

**Answer to the alert on the Platform to promote the protection of journalism and safety
of journalists**

1. At the session on 26 January 2018, Sejm passed the Act (of 26 January 2018) on amending the Act on the Institute of National Remembrance – Commission for Prosecution of Crimes against the Polish Nation, the Act on military graves and cemeteries, the Act on museums and the Act on liability of collective entities for acts prohibited under penalty, in which the following amendment was introduced (inter alia) to the Act of 18 December 1998 on the Institute of National Remembrance (Art. 1 Item 6):
„Art. 55a. 1. Whoever publicly and contrary to the facts attributes to the Polish Nation or the Polish State responsibility or shared responsibility for Nazi crimes committed by the Third Reich and specified in Art. 6. of the Charter of the International Military Tribunal attached to the International agreement for the prosecution and punishment of the major war criminals of the European Axis, signed in London on 8 August 1945 (Dz. U. (Polish Journal of Laws) of 1947, Item 367), or for other offences constituting crimes against peace, against humanity or war crimes, or in another way drastically reduces the responsibility of the actual perpetrators of those crimes, shall be subject to a fine or the penalty of imprisonment up to 3 years. The sentence shall be made public.
2. If the perpetrator of the act specified in Paragraph 1 acts unintentionally, they shall be subject to a fine or a custodial sentence.
3. The perpetrator of a prohibited act specified does not commit a crime if they have committed that act as part of artistic or scientific activity.
2. The solution adopted by Sejm on 26 January 2018 – Art. 55a Para. 1 and 2 of the Act on INR – concerns protection of the „Polish Nation” and „Polish State” rather than of individuals or their groups. In consequence, **those regulations do not prohibit public, or even contrary to the facts, attribution of responsibility or shared responsibility for the crimes referred to in Art. 55a Para. 1 of the Act on INR to individuals or their groups.**
3. Art. 55 Para. 1 and 2 of the Act on INR uses the notions of the „Polish Nation” and the „Polish State”. Criminal law protection is granted to those entities. The notion of the „Polish Nation” is used in the preamble to the Constitution of RP of 2 April 1997 (Dz. U. 1997, no 78, Item 483, as amended), which refers it to „all citizens of the Republic of Poland”.

4. There is no danger that Art. 55a Para. 1 or 2 of the Act on INR will prevent publishing information on participation of individuals of Polish nationality or Polish citizens in Nazi crimes. Those provisions do not apply to protection of individuals or their groups, and hence documenting and disclosing their reprehensible conduct cannot be judged under Art. 55a Para. 1 or 2 of the Act on INR
5. Art. 55a Para. 3 of the Act on INR decrees that perpetrator of the prohibited act specified in Para. 1 and 2 does not commit a crime if they have committed that deed as part of artistic or scientific activity. This means that if the formulated charge of responsibility or shared responsibility of the „Polish Nation” or the „Polish State” for the crimes referred to in Art. 55a. Para 1 of the Act on INR is publicly formulated as part of scientific activity or emerges under artistic activity, there will be no ground for criminal prosecution under Art. 55a Para. 1 or 2 of the Act on INR
6. **Art. 55a Para. 1 and 2 of the Act on INR does not eliminate the possibility of public debate on the Nazi crimes or other crimes referred to in Art. 55 Para. 1 of the Act on INR, including also debate on participation of the population of Polish nationality in those crimes.** The said provision does not prohibit explicating the details of individual events, and the persons who will make findings in that scope and publish the results of their work cannot be charged with criminal liability on its grounds. **This is because the provision does not contain prohibition of showing that persons of Polish nationality have committed crimes specified therein, as perpetrators or co-perpetrators, or else as instigators or aides.** What is more, the provision contains the reservation that specific crimes may not be attributed contrary to the facts to the „Polish Nation” or the „Polish State”, which *a contrario* means that **claims concerning possible reprehensible conduct of individual persons or their groups are not subject to judgment under Art. 55a Para. 1 or 2 of the Act on INR.**