IV C 608/19

JUDGMENT

IN THE NAME OF THE REPUBLIC OF POLAND

13 March 2024

The Regional Court in Warsaw, 4th Civil Division,
composed of: Judge of the Regional Court Magdalena Kubczak
recorder: court clerk [anonymised]
having heard on 13 February 2024, in Warsaw
the case brought by Społeczna Inicjatywa Narkopolityki (*Civil Society Drug Policy Initiative*), an association in Warsaw, against Meta Platforms Ireland Limited (formerly: Facebook Ireland Limited) seated in Ireland
for protection of personality rights,
orders as follows:

1. the defendant company, Meta Platforms Ireland Limited, must unblock and restore all communication channels established by Społeczna Inicjatywa Narkopolityki on Facebook and Instagram, and unblock and restore all content published on these communication channels by Społeczna Inicjatywa Narkopolityki along with all comments posted thereunder by other Facebook and Instagram users, including followers and likes; Meta Platforms Ireland Limited must unblock and restore:

a) the original FB page, i.e. the SinPL page on Facebook, which was deleted on 14 March 2018

b) the original group, i.e. the "SIN- selekcja talerzy" group on Facebook, which was deleted on 13 March 2018

c) the second FB page, i.e. the "Społeczna Inicjatywa Narkopolityki" page on Facebook, which was deleted on 15 March 2018

d) the second group, i.e. the "Talerze" group on Facebook, which was deleted in autumn

2018

f) the second IG account, i.e. the SinTalerze account on Instagram, which was deleted on 16 January 2019

2. the defendant company, Meta Platforms Ireland Limited, must publish a statement as follows: "Meta Platforms Ireland Limited (formerly, Facebook Ireland) apologizes to Społeczna Inicjatywa Narkopolityki (SIN) for blocking and deleting SIN's Facebook and Instagram accounts. The decision to block was unjustified. Meta Platforms Ireland Limited (formerly, Facebook Ireland) apologizes to all users who follow SIN's activities on Facebook and Instagram for preventing them from reading the content published by SIN. Meta Platforms Ireland Limited (formerly, Facebook Ireland Limited)", within one month of the judgment becoming final on Facebook and Instagram in the following way:

a) the statement must be visible to all users visiting the pages, groups or accounts of Społeczna Inicjatywa Narkopolityki;

b) the statement must be displayed in a separate pop-up window or at the top of the Facebook and Instagram sites;

c) the statement must be written in a font that contrasts with the background; the size and typeface of the font must ensure that the statement is clearly legible;

d) the defendant company Meta Platforms will make every effort to ensure that the statement is visible to all users visiting the pages, groups or accounts of Społeczna Inicjatywa Narkopolityki and is not blocked by users' software or browsers;

3. the remainder of the claim is being dismissed;

4. the defendant company, Meta Platforms Ireland Limited seated in Ireland, must pay to the Społeczna Inicjatywa Narkopolityki association seated in Warsaw the amount of PLN 1,320 (one thousand three hundred and twenty) as costs of court proceedings;

5. the defendant company, Meta Platforms Ireland Limited seated in Ireland, must pay to the State Treasury, Regional Court in Warsaw, the amount of PLN 8,841.56 (eight thousand eight hundred forty-one and 56/100) as court costs.

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GROUNDS

In its statement of claim dated 7 May 2019 for the protection of personality rights, filed against Facebook Ireland Limited seated in Ireland, the plaintiff, Społeczna Inicjatywa Narkopolityki (hereinafter also SIN), moved that Facebook Ireland Limited must:

A. cease to infringe the plaintiff's personality rights by unlawfully blocking or deleting pages, groups and accounts created by the plaintiff on Facebook (hereinafter also FB or Fb) and Instagram (hereinafter also IG) and unlawfully blocking or deleting content published by the plaintiff on its pages, groups and accounts on Facebook and Instagram,

B. unblock or restore all pages, groups and accounts created by the plaintiff on Facebook and Instagram, as well as unblock or restore all content published on these pages, groups and accounts by the plaintiff along with any comments posted thereunder by other Facebook and Instagram users; in particular the defendant must unblock or restore, including followers and likes:

1. the original FB page, i.e. the SinPL page on Facebook, which was deleted on 14 March 2018
2. the original group, i.e. the "SIN- selekcja talerzy" group on Facebook, which was deleted on 13 March 2018
3. the second FB page, i.e. the "Społeczna Inicjatywa Narkopolityki" page on Facebook, which was deleted on 15 March 2018
4. the second group, i.e. the "Talerze" group on Facebook, which was deleted in autumn 2018
5. the second IG account, i.e. the SinTalerze account on Instagram, which was deleted on 16 January 2019

C. publish a statement of apology in the manner specified in the statement of claim (statement of claim sheet 23v).

In the justification, the plaintiff stated that the relief sought by the statement of claim included the protection of the plaintiff's personality rights, including a sense of confidence and

security, right of expression *[Polish: swoboda wypowiedzi as opposed to 'wolność wypowiedzi' translated as 'freedom of expression']* and the plaintiff's recognition and reputation, which were infringed by the defendant's removal of content published by the plaintiff on the social media managed by the defendant, i.e. Facebook and Instagram.

In the statement of fact, the plaintiff referred to the defendant's removal of the plaintiff's communication channels, although they were used for a legal and socially useful activity which was not prohibited by the terms of service of these media; further, the removals were arbitrary and based on non-transparent criteria, rather than laws or agreements. The plaintiff alleged that since the defendant had not provided any explanation or response to the plaintiff's appeals, the defendant had prevented the plaintiff from understanding its situation and the reasons why its content was censored. Further, the removals reduced the number of the plaintiff's audience from ca. 16,000 to 2,000, and the defendant thus infringed the plaintiff's sense of security and right of expression. Further, there is no alternative information channel which would be equally popular and have a similar reach that would enable the plaintiff to reach the target group. The plaintiff does not raise the objection of inadmissibility of removing content in accordance with the Community Standards, but the objection of removing content without any warning or explanation, irrevocably, in a way that violates the users' personality rights.

By decision dated 11 June 2019, the motion for injunctive relief was granted in its major part (decision, sheet 57). The defendant's appeal against this decision was rejected (appeal, sheets 609-756, sheets 759-778, reply to the appeal, sheets 901-1040, decision, sheets 1054, 1068).

As it was ordered to serve the statement of claim in Polish, the defendant returned the copies of the documents served on it pursuant to Article 8 (1) of the Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 and requested that the statement of claim be served along with a translation (order, sheet 64, reply, sheet 72, sheet 365, sheet 203).

Due to the defendant's refusal to accept the documents in Polish, it was ordered to serve the statement of claim after the documents were translated. A copy of the statement of claim was served on 8 September 2020 (order, sheet 164, proof of service, sheets 790-793, confirmation of service – statement of defence, sheet 795).

In the statement of defence, the defendant moved that:

- the statement of claim be dismissed due to the lack of jurisdiction of Polish courts – since the parties executed a jurisdiction clause based on which Irish courts have the exclusive jurisdiction;
- the claim be dismissed because the values listed in the statement of claim, i.e. right of expression, a sense of confidence and security, recognition, do not constitute personality rights, and the personality right of the plaintiff's reputation had not been threatened or violated. Further, the defendant provides hosting services for Facebook and Instagram in a legal manner. The defendant alleged that the plaintiff, as an active user of Facebook Ireland's sites, systematically posted content that facilitated and encouraged others to consume illegal drugs, thus repeatedly violating the community standards, and the defendant removed content posted by the plaintiff in the public interest (statement of defence, sheets 794-896).

By decision dated 22 January 2021, the plaintiff's motion to change the injunctive relief was rejected (decision, sheet 1049).

As a result of the Presiding Judge's order, the parties filed preparatory letters along with motions for evidence (order, sheet 1079, plaintiff's letter dated 19 November 2011, sheet 1153, defendant's letter, sheet 1184).

Ultimately, the parties upheld their positions (plaintiff's letter dated 7 March 2024, sheet 1517, defendant's letter dated 5 March 2024, sheet 1529).

The Court established as follows:

Społeczna Inicjatywa Narkopolityki is an association that evolved from a university students' research club. It was registered in 2012 (testimony of witness [anonymised], sheet 1509, [anonymised], sheet 1513). The Association's statutory tasks include addiction prevention and harm reduction with respect to the use of psychoactive substances (statute - exhibit 4 to the statement of claim, testimony of the plaintiff's representative, sheet 1479).

Społeczna Inicjatywa Narkopolityki operates in several cities and online (testimony of the plaintiff's representative, sheet 1479).

Społeczna Inicjatywa Narkopolityki performed tasks in the field of public health on the basis of agreements with the Municipality of the City of Gdańsk (in 2020), the City of Warsaw (in 2019) (agreements – exhibits 1 and 2 to the reply to the complaint, sheet 922).

Społeczna Inicjatywa Narkopolityki co-authored the report entitled *„Dopalamy wiedzę. Pilotaż testowania substancji psychoaktywnych pozyskanych bezpośrednio od użytkowników tzw. dopalaczy w Polsce" [We are high with knowledge. Pilot testing of psychoactive substances obtained directly from users of so-called "legal highs" in Poland]* in 2019 (report - exhibit 3 to the reply to the complaint, sheet 926).

The Association provides information on all the effects of taking psychoactive substances – not only the negative ones. The Association's information and activities are based on those in Portugal, where a harm reduction policy, focused on prevention and treatment, and not on punishing consumers of psychoactive substances, with methods recognised by non-governmental and international organisations, has been implemented since 2001. The idea is that providing substantive information, without lecturing, is a way to provide assistance to those concerned in a more effective manner. Therefore, the Association operates, among others, on site – providing information at festivals, distributing contact details to addiction advice centres to people who would otherwise not accept such information. (testimony of witness [anonymised], sheet 1509, [anonymised], sheet 1513, testimony of the plaintiff's representative, sheet 1479, article entitled *„Nie tylko marihuana…"*- exhibit 1 to the statement of defence, sheet 795).

Harm reduction refers to policies, programmes and practices that aim to minimise the negative health, social and legal impacts associated with drug use, drug policies and drug laws. Harm reduction encompasses a range of health and social services and practices that apply to illegal and legal psychoactive substances. These include, among others, supervision of consumption sites, needle and syringe programmes, housing initiatives, drug control, overdose prevention and reversal, psychosocial support and information on safer drug use (printout of the article "What is harm reduction?" from the website of the Harm Reduction International organisation – exhibit 21 to the defendant's preparatory letter, sheet 1339).

The Association's activities were conducted at festivals and events or on the Internet – through the Facebook page, among others, volunteers applied in 2018 (testimony of witness [anonymised], sheet 1513).

In 2011, the Association created the first SinPL page on Facebook (address facebook.com/SinPL), which was removed by the defendant on 14 March 2018. The page contained information about what SIN was doing (printout – exhibit 5 to the statement of claim). The page displayed a message that the materials had been removed because the published content infringed the

Fb community standards and because individuals cannot buy and sell prescription drugs or marijuana on Fb (printout – exhibit 6 to the statement of claim). Also, a message that the page had been blocked because its content infringed the terms of service and community standards was displayed (printout – exhibit 7 to the statement of claim). In addition, a message that the page had been removed was displayed (printout – exhibit 9 to the statement of claim).

The second page - „Społeczna Inicjatywa Narkopolityki" (address: facebook.com/Społeczna-Inicjatywa-Narkopolityki-151...) was created by the plaintiff on 14 March 2018 and removed by the defendant on 15 March 2018. A message was displayed that the page had been removed because the recent activity on the page was inconsistent with the FB terms of service (printout – exhibit 10 to the statement of claim).

The first group called "SIN-sekcja talerzy" (address: facebook.com/groups/468999743481746/?...) was created on Facebook in the first quarter of 2018 and was removed by the defendant on 13 March 2018. A message was displayed that the group had been removed because the terms of service and community standards had not been complied with (printout – exhibit 8 to the statement of claim).

The second group called "Talerze" (address: www.facebook.com/groups/talerze/) was created by the plaintiff on 14 March 2018 and removed by the defendant in autumn 2018.

The "SinTalerze" account on Instagram (address: www.instagram.com/sintalerze/) was created by the plaintiff in November 2018 and removed by the defendant on 16 January 2019 (printout – exhibit 11 to the statement of claim, testimony of witness [anonymised], sheet 1509, information provided in the reply to the complaint, sheet 904, not disputed by the defendant).

After the third page was created on FB, the Association published information on the page that SIN dealt with harm reduction (printout – exhibit 12 to the statement of claim).

On the official SIN Instagram account, a message that the materials had been removed was displayed in March and April 2018 (printout – exhibit 8 to the defendant's preparatory letter, sheet 1249).

Before the pages were deleted, a message that the pages were inconsistent with the Facebook community guidelines was displayed. Previously, when a SIN website was closed, it was possible to

click on the "appeal" button. After doing that, the website administrator received information that the appeal would be considered. There was no other feedback than the information about the content inconsistency. The Association tried to contact Facebook using the technical error report form and by sending letters to Facebook's offices in Poland and the USA and publishing a petition on the Internet together with other entities. Facebook's office in Poland provided information that Facebook Poland had nothing to do with the facebook.com website, and no response was received from the US offices. Content published on Instagram was removed as well. It was not possible to appeal on Instagram (testimony of witness [anonymised], sheet 1509, petition – exhibit 14 to the statement of claim, sheet 48, exhibit 12 to the defendant's preparatory letter, sheet 1287, screenshots – exhibit 13 to the defendant's preparatory letter, sheet 1292, exhibit 7 to the statement of claim, exhibit 10 to the statement of claim, exhibit 13 to the statement of claim).

The Facebook information channels were used to announce events and conduct discussions; those interested had an opportunity to read and comment on the information posted there and to ask questions. The Association had a wider reach on Facebook than on Instagram. The majority of the target group was concentrated around the Facebook fanpage. The target group were consumers of psychoactive substances. On Instagram, the Association was able to reach those who would not have been reached otherwise. Facebook was also used to recruit volunteers and post advertisements; a store was run also on the website. There was an Instagram profile called "Talerze", where warnings about dangerous substances were posted. The funds from sales of tests used to check the composition of psychoactive substances were allocated to statutory activities. The purpose of the sale was to reach people who would not otherwise be interested in educational and preventive content. The tests contained information that psychoactive substances should not be consumed (testimony of witness [anonymised], sheet 1509, [anonymised], sheet 1513).

Since the information channels were removed, the Association lost volunteers. Further, the access to information published on the website *[was lost]*. At that time, in 2018, the Association implemented a project of the National Bureau for Drug Prevention, which was financed by the Ministry of Health. The aim of the project was to examine users of the so-called "legal highs". One of the components of the project was to collect questionnaires and samples of substances from users during festivals in order to analyse them at the National Institute of Medicines. The collection of questionnaires was to be promoted through the Association's website, the project was not completed. In addition, as a result of the liquidation of communication channels, the store's activities were separated. Test are sold by a company founded by former Association members (testimony of witness

[anonymised], sheet 1513, printout of the page – exhibits 25, 26, 28 to the defendant's preparatory letter, sheets 1371, 1385, 1410, an excerpt from the National Court Register, sheet 1264).

Currently, there is a Facebook page called SIN-Społeczna Inicjatywa Narkopolityki and an Instagram account called sin.org.pl. (testimony of witness [anonymised], sheet 1509, printout – exhibits 6 and 7 to the defendant's preparatory letter, sheets 1229, 1240). The current page does not have as many followers as before. Previously, the page had ca. 14,000 followers. Archival content is also not available for the Association. The Association has a YouTube channel, but it is not very active (testimony of the plaintiff's representative, sheet 1479).

In 2019, 2020 and 2021, the Association posted information on the rules for taking psychoactive substances on its official Fb page (printout – exhibits 16, 17, 18, 22, 24 to the defendant's preparatory letter, sheets 1307, 1313, 1316, 1351, 1367, printouts – exhibit 4 to the statement of defence, sheet 795). The Association posted such content in June 2017 and December 2018. on the Instagram account (printout – exhibits 7, 5 and 6 to the statement of defence, sheet 795). Further, the Association publishes such information on the Instagram account (printout – exhibits 19 and 27 b to the defendant's preparatory letter, sheets 1424, 1394).

In addition, SIN has official YouTube and X (previously Twitter) accounts (printout – exhibits 4 and 5 to the defendant's preparatory letter, sheets 1213, 1221).

On 30 December 2018, the Association's post was published on Instagram, which included someone else's post "Witam Mireczki" found at wykop.pl website, next to which, on the right, the Association published its own information (printout of the post, sheet 1498, testimony of witness [anonymised], sheet 1509).

In order to create a Facebook or Instagram account, a user must accept the terms of service of Facebook or Instagram, respectively; Facebook's terms of service include Facebook's community standards, and Instagram's terms of service include Instagram's community rules. The purpose of Facebook's community standards is to encourage users to speak out and build a safe environment. The purpose of the Instagram's community rules is to enable users to co-create and protect the community (a fact admitted in the statement of defence, p. 795, Facebook's community standards as of 2019 and Instagram's community rules as of 2020 – exhibits 7 and 8 to the defendant's complaint against the injunctive relief, sheet 605, view of messages from websites in the event of an attempt to display

removed content – exhibits 9 and 10 to the defendant's complaint against the injunctive relief, sheet 605).

In August 2017, Facebook's community standards were different (standards - exhibit to the plaintiff's preparatory letter, sheet 1153).

Section 5 of the Facebook terms of service of 17 March 2018 stipulates that it is prohibited to publish content or perform any activities which are illegal. Facebook also reserved the right to remove any content or information published on Facebook by a user if it is deemed by the website to be contrary to this statement or terms of service (printout – exhibit 15 to the statement of claim, exhibit 9 to the defendant's preparatory letter, sheet 1259).

An article published on Facebook on 24 April 2018 contained information that it is not allowed to share photos or videos showing the use of non-medicinal substances, or to describe their use or encourage others to do so, and it is also not allowed to sell, trade in, or encourage the purchase of any drugs - whether non-medical, medical, or marijuana (printout – exhibit 11 to the defendant's preparatory letter, sheet 1274).

In May 2018, the Facebook terms of service was changed again as a result of the entry into force of the GDPR (printout of the article "New Facebook terms of service..." – Exhibit 3 to the defendant's preparatory letter, sheet 1205, view of the announcement regarding the update of the terms of service - Exhibit 2 to the defendant's preparatory letter, sheet 1203).

The terms of service of 15 January 2019 contain a prohibition on using Facebook's "products" to perform activities or share content that breaches Fb's terms of service, community standards, other terms and policies applicable to FB users; that is unlawful, misleading, discriminatory, or fraudulent, that infringes or breaches someone else's rights. If it is determined that a user violated the terms of service or policies, FB may take action in relation to the user's account, including to suspend access to or block the account (printout - Exhibit 10 to the defendant's preparatory letter, sheet 1264).

Section 15 of the Facebook's terms of service of 17 March 2018 as amended on 30 January 2015 provides for the jurisdiction of US courts (the District Court of the Northern District of California or the state court of San Mateo County) in matters of any claims, causes of action or disputes arising from the Facebook's terms of service (printout – exhibit 15 to the statement of claim).

The Facebook's terms of service effective as at 19 April 2018 stipulate that if the user is a consumer and resides in an EU Member State, the laws of that country shall apply to any claim, action or dispute the user has with Facebook in connection with the FB terms of service or products, and the user may request that its claim be heard in any court of competent jurisdiction in that country. In all other cases, the user acknowledges that the claim will be resolved by an Irish court (printout – exhibit 16 to the statement of claim, exhibit 6 to the defendant's complaint against injunctive relief, sheet 609).

The same regulation is included in Instagram's terms of service effective on 19 April 2018 (printout – exhibit 17 to the statement of claim, exhibit 6 to the defendant's complaint against injunctive relief, sheet 609).

There are other public portals: LinkedIn, X (previously, Twitter), Pinterest, YouTube, TikTok, Snapchat. YouTube is a video service, where users can publish video materials and discuss them. Users can run their own video channels, cooperate with other YouTubers-influencers, present ads. Users of X can communicate instantly in a short and concise form. They can get information immediately. The channel is popular among journalists, politicians, press officers. LinkedIn is used to build a business position and develop a professional career. It is popular among management staff. Snapchat is an application used to send videos and photos. On TikTok, users can share short video spots – videos of ca. 15-seconds (indisputable - a "Guide to social media in Poland" 2019/2020, prepared by IAB Polska's Social Media working group – exhibit 6 to the reply to complaint, sheet 953).

Founded in 2004, Facebook is currently the largest global social networking site with the highest total number of active users. In order to use Facebook, a user must register and create a personal profile to interact with other users, who can be added as "friends". In addition, users can join various groups. Users can publish their own content, share what others have published, use numerous applications, including social games and other services, such as Instagram. The Polish version of the site has been available since 2008 (information taken from a "Guide to social media in Poland" 2019/2020, prepared by IAB Polska's Social Media working group – exhibit 6 to the reply to complaint, sheet 953, article entitled „Facebook od 10 lat w Polsce" *[10 years of Facebook in Poland]*- exhibit I.3 to the plaintiff's letter dated 6 August 2019).

Facebook offers, among others, the following functions:

- page (fanpage): a company's or organisation's "own" page where it can publish content using statistical graphics or videos, redirect outside Facebook, animate discussions, moderate comments and content posted by users;

- event - a subpage of a specific event (e.g. fair, concert) where information about the event and posts can be published and guests invited;

- groups - places gathering users interested in a given topic. The site administrator has the option of creating a related group to enable users to discuss freely;

-store - a tab where users can place products and redirect other users from Facebook to the store website (information taken from a "Guide to social media in Poland" 2019/2020, prepared by IAB Polska's Social Media working group – exhibit 6 to the reply to complaint, sheet 953).

Created in 2010, Instagram enables to exchange photos and videos with friends and to create a social networking site with people from all over the world. Since 2012, Instagram has been owned by Facebook. It has been available in Poland since 2008. Each user creates a profile where their photos are visible, and also follows the news, where the latest photos, posts from friends and profiles they follow appear. Instagram enables interactions through comments under posts and private messages (information taken from a "Guide to social media in Poland" 2019/2020, prepared by IAB Polska's Social Media working group – exhibit 6 to the reply to complaint, sheet 953).

Facebook and Instagram communicate with their users in Poland in Polish, accounts are set up in Polish, and instructions and guides on how to do it and the terms of service are also in Polish. The company's legal department in Ireland employs lawyers who speak Polish (indisputable, exhibits I.1-I.15 and I.16-I.21. to the plaintiff's letter dated 6 August 2019, sheet 217).

Facebook Ireland Limited was founded in 2008 and its registered office is in Dublin. The company operates as a limited company (certificate of incorporation, sheet 642).

Facebook Ireland Limited changed its name to Meta Platforms Ireland Limited on 4 January 2022 (certificate of incorporation along with a translation, sheet 1174).

After the pages were removed, another user impersonated the Association on Facebook (printout of information from the Hyperreal website, exhibit 4 to the reply to the complaint, sheet 948).

The court established the above facts on the basis of the aforementioned evidence, which was reliable in its opinion. Neither party submitted any other motions for evidence. Only some of the content published by the plaintiff (the Association) on its pages and account could be determined because it was removed by the defendant without archiving it. A printout (exhibit 11) with some of the removed content is attached to the defendant's letter - the complaint against the decision on injunctive relief. However, it does not show where and when the content was published by the plaintiff. The remainder of the dispute mainly concerned the legal assessment of the existing facts.

The Court found as follows:

With regard to the objection of the lack of jurisdiction of the Polish court, based on which the statement of claim was to be dismissed under Article 1099 (1) of the Polish Code of Civil Procedure, it was found as follows:

In justifying the jurisdiction of the Polish court, the Plaintiff referred to the provisions of Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ EU.L.2012.351.1) and supported its argument with the grounds to the judgment of the Court of Justice of 25 October 2011 in case C-509/09.

Pursuant to Article 7 (2) of the said Regulation, a person domiciled in a Member State may be sued in another Member State in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur.

According to the judgment of the Court of Justice of 25 October 2011 in case C-509/09, the rule of special jurisdiction laid down, by way of derogation from the principle of jurisdiction of the courts of the place of domicile of the defendant, in Article 5(3) of Regulation 44/2001 (currently, Article 7 (2) of Regulation 1215/2012), is based on the existence of a particularly close connecting factor between the dispute and the courts of the place where the harmful event occurred, which justifies the attribution of jurisdiction to those courts for reasons relating to the sound administration of justice and the efficacious conduct of proceedings. Further, a person who has suffered an infringement of a personality right by means of content placed online on an internet website has the option of bringing an action for liability, in respect of all the damage caused, before the courts of each Member State in the territory of which content placed online is

or has been accessible. The consequences of an infringement of a personality right by means of the internet arise not only at the place where the infringer is established, but also at the place where the alleged victim has his centre of interests, which in the case of media providing wide possibilities for disseminating publications should be considered the area where the public has the opportunity to read the content (infringing content in the opinion of the alleged victim) (a similar opinion was expressed by the Supreme Court in its considerations in the context of the connecting factor of the place of the event within the meaning of Article 7 (2) of the Regulation in the resolution of 15 December 2017, docket No. III CZP 82/17, published in: OSNC 2018 No. 10 item 93).

Although this case does not concern infringement of personality rights by placing infringing content on the internet, but infringement of personality rights by removing content from the internet, it should be assumed that the jurisdiction of a Polish court is admissible pursuant to the aforementioned Article 7 (2) for the following reasons. Both parties are based in Member States, and the plaintiff also operates in Poland, so the plaintiff's centre of interests is within the jurisdiction of this Court. The public availability of content placed on the internet means that the content is also available at the place where the plaintiff's centre of interests is located. Actually, the plaintiff directs its content to people residing in Poland, since it is mainly published in Polish. Therefore, as a result of the removal of the content published by the plaintiff from the internet with the suggestion that the content is harmful and threatens the safety of users, the consequences of infringement of the right of expression by blocking pages and groups also arose at the place where the plaintiff carries on its business, and the consequences of infringement of the right of renown (reputation) of the publisher also arose at the place where the plaintiff carries on its business.

With regard to the objection of the lack of jurisdiction of the Polish court as a result of the prorogation agreement, it was found as follows:

In accordance with Article 25 (1) of Regulation 1215/2012, if the parties, regardless of their domicile, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction, unless the agreement is null and void as to its substantive validity under the law of that Member State. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. The agreement conferring jurisdiction shall be either:

a) in writing or evidenced in writing;
b) in a form which accords with practices which the parties have established between themselves; or
c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.

In accordance with Article 25 (2), any communication by electronic means which provides a durable record of the agreement shall be equivalent to 'writing.

The admissibility and consequences of execution of such an agreement under national law are governed by Articles 1104 and 1105 of the Polish Code of Civil Procedure. It is beyond dispute that an entity expressing its will to use Facebook/Instagram is obliged to accept the terms of service. Taking into account the dates on which the plaintiff created its pages, groups and accounts, it must be stated that, apart from the Instagram account, which – as admitted by the plaintiff – was created in autumn 2018, the communication channels in the form of the first and second pages and the first group were created and removed before the introduction of the 2018 terms of service; therefore, the term regarding the jurisdiction of Irish courts does not apply to these pages/groups.

The plaintiff is also right to argue that the failure to present the 2011 terms of service, which was in force at the time when the first page was created, excludes the possibility to examine and thus to recognise that the parties executed any prorogation agreement at that time.

It must be assumed that the plaintiff had to accept the 2015 terms of service at the time it created the second page and the first and second groups (which were created before the 2018 terms of service were introduced). In such case, it would be bound by a prorogation agreement under which US courts had jurisdiction (District Court for the Northern District of California or state court of San Mateo County). However, the objection of failure to observe the appropriate form within the meaning of Article 1105^1 of the Polish Code of Civil Procedure was rightly raised.

In accordance with Article 1105 (1) of the Polish Code of Civil Procedure, the parties to a legal relationship may agree in writing to submit to the jurisdiction of the courts of a foreign

country the cases for property rights that have arisen or may arise therefrom, to the exclusion of the jurisdiction of Polish courts, if such agreement is effective according to the laws applicable to it in a foreign country. In accordance with Article 1105^1 of the Polish Code of Civil Procedure, the requirement to conclude an agreement in writing provided for in Article 1105 (1) is met if the agreement is included in a document signed by the parties or in letters exchanged between them or declarations made by means of remote communication in which their content may be recorded. A reference to a document containing a provision corresponding to the agreement specified in Article 1105 (1) in the master agreement meets the requirement regarding the form of the agreement if the master agreement is made in writing, and the reference incorporates the agreement into the master agreement.

The US jurisdiction clause was incorporated into the declarations (terms of service) submitted by means of remote communication, but they were not recorded, because, as the plaintiff alleges, the declaration was submitted by the plaintiff only by performing a technical activity of checking a "box" - consent (click wrapping).

It is notable that the defendant did not prove that upon the entry into force of the Fb 2018 terms of service the plaintiff – taking into account that the second Facebook group existed until autumn 2018 – accepted the Irish jurisdiction clause of the terms of service.

As contrary to what the defendant alleges, it is notable that there is no ground to extend the jurisdiction clause to disputes concerning the infringement of personality rights. In the light of the aforementioned provisions, an infringement of personality rights is classified as a type of a tort, so there is no ground to assume that the parties intended to regulate claims arising against the background of the performance of the agreement, but by operation of law by means of a clause contained in the terms of service and not subject to negotiations because it was included in a document constituting a model agreement - as in the case of claims for infringement of personality rights.

Further, without disputing valid arguments concerning the assessment of the status of a consumer in agreements executed with an entrepreneur, which were submitted in the statement of defence, the term “consumer” should be interpreted in a different way in this case.

It is beyond dispute that a consumer is a natural person who enters into a legal relationship with an entrepreneur, where this relationship is not related to the natural person’s

business or professional activity.

Article 17 (1) of the Regulation does not define the term “consumer” and only refers to a purpose which is not related to the business or professional activity of the person who executes the agreement. In fact, as the defendant claims, the term “consumer” should be interpreted in accordance with Article 2 (1) of Directive 93/13 ("Consumer Directive"), which refers to a natural person who, in contracts is acting for purposes which are outside his trade, business or profession. Consequently, the term “consumer” is defined in this way, among others, by Article 22^1 of the Polish Civil Code. However, this statement does not exhaust the issue of interpretation of the term “consumer” under specific circumstances. It is notable that, as it results from the aforementioned provision, the status of a consumer is created in opposition to the status of an entrepreneur – a professional who is assumed to have a certain level of knowledge regarding the transactions he concludes and a specific economic potential; in contrast, consumers lack information, which means that they are economically and informationally the weaker party to the contractual relationship, which deserves special protection.

In the present case, the position of the defendant company in relation to all potential contractors interested in an agreement with the defendant company in order to use Facebook or Instagram should be taken into account. The economic position of the defendant company is incomparable to any other private entrepreneur operating in the area of social media. It should be stated that the defendant has a dominant position in this area, having basically no competition. There is no other provider of such services on such a vast (global) market, who would offer a possibility to establish relationships between users by means of its services ("products" – accounts, pages, groups, profiles). Other sites owned by other entrepreneurs, which are listed in the aforementioned "Guide to social media in Poland" do not constitute alternative, and at the same time equally popular information channels with a similar reach that would enable both the plaintiff and other users to achieve the goal of reaching a specific group of people or establishing multi-entity or multi-person relationships. An agreement with the defendant company is executed by accession – acceptance of the terms of service. Due to its position, the defendant may impose specific agreement terms (terms of service) on contractors-users without it being possible to negotiate them. The best example is the introduction into the Polish version of the terms of service in 2018 of a disputable clause establishing the exclusive jurisdiction of Irish courts – on the occasion of the obligatory changes in the terms of service in connection with the entry into force of Regulation 2016/679 (GDPR). However, the defendant, in raising the argument that adhesion agreements are common in mass services, did not prove that any entity that does not

have the status of a consumer within the meaning of the consumer directive was able to individually negotiate the removal of the jurisdiction clause with the defendant company.

Consequently, it should be stated that from the defendant's perspective, all potential contractors interested in using Facebook and Instagram, which are offered by the defendant, have a status comparable to that of a consumer – if the lack of negotiation possibilities and the lack of an economic or informational advantage or equality in relation to the defendant, which are the characteristics of a consumer, are taken into account. Further, the clause in question had to be considered to be unfair, because it reserves an unjustified advantage for the defendant, i.e. the jurisdiction of the courts of the company's registered office, although there are no special circumstances that would justify such jurisdiction and although the territorial (global) area of the company's operations does not suggest any connection (apart from the location of the company's registered office) justifying the need to resolve disputes under the agreement by the courts having jurisdiction for the company's registered office.

Further, it should be stated that instead of the jurisdiction clause, the remaining provisions on jurisdiction should be applied. It must be admitted that the court of competent jurisdiction may be the court determined in accordance with Article 7 (2) of the aforementioned Regulation.

Moving on to the assessment of the legitimacy of the relief sought by the statement of the claim, it was found as follows:

In accordance with Article 16 (1) in conjunction with Article 20 of the Private International Law Act of 4 February 2011 (Dz.U. *[Journal of Laws]* No. 80 of 2015, item 1792), the personality rights of a legal person shall be governed by the laws of the country whete is is established. A person whose personality rights are threatened with infringement or have been infringed may claim protection under the laws of the country in the territory of which the event giving rise to the threat or infringement took place, or under the laws of the country in the territory of which the effects of the infringement occurred (Article 16 (2)).

Since the plaintiff associates the effects of the infringement of a personality right with the territory of Poland, the laws of Poland shall apply.

In accordance with Article 23 of the Polish Civil Code, personality rights remain under

the protection of civil law regardless of the protection provided for in other regulations.

In accordance with Article 43 of the Polish Civil Code, the provisions on the protection of personality rights of natural persons shall apply accordingly to legal persons. At the same time, Article 24 of the Polish Civil Code stipulates a that any person whose personality rights are threatened by another person's actions may demand that the actions be ceased unless they are not unlawful. In the case of infringement he may also demand that the person committing the infringement perform the actions necessary to remove its effects.

In the light of Articles 23 and 24 of the Polish Civil Code, the prerequisites of a claim include the existence of a personality right protected by law, the threat of infringement of the right or infringement of the personality right and the illegality of the infringer's action. The burden of proof regarding the first two prerequisites rests with the plaintiff, while the defendant has to prove that the infringement or threat of infringement of the personality right was not illegal, because Article 24 (1) of the Polish Civil Code introduces the principle of the presumption of illegality. In general, it is assumed in the case law that an action is not illegal if the infringer acts within the limits of law, if the infringer exercises his subjective right, if (with certain exceptions) the alleged victim has given its consent, if the infringer acts to defend a public or private interest which is of special importance (so stated by the Supreme Court in its judgment of 19 October 1989, II CR 419/89, published in: OSP 1990 /7-8/377, which the view is shared by the Court adjudicating this case).

The question whether or not a personality right was infringed is assessed using objective criteria, i.e. it should be examined whether the infringer's conduct constitutes an infringement of a personality right in the context of the type of the right the alleged victim seeks to protect.

Based on the documents attached to the statement of claim, the plaintiff proved that two pages and two groups created by the plaintiff and one account were blocked and removed from Facebook and Instagram (exhibits 6-11 to the statement of claim). Further, the plaintiff demonstrated that in removing content from the Internet, the defendant suggests in its message that the content being removed from Facebook is harmful and threatens the safety of users.

In view of the foregoing, the plaintiff alleges that the right of expression understood as the right to communicate with others (removal of content without the consent and knowledge of the publisher in a situation where the plaintiff had been using Facebook and Instagram without

any problems for many years) and renown (reputation) of the publisher were infringed (suggestions that the content removed is harmful and threatens the Internet users, and hence the activity of the publisher threatens other entities, which may undermine confidence and credibility with the addressees of the content). Further, the right of a sense of confidence and security.

First of all, the above provision contains an open catalogue of personality rights.

In the legal doctrine and case law, personality rights are understood as universal values that are inherently related to the subject of the law. These are the most important non-property and intangible values that concern the physical and mental integrity of a human being (so stated by the Court of Appeal in Warsaw in its judgment of 27 November 2018, docket No. I ACa 542/18, the Supreme Court in its resolution of 19 November 2010, docket No. III CZP 79/10).

As regards the protection of personality rights of a legal person, in its judgment of 26 October 2006, docket No. I CSK 169/06, the Supreme Court assumed that only Article 24 of the Civil Code could be applied directly to legal persons, and the other provisions could be applied only after a relevant modification for structural and functional differences of natural and legal persons. The scope of personality rights of these entities is not the same. Article 43 of the Polish Civil Code does not protect personality rights inherently associated with a natural person, such as life, health, freedom of conscience, cult of a deceased person. When determining the scope of protection of personality rights of legal persons, the purpose of the activity and the function of the legal person are of fundamental importance.

In turn, in its judgment of 14 November 1986, docket No. II CR 295/86, the Supreme Court assumed that personality rights of legal persons included non-property values using which the legal person may operate in accordance with its scope of activities.

As regards the personality right of renown, in its judgment of 26 October 2006, docket No. I CSK 169/06, the Supreme Court found that the renown of a legal person (renown, reputation, good fame) is the equivalent of the honour of a natural person. The renown of a legal person can take various forms. The components that make up the renown of a legal person depend on the type of activity carried on by the legal person (economic, educational, charitable activity).

Personality rights of a legal person protect a certain area of values which are reserved

only for a specific legal person and are defined both in the legal doctrine and the case law as non-property values using which the legal person may operate in accordance with its scope of activities. In accordance with the current case law, legal persons are entitled to personality rights such as renown (good fame, reputation, authority), name (business name), confidentiality of correspondence. At the same time, personality rights that are related to having feelings are not attributed to a legal person. In consequence, it is a common view that rights such as life, health, dignity, freedom of conscience or image cannot be perceived as personality rights of a legal person (judgment of the Supreme Court of 5 April 2013, docket No. III CSK 198/12).

Having regard to the foregoing, it must be assumed that renown (reputation) is indisputably among a legal person's rights. Renown is the opinion about a legal person in society due to its activities. This personality right may be infringed if an inappropriate activity is attributed to the legal person which may cause a loss of confidence necessary for it to perform its tasks (judgment of the Supreme Court of 16 November 2017, docket No. V CSK 81/17). In view of the nature of, and the place where the plaintiff performed, its information and educational activities, it must be concluded that the personality right has been infringed. In performing information activities on the defendant's websites, the plaintiff created its image as an entity that conducts educational and information activities addressed to people using psychoactive substances (target group). As a result of removing and blocking accounts and groups created by the Association, current and potential addressees' confidence in the Association decreased. At the same time, if Facebook and Instagram users are aware that the defendant blocks or removes pages, groups and accounts when they contain illegal or dangerous content, then users have a basis to believe, if the Association's pages, groups and accounts are blocked, that the content posted by the Association is of such nature. As mentioned above, the question whether or not a personality right was infringed is assessed using objective criteria. It is therefore irrelevant whether the defendant's actions created in the minds of users of both websites a view of the victim's conduct which is untrue in the plaintiff's opinion. It is relevant that such actions of the defendant undermined confidence in an entity present in social media and thus could have had such an effect.

As regards the personality right of expression, personality rights of legal persons are defined as non-property values using which the legal person may operate in accordance with its scope of activities. Based on this definition, it must be assumed that the right of expression is a personality right that may also be vested in legal persons. Therefore, while the right (freedom) of expression in the case of natural persons has its source in human dignity, in the case of legal

persons, right of expression is related to the goal and type of the legal person's activity. The Association's goal is to prevent addiction and reduce harm related to the use of psychoactive substances. This goal is implemented through information activities, and due to the target group (people using psychoactive substances), the activity is carried on using a number of communication channels offered by the defendant company within Facebook and Instagram services, in which content may be shared and participants of discussions may exchange views and interact. In consequence, the removal and blocking of accounts, groups and pages created by Społeczna Inicjatywa Narkopolityki on Facebook and Instagram, especially those publicly available, prevents the plaintiff from communicating with the addressees of the content and hence, by interfering with this area of the plaintiff's activity, leads to an infringement of the Association's personality rights.

However, the court did not find sufficient grounds for creating a personality right of a sense of confidence and security. The plaintiff referred to the judgment of the Supreme Court of 15 February 2008, docket No. I CSK 358/07, in which a natural person's personality right of a sense of confidence and security understood as the ability to understand and manage one's own situation, based on reliable information obtained from an obliged institution, while maintaining certainty that other people will receive the same information, which will let them take reasonable actions aimed to resolve specific issues, was created. The Supreme Court found that a person's dignity and sense of security are threatened if, as a result of unreliable information, he is unable to understand his situation or the reaction of other people. However, it is notable that the source of the sense of confidence and security is in fact the dignity of a human being, i.e. a personality right vested solely in a natural person. The defendant rightly invokes the arguments presented in the decision of the Court of Appeal in Warsaw of 15 May 2019, docket No. I ACa 84/18, against the allegations submitted in the statement of claim. According to the arguments, a sense of security does not constitute a personality right – it is merely a mental condition that depends not only on the objective circumstances of a specific person, but also on his mental structure, including such personality traits as resistance to stress or tendency to feel fear. It is therefore a subjective condition. A similar view was expressed by the Court of Appeal in Łódź in its decision of 16 January 2019, docket No. I ACa 458/18. It follows from this decision that a sense of confidence and security is a component of the sphere of feelings which a legal person does not have. Further, being only a state of feelings or state of mind, it is connected with the emotional sphere of a person, and not with the sphere of values, including non-property values.

The assumption that the plaintiff's personality rights have been infringed by the

defendant obligates the defendant to demonstrate that his action was not illegal. It is presumed that a person who infringes someone else's personality rights are illegal. The prerequisite of illegality of an action is objective. Illegality of an action is broadly defined in civil law. Any action infringing a personality right is deemed to be illegal if none of the special circumstances justifying the same has occurred. As mentioned above, it is assumed in the case law that an action is not illegal if the infringer acts within the limits of law, if the infringer exercises his subjective right, if (with certain exceptions) the alleged victim has given its consent, if the infringer acts to defend a public or private interest which is of special importance.

The defendant referred to two lawful excuses: the conclusion of an agreement between the parties, giving him the right to block or remove pages, groups and accounts in the event of a breach of the terms specified in the agreement, and an important public interest.

Given that the basis for liability does not arise from a contract but from claims arising from the infringement of personality rights, the fact that the parties executed an agreement (terms of service) setting out the conditions upon which the defendant may interfere with the groups, pages and accounts created by the user should be assessed in the context of the aforementioned circumstance that the (future) victim has given its consent for the defendant to interfere with the plaintiff's personality rights.

Based on the agreement (terms of service), Facebook has reserved the right to remove any content or information published in the communication channels it offers (page, group, etc.) by the user if it considers the same to be contrary to the statement (terms of service) or rules of Facebook and Instagram, as applicable. At the same time, the established community standards and community rules, respectively, specify the behaviour which is permitted on Facebook (Instagram). At the same time, it should be taken into account that the versions of the community standards at the time of removal of the first and second pages and the first group were different.

In the course of the proceedings, the defendant did not explain the reasons why the individual communication channels (original page, second page, original group, second group, account) were removed. The findings show that only the message, the printout of which is attached as exhibit 6 to the statement of claim, to remove materials because they published content inconsistent with the Fb community standards and that private individuals cannot buy and sell prescription drugs or marijuana on FB, which most likely pertains to the original page (the defendant did not admit that it pertained to the original page of SIN and only presented a

view of messages appearing on the websites when an attempt was made to display the removed content – exhibits 9 and 10 to the defendant's complaint against the injunctive relief, sheet 605), indicates the reason for the defendant's interference, although, as the plaintiff rightly submits, the reason is inadequate to the factual situation. As regards the other channels blocked and removed, the defendant only made a general comment that the terms of service and community standards were not adhered to (printout of messages - exhibits 7-11 to the statement of claim).

As a result, it is justified to allege that the action was arbitrary since the action cannot be considered correct even in the light of the provisions of the agreement between the parties and especially when it is assessed through the prism of the infringement of a personality right of expression understood as the ability to decide on the content of the statement.

Further, the findings indicate that the plaintiff had no possibility to appeal against such decision, because the messages regarding the removals did not contain information about the appeal procedure, and the only option to use the "appeal" button turned out to be ineffective.

Consequently, Facebook does not provide the possibility to appeal against its decision to block *[a page or an account]*. In the absence of relevant evidence, there is no ground to believe that the defendant carried out a self-control in order to verify whether the community standards or community rules (Instagram) had been applied by the defendant correctly and fairly. In consequence, it is justified to conclude that the community standards are mainly declarative in nature.

As a further consequence, it must be stated that the defendant company applies non-transparent rules of content moderation, which are not verified in any procedure.

The defendant submitted that it was a private entrepreneur and was not obliged to ensure the right of expression. Without disputing this argument, the defendant’s position in relations with other entities using social media must be taken into account. Offering Facebook and Instagram, the defendant is a global provider of communication channels which are nowadays used in contacts between users. As stated by the defendant, a Facebook user can communicate with others in many ways: both by creating pages (using which a wide audience may be reached, comments and content published by users may be moderated) and groups (gathering users interested in a given topic and enabling them to freely discuss).

As noted in the literature: "social media and other internet platforms equipped with content moderation instruments often become arbiters in the field of the freedom of expression, control the information flow and are one of the main information sources. In the legal doctrine, there are intensive discussions on the nature of these entities, which are increasingly more often being attributed a quasi-public nature. This is a consequence of the social media creating, among others, a kind of internal legislation (terms of service or the so-called community standards) referring to the language of human rights or a structure based on the state system" (A. Krzywoń, „Wolność wypowiedzi w internecie. O roli mediów społecznościowych i pozytywnych obowiązkach państwa" *[Freedom of expression in the Internet. On the role of social media and positive obligations of the state]*, published in: Państwo i Prawo No. 4 of 2022).

Attention was also drawn to discrepancies in the treatment of entities such as Meta Platforms (Facebook), which reduces the problem to the question of whether Facebook should be treated as a media organisation (press, television) which is responsible for the content it publishes and thus able to influence this content or the infrastructure through which services are provided; however, service providers are not responsible for the content transmitted using these services and generally do not interfere with the content (M.R. Woźniak, "Prywatna przestrzeń publicznej debaty" *[Private space of public debate]*, published on Okopress website on 4 September 2022).

The defendant's leading position among social media should be considered an obvious fact. The contemporary changes in the manner of communication and expression of opinions that result in the development of such platforms, while limiting the use of "traditional" media such as press and television in favour of digitisation should also be taken into account. It may be thus concluded that the possibility to access and use such platforms determines participation in social life.

It is notable that the right of expression *[Polish: swoboda wypowiedzi]* treated as a personality right has the rank of freedom of expression *[Polish: wolność wypowiedzi]* under the Constitution (Article 54 (1)) and hence a principle of law which is given special significance in a democratic state of law. Freedom to express opinions consists of the freedom to express one's own opinions, freedom to acquire information and freedom to disseminate information.

The plaintiff's allegation that the Association had no possibility to gain an alternative forum to express opinions with a similar reach and communication channels must be agreed with. Therefore, the right of expression in the media, including both the freedom to express and disseminate opinions, has been restricted.

As regards the other circumstance, an important public interest, it must be admitted that drug addiction is indeed a serious social problem, which is reflected in legal regulations which, on the one hand, define the policy of counteracting drug addiction by state and local authorities and other institutions and private entities, and on the other hand, introduce the punishability of certain acts related to advertising, marketing, possession of narcotic drugs and psychoactive substances (Articles 2, 28, 53 et seq. of the Counteracting Drug Addiction Act of 29 July 2005, Dz.U. *[Journal of Laws]* of 2023, item 1939).

It results from the findings that the Association conducts information and educational activities based on the assumptions of the harm reduction policy adopted in Portugal, focused on prevention and treatment. As part of the harm reduction policy, warnings about the harmfulness of consumption of psychoactive substances are issued, and in the absence of appropriate possibilities to persuade the relevant target group (people already taking such substances and not interested in giving them up), information activities to indicate the least dangerous methods of taking psychoactive substances from the health perspective are taken. These activities include posting relevant content on Facebook and Instagram, which are the basic sources of knowledge for the target group. These activities are also carried on during various meetings, festivals, etc.

The Association participated in performing tasks in the field of public health on the basis of agreements with the relevant local government authorities in Gdańsk and Warsaw, and also implemented a project of the National Bureau for Counteracting Drug Addiction, which was financed by the Ministry of Health and the aim of which was to examine users of so-called "legal highs" and one of the components of which was to collect questionnaires and samples of substances from users during festivals and other meetings. In addition, the Association participated in the preparation of a report entitled „Dopalamy wiedzę. Pilotaż testowania substancji psychoaktywnych pozyskanych bezpośrednio od użytkowników tzw. dopalaczy w Polsce" *["We are high with knowledge. Pilot testing of psychoactive substances obtained directly from users of so-called "legal highs" in Poland]*.

The above activities, which were carried on together with public entities and financed from public funds, lead to the presumption that the Association operates within the limits of law.

Therefore, it cannot be unequivocally concluded that the content published by the Association in the communication channels on Facebook and Instagram violated or violates the

law. The defendant company has not presented any evidence proving at least that any criminal proceedings for violating the provisions of the Counteracting Drug Addiction Act had been instituted against the members of the Association's management board or the administrator of the page posting on the page or that any state (public) authority dealing with drug addiction policy had found that the Association's activities go beyond the methods of counteracting drug addiction permitted by law. In such case, the defendant cannot invoke an important public interest as the basis for its actions, because this would lead to a infringement of the right of expression through arbitrary decisions of the defendant based on a subjective assessment of the user's activity in violation of law. The argument that the defendant might have been exposed to legal liability, which would entitle the defendant to stop providing access to any part of/the whole service in accordance with Section 15 of the Fb terms of service is not convincing.

In view of the foregoing, it was concluded that there is no circumstance justifying exclusion of liability for infringement of personality rights.

Consequently, the relief sought under the statement of claim was generally accepted.

The determination that there was an infringement of personality rights and that the infringement was unlawful results in the selection of measures aimed to eliminate the effects of the infringement of the personality right.

For the above reasons, the request for an apology by submitting an appropriate statement was granted. In accepting this relief sought under the statement of claim, the court ruled that the defendant company must satisfy this obligation in the manner specified by the plaintiff.

The apology should be made in the form in which the infringement of a personality right occurred, and the relevant measure should be selected by the victim so as to gain a real and appropriate legal and moral satisfaction (judgment of the Supreme Court of 7 March 2007, docket No. II CSK 493/06). The plaintiff should precisely specify in the statement of claim what the apology should contain and how it should be made.

In the Court's opinion, there was no ground to conclude that the manner of fulfilling this obligation specified in the relief sought would be too burdensome for the defendant or inappropriate. The manner of displaying the text of the apology statement specified in the relief

sought to those visiting the plaintiff's pages, groups or accounts in both services cannot be considered irrational from the perspective of the purpose of this measure to protect personality rights. The Court has found no ground to conclude that such form is disproportionate in relation to the manner of interfering with someone else's personality rights.

The request to restore the previous condition – to restore pages, groups and accounts – all communication channels that have been closed and to unblock all content previously published in these channels together with all comments, was also granted. Although the plaintiff currently uses some of the communication channels, because after the closure it created a new page, it should be borne in mind that not all the content that was available in these communication channels and which was important from the perspective of the plaintiff's information activity has been recovered.

In point 3, the remainder of the statement of claim, i.e. as regards claim a), has been dismissed since it was concluded that such relief sought was too general and the prohibition sought contained a component of an evaluation (accounts blocked or removed unlawfully), which would lead to a general prohibition to block pages, groups and accounts in the light of the agreement between the parties giving the defendant the right to block pages, groups and accounts in certain cases.

In point 4, all costs of the proceedings were awarded against the defendant. The costs include the statement of claim fee and the attorney's fee – pursuant to Article 100 sentence 2 of the Polish Code of Civil Procedure, taking into account that the plaintiff generally won the case.

In point 5, the defendant as the losing party was charged with the costs of translation of the documents served. These costs amounted to PLN 8,841.56 (decision, sheet 582). As a general rule, under the regulations mentioned above, the petitioner (i.e. the plaintiff in the present case) is obliged to pay for the costs of translation of the documents served into a language understood by the addressee or into the official language of the country of transmission. At the same time, it is accepted in the case law of the CJEU that a national court, in verifying whether the addressee really does not understand a given language, should take into account all facts known to the court, specifically whether the addressee had previously conducted correspondence in a given language (CJEU judgment C-14/07 of 8 May 2008). It is indisputable in the case that the defendant uses Polish in contacts with users, so there was no legal need to translate the attachments to the statement of claim or even the statement of claim into English. Consequently, the expenses incurred by the State Treasury for the expert's fee for translation of the documents must have been awarded against the defendant because such costs were unnecessary from the perspective of

the defendant's ability to defend its rights. These costs were awarded pursuant to Article 98 (1) of the Polish Code of Civil Procedure in conjunction with Article 113 (1) of the Costs in Civil Cases Act (the principle of responsibility for the outcome of the proceedings) and Article 103 (1) of the Polish Code of Civil Procedure since the defendant's refusal to accept the documents in Polish should be deemed unjustified under these regulations and hence at guilt (the principle of guilt).