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Dominika NAROŻNA
Adam Mickiewicz University in Poznań
ORCID: 0000-0001-9877-1185

Protection of Politicians' Image in Poland

Abstract: A politician's activity in the public sphere is a prerequisite for winning electoral support and attaining power. It is therefore unsurprising that politicians are inclined to present not only particular messages but also themselves in public fora. One means of reaching the widest possible audience is to use mass media. Media actors frequently employ a politician's image to illustrate specific topics. In an era marked by the growing importance of visual communication, such practices create both opportunities and risks for politicians.

This scholarly article seeks to define and specify the concept of "image" within the Polish legal–political order and to delineate the boundaries of its protection under the law in force in the Republic of Poland. Its aim is to indicate the extent to which a politician's image is protected in Poland. The author advances the thesis that there is an increased scope for third parties to rely on the right to the image of individuals active in the public sphere (including politicians). To test this thesis, the article poses the following research questions: What, from a legal standpoint, is an image? What exclusions from its protection exist? What forms can its infringement take? Is a politician's image protection relative (i.e., dependent on the circumstances)? To answer these questions, the analysis draws on the subject-matter literature, legal norms, case law and the author's professional (journalistic) practice. The argument proceeds by analysing source materials (to establish definitions) and by applying the legal exegetical method (to interpret legal provisions). This approach enables conclusions to be drawn regarding the essence of the notion of "image" in the Polish legal–political order, the forms of its infringement, the claims that may be pursued on that basis, and the framework of its protection.

Key words: image, politician, personality rights, right to privacy

Introduction

In today's digital society, where individuals possess access to a wide range of technical means, the risk of infringements of the law by users increases with respect to the protection of the image of natural persons. Visual communication plays an ever more significant role in information processes. In the public sphere, the media increasingly curtail politicians' right to privacy, and politicians – by virtue of their office – are exposed to greater criticism. Journalists and internet users often resort to politicians' images when presenting content about them. This is not always done in a justified manner or in line with the law in force. The use of a politician's image may serve to illustrate certain content, to assign them a particular role, to anchor the subject matter in a given context, and-even-to defame or insult them. Photographs that unlawfully use a politician's image (without consent to take or publish them) appear ever more frequently in the digital sphere. Moreover, in the twenty-first century, modern technical tools allow the modification (including distortion) of elements of politicians' images (e.g., the face or other distinctive external characteristics) in photographs and audiovisual materials. There are

also instances of unlawfully using another’s image to construct a false identity online. None of this is conducive to accuracy and integrity in informing the public.

In the process of political legitimisation (Biernat, 2000, p. 218), image plays a pivotal role, as it helps to secure and sustain public trust – a *conditio sine qua non* for the exercise of power in democratic systems. Power is also recognised as legitimate through broad societal acceptance, to which the perception of a political actor by their environment contributes significantly. The portrayal of a politician in the media can evoke positive emotions and foster a sense of psychological proximity with the electorate; as a result, such a figure may be perceived as credible and trustworthy. In the longer term, this can have a decisive impact on electoral preferences.

It is worth emphasising that the development of social media and political communication has further increased the importance of image. Politicians are increasingly using their own photographs and audiovisual materials to elicit emotional responses and capture the electorate’s attention with the aim of gaining support. Today, artificial intelligence, in particular, enables the production of short video formats and personalised messages, which facilitate reaching diverse voter groups and strengthening the public image of party leaders. Consequently, skilful image management is crucial for any political actor, although it also entails the risk of manipulation and the erosion of public trust. Hence, legal regulations exert a fundamental influence on political communication, defining its framework, boundaries, and transparency.

Image as a Category of Personality Rights

Scholars generally present the concept of image in three senses:

– as the representation of a subject formed in people’s consciousness (a set of mental schemata);
– as a set of meanings and symbols that render a subject recognisable (a set of visual and non-visual signs);
– as the manner in which people describe and relate to a given subject (Adamus-Matuszyńska, 2010, pp. 11–12).

Polish legislation lacks a normative definition of the term. Valuable proposals for presenting the concept can be found in Polish judicial decisions and in the Polish legal literature (Narożna, 2018, pp. 106–114). From this perspective, image is treated as an “intangible creation” (Grzeszak, 2013, p. 665); as a symbol of a natural person that individualises them (Judgment of the Court of Appeal in Warsaw of 7 October 2004, I ACa 8/04); and as the depiction of a person – that is, a perceptible complex of features that enable identification (Stefaniuk, 1970, p. 64). The concept may also refer to elements connected with the performance of a profession, including such features as attire, make-up, or manner of movement (Judgment of the Supreme Court of 20 May 2004, II CK 330/03). It most commonly focuses on the face, as the most characteristic part of the human body, but it also encompasses distinctive bodily marks (e.g., tattoos, scars) and characteristic voice timbre. Image is classified as a personality right.

The notion of personality rights itself is also not statutorily defined. Article 23 of the Act of 23 April 1964 – Civil Code (Journal of Laws 1964, No. 16, item 93, as amend-

ed) sets out only the framework for the protection of personality rights by providing a non-exhaustive list. This “open catalogue” allows for the protection of potential personality rights that may be included in, or excluded from, the catalogue in response to social change (Judgment of the Supreme Court of 18 January 1984, I CR 400/83). Personality rights are non-pecuniary in nature and constitute attributes of persons (see Judgment of the Supreme Court of 14 November 1986, II CR 295/86): they “comprise all aspects of someone’s personality which form an integral part of that person for the sole reason that the person was born with them” (Święcka, 2010, p. 27). They are so closely tied to the rights-holder that they arise and expire together with them.

Measures for the protection of personality rights are set out in Article 24 §1–2 of the Civil Code. They allow claims of a non-pecuniary character – such as injunctions against further infringement (see Judgment of the Supreme Court of 26 February 1965, II CR 13/65; Judgment of the Supreme Court of 22 December 1997, II CKN 546/97) or orders to undertake acts necessary to remove the effects of an infringement, in particular the publication of an appropriate statement in a suitable form and content (Judgment of the Supreme Court of 10 February 1998, II CKN 528/9; Judgment of the Supreme Court of 19 January 1982, IV CR 500/81) – as well as pecuniary relief in the form of monetary compensation for non-pecuniary damage or payment of a sum to a designated public interest cause (Judgment of the Constitutional Tribunal of 7 February 2005, SK 49/03; Judgment of the Supreme Court of 23 May 2002, IV CKN 1076/00; Judgment of the Supreme Court of 12 December 2002, CKN 1581/00; Judgment of the Supreme Court of 15 June 2005, IV CK 805/04).

Polish scholarship observes that – alongside honour and the right to privacy – image is among the most frequently infringed personality rights (Brzozowska, 2013, p. 137).

Image as Part of a Politician’s Personality Rights

A politician is commonly understood to be a person active in politics. Politics is defined as “the totality of relations and processes relating to the broadly understood issue of power and its functioning in public life… it is thus an institutionalised phenomenon, generally derived from the traditions of a given nation/group and from prevailing patterns of political culture; a derivative of social relations focused on power – particularly state power – endowed with formal-legal sanctions and enjoying a monopoly on the legitimate use of coercive apparatus” (Jeziński, 2005, p. 255). Political scientists note, however, that the practice of politics encompasses not only processes “aimed at the attainment of power, its exercise, and the performance of duties imposed on organs of state authority” (Przybysz, 2003, p. 12), but, in a broader sense, “all activities connected with politics, that is, both the foregoing, directly associated with the exercise of power, and indirect activities leading to the implementation of coherent, specific actions described as political” (ibid., p. 12).

For the purposes of this article, the author adopts a broad understanding of the term “politician”: a natural person who is a subject of the exercise and maintenance of power in public life and who performs tasks encompassed by “politics.” As a natural person, a politician is likewise entitled to protection of their image.

Image: Infringements and Exclusions from Protection

The protection of image rights varies across European jurisdictions; however, the fundamental principle underpinning such regulation is the requirement of consent for the recording or dissemination of an individual’s image. Such consent must be voluntary, informed, and unequivocal. In Poland – as in the wider European Union – the legal framework affords robust protection to personal data, including image, under the provisions of the General Data Protection Regulation (GDPR) – *Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC* (OJ L 119, 4.5.2016, p. 1).

From the perspective of the Act of 4 February 1994 on Copyright and Related Rights (Journal of Laws 1994, No. 24, item 83, as amended), a tendency can be observed to distinguish between the notions of the “physical depiction” (appearance) of a person and the “image” as a protected legal interest. This means that image is not simply a person’s physical appearance but a concretisation of that appearance. Accordingly, it need not be a carbon copy of the natural person; it may concentrate on characteristic elements that allow identification (Sadomski, 2008, pp. 177–178).

In doctrine, image is regarded as an absolute, non-pecuniary, inalienable and non-heritable subjective right. As a rule, publication of an image requires the consent of the right-holder. Such consent cannot be presumed (Judgment of the Court of Appeal in Warsaw of 10 February 2005, I ACa 509/04); it must be specific, precise and indeed beyond doubt (Judgment of the Court of Appeal in Warsaw of 12 February 1998, I ACa 1044/97). Consent to fixation of the image is not tantamount to consent (express or implied) to its dissemination.

The Copyright Act provides three exceptions to the general requirement to obtain the right-holder’s consent for publication of their image (Article 81(1) and (2)(1–2) of the Act on Copyright and Related Rights). Consent is not required where:

– the person received remuneration for making their image available (cf. Judgment of the Court of Appeal in Warsaw of 20 June 2002, I ACa 1358/01);
– dissemination concerns a person commonly known (Judgment of the Supreme Court of 20 July 2007, I CSK 134/07), provided that the image is used in connection with the performance of their public function;
– the person whose image is shown constitutes an element of a broader whole (Judgment of the Court of Appeal in Warsaw of 10 February 2005, I ACa 509/04).

T. Grzeszak distinguishes two types of image infringement:

– contextual – where another personality right is infringed and the image serves merely as the form through which the infringement occurs;
– non-contextual (neutral) – where the mere use of someone’s image does not infringe any personality right of that person but nonetheless violates other legal provisions (Grzeszak, 2013, pp. 666–668).

On this basis, the forms of image infringement and the exclusions from protection applicable to politicians, as holders of this intangible personality right, are the same as for other natural persons.

Protection of Image within the Right to Privacy

The Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, No. 78, item 483, as amended) guarantees citizens the right of access to information. At the same time, Article 61(4) of the Constitution limits that right (including access to visual information, such as photographs depicting the images of natural persons) by reference to other freedoms and rights of others. One such sphere – and right – is undoubtedly privacy.

The relationship between the public sphere (concerned with matters of the community and the state) and the private sphere (encompassing family or personal life) in liberal democracies is founded on the principle of separation. However, the boundary between them remains largely conventional, as these two domains are engaged in dynamic interaction and therefore evolve continuously. On the one hand, the state is tasked with acting in the public interest and safeguarding citizens’ rights and freedoms. On the other hand, the public sphere is conceived as a space in which citizens are free to deliberate on public affairs. Within the liberal tradition, however, the state has an obligation to protect individual privacy and should refrain from interfering in a person’s private life, provided that such conduct does not infringe upon the rights of others. This concept is underpinned by the idea of negative liberty – namely, freedom from coercion (Berlin, 1991, p. 382).

The public sphere exerts influence over the private sphere (see Ochman, 2015, pp. 147–168), for instance, through the regulation of legal norms and the shaping of social norms. Conversely, the private sphere affects the public sphere by revealing aspects of politicians’ personal lives, which often become the subject of public debate (for example, through media coverage) and may, in turn, impact their professional careers. In an information society, the boundaries between the public and private spheres are becoming increasingly fluid. This is driven, among other factors, by new technologies and social media, which contribute to the *publicisation* of elements traditionally belonging to the realm of private life.

No universally accepted definition of private life exists. It is a capacious category. Alongside the right to withhold information about oneself outside the public sphere, the secrecy of correspondence, the inviolability of the home, and the right not to disclose certain aspects of one’s life, it also encompasses the right to one’s image. “Privacy” is defined as the opposite of public (including political) life. K. Święcka treats it as the extent of “our control over what others know about us” (Święcka, 2010, p. 40).

To publish information – including photographs bearing an image – from a politician’s private life, there must be a direct connection with their public activity (Ślęzak, 2009, p. 43). This should be interpreted as a causal link between publishing private-life information and public activity. If certain acts (including reprehensible ones), even from a politician’s intimate life, bear upon the public sphere and arise from that public activity (are linked to the performance of that role), then others (including journalists) have the right to use the image in connection with that activity. Thus, where a politician’s image is presented in relation to their public activity, there is no infringement – under the Civil Code – of the provisions on unauthorised use of this intangible personality right. In the sphere of private life (where the situation is not connected to, and does not translate into,

the public sphere), the use of a politician’s image without their consent may constitute an infringement of the right to privacy.

Commercial Use of a Politician’s Image

As a rule, commercial (e.g., marketing) use of a politician’s image requires their consent (Rakiewicz, 2007, p. 337). Unlawful exploitation of this personality right for such purposes by third parties may give rise not only to liability for infringement of personality rights but also to liability under the law on unfair competition (Act of 16 April 1993 on Combating Unfair Competition). Exceptions to this rule include the use of a politician’s image as an element of broader critical or satirical expression, or where its use serves academic, educational or informational purposes (see Ślęzak, 2019, pp. 40–52). The key distinction here is between use of the image as a component of a commercial message and its use as part of expression protected by freedom of speech (Protection of the Image of Public Figures).

Impersonation of a politician’s image is prohibited. Likewise, modification of a politician’s image by third parties in visual or audiovisual space – absent the politician’s consent – is, as a rule, forbidden. In the latter case, the rights to caricature and satire constitute exceptions, provided they do not violate the politician’s dignity or good name.

The Image of Politicians and Social Media

An analysis of media and politics in the context of social media reveals how the right to one’s image is constantly being redefined and, at times, fundamentally challenged. At present, users have effortless access to photographs and audiovisual materials featuring politicians, which can, *ad hoc*, become viral and reach large audiences. In most cases, users do not possess the necessary consent for the publication or dissemination of such materials. Moreover, social media platforms frequently do not recognise violations of personal rights as sufficient grounds for the removal of content or images, thereby complicating the pursuit of legal remedies. Furthermore, once an image has been published, it rarely disappears entirely from the digital sphere, even if deleted. Consequently, the so-called “right to be forgotten” – which entitles an individual to request the immediate erasure of their personal data by the data controller – often proves difficult to enforce. On the other hand, technology companies are under increasing pressure to moderate content, including that which infringes upon the image rights of politicians. This, however, raises the critical question of whether such private entities ought to determine the circumstances under which the right to one’s image has been violated – or, more broadly, where the boundary lies between legitimate protection and censorship.

It is also noteworthy that many politicians actively employ social media platforms to construct highly personalised public images, frequently sharing aspects of their family lives. Such practices complicate subsequent attempts to demarcate the boundaries of privacy when media outlets or internet users later exploit such images in dis-

advantageous ways. Moreover, the image of a politician may become a tool in the wider political arena, as opponents or critics may deploy it in malicious, defamatory, or manipulative campaigns that operate at the margins of legality. A particularly serious concern is the proliferation of *deepfakes* – fabricated videos or audio recordings that manipulate an individual’s likeness to make them appear to say or do things they never actually did. These techniques enable unprecedented forms of manipulation of public opinion.

It must also be acknowledged that social media platforms, through their algorithmic structures, generate so-called “information bubbles” (Pariser, 2011, p. 294), in which internet users are predominantly exposed to content that confirms their pre-existing beliefs and worldviews, while divergent opinions are marginalised or condemned. This dynamic can contribute to more aggressive and one-sided uses of opponents’ images, limiting the possibility of constructive political debate.

Thus, legal regulation may both support democratic principles – such as freedom of expression and fair deliberation – and lead to abuses if poorly designed, misaligned with technological realities, or exploited for partisan purposes. Polish legislation governing the media – both traditional and online – shapes political communication by establishing, at least in principle, norms of neutrality, pluralism, and accountability for published content. However, with the rapid development of new technologies, the law must increasingly adapt to challenges associated with disinformation, *fake news*, and the personalised targeting of political advertising online. Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (the Digital Services Act, DSA)[1] introduces new mechanisms of oversight and transparency designed to safeguard public debate against systemic risks. Yet, Poland has not yet implemented national legislation that would allow for the full enforcement of all aspects of the DSA.

Conclusions

The foregoing supports the thesis that third parties are increasingly making use of politicians’ image rights. The discussion above allows the following conclusions to be drawn:

1. In Poland, politicians’ images are protected by law.
2. A politician’s image is a category of intangible personality rights and may thus be protected under the Civil Code.
3. Mere fixation of a politician’s image (e.g., taking a photograph) does not imply consent to its publication.
4. Publication of any person’s image (including a politician’s) without their consent is permissible where the person received remuneration for posing; where the person forms part of a larger whole in the photograph; or where fixation occurred in the public sphere in connection with the performance of a public function.

[1] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act), *Official Journal of the European Union*, L 277, 27.10.2022, pp. 1–102.

5. A politician’s right to privacy limits third-party use of their image.
6. Third parties may publish photographs capturing a politician’s image from the sphere of private life where acts undertaken (or omissions) in that sphere have a connection with the politician’s public obligations (e.g., publication justified by a legitimate public interest).
7. As a rule, commercial use of a politician’s image without their consent is prohibited.
8. Use of a politician’s image as an element of broader critical or satirical expression, or for academic, educational or informational purposes, is permissible.
9. The consequences of infringing image rights give rise to the same claims for politicians against infringers as for any other person.

At present, the use of politicians’ images by others stems from varied motivations. Where such use serves informational purposes, relates to the public sphere and does not infringe other personality rights or the politician’s rights, it should not be categorised as a breach of legal norms. Society has the right to inform and to be informed. However, where the use is aimed solely at disinformation, violates the right to privacy, or defames or insults a politician, there is no tolerance for such conduct within the Polish legal order.

The establishment of legal frameworks for the protection of politicians’ image carries significant political implications. On the one hand, such frameworks enable the exercise of ”social control” over the actions of political actors; on the other hand, their violation may give rise to serious legal consequences, including civil claims – such as demands for the cessation of infringements, the removal of their effects, the payment of compensation or damages – as well as criminal liability, which may involve fines, restrictions of liberty, or imprisonment. In this context, the increasing use of so-called *strategic lawsuits against public participation* (SLAPPs)[2] – including actions related to the protection of image – has become a growing concern, as they are often deployed to limit public debate and silence critical voices (Gucman, 2022). Consequently, it may be argued that the law can serve not only as a means of protection but also as an instrument for constraining political criticism.

Forecasts concerning the use of others’ images, including those of politicians, are not encouraging: abuses in this area are expected to grow. The proliferation of fake news, identity theft, and the use of artificial intelligence to modify another’s image are merely some of the emerging problems (see Koschel-Sturzbecher, Jujeczka, 2025, p. 184). Hence the call for the legislature to keep pace with a changing reality in order to protect the personality rights of every person, including politicians.

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[2] A SLAPP constitutes a form of strategic litigation intended to exert influence in cases where no genuine legal claims exist, focusing instead on suppressing messages or opinions that, in matters of public interest, are unfavourable to those subjected to public criticism.

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Ochrona wizerunku polityka w Polsce

Streszczenie

Działanie polityka w sferze publicznej jest warunkiem pozyskiwania poparcia elektoratu wyborczego i zdobywania władzy. Zatem nie dziwi fakt, że jest on skłonny do prezentowania nie tylko określonych treści, lecz także własnej osoby na forum publicznym. Jednym ze sposobów dotarcia do jak największej liczby osób jest korzystanie przez niego ze środków masowej komunikacji. Przedstawiciele tych ostatnich często posiłkują się jego wizerunkiem, aby zobrazować dane tematy. W dobie rosnącej roli komunikacji wizualnej takie działania dla polityka niosą za sobą zarówno szanse, jak i zagrożenia.

Artykuł naukowy skupia się na zdefiniowaniu oraz dookreśleniu pojęcia „wizerunek” w polskim porządku prawno-politycznym oraz przedstawieniu granic jego ochrony na gruncie prawa obowiązującego w Rzeczypospolitej. Jego celem jest wskazanie w jakim wymiarze istnieje ochrona wizerunku polityka w Polsce. Autorka przyjmuje przy tym tezę o zwiększonym zakresie korzystania z prawa do wizerunku osób występujących w sferze publicznej (w tym także polityków) przez inne osoby. Chcąc ją potwierdzić stawia pytania badawcze: Czym, z punktu widzenia prawa, jest wizerunek?; Jakie są wyłączenia spod jego ochrony?; Jakie są rodzaje jego naruszenia?; Czy ochrona wizerunku polityka jest relatywna (uzależniona od sytuacji)? Szukając odpowiedzi na nie, sięga do przedmiotowej literatury, norm prawnych, kazuistyki oraz zdobytej praktyki (dziennikarskiej). W prowadzonym wywodzie posiłkuje się analizą materiałów źródłowych (ustalenia definicyjne) oraz metodą egzegezy prawniczej (interpretacja przepisów prawa). Pozwoli to na wyciągnięcie wniosków na temat istoty pojęcia „wizerunek” w polskim porządku prawno-politycznym, wskazania form jego naruszeń, roszczeń z tego tytułu oraz ram jego ochrony.

Słowa kluczowe: wizerunek, polityk, dobra osobiste, prawo do prywatności

Author Contributions

Conceptualization (Konceptualizacja): Dominika Narożna

Data curation (Zestawienie danych): Dominika Narożna

Formal analysis (Analiza formalna): Dominika Narożna

Writing – original draft (Piśmiennictwo – oryginalny projekt): Dominika Narożna

Writing – review & editing (Piśmiennictwo – sprawdzenie i edytowanie): Dominika Narożna

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