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ARTICLE

## Selected legal aspects of the crime of intelligence disinformation

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### Abstract

The aim of this article is to discuss the crime of intelligence disinformation as defined in the purview of Art. 132 of the Criminal Code, and its importance for ensuring both internal and external security of the Republic of Poland. The author presented the subjective and objective aspects of the crime of intelligence disinformation and its criminalisation. The article shows a standpoint according to which the criminal offence of intelligence disinformation has the nature of a common offence, since the attribute 'rendering intelligence services for the Republic of Poland' does not indicate any particular attribute of the subject of a prohibited act, but merely a particular situation. The author postulates *de lege ferenda* a possibility of having the attributes of the offence of intelligence disinformation supplemented with documents attesting an untruth. It would certainly allow a broader penalisation of disinformation behaviours and an adaptation of this legal institution to rapidly changing times.

### Keywords

disinformation, internal and external security, intelligence, counterintelligence

## Introduction

In modern times, which are characterised by considerable international instability, espionage activity has intensified. The activities of so-called double agents are considered particularly dangerous. Their main goal is to unofficially pass information to a specific country (organisation), while officially spying for another. History provides many examples of such activity, including the famous Dutch woman Mata Hari<sup>1</sup>. This world-renowned dancer acted as a double agent in the service of France and Germany. Her activity allegedly contributed to the deaths of thousands of soldiers on the fronts of World War I, and the evidence in her case consisted of dispatches sent by the Germans from Madrid and intercepted by the British.

Aware of the serious threat that espionage poses to the existence of an independent state, the legislator created legal instruments to effectively counteract it<sup>2</sup>. A significant role in this regard was assigned to substantive criminal law, which is intended, among other things, to prevent Polish state authorities from being misled by persons cooperating with intelligence and counterintelligence agencies. In the Art. 132 of the Criminal Code, the legislator defined the characteristics of the crime of intelligence disinformation: *Anyone who, while rendering intelligence services to the Republic of Poland, misleads a Polish state authority by providing forged or altered documents or other items, or by concealing true information or providing false information of significant importance to the Republic of Poland, shall be subject to imprisonment for a term of between one and 10 years*<sup>3</sup>.

The offence of intelligence disinformation is an original creation of the Polish legal thought and has no equivalent in European legal systems<sup>4</sup>. The offence in question is referred to in legal doctrine as the offence of intelligence disinformation<sup>5</sup>, intelligence disinformation<sup>6</sup> or the offence of misleading the Polish state

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<sup>1</sup> P. Szlanta, *Mata Hari była postacią tragiczną* (Eng. Mata Hari was a tragic figure), "Gazeta Prawna", 25 VII 2017.

<sup>2</sup> P. Kosmaty, *Rośnie aktywność szpiegów. Najgroźniejsi są podwójni agenci. Co na to polskie prawo?* (Eng. Spy activity is on the rise. Double agents are the most dangerous. What does Polish law say about this?), "Rzeczpospolita", 15 I 2025.

<sup>3</sup> *Act of 6 June 1997 – Criminal Code*.

<sup>4</sup> J. Wojciechowska, *Komentarz do Kodeksu karnego. Część szczególna* (Eng. Commentary to the Criminal Code. Specific part), vol. 1, Warszawa 2004, p. 80.

<sup>5</sup> S. Hoc, *Przestępstwa przeciwko Rzeczypospolitej Polskiej* (Eng. Offences against the Republic of Poland), Opole 2002, p. 106.

<sup>6</sup> L. Gardocki, *Prawo karne* (Eng. Criminal law), Warszawa 2001, p. 210.

authority<sup>7</sup>. Intelligence disinformation is a deliberate misleading or manipulation of information to achieve strategic, political or military advantages. It is used by states or intelligence organisations that use false or distorted data to weaken their opponents, cause confusion or strengthen their own position. It may include spreading false information, forging documents and controlling the narrative in the media. Intelligence disinformation is one of the tools of information and psychological warfare used in armed conflicts and political rivalry.

### Definition of disinformation

At the outset of our discussion on disinformation, it is worth quoting Winston Churchill: *I must honestly admit that I consider deceiving one's opponent to be entirely justified, even if it means deceiving one's own nation for a certain period of time*<sup>8</sup>.

There is no legal definition of disinformation anywhere in the legal sphere. It is also not explained in the *Dictionary of national security terms*. Only the verb 'to disinform' was mentioned<sup>9</sup>. In turn, according to the *Dictionary of Polish Language by PWN* definition, disinformation is misleading someone by providing confusing or false information<sup>10</sup>.

The very concept of disinformation was introduced nearly 100 years ago in Russia. A special disinformation office was established within the State Political Directorate (Государственное Политическое Управление, GPU) to conduct active intelligence operations. In the pre-war Polish legal space, the term 'disinformation' appeared in 1929 in the instruction of the Second Department of Polish General Staff. According to it disinformation consists of providing the enemy's intelligence with information that conceals one's own intentions and forcing them to treat the information provided by their own intelligence as true, or forcing foreign intelligence to analyse the inspired information for a longer period

<sup>7</sup> J. Wojciechowski, *Kodeks karny. Komentarz. Orzecznictwo* (Eng. Criminal Code. Commentary. Case law), Warszawa 1997, p. 222.

<sup>8</sup> Quoted after: M. Iwiński, D. Rosenau, *Odpowiedzialność karna za dezinformację jako forma działań wywiadowczych* (Eng. Criminal liability for disinformation as a form of intelligence activities), "Studia z Zakresu Nauk Prawnoustrojowych. Miscellanea" 2018, vol. 8, no. 1, p. 156.

<sup>9</sup> B. Zdrodowski, *Słownik terminów z zakresu bezpieczeństwa narodowego* (Eng. Dictionary of national security terms), [https://elk.wans.edu.pl/wpcontent/uploads/2021/11/Słownik\\_terminow\\_z\\_zakreu\\_bezpieczenstwa\\_narodowego.pdf](https://elk.wans.edu.pl/wpcontent/uploads/2021/11/Słownik_terminow_z_zakreu_bezpieczenstwa_narodowego.pdf) [accessed: 26 II 2025].

<sup>10</sup> The term: disinformation, *Słownik Języka Polskiego PWN* (Eng. Dictionary of Polish Language by PWN), <https://sjp.pwn.pl/slowniki/dezinformacja.html> [accessed: 26 II 2025].

of time<sup>11</sup>. Referring to the USSR's strategic disinformation, Anatoli Golitsyn defined disinformation as systematic efforts to spread false information and to distort or block information about the real situation and policies of the communist world. Consequently, disinformation practices were intended to confuse, mislead and influence the non-communist world in a biased manner, to undermine its policies and to persuade Western opponent to unwittingly contribute to the achievement of communist goals<sup>12</sup>.

The role of disinformation actor is played not only by special service and military officers, but also by diplomats, business representatives, the media and politicians. Vladimir Volkoff, who served as a French intelligence officer during the Algerian War, treated disinformation as a weapon of war, similar to deception, misleading, diversion, black and white propaganda, as well as exerting influence. According to Volkoff, disinformation can only be effective if three conditions are met: 1) there is already a certain group of people who are misinformed or susceptible to influence; 2) it is not used 'against the grain'; 3) it is spread out over time and has a long-term effect<sup>13</sup>. This author elevates disinformation to the rank of doctrine, while calling deception merely a technique<sup>14</sup>.

Disinformation should not be confused with propaganda. Disinformation refers to a certain type of information, but it is the opposite of propaganda: false information that misleads the recipient. The fundamental interpretative assumption of the concept of disinformation is its intentionality – i.e. false information is conveyed in order to give the recipient apparent, useless or even harmful knowledge, which will lead them to make wrong decisions that are beneficial from the point of view of the disinformation actor. It is also possible to achieve an unintended effect resulting from a misunderstanding of the information content by the recipient or its distortion, e.g. by social media. Propaganda, on the other hand, is commonly associated with the practice of lying to entire societies by state authorities, especially those operating in totalitarian states. It is directed at a potential enemy of a given state or international opinion, but above all at its own society<sup>15</sup>.

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<sup>11</sup> A. Peplowski, *Wojna o tajemnice. W tajnej służbie Drugiej Rzeczypospolitej 1918–1944* (Eng. The war for secrets. In the secret service of the Second Polish Republic), Kraków 2011, p. 335.

<sup>12</sup> A. Golitsyn, *Nowe kłamstwa w miejsce starych. Komunistyczna strategia podstępów i dezinformacji* (Eng. New lies for old. The Communist strategy of deception and disinformation), Warszawa 2007, p. 5.

<sup>13</sup> V. Volkoff, *Dezinformacja – oręż wojny* (Eng. Disinformation – a weapon of war), Warszawa 1991, p. 6 et seq.

<sup>14</sup> Ibid.

<sup>15</sup> R. Bielawski, B. Grenda, P. Majdan, *Wieloaspektowa i wielowariantowa ewaluacja adekwatności opracowanych modeli walki informacyjnej w cyberprzestrzeni na potrzeby ewaluacji ryzyka zagrożeń*

After conducting a thorough theoretical analysis of the concept of disinformation, Mikołaj Juliusz Wachowicz proposed a comprehensive definition of it. According to this author, disinformation is:

- conscious, deliberate and insidious misleading of an opponent by any state or non-state entity concealing its real intentions, in physical or information space, by means of appropriately distorted (literally or contextually) data, information and documents, in order to induce the misinformed party to make decisions (actions and omissions) that are beneficial to the disinformation actor, to confuse the misinformed party, to divert their attention, to achieve the effect of surprise, to distort the real picture of things and the world, as well as to protect the legitimate and illegitimate interests of the disinformation actor;
- unaware and unintentional misleading of superiors, allies, subordinates or the environment, cooperating in any social structure, by misinterpreting orders, directives or other tactical and operational information, or omitting important instructions (guidelines), sometimes failing to provide necessary information at the right time, using ambiguous or incomprehensible terms;
- conscious, deliberate and usually insidious misleading of superiors, allies, subordinates or the environment, cooperating in any social structure and physical or information space, by any entity concealing its real intentions, using appropriately distorted (literally or contextually) data, information and documents, in order to induce the misinformed to take decisions (actions and omissions) that are beneficial to the disinformation actor (but sometimes also to the misinformed) – whether constructive or destructive<sup>16</sup>.

## History of criminalising the offence of intelligence disinformation

Intelligence disinformation activities were already criminalised in the interwar period. According to the Art. 20 § 1 of the *Regulation of the President of the Republic of Poland of 24 October 1934 on certain offences against the security of the State*, it was a criminal offence to mislead the Polish authorities by providing them with false information or by supplying forged or altered documents or other items

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*bezpieczeństwa narodowego* (Eng. Multifaceted and multi-variant evaluation of the adequacy of developed models of information warfare in cyberspace for the purposes of assessing national security threats), “Joint Publication” 2017, pp. 3–13.

<sup>16</sup> M.J. Wachowicz, *Ujęcie teoretyczne pojęcia dezinformacji* (Eng. Theoretical approach to the concept of disinformation), “Wiedza Obronna” 2019, vol. 266–267, no. 1–2, p. 250. <https://doi.org/10.34752/x40y-nc78>.

of importance to the security of the Polish state. Such an act was punishable by up to 5 years in prison. Pursuant to § 2 of Art. 20 of the regulation, the same penalty was imposed on perpetrators who, while rendering intelligence services to the Polish authorities, misled them by concealing important circumstances of their activities in relation to the government of a foreign state.

In the 1969 Criminal Code<sup>17</sup>, the crime of disinformation was penalised under Art. 131 § 1 and 2. The perpetrator of the crime specified in § 1 could be any person regardless of their relationship with Polish state authorities (e.g. an officer or a casual informant). However, the main perpetrator of the crime under § 2 could only be a person ‘rendering services to a Polish state authority’, and therefore one who was also connected with the government of a foreign state through their current or past activities, whereby knowledge of these activities would be relevant to the external security of the Polish People’s Republic<sup>18</sup>. Under current law, there is no such restriction.

The offence specified in Art. 131 of the 1969 Criminal Code was committed when the perpetrator misled a state authority. Providing this authority with false information, supplying it with forged documents or other forged or altered items of importance to the security of the Polish People’s Republic, undertaken with the intention of misleading, could constitute an attempt. Concealment was also considered an attempt under § 2 if, contrary to the perpetrator’s intentions, it did not mislead a Polish state authority. Cases concerning offences specified in Art. 131 of the 1969 Criminal Code fell within the jurisdiction of the provincial court pursuant to Art. 17 § 1 of the 1969 Code of Criminal Procedure.

### The protected interest under the Art. 132 of the Criminal Code

The purpose of Art. 132 of the Criminal Code is to protect the internal and external security of the Republic of Poland. The phrase ‘information of significant importance to the Republic of Poland’ contained in Art. 132 of the Criminal Code *in fine* should be understood as information of importance to the external and internal security of the Polish state<sup>19</sup>. The protected interest is external and internal

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<sup>17</sup> Act of 19 April 1969 – Criminal Code.

<sup>18</sup> J. Bafia, K. Mioduski, M. Siewierski, *Kodeks karny. Komentarz* (Eng. Criminal Code. Commentary), Warszawa 1977, p. 329.

<sup>19</sup> P. Kardas, in: *Kodeks karny. Część szczególna. Tom II. Komentarz do art. 117–211a* (Eng. Criminal Code. Specific part. Vol. II. Commentary to art. 117–211a), W. Wróbel, A. Zoll (sci. eds.), Warszawa 2017, p. 163.

interests of the Republic of Poland threatened by the disloyalty of a person rendering services to Polish intelligence or counterintelligence<sup>20</sup>. The subject of protection under the provision in question is also the proper functioning of the intelligence services of the Republic of Poland<sup>21</sup>. Art. 132 of the Criminal Code serves to support its defence in such a way that the information provided to Polish authorities is accurate<sup>22</sup>. The generic subject of protection is the Republic of Poland, while the individual subject of protection is external security in terms of protecting the independence and territorial integrity of the Republic of Poland, national defence and internal security<sup>23</sup>. The presented views of the doctrine regarding the subject of protection lead to the conclusion that Art. 132 of the Criminal Code protects the interests of the Republic of Poland in terms of its internal and external security understood in the broad sense. An adequate level of internal security is intended to provide citizens with a sense of security, stability, independence and protection of their quality of life. According to Katarzyna Żukrowska (...) *internal security is the domain of a country's internal policy. This is still the case today, although the nature and type of threats, as well as the methods of preventing them, have changed. Globalisation and the development of international communication require the internationalisation of internal security, which is happening, but there is still no full conviction of the necessity of this, due to a number of specific conditions*<sup>24</sup>. In turn, ensuring an appropriately high level of external security is an important element of a state's foreign policy.

In the 20<sup>th</sup> century, the concept of external security provided by the state changed. Previously, the country relied primarily on the potential of its own armed forces, whereas now it focuses mainly on acquiring suitable allies. Due to Poland's location on the border of the EU and NATO, particular importance should be attached to strengthening cooperation with other countries in the areas of immigration, asylum and border protection policies. In the reality of contemporary threats, even such fundamental human rights as freedom of speech, which is embodied in freedom of the press, must give way to the security system. *There is no doubt that*

<sup>20</sup> K. Wiak, in: *Kodeks karny. Komentarz* (Eng. Criminal Code. Commentary), A. Grześkowiak, K. Wiak (eds.), Warszawa 2019, p. 845.

<sup>21</sup> I. Zgoliński, in: *Kodeks karny. Komentarz* (Eng. Criminal Code. Commentary), V. Konarska-Wrzošek (ed.), Warszawa 2018, p. 703.

<sup>22</sup> M. Iwiński, D. Rosenau, *Odpowiedzialność karna za dezinformację...*, p. 161.

<sup>23</sup> P. Hofmański, A. Sakowicz, in: *Kodeks karny. Komentarz* (Eng. Criminal Code. Commentary), M. Filar (ed.), Warszawa 2016, p. 891.

<sup>24</sup> K. Żukrowska, *Pojęcie bezpieczeństwa i jego ewolucja* (Eng. The concept of security and its evolution), in: *Bezpieczeństwo międzynarodowe. Teoria i praktyka*, K. Żukrowska, M. Grąciak (eds.), Warszawa 2006, p. 21.

when national security is compared to freedom of the press and the right to information as inalienable rights, it is more important. If only for the simple reason that without the secure existence of the state and its citizens, there would be neither press nor readers<sup>25</sup> – said Israeli judge Ido Druyan in September 2012, approving a settlement under which the journalist Uri Blau was sentenced to four months of community service for possession of classified documents. This marked the end of a scandal lasting several years involving leaks of classified information from the Israeli army. The journalist, working for *Haaretz* newspaper, published articles based on secret military documents taken by a female soldier, revealing how the Israeli army, contrary to the instructions of the Supreme Court, had killed Palestinians suspected of terrorism, even though it was possible to arrest them<sup>26</sup>.

### The subject matter of the offence of intelligence disinformation

The prevailing view in the literature on the subject is that the offence defined in the provision in question is of an individual nature, which means that it can only be committed by a person providing intelligence services to the Republic of Poland, regardless of whether they are a Polish citizen, a foreigner or a stateless person<sup>27</sup>. Only a person cooperating with the Polish intelligence services can commit them<sup>28</sup>. This opinion is shared by Natalia Kłaczyńska. According to her, the form of providing these services (permanent cooperation or only *ad hoc*) is irrelevant. The only requirement is that there must be an agreement between

<sup>25</sup> Quoted after: P. Kosmaty, *Trudny kompromis: wolność prasy a bezpieczeństwo narodowe*, “Rzeczpospolita”, 10 X 2018. See also: *Izrael: dziennikarz skazany za posiadanie tajnych dokumentów* (Eng. Israel: journalist convicted for possessing secret documents), Onet, 3 IX 2012, <https://wiadomosci.onet.pl/swiat/izrael-dziennikarz-skazany-za-posiadanie-tajnych-dokumentow/1076k> [accessed: 26 II 2025].

<sup>26</sup> *Ibid.*

<sup>27</sup> I. Zgoliński, in: *Kodeks karny. Komentarz* (Eng. Criminal Code. Commentary), V. Konarska-Wrzošek (ed.), Warszawa 2023, p. 785.

<sup>28</sup> M. Budyn-Kulik, in: *Kodeks karny. Komentarz aktualizowany* (Eng. Criminal Code. Updated commentary), M. Mozgawa (ed.), LEX/el. 2025, commentary to Art. 132. Similar opinions: P. Kardas, in: *Kodeks karny. Część szczególna. Tom II. Komentarz do art. 117–211a...*, p. 164; M. Filar, in: *Kodeks karny. Komentarz* (Eng. Criminal Code. Commentary), M. Filar (ed.), Warszawa 2016, p. 891; A. Michalska-Warias, in: *Kodeks karny. Komentarz* (Eng. Criminal Code. Commentary), T. Bojarski (ed.), Warszawa 2012, p. 366; M. Mozgawa, *Kodeks karny. Komentarz* (Eng. Criminal Code. Commentary), Warszawa 2015, p. 384; A. Marek, *Kodeks karny. Komentarz* (Eng. Criminal Code. Commentary), Warszawa 2010, p. 349; O. Górniok, *Kodeks karny. Komentarz* (Eng. Criminal Code. Commentary), Warszawa 2006.

the intelligence services and the perpetrator, under which the latter undertakes to provide intelligence services, either for a fee or free of charge. The perpetrator of an act under the Art. 132 of the Criminal Code may be either a double agent or a person merely cooperating with Polish intelligence, Polish citizen, a foreigner or a stateless person<sup>29</sup>. According to Janina Wojciechowska, the subject of intelligence disinformation can only be an agent of Polish intelligence, i.e. a person working within its structures or even cooperating with it on a one-off basis<sup>30</sup>. It is difficult to agree with this view, as the provision in question clearly refers to a 'person rendering intelligence services'. There are therefore no grounds for narrowing down the group of persons who may be subject to the offence under Art. 132 of the Criminal Code. This provision does not indicate a requirement for the perpetrator of the crime to be affiliated with Polish intelligence or counterintelligence. They are only required to 'render services' to them, i.e. to conduct activities on their behalf.

Jan Kulesza presents a different position, arguing that the offence under Art. 132 of the Criminal Code is a common offence, because the phrase 'rendering intelligence services to the Republic of Poland' does not indicate a specific feature of the perpetrator of the prohibited act, but only a specific situation<sup>31</sup>. Jarosław Majewski<sup>32</sup> and Konrad Lipiński share the same opinion. The second author adds that the phrase 'misleads while rendering intelligence services' presupposes that the perpetrator commits two acts simultaneously: providing intelligence services to the Republic of Poland and misleading the state authority.

The first of these actions characterises not the perpetrator, but the conditions (broader context) of misleading the authority<sup>33</sup>. It seems more appropriate to consider the conduct defined in Art. 132 of the Criminal Code as a general offence. Adopting such a position would also make it possible to extend the criminalisation of particularly dangerous conduct consisting in misinforming Polish intelligence services.

<sup>29</sup> N. Kłączyńska, in: *Kodeks karny. Część szczególna. Komentarz* (Eng. Criminal Code. Specific part. Commentary), J. Giezek (ed.), Warszawa 2014, p. 87.

<sup>30</sup> J. Wojciechowska, in: M. Fleming, J. Wojciechowska, *Zbrodnie wojenne. Przestępstwa przeciwko pokojowi, państwu i obronności. Rozdział XVI, XVII, XVIII Kodeksu karnego. Komentarz* (Eng. War crimes. Crimes against peace, the state and national defence. Commentary), Warszawa 1999, p. 150.

<sup>31</sup> J. Kulesza, in: *Kodeks karny. Część szczególna. Tom I. Komentarz do art. 117–221* (Eng. Criminal Code. Specific part. Vol. I. Commentary to art. 117–221), M. Królikowski, R. Zawłocki (eds.), Warszawa 2013, p. 95.

<sup>32</sup> J. Majewski, in: *Kodeks karny. Komentarz* (Eng. Criminal Code. Commentary), J. Majewski (ed.), Warszawa 2024, p. 805.

<sup>33</sup> K. Lipiński, in: *Kodeks karny. Część szczególna. Komentarz* (Eng. Criminal Code. Specific part. Commentary), J. Giezek (ed.), Warszawa 2021, p. 133.

The conduct of the perpetrator of the offence under Art. 132 of the Criminal Code consists in misleading a Polish state authority while rendering intelligence services to the Republic of Poland (i.e. acting on behalf of Polish intelligence or counterintelligence) exclusively in one of the following ways:

- 1) providing forged or altered documents;
- 2) providing items other than documents;
- 3) concealing genuine information that is of significant importance to the Republic of Poland;
- 4) providing false information of significant importance to the Republic of Poland.

This list is exhaustive. Therefore, misleading delivery of documents containing false information is not subject to criminalisation (it is difficult to accept that they fall under the category of ‘other items’, as this would call into question the distinction between the first two categories) – although there may be reservations as to the appropriateness of such a solution<sup>34</sup>. A document issued within the meaning of Art. 271 of the Criminal Code is not a forged document, i.e. a document that has been counterfeited or altered. The subject of the executive act of each form of offence under Art. 271 of the Criminal Code is both the document itself (in the sense that the certification of untruth constitutes a document in itself) and an integral part of the document (in the sense that the certification of untruth is precisely such an integral part)<sup>35</sup>.

It appears that, in its current form, the provision codified in Art. 132 of the Criminal Code excludes from criminal liability a number of significant acts related to the use of documents certifying untruths in legal transactions, which may be of significant importance for the Republic of Poland. One can imagine a situation in which intelligence services, in accordance with their powers, protect investments of strategic importance to the Republic of Poland. During the investment process, the person providing intelligence services to the Republic of Poland will present an appraisal report containing a false statement. According to the Supreme Court judgement of 13 May 2008, preparing an appraisal report containing a false statement constitutes the offence specified in Art. 271 § 1 of the Criminal Code<sup>36</sup>. Therefore, *de lege ferenda*, it would be necessary to consider the need to supplement the elements of the offence under Art. 132 of the Criminal Code with documents certifying untruths. ‘Misleading’ consists in the perpetrator taking deceptive measures leading to the victim having a false perception of reality (active

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<sup>34</sup> Ibid., pp. 133–134.

<sup>35</sup> J. Bafia, K. Mioduski, M. Siewierski, *Kodeks karny. Komentarz...*, p. 698.

<sup>36</sup> Judgement of the Supreme Court of 13 V 2008, ref. no. V KK 428/07, LEX no. 398537.

fraud). The victim's perception of reality does not correspond to the facts relevant to the decision on the specific disposal of property<sup>37</sup>. The method of deception in the case of an offence under Art. 132 of the Criminal Code has been narrowed down to the provision of forged or altered documents or other items, or the concealment of true information or the provision of false information.

Misleading refers to behaviour that constitutes a type of fraud, characterised by specific features that distinguish it from the fraud described in Art. 286 § 1 of the Criminal Code. Firstly, Art. 132 of the Criminal Code limits the circle of entities that the perpetrator can mislead to only the Polish state authority. Secondly, clearly characterises the methods of deception, which can only occur through the provision of forged or altered documents or other items, or through the concealment of true information or the provision of false information that is of significant importance to the Republic of Poland<sup>38</sup>. The offence is material in nature, as the perpetrator's actions result in an error on the part of a Polish state authority. For the offence to exist, it is irrelevant whether the perpetrator's actions actually harmed the interests of the Republic of Poland or even exposed those interests to harm. The decisive factor is the false content of the documents or information provided by the perpetrator which are of importance to the Republic of Poland, or the fact that the perpetrator concealed or withheld genuine documents or information of such importance, thereby misleading a state authority<sup>39</sup>.

According to Art. 115 § 14 of the Criminal Code, a 'document' is any object or other recorded medium of information to which a specific right is attached or which, due to its content, constitutes evidence of a right, legal relationship or circumstance of legal significance. The document must be forged or altered in such a way that it is relevant from the perspective of the intelligence or counterintelligence activity. Although the condition of the significance of such forgery or alteration of a document is not expressly included in the provision, it should be reconstructed from the context in which this type of behaviour by the perpetrator appears among other criminalised activities<sup>40</sup>. For the offence specified in Art. 132 of the Criminal Code to exist, it is irrelevant who altered or forged the document. It may therefore be the perpetrator himself or another person, e.g. in a situation where the perpetrator receives forged documents from a foreign intelligence authority. The perpetrator's behaviour may manifest itself in action or omission. In the case of an offence in

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<sup>37</sup> Judgement of the Supreme Court of 2 XII 2002, ref. no. IV KKN 135/00, "Prokuratura i Prawo" 2003, no. 6, "Orzecznictwo" supplement, item 8.

<sup>38</sup> P. Kardas, in: *Kodeks karny. Część szczególna. Tom II. Komentarz do art. 117–211a...*, p. 164.

<sup>39</sup> P. Hofmański, A. Sakowicz, in: *Kodeks karny. Komentarz...*, p. 891.

<sup>40</sup> K. Lipiński, in: *Kodeks karny. Część szczególna. Komentarz...*, p. 135.

the form of omission, it must be demonstrated that the perpetrator had a duty to provide the Polish state authority with true information of significant importance for the Republic of Poland. Another ‘item’ that, once delivered, is intended to mislead the Polish state authority could be, for example, a prototype of a new machine gun. This may apply to a medium other than a paper document, e.g. USB flash drive. Intelligence activity may be paid or unpaid. The activities of the person providing the intelligence services must be approved by the intelligence or counterintelligence service, which in practice means assigning them specific tasks.

### Recipient of intelligence disinformation – Polish state authority

In the context of the offence referred to in Art. 132 of the Criminal Code, the Polish state authority shall be understood as the authority responsible for external or internal security protection in the Republic of Poland. This limitation of the scope of the concept of the Polish state authority stems from the characteristics of the subject of the offence, which can only be a person ‘rendering intelligence services to the Republic of Poland’. Polish state authority is therefore a body that performs tasks in the field of intelligence activities<sup>41</sup>. Stanisław Hoc rightly points out that the Polish state authority should be understood as a separate organisational unit with a scope of activity defined by law, established to exercise state power, e.g. a special service (Foreign Intelligence Agency – AW, Internal Security Agency – ABW, Military Intelligence Service – SWW, Military Counterintelligence Service – SKW), minister, head, commander-in-chief (receiving information from the special services, within the scope of their powers, which may contain disinformation)<sup>42</sup>. Such an authority is, for instance, the Commander-in-chief of the Police or the Head of the ABW or AW. Generally speaking, a state authority is a properly organised institution established under the law, acting on behalf of and for the benefit of the state, using the means appropriate to the state authority. One of the fundamental aspects of the functioning of a given state body is the definition of its tasks and the granting of powers to carry out those tasks (competences). Competence means the ability to perform actions that have legal effects in the form of specific obligations on the part of certain entities. This concept should be interpreted in the context of the tasks specified in Art. 5(1) and Art. 6(1) of the *Act of 24 May 2002 on the Internal Security Agency and the Foreign*

<sup>41</sup> J. Wojciechowska, in: *Kodeks karny. Część szczególna. Komentarz* (Eng. Criminal Code. Specific part. Commentary), A. Wąsek (ed.), Warszawa 2010, p. 81.

<sup>42</sup> S. Hoc, *Przestępstwo dezinformacji wywiadowczej w polskim prawie karnym* (Eng. The offence of intelligence disinformation in Polish criminal law), “Nowe Prawo” 1980, no. 5(397), p. 51.

*Intelligence Agency*, as well as in the Art. 5(1) and Art. 6(1) of the *Act of 9 June 2006 on the Military Counterintelligence Service and the Military Intelligence Service*.

In the Art. 132 of the Criminal Code, the legislator used a very vague term: ‘of significant importance for the Republic of Poland’. According to the common meaning, ‘significant’ means ‘something that is of great importance or has a great impact on something’<sup>43</sup>. Not all disinformation provided by the Polish state authorities will be relevant, only that which would have a significant impact on the proper functioning of the Polish internal and external security system. ‘Significant importance for the Republic of Poland’ means that the concealed true information or the false information provided must be of fundamental, serious importance to the Polish state and its interests<sup>44</sup>. ‘Providing’ should be understood as the transfer of documents to the Polish state authority using all technically feasible means, and therefore may take the form of physical transfer, leaving them in a so-called contact box, sending them by post (traditional or electronic), by courier or via instant messaging services.

### The subjective aspect of the crime of intelligence disinformation

The offence specified in Art. 132 of the Criminal Code may only be committed intentionally in the form of direct intent. This is because all types of causative acts of this type of prohibited act are intentional in nature, involving ‘misleading’<sup>45</sup>. This is what Piotr Kardas indicates<sup>46</sup>. Konrad Lipiński takes a different position, arguing that both forms of intent should be considered: direct and contingent. However, it does not seem that ‘misleading’, as an axiologically neutral term (as opposed to, for example, deceit), allows for the criminal form of intent to be limited to direct intent<sup>47</sup>. The perpetrator of the offence in question must be aware that they are providing intelligence services to the Republic of Poland and that they are misleading the Polish state authority.

<sup>43</sup> The term: significant, *Wielki słownik języka polskiego* (Eng. The Great Dictionary of the Polish Language), <https://wsjp1/haslo/podglad/2929/istotny> [accessed: 26 II 2025].

<sup>44</sup> A. Błachnio, in: *Kodeks karny. Komentarz* (Eng. Criminal Code. Commentary), J. Majewski (ed.), Warszawa 2024, p. 806.

<sup>45</sup> I. Andrejew, W. Świda, W. Wolter, *Kodeks karny z komentarzem* (Eng. Criminal Code with commentary), Warszawa 1973, p. 404.

<sup>46</sup> P. Kardas, in: *Kodeks karny. Część szczególna. Tom II. Komentarz do art. 117–211a...*, p. 168.

<sup>47</sup> K. Lipiński, in: *Kodeks karny. Część szczególna. Komentarz...*, p. 136. M. Budyn-Kulik holds a similar position, in: *Kodeks karny. Komentarz* (Eng. Criminal Code. Commentary), M. Mozgawa (ed.), Warszawa 2015, p. 130.

## Penalties for offences under the Art. 132 of the Criminal Code

The offence specified in Art. 132 of the Criminal Code is punishable by imprisonment for a term of between one and 10 years. On the basis of the Art. 40 § 1 and 2 of the Criminal Code, it is possible to deprive the perpetrator of the offence of their public rights. This includes the loss of the right to vote and stand for election to public authorities, professional or economic self-government bodies, the loss of the right to participate in the administration of justice and to hold office in state and local government or professional bodies and institutions, as well as the loss of military rank and return to the rank of private. It also includes the loss of orders, decorations and honorary titles, as well as the loss of the ability to obtain them during the period of deprivation of rights.

It seems that in the case of convictions for political offences, including the offence of intelligence disinformation, this penalty should be considered more often than in the case of, for example, property offences. The imposition of this penalty means moral condemnation of the perpetrator for unworthy use of public rights and honours. Under Art. 37b of the Criminal Code, the court may impose (instead of the penalty provided for in the sanctioned norm) both imprisonment and restriction of liberty on the perpetrator of the offence. The offence referred to in Art. 132 of the Criminal Code is a public offence, prosecuted *ex officio*. There is no cumulative concurrence between the provisions of Art. 132 of the Criminal Code and Art. 130 Criminal Code. If a person participates in foreign intelligence or acts on its behalf by providing it with specific information, and this is done with the knowledge and consent of a Polish state authority, and at the same time that person misleads the Polish state authority in one of the ways specified in Art. 132 Criminal Code, then the legal basis for classification is Art. 132 Criminal Code<sup>48</sup>. The provision in question appears to coincide with Art. 270 and constitutes *lex specialis* in relation to it with regard to the use of forged or altered documents. The offence of intelligence disinformation may coincide cumulatively with the prohibited act specified in Art. 130 of the Criminal Code (espionage)<sup>49</sup>. If the perpetrator forges or alters a document himself and then delivers it to a state authority, the entire criminal content of the act is covered by Art. 132 of the Criminal Code<sup>50</sup>.

<sup>48</sup> P. Kardas, in: *Kodeks karny. Część szczególna. Tom II. Komentarz do art. 117–211a...*, p. 168.

<sup>49</sup> J. Majewski, in: *Kodeks karny. Komentarz...*, p. 806.

<sup>50</sup> K. Lipiński, in: *Kodeks karny. Część szczególna. Komentarz...*, p. 136.

## Summary

Due to its geopolitical location, Poland is particularly vulnerable to increased intelligence activity by various countries, both hostile ones and those with which it has military or political alliances. It should also be remembered that modern wars are far removed from their traditional understanding. Chaos, disinformation, fake news, manipulation of public opinion on an unprecedented scale, and other hybrid activities have become as important as bombs and heavy artillery. These types of challenges must be addressed by the state apparatus. Intelligence and counterintelligence services play a key role in this regard, ensuring an adequate level of internal and external security in the Republic of Poland. Espionage and related intelligence disinformation are combated by legal provisions, including criminal law. An analysis of the fundamental norm codified in Art. 132 of the Criminal Code has shown that it may not live up to expectations and that consideration should be given *de lege ferenda* to supplementing its characteristics with documents certifying untruths. This would allow for broader penalisation of disinformation behaviour and adaptation of this legal institution to the rapidly changing reality.

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