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INSTRUMENTALISATION OF HATE SPEECH REGULATIONS IN THE ACTIONS OF THE CHAIR OF THE NATIONAL BROADCASTING COUNCIL (KRRiT): THE 2023 TOK FM CASE

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Abstract:

The Polish National Broadcasting Council (KRRiT) is a constitutional public authority established to safeguard freedom of speech, the right to information, and the public interest in radio and television broadcasting. Its main objective is to protect the pluralistic nature of broadcasting. Simultaneously, broadcasters have been subjected to a range of restrictions. In particular, the broadcasts must not contain incitement to hatred or violence or discriminatory content. The assessment in this case lies with the Chairman of the Council, who has been vested with the authority to issue decisions imposing fines. The largely subjective criteria indicated can be made more objective by considering other provisions in the legal framework and case law. However, there is no doubt that the way these concepts are interpreted is shaped by the specific analytical lens adopted, i.e., whether they are grounded in the principles of liberal democracy or shaped by the ideological matrix of right-wing populism. An analysis of the decisions issued by the Chair of the National Broadcasting Council (KRRiT) between 2016 and 2023 – thus covering two consecutive terms of the KRRiT coinciding with the period of governance by the Law and Justice party – indicates that, contrary to expectations, the Chair of the KRRiT, as a general rule, did not invoke provisions prohibiting hate speech when assessing broadcast content. In fact, only one decision – namely, the one issued in the Tok FM case in 2023 – may serve as an example of the instrumental application of provisions aimed at combating hate speech, the underlying rationale of which may lie in populist assumptions..

Keywords: hate speech, media, media regulator, populism

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Introduction

The Polish National Broadcasting Council¹ is a constitutional public authority established to safeguard freedom of speech, the right to information, and the public interest in radio and television broadcasting (Constitution of the Republic of Poland, 1997, art. 213). Its main objective is to protect the pluralistic nature of broadcasting (Broadcasting Act, 1992, art. 6(1)). Simultaneously, broadcasters have been subjected to a range of restrictions concerning the permissible content of their programmes, including prohibitions on promoting actions contrary to law, the Polish *raison d'état*, and attitudes and views contrary to morality and the social good. In particular, the broadcasts must not contain incitement to hatred or violence or discriminatory content (Broadcasting Act, art. 18(1)). The assessment in this case lies with the Chairman of the Council, who has been vested with the authority to issue decisions imposing fines (Broadcasting Act, art. 53).

Although the criteria indicated above are largely subjective, they can be objectified by considering other provisions of the legal framework, case law, and the prevailing societal value system reflected in the Constitution. However, there is no doubt that the way these concepts are interpreted is shaped by the specific analytical lens adopted: i.e. whether they are grounded in the principles of liberal democracy or shaped by the ideological matrix of right-wing populism. In both cases, there is a risk of abuse. Generally, however, in the former case, the interpretation of these regulations should aim to prevent expressions that are extremely discriminatory toward specific groups, intended to provoke intensely negative emotions against them, and, therefore, pose a threat to the peaceful functioning of a pluralistic society. This perspective seems to have been adopted in the case law of Polish courts and tribunals (see section 2). In the latter case, on the one hand, the legitimacy of prohibiting so-called hate speech is often rejected as an unjustified interference with freedom of expression; on the other hand, hate speech is construed as an attack on conservative values.

It is widely accepted that the rule of Law and Justice² in Poland fall within a populist trend (Eatwell & Goodwin, 2018; Runciman, 2019; Holmes &

¹ Pol. *Krajowa Rada Radiofonii i Telewizji*, hereinafter referred to as the “KRRiT” or the “Council”.

² Pol. *Prawo i Sprawiedliwość*, hereinafter referred to as “PiS”.

Krastew, 2020; Blokker, 2020). This justifies examining the actions of state institutions operating during that period from this standpoint.

This article seeks to examine the Chairman's of the National Broadcasting Council 2023 sanctioning decision regarding TOK FM, with a view to uncovering the conceptualisation of hate speech embedded therein.

The timeframe chosen covers the two terms of office of the National Broadcasting Council, appointed by the conservative right-wing party Law and Justice³. In practice, however, the analysis is limited to a single case because, contrary to the initial assumptions, among the decisions issued between 2016 and 2024, only in this instance is reference made to provisions concerning the combating of hate speech.

The principal thesis of this article is as follows: the regulations intended to counter hate speech in the media were instrumentalised by the Chairman to exert pressure on independent broadcasters. In pursuit of this objective, the Authority adopted a specific definition of hate speech that reflects the logic of rightwing populism.

A formal-dogmatic method was used to study the current legislation. In addition, textual analysis and interpretation were used.

The Polish Criminal Legal Framework and Jurisprudential Approach to Hate Speech

Polish law does not provide a legal definition of hate speech. Nevertheless, it is assumed that the following penal provisions address this issue⁴:

³ KRRiT members should be apolitical, despite being elected by the Parliament and President (Constitution, art. 214).

⁴ Note: this article considers the legal framework as of November 15, 2025. In the Polish parliament, however, work has been completed on amending legislation to extend the prosecution of hate crimes. The amendment awaits the President's signature and publication in the Journal of Laws (Pol. Dziennik Ustaw). Status of the legislative process: see <https://www.sejm.gov.pl/Sejm10.nsf/PrzebiegProc.xsp?nr=876>. The proposed new wording of article 119, 256 and 257 of the Criminal Code considers such motivations of the perpetrator as the victim's national, ethnic, racial, political, religious affiliation, their irreligiousness, disability, age, gender or sexual orientation. A similar change has taken place regarding the sentencing principles (see article 53§2a point 6).

- Article 256 of the Criminal Code of June 6, 1997⁵ (public incitement to hatred based on differences of nationality, ethnicity, race, religion or irreligion),
- Article 257 of the Criminal Code (public insult of a group of people or an individual on grounds of their national, ethnic, racial or religious affiliation or their irreligiousness),
- Article 119 of the Criminal Code (use of unlawful threats against a group of persons or an individual because of their national, ethnic, racial, political or religious affiliation or because of their irreligiousness),
- Article 55 of the Act on the Institute of National Remembrance (public denial of Nazi and Communist crimes – also known as Auschwitz and Katyń denial, treated accordingly as a form of anti-Semitic or anti-Polish hate speech).
- Articles 256 and 257 of the Criminal Code seem to be of key interpretative importance for this analysis. They have been supported by numerous academic studies and case law, resulting in a relatively uniform understanding of how to apply the law in practice. Indeed, this article concentrates on the legal interpretation of the phenomenon known as hate speech.

In addition, regulations relating to hate speech – albeit much more broadly outlined – are contained in the Broadcasting Act. This issue will be discussed in more detail in Chapter 3. However, it can already be noted that the wording of Article 18 of the Broadcasting Act requires that the mentioned penal provisions be considered when explaining the legal aspects of hate speech.

Article 256 of the Criminal Code

Article 256§1 of the Criminal Code provides: “Whoever publicly (...) incites hatred on the grounds of national, ethnic, racial, or religious differences, or because of lack of religious affiliation, shall be subject to the penalty of deprivation of liberty for up to 3 years”.

The phrase ‘incites hatred’ was examined by the Constitutional Tribunal, which found it to be consistent with the Constitution despite its vagueness and lack of precision (Constitutional Tribunal Judgment, 2014, point 6.7).

⁵ The commission of a hate motivated crime is treated as an aggravating circumstance and should be considered by the court when imposing a sentence (art. 53§1 in conjunction with §2a (6) of the Criminal Code).

Considering the linguistic context, Tribunal assumed as follows: the term “incitement to hatred” should be understood as to “call, encourage, urge feelings of strong dislike, hostility towards someone”. The Tribunal observed that a similar interpretation is advanced in the doctrine of criminal law (point 5.1.4 and 5.2.2). Expanding these findings to include the normative perspective, the Tribunal held that only public acts of “incitement to hatred” committed through active conduct, intentionally and with direct intent, are prohibited, and these acts must additionally relate exclusively to one of the five groups specified in the provision (point 6.2).

At that time, two judgments issued by the Supreme Court had also addressed the interpretation of the term “incite to hatred”, which the Constitutional Tribunal referred to in the verdict under discussion.

In its IV KK 406/06 ruling, the court defined “incitement to hatred” quite broadly as a type of speech “which arouses feelings of strong dislike, anger, disapproval or even hostility towards individuals or entire social or religious groups or which, due to its form of expression, sustains and intensifies such negative attitudes and thus emphasises the privileged or superiority of a particular nation, ethnic group, race or religion”.

In the second of the Supreme Court judgements, V KK 98/11, it limited the possibility of criminal prosecution by stating that hate speech “involves the intention to bring out in third parties the most intense form of negative emotion – akin to hostility – towards a particular nationality, ethnic group, or race. It is clearly not about evoking feelings of disapproval, antipathy, prejudice, dislike”. In its commentary on the V KK 98/11 judgment, the Constitutional Tribunal emphasised that “public disclosure of one’s opinion (...), even if socially regarded as unacceptable or controversial, does not amount to ‘incitement to hatred’. Such qualification requires that the perpetrator’s conduct involve urging others to hatred” (Constitutional Tribunal Judgment, 2014, point 6.3).

The Constitutional Tribunal linked the criminalisation of hate speech to the atrocities of 20th-century genocides, underscoring the importance of protecting the dignity and memory of the countless victims of totalitarianism (point 7.9.1).

Case law also stresses that the legal recognition of an offence as a hate crime requires a clearly established and visible rationale behind the offender’s actions. If the offender has not expressed his intention in words, it is inferred from the circumstances of the incident (Supreme Court, 2006, IV KK 92/06).

The assessment of intent requires a thorough analysis of both the substance and form of their statements (Supreme Court, 2022, IV KK 32/22).

The Supreme Court also reiterated the European Court of Human Rights' view that "even in a democratic society, there is a need to sanction and even counteract all forms of expression that aim to disseminate, promote, justify or incite hatred motivated by intolerance, provided that such restrictions or limitations, when imposed on freedom of expression, are proportionate to the objective they aim to serve" (Supreme Court, 2019, IV KK 38/18).

Article 257 of the Criminal Code

Article 257 of the Criminal Code provides: "Whoever publicly insults a group of people or an individual because of their national, ethnic, racial, or religious affiliation, or because of their lack of religious affiliation, or for such reasons violates the bodily integrity of another person, shall be subject to the penalty of deprivation of liberty for up to 3 years".

Insult is a manifestation of disdain directed at another person. The assessment of such conduct is based on a cultural perspective and prevailing social standards and norms (Raglewski, 2017). It is a defamatory and derisive statement, lacking any rational explanation, that ultimately undermines the victim's sense of self-worth (Supreme Court, 2020, II DO 96/20).

Article 257 requires the existence of causal connection between the perpetrator's conduct and the discriminatory intent underlying it. The perpetrator must be aware of the specific characteristics of the victim – such as their race, nationality, religion, or lack thereof – and must intend to violate the victim's dignity (or bodily integrity) precisely because of those characteristics, and primarily because of them (Ćwiąkalski, 2017).

Similarly to article 256 of the Criminal Code, this provision contains a closed catalogue of motives underlying the perpetrator's actions, which means that an expansive interpretation of this legal norm – extending its protective scope to groups not explicitly mentioned – is not permissible (Supreme Court, 2022, II KK 534/21).

The rationale behind criminalisation lies in combating deliberate and intentional hostility rooted in racism, nationalism, or religious intolerance, as well as in opposing expressions of superiority and the denial of individuals' right to equal treatment (Kulesza, 2025).

The National Broadcasting Council and the Question of Hate Speech

As mentioned earlier, it is not only criminal laws that set limits to the freedom of expression that is hate speech. Such regulations – albeit much more broadly outlined – can be found in the Broadcasting Act.

According to article 18(1): “Broadcasts or other media content may not propagate actions contrary to the law, to the Polish *raison d'état* or attitudes and views contrary to morality and the social welfare, in particular they may not contain content that incites hatred or violence or that discriminates on the basis of gender, race, skin 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 that incites to commit a terrorist offence”.

Although such restrictions are possible under European law, including art. 10(2) of the European Convention on Human Rights, and art. 31(3) of the Polish Constitution, the effective compliance with democratic standards can be assessed at the stage of application of the law. Indeed, it is crucial to strike the right balance between the legitimate interests of the state or society and freedom of expression – particularly when the decision is to be made by a public administrative authority, subject to subsequent judicial review.

As regards the Chairman's of the National Broadcasting Council activities in detecting and combating hate speech in the media in the years 2016-2024, it appears to be of limited significance. Namely, in 2016, 2018, 2019, 2020, 2021, and 2022 the Authority did not impose any sanctions on broadcasters for violations of Article 18(1) of the Broadcasting Act in connection with content inciting hatred (KRRiT Resolution, 2017; KRRiT Resolution, 2019; KRRiT Resolution, 2020; KRRiT Resolution, 2021; KRRiT Resolution, 2022; KRRiT Resolution, 2023).

In 2017, a single sanctioning decision was issued in this regard (Decision No. DPz-3/2017, 2017; KRRiT Resolution, 2018, pp. 18 and 45).⁶

⁶ The sanction concerned the use of the phrase “dirty, stinking vermin” to describe public television journalists, while public television itself was referred to as a “sewer” – as documented in the official decision of the National Broadcasting Council. It is important to note, however, that *Superstacja* emphasised the satirical nature of the programme and, significantly, pointed out that the broadcast echoed expressions previously used by journalists and commentators affiliated with public television. Regardless of the above, the broadcaster issued an apology for the statements made during the programme.

Although criminalisation of hate speech was undoubtedly rare, this does not imply that the decisions of the Chairman of the KRRiT taken in this respect can be disregarded.

Indeed, the most high-profile decisions were issued in 2023, in connection with broadcasters' applications for license renewal. The actions of the KRRiT taken at that time were widely criticised by the international community, above all the Council of Europe platform to promote the protection of journalism and safety of journalists (COE, 2023) and Reporters without Borders (RSF, 2023). The debate focused on one decision regarding the programme entitled *Pierwsze śniadanie w TOK-u* (Eng. *First Breakfast on TOK* or, considering the play on words, *First Breakfast in Progress*).

This case, engaging with issues such as historical policy and collective memory, may serve as an example of the instrumentalization of hate speech regulations, underpinned by a particular worldview rooted in rightwing populism.

The TOK FM Case

By decision of 28 April 2023 (No. 6/DPz/2023), acting pursuant to Article 53(1) in conjunction with Article 18(1) of the Broadcasting Act, the Chairman of the KRRiT imposed a financial penalty of PLN 80,000 on Inforadio Sp. z o.o. for broadcasting of a programme entitled *Pierwsze śniadanie w toku* aired on 7 June 2022 at 6:40 a.m., which was found to “promote actions contrary to law, views and attitudes inconsistent with morality and the public interest, and to contain content inciting hatred”.

The proceedings were initiated by a complaint lodged by the publisher of a controversial secondary school textbook recommended for teaching a new subject, *History and the Present* (Pol. *Historia i Teraźniejszość* or *HiT*), the content of which was the subject of the broadcast. More specifically, it concerned an analysis of excerpts from the book made available on the publisher's website.

Outline of the programme⁷

In the morning programme, to which an upper secondary school teacher of history and civics was invited, the host opened the broadcast by quoting the following passage: “The European Union promotes atheism and implements

⁷ The course of the broadcast reconstructed after listening to it by the author of the article.

it through bureaucratic and administrative measures. European integration constitutes external oppression, permeated by a Eurosceptic discourse that bears no relation to the realities of establishing the first European organisations in the 1950s. And here I will resort to the flagship expressions: gender ideology, European intellectual perversions”. Subsequently, the host posed a series of probing questions to the guest: “In your opinion, is this a history textbook? A textbook on contemporary issues? On civics? Or rather some form of a manual for xenophobia?”

In response, the guest articulated the first critical statements that later became the basis for the sanction imposed by the Chairman of the KRRiT: “I deeply regret that this new subject (*HiT*) is replacing civics education (Pol. *Wiedza o społeczeństwie* or *WOS*) (...). Students will be learning this historical mush rather than acquiring civic skills that would be useful in their lives. They may emerge proud of being heirs to the legacy of the *Cursed Soldiers*⁸ or as suffering victims who are constantly entitled to something – see: lessons on victimhood after World War II and Germany’s alleged failure to meet reparations claims – yet they will not emerge as competent citizens (...).”

The teacher also expressed surprise at the book’s author, whom he had esteemed for his earlier publications on contemporary history. The journalist added a contextual remark: “a former Member of the European Parliament representing *PiS*”.

The Guest also voiced disappointment with the content of the textbook, despite the promising assumptions outlined in its introduction. As an illustrative example, he referred to the section discussing Martin Luther King’s March on Washington, which concludes with the following reflection: “Today, the word *Negro* is considered offensive (...). Progressive circles and organisations attempt to remove it from literary works; right after there is an addition mentioning Marxist and left-leaning environments, while, the author of a textbook complains, worse words are tolerated, such as ‘f’⁹(...)”.

⁸ *Żołnierze wyklęci* (Eng. *Cursed Soldiers*) – app. 120-180 000 members of Polish anti-communist and independence underground after 1944, who did not accept the conditions of the end of World War II and resisted the Sovietisation of Poland and its subordination to the USSR. Their activities are the subject of debate and controversy. Under this common name lies a diverse group, which includes idealists and heroes, but also, in some cases, criminals. The *Cursed Soldiers* are an important point of identification for the Polish right wing.

⁹ This is a direct reference to the slogans used during the mass women’s strikes that broke out at the end of 2020 following the tightening of abortion laws in Poland.

In this context, the journalist then shared the following, undoubtedly controversial thought: “I have the impression that the intention of [this textbook] is to convince young people to leave the European Union – if not now, then perhaps in a few years. To persuade them that the European Union is evil. To foster an attitude that, I don’t know, might even lead to the extermination of non-heteronormative individuals, as if they were a threat to the healthy fabric of society. Reading this feel, forgive the comparison, somewhat like a manual for the Hitler Youth. At times... not everywhere, but at times”.

Grounds for the decision of the Chairman of the KRRiT

The publisher’s complaint submitted to the National Broadcasting Council triggered approximately six months of correspondence between the broadcaster and the Chairman of the KRRiT, during which new objections were systematically raised.

In the first letter, dated 27 June 2022, the broadcaster denied the allegation of hate speech against the author of the textbook, explaining that the criticism was directed solely at his work. Moreover, although opinions expressed in the programme were unfavourable, yet the criticism was supported by extensive reasoning and quotations taken from the publisher’s website.

In a response dated 23 September 2022, the Chairman of the KRRiT stated that the Council “cannot approve of the dissemination in public debate of such comparisons, which (...) are likely to evoke negative associations in the public mind”. He also issued a “request to avoid on-air expressions and terms that may lead to the sanctioning of hate speech”.

In its letter dated 28 September 2022, the broadcaster denied the supposed “legitimising hate speech”. In his view, while a textbook intended for young people should provide balanced information and an objective presentation of the most significant facts, enabling readers to form their own opinions, it “displays a xenophobic attitude towards certain social groups, races, or genders, thus employing hate speech” instead.

In its reply dated 30 September 2022, the Authority expanded the reasoning, emphasising that “criticism of the textbook is also criticism of its author” and that the limits of criticism are exceeded by “violating the author’s good name through comparing him to the authors of fascist works of the Third Reich”.

The broadcaster responded to this allegation on 10 October 2022, questioning the existence of a legal basis that would allow the authority to raise

new allegations, namely defamation and infringement of the authors personal rights. It also emphasised that criticism of the work is not equivalent to criticism of its author.

Nevertheless, in the letter dated 16 November 2022, the Authority engaged in an overinterpretation of the content of the broadcast, stating that the phrase used there – “a textbook for the Hitler Youth” – virtually imposed on listeners an association between the author and the functionaries of a criminal regime. Meanwhile, acceptable criticism should “devoid of attributing to the discussed book characteristics it does not possess. (...) It is beyond doubt that the textbook (...) in no way promotes Nazi ideology among young people, as was asserted on the TOK FM radio station, since this is the only possible interpretation of the phrase ‘a textbook for the Hitler Youth.’ Such a statement infringes upon the author’s dignity (...)”.

In its last submission to the KRRiT, the broadcaster indicated that “the Hitler Youth organisation continues to be widely recognised as an example of the compulsory indoctrination of young people by a totalitarian system. Consequently, listening to the entire statement concerning the criticised textbook left no doubt for the audience that this comparison was employed precisely in that sense”. As an aside, broadcaster expressed surprise at the Chairman’s actions aimed at safeguarding the honour and dignity of the textbook’s author – who is the only one with the authority to protect his good name.

Ultimately, on 2 February 2023, the Authority informed the broadcaster of the initiation of proceedings concerning the imposition of a financial penalty.

Decision of April 23, 2023 - No 6/DPz/2023

According to the Chairman of the KRRiT, the broadcast violated Article 18(1) of the Broadcasting Act by promoting actions contrary to the law, views and attitudes inconsistent with morality and the public interest, and by containing content inciting hatred and discriminating based on political views, using 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 somewhat like that, not everywhere, but sometimes”.

Regarding the first statement, the Authority alleged a violation of the dignity of World War II victims through the contemptuous characterisation of them as “suffering”, for in the civilised world it is a recognised norm to seek redress from the perpetrators. As the Authority stated, “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”.

As for the second quote, in the opinion of the Chairman of KRRiT the fact that the author of a textbook held a mandate as a Member of the European Parliament on behalf of *PiS* was an entirely irrelevant detail for the critique of his work; the sole purpose of giving this information was to evoke a specific association in the listener's mind. In the eyes of the Authority, a more serious allegation, however, concerned the creation of the following chain of associations: “a former *PiS* MEP, whose intention is to persuade young people to exterminate LGBT individuals, and who writes a textbook for the Hitler Youth, constitutes the propagation of content inciting hatred”. The intended effect on the listener is to evoke the following connotation: *PiS* MEP – extermination of LGBT individuals – dissemination of Nazi propaganda. According to the Authority, such content affects not only the author but also people who share his views, thus meeting the criteria for promoting material that discriminates based on political beliefs.

In conclusion, the Authority found that the purpose of the statements analysed was to: “violate the dignity and humiliate the victims of the Second World (...)”; „violate the dignity of a specific individual 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”; incite 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 (...) and linking the name of the political party with incitement to the extermination (murder/annihilation) of LGBT individuals and the dissemination of Nazi content (...)”.

Moreover, the Chairman of the KRRiT emphasised 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 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. (...)”.

Court judgment of July 9, 2024 – XXVI GC 837/23

By the judgment of the District Court in Warsaw dated 9 July 2024, the decision of the Chairman of the National Broadcasting Council of 28 April 2023 was annulled in its entirety. After conducting a detailed analysis of the broadcast, the court reached the following conclusions, supported by extensive legal reasoning:

Firstly, Polish law not only protects every form of press criticism but also criminalises any obstruction or suppression thereof.

Secondly, despite the broad protection of freedom of expression, it remains subject to certain limitations – among others, those set out in the Broadcasting Act, which, however, must be interpreted in light of the jurisprudence of the Polish courts and the European Court of Human Rights. From this perspective, it is necessary to consider the requirements of pluralism, including tolerance for ideas that are shocking or disturbing. Exaggeration and a sharp tone in public debate are permissible. The boundaries of criticism are at their widest when its subject is those in power.

In case law, even harsh criticism is considered lawful if it aims at improving reality and the means of expression employed are justified by the significance of the issues addressed. Press criticism is a cornerstone of a democratic state, and its restrictions should be minimal for individuals holding public office. Importantly, negative statements are not subject to a truthfulness test. Nevertheless, acceptable criticism should serve the public interest and be fair (see also: Judgment of the Supreme Court of 28.11.1990, I CR 436/90; Judgment

of the Supreme Court of 10.10.2019, I CSK 482/18; Judgment of the Supreme Court of 30.04.202, I CSK 679/20). The District Court in Warsaw also referred to the view of the Constitutional Tribunal, according to which “there is no free, unrestricted, democratic debate in a situation where the level of emotion and the vividness of the language used would be subject to a predetermined standard, formally and bureaucratically imposed by public authorities” (Judgment of the Constitutional Tribunal of 11 October 2006, P 3/06).

Thirdly, the Court emphasised the role of journalists and the media in a democratic society, as obliged to convey information and opinions on topics of public interest. Even more cautious should be any state interference with freedom of the press.

Regarding the disputed broadcast, the court pointed out the Authority's peculiar evolution and change of position, as well as basing it on non-existent factual grounds: “(...) entirely new assertions and assessments appeared [in letters to the broadcaster]. (...) the Authority's argumentation relies on content that is absent from the broadcast, and the reasoning of the decision constitutes an attempt to find justification for imposing a penalty for individual critical statements concerning the textbook for young people”.

The Court held that the disputed broadcast neither violates Article 18(1) of the Broadcasting Act nor infringes upon the dignity of the textbook's author, as this provision generally concerns the public interest rather than individual interests, such as the personal rights of a specific natural person.

In interpreting Article 18(1) of the Broadcasting Act, the Court noted that its hypothesis encompasses solely the propagation, and not the dissemination, of the actions specified therein. Thus, an assessment must relate to the content of the entire broadcast rather than to individual thoughts expressed within it, so that “after its airing one could conclude that it encouraged viewers to undertake the actions presented there, or that the broadcast was conducted in such a way as to imply that the actions shown should be regarded as proper and justified, worthy of imitation”.

As the Court observed, “the Authority (...) attempted to ascribe to the entire broadcast content that was discriminatory, inciting hatred, or promoting actions contrary to law and morality; however (...) insofar as certain content appears only incidentally (...) it cannot be regarded as “propagation” within the meaning of that provision”. The subject of the broadcast was participants' opinions on publicly available excerpts from a new textbook for young people. The mere expression of an opinion does not automatically entail the conclusion

that there was the propagation of unlawful actions or specific views. Likewise, the very fact of “agreeing” – contrary to the Authority’s position – cannot be regarded as “propagation”. Moreover, the Authority itself refers to two statements rather than to the entire broadcast, indicating the incidental nature of the analysed excerpts.

Therefore, in the Court’s assessment, “at no point in the broadcast did its host or guest urge viewers to undertake any actions or adopt specific attitudes or views; they did not encourage imitation or acceptance of their perspective. (...) It was a reasoned critique of several excerpts from the forthcoming textbook, which had been posted on the publisher’s website (...)”.

As regards the allegation concerning the use of the term “martyrs” in reference to the victims of World War II and the Authority’s interpretation of this statement as violating the dignity of those victims, or even as antisemitic, the Court found no grounds for such conclusions. As it stated: “the Authority based its argument on a misunderstanding of the broadcast’s content or applied a far-reaching overinterpretation of a fragment, relying on a statement by the guest taken out of context (...)”. A proper assessment of the broadcast requires “evaluating the contested statement based on its logical sense and factual point of reference”. This approach led the Court to find that “the guest’s statement did not concern the victims of World War II but rather the anticipated attitudes of high school students (...). During the broadcast, no one insulted or demeaned the victims of World War II. The broadcast contained no such content”.

Similarly, this applies to charges that: the broadcaster expressed the view that teaching about World War II is unjustified; supposedly attributed to the textbook’s author the dissemination of Nazi content; and, finally, inferred from the mere mention of the author’s political affiliation that the broadcast propagated hate speech both against him and against individuals sharing the views of the party with which he was associated.

Recalling the subsequent themes that appeared in the broadcast, the Court found no attempt to attribute Nazi content to the book or its author. It acknowledged that the “comparison to a Hitler Youth textbook (...) fell within the limits of freedom of expression, all the more so as it was the result of emotion and an expression of opposition to presenting politically charged content to young people as part of a compulsory subject – content offered instead of a subject previously aimed at fostering civic attitudes among high school students, as noted by the guest. The participants of the broadcast provided

reasoned arguments for the critical and unfavourable opinions expressed regarding the textbook (...).”

The Court completely rejected the attempt by the Chairman of the KRRiT to attribute hate speech to the journalist against the textbook's author and supporters of the *PiS* party. The Court held that “the Authority appears to confuse hate speech with permissible criticism of the actions of public authorities – in this case, in education and youth development. Civic opposition to the inclusion of politically charged content in a textbook for high school students does not constitute the propagation of unlawful actions or views contrary to morality or good customs, even if the form of such opposition was sharp and emphatic, as it still falls within the limits of freedom of expression and permissible criticism”.

Conclusions

R. Eatwell and M. Goodwin observe that national populists prioritise culture and the interests of the nation. Simultaneously, they are concerned about hyperethnic change, cosmopolitanism and globalisation (Eatwell, Goodwin, 2020, pp. 9–12)¹⁰. The literature also highlights the tendency of populist movements to mythologise the nation. In this perspective, the nation is portrayed as an idealised monolith embodying virtues such as heroism and bravery. Those who contest this narrative are effectively positioned outside the boundaries of the national community (Futyr, 2017, p. 220). In an interesting study, K. Jaskulowski and P. Majewski examine the role of state-sponsored memory politics in establishing a new hegemonic framework for Polish collective memory. According to the authors “In *PiS*' view, history is above all a monumental history of national heroes fighting internal and external enemies. The heroes represent an ethnically homogeneous nation that has always only suffered and been a victim, never an aggressor” (Jaskulowski & Majewski, 2023, p. 462, 473).

There is no doubt that the broadcast struck at the most sensitive chords and offered a sharp critique of the national-populist worldview. It is therefore unsurprising that part of the audience responded negatively, and that this reaction was subsequently followed by action by the KRRiT.

¹⁰ R. Eatwell and M. Goodwin (2018, pp. 20–28) believe that the development of national populism has been driven by four historical developments – the “four Ds”: distrust, destruction, deprivation, de-alignment.

Nevertheless, the assessment of this broadcast through the lens of provisions on combating hate speech raises serious doubts.

As the court observed, the Chairman of the KRRiT not only failed to demonstrate the conditions required by Article 18(1) but also attempted to attribute content to the broadcast that was not actually mentioned.

The way the proceedings were conducted, as well as the legal basis of the decision, seem to indicate an attempt to use provisions aimed at combating hate speech instrumentally to suppress criticism.

Meanwhile, although the criminalisation of hate speech constitutes an interference with freedom of expression, it may be justified by the need to safeguard public order and protect others' rights. Its defining characteristic lies in the deliberate intent to provoke extremely negative, hostile emotions in third parties toward individuals belonging to one of the groups enumerated in the relevant legal provisions.

However, hate speech cannot be equated with mere criticism or disapproval, even if expressed in harsh or provocative language. The latter falls within the scope of freedom of expression and the right to criticism, both of which should be safeguarded by state authorities.

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INSTRUMENTALIZACJA PRZEPISÓW MAJĄCYCH NA CELU ZWALCZANIE MOWY NIENAWIŚCI W DZIAŁALNOŚCI PRZEWODNICZĄCEGO KRAJOWEJ RADY RADIOFONII I TELEWIZJI: KAZUS RADIA TOK FM (2023 R.).

Streszczenie

Krajowa Rada Radiofonii i Telewizji (KRRiT) jest konstytucyjnym organem powołanym do stania na straży wolności słowa, prawa do informacji oraz interesu publicznego w radiofonii i telewizji. Jej głównym celem jest zapewnienie otwartego i pluralistycznego charakteru radiofonii i telewizji. Równocześnie nadawcy zostali poddani szerego-

wi restrykcji. W szczególności, audycje lub inne przekazy nie mogą zawierać treści nawołujących do nienawiści lub przemocy lub dyskryminujących. Ocena w tym przypadku należy do Przewodniczącego KRRiT, który ma kompetencje do nakładania kar pieniężnych na nadawców. Wskazane powyżej kryteria, w dużej mierze subiektywne, można obiektywizować, uwzględniając inne przepisy prawne i orzecznictwo. Nie ulega jednak wątpliwości, że sposób interpretacji tych pojęć zależy od przyjętej perspektywy analitycznej, a tym samym – czy opierają się one na zasadach liberalnej demokracji, czy też są kształtowane przez perspektywę charakterystyczną dla prawicowego populizmu. Analiza decyzji Przewodniczącego KRRiT w latach 2016–2023, a zatem w okresie dwóch kadencji KRRiT przypadających na czas rządów Prawa i Sprawiedliwości, wskazuje, że – wbrew oczekiwaniom – Przewodniczący KRRiT w ocenie audycji co do zasady nie odwoływał się do przepisów zabraniających mowy nienawiści. W istocie tylko jedna decyzja – ta wydana w sprawie Tok FM w 2023 r. – może służyć za przykład instrumentalnego traktowania przepisów mających na celu zwalczanie mowy nienawiści, u źródeł której mogą tkwić założenia populistyczne.

Słowa kluczowe: mowa nienawiści, media, KRRiT, populizm

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