

## CIVIL LAW PROTECTION OF THE SECRECY OF CORRESPONDENCE

DOI: 10.26399/iusnovum.v12.1.2018.03/t.mroz

TERESA MRÓZ\*

### 1. SECRECY OF CORRESPONDENCE AS A PERSONALITY RIGHT

It is estimated that there are about 239 legal acts in force in Poland the provisions of which refer to various types of secrecy (e.g. professional privilege, corporate confidentiality).<sup>1</sup> It must be pointed out that to a great extent these are regulations in the sphere of public law. Undoubtedly, a big social and legal rank is given to official secrets, especially in connection with the state security, defence and diplomacy. However, the secrecy of correspondence has always been of great value. Over the recent years, the legal issue of secrecy has become the subject of great interest of jurisprudence. In scientific considerations concerning human rights, the secrecy of correspondence has been called a human right of the first generation, a “classical” right<sup>2</sup>. It should be added that corporate secrets having economic value constitute a separate issue.

The content of Article 23 of the Polish Civil Code unambiguously suggests that the secrecy of correspondence belongs to the category of personality rights, i.e. the most important values for a human being, which are protected by civil law. Although, in accordance with Article 43 Civil Code, the provisions on the protection of personality rights of natural persons are applied to legal persons respectively, an individual is without doubt ontologically the constructive basis of personality

---

\* Prof., PhD hab., Head of the Department of Commercial Law, Faculty of Law of the University of Białystok; e-mail: teresamroz.uwb@gmail.com

<sup>1</sup> See e.g., G. Szpor (ed.), *Jawność i jej ograniczenia*, [in:] A. Gryszczyńska (ed.), *Struktura tajemnic*, Vol. IV, C.H. Beck, Warsaw 2014, p. 23 and the legal regulations referred to therein. For physician-patient privilege, see e.g. M. Safjan, *Prawne problemy tajemnicy lekarskiej*, *Kwartalnik Prawa Prywatnego* issue 1, 1995, p. 5 ff; J. Sobczak, *Godność pacjenta*, *Medyczna Wokanda* No. 1, 2009, p. 34.

<sup>2</sup> L. Bosek, *Gwarancje godności ludzkiej i ich wpływ na polskie prawo cywilne*, Wydawnictwo Sejmowe, Warsaw 2012, p. 335 and the literature referred to therein.

rights, which was expressed in Article 23 Civil Code (“Personality rights of a human being...”).<sup>3</sup>

In the conditions of common and dynamic development of correspondence means and methods, the problem of the secrecy of correspondence has a global dimension. Today, correspondence can reach an addressee immediately and still not so long ago the word “correspondence” was associated with a handwritten paper letter or an official letter delivered by a postman. The violation of the secrecy of correspondence was easily detectable in case of the opening of a letter. At present, the art of epistolography is disappearing and new ways of passing information and thoughts are developing. Paper correspondence is evidently pushed away by electronic correspondence.

The secrecy of correspondence is compared with other legally protected rights and interests in different ways. In the literature, one can find a statement that the secrecy of correspondence is a single right that exists on its own.<sup>4</sup> There is also an opinion that the secrecy of correspondence is a personality right within the sphere of privacy.<sup>5</sup> As M. Pazdan rightly notices, the attempts to precisely separate personality rights and adequate subjective rights (the secrecy of correspondence and the sphere of privacy) are useless.<sup>6</sup> Inter alia because of that the protection of privacy is becoming another contemporary problem. The development of modern technologies is a benefit but also a threat to health, privacy and many other areas of people’s lives. Information, often also this concerning privacy and obtained with the violation of the secrecy of correspondence, is a “marketable product”.

The secrecy of correspondence referred to in Article 23 Civil Code cannot be looked at from the perspective of the limitation of the principle of openness to the public because the principle of freedom of information and its limitation belong to the sphere of public law. In public law, openness to the public is a principle, and from the point of view of the study of administration, “it is an element of the functions of necessary administrative systems (...)”,<sup>7</sup> thus, in this field, various types of secrets are exceptions to the rule. Private law protects private interests, including the secrecy of correspondence. Therefore, every type of correspondence is confidential unless the author’s will, statute or a custom decides otherwise.

According to the dominating opinion in the study of private law, the protection of personality rights of an individual is implemented within the construction of personal rights.<sup>8</sup> Ignoring the scientific discussions on the issue whether, based

---

<sup>3</sup> By the way, it can be mentioned that the provisions of Articles 23 and 43 Civil Code use different terms, namely the former refers to personality rights of a human being and the latter to the personality rights of a natural person.

<sup>4</sup> I. Dobosz, *Tajemnica korespondencji jako dobro osobiste oraz jej ochrona w prawie cywilnym*, Jagiellonian University, Kraków 1989, p. 61 and the literature referred to therein.

<sup>5</sup> A. Kopff, *Koncepcja praw do intymności i prywatności życia osobistego. Zagadnienia konstrukcyjne*, Studia Cywilistyczne, Vol. XX, Warsaw–Kraków 1972, pp. 30, 40.

<sup>6</sup> M. Pazdan, [in:] M. Safjan (ed.), *System prawa prywatnego*, Vol. 1, 2<sup>nd</sup> ed., C.H. Beck, Warsaw 2012, p. 1269 ff.

<sup>7</sup> Z. Cieślak, *Aksjologiczne podstawy jawności. Perspektywa nauki o administracji*, [in:] Z. Cieślak (ed.), *Jawność i jej ograniczenia*, Vol. II: *Podstawy aksjologiczne*, C.H. Beck, Warsaw 2013, p. 9.

<sup>8</sup> L. Bosek, *Gwarancje godności ludzkiej...*, p. 335 and the literature referred to therein.

in the Civil Code, we deal with a construction of a general right of personality or with many personal rights connected with personality rights, e.g. referred to in Article 23 Civil Code, it can be assumed that the secrecy of correspondence is a component of a superior, original personality right such as human dignity, especially in a personalistic approach.<sup>9</sup> This statement is fully justified if, approving of the opinions of the legal doctrine representatives,<sup>10</sup> we assume that personality rights should be derived from human dignity, which was also emphasised in non-legal professional circles.<sup>11</sup>

The exceptionality of human dignity is a basis for inviolability of personal rights of a human being.<sup>12</sup> It is emphasised in the doctrine that if we want to point out the types of ethical values that are really represented by personality rights, it is necessary to mention two of them, namely dignity and freedom.<sup>13</sup>

Analysing basic regulations concerning the discussed issues, it is necessary to point out that in the content of the Charter of Fundamental Rights, the second title: "Freedoms", Article 7 entitled "Respect for private and family life", there is a statement that everyone has the right to respect for his or her private and family life, home and communications.<sup>14</sup> As it is seen, the right to communication has not been included in the sphere of human dignity,<sup>15</sup> but in the sphere of freedoms. In the Constitution of the Republic of Poland, which guarantees the freedom and protection of privacy of communication in Article 49, it is included in the part dealing with personal freedoms and rights, i.e. in the same section as in the Charter of Fundamental Rights.

---

<sup>9</sup> For more on the concepts of human dignity, see *ibid.*, p. 43 ff, and the literature referred to therein.

<sup>10</sup> A. Maczyński, *Konstytucyjne prawa do godności i prawa do prywatności*, [http://26konferencja.giodo.gov.pl/data/resources/MaczynskiA\\_paper.pdf](http://26konferencja.giodo.gov.pl/data/resources/MaczynskiA_paper.pdf) [accessed on 2/05/2018]; J. Sobczak, *Godność człowieka i prawo do prywatności w orzecznictwie Trybunału Konstytucyjnego*, [in:] A.J. Madera, T. Ślęzak (ed.), *Nowa Konstytucja czy nowe państwo? Państwo. Bezpieczeństwo. Gospodarka*, Kraków 2005, p. 45 ff.

<sup>11</sup> Pope John Paul II drew attention to dignity of a human being as the highest value. His first encyclical *Redemptor hominis* of 1979 discussed this issue. Moreover, on many occasions, the Pope emphasised that dignity is the source and the foundation of human rights, the basic element of humanity and, at the same time, an indicator of the moral value of human activities. See, K. Wojtyła, Address to the General Assembly of the United Nations of 2 October 1979, [in:] John Paul II, *Dzieła zebrane*, Vol. 12, Kraków 2009, p. 108; J. Matys, *Model zadośćuczynienia pieniężnego z tytułu szkody niemajątkowej w kodeksie cywilnym*, Oficyna Wolters Kluwer, Warsaw 2010, p. 105.

<sup>12</sup> M.A. Krapiec, *Człowiek jako osoba*, Polskie Towarzystwo Tomasza z Akwinu, Lublin 2005, p. 262.

<sup>13</sup> M. Wilejczyk, *Zagadnienia etyczne części ogólnej prawa cywilnego*, C.H. Beck, Warsaw 2014, p. 163.

<sup>14</sup> Karta Praw Podstawowych Unii Europejskiej [Charter of Fundamental Rights of the European Union], OJ C 326 of 26 October 2012, pp. 391–407.

<sup>15</sup> For more on the right to privacy, see: J. Sobczak, [https://www.kul.pl/files/983/mgr\\_fabian\\_wider/Recenzja\\_prof.\\_Jacka\\_Sobczaka.pdf](https://www.kul.pl/files/983/mgr_fabian_wider/Recenzja_prof._Jacka_Sobczaka.pdf) and the literature referred to therein [accessed on 2/05/2018].

## 2. VIOLATION OF THE SECRECY OF CORRESPONDENCE VS PRIVACY OF COMMUNICATION

The legal protection of the secrecy of correspondence is provided to a sender and an addressee. Other persons that may be harmed as a result of the infringement of the secrecy of correspondence may seek protection claiming the violation of or a threat to the rights other than the secrecy of correspondence. In general, not only natural persons are protected but also legal persons under private law and organisational units referred to in Article 33<sup>1</sup> Civil Code. The principle does not apply to legal persons under public law because their activities, including communication, should be open to the public as a rule.

It is especially well seen in the court practice that in the era of fast development of modern technologies, legal protection of the secrecy of correspondence requires up-to-date or even current establishment of the content of the term “secrecy of correspondence” and its confrontation with “privacy of communication”, i.e. the term used in the Constitution of the Republic of Poland. To tell the truth, the concept of secrecy (in a general way), as well as the concept of correspondence, has not been defined in the Polish legal system. It seems that the judicature and jurisprudence “fill in” this “gap” and manage to meet contemporary challenges concerning the protection of the secrecy of correspondence. In the course of time, the problems that theoreticians and practitioners face in connection with the secrecy of correspondence are changing. In the past, legal literature focused on the concepts of “correspondence” and “letter” and the relationship between the two.<sup>16</sup> At present, from the point of view of the method of legal protection, the issue of the relationship between the concepts of “correspondence” and “information” is up-to-date. It is pointed out in the literature that the secrecy of correspondence does not refer to obtaining any information but only such that is in the form of correspondence. The infringement of privacy of information that is not correspondence (e.g. computer hacking) may be the violation of the right to privacy.<sup>17</sup> As a rule, a hacker breaks into the computer systems for different reasons and for different purposes than the person obtaining information addressed to a particular addressee via e-mail. Drawing a clear borderline between the secrecy of information and the secrecy of correspondence may sometimes be difficult because the concepts may overlap.

Selected types of secrecy are regulated in different – broad or narrow – ways by determining information concerned (or circumstances of such information), entities obliged to keep a secret and indicating special duties.<sup>18</sup> The issue of secrets and the

---

<sup>16</sup> I. Dobosz, *Tajemnica korespondencji...*, p. 27.

<sup>17</sup> P. Księżak, [in:] M. Pyziak-Szafnicka (ed.), *Kodeks cywilny. Część ogólna*, Wolters Kluwer, Warsaw 2009, p. 265.

<sup>18</sup> In the judicature’s opinion, the concept of legally protected secrecy should be based on the co-existence of two conditions: financial and formal ones. Financial conditions concern the subjective scope, including indication of entities obliged and beneficiaries of secrecy, the objective scope and the period of secrecy. Formal conditions include the will to keep information secret demonstrated in the form of secrecy (*ex officio*, information sensitivity clause, agreement) or declassification of information (consent of the beneficiary of secrecy, court ruling). G. Szpor (ed.), *Jawność i jej ograniczenia...*, p. 5.

secrecy of correspondence give the judicature and jurisprudence a basis to legal inquiries into modern methods of communication, which are necessary in order to adjudicate in particular cases.<sup>19</sup>

In case law, the term “secrecy of correspondence” is interpreted in different ways. Both the judicature and jurisprudence assume that the term covers all types of communication (a letter, an e-mail, radio messages, light signals, etc.). Information included in correspondence does not have to be protected in a special method (e.g. a postcard).<sup>20</sup> It does not matter to whom it has been addressed (a natural person, an office, etc.). The infringement of the secrecy of correspondence means any unauthorised interference in it by a third party, especially getting to know or changing its content, as well as creating a situation in which such interference may take place, opening a letter that has not been addressed to a perpetrator of the infringement, hiding or damaging a letter before an addressee got to know its content and overhearing a telephone conversation and not only a telephone one. The infringement of the secrecy of correspondence also takes place when, as a result of loss of someone’s correspondence, real conditions (threats) are created for third parties who most probably will be able to get to know its content.

In another judgement, a court assumed that the secrecy of correspondence is included in the broadly understood right to communicate. However, it is a separate personality right of much narrower range protecting the right to keep the content of communication secret from third parties.<sup>21</sup>

The above-presented theses of the judicature indicate different stands on the relationship between the secrecy of correspondence and privacy of communication. In accordance with the former,<sup>22</sup> the term “correspondence” should be interpreted broadly and it should cover all types of communication. However, according to the latter, secrecy of communication is a separate personality right that has not been *expressis verbis* referred to in Article 23 Civil Code.<sup>23</sup> One may wonder whether privacy of communication is a separate personality right or it is only included in the sphere of privacy. It seems that the right to communication may be protected within the right to privacy. The protection is sufficient and the distinction of the right to communication as a separate personality right is not going to result in changes in its protection.

Communication covers not only the secrecy of correspondence but also all types of interpersonal contacts. M. Wild<sup>24</sup> believes that it is improper to think

---

<sup>19</sup> M. Jaśkowska, *Materialne i formalne przesłanki tajemnic publicznoprawnych*, [in:] M. Jaśkowska (ed.), *Jawność i jej ograniczenia*, Vol. IV: *Znaczenie orzecznictwa*, C.H. Beck, Warsaw 2014, pp. 3–12.

<sup>20</sup> Judgement of the Appellate Court in Wrocław – Civil Chamber of 26 June 2012, I ACa 521/12, Legalis No. 738967; P. Księżak, [in:] M. Pyziak-Szafnicka (ed.), *Kodeks cywilny...*, p. 265.

<sup>21</sup> Judgement of the District Court in Gdańsk of 31 January 2014, I C 1551/11, Legalis No. 1556485.

<sup>22</sup> Judgement of the Appellate Court in Warsaw of 6 July 1999, I ACa 380/99, Legalis No. 48547.

<sup>23</sup> Judgement of the District Court in Gdańsk of 31 January 2014, I C 1551/11, Legalis No. 1556485.

<sup>24</sup> M. Wild, [in:] M. Safjan, L. Bosek (ed.), *Konstytucja RP*, Vol. I: *Komentarz do art. 1–86*, C.H. Beck, Warsaw 2016, p. 1214.

that the necessary condition for privacy of communication under Article 49 of the Constitution is the use of a particular means of transmission. According to this author, constitutional protection applies to all methods of communication, regardless of the way and circumstances of communication. Correspondence is in general bilateral in nature and a type of interpersonal communication similar to a conversation. Communication takes place both in the presence of parties as well as at a distance, while correspondence covers different forms of communication at a distance. Therefore, communication is a concept broader than correspondence.

Still, in accordance with the Civil Code, one can assume that the secrecy of correspondence and privacy of communication are not the same concepts. The protection of privacy of communication applies to just the fact of communicating of a message with an addressee individually selected by an author and may concern interference into the sphere of privacy as a personality right. The secrecy of correspondence covers the content dedicated to an addressee, including the protection against any interference into the content of a message. It may concern getting to know the content of correspondence by an unauthorised person in order to use the information or altering its content, and a possibility of getting to know the content of correspondence by an unauthorised person.

Opening a letter addressed to an indicated individual by another person should be classified as the infringement of the secrecy of correspondence. It does not matter that the person is e.g. a superior of an addressee. Only a person to whom a letter is addressed can open it. However, in general, the person does not have the right to reveal correspondence. An addressee is not a person entitled to reveal correspondence if the circumstances or an author's clear reservations indicate that it is intended exclusively for that addressee.<sup>25</sup> The provisions of copyright give the right to give consent to disseminate it only to an addressee of correspondence, and in the period of 20 years after his/her death also to his/her spouse, and in case there is no spouse, to other heirs, parents or siblings, unless the addressee's will is different. In accordance with Article 82 of the Act on copyright, if a person to whom correspondence was addressed does not express a different will, in the period of 20 years after his/her death, dissemination of correspondence requires consent of his/her spouse, and in case there is no spouse, of successive heirs, parents or siblings.<sup>26</sup> It should be emphasised that it applies to a person to whom correspondence is addressed, i.e. an addressee and not a sender of correspondence.

As a result of publicising, the content of correspondence changes its essence and nature, it loses the feature of individuality. The legal classification of information and its aim change and it can be subject to protection under Article 54 of the Constitution of the Republic of Poland, in accordance with which the freedom to acquire and to disseminate information is guaranteed to everyone. However, when the disseminated information concerns private and family life, dignity and reputation, to protect it one can apply the provisions of the Civil Code that provide

---

<sup>25</sup> P. Książak, [in:] M. Pyziak-Szafnicka (ed.), *Kodeks cywilny...*, pp. 265–266.

<sup>26</sup> Act of 4 February 1994 on copyright and related rights, Journal of Laws [Dz.U.] No. 24, item 83.

financial and non-financial measures of protection for endangered or infringed personality rights.

The violation of the secrecy of correspondence often starts a chain of events that infringe other personality rights and values that are subject to legal protection. It seems that at present this problem is practically becoming more apparent and perceptible than the violation of the secrecy of correspondence as such.

The conduct of a sender of correspondence can lead to the infringement of an addressee's personality right other than the secrecy of correspondence. A court assumed that a personality right includes a person's right to respect his/her private life, including the right to secrecy of the content of information concerning this sphere of life, also protected by the secrecy of correspondence. A defendant (a bank) sending correspondence to an out-of-date address of a plaintiff (a customer) enabled an unauthorised person to get acquainted with its content. At the same time, it does not matter for the issue of the sued bank's liability whether a third person infringed the secrecy of correspondence. What matters is whether the defendant's activity may also be recognised as the infringement of the secrecy of correspondence.<sup>27</sup>

The secrecy of correspondence is not absolute in nature. Public authorities' interference into the secrecy of correspondence is admissible. The conditions of this interference are strictly regulated, especially in Article 8(2) of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950,<sup>28</sup> which stipulates that it may take place in accordance with the law and if necessary in a democratic society in the interest of the specified socially desired objectives.<sup>29</sup>

### 3. MEASURES OF PROTECTION FOR THE SECRECY OF CORRESPONDENCE UNDER THE CIVIL CODE

Traditionally, measures of protection of personality rights are classified as non-financial and financial ones. The protection of personality rights with the use of non-financial measures is laid down in Article 24 Civil Code. A person whose personality right is endangered by another person's activity may demand that the activity be stopped, unless it is legal. In case of violation, he/she can also demand that the perpetrator undertake steps necessary to eliminate the consequences, especially that the perpetrator makes an appropriate declaration and in an appropriate form. Thus, non-financial protection of the secrecy of correspondence depends on the fulfilment of the following conditions: endangerment or infringement of the secrecy of correspondence and unlawful nature of an activity. In order to make it easier to enforce non-financial protection of personality rights, the legislator made use of the assumption of unlawfulness of endangerment or infringement of personality

---

<sup>27</sup> Judgement of the Appellate Court in Warsaw – VI Civil Chamber of 18 November 2013, VI ACa 674/13, [www.orzeczenia.ms.gov.pl](http://www.orzeczenia.ms.gov.pl), Legalis No. 831513.

<sup>28</sup> Journal of Laws [Dz.U.] of 1993, No. 61, item 284.

<sup>29</sup> Judgement of the Appellate Court in Katowice – I Civil Chamber of 3 December 2014, I ACa 696/14, [http://orzeczenia.katowice.sa.gov.pl/content/\\$N/15150000000503\\_I\\_ACa\\_000696\\_2014\\_Uz\\_2014-12-03\\_002](http://orzeczenia.katowice.sa.gov.pl/content/$N/15150000000503_I_ACa_000696_2014_Uz_2014-12-03_002) [accessed on 19/07/2017].

rights. Pursuant to Article 24 Civil Code, an aggrieved person may demand that specific conduct be stopped, and may demand that action necessary to eliminate consequences of the infringement of a personality right be performed. The above-mentioned activities are just examples.

The non-exhaustive catalogue of measures referred to in Article 24 Civil Code results from the fact that they must be adequate to the type of personality right infringed, the type and extent of the infringement.<sup>30</sup> It is rightly emphasised in the judicature that a declaration eliminating the consequences of the infringement of a personality right in the form of the secrecy of correspondence, in order to be effective, must reach other people who dealt with that unlawful infringement. On the other hand, the measure used to eliminate the consequences of the violation should be adequate to the extent of the infringement.<sup>31</sup> This stand expresses the need for unconventional approach to the measures of protection for personality rights, both non-financial and financial ones.

It is not necessary to conduct detailed inquiries to claim that in case of the infringement of personality rights the reparation for non-financial damage and restitution of the former state is very difficult or, in fact, impossible. Appropriate apologies and declarations do not usually eliminate all the negative consequences of the violation of personality rights. It was assumed that an action to declare rights or a legal relationship may constitute a measure of protection for personality rights if a plaintiff has a legal interest in it (e.g. the recognition that the infringement of personality rights resulted in the creation of a legal relationship between the plaintiff and the defendant). A declaratory action is exceptional in nature because it cannot be assumed that this lawsuit ensures the protection of rights to a greater extent than a lawsuit to protect personality rights. And only in such a case, does the doctrine exceptionally admit a possibility of a declaratory action when there are other measures of legal protection.<sup>32</sup> The Supreme Court in its judgement of 8 May 2008 ruled that there are no grounds for demanding that just the fact of violation of a personality right be established without the indication of legal measures of protection (adequate claims) referred to in Article 24 Civil Code.<sup>33</sup>

Financial measures in the form of compensation are becoming more and more important because they are treated as a modern way of moderating the consequences of the violation of personality rights. The adoption and approval of consumerist lifestyle and universality of money use in the contemporary world cause that compensation as a financial measure of protection of personality rights is becoming the most effective instrument of protection of non-financial values.<sup>34</sup> An adequate sum of compensation is not the only financial measure of protection

---

<sup>30</sup> P. Machnikowski, [in:] E. Gniewek, P. Machnikowski (ed.), *Kodeks cywilny. Komentarz*, 7<sup>th</sup> ed., C.H. Beck, Warsaw 2016, pp. 61–64.

<sup>31</sup> Judgement of the Appellate Court in Warsaw – VI Civil Chamber of 8 September 2011, VI ACa 297/11, [www.orzeczenia.ms.gov.pl](http://www.orzeczenia.ms.gov.pl), Legalis, No. 740943.

<sup>32</sup> Judgement of the Appellate Court in Gdańsk – I Civil Chamber of 27 February 2015, I ACa 842/14, [http://orzeczenia.gdansk.sa.gov.pl/content/\\$N/15100000000503\\_I\\_ACa\\_000842\\_2014\\_Uz\\_2015-02-27\\_001](http://orzeczenia.gdansk.sa.gov.pl/content/$N/15100000000503_I_ACa_000842_2014_Uz_2015-02-27_001) [accessed on 24/06/2017].

<sup>33</sup> V CSK 568/07, Lex No. 496388.

<sup>34</sup> J. Matys, *Model zadośćuczynienia pieniężnego...*, p. 14.



of personality rights. In accordance with Article 448 Civil Code, the aggrieved may claim alternatively (exclusive disjunction)<sup>35</sup> pecuniary compensation for harm or an adequate money contribution towards an indicated social aim. Therefore, as in case of violation of the secrecy of correspondence the provision of Article 448 Civil Code is applied, the choice of a claim to make an adequate money contribution towards an indicated social aim may mean that a repressive function may become most important: to oppress a perpetrator. Maybe, in some cases, the observations made by Cicero and Publilius Syrus that “the pain is mitigated by the punishment of an adversary” and “the pain of an enemy is a hearing remedy to a wounded spirit” will come true.<sup>36</sup>

If, as a result of the infringement of a personality right, there is a financial loss, the aggrieved may claim damages in accordance with general rules (Article 24 §2 Civil Code). As it is pointed out in the literature, the scope of actual damages may create a problem because, due to the non-financial nature of personality rights (including the secrecy of correspondence), only in a few cases the aggrieved can prove that the violation of their rights resulted in failure to conclude a particular contract and consequently to obtain a particular profit from it (*lucrum cessans*).<sup>37</sup>

Taking into account the issue of compensation for the harm caused by the violation of the secrecy of correspondence, it is worth considering whether, in connection with the need for unconventional treatment of the measures of personality rights protection signalled above, there should also be a certain gradation of personality rights and their protection in practice, and if so, what position in that gradation should be given to the protection of the secrecy of correspondence.

The provision of Article 23 Civil Code compiles a list of personality rights with health topping it and the secrecy of correspondence ranked eighth. Does it automatically mean weaker protection of this personality right? Can it constitute grounds for establishing the legislator’s stand on the issue of which personality rights are valued more and are prioritised? Theoretically, it is the legislator’s suggestion, and thus the sequence of the listed rights does not constitute an unchangeable evaluation or hierarchical order of the rights. In practice, in case of violation of the right to health or freedom, the rights are sure to get stronger protection than the secrecy of correspondence. It seems that in particular circumstances the gradation of compensation depending on which right was infringed is justified. For most people, it is unquestionable that life and health are most important. It is confirmed in the doctrine and judicature, which assume that when assessing what sum is appropriate as compensation for harm caused by the infringement of personality rights, it is necessary to take into consideration which right was infringed and its nature, degree and time when the aggrieved was exposed to it, and the negative psychological

---

<sup>35</sup> M. Pazdan, [in:] K. Pietrzykowski (ed.), *Kodeks cywilny*, Vol. I: *Komentarz do art. 1–449*<sup>10</sup>, C.H. Beck, Warsaw 2015, p. 148 and the literature referred to therein; K. Mularski, [in:] M. Gutowski (ed.), *Kodeks cywilny*, Vol. I: *Komentarz do art. 1–449*<sup>11</sup>, C.H. Beck, Warsaw 2016, p. 1849.

<sup>36</sup> Citation after H. Grotius, *O prawie wojny i pokoju*, Vol. II, PWN, Warsaw 1957, p. 53.

<sup>37</sup> M. Wilejczyk, *Zagadnienia etyczne...*, p. 204.

experiences resulting from the infringement.<sup>38</sup> Courts rule higher and higher amounts of damages. It takes place in particular in lawsuits against physicians, which confirm the common opinion that life and health are especially valuable interests; low amounts of compensation in case of serious damage to health leads to undesired depreciation of that interest. Interpreting regulations literally, such a conclusion can be drawn from Article 445 in conjunction with Article 444 Civil Code and the regulation laid down in Article 448 Civil Code. The provision of Article 444 Civil Code only lists body damage and a health disorder, and Article 445 Civil Code gives grounds for ruling compensation in case those interests are violated. At present, claiming a payment of a certain sum of money for an indicated social aim is not envisaged on this basis. Article 448 Civil Code does not list protected rights but states: "in case of violation of a personality right (...)". Claiming compensation for harm inflicted as a result of the infringement of the secrecy of correspondence, it is necessary to refer to Article 448 Civil Code. Moreover, in case of this provision, there is a possibility of formulating claims for a certain amount of money towards an indicated social aim. The provision of Article 448 Civil Code *in fine* lays down admissibility of a redress or claims for a specified amount of money towards an indicated social aim together with non-financial measures of protection referred to in Article 24 Civil Code.<sup>39</sup> The relationship between Article 445 and Article 448 Civil Code and legal protection measures laid down in those provisions has raised many doubts. In general, it is analysed in detail in every commentary on the Civil Code and many other scientific publications.<sup>40</sup> Therefore, there is no need to report already identified problems and interpretational dilemmas here. It seems that A. Śmieja puts all basic issues in order emphasising that Article 448 Civil Code is not a provision independent in nature but refers to the provisions preceding it and concerning liability for financial loss resulting from prohibited acts.<sup>41</sup> Thus, it may concern not only liability based on guilt but also based on risk. The same rules should constitute grounds for liability for inflicted non-financial harm. It should be added that there has been a discussion for some time on the issue of admissibility of a redress for non-financial loss in contractual obligations.<sup>42</sup> The problem also appeared in the

---

<sup>38</sup> Judgement of the Appellate Court in Łódź of 26 April 2013, I ACa 1467/12, Lex No. 1321976.

<sup>39</sup> M. Pazdan, [in:] K. Pietrzykowski (ed.), *Kodeks cywilny...*, p. 148 and the literature referred to therein.

<sup>40</sup> K. Pietrzykowski, *Nowelizacja kodeksu cywilnego z 23 sierpnia 1996 r.*, PS No. 3, 1997, p. 5; J. Matys, *Model zadośćuczynienia pieniężnego...*, p. 150 ff and the literature referred to therein; A. Cisek, W. Dubis, [in:] E. Gniewek, P. Machnikowski (ed.), *Kodeks cywilny...*, commentary on Art. 448.

<sup>41</sup> A. Śmieja, *Z problematyki odpowiedzialności uregulowanej w art. 448 k.c.*, [in:] M. Pyziak-Szafnicka (ed.), *Odpowiedzialność cywilna. Księga pamiątkowa ku czci Profesora Adama Szpunara, Wolters Kluwer, Kraków 2004*, p. 298; A. Mączyński, *Zadośćuczynienie pieniężne za krzywdę spowodowaną naruszeniem dobra osobistego. Geneza, charakterystyka i ocena obowiązujących regulacji*, [in:] M. Pyziak-Szafnicka (ed.), *Odpowiedzialność cywilna. Księga pamiątkowa...*, pp. 242–243.

<sup>42</sup> P. Księżak unambiguously stated that the possibility of awarding financial compensation in contractual obligations is *de lege lata* excluded. P. Księżak, [in:] M. Pyziak-Szafnicka (ed.), *Kodeks cywilny...*, p. 308.

judicature.<sup>43</sup> In case of the infringement of the secrecy of correspondence, one cannot ignore a situation in which providers of correspondence delivery services, based on contracts concluded with senders or addressees, may be potential violators of the secrecy of correspondence. A possibility of claiming compensation for inappropriate fulfilment of an obligation is not unimportant for the financial protection of the secrecy of correspondence. A few years ago, a court examined a case of lost correspondence sent to an imprisoned person. The plaintiff's suffering resulted from the fact that his correspondence remained unanswered, while he was convinced his letters had been delivered and waited for replies. The addressee was a woman who was in close relation with the sender. Failure to deliver letters resulted in the breakdown of the relationship and the plaintiff's attempted suicide.<sup>44</sup> The court considered the issue of claims concurrence (Article 443 Civil Code) and a possibility of ruling compensation. M. Nesterowicz's opinion that the principle of awarding damages only in tort starts fading proves to be right.<sup>45</sup>

The awarded sum of compensation is to constitute an equivalent of the non-financial harm that the aggrieved suffered. The basis for establishing the sum of compensation is the amount of suffering; and thus in particular cases of violation of the secrecy of correspondence, a big sum may be awarded because there are no separate criteria for establishing the sum of compensation for individual personality rights.

The sum of financial compensation should be adequate, established in such an amount that its use could remove the negative feelings resulting from the violation of personality rights.<sup>46</sup> Ideally, compensation is to restore the state that was before the event inflicting harm. It is often impossible. A compensatory function of damages for harm differs from compensation for financial loss. It can be assumed that the role of redress is to mitigate the immeasurable non-financial harm.<sup>47</sup> Claims for an adequate sum of money to be paid for an indicated social aim in case of violation of the secrecy of correspondence play a repressive, pedagogical and preventive role.

---

<sup>43</sup> Supreme Court Judgement of 14 December 2010, I PK 95/10, Lex No. 785643; also the judgement of the Appellate Court in Szczecin, I ACa 235/14, [http://orzeczenia.szczecin.sa.gov.pl/content/\\$N/155500000000503\\_I\\_ACa\\_000235\\_2014\\_Uz\\_2014-06-17\\_001](http://orzeczenia.szczecin.sa.gov.pl/content/$N/155500000000503_I_ACa_000235_2014_Uz_2014-06-17_001) [accessed on 24/06/2017].

<sup>44</sup> Justification of the judgement of the Appellate Court in Szczecin of 17 June 2014, I ACa 235/14, [http://orzeczenia.szczecin.sa.gov.pl/content/\\$N/155500000000503\\_I\\_ACa\\_000235\\_2014\\_Uz\\_2014-06-17\\_001](http://orzeczenia.szczecin.sa.gov.pl/content/$N/155500000000503_I_ACa_000235_2014_Uz_2014-06-17_001) [accessed on 24/06/2017].

<sup>45</sup> See e.g., M. Nesterowicz, *Zadośćuczynienie pieniężne ex contractu i przy zbiegu z odpowiedzialnością ex delicto*, PiP No. 1, 2007, p. 23; M. Serwach, *Przestanki odpowiedzialności cywilnej lekarza za szkodę wyrządzoną pacjentowi w orzecznictwie sądów polskich*, PiM No. 4, 2006, p. 10; also compare, K. Warzecha, *Glosa do wyroku SN z dnia 17 grudnia 2004 r.*, II CK 300/04, Palestra No. 1-2, 2007, p. 324; K. Zacharzewski, *Glosa do wyroku SN z dnia 15 lutego 2008 r.*, I CSK 358/07, *Glosa* No. 2, 2009, p. 66.

<sup>46</sup> J. Matys, *Model zadośćuczynienia pieniężnego...*, p. 328.

<sup>47</sup> Supreme Court judgement of 12 October 1999, II UKN 141/99, Lex No. 151535.

#### 4. CONCLUSIONS

“The idea of communicating thoughts from a distance is as old as the human mind”.<sup>48</sup> Only methods of sending information have changed and improved over the successive historic epochs. Letters have been a basic traditional element of correspondence for years. The oldest letters date back to 2200-2000 BC but they supposedly occurred earlier.<sup>49</sup> Nowadays nobody questions the fact that the secrecy of correspondence is broad in nature, encompassing messages and information obtained in various ways. Legal and non-legal factors influence the scope and methods of protection of the secrecy of correspondence. The Civil Code classifies the secrecy of correspondence within personality rights that are subject to financial and non-financial protection. The Constitution of the Republic of Poland includes the secrecy of correspondence in the sphere of personal freedoms and rights. In the time of modern technologies, there may be many real situations endangering or infringing this personality right. In practice, there is a need to establish a relationship between the concept of “the secrecy of correspondence” referred to in Article 23 Civil Code and the concept of “privacy of communication” used in Article 49 of the Constitution of the Republic of Poland. The problem requires that terminology be normatively unified. There is no general normative concept of “secrecy” in law. It can be assumed that “secrecy” is an elementary concept and the legislator in general does not define such. As it is rightly noticed in the legal literature, constitutions and civil codifications are based on such concepts. In the continental culture, mainly the doctrine and to some extent also case law define them.<sup>50</sup>

At present, in the light of Article 23 Civil Code, it should be assumed that the secrecy of correspondence covers information (regardless of what it refers to) saved in different forms (letters, audio recordings, e-mails, other electronic formats, etc.) that a sender passes to an addressee. For the protection of the secrecy of correspondence, the form of correspondence and the method of sending it (by post, courier, fax) are unimportant. Only information that is memorised or in the form of an open letter is not subject to protection of the secrecy of correspondence. A sender may exclude the secrecy of correspondence granting it the status of an open letter addressed to a wider number of addressees. Although there is no clear statutory requirement, senders and addressees should treat individual information enclosed in correspondence as confidential. However, the secrecy of correspondence is not conditioned by any other additional statutory requirements typical of other secrets, e.g. corporate secrets.<sup>51</sup>

---

<sup>48</sup> L. Jardel, *La lettre missive (Essai d'une théorie juridique nouvelle de la correspondance épistolaire)*, Paris 1911, p. 5, citation after: I. Dobosz *Tajemnica korespondencji...*, p. 7.

<sup>49</sup> I. Dobosz, *Tajemnica korespondencji...*, p. 7.

<sup>50</sup> S. Sołtysiński, *Czynności rozporządzające. Przyczynek do analizy podstawowych pojęć cywilistycznych*, [in:] *Rozprawy z prawa cywilnego. Księga pamiątkowa ku czci Witolda Czachórskiego*, PWN, Warsaw 1985, pp. 301–302.

<sup>51</sup> Attention should be drawn to the fact that Article 11(4) of the Act of 16 April 1993 on the fight against unfair competition (uniform text Journal of Laws [Dz.U.] of 2003, No. 153, item 1503) lays down that corporate information is secret only if it jointly meets three criteria:

1. it has not been revealed to the public;
2. it has economic value (e.g. corporate technical, technological and organisational data);
3. an entrepreneur has undertaken necessary steps to keep it secret.

The provision of Article 24 Civil Code contains the assumption of unlawfulness of an action performed by a person infringing personality rights, including the secrecy of correspondence. The assumption of unlawfulness of someone's action laid down in Article 24 Civil Code does not exempt the protected entities from reasonable diligence in ensuring confidentiality of the passed information concerning an addressee's privacy.

Although general rules of redressing the wrong (Article 363 Civil Code) also apply to the measures of personality rights protection, e.g. indicated in Article 24 Civil Code, and compensation, it is not possible in general to restore the previous state, and the payment of an adequate sum of money in the era of consumerist lifestyle may only mitigate the consequences of unlawful infringement of personality rights. Compensation is at present the most important legal measure of protection of the secrecy of correspondence. The violation of the secrecy of correspondence often starts a sequence of other events infringing privacy, image and other personality rights, the basis of which is human dignity.

## BIBLIOGRAPHY

- Bosek L., *Gwarancje godności ludzkiej i ich wpływ na polskie prawo cywilne*, Warsaw 2012.
- Cieślak Z. (ed.), *Jawność i jej ograniczenia*, Vol. II: *Podstawy aksjologiczne*, C.H. Beck, Warsaw 2013.
- Dobosz I., *Tajemnica korespondencji jako dobro osobiste oraz jej ochrona w prawie cywilnym*, Jagiellonian University, Kraków 1989.
- Grotius H., *O prawie wojny i pokoju*, Vol. II, PWN, Warsaw 1957.
- Jaśkowska M. (ed.), *Jawność i jej ograniczenia*, Vol. IV: *Znaczenie orzecznictwa*, C.H. Beck, Warsaw 2014.
- John Paul II, *Dziela zebrane*, Vol. 12, Kraków 2009.
- Kopff, A. *Koncepcja praw do intymności i prywatności życia osobistego. Zagadnienia konstrukcyjne*, *Studia Cywilistyczne*, Vol. XX, Warsaw–Kraków 1972.
- Krapiec M.A., *Człowiek jako osoba*, Polskie Towarzystwo Tomasza z Akwinu, Lublin 2005.
- Książek P., [in:] M. Pyziak-Szafnicka (ed.), *Kodeks cywilny. Część ogólna*, Wolters Kluwer, Warsaw 2009.
- Machnikowski P., [in:] Gniewek E., Machnikowski P. (ed.), *Kodeks cywilny. Komentarz*, 7<sup>th</sup> edition, C.H. Beck, Warsaw 2016.
- Matys J., *Model zadośćuczynienia pieniężnego z tytułu szkody niemajątkowej w kodeksie cywilnym*, Oficyna Wolters Kluwer, Warsaw 2010.
- Maczyński A., *Zadośćuczynienie pieniężne za krzywdę spowodowaną naruszeniem dobra osobistego. Geneza, charakterystyka i ocena obowiązujących regulacji*, [in:] M. Pyziak-Szafnicka (ed.), *Odpowiedzialność cywilna. Księga pamiątkowa ku czci Profesora Adama Szpunara*, Wolters Kluwer, Kraków 2004.
- Maczyński A., *Konstytucyjne prawa do godności i prawa do prywatności*, [http://26konferencja.giodo.gov.pl/data/resources/MaczyńskiA\\_paper.pdf](http://26konferencja.giodo.gov.pl/data/resources/MaczyńskiA_paper.pdf) [accessed on 2/05/2018].
- Mularski K., [in:] M. Gutowski (ed.), *Kodeks cywilny*, Vol. I: *Komentarz do art. 1–449<sup>11</sup>*, C.H. Beck, Warsaw 2016.
- Nesterowicz M., *Zadośćuczynienie pieniężne ex contractu i przy zbiegu z odpowiedzialnością ex delicto*, PiP No. 1, 2007.

- Panowicz-Lipska J., *Majątkowa ochrona dóbr osobistych*, Warsaw 1975.
- Pazdan P., [in:] K. Pietrzykowski (ed.), *Kodeks cywilny*, Vol. I: *Komentarz do art. 1–449*<sup>10</sup>, C.H. Beck, Warsaw 2015.
- Pietrzykowski K., *Nowelizacja kodeksu cywilnego z 23 sierpnia 1996 r.*, PS No. 3, 1997.
- Pyziak-Szafnicka M. (ed.), *Kodeks cywilny. Część ogólna*, Wolters Kluwer, Warsaw 2009.
- Safjan M., *Prawne problemy tajemnicy lekarskiej*, *Kwartalnik Prawa Prywatnego* issue 1, 1995.
- Safjan M. (ed.), *System prawa prywatnego*, Vol. 1, Warsaw 2007; 2<sup>nd</sup> edition, C.H. Beck, Warsaw 2012.
- Safjan M., Bosek L. (ed.), *Konstytucja RP*, C.H. Beck, Warsaw 2016.
- Serwach M., *Przesłanki odpowiedzialności cywilnej lekarza za szkodę wyrządzoną pacjentowi w orzecznictwie sądów polskich*, PiM No. 4, 2006.
- Sobczak J., *Godność człowieka i prawo do prywatności w orzecznictwie Trybunału Konstytucyjnego*, [in:] A.J. Madera, T. Ślęzak (ed.), *Nowa Konstytucja czy nowe państwo? Państwo. Bezpieczeństwo. Gospodarka*, Kraków 2005.
- Sobczak J., *Godność pacjenta*, *Medyczna Wokanda* No. 1, 2009.
- Sobczak J., [https://www.kul.pl/files/983/mgr\\_fabian\\_wider/Recenzja\\_prof.\\_Jacka\\_Sobczaka.pdf](https://www.kul.pl/files/983/mgr_fabian_wider/Recenzja_prof._Jacka_Sobczaka.pdf) [accessed on 2/05/2018].
- Sołtysiński S., *Czynności rozporządzające. Przyczynek do analizy podstawowych pojęć cywilistycznych*, [in:] *Rozprawy z prawa cywilnego. Księga pamiątkowa ku czci Witolda Czachórskiego*, PWN, Warsaw 1985.
- Szpor G. (ed.), *Jawność i jej ograniczenia*, [in:] A. Gryszczyńska (ed.), *Struktura tajemnic*, Vol. IV, C.H. Beck, Warsaw 2014.
- Śmieja A., *Z problematyki odpowiedzialności uregulowanej w art. 448 k.c.*, [in:] M. Pyziak-Szafnicka (ed.), *Odpowiedzialność cywilna. Księga pamiątkowa ku czci Profesora Adama Szpunara*, Wolters Kluwer, Kraków 2004.
- Wilejczyk M., *Zagadnienia etyczne części ogólnej prawa cywilnego*, C.H. Beck, Warsaw 2014.

## Legal regulations

### International law

- Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, *Journal of Laws [Dz.U.] of 1993*, No. 61, item 284.
- Charter of Fundamental Rights of the European Union, OJ C 326 of 26 October 2012.

### Polish law

- Ustawa z dnia 23 sierpnia 1964 r. – Kodeks cywilny [Act of 23 April 1964 – Civil Code], *Journal of Laws [Dz.U.] of 1964*, No. 16, item 93, as amended.
- Ustawa z dnia 16 kwietnia 1993 r. o zwalczaniu nieuczciwej konkurencji [Act of 16 April 1993 on the fight against unfair competition], uniform text, *Journal of Laws [Dz.U.] of 2003*, No. 153, item 1503.
- Ustawa z dnia 4 lutego 1994 r. o prawie autorskim i prawach pokrewnych [Act of 4 February 1994 on copyright and related rights], *Journal of Laws [Dz.U.] No. 24*, item 83.

### Court rulings

- Judgement of the Appellate Court in Warsaw of 6 July 1999, I ACa 380/99, *Legalis* No. 48547.
- Supreme Court judgement of 12 October 1999, II UKN 141/99, *Lex* No. 151535.
- Supreme Court judgement of 8 May 2008, V CSK 568/07, *Lex* No. 496388.
- Supreme Court Judgement of 14 December 2010, I PK 95/10, *Lex* No. 785643.
- Judgement of the Appellate Court in Warsaw – VI Civil Chamber of 8 September 2011, VI ACa 297/11, *Legalis*, No. 740943.

Judgement of the Appellate Court in Wrocław – Civil Chamber of 26 June 2012, I ACa 521/12, Legalis No. 738967.

Judgement of the Appellate Court in Łódź of 26 April 2013, I ACa 1467/12, Lex No. 1321976.

Judgement of the Appellate Court in Warsaw – VI Civil Chamber of 18 November 2013, VI ACa 674/13, Legalis No. 831513.

Judgement of the District Court in Gdańsk of 31 January 2014, I C 1551/11, Legalis No. 1556485.

Justification of the judgement of the Appellate Court in Szczecin of 17 June 2014, I ACa 235/14, [http://orzeczenia.szczecin.sa.gov.pl/content/\\$N/15550000000503\\_I\\_ACa\\_000235\\_2014\\_Uz\\_2014-06-17\\_001](http://orzeczenia.szczecin.sa.gov.pl/content/$N/15550000000503_I_ACa_000235_2014_Uz_2014-06-17_001).

Judgement of the Appellate Court in Katowice – I Civil Chamber of 3 December 2014, I ACa 696/14, [http://orzeczenia.katowice.sa.gov.pl/content/\\$N/15150000000503\\_I\\_ACa\\_000696\\_2014\\_Uz\\_2014-12-03\\_002](http://orzeczenia.katowice.sa.gov.pl/content/$N/15150000000503_I_ACa_000696_2014_Uz_2014-12-03_002).

Judgement of the Appellate Court in Gdańsk – I Civil Chamber of 27 February 2015, I ACa 842/14, [http://orzeczenia.gdansk.sa.gov.pl/content/\\$N/15100000000503\\_I\\_ACa\\_000842\\_2014\\_Uz\\_2015-02-27\\_001](http://orzeczenia.gdansk.sa.gov.pl/content/$N/15100000000503_I_ACa_000842_2014_Uz_2015-02-27_001).

### Glosses

Warzecha K., Glosa do wyroku SN z dnia 17 grudnia 2004 r., II CK 300/04, Palestra No. 1–2, 2007.

Zacharzewski K., Glosa do wyroku SN z dnia 15 lutego 2008 r., I CSK 358/07, Glosa No. 2, 2009.

## CIVIL LAW PROTECTION OF THE SECRECY OF CORRESPONDENCE

### Summary

The purpose of this article is to identify and analyse the basic legal issues related to the protection of the secrecy of correspondence as a personality right in the era of modern technologies. Presently, the protection of the secrecy of correspondence by civil law is viewed in relation to privacy of communication. The judicature and jurisprudence identify a number of new legal issues that, in the absence of elementary normative concepts, play an important role in the protection of the secrecy of correspondence.

A dogmatic method, which is a classical method of research in legal works, is used in the discussion. The analysis of legal provisions and views of the doctrine and the judicature allowed the author to present the nature of the violation of the secrecy of correspondence and to determine the direction of the optimum protection of this personality right. The importance of financial measures of protection is growing in the same way as in case of other personality rights. Currently, compensation is the basic means of protecting the secrecy of correspondence, although it is also possible to use non-financial protection measures. Societies highly appreciating a consumerist lifestyle believe that financial protection measures might lead to the mitigation of harm resulting from the violation of non-tangible values closely related to humanity and dignity.

Keywords: secrecy of correspondence, privacy of communication, violation of the secrecy of correspondence, protection of the secrecy of correspondence by civil law

## CYWILNOPRAWNA OCHRONA TAJEMNICY KORESPONDENCJI

## Streszczenie

Celem artykułu jest identyfikacja i analiza podstawowych problemów prawnych związanych z ochroną dobra osobistego, jakim jest tajemnica korespondencji w dobie nowoczesnych technologii. Obecnie cywilnoprawna ochrona tajemnicy korespondencji rozpatrywana jest w relacji do tajemnicy komunikowania się. Szereg nowych kwestii prawnych dostrzegają doktryna i judykatura, które w sytuacji braku normatywnych pojęć o charakterze elementarnym spełniają istotną rolę w sferze ochrony tajemnicy korespondencji.

W rozważaniach wykorzystano klasyczną metodę badań stosowaną w pracach prawniczych, czyli metodę dogmatyczną. Analiza przepisów prawnych, poglądów doktryny i stanowiska judykatury pozwoliła ukazać rodzaj naruszeń tajemnicy korespondencji i określić kierunki optymalnej ochrony tego dobra osobistego. Podobnie jak w przypadku innych dóbr osobistych różnie znaczenie majątkowych sposobów ochrony. Obecnie podstawowym środkiem ochrony tajemnicy korespondencji jest zadośćuczynienie, chociaż korzysta się także ze środków ochrony niemajątkowej. Społeczeństwa wysoko ceniące konsumpcyjny tryb życia uznają, że środki majątkowe mogą prowadzić do złagodzenia dolegliwości wynikających z naruszenia wartości niemajątkowych ściśle związanych z człowiekiem i jego godnością.

Słowa kluczowe: tajemnica korespondencji, tajemnica komunikowania się, naruszenie tajemnicy korespondencji, cywilnoprawna ochrona tajemnicy korespondencji

**Cytuj jako:**

Mróz T., *Civil law protection of the secrecy of correspondence*, „Ius Novum” 2018 (Vol. 12) nr 1, s. 46–61. DOI: 10.26399/iusnovum.v12.1.2018.03/t.mroz

**Cite as:**

Mróz, T. (2018) 'Civil law protection of the secrecy of correspondence'. *Ius Novum* (Vol. 12) 1, 46–61. DOI: 10.26399/iusnovum.v12.1.2018.03/t.mroz