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‘Bullshitting’ (as Understood by H.G. Frankfurt) on Law in the Media. From the Issue of Eristic Communication²

Abstract

The purpose of the article is to study the sources and analyse the effects of one way of manipulating information on law in the media, i.e. the phenomenon of ‘bullshitting’ (saying nonsense, sharing pseudo-information) on law and its work. A linguistic statement that involves ‘bullshitting’ is an eristic technique in written or oral communication, expressed by the sender in a specific environment with the purpose of convincing the addressee (audience) that things are so and so and making an impression of being professional and masking the fact that the sender does not care what the truth is. The ‘bullshitter’ does not make attempts to make their input into the conversation factual; they say anything, without any conviction of the truth; they say what they do not have sufficient grounds to claim. This phenomenon is an important factor that makes building the prestige of law (also in Poland) more difficult. Without taking care of the organisation of professional communication about law from professionals to citizens, manipulating information on law will cause permanent damage to legal awareness. The author compares this eristic technique with statements with include lies, provides examples of ‘bullshitting’ on law by politicians and journalists, and deals with the circumstances and effects of the phenomenon.

Keywords: ‘bullshitting’ on law, On Bullsh*t, cognitive camouflage, internet, knowledge availability myth.

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Introduction

The purpose of the article is to study the sources and analyse the effects of one way of manipulating information on law in the media, i.e. the phenomenon of 'bullshitting' on law and its work.

In this text, I understand 'bullshitting' like the American moral philosopher, Harry Gordon Frankfurt does.³ In 1986, H.G. Frankfurt delivered a lecture entitled *On Bullshit*, which still resonates in the world of science.⁴ Unfortunately, in Polish there is no good non-metaphorical term for this phenomenon. This is because it is not a synonym to a lie understood as misleading someone knowingly. H.G. Frankfurt claims that the 'bullshitter' is not a liar because a liar knows what is true, knows the truth and denies it knowingly. They have to know the truth in order to lie. The 'bullshitter', in turn, does not care about the truth at all. Only a person who knows the truth can lie. 'Bullshitting' does not impose any restrictions of this kind.⁵

A linguistic expression that involves 'bullshitting' is an eristic technique in written or oral communication expressed by the sender, the purpose of which is to convince the addressee (audience) that things are so and so, and furthermore, to mask the fact that the sender does not care about the truth.⁶

There is a constant hard game for power over the content of communication about the essence and properties of legal phenomena and the legitimisation of law. Its open or secret participants include many entities with various interests.⁷ Lawyers are only one group of players. The actors in this game are politicians, officials, journalists, industry and business representatives, celebrities, artists, anonymous internet users, and additionally: bots, trolls, and other forms of artificial intelligence and interests behind them.

Nowadays, various types of rubbish (e.g. in the form of language abuse, templates, stereotypes, tautologies, allegations, clichés, phantom reasoning, lies, mista-

³ H.G. Frankfurt, *O wciskaniu kitu*, Warszawa 2005. Original title: *On Bullshit*.

⁴ Defined by J.J.-B. After H.G. Frankfurt, I assume a narrow understanding of 'bullshitting', I do not include lies in this category: for a broader discussion, see J. Stelmach, *Sztuka manipulacji*, Warszawa 2018, p. 51.

⁵ As cited in T. Phillips, *Truth. A Brief History of Total Bullsh*t*, Wildfire 2019, p. 31.

⁶ In the paper, I adopt a narrow understanding after Frankfurt to emphasise that this kind of manipulation has other communicative functions than lying. J. Stelmach, writing about 'bullshitting', adopts a broad understanding of 'bullshitting' that also covers lying, see *idem*, *op. cit.*, p. 58.

⁷ J. Jabłońska-Bonca, *Naukowiec w grze o władzę nad poznaniem. W świetle ustawy 2.0*, „Krytyka Prawa” 2019, 11(4), pp. 116–130.

kes) make use of the possibility of reaching the mass receiver around the world instantly.⁸

New media created a gap between the traditional world of legal scientific discussions and the traditional ways of transferring knowledge to politics and the social environment. Too slow a movement of lawyers from the traditional place of communication on the pages of paper journals, in television and radio discussions, discourse in courts to a new place, i.e. to social media, results in the fact that quick disinformation in internet media, when it is attractively given and easy to digest, wins and backfires on the traditional media.⁹

Even 30 years ago, it was mainly materials distributed by the traditional media reached the public space. Journalists, editors acted as gatekeepers, filtering and checking information on law¹⁰. The ongoing digital revolution and the instant expansion of the social media changed that balance of power. Now information can be shared by any politician, blogger, celebrity, citizen journalist, influencer. Most of these individuals have no professional knowledge of law, they do not know the rules of interpreting legal provisions or the principles of legal inference. They do not have any knowledge of legal axiology or any skills in the critical analysis of legal texts.¹¹

Many empirical studies uniquely show that most information on law obtained by citizens comes from the media. The authors of sociological and legal studies, by analysing the changes in attitudes towards the law in several dozen years, claim that paradoxically, for the freedom of media we paid with a decrease in trust in law and with a decrease in its prestige.¹²

The person who talks nonsense about law in the media says sentences without thinking whether they are true or false and without understanding the importance

⁸ In 2019, nearly 2/3 of the global population was connected to the internet – 4 billion 390 million people. As cited in: A. Demczuk, *Wolność wypowiedzi i prawo do prywatności w społeczeństwie informacyjnym – wybrane aktualne refleksje*, "Polityka i Społeczeństwo" 2020, 1(18), p. 24.

⁹ Raport NASK Cyberpolicy, *Zjawisko dezinformacji w dobie rewolucji cyfrowej. Państwo. Społeczeństwo. Polityka. Biznes*, www.cyberpolicy.nask.pl (access: 15.12.2020).

¹⁰ J. Jabłońska-Bonca, *Wokół problematyki „gatekeeperów” w prawniczej komunikacji naukowej*, [w:] M. Smolak (red.), *Sto lat „Ruch Prawniczy, Ekonomiczny i Socjologiczny”*, Poznań 2021.

¹¹ See the paper: D. Levitan, *Not a Scientist. How Politicians Mistake, Misrepresent, and Utterly Mangle Science*, New York 2017.

¹² See a cross-functional analysis of empirical research devoted to the prestige of law in Poland, especially after the political transformation: A. Przylepa-Lewak, *Legal-Sociological Research of the Prestige of Law*, "Studia Iuridica Lublinensia" 2021, 30(1), pp. 219–235, <http://studiaiuridica.umcs.pl> (access: 1.04.2021). The author writes in the conclusions i.a. 'The above analysis of empirical research shows that, unfortunately, the changes taking place in Poland over the last half a century, such as the change of the system, increasing civil rights and freedoms, joining international organizations, greater availability of information about law, etc., did not significantly affect the level of prestige of law in society,' p. 232.

of the statements to the prestige of the law. It may be assumed that that person's goal is to come up in the media as soon as possible as the 'most informed' 'authority', whereas it is, in fact, only a form of camouflage.¹³

'Thanks to' new information technologies, 'bullshitting' on law makes use of the possibility to instant and multiplied reaching of the mass receiver around the world. Accurate legal information should be checked, verification must take some time. When the information is argumentatively complex, it cannot be presented immediately. In turn, the rules of media coding in the 21st century are targeted at time and 'theatralisation' of the message.¹⁴

Hope for strengthening the role of researchers as promoters of knowledge of law was in the Polish Act 2.0 in connection with the possible application of regulations expressed in the European Charter for Researchers.¹⁵ It seemed that it would be possible to convince the project promoters of the Act 2.0 to acknowledge the role of a promoter of science of the professional roles of an academic. However, it did not happen. The legislator underestimated the matter and the act remained in the ruts of the old regulation of the responsibilities of an employee.

Nonsense may be colourful, it does not require any methodological effort or any relativisation of existing scientific achievements. One may say 'popycock' in public, having no idea about law, its creation, interpretation and application or about the context of its work. Some of the mechanisms of repressing thinking about the value of law from political thinking have been interestingly and convincingly explained by Artur Łuszczynski in his study: *Value of Law in Political Thinking*.¹⁶

Not only does the internet guarantee the massive scale, but it also led to the 'folding' of time and space and it 'removed' renowned authorities. Everyone can be a prophet on their blog. There is postmodern equality. Tweets, Instagram, TikTok

¹³ P. Markiewicz, *Kamuflaż, antykamuflaż i granice świadomości*, „Studia Philosophiae Christianae” 2009, 45(2), pp. 223–234. I use Aristotle's meaning of truth in the text.

¹⁴ J. Jabłońska-Bonca, K. Zeidler, *Prawnik a sztuka retoryki i negocjacji*, Warszawa 2016, p. 63.

¹⁵ Act of 20 July 2018 – the Law on Higher Education and Science (Journal of Laws of 2018 item 1668). In brief: the Act 2.0.; the European Charter for Researchers from 2005 is a recommendation from the European Commission, see: <https://www.euraxess.pl/pl/poland/naukowcy/karta-i-kodeksnaukowcy> (access: 15.12.2020).

¹⁶ A. Łuszczynski, *Value of Law in Political Thinking*, „Studia Iuridica Lublinensia” 2020, 29(4), at <http://studiaiuridica.umcs.pl> (access: 10.02.2021). 'There are many indications that law and its values are not a point of reference for contemporary politics, which results from the ongoing process of democratization. The coherence of virtues, law and politics, variously approached and variable over time, lasted in European culture for more than a thousand years. The Greek models have been adopted and consolidated by the Romans and Medieval thinkers. The breakthrough is brought by Machiavelli's writings, which radically changed the view of politics, free will, power. The nature of the state ceases to mean providing citizens with a happy life, and it begins to concern security. As a result, law becomes a tool to protect this security effectively.'

make everyone equal. What counts is the following eristic technique: 'Listen to what *I* have to say,' and 'if *I* speak honestly, it is true!'

Digital generations, with exceptions, cannot understand that getting to the truth requires effort and critical assessment – 'knowledge' is available with one 'click'!

Gap in the Description from 25 Years Ago

Politicians always look for ways of effectively influencing society in order to justify social and legal restrictions, obtain the relatively permanent legitimisation of exercising power, 'lull' social aggressiveness by limiting or excluding social scepticism.¹⁷ They know that the most effective communication occurs with the use of emotions, appeals to hearts, faith and authorities.¹⁸ 25 years ago, when I was writing a paper on legal myths (*Prawo w kręgu mitów*, Gdańsk 1995), I did not notice the importance and special meaning of manipulation involving 'bullshitting', perhaps because the internet was just being born then.

I associated the current communication drama with myths because with myths one can easily build bridges to communities because judgements that are passed down are simple and vivid. Myths, stereotypes and utopias form a thick layer on the principles of law that have been shaped over centuries. Communities are susceptible to the 'temptation' of an ideological order, and myths are a convenient tool for removing uncertainties.

Today I see that there is a second very important social mechanism of excluding scepticism and criticism. One does not have to lie knowingly, it is enough to have an indifferent attitude to truth.

'Bullshitting' vs Lying and Post-truth

Many maxims constitute a model of reliable conversational co-operation.¹⁹ Quality maxims are as follows: 'Try to make your conversation input real,' 'Do not say anything that you are convinced is not true,' 'Do not say anything that you have no grounds to claim.'

¹⁷ J. Jabłońska-Bonca, *Prawo w kręgu mitów*, Gdańsk 1995.

¹⁸ See: K. Ajdukiewicz, *Logika pragmatyczna*, Warszawa 1975; W. Patryas, *Uznawanie zdań*, Warszawa 1987.

¹⁹ J. Jabłońska-Bonca, K. Zeidler, op. cit., p. 52.

A 'bullshitter' does not try to make their conversation input real; they say anything, without conviction about the truth; they say what they have no sufficient grounds to claim. Thus, they violate the quality maxims of the conversation.

A liar consciously wishes to drag their addressee away from the truth. The audience should not know that the liar's goal is to make us believe in something that the liar deems false. The 'bullshitter' is motivated differently as they play a social role as part of their job or function. They pretend that they have a professional knowledge of law. A. claims that 'what is obvious to a lawyer becomes an abstraction for a politician (...). Law (...) ceased to perform its original function related to either a virtue, guarantee of freedom, conservative order or citizenship. Today, law has become an element of the watered-down story of rights, so numerous that no one takes them seriously. The right to a dignified death is accompanied by the right to life and between them we find the right to different lifestyles, the right to privacy or the right to a dignified life. Politicians are free to pick parts of these stories that are of interest to them, without any particular care for the coherence of both their party's program and their overall vision of law.'²⁰

'Unlike a liar who must always keep an eye on the truth to twist it or hide it, a bullshitter does not care. The bullshitter says whatever comes to their mind if only they see it fit...'²¹ 'When bullshitting, tiny accidental coincidence with the truth may be considered an optional addition; if the world of bullshit that you create sometimes overlaps with the real one, it will not hurt you, and maybe it will even be a helpful bonus. For a liar, though, careless admission to an uncomfortable fact may prove disastrous,' Tom Phillips claims.²²

'The bullshitter ignores [the] demands [of the truth] altogether,' H.G. Frankfurt writes. 'He does not reject the authority of the truth, as the liar does, and oppose himself to it. He pays no attention to it at all. By virtue of this, bullshit is a greater enemy of the truth than lies are.'²³

The 'bullshitter' does not share any particular piece of information and behaves as if they said something important. They only wonder what other people should hear in order for that person to 'come across well' in the eyes of their audience and to achieve the effect of convincing their audience.

The distinction that H.G. Frankfurt draws between lying and nonsense seems particularly important not only for analyses of the public discourse, but also for the

²⁰ A. Łuszczynski, op. cit., p. 185.

²¹ S. Dieguez, *Glupota i postprawda*, [in:] J.-F. Marmion et al. (ed.), *Glupota. Nieoficjalna biografia*, Wrocław 2019, p. 215.

²² T. Phillips, op. cit., p. 3.

²³ H.G. Frankfurt, op. cit., p. 70.

academic discourse in its present form. This issue deserves a separate study and I will omit it here.

A lie is a name of a pragmatic act and its purpose is to mislead one's audience knowingly.²⁴ The liar remains in the state of 'double awareness' and, in fact, does not harbour judgements that that person passes down. In the semantic area, the argument is false. In the pragmatic aspect, it communicates untruth.²⁵ The liar may be revealed, exposed if one learns the truth.²⁶ When it comes to nonsense, the matter is not as easy in the semantic and pragmatic sense.

In 2016, the editorial board of Oxford Dictionaries pronounced 'post-truth' the word of the year.²⁷ Can statements that involve 'bullshitting' be considered statements from the circle of post-truth?²⁸ Post-truth is to 'say one's own truth' that is corresponds to one's beliefs, world view, one's interests, ideas in which one believes, regardless of the state of reality, the 'objective' state, which supposedly became 'outdated' in the postmodern society.²⁹ For an ignorant, their beliefs are their truth. This is accompanied by the phenomenon of 'displacing law from political thinking (...),' a temporary solstice of the democratic model in which the 'general will' of the sovereign wants to break free from the shackles of law which it does not understand, treating the law as the burden imposed by undefined external entities because the theoretical union of the government and the governed was broken.³⁰

'I say what I think and I think what I say just because I say it and I think it. (...) And if I do not agree with something, this is obvious proof of that thing being false.'³¹

'I think so, so it is true, no verification is necessary. My "reason" is more important than research results.'³²

²⁴ J. Antas, *O kłamstwie i kłamaniu*, Kraków 2000.

²⁵ Errors, i.e. statements, in which one unconsciously expresses untruth, are also possible.

²⁶ T. Phillips, op. cit.

²⁷ Ibidem, p. 14.

²⁸ Post-truth resembles the Russian sense of truth, 'the subjective truth' more and more, gaining a clear psychological dimension (context). See further discussion in e.g.: T.W. Grabowski, M. Lakomy, K. Oświecimski, A. Pohl (eds.), *Postprawda. Spojrzenie krytyczne*, Kraków 2018.

²⁹ S. Warzeński, *O współczesnych problemach z prawdą. Refleksje w świetle eseju Harry'ego G. Frankfurta, „O wiskaniu kitu (On Bullshit)”, „Collectanea Theologica” 2017, 87(3).*

³⁰ Broder discussion: A. Łuszczynski, op. cit., p. 186.

³¹ See: J.-F. Marmion et al., op. cit., p. 220.

³² The celebrity singer claims that there are extras in COVID hospitals. 'Piosenkarka zszokowała swoimi słowami o statystach, którzy leżą w szpitalach zamiast prawdziwych chorych.' <https://dorzeczy.pl/>

Questionable Examples of Statements by Politicians and Journalists in the Media³³

Statements Blurring the Lines of Law

Example 1

“Today, I can only emphasise that in the maze of all those actions, regulations, restrictions, orders, prohibitions, rigours (emphasis: J.J.B.), such mistakes certainly happened and it's worth to apologise for them,” politician A claims during a press conference.³⁴

This original, medially emotional but incorrect enumeration, strengthened by a very suggestive expression ‘maze’ (which is, e.g. an entanglement, a swirl, heaps) causes a citizen with low legal awareness, who receives such a message (multiplied from hundreds of websites) from an authority, to lose general orientation points when it comes to the limits of the law. They are unclear in this statement. It is not

kraj/160508/bill-gates-statystyci-i-oregano-gorniak-dzieli-sie-swoimi-teoriami-dot-pandemii.html (access: 15.12.2020).

³³ The examples include statements of people who should not lie, if only because of their social professional position, and if they do **not lie** (as I assume in the following considerations), then they ‘bullshit’ by making errors, they do not have sufficient knowledge of law or do not attach importance to the truth, and they do not understand the importance of the prestige and seriousness of law of this kind of speech.

³⁴ I anonymise the statements, I do not give names because it is the problem, not the person, which is important. I put all the sources in one footnote so that the source is quoted, but also so that the readers do not concern themselves with who said it, but with the content of the statement: J. Kunert, *Mateusz Morawiecki: „konkluzje są ponad rozporządzeniami”*. To nieprawda, *Konkret24* 11.12.2020, <http://konkret24.tvn24.pl/polityka,112> (access: 15.12.2020); M. Ratajczak, *Limit osób na święta Bożego Narodzenia. Rząd myśli, czy egzekwować przepisy*, <https://www.money.pl/gospodarka/5-osob-na-swiewta-bozego-narodzenia-rzad-ma-podporke-o-egzekucji-przepisow-zdecyduje-w-grudniu-6578695120739168a.html> (access: 15.12.2020); <https://www.money.pl/gospodarka/nowe-obostrzenia-a-moze-kwarantanna-narodowa-morawicki-dajmy-czas-do-poniedzialku-6573853339413376a.html> (access: 15.12.2020); <https://www.gov.pl/web/koronawirus/regionalne-obostrzenia-dla-wybranych-powiatow/> (access: 15.12.2020); P. Pacewicz, *70+ zamknięci w domu. Miała być prośba, jest zakaz, odebranie praw seniorom*, <https://oko.press/70-zamknieni-w-domu-miala-byc-prosba-jest-zakaz/> (access: 15.12.2020); K. Bagiński, *Zaskakująca treść rządowego rozporządzenia. Seniorzy powyżej 70. roku życia mogą wychodzić tylko w trzech przypadkach*, <https://www.money.pl/gospodarka/czy-seniorzy-moga-chodzic-samopas-niejasne-zapisy-w-rozporzadzeniu-6568049489857280a.html> (access: 15.12.2020); <https://oko.press/70-zamknieni-w-domu-miala-byc-prosba-jest-zakaz/> (access: 15.12.2020); <https://demagog.org.pl/wypowiedzi/czy-stan-nadzwyczajny-oznacza-wyprowadzenie-wojska-na-ulice/> (access: 15.12.2020); Gość Radia ZET, 7 April 2020, www.demagog.org.pl (access: 15.12.2020); Adamek in ‘Jeden na jeden’ on TVN24, see: demagog.org.pl/wypowiedzi/kto-odpowiada-za-publicacje-wyrokow-tk/ (access: 15.12.2020); <https://demagog.org.pl/wypowiedzi/czym-jest-zabytek-w-rozumieniu-polskiego-prawa/> (access: 15.12.2020); <https://demagog.org.pl/wypowiedzi/ile-sedziow-ma-polska/> (access: 15.12.2020); <https://demagog.org.pl/wypowiedzi/ilu-sedziow-jest-czlonkami-stowarzyszen-zawodowych-sedziow-2/> (a ccess: 15.12.2020); <https://demagog.org.pl/wypowiedzi/liczba-wyrokow-w-zawieszeniu-weryfikacja-slow-jaroslaw-gowina/> (access: 15.12.2020).

known what applies as the law and what is not the law. A pejorative vision of law as a maze, an entanglement of formally unclear rules spreads.

Example 2

The blurring of the lines of law in the public awareness may also be contributed by statements that blur the lines between hard law and soft law in the public discourse and between legal norms and political norms. Here is an example: 'These conclusions (of the European Council – J.J.-B.'s note) are a permanent act of European law, they are close to primary law, they are close to the treaties in this sense. (...) They are above regulations. (...) The European Council is in some sense above secondary law, i.e. regulations' (emphasis: J.J.-B.), politician B states publically.³⁵ Conclusions of the European Council are not a 'permanent act of European law' and the Council is not 'in some sense above secondary law.'³⁶ It is soft law. Conclusions are a document expressing a political position, not a legislative act.³⁷ No provision of the EU makes the amendment of the regulation conditional on an earlier amendment to the adopted conclusions.

Example 3

Journalist A titles the article: *Limit osób na święta Bożego Narodzenia. Rząd myśli, czy egzekwować przepisy*, and then creates the following chaos in the text: 'This is a recommendation (...) However, it is not that there are no punishments at all – they are quite painful. Violating the orders and prohibitions can cost from PLN 5,000 to PLN 30,000. (...) If the epidemic situation is good, the regulations will remain dead. (...) The police will not go door-to-door (...) – (...) What is worth emphasising, in the whole draft regulation there is no (...) information about penalties, no information about fines and tickets. (...) It is not, however, that this is a 'dead regulation' because the penalties are (...) from PLN 5,000 to PLN 30,000. Penalties (...) are issued by sanitary inspectors. (...) The limit of people for Christmas in the regulation is currently a pad and a trial balloon. The regulations are already there, but final decisions will be needed on how to enforce them. And these will be political decisions.'³⁸ (emphasis: J.J.-B.).

Example 4

Another example shows how politicians, government administration and journalists – perhaps also unconsciously, due to lack of knowledge – demonstrate an indiffe-

³⁵ See note 35.

³⁶ Article 15 of the Treaty on the European Union – the European Council has no legislative function.

³⁷ See note 35.

³⁸ Ibidem.

rent attitude towards the truth about law and act – perhaps without any intention to – in favour of blurring the lines of law in the minds of citizens as a result of careless analysis of the content of the law.

In accordance with §26(2a) of the Regulation of the Council of Ministers of 23 October 2020 Amending the Regulation on the Establishment of Certain Restrictions, Orders and Bans in Connection with the Occurrence of an Epidemic: ‘Persons over 70 years of age may move exclusively for the purpose of: 1) performing professional or business activities; 2) meeting the necessary needs related to the current affairs of everyday life; 3) exercising or participating in the performance of religious worship, including religious activities or rites.’³⁹

On the official website the government administration claims that this is an appeal, especially for people who are over 70.⁴⁰ Quote: ‘Senior, stay at home! We appeal (emphasis: J.J.-B.) for limiting the movement of seniors – especially those over 70 years of age. The exceptions are situations related to:

- ❑ performing professional activities,
- ❑ satisfying the necessary needs related to current affairs of everyday life,
- ❑ performing or participating in religious worship, including religious activities or rites.’

Politician D also claims that it is an appeal and adds: a recommendation, not an order. ‘When asked during a conference on Friday (politician D – J.J.-B.’s note) whether the restriction of movement for seniors is a request or an order, he said that it was an appeal to citizens aged over 70. And the inquiring journalists heard that the appeal to seniors was a recommendation, not an order.’ (emphasis: J.J.-B.).

Journalist B claims that politician A presented recommendations, and when he was questioned, he added that these were only requests. Quote: ‘New restrictions related to the coronavirus pandemic enter into force throughout Poland.’ Politician A ‘presented on Friday, i.a. recommendations regarding the movement of seniors... when he was questioned by journalists, he said that these were only requests.’⁴¹

‘The ban (emphasis: J.J.-B.), the withdrawal of seniors’ rights is an exceptionally drastic restriction,’ journalist C, in turn, writes: ‘Those over 70 years

³⁹ Rozporządzenie Rady Ministrów z dnia 23 października 2020 r. zmieniające rozporządzenie w sprawie ustanowienia określonych ograniczeń, nakazów i zakazów w związku z wystąpieniem stanu epidemii, Journal of Laws of 2020, item 1871, <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20200001871> (access: 15.12.2020).

⁴⁰ See note 35.

⁴¹ K. Bagiński, *Zaskakująca treść...*

of age are locked up at home. There was to be a request, there is a ban, taking away the rights of seniors. Restricting movement or leaving the house to go outside is an exceptionally drastic restriction. It violates Article 52 of the Constitution: "Everyone shall be guaranteed freedom of movement within the territory of the Republic of Poland." (...) In addition, this is done by a regulation, although the Constitution emphasises that "the freedoms in question may be subject to limitations specified in the Act."⁴²

The Ministry of Health, however, declares that this is a manifestation of free will. (emphasis: J.J.-B.). From the Twitter account of the Ministry of Health: 'You are over 70 years old and you have made a decision to stay at home for the sake of safety...'⁴³ (emphasis: J.J.-B.).

Statements Erroneously Referring to the Content of Legal Norms

Example 5

Politician C – who probably wants to raise the temperature of the dispute – misrepresents the content of legal norms. The law in Poland does not provide for any obligation to limit civil rights and freedoms under a state of emergency or a state of natural disaster, but only allows for a decision on such actions to be taken.⁴⁴

Quote: 'Do we know the consequences of the introduction of the state of emergency? And I'm not talking about the financial ones. I am talking about the fact that we will have the army in the streets, internet websites taken down. (...) Well, in a state of emergency... closed radio stations. (emphasis: J.J.-B.). Do we really... really want it?'⁴⁵

Example 6

A high official of country F utters an authoritarian, obviously erroneous statement on television, 'As I understand it, you are talking about the judgment of the Constitutional Tribunal, which has aroused so much emotion and discussion lately. It depends on the Government Legislation Centre that publishes the judgments. (...) I repeat, it is not the Prime Minister that publishes this verdict'⁴⁶ (emphasis: J.J.-B.). Article 20(1) of the Act of 20 July 2000 on the Publication of Normative acts and

⁴² See note 35.

⁴³ Ibidem.

⁴⁴ Ibidem.

⁴⁵ Ibidem.

⁴⁶ Ibidem.

Certain Other Legal Acts provides that: the Prime Minister issues: 1) Dziennik Ustaw (Journal of Laws) and Monitor Polski (Polish Monitor) with the help of the Government Legislation Centre. RCL is an organisational unit subordinate to the Prime Minister.

Example 7

Politician G misleads the public opinion as to the content of the law. 'Not every old thing is a monument. It is clearly written in the law that a monument is only what has a social, artistic or scientific value. In art and culture, this value arises only when there is a relationship between the cultural object and the man. So, if an object is unused, unavailable, it has no such value. So, it's not a monument,'⁴⁷ (emphasis: J.J.-B.) politician G claims in the media. The law states otherwise: in accordance with Article 3(1) of the Act of 23 July 2003 on the Protection and Care of Monuments: a monument is: 'real estate or a movable property, their parts or complexes, being the work of man or related to his activity and representing a bygone era or events whose preservation lies in social interest due to the possessed historical, artistic or scientific value.'⁴⁸

Statements with Fictive Data

Example 8

Politician D (lawyer) reports incorrect data in the media, 'The Themis Association consists of several hundred judges.' (emphasis: J.J.-B.) At the time when he said that, the association had 120 judges.⁴⁹

Example 9

Politician E gives statistical data without providing a source. 'We are in the first place in the world (emphasis: J.J.-B.) when it comes to the number of suspended sentences,' politician E states.⁵⁰

If he had given the source, the information would have been verifiable, and when it is given only 'on belief', unfortunately, it does not raise scientific trust.⁵¹ However, it can create a social impression – it is difficult to judge what kind of impression – due to the person who shares it.

⁴⁷ Ibidem.

⁴⁸ Act of 23 July 2003 on the Protection and Care of Monuments, Journal of Laws No. 162, item 1568.

⁴⁹ See note 35.

⁵⁰ Ibidem.

⁵¹ In my opinion, there are no such statistics.

Example 10

At the end, some data from the USA because the phenomenon described is universal. According to "The Washington Post's" fact-checking team, (...) President Trump in eight hundred sixty-nine days in office (...) made 10,796 'false or misleading claims.'⁵² Most of them are certainly lies, besides, only some of them concern law, but, as Tom Phillips writes, 'Maybe he simply does not know what the truth is, and he does not care at all about finding out.'⁵³

Circumstances in Favour of 'Bullshitting' on Law in the Media

We will have a look at circumstances in favour of 'bullshitting' through the lens of W. Schram's communication model which accentuates the importance of 'common experiences' of the sender and the addressee of a message for its effectiveness.⁵⁴ It is necessary that the area of common ideas, common experience be found and that the sender and the addressee be 'synchronised' in order for the message to reach the addressee. In this case, the 'communion' is created by: lack of knowledge of law, the postmodern cult of informal knowledge, a belief in the value of common-sense knowledge, dislike for the meritocratic power. The message has a chance to be effective if both parties value first of all promptness and the simplicity of information. They believe that acquiring it without any effort is possible, without looking at scientific methodology, traditional values, institutions, and models of social roles. If nothing certain exists, and the average time of the truth's life is currently said to last circa 10 years, even some Nobel Prize winners are wrong, everyone decides for themselves what the truth is.⁵⁵ 'Society', as we are told with conviction, 'has had enough of experts.'⁵⁶

The sender is convinced that what is important to them is their own self-creation, a camouflage presentation of themselves as an epistemic authority, expert or a moralist.⁵⁷ The sender's camouflage may be of a masking or provocative nature.

⁵² G. Kessler, *A Year of Unprecedented Deception: Trump Averaged 15 False Claims a Day in 2018*, "The Washington Post" 30.12.2018.

⁵³ T. Phillips, op. cit., p. 14.

⁵⁴ J. Jabłońska-Bonca, K. Zeidler, op. cit., p. 53.

⁵⁵ See e.g.: <https://naukaoklimacie.pl/aktualnosci/noblista-do-noblistow-o-klimacie-szkoda-ze-z-bledami-242> (access: 15.12.2020).

⁵⁶ T. Phillips, op. cit., p. 14.

⁵⁷ P. Markiewicz, op. cit.

In the case of the masking camouflage, the addressee of the message does not receive any clear information on the views of a specified entity, and in the case of the provocative camouflage, the sender overtly exposes some characteristic trait, which is supposed to mask the actual picture of that person and that person's views. The sender presents themselves as an authority in public. These behaviours can be assigned to two eristic strategies.

The masking camouflage is frequently realised by means of a strategy called misleading. 'Misleading is a strategy of having a conversation which means that your enemy does not let you, in fact, know what the real purpose of his or her arguments.'⁵⁸ In turn, the provocative camouflage is moving the discussion to the level of emotions and using the power in the strong emotional expression of spoken theses by mixing them with hot, authoritative assessments. The one who talks about law in public acts as part of their 'public' identity, feeling that he or she 'is not guilty' in the era of post-truth because he or she 'is used to change [his or her] identities like other people change clothes.'⁵⁹ His or her statements – regardless of their content – become more reliable thanks to the halo effect ('this is my truth') and mass sharing in the social media. *Nihil novi sub sole*. It was Euripides who claimed, 'They have two tongues, they say the truth with one, and what suits the occasion and seems useful they say with the other. They turn black into white, they blow the cold and blow the hot with the same mouths, and they hide one thing in their hearts and another in their words.'⁶⁰

The addressees of messages are an 'easy target' if – due to 'common experiences' – are of the opinion that knowledge of law is attainable without any particular effort. This is used by the sender of the message, and thanks to the internet, the sender attempts to be the first to share the piece of pseudo-information. Thanks to the internet, this is when so-called anchoring heuristic: the first message received by the addressees has a great influence on them.⁶¹ It is worth knowing that only 16% of readers read every word of a text found in the internet.⁶² Titles and the first sentences are what counts. The knowledge availability myths, broken social and cultural distance, and anchoring heuristic (giving in to the first piece of information provided) and the attractiveness of simple explanations and solutions create

⁵⁸ M.M. Czarnawska, *Współczesny sofista, czyli nowe chwytły erystyczne*, Warszawa 1995, p. 58.

⁵⁹ P. Pomerantsev, *Jądro dziwności. Nowa Rosja*, Wołowiec 2015, p. 155.

⁶⁰ *Ibidem*, p. 81.

⁶¹ Anchoring heuristic is a well-documented psychological effect. For a review of research results on anchoring heuristics, see: P. Tomczak, *Dlaczego kotwica kotwaczy? Przegląd mechanizmów i zasad działania heurystyki zakotwiczenia*, „Decyzje” 2017, 28, pp. 93–110.

⁶² E. Mistewicz, *Marketing narracyjny. Jak budować historie, które sprzedają*, Gliwice 2011, p. 38.

the conditions for the effectiveness of 'bullshitting'. The principle of asymmetry works – it is much more difficult to debunk claims which 'anchored' first onto the addressees' brains. For this reason, manipulators value first and foremost the tempo of announcing messages. The stage of the internet is near, so 'bullshit' is at hand. It may be repeated multiple times.⁶³ What also works is algorithms causing internet users to function in so-called information bubbles which are widely described in sociology and psychology, which gradually destroys their skills in analysing information critically.⁶⁴ The so-called democracy of social media gives a false impression that everyone is equal and everyone can talk about 'their truth'.⁶⁵ The temptation to show oneself as the first person who can control legal uncertainty and thus reveal one's power is difficult to control for those who have 'public identities'.

The Effects of 'Legal Bullshit' on the Prestige of Law

The mass sharing of pseudo-information in the internet causes the gradual destabilisation of attitudes to truth in social awareness, especially when it comes to law – the destruction of the already fragile social awareness of law, the elements of which are knowledge of law, assessment and one's attitude towards law. It is also impossible to educate lawyers and popularise ideas carried by law if citizens stop considering truth a value and if they come to terms with the fact that the right to truth in the public discourse is a myth, also in democratic political systems.

However, one has to admit, as Artur Łuszczynski writes that in general, 'what is obvious to a lawyer becomes an abstraction for a politician.'⁶⁶ Statements about law that are based on indifference to what the truth is mute cognitive processes, make it possible to hide unresolved issues, including the creation of taboo. As noted by neuropsychologist Sebastian Dieguez, 'bullshit allows for its production on a large scale anyone and with little effort, whereas there are not many persons who are able to remove its effects and determined to do it, and they have to make a huge effort.'⁶⁷

⁶³ Raport NASK Cyberpolicy, *Zjawisko dezinformacji w dobie rewolucji cyfrowej. Państwo. Społeczeństwo. Polityka. Biznes*, www.cyberpolicy.nask.pl, p. 23 (access: 15.12.2020). Social media have become the main source of information – every fourth internet user believes the information that they found in social media.

⁶⁴ See e.g. M. Hindman, *The Myth of Digital Democracy*, Princeton 2008, p. 265.

⁶⁵ I omit the huge issue of paid trolls and other cyberforms of sharing nonsense.

⁶⁶ A. Łuszczynski, op. cit.

⁶⁷ S. Dieguez, op. cit., p. 225. Research at Stanford University shows that over 80% of American students cannot distinguish sponsored information from an informative text. Raport NASK Cyberpolicy, op. cit., p. 21.

Forms of defence could be the popularisation of law by scientists, provided that it is appreciated at higher education institutions; good legal academic journalism and legal scientific communication workshops provided in the higher education curricula, which would cover both the ability to communicate clearly and factually in writing as well as in *ad rem* oral argumentation.

It would also be important to conduct empirical research on social media and identify a few of the most important areas (topics) of permanent ‘bullshitting’ on law in Poland. This would expose critical gaps (discrepancies between what people think that they ‘know’ about the law and what they should know) and provide a comprehensive explanation of why such gaps arise. Legal manipulations in the media destroy the living tissue of the legal tradition in social consciousness, tear the social understanding of the principles of law, violate the cultural pillars of the rule of law, and crush the understanding of the content and forms of specific legal institutions. ‘Bullshit’ slips into legal language, distorting the real images of regulation and only seemingly removes legal uncertainty. Falsified images (models) of legal institutions and legal principles arise.

The destruction of the axiological and formal identity of law, the disintegration of concepts and doctrines are sometimes an accidental effect but they can also be an element of deliberate hidden political direction in which the actors – unconscious circumstances, though externally controlled, are not only the addressees, but also the senders of pseudo-information. Senders (which are frequently politicians), having no knowledge of the threats to the law posed by their multiplied statements on the internet and not attaching special importance to the truth about the law in the media, often do it for short-term profitability, e.g. to stay on the public stage; the recipients, however, succumb to the need to remove uncertainty. The citizen moves in the legal order in the dark, the normative environment becomes opaque. Filters to observe the legal reality do not work, and the law ceases to be a shield for the citizen. By making their own decisions, they may misjudge their legal situation.⁶⁸ The citizen *de facto* navigates in a legal unreality, so they cannot be effective.

⁶⁸ E.g. citizens, encouraged by such an attitude of politicians, officials, celebrities and journalists towards law, learn how to manipulate law, they resort to ignoring *ius et lex* bravely. [in Polish] „Proboszcz z podlódzkiego Ksawerowa wywiesił na bramie parafialnego cmentarza napis „Park cmentarny” i – mimo obowiązującego w całym kraju zakazu wstępu na cmentarze – otworzył nekropolię dla odwiedzających, K. Karolak, A. Kozłowska, „Park Cmentarny” w Ksawerowie – proboszcz obszedł rządowy zakaz?, <https://lodz.tvp.pl/50590087/park-cmentarny-w-ksawerowie-proboszcz-obszedl-rzadowy-zakaz> (access: 20.12.2020) or: [in Polish] „Architekt [X] z Kościeliska ogłosił na swoim kanale Pitoń TV, że nie będzie się stosował do rządowych obostrzeń. – Jak chcecie sobie zamykać hotele, i co tam chcecie, wszystkie swoje biznesy, to sobie zamykajcie, ale od naszych wam wara. Jestem wolnym człowiekiem i zgłaszam liberum veto do rządowych obostrzeń – ogłosił”, K. Bagiński, *Liberum veto na Podhalu. „Wara od naszych biznesów”*,

The conditions that make it difficult to 'bullshit' include reliable education, wide professional popularisation, high legal culture, critical thinking, the ability of 'intellectual resistance', quick response to nonsense, websites checking news related to the law.⁶⁹ 'In order to be immune to bullshit,' Jerzy Stelmach notes, 'one needs to make a reliable and immediate verification of the manipulative statements made by the manipulating person. This means the necessity to refer either to the truth criterion or, in the case of statements with a "normative flavour", that is, to which the truth criterion cannot be directly applied, to other, weaker criteria, for instance, of rationality or equity.'⁷⁰

What is also essential is new technological instruments, within which it is necessary to develop algorithms and create fact-checking websites and so-called slow news, through which the user receives links to verified information and the assessment of its credibility. Fact-checking organisations are institutions that check facts. Most frequently, they operate at editorial offices or as independent non-governmental organisations, and less frequently in the academic environment. The main goal of the fact-checking organisations is to improve quality public debate. First of all, they focus on verifying the statements of politicians, officials or other influential people who appear in the public space. Only these pieces of information that can be verified are checked, by means of reaching data, statistics, substantive analyses or source documents.⁷¹

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⁶⁹ In 2018, the *Code of Practice on Disinformation* was adopted in the EU, <https://ec.europa.eu/digital-single-market/en/news/code-practice-disinformation> (access: 15.12.2020). Representatives of online platforms, leading social networks, advertisers and the advertising industry have agreed a self-regulatory code of conduct against the spread of disinformation and fake news in the internet.

⁷⁰ J. Stelmach, op. cit., p. 52.

⁷¹ For instance, "The Washington Post", in 2016, introduced a fact-checker, which verified all of Donald Trump's public speeches.

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