfettered political force was born, which also created dangers.¹⁶

It is worth emphasizing the nature of the uprising itself, somehow “grassroots” and “youthful,” to some extent contrary to the views and interests of conservative elites and military leaders. This feature is also evident with regard to freedom of the press, for throughout the uprising, attempts were made to limit it. Even the argument that the liberty of the press threatened the military security of the uprising was submitted (and is sometimes referred to even today¹⁷), although this position was rather successfully rejected it is obvious that along with the military failures of the uprising, the conflict between the authorities and the independent press grew.¹⁸ However, neither this nor the fear of the dissemination of revolutionary currents led to the introduction of press restrictions.¹⁹ The freedom of the press remained firmly fixed, although the uprising itself came to an end in October 1830. All things considered, the existence of the freedom of the press even during this short period is estimated positively as serving the national interest²⁰ and the struggle for social reforms (e.g., the abolition of serfdom), as well as presenting artistic postulates.²¹ The fall of the November Uprising started the “Great Emigration.” Many Polish politicians, thinkers, artists, and journalists went abroad, after which many press movements developed in exile, particularly in France. Therefore, the press also developed independently of the legal framework regulating its operation on Polish territory. This experience was later continued, for instance in the times of the Polish People’s Republic.

Moreover, the fall of the November Uprising was the end of even the formal validity of the Constitution of 1815, which the Tsar replaced with the Organic Statute from February 1832. However, the actual situation was influenced especially by the person of Ivan Paskevich, who administrated the Kingdom. The following years were a time of political repression, of course taking into account the strengthening of censorship.

14 Szyndler (1993): pp. 80, 82.

15 Władysław Zajewski (1963): *Wolność druku w powstaniu listopadowym* (Freedom of printing during November Uprising, 1830–1831), Łódzkie Towarzystwo Naukowe, Zakład Narodowy im. Ossolińskich–Wydawnictwo, Łódź, Wrocław, p. 16.

16 Zajewski (1963): pp. 17, 19.

17 Sobczak (2009): p. 66.

18 Zajewski (1963): p. 116.

19 Zajewski (1963): pp. 40, 118.

20 Jerzy Łojek (1976): *Prasa polska w latach 1661–1864* (The Polish press, 1661–1864), Państwowe Wydawnictwo Naukowe, Warszawa, p. 109.

21 Zajewski (1963): p. 120.

III. THE ROLE OF THE CHANGES IN THE SECOND HALF OF 19TH CENTURY

1. 1848 in the Austrian and Prussian Partitions

The year 1848 brought a movement and disruptions in Europe, including in the territories of the Austrian and Prussian Partitions of Poland. Although the independence protests, including for instance the uprising in the Prussian Partition, were not successful for Poles, in the atmosphere of change, the regulations on the press, previously subjected to prior restraint with the requirement of the permission of a state official to publish the text, were also questioned.

In the Austrian Partition (Galicia), the decision on March 24, 1848, of the governor Franz Stadion permitted a Polish political journal to be founded. However, after the fall of the revolution, censors again objected to Polish patriotic content. The year 1848 was also a time when a daily newspaper "Czas," an important voice of Krakow conservatives and a source of much information about the era, was created.

In the Prussian Partition, 1848 was the year of the abolition of prior restraint, functioning previously on the basis of regulations from 1819,²² which are however considered fairly liberal.²³ The change to repressive censorship enabled to some extent the development of positivist ideas, of which the Prussian Partition was an important center. The role of the press was remarkable due to the lack of a university in the region.²⁴

Below, two systems resulting from the changes inaugurated in 1848 will be briefly presented, together with the circumstances related to their creation and application, and their real effectiveness for the realization of freedom of the press will be examined.

1.1. The Austrian Press Act of 1862

The failure of the Revolution of 1848 resulted in a more repressive regulation of the press under the laws of 1849 and 1851. This situation lasted until the beginning of the 1860s, when the Austrian monarchy underwent changes leading to the rule of law. The Austrian press regulation of 1862 seemed to be one of the models (at least in the future, independent, interwar Poland) for the modern press law and guarantees of the freedom of the press. This system functioned on the basis of the Press Act of 1862, whose adoption responded to the most urgent wishes of the liberalism

22 Grzegorz Kucharczyk (2001): *Cenzura pruska w Wielkopolsce w czasach zaborów 1815–1914* (Prussian censorship in Greater Poland during the Partitions, 1815–1914), Wydawnictwo Poznańskie, Poznań, p. 25.

23 Szyndler (1993): p. 105.

24 Marek Rajch (2004): *Cenzura pruska w Wielkopolsce w latach 1848–1918* (Prussian censorship in Greater Poland, 1848–1918), Wydawnictwo Poznańskie, Poznań, p. 20.

and helped advance the process of building real constitutionalism in the Austrian empire.²⁵ The Act introduced the principle that freedom of the press exists and can be limited exclusively by law (penal code)²⁶ in the case of goods and values that are ranked higher. Since civil rights in the area of the press were to be guaranteed, prior restraint and formal censorship consequently had to be abolished. Counteracting abuses of freedom (press and other issues) by repressive methods was not considered as dangerous as limiting citizens in an illegitimate way.²⁷ Therefore, freedom of the press gave the way to insults to power, morality, and religion.²⁸ The regulation provided subsequent means of executing the law in answer to breach of liberty. The journals were obligated to present the prepared copy 24 hours before printing. In the case harm was identified to the above-stated values, the prosecutor could order confiscation, no distribution, or even destruction of the edition. The decision of prosecutor needed a court's approval. Due to the adopted model, the accused usually were, in a way, the text itself. However, the authors, editors had a possibility to present the objections and complaints. Nevertheless, judicial review had a rather narrow scope, especially in the first period of the new regulation. The significance of the Press Act of 1862 was confirmed by the statements of the 1867 Constitution, which guaranteed in Art. 13 that: "Everyone shall have the right, within legal limits, freely to express his thoughts orally, in writing, through the press, or by pictorial representation. The press shall not be placed under censorship, nor restrained by the system of licenses. Administrative prohibitions of the use of the mail are not applicable to matter printed within the country."²⁹ The adoption of the Press Act and the Constitution caused amendments to the penal code and penal procedure. The Press Act itself was amended in 1894.³⁰

However, the Act was "modern" in a 19th century way of thinking. Governors, in a way characteristic of the style of government, believed that such measures were needed to counteract any abuse of freedom or attempt to defeat the state order. Regardless of how measures to prevent change and "maintain order" might be estimated nowadays, the system existing in Austria protected the state against ideologies that turned out to be harmful in the next century.³¹

25 Tomasz Olechowski (2010): Lawmaking Procedure under the Rule of the February Patent: The Austrian Press Act 1862 between the House of Lords and the House of Deputies in: *Jean Garrigues et al (ed.) Actes du 57e congrès de la CIHAE: Assemblées et parlements dans le monde, du Moyen-Age à nos jours*, Paris (pp. 581–590), p. 582.

26 Dziadzio (2012a), p. 25.

27 Dziadzio (2012a): p. 113.

28 Dziadzio (2012a): p. 32.

29 The document below was taken from Walter Farleigh Dodd (1909) (ed.): *Modern Constitutions: A Collection of the Fundamental Laws of Twenty-Two of the Most Important Countries of the World, with Historical and Bibliographical Notes*, Chicago: The University of Chicago Press, https://ecommons.cornell.edu/bitstream/handle/1813/1443/Austr_Const_1867.pdf?sequence=1&isAllowed=y [available on 1st of December 2021].

30 Dziadzio (2012a): p. 28.

31 Dziadzio (2012a): p. 133.

Interesting cases from the Kraków courts related to the protection of religion, among which the cases related to the protection of the Mosaic religion may serve as a remarkable example.³² Due to social and economic problems, anti-Jewish sentiments grew, which was also manifested in the press. In a situation involving the weighing of values and the need to assess whether the limits of freedom have been exceeded, it is always problematic to distinguish when we are dealing with offense or abuse, and when we are dealing with permitted criticism. The task of judges assessing the prosecutors' decisions on press confiscation was difficult here, and sometimes they succumbed to the social mood that was unfavorable toward Jews. These kinds of situations show the complexity of the issue of press freedom and the need to protect other values in the whole social context, along with the interplay between the social context and the press.

1.2. The German Press Act of 1874

As in the Austrian Partition, the years after 1848 were a time of transition in the Prussian Partition from the system of prior restraint performed by censors subordinated to various organs of the Prussian administration to repressive censorship exercised by the police, prosecutor's office, and courts.³³ In the light of another distinction,³⁴ the conditions existing in the first half of the 19th century can be called a "police system" that preventively limited the possibilities of operation of press publishers. It was the state in the person of the censor that assumed part of the responsibility for the word to be printed. On the other hand, the conditions introduced in the second half of the 19th century can be called a "legal system" that imposed legal responsibility upon publishers for published content and its enforcement by state authorities.

However, the transitions or changes did not happen automatically. Although freedom of the press was proclaimed in 1848 and entered into the constitution, and the abolition of prior restraint is considered one of the few successes of the Spring of Nations in Germany,³⁵ in later years press regulations were alternately strengthened and relaxed. In 1851 and 1854 laws on the topic of the press were created. Various administrative obligations and taxes imposed on authors of the press were also of great importance.³⁶

It is worth noting that some journalists, publishers, printers, and distributors argued that the repressive censorship system was less favorable to them. They raised the issues of the greater "flexibility" of the censors who worked previously and their solid preparation to perform their functions, as well as the high costs of destroying

32 Andrzej Dziadzio Antysemityzm jako powód konfiskat prasowych. Orzecznictwo sądów krakowskich. XIX/XX w. (Antisemitism as a reason for press confiscations. Jurisprudence of Krakow courts at the turn of the 19th and 20th centuries) in: Grzegorz Górski, Leszek Ćwikła, Marzena Lipska (ed.) *Cuius Regio Eius Religio?* Wydawnictwo KUL, Lublin 2008, Tom II, (pp. 211–227).

33 Kucharczyk (2001): p. 6.

34 Rajch (2004); p. 25.

35 Rajch (2004): p. 30.

36 Sobczak (2009): pp. 46, 85; Rajch (2004): p. 34.

an already prepared edition within the new legal framework.³⁷ This illustrates that all civil liberties are implemented in a specific reality in which they may become illusory.³⁸

In this context, the Press Act of 1874 merits attention. Its enactment was a consequence of the unification of Germany in 1871, and its entry into force replaced as many as 27 regulations in force in various territories.³⁹ Its decisions confirmed the abolition of prior restraint and strengthened the system of “legal censorship” exercised by the judiciary, which was to respond to violations of the penal code in the press. The German law, like the Austrian law, provided for the institution of press confiscation at the request of a prosecutor approved by the court.⁴⁰ The crimes that demanded such a reaction were *lèse-majesté*, resistance to the orders of the authorities, or disturbing the public peace.

The inhabitants of Great Poland who were under German rule were sometimes accused of crimes falling within this scope, such as incitement against the Germans.⁴¹ The censorship system was used to fight “national minorities” in the emerging German nation after unification.⁴² It was a time of a strong Germanization policy toward the Polish population. People involved in the creation of the press were required to prove their loyalty to the values promoted by the authorities.⁴³ Although legal regulations allowed for a relatively free development of the Polish press, their instrumental application was possible.⁴⁴ Polish editors were sometimes imprisoned for their actions or omissions, for example in spreading “public frolics.”⁴⁵ The punishments were adjudged on the basis of the provisions of the 1871 Penal Code and the 1874 Penal Procedure.

Contrary to the Austrian solutions, proceedings in Germany were usually conducted against a specific editor. The act imposed an obligation to appoint a responsible editor representing the journal, who was sometimes called “the editor to be imprisoned.”⁴⁶

2. The Situation in the Russian Partition

Economic circumstances were also important factors determining that the second half of the 19th century would be a time of the intensive development of the Polish press. On the example of the Russian Partition, it should be noted that an important

37 Kucharczyk (2001): p. 39.

38 Kucharczyk (2001): p. 40.

39 Rajch (2004): p. 36.

40 Kucharczyk (2001): p. 42.

41 Szylder (1993): p. 106.

42 Kucharczyk (2001): p. 206.

43 Sobczak (2009): p. 84.

44 Sobczak (2009): pp. 85–86.

45 Grażyna Gzella: Procesy prasowe redaktorów „Gazety Grudziądzkiej” 1894–1914 (Press trials of the editors of „Gazeta Grudziądzka”), *Rocznik Historii Prasy Polskiej 2007* (pp. 33–55), pp. 39–40.

46 Kucharczyk (2001): p. 42.

issue was the press commercialization process, which began in 1850 with the creation of the “Dziennik Warszawski.”⁴⁷

On the other hand, the situation of the press in the Kingdom of Poland and the Russian Partition was very complicated politically and subject to frequent changes. During the January Uprising (1863–1864), Russian censorship was additionally strengthened,⁴⁸ but the underground press was of great importance at that time. In the years after the failure of the January Uprising, various commissions appointed by the authorities controlled various categories of publishing houses.⁴⁹ Despite the existence of the laws of 1828 and its subsequent editions of 1886 and 1890 providing for prior restraint involving control of the press at various levels (“domestic,” “imported,” and “religious” publications),⁵⁰ at various times, certain elements of repressive censorship were introduced.⁵¹ Thus, legal ambiguity and political abuses reigned.⁵² The time after the January Uprising was also a time of increased attempts to subject Polish society to Russification.⁵³ As a rule, however, “freedom of the press” collided with the principles of Orthodoxy and other Christian denominations, respect for authority, the emperor and his family, state decrees, good manners and morals, and the veneration of private persons.⁵⁴ Thus, the catalog of values officially placed above freedom of the press was similar in all the partitioning states.

In the Russian Partition, although the development of the press was noticeable, attempts were made to subordinate it to the interests of the authorities.⁵⁵ At the level of the entire state and in individual cities, the organization of censorship offices and the complex system of mutual relations between them and the press were of significant importance.⁵⁶

The revolution of 1905 resulted in the adoption by Tsar on October 17 of the Manifesto proclaiming freedom of speech, association and personal inviolability.⁵⁷ Following the publication of the Manifesto, in 1906 a repressive censorship system was introduced in the Austrian style and the term “censorship” was carefully removed from the official language. In practice, however, penalties and fines were imposed on journalists, and as early as 1907, the use of the term “censorship” was also returned

47 Władysław Marek Kolasa: Tendencje w Badaniach dawnej prasy polskiej (do 1864)–analiza biblio metryczna (Tendencies in Research of the Old Polish Press (until 1864): A bibliometric analysis), *Studia informacyjne* Tom 50 nr 1 (99) 2012, (pp. 35–53), p. 35.

48 Sobczak (2009): p. 68.

49 Sobczak (2009): pp. 66–67.

50 Marek Tobera: Cenzura czasopism w Królestwie Polskim na przełomie XIX i XX w. (Censorship of magazines in the Kingdom of Poland at the turn of the 19th and 20th centuries), *Przegląd Historyczny* 80/1 (1989), (pp. 41–67), p. 43.

51 Tobera (1989): p. 42; Sobczak (2009): p. 70.

52 Tobera (1989): p. 42.

53 Sobczak (2009): p. 69.

54 Tobera (1989): p. 43.

55 Kamil Śmiechowski: Strategie władz carskich wobec łódzkiej prasy codziennej do 1914 roku (Strategies of the tsarist authorities toward the daily press in Łódź until 1914), *Klio–Czasopismo Poświęcone Dziejom Polski i Powszechnym*. 28, 1 (2014), (pp.63–83), p. 66.

56 Śmiechowski (2014): pp. 65, 76.

57 Sobczak (2009): p. 72.

to legal texts.⁵⁸ Journals were subjected to repressions depending on their ideological diversity, because the end of the 19th century was also the time when political parties were constituted and the press gave them voice.⁵⁹ Another cause of censorship, for instance in the industrial reality of Łódź, was social issues when the magazines tried to become a spokesman for the emancipation of working-class.⁶⁰

The outbreak of the Great War in 1914 subjected the press content to the principles of war censorship.⁶¹

IV. INTERWAR PERIOD

1. Non-uniformity of law in the interwar Poland

An entirely new situation resulted from Poland regaining independence after the First World War. The date of November 11, 1918, commemorating independence, the day of the end of the war, and the arrival of Józef Piłsudski (who was to become a very important figure in the history of interwar Poland) to Warsaw, is obviously symbolic and conventional. Of course, the process of rebuilding state structures could not take place overnight, and indeed the struggle to shape the borders of the “regained” state lasted until 1923. One of the problems that the “new” state had to face was the non-uniformity of the law within its borders, even those formed quite quickly. Therefore, one of the challenges was to try to unify the law in its many branches, among which the press law cannot be considered the most important area.

In the territory of the former Austrian and German Partitions, there were rules providing for repressive censorship along with administrative mechanisms of control over the press.⁶² In the former Kingdom of Poland, with the abolition of prior restraint and the proclamation of press freedom in autumn 1918, no rules regarding the functioning of the press were in force, so it operated without embarrassment, which threatened the interests of the state.⁶³ The aim of the legislator’s actions was therefore to eliminate particularisms and to shape the boundaries for the freedom of the press.⁶⁴ However, political instability and frequent changes of government made it difficult to change the status quo.

In the years 1919–1921, the first attempts at changes were made by decreeing temporary provisions for the former Russian Partition. The adopted rules introduced

58 Szylder (1993): p. 136; Sobczak (2009): p. 73.

59 Śmiechowski (2014): p. 82.

60 Śmiechowski (2014): p. 75.

61 Sobczak (2009): p. 73.

62 Rafał Habielski: Ewolucja prawa prasowego w Drugiej Rzeczypospolitej. Zakres I recepcja (The evolution of the press law in the Second Polish Republic: Scope and reception), *Studia Medioznawcze* 2014 nr 4 (pp. 79–92), p. 79.

63 Habielski (2014): p. 80.

64 Katarzyna Todos: Polskie prawo prasowe 1919–1939 (Polish Press Law, 1919–1939), *Z Dziejów Prawa t. 10*, 2017 (pp. 105–140), p. 107.

the freedom of the press within legal limits. Contrary to the regulations prevailing in the lands of the former Austrian and German Partitions, the temporary press regulations provided for the institution of “suspension of the magazine” in which the crime had occurred.⁶⁵ In addition, control over the press in the first instance was exercised by the administrative bodies, not the prosecutor’s office, as was the case under Austrian and German regulations. Therefore, there was still non-uniformity, and in the opinion of some press authors, excessive discretion in the application of regulations.⁶⁶ It is also worth mentioning the time of the Polish-Bolshevik war of 1920, when the press was subjected to preventive censorship for the defense of the state.⁶⁷

2. Freedom of the press under the March Constitution of 1921

The Constitution⁶⁸ adopted on March 17, 1921, guaranteed the freedom of the press to a large extent. Citizens received the freedom to express their thoughts and beliefs (Art. 104), and a particular constitutional provision (Art. 105) was devoted to freedom of the press, prohibiting censorship or the licensing or restriction of the distribution of the press. Moreover, the Constitution did not allow the function of a parliamentarian and the function of an editor to be combined, and sessions of the Sejm and parliamentary committees were to be opened to the press. Apart from other important civil rights, the exercise of freedom of the press could be suspended under a specific procedure only in the event of a threat to public security in a specific area (Art. 124). Principles concerning application of the freedom of the press, considered important and described quite broadly, were to be provided for in the legal act. So were its limitations.

The draft of a new law was prepared in 1923⁶⁹ that would have unified the legal frameworks in the country and ensured the necessary order in the matter of press law, the realization of the freedom guaranteed at the constitutional level, and its (necessary) restrictions. However, it did not enter into force due to the instability of the government.

3. Situation after *coup d'état* in May 1926

An important turning point in the history of the Second Polish Republic was May 1926, when Józef Piłsudski, previously a formal and then informal leader of the state, returned from retirement through a *coup d'état*, demanding “moral and political cleansing” and placing his candidates at the helm of power. This course of events also had legal consequences, visible, for example, in the area of press regulations.

Revision of the Constitution from August 1926 introduced the presidential decree with the force of law. This legal remedy would later be used as a tool of law unification and its implementation in general. It was under presidential decree that in November

65 Todos (2017): pp. 114–116; Sobczak (2009): p. 89.

66 Habielski (2014): p. 81.

67 Todos (2017): p. p111

68 Dz.U. 1921 nr 44 poz. 267

69 Habielski (2014): pp. 82–83.

1926 legal provisions concerning penalties for disseminating false information and insulting the authorities and their representatives⁷⁰ were introduced. According to journalistic circles, these provisions were intended to infringe the freedom of the press guaranteed by the Constitution.⁷¹ The introduced regulation also sparked a discussion in the Sejm and was finally repealed in December 1926.

Another decree was passed on May 10, 1927.⁷² It was supposed to unify the rules of the press law. It did not introduce solutions other than those known from the partitionsystems or temporary regulations, such as specifying formal requirements related to the establishment of magazines, the obligation to submit copies before their distribution, or the institution of print confiscation (which was already controversial at that time).⁷³ In particular, the regulation regulated press crimes in detail, being an independent basis for adjudicating them (without the need to apply additional penal provisions) and providing for severe penalties.

The content of the 1927 regulation was controversial, and although these regulations were the basis for adjudication until 1930, they were repealed. It is difficult to say when this happened. In connection with the Sejm's resolution not to approve the presidential regulation and the issue of its publication, there was a dispute over powers that lasted for many months.

The adoption of the Penal Code in 1932⁷⁴ (also under presidential decree) was significant from the point of view of the unification of the law. This code, which was the result of the work of the Codification Commission comprising eminent scholars, is in many respects a model for the regulation of substantive criminal law. However, Chapter XIX, devoted to crimes against the authorities, including incitement to crimes in print or mockery of the authorities and the nation, was accused of being vague, which could contribute to abuses.⁷⁵

Another crucial change was the adoption of a new Constitution on April 23, 1935.⁷⁶ Contrary to its predecessor of March 1921, it did not contain a separate place for freedom of the press. The guarantee of its existence was derived indirectly from Art. 5 of the Constitution, stating the possibility of development of citizens' personal values, freedom of their consciences, freedom of speech, and freedom of association. Therefore, this one provision contained a very broad catalog of civil rights and freedoms that required interpretation. Moreover, as stipulated in Art. 5 (pts. 3), the limit of the realization of these freedoms was the "common good," whatever that term meant. In this context, the need to pass an act, one for the entire country, regulating the implementation of the (indirectly) guaranteed freedom of the press and developing the understanding of its possible collisions with the "common good," clearly emerged. Press publishers expostulated for it.⁷⁷

70 Dz.U. 1926 nr 110 poz. 640

71 Habielski (2014): pp. 83–85.

72 Dz.U. 1927 nr 45 poz. 398

73 Todos (2017): p. 124.

74 Dz.U. 1932 nr 60 poz. 571

75 Habielski (2014): p. 87.

76 Dz.U. 1935 nr 30 poz. 227

77 Habielski (2014): p. 88.

The need of press authors was met on November 21, 1938, when the Press Law⁷⁸ entered into force by presidential decree. This act established freedom of the press, understood (as in the 19th century) as the lack of prior restraint. Under the provisions of the Constitution, the boundary for this freedom was to be the “common good.” In the new law the institutions of print confiscation, magazine suspension, and fines for editors were present. The journalists’ fears and protests were especially aroused in regard to the possible directions of the application of the law in the existing political reality. However, the practical allegations of the press circles were to some extent included in the implementing provisions to the adopted act.⁷⁹

As for the constitutional notion of “common good” repeated in the Press Law, its interpretation was made under difficult political circumstances that caused or forced its introduction. Internal disputes that led to a no-less disputable authoritarianism; the cult of the ruling spheres toward Piłsudski, who died in May 1935; and the specter of the approaching war shaped this notion and not otherwise. To some extent it was an attempt to ensure the stability of the state and its power under the given conditions. It is worth noting that during the (short) period of Polish interwar independence, the attitude toward the limits of press freedom changed⁸⁰ such that the system of functioning of the press was heading toward being controlled by the state.⁸¹ Under the temporary regulations of 1919, the limitation of the freedom of the press, according to the “classic” mechanism, was to be legal acts (penal law in particular). In the 1927 decree, priority was given to press law as a *lex specialis* in the field of delineation. In the April Constitution and the Act of 1938, primacy was given to the interests of the state under the concept of the “common good.” The catalog of press crimes was expanded to include crimes against these interests, also on the basis of specific acts, an example of which may be the provisions of the decree on the protection of Józef Piłsudski’s name⁸² (also in press content). However, no matter what their assessment could be, no actions to protect the common good and the state’s interest could have saved the state and all manifestations of public life from the next tragedy.

V. THE POLISH PEOPLE’S REPUBLIC

1. The basis and operation of censorship

During World War II, if the Polish-language press existed at all, it was subordinated to the interests of the Third Reich or the USSR, which occupied and controlled the territories. Again, there was reference to the “tradition” of the underground and emigration press, being the voice of the state creating its structures in the underground

78 Dz.U. 1938 nr 89 poz. 608

79 Habielski (2014): p. 90.

80 Todos (2017): pp. 135–138.

81 Notkowsky, Władysław (1982): p. 168.

82 Dz.U. 1938 nr 25 poz. 219

and in exile, which would continue their activities during the war and during the existence of the Polish People's Republic. The emigration and underground structures, and with them the press, did not have a chance to "come to the surface," but were replaced by the Communist authorities.

The intentions of the new authorities regarding the press were clear.⁸³ The freedom of the press was to be limited under the applicable law and outside it. The Communists conceived of building a press strongly involved in social and political changes.⁸⁴ The press was to be "socialized, institutionalized, and centralized." The Soviet-style press could not remain in the hands of private entities; therefore, state-owned press publishing houses were established and were merged until 1951.

The manifesto of the Polish Committee of National Liberation announced on July 22, 1944, which was the "founding act" of the new Communist state, provided for the existence of democratic freedoms, including freedom of the press, which, however, could not serve purposes that were "hostile to democracy."⁸⁵ This sounds much worse than the "common good" of the interwar period. Interestingly, in the July Manifesto, the March 1921 Constitution, whose structure at least emphasized the importance of freedom of the press, was declared binding until the new constitution was adopted. The 1938 Press Act also remained in force.

The first decisions concerning the press were made as early as 1944. On August 15, a law was passed,⁸⁶ according to which decree-laws became a widely used form of legal source. From 1945 there was an office controlling the press operating at the highest levels of state administration. "Control over the press" meant formal prior restraint⁸⁷ that was not subject to any control. Although the notion of censorship did not appear in legal language, it had importance in the colloquial language.⁸⁸ The legal basis for the functioning of the censorship office or its units changed many times on the basis of numerous decrees, orders, and resolutions of various decision-making bodies at any given moment. Casuistic regulations (and therefore ambiguous and subject to interpretation depending on the will of the authorities) concerned the direct methods of press control, the operation of publishing houses, methods of providing information, responses to press criticism, the working conditions and earnings of journalists, distribution, publication of advertisements, the activities of printing houses, and the management of (necessary) paper.⁸⁹ The regulations appeared to be detailed, perhaps excessive, as in fact censorship acted freely through

83 Anna Domska: Ograniczenia wolności prasy w PRL (Restrictions on freedom of the press in the Polish People's Republic), *Studia prawno-ekonomiczne* LXXXIV 2011 (pp. 79–100) p. 79.

84 Mieczysław Ciećwierz: Kształtowanie się państwowego aparatu nadzoru i kontroli prasy w Polsce w latach 1944–1948 (Formation of the state apparatus for supervision and control over the press in Poland in the years 1944–1948), *Kwartalnik Historii Prasy Polskiej* 22/2, 1983 (pp. 27–63), pp. 27–29.

85 The text of the Manifesto published in *Rocznik Lubelski* (Lublin Yearbook) t. 2 1959 (pp. 7–4), p. 10.

86 Dz.U. 1944 nr 1 poz. 3

87 Repressive censorship played a role in the control of foreign publications.

88 Sobczak (2009): p. 95

89 Ciećwierz (1983): p. 34.

arbitrary decisions for which there was no legal remedy.⁹⁰ Meanwhile, the Constitution of the People's Republic of Poland of 1952⁹¹ guaranteed in Art. 71 Sec. 1 freedom of speech and printing to citizens, among many other freedoms.

2. Changes of the early 80s

With the passage of time, society, including the nascent Solidarity movement, postulated changes. Interestingly, they were not meant to abolish censorship, the existence of which was obvious in the practice of life, but to subject its decision to control from the point of view of legality by submitting its functioning to proper regulation through its subjection to the judgment of the courts.⁹²

The strikes that took place in August 1980 in large industrial plants, the Gdańsk Shipyard among them, led to the signing of an agreement with the government by the strikers and the creation of Solidarity. One of the 21 points of the Gdańsk Agreement⁹³ from August 31 included the postulate of the implementation of (constitutional) freedom of the press. Its fulfillment was to be ensured by passing a new law, according to which censorship would protect state secrets and security, protect religious feelings and non-believers, and prevent the dissemination of morally harmful content. The decisions of the press control bodies were also to be appealed against to the newly established Supreme Administrative Court.

The government, the social side, and the episcopate (one of the elements of the arrangements was also to ensure radio broadcasts of the Sunday mass) participated in the discussions on the shape of the new law. It is also worth mentioning the significant role of the Catholic press in the Polish People's Republic.

The new Act on the control of publications and shows,⁹⁴ often called the "Censorship Act," was indeed passed on July 31, 1981, and entered into force on October 1, but it did not live up to the hopes placed in it by society. All "freedom" expectations ended with the introduction of martial law on December 13, 1981.

3. The Press Law of 1984

Despite the projects and attempts made in the 1950s, 1960s, and 1970s, no new press law was passed at that time. New projects appeared in the 1980s. The law was passed on the January 26, 1984,⁹⁵ and entered into force on July 1. The law maintained the mechanisms for licensing the press and controlled circulation of paper. However, it extended the judicial control of censorship decisions. It was also important in introducing means to protect personal rights (among them freedom of speech), with the possibility of obtaining financial compensation.

90 Sobczak (2009): p. 96.

91 Dz.U. 1952 nr 33 poz. 232

92 Dombska (2011): p. 83; Sobczak (2009): p. 96.

93 Text accessible at http://www.solidarnosc.org.pl/wszechnica/page_id=2906/index.html [December 7, 2021]

94 Dz.U. 1981 nr 20 poz. 99

95 Dz.U. 1984 Nr 5, poz. 24

The act remains in force to this day, though of course with numerous amendments, protecting the freedom of the press in other constitutional, social, and economic conditions. In the original version, as provided for in Art. 1, was the implementation of the freedom of printing guaranteed by the Constitution of the People's Republic of Poland, which for some time has regulated the principles of the press law in the Republic of Poland. The Main Office for Publications and Performances Control was liquidated in 1990.

CONCLUSION

The story presented above shows, in fact, the similarity of the goals and methods used by the authorities at different times in the history of the 19th and 20th centuries, regardless of the legal system of the state (Russian, Austrian, German, Polish, or Communist) in which it took place. The periods of increasing repressiveness (or sometimes preventive measures) of the censorship system were intertwined with the fight on various fronts for its mitigation. The purpose of censorship, rather unchallenged by the Polish society in the period in question, was the protection of morality (and of course rights or freedoms considered more important than freedom of the press in given circumstances), and, more problematic, the protection of the authorities and the state and the maintenance of order in the state, which was defined differently depending on the time and place. It could mean keeping Poles under the partitions under control; opposition to reformist or revolutionary or grassroots movements; or responses to internal or external disputes. Due to such an aim, political and organizational factors, including the persons of specific leaders or censors, were more important than legal factors for the guarantee of the freedom of the press or the scope of its limitation. Legal regulations in this complex area are easily fragmented and subjected to instrumental treatment. Internal censorship, carried out by the press, was certainly also of great importance. As an example of press regulations, the dangers of writing something on the pages of a legal act (even of a constitutional rank), which, however, have no substantial significance for the realization of a given freedom, are clearly visible. One of the legal orders whereby freedom of the press was proclaimed successfully developed the activity of prior restraint, the results of which could not be foreseen or remedied. The ability on the part of the author and recipient to cope with the maze of legal and non-legal mechanisms made it possible to implement elements of press freedom in its essence.