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## Disinformation in legal and criminalistic reality

### Introduction

Disinformation is undoubtedly a social threat, in particular in the field of psychosociology of the Internet and the sphere of political and propaganda influences. This issue is discussed in the rich literature on the subject, and at the same time, it is widely discussed in the public debate, especially in the context of the so-called fake news or spreading conspiracy theories<sup>1</sup>.

On the other hand, it is undoubtedly an element of criminal activity that mislead the state authorities established to detect crimes and prosecute their perpetrators. Certain criminal issues may undoubtedly be closely related to disinformation, as evidenced by its widespread use by terrorist organizations, the detection and combating of which undoubtedly belongs to the interests of criminalistic<sup>2</sup>. For this reason alone, as a tool of criminal activity, disinformation is worth analyzing from a criminalistic point of view.

However, also in the work of law enforcement officers, there is a deeply entrenched element of lying, misleading and using false information. In Anglo-Saxon literature, this problem is considered one of the significant ethical challenges, as it risks generating false convictions by fabricating evidence or manipulating evidence<sup>3</sup>. Thus, in the context of disinformation, questions arise, what if the lie penetrates the social communication of the police and becomes a tool for fighting crime? Are there any grounds for a legal assessment of this

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<sup>1</sup> J. Bodziony, *Funkcjonowanie teorii spiskowych w Internecie. Omówienie wybranych przyczyn i skutków zjawiska*, [in:] D. Siemieniecka, M. Szablowska-Zaremba (eds.), *Internet jako przestrzeń relacji społecznych – szanse, ograniczenia, perspektywy*, Lublin 2021, p. 141.

<sup>2</sup> N. Jankowicz, *Disinformation in terrorist content online. The George Washington University Program on Extremism*, 2019, <https://www.voxpol.eu/download/report/Disinformation-In-Terrorist-Content-Online.pdf> (accessed: 14.02.2021).

<sup>3</sup> See: G.P. Alpert, J.J. Noble, *Lies, true lies, and conscious deception: Police officers and the truth*, "Police Quarterly" 2009, no. 12(2), pp. 237–254.

type of activity? When can they take place? Should their assessment be positive or negative?

Undoubtedly, in the case of such outlined doubts, there arises a problem worth reflection from the point of view of criminalistic tactics, in which an attempt should be made to find a contribution to the theoretical study of a given issue. At the same time, the article is not aimed at “breaking open doors”, and thus subjecting the behaviour of officers using selected methods of operational work, such as police provocation, to ethical assessments. There is already extensive literature in this area.

In this article, the author attempts to address the issue of disinformation that is used in the operation of law enforcement agencies to obtain a specific goal, which is usually to obtain evidence and select the perpetrator of the event. Taking up the above-mentioned topic requires not only defining disinformation but also answering the question of whether and why society can be manipulated by representatives of law enforcement agencies? The work is based on the analysis of the literature, as well as on the case study. It is an attempt to comprehensively address the subject matter.

Considerations about disinformation can be set in two contexts, the first of which concerns the activities of police services and formations that use disinformation usually addressed to a small group of addressees. Mainly, disinformation understood in this way is aimed at the perpetrator or perpetrators of crimes that are currently being dealt with by the services aimed at identifying them. The second sphere concerns larger categories of recipients, usually entire social groups, organizations and states. Such activities are related to large and usually large-scale disinformation (psychological) operations involving the armed forces and the intelligence and counterintelligence services of the countries concerned. Due to the complexity of the issues, the author will focus in this work only on the first sphere related to the operation of the police services.

Homo sapiens, as indicated by the species epithet describing man (rational man), is a being characterized by reason. According to the PWN dictionary, the reason is “the inherent human ability to think, explore the world, analyze and draw conclusions”<sup>4</sup>. The process of reasoning, which seems to result from human nature, is related to the flow of all information and data that the mind can process. Every day, a person processes hundreds of different pieces of information from the world around him, both in private and professional life. The information that a person receives, processes and analyzes at the same time has enormous causative power. After all, it influences the perception of the world, another person, the way of conduct, the hierarchy of values, and the choice of a life path, both private and professional. Unfortunately, the concept

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<sup>4</sup> <https://sjp.pwn.pl/slowniki/rozum.html> (accessed: 25.09.2021).

of information is associated with the concept of disinformation. False information has the same causative power as true information, and its processing by the human mind is subject to the same mechanisms and laws. However, disinformation can bring about several pejorative effects in human life, which – paradoxically – result from the fact that the communicated content differs from the actual state.

For a correct understanding of the problem of the occurrence of disinformation in human life, it is, therefore, necessary to first describe what the disinformation discussed here is. The PWN dictionary states that disinformation is “misleading someone by stating that they are misleading or false information”<sup>5</sup>. In an intuitive sense, disinformation activities show a certain purposefulness, i.e. deliberate misleading, through the dissemination of false information. However, it seems that according to the cited definition, disinformation could be treated a bit more broadly, including also the transmission of misleading, false information that takes place unconsciously, i.e. it results from the ignorance of the disinforming person (misinformation), as well as the deliberate transmission of information that is essentially consistent with the truth but used to mislead (misinformation). It may therefore happen that the person conveying disinformation messages considers them facts, consistent with the real state, or at least relating to the empirical reality. The person may not be aware that he or she is providing false information. It seems that the intentionality of the action, in the case of providing false information, goes to the background – it is not as important as the message itself.

Polish writer and journalist Marek Świerczek systematized the multitude of definitions of what disinformation is. He points out that the concept of disinformation is ambiguous. Disinformation can be understood as a mode of action in operational work where you intend to achieve a set goal. The association of the concept of disinformation with operational activities, however, narrows this concept mainly to the work of secret services. In addition, it is emphasized that it is an activity that is concealed, secret or even overt dissemination of some partially or completely false information<sup>6</sup>. Disinformation can also be understood as “creating and spreading misleading or false information to distort the image of the opponent”<sup>7</sup>. Summarizing numerous definitions, Świerczek indicates that the essence of disinformation is not strictly a lie, but rather a provocation, a desire to obtain a specific effect through information activities. In the broader sense of the concept, disinformation should therefore be perceived as influencing the recipients’ subconsciousness so that the disinformation transmitted by the disinformator is considered true infor-

<sup>5</sup> <https://sjp.pwn.pl/slowniki/dezinformowa%C4%87.html> (accessed: 25.09.2021).

<sup>6</sup> M. Świerczek, „System matryoszek”, czyli *deformacja doskonała. Wstęp do zagadnienia*, “Przegląd Bezpieczeństwa Wewnętrznego” 2018, no. 19, pp. 210–211.

<sup>7</sup> *Ibidem*, p. 211.

mation and processed by the recipient as true information. Hence, all definitions of disinformation point to one basic element, which consists in “creating in the opponent a false image of reality, which is to persuade him to make wrong decisions”<sup>8</sup>.

Decisions made by a disinformed person are directed by a disinformor. A disinformor is the creator of a distorted image of reality, which he creates to induce influence and specific behaviours in a disinformed person. When analyzing the concept of disinformation from the legal point of view, it is worth paying attention to the derivative linguistic concepts: disinform, disinformor and disinformed. “Dezinformować” is a verb in the form of an infinitive, from which personal forms are created that denote activities undertaken to convey erroneous information, changing – by the above-mentioned considerations – the recipient’s state of consciousness to a state other than corresponding to the real state to which the information is referred to. A “disinformor” is a person who undertakes such activities and thus resorts to misinforming someone, the performer of these activities. Whereas the “disinformed” person is the recipient of the information thus conveyed. As indicated above, “disinformation” is an activity in which the sender, recipient and message are involved. Just as the word “disinformation” is a relatively young concept, the words “disinformor” and “disinformed” are also neologisms<sup>9</sup>.

Regardless of the perspectives shown, disinformation is by definition a planned process, which differs from a lie, which can be completely spontaneous and even pointless. Looking from the theoretical point of view, Świerczak notices that effective disinformation only exists when the disinformed person cannot verify the information provided. The possibility of verification carries the risk that any untrue information will be intercepted, recognized as inconsistent with the actual state. When analyzing disinformation from the point of view of the logical process, it is worth noting that these assumptions come from the very goals of disinformation. For if the reasoning is based on false premises, it does not have to lead to a false conclusion, although it usually leads to such a conclusion. However, in the case of disinformation as a deliberate influence on the recipient’s state of consciousness, the goal is precisely to obtain false conclusions. Thus, false premises provided by a disinformor should and, if they are skillfully provided and the reasoning of the disinformed person is correct or consistent with the prediction, must lead to false conclusions. However, if the premises are verified and articulated truthfully, the conclusion should also be true<sup>10</sup>.

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<sup>8</sup> Ibidem, p. 212.

<sup>9</sup> See: M. Wachowicz, *Ujęcie teoretyczne pojęcia dezinformacji*, “Wiedza Obronna” 2019, no. 1–2, pp. 229–230.

<sup>10</sup> Cit. per: M. Świerczek, op. cit., pp. 213–214.

As already indicated, the disinformation process is also seen in context propaganda, usually as a component of it. This requires defining the relation of both of these concepts. First of all, propaganda coupled with disinformation is perceived as part of the so-called "Information warfare"<sup>11</sup>, which suggests the scope separateness of these concepts in the set of designates of the concept of "information warfare tools". Propaganda is defined as "the consistent, sustained effort to produce or shape events in such a way as to influence social perceptions of specific undertakings, ideas, or groups"<sup>12</sup>. It follows from the very definition of propaganda that disinformation fits perfectly into it. In such a way, the message and the content of the message are shaped to achieve specific goals in the social dimension. It seems that the perception of disinformation as part of propaganda is perfectly justified, although disinformation does not strictly correspond to propaganda. Disinformation can be part of propaganda, but it can also occur in other forms, or a different shape or context, such as on its own, independent of the propaganda. Moreover, propaganda usually targets a wider audience, while in the case of disinformation there may be a single subject of influence, i.e. one misinformed person.

The literature indicates four basic features of information, namely: accuracy, timeliness, completeness and relevance. According to the above-mentioned features of information, the features of disinformation can be indicated as the opposite of the above-mentioned ones. Disinformation is characterized by inaccuracy, that is, it provides an unbelievable reflection of reality. Moreover, disinformation is out of date, and incomplete news. The adequacy of information is determined by its usefulness for the recipient, that is, appropriate information "is information useful for the recipient, depending on his specific needs and conditions"<sup>13</sup>. Then the disinformation is not useful for the recipient. The usefulness of disinformation can only be indicated by the sender of the message. Due to the opposite of the above-mentioned features, the opposite of information is created, i.e. the anti-information called disinformation. This characterization seems to be a somewhat simplified description, but it defines the basic features of disinformation as a form of communication. Particular reservations can be made about the issue of "topicality", as it would seem that this feature may refer to both information and disinformation.

Disinformation is visible in all spheres of human life, both private, professional and public. This article focuses, as already outlined, on disinformation in the legal and criminalistic reality, based on theory and practice. The legal and criminalistic reality revolves around issues related to crime and its prevention (detection, combating and prevention). As it is noted in the literature

<sup>11</sup> M. Wachowicz, op. cit., p. 232.

<sup>12</sup> M. Bartoszewicz, *Teorie propagandy w obliczaniu algorytmizacji*, "Kultura Współczesna" 2019, no. 1(104), p. 86.

<sup>13</sup> M. Wachowicz, op. cit., p. 248.

on the subject, “crime is a negative global phenomenon”<sup>14</sup>. Crime is not a problem concerning the perpetrator and the victim, as well as the judiciary or law enforcement agencies, but it is a general problem that affects individuals, communities and entire countries, and extends beyond the borders of a given country, into the international legal sphere. Crime is also a very complex social phenomenon where information and disinformation can play a very important or even a key role. The issue of information in the legal and criminalistic reality cannot be discussed in such a short article, so it will be omitted in favour of a more complete focus on the issue of disinformation, as a much more complex problem, with particular emphasis on the goals, methods and patterns of disinformation in legal and legal reality criminalistic.

There are state authorities that use or may use disinformation. In practice, this applies to all state bodies that conduct social communication, and therefore have the tools of a spokesman or press officer, run social media, etc. It is difficult to find legal grounds for the indicated process, as there is no provision directly allowing the use of information untrue. On the other hand, not all information can be directly verified and the findings, even if they appear to be certain in the light of the evidence gathered so far in the case, or the information about the ongoing investigation may subsequently be falsified. Already at this stage, the question arises whether the assessment of the legitimacy or lawfulness of this type of action should be the subject of the entire message, or of individual pieces of information that can be attributed to the features of truth and falsehood.

Defining the group of authorities that may use disinformation requires prior determination of its purpose in the legal and criminalistic reality. It is necessary both to identify these authorities and to assess the legality of these activities.

### **The goals of disinformation in the legal and criminalistic reality and the legality of its use**

As is clear from d Considering the considerations made so far, at first glance, it might seem that disinformation is a typically pejorative phenomenon, as it is associated with an error, a lie, the transmission of untrue information, or the induction of recognizing false circumstances as facts. Meanwhile, when analyzing this, in fact, a common phenomenon in more depth, attention is drawn to the distinction of the goals of disinformation. This is particularly relevant to the legal and criminalistic reality, in which various operational and informational interactions may occur between law enforcement agencies

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<sup>14</sup> S. Pikulski, *Podstawowe zagadnienia taktyki kryminalistycznej*, Białystok 1997, p. 5.

and the circles of suspects and suspects as part of investigative and operational activities. Nowadays, the information space plays a special role. As it is emphasized, “in the era of the information society, people become susceptible to disinformation, propaganda and all forms of information manipulation”<sup>15</sup>. Meanwhile, the criminal and terrorist element, persons acting on behalf of foreign intelligence services, and in military conditions also the enemy’s subversive and reconnaissance elements, undoubtedly belong to the group of people with a greater or lesser degree of preparation and susceptibility to information influences.

Disinformation is undoubtedly part of certain legal activities of legal state bodies. At the outset, it should be pointed out that all state authorities can and should participate in social communication, in particular, communication via traditional media. The functions of press spokesmen for this communication are created unless there are more detailed regulations, based on Art. 2nd et seq. of the press law<sup>16</sup>, which states that “state bodies, by the Constitution of the Republic of Poland, create the conditions necessary for the press to perform its functions and tasks, including enabling the activities of editorial offices of newspapers and magazines, which differ in terms of the program, thematic scope and attitudes presented”. Thus, communication with the media and creating conditions for it is the duty of all state organs, and the scope and manner of this communication are subject to a special assessment, as it may seem from the literal wording of the quoted provision, from the point of view of the Polish constitution.

Thus, according to the applicable law, the obligation of informational activity should be applied to all state organs, and thus also to all organizations and institutions existing in the legal and criminalistic space.

At the same time, as it results from the content of the provision constituting the legal basis for social communication of state organs, this communication should be more strongly related than other statutory sentences with the content of constitutional norms referred to in the quoted provision. Thus, it can be concluded that the use of elements of disinformation in the social communication of law enforcement agencies and other state bodies may in no way be inconsistent with the constitution. Direct reference to constitutional norms, adopting the principle of a rational legislator, prescribes – it seems – that not only the content of the provisions of universally binding legal acts should be subject to constitutional control, which could affect social communication, but also the process of its implementation through the prism of constitutional models.

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<sup>15</sup> P. Kmieciak, *Bezpieczeństwo informacyjne Rzeczypospolitej w dobie fake news – przykłady wykorzystania mediów cyfrowych w szerezeniu dezinformacji*, Warszawa 2019, pp. 84–85.

<sup>16</sup> Act of January 26, 1984 (LJ of 1984, No. 5, item 24, consolidated text, LJ of 2018, item 1914).

At the same time, it should be emphasized that the mere fact that the cited provision of the press law applies only to communicate with the media, and through them with the public, cannot be – as it seems – doubt that all official messages of state authorities and their representatives overlap with communication with the media. Media, as the media, publish and comment on such messages and statements, which are an indispensable element of press coverage. Thus, all forms of social communication of state organs under the current legal status may not disregard their close relationship with constitutional principles, even if it did not result directly from the Constitution of the Republic of Poland itself. However, this position is additionally supported by the principle of direct application of the provisions of the Basic Law. As has already been indicated, the goals of disinformation, by the very essence of this phenomenon, are aimed at a specific effect. And it is the effect of the message that determines the goal because undoubtedly both of these categories should be logically similar (in principle – identical), as long as the disinformant correctly defined the means aimed at achieving the goals and used them correctly.

While the purpose of presenting untrue information as facts is to influence society as recipients of disinformation messages, this society should be perceived in all its complexity against the background. The disinformant wants to develop and strengthen specific views in a mass audience or specific individuals and groups of people. In the legal and criminalistic reality, this goal may be realized in the social communication of law enforcement agencies. Considering that they are undoubtedly state organs, the question arises as to whether this is the case each activity is legally permissible.

For example, elements of disinformation are carried out through spokespersons and press officers, i.e. persons representing law enforcement agencies. These people, bypassing certain information to the mass media, make it reach the public opinion. In addition to information consistent with the actual state of affairs, disinformation messages may appear, for example, messages are broadcast stating that the police are “on the trail” of the alleged serial killer and that he will be arrested soon. This type of information, if it is not true, aims to induce certain behaviours in the person sought (by arousing fear in him, and thus psychological pressure in the reality of which he may make mistakes) or to reassure the public opinion, indirectly increasing public trust as to the effectiveness of law enforcement activities, first of all to favorably shape an operational environment in which social behaviour will facilitate, rather than obstruct, urgent and large-scale activities of law enforcement agencies. namely, pro-social activity, which is to bring several beneficial results for the common good.

In the above-outlined situational context, after a meticulous analysis of the situation, the press spokesman provides the mass media with data that can only help in the conduct of the proceedings. At this point, the question



arises, what the limits of disinformation in his message may be, so whether and to what extent the principle of *exitus Acta probat*<sup>17</sup> may apply? The answer to the above question does not seem to be unequivocal. On the one hand, the goal is glorious, and on the other hand, *mendacium semper manet mendacium*<sup>18</sup>. At this point, therefore, an obvious ethical dilemma arises as to whether it is legitimate to provide erroneous information due to a worthy goal. There is also the question of whether society has no right to know the truth, and whether the transmission of disinformation is not a matter of manipulating public opinion. However, considering the issue from the perspective of the goal of such action, which is the goal of protecting the common good, it seems that the media transmission of disinformation related to the ongoing criminal proceedings, and thus public safety, is justified. However, the line between truth and lies then becomes blurred. And some false information affects the dissemination of further false information resulting from the former. Is then society not falling into the so-called vicious circle of lies? In this approach, disinformation is used as a tool to be used for a specific purpose. For some, such actions are a lie, while others will find that the lies are justified due to the purpose of the action. Regardless of the method of assessing this action, it should be emphasized that it is a permanent practice used by law enforcement agencies.

As far as providing a comprehensive answer to the above questions exceeds the objectives of this study, it is undoubtedly necessary to outline the legal status in this respect in general. Even this task is difficult, however, insofar as no law would allow anyone to directly use disinformation legally. In the scope in which it is applied, therefore, only activities aimed at the implementation of the statutory tasks of the institutions and formation applying it should be seen – for example, in the legal and criminalistic reality, such tasks will undoubtedly be the protection of the life and health of citizens as well as the detection and prosecution of offenders.

Thus, in such a real state, questions arise even more as to the compliance of the indicated practices with public law. It is worth noting that in dealing with disinformation, especially about important situations concerning, for example, human life, as is the case in the legal and criminalistic sphere, there are many programs or postulates to combat false information, inconsistent with the actual state. In fear of the so-called fake news, which disrupt the work of law enforcement agencies, or have a negative impact on public opinion, or rather introduce information chaos, attempts are made to counteract these phenomena. In Warsaw, in December 2020, a document on the above-mentioned phenomenon was issued by the National Broadcasting Council. It is noted that disinformation “undermines trust in institutions, traditional and digital media

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<sup>17</sup> Crowd. from English pour. the ends justify the means.

<sup>18</sup> Crowd. from English pour. a lie will always remain a lie.

and damages democracies by preventing citizens from making informed decisions”<sup>19</sup>.

In this context, therefore, it is necessary to mention, first of all, Art. 2 of the Constitution of the Republic of Poland, “The Republic of Poland is a democratic state ruled by law, implementing the principles of social justice”. This provision implies directly and indirectly a number of constitutional standards relating to the implementation of the principle of a democratic state ruled by law and the principles of social justice by the state towards its citizens. The principles of a democratic state ruled by law include, inter alia, the principle of trust in the state and the law it enacts, including other principles, including the principle of decent legislation, the principle of protection of acquired rights, etc.<sup>20</sup> In the jurisprudence of the Tribunal it is also pointed out that Article 2 of the Constitution is of fundamental importance for the legal situation of citizens and state authorities and should be considered as the foundation of the constitutional and legal order of the Polish State<sup>21</sup>, nevertheless even actions going as far as restriction of constitutional rights and civil liberties by the legislator, i.e. going further than presenting untruths in public communication of prosecutions, are admissible, provided that (subject to the principle of proportionality) they are permissible in a democratic state ruled by law.

It should be emphasized that these standards are not literally specified in the Constitution of the Republic of Poland, but have been determined secondarily in the jurisprudence of the Constitutional Tribunal and the jurisprudence of the Supreme Administrative Court<sup>22</sup>. Without going into the historical conditions of the indicated principles, which would go beyond the scope of this study, it seems necessary to at least indicate that these principles, since they are derived from the provisions of the Polish Constitution, remain in a functional relationship with other constitutional principles. As indicated by the Constitutional Tribunal still on the basis of the Polish People’s Republic constitution: “The principle of citizens’ trust in the state, underlying the above-mentioned provisions of the Constitution and the institutions of the system regulated by them, is – similarly to the principle of substantive rule of law – a legal and constitutional principle that gives rise to certain obligations in the sphere of state activity. In the field of the legislative activity of the state, it creates, in particular, the obligation to shape the law in such a way as not to limit the freedom of citizens, unless it is required by an important social or

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<sup>19</sup> Cit. per: Krajowa Rada Radiofonii i Telewizji, *Fake news – dezinformacja on line. Próby przeciwdziałania tym zjawiskom z perspektywy instytucji międzynarodowych oraz wybranych państw UE, w tym Polski*, Warszawa 2020, p. 5.

<sup>20</sup> The judgment of the Constitutional Tribunal of March 21, 2001, file ref. act K. 24/00.

<sup>21</sup> Ibidem.

<sup>22</sup> R.M. Duda, *Konstytucyjna zasada zaufania obywateli do organów państwowych i próba jej realizacji w przepisach ustawy z dnia 6 marca 2018 r. Prawo przedsiębiorców (LJ of 2018, item 646)*, “Folia Iuridica Universitatis Wratislaviensis” 2019, no. 8(1), pp. 91–106.

individual interest, protected by the Constitution, the obligation to grant rights to citizens with the simultaneous establishment of guarantees for the implementation of these rights, the obligation to legislate consistent, clear and understandable for citizens, and finally the obligation not to retroactively apply legal provisions (...). In this way, the principle of citizens' trust in the state becomes at the same time the fundamental collective value to which they refer and protected by the norms of the constitution"<sup>23</sup>.

Both the judgments of the Constitutional Tribunal<sup>24</sup> and the Supreme Administrative Court<sup>25</sup> indicate directly that the principles derived from Art. 2 of the Polish Constitution, for example, the principle of protection of interests in progress is not absolute.

Moreover, it should be noted that this principle is primarily related to the state's activity in the application and making of the law, primarily the predictability of this process and legal certainty, so that an individual could foresee the legal consequences of his actions and omissions<sup>26</sup>. In the practice of applying the law in social communication, it is therefore not without significance that disinformation in the field of law enforcement by law enforcement agencies is aimed at strengthening its compliance and stabilizing the public-law system based largely on the standards of criminal law. One of the theoreticians raising a given topic, advocate Maciej Górny, points out that the information and disinformation coming from law enforcement authorities result from the following goals – firstly, official factors, i.e. the need to transmit information on socially important matters – as a certain obligation of the authorities prosecution (bureaucratic and reporting obligations), secondly, from social pressure, i.e. curiosity and, at the same time, the right of the public to know the facts, or for strictly criminalistic purposes, i.e. controlled leaks of information or information in conjunction with disinformation, in order to achieve specific goals in during the proceedings<sup>27</sup>. It is worth noting at this point that an organizational unit for information services has been established in the Police Criminal Intelligence Department, the specific tasks of which have been determined on the basis of the Guidelines of the Police Commander in Chief of August 29, 2005<sup>28</sup>.

In other words, there is a legal and functional framework in which disinformation is used, but any use of it can be considered legally questionable. On

<sup>23</sup> Judgment of the Constitutional Tribunal of November 30, 1988, file ref. act K 1/88.

<sup>24</sup> The judgment of the Constitutional Tribunal of February 7, 2001, file ref. act K. 27/00.

<sup>25</sup> Judgment of the Supreme Administrative Court of August 8, 2015, file ref. act I OSK 2708/13.

<sup>26</sup> J. Łętowski, *Zasada zaufania w stosunkach między obywatelem i administracją*, [in:] idem, *Państwo, prawo, obywatel*, Wrocław 1989, pp. 559–561.

<sup>27</sup> As cited in: M. Górny, *Rola procesów informacyjnych w pracy Policji*, "Kwartalnik Prawno-Kryminalistyczny Szkoły Policji w Pile" 2013, no. 1–2(14–15), pp. 32–33.

<sup>28</sup> Wytyczne nr 3 Komendanta Głównego Policji z dnia 29 sierpnia 2005 r. w sprawie działania wydziałów wywiadu kryminalnego w Policji (OJ of the KGP 2005.14.105).

the other hand, it is difficult to show its direct contradiction with the Polish Constitution in situations where its application is justified, bearing in mind the need to protect other rights, e.g. human life and health. Therefore, it should be anticipated that this issue will be the subject of the jurisprudence of the Constitutional Tribunal in the future. Until this happened, however, the use of disinformation can be seen as a tool of the so-called “Less evil”, which serves the protection of other constitutional values, in particular the protection of human life and health.

On the other hand, it would be difficult to find a justification for its use in connection with the truth of the sphere of information flow in public space surrounding to some extent criminalistic-related tasks, for example in the face of justified or unjustified criticism of the police in the public debate. Undoubtedly, the very comfort of professional work of the management of a given institution is not a constitutional value, and therefore it cannot be used as any legal justification for violating constitutional principles by state organs. Thus, while one can perceive the legality of the use of disinformation in order to carry out tasks related to the protection of human life and health, or the prosecution of perpetrators of crimes, undoubtedly, actions consisting in falsifying the message in order to suppress press or social criticism by the police cannot be considered lawful, or any other uniformed formation.

Thus, from the circle of entities that should implement social communication, including – as has already been indicated – all state organs can be distinguished those that could be considered to perform tasks whose implementation, if it requires the use of disinformation, can justify it and thus aims to protect values that can be considered superior to the protection of citizens’ trust in the state.

This challenge is not simple, taking into account that the content of the cited provisions of the press law clearly shows that public communication of state organs should be consistent with the Polish Constitution, and thus the assessment of the state of affairs in which it violates the constitutional obligations of the state cannot be extensively extended beyond doubtless certain cases. The role of the principle of a democratic state ruled by law cannot justify the expansion of the number of such entities, which is also particularly important. It can be concluded from the previous jurisprudence of the Constitutional Tribunal that the constitutional principle of the protection of human life (also referred to in the jurisprudence also to *nasciturus*) and the principle of protection of human dignity, as the implementation of the foundation of human rights, and therefore inalienable, natural rights, are of fundamental and superior significance as constitutional principles. human dignity<sup>29</sup>.

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<sup>29</sup> See: The judgment of the Constitutional Tribunal of October 22, 2020, file ref. act K 1/20; Judgment of the Constitutional Tribunal of 7 January 2004, file ref. act K 14/03; Judgment of the Constitutional Tribunal of 7 March 2007, file ref. act K 28/05.

Thus, in the author's opinion, it is legitimate to consider that disinformation in social communication, to the extent that its application actually aims to accomplish these tasks, may be used by bodies that meet the following criteria:

- 1) are state authorities,
- 2) in the scope of acting on the basis of and within the limits of the law, undoubtedly (i.e. as it results directly from the relevant laws) their task is to protect human life and human dignity, and therefore also to combat crimes where the subject of protection of the criminal law norm is human life,
- 3) the use of disinformation in social communication clearly aims (and therefore directly and directly, and therefore against real, not potential threats) of the implementation of these tasks and the protection of constitutional values, which are human life and inalienable human dignity.

As far as the scope of this work covers only the legal and criminalistic reality, its scope would exceed legal arguments relating to the use of disinformation in the implementation of tasks not related to crime, for example, the admissibility of using disinformation for the same reasons by health authorities, etc. At this stage, it seems possible to indicate some entities of this type, i.e. those that there can be no doubt that they meet the above criteria. Such bodies, among the institutions that use the criminalistic tactic, will therefore be:

- 1) The Police, to the extent to which the Police Act obliges them to perform the tasks specified in Art. 1 clause 2, point 2 "protection of human life and health and property against unlawful attacks violating these goods" and point 4 "point 4 detection of crimes and offenses and prosecution of their perpetrators" of this Act<sup>30</sup>;

- 2) Border Guard – to the extent that it can be considered that some crimes related to illegal migration (smuggling of people and trafficking in human beings)<sup>31</sup>, and Art. 1 clause 2, point 2a) lit. c. the Border Guard Act obliges it to combat this type of crime;

- 3) Organizational units of the public prosecutor's office – pursuant to Art. 2 law on the public prosecutor's office "The public prosecutor's office performs tasks in the area of prosecuting crimes and upholds the rule of law"<sup>32</sup>;

- 4) Military Police in the scope of the tasks referred to in Art. 4 sec. 1 point 2 of the Act on Military Gendarmerie and military law enforcement bodies, ie "protecting the life and health of people and military property against attacks violating these goods"<sup>33</sup>;

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<sup>30</sup> Act of April 6, 1990 on the Police (LJ of 1990, No 30, item 179, consolidated text LJ of 2021, item 1882).

<sup>31</sup> Act of October 12, 1990 on the Border Guard (LJ of 1990, No.78, item 462, consolidated text LJ of 2021, item 1486).

<sup>32</sup> Act of January 28, 2016, Law on the Public Prosecutor's Office (LJ of 2016, item 177, consolidated text LJ of 2021, item 66).

<sup>33</sup> Act of August 24, 2001 on the Military Police and military law enforcement bodies (LJ of 2001, No. 123, item 1353, consolidated text LJ of 2021, item 1214).

5) Civil special services as part of the tasks referred to in the relevant regulations, ie: the Internal Security Agency (ABW) as part of the tasks referred to in Art. 5 sec. 1 point 2 letter a “identification, prevention and detection of crimes: espionage, terrorism, unlawful disclosure or use of classified information and other crimes threatening the security of the state” and the Intelligence Agency (AW) within the framework of lization of the tasks referred to in art. 6 sec. 1 point 2 “identifying and counteracting external threats threatening the security, defense, independence and inviolability of the territory of the Republic of Poland” and 7a “identifying, counteracting and preventing terrorist events directed against citizens or property of the Republic of Poland outside the state terrorist attacks against the personnel or property of the Armed Forces of the Republic of Poland” the Act on the Internal Security Agency and the Intelligence Agency<sup>34</sup>,

6) Military special services, as part of the implementation of similar tasks within the scope of their competence, ie the tasks referred to in art. 5 sec. 1 paragraphs 1 and 7 and article 6 (1) (2) of the Act on the Military Counterintelligence Service and the Military Intelligence Service<sup>35</sup>.

It should be borne in mind that it is difficult in this type of study to go beyond the relatively rudimentary legal framework due to the lack of – so far – case law and in-depth analyzes of the discussed issue in the doctrine, and above all the lack of literally expressed legal bases for disinformation activities, which could be discussed, analyzed and assessed for compliance with the Constitution of the Republic of Poland.

Further limitations of the group of entities that may legally conduct disinformation may result from the scope of activities for which it can be considered possibly permissible. This issue will be discussed in the next section. However, it should be noted at this point that operational and reconnaissance activities are reserved for the Police and the Internal Security Agency, and cannot be used by other bodies appointed, inter alia, to detect crimes and prosecute their perpetrators<sup>36</sup>. Thus, the use of disinformation in connection with combating crime by authorities other than the Police and the Internal Security Agency may in any case seem unacceptable.

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<sup>34</sup> The Act of May 24, 2002 on the Internal Security Agency and the Foreign Intelligence Agency (LJ of 2002, No. 74, item 676, consolidated text LJ of 2020, item 27).

<sup>35</sup> Act of June 9, 2006 on the Military Counterintelligence Service and the Military Intelligence Service (LJ of 2006, No.104, item 709, consolidated text LJ of 2019, item 687).

<sup>36</sup> B. Szyprowski, *Postępowanie sprawdzające w procesie karnym*, “Prokuratura i Prawo” 2007, no. 7–8, p. 159.

## Methods of disinformation in the legal and criminalistic reality

The PWN encyclopedia defines a method as “consciously used method of conduct aimed at achieving the intended goal”<sup>37</sup>. Disinformation methods are different methods of conveying disinformation messages. As already indicated, disinformation according to the dictionary definition from the same source does not have to be deliberate. Even more so if we take the point of view of the cited theoretical studies, according to which disinformation is the negation of information and has features opposite to it.

Therefore, when we talk about the use of disinformation methods in criminalistic practice, it should be noted that we are talking only about using them consciously.

In relation to the legal and criminalistic reality, methods of disinformation rely on methods of transmitting messages inconsistent with the actual state. The transmission of disinformation and information is identical, and even informing and disinforming messages are usually intertwined within one message. The transmission of disinformation usually takes place through the mass media. Among the mass media, a number of different forms of communication are mentioned, however, in the legal and criminalistic aspect, the following methods of transmitting information are in particular: radio, television, press and Internet. The basic methods of transmission are spoken and written communication – that is, using words, as well as vision, image, because, as we know, most Homo sapiens are so-called “visual learners”, i.e. they register and remember more with their eyes than with other senses. Thus, the images presented in the strong media can be remembered rather than the words themselves spoken, especially when these images concern shocking or moving scenes, which is often the case in relation to the places of events, pictures of victims or the reconstruction of committed crimes. This fulfills the informative function of the mass media consisting in collecting and disseminating information on socially important topics<sup>38</sup>. It is noted that the impact of the mass media on a person is unquestionable<sup>39</sup>, therefore disinformation and information conveyed by mass media to the public for the reception of public opinion, concerning the legal and criminalistic sphere, also has a strong impact, which is best illustrated by the examples provided later in this section article.

<sup>37</sup> <https://sjp.pwn.pl/slowniki/metoda.html> (accessed: 28.09.2021).

<sup>38</sup> See: J. Wiczorek, *Środki masowego przekazu. Rodzaje współczesnych mediów*, 2005, <http://joannawiczorek.pl/wp-content/uploads/2015/10/%C5%9ARODKIMASOWEGO-PRZEKAZU.pdf>.

<sup>39</sup> See: D. Poleszak, D. Maciolek, *Środki masowego przekazu jako narzędzie edukacji w drodze do kształtowania postaw i konstruktywnych form zachowania wśród młodzieży*, “Kultura – Media – Teologia” 2013, no. 12, pp. 23–32.

When analyzing the methods of disinforming influences in the legal and criminalistic reality, it is also worth noting that Paweł Kmiecik from the Internet Information Department of the Operational Center of the Ministry of National Defense indicates the methods of informational activities in the legal and criminalistic reality in relation to the interactions undertaken with the use of the Internet. These methods, according to Kmiecik, are divided into two groups. The first group of methods is the creation of fake accounts on internet portals, the so-called “False identity”, while the second group of methods is false information. Among the first group of methods, the author distinguishes between “bots – programs simulating human behavior, used to direct the discussion on the Internet, sending spam or posting links (and) trolls and sockpuppets – people who use fake accounts to direct a given discussion in order to evoke specific emotions among its participants or create the impression of mass support for an idea or narrative”<sup>40</sup>. The transmission of information or disinformation through modern media, i.e. with the use of the Internet, has become particularly popular because it reaches a very wide audience, and therefore is a good tool for achieving goals by a disinformant. Disinformation concerning the legal and criminalistic reality is more and more often disseminated via the Internet in the forms indicated above. Law enforcement agencies have separate units that handle social networking sites. The problem is too much information and disinformation that is allowed to flow freely via the Internet<sup>41</sup>.

Among the activities of law enforcement agencies that may contain elements of disinformation activity, there may certainly be activities involving such cases where disinformation will be aimed at the implementation of the entrusted tasks. The indicated issues seem to be justified on the example of the police. According to Art. 14.1 of the Police Act, within the limits of its tasks, the Police performs the following activities: operational and reconnaissance, investigative and administrative in order to:

- 1) identifying, preventing and detecting crimes, fiscal crimes and petty offenses;
- 2) searching for people hiding from law enforcement or justice authorities, hereinafter referred to as “wanted persons”;
- 3) searching for people who, as a result of an event that makes it impossible to determine their whereabouts, should be found in order to ensure the protection of their life, health or freedom, hereinafter referred to as “missing persons”.

However, the concept of operational-search activities has not been explicitly defined in any legal act. On the basis of the doctrine, however, a view has

<sup>40</sup> P. Kmiecik, *op. cit.*, p. 88.

<sup>41</sup> See: B. Saramak, *Wykorzystanie otwartych źródeł informacji w działalności wywiadowczej: historia, praktyka, perspektywy*, Warszawa 2015, p. 37.



emerged that these are secret activities aimed at the performance of statutory tasks, but separate in scope from the criminal trial, carried out outside of the investigation and investigation. These activities are assigned the following functions: identification (recognition of criminogenic and criminal environments and factors influencing these communities), detection (detection of prohibited acts and their perpetrators), evidence (consisting in proving guilt and other statutory features of a committed crime) and preventive (preventing specific threats, possibly eliminating them)<sup>42</sup>. Similarly, investigative activities should be those that are carried out as part of the ongoing criminal proceedings to achieve its goals, and administrative and administrative activities as other tasks of the police<sup>43</sup>.

It seems that the use of disinformation, as it is in no way regulated by the procedural law, and it is impossible to identify any arguments for its admissibility in the case of administrative and organizational activities. In addition, with regard to investigative activities, it is assumed, both on the basis of the Code of Criminal Procedure and the principles of professional ethics of officers, that misleading a suspect is in principle perhaps admissible, although controversial, and unacceptable in situations where it is expressly prohibited by law, and in a manner inconsistent with the law (using threats or coercion), and in any case you must not mislead the suspect or other participants in the trial as to his legal situation, personal situation, health condition, etc.<sup>44</sup> If we assumed that disinformation is admissible in criminal proceedings, i.e. at the stage of prosecuting the perpetrator of a crime and gathering evidence of guilt, there would be a tool to bypass these bans by providing false information to the public. In this context, it seems that, taking into account the objectives of criminal proceedings, there are no grounds to consider disinformation as admissible in investigative activities and in direct connection with their conduct.

Thus, disinformation should be considered a component only of operational and reconnaissance activities, including in particular: operational control, covert surveillance, controlled purchase, activities of police agents (i.e. policemen under the so-called “cover” and personal information sources – the so-called informants and in relation to CBŚP – secret collaborators and operational contacts) and police provocation.

In terms of operational control, it seems that the use of disinformation may be important to the extent that it would serve to break the counterintelligence mechanisms used by the criminal and terrorist groups themselves. Such activities in the criminalistic literature include:

- 1) use of anonymous telephone systems,

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<sup>42</sup> N. Nowicki, *Normatywne ujęcie czynności operacyjno-rozpoznawczych w aspekcie dowodu nielegalnego*, “Przegląd Bezpieczeństwa Wewnętrznego” 2021, no. 24(13), pp. 333–350.

<sup>43</sup> Ibidem.

<sup>44</sup> S. Pikulski, op. cit., p. 111.

- 2) criminal slang,
- 3) cryption of correspondence,
- 4) self-control,
- 5) disinformation activities carried out by messaging groups obtus,
- 6) jamming wiretaps,
- 7) anti-surveillance examinations of the premises<sup>45</sup>.

In the above scope, it should be noted that to the extent that disinformation in public communication could be used only in a narrow range of cases, if it would lead to the protection of such constitutional values as human life and human dignity, there is no wide range of situations in which it would be closely related with operational control. As it can be assumed, disinformation carried out by the police could be aimed at concealing the fact of applying operational control by providing false information about data obtained so far by the police.

Similarly, the possibilities of using disinformation seem to apply to the operation of police agents, as the scope of counterintelligence activities of criminal groups used to unmask it is even wider, and the methods used to implement them are even richer. In this context, it is also necessary not only to keep the surveillance secret, as in the case of operational control, but also to ensure the safety of an informant or a policeman operating “under cover”<sup>46</sup>. In this respect, it should be borne in mind that – unlike operational control, which can be performed in a basically passive or even fully automated manner (nota bene also with the use of software that automatically breaks the security of operating systems), the use of the aspect of active, direct influence on the situational awareness of the under surveillance. The essence of such activity is based on a trick which consists in deliberately misleading criminals as to the real identity of the agents and their intentions towards them. It is only by using their misconception that an officer or secret collaborator becomes “one of them” and can accomplish the task of obtaining information, which he then discloses to law enforcement authorities<sup>47</sup>.

Thus, the conditions for the operation of spy infiltration are consistent with the goals of disinformation in a special way, and disinformation activities – as it follows directly from the above – can be used to legend, gain and deepen trust by a personal source of information, for example by providing information that a given person is seeking, left prison or escaped from prison, etc., in re-

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<sup>45</sup> P. Łabuz, T. Safjański, *Działania kontrwykrywcze grup przestępczych ukierunkowane na ograniczenie skuteczności kontroli operacyjnej oraz procesowej kontroli i utrwalania rozmów*, “Problemy Kryminalistyki” 2017, no. 297, pp. 28–35.

<sup>46</sup> K. Horoszkiewicz, P. Łabuz, T. Safjański, *Działania kontrwykrywcze grup przestępczych ukierunkowane na przeciwdziałanie infiltracji prowadzonej przez Policję z wykorzystaniem osób udzielających jej pomocy*, “Przegląd Bezpieczeństwa Wewnętrznego” 2020, no. 12(22), pp. 144–166.

<sup>47</sup> R. Teluk, *Osobowe źródła informacji jako jedna z metod operacyjnego działania organów policyjnych*, “Zeszyty Prawnicze UMCS” 2013, no. 13(4), p. 184.

lation to activities aimed at dispelling possible doubts of criminals as to the identity of such a person, awakening respect for him in the criminal environment, etc.

It should be noted that, both in the work of special services and criminal police formations, there may be situations where obtaining a personal source of information is based on the use of compromising materials, but these materials do not always have to be incriminating from the point of view of criminal law<sup>48</sup>. From the point of view of the purposes of disinformation, in particular when such material does not exist, a false message may be used, indicating the existence of such material, which, if disseminated in public, would reach a candidate for secret collaborator and could induce him to cooperate. On the other hand, it should be emphasized that, for the reasons already discussed, disinformation should not be used in investigative activities. On the other hand, there is no reason to assume that the general prohibition of misleading an individual's legal position did not extend to operational-search activities. Thus, it should be assumed that when constructing such a message, a candidate for a secret collaborator should not be misled as to his legal situation, for example by generating a conviction that he is threatened with criminal liability for something that he clearly did not commit.

In terms of covert observation, it should be noted that this is less complex than operational control, and sometimes it can be even demonstrative and, paradoxically, it should be noticed by the criminal. For example, the presence of a marked police vehicle in the place where a prohibited act is to be committed may be enough to prevent such an act from being committed. This type of action can be used when there are no grounds for detention or the possibility of its implementation prior to the intended commission of the act, or the identity of the perpetrator is not known, and at the same time the risk related to the act itself or the perpetrator's escape is too high to allow an attempted act by perpetrator, to catch him in the so-called "red-handed".

As regards the use of disinformation, it should be noted that undoubtedly, in the case of covert observation, there may be goals related to reducing the criminal's vigilance, persuading him to reveal by his actions the circumstances that allow the detection of the crime or prosecution as the perpetrator or, on the contrary, the objectives of deterring him by showing interest to the police.

Thus, in the scope related to the activity of observing him In the late 1980s, there are a number of possible targets for disinformation, which may or may not coincide with the goals of much further operational control.

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<sup>48</sup> P. Herbowski, *Pozyskanie tajnego współpracownika przez służby kontrwywiadowcze na podstawie materiałów obciążających – rozważania o sensie instytucji*, "Nowa Kodyfikacja Prawa Karnego" 2019, no. 51, pp. 83–102.

Finally, in the case of a police provocation or controlled purchase, disinformation may go in a similar direction as in the case of spy infiltration, i.e. to lull criminals' vigilance or increase the likelihood of their taking actions in which they will go beyond the limits of the applicable law. In this regard, the issues of the legality of police provocation should be taken into account at the same time.

### **Patterns of disinformation in the legal and criminalistic reality**

Patterns of disinformation in the legal and criminalistic reality concern the way information is processed and, at the same time, disinformation. When describing the above-mentioned patterns, it is noted that information is mixed with disinformation, as in the case of the methods discussed above. Law enforcement agencies collect information about events that are of interest to them, then track and associate the facts necessary to build hypotheses, and then create information about objects, people and crimes<sup>49</sup>. In this process, there is no room for the appearance of erroneous information, inconsistent with the actual state. Disinformation then is a highly undesirable and pejorative phenomenon. Disinformation elements appear when information is transferred to the public.

The pattern of conduct in the case of transmitting disinformation in the legal and criminalistic reality is considered from the side of law enforcement agencies or from the side of the mass media. Analyzing this issue from the side of law enforcement agencies, in the course of the criminal proceedings conducted, they transmit some of the information to the press, where, along with the transmission of information, disinformation also appears very often. The transmission pattern is always one and constant, namely selected information is transferred to the mass media through the police spokesman, or when the mass media appear on the spot at the time of police intervention, the police officers participating in the intervention report on an ongoing basis. Considering the matter from the point of view of the mass media, it seems that there is no single, standardized pattern for dealing with the transmission of disinformation. A representative of the mass media tries to obtain information of interest to him at all costs, whether through cooperation with law enforcement agencies or using his own sources, e.g. the work of investigative journalists. What matters in this respect is the effect, i.e. the obtained information, and undoubtedly, to a lesser extent, the method of obtaining it, which does not

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<sup>49</sup> See: W. Ignaczak, E. Pierzgała, *Zarządzanie informacją w Policji*, "Kultura – Media – Teologia" 2013, no. 12, p. 45.

have to be known to the recipient or subject to legal or social control. Therefore, when obtaining this type of information, real and untrue information is often mixed, which is not surprising due to the type of source from which it comes, as not all of the mentioned sources have to be reliable.

Considering the issue of investigative journalism in relation to the handling of information and disinformation in the legal and criminalistic aspect, it should be noted that this practice is gaining in importance and is becoming more and more important in the sphere of the activities discussed. Investigative journalism is undoubtedly part of the activity related to the transmission of information, and at the same time can be used to transmit disinformation in the legal and criminalistic aspect. It is difficult, however, to fit this type of journalism into one specific pattern of conduct. Rather, it points to some characteristic features that can be found in investigative journalism, namely: an attempt to show what is hidden, being guided in activities by the public good, tracking crimes, using various sources of information, own investigation conducted by the author-journalist<sup>50</sup>. Due to the conduct of “self-inquiry” when tracking irregularities and the use of various sources of information in investigative journalism, there is a very high probability that disinformation messages will appear. These news will relate to the legal and criminalistic sphere due to the subject matter of investigative journalists, which mainly concerns the tracking of crimes.

## Theory and practice

From the beginning of the existence of law enforcement agencies, information seems to be the basic element of their functioning and effectiveness. On the one hand, obtaining information influences the actions taken, but on the other hand, in a democratic society, the mass media, as the so-called “fourth authority”, have the right and, at the same time, the obligation to inform the public about the actions taken by law enforcement agencies. However, next to the information there is also the disinformation described above.

In theory, disinformation in the legal and criminalistic reality appears in the form of simulation and confusion. Such a distinction was made by Marian Mazur in his book *Qualitative Information Theory*<sup>51</sup>. The author notes that simulation disinformation occurs when content that does not reflect reality in an original way appears in a given message of information. Whereas, confusion disinformation is the transmission of information that has a reference in reality, but is modified by a disinformant, and thus elements of untruth appear

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<sup>50</sup> As cited in: I. Młodoch-Mendoń, K. Maciąg (eds.), *Wybrane zagadnienia z zakresu kryminologii i psychologii kryminalistycznej*, Lublin 2020, p. 245.

<sup>51</sup> See: M. Mazur, *Jakościowa teoria informacji*, Warszawa 1970, pp. 141–153.

in it. Both these types of disinformation described theoretically are reflected in practical activities in the legal and criminalistic reality. On the one hand, completely new pseudo-facts appear as disinformation, i.e. information that is given as true, but in fact is not. On the other hand, true information is combined or mixed with untrue information, and it is handled as if it were 100% true.

Later in the article, there will be specific examples of operating disinformation in the legal and criminalistic reality in the context of information exchange between law enforcement agencies, the mass media and the public.

The case of Tomasz Komenda is famous in the media, in which disinformation played a huge and pejorative role. He was sentenced to 25 years in prison for the rape of a teenager, which resulted in the victim's death, on the basis of evidence, including testimony from allegedly missed witnesses, was sentenced to 25 years in prison. The man was convicted largely based on the testimony of only one witness, i.e. his neighbor. Despite the testimony of 12 other people who, to a varying extent, testified in favor of the Command, providing mainly the so-called An alibi regarding his whereabouts at the alleged time of the incident, the man was finally found guilty in June 2004. Then, after 18 years of serving the sentence by the Command, the case was returned to the case, analyzing its circumstances, and in the course of this analysis it turned out that the woman – the main witness, did not tell the truth in the circumstances she had recalled. It can therefore be concluded that by providing false information, the witness led to the conviction of an innocent person. The disinformation that appeared at the stage of the court proceedings led to the fact that a young, probably innocent man spent more than half of his life in prison, and thus to extreme consequences from the point of view of the good and interests of the individual. The distortion of the information provided at the stage of court proceedings clearly influenced its outcome, i.e. the conviction that was handed down. This conclusion stems from the fact that Tomasz Komenda was acquitted in 2018<sup>52</sup>.

Referring to the practice, one should mention the famous historical judgment, issued on the basis of circumstantial evidence, in a criminal case in which the governess Rita Gorgonova was sentenced for the murder. During the investigation and in the courtroom, no concrete, material evidence was revealed that the crime was committed by the accused. Nevertheless, in the course of the proceedings, there were indications that did not constitute obvious evidence, but proved to be against it. The court of first instance sentenced the woman to the death penalty. while the appellate court ruled that he was imprisoned, upholding the sentence as far as the accused was found guilty of

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<sup>52</sup> See: <https://wiadomosci.gazeta.pl/wiadomosci/7,114883,27634576,zbrodnia-miloszycka-biegli-ponownie-przeanalizowali-dowody.html> (accessed: 12.12.2021).

the alleged act. During the trial, in addition to certain information consistent with the actual state, there was a whole range of slander, circumstantial evidence, pseudo-evidence, which even seems to have occurred in more than the so-called dry facts. Moreover, had it not been for a different assessment of the proportionality of the sentence made by the court of second instance, the woman would have been sentenced to death. Facts relating to reality were confused with disinformation news and the judgment was issued on the basis of this. The distortion of the content or the over-interpretation of the facts influenced the course of the process and its result. In this situation, disinformation also had a negative impact on the course of the proceedings and the work of law enforcement agencies.

Undoubtedly, it is particularly disturbing to public opinion when the victim is a small child. Cases of this type are interesting for the mass media because they increase the demand for their services – programs, press, etc. Cases of this type also strongly involve the society in terms of psychosociology, as it usually strongly sympathizes with the victim, sympathizes with the family and stigmatizes the perpetrator. In addition, cases of this type are particularly troublesome for law enforcement agencies, as they feel pressure from society to quickly resolve the case and punish the guilty. It is particularly important to skillfully use information and disinformation in these cases, as the public opinion quickly issues a sentence on the perpetrator, stigmatizing him and demanding a sufficiently high penalty. When citing specific examples, it is impossible not to mention the 4-year-old Michalek, murdered in January 2001. The boy was picked up from kindergarten by his mother's cohabitant whom he knew and trusted. Then he was brutally murdered by him being thrown into a cold river, causing the boy to drown. After being arrested, the man testified that the murder had been ordered by the child's mother. So the charges were brought against the woman, which is not, after all, tantamount to conviction. Before the sentence was passed, the public severely assessed it as the so-called a degenerate mother and a child-killer. Despite the fact that the boy's mother until the end maintained that she was innocent, on the basis of her cohabitant's testimony, the mass audience found her guilty in the process of shaping public opinion. On the line of the trial authority media – society, such messages appeared, which made the social perception of the boy's mother even more unambiguous. This, of course, had no effect on the final result of the trial. Ultimately, Michalek's mother was acquitted. However, this example shows how strong an impact misinformation can have. The killer of the child provided false information that the boy's mother was the second to be guilty, which entailed a number of serious consequences, namely the woman was subject to criminal proceedings, but was also severely assessed by the public opinion, which issued its own judgment based on the information untrue. Public opinion can therefore be ruthless, even basing its judgment on disinforma-

tion, which can be verified by the ongoing criminal proceedings, i.e. news that has not been verified by reference to reality in a procedural manner, but will inevitably be thoroughly assessed<sup>53</sup>.

The strength of the information transfer is evidenced by the famous wire-tapping scandal that broke out in 2014 as a result of the actions of non-law enforcement agencies, including investigative journalists for whom – as already indicated – an important aspect of their work is the activity of searching for information on similar cases. In the period from July 2013 to June 2014, illegal recordings of politicians' conversations were made in selected Warsaw restaurants. The recordings, although made illegally, were widely disseminated in the press. They concerned both business and private matters. Four people were detained in the above-mentioned case, against whom law enforcement instituted criminal proceedings<sup>54</sup>. The present case shows the important role of data, information and their transmission, especially in view of the current law on the protection of personal data<sup>55</sup>. On the other hand, the above example illustrates the power of the mass media, including the role of investigative journalism, which in practice works analogously to law enforcement agencies, of course according to more limited powers. It seems that many cases saw the light of day thanks to the work of investigative journalists. However, in their work, information is very often intertwined with disinformation, and it is the role of law enforcement agencies in this regard to examine the case in detail and separate the facts from the news, do not refer to the actual state of affairs. Sometimes an investigative journalist, in search of sensation and the desire to reach the largest possible audience, may consciously or unconsciously modify the presented reality to make his material more attractive, and then the truth may be mixed with a lie, and in this way disinformation messages are created that may affect the work of law enforcement agencies operating in parallel. Sometimes the investigative journalist deliberately misleads law enforcement agencies in order to obtain more interesting material and a larger audience. The activities of investigative journalists seem to oscillate around true and untrue information as much as possible, as the goal is to convey as much sensational material as possible. Deliberate distortion of information plays an important role in many relationships and social processes. On the one hand, investigative journalists can be helpful in the work of law enforcement agencies, because thanks to their work, cases of the type of the wiretapping scandal mentioned above come to light. However, on the other hand, in-

<sup>53</sup> See: <https://wiadomosci.gazeta.pl/wiadomosci/7,126765,10996687,zamordowali-4-letniego-mi-chalka-wrzucajac-do-lodowatej-wisly.html> (accessed: 12.12.2021).

<sup>54</sup> See: <https://wiadomosci.wp.pl/afera-podsluchowa-w-rzadzie-tuska-6028865210933889c> (accessed: 12.12.2021).

<sup>55</sup> See: Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).



vestigative journalists sometimes do not inform law enforcement agencies about the crime they have committed, because they want to solve the case and present the material to the public. In addition, there are also cases in which investigative journalists based on disinformation present to the public material that “slanders” someone and is not truthful. It should be borne in mind that it can be presumed that mistakes by investigative journalists, i.e. relying on disinformation, occur much more often than mistakes by law enforcement agencies, because journalists have a smaller range of legal and technical instruments at their disposal. Such mistakes can be very harmful to people who become slandered and often result in the need for an official apology, or a case for infringement of personal rights through defamation, slander, etc.

In their practice, law enforcement agencies are prepared to properly interpret each piece of information. Used the stem allows the credibility of the information to be assessed, in which the source of the information is assessed, as well as the information itself. Among others, in the Police and Border Guard, the 4x4 method is used, which aims to have the same understanding and proper interpretation of information for each recipient<sup>56</sup>. It also allows you to determine the appropriate value of the information obtained, which allows the superiors to take appropriate decisions or operational, process or administrative actions. Each Border Guard officer is obliged to use this method<sup>57</sup>.

## Conclusions

The concept of disinformation in the legal and criminalistic reality is primarily closely related to the transfer of this information to a wider audience, i.e. to the public. This message is supported by the mass media that inform the public about important matters relating to the legal and forensic criminalistic sphere. Unfortunately, along with the transmission of information, disinformation, which can take various forms, also appears very often in the message. In the media it seems that information always occurs along with disinformation and is intertwined. However, when disinformation enters the legal and criminalistic sphere, such a false media message can do a lot of evil by creating a world, attitudes inconsistent with the real state. The public opinion passes a sentence very quickly, even based on slander, gossip, and guesswork, and can be ruthless in it.

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<sup>56</sup> Wytyczne nr 2/2017 Dyrektora Biura Wywiadu i Informacji Kryminalnych Komendy Głównej Policji z dnia 29 czerwca 2017 r.

<sup>57</sup> Wytyczne nr 44 Komendanta Głównego Straży Granicznej z dnia 3 marca 2009 r. w sprawie stosowania w Straży Granicznej oceny informacji metodą 4x4 (OJ of the Chief Commandant of the Border Guard of 2009, No. 2, item 15).

Disinformation in the legal and criminalistic reality occurs in various aspects and forms. However, as a result of the above analysis, it seems that some keywords can be mentioned that relate to disinformation messages in general. The factual words include: misleading, disseminating false information, manipulating, deceptive actions, distorting the image of the world, hiding true intentions, etc. Usually, when the above concepts appear in the legal and criminalistic aspect, it would be worth considering whether disinformation is not present at the same time<sup>58</sup>.

However, this article draws attention to another aspect of disinformation, while despite conveying untruths, it may have a positive overtone. The message on a specific case from law enforcement agencies via the mass media sometimes contains disinformation, but it is made consciously for a specific purpose. Supporters of the fact that the end justifies the means undoubtedly consider the use of disinformation to be permissible and even right.

Regardless of whether the message of disinformation is considered from the side of law enforcement agencies, the mass media, or recipients, i.e. the public, or regardless of the purpose of this erroneous message, it should be recognized that in the face of digitization and the rapid technological development of society, disinformation is certain an undeniable fact that is and will be present in every sphere of human life, including the legal and criminalistic reality.

## References

- Alpert G.P., Noble J.J., *Lies, true lies, and conscious deception: Police officers and the truth*, "Police Quarterly" 2009, no. 12(2).
- Bartoszewicz M., *Teorie propagandy w obliczeniu algorytmizacji*, "Kultura Współczesna" 2019, no. 1(104).
- Bodziony J., *Funkcjonowanie teorii spiskowych w Internecie. Omówienie wybranych przyczyn i skutków zjawiska*, [in:] D. Siemieniecka, M. Szablowska-Zaremba (eds.), *Internet jako przestrzeń relacji społecznych – szanse, ograniczenia, perspektywy*, KUL, Lublin 2021.
- Duda R.M., *Konstytucyjna zasada zaufania obywateli do organów państwowych i próba jej realizacji w przepisach ustawy z dnia 6 marca 2018 r. Prawo przedsiębiorców (LJ of 2018, item 646)*, "Folia Iuridica Universitatis Wratislaviensis" 2019, no. 8(1).
- Górny M., *Rola procesów informacyjnych w pracy Policji*, "Kwartalnik Prawno-Kryminalistyczny Szkoły Policji w Pile" 2013, no. 1–2(14–15).
- Herbowski P., *Pozyskanie tajnego współpracownika przez służby kontrwywiadowcze na podstawie materiałów obciążających – rozważania o sensie instytucji*, "Nowa Kodyfikacja Prawa Karnego" 2019, no. 51.
- Horoszkiewicz K., Łabuz P., Safjański T., *Działania kontrwykrywcze grup przestępczych ukierunkowane na przeciwdziałanie infiltracji prowadzonej przez Policję z wykorzystaniem osób udzielających jej pomocy*, "Przegląd Bezpieczeństwa Wewnętrznego" 2020, no. 12(22).

<sup>58</sup> See: M. Wachowicz, op. cit., p. 249.

- <https://sjp.pwn.pl/slowniki/dezinformowa%C4%87.html>.
- <https://sjp.pwn.pl/slowniki/metoda.html>.
- <https://sjp.pwn.pl/slowniki/rozum.html>.
- <https://wiadomosci.gazeta.pl/wiadomosci/7,114883,27634576,zbrodnia-miloszycka-biegli-ponownie-przeanalizowali-dowody.html>.
- <https://wiadomosci.gazeta.pl/wiadomosci/7,126765,10996687,zamordowali-4-letniego-michalka-wrzucajac-do-lodowatej-wisly.html>.
- <https://wiadomosci.wp.pl/afery-podsluchowa-w-rzadzie-tuska-6028865210933889c>.
- Ignaczak W., Pierzgała E., *Zarządzanie informacją w Policji*, "Kultura – Media – Teologia" 2013, no. 12.
- Jankowicz N., *Disinformation in terrorist content online. The George Washington University Program on Extremism*, 2019, <https://www.voxpol.eu/download/report/Disinformation-In-Terrorist-Content-Online.pdf>.
- Kmieciak P., *Bezpieczeństwo informacyjne Rzeczypospolitej w dobie fake news – przykłady wykorzystania mediów cyfrowych w szeregach dezinformacji*, Wydział Informacji Internetowej Centrum Operacyjne MON, Warszawa 2019.
- Krajowa Rada Radiofonii i Telewizji, *Fake news – dezinformacja on line. Próby przeciwdziałania tym zjawiskom z perspektywy instytucji międzynarodowych oraz wybranych państw UE, w tym Polski*, Warszawa 2020.
- Łabuz P., Safjański T., *Działania kontrywerywne grup przestępczych ukierunkowane na ograniczenie skuteczności kontroli operacyjnej oraz procesowej kontroli i utrwalania rozmów*, "Problemy Kryminalistyki" 2017, no. 297.
- Łętowski J., *Zasada zaufania w stosunkach między obywatelem i administracją*, [in:] idem, *Państwo, prawo, obywatel*, Ossolineum, Wrocław 1989.
- Mazur M., *Jakościowa teoria informacji*, WNT, Warszawa 1970.
- Moldoch-Mendoń I., Maciąg K. (eds.), *Wybrane zagadnienia z zakresu kryminologii i psychologii kryminalistycznej*, Tygiel, Lublin 2020.
- Nowicki N., *Normatywne ujęcie czynności operacyjno-rozpoznawczych w aspekcie dowodu nielegalnego*, "Przegląd Bezpieczeństwa Wewnętrznego" 2021, no. 24(13).
- Pikulski S., *Podstawowe zagadnienia taktyki kryminalistycznej*, Temida 2, Białystok 1997.
- Poleszak D., Maciołek D., *Środki masowego przekazu jako narzędzie edukacji w drodze do kształtowania postaw i konstruktywnych form zachowania wśród młodzieży*, "Kultura – Media – Teologia" 2013, no. 12.
- Saramak B., *Wykorzystanie otwartych źródeł informacji w działalności wywiadowczej: historia, praktyka, perspektywy*, Wydział Dziennikarstwa i Nauk Politycznych UW, Warszawa 2015.
- Szyprowski B., *Postępowanie sprawdzające w procesie karnym*, "Prokuratura i Prawo" 2007, no. 7–8.
- Świerczek M., „System matryoszek”, czyli deformacja doskonała. Wstęp do zagadnienia, "Przegląd Bezpieczeństwa Wewnętrznego" 2018, no. 19.
- Teluk R., *Osobowe źródła informacji jako jedna z metod operacyjnego działania organów policyjnych*, "Zeszyty Prawnicze UMCS" 2013, no. 13(4).
- Wachowicz M., *Ujęcie teoretyczne pojęcia dezinformacji*, "Wiedza Obronna" 2019, no. 1–2.
- Wieczorek J., *Środki masowego przekazu. Rodzaje współczesnych mediów*, 2005, <http://joannawieczorek.pl/wp-content/uploads/2015/10/%C5%9ARODKIMASOWEGO-PRZEKAZU.pdf>.

## Summary

### Disinformation in legal and criminalistic reality

**Keywords:** law enforcement, information, disinformation, mass media, criminal cases, investigative journalism.

This article aims to discuss the phenomenon of disinformation, in a legal and criminalistic reality, with particular emphasis on the goals, patterns and methods of using disinformation. The aim of this research is to deepen scientific knowledge about disinformation itself and its criminalistic context. The analysis of the available literature was used as the research method. The article initially describes what disinformation is, in order to move on to the key legal issues related to it. The article in the first part is strictly theoretical, while the second part describes specific criminal cases where disinformation elements can be found. The article is intended to be a comprehensive approach to the research topic, addressing various issues regarding disinformation in relation to the legal and criminalistic reality, along with providing relevant examples. Despite the negative connotations caused by disinformation, i.e. a deliberate attempt to falsify the message, it can sometimes be considered in the context of an operational tool that is to bring a positive effect and contribute to the solution of a specific case, e.g. by breaking the stagnation in the ongoing investigation.

## Streszczenie

### Dezinformacja w rzeczywistości prawno-kryminalistycznej

**Słowa kluczowe:** prawo karne, informacja, dezinformacja, organy ścigania, mass media, sprawy karne, dziennikarstwo śledcze.

Niniejszy artykuł ma na celu omówienie zjawiska dezinformacji w rzeczywistości prawno-kryminalistycznej, ze szczególnym zwróceniem uwagi na cele, wzorce i metody stosowania dezinformacji. Celem niniejszych badań jest pogłębienie wiedzy naukowej dotyczącej samej dezinformacji oraz jej kontekstu kryminalistycznego. Jako metodę badawczą wykorzystano analizę dostępnego piśmiennictwa. We wstępie artykułu scharakteryzowano czym jest dezinformacja, aby w meritum przejść do kluczowych, związanych z nią zagadnień prawnych. Artykuł w pierwszej części ma charakter stricte teoretyczny, podczas gdy w drugiej części opisane są konkretne sprawy karne, gdzie odnaleźć można elementy dezinformacyjne. Artykuł w zamierzeniu stanowi kompleksowe podejście do tematu badawczego, poruszając różne kwestie dotyczące dezinformacji.

macji w odniesieniu do rzeczywistości prawnokryminalistycznej, wraz z przytoczeniem stosownych przykładów. Mimo negatywnych konotacji, jakie wywołuje dezinformacja (czyli świadoma próba zafałszowania przekazu informacyjnego), niekiedy można ją rozważać w kontekście narzędzia operacyjnego, które ma przynieść pozytywny efekt i przyczynić się do rozwiązania konkretnej sprawy, np. umożliwiając przełamanie stagnacji w prowadzonym dochodzeniu.

