

LETTER OF THE OMBUDSMAN TO THE NATIONAL BROADCASTING COUNCIL

Warsaw, August 4, 2021

Mr.

Witold Kołodziejcki

Chairman of the National Broadcasting Council

Dear Mr. Chairman,

I am addressing you in connection with the request of the Journalist Association, indicating the delay in issuing a decision leading to an extension of the broadcasting license for TVN24. At the same time, I would like to thank you for your response dated July 20, 2021 (reference no.: DR.413.4.34.2020).

The process of analyzing the application filed in the relevant matter has been underway for the past 17 months. The matter of TVN S.A.'s application has many times been the subject of National Broadcasting Council's sessions. The Council is exchanging correspondence with the broadcaster, it has ordered legal analyses, and the broadcaster has also provided their analyses and legal opinions. The National Broadcasting Council has also asked the broadcaster to provide details on the merger of AT&T and Discovery.

In the circumstances where, since the initial broadcasting license was obtained by TVN24, neither the legal nor the factual circumstances of the company have changed and, therefore, the company still meets the legal requirements for an extension of the broadcasting license, the right of the applicant to receive the license is up-to-date. Certainly, should any doubts arise, the Council is obliged to perform an appropriate analysis, as part of the proceedings concerning the issuance of a license. However, the current excessive length of the proceedings, the purpose of which is to issue a decision in this matter, especially now that the Council has already made an attempt to vote, raises serious concerns in terms of respecting the rights of the applicant and the correctness of the diligent and efficient operation of the Council as a Constitutional body, which ought to be a principle arising out of the preamble of the Constitution of the Republic of Poland.

The excessive length of the relevant license proceedings leads to a violation of the party's right to have the decision issued within a reasonable timeframe. Filing the application early enough before the expiration of the broadcasting license is also intended to supply the applicant with the right to benefit from their right to judicial control of the decision issued by the Council within an appropriate timeframe. Therefore, a delay in issuing a decision, regardless of its final content, leads to significant difficulties, which may even result in interrupting the broadcast, without the possibility of prior judicial review, which may not only violate the freedom of economic activity, guaranteed by the Constitution (Article 22 of the Constitution of the Republic of Poland), but also negatively affect the freedom to spread information and the freedom of citizens to obtain information (Article 54 Section 1 of the Constitution of the Republic of Poland).

It ought to be highlighted that an analysis of the practices of the National Broadcasting Council indicates that, in the majority of cases, the decision to issue another broadcasting license for

a station which is already a license holder, is almost automatic, though preceded by an analysis. The National Broadcasting Act grants the right to have a broadcasting license extended to every broadcaster who files an application at least one year prior to the expiration of the previous license and that condition was met by TVN.

Moreover, in view of the information published in the past few days in Dziennik Gazeta Prawna (E. Rutkowska, G. Osiecki, *Jak Krajowa Rada zmieniła zdanie w sprawie TVN* [EN: How the National Broadcasting Council changed its opinion about TVN], Dziennik Gazeta Prawna, electronic issue, August 3, 2021), concerning the previous stances of the Council, it is incomprehensible where this 1,5-year-long delay in issuing a decision by the National Council in the relevant matter is coming from. Up until now, Polish Television Holding registered in Amsterdam did not raise concerns of the Council as the owner of TVN and it was treated by the regulator as an EU entity. Moreover, as indicated in said publication, this was also the official stance of the Council which, in 2015, did not take any action to stop the sale of shares to an American holding (Scripps), deeming that being controlled by an entity from outside of the EEA did not deprive the company of the status of a foreign entity with its seat in an EEA country and, as a result, the company was not subject to the obligation to receive the National Broadcasting Council's permission. The above stance was upheld by the Council, which is evidenced by the fact that last year, the National Broadcasting Council, acting in the same legal circumstances and with the same composition as today, extended a broadcasting license for the terrestrial channel TTV of the same broadcaster.

In view of the above, acting on the basis of Article 13 Section 1 Subsection 2 of the Act of 15 July 1987 on the Ombudsman (Journal of Laws of 2020, item 627), I hereby kindly ask to be presented with an explanation in the relevant matter and, in particular, to be informed about the reasons for the delay in the review of the application.

Sincerely,

Marcin Wiącek
Ombudsman