Chairman
National Broadcasting Council of Poland
Maciej Świrski

Warsaw, 28 April 2023

Inforadio Sp. z o. o.
Czerska Street 8/10
00 - 732 Warsaw

DECISION No 6/DPz/2023

Pursuant to Article 53(1) in conjunction with Article 18(1) of the Broadcasting Act of 29 December 1992 (i.e. Journal of Laws of 2022, No. 1722, hereinafter referred to as the 'Act') and Articles 104 and 107 of the Act of 14 June 1960 – Administrative Procedure Code (i.e. Journal of Laws of 2022, No. 2000, 2185, hereinafter referred to as the 'Code'), following an official procedure that was undertaken and after considering the case concerning the broadcasting of the programme entitled *'Pierwsze śniadanie w TOK – u',* during the *TOK FM - Pierwsze Radio Informacyjne* programme on 7 June 2022, at 6:40 a.m.,

I have decided:

- to declare that the company Inforadio Sp. z o. o., with its registered office in Warsaw, has infringed Article 18(1) of the Broadcasting Act ('Act') by broadcasting, on the programme *TOK FM - Pierwsze Radio Informacyjne*, a programme entitled *"Pierwsze śniadanie w TOK - u",* broadcast on 7 June 2022 at 6:40 a.m., which promotes actions contrary to the law, views and attitudes contrary to morality and social welfare and contains content inciting to hatred and discriminatory content;
- to impose a fine of PLN 80,000 (in words: eighty thousand zlotys) on Inforadio Sp. z o. o. with its registered office in Warsaw.

The fine shall be paid within 14 days of the date of receipt of this Decision to the account of the National Broadcasting Council ('KRRiT') at the National Bank of Poland (NBP) Regional Branch in Warsaw, Bank acc. No. 13 1010 1010 0095 3722 3100 0000.

JUSTIFICATION

I.

In connection with the complaint by Mr Leszek Sosnowski, President of *Wydawnictwo Biały Kruk*, the Chairman of the National Broadcasting Council, hereinafter referred to as the 'KRRiT', in his letter of 14 June 2022 (DPz-WSW.0511.834.1.2022), requested Inforadio Sp. z o. o., with its registered office in Warsaw, hereinafter referred to as the 'Broadcaster', to provide the transcript of the programme entitled *'Pierwsze śniadanie w TOK-u',* broadcast on *TOK FM - Pierwsze Radio Informacyjne* on 7 June 2022 at 6:40 a.m., and to present its position on the case.

On 27 June 2022, the KRRiT received a position paper in which the Broadcaster explained that the programme was based on a conversation between the presenter and a guest – a history teacher and the subject was 'Knowledge of Society' (Pol.: *Wiedza o społeczeństwie*). The Broadcaster confirmed that both the presenter's and the guest's views on the new History and the Present (Pol.: *Historia i Teraźniejszość - HIT*) textbook were unflattering – which, in the Broadcaster's view, did not bring the programme or the Broadcaster any disrepute. This is because the Broadcaster believes that it is the duty of journalists to express opinions (even scathing ones). This is why the planned HIT textbook has been criticised, with extensive arguments and quotes from the *Biały Kruk* publishing house website. However, the term pointed out by the author of the complaint to the KRRiT: 'A Handbook for the Hitler-Youth (*Hitler-Jugend*)', was an apt metaphor that emphasised the propagandistic nature of the work. According to the presenter, the comparison was justified in view of the quoted passages from the textbook and did not exceed the limits of journalistic freedom. The Broadcaster also denied that any insult or hatred was directed against the author of the textbook, Prof. Wojciech Roszkowski, as the programme focused solely on the textbook written by this author. The allegation that the programme was intended to exert pressure on the authorities in the process of approving the HIT textbook for schools is also untrue. The Broadcaster stated that it did not feel responsible for the negative economic impact on the publisher caused by the quality of its product.

In response to the submission in question, the KRRiT stated in a letter dated 23 September 2022 (DPz-WSW.0511.834.5.2022) that an analysis of the programme showed that the journalist presenting the programme used the expression 'a textbook for the Hitler- Youth (*Jugend*)' in a conversation about the content of the textbook *HIT "Historia i Teraźniejszość"* by Professor Wojciech Roszkowski. While the KRRiT respects the right of the Broadcaster and journalists to freely present their assessments and views on current political and social issues, it does not agree with the statement that this type of expression is 'an apt metaphor emphasizing the propagandistic nature of the work.' *Therefore, it cannot approve of the*

dissemination in public debate of such comparisons, which, like other such references associating Hitler and the fascist regime, are likely to evoke negative associations in the public mind. In view of the above, the KRRiT asked the Broadcaster to avoid on-air expressions and terms that could lead to the sanctioning of hate speech.

In a letter dated 28 September 2022, the Broadcaster in turn reiterated its position on the case. It disagreed with the allegations that phrases or expressions that could lead to the sanctioning of hate speech were broadcast on the TOK FM programme. As evidence, the Broadcaster quoted an extract from a statement containing the controversial phrase 'Hitler-Youth *(Jugend)* Manual', which it said had been taken out of context: 'I have the impression that [HIT] is meant to convince young people that the European Union is evil, to convince them ... I don't know ... to exterminate non-heteronormative people because they are a threat to a healthy social fabric. It reads like a textbook – excuse the comparison – for the Hitler-Youth (*Jugend*), some, sometimes, not everywhere, but sometimes ... .' The Broadcaster stressed that the book in question was not journalistic material or a column, but a textbook for young people. Therefore, its content should provide balanced information, a compilation of the most relevant facts, presented in an objective manner, unencumbered by commentaries containing the author's one-sided assessments, so that young people have the opportunity to form their own opinion on the issues discussed. According to the Broadcaster, the presenter and his guest quoted passages from the book which clearly showed that *the textbook presented xenophobic attitudes towards certain social groups, races or genders, i.e. used hate speech*. Therefore, it was the journalist's duty to stigmatize hate speech in order to oppose its sanctioning. The Broadcaster also stressed that the disputed wording was used in relation to an object (the HIT textbook) and was not made in relation to any individual or group of individuals. Therefore, in the Broadcaster's view, the allegation of 'hate speech' in relation to the book was unauthorised and inappropriate and stigmatised the Broadcaster. The Broadcaster also pointed out that there is no definition of hate speech in Polish legislation, but the UN Strategy and Action Plan defines it as follows: 'any form of communication in speech, writing or behaviour that attacks or uses derogatory or discriminatory language against a person or group because of who they are, in other words, because of their religion, ethnicity, nationality, race, colour, descent, gender or other identity factors.' The Council of Europe, in turn, introduces its own definition: 'speech that disseminates, promotes or justifies racial hatred, xenophobia, anti-Semitism and other forms of intolerance that undermine democratic security, cultural cohesion and pluralism.' Thus, both definitions indicate that only a person or group of people, and not an object such as a book, can be affected by 'hate speech.' The Broadcaster reiterated that, in its view, the blunt comparison made was legitimate and duly justified, because the introduction of prejudices into young people's school curricula, allowing the achievements of the European Union or feminism to be discredited, denigrating people of a different sexual orientation, turning social groups against each other on the basis of their beliefs, is clearly associated with a fascist regime and also ... with hate speech. The Broadcaster has stated that it opposes the promotion of hate speech and defends the right to freedom of expression. The Broadcaster believes that criticism is one of the essential forms of freedom of expression, and that freedom of expression consists

precisely in the possibility of expressing judgements and evaluations, always with reference to the facts. [...] Freedom of speech, including critical speech, is a manifestation of freedom of speech that exists in Poland, which ensures an open and pluralistic image created by the media, a freedom of speech that should be safeguarded by the National Broadcasting Council (KRRiT) in accordance with its competences set out in Article 6(1) of the Broadcasting Act.

In response to this submission, by letter dated 30 September 2022 (DPz-WSW.0511.834.9.2022), the KRRiT pointed out that criticism of a textbook was also criticism of its author and that the epithets used by the journalist against the textbook were also epithets against Professor Wojciech Roszkowski. As an example, the KRRiT cited the case of *Wabl v. Austria*, in which the European Court of Human Rights ('ECHR') found that the description of a newspaper as 'Nazi journalism' went beyond the bounds of political criticism. According to the ECHR, the expression used in this case was not a necessary means of expressing political criticism (Dr Monika Nowikowska, *'Granice dozwolonej krytyki prasowej działalności osób pełących funkcji publiczne',* Legalis 2020). The KRRiT pointed out that, in the light of case law, criticism of the press is permissible, but not in an unlimited manner. Above all, press criticism must be truthful. Statements that present a one-sided view of the phenomenon being described and attribute negative characteristics to the person being criticised that are not supported by the facts are considered to be untrue criticism. Therefore, a statement that includes a reference to a textbook for a fascist organisation goes beyond the permissible rhetoric of public debate and press criticism, as it violates the author's good name by comparing him to the fascist authors of the Third Reich. A good name is defined as the good opinion of a certain natural or legal person in society, whereby the Supreme Court, in its judgment of 29 September 2010, emphasised that the defamatory nature of a statement is not determined by its effect in terms of a reaction from the plaintiff's environment, expressed in a change of attitude towards him; but solely by the opinion expressed in the views of reasonable and fair-minded people. Therefore, in each case it should be examined whether a given statement could have caused negative evaluations and feelings not only in the addressee, but also when it concerns an average, reasonable person (V CSK 19/10, OSNC-ZD 2011/B, no. 37 - M. Zaremba (ed.), *Prawo prasowe* (the Press law). Commentary, Lex 2018). In view of the above, the KRRiT confirmed the assessment expressed in its letter of 23 September 2022 (DPz-WSW.0511.834.5.2022).

By a letter dated 10 October 2022, the Broadcaster reiterated its position in the case. It stated that it did not see the legal basis for the new allegations of defamation and violation of the personal rights of Professor Wojciech Roszkowski. Nevertheless, the Broadcaster stated that criticism of a work is not the same as criticism of the author of that work. In its opinion in the case of *Andreas Wabel v. Austria*, cited by the KRRiT, the ECHR began by pointing out that Article 10(2) of the Convention for the Protection of Human Rights and Fundamental Freedoms refers not only to opinions that are regarded as favourable or harmless, but also to those that offend, shock or disturb. The Court went on to emphasise that the assessment of whether the prohibition of the use of the expression 'Nazi journalism' by Mr Wabel was justified in this specific, individual case must be made in light of the totality of the circumstances in which that expression was used. In examining those circumstances, the ECHR

noted, among others, that the allegation of Nazi activities was close to a criminal charge under Austrian law, that Andreas Wabl had already expressed his criticism of *the Kronen-Zeitung* after the newspaper had published a correction and a statement by Wabl himself, and that Wabl, having been offended by the publications, could have taken legal action to prevent the newspaper from publishing defamatory material against him. After examining the totality of the facts, the Court held that, in this particular case, the Austrian Supreme Court was entitled to prohibit the complainant from using the term 'Nazi journalism' against the *Kronen-Zeitung*. According to the Broadcaster, the relevant judgment of the European Court of Human Rights in no way provides a basis for the assumption that the term 'Nazi journalism' generally exceeds the limits of acceptable criticism. The Broadcaster took the view that in the programme in which the negative assessment of the aforementioned article was presented, the programme listeners had the opportunity to hear on what grounds the scathing assessment of the textbook in question was based.

In response to the submission in question, the KRRiT, by letter of 16 November 2022 (DPz-WSW.0511.834.12.2022), reiterated the positions expressed in its letters of 23 and 30 September 2022. In the KRRiT's view, the courts and scholars have clearly expressed their views on the admissibility of criticism of the work and its author. The line between *ad rem* and *ad personam* criticism is fluid. As the doctrine rightly points out, criticism of someone's activity will always involve, to some extent, the assessment of the person who carries out that activity. In the case of the statement made on the TOK FM radio programme, it should be noted that the statement in question concerned a book written by a well-known and respected historian, a professor, author of many scientific publications, whose monograph on recent Polish history has become part of the canon of historical studies on that period. The KRRiT referred to a judgment of 28 August 1932 in which the Supreme Court, speaking of the limits of criticism, emphasised: *(...) The humiliation of human dignity of the offended party, which is an essential element of a punishable personal insult, is in itself an extremely loose and relative concept, because it depends on the degree of culture and familiarity, on the views and customs of a given environment, on the mutual relations of the parties, on their sensitivity and personality, on the position and profession (and professional honour) of the offended party, and, to some extent, even on the external circumstances of the place and time – in a word, on the whole combination of conditions capable of giving the stigma of a punishable insult to the deeds, words or gestures.* (I. Dobosz, *Prawo prasowe* (The Press Law), Warsaw 2011, p. 204).

Therefore, the comparison of the work of a well-known historian with the activities of the authors of schoolbooks published after 1933 in the German Reich (Third Reich) is an extremely insulting and even stigmatising formulation used against Prof. Wojciech Roszkowski. The argument used in the letter, that no reference was made to the author of the textbook, but that only the textbook itself was criticised within permitted limits, is logically questionable. After all, when we talk about a textbook written by a particular author, we are also talking about the author himself. The phrase used in the radio programme 'a textbook for the Hitler-Youth (*Jugend*)' even forces the listener to make a connection between the figure of Prof.

Wojciech Roszkowski and the functionaries of that criminal system. Such a comparison is not only offensive, but also reduces the public debate on such an important issue as the historical education of young people to the level of the most primitive insults, which are intended to create a negative image not only of the textbook, but also of the author of the criticised work.

In support of the above statement, the KRRiT cited the judgment of the Lublin Appeals Court of 6 June 2011 (II AKa 91/11), in which the Court expressed the view that *'criticism should not be harassing or dictated by personal animosities, nor should it contain grossly insulting or defamatory phrases, nor be defamatory or malicious, nor aim at destroying a personal opponent. It was emphasised that it is impossible to define the limits of permissible criticism in general terms, as they are determined by the specific circumstances of each case.'* In the same judgment, the Lublin Court of Appeals also emphasised that: *'Journalists - especially in the light of the provisions of the Press Law – should be expected to shape and civilise the model of public debate, not to lower it by adapting it to the level of "relatively simple people without political aspiration". And even if a publication is aimed at undiscerning readers, this in no way means that it is acceptable to violate the standards of press expression and criticism under the pretext of freedom of expression and the public's right to information.'*

The limits of the right to press criticism have been aptly expressed by Prof. Jacek Sobczak: *'The limits of the legality of criticism (...) are the fair presentation of a critical assessment of a work in accordance with the principles of social coexistence. The presentation of a negative opinion in a malicious, tendentious and unacceptable manner exceeds the limits of protection set forth by Article 41 of the Press Law and constitutes a criminal offence. A journalist who has acquired the right to negatively evaluate any creative, professional or public activity is not released from the obligation to maintain an appropriate form of criticism. Violation of this form leads to both criminal and civil liability, even if the journalist was factually correct.*" (J. Sobczak, '*Prawo prasowe. Komentarz'*, Warsaw 2008, p. 858).

Joanna Rupar also pointed out that *'permissible criticism, especially journalistic criticism, is not unconditional and must always be within the limits of the law and in accordance with social norms. Principles of social coexistence, legal norms, especially constitutional norms, require that respect be maintained for everyone, including public figures, and that their sense of dignity, personal worth and social usefulness be taken into account. Therefore, criticism of someone's behaviour, views or activities should not go beyond what is necessary to achieve the social purpose of the criticism (otherwise it may constitute defamation or slander rather than criticism).'* (J. Rupar, *'Zniesławienie a dozwolona krytyka dziennikarska wobec osób publicznych,'* in: *Prokuratura i Prawo*, 11/2008, p. 136).

In view of the above, the KRRiT pointed out that, in order to be fair, criticism of Professor Wojciech Roszkowski's textbook should, in accordance with case law and doctrine, be done in accordance with good morals, and thus should not attribute to the book in question characteristics that it does not have. In the opinion of the KRRiT, the book written by Professor Wojciech Roszkowski does not in any way promote Nazi ideology among young people, as was stated on the TOK FM radio station, since this is the only way to interpret the phrase 'a textbook for the Hitler-Youth (*Jugend*).' This type of statement alone itself violates the dignity of the author, which is a constitutional value, since, according to Article 30 of the Constitution,

inherent and inalienable human dignity is the source of human and civil freedoms and rights. Its importance was also emphasised by the Constitutional Court in its judgment of 4 April 2001 (K11/00), which pointed out that the concept of dignity, as a source of individual rights and freedoms, determines the way in which they are understood and implemented by the State. The prohibition of violations of human dignity is absolute in character and applies to everyone.

Furthermore, the KRRiT also noted that the doctrine emphasises that press criticism containing offensive statements can cause unjustified damage that is difficult to repair. Witold Kulesza aptly pointed out that even the publication of a correction or of a won court case does not fully repair this damage and the accusations continue to function in public circulation (*cf.* W. Kulesza, '*Zniesławienie i zniewaga* [*ochrona czci i godności osobej człowieka w polskim prawie karnym - zagadnienia podstawowe*]', Warsaw 1987, p. 129).

A journalist who criticises, for example, literary or scientific works, should always bear this in mind and be aware of the effects of his statements in the public sphere. And although the 'Hitler-Youth (*Jugend*)' was not recognised as a criminal organisation at the Nuremberg Trials, it remains one of the symbols of the Third Reich, as an example of the forced indoctrination of young people by the totalitarian system *(cf.* R. Grunberger, *'Historia społeczna III Rzeszy'*, Warsaw 1987, vol. II. p. 112 and further).

The KRRiT therefore emphasised that criticism must always be characterised by fairness and care, especially in checking the reliability of information, and must be limited by factual necessity, and its form must not exceed the limits set by responsibility for the content of the allegations made. It should be stressed that the programme did not discuss the textbook itself, which was published after the programme was aired. The criticism was made on the basis of several extracts that the publisher had placed on its website.

In its Decision of 4 September 2003 (IV KKN 502/00), the Supreme Court referred to this type of action as follows: *'The making of an unverified allegation, according to the rules of due diligence, in principle excludes the possibility of successfully proving that it was made in defence of a socially legitimate interest and in a justified belief in its truthfulness. A person who makes an unproven allegation against another person, even if the allegation subsequently proves to be true, cannot rely on the defence of a legitimate social interest.'*

In the light of the above, the KRRiT fully confirmed the assessments made in its letters of 23 and 30 September 2002 and requested the Broadcaster to adapt its programming activities on TOK FM in accordance with the statements made therein, supplemented by the arguments presented in the letter in question.

In a letter dated 9 December 2022, the Broadcaster again commented on the case, pointing out that, in order to preserve the substance and relevance of further correspondence, it was necessary to quote once again the broader context in which the term 'manual for the (. . .) Hitler-Youth (*Jugend*)' was used in the programme *'Pierwsze śniadanie w TOK-u'* on 7 June 2022: '... and I have the impression that the intention [*of the authors of the manual - author's note*] is to convince the young people to leave the European Union as soon as possible, if not now, then in a few years, maybe to convince them that the European Union is evil, to convince them ... I don't know ... to exterminate non-heteronormative people because maybe ... because they are a threat to a healthy social fabric. It reads like a textbook - excuse the

comparison - for the Hitler-Youth (*Jugend*), some, sometimes, not everywhere, but sometimes ...'.

The Broadcaster stated that he did not agree with the interpretation made in the letter of 16 November 2022. It pointed out that the Hitler-Youth (*Jugend*) organisation still functions in the public consciousness today as an example of the forced indoctrination of young people by a totalitarian system. Listening to the full statement about the textbook in question left no doubt that this was the meaning of the comparison. The Broadcaster also pointed out that neither the presenter nor the guest of the programme gave the impression that they had read the entire work of Prof. W. Roszkowski. On the contrary, they clearly stated that their critical opinions related to the extracts of the textbook available on the website of the *Biały Kruk* publishing house. The Broadcaster is also unable to understand the relevance of the judgements cited in the letter of 16 November from the point of view of the correspondence and actions taken, in the Broadcaster's opinion, by the KRRiT, to protect the honour and dignity of the professor, which is only due to an entity whose honour or dignity has been violated (with a few exceptions, such as the right of a close person to speak in defence of the 'cult of the deceased'). The Broadcaster also indicated that neither Professor Wojciech Roszkowski nor the publisher of the textbook HiT *'Historia i Teraźniejszość'* had made any claims against it in connection with the programme in question or any other programme.

In the KRRiT's view, the Broadcaster's position and the arguments presented by it in subsequent letters cannot undermine the correctness of the qualification of the violation of Article 18(1) of the Act.

In view of the foregoing, by letter of 2 February 2023 (reference DPz-WSW.0511.834.17.2022), the KRRiT informed the Broadcaster of the initiation of proceedings for the imposition of a fine pursuant to Article 53(1) of the Broadcasting Act in connection with the finding that the content of the programme was contrary to morality and social welfare. The Broadcaster was notified that it had the opportunity to familiarise itself with the case file and the evidence collected and to submit a final statement within 7 days from the date of receipt of the notification. The Broadcaster received the above notice on 2 February 2023. In a letter dated 9 February 2023, the Broadcaster submitted its comments, pointing out that the file did not contain any additional documents or information other than the letters exchanged between the KRRiT or its Chairman and the company. In view of the above, the Broadcaster maintained its previous position in the case and the arguments presented in its letters. The Broadcaster emphasised that the company makes every effort to emit its radio programme with the highest level of content, including by not broadcasting messages that are contrary to morality and social welfare. In addition, the Broadcaster pointed out that it remained convinced that the Chairman of the KRRiT had decided to close the case in a letter dated 12 January 2002, which concluded with a general call to avoid comparisons 'with Nazi works if there is no factual basis for such an opinion.' The Broadcaster stated that it fully accepted this general remark and did not make such unfounded comparisons. However, in view of the initiation of proceedings against the company, it has become necessary to respond in detail to the arguments contained in the letter of the Chairman of the KRRiT dated 12 January, which will be done in a separate letter by the company's legal plenipotentiary.

In a letter dated 9 February 2023, the company's plenipotentiary referred to the arguments put forward by the KRRiT Chairman in his letter of 12 January 2023 and stressed that it was not true that the presenter of the programme 'considers that the book promotes Nazi ideology.' Rather, the presenter and the Broadcaster believe that the book's emotionally charged content, including the stigmatisation of certain people or the discrediting of the ideas of the European Union, makes it more akin to a propaganda pamphlet than a balanced informational work. The company's plenipotentiary acknowledged that the presenter had expressed the above idea in a blunt manner. The plenipotentiary denied that the programme compared the authors of the textbook with the authors of textbooks for Nazi organisations. On the contrary, Prof. W. Roszkowski was praised on several occasions, although not in the context of the HiT textbook. The company's legal plenipotentiary also expressed surprise at the initiation of proceedings to punish the Broadcaster, given that in a letter dated 12 January 2023 the Chairman of the KRRiT merely referred to the 'inappropriateness' of the comparison made by the programme's journalist.

The KRRiT noted the following.

Pursuant to Article 18 par. 1 of the Broadcasting Act, programmes or other broadcasts may not promote actions contrary to the law, the Polish *raison d'état* or attitudes and views contrary to morality and social welfare, in particular they may not contain content that incites hatred or violence or discrimination based on sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, nationality, membership of a national minority, property, birth, disability, age or sexual orientation, or incitement to commit a terrorist offence.

This programme in question violates Article 18(1) of the Act by promoting actions contrary to the law (...), views and attitudes contrary to morality and social welfare, and contains content that incites hatred and discriminates on the basis of political views, in particular through the use of the following quotations:

1. *'They will perhaps be very proud of the fact that they are heirs to the legacy of the Accursed Soldiers (*Pol.: Żołnierze wyklęci*), or a "suffering victim" who deserve something all the time and do not get it', see lessons on: the victims of the Second World War and the German shortcomings in fulfilling claims.*
2. *The intention is to convince young people (...) that... I don't know ... to exterminate non-heteronormative people because maybe ... because they are a threat to a healthy social fabric. It reads like a textbook, sorry for the comparison, for the Hitler-Youth* (Jugend) *somewhat like that, not everywhere, but sometimes.*

The following points should be made here:

1. The victims of the Second World War portrayed as *'suffering victims who deserve something all the time and do not get it.'*

It is a violation of the dignity of the victims of the Second World War to refer to them as 'suffering victims' (in an ironic tone) who are constantly demanding compensation for their suffering. According to moral and legal norms in force throughout the civilised world, anyone who has suffered damage (material - in the form of loss or immaterial - in the form of harm) should be compensated. The victims of the Second World War have been pointing out for many years that their (material) losses and the suffering they have experienced have not been compensated in any way. It should not be forgotten that the Second World War resulted in the annihilation of millions of people. The contemptuous characterisation of people who demand just compensation as 'suffering' victims who are still entitled to something is a violation of elementary moral and legal norms - in particular a violation of the dignity of these victims. A 'suffering' victim (stated as: *cierpiętnik* - in an ironic Polish word form of someone who experiences suffering), according to the Polish dictionary (Słownik Języka Polskiego) , is 'a person who passively submits to suffering or enjoys experiencing it.' In the public sphere – especially in Poland, where Jews, Poles and citizens of other nationalities perished in German concentration camps – it is particularly important to refrain from mocking or despising the victims of the WW2 annihilations that occurred.

The jurisprudence of the European Court of Human Rights emphasises this very strongly – any form of mockery, ridicule – especially of the victims of the Second World War – which belittles their suffering, does not find protection under Article 10 of the European Convention on Human Rights ('ECHR'). Questions relating to the protection of the reputation/memory of victims of the Second World War have arisen several times in the case law of the ECHR – from one of the earliest cases, i.e. *X v. Germany* (complaint no. 9235/81), where it was said that the Holocaust was a Zionist 'hoax' and myth, to the most recent, e.g. *Lewit v. Austria* (judgment of 10 October 2019, application no. 4782/18), where it was said that inmates of the German concentration camp Mauthausen were 'criminals.' In all of these cases, the ECHR sided with the offended victims of the Second World War and found that such statements violated the limits of freedom of expression.

The ECHR's jurisprudence in these cases is very consistent – it is not permissible under freedom of expression to mock, humiliate, ridicule or defame victims of war, including victims of the Second World War.

The case that most fully confirms such a line of jurisprudence, and at the same time explains why the ECHR adopts precisely such a view in relation to the victims of the Second World War, is the judgment in *PETA v. Germany* (ECHR judgment of 8 November 2012, 43481/09), in which the ECHR resolved the issues of a social campaign that used images of extremely emaciated prisoners from German concentration camps on posters in order to protect animal rights. Both the German courts and the ECHR considered that comparing the suffering of people in the German camps with that of animals was a distortion of the suffering of the victims who were tortured in the death camps. However, the complainant

to the ECHR (i.e. PETA) emphasised not only freedom of expression, but also the fact that the campaign was in no way intended to insult the memory of the German victims of the Second World War or to trivialise their suffering. The ECHR judges stated that *'when human beings in a concentration camp, not only of Jewish origin but also of all other nationalities, are used as an instrument to promote animal rights, when their image is exploited in this way, little room is left for their human dignity.'* At the same time, they added that if this kind of expression lies within the bounds of artistic freedom, it is difficult to imagine what remains outside it.

Finally, one can also refer to the decision of the ECHR in the case of *Sinkova v. Ukraine* (ECHR decision of 27 February 2018, complaint no. 39496/11). In this case, a Ukrainian artist staged a protest performance in which she fried eggs on the Monument of Eternal Glory. She was arrested and subsequently fined.

The artist appealed to the ECHR, claiming that her freedom of expression had been violated. The Court pointed out that the mere invocation of freedom of expression – including artistic freedom – does not protect against the possibility of liability and does not protect against restrictions of that freedom within the limits of the law. The Court clearly stated that *'there are many ways to express one's opinion without insulting the memory of soldiers who lost their lives and without hurting the feelings of veterans'* - and such a way that the artist chose was considered by the Court as an insult to the memory of soldiers who defended Ukraine during the Second World War, often sacrificing their lives.

2. The author of the textbook as a former Law and Justice (PiS) MEP who calls for the extermination of LGBT people and promotes Nazi ideas.

The author of the textbook, Prof. W. Roszkowski, is also mentioned (by his full name) in the programme. It is noteworthy that one of the first pieces of information after the author's name mentioned was that he was introduced as a *'former Law and Justice (PiS) MEP.'* This information is completely irrelevant to the criticism of the textbook itself, but was given to orient the listener. Prof. Roszkowski was further demeaned, and it was pointed out that *'the absence of Anna Radziwiłł and her knowledge, experience, drift, skills and teaching practice'* (which Prof. W. Roszkowski apparently lacks) led to the 'gaffe' in the form of the HiT textbook.

The strongest accusation, however, is the identification of Prof. W. Roszkowski in two respects: first, as a person whose intention (by writing a textbook) is *'to convince young people (...) that... I don't know... to exterminate non-heteronormative people, because maybe... because they are a threat to the healthy social fabric,'* and secondly as an author of a textbook for the Hitler-Youth (*Jugend*).

These types of comparisons were made in a short time frame and in a specific context: a former Law and Justice (PiS) MEP who wants to convince young people to exterminate LGBT people and who writes a manual for the Hitler-Youth (*Jugend*) is promoting content

that incites hatred. It is intended to evoke the following connotation in the mind of the listener: A Law and Justice (PiS) MEP – extermination of LGBT people – spreading Nazi propaganda. Such content also meets the criteria of promoting content that discriminates on the basis of political beliefs (as the political views of Prof. W. Roszkowski - 'the former Law and Justice (PiS) MEP' – were equated with those of Nazis and people who murder non-heteronormative people) and promoting attitudes and views that are contrary to morality and the social good.

Indeed, it seems that the sole purpose of invoking the political affiliation of Prof. W. Roszkowski (a former Law and Justice (PiS) MEP) and combining this affiliation with calls for the extermination of LGBT people, as well as presenting Nazi content to young people (a textbook for the Hitler-Youth (*Jugend*), was not only to offend the professor himself, but also, more broadly, people who share the views of the Law and Justice (PiS) party. This is because the views/ideas of the Law and Justice Party (by quoting them in the context of the author of the textbook) were linked to those of the Nazis, who exterminate (murder) LGBT people and prepare propaganda textbooks for young Nazis.

To summarise the above, it should be pointed out that the purpose of the statement was:

Firstly, to violate the dignity and humiliate the victims of the Second World War by presenting them as 'suffering victims' (Pol.: '*cierpiętne ofiary'*) who are constantly demanding something (in particular, compensation for their suffering, damages and losses).

Secondly, violation of the dignity of a specific individual (Prof. W. Roszkowski) by presenting him as the author of a textbook whose intention is to incite a crime (the extermination of LGBT people) and to prepare content for the Nazis.

Thirdly, incitement to hatred on the basis of political views and the presentation of discriminatory content on the basis of political views, by referring to the political affiliation of the author of the textbook – by indicating the Law and Justice (PiS) party – and linking the name of the political party with incitement to the extermination (murder/annihilation) of LGBT individuals and the dissemination of Nazi content (through the Hitler-Youth (*Jugend*) textbooks prepared accordingly).

It's worth pointing out that there is no place in a democratic society for statements such as anti-Semitic speech (and this is how 'suffering victims' can be read – the majority of victims of the German concentration camps were Jews, who have been raising questions for years about the just and fair compensation/redress for the Holocaust), nor is there any place for 'hate speech' or discrimination on the basis of someone's political views.

Comparing the work of a well-known historian with the activities of the authors of textbooks written after 1933 in the German Reich (Third Reich) and linking this to a political party, adding the intention to incite murder and spread Nazi ideas, goes beyond the framework of permissible textbook criticism and is a form of expression that spreads, incites, promotes or justifies hatred based on intolerance.

Under the 'guise' of criticism, it is suggested that a former MEP from a particular party (Law and Justice (PiS)) is promoting incitement to commit crimes against LGBT individuals

and spreading Nazi ideas. This action seems to be an action ‘under a preconceived thesis,’ because it is difficult to read otherwise the statement referring to the historical fact of Prof. W. Roszkowski's past candidacy as a Law and Justice MEP – such information has no weight and significance from the point of view of legitimate public interest (for what would it bring in the context of criticism of the textbook). But the combination, i.e. of a former Law and Justice MEP – extermination of LGBT people – spreading Nazi content in his textbooks, is supposed to ‘orient’ the listener accordingly.

Incidentally, it should be pointed out that the Broadcaster itself stated that the critical opinions were based only on extracts from the textbook available on the website of the *Biały Kruk* Publishing House, and were not based on a comprehensive and reliable analysis of the entire work. Therefore, it can be concluded that this circumstance indicates that the material was prepared in an unreliable manner and that the programme was limited to quoting random fragments of the book in order to attack the victims of the Second World War who are demanding compensation (by calling them ‘suffering’ victims who always want something) and people who identify with the views of the Law and Justice Party (by pointing out that the party's MEP calls for the extermination of LGBT individuals and promotes Nazi views). The violation of the personal rights of the author of the textbook cannot be overlooked either.

Before imposing the financial penalty, the KRRiT specifically analysed Article 10 of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in Rome on 4 November 1950 and in force in Poland since 19 January 1993.

This was necessary in order to determine whether the test laid down by the European Court of Human Rights was met in this particular case, namely:

1. Whether the restriction of the right to freedom of expression is provided for by law;
2. Whether it is purposeful, i.e. whether it serves to protect one of the aims listed in Article 10(2) of the Convention; and,
3. Whether the interference is necessary in a democratic society.

Ref. 1. Limitation of the right to freedom of expression

According to the wording of Articles 14 and 54(1) of the Constitution of the Republic of Poland, the Republic of Poland guarantees freedom of the press and other means of social communication, while everyone is guaranteed the freedom to express his or her opinion and to receive and disseminate information. In turn, according to Article 10(1) of the Council of Europe Convention, everyone has the right to freedom of expression. This right includes

freedom to hold opinions and to receive and impart information and ideas without interference by public authorities and regardless of state borders.

However, according to Article 10(2) of the Convention, the exercise of these freedoms entails duties and responsibilities which may be subject to such formal requirements, conditions, restrictions and penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of confidential information, or for ensuring the integrity and impartiality of the judiciary.

It should therefore be emphasised that Article 10(1) of the Council of Europe Convention does not guarantee an unlimited right to freedom of expression. This also applies to journalistic expression.

A limitation of the right to freedom of expression can be found in Art. 18 of the Broadcasting Act, according to which 'programmes or other broadcasts cannot promote actions contrary to the law, the Polish *raison d'état*, 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.'

In addition, Article 12(1)(2) of the Press Law of 26 January 1984 (i.e. Journal of Laws 2018, item 1914) stipulates the need to protect personal property (in press materials) – also in journalistic communications.

According to this article, a journalist is obliged to protect personal property and, in addition, the interests of bona fide informers and other persons who place their trust in him or her. It should be noted that under Article 3 of the Broadcasting Act, the provisions of the Press Law apply to the broadcasting of radio and television programmes, unless otherwise provided for in the (Broadcasting) Act.

It should also be noted that freedom of expression may be restricted by applying the norm of Article 24 of the Act of 23 April 1964, Civil Code (i.e. Journal of Laws of 2022, items 1360, 2337, 2339, of 2023, item 326, hereinafter: the 'Civil Code'), according to which a person whose personal interest is endangered by another person's action may demand that this action be discontinued, unless it is not unlawful. In the case of an infringement, he or she may also require the offender to take the necessary measures to eliminate the effects of the infringement, in particular to make a declaration of appropriate content and form. In accordance with the provisions of the Civil Code, he or she may also demand financial compensation or the payment of an appropriate sum for a specified social purpose.

It should therefore be recognized that a number of provisions, including those mentioned above, provide for restrictions on the exercise of the right to freedom of expression.

Such a position was adopted by the Constitutional Court in its ruling of 11 October 2006. (P 3/06, Journal of Laws 2006, No. 190, item 1409; OTK-A 2006, No. 9, 121), where it stated that *'freedom of expression is a fundamental value for the rule of law, but it is not an absolute value, as it is subject to limitations in terms of the presentation of content that ex definitione does not fall within the axiology of a democratic legal space. The limits of freedom of expression, thus framed, are reflected in Article 10(2) of the Convention and Article 18(2) of the Broadcasting Act. They cover different issues, but the limitation of the right to freedom of expression remains closely linked to the "duties and responsibilities" of those exercising this right.'*

In summary, the restriction of freedom of expression in press materials (broadcasts and other transmissions) is provided for in Polish legislation.

Ref. 2. Objectives set out in Article 10(2) of the Convention

Next, the KRRiT examined whether the restriction under Article 18(1) and the imposition of a penalty on the Broadcaster were purposeful, i.e. whether they served to protect one of the goals set out in Article 10(2) of the Convention.

According to the wording of Article 10(2), the exercise of freedom of expression 'may be subject to such formal requirements, conditions, restrictions or sanctions as are prescribed by law and are necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of confidential information, or for ensuring the integrity and impartiality of the judiciary.'

In this particular case, the need to restrict freedom of expression was a direct consequence of the protection of morals and reputation (as detailed above), against the dissemination of discriminatory content and incitement to hatred.

In any democratic society, victims (of crimes, offences, wars or martial law) cannot be humiliated or ridiculed simply for seeking redress for their wrongs. This is contrary not only to international legal norms, but also to morality, social welfare and the basic principles of social coexistence.

Nor is such speech protected if it aims to discriminate on the basis of political opinion or to incite hatred.

Ref. 3. The necessity of interference with freedom of expression in a democratic society.

The adjective ‘necessity’ within the meaning of Article 10 § 2 of the European Convention on Human Rights implies the existence of a ‘pressing social need.’ At the same time, it must be shown that this pressing need for interference is ‘proportionate to the achievement of the legitimate aim’ and that the reasons for the interference appear ‘appropriate and sufficient.’

In summarising the facts of the case, it should be noted that the expressions used during the programme, i.e. the 'suffering' victims of the Second World War who were constantly demanding something, the 'Hitler-Youth (*Jugend*) manual' written by a former Law and Justice (PiS) MEP with the intention of exterminating LGBT people, were demeaning and exceeded the rules of acceptable criticism in the public sphere.

It should be noted that speech incompatible with the values proclaimed and guaranteed by the European Convention on Human Rights and Polish legislation (Article 18(1) of the Broadcasting Act, Article 24 of the Civil Code, Article 12 of the Press Act) is not protected under Article 10 (on the basis of Article 17 of the Convention).

With regard to the humiliation of entire groups, the case law of the ECHR has provided examples of such speech that is not protected by Article 10(1) of the European Convention on Human Rights. These include speech that denies the Holocaust, justifies pro-Nazi policies, linking all Muslims to serious terrorist acts or portrays Jews as the source of evil in Russia (e.g. judgments in *Lehideux and Isorni v. France*, 23 September 1998; *Garaudy v. France* (dec.), no. 65831/01; *Norwood v. United Kingdom* (dec.), no. 23131/03; *Witzsch v. Germany* (dec.), no. 7485/03; *Pavel Ivanov v. Russia* (dec.), no. 35222/04).

The ECHR takes a similar approach to the issue of the ridicule of victims, in particular victims of the Second World War. This applies to statements that mock, ridicule, humiliate or dehumanise victims of wars/armed conflicts (e.g. judgments such as *X v. Germany*, no. 9235/81, *PETA v. Germany*, no. 43481/09, *Lewi v. Austria*, no. 4782/18, *Sinkova v. Ukraine*, no. 39496/11).

With regard to the reputation of individuals, the ECHR often recalls that the right to the protection of one’s reputation (Article 8 ECHR) must also be taken into account when assessing interference with freedom of expression. The task of the Court has therefore been to strike an appropriate balance in the protection of these two values guaranteed by the Convention. In principle, these rights deserve the same respect.

There is no doubt that it is unlawful to portray the author of the textbook (HiT), a historian with an enormous body of work, as a person who incites to commit a crime and who spreads Nazi ideas. Because, in the opinion of an average intelligent person, to portray someone as spreading hatred, calling for the extermination of (someone, whoever), spreading Nazi ideas – is a violation of that person's dignity if it is false information or an unjustified and unfounded assessment.

It is clear that the textbook may not have been liked, although it must be somewhat surprising that, as the Broadcaster admitted, the people talking about the textbook had not read it and judged its value which occurred only on the basis of some excerpts. In this case, however, the aversion to the textbook was shifted to the person of its author and, more generally, to the author's specific political affiliations. In the KRRiT's view, these statements rose to the level of hate speech and discriminatory content, and this type of content does not enjoy the protection of Article 10 of the European Convention on Human Rights.

Finally, it is worth referring to jurisprudence and views of the doctrine on the restriction of freedom of expression in the context of journalistic expression and the duties of the Chairman of the National Broadcasting Council (KRRiT).

The doctrine points out that *'the National Broadcasting Council (KRRiT), as a public authority referred to in Article 30 of the Polish Constitution, is obliged to respect and protect human dignity. This means that it must (...) take appropriate measures in case of violation of this dignity by other entities in radio and television'* (Komadowska Anna, reviewed by: L. Bosek, *'Gwarancje godności ludzkiej i ich wpływ na polskie prawo cywilne'*, Warsaw 2012, p. 135 and further).

It should be noted that Article 18(1) of the Act, by prohibiting the promotion of activities contrary to the law, morality and social welfare, indirectly refers to the prohibition of the violation of human dignity. However, as the doctrine points out, *'there is no doubt that the provisions of this article refer to the protection of human dignity in radio and television. (....) The violation of human dignity may consist (...) in the promotion of acts contrary to the law, but also in the promotion of attitudes and opinions contrary to morality. The unlawfulness referred to in Article 18(1) of the Act should be understood in this context as all legal provisions, including, in the context of the protection of human dignity, constitutional and civil law provisions. Indeed, the constitutional norms guaranteeing human dignity are closely linked to the provisions of the Civil Code concerning the protection of personal rights. At the same time, it should be noted that the provisions relating to human dignity and other personal rights are formulated in general terms, leaving the bodies applying them considerable leeway in defining the concepts contained therein and in deciding whether, in a given case, they have actually been violated. It is therefore up to the Chairman of the KRRiT to define human dignity and decide whether it has been violated in a given situation.'* (Ewa Godlewska, in: *'Ochrona godności ludzkiej w świetle przepisów o radiofonii i telewizji',* Palestra 1-2/2016, p. 100).

The protection of human dignity, defamation or violation of personal rights and the limits of permissible criticism in press coverage have been addressed many times in case law.

Such behaviour, which does not refer to facts but is based only on assessments formulated with pejorative adjectives, goes beyond the scope of criticism (Supreme Court judgement of 28 September 2000, V KKN 181/98).

In accordance with the Supreme Court ruling of 26 August 2009. (I CSK 528/08, LEX No. 1211189): *'A condition for the legality of the publication of negative assessments and critical opinions by the press is the reliability of such action and its compliance with the principles of social coexistence. From this point of view, the motives of the person disseminating the assessment or opinion are important. It is necessary to determine whether the purpose of his action was to annoy, humiliate or undermine the good reputation of the person concerned by the opinions expressed, or whether it was to defend a legitimate social interest. To do so, it is necessary to define that interest and to determine whether and how, in the light of the content of the statement, it is necessary to publish it in order to protect that interest. On the other hand, the accuracy of the statement depends on whether it takes into account all the circumstances that the journalist should take into account when exercising particular care in gathering and using press material' (Article 12(1) of the 1984 Act – the Press Law).*

Journalists have the right to describe events that may outrage the public. However, it is required that this is done with professional diligence and reliability in the collection and use of materials. '*The abolition of illegality in the protection of a legitimate public interest requires the use of appropriate means to protect that interest. An unreliable commentary used in violation of the obligation provided for in Article 12 of the 1985 Press Law does not constitute an appropriate measure for the protection of a legitimate social interest'* (Judgment of the Supreme Court of 21 September 2007, V CSK 192/07, LEX no. 619680).

The jurisprudence confirms the above principle in its judgments, '*stressing that the overriding social interest in press criticism is to obtain factual information and to make factually adequate assessments'* (Judgment of the Court of Appeal in Cracow of 6 February 1992, I ACr 364/91).

According to the judgment of the Court of Appeals in Gdańsk of 28 December 2018 (ref. II AKa 218/18): *'The typological features of a debate are an appropriate, representative selection of debaters or experts, the validity (attractiveness) of the topic, which cannot be too familiar or elaborated, the ability to balance the role of the moderator, who should not be apodictic, but also cannot allow the debate to turn into a cacophonous polyphony or argument*' (see: W. Pisarek (ed.), *Słownik terminologii medialnej*, Cracow 2006). *As we can see, the debate is structured, formalised, usually takes place with the participation of the moderator, and its essence is to solve a specific problem or present a specific issue.*

It is also worth mentioning that on 3 April 2023. The District Court in Sokółka found that border guards had been defamed by comparing them to members of a formation considered criminal, i.e. to members of SS units.

The doctrine also indicates the limits of permissible journalistic criticism.

Joanna Rupar (*'Zniesławienie a dozwolona krytyka dziennikarska wobec osób publicznych,'* in: *Prokuratura i Prawo,* 11/2008, pp. 136-137) emphasises that '*it is important to determine*

whether criticism is lawful or unlawful depending on whether it contains arguments in the form of the defence of a legitimate interest (primarily social) or statements indicating that it was mainly motivated by a desire to annoy, humiliate or ridicule the criticised person (e.g. a political opponent, official, etc.) in the eyes of others. The author states *that criticism of someone's behaviour, views or activities should not go beyond what is necessary to achieve the social purpose of the criticism (otherwise it may be defamation or slander rather than criticism). With regard to the principle of social coexistence expressed in Article 5 of the Civil Code, we have in mind in particular the use of forms of criticism that are in keeping with good manners, without polemical insults, without unjustifiably attributing to the work (article, programme or other form in which the criticism is expressed) characteristics that it does not have, and without violating the principles of journalistic professional ethics. However, criticism of the misconduct of certain persons must be impartial and diligent (particularly in verifying the reliability of information), limited by factual necessity, and its form must not exceed the limits set by the responsibility for the content of the allegations made. It should be emphasised that criticism which goes beyond the limits of a socially acceptable form, even if justified by a legitimate aim and by the relevance of the issue raised, cannot be considered permissible.'*

In view of the above, in the present case it must be concluded that the Broadcaster violated Article 18(1) of the Act by broadcasting the programme "*Pierwsze śniadanie w TOK - u*" on *TOK FM - Pierwsze Radio Informacyjne,* aired on 7 June 2022 at 6:40 a.m., which promotes actions contrary to the law, views and attitudes and is contrary to morality and social welfare, and contains content inciting hatred and discriminatory content.

II.

In light of the foregoing and pursuant to Article 53(1) of the Law, it is decided as set out in the operative part.

Pursuant to Article 53(1) of the Act, if a Broadcaster violates the obligation under Article 18(1) of the Act, the Chairman of the National Broadcasting Council shall issue a decision imposing on the Broadcaster a fine of up to 50% of the annual fee for the right to dispose of the frequency designated for broadcasting a programme, taking into account the scope and degree of harmfulness of the violation, the previous activity of the broadcaster and its financial capacity.

The fee for the right to dispose of the frequency for programme transmission is PLN 177,950. (in words: one hundred and seventy-seven thousand nine hundred and fifty zlotys). Therefore, the maximum amount of the fine is PLN 88,975. (in words: eighty-eight thousand nine hundred and seventy-five zlotys).

In determining the amount of the fine, the KRRiT took into account the legal requirements set out in the above-mentioned provision, i.e. the scope and degree of harmfulness of the infringement, the previous activity of the Broadcaster and its financial capacity.

The degree and scope of the harmfulness of the infringement was determined by the KRRiT in the context of the nature and intensity of the infringement. As the KRRiT has already indicated above, the infringement committed by the Broadcaster was a substantial infringement. The degree of harmfulness of the infringement was therefore higher (greater) than negligible.

In accordance with the statutory guidelines for determining the penalty, the KRRiT also took into account the fact that the Broadcaster had not previously been penalised for its previous activities.

In addition, the KRRiT clarifies that the fine is imposed without regard to fault, which means that the question of culpable acts or omissions of certain persons who are in any way dependent on the Broadcaster cannot influence the question of the application of the provision of Article 53(1) of the Act, if, in the light of the facts of a particular case, the conditions for the imposition of a fine provided for therein have been fulfilled.

Therefore, in the circumstances of this particular case, a fine of PLN 80,000 (in words: eighty thousand zlotys) was imposed, i.e. below the upper limit.

In its assessment of the case, the KRRiT also took into account the content of Article 189f §1 item 1 of the Administrative Procedure Code, which stipulates that the public administration body may, by decision, refrain from imposing an administrative fine and issue an instruction if the gravity of the breach of the law is negligible and the party has ceased to violate the law. The KRRiT will refrain from imposing a fine in a situation where both of the conditions set out in the above provision are met. However, in the KRRiT's view, the nature of the goods infringed as a result of the Broadcaster's actions means that it is not possible to speak of a negligible gravity of the infringement in the present case. In light of the above, the KRRiT concluded that the gravity of the infringement in the present case is not negligible, which relieves the KRRit from analysing the second condition for not imposing a fine set out in Article 189f § 1.1 of the Administrative Procedure Code, i.e. whether or not the Party has ceased to infringe the law.

In the present case, the circumstance referred to in Article 189f § 1.2 of the Administrative Procedure Code is also not present, i.e. the Party has previously been fined for the same conduct by another authorised public administration body by a valid decision, or the Party has been validly punished for a misdemeanour or fiscal offence, and the previous punishment fulfils the purposes for which the administrative fine is to be imposed. Pursuant to Section 2 of Article 189f of the Administrative Procedure Code, in cases other than those referred to in Section 1, the public administration body may, if it is necessary to achieve the purposes for

which the administrative fine was imposed, by means of a decision, set a deadline for the Party to submit evidence confirming: 1) the elimination of the infringement of the law, or, 2) the notification of the competent bodies of the established infringement of the law, specifying the deadline and the manner of notification. According to §3, if the Party has submitted evidence confirming the fulfilment of the order, the public administration body shall refrain from imposing an administrative fine and shall stop with the order. The doctrine points out *that such a decision is possible only if the administrative authority, on the basis of the circumstances of the individual case, taking into account, in particular, the subjective characteristics of the Party, determines that the very fact of initiating proceedings in the case and of being in a situation of a real threat of the imposition and execution of a sanction will, in the individual case, lead to the achievement of the objectives assumed for a given sanction* (See: S. Gajewski, *Kodeks Postępowania Administracyjnego. Nowe instytucje.* Commentary on Chapters 5a, 8a, 14 and Sections IV and VIII a of the KPA ('Code'), Warsaw 2017).

In view of the above findings, acting pursuant to Article 53(1) of the Act in connection with the finding of a violation of Article 18(1) of the Act, it has been decided as set out in the operative part.

Notification

Pursuant to Article 56(1) and (2) of the Broadcasting Act in conjunction with Article 47928(1)(2) of the Act of 17 November 1964 – Code of Civil Procedure (i.e. Journal of Laws of 2021, No 1805, as amended), a Party may appeal against this decision to the Regional Court in Warsaw – Commercial Court through the KRRiT within one month of the date of notification of this decision.

Pursuant to Article 3(2)(9) in conjunction with Article 33 of the Act of 28 July 2005 on court costs in Civil Cases (i.e. Journal of Laws of 2020, items 755, 807, 956, 2186), a fixed fee of PLN 3,000 is charged for an appeal against a decision of the Chairman of the National Broadcasting Council.

Pursuant to Article 103 of the Act on Court Costs in Civil Matters, the court may grant an exemption from court costs to a legal entity or an organisational unit which is not a legal entity but which has legal capacity under the Act, if it proves that it does not have sufficient means to pay the court fees. Pursuant to Article 105(1) of the above mentioned Act, an application for exemption from court fees must be made in writing or orally in the minutes of the court before which the case is to be brought or is already underway.

Pursuant to Article 117(1), (3) and (4) of the Code of Civil Procedure, a Party who has been wholly or partially exempted from court costs by the court may request the appointment of a lawyer or legal adviser. A legal person or other organisational unit to which the law confers legal capacity and which is not exempted by the court from the payment of court fees may request the appointment of a lawyer or legal adviser if it proves that it does not have sufficient

means to pay the fees of a lawyer or legal adviser. A Party shall submit a request for the appointment of a lawyer or a legal adviser either together with the application for exemption from court fees or separately, in writing or orally for the record, to the court or tribunal before which the case is to be brought or is already underway.

Maciej Świrski

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