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The monetary penalty for violating Art. 18(4–5b) of the Broadcasting Act – an administrative-legal instrument for protecting the safety of children as media recipients?

Kara pieniężna za naruszenie przepisu art. 18 ust. 4–5b ustawy o radiofonii i telewizji – instrument administracyjnoprawny wspierający ochronę bezpieczeństwa dziecka jako odbiorcy przekazów medialnych?

The aim of the article entitled “Monetary penalty for violating Art. 18(4-5b) of the Broadcasting Act – an administrative-legal instrument for protecting the safety of children as media recipients?” is to examine whether the monetary penalty imposed on radio and television broadcasters for violating Art. 18(4-5b) of the Broadcasting Act is an effective legal instrument for protecting the safety of children as media recipients. To answer this question, we discuss the essence of the administrative monetary penalty and its legal framework under the Polish Broadcasting Act (the *RTVU* in Polish). Then we examine and assess how this instrument is applied for violating the provisions that protect the development of children. These analyses lead to the conclusion that the administrative monetary penalty may support the protection of the safety of children who are media recipients, but this support is very limited, and the instrument itself is used selectively and repressively.

Key words: the monetary penalty; the child’s safety; the broadcasting act; the administrative decision; the Chairman of the National Broadcasting Council

Celem artykułu „Kara pieniężna za naruszenie przepisu art. 18 ust. 4–5b ustawy o radiofonii i telewizji – instrument administracyjnoprawny wspierający ochronę bezpieczeństwa dziecka jako odbiorcy przekazów medialnych?” jest zbadanie, czy kara pieniężna nakładana na nadawców radiowych i telewizyjnych za naruszenie przepisu art. 18 ust. 4–5b RTVU jest instrumentem prawnym realnie wspierającym ochronę bezpieczeństwa dziecka będącego odbiorcą przekazów medialnych i pytanie to jest głównym problemem artykułu. By udzielić na nie odpowiedzi, omówiono istotę administracyjnej kary pieniężnej, przeanalizowano konstrukcję prawną kary pieniężnej na gruncie polskiej ustawy o radiofonii i telewizji, zbadano jaka jest praktyka jej stosowania z powodu naruszenia przepisów chroniących rozwój dziecka oraz dokonano oceny tego instrumentu. Przeprowadzone analizy doprowadziły do wniosku, że instrument prawny jakim jest administracyjna kara pieniężna może wspierać ochronę bezpieczeństwa dziecka będącego odbiorcą przekazów medialnych, ale to wspieranie jest bardzo ograniczone, a sam instrument wykorzystywany jest punktowo i represyjnie.

Słowa kluczowe: kara pieniężna, bezpieczeństwo dziecka, ustawa o radiofonii i telewizji; decyzja administracyjna; Przewodniczący Krajowej Rady Radiofonii i Telewizji

Introduction

Examining the role of media in children’s upbringing raises questions about the legal aspects of media influence on children and the related issue of protecting their safety regarding media messages. The media influence may be positive only when the messages received by children do not endanger their overall development and are safe for them. It is the legislator’s role to establish legal regulations that ensure broadcasters fully adhere to these standards. This is also a manifestation of concern for maintaining the media order. In the area of radio and television broadcasting, the Polish legislator strives to achieve this goal by imposing a number of obligations on broadcasters and ensuring compliance through legal liability provisions. Obligations concerning the protection of development and safety of minors in this area are defined, among others, in Art. 18(4-5b) of the Act of 29 December 1992 on Radio and

Television Broadcasting (referred to in the article as: the Broadcasting Act)¹. One of the instruments which ensures compliance with these obligations is the administrative monetary penalty.

The aim of the article is to examine whether the monetary penalty imposed on radio and television broadcasters for violating Art. 18(4-5b) of the Broadcasting Act is an effective legal instrument for protecting the safety of media children recipients. The following detailed questions are asked: What is the essence of the administrative monetary penalty? What is its legal framework under the Broadcasting Act? How often is it applied for violating Art. 18 (4-5b) of the Broadcasting Act? And how should these elements be assessed in terms of protecting the safety of children as media recipients?

The study primarily employs the dogmatic-legal method and case analysis. It invites discussion on an important topic in media law.

The essence of the administrative monetary penalty and its legal framework under the Broadcasting Act

Although the Broadcasting Act includes the administrative monetary penalty as a legal instrument, it does not define this concept. In this regard, the provisions of the Code of Administrative Procedure² can be helpful. Pursuant to Art. 189b of the Code of Administrative Procedure, the administrative monetary penalty is a monetary sanction specified by statute and imposed by the public administration authority by way of a decision as a result of an infringement of law consisting in a failure to comply with an obligation or in a breach of a prohibition imposed on a natural person, a legal person or an organisation unit not having the status of a legal person³. To capture the essence of this instrument, it is worth pointing out the key elements in its legal definition. Firstly, it is a monetary sanction, which means that it is expressed in financial terms. The essence of a monetary sanction is the negative consequence

¹ Act of 29 December 1992 on Radio and Television Broadcasting (consolidated text: Journal of Laws of 2022, item 1722), referred in the article as the Broadcasting Act (in Polish abbreviated as: the RTVU).

² Act of 14 June 1960 The Code of Administrative Procedure (Journal of Laws of 2023, item 775), abbreviated in Polish as *KPA*.

³ Cf. Art. 189b, Code of Administrative Procedure.

of violating a legal obligation, resulting in a financial loss for the violator. This loss is incurred through the payment of a specified amount of money as determined by the administrative decision⁴. Secondly, the monetary penalty must be specified *expressis verbis* in a statute; hence, it must be based on statutory acts and may not be derived from laws of a lower level. Thirdly, it is imposed by a specific entity, which is the public administration authority as defined in the Code of Administrative Procedure. Pursuant to the Code, public administration authorities “shall mean ministers, central government administration authorities, voivodes and acting on behalf of the above authorities or on their own other local government administration authorities (combined and non-combined), authorities of units of self-government and other authorities and entities appointed by operation of law or on the basis of agreements, to decide in individual matters to be determined by way of administrative decisions or disposed of without notice by the authority”⁵. It is also worth noting that the term ‘minister’ is defined more broadly in the Code of Administrative Procedure than in common usage. Pursuant to the Code of Administrative Procedure, ministers “shall mean the Prime Minister and Deputy Prime Minister serving as ministers presiding over a specific division of government administration, ministers presiding over a specific division of government administration, heads of the committees in the Council of Ministers, heads of central offices of government administration subordinated, submitted or supervised by the Prime Minister or a relevant minister, as well as heads of other equivalent state offices authorized to dispose of individual matters to be determined by way of administrative decisions or disposed of without notice, and matters regarding the issuance of certificates”⁶. Fourthly, the monetary penalty is imposed through an administrative decision, with all its legal and practical consequences, particularly the possibility of reviewing the legality of this decision by appropriate authorities. Finally, it is imposed in situations where the law has been violated.

⁴ Cf. A. Wróbel, *Art. 189(b) Administracyjna kara pieniężna – pojęcie*, [in:] *Komentarz aktualizowany do Kodeksu postępowania administracyjnego*, M. Jaśkowska, M. Wilbrandt-Gotowicz, A. Wróbel (eds.), LEX/el. 2024.

⁵ Cf. Art. 5 § 2(3), Code of Administrative Procedure and Art. 1(2) Code of Administrative Procedure in conjunction with Art. 1(1) Code of Administrative Procedure.

⁶ Cf. Art. Art. 5 § 2(4) Code of Administrative Procedure in conjunction with Art. 1(1) and (4) Code of Administrative Procedure.

By examining these characteristics in relation to the monetary penalty discussed in this article, we can identify its key elements. This penalty is regulated in the chapter on legal liability, where the legislator has included provisions on both criminal and administrative liability. Under the administrative liability category, it prescribes the monetary penalty as an administrative sanction, and its characteristics justify classifying it as an administrative-legal sanction⁷. When examining the essence of a monetary penalty, which is an administrative and legal instrument that can serve to protect the child's safety in the area of radio and television broadcasting, it is essential to scrutinize its legal framework as laid down in the Broadcasting Act.

It should be noted that under the Broadcasting Act, the monetary penalty represents a regulatory measure through which the Chairman of the National Broadcasting Council (*KRRiT* in Polish) intervenes in constitutional freedoms, particularly two dimensions of the freedom of press: freedom of economic activity and freedom of expression. This interference may be lawful or unlawful. The monetary penalty is imposed under Art. 53 of the Broadcasting Act, by the Chairman of the National Broadcasting Council, who, in exercising this authority, acts as a public administration authority according to the Code of Administrative Procedure. The Chairman may issue administrative decisions

⁷ It should be noted that the use of monetary penalty as an administrative-legal sanction has been debated in the doctrine for years. Due to the limitations of this study, it is not possible to present the main points of these discussions here. More information on administrative penalties can be found in: A. Błachnio-Parzych, *Zbieg odpowiedzialności karnej i administracyjno-karnej jako zbieg reżimów odpowiedzialności represyjnej*, Warszawa 2016; E. Bojanowski, *Kara administracyjna. Kilka refleksji*, [in:] *Fenomen prawa administracyjnego. Księga jubileuszowa Profesora Jana Zimmermanna*, W. Jakimowicz, M. Krawczyk, I. Niżnik-Dobosz (eds.), Warszawa 2019, pp. 64-70; M. Czyżak, *Kara pieniężna jako instrument regulacji rynku telekomunikacyjnego*, *IKAR* 2012, No 6 (1), pp. 20-30; Ł. Gajek, *Kary pieniężne w ustawie o radiofonii i telewizji – analiza krytyczna*, *IKAR* 2019, No 3(8), pp. 7-30; A. Nałęcz, *Kary pieniężne w ustawie o radiofonii i telewizji*, „Administracja: teoria, dydaktyka, praktyka” 2006, No 4, pp. 74-98; L. Staniszevska, *Administracyjne kary pieniężne. Studium z zakresu prawa administracyjnego materialnego i procesowego*, Poznań 2017; D. K. Nowicki, S. Peszkowski, *Kilka uwag o szczególnym charakterze administracyjnych kar pieniężnych*, [in:] *Administracyjne kary pieniężne w demokratycznym państwie prawa*, M. Błachucki (ed.), Warszawa 2015, pp. 11-27; L. Staniszevska, *Materialne i proceduralne zasady stosowane przy wymierzaniu administracyjnych kar pieniężnych*, [in:] *Administracyjne kary pieniężne w demokratycznym państwie prawa*, M. Błachucki (ed.), Warszawa 2015, pp. 28-41; L. Staniszevska, *Administracyjne kary pieniężne w gospodarce odpadami*, Warszawa 2023; M. Błachucki, *Wytyczne w sprawie nakładania administracyjnych kar pieniężnych (na przykładzie wytycznych wydawanych przez Prezesa UOKiK)*, [in:] *Administracyjne kary pieniężne w demokratycznym państwie prawa*, M. Błachucki (ed.), Warszawa 2015, pp. 42- 62; B. Majchrzak, *Problematyka prawna administracyjnych kar pieniężnych w orzecznictwie Trybunału Konstytucyjnego i sądów administracyjnych*, [in:] *Administracyjne kary pieniężne w demokratycznym państwie prawa*, M. Błachucki (ed.), Warszawa 2015, pp. 63-71; M. Maciejewski, G. Sibiga, *Automatyzacja w nakładaniu administracyjnych kar pieniężnych*, [in:] *Administracyjne kary pieniężne w demokratycznym państwie prawa*, M. Błachucki (ed.), Warszawa 2015, pp. 72-82.

in this regard, thereby determining the legal status of a specified entity; namely, the broadcaster. The broadcaster is defined as a natural person, legal person or partnership that develops and organizes a programme service and transmits it or has it transmitted by other persons⁸. It should be emphasized that the sanction may be imposed on both public and private broadcasters. The monetary penalty is imposed by the Chairman of the National Broadcasting Council by way of an administrative decision. This has several implications. In particular, it gives broadcasters the opportunity to protect their legal interests through appeal proceedings. It is worth noting that typically, an administrative decision issued by the Chairman of the National Broadcasting Council would permit a request for reconsideration and an appeal to the administrative court. Under the Broadcasting Act, however, such decisions may be appealed against to the Regional Court in Warsaw – the Commercial Court⁹.

The basis for imposing a monetary penalty on the broadcaster lies in the violation of obligations laid down in Art. 53 of the Broadcasting Act. Depending on the nature of those violations, the imposition of the penalty may be mandatory or discretionary. One of the grounds mandating the imposition of a monetary penalty is the breach of obligations specified in Art. 18(4-5b) of the Broadcasting Act and its related regulation¹⁰. These obligations serve to protect minors, promote their integral development, and ensure their safety in the area of radio and television broadcasting. It should be noted that the provisions protecting this group of recipients¹¹ against the harmful influence of media content were included in

⁸ Cf. Art. 4 (5) of the Broadcasting Act.

⁹ Cf. Art. 56 of the Broadcasting Act.

¹⁰ Regulation of the National Broadcasting Council of 13 April 2022 on the rating, broadcasting and method of announcing programmes or other broadcasts that may have a negative impact on the development of minors (Journal of Laws of 2022, item 938).

¹¹ The civil law term 'minor,' i.e., a person who has not reached the age of majority, is predominantly used in the Act. Sometimes the term 'child' is used. Cf. Art. 10 of the Act of 23 April 1964 – Civil Code (Journal of Laws of 2023, item 1610).

the Broadcasting Act from the time it was first enacted¹². Art. 18(4-5b) states *expressis verbis* the requirements that the legislator imposes on broadcasters, in order to protect minors. Pursuant to these regulations, it is prohibited to transmit programmes or other broadcasts prejudicial to physical, mental or moral development of minors, in particular those containing pornographic content or exhibiting gratuitous violence, and programmes or other broadcasts containing scenes or contents which may have an adverse impact upon a healthy physical, mental or moral development of minors, other than those referred to in paragraph 4, may be transmitted only during between 11 p.m. and 6 a.m. Therefore, Art. 18(4) imposes an absolute prohibition on transmitting specified content, ensuring that broadcasts endangering the development of minors are not allowed on radio or television at any time. On the other hand, Art. 18(5) establishes a designated ‘protected time’ during which broadcasts that could potentially, though not necessarily, negatively impact the proper development of minors are prohibited. The protected time is defined as between 6:00 a.m. and 11:00 p.m. Furthermore, Art. 18(5a and 5b) requires broadcasters to appropriately label programmes. These regulations are integral to maintaining the media order.

While emphasizing the importance and necessity of such regulations, including those aimed at safeguarding the development of minors in radio and television broadcasting, it is crucial to note that they are extremely general. The legislator fails to define the concepts used in the Broadcasting Act, and the terms such as ‘physical development,’ ‘mental development,’ or ‘moral development’ are broad and non-legal. Consequently, their interpretation requires expertise in psychology and pedagogy¹³. Likewise, the substantive grounds for imposing a monetary penalty are imprecise, ill-defined and broad, which makes them

¹² More on this issue in: L.K. Jaskuła, *Prawna ochrona dziecka przed negatywnym wpływem przekazów medialnych*, [in:] *Ochrona dziecka w prawie publicznym*, M. Bartnik, M. Bielecki, J. Parchomiuk, B. Uliasz (eds.), Lublin 2008; pp. 139-159; L.K. Jaskuła, *Działania Krajowej Rady Radiofonii i Telewizji na rzecz ochrony małoletnich odbiorców przed negatywnym wpływem przekazów medialnych*, [in:] *Przegląd dyscyplin badawczych pokrewnych nauce prawa i postępowania administracyjnego*, S. Wrzosek, M. Domała, J. Izdebski, T. Stanisławski (ed.), Lublin 2010, pp. 381-397; L.K. Jaskuła, *Wymóg ochrony małoletnich przed negatywnym wpływem przekazów audiowizualnych w świetle dyrektywy medialnej jako wyzwanie stawiane KRRiT przez prawo europejskie. Wybrane aspekty prawne*, [in:] *Współczesne uwarunkowania europeizacji i informatyzacji administracji*, E. Jasiuk, G. Maj (ed.), Radom 2012, pp. 189-214; L.K. Jaskuła, *Protection of Minors against the Negative Influence of Audiovisual Communications as a Challenge to Law in the Light of the Audiovisual Media Services Directive of the European Parliament and of the Council*, „*Annales Universitatis Apulensis*” 2011 (14), pp. 127-133.

¹³ Cf. J. Sobczak, *Radiofonia i telewizja. Commentary (Art. 18)*, Kraków 2001, LEX.

subjective. The assessment of what constitutes a ‘prejudicial broadcast’ or ‘content that could have an adverse impact’ on the development of minors, may and does lead to disputes. The implementing regulations to the Broadcasting Act provide some guidance in this respect, but they do not resolve all doubts.

The discussion on the legal basis for imposing monetary penalties for violations of Art. 18(4-5b) should be supplemented with additional administrative-legal insights. Firstly, violating Art. 18(4-5) or the implementing regulation results in the mandatory imposition of a monetary penalty on the broadcaster. In other words, if a public administration authority finds that a violation has occurred, it is obligated to assign and impose a penalty. However, despite the mandatory nature of this decision, the substantive grounds for imposing a monetary penalty laid down in Art. 18(4)-(5) of the Broadcasting Act and the directives concerning the amount of the penalty in Art. 53(1), give the Chairman of the National Broadcasting Council a considerable discretion in this regard. The Chairman autonomously evaluates the content of the broadcasts, the severity of infringement, the broadcaster’s past activity and their financial capacity, to determine the amount of the monetary penalty. In other words, wielding broad administrative discretion, the Chairman decides whether to initiate proceedings, impose a monetary penalty, and how high it should be. As a result, the mandatory nature of this decision is disarmed by discretionary elements in the area of substantive and formal grounds. Finally, the issuance of an administrative decision imposing a monetary penalty on the broadcaster, does not require a prior resolution of the National Broadcasting Council. This unprecedentedly strengthens the position of the Chairman, raising doubts about the appropriateness of such a solution. It is noteworthy that the Chairman of the National Broadcasting Council is not a constitutional body; the Constitution of the Republic of Poland does not mention this position at all¹⁴. Nor is he an organ of the National Broadcasting Council. The Chairman is one of the members of the National Broadcasting Council elected by other members to exercise this function¹⁵. Pursuant to the Broadcasting Act, the Chairman manages the work of the National Broadcasting Council, represents it and performs the tasks specified in

¹⁴ Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, No. 78, item 483, as amended).

¹⁵ Cf. Art. 7(2b) of the Broadcasting Act.

the Act. These include issuing administrative decisions as specified by the statute. Therefore, the unprecedented strengthening of his authority in issuing administrative decisions to impose monetary penalties raises concerns about interference with constitutional freedoms. Such decisions are made by an individual who is not the authority competent in matters of radio and television broadcasting, while the rightful authority (the National Broadcasting Council) is deprived of any influence in imposing monetary penalties.

The practice of imposing monetary penalties for violating Art. 18(4-5b) of the Broadcasting Act

It is worth examining how many monetary penalties were imposed for violating Art. 18(4-5b) in comparison to all monetary penalties imposed under Art. 53 of the Broadcasting Act. The analysis of such decisions issued in 2020-2023 will allow us to identify trends in how this instrument was employed by the Chairman of National Broadcasting Council. Firstly, it should be noted that the statistics on the number of administrative decisions imposing monetary penalties, vary from year to year. The information on these decisions is included in the National Broadcasting Council's annual reports, based on which the authorities that appointed the Council either grant or deny it a vote of approval. In the years 2020-2023, the number of decisions imposing monetary penalties decreased to a certain point; however, the total amount of penalties was on the constant increase. In 2020, the Chairman of the National Broadcasting Council issued 45 decisions imposing monetary penalties, totalling PLN 284,930¹⁶. In 2021, their number decreased to 32, but the total amount of penalties increased to PLN 285.340¹⁷. In 2022, the Chairman of the National Broadcasting Council issued only 25 decisions imposing monetary penalties, but for a significantly higher total amount of PLN 475,000¹⁸. This means that they were higher and consequently,

¹⁶ National Broadcasting Council, *Report of the National Broadcasting Council on its activities in 2020*, Warszawa 2021, p. 22.

¹⁷ National Broadcasting Council, *Report of the National Broadcasting Council on its activities in 2021*, Warszawa 2022, p. 18.

¹⁸ National Broadcasting Council, *Report of the National Broadcasting Council on its activities in 2022*, Warszawa 2023, p. 17.

much more severe for broadcasters as compared to previous years. The number of decisions issued and the total amount of monetary penalties imposed grew significantly in 2023, when the Chairman of the National Broadcasting Council issued 66 decisions imposing penalties¹⁹ for a total amount of almost PLN 2 million (PLN 1,866.800). This comparison supports the thesis that the Chairman's administrative style became more proactive, resulting in stricter decisions, particularly in relation to some broadcasters. It should be added that in 2023 alone, the Chairman of the Broadcasting Council initiated 80 proceedings to impose monetary penalties²⁰. Of these, 51 resulted in decisions imposing monetary penalties within the same year; 20 proceedings concluded in the first quarter of 2024; two concluded with notices to discontinue unlawful activities, and seven are still ongoing²¹. The monetary penalties imposed in 2023 varied – the lowest was PLN 300,²² and the highest amounted to PLN 476,000²³. These decisions raise comments, especially when they are believed to constitute an obvious interference with freedom of expression. In such a situation, they may have the so-called “chilling effect,” which should not take place in a democratic state, where freedom of expression is protected by the Constitution.

¹⁹ 15 decisions imposing monetary penalties were issued in proceedings initiated before 2023 and 51 decisions in proceedings initiated in 2023.

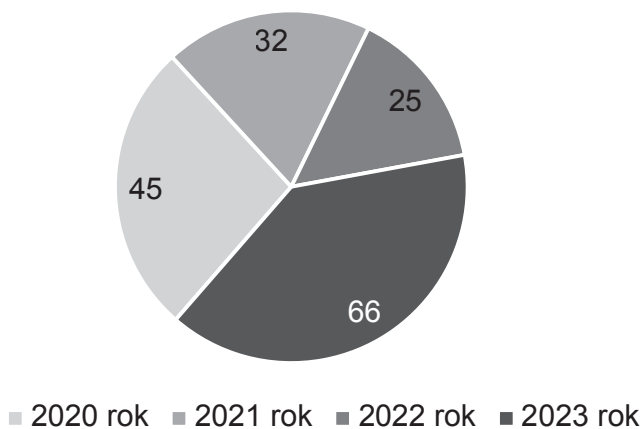
²⁰ As of 9 April 2024, as provided by the Chairman of the National Broadcasting Council in response to a request for public information (unpublished materials, in the author's resources).

²¹ As of 9 April 2024, as provided by the Chairman of the National Broadcasting Council in response to a request for public information (unpublished materials, in the author's resources).

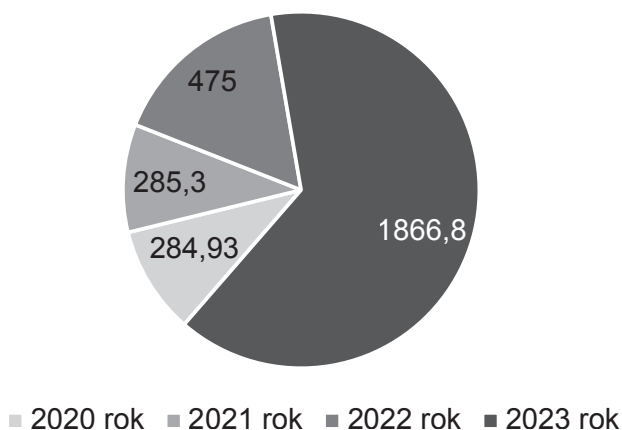
²² Decision of the Chairman of the National Broadcasting Council of 11 May 2023, No. DM-10-2023, imposing a monetary penalty on the Przedsiębiorstwo Usług Specjalistyczny KABLOMEDIA Sp. z o. o. (Radio Impuls) for violating Art. 16c(1) of the Broadcasting Act by airing a comment that promoted the Black Ball Club (BBC Club) and encouraged listeners to participate in an event organized there. The comment was broadcast on 1 November 2022 by the programme host.

²³ Decision of the Chairman of the National Broadcasting Council of 11 August 2023, No. 8/DPz/2023, imposing a monetary penalty on the Eurozet Radio Sp. z o. o. (Radio Zet), for violating Art. 18(1) of the Broadcasting Act by airing content that was contrary to the law, the Polish *raison d'Etat*, and detrimental to the public good; i.e., misinforming the public about the circumstances of the Ukrainian President's passage through the territory of Poland. This information was broadcast at 9:00 a.m. on 22 December 2022.

Total number of administrative decisions imposing monetary penalties in 2020-2023.



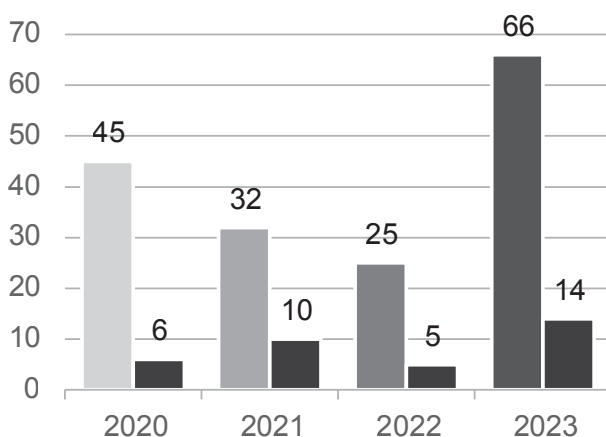
Total amount of monetary penalties imposed in 2020-2023 (PLN thousand)



Considering the overall statistics on imposed monetary penalties, it is essential to focus specifically on those aimed at protecting the physical, mental, and moral development of minors, thereby ensuring their safety in the context of radio and television broadcasts. How does the Chairman of the National Broadcasting Council use this instrument to protect the development and safety of minor recipients?

In 2020, only 6 decisions issued by the Chairman in connection with Art. 53 of the Broadcasting Act concerned the protection of development of minors. This constituted 13% of all decisions issued. In 2021, the Chairman of the National Broadcasting Council issued 10 such decisions, which constituted 31% of the total number of decisions that imposed monetary penalties. In 2022, 5 such administrative decisions were handed down, accounting for 22% of all penalty-imposing decisions. In 2023, the Chairman of the National Broadcasting Council issued 14 decisions in this matter, which represented 21% of all penalty-imposing decisions.

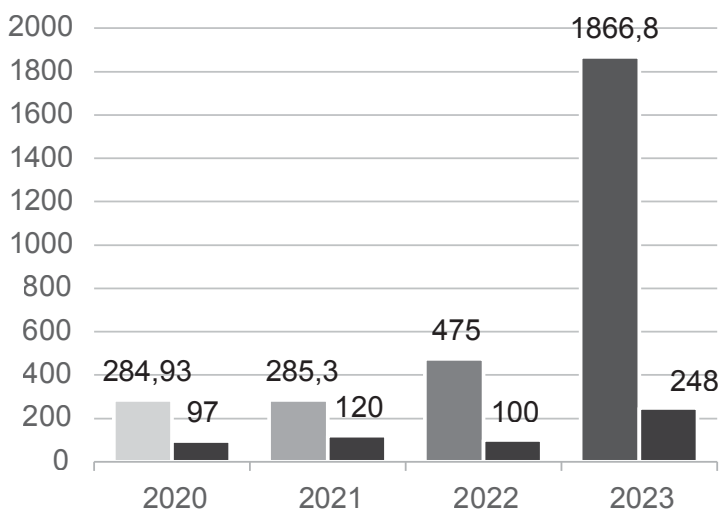
Number of monetary penalties imposed on the grounds of Art. 53(1) in conjunction with Art. 18(4-5b) compared to the total number of decisions issued in this matter



The amount of monetary penalties imposed also varied. In 2020, monetary penalties for violating the provisions protecting the development of minors amounted to PLN 97,000, which constituted 34% of the total amount of penalties. In 2021, penalties imposed pursuant to Art. 53(1) for violating Art. 18(4-5b) amounted to 120,000 PLN, which represented 42% of the total amount. This was the highest amount recorded in the years under analysis, indicating that in 2021, the Chairman of the National Broadcasting Council placed significant priority on protecting the development of minors. A noticeable change in this approach can be observed from the following year. In 2022, monetary penalties amounted to PLN 100,000, which constituted 21% of the total amount. This shows a clear

decrease and reversal of the trend observed until 2021. This is confirmed by the data for 2023, when the nominal amount of penalties imposed for violating provisions that protect the development of minors under Art. 50(1), amounted to PLN 248,000. Although this was a relatively high sum, it constituted only 13% of the total amount of penalties imposed.

Amount of monetary penalties imposed pursuant to Art. 53(1) in conjunction with Art. 18(4-5b) compared to the total amount of monetary penalties issued in this matter (in PLN thousand).



It is noteworthy to mention several decisions in this matter issued last year. In 2023, the majority of decisions imposing monetary penalties on broadcasters were related to violations of Art. 18(5); i.e. provisions on the protected time. In these instances, the Chairman of the National Broadcasting Council decided that programmes aired during the protected time should not have aired before 11 p.m., or were aired without appropriate content ratings.

For example, the monetary penalty of PLN 20,000 was imposed on Kino Polska TV SA for airing a film entitled “Galerianki” at 8 p.m. with 16+ rating²⁴. After analysing its content, the Chairman of the National

²⁴ Decision of the Chairman of the National Broadcasting Council of 17 January 2023, No. 1/DPz/2023 (unpublished).

Broadcasting Council stated that the film contained scenes of violence and aggression depicted in a naturalistic and brutal way. Consequently, the fact that it was aired at 8:00 p.m., with 16+ rating could have a negative impact on the mental development of minor viewers.

The penalty of the same amount was imposed on Telewizja Puls Sp. z o. o. for broadcasting a film entitled “John Wick 3” at 9:50 p.m., also with the 16+ age rating²⁵. In the opinion of the Chairman of the National Broadcasting Council, the film was unsuitable for individuals under 18 due to its brutal and lengthy depictions of fighting, mutilation, and killing. Also, in his opinion, the skills required to interpret the content appropriately are typically possessed by adults. The Chairman emphasized that manifestations of social pathology in the form of physical violence were approved in the film, and the viewer identified with the character who had killed 75 people during a two-hour film.

Another example involved the airing of a music video titled “Wypijemy, odpłyniemy” by Michał Winnicki Entertainment on the POWER TV channel. The video aired for 4 minutes during the Power MIX programme, starting at 15:52, and was labelled as suitable for viewers from 12 years of age. In justifying his decision, the Chairman of the National Broadcasting Council argued that this music video, which approvingly portrayed risky behaviours such as substance use, specifically alcohol, and reduced the depiction of the social world to eroticism, constituted a violation of the law²⁶. As a result, a penalty of PLN 30,000 was imposed on the broadcaster.

In 2023, the highest penalty imposed on a broadcaster for violating regulations on the protection of the development of minors was PLN 70,000. It was levied on Telewizja Polsat Sp. z o. o. for airing a programme titled “Kroniki żenującego seksu” [Chronicles of Embarrassing Sex] on the Polsat Doku channel at 2 p.m. with the age rating “12 and over”²⁷. The programme was broadcast in the protected time, with an underestimated age rating and without information that its content may have a negative impact on the physical, mental and moral development of minors.

²⁵ Decision of the Chairman of the National Broadcasting Council of 31 March 2023, No. 4/DPz/2023 (unpublished).

²⁶ Decision of the Chairman of the National Broadcasting Council of 23 June 2023, No. DM-15-2023 (unpublished).

²⁷ Decision of the Chairman of the National Broadcasting Council of 29 September 2023, No. 10/DPz/2023 (unpublished).

Other decisions in this matter that were issued in 2023, contained identical or similar concerns²⁸. It is also worth noting that only 2 decisions (out of 14) issued last year by the Chairman of the National Broadcasting Council imposed a monetary penalty on the public television.

To sum up, it should be stated that in the analysed period; i.e., in the years 2020-2023, the number of monetary penalties imposed by the Chairman of the National Broadcasting Council pursuant to Art. 53 (1) in relation to violations of the provisions protecting the development of minors, ranged from 5 to 14 annually. In the last two years, the amount of penalties increased significantly, and consequently they were more severe. It can also be seen that in the last 2 years, the Chairman of the National Broadcasting Council employed this instrument more often for purposes other than protecting the development of minors.

Assessment of the legal framework and application of the monetary penalty by the Chairman of the National Broadcasting Council

Based on the analysis of the legal framework and implementation of the monetary penalty for violations of Art. 18(4-5b) of the Broadcasting Act, several conclusions can be drawn, and the effectiveness of this measure enacted by the Polish legislator can be critically assessed. Taking into account the provisions of Art. 53(1) of the Broadcasting Act and the legal framework of this instrument, it is evident that the monetary penalty is designed to ensure compliance with Art. 18(4-5b), which aims to protect the physical, mental, and moral development of minor viewers, including their safety as media recipients. Whether this

²⁸ Decision of the Chairman of the National Broadcasting Council of 18 April 2023, No. 5/DPz/2023 (unpublished); Decision of the Chairman of the National Broadcasting Council of 22 June 2023, No. 7/DPz/2023 (unpublished); Decision of the Chairman of the National Broadcasting Council of 7 September 2023, No. DM-25-2023 (unpublished); Decision of the Chairman of the National Broadcasting Council of 8 September 2023, No. DM-27-2023 (unpublished); Decision of the Chairman of the National Broadcasting Council of 19 September 2023, No. DM-29-2023 (unpublished); Decision of the Chairman of the National Broadcasting Council of 20 September 2023, No. DM-32-2023 (unpublished); Decision of the Chairman of the National Broadcasting Council of 4 October 2023, No. 11/DPz/2023 (unpublished); Decision of the Chairman of the National Broadcasting Council of 25 October 25, 2023, No. 12/DPz/2023 (unpublished); Decision of the Chairman of the National Broadcasting Council of 25 October 2023, No. 13/DPz/2023 (unpublished); Decision of the Chairman of the National Broadcasting Council of 23 June 2023, No. DM-14-2023 (unpublished).

aim is truly achieved depends on how the instrument is employed by the competent authority, specifically how the law in this area is applied by the Chairman of the National Broadcasting Council. Problems and allegations concerning violations of the analysed provisions result from their general nature and imprecision. Due to the varying sensitivities of media recipients, the assessment of whether certain media content endangers the physical, mental, or moral development of minors inherently entails subjective judgment. An example of imprecise wording is ‘content involving gratuitous violence,’ which is entirely prohibited on radio and television broadcasts²⁹. It should be inferred that – *a contrario* – content that justifiably depicts violence is not prohibited. Obviously, it is the broadcaster that decides whether the media content to be aired includes prohibited elements. However, this decision is made amidst considerable uncertainty, as the relevant provision is broad, imprecise, subjective, and discretionary. If the broadcaster decides to air some media content, they bear full liability for their decision, and the sanction related to this liability is arbitrarily decided by the Chairman of the National Broadcasting Council. The discretionary nature of both the substantive grounds for imposing monetary penalties and the procedure for assigning them, renders the application of the law dependent on the administrative style of the Chairman of the National Broadcasting Council. This represents the weakest aspect of the legal framework governing this instrument, as it may lead to misuse. It must be remembered that each case of imposing a monetary penalty constitutes interference with the freedom of radio and television broadcasting, including the freedom of conducting business activity and expressing opinions. When constitutional freedoms are at stake, such interference should not be left to the discretion of an entity that, while possessing statutory authority to issue administrative decisions imposing monetary penalties, lacks competence in matters of radio and television broadcasting. Meanwhile, the competent authority in this area (the National Broadcasting Council) is stripped of any influence over such decisions. This legal situation raises serious doubts about its constitutionality.

When assessing how this instrument is employed by the Chairman of the National Broadcasting Council, it should be noted that proceedings regarding violations of Art. 18(4-5b) are typically initiated following

²⁹ Cf. Art. 18(4) of the Broadcasting Act.

a complaint. This means that the authority itself does not actively monitor broadcasters' compliance with the analysed provisions. Obviously, a question remains open whether such monitoring is technically feasible at all. Regardless of the answer to this question, it should be emphasized that the mere existence of these provisions does not guarantee effective protection of minors against the harmful influence of radio or television broadcasts. Moreover, it appears that in the years we analysed, monetary penalties were imposed more frequently on private broadcasters compared to public ones. The penalties imposed for violations of provisions aimed at protecting the development of minors during the examined period were generally symbolic, typically ranging from PLN 10,000 to PLN 30,000, and were issued following spot checks prompted by complaints. These amounts represent the lower range of possible penalties. The number of monetary penalties imposed annually is not high, indicating the Chairman's limited activity in this area. Broadcasters usually make use of the appeal procedure available to them, which shows that they disagree with the Chairman of the National Broadcasting Council's position, and do not accept that their activities have compromised the welfare of children.

Despite an increase in the number of decisions issued and the amount of penalties imposed under Art. 18(4-5b), their percentage share in all penalties, suggests that applying this instrument to protect the development and safety of minor viewers ceased to be a priority for the Chairman of the National Broadcasting Council, in the last two years.

Concluding remarks

The aim of this article was to determine whether the administrative monetary penalty imposed on radio and television broadcasters for violating Art. 18(4-5b) of the Broadcasting Act, is an effective legal instrument for protecting the safety of children as media recipients. The analyses carried out support the conclusion that, while imposing monetary penalties on broadcasters has the potential to protect children from content that may endanger their development, in practice this instrument is used for such purpose only sporadically, and most often as a result of complaints. Additionally, it is not actively employed to protect the development of minors. This is shown by the number and amount of penalties imposed

on broadcasters for violating Art. 18(4-5b) of the Broadcasting Act, as compared to the total number and amount of penalties imposed pursuant to Art. 53 of the Broadcasting Act. Therefore, it can be concluded that the monetary penalty in question is a legal instrument with the potential to protect the safety of children who are recipients of media messages, but its effectiveness is very limited, and the instrument itself is used selectively and repressively.

References

- Błachnio-Parzych A., *Zbieg odpowiedzialności karnej i administracyjno-karnej jako zbieg reżimów odpowiedzialności represyjnej*, Warszawa 2016.
- Błachucki M., *Wytyczne w sprawie nakładania administracyjnych kar pieniężnych (na przykładzie wytycznych wydawanych przez Prezesa UOKiK)*, [in:] M. Błachucki (ed.), *Administracyjne kary pieniężne w demokratycznym państwie prawa*, Warszawa 2015.
- Bojanowski E., *Kara administracyjna. Kilka refleksji*, [in:] W. Jakimowicz, M. Krawczyk, I. Niżnik-Dobosz (eds.), *Fenomen prawa administracyjnego. Księga jubileuszowa Profesora Jana Zimmermanna*, Warszawa 2019.
- Czyżak M., *Kara pieniężna jako instrument regulacji rynku telekomunikacyjnego*, IKAR 2012, No 6 (1).
- Gajek Ł., *Kary pieniężne w ustawie o radiofonii i telewizji – analiza krytyczna*, IKAR 2019, No 3(8).
- Jaskuła L.K., *Działania Krajowej Rady Radiofonii i Telewizji na rzecz ochrony małoletnich odbiorców przed negatywnym wpływem przekazów medialnych*, [in:] S. Wrzosek, M. Domagała, J. Izdebski, T. Stanisławski (ed.), *Przegląd dyscyplin badawczych pokrewnych nauce prawa i postępowania administracyjnego*, Lublin 2010.
- Jaskuła L.K., *Prawna ochrona dziecka przed negatywnym wpływem przekazów medialnych*, [in:] *Ochrona dziecka w prawie publicznym*, M. Bartnik, M. Bielecki, J. Parchomiuk, B. Uliasz (eds.), Lublin 2008.
- Jaskuła L.K., *Protection of Minors against the Negative Influence of Audiovisual Communications as a Challenge to Law in the Light of the Audiovisual Media Services Directive of the European Parliament and of the Council*, „Annales Universitatis Apulensis” 2011 (14).
- Jaskuła L.K., *Wymóg ochrony małoletnich przed negatywnym wpływem przekazów audiowizualnych w świetle dyrektywy medialnej jako wyzwanie stawiane KRRiT przez prawo europejskie. Wybrane aspekty prawne*, [in:] *Współczesne uwarunkowania europeizacji i informatyzacji administracji*, E. Jasiuk, G. Maj (ed.), Radom 2012.
- Maciejewski M., G. Sibiga, *Automatyzacja w nakładaniu administracyjnych kar pieniężnych*, [in:] M. Błachucki (ed.), *Administracyjne kary pieniężne w demokratycznym państwie prawa*, Warszawa 2015.
- Majchrzak B., *Problematyka prawna administracyjnych kar pieniężnych w orzecznictwie Trybunału Konstytucyjnego i sądów administracyjnych*, [in:] M. Błachucki (ed.), *Administracyjne kary pieniężne w demokratycznym państwie prawa*, Warszawa 2015.
- Nałęcz A., *Kary pieniężne w ustawie o radiofonii i telewizji*, „Administracja: teoria, dydaktyka, praktyka” 2006, No 4.
- National Broadcasting Council, *Report of the National Broadcasting Council on its activities in 2020*, Warszawa 2021.

National Broadcasting Council, *Report of the National Broadcasting Council on its activities in 2021*, Warszawa 2022.

National Broadcasting Council, *Report of the National Broadcasting Council on its activities in 2022*, Warszawa 2023.

Nowicki D.K., S. Peszkowski, *Kilka uwag o szczególnym charakterze administracyjnych kar pieniężnych*, [in:] M. Błachucki (ed.), *Administracyjne kary pieniężne w demokratycznym państwie prawa*, Warszawa 2015.

Sobczak J, *Radiofonia i telewizja. Commentary (Art. 18)*, Kraków 2001.

Staniszewska L., *Administracyjne kary pieniężne w gospodarce odpadami*, Warszawa 2023.

Staniszewska L., *Materialne i proceduralne zasady stosowane przy wymierzaniu administracyjnych kar pieniężnych*, [in:] M. Błachucki (ed.), *Administracyjne kary pieniężne w demokratycznym państwie prawa*, Warszawa 2015.

Staniszewska L., *Administracyjne kary pieniężne. Studium z zakresu prawa administracyjnego materialnego i procesowego*, Poznań 2017.

Wróbel A., *Art. 189(b) Administracyjna kara pieniężna – pojęcie*, [in:] M. Jaśkowska, M. Wilbrandt-Gotowicz, A. Wróbel (eds.), *Komentarz aktualizowany do Kodeksu postępowania administracyjnego*, LEX/el. 2024.

Legal Acts:

Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, No. 78, item 483, as amended).

Act of 14 June 1960 – The Code of Administrative Procedure (Journal of Laws of 2023, item 775).

Act of 23 April 1964 – Civil Code (Journal of Laws of 2023, item 1610).

Act of 29 December 1992 on Radio and Television Broadcasting (consolidated text: Journal of Laws of 2022, item 1722).

Regulation of the National Broadcasting Council of 13 April 2022 on the rating, broadcasting and method of announcing programmes or other broadcasts that may have a negative impact on the development of minors (Journal of Laws of 2022, item 938).

Decisions of the Chairman of the National Broadcasting Council:

Decision of the Chairman of the National Broadcasting Council of 11 May 2023, No. DM-10-2023.

Decision of the Chairman of the National Broadcasting Council of 11 August 2023, No. 8/DPz/2023.

Decision of the Chairman of the National Broadcasting Council of 17 January 2023, No. 1/DPz/2023. (unpublished).

- Decision of the Chairman of the National Broadcasting Council of 31 March 2023, No. 4/DPz/2023.
- Decision of the Chairman of the National Broadcasting Council of 23 June 2023, No. DM-15-2023.
- Decision of the Chairman of the National Broadcasting Council of 29 September 2023, No. 10/DPz/2023.
- Decision of the Chairman of the National Broadcasting Council of 18 April 2023, No. 5/DPz/2023.
- Decision of the Chairman of the National Broadcasting Council of 22 June 2023, No. 7/DPz/2023.
- Decision of the Chairman of the National Broadcasting Council of 7 September 2023, No. DM-25-2023.
- Decision of the Chairman of the National Broadcasting Council of 8 September 2023, No. DM-27-2023.
- Decision of the Chairman of the National Broadcasting Council of 19 September 2023, No. DM-29-2023.
- Decision of the Chairman of the National Broadcasting Council of 20 September 2023, No. DM-32-2023.
- Decision of the Chairman of the National Broadcasting Council of 4 October 2023, No. 11/DPz/2023.
- Decision of the Chairman of the National Broadcasting Council of 25 October 2023, No. 12/DPz/2023.
- Decision of the Chairman of the National Broadcasting Council of 25 October 2023, No. 13/DPz/2023.
- Decision of the Chairman of the National Broadcasting Council of 23 June 2023, No. DM-14-2023.

