



Chairman
National Broadcasting Council of Poland
Maciej Świrski

Warsaw, April 2024

TVN SA
ul. Wiertnicza 166
02-952 Warszawa

DECISION No. 7/DPz/2024

Pursuant to Article 53(1) in conjunction with Article 18(7) of the Broadcasting Act of 29 December 1992 (i.e. Journal of Laws of 2022, item 1722, hereinafter referred to as "the Act") and Articles 104 and 107 of the Administrative Procedure Act of 14 June 1960 (i.e. Journal of Laws of 2023, item 775, hereinafter referred to as the "kpa") and having conducted the proceedings initiated ex officio and having considered the case concerning the dissemination of vulgarity in the program *Szko kontaktowe* ["Contact lens"] (a TVN 24 broadcast on 15 May 2023, at 22:00),

I have decided:

1. To declare that TVN SA, with its registered office in Warsaw, violated Article 18 (7) of the Broadcasting Act on 15 May 2023 at 22:00, during the program entitled *Szko kontaktowe* ["Contact Lens"],
2. To impose a fine on TVN SA, with its registered office in Warsaw, in the amount of PLN 19,526.45 (in words: nineteen thousand five hundred and twenty-six zlotys and 45 groszy).

The fine shall be paid within 14 days of receiving this decision and deposited in the account of the National Broadcasting Council at the NBP District Branch in Warsaw 13 1010 1010 0095 3722 3100 0000.

JUSTIFICATION

I.

In connection with the complaints of viewers dated 16 May 2023, the Chairman of the National Broadcasting Council, hereinafter referred to as the ‘Authority,’ in a letter dated 17 May 2023 (reference number: DPz-WSW.0511.1820.1.2023), requested the company TVN SA with its registered office in Warsaw, hereinafter referred to as the ‘Broadcaster,’ to provide a transcript of the program entitled *Szko kontaktowe*, broadcast on TVN 24 on 15 May 2023, at 22:00, to present its position on the case.

On 30 May 2023, the Office of the National Broadcasting Council received a letter (dated 29 May 2023) in which the Broadcaster sent the aforementioned materials and presented its position regarding the allegations in the complaints.

In the submitted position, the Broadcaster referred primarily to the allegations regarding the broadcasting of discriminatory content against transgender people in the program. The Broadcaster regretted that *‘unacceptable words were said in such a respected and popular program. The station and the show's host, Tomasz Sianecki, immediately apologised to viewers and the LGBTQ+ community for its content. Also, the statement (during the closing credits) by Krzysztof Daukszewicz indicates an immediate and highly self-critical assessment.’* The station reported that *“the editors, Tomasz Sianecki and acting commentator Krzysztof Daukszewicz apologised to editor Piotr Jacoń. The apology was accepted. As Piotr Jacoń wrote in a post on his official Instagram profile: ‘Yesterday's incident does not change the fact that TVN 24 is the only channel in Poland that regularly and wisely manages to be on the side of the LGBTQ+ community. Nowhere else would my reports have been produced, including in the latest “Wszystko o moim państwie” [“All about my country.”]’*

The Broadcaster also emphasised that the program's premiere took place ‘live,’ so the statements of the guest invited to the studio as a commentator could not be checked in advance by the host and editors. He informed us that the statements made by Krzysztof Daukszewicz, to which the complaints refer, have been removed from the program's rebroadcast and its on-demand version on TVN24GO. *‘Despite the Broadcaster's efforts to promote equality and prevent discrimination, situations like this are the subject of the viewers' complaints. Fortunately, this was an isolated incident for which the editors and the station immediately issued a public apology. The apology was aired in the next edition of the program Szko kontaktowe [Contact Lens], which was broadcast on TVN 24 the following day.’*

In the second part of the 29 May 2023 position, the Broadcaster outlined its efforts to oppose any discrimination against minorities, including participating in the annual ‘Pride Month’ celebration, known worldwide as *#pridemonth*, or joining the Responsible Business Forum initiative at the end of May 2022 and signing the Diversity Charter (a document promoting diversity and equal employment opportunities). The Broadcaster also announced

that TVN Group's Warner Bros. Discovery was recognised in the Diversity Charter Awards in 2022, which aim to identify Polish employers' initiatives in favour of equality.

The Broadcaster requested that the investigation be closed without penalty.

The Broadcaster attached to its letter of 29 May 2023 a recording of the *Szko kontaktowe* [Contact Lens], broadcast on TVN 24 on 15 May 2023 at 22:00.

An analysis of the recording revealed the vulgarity mentioned in one of the complaints: 'I think I'm the one who made the fuckin' stupid remark' (00:40:16 of the recording, at 22:53:22). The above phrase does not refer to the LGBTQ+ community.

Dissemination of vulgar content violates Article 18(7) of the Broadcasting Act, which obliges broadcasters to ensure the correctness of language and prevent its vulgarisation. The violation of Article 18(7) of the Act is grounds for initiating a procedure to fine the Broadcaster under Article 53(1).

Given the above, by letter dated 22 June 2023 (reference: DPz-WSW.0511.1820.5.2023), the Authority notified the Broadcaster of the initiation of proceedings for the imposition of a fine according to Article 53(1) of the Act, in connection with the finding of the dissemination of vulgar language in the program *Szko kontaktowe* [Contact Lens] (broadcast on TVN 24, on 15 May 2023, at 22:00). The Broadcaster was also informed of the opportunity to familiarise itself with the files of the proceedings, the collected evidence and to make a final statement within seven days from the receipt of the notice. The letter was delivered to the Broadcaster on 22 June 2023.

The Broadcaster exercised its right and familiarised itself with the case file. On 4 July 2023, the National Broadcasting Council's [KRRiT] office received the Broadcaster's final position dated 29 June 2023.

In the letter dated 29 June 2023, the Broadcaster requested that *the proceedings be discontinued in their entirety because there was no basis to believe that there had been a violation of Article 18(7) of the Act. Therefore, the proceedings should be considered pointless within the meaning of Article 105(1) of the Code of Administrative Procedure* ['kpa']. The Broadcaster emphasised, among other things, that *at the root of the issue was a single word, which had already been uttered during the broadcast of the closing credits (shortly before 23:00), spontaneously, as a blunt and emotional reaction to the earlier words of the same broadcast guest. The statement was not directed against or at any third party, but was merely an blunt expression of self-criticism.* The Broadcaster also pointed out that *'the verbal accident – because the statement made by the broadcast guest "live" should be considered in this category – was eliminated from the reruns of the broadcast and its version made available in the "on-demand" formula. (...) The program is not aimed at a young audience but at an informed audience that understands the nature of the program and can relate with distance to a linguistic slip-up that can happen during a "live" broadcast*'. According to the Broadcaster, such individual cases cannot prejudge the Broadcaster's violation of Article 18(7) of the Act. This provision imposes a general obligation to ensure the correctness of the language of programs and to prevent their vulgarisation. The legislator takes a broader view of broadcasters' activities, referring to 'the program' rather than individual broadcasts. *This rational approach assumes that a program is broadcast for a dozen or more hours a day, or more than 20 hours*

a day, so broadcasters' fulfilment of the obligation above should be evaluated with a broader time slot in mind.

The Authority considered the following.

The Broadcaster's statement of 29 May 2023, in the section on the rights of persons belonging to the LGBTQ+ community, does not fall within the merits of the case specified in Article 18(7) of the Act.

The program used a vulgar word, the broadcast of which constitutes a violation of Article 18(7) of the Act, according to which 'broadcasters shall ensure the correctness of the use of language in their programs and prevent its vulgarisation.' A similar injunction was formulated in the Press Law (Journal of Laws No. 5, item 24) for journalists (Article 12, paragraph 1, item 3 of the Press Law) and editors-in-chief (Article 25, paragraph 4, second sentence of the Press Law). Thus, the legislator's tendency to counteract vulgarisations in the Polish language in the media is clear.

Provisions concerning the Polish language are included in the Constitution of the Republic of Poland in Article 27 ('Polish shall be the official language in the Republic of Poland'), while the essential legal act normalising the legal protection of the Polish language is the Polish Language Act of 7 October 1999. The Sejm enacted this law to protect the Polish language, which is primarily a cultural asset. It also applies to the use of the Polish language in public activities and legal transactions. According to Article 3(1) of the Act on the Polish Language from 7 October 1999, the protection of the Polish language consists, among other things, in ensuring the correct use of the language and improving the linguistic skills of its users; creating conditions for the proper development of the language as a means of interpersonal communication; and preventing its vulgarisation.

The provision contains only an exemplary list and a general directive imposing an obligation on public authorities, institutions and organizations participating in public life to protect the Polish language.

As Wojciech Żukowski points out in his commentary on the Act on the Polish Language (LexisNexis Publishing House): "As can be seen from the government's explanatory memorandum, the drafters of the law assumed that language is a specific cultural good that requires the creation of a protection regime different from other cultural goods. (...)

Jacek Sobczak, in his commentary on the Press Law, points out that '*a vulgarism (...)* is a word or phraseological compound that the general users of the language consider to be indecent, boorish, and/or gross from a moral or aesthetic point of view' (J. Sobczak, Press Law. *Komentarz*. Commentary, Warsaw 2008, p. 489).

As Marta Rakoczy points out, writing about the increasing vulgarisation of language: '*For many, this crisis is merely a reflection of contemporary social and political tensions. But everyone agrees that the vulgarisation of language is a phenomenon that demands reflection. Verbal violence is not the same as physical aggression, but it is closely related. It leads one to treat rules – once taken for granted, norms of respectful behaviour toward others – as inauthentic conventions that embarrass people rather than improve their lives. Therefore, the stigmatization of verbal aggression is an insufficient action today. For behind the vulgarisation of language lie important cultural changes. They are not only concerned with language and the media. They are based on a revolution in thinking about public expression and the subject*

forming it.' (M. Rakoczy, *Wulgaryzacja języka, upadek człowieka publicznego* [The Vulgarisation of Language, the Fall of the Public Person], <https://wszystkoconajwazniejsze.pl/marta-rakoczy-wulgaryzacja-jezyka-upadek-czlowieka-publicznego/>).¹

Krzysztof Maćkowiak points out that *'negative changes in linguistic mores are not only a linguistic issue, just as language is not only a tool for interaction. The form of speech largely determines human existence, and differences in the form of communication affect many social processes'* [see, for example, Bernstein 1980]. Marek Ziółkowski notes that the consciousness of acting individuals *'is encoded in language; all terms for things and people are primarily linguistic terms. The human individual, who does not simply react to stimuli, but directs his own actions in a conscious process of adaptation, interprets reality and gives himself/herself orientation through the words of language'* [1980, 152]. Mieczysław Krąpiec mentions similar dependencies even more emphatically: *'Language, thinking and being form an inseparable whole'* [1985, 16]. (K. Maćkowiak, *Media a proces wulgaryzacji polszczyzny w świadomości językowej studentów PWSZ w Lesznie* [The Media and the Process of Vulgarization of the Polish Language in the Linguistic Consciousness of J.A.Komeński's PWSZ students in Leszno], *Scripta Comeniana Lesnensia PWSZ in Leszno* in the year 2009, no. 7, p. 10).

This position is confirmed by the judgment of the Supreme Court on 18 October 2019, I NSK 60/18, according to which *'media service providers perform important functions in a democratic society, as emphasized in particular by Article 14 of the Constitution of the Republic of Poland in its Chapter I Rzeczpospolita [The Republic]. Their role is not limited to doing business and making profits. It also includes informing citizens about important events, forming opinions, providing entertainment, and contributing to the development and dissemination of culture. The media, often referred to as mass media, thus exerts a significant influence on the formation of individuals' opinions, attitudes, habits and customs. Therefore, one of the basic tasks of the Republic of Poland as a democratic state is to ensure that the activities of the media are carried out in accordance with the principles and values of the Constitution of the Republic of Poland, the provisions of international law and laws, in a manner that does not disturb public order and with respect for other persons and good customs. The Constitution of the Republic of Poland entrusts the tasks and powers in this respect exclusively to the independent National Broadcasting Council.'*

K. Sikora points out that *'Many people, especially young people, who experience the weakness of moral and legal norms, the lack of a controlling function of society, are confirmed in the conviction that they will not have to reckon with restrictions in the field of communication. The questioning of the traditional norms of social life inevitably results in the display of vulgarity (cf. Kowalikowa 2000), verbal aggression and contempt for another human being; it also leads to permissiveness, which manifests itself, for example, in the helpless indulgence of the vulgarity of speech and moral excesses'* (K. Sikora, in: *Kilka uwagi na temat wulgaryzacji i brutalizacji polszczyzny*, *Poznańskie Spotkania Językoznawcze*, p. 108).

In light of the above, it should be noted that the dissemination of messages containing vulgarities promotes the promotion of uncensored vocabulary and the perpetuation of unacceptable behaviour.

¹ Accessed on 04 July 2023.

In addition, it should be noted that the vulgarities present in television programs, in most cases, relate to feature films, where the attribute of a negative character, the so-called villain, is often the vulgar language he uses. These are fictional characters that, according to the filmmakers, must be characterized, among other things, by giving them certain negative characteristics. In this present case, however, we are dealing with vulgarity uttered by a regular commentator who is well known to the viewers, who is regularly invited to the *Szkle kontaktowe* [‘Contact Lens’] programs, and whose statements to date have not been controversial in terms of linguistic correctness. In this case, viewers may have been all the more surprised and embarrassed by the vulgarity of the guest.

The Authority cannot agree with the Broadcaster's argument in its letter of 29 June 2023 that the provision of Article 18(7) should be applied to the entire program and not to individual broadcasts. Indeed, a finding of its violation is mandatory for imposing a fine on the Broadcaster. Article 53(1) does not make the imposition of a fine dependent on an overall assessment of the Broadcaster's programming activity.

II.

In view of the foregoing, and acting according to Article 53(1) of the Act, it is decided, as in the operative part, that according to Article 53(1) of the Act, if a Broadcaster violates the obligation found under Article 18(7) of the Act, the Chairman of the National Broadcasting Council shall issue a decision imposing a fine of up to 50% of the annual fee for the right to the use of the frequency designated for broadcasting, and if the Broadcaster does not pay the fee for the right to the use of such frequency, a fine of up to 10% of the Broadcaster's revenues in the previous fiscal year, taking into account the scope and seriousness of the violation, the Broadcaster's previous activities and its financial capacity.

In 2022, TVN SA generated revenues of PLN 1,952,645,000 (one billion nine hundred and fifty-two million six hundred and forty-five thousand zlotys). Therefore, the upper limit of the penalty, or 10% of the revenue, is PLN 195,264,500 (in words: one hundred and ninety-five million two hundred and sixty-four thousand five hundred zlotys).

In determining the amount of the fine, the Authority considered the legal requirements outlined in the aforementioned provision, i.e. the scope and degree of harmfulness of the violation, the previous activities of the Broadcaster and its financial capacity.

In assessing the scope and degree of harmfulness of the violation, the Authority took into account the fact that the violation took place in a cyclical, satirical, and journalistic program broadcast to a high audience share. In connection with this premise, the Authority also considered the nature of the violated obligation: the protection of viewers from vulgar content.

Therefore, the degree of harm was more than negligible.

In accordance with the statutory guidelines for penalties, the Authority also considered that the Broadcaster had not previously been fined in connection with its previous activities for violating Article 18(7) of the Act in connection with broadcasting vulgarisms in the program.

The Authority also took into account the fact that TVN SA's financial statements for 2022 show that the company is in good financial condition.

Therefore, in the circumstances of this particular case, a fine of PLN 19,526.45 (nineteen thousand five hundred and twenty-six zlotys and 45 groszy) was imposed, which is one ten thousandth (0.0001) of the maximum amount.

In assessing the case, the Authority also took into account the content of Article 189f § 1(1) of the Code of Administrative Procedure (*kpa*), which states that the public administration body shall, by way of a decision, waive the imposition of an administrative fine and stop with issuing an instruction if the gravity of the violation of the law is negligible and the party has ceased to violate the law. The Authority shall refrain from imposing a fine in a situation where both of the conditions outlined in the above provision occur together. However, in the opinion of the Authority, it is not possible to say, in the present case, that the gravity of the violation is negligible, given the nature of the good that was infringed as a result of the Broadcaster's actions, i.e. the right to protect viewers from the vulgarization of the Polish language. In light of the above, the Authority concluded that in the case at hand, the gravity of the violation is not negligible, which relieves the Authority from analyzing the second condition for waiving the imposition of a fine outlined in Article 189f § 1(1) of the Code of Administrative Procedure (*kpa*), i.e. whether the party has ceased the violation.

The circumstance referred to in Article 189f § 1, paragraph 2 of the Code of Administrative Procedure, i.e. that the party has been previously imposed an administrative fine for the same conduct by another authorized public administration body by a final decision, or that the party has been validly punished for a misdemeanour or fiscal offence or has been validly convicted of a misdemeanour or fiscal offence, and the prior penalty meets the purposes for which the administrative fine would be imposed, is also not applicable in the present case. According to Article 189f § 2 of the Code of Administrative Procedure, in cases other than those referred to in § 1, if it allows the purposes for which the administrative fine would be imposed to be fulfilled, the public administration body may, utilizing a decision, set a deadline for the party to submit evidence confirming: 1) the elimination of the violation of the law, or 2) the notification of the competent bodies of the established violation of the law, specifying the date and manner of the notification. According to § 3, if the party has provided evidence confirming the execution of the order, the public administration authority shall refrain from imposing an administrative fine. It shall limit itself to issuing an instruction. The doctrine indicates that *taking this decision is possible only when the public administration body determines, based on the circumstances of the specific case, taking into account, in particular, the subjective characteristics of the party, that the very fact of initiating proceedings in the case and finding itself in a situation of a real threat of the imposition of a sanction will lead to the achievement of the objectives set for a given sanction in a specific case.* (see S. Gajewski, Code of Administrative Procedure. *Nowe instytucje* [New Institutions]. Commentary to chapters 5a, 8a, 14 and sections IV and VIIIa of the *kpa*, Warsaw 2017).

In the Authority's opinion, in the circumstances of the case at hand, it cannot be considered that waiving the penalty and stopping only with the instruction would allow to achieve the purposes for which the administrative penalty should be imposed. The authority concluded that imposing the fine provided for in Article 53 of the Act in the present case was necessary. As a result, it cannot be considered that other circumstances would justify waiving the imposition of the penalty per Article 189f of the Code of Administrative Procedure.

In light of the foregoing findings, acting according to Article 53(1) of the Act in connection with the finding of a violation of Article 18(7) of the Law, it was decided as in the operative part.

Notice

Pursuant to Article 56, paragraphs 1 and 2 of the Broadcasting Act, in conjunction with Article 47928 § 1 paragraph 2 of the Law of 17 November 1964 - the Code of Civil Procedure (i.e. Journal of Laws of 2023, item 1550, 1429, 1606, 1615, 1667, 1860), a party has the right to appeal against this decision to the District Court in Warsaw - Commercial Court through the Authority within one month from the date of delivery of this decision.

Pursuant to Article 3(2)(9) in conjunction with Article 33 of the Act of 28 July 2005 on Court Costs in Civil Cases (i.e. Journal of Laws of 2023, Item 1144, 1532, 1860), a fixed fee of PLN 3,000 shall be charged for such an appeal against a decision of the Chairman of the National Broadcasting Council.

Pursuant to Article 103 of the Law on Court Costs in Civil Cases, the Court may grant an exemption from court costs to a legal person or an organizational unit that is not a legal person to which the law grants legal capacity if it has demonstrated that it does not have sufficient funds to pay them. According to Article 105(1) of the aforementioned law, the application for exemption from court costs must be made in writing or orally on the record in the court where the case is to be brought to or is already pending.

According to the wording of Article 117 § 1, § 3 and § 4 of the Code of Civil Procedure, a party whom the court exempts from court costs in whole or in part may request the appointment of a lawyer or legal counsel. A legal entity or other organizational unit to which the law grants judicial capacity, not exempted by the court from court costs, may demand the appointment of a lawyer or legal adviser if it demonstrates that it does not have sufficient funds to bear the costs of the lawyer's or legal adviser's fees. A party shall submit a request for the appointment of an attorney or legal counsel together with the request for exemption from court costs or separately, in writing or orally for the record, at the court where the case is to be brought to or is already pending.

Maciej Świrski