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The Case of Tomasz Komenda: Media Discourses and Legal Consciousness in Polish Society¹

Over recent years in Poland, both the law and media (above all Poland's public media) have undergone enormous changes viewed unfavourably by a large part of Polish society. The vast majority of these changes were the result of the political sphere's gradual penetration into other areas of societal life. Consequently, the law and media are increasingly entangled in various types of political conflicts and collusions, to the detriment of legal regulations and media debates regarding the law. As the latter constitute an important factor in the formation of legal consciousness, their scrutiny can facilitate an understanding of the processes that accompany Polish indifference to infractions of the rule of law. Building upon a discourse analysis of the public debate around one of the most famous legal cases in Poland, this article strives to answer the question as to whether and to what extent images of the law and law-applying institutions that function in the public sphere can affect the legal consciousness of Polish society. Special attention is paid to the images of mutual relations between the law and its addressees presented in the media, with particular emphasis on the agency of legal subjects.

Key words: legal consciousness, media, communication, agency

W ciągu ostatnich lat w Polsce zarówno prawo, jak i media (przede wszystkim media publiczne) przeszły ogromne zmiany, postrzegane niekorzystnie przez istotną część polskiego społeczeństwa. Znakomita większość tych zmian wynikała ze stopniowego przenikania sfery politycznej do innych obszarów życia społecznego. W rezultacie prawo i media są coraz bardziej uwikłane w różnego rodzaju układy i konflikty polityczne, ze szkodą dla regulacji prawnych oraz medialnych debat na temat prawa. Ponieważ te ostatnie stanowią istotny czynnik kształtowania świadomości prawnej, ich analiza może pomóc w zrozumieniu procesów odpowiedzialnych za obojętność Polaków wobec naruszeń pra-

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¹ This article is an outcome of the “Legal Consciousness of Polish Society: Diagnosis, Types, Paths of Formation” research project (No. 2017/27/B/HSS/01658), financed by the National Science Centre and carried out at the Jagiellonian University Institute of Sociology.

worządności. Opierając się na analizie dyskursu debaty publicznej toczącej się wokół jednej z najgłośniejszych spraw sądowych w Polsce, niniejszy artykuł stara się odpowiedzieć na pytanie, czy i w jakim stopniu funkcjonujące w sferze publicznej obrazy prawa i stosujących go instytucji mogą wpływać na świadomość prawną polskiego społeczeństwa. Szczególną uwagę zwrócono na prezentowane w mediach obrazy wzajemnych relacji między prawem a jego adresatami, ze szczególnym uwzględnieniem sprawczości podmiotów praw.

Słowa kluczowe: świadomość prawna, media, komunikacja, sprawczość

“When the handcuffs tightened on his hands, he was a happy youth; he had dreams and plans for the future. Today, after 18 years in prison for a crime he did not commit, Tomasz Komenda (42 years old) is nothing like that carefree young man. He is bitter, nothing makes him happy, and he cannot function normally. Tomek was sentenced to 25 years for raping and murdering 15-year-old Małgosia. He did not commit this crime, but the truth has only recently come to light. Last week, a man left prison, but he is no longer the same cheerful person he was before his detention. Behind bars, he went through hell. He reported that other prisoners bullied him cruelly as there is no mercy in this world for those who harm children. He explained to them that he was innocent, but other convicts did not believe him. Several times he wanted to end this in the only way he thought possible – by committing suicide. Once he even hanged himself, but, at the last minute, someone cut the rope. Now free, Komenda has mood swings. Immediately after leaving prison, he was euphoric and could move mountains. A few days passed, however, and the 42-year-old man broke down completely. He is under the care of a psychotherapist who is to help Komenda return to normal life” (*Super Express*, 22.03.2018).

The case of Tomasz Komenda is the best-known and most dramatic instance of wrongful conviction by the Polish judiciary. In the year 2000, Komenda was unjustly arrested, suspected of having committed the so-called Miłoszyce crime that took place in a Lower Silesian village, not far from the regional capital of Wrocław, on New Year’s Eve of 1996/1997. With the 4-year criminal proceedings proving that Tomasz Komenda had participated in the brutal rape of a 15-year-old girl who died as a result of her injuries and hypothermia, the court sentenced him to 25 years in prison. Some twelve years after that conviction, the Prosecutor General’s office reopened the case and, as a result of its review, Tomasz Komenda was first paroled and ultimately acquitted.

Since the moment of his release in March 2018, Tomasz Komenda has been accompanied by the mass media, which have reported on the successive stages of him regaining his civil rights and reaccustoming himself to freedom. These stages have included Komenda’s commencement of psycho-

therapy, removal from the register of sex offenders, acceptance of free legal services offered by one of the most recognised lawyers in Poland, being granted a special pension by the Prime Minister, acquittal, filing a claim for redress and compensation, entering into cooperation with a well-known Polish foundation, engagement to be married, and the birth of his child. Concurrently, any information concerning individuals who had in any way contributed to Tomasz Komenda's wrongful conviction drew vast media interest, as did the proceedings of the new Miłoszyce crime trial, through which two new suspects were convicted. Komenda's case had a seemingly (at the time) happy ending in February 2021, when a verdict was issued awarding him the highest redress (PLN 12 million) and compensation (PLN 800,000) in the history of the Polish justice system.

The primary aim of this article is to examine the social mechanisms that link legal consciousness to mass media communication regarding the law in the public sphere. This particular exploration is conducted with reference to Komenda's case because it was very noticeable in both Polish public debate and individual narratives about the law in general. A qualitative analysis of the content and assertions connected with this case enables an examination of the media effect, elucidating the processes that underlie social learning of the meanings of law. Moreover, with a focus on agency, answers are sought to the question as to whether individuals are presented as having control over their legal environment through an ability to shape their life circumstances. Finally, by incorporating a more complex perspective drawn from legal consciousness and media literature, the research results presented here more accurately pinpoint how law as a communicative phenomenon works in the everyday life of representatives of Polish society.

The article comprises four main parts. In the first, the theoretical foundations of the relationship between the law and the mass media are explored. The second provides quantitative data on the media and non-media sources of information about the law. The results of discourse analysis pertaining to Komenda's case are presented in the third section. Finally, the last part of the article discusses the findings of the analysis – looking into the potential impact of specific narratives on the legal consciousness of Polish society.

Law and media

The theoretical cornerstone for this study is the concept of law as a phenomenon that materialises in the process of communication (see e.g. Cyrul 2007; Dudek 2014; van Hoecke 2002; Jopek-Bosiacka 2010; Kłodawski 2012), that is, as a phenomenon that is communicable and subject to inter-

pretation, and simultaneously a tool for practical, individual, and collective actions. An assumption is that the communication and interpretation are conducted by experts (lawyers), powerholders (authorities, politicians, and journalists, among others), and ordinary citizens. The experts render official interpretations of the law while powerholders create and apply their own interpretations, serving their own (very often collective) interests. Citizens, in turn, are also engaging with the law and interpreting it for their own purposes. The law is therefore a subject of both 1) vertical, one-sided communication and interpretation from the sender to the receiver, taking the form of knowledge and interpretation transmission, and 2) multilateral, horizontal (including media) communication between citizens using the law. The latter type of communication – apart from personal experiences and contacts with the law – has a decisive impact on evaluative opinions about the law as well as more specific and practical information about the law in force. It should be emphasised here that opinions and arguments pertaining to the law in general, regarding how the law is applied and about relevant, headline-making cases in the public sphere, are important factors shaping popular opinions and representations of the law in the social consciousness.

Although there is little knowledge on the level and nature of media discourse influence on the perception of law and the legal competencies of media consumers, the role of the mass media in studies of legal consciousness is very often treated as self-evident. Notwithstanding such a state of affairs, research on legal consciousness could provide insight into the nature of the media's contribution to our sense of familiarity with the law and of the relations between media and non-media sources of legal consciousness.

According to Lieve Gies (2008; 2016), when analysing the ways in which media are used when making sense of one's legal experiences, it should be remembered that 1) people are not passive media recipients, and 2) the contribution that the mass media make to people's understanding of the law corresponds with their ability to structure people's daily experiences. Citizens are actively involved in interpreting mass media texts on legal matters, and draw on a large repertoire of cultural resources when constructing the meaning of both media messages and legal events described by broadcasters. Moreover, media consumption is not the most important social practice enabling citizens to become familiar with the law. As Gies (2016) has shown in her research, personal experiences with the law often prevail over the media as a source of legal consciousness, mainly due to the influential form of firsthand experience. In consequence, "the various resources of legal consciousness form a seamless structure in which it is difficult to distinguish the elements to which people refer when discussing their legal experiences" (Gies 2016: 48).

With reference to Gies's observation on the relations between the law and the media, and for the purposes of the analysis presented herein, this paper adopts the constitutive orientation and constructionist model. In line with the constitutive perspective, I focus on ways in which the law's effects are discernible in "meanings and self-understandings" (Sarat and Kearns 1995: 27). At the same time – following the constructionist approach (Gies 2016) – I place the media discourse within a much broader framework (social, cultural, and political) and treat it only as one of many indicators of how people construct meaning from the law. The instrumental viewpoint – which assumes that the law is distantly removed from human lives (Sarat and Kearns 1995) – will be invoked only incidentally when looking at the quantitative data regarding the sources of Polish citizens' knowledge about the law.

Therefore, the headline story introducing this article is not treated as leading to the ways in which people understand and perceive the legal system. To use Gies's words (2008: 30), "such a 'second-hand' familiarity" is not treated "as the principal or overriding factor in the constitution of legal consciousness". This premise is particularly important given that the case described concerns criminal law, or in other words an area of law with which most citizens do not have direct experience. For that reason, people rely heavily on the mass media to understand and make sense out of this field's principles and norms. That is chiefly due to the fact that "the media enable us to satisfy our curiosity about law from the safety of our living room and behold the legal maze in a risk-free way: law in media discourse is invariably something that happens to other people" (Gies 2008: 30). It is also not without significance that the described case was at some point (mostly in 2018 and in 2021) the most commonly discussed topic in Poland. Tomasz Komenda's case (as will be seen further in this article) was undoubtedly an example of an "inescapable media event," which Fiske (1994: 7) defines as "sites of maximum visibility and maximum turbulence" to which virtually everyone (Polish society in this instance) was exposed. Consequently, even individuals who avoid the mass media (not watching television or reading newspapers) likely found Komenda's story inescapable because it had become a talking point in many contexts of (ordinary) social interactions.

However, mere indirect contact with the case at hand is insufficient to shape the legal consciousness of the recipients of related mass media communication. As Gies (2008: 33) rightly observed, decisive in explaining the significance of the media as a legal consciousness resource is the extent to which media representations are able "to resonate with first-hand or local legal experience and meet the expectations of audiences". Such resonance determines the way in which people negotiate the interplay between events

described in the media and personal experience. In the case of high-profile criminal cases (such as Tomasz Komenda's), personal experience need not consist of similar, direct contact with criminal law, but can refer to general experiences with representatives of the justice system. In the absence of this kind of "common denominator", the images and news will "wash over us, but most leave little trace" (Bird 2003: 2). The resonance factor also explains the differences in the way media stories and texts are received: the fact that specific social groups have different (negative, neutral or positive) experiences with the law means that representatives of these groups also use the media differently as a resource for making sense of the law (Gies 2008; 2016). Consequently, media consumption – more specifically, "differential attentiveness to media discourse" (Sasson 1995: 156) – introduces another reason why social identity is an important variable explaining variations in legal consciousness.

Additionally, media preferences play an important, though not yet fully defined, role in the way in which the media impact legal consciousness. Despite the fact that there are established correlations between the types of media that people prefer to consume (such as types of newspaper, TV programme or website) and their general perception of the law and legal system (especially the criminal justice system; see, for example, O'Connell, Invernizzi and Fuller 1998; Dowler 2002), it is impossible to establish whether this is a bottom-up (perception of the law or variable that determines this perception guiding the choice of media) or a top-down phenomenon (media determining perception of the law).

In subsequent parts of this article, quantitative data are provided regarding the media and non-media sources of knowledge that Poles use in regard to the law. Following that comes a presentation of the most crucial characteristics of Polish media discourse on law, and a reconstruction of the processes by which the law is understood, perceived, and figured out on the basis of the Tomasz Komenda case (with special emphasis on the agency of legal subjects). Finally, with reference to both personal and mediated experiences recounted by Poles, the findings of an analysis investigating the potential impact of particular types of discourse on the legal consciousness of Poles are presented.

Research methods

This article lays out research findings from 1) a nationwide survey examining the legal consciousness of Polish society, 2) in-depth interviews with legal journalists, and 3) discourse analysis of mass media communications describing the case of Tomasz Komenda. The survey was conducted in 2020

by the Centre for Public Opinion Research (CBOS) on a representative sample of 1000 adult Poles. As this article focuses on relations between the media and legal consciousness, data drawn from the questionnaire's sections on contacts with the law and law-applying institutions will be discussed in detail, along with sources through which knowledge about the law is acquired. The in-depth interviews were conducted in 2019 with seven journalists specialising in legal issues. The discourse analysis probed TV, press, and internet communication referring to the Komenda case between 2018 and 2021. The analysis of television discourse covered 108 randomly selected examples of such communication; press discourse covered 352 print articles closely related to the case; and internet discourse covered 3723 websites generally connected with Komenda's case. With regard to the internet discourse, 928 pages, from two selected time periods (March 2018 and February 2021) have been analysed in greater depth. During the discourse analysis, general images of the law, and relations between the legal system and its addressees were reconstructed; answers were also sought to the question of whether individuals are presented as helpless or empowered when it comes to legal action-taking.

Media and non-media sources of legal consciousness in Poland

Most Polish studies on the sources of legal consciousness among the citizenry take "an external stance" (instrumental perspective), and posit a clear distinction between the law on the one hand, and human activities on the other (Sarat and Kearns 1995: 21). Periodically repeated, nationwide surveys on the sources of knowledge about the law and law-applying institutions are very often a typical manifestation of such methodological and theoretical strategizing. This type of research most often asks Poles about the sources of their information or views on the courts and justice system (e.g. Borucka-Arctowa 2003; Głowacki 2010; CBOS 2013; Iustitia 2016). It is quite rare for the law itself to be the subject of questions.

Up until 2020 – when the research project survey was conducted – only two significant studies had included questions about sources of information about the law. According to the results of the first (Gerula 1978: 22) – conducted by Maria Borucka-Arctowa's team in 1975 – most Poles acquired information about the law from the press (61%), and from TV and radio (60%). Sequentially, the highest ranking means of learning about the law were self-education (15%), workplace (13%), and education (6%).² Only 6%

² Respondents were asked to indicate the two most important sources of information about the law.

of the then-surveyed Poles declared not using any source of information about the law.

In the second study – conducted almost 40 years later, in 2013 – Grzegorz Wierczyński (2015) adopted a narrow definition of what constituted a source of information about the law, limiting this to “sources consciously and directly used to obtain information on legally binding norms” (2015: 254). Due to the difficulties in distinguishing such sources, in specific radio or TV programmes, from those in which the law served only as a backdrop, Wierczyński (2015: 254) excluded broadcasts from his catalogue of information sources about the law. This narrowed the set of choices from which respondents could make selections. That notwithstanding, in 2013 the most frequently indicated sources to which Poles had referred in the previous three years were social contacts (34%), daily newspapers (25%), internet services (25%), public servants and court employees (21%), and popular internet forums (20%). Less frequently selected were women’s magazines and periodicals (17%), opinion weeklies (14%), education (12%), paid consultants (11%), Polish official journals (such as the Journal of Laws of the Republic of Poland) (10%), specialised internet forums (10%), trade publications (8%), unpaid consultants (7%), and legal information databases (6%). It is also worth noticing that only half of the respondents (51%) declared having sought information about the law in the last three years (Wierczyński 2015: 274-276).

More currently, according to findings from the 2020 questionnaire described earlier, the mass media were now the chief source from which Poles (82%) learned about the law (see Table 1). Moreover, 44% declared having gained knowledge about the law over the course of everyday life experiences (for example in conversation with others, at work, at school or at university); 37% claimed to have acquired such information from professionals (such as lawyers, public servants, or non-governmental organisations). At the same time, only 10% of Polish society stated that cultural texts (including literature, films, and TV series) served as important sources of knowledge on law, while 7% claimed to have not sought information about the law from any sources. At this point in time, the most popular medium through which Poles acquired knowledge about the law was the internet; Polish general news websites (such as onet.pl, wp.pl, interia.pl) were indicated most frequently (35%), followed by official websites of public institutions (28%), websites offering legal advice (26%), the Public Information Bulletin (BIP) (15%), and forums or other sites where people exchange accounts of their

experiences with the law (13%). Internet sources were followed by television; the media least sourced in this respect were the press and radio.

Table 1. Frequency distribution of responses to the question: *Where do you get information about legal regulations and institutions?* (More than one response permitted)

Responses	Percent
from the internet	65.5
from television	37.2
from conversations with others	31.8
from lawyers	22.9
from public institutions and offices	19.9
from the press	17.5
from work	11.8
from school/university	11.0
from the radio	7.5
from literature	6.9
from other sources	4.8
from NGOs	3.9
from movies and television series	3.7
I don't get information about the law from any sources	7.2

The types of declared sources correlated with such sociodemographic variables as age, level of education, place of residence, socio-career group, financial situation, willingness to participate in elections, and political views.³ Older people more often obtained such information from television and radio, while younger people more often used the internet and literature. People aged 65 and over chose the press or indicated that they did not refer to any such sources. People between the ages of 18-29 were more likely to rely on knowledge learned at school or through TV series. As for people aged 30-44, the most typical sources were work, public institutions, and NGOs.

The television as a source of knowledge about the law was most often indicated by persons with primary or vocational-technical education, farmers, unskilled workers, retirees or pensioners, religious people, and those who practice their faith, as well as people giving the lowest assessment of their financial situation. The press and radio were chosen slightly more often by inhabitants of medium-sized cities and persons in poor economic conditions. The internet in turn was most often indicated as a source by the higher-educated; representatives of such socio-career groups as specialists,

³ All relationships presented here are statistically significant – at the level of $p < 0.05$ or $p < 0.01$.

creative artists, administrative staff, hired workers, self-employed persons, and housewives; inhabitants of villages, small, and medium-sized towns; and citizens who assessed their financial situation as good.

Poles who stated their support for the right-wing *Prawo i Sprawiedliwość* (PiS)⁴ more often obtained their knowledge about the law from television, while supporters of the centrist *Ruch Polska 2050* and highly nationalistic *Konfederacja* more often used the internet in this regard. At the same time, supporters of *Prawo i Sprawiedliwość* or its major opposition party, *Koalicja Obywatelska* (KO)⁵ signalled that conversations with friends and relatives were a significant source more often than did supporters of other parties. People who did not intend to vote tended more often to make no reference to any possible sources of knowledge about the law than did those planning to take part in elections.

It is also worth noting that individuals who obtained knowledge about the law from the internet, work, lawyers, school or university, or specialised literature were more likely to rate their knowledge as sufficient for their own needs. Furthermore, dissatisfaction with one's comprehension of the law was more common among people not looking anywhere for information on this topic, but also among those who obtained such knowledge from NGOs.

In addition to the question about their sources of information, the 2020 survey also asked Poles about more general reasons for contact with the law in everyday life, and about their contacts with law-applying institutions (see Table 2). When answering the first question, Poles most often indicated contacts with public offices and institutions (36%). In second and third place came experiences with the law in everyday life (32%) or through professional activities (27%). Every fifth respondent described media consumption (for example reading the press, watching TV, listening to the radio, or browsing the internet) as a source of contact with the law. The forms of contact given least often in the survey were associated with conflict situations – such as being in conflict with the law (16%) or involved in an interpersonal dispute (14%) – or with conversations with family members, friends or acquaintances on the topic of their legal problems (13%). Also worth noting is the fairly large group of respondents (30%) claiming to have had no contact at all with the law.

⁴ In coalition with *Solidarna Polska* and *Porozumienie*.

⁵ *Koalicja Obywatelska* is a political alliance formed in 2018 around *Platforma Obywatelska* (PO). In addition to PO, it included (at the time of the survey) *Nowoczesna*, *Inicjatywa Polska* and *Zieloni*.

⁶ All relationships presented here are statistically significant – at the level of $p < 0.05$ or $p < 0.01$.

The types of contact Poles declared here depended on age, education, place of residence, financial and family circumstances, level of civic involvement, and religious views.⁶ Indicating a greater number of contacts with the law – and thus possessing a greater capacity for noticing the presence of the law in everyday life – was typical of the young and well-off, singles or people with a big family, the non-religious, and those declaring a willingness to participate in elections. Furthermore, the declared types of contact with the law correlated with views on the importance and role of law in society. People of the opinion that the law plays an important role in modern society, as well as those who pointed to the protection of rights and the enforcement of obligations as important functions of the law, declared a greater number of contacts with the law.

According to data from the 2020 survey, the most common role in which the respondents or their relatives had contact with law-applying institutions (see Table 2) was that of a witness in a court proceeding (30%) or as someone who had committed a misdemeanour (27%). Poles also relatively often indicated the roles of a person receiving an administrative decision (17%), a crime victim or injured party (16%), a person who had filed a lawsuit (14%), or a person reporting a crime or misdemeanour (12%). Only 7% of the respondents had contact with the law as a person accused or suspected of a crime – something quite significant from the point of view of the case analysed in this article. Noteworthy here is the high percentage of Polish citizens (32%) claiming that neither they nor their relatives had had any contact with law-applying institutions.

The findings as a whole show that the vast majority of Poles treat the mass media (and above all online media) as a very important source of information and knowledge about the law. Social contacts are the second most important source. However, the situation changes when Poles are asked about general contact with the law, but without hinting at the nature of that contact (in the case of the referenced research – contact related to knowledge acquisition). In such situations, Poles pointed mostly to public offices and institutions; only 20% indicated media consumption as a situation in which they come into contact with the law.

Table 2. Frequency distribution of responses to the question: *Have you or any of your relatives ever had contact with law-applying institutions in one of the following roles?* (More than one response permitted)

Responses	Percent
A witness in court	30.4
A person who committed a misdemeanour	27.2
A person receiving an administrative decision	17.4
A crime victim or injured party	15.9
A plaintiff	13.7
A person who reported a crime or misdemeanour	12.1
A suspect or person formally charged with a crime	6.7
An audience member at a court hearing	6.1
A defendant in a lawsuit	5.8
A person who filed a complaint against an administrative decision	4.1
A person informally helping others to defend their rights or interests	3.3
A professional courtroom participant	2.5
A member of a social organisation defending the rights or interests of others	1.0
In other situations involving contact with law-applying institutions	4.3
Neither I, nor any of my relatives have had contact with any law-applying institution	32.1

A comparison of data on media sources of information about the law with data on contacts (direct and indirect) with institutions applying the law shows that people who declare having had such contacts tend less frequently to indicate older media (that is, television, the press and radio) as a source of knowledge about the law, and more often choose the internet.⁷ On the one hand, this observation confirms findings previously mentioned that indicate the greater importance of one’s own experiences. On the other hand, it seems to imply that as the majority of steadily aging citizens are permanently connected to the internet, the influence of the media on legal consciousness will inevitably increase. However, such influence will depend upon how the internet is used. People who treat it primarily as a medium enabling quick access to a practically unlimited amount of information are likely to be less affected by a flood of messages from various types of media broadcaster (including press publishers and TV producers). Those focused in turn on the

⁷ A positive correlation (0.103) was observed between a declared lack of contact with institutions applying the law and the indication of traditional media as a source of knowledge about the law; a negative correlation (-0.221) exists between the declared lack of contact with law-applying institutions and indications of the internet as a source. Both correlations were statistically significant at the level of $p < 0.01$.

passive consumption of content posted on the internet (including various types of social media) will be more susceptible to the negative impact of the flood of media information. Of course, in the case of the second group of people, personal experience with the law could be a factor changing perception and knowledge built on information read, seen or heard online. The importance of how this medium is used, including the types of internet searches and sources, suggests that future studies on sources of legal knowledge should examine in greater detail the significance and impact of different types of online sources. As for the crucial importance of personal experiences, this has not been confirmed by analysis of the survey data from 2020. Specifically, in the regression model of declared activities in the area of law among Poles, the number of sources they used was slightly more important than personal experience with the law (Skąpska, Radomska and Wróbel 2022).⁸

Polish media discourse on the law

Despite the fact that law is a communicable phenomenon, its presence in public discourse causes messages about it to be manipulated and distorted in various ways (Raczkowska 2013a: 55). Much of the distortion stems from the linguistic limitations that journalists face when formulating media messages (Łojko 2013: 15). Legal language is, as journalists themselves lament, hermetic and incomprehensible to the average reader or listener. Although there are journalists specialising in legal matters (some are even law graduates), there are not many such professionals in Poland. At the same time, those Polish journalists who may be considered legal specialists mention a number of perils associated with writing about this realm of social reality.

First of all, despite the fact that legal topics are, according to legal journalists, increasingly popular (especially among the educated and professionally active), messaging about the law is rarely reliable – resulting from the fact that in the era of capitalism, serving society and the state is giving way to free market principles ordaining that information be sold as a commodity (Raczkowska 2013b: 70). Moreover, the lack of adequate financial resources and pursuit of sensationalism means that journalists writing about the law very often lack the appropriate qualifications, knowledge, time, and funding to fill in the gaps. As a result, all too often “journalists, guided mainly by the appeal of some material, [...] manipulate the facts [...], and play on the au-

⁸ The regression coefficient for the “number of sources of knowledge about the law” variable was 0.355; for the “experiences with the law” variable (scaled) it was 0.110.

dience's emotions, aiming for the public to pass a verdict before the conclusion of a trial" (Łojko 2013: 16).

According to journalists dealing with legal matters, the low quality of media communications on this subject is more symptomatic of the online press. Websites are only able to provide very general information about legal events, leaving recipients with the task of hunting down more detailed data:

"Especially on those electronic media, I wouldn't count too much on them providing us with some legal information. They can send us a signal, but then you can search out the entirety there, or that document, or case that was provided there – and only then form an opinion against this background" (interview no. 1).

More pointedly here, the instantaneous circulation of such reporting means that once incorrect information has been relayed, it is rapidly duplicated: correction is thus difficult and removal impossible.

Another hazard and limitation of writing about the law for the general public is its inescapable relationship with politics. From the standpoint of Polish legal journalists, the public sphere in Poland has, in recent times, been inundated with content and narratives that intertwine law and politics. As a result, it is very hard to find reliable and substantive legal journalism.

Professional media – such as *Dziennik Gazeta Prawna* or the legal supplement to the daily newspaper *Rzeczpospolita* – in which articles are primarily written by legal professionals, would appear to be the only way to avoid the risks and flaws. However, as journalists working in these editorial offices admit, the content created in this genre is impenetrable for the average reader, who requires real examples illustrating the legal content. As one Polish journalist dealing with legal concerns put it: "If it doesn't contain a human story, it's useless [...]. The normal reader must have a human story or a series of human stories" (interview no. 2). With reference to this assertion and bearing in mind that criminal cases (especially those of a heinous and sensational nature) are of particular interest to the public, the following section focuses on analysis of media discourses surrounding the specific case introduced at the beginning of this article.

Public discourse and the case of Tomasz Komenda

With the assumption at the questionnaire construction stage of the 2020 research project that the mass media comprise a key source of knowledge about the law, a question was included in the survey about whether there had been legal cases that Poles felt particularly touched by. Only 32% of the respondents answered in the affirmative, while the most frequently men-

tioned example was the case of Tomasz Komenda: it was mentioned by 15% of those who answered “yes”, so roughly 5% of the general population. Less frequently selected were “[unspecified] cases discussed on television” and a variety of wrongful judgments or other judicial errors. Other specific legal cases known to Poles from the mass media, and mentioned by at least 1% of the respondents, were reprivatisation scandals and the dismantling of the legal system by the current Polish government.

The fact that the Komenda case was the single most frequently named legal event was a double surprise. Firstly, the issue of criminal law had been deliberately omitted from the survey (a key exception being the question about the law’s most important functions, possible answers to which included punishment and the seeking of justice). Secondly, 2020 seemed to be more dominated by issues related to the COVID-19 pandemic regulations and restrictions. Nonetheless, the subsequent discourse analysis demonstrated that the Komenda case was indeed unique in terms of the far-reaching range of television programmes, newspaper columns and websites on which it was discussed. According to the results of a survey conducted by a major online news site in Poland, as early as in March 2018 as many as 89% of the population had heard about it.⁹ References to this case also surfaced in various lists, such as those noting the most significant legal matters in the previous year.¹⁰ Concurrently, people who were involved (even indirectly) were awarded various forms of recognition for their work.¹¹ Finally, it is not insignificant that this case of injustice spawned several books, a film, and a television series.¹²

Analysis of the 2018–2021 television, press, and internet discourse in Poland regarding the Komenda case demonstrated that the law itself was very rarely the direct subject: issues of the justice system and its relationships with specific addressees of the law were discussed much more frequently.

⁹ The full results of the survey conducted by *Wirtualna Polska* can be found at <https://opinie.wp.pl/polacy-juz-zdecydowali-tomasz-komenda-powinien-dostac-odszkodowanie-6232585086686849a> (accessed 22.01.2024).

¹⁰ An example of such a list is *Rzeczpospolita*’s “Top Ten” for 2020: <https://www.rp.pl/opinie-prawne/art347771-tomasz-pietryga-dziesiatka-roku-najwazniejsze-wydarzenia-prawne-2020-roku> (accessed 22.01.2024).

¹¹ The awards most frequently mentioned in the media were: 1) the Jan Karski Mission medal which went to Zbigniew Cwiakalski, the attorney who represented Tomasz Komenda pro bono (<https://lodz.tvp.pl/52950308/prof-zbigniew-cwiakalski-uhonorowany-medalem-75lecia-misji-jana-karskiego>) (accessed 22.01.2024); and 2) the *Dziennik Gazeta Prawna* Golden Articles award for the best prosecutor which went to Bartosz Biernat, <https://www.gov.pl/web/prokuratura-krajowa/prokurator-bartosz-biernat-zostal-wyrozniony-w-konkursie-zlote-paragrafy> (accessed 22.01.2024).

¹² Both the film and series bear the same title: *25 Years of Innocence (25 lat niewinności: Sprawka Tomka Komendy)*.

A look at the discourse in question shows that the issues chiefly discussed were primarily 1) Tomasz Komenda and his relatives, 2) the family of the victim of the crime of which Komenda was convicted, 3) the new suspects and later convicts of what was known as the Miłoszyce crime, 4) various representatives of the justice system (including, above all, the judges), and 5) Polish society as a whole.

The media discourse surrounding this case focused on coverage (occasionally supplemented by commentary or analysis) of the most important and pertinent events, such as Komenda's parole (March 2018) and acquittal (May 2018), the new trial with new defendants (May 2019–December 2021), the film premiere of *25 Years of Innocence* (September 2020), and the ruling on redress and compensation for Tomasz Komenda (February 2021). Due to the breadth of the issues, as well as the widespread range of the media analysed, we can speak not of a single discourse on the Komenda case, but rather of many different sub-discourses. In-depth analysis of these sub-discourses enables the discernment of several types of discourse, differing from each other with respect to the main purpose of the media message, the intensity with which legal and political issues are confronted, and the nature of how the relationship between the legal system and citizenry (addressees of the law) is presented.

Across all forms of media (that is, television, press, and internet) two types of discourse dominated: 1) informative and 2) sensational (particularly in the print tabloids). The chief objective of these discourses was to provide up-to-date information about the Miłoszyce crime and its aftermath. The content very rarely included narratives concerning the law, but when such narratives did appear, the law was presented neutrally with its most important function identified as the seeking of justice. The main disparity between the two types of discourse, in addition to their different means of expression, manifested itself primarily in the fact that the oppressiveness of the legal system (especially the judiciary) towards Tomasz Komenda was much more often emphasized in the sensational discourse.

Among the other types of discourse that emerged were: 1) cultural (promoting and reviewing cultural products about the Komenda case); 2) journalistic (encompassing comments and analyses of the sociopolitical aspects of the case); 3) professional (conducting in-depth analyses of selected legal and other issues relevant to the case); 4) populist (a specific type of journalistic discourse that is interlinked with politics and characterised by excessive simplification); and 5) celebrity (focusing on reporting details of Tomasz Komenda's everyday life). All the identified types of discourse are inseparable, and overlapping was evident.

Informative discourse

The informative type of discourse prevailed in television and internet media communication. This type aimed to provide the latest information on particular legal events. With regard to television, the information discourse appeared above all in news programmes broadcast by stations such as Polsat (privately-owned) as well as TVP Info and TVP2 (state-owned); as for the regular press, the informative type was most often adopted by such dailies as *Gazeta Wyborcza* and *Rzeczpospolita*. Looking at internet content, various news portals (such as wp.pl, onet.pl, gazeta.pl, natemat.pl) were places where informative discourse could typically be found. As already noted, the law was rarely the subject of informative discourse, and when it did appear it was presented neutrally.

Within the sphere of informative discourse, the crucial subject of the law was Tomasz Komenda. Relations between him and the legal system were most often presented dynamically – the initial oppressiveness of the law was now juxtaposed with his fresh empowerment. Manifestations of the latter surfaced especially in public statements made by Komenda’s pro bono attorney (Zbigniew Ćwiąkalski, former Minister of Justice and university professor), as well as by representatives of the government and judiciary, in which concern for Komenda’s rights was expressed. The most vivid example of an empowering statement coming from the government was a decision announced on Twitter by Prime Minister Mateusz Morawiecki to grant Komenda a special pension¹³. As for such a narrative from Komenda’s attorney, Ćwiąkalski made the following statement for *Gazeta Wyborcza*: “We will wait for findings by the Łódź prosecutor’s office, which has the tools by which to verify what Tomasz Komenda states about the behaviour of the prison guards. Use of the materials from the ongoing investigation is important to us” (12.09.2018).

Interestingly, both the political aspects and the question of where responsibility lay for the wrongful conviction of Tomasz Komenda rarely arose in the informative discourse. In contrast, narratives focusing on civil rights protection appeared relatively often – overwhelmingly concentrating on Komenda’s right to compensation and redress.

¹³ The mentioned tweet is available at: <https://twitter.com/MorawieckiM/status/979267263399366661> (accessed 22.01.2024).

Sensational discourse

In the more traditional media, discourse of a sensational nature was most common in the programmes of commercial TV stations (such as TVN and Polsat, both privately owned), as well as on the pages of popular daily tabloids (such as *Fakt* and *Super Express*). In the tabloids, issues concerning the Komenda case were very frequently discussed, albeit mostly at the story's outbreak in 2018. As for online discourse, sensational content was found on the websites of those TV and radio stations or weeklies that tend towards exaggerated means of expression. Such content also appeared on websites focusing on the presentation of sensationalist details (for example popular.pl, wmeritum.pl), as well as on some news platforms (such as natemat.pl, wp.pl, onet.pl) and right-wing portals (wpolityce.pl).

Regarding sensational discourse (as with the informative), references to the law were very rare. The justice system was mentioned significantly more often and, overwhelmingly, assessed negatively. This is well illustrated by the following quotes from print and online media respectively: "The wheels of justice grind exceedingly slow and rather imprecisely" (*Super Express*, 3.04.2018); and "Tomasz Komenda is to be released. However, we live in a country where an essential element for any and all action-taking is the filling out of papers. That is why it is possible that procedures could even take a few months" (popularne.pl, 13.03.2018).

The subject of the law as described in sensational discourse was, first and foremost, Tomasz Komenda. His relationship with the legal system was predominantly presented here as oppressive; as the presenter of the television news program, *Fakty po południu* stated: "his history is marked mainly by suffering and injustice" (TVN, 11.09.2020). It was only when Tomasz Komenda received reparations that a definite departure from such a narrative ensued in favour of an empowering one, and mostly in online communications. Regardless of his actual relations with the legal system, Tomasz Komenda was presented as both helpless and empowered. At the beginning, Komenda's agency was visible primarily in his own statements, such as, "The people who framed me will carry that stigma until the end of their lives. I will not rest until they are brought before the bench" (*Tele Tydzień*, 2.07.2018). Moreover, with the passage of time and further, effective action-taking, his agency became more and more manifest. The culminating moment, when Komenda's agency was at its highest, was the moment when he was awarded compensatory damages. With regard to his helplessness, the sensational discourse chiefly explained this by pointing at police and prosecutorial corruption, judicial susceptibility to social and media pressure, as

well as fallacious expert opinions. The following excerpt from an online article highlights some of these:

“Tomasz Komenda was arrested in the year 2000. In court, he maintained his innocence the whole time. He pled guilty only at the police station, but later stated that the confession had been coerced from him. The main incriminating evidence was DNA recovered from a hair found on the victim’s cap. Traces of bite marks left on the girl’s body constituted additional evidence. Expert reports showed those dental impressions to match Komenda’s dentition. Meaningless was the fact that Komenda had an alibi. In 2004, he was ultimately sentenced to 25 years in prison” (natemat.pl, 17.03.2018).

The sensational discourse on this case centred on 1) the tragedy of Tomasz Komenda taken as a whole, 2) the investigation into the irregularities found in the criminal proceedings against Komenda, 3) Komenda’s psychological health, 4) the judges and prosecutors responsible for his conviction, 5) the pension and compensatory damages awarded, and 5) the second Miłoszyce crime trial with new suspects. Other distinguishing features of the sensationalist discourse were: rare references to politics and a relatively rare (appearing in less than half of the articles in print media) focus on rights protection. Furthermore, within this discourse, an interesting mixture of colloquial and legal language can be found. Interestingly, the legal content (with a few exceptions such as the unfounded use of the term “innocent” or confusing redress with compensation) was presented understandably and correctly. Also worth noting is the visual and audiovisual content, which is essential in sensationalist messaging. Numerous photos and videos showed Tomasz Komenda or his relatives in tears, doubtlessly intended to strengthen the reception of the communication and encourage the consumption of more sensational content. This tactic inevitably contributed to the reinforcement of messages describing the legal system as oppressive and ruthless towards individuals.

Cultural and celebrity discourse

The cultural discourse focused primarily on discussions connected with the above-mentioned film. The premiere of *25 Years of Innocence* was accompanied by numerous statements regarding Komenda and his case by personalities from the cultural milieu; some of their remarks also referred to the law or justice system. Another important element in the cultural discourse was that of books¹⁴

¹⁴ The most frequently discussed books in the public discourse were: Grzegorz Głuszak, *25 lat niewinności: Historia Tomasza Komendy*, Kraków: Znak 2018; Grzegorz Głuszak, *Walka przez łzy: Matka Tomasza Komendy Teresa Klemańska*, Kraków: Znak 2019; and Ivo Vuco, *Ofiary systemu: Sprawa Tomasza Komendy*, Wrocław: Wydawnictwo Dolnośląskie 2019.

based on as well as music focusing on¹⁵ or referring to¹⁶ the Komenda case. The essential distinguishing feature of the cultural discourse – present especially in a broad range of print and online media – is its unambiguously negative assessment of the legal and justice systems. Overwhelmingly, the aim of such narratives is to deliberately exaggerate features of the social reality under criticism. As the film’s director stated outright: “I also treat this as a sort of parable, known since the law was invented at all. Franz Kafka wrote the story of Tomek Komenda over a century ago” (*Magazyn Filmowy*, 1.09.2020). A consequence of adopting such a strategy is the emergence of an image accentuating the oppressiveness of the legal system and the helplessness of Tomasz Komenda. Taking this into account, and bearing in mind the broad spectrum of cultural texts presenting Komenda’s case, a significant impact of cultural discourse on the legal consciousness of Polish society cannot be ruled out.

A type of discourse related quite closely to the cultural was the celebrity discourse, present primarily on the pages of sensationalist publications (for example *Życie na gorąco*, *PARTY Życie Gwiazd*, and *Flesz Gwiazdy & Styl*), as well as on gossip websites (including party.pl, plotek.pl, and pudelek.pl). Although legal issues were not discussed as part of the celebrity discourse, the main actor of this case was presented as an individual characterised by a high level of empowerment and agency in the legal system. Such a narrative is illustrated well in the following quote from a weekly:

“A case is pending before the court in Opole that [Komenda] has brought against the state treasury. He is demanding PLN 19 million in damages for his wrongful conviction and 18 years spent in prison. A little over a million for each year. This time he has a good lawyer” (*Życie na gorąco*, 15.10.2020).

In regard to the celebrity discourse, the presence of a narrative devoted to the protection of human rights is also noteworthy, although they were mentioned more indirectly.

Comparing the cultural with the celebrity discourse, it is worth emphasising that despite the former presenting a more negative image of the legal system, the cultural image is often accompanied by more in-depth reflection. Among other things, it draws attention to the impact of social inequalities on the oppressiveness of the legal system. The following statement by

¹⁵ Kazik Staszewski wrote and composed a song promoting the film, *25 Years of Innocence*.

¹⁶ The case of Tomasz Komenda also appeared as a musical motif in Polish rap. See https://www.bsy.pl/mejek-ftk-x-bartek-boruta-hot16challenge2-muremzabonusem?cn-reloaded=1&fbclid=IwAR3o4xl0B6efMCWDCNrKU8J2FfTG3OHI85UIKWp6G_uCu57MiNYsFCGqA4&cn-reloaded=1 (accessed 22.01.2024).

the producer of *25 Years of Innocence* manifests just such reflection: “This is a tale of an enormous [...] social injustice. Chosen as the victim was a young man, with little life experience, who stood no chance in his encounter with the system of injustice” (*Magazyn Filmowy*, 1.04.2020). At the same time, celebrity discourse negative assessments (primarily online) of the legal system were presented implicitly (without pointing directly at the law) and in a more superficial manner. People making such assessments focused, above all, on expressing their dissatisfaction with the functioning of the Polish justice system, albeit without actually considering how that system works. The following statement posted on a gossip portal is an excellent example of such an attitude:

“[T]he prosecutor’s office still has a chance to appeal the verdict, and then Tomek will have to visit the courtroom again. We, meaning the taxpayers, will be the ones paying for the mistakes of the justice system. Those who passed the verdict and sentenced an innocent man to 18 years in prison have not been held accountable to this day. The real killers remain at large. This is a case that really did happen, although it never should have. Tomek has never heard the word ‘sorry’ from the justice system” (*pudelek.pl*, 8.02.2021).

Journalistic and populist discourse

Distinguishing features of the journalistic discourse – which, regardless of the medium, constituted but a small percentage of the public discourse on the Komenda case – are frequent references to politics, reflections on the reasons underlying Tomasz Komenda’s wrongful conviction, and frequent narratives focusing on civil rights protection. On television, the journalistic discourse regarding this case appeared primarily on current affairs programmes, while in print it appeared mainly in *Gazeta Wyborcza*, *Rzeczpospolita*, *Polityka*, *Angora*, *DoRzeczy*, and *Gazeta Polska Codziennie* (including the online editions of these dailies and weeklies). This type of discourse was also to be found on some general news websites.

Tomasz Komenda was presented in the journalistic discourse mostly as a helpless individual, one on whom an oppressive legal system had set its sights. This narrative is evident in a quote from *Gazeta Wyborcza*:

“Tomasz Komenda spent 18 years (6540 days) behind bars. Three times he attempted to commit suicide. He was sentenced to 25 years in prison for the rape and murder of a minor. In the eyes of fellow prisoners, he was a paedophile; they abused him mentally and physically, and took his food” (19.09.2020).

Journalists dealing with this case dug deeper into the reasons behind his wrongful conviction, highlighting such issues as the pathologies of the Pol-

ish justice system, errors made by experts, and the political pressures placed on representatives of the justice system. Programmes and articles in which such analyses were undertaken differed significantly from those offering viewers and readers simple explanations for this personal tragedy. The latter type – with its uncomplicated rationalisations and validations (and often with special attention placed on political issues) – falls within the category of populist discourse.

Worth emphasising is that populist discourse was found in both the conservative, pro-government media (such as TVP, *Gazeta Polska*, and *Gazeta Polska Codziennie* as well as conservative, right-wing internet sites including wPolityce.pl, niezalezna.pl, and tysopl.pl), and the left-wing oppositionist media (mainly *Gazeta Wyborcza*). With respect to the conservative, pro-government media, it was the judges (especially a purportedly politicised and demoralized segment dubbed a “caste” by the right-wing media) who were put forward as chiefly responsible for the tragic experiences of Tomasz Komenda. With respect to the left-wing, oppositionist media, the dominant narrative blamed the Minister of Justice at the time of the wrongful conviction – the late President of Poland, Lech Kaczyński. A very good example of a populist narrative appearing in the pro-government, public media is the following television commentary by the Vice-Minister of Justice at the time:

“Let us remember that this man experienced a tragedy – and a personal one. Such a life [tragedy] was experienced also by his loved ones. And it is very good that we are governing today, because if that was not so, he would probably have had to spend further years in prison. However, I would like to say that precisely because the prosecutors were so inquisitive, which has happened specifically in the times of the ‘good change,’¹⁷ that justice has now been thoroughly served” (TVP1, *Kwadrans Polityczny*, 9.04.2019).

In the context of the case at hand, a key feature of the populist discourse was also the fact that the law and the institutions applying it were being presented as highly repressive against citizens who tended to be completely helpless against actions taken by representatives of the government. Remarkable, too, is that the populist narrative – in addition to the seeking of justice – often pointed in the direction of punishment as an important function of the law; that was not, however, accompanied by an appropriate highlighting of the need to protect civil rights. Exemplifying a narrative that emphasised punishment is the following quote from *Gazeta Polska Codziennie*:

¹⁷ The “good change” (*dobra zmiana*) is a political slogan belonging to PiS, the right-wing party in power since 2015.

“The Komenda case best shows that it is impossible to fight serious criminals without heavy penalties for them and fair courts. [Instead,] either lenient sentences are passed, or the wrong people are sentenced. Lech Kaczyński advocated both heavy penalties for criminals and honest courts that investigate cases thoroughly and convict those whom they should. One and the other must go hand in hand” (Tomasz Sakiewicz for *Gazeta Polska Codziennie*, 29.05.2018).

Professional discourse

The professional discourse constituted a very small percentage of the discourse devoted to the case of Tomasz Komenda. When it did appear, it was primarily in the press (particularly in the dailies *Rzeczpospolita*, *Dziennik Gazeta Prawna*, and *Gazeta Wyborcza*, as well as in the *Polityka* weekly) or on press websites. A large part of this discourse took the form of interviews with experts (not only lawyers); as expected, the most frequently interviewed expert was Komenda’s attorney, Zbigniew Ćwiąkalski. Furthermore, articles of an expert nature dealt principally with the following issues: compensation and redress for wrongful conviction and time served in prison, relations between the material and formal truth, the specificity of legal services, the presumption of innocence, pathologies of the Polish justice system, and recourse against persons whose unlawful actions have resulted in an unjust conviction.

The elements of professional discourse in the media coverage on Komenda’s case made references to the law more often than the other types of discourse, and above all presented detailed criticism. This criticism meant, among other things, that citizens (including Tomasz Komenda) would more often be presented as helpless victims than empowered agents. The reasons indicated for this helplessness were most often the improper application of the law by public institutions, or errors by specialists that affected decisions made by those institutions. At the same time, it was professionals (not only lawyers) who most often drew attention to the need for rights protection.

The specificity of the internet discourse

A meaningful and simultaneously distinguishing feature of the internet discourse is its intertextuality: the possibility of co-creating an existing narrative by, for instance, posting comments on social media or in dedicated sections beneath an article. Analysis of the latter showed that in Komenda’s case the law was either generally criticised or treated as a kind of value improperly taken into account by decisionmakers at various stages of the legal procedures and proceedings with respect to the Miłoszyce crime. Excellent examples of the latter are the following comments posted by online readers:

“There is nothing more disgusting than harming an innocent person – especially when this is done following the letter of the law and, as a consequence, no one’s conscience is even moved by this” (salon24.pl, 15.03.2018).¹⁸

“To all supporters of the so-called ‘death penalty.’ An innocent man was convicted on the basis of a series of mistakes and the ‘bad impression’ he made in court. The court COULD NOT sentence him to the ‘death penalty’, and that saved him. In the case of the possibility of adjudicating this hmm... ‘punishment’(?), the judiciary could have adjudicated and enforced that sentence. Would the disclosure of new circumstances years later, evidence of a mistake, bring the convict back to life? Would even a judicial apology help the slain individual in the majesty of the law?” (polskatimes.pl, 15.03.2018).¹⁹

“Lech Kaczyński speaks the language of revenge, retaliation, a colloquial language as if he did not know what the law and justice system are. He contributed to the conviction of an innocent man” (wyborcza.pl, 8.02.2021).²⁰

The law thus perceived bears no connection to actually applicable regulations. Here it is merely an expression of general ideas and expectations regarding how the applicable legal regulations should look. A textbook example of such a discrepancy is a proposal offered by the vast majority of internet users: those who contributed to the wrongful conviction of Tomasz Komenda (with judges mentioned most frequently) should bear fitting consequences, both criminal and financial. Internet users – without checking or questioning whether and under what conditions such liability is possible under Polish law – stated that the situation in which the persons responsible for Komenda’s conviction are not held accountable is itself a manifestation of lawlessness and injustice:

“It was not the state that prepared him such a fate and took away his youth. These are judges and prosecutors likely known by name. Their property should be confiscated for the benefit of this unfortunate individual. This is a crime against a person and those responsible should be brought to justice. Otherwise, this is not a state based on law, but of lawlessness” (polskatimes.pl, 27.03.2018).²¹

¹⁸ See comments section, <https://www.salon24.pl/newsroom/852154,lzy-szczescia-witaly-tomasza-komende-w-domu-teraz-dajcie-mi-po-prostu-zyc> (accessed 22.01.2024).

¹⁹ See comments section, <https://i.pl/dlaczego-prokuratura-uwaza-ze-tomasz-komenda-jest-niewinny-zbrodni-za-ktora-siedzi-od-18-lat/ar/13010318> (accessed 22.01.2024).

²⁰ See comments section, <https://wyborcza.pl/7,75968,26768428,sprawa-tomasza-komendy-jak-bardzo-mylil-sie-lech-kaczynski.html?disableRedirects=true> (accessed 22.01.2024).

²¹ See comments section, <https://i.pl/tomasz-komenda-dostanie-rente-od-panstwa-domaga-sie-tego-jego-prawnik/ar/13043526> (accessed 22.01.2024).

“Except why is this money not coming from the fortunes of judges and prosecutors who put an innocent man behind bars, despite witnesses and alibis – but [it’s] from taxpayers. They should rot in prison now like the thugs they are! At the very least they should lose their job! Where is the law and where is justice?” (wprawo.pl, 8.02.2021).²²

Media discourses and legal consciousness

To gain a fuller picture of the situation and discover whether and how public discourse connected to the case of Tomasz Komenda could affect the legal consciousness of Polish society, it is worth comparing certain sub-discourses with the four types of legal consciousness distinguished on the basis of the quantitative 2020 survey data.

Skąpska, Radomska, and Wróbel (2022; 2023) distinguished four categories of Poles differing in the degree of their declared engagement with the field of law. The first group – the “outsiders” – are people who very rarely declare readiness to take action in the area of law, have very little knowledge of the law, and appraise it very poorly; they believe that the law is irrelevant in everyday life, and they are not oriented towards protecting their own rights or the rights of others. Outsiders are also people with the lowest level of sensitivity to legal injustice, and the lowest level of professional and social activity.

Poles belonging to the second group – that is, “sceptics” – are people who, apart from declaring slight involvement, have a low level of knowledge of the law, and assign less importance to it. It is also a group that has little experience with the law, and uses few sources to gain knowledge about it.

“Empathetic participants” – members of the third group – constitute that part of Polish society characterised by an above-average readiness to take action in the legal domain, by extensive knowledge of the law and its positive assessment, by a strong orientation towards rights and a powerful conviction that the law is important. These are also people with the greatest sensitivity to the law’s unfair treatment of certain social groups.

Finally, members of Polish society classified into the fourth group – that of “active participants” – are citizens with the highest level of knowledge, the strongest orientation towards rights protection, giving the highest ratings of the law itself, and with the sturdiest conviction of the law’s significance in everyday life. These are usually working-age people active both professionally and socially; such individuals use many sources of knowledge about the law, and have the most experience with the law.

²² See comments section, <https://wprawo.pl/prawie-13-mln-zl-zadosuczynienia-i-odszkodowania-dla-tomasza-komendy-skazanego-za-przestepstwo-ktorego-nie-popelnil/> (accessed 22.01.2024).

A juxtaposition of the types of legal consciousness cited above with the earlier-described types of discourse allows the hypothesis that if “outsiders” – who use mass media much less frequently than representatives of other cohorts – do access the mass media in order to gain knowledge about the law, they will do so via media using sensational, informative or celebrity narratives. Those narratives are more likely to be found on television programmes of an informational or sensational nature, in tabloids or gossip papers, on the news or gossip portals, or through the social media. A caveat to keep in mind is that representatives of this group use online media less often than representatives of the other types (see Skąpska, Radomska and Wróbel 2022).

“Sceptics” – that is, people with little interest in the law, but who are not completely indifferent to issues of rights protection – are more likely to use sources of knowledge about the law that are very similar to those checked by “outsiders,” although they delve into a variety of sources with greater frequency. It is also probable that people belonging to this category – because they declare fewer contacts with law-applying institutions and little readiness to take action in the field of law – use media presenting a populist narrative more often than representatives of other groups. This narrative presents the legal system as oppressive towards several groups of citizens. That, in turn, might discourage “sceptics” (at least to some extent) from taking action in the area of law.

“Empathetic participants” may be suspected of comparatively more frequent use of media that presents or discusses cultural content, as well as journalistic programmes and articles. Both the cultural and the journalistic discourse (with the exception of the populist) aim to develop in their recipients an appropriate level of sensitivity to excessively oppressive law and its injustice. Sensitivity to the latter is the distinguishing feature of the empathetic participants.

Finally, “active participants” make up a category of people that uses the most diverse sets of media and discourses as sources of knowledge about the law. Moreover, people belonging to this category probably consume sensational and populist media content less often. At the same time, these individuals are more familiar with the professional discourse, which presents an objective and substantive analysis of legal cases. This can help citizens (using the media) to choose the most appropriate strategies for coping with similar legal problems. The people who acquire such knowledge are likely to be those most willing to take action in the field of law.

It is worth noting that the discourse analysis described in this article indicated a correlation, also found in the 2020 quantitative study (Skąpska,

Radomska, Wróbel 2023), between political views and an orientation towards rights. This means that the conservative and pro-government media opted decidedly more often for populist narratives, the distinguishing feature of which is an oppressive vision of the law with very little attention paid to the rights of citizens. At the opposite extreme are the left-wing and oppositionist media in which narratives focusing on protecting civil rights are extremely evident.

Finally, it should be stressed that it is impossible to determine the direction of the potential dependencies signalled here. Specifically, on the basis of research study results (see for example O'Connell, Invernizzi and Fuller 1998; Dowler 2002), it cannot be stated whether attitude to and perception of the law (or some determining variable thereof) guide choices as to media messages about the law, or whether the media consumed determine the law's perception.

Conclusions

The research findings presented in this article lead to the conclusion that, despite the fact that the mass media are not the single most important factor shaping legal consciousness, their importance and scope of influence are still quite significant. Polish society still treats the media as a key source of knowledge about the law. At the same time, an in-depth analysis of the discourse pertaining to the case of Tomasz Komenda suggests a broader inference: the diverse ways in which media speak to the public about the law can lead to diverse attitudes towards the law and the institutions applying it. In other words, specific types of media discourse can shape specific, corresponding mindsets among their readers, viewers or listeners.

Particularly noteworthy here are media communicating in a sensationalist or populist discourse. Media messages falling into these discourse categories are very often characterised by excessive simplification or excessive emotionality. These traits lead, naturally, to oppressive images of the law and images of individuals helpless in confrontations with the law. Given that such messaging is most often addressed to the less educated, who are also less likely to access diverse sources of information, one could have serious concerns about how the content affects the legal consciousness of those to whom these messages are addressed. Thus, it can be assumed that (at least among some persons in this category) sensational and populist narratives deepen pre-existing legal alienation.

The public narratives found in Poland that are more complete, less emotional, and more focused on raising audience awareness (that is, those fitting into the journalistic, cultural or professional discourse categories) are ad-

dressed to citizens already possessing appropriate cultural capital. Despite the fact that – in these discourses, too – one can find negative images of both the law and the relationship between the law and the citizen, the communication is usually accompanied by a deeper analysis of problems as well as tips suggesting how to deal with them. Unfortunately, as has been repeatedly underscored, the target audience for these discourses comprises educated individuals with much experience with the law, and, therefore, the journalistic, cultural and professional discourses cannot remedy the hazards evoked by sensational and populist narratives about the law.

The cited quantitative research, qualitative interviews, and discourse analysis unfortunately sketch a rather pessimistic vision of how and to what degree the Komenda case (in addition to other, similar stories reported in the media) might have influenced the legal consciousness of Polish society. This is all the more disheartening when considering that the mass media discourse might have particularly affected attitudes and awareness among Poles who were less competent in the law, legal system, judiciary, etc. when the case of Tomasz Komenda came to the fore. The potential negative impact of the narratives describing Komenda's tragedy was limited, on the one hand, by the fact that the story had a somewhat happy ending in 2021, and on the other by the fact that most citizens could not directly relate to the experience of Tomasz Komenda as it was described in the mass media. The possibility of resonating with content and events presented in the media is, as Gies (2016) pointed out, the main factor determining whether a media message will or will not have a significant impact on the legal consciousness of that message's receiver. However, it should be kept in mind that a potential source of experiential resonance between mass media readers and listeners and the subject of a legal issue discussed in that media may also be a more general experience of oppression and injustice in the Polish legal system – undoubtedly an experience with which a substantial part of Polish society identifies.

That notwithstanding, it is worth recalling, in line with Gies (2008: 31), that “we seem capable of resisting mass culture just as we are capable of resisting legal authority. Usage appears to be the critical factor: both our media consumption and legal consciousness involve moments of agency, making us active media users and legal subjects.” An excellent manifestation of the fact that Poles are able to fend off negative and simplistic narratives regarding the law is the conviction (shared by a high percentage of Polish internet users) that the law is a kind of value. That is true regardless of the quality of legal regulations currently in force, or the ways in which those regulations are applied. Unfortunately, in the case of institutions that apply the law – including, above all, the judges who have very often been accused of the unjust conviction of

Tomasz Komenda – one cannot be such an optimist. Quite recently, more general research on the level of social trust that the public places in the courts (see, for example, CBOS 2022) indicates that this trust is declining. That finding might testify to the effectiveness of a narrative discrediting judges – visible in the discourse on the case of Tomasz Komenda – that the *Prawo i Sprawiedliwość* government (see, for example, Bucholc 2022) and the media supporting it have consistently communicated in public discourse since 2015.

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