



OPEN DIALOGUE

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Warsaw, 24th of February, 2021

POSITION OF THE OPEN DIALOGUE FOUNDATION ON THE CRIMINAL DEFAMATION LAWSUIT FILED BY TVP AGAINST PROFESSOR WOJCIECH SADURSKI

The Open Dialogue Foundation, acting as a representative of the public, is anxiously observing the court proceedings brought by the Polish public broadcaster, TVP, against Professor Wojciech Sadurski. In our opinion, this trial is of fundamental importance. After all, freedom of expression is at stake. We do not hide the fact that we also see this lawsuit as a kind of barometer of the crisis of Polish democracy related to the attack on the rule of law conducted since 2015 by the ruling camp led by the Law and Justice party.

We object in particular to TVP's use of the constitutionally questionable Article 212 of the Criminal Code as a basis for bringing charges. The use — or the very existence — of criminal sanctions, in particular imprisonment, for statements deemed to be defamatory or insulting is contrary to the freedom of expression enshrined in the Polish Constitution and — binding in Poland — the European Convention on Human Rights. Words may hurt or undermine the credibility of public figures, but in a democratic state based on the rule of law that protects freedom of expression, they cannot be a reason for a criminal record. From our experience of conducting similar monitoring activities in the post-Soviet area, for example in Kazakhstan, we can conclude that such criminalisation of defamation puts Poland — a member of the European Union and the Council of Europe — on a par with dictatorships and sham democracies. Although even Kazakhstan decriminalised defamation in 2020. Finally, it is surprising that it is a public broadcaster, part of the Polish media ecosystem, that is asking for criminal sanctions for defamation — a measure aimed, among other things, at discouraging journalists from speaking critically in the future and preventing the media from fulfilling its watchdog function.

As a non-governmental organisation committed to promoting and defending the rule of law in Poland since 2017, we would also like to draw attention to the broader political context surrounding this case. Since 2015, we have observed a progressive devaluation of the rule of law and numerous attempts to attack state institutions. In particular, the monitoring of trials that we have been conducting since 2019 as part of the "Programme for the Protection of the Persecuted" points to a dangerous trend in which the law becomes a tool in the hands of the authorities, losing its basic protective function. One example of this abuse is the growing number of defamation lawsuits used for political purposes. Moreover, there are many indications that the aforementioned politicisation of state institutions by those in power has also happened to the private prosecutor in this case, i.e. TVP. This is indicated, paradoxically, by the indictment itself, based on Sadurski's tweet. In his tweet — which, according to the plaintiff, damages the reputation of TVP — Sadurski used the phrase "government media". To put it differently, the plaintiff self-identified as

"government media" — which, given the programme policy presented by, for example, TVP Info, we accept with sadness but without much surprise.

In light of the above, it seems reasonable to ask whether the criminal defamation lawsuit brought by TVP against Wojciech Sadurski is not an attempt by a public broadcaster, which — once again — self-identifies as "government media", to harass and silence an inconvenient critic of the ruling camp? This also raises another question, important from a public interest perspective. Is taxpayers' money being spent on the lawyers through which TVP prosecutes government critics? Without pretending to be a high court, we will confine ourselves to emphasising that the criminal proceedings against Sadurski are of the utmost concern to us, and we consider its outcome to be fundamentally important for freedom of expression in Poland and — in a broader sense — for Polish democracy.