

## SWORN TRANSLATION FROM THE POLISH LANGUAGE

[translator's comments have been italicized and put in square brackets]

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File reference number: IV C 608/19-I.

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### DECISION-I-

On June 11<sup>th</sup>, 2019-I-

The Regional Court in Warsaw 4<sup>th</sup> Civil Division composed of:-

Presiding Judge: Judge of the Regional Court Magdalena Kubczak-I-

after examining at an in camera hearing held on June 11<sup>th</sup>, 2019 in Warsaw-I-

the case brought by the 'Społeczna Inicjatywa Narkopolityki' association against Facebook Ireland Limited for infringing personality rights-I-

with regard to:-

a request for securing the claim-I-

decides:-

1. to grant the Plaintiff the security of claim for infringing its personality rights in the form of freedom of speech and good name (reputation) by:-

1. ordering the Defendant, Facebook Ireland Limited, to cease to block or remove the pages, groups or accounts established by the Plaintiff in Facebook and Instagram websites and block or remove content published by the Plaintiff on the pages, groups and accounts on Facebook and Instagram - for the duration of these proceedings,-

2. ordering the Defendant, Facebook Ireland Limited, to store, for the duration of these proceedings, the data collected as part of the channels of communications specified in point 111 b of the filed action, i.e. the pages, groups and accounts heretofore established on Facebook and Instagram by the Plaintiff along with any and all content published on those pages, groups and accounts by the



Plaintiff along with comments posted underneath said content by other users of Facebook and Instagram websites together with people who follow or like:-/-

- a) the First FB Page, i.e. the SinPL page on Facebook website, which was removed on March 14<sup>th</sup>, 2018-/-
- b) the First Group, i.e. the 'SIN - sekcja talerzy' group on Facebook website, which was removed on March 13<sup>th</sup>, 2018-/-
- c) the Second FB Page, i.e. the 'Społeczna Inicjatywa Narkopolityki' page, on Facebook website, which was removed on March 15<sup>th</sup>, 2018-/-
- d) the Second Group, i.e. the 'Talerze' group on Facebook website, which was removed in fall of 2018-/-

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[in the original document the list begins with letter 'f' - this translation reflects that]

- f) the Second Instagram Account, i.e. the SinTalerze account on Instagram website, which was removed on January 16<sup>th</sup> 2019-/-

to the degree allowing for their complete reinstatement if the action is ruled in favor of SIN,-/-

II. to dismiss the reminder of the request for securing the claim.-/-

#### GROUND-/-

In its action for infringement of personality rights dated May 7<sup>th</sup>, 2019 the Plaintiff, i.e. the 'Społeczna Inicjatywa Narkopolityki' association (hereinafter also referred to as: 'SIN') requested for securing its claim by ordering:-/-

- A. a cessation of infringements upon Plaintiff's personality rights by groundlessly blocking of removing pages, groups and accounts established by the Plaintiff on Facebook (hereinafter also referred to as: FB) and Instagram (hereinafter also referred to as: IG) websites and groundlessly blocking or removing content published by the Plaintiff on its pages, groups and accounts on Facebook and Instagram websites;-/-
- B. the unblocking or reinstating all pages, groups and accounts heretofore established by the Plaintiff on Facebook and Instagram websites, and unblocking or reinstating any and all content published on those pages, groups and accounts by the Plaintiff along with any and all comments published underneath such content by other Facebook and Instagram users, particularly by ordering the Defendant to unblock or reinstate, together with people who follow or like:-/-



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1. the First FB Page, i.e. the SinPL page on Facebook website, which was removed on March 14<sup>th</sup>, 2018,-/-
  2. the First Group, i.e. the 'SIN - sekcja talerzy' group on Facebook website, which was removed on March 13<sup>th</sup>, 2018,-/-
  3. the Second FB Page, i.e. the 'Społeczna Inicjatywa Narkopolityki' page, on Facebook website, which was removed on March 15<sup>th</sup>, 2018,-/-
  4. the Second Group, i.e. the 'Talerze' group on Facebook website, which was removed in fall of 2018,-/-
  5. the Second Instagram Account, i.e. the SinTalerze account on Instagram website, which was removed on January 16<sup>th</sup> 2019,-/-

C. alternatively, if the court does not endorse the request specified in point B, we request that the Defendant be ordered to store the data collected as part of the channels of communication specified in point B to the degree allowing for their complete reinstatement if the action is ruled in favor of SIN.-/-

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In the substantiation of the request it has been indicated that the statement of claim regards the infringement of personality rights in the form of: sense of certainty and security, freedom of speech and recognizability and reputation of the Plaintiff, which were infringed upon the removal by the Defendant of the content that the Plaintiff had published in Facebook and Instagram social networks managed by the Defendant. In the factual reasons the Plaintiff has alleged the removal by the Defendant of Plaintiff's channels of communication, even though they were used for legal, socially beneficial activities and not proscribed by the terms of service of the web sites; additionally, the removals were arbitrary and not dictated by the provisions of the law or contracts. The Plaintiff alleged that due to lack of explanation and reaction to the appeals lodged by the Plaintiff, the Defendant has prevented the Plaintiff from understanding its situation and the reasons for its content to have been censored. Moreover, the removals have limited the number of Plaintiff's recipients from approx. 16000 to a little less than 2000 and the Defendant has thus infringed upon SIN's sense of safety and freedom of speech.-/-

As a consequence the Plaintiff requested in its action that the Defendant:-/-

1. to cease to infringe upon personality rights by blocking or removing the accounts, pages, and groups established on Facebook and Instagram and blocking or removing content published by the Plaintiff in the accounts, groups and pages,-/-
2. to order the remedy of the infringement of personality rights by unblocking or reinstating all channels of communication established by the Plaintiff in both social networks, and unblocking or reinstating any and all content published in those channels of communication by the Plaintiff along with any and all comments published underneath such content by other Facebook and Instagram users, particularly



the first and second page established by the Plaintiff on Facebook, the first and second group established on Facebook and the second account on Instagram website.-/-

3. to order the Defendant to make the statement in the wording presented in the action.-/-

With respect to the request for securing the claim, the Plaintiff stated that securing the claim was justified due to the previous infringements upon Plaintiff's personality rights that were substantiated in the action; thus, there was a justified, real threat of further infringements. Said threat consists in the risk of further bans and removals of the Third FB Page and the First Instagram Account which are currently used by the Plaintiff. The Plaintiff indicates that because it uses the present accounts in the same manner as the previous channels of communications (containing information about psychoactive substances), there is justified concern that the Defendant will once again ban or remove them (action, sheet 3-15).-/-

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The Court finds that:-/-

The request shall be partially granted.-/-

Firstly, it needs to be stated that the Plaintiff, in order to substantiate the jurisdiction of the Polish court, invoked 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 (Official Journal of the European Union 2012.351.1) and supported its argumentation with the Judgment of the Court of 25 October 2011 in the case C-509/09.-/-

Pursuant to Article 7 point 2 of the invoked 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.-/-

In the judgement of the European Court of Justice dated October 15<sup>th</sup>, 2011 in the case C-509/09 it was indicated that the provision on the special jurisdiction, by providing for an exception to the rule of jurisdiction of the courts for the place where a defendant is domiciled, included in Article 5 point 3 of Regulation No. 44/2001 (currently Article 7 point 2 of Regulation No. 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. It was also decided that the person who considers that his rights have been infringed by means of content placed online may, depending on the place in which the damage occurred, bring his action before the courts of each Member State in the territory of which content placed online is or has been accessible.-/-

Even though this case does not refer to an infringement of personality rights by placing content infringing upon such rights online, but to an infringement of personality rights by removing content from the Internet, the jurisdiction of the Polish courts shall be allowed pursuant to the invoked Article 7 point 2 for the reasons specified hereinbelow. Both parties have their registered offices in member states; additionally, the Plaintiff conducts its activities on the territory of Poland, thus its center of interests is located within the jurisdiction of this Court. The universal availability of content placed online means that said content is also available in the place where Plaintiff's center of interests is located. The Plaintiff targets said content at people residing in Poland since said content is placed online mainly in the Polish language.



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Therefore, the removal of content placed online by the Plaintiff whilst suggesting that such content is harmful and threatens the safety of users means that the effects of infringement of an interest, i.e. freedom of speech by blocking the pages and groups have also occurred at the place where the Plaintiff carries on its activity, and the effects of infringement of an interest, i.e. the good name (reputation) of the party placing content online have also occurred at the place where the Plaintiff carries on its activity.-/-

As a consequence, the instigation of a legal action and the submission of the request for securing the claim before the Polish court shall be considered admissible.-/-

Pursuant to Article 730<sup>1</sup>§1 of the Polish Code of Civil Procedure any party may request security to be established if it substantiates the claim and legal interest in establishing security; legal interest in establishing security exists when absence of security would prevent or seriously impede execution of the decision passed in a case or otherwise prevent or seriously impede attainment of the purpose of the proceedings in a case (§2 of the cited provision). Pursuant to Article 755§1 point 3 of the Polish Code of Civil Procedure where security does not concern a pecuniary claim, the court shall order security to be established in such manner as it deems appropriate depending on the circumstances.-/-

In consideration of the above, the Plaintiff shall be obligated to prove two conditions for granting security: furnishing prima facie evidence in support of the claim which the Plaintiff seeks to be secured and furnishing prima facie evidence of its legal interest.-/-

In considering the first condition it should be concluded that the Plaintiff has substantiated the claim arising from an infringement of personality rights: freedom of speech and good name. It should also be noted that at this stage of proceedings the law does not require the existence of a claim to be proven, but merely that prima facie evidence in support of a claim be furnished.-/-

Pursuant to Article 16 clause 1 in connection with Article 20 of the Act dated February 4<sup>th</sup>, 2011 on the International Private Law (Dz. U. [Journal of the Law] No. 80 dated 2015, item 1792), personality rights of a legal person are subject to the law of the country in which its registered office is located. A person whose legal interests are at risk of being infringed upon or have been infringed upon may seek protection under the law of the country on whose territory the event causing such a risk or an infringement itself occurred, or the law of the country on whose territory the results of such an infringement occurred (Article 16 clause 2). Since the Plaintiff connects the results of the infringement of a personality rights with Polish territory, then the Polish law shall apply.-/-

An action for infringement of a personality rights provided for in Article 23 and 24 of the Polish Civil Code shall require evidencing that the interest has been infringed upon by a behavior of another entity. The fact of infringement of a personality rights shall be evaluated by means of objective criteria, i.e. it shall be necessary to evaluate whether the behavior of the party at fault constitutes an infringement of a personality right with respect to the right which the wronged party seeks to be protected.-/-

The Plaintiff has proven using the documents appended to the request that at least two pages and two groups established by the Plaintiff and one account (Appendix no. 6, no. 7, no. 8, no. 9, no. 10, no. 11 to the action) were blocked and removed from Facebook and Instagram websites.-/-

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Additionally, the Plaintiff has proven that the Defendant, in removing content from the Internet suggested in its message that the content removed by it from Facebook website is harmful and threatens the safety of users. In such a way the Plaintiff furnished prima facie evidence that an interest in the form of freedom of speech to be construed as freedom of communicating with others (the removal of content without permission and knowledge of the party posting content online when the Plaintiff has been using Facebook website for many years without any issues) and the good name (reputation) of the party posting comment online (suggestions that the content being removed is harmful and threatens Internet users, thus the activities undertaken by the party posting content online threaten other entities, which may undermine the trust and credibility enjoyed by such a party amongst content recipients). The claim is based on the infringement of personality rights and not on the contractual relationship, thus at this stage the matter of regulation contained in the terms of service of Facebook and Instagram websites is outside the scope of evaluation.-/-

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At the current stage of the proceedings the Court has not evaluated content published by Społeczna Inicjatywa Narkopolityki from society's point of view because this matter is outside the scope of evaluation at this stage.-/-

The Plaintiff has also furnished prima facie evidence its legal interest in establishing the security of claim.-/-

This interest shall be defined as a need to obtain a suitably worded court judgement; said need shall be objective under the applicable law, i.e. resulting from an actual necessity to protect a specified legal area. The objective of security is to grant temporary legal protection to the entities which need it. A legal interest shall exist if there is a need for granting an entitled entity due legal protection before it obtains protection, i.e. before achieving the objective of legal proceedings with respect to which security is provided. Due legal protection consists in removing an infringement or a risk of infringement upon a right of an entitled entity.-/-

The removal and blocking of accounts and groups established by Społeczna Inicjatywa Narkopolityki on Facebook and Instagram, particularly of public nature, prevents communication of the Plaintiff with the recipients of content posted online and may cause loss of trust amongst the current and prospective content recipients. This justifies a regulation for the duration of a relationship between the parties by granting a temporary protection to the Plaintiff, i.e. for the duration of these proceedings.-/-

The essence of said protection is the creation of a new, provisional situation lasting till the case is resolved. It should also be noted that the objective of granting security is to increase the efficiency of a civil action by guaranteeing that despite the passage of time necessary to litigate the case it will be possible for a party to achieve the desired objectives of such an action.-/-

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It is also necessary to make reference to the manner of securing the claim indicated in the action.-/-

Pursuant to Article 730<sup>1</sup>§ 3 of the Polish Code of Civil Procedure upon choosing the method of securing the court shall take into account the interests of the parties or participants in the proceedings to such an extent as to provide the entitled party with appropriate legal protection and not to burden the obliged party excessively. This provision governs the so-called minimum severity of security. The



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application of this rule results from the fact that a decision to grant security is, as a rule, of temporary nature. This means that upon choosing the method of securing the court shall compare the interests of the entitled party and the obliged party and prefer such means as are both capable of providing the entitled party with legal protection and are not burdening the obliged party excessively.-/-

In the court's view the manner of securing the claim requested by the Plaintiff has been partially accepted. The court has considered as appropriate the manner specified in point III a of the action, thus prohibiting the Defendant from blocking or removing new pages, groups or accounts which the Plaintiff wishes to establish or has already established after the previous ones were removed or blocked. This manner of securing the claim allows the Plaintiff to continue its activities justified by freedom of speech for the duration of litigation. The contents of said prohibition are that with respect to the pages, groups, accounts and other channels of communications established by the Plaintiff on or before the action was filed (May 7<sup>th</sup>, 2019), which, at the same time, had not been removed or blocked by the Defendant on or before said date, said channels of communications shall be available on Facebook and Instagram websites in accordance with the current rules until such time as the case is resolved; whereas the Plaintiff shall, additionally, be allowed from said date forward to establish further pages, groups, accounts and other channels of communications in accordance with the current rules until such time as the case is resolved.-/-

The manner specified in point III b, whereby the previously removed or blocked pages, groups or accounts would be ordered to be unblocked or reinstated, has been dismissed because such a manner would result in satisfying the claim, i.e. the return to the original state, sought by the Plaintiff in its action, which is inadmissible pursuant to Article 731 of the Polish Code of Civil Procedure which provides that, as a rule, security shall not be aimed at satisfying the claim.-/-

Aside from disallowing the manner specified in point III b of the action, the court has allowed the alternative manner specified in point III c of the action, whereby the removed data shall be saved.-/-

It is important that until such time as the dispute is resolved said data not be deleted irretrievably, otherwise if the claim is allowed, the objective of litigation, with respect to one of the claims, would not be achieved.-/-

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The security granted in the manner specified in the decision will not only protect Plaintiff's claims, but also give the Defendant a chance to defend its actions. The litigation objective intended by the party will not be achieved because the security has not been allowed in full; nonetheless, its personality rights will not be infringed upon.-/-

In point II the Court has dismissed the reminder of the request, i.e. as has been indicated hereinabove, with respect to allowing the manner of securing indicated in point III b of the action. Additionally, the Court has dismissed the request to the extent it was aimed at obtaining protection of personality rights other than Plaintiff's freedom of speech or its good name (reputation). Even though the matter of establishing whether the pursued right is a personality right within the meaning of Article 23 of the Polish Civil Code constitutes a part of legal assessment, the Plaintiff, in its grounds for the action and the grounds for the request for securing claims, has failed to present sufficient arguments which would allow at this stage to categorize such rules as feeling of certainty and safety and a characteristic in the form of recognizability as a personality right.-/-

For these reasons, it was resolved as stated hereinabove.-/-



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emblem of Poland in the middle and the following text:]

REGIONAL COURT-I-  
IN WARSAW-I-

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text:]

There are relevant signatures affixed to the original.-I-

Certified true copy-I-

Court clerk-I-

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COURT CLERK-I-

Dorota Wołowiec-I-

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Repertory no.: 0056/03/2020

I, Marcin Basiak, M.A., sworn translator of English (no. TP/78/09), hereby certify the above to be a true translation of an  
original court document in the Polish language presented to me.

Warsaw, March 31st, 2020