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POLISH LEAGUE AGAINST DEFAMATION

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Dear Readers,

**At the end of December 2018, we informed you about the judgement of the Regional Court in Kraków issued against ZDF and UFA Fiction – the producers of the German TV series *Unsere Mütter, unsere Väter* (*Our Mothers, Our Fathers*, released as *Generation War* in English) – in the civil action brought forward by Captain Zbigniew Radłowski and the World Association of Home Army Soldiers. Below are parts of the comprehensive statement of reasons presented by the Regional Court in Kraków in which the infractions of the series’ producers were highlighted.**

First, it needs to be stressed that the Court found that personality rights include the right to a non-distorted history and national dignity. The Court also established that the right to honour the truth about the activities of the Home Army during the Second World War is an important element in shaping Polish national identity and the sense of national dignity. This line of reasoning is crucial to all lawyers who defend the honour and dignity of the Polish people – a victim of German atrocities during the Second World War.

Turning to the particular parts of the comprehensive, 70-page statement of reasons, it should be taken into account that the Court delivered the judgement not only on the basis of witness testimonies, but also on the expert testimony of Prof. K. Klejsa. On a side note, the court mentioned in its deliberations that the defendants did not want this witness to testify in the trial due to ... his nationality! In the view of the Court, *the claims of the defendant questioning the expert witness’s impartiality due to his nationality are non-substantive and discriminatory*, especially given the fact that the defendants wished to call a German expert witness.

The comprehensive statement of reasons given by the Court includes:

**1. *The series depicts the Home Army as an anti-Semitic organisation, which, even if not it did not partake in the Holocaust, at the very least condoned the Holocaust.***

In the view of the Court, the series depicts the Home Army soldiers in a one-dimensional and biased way. The soldiers are portrayed as one-dimensional people who have an “obsession” with the Jews. Every dialogue between the Polish characters (both the Home Army soldiers and villagers) features anti-Semitism as a dominant component. This is particularly striking when compared to the German soldiers, *who – according to the narrative of the series – were for the most part ordinary people forced into taking specific actions by virtue of their circumstances. On the other hand, the Home Army soldiers were depicted exclusively as anti-Semites, filled with hatred against Jews, and condoning the German actions.*

**2. *The series cannot be construed only as a work of fiction (...) By employing certain devices, it encourages the viewer to believe that it depicts true stories which took place during true occurrences in the Second World War.***

In the view of the Court, examples of such devices aimed at convincing the viewer that the depicted storylines are true include the display of the list of names, dates of birth, and deaths of the main protagonists during the end credits. The series further includes long sequences of archival footage which are commonly used in historical feature films.

**3. *In the opinion of the Court, the key and somewhat emblematic scene is the one which shows the shutting of the doors of a boxcar filled with Jews headed towards a concentration camp.***

The Court found the fact that the doors of a boxcar carrying Jews were shut by a “Home Army soldier” was aimed at demonstrating that *the Home Army soldiers condoned the mass extermination of Jews as well as the crimes committed by Germans in the concentration camps*. The Court recalled that the boxcar has a deeply symbolic meaning in the series –boxcars which took the prisoners to concentration camps have been made into memorials, both in the former Auschwitz-Birkenau Nazi concentration camp and Yad Vashem. It is worth noting that this is a response to one of the most prominent scenes in that German series.

**4. *Pathological behaviour was deemed normal***

The Court pointed out that there could have been individuals or even entire units with anti-Semitic attitudes within the Home Army; however, the scale of this problem – as the historical debate suggests – was insignificant when compared to the number and scope of the activities of the Home Army soldiers.

Recalling the basic facts from the history of the Home Army, the Court clearly stated *there is no historical evidence that the Home Army soldiers, having intercepted a transportation of Jews heading towards a concentration camp, left them trapped in a closed box car*. Furthermore, it was pointed out in the statement of reasons that the vast majority of Home Army soldiers helped Jews, and concealed them, even though such acts posed a direct threat to life, as aiding Jews was always punishable by death by the German occupiers.

**5. *We are dealing with a blatant attempt to show and highlight the fact that the partisan forces belonged to the Home Army (through specific framing, camera positioning and lighting).***

The Court indicated that the portrayal of Polish partisan groups sporting Home Army armbands was a deliberately crafted move on the part of the series creators. Additionally, the Court pointed out the fact that the make-up, costume design, and acting were aimed at depicting the Home Army soldiers in a decidedly unsympathetic light. In the opinion of the Court, *during the 24 minutes of screen time devoted to the Home Army soldiers, there is not a single action by such a soldier which could be construed explicitly as a positive one, and not a single Polish character who evokes sympathy*.

The Court explained that the ruling was not to be understood as an attempt to interfere with the content of the series, or to censor it in any way. In the statement of reasons we can find the following: *An apology and placement of a plaque describing the actual role of the Home Army, undisputed by the defendant, is aimed at restoring the right balance to the discussion about anti-Semitism in its ranks, and making the viewers of the series aware that even if anti-Semitic behaviour did transpire, the goal of the Home Army was to fight the fascists, not to support them in the extermination of Jews*. The Court stressed the fact that the ruling was not aimed at stifling any debates on history,

but to restore balance to the discussion of the culpable actions of some Home Army soldiers.

The Court also mentioned the educational factor in connection with the *Unsere Mütter, unsere Väter* series in the statement of reasons. It can be found there that *the claims that the average viewer of the series will consult any research on this topic, and form an informed opinion on that basis, are simply naive*. Even though the Court admitted that such a situation would be desirable, *the claim does not reflect the reality. In the opinion of the Court, the average viewer, who is not particularly interested in the history of the resistance movement in occupied Poland, will gather information exclusively from films and TV. This fact should be taken into account when considering such films or series, as they could be perceived as more than just artistic expression, and could form the basis for the distortion of history. It is also worth mentioning that Unsere Mütter, unsere Väter is more than just a tale focused on the lives of its protagonists, but also, or perhaps most importantly, a depiction of a significant part of World War II history.*

And finally, attention should be also given to the final sentence of the Court's statement of reasons, which reads: *The Court considered the precedent nature of the case, and its crucial importance in terms of maintaining a balanced view in historical debates concerning World War II, as well as its special role for society.*

Let us remind that the claimant's representatives in this case were Dr Monika Brzozowska-Pasieka (advocate) and Jerzy Pasieka (attorney at law) – who worked a pro-publico-bono basis.

The Polish League Against Defamation monitored the above case.