



CHAIRMAN
National Broadcasting
Council

Warsaw, the 4 March 2024

Maciej Świrski

TVN SA
166 Wiertnicza St.
02-952 Warsaw

Concerning concession No. 479/K/2021-T
of September 24, 2021

DECISION No. 4/DPz/2024

Pursuant to Article 53(1) in connection with Article 18(1) and (2) of the Act of December 29, 1992 concerning the Broadcasting Act (i.e., Journal of Laws of 2022, item 1722, hereinafter: "Broadcasting Act") and Article 104 and Article 107 of the Act of June 14, 1960, of the Code of Administrative Procedure (Journal of Laws of 2023, item 775, hereinafter: "kpa"), having conducted proceedings initiated ex officio and having considered the case of the broadcast aired on March 6, 2023 by the Company TVN SA with its registered office in Warsaw 02-952, 166 Wiertnicza St., in the TVN 24 program, at 20:35, a program in the series entitled "Black on White," which included a reportage entitled "*Bielmo. Franciszkańska 3*,"

I have resolved:

- 1) To declare a violation by TVN SA, with its registered office in Warsaw (hereinafter the "Broadcaster"), of Article 18(1) and (2) of the Broadcasting Act in connection with the broadcast on March 6, 2023, at 20:35, of a program in the series entitled "*Czarno na białym*," which contained a reportage entitled: "*Bielmo. Franciszkańska 3*" (hereinafter the "Broadcast");
- 2) Impose a fine on the Broadcaster in the amount of PLN 550,000 (in words: *Five hundred and fifty thousand zlotys*).

The fine should be paid within 14 days from the date of receipt of this decision to the account of the National Broadcasting Council in the NBP District Branch in Warsaw 13 1010 1010 0095 3722 3100 0000.

JUSTIFICATION

Factual justification

I.

On March 6, 2023, the Broadcaster aired the Reportage, which included, among other things, the excerpts shown below.

1. *"Today's program will show how Karol Wojtyła, while serving as Metropolitan of Cracow, himself moved priests from parish to parish who sexually abused children. These are three, solid, staggering stories of sexual predators in cassocks. We have reached hitherto unknown documents, including official Church documents, but above all, we have reached many victims, their relatives and witnesses who were said to have personally informed the Cardinal about the crimes of priests under his authority. This is a groundbreaking discovery" (...). "I would also add that today's episode of the series "Bielmo. Franciszkańska 3," is the result of nearly 3 years of meticulous journalistic investigation to answer the difficult, but important and inevitable question in Karol Wojtyła's homeland about his role in accounting for sexual abuse in the Church" - from about 0:35.*
2. *"For two and a half years, we searched for answers to the question of what John Paul II knew about the pedophile scandals in the Church," starting at about 1:45.*
3. *"It is at this address [Franciszkańska 3] that the stories we will tell are focused. And thanks to this, we now know without a doubt that Karol Wojtyła knew about the sexual abuse of priests and covered it up even in Poland before he became Pope," from about 2:14.*
4. In the recording, Archbishop Rembert Weakland stated that K. Wojtyła was supposed to know about the case of an unnamed pedophile archbishop in Poland (when asked by Rembert Weakland if he knew the case, K. Wojtyła was said to have said, "yes I know it, Rembert." - 5:18). In the following excerpt from the conversation, Rembert Weakland quotes K. Wojtyła's next words: "I don't know what to do about it." - from about 5:47.
5. *"The documents in the files and the dozens of others we learned about were only a starting point for us. Aware that they were created by the communist-era security services (SB) that destroyed people and wanted to destroy the Church as an institution, we spent many months verifying the information contained therein, reaching out to witnesses and documents from other sources. We checked every lead and will present the most important findings in this story," from about 9:32.*
6. Tomasz Terlikowski says that K. Wojtyła acted "guided largely by the institution's interests, that is, that the matter should not see the light of day, and if it does, to cover it up, calm it down and clean it up. (...) And secondly, guided by the interest of the priest [Marcin Gutowski adds "guided by the interest of the pedophile priest, yes?" – although he has so far presented no evidence of pedophilia. Tomasz Terlikowski continues, nodding his head]

- guided by the interest of a *pedophile priest, which sounded completely different at the time; then, one said a priest who is a sinner, a priest who has a weakness*" - from about 14:18.
7. An excerpt from a memo from a meeting between an SB officer and Father Saduś was read. The note contains information about Cardinal K. Wojtyła's agreement to have Father Saduś go to Vienna as soon as possible. After reading it, Marcin Gutowski said: *"Here we come to a key moment. Is it possible that in 1972 Cardinal Karol Wojtyła arranged for a pedophile priest subordinate to him, to travel abroad so that he could avoid the consequences of his crimes?"* - from about 15:00.
 8. A recording (from a hidden camera) of a sister is shown, saying that she can't release the materials (relating to the catechetical classroom where the abuse allegedly took place) that are in the archives of the Cracow Curia, because she has yet to review them herself. Then a telephone conversation with Marcin Gutowski's assistant is shown, during which another sister says that journalists cannot access personnel files for the time being, because a reorganization is underway. She does not have to explain it. This statement is juxtaposed with Marcin Gutowski's reading of information from a mysterious priest from the Cracow Curia, who claims that *"right after Christmas, the deputy director of the Curia's archives in Cracow was fired immediately, and from then on only the Curia's chancellor holds the keys to all collections."* Then again, there is an assistant talking to the sister about having to gain permission from the Curia to access the files - as of about 16:15.
 9. Marcin Gutowski said: *"Interestingly, the IPN documents on this case have been discussed in many publications, but so far, no one has publicly mentioned the real reasons for Cardinal Wojtyła's transfer of Saduś. We are the first to do so, and in parallel, Ekke Overbeek was working on the case"* - from about 18:10.
 10. Excerpt from an interview with Ekke Overbeek, where we hear: *"The SB is even happy about it, that Wojtyła arranges for him to go to Austria, that maybe he will be able to profit from him being there as an informant from abroad (...) well it succeeds, yes."* As proof of the veracity of his words, an excerpt from the SB memo is read out, which includes the phrase that Fr. Saduś *"had to leave the archdiocese as a result of the moral charges against him."* Thus, there is no information about either pedophilia or K. Wojtyła. Nevertheless, Ekke Overbeek concludes: *"The documents are strong, they are very strong. Besides, these are not just the documents where SB informants talk about why Wojtyła took him [Fr. Saduś - author's note] off St. Florian's parish and sent him abroad. There's a whole sequence of events there (...) It **must have been known in the Church that he had a predilection for young guys, for young boys,**"* - from about 18:27.
 11. Marcin Gutowski states: *"Let us emphasize, Cardinal Wojtyła, at the time of writing this letter, **was fully aware of the accusations against Father Saduś.**"* - from about 26:56.
 12. Marcin Gutowski comments: *"This would mean that Cardinal Wojtyła did not inform Cardinal Koenig of the real reasons for Saduś's departure,"* - from about 28:24.
 13. Fr. Stopka's statement to the SB: *"Cardinal Wojtyła **knew** about his sexual perversion, and reportedly the latter, fearing scandals, allowed Fr. Saduś to go to Austria. [...] Austrian church authorities reportedly do not know."* - from about 28:41.
 14. Thomas Doyle's statement: *"I often wonder what is wrong with the bishops, That they know about the danger and yet allow for abuse. But if they have a boss like that, who allowed it when he was a bishop, they know he won't care too much about other bishops who do the same thing. And he **knew** that bishops were transferring priests and nothing bad*

- was happening to them." During this statement, you can see flashes of Marcin Gutowski nodding in agreement - from about 29:37.
15. Statement by Anna Karoń-Ostrowska: *"One thing I don't think we can say is that he didn't **know**"* - about 30:12 Statement by Thomas Doyle: *"What you have discovered is groundbreaking, because it shows what many people have assumed for years that John Paul II **knew** the problem existed even before he became the Pope. He must have known, but there was no evidence, and this is proof. (...) You have exposed the myths and the lies told about him [about John Paul II - author's note],"* - from about 30:40.
 16. Marcin Gutowski: *"Rather, he [Fr. Saduś - author's note] did not have a decisive influence on the appointment of a widely unknown Benedictine priest to succeed Cardinal Koenig, the same one to whom Cardinal Wojtyła had earlier sent a pedophile priest from Poland, most likely concealing his true motives from him"* - from about 35:35.
 17. Tomasz Terlikowski: *"The victims were invisible, the victims were unheard, the victims were neglected. This is indeed what happened, and this is something that the Church in Poland, including those writing the history of the last seventy years, both that of Karol Wojtyła and other Polish bishops, will have to face."* In the background appears a photo of K. Wojtyła with folded hands, and Marcin Gutowski as the narrator adds, *"because the then Cracow Metropolitan, Cardinal Karol Wojtyła, **knew** about the crimes of Father Surgent, who was working in his archdiocese. This is confirmed not only by the documents we reached, but above all, by witnesses, including one key one we found after fifty years,"* - from ca. 40:32.
 18. A masked witness appears on the screen, claiming to have personally informed K. Wojtyła about Fr. Surgent's pedophilia: *"Then Bishop Karol Wojtyła asked not to report it anywhere, that he would take care of it. Am I able to keep this matter quiet? [Marcin Gutowski: "Who asked for it?"] Well, Wojtyła. Am I able to silence all this? [Marcin Gutowski: "What does that mean?"] Well, so that it doesn't get publicity; so that the authorities don't find out about it."* - from 41:24.
 19. Ekke Overbeek: *"In 2019, I came across the first such case that you can see that John Paul II must have known about, i.e., at the time he was still Archbishop Wojtyła (...)"* - from about 44:04.
 20. A conversation between Marcin Gutowski and Tomasz Krzyżak. Marcin Gutowski: *"I mean, we are dealing with a priest about whom the Curia finds out that he abused a minor in one of the parishes subordinate to the bishop of that diocese, who at the time was Cardinal Karol Wojtyła. The priest is reprimanded by the hands of another bishop."* Tomasz Krzyżak: *"Well, all in accordance and according to the competences."* Marcin Gutowski: *"I mean, in the paperwork, everything agrees, yes, but we are moving him to another parish, to a one-man outpost, in a remote village, where there is no control over him. You call that imprudence?"* Tomasz Krzyżak: *"I gently call it that. I say I might call it imprudence,"* - from about 51:42.
 21. Ekke Overbeek comments on the aforementioned statement: *"A huge euphemism. The Surgent case emphatically shows that **he [K. Wojtyła - author's note] already knew long before he became Pope, which sheds a completely different light on his pontificate.** (...) We see a completely different face of John Paul II here, a different image, with no care, no feeling, no empathy for the victims"* - from about 52:50.

22. Marcin Gutowski: *"Do you know who was transferring him from parish to parish at the time?"* Victim: *"Well, no, I don't know."* Marcin Gutowski: *"Cardinal Karol Wojtyła."* The victim: *"Well, that's what I presumed. Well, that's what I presumed exactly. Yes, exactly."* - from about 59:07.
23. A conversation between Marcin Gutowski and Tomasz Krzyżak. Tomasz Krzyżak: *"Surgent falls into a decisional vacuum. We don't know what happened to him."* Marcin Gutowski: *"But he is sent there knowingly by Cardinal Karol Wojtyła."* Tomasz Krzyżak: *"But where does he send him?"* Marcin Gutowski: *"Into that decision-making vacuum."* Tomasz Krzyżak: *"No, no, why does he send him there consciously? He's sacking him from his job in the diocese."* Ekke Overbeek comments: *"He actually let him go, yes. He washed his hands of the excuse that he is a priest not of his diocese, of the archdiocese"* - from about 01:00:17.
24. *"And let's recall again: documents and witness accounts indicate that the Cracow Curia and Cardinal Karol Wojtyła, who manages the archdiocese, knew from the beginning, that the priest subordinate to them was a sexual predator and was abusing underage boys in the successive parishes to which he was sent. But when the matter came to light, Cardinal Wojtyła formally dismissed the subordinate priest from his diocese,"* Marcin Gutowski concludes, starting at about 01:02:04.
25. [From about 01:10:52 begins the plot concerning Father Józef [Loranc - author's note] Marcin Gutowski as narrator: *"Loranc, like Surgent, was sent to prison shortly after Cardinal Wojtyła, to whom information about his actions had reached him, dismissed him from the parish and sent him to a monastery, where the pedophile priest was later arrested."* Next, a TW's account of the SB documents on K. Wojtyła's decision is quoted. According to the file, he was to say, *"The matter has taken a very unpleasant turn, because the investigating authorities have already taken an interest in it. It is not known how it will end. The most unpleasant thing is the act itself - the deprivation of the children."* - from about 01:12:56.
26. A letter quoted from Cardinal K. Wojtyła to Loranc found in SB documents, probably sent after the priest's release from prison: *"Every crime should be punished. If, therefore, in the case of the priest, the punishment did not occur, it was due to special circumstances provided for by the Church legislature."* Marcin Gutowski comments: *"So the crime should be punished, but the Church authorities will not punish. Cardinal Wojtyła explains that the diocesan tribunal ruled so because Loranc had already been punished by the secular authorities (...)"* - from about 01:14:03.
27. Tomasz Terlikowski: *"It is undoubtedly the case, unfortunately, that the Church, including Karol Wojtyła, had a serious problem with controlling such situations."* - from about 01:15:42.
28. Tomasz Terlikowski: *"The idea of referring him to a hospital, still a hospital with a pediatric ward, is already a reality that I do not understand. However, this demonstrates a profound misunderstanding, let me say very gently, a misunderstanding of how dependent a sick person, including a sick child, can be on a hospital chaplain... And how a sick child can be an easy object of abuse. This is something that is for me - completely incomprehensible in this particular case. I can't even put it into that knowledge or into that mentality of the time, I just can't, that precisely, about the dignity of sick people and the awareness of their fragility, their dependence on caregivers John Paul II wrote about in an*

- extremely profound way (...). Sending a person there with this kind of past – well, it doesn't add up for me into a whole" - from about 01:16:58.*
29. A conversation between Marcin Gutowski and Ekke Overbeek. Ekke Overbeek: *"It's absolutely impossible to claim anymore that he didn't **know**. He didn't find out as Pope because He already **knew** beforehand. And that sheds a completely different light on his pontificate (...)." Marcin Gutowski: "The fact that he was too old to react." Ekke Overbeek: "All this we can put..."; Marcin Gutowski: "...between the pages of fairy tales"; Ekke Overbeek: "between the pages of fairy tales" - from about 01:18:07.*
 30. Marcin Gutowski: *"And there were more cases similar to those we showed. We learned about several more ourselves, including some that are not mentioned in the IPN documents, and which require further in-depth investigation." Ekke Overbeek: "But this is where the Church archives are needed." Tomasz Terlikowski: "I think that some of the bishops if they knew what was in their own archives, would have put things in order long ago..."; M. Gutowski: "...or the archives." T. Terlikowski: "Or with the archives." Marcin Gutowski as narrator: "With the archives, which may hide even darker secrets, such as the answer to the question of the reason for Karol Wojtyła's attitude towards pedophilia in the Church" - from about 01:18:40.*
 31. [From about 01:19:32 the thread of Cardinal Adam Stefan Sapieha begins - *author's note*]. Tomasz Terlikowski: *"The case of Cardinal Sapieha is a matter that has been talked about in **rumors, suggestions, and understatements** for years." Marcin Gutowski: "And what is being said?" Tomasz Terlikowski: "The question being asked is, why did he become a cardinal so late? This is one of the questions. There is talk about the so-called aristocratic illness that was supposed to have plague him. Priests **tell each other stories** about the gym clothes young boys wore to practice in front of the cardinal when he visited them." - from about 01:23:11.*
 32. Marcin Gutowski: *"From the testimony of Sapieha's former chaplain available in the IPN archives, it appears that **the molestation of clerics under Sapieha was systemic, and everyone was subject to it**. Is it possible that Karol Wojtyła, closest to Sapieha, did not **know** about it, and the cardinal treated him as the apple in his eye?" - ca. 01:25:34-01:25:51.*
 33. Ekke Overbeek: *"If this information that Archbishop Sapieha molested seminarians and young priests is true, then this may be the key to understanding why John Paul II looked the other way and remained silent when information about child sex abuse by priests reached him." - from about 1:29:40.*
 34. Joanna Tokarska-Bakir: *"Further research is needed. But **it seems** that already in his seminary days, he [Karol Wojtyła - *author's note*] was accustomed to molesting seminarians as a thing committed by a person for whom he certainly had the highest regard. These practices of Bishop Sapieha **normalized** this crime. And since **he was accustomed to it**, so he himself **did not consider it something extraordinary and behaved in relation to it, as we know he behaved**," from about 01:30:05.*
 35. Anna Karoń-Ostrowska: *"Cardinal Sapieha was such a model for Wojtyła as a priest, a bishop, a great man of the Church. And **if the testimonies** say that **it was talked about** and that the clerics who lived in the two rooms on Franciszkańska Street right next to the private rooms of the Metropolitan, that these were matters, well, that were a kind of an insider secret. It **seems** that, well, he couldn't have not known" - from about 01:30:44.*

36. Marcin Gutowski: *"So could the recollection of the meeting with Cardinal Wojtyła that we got in Archbishop Rembert Weakland's recording have been about the mentor of the future pope, Cardinal Adam Stefan Sapieha?"* Rembert Weakland: *"There was a case of an archbishop who was a pedophile, I asked him if he knew the case, and he said, yes, I know it. Rembert: This hierarch was imprisoned by the Nazis, locked up with young people. Wojtyła said, I don't know what to do about it. I saw how torn he was under this burden"* - from about 01:31:21.
37. Anna Karoń-Ostrowska: *"Perhaps from the beginning of his being in the Church, he got used to, although it's a terrible word, the fact that such things happen in the Church and this is how bishops behave, this is how priests behave,"* from about 01:32:02.
38. Ekke Overbeek: *"That might explain why he didn't want to know. Yes. Because Sapieha was such an important figure to him, that's why.... He had to deal with it somehow."* - from about 01:32:18.
39. Anna Karon-Ostrowska: *"What is happening at the moment, this exposing, this unveiling, showing witnesses, showing documents, uncovering all this, is something, first of all, necessary if we want to live in the truth and seek the truth, and secondly, there is in this, that is, in this need, which I think is increasing, there is also such great pain, grief, but also rage. And it is difficult, and I don't know how we, as believers, still believers, will need to cope with such an image of the Church that reaches us. And is it even possible?"* - from about 1:32:38.
40. *"Black on White"* host Patrycja Redo-Łabędziewska: *"It's not just conjecture anymore, there is evidence that John Paul II knew about pedophilia in the Church, and that was before he became the Pope. He knew because, while he himself was the Metropolitan of Cracow, he transferred priests from parish to parish who had sexually abused children, as we showed today in black and white. The reportage "Franciszkańska 3" can be seen once again on TVN 24 GO, and there I will remind you, all the previous parts of the series "Bielmo" by Marcin Gutowski."* The presenter then invites viewers to TVN 24 to discuss the topic in a special edition - starting at about 1:33:57.

In connection with the complaints received, by letter No. DPz-WSW.0511.327.1.2023 dated March 9, 2023, the Broadcaster was requested to provide a transcript of materials related to the Broadcast within 7 days (announcements, editorial comments, and the Broadcast itself) and to address the allegations contained in the 11 complaints provided. The complaints formulated the allegations set forth below.

1. *"I hereby file a complaint against this Broadcast on the extremely anticlerical TVN24, which constitutes the hallmarks of **blasphemy** and **slander** against St. John Paul II, including **incitement to hatred** against the Catholic Church. The activities of the anti-Catholic media and organizations should be outlawed under Article 13 of the Polish Constitution."*
2. *"First of all, pedophilia can be spoken of when sexual activities involve a person under the 15 years of age. Deliberately, **every situation described in the "Franciszkańska 3" broadcast was called pedophilia, regardless of the age of the potential victim, because nothing was proven to anyone. Secondly, there was a lack of substantive evaluation of the documents used in the historical context and the creation of false documents by the***

- communist authorities. The materials were **biased, hate speech** directed toward the heroes of the time of the war and occupation by Germany and the USSR."
3. "Spreading **lies** and violating **religious feelings**."
 4. "The film advertised as a documentary is a slander based on the **manipulation of facts and sources**. I express my deep indignation and disapproval of **violating the personal rights of St. John Paul II and Cardinal Sapieha**, and by extension of my **own**, and demand the immediate cessation of unlawful actions and the punishment of the Broadcaster."
 5. "The media should honestly present the historical context in which the Catholic Church operated in the People's Republic of Poland in this type of case and present the achievements of St. John Paul II - which contradicts all these 'allegations'."
 6. "The lack of professionalism and **bias** in evaluating St. John Paul II is astounding. The film advertised as a documentary is nothing but slander based on **manipulating facts and sources**. I express my deep indignation and disapproval at violating Saint John Paul II's **personal rights** and, by extension, my own."
 7. "The authors have shown an astonishing lack of professionalism and bias. The film, referred to as a documentary, is a slander based on manipulating facts and sources. I express my deep indignation and disapproval of the violation of the personal rights of Saint John Paul II, as well as my own. I demand an immediate cessation of the unlawful actions."
 8. "Manipulated and defamatory material that violates the personal rights of Saint John Paul II and Cardinal Sapieha, and consequently harms constitutional values."
 9. "The program made **very radical accusations** against John Paul II, the Pope, stating that in the 1970s as Cardinal Karol Wojtyła, Archbishop of Cracow, **he covered up acts of pedophilia** by certain priests from his Archdiocese. The program was **edited** to give to the uninformed viewer the impression that John Paul II himself was somehow entangled in the problem of pedophilia. Statements such as: "it is necessary to x-ray this sanctity...", underscore such an effect of the program. Many statements are **anonymous** sentences simply delivered from the shadows without introducing the speakers. On multiple occasions during the Broadcast, some sealed envelopes and then a photo of Cardinal Wojtyła are shown, meant to create the effect of Wojtyła **hushing up an association with pedophilia**. The insertion of a statement by Bishop R.G. Weakland, a pedophile who was removed as Bishop of Milwaukee, and died in August 2022, means that this action has been prepared for a long time. This is an **attack not only on the memory of JP II, but on Poland, on its imponderables, and this** must be responded to."
 10. "The film contains many lies and allegations concerning St. John Paul II and is based on the UB archives, which are unreliable."
 11. "The Broadcast contains false information that harms people's good name and religious feelings."

In response, the Broadcaster, by letter dated March 13, 2023, provided a DVD with the recording of the Broadcast and the accompanying TV studio debate aired on March 6, 2023. Furthermore, in a letter dated March 15, 2023, the Broadcaster notified that it was difficult to respond within the seven-day deadline due to the complexity of the case and the number of complaints submitted. Therefore, the Broadcaster notified the Chairman of the National Broadcasting Council (hereinafter "**the Authority**") to respond no later than within 14 days of receipt of the letter.

In a letter dated March 21, 2023, the Broadcaster presented its position, stressing at the outset that the complaints do not contain substantive arguments that would allow a fair and detailed response to the allegations. In the opinion of the Broadcaster, none of the complaints refers to specific content contained in the Broadcast, and the nature of the reported allegations is solely an expression of the subjective feelings of the complainants, which cannot form the basis for assessing the compatibility of the Broadcaster's actions with the law. The Broadcaster stresses that the Broadcast results from many months of editorial work per the highest journalistic standards. In the opinion of the Broadcaster, the authors of the Broadcast exercised due journalistic diligence in the course of their work, including during the collection of materials, and objectively evaluated the collected materials and fairly presented them to the public. For these reasons, the Broadcast satisfies the provisions of the Broadcast Act, as well as the Press Law of January 26, 1984 (i.e., Journal of Laws of 2018, item 1914, as amended, hereinafter: the "**Press Law**"). In addition, the Broadcaster stressed that the role of independent and reliable media is to provide the public with information, even if it is difficult to accept, as it is in the important public interest, and journalists exercise their constitutional right to freedom of expression. There were no statements in the Broadcast depreciating the Catholic faith or people of that faith. According to the Broadcaster, the complainants wrongly equate the need for a public discussion of the Church hierarchy with hate speech or violations of the memory of the dead or any personal property. There are no such elements in the Broadcast, and, in the opinion of the Broadcaster, the complaints lack factual and legal basis.

On March 17, 2023, a letter was sent to the Broadcaster, No. DPzWSW.0511.327.8.2023, transmitting another 30 complaints received in connection with the Broadcast and requesting a position on the allegations made within 7 days from the date of delivery of the letter. Among these complaints, a letter was also sent to the National Broadcasting Council (KRRiT) by Prof. Janusz Kawecki, which was published on Radio Maryja's website, as follows:

"The Broadcast of the aforementioned reportage violated the requirements outlined in the Broadcasting Act (Article 18, paragraph 1, in conjunction with Article 53, paragraph 1) and the Press Law (Article 12, paragraph 1, item 1, in conjunction with Article 19, paragraph 1, of the Broadcasting Act).

The complaint concerns the following actions of the Broadcaster that aired the reportage:

- 1. The Broadcaster disseminated a reportage whose authors showed a **lack of integrity and diligence** in presenting the topic. The **selection of source material was biased and often – in conjunction with the commentary – manipulated**. There is a clear **lack of verification of the sources for truthfulness**. The reportage also used materials and informants with little or no credibility with regard to the issues they were supposed to report on. The comments provided are characterized by ahistoricity i.e., they do not consider the scientific knowledge of the period under review. All of this has a clearly visible purpose: to strike a media blow against the authority of St. John Paul II, to arouse a negative opinion of St. John Paul II or at least to **raise doubts about the figure of the Polish Pope** and thus at least **weaken the impact of his teachings**. With the help of the produced and disseminated reportage built on lies and vilification of St. John Paul II and Rev. Cardinal Adam S. Sapieha, not only the aforementioned Persons were attacked, but also Catholics and the Catholic Church. In addition, the **lies so disseminated** triggered – as the first week after the Broadcast of the reportage showed*

– even aggression against the memorials of St. John Paul II and calls from some politicians for the destruction of these sites.

2. *The Broadcast of the reportage and the aforementioned violations of statutory requirements should still be viewed as a major element of the organized assault on St. John Paul II. To have a stronger impact on media audiences, this assault on St. John Paul II was carried out in cooperation with other media outlets, which disseminated the deceitful theses in the reportage. This is even clearer evidence of an organized action to destroy the authority of the Polish Pope. This action is an unlawful assault on a Man of extraordinary personal integrity, a defender of the rights of every human being from conception to natural death, a defender of marriage and family, endowed with great authority in Poland and around the world.*
3. *Four years ago, in establishing the year 2020 as the year of Saint John Paul II, the Sejm of the Republic of Poland noted in its almost unanimously adopted resolution: "Saint John Paul II holds a special place in the history of Poland and Europe. His resolute insistence on our homeland's right to freedom among the nations of Europe, his practical defense of our nation's rights have made the Holy Father the most important of the Fathers of Poland's independence." Thus, striking at the authority of St. John Paul II using the methods mentioned in pts. 1 and 2 must be regarded as an action contrary to the Polish raison d'état. Such an opinion was also expressed by Deputy Prime Minister Piotr Gliński at a meeting of the Parliamentary Committee on Culture on March 9, 2023. We also find it in the position of the President of the Republic of Poland in a letter sent on March 11, 2023 to Msgr. Sławomir Oder (who was the postulator in the beatification and canonization process of St. John Paul II) on the day of his consecration, where we read, among other things: "For us Poles, the memory of St. John Paul II is an integral part of our national heritage and belongs to the Polish raison d'état, which we should guard with absolute devotion and firmness, regardless of the consequences. Considering the above, I request that proceedings be instituted against the Broadcaster as provided for in the "Broadcasting Act" and, as a result, that the Broadcaster be punished accordingly. In doing so, I request that the previous offenses shown in the decisions and summonses addressed to the Broadcaster be considered. This is because this is a Broadcaster that systematically violates its statutory obligations.*

Examples relating to the allegations listed in the complaint:

Re: 1)

*The authors of the reportage already at the beginning – acting under an assumed thesis – wanted to show that Fr. Karol Wojtyła, being a pupil of Cardinal Adam Sapieha, **"was imbued with an atmosphere of tolerance for sexual abuse and therefore did not later react to such abuses by subordinate priests."** A transcript of the testimony of Father Anatol Boczek, obtained by the UB in 1950 from a man who was a UB addict and whose testimony is so improbable that the UB did not use it in its famous trial against the Cracow Curia in 1953, was used for this purpose. Similarly used in the reportage as a witness, Archbishop Rembert Weakland, is a man of scant credibility. One only had to turn to his home diocese to find out. The reportage did not say anything about the reasons for this man's lack of credibility. The authors did not confront the allegations disseminated with the repeatedly spoken testimony of Cardinal*

Karol Wojtyła and later St. John Paul II. They did not want to note the testimony of Rev. Cardinal Karol Wojtyła about his superior, spoken about in many places and known almost universally. Rev. Cardinal Karol Wojtyła on May 7, 1976, during the dedication of a monument to Rev. Cardinal Adam Sapieha in Cracow, said, among other things: "A prince of steadfastness. I still have in my memory his face, his features, his words, his sayings(...) The years are passing, already many do not remember the Prince Cardinal. Those who remember him as I do have a duty to remind others about him so that this greatness lasts and creates the future of the nation and the Church on this Polish soil. God be thanked, Cardinal, for what you were to us, to me, to all Poles during the terrible period of the occupation." And in another place in the same speech, we read about Rev. Cardinal Adam Sapieha: "He was a great son of his Homeland, resolute in difficult moments, courageous beyond the measure of any mediocrity (...) an extraordinary man of history and Poland." Already as John Paul II, during his First Pilgrimage to the Homeland, met with priests in the Częstochowa Cathedral and, already at the beginning of his speech, presented a beautiful testimony: "Standing before you is the one who received his priestly ordination from the hands of the Polish bishop, the unforgettable and indomitable Prince Cardinal Adam Sapieha." Sharing his experience of the communist era with Polish priests at the time, he said: "The Church is most easily defeated by priests." And if the creators of the reportage did not find such speeches by Cardinal Karol Wojtyła, after all, reading the already much later book by John Paul II titled: "Rise, let us be on our way," they should have known the opinion of its author about Fr. Cardinal Adam Sapieha, if only expressed in such sentences: "With him, I did my seminary studies: I was a seminarian and then a priest. I had great confidence in him, and I can say that I loved him as other priests loved him. They loved him first of all because he was like a father - he cared about people." With such statements, could the records obtained from the UB files be considered reliable?

*Elsewhere, the report **criticized the actions of Cardinal Karol Wojtyła in the face of the pedophilic activities of three priests**. And, for example, about how selectively and deceitfully reference was made thereto, after all, known materials concerning the priests Józef Loranc and Eugeniusz Surgent. It is clear if one relates the information from the reportage to the results of the study of source documents by editors Tomasz Krzyżak and Piotr Litka, who are known for their work in "Rzeczpospolita". There they showed that **Rev. Cardinal Karol Wojtyła made all the necessary decisions in these matters**. Their work should have interested the authors of the reportage. This did not happen. This is because the results did not confirm the thesis assumed in the creation of the reportage. Both editors would not have allowed to vilify the conduct of Rev. Cardinal Karol Wojtyła. After the reportage was Broadcast by TVN24, the authors of this research presented a detailed calendar ("day by day") on the case. This can be found at the following link: <https://www.rp.pl/kosciol/art38096401-jak-kardynal-karolWojtyla-kontrolowal-pedofila>. It is clear from the compilation that Rev. Cardinal Karol Wojtyła carried out the entire procedure for punishing the perpetrators in accordance with the applicable requirements without any "sweeping under the rug." Those familiar with the materials published by Tomasz Krzyżak and Piotr Litka confirm that the materials collected by these editors testify how correctly the Cardinal*

reacted both in the canonical and preventive sense. In the reportage aired on TVN24, there is no reference to the work of Tomasz Krzyżak and Piotr Litka. Probably because it did not fit the preconceived thesis?

These are just a few examples of the unreliability of the reportage's creators and those who directed it for Broadcast. Other unreliability, manipulations and lies of the reportage aired by TVN24 are pointed out by various authors in a growing number of statements appearing in some media and social media forums. As for the criticism of St. John Paul II's lack of action with regard to sexual offenses of priests, it is worth recalling at least some documents and speeches of the Polish Pope, which, as can be seen from the content of the report, its creators did not want to know or deliberately forgot. They are given in many publications on St. John Paul II. One can recall, for example, the 1994 indulgence about the fact that there is no tolerance for this type of crime. Or perhaps the authors of the reportage should be reminded of the apostolic letter *motu proprio* "Sacramentorum sanctitatis tutela" dated April 30, 2001, in which, among other things, he affirmed that the sexual abuse of minors is among the catalog of the most serious crimes, and therefore the consideration of penalties for these crimes lies with the Congregation for the Doctrine of the Faith. It was this Pope who then promulgated the norms on these activities issued by that Congregation. In April 2002, he convened a meeting of cardinals and other representatives of the US Episcopate devoted (at his request) to the sexual abuse of minors. In his address to the participants, he spoke of how painfully he felt the 1994 papal document had been disregarded. And what to say about the speeches to priests of the Roman diocese as early as November 1978 recalled during the First Pilgrimage to Poland in June 1979? Nor can we forget to recall the text from the Letter to Priests for Holy Thursday in 1979. Due to the already excessive volume of this justification, I will remain only to cite these actions. Given all this, how can the statements in the "he knew and did nothing" cycle trotted out in this report be considered truthful?

*Re: 2) It is worth noting that in addition to the many different media outlets joining immediately after the reportage was broadcast in reproducing the assessments and slogans contained therein, there were also those that pre-emptively disseminated these assessments. This refers not only to the book published by Ekke Overbeek vilifying St. John Paul II (...). Such a specific example in the area of electronic media may be the video provider "Idź Pod Prąd TV" ["Go Against the Current TV"]. It was there that on March 6, as early as 1:00 p.m. (a few hours before the Broadcast of the report on TVN24), P. Chojecki - the owner of this portal, with the host of the Broadcast Kornelia Chojecka, discussed the reportage using, as a result of an earlier viewing, scandalous terms intended to result from the viewing of the reportage ("the thing about the crime") and an assessment of the Pope ("he participated in the crime, which means he was a criminal"). I cite this example because of the extraordinary **rudeness and hate speech of the speaker**, which is a violation of the requirements for this type of subject matter and enshrined in Article 47h of the "Broadcasting Act." This also proves that this was an organized action, the purpose of which I have already stated.*

Re: 3) The reportage was aired at a time when Poland is at war abroad. Under these conditions, any stirring up of tensions and unrest among citizens of neighboring countries is to the advantage of the aggressor. And bringing into the public space a

media blow against a Person who is an unquestionable authority for multitudes of Poles can only result from the desire to arouse social unrest in Poland. This is because the presented reportage and its lying and manipulated theses obtrusively disseminated by the media cooperating with the Broadcaster lead to stirring up confusion and unrest. Therefore, the Broadcast of this reportage cannot be treated as an incident. Everything indicates that this is an organized plot to destabilize the situation in the country.

Re: 4) If one additionally takes into account that in this reportage the allegations built on manipulation and lies are directed mainly against St. John Paul II, a man of extraordinary personal integrity, a defender of mankind, marriage and family, a great Pole, the actions described above are against the Polish raison d'etat. This, in turn, violates the requirements for Broadcasters enshrined in Article 18 (1) of the "Broadcasting Act." In turn, the summary outlined in Article 53(1) of the same Act obligates the Chairman of the National Broadcasting Council to issue a decision imposing a fine on the Broadcaster in the amount specified in the law.

In Summary:

*- There is an increasingly common term in circles defending the good name of St. John Paul II for the massive attack on St. John Paul II already present in the public sphere and built on lies and manipulation, that this is the second assassination attempt on the Polish Pope. The effect expected by the assassin of the first attack was not achieved. With the appropriate actions of state bodies and the rejection of the manipulation and lies used after this second attack, we should prevent the achievement of the effect expected by the assassins. Therefore, I come forward with this complaint requesting that it be reviewed, and the Broadcaster punished accordingly. This is because I believe that by remaining indifferent to the occurrence in the public sphere (the media) **of a lie manufactured in violation of the statutory requirements applicable to Broadcasters**, I would be allowing it to function in this space first as a "media fact" that, if repeated without punishment, can lead to the suppression of the truth from the memory of the community. The Broadcasting Act – following the Constitution of the Republic of Poland – ensures freedom of speech, but rightly does not ensure the freedom to lie.*

*-In examining the validity of the complaint I have filed and determining the fault of the Broadcaster, I ask you to take into account the fact that over the past several years, **this Broadcaster has repeatedly received a "call to desist" from the KRRiT and downplayed it.** Indeed, the Broadcaster has always included in its response to such a summons a self-description of its activities as being carried out "in accordance with the highest journalistic standards." Recently, the Broadcaster also expressed this in its "Statement" issued on March 9th, in which it supplemented the aforementioned quote with an assertion that the reportage was subjected to "several stages of verification" before Broadcasting.*

*- In assessing the Broadcaster's actions in connection with the Broadcast of the reportage covered by the complaint, please also take into account the **enormous harm caused by the Broadcast of the reportage, not only with regard to the image of St. John Paul II and his authority but also the action with the intention of stirring up unrest in the Country, which is in the immediate vicinity of a country at war.** It is*

also necessary to mention here the already visible impact of this organized action on the downgrading of Poland in world opinion. After the reportage broadcast, questions began to reach us more and more frequently (I had several myself) about the strange struggle of Poles against the memory of St. John Paul II."

The Broadcaster, in a response dated March 23, 2023, said it would present its position on the subsequent complaints sent within 14 days of receiving the letter.

In a letter No. DPz-WSW.0511.327.11.2023, dated March 28, 2023, the Broadcaster was informed that as of March 24, 2023 (including those already provided to the Broadcaster previously), 1,446 pronouncements had been received regarding the content of the Broadcast. The Broadcaster was provided with access to these pronouncements on an electronic medium.

A total of 6,058 pronouncements (e-mails, forms from the website, submissions via the ePUAP platform and letters sent by traditional mail) were received by the National Broadcasting Council in connection with the airing of the Broadcast on TVN 24 on March 6, 2023. These various pronouncements contained 39,613 signatures.

The complainants, **on the one hand**, stressed, among other things, that the Broadcast contained blasphemies and slander against St. John Paul II, including incitement to hatred against the Catholic Church. They stated that the authority of the clergy and the veneration of the memory of the deceased, particularly St. John Paul II and Cardinal Adam Stefan Sapieha, were violated, as well as violating the religious feelings of the complainants and insulting Catholics, and even inciting hatred against the Catholic Church. Attention was also drawn to the fact that the Broadcast talked about pedophilia without regard to the age of the potential victim.

On the other hand, it was pointed out that the Broadcast used lies, slander, manipulation of facts and sources and that the Broadcast did not make a substantive, professional, comprehensive evaluation of the historical sources used in the Broadcast and did not take into account the fact that during the People's Republic of Poland, the authorities and security services (SB) of the time created various types of so-called "fakes" to discredit the clergy.

In its response dated March 31, 2023, the Broadcaster stressed that the complaints received can be divided into two groups:

The first group are complaints with vague and curt allegations, not referring to specific parts of the Broadcast. The Broadcaster maintains its position towards these complaints as expressed in its letter of March 21, 2023.

The second group of complaints, according to the Broadcaster, includes a complaint by a former member of the National Broadcasting Council (hereinafter "KRRiT"), Prof. Janusz Kawecki, and complaints whose authors joined his position, published on Radio Maryja's website, among others. With regard to this group of complaints, the Broadcaster also found the allegations to be vague, curt, and not referring to specific parts of the Broadcast, and therefore the Broadcaster fully reiterated its position expressed in its letter of March 21, 2023, and attached this letter to the currently communicated position as its response.

In addition, the Broadcaster, referring to the first point of its position, marked as an additional explanation, presented arguments relating to the nature and purpose of the Broadcast, among other things, emphasizing that the Broadcast is not an attack on John Paul II, his teaching, his heritage, as well as against the Church itself or the Faith.

In the second point to its position, the Broadcaster, among other things, considered that the allegation of using unreliable sources was unfounded. According to the Broadcaster, the authors

of the Broadcast relied not only on the resources collected in the archives of the Institute of National Remembrance (hereinafter: "IPN") but also verified the findings of IPN materials with other sources: witnesses, victims, Church documentation from abroad. The materials from the communist security services were only a starting point for further analysis, as the authors informed viewers in their commentary.

In the third point, the Broadcaster addressed the allegation of violation of Article 18(1) of the Broadcasting Act, including the promotion of activities contrary to the Polish *raison d'état*. In its explanations, the Broadcaster stated, among other things, that the charge of violating the Polish *raison d'état* is devoid of any basis and contradicts the essence of the concept of the *raison d'état* of a democratic state. Completely unfounded, in the opinion of the Broadcaster, is the thesis that the action of the Broadcaster through the airing of the Broadcast was an element of an organized action to destabilize the situation in the country. The Broadcast did not touch the issue of the security of the Republic of Poland or its international position at all.

In the fourth point, the Broadcaster found the allegation of a violation of Article 12(1) of the Press Law to be unfounded, reiterating that the authors of the Broadcasts had fulfilled all the precepts of this provision.

In the fifth point, the Broadcaster found unfounded the allegation of repeated disregard for the Authority's calls for cessation of violations addressed to the Broadcaster and the systematic violation of statutory obligations. The Broadcaster stressed that the complainant did not specify what this alleged disregard by the Broadcaster of the Authority's summonses consisted of.

After analyzing the documentation gathered at the above stage of the investigation, and after reviewing the recording of the Broadcast, delivered to the Authority by the Broadcaster, **by letter DPz-WSW.0511.327.13.2023, dated March 31, 2023, No. DPz WSW.0511.327.13.2023.327.13.2023 dated March 31, 2023, the Authority informed the Broadcaster that, in the Authority's opinion, by airing the Broadcast, there had been a violation of Article 18(1) and (2) of the Broadcasting Act**, which in turn is the basis for **initiating ex officio proceedings to punish the Broadcaster under Article 53(1) of the Broadcasting Act**. The Broadcaster was notified of the opportunity to familiarize itself with the files of the proceedings, the collected evidence, and the opportunity to make a final statement within 14 days from the date of receipt of the notice of initiation of the proceedings. Through its legal representatives, the Broadcaster freely exercised its right and familiarized itself with the files of the proceedings on the days and hours it proposed, and the legal representative of the Broadcaster was also informed by telephone about, among other things, the expert reports performed to the order of the Authority, including, for example, the expert report of Dr. Klaudia Rosińska. In this regard, the Broadcaster therefore had full knowledge of the contents of the proceedings file and full, free, unrestricted access to them, regulated only by its own needs.

For this reason, the Authority finds the Broadcaster's assertions that it had a limited right to counsel (*vide the* Broadcaster's letters of April 17 and May 31, 2023) to be unauthorized.

In response to the notice of initiation of administrative proceedings to penalize the Broadcaster under Article 53(1) of the Broadcasting Act, in a letter dated **April 17, 2023, the Broadcaster informed that the position of the Broadcaster expressed in the letters submitted to date – responses to complaints, dated March 21 and 31, 2023 – remains valid**. Given the arguments presented in the cited letters, the Broadcaster asked the Authority to discontinue the initiated proceedings. In addition, the Broadcaster pointed out three issues in its

letter dated April 17, 2023: (1) the lack of grounds for initiating proceedings for imposing a penalty due to the lack of violation of Article 18 (1) and (2) of the Broadcasting Act, (2) the constitutional and convention protection of freedom of the press and expression, and (3) procedural aspects, as addressed by the Authority above.

To obtain additional clarification regarding the issues under investigation, in a letter dated April 5, 2023 (No. DPz-WSW.0511.327.15.2023), the Authority asked Editor Tomasz Krzyżak – head of the National Department of the daily newspaper "*Rzeczpospolita*" with a request for his position on how statements were presented in the Broadcast. In particular, the request concerned the question of whether the statements were used correctly and reflecting the position taken and in the correct situational and historical context and at the correct length, which in turn is related to the correct understanding by the general audience of the statement's contents and their message. A request of similar content was also sent by the Authority to editor Tomasz Terlikowski, also a speaker in the Broadcast (letter dated April 5, 2023, No. DPz-WSW.0511.327.16.2023). The Authority did not receive any response to the above-mentioned letters from the addressees of these letters. The aforementioned letters of the Authority were in the nature of a request for information. The request was addressed to persons participating in the public discussion and in the Broadcast, so in the opinion of the Authority, these persons may have had knowledge useful to the investigation, but the knowledge of these persons was not in the nature of information necessary for this investigation. Accordingly, the Authority made no further attempts to obtain information from the persons indicated. The above clarification, therefore, renders the Broadcaster's comments on this subject expressed in its letter dated May 31, 2023, to the Authority irrelevant.

Archdiocese of Cracow

In response to the letter dated March 17, 2023 (No. DPz-WSW.0511.327.7.2023), addressed to Archbishop Marek Jędraszewski, Metropolitan of Cracow, regarding the provision of information on possible contacts of the authors of the Broadcast with the Archdiocese of Cracow and their requests for access to source materials held by the archdiocese's archives, the Authority received a response with reference **number 1254/2023, dated April 18, 2023**. **Archbishop Marek Jędraszewski**, Metropolitan of Cracow, informed in the aforementioned letter that such contacts had been made but could not be considered correct. Archbishop Marek Jędraszewski informed that the query of the priests' personal archives was requested by Ms. Agata Listoś-Kostrzewa, introducing herself as a researcher and not as a person working for the Broadcaster on the implementation of the Broadcast. It was not until February 22, 2023, that Ms. Agata Listoś-Kostrzewa, under suspicion from the archive staff, admitted she was working for the Broadcaster and turned to questions about individual clergymen. **On February 27, 2023, the director of the Press Office of the Archdiocese of Cracow answered these questions, but the information thus obtained was not used in any way in the Broadcast.** On the other hand, the Broadcast used, among other things, recordings from a hidden camera, thus violating the personal rights of those working in the archive, as the technical methods used were not effective and allowed their image to be recognized and false information was conveyed, even though true information had been obtained, that the Chancellor of the Curia had forbidden access to the archive collection, and that the archive itself is closed by him. In addition, Archbishop Marek

Jędraszewski stressed that viewers were manipulated by the earlier ongoing promotional campaign of the Broadcast and were then shown propaganda material aimed at **destroying the authority that St. John Paul II and Rev. Cardinal Adam Sapieha, enjoyed among the Poles.**

Institute of National Remembrance (IPN)

In response to a letter dated March 17, 2023 (No. DPz-WSW.0511.327.6.2023), addressed to the President of the Institute of National Remembrance, Dr. Karol Nawrocki, regarding the provision of information on possible contacts of the authors of the Broadcast with the IPN to obtain access to the IPN archives and their possible requests **for** expert advice from the IPN during the realization of the Broadcast, the Authority received a **response with the number BIK-076-26/5/123, dated April 26, 2023. Among other things, the President of the IPN** informed that the author of the Broadcast, Editor Marcin Gutowski, 2022-2023, submitted a request for archival materials concerning the topic "History of the Catholic Church in Poland," which was granted. These included documents relating to the priests whose stories were presented in the Broadcast. The President of the IPN, in the submitted response, also referred to **the Authority's request for expert advice by assessing the use of sources from the IPN** archives, including whether archival materials were used objectively and reliably, whether a thorough evaluation was made, or whether, without proper analysis, the information was used in a schematic and routine manner. In response to these questions, the President of the IPN, among others, stressed that in the Broadcast (as in the book titled. "*Maxima culpa. What is the Church Hiding Concerning John Paul II?*" by Ekke Overbeek), **overinterpretations** were made that even give the impression of **manipulation**. Archival materials, in the opinion of the IPN President, were used **selectively** to prove **the thesis that Archbishop and then Cardinal Karol Wojtyła knew about pedophilia among priests under his authority but did nothing about it.** Contrary to journalistic technique, only those fragments of archival documentation that served to prove the thesis were quoted, and the Broadcast (as well as the mentioned book) was based on very tenuous factual premises, very fragile evidence, manipulations without proper verification of historical sources. The IPN president stressed that both research methodology and the historian's technique and journalistic ethics were ignored. The Broadcast does not mention the historical and social context at all, with the result that the Broadcast is a *de facto* indictment of Cardinal Karol Wojtyła, and this in turn strikes at the image of St. John Paul II and the institution of the Catholic Church.

The Broadcaster's Position

In a letter to the Authority dated May 31, 2023, the Broadcaster referred to the above positions contained in the aforementioned letters. With regard to the arguments presented in the aforementioned response of the President of the Institute of National Remembrance, the Broadcaster, among other things, stressed at the outset that the Broadcast is journalistic material, not a historical work, and therefore it is not legitimate to require the authors of the Broadcast to apply the methodology appropriate for researchers - historians. The Broadcaster denied the claim that there was not even a mention of the historical and social context in the Broadcast, giving the

example of the author's commentary from the very beginning of the Broadcast, in which the following words were said, quote: "the *documents contained in his files and dozens of others we learned about, were ONLY a starting point for us. Aware of the fact that they were created by security services that destroyed people and wanted to destroy the Church as an institution - we spent many months verifying the information contained therein, reaching out to witnesses and documents from other sources"* (Broadcaster's emphasis). The Broadcaster also referred to the thesis, that the Broadcast constitutes a *de facto* indictment of Cardinal Karol Wojtyła, and that this, in turn, strikes at the image of St. John Paul II and the institution of the Catholic Church. First of all, the Broadcaster emphasized that the Broadcast did not contain such a thesis at all, and that the IPN president did not present any evidence in support of his conclusion. In addition, the Broadcaster stressed that Ekke Overbeek is not a co-author of the Broadcast, and therefore it is incomprehensible for the IPN president to make a combined reference to both his book and the Broadcast made for the TVN 24 program.

Regarding the arguments presented in the aforementioned response of Archbishop Marek Jędraszewski, Metropolitan of Cracow, the Broadcaster, among other things, presented its chronology of contacts with the Archdiocese of Cracow regarding access to the archival collections in its possession and the extent of the answers given or not given by representatives of the archdiocese to questions asked in connection with the work on the Broadcast. The Broadcaster assessed the above contacts as having been devoid of any willingness on the part of the Cracow Curia to cooperate with the authors of the Broadcast and to provide the public with information on the topics constituting the content of the Broadcast.

In order to thoroughly and comprehensively clarify all the circumstances related to the content of the Broadcast, three expert reports were performed at the request of the Authority by the experts listed below:

- 1) UW Prof. Anna Cegiela, Ph.D. - on the objectivity and reliability of the Broadcast,
- 2) Dr. Piotr Gontarczyk - in assessing the methodology of using historical sources in the Broadcast,
- 3) Dr. Klaudia Rosińska - in terms of detailed analysis of the content contained in the Broadcast and other communications related to the Broadcast on TVN 24 on March 6, 2023.

Ad. 1. Opinion of UW Prof. Anna Cegiela, Ph.D. - on the objectivity and reliability of the Broadcast

Dr. hab. Prof. UW Anna Cegiela, in the expert opinion presented, pointed out, that the content of the Broadcast was created by three types of content: factual, "(...) *interpretive and emotional. All three types of content were expressed in such a way that the viewer was convinced that he/she is dealing with a coherent, credible, momentous, and poignant message. This is served by the way in which words and sound are handled, as well as by a set design reminiscent of a Scandinavian crime film in which an investigator searches for evidence of a crime. The music is 'dark' and provides a background typical of a drama. Most scenes are shrouded in darkness, the frames move slowly, the landscape is shown by the camera so that the viewer can guess, that he/she will see the crime scene in a moment. The victims of the crime also*

stand or sit in darkness, probably so that the circumstances of the conversation are not visible and to show that the dark stain of the crime is still present in their lives. In the light, we see those places where the accused criminal will surely not appear again. I use this last word not by accident. Already in the first minute of the reportage, we hear that "Karol Wojtyła knew about the crimes of pedophilia in the Church even before he became Pope and covered them up." Thus, he was complicit in the crime.

*In subsequent passages, we learn that he "covered up" the crime of pedophilia. This is a serious accusation of complicity in this crime. And such an accusation means the moral discrediting of Karol Wojtyła and taking away his good name. Interpretations and evaluations and emotional statements therefore prevailed in the Broadcast over reporting on facts and rational argumentation." ¹ Instead of evidence, viewers received assurances of thorough research conducted over a span of nearly three years. These assurances were legitimized by the experts on Church-related issues shown in the Broadcast, including, among others, Ekke Overbeek, who spoke poignantly about Karol Wojtyła: "How could he, how could he!". This linguistic treatment served a function similar to **presupposition**. The emotional reaction was to be perceived by the viewer as genuine emotion over the suffering of the children, which was tolerated by the indifferent Bishop Karol Wojtyła. Viewers were supposed to believe that since the journalist was shocked, he knew what had happened and would not notice what E. Overbeek based it on. Thus, the viewers will not notice the manipulateness of this narrative. ²*

In her expert opinion, UW Prof. Anna Cegięła recalled various important historical publications that appeared before the dissemination of the Broadcasts, which treated the Catholic Church during the communist era in a very insightful way. She also cited as sources the reliable and credible analyses made in 2022 by journalists from the daily newspaper "Rzeczpospolita": Tomasz Krzyżak and Piotr Litka. The aforementioned journalists, according to Dr. Prof. UW A. Cegięła reliably examined not only the content of the documents but also their credibility, which was influenced by the actions of the elaborate apparatus of the PRL security services, which organized provocations and used disinformation and lies.

The subject of the journalistic investigation presented in the Broadcast was only ostensibly the stories of three priests: Father Bolesław Saduś, Father Eugeniusz Surgent and Father Józef Loranc. The three stories about their crimes and the alleged cover-up of these crimes by Karol Wojtyła, together with a thread about the actions of Cardinal Adam Stefan Sapieha, formed the main content of the Broadcast. However, in fact, the main character of the Broadcast was Cardinal Karol Wojtyła as a representative of the clerical Church, covering up the crimes of priests, and even possibly, covering up the acts of Cardinal Adam Sapieha. In the case of Fr. Bolesław Saduś, the authors of the Broadcast relied exclusively on SB materials in establishing the facts. They assured viewers, however, that all the documents "*contained in his files and the dozens of others we learned about were only a starting point for us. Aware that they were created by security services that destroyed people and wanted to destroy the Church as an institution, we spent many months **verifying the** information contained therein, reaching out to witnesses and documents from other sources, **checked every lead**, and will present the most important findings in this story*" [expert's emphasis].

UW Prof. Anna Cegięła explains in her expert report that the authors of the Broadcast did not check all the clues, did not conduct a thorough search, did not connect the events, omitted

¹ The Expertise-Opinion of Dr. Prof. Anna Cegięła

² Ibid, p. 4.

facts that did not fit the concept, and fitted the entire narrative to the thesis that had been put forward earlier, which was that Fr. Bolesław Saduś was a pedophile and harmed children. News of the scandal reached the Curia. To cover up the crime, Bishop Karol Wojtyła, who was quite close friends with Fr. B. Saduś, arranged for him to go to Vienna at lightning speed. Other researchers (i.e., editors from the “*Rzeczpospolita*” daily Tomasz Krzyżak and Piotr Litka), after a thorough search of more than 1,500 pages of court documents and SB materials, concluded that Fr. Bolesław Saduś was *not* a pedophile, but a homosexual. In turn, the Broadcast states that Fr. Saduś harmed minors, but does not state their ages. It also does not say whether they were minors in today's sense or earlier (in the 1970s, the age of legal protection in the Criminal Code was 15, and in the Code of Canon Law it was 16). The thesis of the report, however, is that Fr. Saduś was a pedophile, and Karol Wojtyła wanted to hide the problem. According to UW Prof. A. Cegięła this was at least an overinterpretation. Karol Wojtyła was also attributed unjustified motivations in this part of the Broadcast. A procedure of false attribution was performed, as the authors of the Broadcast suggested that Karol Wojtyła helped Fr. Saduś because he was friends with him. The authors of the Broadcast did not provide any rational evidence, but instead suggested logically unauthorized conclusions to the viewers. The authors of the Broadcast did not consider at all other interpretive possibilities than their own, for example, Fr. Prof. Paul Zulehner, the current pastor of the Glaubstsch parish, said that in light of the documents, the reason Fr. Saduś left for Vienna was to study. *"Other reasons are not given here, and according to my assessment and knowledge of the matter, at the time, in fact, they would not have been given, as they were considered at the time to be very discreet matters and rather attributed to internal Church politics,"* said Fr. Prof. Paul Zulehner. These words, however, did not affect the Broadcaster's interpretation of the facts, as viewers heard: *"this would mean that Cardinal Wojtyła did not inform Cardinal König of the real reasons for Saduś's departure."* Another strand of the Broadcast was devoted to the story of Fr. Eugeniusz Surgent, formally subordinate to the bishop from the Lubaczów diocese, not the Cracow diocese. Despite this, we find the following words in the Broadcast: *"All indications are that he committed crimes not only in Kiczor, and Cardinal Wojtyła's leniency towards a sexual predator who abused children lasted several years."* The Broadcast goes on to state, without giving evidence, that *"documents and witness accounts indicate that Wojtyła and the Curia knew from the beginning that the priest under them was a sexual predator and was abusing underage boys in successive parishes. And when the matter came to light, Wojtyła formally dismissed the subordinate priest from his diocese."* The Broadcast does not inform viewers that these are new reports coming from recent months and documents that the Curia did not have at its disposal because they were denunciations obtained by the SB. Another manipulative procedure was used in the next section of the Broadcast. Its purpose was to fix in the viewer's consciousness, without providing proof of the truthfulness of the proclaimed thesis, that Karol Wojtyła considered that the punishment of Fr. E. Surgent was not his competence and helped the criminal find a job in a parish from the Koszalin-Kołobrzeg diocese. Here again, false attribution was used, and the facts and their chronology were adjusted to suit one's own interpretation.

The third thread was devoted to the story of Fr. J. Loranc. In this thread, too, biased interpretations were made against the factual record, including that contrary to Ekke Overbeek's claims, as disseminated in the Broadcast, Fr. J. Loranc was not immediately reinstated to pastoral work after serving his prison sentence. The authors of the Broadcast did not present any evidence that Fr. J. Loranc had committed any crime after his release from prison and was still dangerous.

According to the expert opinion of UW Prof. A. Cegięła, in assessing the manner in which the content is conveyed in the Broadcast, it should be emphasized that the message, first of all, is a sham of verified knowledge, which is all the more harmful because the viewer has no possibility of verifying the veracity of the information conveyed, has no access to sources, and has the right to believe, that the authors acted honestly, as they announced in the introduction to the Broadcast.

Second, the authors of the Broadcast repeatedly tell untruths, including the claim that Cardinal Karol Wojtyła undoubtedly knew about the pedophilia of Fr. B. Saduś, Fr. E. Surgent and Fr. J. Loranc, but covered up and concealed these crimes. Cardinal Karol Wojtyła did not know about Fr. Surgent's crimes from before 1969. Journalists recently learned about these crimes from SB materials, including a denunciation of Fr. Surgent from prison. Cardinal Karol Wojtyła could not have known about these materials. It is possible that he knew about the 1969 crime, but there is no conclusive hard evidence for this. It is not true that Cardinal Karol Wojtyła violated Canon Law regarding suspensions and covered up the pedophilic acts of Fr. Joseph Loranc. He imposed a suspension on Fr. J. Loranc and then removed it, that is, after several years and after the parish service of Fr. J. Loranc under the special control of the parish priest. Suspension is a periodic punishment. Resigning the ecclesiastical punishment was a decision of a Church Tribunal consisting of several people.

Third, the authors of the Broadcast give the audience an interpretation instead of knowledge of the facts, and they retouch the facts to better fit the theses presented in the Broadcast. For example, they claim that Fr. J. Loranc was a priest again immediately, that is, a year after his release from prison. After his release from prison, Fr. J. Loranc held a ministry of a different kind, then was a parish resident without the right to teach or hear confessions. He became a chaplain after four years of ministry under control.

Fourth, the procedure of implication was used several times in the Broadcast. Information was suggested to the viewer, based on which the viewer could (and certainly did) draw unauthorized conclusions falsifying the picture of Cardinal Karol Wojtyła's actions. It was clearly stated that Cardinal Karol Wojtyła arranged for Fr. B. Saduś to go to Austria so that he could avoid punishment. What kind of punishment? This was not said in the Broadcast. Previously, information was given based on which the viewer concluded that Fr. B. Saduś was connected with Cardinal Karol Wojtyła by friendship. It was said that the cardinal visited him in Glaubitz, that he travelled to Poland with his driver, and that he had already telephoned him as Pope when Fr. B. Saduś was dying. Thus, the idea of Cardinal Karol Wojtyła's motivation was suggested to the audience. Implication was also used when informing that Cardinal Adam Sapieha ordained Karol Wojtyła as a priest in his private chapel as the only one of his seminarians, that he sent him to Rome for two years and visited him there on his birthday, that he arranged for him to travel to France, Belgium, and Holland, and that Karol Wojtyła was the 'apple of his eye.' Earlier, the viewer learned that Cardinal Adam Sapieha systemically molested all seminarians. Unprompted, the viewer is led to the conclusion of the depraved relationship between the two clerics.

Fifth, this treatment is accompanied in the Broadcast by a presupposition that constitutes a false accusation against a person who has no way to defend himself.

Sixth, in the contents of the Broadcast, we also have to deal with false attribution, i.e., with unfounded accusations by Cardinal Karol Wojtyła of arranging the escape of Fr. Saduś,

concealing from Cardinal Franz König the real reason for the trip to Vienna, tolerating and covering up the pedophilia of priests B. Saduś, E. Surgent and J. Loranc, and violating Canon Law.

Seventh, the lack of objectivity and journalistic integrity is also evidenced by the selection of facts and their irrational interpretation. The authors of the reportage claim that it was Karol Wojtyła who dismissed Fr. E. Surgent so that he found himself in the Koszalin-Kołobrzeg diocese, but they do not say whose consent was needed to do so. They interpret the lack of information about Fr. B. Saduś's crime in the letter to Cardinal Franz König as a cover-up of this fact, even though in a conversation with journalists, Fr. Prof. Paul Zulehner makes it clear that such matters were not written about in official letters.

Eighth, in the Broadcast, the author's opinions outweigh factual reporting. Opinions and beliefs of the authors of the Broadcast were treated as evidence and arguments. The content of the message in the Broadcast is an interpretation – unauthorized and tailored to the thesis that Cardinal Karol Wojtyła is guilty of a crime.

In the opinion of UW Prof. A. Cegiela, in assessing the objectivity of the Broadcast, it is important to read the intentions of its authors. From the announcement of the material, it can be inferred that it is the presentation of evidence of the crime of covering up pedophilia and the omission of punishment for committing it. While presenting the story of the crimes, viewers learned that the authors are outraged by the lack of compassion for the victims. And it is this theme that appears as the stated intention of the author's quest. Nowhere in the reportage, however, nor in the conversation after its Broadcast, did the information about the Pope's actions against pedophilia in the Church appear. The juxtaposition of this fact, for example, with the presented opinion on Canon Law allegedly created to cover up crimes, leads to the conclusion that the authors, however, had somewhat different intentions than to move the audience with the harm done to victims of Church pedophilia. The viewer does not focus on discovering the authors' motivations. He/she doesn't inquire into the credibility of the documents because he/she can't and doesn't know how to, and he/she follows the course of the author's reasoning selectively, noticing and remembering a certain informational novelty in the message presented. And this is the new image of Karol Wojtyła remaining in contrast to both the image of a Pope who contributed to the strengthening of Christianity, the collapse of communism, who addressed people with words of respect and love for the human person, a philosopher and anthropologist, and the image of a saint and upright hero to whom monuments are erected. Here presented is the image of a Church official covering up the crime of his subordinates, guided by the interests of the institution, complicit in the suffering of dozens of people. This man is carefree, without feeling, without empathy for the victims, faithful to the system he came out of, and lenient and helpful to criminals, especially friendly ones. He disregards the suffering of victims of molestation because he had already become accustomed to pedophilia in the seminary. The picture of Cardinal Karol Wojtyła formed in this way shows that the authors of the Broadcast intended to indict him for the practices of the clerical Church, practices that are difficult for believers to understand, revealed slowly and with pain. However, the authors were not tempted to reflect further on what might have influenced Cardinal Karol Wojtyła's decision – whether it was an overconfidence in priests, a belief in the improvement of their behavior, or a peculiar attitude to the role of the priest, or a desire to avoid the interference of secular authority in Church affairs. They simplified this problem to a taming of the phenomenon of pedophilia in the Church and indifference to the victims, which is clearly contradicted by the later actions of John Paul II. They did not take into account the public attitude toward pedophilia in the 1970s or the

relationship of the Church to the totalitarian state, a relationship that had a significant impact on the non-disclosure of the problems of sexual crimes in the Church. This relationship is pointed out in a statement by Bishop Grzegorz Rys. The report's authors did not try to understand the principles and norms of Canon Law and do not realize how severe a punishment it is for a priest's suspension and what it *de facto* means. The perspective from which they present events and evaluate the behavior of Cardinal Karol Wojtyła is an ahistorical perspective, and when it comes to Canon Law, it is an ignorant one.

Ad. 2. Opinion of Dr. Piotr Gontarczyk - regarding the evaluation of the methodology of using historical sources in the Broadcast

Dr. Piotr Gontarczyk, in his expert opinion on the evaluation of the methodology of the use of historical sources in the Broadcast, stressed, among other things, the fact that the primary archival materials used in the Broadcast are those of the communist-era security services. These materials are a source of research knowledge, but under certain conditions. First of all, they cannot be treated as a source of unquestionable knowledge, as they are subject to the typical errors or misrepresentations that occur in historical sources, as well as the special kind of imperfections that characterize the materials of the security services of the PRL period.³ Dr. Piotr Gontarczyk stressed that in the introduction to the Broadcast, the authors addressed the audience as follows: *"We will show how Karol Wojtyła, while he was Metropolitan of Cracow, moved priests from parish to parish who sexually abused children. These are three concrete, striking stories of sexual predators in cassocks."*⁴ This treatment of the subject clearly indicated that Bishop and later Cardinal Karol Wojtyła knew about the criminal acts of three priests (Fr. Bolesław Saduś, Fr. Eugeniusz Surgent and Fr. Józef Loranc), and through this *"transfer from parish to parish"* bears shared responsibility for the harm to children in these cases.⁵ The description of Fr. Eugeniusz Surgent's case resonated particularly clearly in the Broadcast. In this case, this responsibility of Cardinal Karol Wojtyła is indicated directly: *"the indulgence of Archbishop and Cardinal Wojtyła towards a sexual predator in a cassock who abused children lasted several years."* In the final part of the Broadcast, viewers learned that *"John Paul II (...) himself, while being Metropolitan of Cracow, transferred priests from parish to parish who sexually abused children, as we have shown today in black and white."* Also presented in this part of the Broadcast were materials from the Office of Security (SB) regarding Fr. Cardinal Adam Sapieha, whose contacts with Cardinal Karol Wojtyła, it was suggested, were connected *"perhaps by some dark secret."* There was also a set of suggestions and allusions contained in the statements of various people who looked for hidden dependencies in Karol Wojtyła's career on his mentor and guardian, Cardinal Adam Sapieha, portrayed as a homosexual. Dr. Piotr Gontarczyk states in his expert report that an analysis of the use of archival documents, which are almost exclusively files of the security services, has shown that the main thesis of the Broadcast about Cardinal Karol Wojtyła's transferring of *"sexual predators"* from parish to parish is not adequately supported by these files. In the case of Fr. Bolesław Saduś from the surviving files we know for sure that he was a homosexual. The Broadcast did not point to convincing evidence that Fr. B. Saduś had intimate contact with a minor, let alone a person under

³ Opinion by Dr. Piotr Gontarczyk, p. 1.

⁴ Ibid, pp. 4-5.

⁵ Ibid, p. 13.

the age of 15, as stipulated by the Criminal Code. The only description of the alleged child abuse found in the Broadcast concerns two men about whom the author, editor Marcin Gutowski, had information that they were adults at the time, and yet he made this manipulation. Viewers watching this segment of the Broadcast did not know that the scenes shown and the descriptions of Fr. Saduś's alleged pedophilic act were mystifications. The security services' documents show that Fr. B. Saduś was a homosexual, not a pedophile, which makes such a portrayal of the case as was made in the Broadcast and annotating it with the comment "*striking instances of Karol Wojtyła's transferring of sexual predators harming children*" a serious abuse of journalistic skills/techniques and statutory obligations. Insofar as the presentation in the Broadcast of the story of Fr. Eugeniusz Surgent, about whom viewers heard an unambiguous comment: "*the leniency of Archbishop and Cardinal Wojtyła towards a sexual predator in a cassock who abused children lasted several years,*" Dr. P. Gontarczyk stressed the obvious fact, that Bishop Karol Wojtyła took office as Archbishop - Metropolitan of Cracow – in 1964, and Fr. Eugeniusz Surgent's last function in the area was in the early 1970s. Therefore, it could not have been a "*leniency lasting a dozen years.*" In this case, the crucial question is when the security services and the Cracow Curia learned of this priest's inclinations, and whether the reason for subsequent transfers was indeed pedophilia cases from the very first parish where he stayed. Dr. P. Gontarczyk, after analyzing various materials, concluded that the scenario of the Broadcast on this important issue of the SB's knowledge of the case, the position of the Cracow Curia, and the responsibility of Cardinal Karol Wojtyła for the alleged several years of deliberate transfer of a "*sexual predator from parish to parish,*" was purely a mystification made by the authors of the Broadcast.

The latest example, as said in the Broadcast, of *Cardinal Karol Wojtyła "transferring sexual predators from parish to parish"* was the case of Fr. Józef Loranc. According to Dr. P. Gontarczyk's analysis, Fr. Loranc suffered punishment for his criminal acts after being released from prison, was removed from contact with children by Cardinal Karol Wojtyła, and there is no evidence that Fr. Loranc ever harmed any child afterwards. This example proves that Cardinal Karol Wojtyła did not take the matter lightly, did not act sluggishly or without empathy, as was repeatedly presented in the Broadcast, but took immediate and decisive action after being informed. Thus, the story of Fr. J. Loranc had an exactly different course from the one presented in the Broadcast. It should be mentioned that at the time the Broadcast occurred, the high-profile publications that appeared in the "*Rzeczpospolita*" daily by Tomasz Krzyżak and Piotr Litka⁶ were known. One must unequivocally assess those materials of the security services that were used in the Broadcast to describe the actions of Cardinal Adam Sapieha as unbelievable. In the Broadcast, during the alleged description of Cardinal Adam Sapieha's homosexual act, viewers heard the comment that the quoted account came from the materials of an unreliable person, so "*we will not return to them.*" The description of the alleged touching of the young seminarian's genitalia by the hierarch was presented in the Broadcast based on material that the author himself had previously described as unreliable. From the point of view of both the uncritical way in which the available files of the security services were used and the elementary principles of journalism, such an action can only be described as a totally unacceptable violation of journalistic obligations.

⁶ Tomasz Krzyżak, Piotr Litka, *Wojtyła to pedophile priest: "Every crime should be punished,"* in: "*Rzeczpospolita*", December 2, 2022, p. A4.

Ad. 3. Opinion of Dr. Klaudia Rosińska on the detailed analysis of the content contained in the Broadcast and other messages related to the airing of the Broadcast on TVN 24 on March 6, 2023

Dr. Klaudia Rosińska's expert opinion, which was conducted according to the temporal chronology of the recording of the Broadcast, analyzed the various issues successively presented and discussed in the Broadcast. On the basis of such a detailed analysis, Dr. K. Rosińska assessed that the material did not meet the criteria for reportage and the standards of journalistic ethics.⁷ As the expert pointed out: *"The main charges that can be brought against it are: bias, selective selection of sources, ahistorical interpretation of historical facts and events, and use of manipulative techniques such as: innuendo, use of terms of so-called fixers, false linking of emotions and persons, gossip."*⁸

In the detailed part of the report, those parts of the Broadcast were selected in which the mentioned manipulative techniques were used. In the description of the program, the question is asked what John Paul II knew about the pedophile scandals in the Church, but at the very beginning of the program, the viewers were given only the answer to the question "did he know? Asking questions is important and necessary in journalism, even on difficult and controversial topics. However, approaching these topics must be based on a fair description of reality, and not on promoting predetermined theses and judgments. In the analyzed Broadcast, a clear thesis was made from the beginning that Cardinal Karol Wojtyła knew about cases of pedophilia among the clergy he supervised and, which is a much more serious and unproven allegation resounding in the Broadcast – he covered up known cases. The phrase "he must have known" is repeated many times. This is a classic example of so-called framing, that is, subconsciously influencing the interpretation of the facts and events presented in the Broadcast. Framing of this type significantly impedes critical evaluation of the facts presented in the Broadcast and sometimes even prevents an objective view of the actions of individuals. In this sense, it is difficult to evaluate the Broadcast as an objective and ethical journalistic work already from the onset.

Another major objection, according to Dr. K. Rosińska, is the selective selection of sources. In the reportage, the Author relied mainly on the testimony of individual witnesses and on controversial historical sources, i.e., documents of the security services of the People's Republic of Poland, found in the archives of the Institute of National Remembrance (IPN). Source criticism is a complex job, requiring appropriate skills. The materials referred to by the author of the Broadcast come from documents collected by the security services of the People's Republic of Poland. They therefore require cross-checking also in other sources, as they were often prepared, among other things, in order to cause harm to individuals.

Thus, the Author pushes the thesis of the negative actions of Cardinal Karol Wojtyła on the basis of uncertain documents whose credibility has been undermined by other journalistic investigations and historical analyses (including the publications of Tomasz Krzyżak and Piotr Litka on the pages of the daily newspaper *"Rzeczpospolita"*, which appeared in 2022). This is unreliable and unfair to the audience, who have the right to confront the conclusions presented in the Broadcast with other analyses on the subject.

⁷ Opinion by Dr. Klaudia Rosińska, p. 16.

⁸ *Ibid*, p. 1.

Dr. K. Rosińska made similar accusations against the selection of witnesses invited to speak during the Broadcast. The statements of the victims or people close to the victims cited in the Broadcast were juxtaposed with materials produced by the security services concerning the actions of three priests: Eugeniusz Surgent and Józef Loranc, who were tried and served prison sentences, and Bolesław Saduś, whose case is still being discussed by historians. As a result of such juxtaposition, certain emotions were evoked related to the victims (sympathy, empathy, sadness, and grief) and the aggressors (anger, disgust, desire for retaliation, punishment). These emotions were then suggestively transferred to Cardinal Karol Wojtyła, for example, through the regular use of the phrase "he had to know." This is an example of the manipulation of emotions to create a guilty party, and an example of the action of maintaining a psychological emotional affect in the audience, which must find an outlet at the end of the material prepared in this way. Disgust and anger toward the described sexual aggressors, according to this concept, must be partially transferred to the main character of the Broadcast, i.e., Cardinal Karol Wojtyła. The structure of the Broadcast in this sense is biased and unambiguously partisan. Similarly one-sided remains the selection of commentators, including the opinions of, among others, Ekke Overbeek, author of the book titled. "*Maxima culpa. John Paul II knew,*" journalist Tomasz Terlikowski, who sits on the pedophilia commission, and Anna Karoń-Ostrowska, who declares herself a friend of Pope John Paul II. All of these individuals present an unequivocal position on the case, agreeing that Cardinal Karol Wojtyła probably covered up cases of pedophilia in the Poland's Catholic Church.

Another major allegation in Dr. K. Rosińska's expert report is the ahistorical interpretation of facts and events. The expertise shows that while the facts themselves are not reliable, even if they were, they are not sufficient for a reliable historical interpretation. History happens in a certain context of time, culture, society, etc. Therefore, historical events and decisions cannot be interpreted in relation to the contemporary cultural and social framework. This distorts reality and, in Dr. K. Rosińska's opinion, is dishonest. The Broadcast makes ahistorical interpretations, as it completely ignores the context of the People's Republic of Poland. The author of the Broadcast relies on SB materials but does not explain how the SB dealt with people with homosexual and pedophilic inclinations; among other things, homosexual circles were under constant surveillance by the MO (People's Militia) and the SB, and people with such inclinations were regularly blackmailed, intimidated, and even murdered. In the Broadcast, the stories presented are interpreted in a contemporary context, in which the State presents a completely different attitude towards people with homosexual inclinations. In Dr. K. Rosińska's opinion, the attempt to make viewers believe that Karol Wojtyła's decisions as a bishop were wrong or a form of cover-up is largely due to an ahistorical view of the issue. At the time, these were decisions that affected the lives of these priests but also their victims. If one considers the risks associated with the actions of the security services with regard to those with homosexual and pedophile tendencies, it may turn out that Bishop Karol Wojtyła's reactions were even a model. The historical context of the victims' functioning was also completely ignored in the Broadcast. At that time, victims of pedophilia would likely have been highly stigmatized and even threatened with blackmail and humiliation from the state apparatus, but also from the local community. The theses posed, as well as the questions asked in the Broadcast are the result of contemporary experience and reflection.

According to Dr. K. Rosińska, the most unethical and dishonest journalistic approach in the Broadcast is its ending, specifically the last 15 minutes devoted to Cardinal Adam Sapieha,

mentor of the later John Paul II. Leaving this thread for the end of the Broadcast and presenting it in the form of understatement, half-truths, and insinuations finds no justification. It is an action bearing the hallmarks of manipulation and even exerting disinformative influence on the audience. In addition to the testimony of one priest, in addition considered unreliable even by the SB, accusing Cardinal Adam Sapieha of molestation, in the end of the Broadcast, viewers hear only journalistic formulations, such as: "*if this information is true...*", "*it seems that...*", "*it was talked about...*", "*perhaps from the beginning of his being in the Church, Wojtyła got used to (molestation - expert's footnote)*", etc. There was no diligence and journalistic integrity in gathering materials, sources were not verified, and the credibility of interviewees was not assessed. Viewers were left with a handful of very strong and unproven pieces of information presented as a summary of the Broadcast. In an era of ubiquitous disinformation and, therefore, the need to educate the public to get their news from reliable sources, such behavior by a journalist is unacceptable. According to Dr. K. Rosińska, even if one assumes that all other parts of the Broadcast could be interpreted in favor of its creators, this last part of the reportage makes the assessment of the Broadcast as a whole negative. Dr. K. Rosińska, therefore, concluded that the interpretations carried out in the Broadcast are neither in line with the craft of historical research, nor with sound journalistic skills. It is an ahistorical interpretation of facts and events, in addition, supported by unreliable and unverified evidence and biased opinions. The authors manipulate legitimate public emotions in an attempt to persuade a preconceived thesis, which is a manipulative action that is not in keeping with the journalistic mission of seeking the truth and the public good.

The Broadcaster reviewed all expert reports on November 9, 2023. The Broadcaster did not refer to the studies in question, did not comment on them, and did not formulate additional questions.

Legal justification

According to the Authority, the Broadcaster violated the provisions of Article 18(1) and (2) of the Broadcasting Act, by, that on March 6, 2023, at 8:35 p.m., it disseminated a program from the series entitled "*Black on White*," which included a report entitled: "*Bielmo. Franciszkańska 3*", promoting a reportage contrary to the law and social good, as well as with messages that hurt the religious feelings of Catholics and misinforming public opinion on pedophile cases among the Polish clergy and the role played in these incidents by Cardinal Karol Wojtyła (St. John Paul II) and Cardinal Rev. Adam Stefan Sapieha.

According to Article 18(1) of the Broadcasting Act: **Article 18.1.** *Programmes or other broadcasts may not **promote** actions contrary to law and Poland's raison d'Etat or propagate attitudes and beliefs contrary to the moral values and **social good**; in particular, programmes or other broadcasts may not include contents inciting to hatred or violence or contents which are discriminatory on grounds of gender, race, colour of skin, ethnic or social origin, genetic features, language, religion or belief, political views or any other opinions, nationality, membership of a national minority, wealth, birth, disability, age or sexual orientation or incitement to commit a terrorist offence.*

According to Article 18(2) of the Broadcasting Law: "*Broadcasts or other transmissions should respect **the religious beliefs of the audience**, especially **the Christian system of values**.*"

First of all, the Authority will analyze the legality of the Broadcast in question, then it will give a legal analysis of the concept of "social good", and the term "promote" (as referred to in

Article 18(1) of the Broadcasting Act), as well as the issue of disrespect for the viewers' religious beliefs, particularly the Christian system of values.

Article 18(1) Contradiction of the Broadcast with the Law

The first and foremost duty of radio and television Broadcasters, regardless of their status (public, commercial, social), is to provide information (Article 1, paragraph 1 of the Broadcasting Act). Prof. Stanislaw Piątek, commenting on the cited provision, aptly linked the obligation to provide information to the criterion of social interest [cf. S. Piątek, W. Dziomdziora, K. Wojciechowski (eds.), *The Broadcasting Act. Commentary*, Warsaw 2015, p. 3], and Prof. Elżbieta Czarny-Drożdżejko that the values to be served by broadcasting and television has objectives of a social nature, as they have a duty to meet the needs of citizens by providing information [E. Czarny-Drożdżejko, *The Broadcasting Act. Commentary*, Warsaw 2014, pp. 13-14]. According to the disposition of Article 3 of the Broadcasting Act, "*Unless it is otherwise provided for in the Act, the Press Law shall apply to the transmission of radio and television programme services.*" This duty should be carried out in accordance with the principles of the art of journalism, as defined by both the law and the principles of journalistic ethics - which follows directly from Article 10(1) of the Press Law, which states: "*The task of a journalist is to serve society and the state. A journalist has the duty to act in accordance with professional ethics and principles of social coexistence, within the limits set by the law.*"

The following are the provisions of the Press Law that define the framework of the journalist/press/Broadcaster.

1. Citizens' right to reliable information ("*Article 1 [Freedom of the press]. The press, in accordance with the Constitution of the Republic of Poland, shall enjoy freedom of expression and shall realize the right of citizens to be fairly informed, to openness of public life, and public scrutiny and criticism*").
2. Obligation to truthfully present the phenomena under ("*Article 6 (1) the Press Law is obliged to truthfully present the phenomena under discussion*"). The Press Law in Article 6 obligates the press to truthfully present the phenomena under discussion. The doctrine points out that "*the concept of truthfulness of phenomena - as a rule - should be read as truthfulness of the information presented*" [cf. M. Brzozowska-Pasieka, M. Olszyński, J. Pasieka, *The Press Law. Practical Commentary*, LEX 2014]. According to E. Szydełko-Ferenc "*truthfulness consists in reliability, i.e., conformity to facts. Facts (phenomena) should be presented objectively and fully, without manipulation of selected fragments*" [E. Ferenc-Szydełko, *The Press Law. Commentary*, Warsaw 2013, p. 79].
3. Obligation to exercise special diligence journalistic integrity ("*Art. 12 .1. A journalist is obliged to: 1) exercise special diligence and integrity in collecting and using press materials, in particular, to verify the truthfulness of the news obtained or to specify its source.*")

Journalistic diligence and integrity are so important because "*the reach of television coverage and the massiveness of its reception require special caution and guarding against unlawful violations of someone's honor*" [Supreme Court Judgment of September 7, 1972, I CR 374/72]. The impact of each Broadcast on its audience, which is much stronger in the case of electronic media than in the case of the printed media, was emphasized by the European Court of Human Rights in Strasbourg (hereinafter: "ECHR"), stating that "*audiovisual media often have*

a more direct and stronger impact than the press" [Judgment *Jersild vs. Austria*, September 23, 1994].

In the aforementioned Supreme Court judgment of September 7, 1973 (I CR 374/72), it is also stated that *"If the Broadcast was first recorded and only after some adjustment Broadcast, the editors are responsible for its content"* [J. Sobczak, *The Press Law. Commentary*, Warsaw 1999, p. 167]. This is the case in the present case. It should be noted that the Broadcaster had exclusive influence on the selection of topics covered in the Broadcast and on the selection of excerpts from quoted statements of interviews with particular persons ultimately shown in the Broadcast.

According to the opinion of UW Prof. Anna Cegiela, PhD, *"the content of the Broadcast was created by three types of content: factual, interpretive and emotional. All three types of content were expressed in such a way that the viewer was convinced that he/she was dealing with a message that was coherent, credible, momentous, and poignant at the same time. Various production procedures were used to achieve this, including the manner of handling words and sound, set design, and music."* A Broadcast constructed in this way has a much stronger impact, all the more reason for it to require special care. Meanwhile, as the further part of the opinion shows, the realization procedures, interpretive and emotional, were not characterized by caution, on the contrary, they were deliberately put together in such a way as to manipulate the viewer and his/her emotions. As the expert points out, *"Interpretations and evaluations and emotional statements prevailed in the Broadcast over reporting on facts and rational argumentation. Instead of evidence, viewers received assurances of thorough research conducted for almost three years."*

The requirements of special journalistic diligence and integrity increase with the severity of the allegations made by the journalist. *"2. The requirements of diligence and integrity. The more serious the rank of the allegations, the more reliable and diligent the journalist should be, as accurately noted by B. Kordasiewicz: the principle that the diligence required of a journalist depends directly proportionately to the gravity of the allegation made against the individual should be considered basic. In doubtful situations, it is incumbent on the journalist to communicate with the one whom the publication concerns."* [B. Kosmus, G. Kuczyński (ed.), *The Press Law. Commentary*, Warsaw 2018, Issue 3, com. to Article 12 nb. 13].

The Broadcast makes the heaviest possible genre of accusations. Namely, in the very first minute of the Broadcast, viewers heard that Karol Wojtyła knew about pedophilia crimes in the Church even before he became Pope and covered them up. Thus, he was complicit in the crime. In subsequent passages, viewers learned that he covered up the crime of pedophilia. In this state of affairs, journalistic diligence and integrity should be proportionate to the severity of the allegations made. Especially since these allegations are not only of a moral and ethical dimension, but also a legal one, in the sense that information about the cover-up of a pedophilia crime is *de facto* information about the commission of a criminal act of so-called "abetment," punishable both today and under the 1969 Criminal Code.⁹

The distinction between special (1) reliability and (2) diligence is also significant. Regarding "special diligence", the case law has specified the characteristics of a journalist's actions that allow them to qualify as particularly diligent and particularly reliable. By "special diligence" is meant, among others: 1) honesty; 3) objectivity; 4) impartiality of the message both

⁹ Article 239 § 1 of the Penal Code. *"Whoever obstructs or frustrates criminal proceedings by helping the perpetrator of a crime, including fiscal crime to evade criminal responsibility, in particular, whoever conceals the perpetrator, creates false evidence, obliterates traces of a crime, including a fiscal crime, or serves a sentence for the convicted person, shall be subject to a penalty of deprivation of liberty from 3 months to 5 years"* and Article 252 §1 of the 1969 Criminal Code.

in presentation, description, and narration; 5) not acting "under a preconceived thesis."
7) responsibility for the word; 10) not be misleading; 11) not misrepresenting facts;
15) interpretation in accordance with the principles of logical reasoning and ordinary experience;
16) not acting from low motives for the purpose of humiliating someone; 18) balance and appropriateness of the judgments presented [see Resolution. SN(7) of 18.2.2005, III CZP 53/04, OSNC 2005, no. 7-8, item 114; judgment of the Supreme Court of 14.5.2003, V CKN 463/01, OSP 2004, No. 2, item 22; post. SN of 17.10.2002, IV KKN 634/99, Biul. SN 2003, No. 4, p. 18; judgment of the Supreme Court of 8.10.1987, II CR 269/87, OSNC 1989, No. 4, item 66; judgment of the Supreme Court of 27.3.2003, V CKN 4/01, Legalis].

In turn, by "special diligence" is meant: 1) diligence; 2) conscientiousness; 3) thoroughness; 4) dutifulness; 5) inquisitiveness in the search for the truth; 6) full presentation of the circumstances of the case; 7) attention to detail; 8) checking the truthfulness of the information obtained by reaching out to all other available sources; 9) making sure that the information is consistent with other known facts; 10) supporting the findings with appropriate verification and documentation of the materials collected.

These requirements apply to every stage of a journalist's work: "*Reliability and diligence. Reliability and diligence apply to each stage towards publication, i.e.: 1) collecting materials; 2) analyzing the collected materials; 3) constructing the content of the press material*" [see: E. Ferenc-Szydełko, *The Press Law Commentary*, Warsaw 2013, p. 101].

As pointed out in the doctrine, journalists should be required "*not just ordinary professionalism, routine exhaustion of professional procedures, but to make an effort, to be not only professionally proficient, sensation-seeking, tracking down irregularities, but also a person who sees the rationale of all sides, and, above all, writes truthfully and with integrity (see: E. Nowińska, Freedom of Expression, p. 59)*" [B. Kosmus, G. Kuczynski (ed.), *The Press Law Commentary*, Warsaw 2018, Issue 3, com. to Article 12 nb. 13].

A culpable violation of the law by an editorial board can occur in the event of a failure to exercise due journalistic diligence. This is an intentional violation since intentional guilt is also an eventual intention, which we deal with in a situation where the perpetrator of the violation is aware of the harmful effect of his/her action and, foreseeing its occurrence, at least consents to it [Judgment of the Court of Appeals in Poznań of September 6, 1995, I ACr 176/96]. Reliable journalistic coverage "*should not be selective or biased. The characteristics of special diligence are always caution, care, precaution, foresight, prudence, circumspection, accuracy, attention, reasonableness, efficiency, insight, knowledge, foresight, criticism, conscientiousness, self-control, objectivity, reliability*" [Judgment of the Court of Appeals in Warsaw of May 10, 2016, I ACa 1076/15].

It should be emphasized that according to **Article 10(1) of the Press Law**, the task of a journalist is to serve society and the state, as well as **Article 12(1) of the Press Law**, according to which a journalist is obliged to exercise special diligence and diligence when collecting and using press materials, in particular to verify the truthfulness of the news obtained or to cite its source. The Supreme Court stated that "*In advocating the concept of the 'rational legislator', it is necessary to recognize that in formulating the requirement of 'special diligence' it demanded that journalists exercise exceptional, special, unprecedented diligence, and therefore greater than that which is normally expected in civil law transactions. The special nature of a journalist's work and the irreparable damage he/she can cause with his/her ill-considered activities justify expecting journalists to exercise extraordinary, above-average diligence in the performance of*

their service. The difference between the requirement of "special diligence" formulated in relation to journalists and the expectations of other professions is based on the expectation on the part of journalists not only of ordinary professionalism, routine exhaustion of professional procedures, and on making an effort to be not only professionally efficient, sensation-seeking, tracking irregularities and iniquities, but also an individual who sees the rationale of not just one side, and first of all writes the truth and with thoroughness (...) proves the lack of special diligence: abandonment of verification of data, lack of criticism of materials, lack of conscientiousness, lack of diligence in the use of press material, as well as lack of objectivity, bias, inaccuracy, creation of a certain mental climate, bias, failure to present the position of the opposing side, incomplete presentation of the circumstances of the case" [Supreme Court decision of October 17, 2002, IV KKN, 634/99].

According to the case law, an infringement can occur *"also in the form of an appropriately directed program that creates a 'specific psychological climate' affecting the viewer"* [Judgment of the Court of Appeals in Gdańsk of June 21, 1991, I ACr 127/91]. The Court of Appeals in Warsaw, in carrying out an argument on how to evaluate a program for possible violation of the Broadcasting Act, stated, among other things, that *"the provision of Article 18 of the aforementioned Act imposes on the Broadcaster the task of appropriate shaping of the program in the context of the prohibition of promoting actions contrary to the law, to the Polish raison d'état (...) the prohibition of fostering behavior that threatens health or safety (...), the adjudicating court is obliged (in the event of an appeal against a decision claiming a violation of all the aforementioned injunctions, prohibitions and imposing a fine) to examine, establish the factual situation based on the entire Broadcast, and only after that to make an appropriate subsumption. This is because a violation of any of the prohibitions or injunctions outlined in the aforementioned provision can take place with the entirety of the Broadcast, its meaning, context, suggestions (cf. analogously, the Supreme Court in its judgment of July 7, 2005, VCK 868/04), and can also take place with the image itself. Such a conclusion follows from an analysis of the provision of Article 18 of the Broadcasting Act. Since propagation means urging, recommending, encouraging, pointing out as right, therefore, to assess whether the Broadcast encourages, points out as right, recommends a certain conduct, it is necessary to evaluate (if it does not come to the conclusion that already one element of the Broadcast violates the prohibition or injunction) the entirety of the Broadcast and the intensity and its impact on the reception of the Broadcast. On the other hand, it cannot be considered sufficient to conclude that there are no prerequisites for imposing a fine that one element of the Broadcast does not violate the injunctions or prohibitions"* [Judgment of the Court of Appeals in Warsaw of December 29, 2008 VI ACa 797/08 – the Authority's emphasis].

In another judgment, the Supreme Court noted that *"repeated repetition of a particular piece of information in other media does not exclude the obligation to be diligent and reliable in collecting and publishing press materials (Article 12(1)(1) of the The Press Law). In addition, (...) acting in the name of a legitimate social interest and striving to make press articles sensational cannot be done at the expense of disseminating untrue facts"* [Supreme Court Judgment September 12, 2007, I CSK 211/07]. Commenting on this judgment, Dr. Kinga Machowicz, noted that *"it seems obvious that it is forbidden to disseminate untrue facts. (...) The person responsible for the publication's content should, therefore, rise above his/her subjective point of view. This can be extremely difficult, especially in a situation in which the journalist wants the analyzed facts to be true. But especially then, bearing in mind the risks associated with one's own subjectivity, it is*

necessary to examine the information gathered very carefully. This allows one to see elements that objectively should be questionable and verify them" [K. Machowicz, Ethical aspect of freedom of expression in the light of Supreme Court practice, Ethics in media vol. 5, Poznań-Opole 2010].

The above-mentioned provisions of the Press Law clearly indicate the need to check information and prevent disinformation. Hence, Broadcasts that promote disinformation activities are against the law, including the Press Law.

According to the opinion of UW Prof. Anna Cegiela, Ph.D., the Broadcast is biased and unreliable.

1. The authors of the Broadcast did not check all the leads, did not conduct a thorough search, did not link events, omitted facts that did not fit the concept and adjusted the entire narrative to fit the thesis that had been set earlier.
2. The authors used manipulative procedures aimed at fixing a proclaimed thesis in the consciousness of the viewers, without providing proof of their truthfulness, in particular:
 - a) A semblance of verified knowledge,
 - b) Pre-supposition,
 - c) Passing off false information as true,¹⁰
 - d) Presenting interpretations instead of factual knowledge, while retouching the facts to better fit the theses presented in the Broadcast,
 - e) Implication,
 - f) False attribution,
 - g) Selection of facts and their unrealistic interpretation,
 - h) The advantage of the author's opinion over a factual account of the facts.

From the opinion of Dr. Piotr Gontarczyk, the following conclusions are drawn.

1. An analysis of the use of archival documents, which are almost exclusively files of the security services, has shown that the main thesis of the Broadcast about Cardinal Karol Wojtyła's transferring of "*sexual predators*" from parish to parish is not adequately supported by these files.
2. In the case of Fr. Saduś, the only description of the alleged child abuse found in the Broadcast is of two men about whom the author, Editor Marcin Gutowski, had information that they were adults at the time, and yet he made this manipulation. Viewers watching this segment of the Broadcast did not know that the scenes shown and the descriptions of Fr. Saduś's alleged pedophilic act were mystifications. The security services' documents show that Fr. B. Saduś was a homosexual, not a pedophile, which makes such a portrayal of the case as

¹⁰ Opinion by Dr. Prof. UW Anna Cegiela, pp. 16 ff.: "*among others, they claim that Cardinal Karol Wojtyła undoubtedly knew about the pedophilia of Fr. B. Saduś, Fr. E. Surgent and Fr. J. Loranc, but covered up and concealed these crimes. Cardinal Karol Wojtyła did not know about Fr. Surgent's crimes prior to 1969. Journalists recently learned about these crimes from SB materials, including a denunciation of Fr. Surgent from prison. Cardinal Karol Wojtyła could not have known about these materials. It is possible that he knew about the 1969 crime, but there is no conclusive hard evidence for this. It is not true that Cardinal Karol Wojtyła violated canon law regarding suspensions and covered up the pedophilic acts of Fr. Joseph Loranc. He imposed a suspension on Fr. J. Loranc and then removed it, that is, after several years and after Fr. J. Loranc's parish service under the special control of the pastor. Suspension is a periodic punishment. Resignation of the ecclesiastical punishment was a decision of a church tribunal of several people.*"

was made in the Broadcast and accompanied by the comment "*the striking instances of Karol Wojtyła's transferring of sexual predators harming children*" is a serious abuse of journalistic obligations.

3. In the case of Fr. E. Surgent, the script of the Broadcast on the issue of when the SB and the Cracow Curia learned of his inclinations and whether, indeed from the first parish where he was, the reason for subsequent transfers were due to cases of pedophilia, and the manner in which the position of the Cracow Curia was presented, and the alleged responsibility of Cardinal Karol Wojtyła for the alleged several years of deliberate transfer of the "*sexual predator from parish to parish,*" was purely a mystification made by the authors of the reportage.
4. In the case of Fr. J. Loranc, Cardinal Karol Wojtyła did not take the matter lightly, did not act tardily, without empathy, as was repeatedly portrayed in the Broadcast, but took immediate and decisive action after obtaining information. In reality, the story of Fr. J. Loranc had an exactly different course from that presented in the Broadcast.

The opinion of Dr. Klaudia Rosińska regarding the detailed analysis of the content contained in the Broadcast and other messages related to the dissemination of the Broadcast in the TVN 24 program on March 6, 2023, shows that the Broadcasted material does not meet the criteria of reportage and standards of journalistic ethics. The Broadcast is biased, based on a selective selection of sources, ahistorical interpretation of historical facts and events, one-sided selection of commentators, and uses manipulative techniques such as framing, innuendo, use of so-called term- fixers, false association of emotions and persons, and gossip.

There was no diligence and journalistic integrity in the collection of materials, no verification of sources, no assessment of the credibility of interviewees. Viewers were left with a handful of very strong and unproven pieces of information presented as a summary of the Broadcast. In an era of ubiquitous disinformation and, therefore, the need to educate the public to get their news from reliable sources, such behavior by a journalist is unacceptable.

The interpretations carried out in the Broadcast are neither in accordance with the technique of historical research nor with sound journalistic style. It is an ahistorical interpretation of facts and events, in addition, supported by unreliable and unverified evidence and biased opinions. The authors manipulate legitimate public emotions in an attempt to persuade a preconceived thesis, which is a manipulative action that is not in keeping with the journalistic mission of seeking the truth and the public good.

Consequently, **the Broadcast was aired in violation of the provisions of the Press Law, namely Articles 1, 6, 10 and 12 of the Press Law and Article 1. 1 of the Broadcasting Act.** This is confirmed by expert opinions gathered in the case. **The Broadcast does not realize the right of citizens to be fairly informed (Article 1 of the Press Law).** **The Broadcast presents the phenomena in question in a manner that is untrue and inconsistent with the facts. The facts are presented in a biased and incomplete (selective) manner; moreover, the Broadcast manipulates the facts. In turn, the journalists did not observe the required special diligence and journalistic integrity both in collecting and using press materials. The basic thesis posed in the Broadcast, i.e., that Karol Wojtyła knew about pedophilia crimes in the Church even before he became Pope and covered them up is not supported by the sources reported in the Broadcast.**

Without depriving journalists of their right to criticism, it is necessary to emphasize the correctness of Prof. Jacek Sobczak's statement, who noted that "*untrue critical opinions constitute an overstepping of the limits of freedom of expression (...). The freedom of the press is treated by most journalists as absolute freedom that is not subject to any restrictions, without considering that this type of position contradicts not only international law documents (...) but also the Polish legal order and constitutional principles. The fetish of freedom of the press has become a convenient screen behind which modern journalism tries to hide, on the one hand, a lot of not fully realized wickedness (...) and skills' immaturity. (...) The journalistic right to criticism must not degenerate into the formulation of invectives and slander. (...) Journalists remain in the realm of myths and generalizing judgments about the content of this (right to freedom of expression) right and European principles. The axis around which these myths are built is the belief that a journalist in practice is allowed to do everything, that they can violate not only ethical norms, but also laws with impunity, since they enjoy informal immunity of a subjective nature. (...) As repeatedly proven in literature, both European systems (EU and Council of Europe) take the position that freedom of the press is not limitless (...)* [cf. J. Sobczak, *The Fetish of press freedom [in:] Legal, economic, and political aspects of media functioning and content creation*, (ed.) P. Dudek, M. Kusia, Toruń 2010, pp. 43-46].

The above violations of the Press Law, the intensity of the manipulative tools used, the selective choice of information sources, the omission of information contradicting the information promoted/propagated in the program, indicate that the program fulfills the *de facto* characteristics of disinformation. In this regard, it is irrelevant to the responsibility of the Broadcaster whether this is a deliberate action or an action resulting from the reasons indicated by the experts for the loss of objectivity by the journalists working on the material.

The premise of a Broadcaster's liability (under Articles 18 and 53) is not its fault in the criminal-legal sense. Acts that are contrary to the law are not only those that are contrary to the norms of criminal law, but also those that are contrary to the totality of legal norms in force in Poland, including civil law and administrative law [cf. commentary to Article 18 [in:] *Broadcasting Act - Commentary*, ed. by A. Niewęglowski, Wolters Kluwer, Warsaw 2021].

As for the concept of "disinformation," according to the lexical definition, "disinformation" is "*misleading someone by providing misleading or false information*" [*wprowadzenie kogoś w błąd poprzez podanie mylących lub fałszywych informacji*] [Dictionary of the Polish Language PWN, <https://sjp.pwn.pl/sjp/dezinformacja;2554971.html>]. In universal dictionary terms, disinformation is defined as "*false, misleading information.*" It is identified with the process of "*misleading information,*" "*a situation in which reliable information is lacking,*" including the transmission of intentional content [Universal Dictionary of the Polish Language, S. Dubisz (ed.), vol. 1, Warsaw 2003, p. 601].

The doctrine of law emphasizes that disinformation leads to the creation of negative social consequences and is characterized by unquestionable harmfulness [see: D. Brodacki, *Legal Aspects of Countering Disinformation in Times of Conflicts and Crises* [in:] *Law as a Future Project*, P. Chmielnicki, D. Minich (eds.), LEX electronic publishing).

Vladimir Volkoff - a French publicist who has made a name for himself as a specialist in disinformation and manipulation of consciousness - locates disinformation between misleading and influencing. At the same time, "*misrepresentation is a one-time activity, related to a specific task, can be conducted amateurishly, uses the most varied means and aims at telling certain things to certain people. Disinformation, on the other hand, involves activities*

undertaken with the involvement of serious means, is carried out (...) always through the mass media and is addressed to the public. Disinformation aims to carry out a consistent program aimed at replacing in the consciousness, and, above all, in the subconsciousness of the masses that are the subject of these activities, views considered unfavorable to the disinformers with those that he considers favorable to himself."

[V. Volkoff, *Psychosociotechnics. Disinformation. A weapon of war*, Delikon Publishing House, Warsaw 1991].

According to Aneta Januszko-Szakiel, *"Unlike informing, which is oriented towards the transmission of content that is a reflection of an objective truth, disinformation is the transmission of intentional content. The media can lead to the manipulation of public opinion through various treatments of information, most often through its selection, redundancy, interpretation, modification, providing false, outdated information, etc. Hence, all efforts to protect against information media manipulation are necessary. It is important to maintain awareness of possible manipulative activities and independence in the reception of media messages. (...) In the process of informational media communication, the most important thing is to accurately separate facts from commentary, that is, information from opinion. The optimal is considered to be an informational message, the purpose of which is to convey to the recipient only what the sender knows about a certain subject, and not what he/she feels and thinks, postulates, or expects. A characteristic feature of such messages is the accumulation of words and phrases that perform the function of notification, and the absence or sparing use of adjectives, adverbs, adjectival participles, also nouns with emotional overtones and those with axiological connotations. To sum up, information communication is about the message's objectivity, allowing recipients to interpret the facts and create individual views independently. Meanwhile, there is a widespread view that nowadays, in the mass media, informing in the above terms is rare, and more and more often the essence of communication in general, including information communication boils down to making the recipients of messages change their views, behavior and sometimes even personality. By appropriate selection of information, its distortion and all other possible treatments on information, the media practice so-called persuasive communication and try to influence the state of social consciousness."* [A. Januszko-Szakiel, *Disinformation as a tool of media manipulation of consciousness* [in:] *Manipulation. Pedagogical and social aspects*, J. Aksam (ed.), Andrzej Frycz-Modrzewski Cracow Academy, Cracow 2010, pp. 209-216].

In line with the conclusions and recommendations arising from the Opinion of the European Economic and Social Committee, *"Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'Action Plan to Combat Disinformation'"* [JOIN (2018) 36 final], 2019/C 228/13, (OJ EU of July 5, 2019), the definition of disinformation adopted includes verifiable, false or misleading information that poses a threat to democracy and causes public harm.

"Disinformation undermines trust in institutions, traditional and digital media and damages democracies by hindering citizens from making informed decisions. (...) It restricts freedom of expression, which is a fundamental right enshrined in the Charter of Fundamental Rights of the European Union. Freedom of expression includes respect for the freedom and pluralism of the media and the right of citizens to hold opinions and to acquire and communicate information and ideas without interference from public authorities and regardless of national borders. The main obligation of state actors with regard to freedom of expression and freedom of the media is to refrain from interference and censorship and to ensure

an inclusive environment and pluralistic public debate" [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. *Combating disinformation online: a European approach*, COM(2018) 236 final].

In Poland, in accordance with Article 213 of the Polish Constitution and Article 6(1) of the Broadcasting Act, the role of regulator is played by the National Broadcasting Council, which upholds freedom of speech and the right to information, the independence of media service providers and the interests of audiences, ensuring the open and pluralistic nature of Broadcasting, while investigating issues concerning individual Broadcasts (in accordance with Article 18(1) of the Broadcasting Act). In the KRRiT's view, freedom of expression and freedom of speech must be subject to special protection in applying tools to combat disinformation. Placed in this context, preventing, and combating disinformation is in the interest of both citizens and state bodies. The National Broadcasting Council realizes these values by, among other things, protecting viewers from content that may promote actions contrary to the law, the Polish *raison d'etat* and the social good.

The Broadcast also violates Articles 23 and 24 of the Civil Code and Article 212 of the Criminal Code, as it violates personal rights in the objective sense and defames the persons named in it and, consequently, the institution they represent with knowledge of pedophilia crimes and their concealment.

Article 18(1) Contradiction of Broadcasts with the social good

The Broadcasting Act did not specify **the concept of "social good."** According to the doctrine, *"this concept is similar to the concept of social interest, i.e., a term used in both criminal and civil law"* (so, among others, J. Sobczak, *Radio and Television. Commentary*, Lex 2001). According to Prof. J. Sobczak, *"an action contrary to the social good will be conduct that is **not in the general interest**, harming this interest both **in the material and spiritual sense**."* Piotr Ślęzak points out that the social good should be *"understood as the achievement of such a state that favors both the individual and society as a whole"* [P. Ślęzak, *Media Law*, LEX electronic publication].

The doctrine stresses that *"Statements that violate religious feelings may also be contrary to morality and the social good. Finally, they can be considered to incite hatred or discriminate based on religion."* ¹¹

Article 18 (2) Religious beliefs of recipients, Christian value system, including as a social good

According to the disposition of Article 18(2) of the Broadcasting Act, *"Broadcasts or other transmissions should respect the religious beliefs of the audience, especially the Christian system of values."*

*"The doctrine stresses that the purpose of Article 18(2) of the Broadcasting Act is **"to counteract the questioning of the freedom of others to identify in an undisturbed manner with certain beliefs."** In turn, the value protected by that provision is freedom of conscience and*

¹¹ E. Galewska, *Obligation to respect religious beliefs in the Law on Broadcasting*, "Electronic Media Law," 2/2015.

religion, referred to in Article 53 of the Constitution. As the Constitutional Tribunal stresses, due to their connection with the constitutional principles of freedom of conscience and religion, religious feelings are subject to special legal protection. There is no doubt that the freedom of religion referred to in Article 53 of the Constitution **"also includes freedom from attacks on objects of religious reverence."** The legislature therefore must create effective legal means for the exercise of the right of freedom of religion in an undisturbed manner, free from interference ... the legislature is obliged to establish conditions to ensure the peaceful exercise of the right of freedom of religion in relations between private persons." The obligation in question here, moreover, derives not only from the provisions of the Constitution, but also from international and EU law. The doctrine stresses that from Article 9 of the ECHR, which stipulates freedom of thought, conscience, and religion, derives the obligation of public authorities to create a legal framework for the exercise of these freedoms and to provide protection against the actions of third parties aimed at violating them. **In doing so, these actions may consist of, for instance, disturbing the inner peace of persons with certain religious beliefs and creating a context hostile to their spiritual development."** ¹²

From the content of the complaints themselves, it is clear that viewers felt that the Broadcast as such constituted "a media blow to the authority of St. John Paul II, arousing a negative opinion of St. John Paul II or at least raising doubts about the attitude of the Polish Pope and thus, at a minimum, weakening the impact of his teachings. By means of the manufactured and disseminated reportage built on lies and vilification of St. John Paul II and Rev. Cardinal Adam S. Sapieha, not only the named Persons were attacked, but also Catholics and the Catholic Church. In addition, the lies so disseminated triggered - as the first week after the Broadcast of the report showed - aggression against the memorials of St. John Paul II and calls from some politicians for the destruction of these sites."

As indicated in the doctrine, "The concept of an object of religious reverence should be understood in this connection as any object that has religious or liturgical significance for a particular religion." ¹³ John Paul II was counted among the saints within the meaning of Canon Law. He was canonized on April 27, 2014. In light of the above, he is an object of public worship (religious veneration) according to the disposition of Canons 1186 and 1187 of Canon Law.¹⁴

In the opinion of the Constitutional Tribunal, expressed in its resolution of March 2, 1994, the part of Article 18(2) of Broadcasting Act referring to the Christian system of values "constitutes an exemplary enumeration justified by the deep rootedness of these values in the tradition and culture of Polish society regardless of a person's attitude toward religion." J. Sobczak, points out that the drafting of Article 18(2) of the Broadcasting Act leads to the conclusion that the Christian system of values is in a privileged position, if only in relation to the religious feelings of the recipients, and is subject to stricter legal protection. A similar opinion is expressed by J. Hartman, who argues that the provisions of the Broadcasting Act favor

¹² Ibid.

¹³ Ibid.

¹⁴ Canon 1186: "To foster the sanctification of the people of God, the Church commends to the special and filial reverence of the Christian faithful the Blessed Mary ever Virgin, Mother of God, whom Christ established as the mother of all people, and promotes the true and authentic veneration of the other saints whose example instructs the Christian faithful and whose intercession sustains them."

Canon 1187: "It is permitted to reverence through public veneration only those servants of God whom the authority of the Church has recorded in the list of the saints or the blessed."

Christianity over other religions and worldviews. ¹⁵ J. Sobczak, argues that *Broadcasts that mock or ridicule religious dogma, question the veracity of revelations, cast doubt on the truths of faith should be considered* contrary to the provisions of Article 18(2) of the Broadcasting Act." ¹⁶

The doctrine also points out that the standards prevailing in a given society are important in this regard. Assessing whether there has been a failure to respect religious beliefs in a given situation is therefore extremely difficult and often depends on the circumstances of the case and what religious beliefs are at stake. As rightly noted by judges E. Palm, R. Pekkanen, J. Makarczyk in a separate opinion submitted to the judgment in *Otto - Preminger - Institut vs. Austria*,¹⁷ **an attack on the religious beliefs of others should be of such a level of aggressiveness and be so close to violating the religious freedom of others that it deprives itself of the right to be tolerated by society.** Thus, it may be about statements that outrage and fill with distaste the **entire local community displaying certain religious beliefs, not just ardent adherents of a particular religion.**

Applying the above to the realities of the **present case, the attack on the complainants' religious beliefs was of such a level of aggressiveness and came so close to violating their freedom of religion that it deprived itself of the right to be tolerated by society.** The statements contained in the Broadcast outraged and inflamed the distaste of some 40,000 people, including both the local community displaying certain religious beliefs, as well as people of Polish nationality from outside Poland's borders (the complaint from the Polish community).

The disputed Broadcast, as explained above, contains false information. Consequently, it calls into question the freedoms of others to undisturbed identification with certain beliefs, i.e., it questions the freedom of Catholics to undisturbedly identify with the beliefs proclaimed by John Paul II and his teachings. This is because it is impossible to identify with the beliefs (regardless of their content) proclaimed by a person who is credited with knowledge of and concealment of pedophilia crimes in the Church.

In addition, in the disputed Broadcast, the view was expressed that Canon Law itself was created to protect pedophilia *"I know that, again, everything agrees in procedures and the Canon Law, by the way, largely created in this way to cover up this kind of situation inside the Church then (...)"*. Such a claim is counterfactual and is a manifestation of discrimination against Catholics on the basis of religion and a sign of disrespect for their religious beliefs based on the Christian value system. As Dr. Piotr Gontarczyk pointed out, *"Canon Law (including the article of his cited in the reportage) among dozens of other issues establishes rules for dealing with clergy who commit various criminal acts, including rape, pedophilia, etc., because the problem of crimes affects every major human collective. The relevant articles on the matter were created to solve problems and to punish those guilty of sinful and transgressive acts, up to and including removal from the Church and the declaration of infamy. There is nothing in the Canon Law that could be interpreted as provisions created to cover up pedophilia."*

¹⁵ J. Hartman, *The variously understood expression "insult to religious feelings" and its application*, [in:] A. Bodnar, D. Bychawska-Siniarska (ed.), *KRRiT and the terror of Broadcasters - faulty regulations or an overzealous institution. Conference materials*, Warsaw 2010, pp. 31-32.

¹⁶ J. Sobczak, *Broadcasting. Commentary*, Lex 2001.

¹⁷ ECHR Judgment of September 20, 1994, in *Otto - Preminger - Institute vs. Austria*, Application No. 13470/87.

The mark of propagation

The term "propagation" has not been defined by the legislature, hence the doctrine and jurisprudence mostly use lexical meanings, indicating that it is "urging," "encouraging," "pointing out for the right and proper," "advocating," "**persuading**," but also "**spreading, disseminating, winning someone over to an idea.**"

According to the Universal Dictionary of the Polish Language, the word "propagate" means *"to spread, disseminate some views, ideas, slogans, to win someone over to an idea, action, etc., to contribute to the popularity of something; to preach, propagate, popularize, promote."* Thus, in order to establish the "propagation" of certain behavior, it is not necessary, on a linguistic interpretation of Article 18(1) of the Broadcasting Act, that the Broadcast of a particular program be accompanied by an intention to convince the audience of the content contained therein, or that the creators of the program must be shown to have acted with direct or possible intent.

According to J. Sobczak, the concept of "propagation" is close in meaning to propaganda, that is, *"a purposeful, persuasive, usually politically or religiously motivated influence on the collective, aiming through the shaping of human attitudes to induce desired behavior."*¹⁸

According to the Supreme Court ruling of July 2, 2013. III SK 42/12, the phrase "propagate," as used in the text of Article 18(1) of the Broadcasting Act, serves to distinguish between Broadcasts whose emission may lead to a Broadcaster being held liable under Article 53(1) of the Broadcasting Act from Broadcasts containing content of the same kind, which will not justify such liability.

As indicated by the Court of Appeals in Warsaw in its judgment of August 11, 2011. VI ACa 867/10¹⁹ to assume that there has been propagation can also occur when a TV idol in a TV

¹⁸ J. Sobczak, *Broadcasting. Commentary*, Lex 2001.

¹⁹ The statement of reasons indicated, among other things, *"Turning to further considerations, it should be pointed out that the program in question, including the behavior of the participants and the presenter described in the content of the facts, (with the applause of the audience gathered there) encouraged the audience, the public, to actions that insult the flag: the presenter of the program, J. W., with his idea and the questions posed as part of its implementation, his guests - with their actions. Thus, the program, by creating a situation based on the insult of a symbol, is in fact an encouragement and inspiration for such actions, especially for young people, showing that, as it were, "anything is allowed," including to sully an otherwise respected flag. At the same time, the actions of a TV idol are often a more convincing role model for its fans than the behavior of people in their everyday surroundings, intrinsically less attractive (...), collared the program shot not live, such actions allowed. No special approval was necessary, the lack of which is emphasized by the Court of First Instance. In this situation, in the opinion of the Court of Appeals, there was fulfillment of the prerequisite of propagation by the said Broadcast of content contrary to Article 1 of the Law of January 31, 1980, on the emblem, as well as morality in the sense indicated above. In the Court's opinion, such an assessment is not precluded by the fact that the goal of the host and guests was to draw attention to other problems. First of all, having such a broad possibility of communication in the form of a catchy television program, it is possible to find such a way of expression that will effectively protest against disturbing social phenomena without offending the feelings of others. Secondly, the authors, by presenting the described behaviors, pretending to be excellent fun, in fact showed that they consider them appropriate and right, they endorsed them and authorized them by their actions. At the very least, therefore, they condoned their persuasive function in terms of these unauthorized actions as such, regardless of the other purposes they, or specifically their performance, had in mind. The existence of a possible intent is sufficient in this situation. Moreover, given the described totality of the content of the program in question, the insistence of its message, in the opinion of the Court of Appeals, it is possible to speak of the propagation of actions contrary to the law and morality, even though the Broadcast was not repeated. The described propagation within the framework of the Broadcast in question, theoretically speaking, does not even require the necessity, the effective accusation of the participants of this Broadcast of committing a crime under Article 137 § 1 of the CC (which was not proven to them), or even the actual violation of honor, respect for the symbol, although, as indicated above, the latter within the framework of their*

program "does not show some particular disapproval" of illegal behavior. The Court of Appeals also considered, for example, "pretending to have a great time" as fulfilling the elements of propagation. In addition, propagation within the framework of a given Broadcast, "theoretically speaking, does not even require the necessity, the effective accusation of the participants of this Broadcast (...) even the actual violation of honor, respect for the symbol (...)." It is also irrelevant whether the purpose of the Broadcast is to draw attention to other issues, if "propagation" takes place. This is because, as pointed out in the aforementioned judgment, "having the possibility of conveying a message in a convincing television program, it is possible to find such a way of expression that will effectively protest against disturbing social phenomena, without offending the feelings of others."

Subscribing the provisions of the law to the established facts, it should be pointed out, that disinformation activity, consisting of untruthful transmission of information, is considered by the Authority to be the propagation (in the sense of spreading, dissemination) of attitudes and views contrary to the social good, and even more so - contrary to the norm contained in Article 18(2) of the Broadcasting Act - activities that do not respect the religious beliefs of the audience.

Summarizing all of the above, given the content of the Broadcast in question, it should be stated that the Broadcast of the aforementioned reportage violated Article 18 (1) of the Broadcasting Act by promoting activities contrary to the law and the public good.

As already indicated above, **the Broadcast was aired in violation of the provisions of the Press Law, namely Articles 1, 6, 10 and 12 of the Press Law and Article 1(1) of the Broadcasting Act.** This is confirmed by expert opinions gathered in the case. **The reportage does not realize the right of citizens to be reliably informed (Article 1 of the Press Law). The Broadcast presents the phenomena in question in a manner that is untrue and inconsistent with the facts. The facts are presented in a biased and incomplete (selective) manner, moreover, the Broadcast manipulates the facts. In turn, the journalists failed to exercise the required special care and journalistic integrity both in collecting and using press materials. The basic thesis posed in the broadcast, i.e., that Karol Wojtyła knew about pedophilia crimes in the Church even before he became Pope and covered them up, is not supported by the sources reported in the Broadcast.**

The Broadcast propagates without evidence, instead using methods of manipulation (characteristic of disinformation, as indicated above), such as: pretense of verified knowledge, presupposition, passing off false information as true, giving interpretations instead of factual knowledge, while retouching facts to better fit the theses presented in the Broadcast, implication, false attribution, selection of facts and their unrealistic interpretation, the predominance of the author's opinion over factual reporting of facts, a series of false theses leading to information conveyed as allegedly completely true, that Karol Wojtyła knew about pedophilia crimes in the Church even before he became Pope and covered them up.

The allegations made in the complaints were confirmed, particularly those contained in the second group of allegations, i.e., that the Broadcast used lies, slander, manipulation of facts and sources, and that there was no substantive, professional, comprehensive evaluation of the historical sources used in the Broadcast. It also failed to take into account the fact that during the

performance occurred. In this situation, the prerequisites of Article 18(1) of the Broadcasting Act, in conjunction with the violation of Article 1(2) of the Act of January 31, 1980 on the emblem, and in view of the violation of the moral rules indicated above, have been met, resulting in the imposition of the penalty referred to in Article 53(1) of the Act" [Judgment of the Court of Appeals in Warsaw of August 11, 2011, VI ACa 867/10].

communist period, the authorities and security services of the time created various types of so-called “fakes” to discredit the clergy. Such actions are contrary to the norms of the Press Law, in particular – but not exclusively – Article 6.

Publishing such reports is also contrary to the public good, as it is the use of false information to depreciate objects of (sacred) worship. It is an action "*not in the general interest, harming that interest both materially and spiritually,*" and is a denial of "a state that is conducive to both the individual and society as a whole." This is evidenced by the reactions expressed in nearly 40,000 complaints.

It should be noted here that – in accordance with the provisions of the Broadcasting Act – the National Broadcasting Council has the authority to control the content of Broadcasts and other transmissions. This competence stems from the fact that radio and television Broadcasters play a special role vis-à-vis society. The consequence of Broadcasters exercising their licenses is that they are subject to statutory obligations and restrictions on the content they transmit. The National Broadcasting Council, by virtue of constitutional norms, plays the role of the guardian of freedom of speech and the public interest in Broadcasting, and thus must balance values that may be in conflict with each other. With the above in mind, the Authority, having analyzed the case in question, concluded that due to the above-mentioned content contained in the Broadcast, the Broadcaster violated Article 18(1) and (2) of the Broadcasting Act.

A reference to the Broadcaster's position contained in the submitted letters

The Authority does not share the position of the Broadcaster that none of the complaints referred to specific content contained in the Broadcast, and the nature of the reported allegations are solely an expression of the subjective feelings of the complainants, which cannot constitute a basis for assessing the compatibility of the Broadcaster's actions with the provisions of the law. The complaints refer to specific content and a specific message that falls or results from the Broadcast. *Nota bene*, there is no such requirement that the complaints refer directly to specific phrases falling in the Broadcast. This would be contrary to the position expressed in the case law regarding a comprehensive examination of the Broadcast, including its overtones arising not only from the transcript, but also from the circumstances indicated in the case law, i.e., " 'mental climate' affecting the viewer" [Judgment of the Court of Appeals in Gdańsk of June 21, 1991, I ACr 127/91] and "the entirety of the message, the Broadcast, its meaning, context, suggestion" [cf. analogously the Supreme Court in its judgment of July 7, 2005 VCK 868/04]. It should not escape notice that the Broadcast is all the time available on the site at the link <https://tvn24.pl/go/programy,7/czarno-na-bialym-bielmo-odcinki,880782/odcinek-12,S00E12,1010607> (Accessed on: 27.02.2024), where it bears a commentary that still contains information that is not true, i.e.: "What you have uncovered is groundbreaking, because it shows what many people have assumed for years, that **John Paul II knew this problem existed even before he became Pope**. He must have known, but there was no evidence. And this is proof," is how the findings of Marcin Gutowski's journalistic investigation are unequivocally assessed by Thomas Doyle, a canon lawyer and author of the first US report on sexual abuse in the Church. For two and a half years, "Black on White" reporter Marcin Gutowski sought answers to the question of what John Paul II knew about the pedophile scandals in the Church. He spoke with victims of pedophile priests subordinate to him, their relatives, witnesses, and those who were said to have personally informed Cardinal Wojtyła about the crimes of priests subordinate to

him. He also reached official Church documents confirming Wojtyła's actions and omissions. "Franciszkańska 3" is the seventh part of the series entitled: "Bielmo."²⁰

Regarding the Broadcaster's position/assessment that the authors of the Broadcast exercised due journalistic diligence in the course of their work, including during the collection of materials, and objectively evaluated the collected materials and fairly presented them to the public; for these reasons, the Broadcast satisfies the provisions of the Broadcasting Act, as well as the Press Law of January 26, 1984 (i.e., Journal of Laws of 2018, item 1914, as amended) - this position does not deserve consideration for the reasons discussed above in the analysis of the Broadcast's compliance with the Press Law.

The Authority agrees with the Broadcaster's claims that there is media freedom and freedom of public expression in Poland. However, it is not boundless. Journalists operate within a specific legal framework. Their rights and obligations are regulated by the Press Law of January 26, 1984, and the Broadcasting Act of December 29, 1992. As indicated above, both the jurisprudence of the Constitutional Court and the European Court of Human Rights indicate that ensuring the realization of these values may justify restrictions on civil rights and freedoms, including freedom of expression. As the Constitutional Court stated in its judgment of March 23, 2006, K 4/06: "*freedom of expression is one of the foundations of a democratic society, a condition for its development and the self-realization of individuals; 2) this freedom is not limited to information and views that are either received favorably or perceived as harmless or indifferent; 3) the role of journalists is to disseminate information and ideas on matters of public interest and public importance.*" At the same time, the Constitutional Court noted that, "*as is the case under the Convention standard, constitutional freedom of expression may suffer restrictions in connection with Article 31(3) of the Constitution (judgment of the Constitutional Court of May 12, 2008, SK 43/05), as long as these restrictions are provided by law, are necessary for the protection of the values enumerated in this provision (in particular, public morality), and will relate to the exercise of this freedom without violating its essence. However, the role of the media and freedom of expression in the functioning of a democratic society means that state interference with freedom of media expression is exceptionally permitted and must be duly justified*" [Judgment of the Constitutional Tribunal of July 2, 2013, III SK 42/12].

Article 18(1) and (2) of the Broadcasting Act is a regulation of statutory rank, limiting the freedom of expression of the Broadcaster of a Broadcast or other communication, which is guaranteed by Articles 14 and 54(1) of the Constitution of April 2, 1997 of the Republic of Poland and Article 10 of the European Convention on Human Rights and Fundamental Freedoms, adopted in Rome on November 4, 1950, in force in Poland since January 19, 1993 (hereinafter: the "Convention"). For the fulfillment of the disposition of Article 18(1) and (2) of the Broadcasting Act, it is irrelevant whether the event was continuous or one-time. The provisions of Article 18(1)

²⁰ Description, commentary on the English-language version of the Broadcast: "*What you have discovered is crucial, because it shows what many people have assumed for years: that John Paul II had known this problem existed, even before he became the Pope. But no one could prove it. And you've just done it - this is how Thomas Doyle, a canon lawyer, author of the first American report on sexual abuse in the Catholic Church, comments on the findings of Marcin Gutowski's journalistic investigation. For two and a half years, the reporter was looking for an answer to the question of what John Paul II knew about pedophilia scandals in the Church. He talked to the victims of pedophile priests who were under Cardinal Karol Wojtyła's (the future Pope) authority, their relatives, witnesses, and those who are said to have informed the cardinal about the crimes personally. He also discovered official Church documents showing how Wojtyła reacted to the allegations of sexual abuse cases among priests under his authority*" [<https://tvn24.pl/go/programy,7/czarno-na-bialym-bielmo-odcinki,880782/odcinek-14,S00E14,1019683>, accessed on: February 27, 2024].

and (2) of the Broadcasting Act impose on the Broadcaster of a television or radio program the task of shaping the nature and content of that program according to the rules set forth therein. In turn, according to Article 13(1) of the Broadcasting Law, the Broadcaster shapes the program independently within the scope of the tasks specified in Article 1(1) and is responsible for its content.

Journalists have the right to describe events that may outrage the public. However, there are legal requirements that this be done with professional diligence and fairness in the collection and use of materials. *"The abolition of illegality acts in the protection of a legitimate social interest requires the use of appropriate measures to protect it. An unreliable commentary used in violation of the obligation provided for in Article 12 of the 1984 Press Law does not constitute a proper measure to protect a legitimate social interest"* [Supreme Court Judgment of September 21, 2007, V CSK 192/07, LEX No. 619680].

In the Authority's opinion, the positions presented by the Broadcaster do not undermine the correctness of the legal qualification of the violation, made based on the provisions contained in Article 18 (1) and (2) of the Broadcasting Act, i.e., related to the finding of the presence in the Broadcast of messages contrary to the law and the social good, as well as messages harming the religious feelings of Catholics and disinforming public opinion on pedophile cases among the Polish clergy and the role played in these incidents by Cardinal Karol Wojtyła (St. John Paul II) and Cardinal Rev. Adam Stefan Sapieha.

According to Article 10(1) of the Convention, everyone has **the right to freedom of expression**. This right includes the freedom to hold opinions and to receive and impart information and ideas without interference from public authorities and regardless of national boundaries.

According to Article 10(1) of the Convention with regard to reporting on matters of public interest, ECHR case law indicates that this right depends *"on the reservation to act in good faith to provide accurate and reliable information - and, in the case of the media, in a manner consistent with journalistic professional ethics"* [Judgment of March 27, 1996, Goodwin vs. the United Kingdom, Application no. 17488/90, § 39; Decision of October 21, 2008, Wołek, Kasprów and Łęski vs. Poland, Application no. 20953/06; Judgment of April 3, 2012, Kaperzyński vs. Poland, Application no. 43206/07, § 57; Judgment of November 15, 2011, Semik-Orzech vs. Poland, Application no. 39900/06, § 44; judgment of June 21, 2011, Kania, Kittel vs. Poland, application no. 35105/04, § 36].

In the present case, the prerequisites for the entitlement under Article 10(1) of the Convention to report on matters of public interest were not met. There was a failure to act in good faith and to provide accurate and reliable information; moreover, acting in a manner contrary to journalistic professional ethics.

Pursuant to Article 10(2) of the Convention, exercising the freedoms outlined in Article 10 para. 1 of the Convention entails duties and responsibilities, which may be subject to such formal requirements, conditions, restrictions and sanctions as are prescribed by law and necessary in a democratic society in the interests of state security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health and morals, for the protection of the reputation and rights of others, and for the prevention of the disclosure of confidential information or to guarantee the dignity and impartiality of the judiciary.

That freedom of expression is not an unlimited freedom, the ECHR has indicated on several occasions, pointing out that *"The State may deem it necessary to take measures repressing certain forms of behavior, including the communication of information and ideas, if it*

*considers them incompatible with respect for the freedom (...) of the religion of others. The respect for religious feelings guaranteed by Article 9 may be considered violated if the object of religious reverence is presented provocatively. (...) Every person who exercises the rights and freedoms in Article 10 takes on "duties and responsibilities." Among them – in the sphere of religious opinions and beliefs – is to avoid, as far as possible, expressions that offend others, violating their rights. They do not contribute in any way to a public debate capable of ensuring progress in solving human problems [ECHR Judgment of September 20, 1994, in *Otto - Preminger - Institut vs. Austria*, Application No. 13470/87].*

Neither the provisions of the Polish Constitution nor those of the Convention guarantee an unlimited right to freedom of expression. The limits of freedom of expression are reflected, among others, in Article 10(2) of the Convention or in Article 18(1) and (2) of the Broadcasting Act.

The ECHR also commented on the conflict of goods protected by Article 10(1) of the Convention and other goods protected by the Convention. In the *Otto - Preminger - Institut judgment vs. Austria*, the Court explained that the Convention must be read/understood as a whole, and therefore both the interpretation and application of Article 10 of the Convention (which is invoked by the Broadcaster) must be applied in harmony with the logic of the Convention.²¹ Therefore, when analyzing Article 10 (1) and (2), other provisions of the Convention cannot be overlooked, including Article 9 of the Convention i.e., freedom of thought, conscience, and religion (religious freedom). The ECHR's line of jurisprudence is well established in this regard.

In Article 9 of the Convention (*Freedom of Thought, Conscience and Religion*), the following rights are emphasized:

1. *"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his/her religion or belief, in worship, teaching practice and observance."*

2. *"Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."*

ECHR case law gives primacy to the goods protected by Article 9 of the Convention. The collision of freedom of expression (including artistic expression) with freedom of thought, conscience and religion has repeatedly been resolved by the Court in favor of the latter²². In the ECHR Judgment in *E.S. vs. Austria* (2018), the Court, in analyzing the conflict of goods protected by Article 9 of the Convention, stated that in order for expression to be protected by Article 10 of the Convention, it must be formulated in a neutral, i.e., diplomatic, unbiased manner.²³ In that judgment, the ECHR stated, among other things, that **depicting objects of**

²¹ The justification of the judgment in the original reads (P. 47 in fine): *"The Convention is to be read as a whole and therefore the interpretation and application of Article 10 (art. 10) in the present case must be in harmony with the logic of the Convention (see, mutatis mutandis, the Klass and Others vs. Germany judgment of September 6, 1978, Series A no. 28, p. 31, para. 68)."*

²² J. Falski, *Glossa to the judgment of the European Court of Human Rights of October 25, 2018, in the case of E.S. vs. Austria, complaint no. 38450/12*, "Parliamentary Review," No. 4 (159)/2020, p. 222.

²³ J. Falski, *Glossa to the judgment of the European Court of Human Rights of October 25, 2018, in the case of E.S. vs. Austria, complaint no. 38450/12*, "Parliamentary Review," No. 4 (159)/2020, p. 227.

religious worship in a provocative manner that may hurt the feelings of followers of a particular religion can be considered a malicious violation of the spirit of tolerance, which is one of the foundations of a democratic society. ²⁴

In this case, ²⁵ the Court confirmed the legitimacy of convicting and fining an Austrian citizen for statements accusing the Prophet Muhammad of pedophilia. Ms. E.S. had conducted seminars under the title "Basic Information on Islam" at the Educational Institute of Austria's right-wing Freedom Party. At one such seminar, referring to the marriage that the Prophet Muhammad entered into with the then six-year-old Aisha, which was consummated when she was nine years old, she stated, among other things: "[Muhammad] *liked to do it with children,*" "*the story with Aisha and sexual relations with children*"; and asked: "*A man of 56 and a six-year-old? What do you call that? Give me an example? What do we call it if it is not pedophilia?*" ²⁶ According to the ECHR's reasons for the judgment, the above statements were capable of provoking legitimate outrage, given that they were not made in an objective manner intended to contribute to the debate in the public interest, but could only be understood as intended to demonstrate, that the Prophet Muhammad is not worthy of worship. *Per analogiam*, therefore, it seems that the saints of Christianity should be given the same protection as the prophets and saints of the Islamic religion.

This ruling is in line with the previous assessment expressed by the ECHR in the *Otto - Priminger - Institut vs. Austria* case, i.e., a case which concerned satire/criticism of Christianity. ²⁷ The Court, in the reasons for its ruling, took into account as a relevant criterion the fact that the violation of freedom of expression (guaranteed by Article 10 of the Convention) took place in the Tyrol,²⁸

²⁴ In the original paragraph. 53 of the ECHR's grounds for judgment reads, "*In that context the Court reiterates that the Convention States are required, in accordance with their positive obligations under Article 9 of the Convention, to ensure the peaceful co-existence of religious and non-religious groups and individuals under their jurisdiction by ensuring an atmosphere of mutual tolerance (see paragraph 44 above). The Court endorses the Regional Court's statement in its judgment of February 15, 2011, that **presenting objects of religious worship in a provocative way capable of hurting the feelings of the followers of that religion could be conceived as a malicious violation of the spirit of tolerance, which was one of the bases of a democratic society** (see paragraph 15 in fine above).*"

²⁵ *E.S. vs. Austria* - application no. 38450/12; judgment of October 25, 2018. [Fifth Section].

²⁶ *Information Note on the Court's case-law 222, October 2018 E.S. v. Austria - 38450/12, Judgment 25.10.2018 [Section V]*, <https://hudoc.echr.coe.int/fre#%22itemid%22:%22002-12171%22> (accessed on: February 29, 2024).

²⁷ ECHR judgment of September 20, 1994, in *Otto - Priminger - Institut vs. Austria*, application no. 13470/87, p. 57: "*In conclusion the Court finds that in the instant case the domestic courts comprehensively assessed the wider context of the applicant's statements, and carefully balanced her right to freedom of expression with the rights of others to have their religious feelings protected and to have religious peace preserved in Austrian society. They discussed the permissible limits of criticism of religious doctrines versus their disparagement and found that the applicant's statements had been likely to arouse justified indignation in Muslims. In addition, the Court considers that the impugned statements were not phrased in a neutral manner aimed at making an objective contribution to a public debate concerning child marriages (contrast *Aydın Tatlav* and *Giniewski*, both cited above), but amounted to a generalisation without a factual basis. **Thus, by considering them as going beyond the permissible limits of an objective debate and classifying them as an abusive attack on the Prophet of Islam, which was capable of stirring up prejudice and putting religious peace at risk, the domestic courts came to the conclusion that the facts at issue contained elements of incitement to religious intolerance. The Court accepts that they thereby put forward relevant and sufficient reasons and finds that the interference with the applicant's rights under Article 10 did indeed correspond to a pressing social need and was proportionate to the legitimate aim pursued.**"*

²⁸ J. Falski, *Glossa to the judgment of the European Court of Human Rights of October 25, 2018, in the case of E.S. vs. Austria, complaint no. 38450/12*, "Parliamentary Review," No. 4 (159)/2020, p. 219. The Austrian government banned the Otto-Priminger-Institut organization from distributing and broadcasting in publicly accessible cinemas in the Tyrol a film offensive to professing Christians entitled "*Das Liebeskonzil*" ("The Council of Love") by the well-known avant-garde German director Werner Schröten. The main characters are depicted in a caricatured manner: God as an impotent old man with dementia, Christ as a mentally retarded man, Our Lady as a fallen woman. The Holy Family, wanting to punish mankind for immoral living, asks for help from Satan, who sends syphilis on mankind.

where – at the date of the ruling – a significant number of the population was Christian. The ECHR, pointing to its responsibility under Article 9(2) of the Convention and referring to the internal margin of appreciation mechanism taking into account the majority Catholic composition of the Tyrolean population, held that there was no violation by Austria of Article 10 of the Convention. In addition, the Court pointed out that the State may legitimately introduce regulations repressing certain forms of conduct, including disseminating information and ideas deemed incompatible with respect for the freedom of thought, conscience, religion of others.²⁹

In the Authority's opinion, the Broadcast – assessed from the perspective of the ECHR case law indicated above – did not contribute to the public debate. At the same time, it exhausts the concept of depicting objects of religious worship, as defined in the case law of the Court in a provocative manner, likely to hurt the feelings of followers of the religion in question. Following the cited case law of the Court, this can be considered a malicious violation of the spirit of tolerance, which is one of the foundations of a democratic society.

Regarding the Broadcaster's position that no statements depreciating the Catholic faith or persons of that faith appeared in the Broadcast - according to the Broadcaster, the complainants wrongly equate the need for a public discussion of Church hierarchs with hate speech or violations of the memory of the dead or any personal property. There are no such elements in the Broadcast, and in the opinion of the Broadcaster, the complaints lack factual and legal basis. The Authority found this position to be incorrect. The Broadcast violates the memory of the deceased and their personal rights and the personal rights of the Broadcast audience. The Broadcast directly contains such elements and has been indicated above in the section on the facts. The Authority does not deny the need for a public discussion concerning the Church hierarchy, but it should be carried out consistent with the Press Law and the Broadcasting Act. A Broadcast in which disinformation is used, false information is conveyed, manipulative procedures are employed, all to typecast someone regardless of whether it is true or not, cannot be considered such an activity.

Regarding the Broadcaster's position that the Broadcast is journalistic material and not a historical work, and therefore it is not legitimate to require the authors of the Broadcast to follow a methodology appropriate for researchers - historians - the Authority has taken this position into account. Journalists are required to follow the technique/research methodology required for their work. This decision refers to the same regardless of the assessments expressed by the President of the Institute of National Remembrance (IPN).

Regarding the Broadcaster's denial of the claim that the historical and social context was not even mentioned in the Broadcast, for it included a comment at the beginning of the Broadcast: "*the documents contained in his files and the dozens of others we learned were the ONLY starting point for us. Aware of the fact that they were created by the security services that destroyed people's lives and wanted to destroy the Church as an institution - we spent many months verifying the information contained therein, reaching out to witnesses and documents from other sources*" (the Broadcaster's emphasis) - the Authority takes the position that this mention lasting only a few seconds in the nearly hour-and-a-half-long Broadcast constitutes only the

²⁹ ECHR judgment of September 20, 1994, in *Otto - Preminger - Institut vs. Austria*, application no. 13470/87, pp. 47-48.

appearance of maintaining journalistic integrity and diligence. It is the only comment made once at the beginning of the Broadcast. The entirety of the Broadcast builds a narrative contrary to this disclaimer, and contrary to its content, documents from the security services served by such a purpose are presented completely uncritically as completely credible. As indicated above in the discussion of disinformation, the reporting of information that is untrue, even with commentary pertaining to it can lead to its being perpetuated as true, especially if one takes into account the non-verbal media and manipulation techniques used by the Broadcaster in the reportage and the complete omission in the Broadcast of sources of information identified by experts in their expert reports contradicting the theses promoted by the Broadcast.

Regarding the Broadcaster's position that the Broadcast does not constitute an indictment of Cardinal Karol Wojtyła and therefore does not strike at the image of St. John Paul II and the institution of the Catholic Church, primarily because the Broadcast does not contain such a thesis, and the IPN President did not present any evidence in support of his conclusion – the Authority found this position to be contradictory to the content of the Broadcast. The thesis promoted in the Broadcast, that John Paul II knew about pedophilia before he became Pope and hid it, constitutes a *de facto* accusation of blind adherence to the act of pedophilia, punishable both in the People's Republic of Poland and today, as already mentioned above. Given that these allegations are made personally against a person holding a particular position at the time of the alleged *tempore criminis* but related mainly from the perspective of his later assumption of the papal office, they objectively strike at the image of St. John Paul II, and consequently the institution of the Catholic Church behind him. The situation resembles one in which the welfare of the church as a legal entity is violated due to the attribution to a person entitled to representation (the Pope) of allegations striking at the fundamental principles of the institution's faith that protect the least of these, such as, in colloquial terms, "*do not do unto another what is unkind to thee.*" As an aside, it should be pointed out that the aforementioned principle is present as the so-called golden rule in European civilization even before Christianity and unites all nations and religions present in the EU.³⁰ Accusing of breaking it, especially against defenseless children, and in a way that constitutes a crime, cannot be judged other than unfounded slander and violation of the social good within the meaning of Articles 18(1) as well as 18(2) of the Broadcasting Act.

Regarding alleged difficulties in contacting the Archdiocese of Cracow regarding access to the archival collections in its possession and the extent of the answers given or not given by representatives of the Archdiocese to the questions asked in connection with the work on the Broadcast, as well as the Broadcaster's assessment of the above contacts as devoid of any willingness on the part of the Cracow Curia to cooperate with the authors of the Broadcast and to provide the public with information on the topics constituting the content of the Broadcast – the Authority points out that no evidence was presented for this circumstance – apart from the claims

³⁰ The golden ethical rule (reciprocity principle): "the ethical principle of "treat others as you would want to be treated"; it can also be referred to in a negative version: "don't do to others what you don't want them to do to you" [1]. This principle can be found in the Confucian dialogues containing the thought of Confucius (551 -479 BC). It also appears in the works of Aristotle, Plato, Seneca, and Isocrates; also, in the works of Philo of Alexandria and Hillel [2]. It is also included in the later Gospel of Matthew (c. 85 AD)." [Wikipedia, https://pl.wikipedia.org/wiki/Z%C5%82ota_regu%C5%82a_etyczna#cite_note-1].

of the Broadcaster. Moreover, from the response received from the Archdiocese of Cracow, there are obstacles of an objective nature. It is also significant that the journalists abandoned waiting for the removal of these obstacles, and instead, the Broadcast was aired approximately 2 weeks after their request, in a situation where the obstacle to accessing the materials of the Archdiocese of Cracow was of a temporary nature. As an aside, it should be pointed out that these circumstances cannot be an excuse for failing to comply with the obligations under the Press Law, referred to earlier, in particular, the exercise of due diligence and journalistic integrity. In addition, as is clear from the analysis of the evidence and the expert opinion, regardless of having prior access to the records of the Archdiocese of Cracow, information from this source was not used in the Broadcast, as it contradicted the thesis promoted in the Broadcast.

II.

According to Article 53(1):

“If a Broadcaster fails to comply with the obligations laid down in Article 14a paragraphs 1 and 2, Article 15 paragraphs 1, 2 and 3, Article 15a paragraph 1, Article 16 paragraphs 1 to 6, Article 16a, Article 16b paragraphs 1 to 3, Article 16c, Article 17 paragraphs 1 to 7, Article 17a paragraphs 1 to 7, Article 18 paragraphs 1 to 5b and 7, Article 18a paragraph 1 and 1a, Article 20 paragraph 1, Article 20b paragraphs 1 and 6, Article 20c paragraphs 1 to 5, Article 37c paragraphs 1 and 2, Article 43 paragraph 2 or Article 43a paragraph 1 or under the provisions issued pursuant to Article 14a paragraph 3, Article 15 paragraph 4, Article 15a paragraphs 6 and 7, Article 16 paragraph 7, Article 16b paragraph 3b, Article 17 paragraph 8, Article 17a paragraph 9, Article 18 paragraph 6, Article 18a paragraph 2 or Article 37c paragraph 3 or fails to comply with the request referred to in Article 43a paragraph 2, the Chairman of the National Council shall issue a decision imposing a fine upon such a Broadcaster in the amount of up to 50% of the annual fee for the right to use the frequency allocated for providing the programme service by terrestrial diffusion, while broadcasters who do not pay for the right to use the frequency shall be liable to a fine of up to 10% of the revenues generated by the broadcaster in the preceding tax year with due regard for the degree and scope of harmfulness of such violation, the operations of the broadcaster to date and its financial capacity.”

In the present case, the Broadcaster violated its obligation under the provisions of Articles 18(1) and 18(2) of the Broadcasting Act. In such a situation, the Chairman of the National Broadcasting Council issues a decision imposing a fine on the Broadcaster. The Broadcaster does not pay the annual fee for the right to dispose of the frequency designated for terrestrial broadcasting. Thus, according to the disposition of Article 53 (1), a fine may be imposed on the Broadcaster up to 10% of the Broadcaster's revenue earned in the previous fiscal year. The prerequisite for this liability, to which the Broadcaster is subject, is not the Broadcaster's fault in the criminal legal sense. It is sufficient for the Broadcast to meet the criterion of violation of an obligation under, among other things, Article 18(1) of the Broadcasting Act.³¹

³¹ Judgment of the Court of Appeals in Warsaw - V Civil Division of August 11, 2011. VI ACa 8677/10: *“This standard stipulates that a Broadcaster who violates, in particular, the obligation under Article 18(1) of the Broadcasting Act, i.e., whose broadcasts promote actions contrary to the law and attitudes and views contrary to morality, is subject to a fine of up to 50% of the annual frequency fee. The prerequisite for this liability,*

TVN SA's revenue in 2022 was PLN 1,976,369,000 (in words: one billion nine hundred seventy-six million three hundred sixty-nine thousand zlotys). The upper limit of the penalty, or 10% of the revenue amount, is PLN 197,636,900 (in words: one hundred and ninety-seven million six hundred and thirty-six thousand nine hundred zlotys).

In imposing the penalty, the Authority considered the statutory prerequisites specified in Article 53, par. 1, i.e., the scope and degree of harmfulness of the violation, the Broadcaster's previous activities and its financial capabilities.

According to the Authority, the degree of harmfulness of the violation was much higher than negligible. In assessing the scope and degree of harmfulness of the violation, the Authority took into account, with regard to the scope of harmfulness, the fact that the violation took place in a cyclical Broadcast aired in the bandwidth with a large audience. Because of this violation, nearly 40,000 viewers expressed and sent their objections to the National Broadcasting Council, expressing their opposition to the Broadcast in question.

In assessing the degree of social harm, the Authority took into account the type of responsibility violated, which is to provide reliable, truthful information obtained in accordance with the rules of the professional art (i.e., Article 1 of the Broadcasting Act and Articles 1, 6, 10 and 12 of the Press Law) and respect for the religious feelings of the audience.

Guidance on how to take into account the scope and degree of harm of the violation can be found in case law. In the judgment of the Court of Appeals in Warsaw - V Civil Division of August 11, 2011. VI ACa 867/10 (concerning the decision on the case of insulting the Polish flag) the Court took into account, among other things, circumstances such as:

- 1) internet protests,
- 2) The number of people participating (10,000),
- 3) the special respect that the violated symbol enjoys in society.

As indicated in the grounds of this judgment: *"In the opinion of the Court of Appeals, the penalty imposed is not too high, even though it was set at the maximum amount, as half of the fee for frequency use, i.e. the amount of PLN 942,000. It is adequate to the degree of violation of the provision, i.e., Article 18(1) of the Broadcasting Act. For it should be reiterated that the Broadcast in question, as shown above, promotes the actions discussed above that are contrary to the legal and moral norms indicated, while its host and participants, by their behavior, flagrantly violated the right of other citizens to respect the national symbol in the form of the Polish flag. This was also reflected in online protests related to the defense of the flag. Even if individuals protested, as the plaintiffs claimed, without having seen the program in question before, it is difficult to attribute such lack of awareness to the 10,000 people, mentioned in his testimony by the initiator of the protest, St. K. B. (k. (...) - (...)). It should be noted at this point that in Polish society this symbol, due to its place in the turbulence of Polish history and the blood that was shed in its name, enjoys special respect. In this situation, the penalty so defined is adequate to the behavior of the Broadcaster that the provision criminalizes. It should be noted, moreover, that the revenue from advertisements, on the day of that Broadcast in question, i.e., on March 25, 2008, amounted to PLN 390,500, or approximately PLN 400,000 (k. - (...)). This penalty, which is therefore not much larger, as for the conditions of the station's income, than that amount, is fully adequate to the financial possibilities of the punished entity and will also fulfill its repressive and educational function."*

to which a legal entity is subject, is not, by its very nature, the Broadcaster's fault in the criminal-legal sense. It is sufficient for the Broadcast to meet the aforementioned subject criterion."

In the present case, *per analogiam*, the Broadcast triggered more numerous Internet protests related to the defense of the goods violated by the Broadcast (about 40,000 people). Moreover, the "symbol" that is John Paul II enjoys special respect in Polish society. Expressions of this respect include the resolutions of the Sejm of the Republic of Poland of June 13, 2019,³² and of March 9, 2023.³³

The Broadcaster's past activities

The Authority also took into account that in its previous operations, the Broadcaster, starting in 1997, was punished under Article 53(1) of the Act a total of 34 times, of which, for violations of Article 18 of the Broadcasting Act, the Broadcaster was penalized a total of 11 times, including for violating Article 18(1) of the Broadcasting Act, the Broadcaster was penalized 3 times with the following penalties:

- 1) with a penalty of PLN 471,000 imposed by Decision No. 6/2008 of May 16, 2008, for violation of Article 18(1) of the Broadcasting Act (the broadcast of the series "Kuba Wojewódzki", in which the national symbol – the Polish flag – was insulted by putting it in dog feces)³⁴ ;
- 2) with a penalty of PLN 300,000, imposed by Decision No. 1/2011 of March 11, 2011, for violation of Article 18(1) and (5) of the Broadcasting Act by broadcasting on October 4, 2010, at 3:55 p.m., a broadcast of the series "Talks in Progress" [*"Rozmowy w toku"*];
- 3) with a penalty of PLN 200,000, imposed by Decision No. 5/2012 of July 9, 2012, for violation of Article 18(1) and (5) of the Broadcasting Act and the KRRiT Ordinance of June 23, 2005, in connection with the broadcast on September 21 and October 5 and 19, 2011, at 9:30 p.m., of the series "Top Model. Become a Model" [*"Top Model. Zostań Modelką"*].

The Authority also took into account that a decision was issued against the Broadcaster on April 7, 2017 by the Chairman of the National Broadcasting Council No. 1/DPz/2017, dated April 7, 2017, ordering TVN SA to desist from actions involving failure to exercise due diligence in the collection and use of materials during the presentation of the issues covered by the subject of the Broadcast entitled "Black and White". "(Un)pure theories" [*"Czarno na Białym. Nieczyste teorie"*], from the series "*Black on White*" (the so-called injunction decision). In particular, that the decision referred to the same subject scope (i.e., failure to exercise due diligence in the collection and use of materials), as well as to the broadcast of the same Broadcaster, from the same series, i.e., "*Black on White*."

In determining the amount of the penalty, the Authority took into account the fact that the Broadcaster had already been punished for violating its obligations under Article 18 of the Broadcasting Act, and the fact that an injunction decision had been issued against the Broadcaster

³² https://orka.sejm.gov.pl/proc8.nsf/uchwaly/3207_u.htm (accessed on: February 27, 2024).

³³ <https://www.sejm.gov.pl/media9.nsf/files/MPRA-CPRNUV/%24File/Uchwa%C5%82a%20Sejmu%20w%20sprawie%20obrony%20dobrego%20imienia%20%C5%9Bw.%20Jana%20Paw%C5%82a%20II.pdf> (accessed on: 27.02.2024 r.).

³⁴ The verdict of the Court of Appeals in Warsaw - V Civil Division dated August 11, 2011. VI ACa 867/10 dismissed the appeal.

regarding a previously identified problem of the Broadcaster's failure to exercise due diligence and journalistic integrity.

In the current proceedings, the amount of the penalties previously imposed was one of the aspects considered by the Authority in determining the penalty amount. Given the nature of the social good violated, it should be noted that the reasons for imposing a penalty in the present proceedings far exceed those indicated in previous proceedings.

The Broadcaster's financial capabilities

The Authority considered that the financial statements of TVN SA for 2022 show that the Company had a very good and stable financial condition. TVN SA generated revenue of PLN 1,976,369,000 (in words: one billion nine hundred and seventy-six million three hundred and sixty-nine thousand zlotys) in 2022. In turn, its profit amounted to PLN 193,892,000 (in words: one hundred and ninety-three million eight hundred and ninety-two thousand zlotys), with Resolution No. 3 of the Ordinary General Assembly of June 28, 2023, the Broadcaster decided to allocate the profit to the payment of dividends.

TVN S.A.

Rachunek zysków i strat

(w złotych; wszystkie kwoty w tysiącach, o ile nie zaznaczono inaczej)

	Nota	Rok zakończony 31 grudnia 2022 r.	Rok zakończony 31 grudnia 2021 r.
Przychody ze sprzedaży	4	1.831.687	1.770.026
Koszty własne sprzedaży	5	(1.224.171)	(1.210.836)
Koszty sprzedaży	5	(200.006)	(212.841)
Koszty ogólnego zarządu	5	(294.102)	(218.825)
Pozostałe koszty operacyjne, netto		(5.707)	(12.346)
Dywidendy i pozostałe wpływy netto od jednostek zależnych	12	120.958	-
Zysk z działalności operacyjnej		228.659	115.178
Przychody z tytułu odsetek	6	23.724	44.011
Koszty finansowe, netto	6	(26.673)	15.603
Ujemne różnice kursowe, netto	6	(4.213)	(4.017)
Zysk brutto		221.497	170.775
(Obciążenie)/ uznanie z tytułu podatku dochodowego	20	(27.605)	137.491
Zysk netto		193.892	308.266

The Broadcaster's financial data for 2023 is not yet available in the public domain https://ekrs.ms.gov.pl/rdf/pd/search_df

Accordingly, under the circumstances of this particular case, a penalty of PLN 550,000 (say: five hundred and fifty thousand zlotys) is being imposed, which is less than 1% of its maximum amount.

In evaluating the case, the Authority also took into account the content of Article 189f § 1(1) of the Code of Administrative Procedure, which stipulates that the public administration authority, by way of a decision, shall waive the imposition of an administrative fine and shall stop

at an instruction if the gravity of the violation of the law is negligible and the Party has ceased to violate the law. The Authority waives the imposition of a fine where both prerequisites listed in the above provision occur together. In the Authority's opinion, however, in the case at hand there can be no question of a negligible gravity of the violation, for the reasons described above. With the above in mind, the Authority concluded that in the case under consideration, the gravity of the violation is not negligible, which relieves the Authority from analyzing the second prerequisite for waiving the imposition of a monetary penalty, outlined in Article 189f § 1 point 1 of the Code of Administrative Procedure, i.e., whether the party has ceased to violate the law. As a side note, it should be pointed out that since its emission, the Broadcast has been disseminated on the website of the following website:

<https://tvn24.pl/go/programy,7/czarno-na-bialym-bielmo-odcinki,880782/odcinek-12,S00E12,1010607>

The circumstance referred to in Article 189f § 1(2) of the Code of Administrative Procedure, i.e., an administrative monetary penalty has previously been imposed on the Party for the same behavior by a valid decision by another authorized public administration body, or a party has been validly punished for a misdemeanor or fiscal offense, or validly convicted of a felony or fiscal offense, and the prior penalty meets the purposes for which the administrative monetary penalty would be imposed. Pursuant to Article 189f § 2 of the Code of Administrative Procedure, in cases other than those mentioned in § 1, if it will allow the fulfillment of the purposes for which the administrative monetary penalty would be imposed, the public administration body, through a decision, may set a deadline for the Party to present evidence confirming: 1) the elimination of the violation of the law, or: 2) the notification of competent entities of the found violation of the law, specifying the date and manner of 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 and shall stop with the instruction. The doctrine indicates that *"taking this decision is possible only if 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 an imposition of a sanction will lead to the realization in the specific case of the goals assumed for the sanction."* [see: S. Gajewski, *Administrative Procedure Code. New Institutions. Commentary to Chapters 5a, 8a, 14 and Sections IV and VIIIa of the KPA*, Warsaw 2017].

In the Authority's opinion, given the circumstances of the case in question, it cannot be considered that waiving the penalty and contenting oneself with an Instruction would allow to achieve the purposes for which the administrative penalty was to be imposed. The Authority concluded that it was necessary in the case at hand to impose the monetary penalty specified in Article 53 of the Broadcasting Act Accordingly, no other circumstances could be considered to justify waiving the penalty pursuant to Article 189f of the Code of Administrative Procedure.

Given the above findings, acting under Article 53(1) of the Broadcasting Act in connection with the finding of a violation of Article 18(1) and (2) of the Broadcasting Act, it was decided as stated in the operative part.

Information

Pursuant to Article 56(1) and (2) of the Broadcasting Act, in conjunction with Article 479²⁸ § 1(2) of the Act of November 17, 1964, Code of Civil Procedure (i.e., Journal of Laws 2023, item 1550, 1429, 1606, 1615, 1667, 1860), a Party may 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 July 28, 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 is charged on 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 exemption from court costs to a legal person or an organizational unit which is not a legal person and to which the law grants legal capacity, if it has demonstrated that it does not have sufficient funds to pay them. Pursuant to Article 105(1) of the aforementioned law, the application for granting exemption from court costs must be made in writing or orally into the record at the court where the case is to be brought or is already pending.

According to the wording of Article 117 § 1, § 3 and § 4 of the Code of Civil Procedure, a party exempted by the court from court costs in whole or in part, may demand the appointment of a lawyer or legal adviser. 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 an advocate or legal adviser if it demonstrates that it does not have sufficient funds to bear the costs of the advocate'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 on the record, to the court where the case is to be brought or is already pending.

Maciej Świrski

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- file