

DEFECTIVE CODES OF MEMORY

How the memory of international crimes
is distorted in public discourse

Uniwersytet Warszawski
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INTRODUCTION: DEFECTIVE CODES OF MEMORY IN THE PRESENT WORLD

Artur Nowak-Far

There is only a fine line between the immediate and the long-term, or even eternal, perspectives. Storytelling is a good case in point. Real-time coverage can perpetuate specific beliefs and judgements about any important event. It can set in stone certain expressions that will gain the power of fixed idioms of language. It can determine identity, and the content and manner of communicating in the world.

It seems to me that the original purpose of storytelling was to facilitate dialogue between group members. The first stories were most probably told about ancestors. Repeated from generation to generation, they strengthened the sense of values shared by families and tribes, and passed on messages of what was considered important, and socially significant for the community. Stories were meant to bring families and tribes closer together, feeding into their knowledge about themselves, contributing to their identity.

Over time, storytelling also became part of intergroup dialogue. That is because a group can draw on its history for uniqueness, distinctness, and sometimes even pride. Moreover, stories can be narrated to convince others, the strangers, of these special features. Such stories contain a tailor-made set of arguments, opinions, and declared beliefs, the purpose of which is to get the message about one group across to members of other groups. We find here the expression of how a group would like to be seen by its environment; moreover, such information can be designed to caution members of other groups or even convey the gist of mutual relations.

Today's world is global. The scale and intensity of information exchange is without precedent in the world's history. No group functions in an isolated space. No information can by itself shape anyone's consciousness, without proper verification. This means that nowadays it is groups, including entire nations and countries, that engage in an intriguing dialogue with each other about their identities, and what makes them up. An important element of this dialogue, which involves many threads and many entities, is history – especially the history of mutual relations and ensuing patterns which form a global experience.

It is in this scale, intensity and network character of discourse that traditional ideas enabling nations and countries to self-define collide with each other. More and more often, a common picture of history, valued by all and avoiding the us/them dichotomy, is emerging from this collision. We already know that for this valuable effect to occur, all the participants of the process leading up to it must fully reveal the truth. In this sense, it is the truth that triggers a new form of history policy, one which is the expression of conciliation necessary to build a common future.

Accumulated over years, prejudices that foster nationalism, or even chauvinism, do little to reach this state of mutual historical dialogue between communities large and small. That is because nationalism and chauvinism focus on building identity by taking short-cuts: they glorify a nation's identity, including its history, a process that often goes hand in hand with building unfounded stereotypes of other groups. It is nationalism and chauvinism that do not allow telling yourself and others the truth.

Defective codes of memory are among the phenomena that prevent "taking the path of truth" described here. They should be understood as false statements (i.e. not meeting the Aristotelian criterion of truth) characterized jointly by the following features:

- (a) falsehood that manifests itself in distorting relevant predicates of collective historical memory of events which are important to the identity of an individual, a community or many communities,
- (b) distortion of the above-mentioned predicates of historical memory by means of euphemisation or by employing syntagms which convey grossly misrepresented information,
- (c) taking advantage (both consciously and unconsciously) of the phenomenon whereby the adequate context of all statements about past events fades out over time.

Examples of defective codes of memory abound. Modern history tends to be given quite a bizarre reflection in the current public discourse. It is all too easily that such erroneous terms as "Armenian genocide," "Herero extermination" or "Polish concentration camps" find their way into international historical discourse, which is otherwise fairly dependable. They spoil this discourse, putting its language at a risk of permanent contamination. They are also insidious, for many people fail to notice them in discourse. Defective codes of memory by and large result from ignorance. Even so, one cannot rule out that they are used deliberately to offend a group, or to reproduce a subtle signal of a more or less explicit contempt for this group.

Defective codes of memory are set in different contexts, perform different functions, and need not always be used on purpose. They also evoke

different emotions. The key thing about them is, to my mind, their ability to reverse – by the power of language – the moral order stemming from the lesson the international community is taught by history. With regard to crimes prosecuted by the international community, they are dangerous because they efface the memory and assessment of actions which had led up to these crimes. At the same time, they undermine the right to truth which we – as the international community – have a duty to demand not only in our own name, but especially in the name of the victims.

This motivation was behind efforts, undertaken by outstanding scholars of different specialities, that have resulted in this publication. After all, defective codes of memory are primarily a linguistic phenomenon. At the same time, they have an important pragmatic dimension that manifests itself in media practices and the application of law. Hence, this publication combines reflections from the fields of linguistics (including philosophy of language), media studies, and legal studies. Eminent scholars and practitioners in these areas from Germany, Poland, and the US have contributed their pieces.

The publication opens with two studies: by Martin Mendelsohn from New York, a well-known international lawyer who has repeatedly sought the truth on behalf of victims of genocide before courts in different countries of the world, and by Professor Dieter Schenk from Berlin, who has not only fathomed the mechanics of twisting historical truth, but has also successfully stood up for this truth in a number of spectacular court cases. In his piece, Martin Mendelsohn looks at the way measures to eliminate defective codes of memory from the public discourse can be applied before US courts. The chapter by Professor Dieter Schenk sets out the possible social and legal qualifications of the use of defective codes of memory in the practice of social life of the Federal Republic of Germany.

In the section of the book on the media dimension of the use of defective codes of memory, the study by Professor Ewa Stasiak-Jazukiewicz from Warsaw shows results of her analysis of German press articles featuring the defective code of memory “Polish concentration camps.” She arrives at the very important conclusion that the running of press titles by editorial boards is inept: despite previous corrections, the defective code of memory in question will often appear in subsequent materials. The research also shows that the problem has not entered media debate in Germany yet. The article by Marta Jas-Koziarkiewicz, Ph.D., presents the results of her research into how Internet users reacted to President Barack Obama’s use of a defective code of memory about German Nazi concentration camps. According to her findings, the incident sparked off a considerable public reaction; Internet users tried to interpret it, while also doing their best to ensure their community learnt the truth. The study by Professor Michał

Bilewicz from Warsaw and his team focuses on the ethnicisation of responsibility for crimes committed in pursuit of political ideas propagated in the 20th century. In their opinion, it is an oversimplification to shift responsibility onto entire nations – the standard of truth should be higher, and more accurate in identifying responsible entities.

The legal part of the book begins with a piece by Professor Artur Nowak-Far (Warsaw) on the fundamental axiological and practical problems with defining and combating defective codes of memory about the crimes of genocide, wherever they were committed. The author observes that the narrative which is being constructed nowadays with the use of mass media targets a global audience. What such targeting entails is that the broadcaster accepts different legal classifications of this narrative according to specific contexts of reception in the event that the narrative violates somebody's interests. In each legal order the use of a defective code of memory causes a clash of protected interests, with the freedom of speech being one of them. But from the duty to maintain a fundamental moral order arises the imperative to protect truth on behalf of the victims of genocide. It is therefore a praxeologically justified counterweight to the requirement of guaranteeing the freedom of expression, at least in those societies whose members fell victim to genocide, but most probably also in those which produced the perpetrators. The text by Filip Rakiewicz (Poznan) is an interesting attempt to demonstrate this special responsibility by formulating and testing a hypothesis on whether Polish law could protect the personal interest of a sense of national identity. Such protection would also apply to the use of defective codes of memory that violated the said interest. The use of defective codes of memory was also addressed by Professor Witold Kulesza (Lodz) in the nuanced context of collective memory which is also treated as a legal interest. Drawing on Polish-German relations and historical examples of crimes of genocide committed in Poland, the Author noted that their memory is part of the common good – common memory of those events. The text also assessed whether current Polish legal regulations which could be applied to prevent defective codes of memory from distorting this common memory are fit for purpose. The collection's legal section ends with a chapter by Natalia Sienkiewicz-Bożyk (Trier) and Magdalena Sykulska-Przybysz, Ph.D. (Gdansk and Trier), who discuss the instruments available in German law that could be used to limit the negative impact of defective codes of memory on the quality of German public discourse, and on the common Polish-German memory of the victims of genocide in Poland during the Second World War. The Authors pointed to the constitution as the source of protection norms for all personal interests in Germany, while concrete norms are generated by case law. In the model of responsibility, the key

issue is objective selection of a piece of information that is believed to have infringed personal interests by an average (abstractly standardized) recipient. Combating defective codes of memory in the media, especially the press, is complicated by the fact that their civil liability is regulated at the level of federal states, rather than the federation itself.

The publication ends with texts from the field of linguistics, which strongly emphasize the pragmatic analysis of language. The first one, written by Ewa Rosiak-Zięba, Ph.D., (Warsaw), examines the syntagm “Polish concentration camps” from the perspective of logical pragmatics. The author notes that the syntagm stands out against other syntagms commonly used to describe similar phenomena that occurred in the late 19th century in Namibia, during the Boer wars in Transvaal, or during the Second World War in Croatia. The author also stresses that in order to neutralize the prominence and impact of defective codes of memory, it is necessary to put them in the right context, which means enhancing historical knowledge of their potential recipients. The second linguistic text, by Professor Zbigniew Greń (Warsaw), parses a selected defective code of memory in its social context. The piece makes the point that repeated use of a code may turn its syntagms into an idiom of language. As a result, the recipient of messages with defective codes of memory does not carry out their full semantic decomposition. This in turn can make it more difficult to eliminate stereotypes, and may distort communication for good.

All of the presented texts lead to the conclusion that the use of defective codes of memory is a major communication problem between individuals and larger groups. It thus represents an interesting and little explored research area, which may come as a surprise given the social importance of the problems posed by defective codes of memory.

The publication presents the results of research done by the above-mentioned practitioners and scholars. Every piece of research occupies a different position in the scholarship and practice of the author, reflecting as it does their individual, very rich experience; needless to say, the research is also based on different methodologies. What all the presented studies have in common is a shared concern that the international discourse does not employ communication codes which would distort history, and make unacceptable re-evaluations in the context of the narrative about the crimes of genocide. What inspired the effort of this book’s authors was a conference organized by the University of Warsaw, the Warsaw School of Economics and the Ministry of Foreign Affairs in October 2013. The ensuing time of reflection allowed the researchers to get a better grasp of the phenomenon of defective codes of memory. Unfortunately, in the intervening period the MFA continued to grapple with the use of defective codes on memory in

media discourse related to Poland. And it is these experiences that many scholars used and continue to use as their research material. From this point of view, the contributions to this book are an important synthesis of practice and theory.

Berlin – New York – Warsaw, May 2015

LIBEL ACTIONS IN THE USA AGAINST THE USE OF DEFECTIVE CODE OF MEMORY

Martin Mendelsohn

This paper is inspired by the title of a White Paper presented to the governments of the United Nations on 10 December 1942 by then-Foreign Minister Edward Raczynski. That White Paper is titled: The Mass Extermination of Jews in German Occupied Poland.

When I saw this, I was struck by the irony and the tragedy that has been brought by historical ignorance and mischief. It is ironical that in 1942 Poland's Foreign Minister properly identified the site of the concentration and death camps as "German occupied Poland." And yet, 70 years later, the world has fallen into a habit of sloppy history by labeling German Nazi constructed concentration and death camps in Poland as Polish death camps. It is wrong as a matter of history; it is wrong as a matter of logic; it is wrong as a matter of morals. And yet it has become accepted practice in civilized and liberal societies to flaunt one's ignorance by referring to Auschwitz, for example, located in Silesia, an area that literally had been annexed by Nazi Germany and considered by the Nazis to be part of the territory of the Third Reich, as a Polish death camp but not a Nazi German death camp.

This mischief has been the source of embarrassment and agony not only to the people of Poland, but to all of us who understand history and understand the brutality of the Holocaust was such that misinformation, exaggeration and hyperbole have no place. We are here today to explore this phenomenon and to discuss possible corrections and solutions to this problem.

Please ask yourself: aside from Austria and Germany, what do the following nations have in common: Albania, Belarus, Belgium, Croatia, Czechoslovakia, Estonia, Denmark, Finland, France, Hungary, Italy, Latvia, Lithuania, the Netherlands, Norway, Romania, Serbia, the U.S.S.R., Ukraine? They are all bound by the historical fact that each of those nations fielded Waffen-SS National Legions consisting of their own citizens who volunteered

to fight on the side of Nazi Germany while wearing German uniforms with their own nation's colors and symbols. Please note that of the nations conquered by Nazi Germany, only Poland did not supply a Waffen-SS National Legion. Poland is unique for another reason as well: More Poles have been honored by Yad Vashem in Israel for saving Jewish lives during the Holocaust than any other nationality. So why, we may all ask, do some otherwise careful historians paint Poland as the exemplar of an Anti-Semitic nation in Central Europe?

It is difficult if not impossible to explain. Even the most casual historian of the period knows that all of the extermination camps in Poland were located in areas either annexed to Nazi Germany, i.e. Auschwitz-Birkenau and Chelmno or in that part of Poland directly ruled by the Nazis through the "General Government," e.g. Belzec, Majdanek, Sobibor and Treblinka.

Ironically the first use of the term came from a man we all revere—Jan Karski writing in a US magazine during the war. But at that time it was intended as a geographic term for purposes of clarifying location for American audiences not a political one.

So the question facing us now is how to educate the public about the mistake and how can we go about correcting it. Not an easy task under the best of circumstances. Because I am a lawyer I have been asked to come up with a legal solution for use in the United States. The law in the US is both complex and simple—much like the country itself—we have freedom of the press and expression and we expect our courts to protect it fiercely. Libel of a public official or public figure in the US must be made with actual malice for an action against the libel to be successful, see *NY Times v. Sullivan* (376 US 254 [1964]). In this case Sullivan, the Commissioner of Police for Montgomery, Alabama sued for libel because the *NY Times* ran an advertisement seeking funds to pay for the legal defense of Dr. Martin Luther King, Jr. The advertisement contained some inaccuracies and Sullivan sued, claiming that because he was responsible for the police department in Montgomery, Alabama and the text of the advertisement contained some inaccuracies he had been libeled. At the same time there were other judgments in the South against various national (usually Northern) newspapers totaling more than \$300 million dollars. This was the case that went before the Supreme Court. In a unanimous decision written by Justice William Brennan the Supreme Court held that actual malice or a reckless disregard of the true facts has to be present for the plaintiff to prevail. Actual malice was defined as knowing that something was false or having a reckless disregard for the truth. This was not to be found in this case because among other things, the advertisement was prepared by others and no employee of the *Times* actually made any contribution to, or approved, the text. The Court's

ruling, however, had broad application in the law of libel and changed the way those libeled could seek relief in the US. An interesting sidelight is that, Justice Hugo Black, who wrote a concurring opinion supporting and agreeing with the result, was a Senator from the state of Alabama before he was appointed by President Franklin D. Roosevelt to the Supreme Court in 1937. In the famous Pentagon Papers case (*NY Times v. United States*, 403 US 713 [1971]), (there's the pesky NY Times again) about the release of documents commissioned by the US government regarding US involvement in Vietnam, from World War II to 1968, the Supreme Court denied the government's attempt to control the right of the *NY Times* and later the *Washington Post* to publish the documents. The US government actually sought a court order to forbid publication and it was granted in the court of first impression, the US District Court in Washington, D.C. The Supreme Court reversed the District Court by a 6–3 decision and established and reinforced the freedom of the press to publish what it wanted to without seeking permission from the government or being subject to any kind of prior restraint by the government. Now, no governmental body in the US, local, state, or national, has any power at any time to attempt to influence the press about what it can or cannot publish.

Since the unanimous holding by the Supreme Court in the *Sullivan* case, the US legal system is not friendly to those who seek relief from libel except in the most outrageous cases. But because most US publications are sold in London, the preferred alternative used by US lawyers is to bring a libel action in the UK. It works because England has a very plaintiff-friendly libel system and under British law and practice once the writ has been issued in a libel action the burden of proof shifts to the defendant to prove the truth of the alleged libel. These are the same rules that applied in the US before the decision in the *Sullivan* case. I believe that just filing the suit in the UK will attract the right kind of attention and bring the right people to a meeting convened to discuss and resolve this embarrassing historical error.

I am afraid there is not a satisfactory legal solution in the US for this very difficult problem. If it becomes necessary, I also believe there is a practical solution in the US for the problem. If the erroneous fact is originally published in the US, at least by traditional publishers of books, magazines and newspapers what follows may help: Each of these institutions has an internal "style and usage" manual that has a set of rules about language and usage.

On September 3, 2013, the day that I submitted this speech so it could be translated, *The New York Times* published an article about the beginning of the trial in Germany of Siert Bruins accused of killing a Dutch resistance fighter. The story is titled "Ex-Nazi, 92, Goes on Trial in War Death" on page A-9. Toward the end of the article, the following phrase appeared, "[...]

the Sobibor Death Camp in Nazi-occupied Poland in 1943.” That morning, I sent an e-mail to the publisher of *The New York Times* asking whether the phrase “Nazi-occupied Poland” is now normal usage for his newspaper. That afternoon, the Publisher sent me an e-mail; let me quote from it:

I asked our Standards Editor your question and here is his reply. By all means feel free to use it in your speech... Yes, a couple of years ago we added an entry to our stylebook specifically cautioning editors and writers to avoid phrases like “Polish death camp,” which could give the misleading impression that the camps were run by Poland. Instead we use phrases like “Nazi death camps” or “death camps in Nazi-occupied Poland.” On a couple of occasions in the past when the misleading phrases were inadvertently used, we have run corrections.

So, we now know that my suggested approach has validity and we are all empowered by the example set by *The New York Times* to insist that responsible media act with integrity and use the same formula that has been and is now used by *The Times*.

Appropriate representatives of the Polish government should contact each of the companies and request a change in their respective “style and usage” manuals. I am sure the requests will be favorably received. And if not, then the stage has been set for a successful libel action to be brought in the US as the publishers have been put on notice of their factual error and if they continue to publish what they now know to be not true then one can reasonably argue that it is being done with malicious intent to defame the Polish nation and its people. The same approach should work with responsible internet publishers in the US and the UK as well but I am not aware of any action for libel in either country against internet publishers.

I am sorry I could not offer a greater multitude of ideas to solve the problem or be more positive about solutions for this issue. It is a problem that all democracies have in determining how to regulate free speech in a free and open society whether that country is Poland or the US.

Thank you very much.

Warsaw, Poland
October 11, 2013

DEFECTIVE CODES OF MEMORY: BAD HABITS, INTENTIONAL LIES, OR NEGLIGENCE? THE GERMAN LAW PERSPECTIVE AND HISTORICAL REVISIONISM

Dieter Schenk

For more than half a century after the Second World War, errors of memory shaped the political landscape in Germany – and we continue to be preoccupied with them to this day in the form of erroneous codes used by neo-Nazis and federations of expellees.

1. National Socialism and contradictions of memory

Memory is a “reliable companion,” writes the political scientist Helmut König. Rather than settling for a faithful reproduction of the past, it is creative and imaginative, and adopts what is foreign as its own. Memories are a *mixtum compositum* made up of what we have experienced, told, desired. So there is no way the past could return to consciousness through memories in a truthful manner, the less so as memory is tuned to the current interests of the person recalling memories, and takes into account possible consequences.¹

So memory creates a link between the past, the present and the future, a connection that is unique to every individual and that determines his or her identity. We recall memories without realizing, we can hardly influence it. The writer Cees Nooteboom put it metaphorically like this: “memory is like a dog that lies down where it pleases.”²

The war generation had individual images of memories, usually with a negative tinge. Such memories can be very painful and lead to repression. Repression is an attempt to forget, for example, to push conscience and guilt aside, as was the case in the post-war period when the once mighty Third

¹ H. König, *Politik und Gedächtnis*, Velbrück Wissenschaft, Weilerswist, 2008, pp. 71 ff., 76.

² C. Nooteboom: *Rituale*, as cited in: König, *Politik*, pp. 81–83.

Reich lay in ruins, and the idolised “Führer,” an equivalent of the ideal ego, was exposed as a criminal.³

Repression may also be a psychological reaction to traumatic experiences of a victim who unconsciously transfers this trauma onto the children, something I have experienced in Tel Aviv, in one Jewish family. Not uncommonly, memory is manipulated by faking facts. Take Hans-Werner Giesecke, a military prosecutor who demanded death penalty for 38 Gdansk Post Office employees. After the war he maintained that as a senior field judge he had handed down only two death sentences, while the actual figure exceeded 60.⁴

It is pride, shame and the fear of punishment that act as censors in individual memory. These emotions order the past according to their own needs and wishes. Albert Speer, Hitler’s architect, the Reich minister of armaments, and a war criminal, asserted during the Nuremberg trials that he had had no knowledge of the extermination of Jews, and escaped death penalty. When I was interviewing him in 1980, a year before his death, he had this to say: “I didn’t know, because I didn’t want to know.” I confronted him by saying that he was present during Himmler’s abominable speech at Poznan City Hall on 4 October 1943, in which Himmler glorified the mass extermination of Jews⁵. Speer conceded that Himmler did address him by name: “Mr Speer, as you know [...],” on that occasion, but “Himmler was short-sighted, and I had been gone by then.”⁶ Was Speer lying or did he repress his memory? We now know that he had detailed knowledge about the death factories in Auschwitz.⁷

It is characteristic of collective memory, especially after wars and a fresh political start, to punish, forgive and forget.⁸ Of the Federal Republic of Germany it was characteristic to forget: perpetrators and fellow-travellers lapsed into collective silence. Forgiveness manifested itself in collective

³ A. Mitscherlich, M. Mitscherlich, *Unfähigkeit zu trauern. Grundlagen kollektiven Verhaltens*, R. Piper & Co., München, 1967, pp. 31, 37, 77.

⁴ The Ministry of Justice of Hesse Wiesbaden, catalogue No. I p G 230, Giesecke personal files; State Archive of Hesse Wiesbaden, catalogue No. 520 F 275 F8 14838, Records of denazification of Giesecke; cf. D. Schenk, *Die Post von Danzig. Geschichte eines deutschen Justizmord*, Rowohlt, Reinbek, 1995, pp. 188–203, 224 ff.

⁵ Text available in Polish at: H. Himmler, “Poznańska mowa do grupenführerów SS 4 października 1943 r.,” *Kronika Miasta Poznania* 2009, no. 2, pp. 315–332 (note of scientific editors).

⁶ Part of the interview with Speer in: D. Schenk, *BKA. Die Reise nach Beirut. Ein Politischer Tatsachenroman*, Rowohlt, Reinbek, 1990, pp. 338–348.

⁷ “Das Sonderprogramm Prof. Speer”, in: *Auschwitz-Birkenau*: www.susannewillems.com/Aufsatz-Willems-WDR.pdf.

⁸ H. König, *Politik*, p. 12.

repression, with the aim to achieve a new political orientation and national identity. Most Germans put the blame for the horrific acts of the Third Reich only on Hitler and a small group of major war criminals. They believed the Germans were entirely in the right to see themselves as the seduced, as those who fell victim to the war and its consequences. In 1952, German Chancellor Konrad Adenauer told the German Bundestag that it was time to stop sniffing around for Nazis.⁹

As opposed to memory, *historiography* clings to the past as a *point of reference*. For example, it has been historically proved that the lack of prosecution of crimes in the post-war period is a disgrace for the German judiciary. There has been no 'zero hour', for where would so many Nazis have disappeared? 1951 saw the founding of a Federal Criminal Police Office, whose staff recruited in 100 percent from members of the former security police, while half of the management was implicated in some of the most serious Nazi crimes.¹⁰ By 1959, as much as 65 percent of the management were former SS members, while 73 percent of senior officials used to belong to the NSDAP.¹¹ The Federal Office for the Protection of the Constitution became a haven for two cliques going back to the Reich Main Security Office in Berlin, and the SD (Security Service) posts in Paris.¹² After 1945, almost all Nazi prosecutors and Nazi judges were taken over by the German judiciary. By 1966, 60 percent of division heads and 66 percent of lower-ranking managers at the Federal Ministry of Justice were affiliated to the Nazi party.¹³

There has been no reliable research on memory lapses conducted with respect to the Nazi past. From research for my book on the Nazi roots of the Federal Criminal Police Office (BKA) I know that former SS and Gestapo members were regarded at the BKA as a clandestine community who would work hand in glove to clear themselves of accusations, deny everything, never blame each other, and show no remorse or sympathy with the victims. Even so, two of them committed suicide. You could express

⁹ N. Frey, *Vergangenheitspolitik*, C.H. Beck, München, 1997, pp. 86, 137, 219, 231, 270, 297, 405.

¹⁰ Cf. D. Schenk, *Auf dem Rechten Auge blind: Die braunen Wurzeln des BKA*, Kiepenheuer & Witsch, Köln, 2001, pp. 282 ff.

¹¹ Bundestagsdrucksache 17/8134 of 14 December 2011, p. 36; I. Baumann, H. Reinke, A. Stephen, P. Wagner, *Schatten der Vergangenheit. Das BKA und seine Gründungsgeneration in der frühen Bundesrepublik*, Luchterhand, Köln, 2011, p. 58.

¹² www.taz.de (2/3 October 2013).

¹³ *Die Rosenberg. Das Bundesministerium der Justiz und die NS-Vergangenheit. Eine Bestandsaufnahme*, hrsg. M. Görtemaker, Ch. Safferling, Vandenhoeck & Ruprecht, Göttingen, 2013, p. 67; cf. R. Giordano, *Der perfekte Mord. Die deutsche Justiz und die NS-Vergangenheit*, Vandenhoeck & Ruprecht, Göttingen, 2013.

it by citing Nietzsche: “I did that’ says my memory. ‘I couldn’t have done that’ – says my pride, and stands its ground. Eventually, memory gives in.”

Since the 1990s, a consensus has prevailed in German society to no longer ignore National Socialism with silence, but rather condemn it as a genocide and crime against humanity.

This is naturally at odds with family memory. There are no Nazis in most families: “Grandpa was no Nazi.” Loyalty towards family members led to a situation where passive participants of events would become resistance fighters, active executors of Nazi policy would turn into critical minds who had always been against, while beneficiaries would assume the mantle of victims of the regime. The Germans became a nation without active subjects, without people performing certain functions, without perpetrators. Subsequent generations want their relatives to appear in roles that have nothing to do with past atrocities. In family conversations, they seize on every strange remark so as not to hear incriminating circumstances; they ask no critical questions, they distort the facts and invent a new history that has no place for a sense of guilt, but focuses instead on excessive tearfulness, a deeply racist and hostile image of the Russians and the Poles, and servility to the Americans.¹⁴ The sons and daughters of former Nazi bigwigs form a separate chapter. They usually separate the good father from the evil Nazi, as if criminals had split personalities. This is quite different with my good friend Niklas Frank, who had the courage and honesty to pillory crimes of the Governor General and his corrupt wife, for “when thinking about his parents, he had piles of corpses before his eyes.”¹⁵

2. Stereotypes and defective codes – excursion

By the time of National Socialism, a number of stereotypes had been in circulation about Poles. Joseph Goebbels commented on this in his diary when travelling through the captured lands in 1939; here is not the place to enumerate them. Although Germans and Poles share over a thousand years of history living side-by-side, their relations are determined by myths, prejudices, stereotypes and superstitions.¹⁶

¹⁴ H. Welzer, S. Moller, K. Tschuggnall, “Opa war kein Nazi.” *Nationalsozialismus und Holocaust im Familiengedächtnis*, Fischer, Frankfurt am Main, 2002, pp. 11, 13, 200 ff., 207.

¹⁵ Cf. D. Bar-On, *Last des Schweigens. Gespräche mit Kindern von NS-Tätern*, Köber-Stiftung, Hamburg 1993; N. Frank, *Der Vater. Eine Abrechnung*, Goldmann, München, 1987; N. Frank, *Meine deutsche Mutter*, Bertelsmann, München, 2005.

¹⁶ German Culture Forum for Eastern Europe: Poland, www.kulturforum.info; cf. T. Szarota, *Stereotype und Konflikte. Historische Studien zu den deutsch-polnischen Beziehungen*, Fibre, Osnabrück, 2010.

Let us leave the days of National Socialism aside for a moment. In recent decades, a German cliché of choice has been that Poland is an El Dorado for organised groups of car thieves. However, official statistics say something different: according to the *Bundeslagebild Kfz.-Kriminalität 2012* of the Federal Criminal Police Office, 148 vehicles (2011 = 157 vehicles) were stolen for good from German citizens in Poland in 2012, or 12 vehicles per month. Meanwhile, a total of 18,554 vehicles, or nearly 1,500 per month, were considered irretrievably stolen in Germany during the same period. Unfortunately, these obvious facts do not prompt the Federal Criminal Police Office to challenge the negative stereotype.

Since 2008, this cliché has been perpetuated in a court judgement: the Higher Regional Court in Rostock dismissed the claim by a German insurance policy holder whose car had been stolen on his way to Gdansk. The court cited gross negligence of the owner who had left his car keys in the ignition. From the legal conclusion of the judgement: “Everybody knows that car thefts are common in Poland. Especially in Poland, one should take into account that some Poles are on the lookout for chances to steal a vehicle – in particular luxury cars – as in the case of this Audi A8, or spontaneously take advantage of opportunities that present themselves.”¹⁷

3. *Lapsus linguae* and defective codes of memory

If someone talks about “Polish concentration camps,” it is a slip of the tongue, provided that no extreme right-wing intention can be seen in the overall context. The same is true when this happens in the press or on television, as in the German dailies *Bild*, and *Die Welt*, in DPA (German Press Agency) and on ZDF (Second German Television). As far as I can tell, these dailies would subsequently offer their apologies. Such false statements, made in a thoughtless and indifferent way, breach the journalistic duty of care, result in libel, and cannot be tolerated given the Nazi concentration and extermination camps located on Polish soil and the 6 million Polish war victims, including three million Polish Jews, so there can be no connivance of this. In such cases, it is recommended that corrections be demanded in each individual case, an institution that has been rooted in the German press law since 1874. It is based on the principle of *audiatur et altera pars* is, which is anchored in national press regulations.¹⁸ The use of defective codes on the Internet can also be controlled through Google Alerts.

¹⁷ OLG (Higher Regional Court) Rostock, file No. 5 U 153/08.

¹⁸ Cf. W. Seitz, G. Walter, G. Schmidt, A. Schoener, *Der Gegendarstellungsanspruch: Presse, Film, Funk, Fernsehen und Internet*, C.H. Beck, München, 2010.

4. *Lapsus memoriae* and defective codes of memory

There was no automatic or collective recruitment to the NSADP or the SS in the Third Reich. Moreover, a candidate had to fill in and sign an application form for admission.¹⁹ Even so, many members of the so-called “Flakhelfer-Generation” quote memory gaps when asked about their joining of the NSDAP (and sometimes the SS) as 16- or 18-year-old Hitler’s boys. We must not forget about their age – some were almost children. The way this stigma was tackled in post-war Germany was usually more important than the membership of a Nazi organisation itself, because they were too young to be guilty. Unlike Günter Grass, who revealed his past in 2006, and self-critically reflected on his, as he put it, “bad behaviour of yore,” other leading politicians and intellectuals want no truck with party or SS membership. This applied to many prominent figures, including four German Federal Presidents, a Federal Chancellor and a total of 26 ministers. Doubts often appear as to whether amnesia is not merely claimed in defence, as in the case of the former Foreign Minister Hans-Dietrich Genscher. In his youth, Günter Grass missed the right moment to disclose his past, which led to decades of anguish. He took fright at himself after one day he caught himself humming an SS tune while shaving. His works abound in ciphers. For example, the narrator of his short story “Crabwalk” says:

It is a good thing he can’t guess the thoughts that against my will come creeping out of the left and right hemispheres of my brain, making terrible sense, revealing anxiously guarded secrets, exposing me, so that I am horrified, and quickly try to think about something else.²⁰

It was no *lapsus memoriae* when, after 1945, scores of former Gestapo officials brazenly lied that they had never been in the SS. They would refer to their SS ranks as “rank standardisation,” an allegedly unmeaning complement to the police rank. The same applies to faking a state of necessity arising from the duty to follow orders.²¹

Memory loss was certainly no affliction of Heinz Wolf (born 1908), from 1933 on a staunch Nazi lawyer who worked his way up issuing death sentences at the Special Court in Gdansk. After the war, he claimed to have been demoted to Gdansk for “opposing party discipline.” In Gdansk, he would allegedly intercede – as far as possible – for people persecuted by the

¹⁹ Federal Archive in Berlin, BDC- file No. BDC/PH/9325/MU/jg, Runderlass RFSS.

²⁰ G. Grass, *Im Krebsgang. Eine Novelle*, Steidl, Göttingen, 2002, p. 190.

²¹ A. Rückerl, *Die Strafverfolgung von NS-Verbrechen 1945–1978*, C.F. Müller, Heidelberg, 1979, pp. 181–184.

Nazis, and pass decisions on their early release. His claims were taken at face value, and in 1949 Wolf was named a prosecutor, soon to be promoted to chief prosecutor. Between 1961 and 1966, he was a member of Hessen's Landtag, acting as a legal-political spokesman for the CDU faction. Then, from 1964 to 1975, he was governor in the district of Limburg-Weilburg. Named an honorary citizen of Limburg, he was decorated with the Grand Cross of Merit on Ribbon of the Order of Merit of the Federal Republic of Germany, and had a sports hall named after him.²² It was by no means a single case. For example, out of 403 deputies of Hessen's Landtag born after 1928, 92 were NSDAP members and 200 belonged to its affiliates.²³

5. Historical revisionism and defective codes

Let me move to this topic by quoting a short poem by Primo Levi, who survived the concentration camp in Auschwitz. He wrote it on 10 January 1946:

You who live safe
In your warm houses,
You who find warm food
And friendly faces when you return home.

Consider if this is a man
Who works in mud,
Who knows no peace,
Who fights for a crust of bread,
Who dies by a yes or no.
Consider if this is a woman
Without hair, without name,
Without the strength to remember,
Empty are her eyes, cold her womb,
Like a frog in winter.

Never forget that this has happened:
Or may your houses be destroyed,
May illness strike you down,
May your offspring turn their faces from you.

²² Federal Archive in Berlin, file No.: ZBII-1653A.1 (Personal files of Wolf Az. RJM-Ip8-W1341).

²³ A. Kirschner, *NS-Vergangenheit ehemaliger hessischer Landtagsabgeordneter*, Vorstudie, 2013, MDI.pdf, www.hessischer-landtag.de; cf. Schenk: Danzig 1930–1945, pp. 123 ff.

I would like to have this poem in memory when the names “Sobibor,” “Majdanek” and “Auschwitz” are mentioned, and I would like to recite it at a meeting of the Federation of Expellees, or in the so-called “camaraderie” of neo-Nazis who dare to ridicule Willy Brandt’s genuflection. I would like to ask them all whether they know what they are doing when they change historical facts, manipulate, falsify, one-sidedly interpret and conceal sources.

Oftentimes, they do not wear military boots or have bald heads, and are quite clever at disseminating defective codes, whilst trying to operate below the threshold of punishability. And they take advantage of the anonymity of the Internet. The use of Nazi uniforms, slogans, emblems and swastikas or the so-called Hitler salute is punishable under section 86a StGB (Criminal Code). The torrent of hatred and encouragement of violence or an attack on human dignity meet the criteria of incitement of the masses, which in Germany is punishable under section 130 StGB. What is meant by this is the potential offense of endangering a legal interest. The criminal law protects public peace and human dignity,²⁴ the dissemination on the Internet is also punishable. The English term ‘hate crime’ seems more pertinent to me than ‘incitement of the masses.’²⁵

While surfing the Internet in preparation for this article, I came across a 142-page study on the Sobibor extermination camp, written by a team of anonymous authors. It is an established fact that about 250,000 Jews were murdered in Sobibor between March 1942 and October 1943.²⁶ In contradiction to this, the authors use pseudo-scientific methods to try to prove that it was a transit camp for Jews, which never had any gas chambers.²⁷ In connection with the Sobibor lie, I filed a complaint with the prosecutor’s office in Freiburg about the incitement of the masses. There is also the Majdanek lie. It is the subject of a German Nazi book, published in Great Britain.²⁸

Whilst browsing the Internet, I read that texts by Holocaust denier David Irving were on sale at a meeting of the Homeland Association of Silesia. In addition, flags with the slogan: “Silesia is not Poland” were seen there.²⁹

²⁴ StGB (Criminal Code), 51. Aufl., Beck-Texte im dtv, München, 2013.

²⁵ Cf. *Never Again/Victim’s Perspective Hate Crime*, Warsaw/Potsdam, 2009.

²⁶ *Enzyklopädie des Nationalsozialismus*, hrsg. W. Benz, H. Graml, H. Weiß, 3. korr. Auflage: Klett-Cotta, Stuttgart, 1998, p. 734; *Enzyklopädie des Holocaust: die Verfolgung und Ermordung der europäischen Juden*, vol. 3, hrsg. I. Gutman, E. Jäckel, P. Longerich, J.H. Schoeps, Argon, Berlin, 1993, vol. 3, p. 1333.

²⁷ <http://fk-sbh.net/2009/12/die-akte-sobibor-vollständig/>.

²⁸ J. Graf, C. Mattogno, *KL Majdanek. Eine historische und technische Studie*, Castle Hill, Hastings, 1998.

²⁹ Press release of the Ministry of Internal Affairs of Lower Saxony on the Landtag meeting of 18 June 2009.

It is because of such names as David Ivring, Ernst Zündel and Bishop Richard Williamson that the Auschwitz lie went down in German law history as incitement of the masses. For the extreme right, Auschwitz remains the butt of cynical attacks. This February, a 49-year-old engineer was charged of inciting the masses before the district court of Ratzeburg. He had posted online a video entitled: *Please take me to Auschwitz*. It shows his Asian girlfriend Sandy in front of a crematorium furnace. The man tells her to wave and say “bye-bye,” and goes on to say: “Sandy, the furnaces are still warm. Bye-bye Sandy.”³⁰

The video is not only disgusting. It also reflects the tendency towards disseminating revisionist codes by different means. Easy to see through as these codes are, they find a receptive audience in people who are susceptible to them. Historical distortion is a method employed by neo-Nazis and far-right Federations of Expellees alike. The difference is that the Office for the Protection of the Constitution monitors neo-Nazis, while the Homeland Association of Silesia is subject to observation, although its Chairman Rudi Pawelka claimed in 2011 that “Poles also participated in the Holocaust.”³¹ Moreover, between 2008 and 2012, the Land of Lower Saxony provided the Homeland Association of Silesia with support to the tune of 200,000 Euros.³²

Finally, mention should be made of musical events organised by the far right: the so-called right-wing rock. Radical right-wingers use music as resounding political propaganda, an identifier and instrument of power. Actually, it was no different between 1933 and 1945. Conditioning is achieved by combining destruction and killing with matching music.³³ At concerts, hate images and bits of ideology are put across openly or subliminally, or the psychological barrier of using violence is broken. Music is used to attract young people and bind them to the community. Lyrics of songs such as “Polacken-tango” or “The Train to Dachau” are utterly revolting.³⁴

On the Internet, you can find far-right message boards and publications featuring the kinds of statements quoted below:

- Between 1945 and 1947, 1250 Polish concentration camps and 227 prisons where inmates were tortured were run east of the Oder

³⁰ www.taz.de/1/archiv/digitaz/artikel.

³¹ Press release of the Ministry of Internal Affairs of Lower Saxony on the Landtag meeting of 18 June 2009; short inquiry in the Landtag of Lower Saxony of 9 September 2011.

³² Data of DIE LINKE political grouping in the Lower Saxony Landtag, dated 3 February 2012, www.lag-antifa-nds.de.

³³ F.K. Prieberg, *Musik und Macht*, Fischer, Frankfurt am Main, 1991, p. 235.

³⁴ Reports of the Office for the Protection of the Constitution of 2010 (pp. 101–106); 2011 (pp. 106–112); 2012 (pp. 124–128); cf. *RechtsRock. Bestandsaufnahme und Gegenstrategien*, hrsg. Ch. Dornbusch, J. Raabe, Unrast, Münster, 2002.

and Nysa Rivers; Polish savage orgies of murder are described in detail.³⁵

- After 1945, 6–8 million Germans allegedly lost their lives in Polish concentration camps.³⁶

or:

- 15 million Germans were brutally expelled from East German lands. Well over 2 million people are believed to have lost their lives.³⁷

or:

- The Federal Republic of Germany is a makeshift country, Greater Germany continues to exist, has legal capacity, while Austria is still a German state;³⁸ the Free City of Danzig has never collapsed as a subject of international law either.
- Finally, it is claimed that it was Poland, not Hitler or the Third Reich, that wanted to start the Second World War as an aggressor. With its mobilisation, Poland allegedly declared war on Germany.³⁹

It was mendacious constructs like these that Professor Bartoszewski, Poland's then Foreign Minister, refuted in his impressive and moving speech to the German Bundestag on 28 April 1995. Here is an excerpt from his address:

Knowledge about the concentration camps, the places of torture and the gas chambers set the course of my future life once and for all: against hatred, against discrimination of people on any grounds – race, class, nationality or religion, and against the intellectual rape of historical lies and intolerance for those who think differently.⁴⁰

Well-known Polish and German historians, e.g. from the Centre for Historical Research of the Polish Academy of Sciences in Berlin⁴¹ – not forgetting about Norman Davies – refuted the false statistics and explained the lack of differentiation.⁴²

³⁵ *Deutsche Heimat*, No. 98, September–December 2011.

³⁶ www.panzerarchiv.de, <http://forum.panzer-archiv.de/viewtopic.php?t=4523>.

³⁷ D. Stein, "Ein schlesisches Drama", *Junge Freiheit* 2013, No. 28 (*Rede Rudi Pawelka*).

³⁸ <http://fk-sbh.net/2009/11/der-staat-der-deutschen/>; <http://fk-sbh.net/2009/10/gros-deutschland-in-seiner-formellen-bedeutung/>.

³⁹ <http://fk-sbh.net/2009/09/polen-wollte-den-krieg/>.

⁴⁰ www.bundestag.de.

⁴¹ Polish Academy of Sciences in Berlin (ed.), *Historie. Krieg und seine Folgen*, yearbook part 1.

⁴² J. Barcz, W. Góralski, "Der Vertrag über gute Nachbarschaft und freundliche Zusammenarbeit: Konzeption, grundsätzliche Regelung und begleitende Vereinbarungen", in:

6. Is right-wing extremism a marginal phenomenon in Germany?

Far-right circles continue to produce defective codes of memory, usually out of conviction and sometimes out of tactical calculation; some people give it up, but the core is hard and cannot be rehabilitated. German neo-Nazis appear in Poland's football stadiums or on the right-wing music scene. There is no structured cooperation between German and Polish right-wing extremists, explains the Federal Office for the Protection of the Constitution, and their contacts are rare. The underlying ideological assumptions are too far apart and irreconcilable,⁴³ as Poland was and is a hate figure for the German Nazis.⁴⁴

The German Office for the Protection of the Constitution maintains contact with the Polish Internal Security Agency. According to information released by the Federal Government earlier this year, cooperation was established in connection with:

- liberation anniversary of Auschwitz,
- World and European football championships,

W. Góralski (Hrsg.), *Historischer Umbruch und Herausforderung für die Zukunft*, Elipsa, Warschau, 2011, pp. 269–294; A. Friszke, *Polen Geschichte des Staates und der Nation*, VWF, Berlin 2009, pp. 129 ff., 475–479; M. Gniazdowski, “Zu den Menschenverlusten, die Polen während des Zweiten Weltkrieges von den Deutschen zugefügt wurden. Eine Geschichte von Forschungen und Schätzungen”, *Historie. Jahrbuch des Zentrums für Historische Forschung Berlin der Polnischen Akademie der Wissenschaften* 1 (2007/2008) (henceforth: *Historie. Jahrbuch*), pp. 65–92; W. Góralski, “Die deutschen Restitutions- und Entschädigungsansprüche gegen Polen. Zur endgültigen Beilegung eines Streits des Völkerrechts”, in: *Historischer Umbruch*, pp. 520–550; I. Haar, “Die deutschen Vertreibungsverluste. Kritische Anmerkungen zu den Opferangaben in der Dokumentation der Vertreibung der Deutschen in Ost-Mitteleuropa”, *Historie. Jahrbuch* 1 (2007/2008), pp. 108–120, 161–165; W. Sienkiewicz, S. Troebst, *Illustrierte Geschichte der Flucht und Vertreibung Mittel- und Osteuropas 1939 bis 1959*, Warschau–Augsburg 2009, pp. 170–201; R. Traba, “Krieg und Zwangsaussiedlungen. Ein Beispiel für die Asymmetrie des kulturellen Gedächtnisses in Polen und Deutschland”, *Historie. Jahrbuch* 1 (2007/2008), pp. 126–128; R. Traba, R. Zurek, “Vertreibung oder Zwangsumsiedlung. Die deutsch-polnische Auseinandersetzung um Termini, das Gedächtnis und den Zweck der Erinnerungspolitik”, in: *Historischer Umbruch*, pp. 409–451; J. Sulek, “Der polnische Beitrag zur abschließenden Friedensregelung in Bezug auf Deutschland. Die gemeinsame Überwindung des deutsch-polnischen Grenzstreits”, in: *Historischer Umbruch*, pp. 108–144; Szarota, *Stereotype und Konflikte*; R. Zurek, “Geschichtspolitik: Wie viele Opfer forderte die Vertreibung? / Polityka historyczna: Ile ofiar wypędzę?”, *Dialog* 90 (2009–2010), pp. 75–78.

⁴³ Letter by the BfV (Federal Office for the Protection of the Constitution) Az. 2A2 -049-00187-0000-0044/13A of 26 September 2013 to the author.

⁴⁴ Cf. *Gemeinschaft Deutscher Osten* (henceforth: GDO), Rundbrief Sommer, 2011, p. 44 ff.

- participation of German nationals in Polish National Independence Day.⁴⁵

Corrupted by suspicious informers and rocked by scandals, Germany's constitution protection authorities were admittedly unable to identify the murderers and right-wing terrorist of the National Socialist Underground (NSU). The former Federal Commissioner for Personal Data Protection, Prof. Hans Peter Bull, suggests that the Office for the Protection of the Constitution be replaced with experts and analysts recruited from among scholars, while it is not only the Humanist Union that demands its complete dissolution.⁴⁶

Secret services, too, produce defective codes with a view to deceiving, although this goes against the grain of democracy and brings little credit to open society, even if the aim is to fight neo-Nazis. The German Office for the Protection of the Constitution hired informers among the leadership of the Nazi party NPD, which indirectly put this agency in charge of the party (let me recall the concept of agent provocateur). The Federal Constitutional Court disapproved of such conduct, however, which was the reason for the failure to ban the NPD in 2003.⁴⁷

On the other hand, democratic principles should not be taken to their extremes. The German state pays the NPD millions of Euros, because the Act on Parties requires it to do so.⁴⁸ I ask myself what stops the legislator from amending this regulation and giving discretion to act. Why does the state finance a Nazi party whose newspaper posts on its message boards information whereby Germany is "governed by the Central Council of Jews," "real racists sit in the German Bundestag," and the national football team is no place for "the blacks."⁴⁹

Civic anti-Nazi organisations (NGOs) in Germany are better at raising awareness and preventive measures than the state. Since 1994, Poland's NEVER AGAIN association has been exposing Polish right-wing extremism in an exemplary way.

One may argue that the 23,150 right-wing extremists registered in Germany (2012), of whom 9,600 are believed to be keen on using violence, cannot pose a serious threat to a nation of 80 million.⁵⁰ But the fact that

⁴⁵ German Bundestag – print No. 17/12307 s of 7 February 2013, p. 14.

⁴⁶ Press release of the Humanist Union in Berlin of 20 September 2013, www.humanistische-union.de.

⁴⁷ Suspension of ban proceedings by the Federal Constitutional Court, decision Az. 2 BvB 1/01 of 18 March 2003.

⁴⁸ Parteiengesetz (Act on Parties) Bundesamtsblatt, I p. 1748 (2011).

⁴⁹ <http://ds-aktuell.de/?p=3259>.

⁵⁰ Report of the Federal Office for the Protection of the Constitution 2012, p. 56.

1,733 cases of inciting the masses were registered in 2012 (1,605 cases in 2011) speaks for itself.⁵¹

The NPD won only 1.3 percent of the vote during the general election three weeks ago, a result that is far below the 5 percent threshold. But this is still 560,000 people who cast their ballots for a Nazi party, mainly in Saxony and Thuringia.⁵² In addition, the latest representative research shows the alarming trend of anti-Semitism, hostility towards Islam and social Darwinism penetrating into the heart of society. Every tenth German wishes for a “Führer.”⁵³

Let us go back to what I said at the beginning: the repression of guilt originates from the ideology spread by the Nazis: the Jews are not human beings, they are rats, as presented in the propaganda film *Der ewige Jude* (“The Eternal Jew”). Consequently, the theory of exclusion permits any cruelty, including killings, without compromising “decency,” as Himmler put it in his Poznan speech: “When 100 corpses lie there, or when 500 or 1000 corpses lie there – to have gone through this and to have remained ‘decent’.” What ensues from that gives a depressing insight into the abyss of negative human abilities. The conscience of a guilty perpetrator can use this “permission” to isolate itself from blame. It disappears from his consciousness, and he feels innocent. It is the greatest possible repression, presumably a mental region (GAU) of the psyche. The sentence spoken by Himmler is in its conciseness a terrible code that, in my opinion, holds the key to the repression of Nazi crimes also in the minds of neo-Nazis.

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⁵¹ Report of the Federal Office for the Protection of the Constitution 2011, p. 36; 2012, p. 37.

⁵² Official results of the 2013 Bundestag election, confirmed by the Federal Returning Officer.

⁵³ O. Decker et al., *Mitte im Umbruch, Rechtsextreme Einstellungen in Deutschland*, Friedrich Ebert Stiftung, München, 2012, p. 31 ff.

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- No. 17/12307 *Belastung der deutsch-polnischen Beziehungen durch Aktivitäten des Vereins Eigentümerbund Ost e.V. in Polen* (7 Febr. 2013)
- No. 17/14644 *Musikveranstaltungen der extremen Rechten im zweiten Quartal 2013* (26 Aug. 2013)
- No. 17/14635 *Rechtsextremismus im ländlichen Raum* (27 Aug. 2013)
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MEDIA CONTEXT OF DEFECTIVE CODES OF MEMORY: A CASE STUDY OF GERMAN PRESS RECOURSE TO FALSE PREDICATES TO DESCRIBE NAZI ANNIHILATION CAMPS AND CONCENTRATION CAMPS ESTABLISHED BY THE GERMANS IN OCCUPIED POLAND

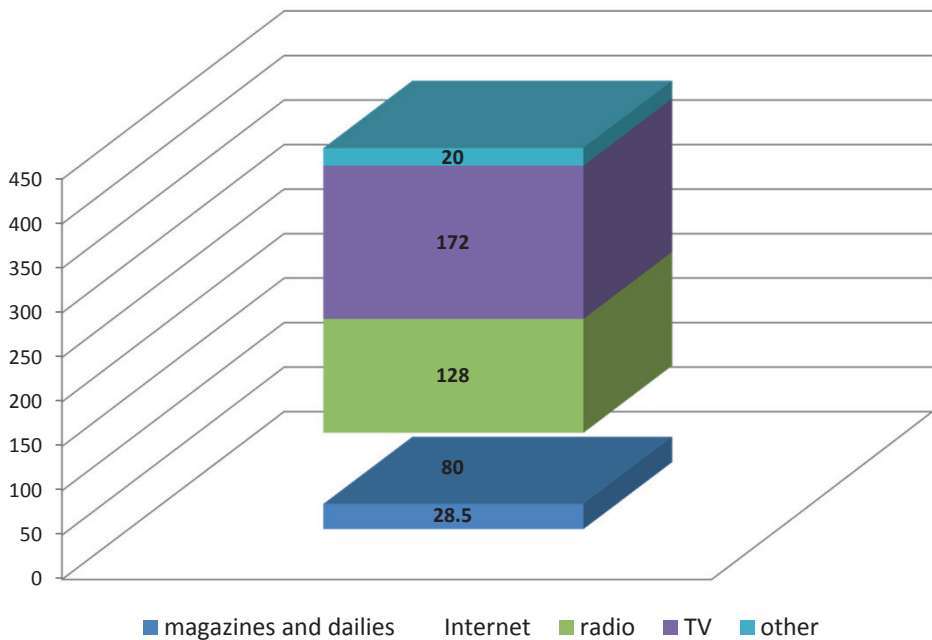
Ewa Stasiak-Jazukiewicz

1. Introduction

Since 2004, the Polish Ministry of Foreign Affairs has been actively raising historical awareness by monitoring foreign media and intervening whenever the so-called defective code of memory is used, i.e. false expressions denoting the Nazi annihilation and concentration camps that were established by the Germans in occupied Poland. It is a very valuable initiative: cultivating historical memory, and making sure generations that were happily unscathed by the war do not form a skewed image of it.

It is only natural to choose the media as the object of interest, given their social influence, and the functions they perform. The amount of time spent with the media is considerable in European countries, and with its large media market Germany is no exception. In 2012, the average German would spend 7 hours a day using the media.

Media users dedicated the least time to reading daily papers. Even so, this medium is far from being forgotten. 50 million Germans aged over 14 read a daily several times a week, while more than 10 million did so several times a month; only 9.22 million declared reading a paper once a month, sporadically or never.

Chart 1. Number of minutes Germans spent with the media in 2012¹**Table 1.** Frequency of the daily press use in Germany in 2012 (people aged over 14)²

Frequency	Number of readers in millions
Several times a week	50.34
Several times a month	10.25
Once a month	1.40
Sporadically	5.13
Never	3.09

In 2013, 68.9 percent of the German population who had turned 14 were newspaper readers. Out of this group, 64.7 percent read dailies, mainly regional subscription dailies (51.6 percent), such as *Augsburger Allgemeine*, *Rheinische Post* and *Kölnische Rundschau*.

The highest percentage of readers was among people over 50, lower in the age group from 30 to 49, and the lowest among the people aged between 14 and 29. One can look optimistically at this data – almost half

¹ Own compilation based on data from: <http://de.statista.com/statistik/daten/studie/77176/umfrage/dauer-der-mediennutzung-in-deutschland-von-2006-bis-2012/> (access: October 2013).

² Own compilation based on: <http://de.statista.com/statistik/daten/studie/171897/umfrage/haeufigkeit-zeitung-lesen-in-der-freizeit/> (access: October 2013).

of the youngest readers, and over a half of 30 to 49-year-olds read daily press. Born after 1964, they take their knowledge about the Second World War also from the media.

Chart 2: Newspaper readership in Germany in 2013 (percent/millions of people)³

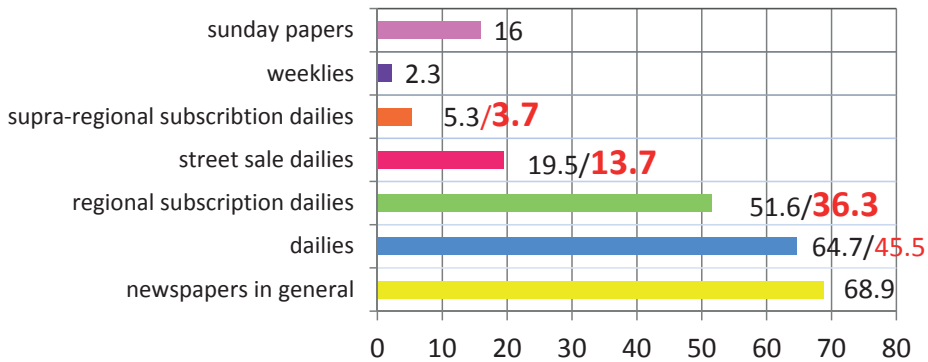
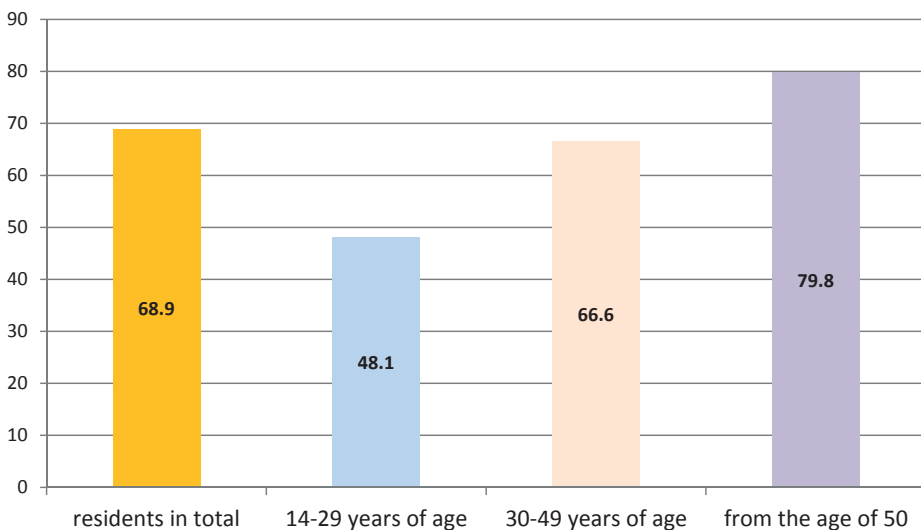


Chart 3: Newspaper readership in Germany according to age groups in 2013



The time of contact with the media goes to show their social function. The role of mass media in the organisation of democratic society has been reflected upon by such theorists as Harold D. Lasswell, Paul F. Lazarsfeld, Robert K. Merton and Charles R. Wright. In his internationally recognized textbook on mass communication, Denis McQuail gives a full catalogue

³ According to: <http://de.statista.com/statistik/daten/studie/162737/umfrage/reichweite-der-zeitungen-in-deutschland/> (access: October 2013).

of the social functions of the media: Information, Correlation, Continuity, Entertainment and Mobilisation.⁴ According to McQuail, Information responsibilities include reporting on developments at home and abroad, offering advice on how to solve everyday problems, and familiarising with innovations. As Correlation McQuail describes suggesting interpretation frameworks for the covered events, shoring up role models and standards, building consensus, and setting priorities in society. Continuity manifests itself in socialisation that is compatible with the dominant system of values. Entertainment is the suggested way of spending one's free time. German-speaking theorists of mass communication have added some details to this catalogue. Pointing to different areas of community life (social, political and economic), they classified the following as social functions: socialisation (*Sozialisationsfunktion*), social orientation (*soziale Orientierungsfunktion*), recreation (*Rekreatationsfunktion*) and integration (*Integrationsfunktion*). Roland Burkart of the University of Vienna emphasises the importance of mass media as a vehicle for behavioural patterns, social norms and values. He points out that the role of orientation is to make it possible to find one's bearings in the wealth of detail.⁵ Franz Ronneberger, the late German sociologist and media expert, who originated the theory of PR, drew attention to the social dimension of enabling entertainment (*Rekreatationsfunktion*).⁶ The Swiss media expert Ulrich Saxer (died 2012) had a slightly different view on the task of providing relaxation (*Gratifikationsfunktion*).⁷ According to the above-mentioned researchers, what makes the integration function important is that it points out socially accepted behaviours and standards to a diversified society, whilst creating social loyalty to values.⁸ Meanwhile, the eminent German theorist of mass communication and psychologist Gerhard Maletzke emphasised the media's ability to provide an individual with the necessary sense of belonging.⁹ Noting the media's leading role in the pro-

⁴ D. McQuail, *McQuail's Mass Communication Theory*, 6th ed. Sage Publications 2010, pp. 98, 99.

⁵ R. Burkart, *Kommunikationswissenschaft*, UTB, Wien-Köln-Weimar, 2002, pp. 378–411.

⁶ F. Ronneberger, "Leistungen und Fehlleistungen der Massenkommunikation", in: *Politik und Kommunikation. Über die öffentliche Meinungsbildung*, hrsg. W. Langenbucher, Piper, München-Zürich, 1979, pp. 127–142.

⁷ U. Saxer, "Funktionen der Massenmedien in der modernen Gesellschaft", in: *Medienforschung*, hrsg. R. Kurzrock, Colloquium, Berlin, 1974, pp. 22–33.

⁸ Cf.: F. Ronneberger, "Integration durch Massenkommunikation", in: *Gleichheit oder Ungleichheit durch Massenkommunikation? Homogenisierung – Differenzierung der Gesellschaft durch Massenkommunikation*, hrsg. U. Saxer, Ölschläger, München, 1985, pp. 3–18.

⁹ G. Maletzke, *Bausteine zur Kommunikationswissenschaft 1949–1984*, Wissenschaftsverlag Spiess, Berlin, 1984, p. 139.

cess of mass communication, Professor Wolfgang Donsbach of the Dresden Technical University underlines their duty not to harm the community.¹⁰

2. Objective and research method

Following interventions by the ministry, erroneous expressions are deleted by the media, and corrections are published. In his 2008 article “Geschichte für Populisten. Wie Polen mit Kritik an ausländischen Medien Politik macht,” the *Süddeutsche Zeitung*’s journalist Thomas Urban attributed the inaccurate wording to the use of mental shortcuts, the purpose of which is to help German readers locate the camps on the map of Europe.¹¹ Polish diplomatic posts receive letters of apology from editors who express regret at human oversight, error or unconscious use of unfortunate wording. Some media outlets show their “lack of bad intentions” by prohibiting such terms in their stylebooks. In another article written for the Polish reader, Thomas Urban also mentions “recommendations” about avoiding such wording “because of its ambiguity.”¹²

Table 3. Examples of apologies

Outlet	Form/date of apology	Excerpt from the apology letter
DPA	letter and correction, 18 February 2013	<i>You are right to point out our <u>serious error</u> in the editorial dispatch about the Berlinale. Sobibor was certainly no “Polish camp,” but a German extermination camp established by the Nazis. DPA has explicit rules prohibiting the use of such inaccurate terms. A member of our editorial staff did not comply with these guidelines last Thursday. Our error was corrected the same day [...] We would like to apologise to all those who felt hurt by the use of this <u>incorrect expression</u> [...].</i> ¹³

¹⁰ Cf.: W. Donsbach, *Legitimationsprobleme des Journalismus. Gesellschaftliche Rolle der Massenmedien und berufliche Einstellungen von Journalisten*, Alber, Freiburg–München 1982.

¹¹ T. Urban, “Geschichte für Populisten. Wie Polen mit Kritik an ausländischen Medien Politik macht”, *Süddeutsche Zeitung* of 27 November 2008; available on the TransOdra website: <http://www.transodra-online.net/de/node/3102> (access: October 2013).

¹² T. Urban, “Polska–Niemcy: nowy prezydenci. Czy nowy początek? Diabeł tkwi w liczbach”, *Forum* 29 (16 July 2010).

¹³ Author’s emphasis. Quoted from the translation of the letter, posted on the website of the Ministry of Foreign Affairs: http://www.msz.gov.pl/pl/polityka_zagraniczna/przeciw_polskim_obozom/niemiecka_agencja_dpa_przepasza_za_polski_oboz_die_welt_i_focus_zamieszczaja_korekty;jsessionid=FA46C687146BA77504E570FC07CC8814.cms2

Die Welt	correction, 26 November 2008	<p><i>In its edition of 24 November, Die Welt published an article entitled 'Asaf's journey around the world' (page 28). It included the following sentence:[...]</i></p> <p><i>For this sentence I apologise with deep regret, because this sentence is false and implies that the Majdanek concentration camp was a concentration camp established by the Poles. A sentence like this <u>should have never appeared in the newspaper</u> in the first place [...]</i></p> <p><i>The terrible crimes committed there are German crimes and it is the Germans who bear sole responsibility for this. I regret that by distorting facts cited in the article we caused concern and dismay in Poland [...]</i></p> <p><i>I can well understand that <u>the cited expression created bitterness in Poland and is not used</u>, and that relations between Poland and Germany which are strained in some respects need to be repaired. I am really sorry about that...</i></p> <p><i>I am all the more devastated as the grotesque distortion of facts in our paper may have created the impression that Majdanek was a Polish concentration camp.</i>¹⁴</p>
Die Welt	letter and correction, 12 February 2011	<p><i>[...] I deplore our <u>serious mistake</u> in the Kompakt and Online editions of Die Welt. In a film review of 'Die Kinder von Paris' one of our guest contributors wrote about "the Polish extermination camp". What she meant was the German concentration and extermination camps in the territory of Poland.</i></p> <p><i>We are fully aware that the 'Polish camps' have never existed. <u>There are no bad intentions behind this wording</u>. It is a regrettable mistake which should have never happened to the author and which should have been spotted by the desk editor and the duty editor. Unfortunately, the uncorrected phrase appeared in some publications. We would like to officially apologise for this <u>mistake</u>. It has already been corrected in the Online edition [...]</i>¹⁵</p>

(access: October 2013). DPA published the correction and letter on 18 February 2013 on its website: <http://www.dpa.de/Pressemitteilungen-Detailansic.107+M593b17ef84b.0.html> (access: October 2013).

¹⁴ "Author's emphasis. Excerpt from an article by editor-in-chief Thomas Schmid, entitled "Die WELT bedauert zutiefst und entschuldigt sich," posted on the daily's website on 26 November 2008. Apologies were published in two languages; German and Polish; see http://www.welt.de/welt_print/article2782915/Die-WELT-bedauert-zutiefst-und-entschuldigt-sich.html (access: October 2013).

¹⁵ Author's emphasis. Quoted from a letter of apology translated by the MFA and posted on its website: http://www.ms.gov.pl/pl/polityka_zagraniczna/przeciw_polskim_obozom/interwencja_ambasady_rp_w_berlinie_die_welt (access: October 2013); correction in the online edition was also published on 10 February 2011, see: http://www.welt.de/print/welt_kompakt/vermishtes/article12496830/Die-Kinder-von-Paris-Razzia-vor-der-Deportation.html (access: October 2013).

<i>Elbe Wochenblatt</i>	letter and correction, 13 March 2013	<i>Our weekend edition of 9 March featured the article ‘Silent Heroes’ (Stille Helden) in which we made an unfortunate error. The piece could have led readers to believe that the Belzec extermination camp where 500,000 people were murdered in Nazi times was a ‘Polish camp’. This is certainly not true. Set up and run by the Nazis, the extermination camp near Lublin was a German camp on Polish soil. Please forgive us <u>the unfortunate expression that is offensive to the Poles</u> [...].¹⁶</i>
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Although some media outlets admit their mistakes and lay down rules to eliminate them, this gives no warranty that incorrect expressions will not be used again. Examples include *Die Welt*, which has made three such errors since 2004: on 24 November 2008 (“Asafs Reise um die Welt”), 10 February 2011 (“Die Kinder von Paris: Razzia vor der Deportation”), and 15 February 2013 (“Filmemacher Claude Lanzmann erhält Ehrenbär der Berlinale”); and the *Focus*: on 18 February 2013 on its web portal www.focus.de (“Filmemacher Claude Lanzmann erhält Ehrenbär der Berlinale”), and 18 April 2013 (“Aufstand im Warschauer Ghetto”) in the print and online versions of the magazine. They exemplify recurring mistakes since the MFA campaign began. Before that, foreign press would also use inaccurate terms to refer to Nazi concentration and extermination camps. FAZ.net, the *Frankfurter Allgemeine Zeitung*’s online edition, contains a free archive article about French collaborator *Maurice Papon*, dated 18 September 2002. Entitled “Verbrechen Nazi-Kollaborateur Papon aus Haft entlassen,” the piece describes the Auschwitz concentration camp as ‘Polish’.¹⁷ Another time the daily used a defective code of memory was in 2011. A 1966 article about SS man Kurt Bender, available in *Der Spiegel*’s archives, refers to the extermination camp in Sobibor, established and run by the German Nazis, as ‘Polish’.¹⁸

¹⁶ Author’s emphasis. Quoted from a correction of 13 March 2013 translated by the MFA and posted on its website; see: http://www.msz.gov.pl/pl/polityka_zagraniczna/przeciw_polskim_obozom/0_elbe_wochenblatt_drukuje_korekte_po_intervencji_polskich_dyplomatow.jsessionid=0A5145BC34D78F642C1D4875A66DF259.cms2 (access: October 2013).

¹⁷ “Die meisten der Deportierten waren im polnischen Konzentrationslager Auschwitz umgebracht worden oder unter den dort herrschenden Bedingungen ums Leben gekommen [...]” (author’s emphasis); as published at: <http://www.faz.net/aktuell/gesellschaft/verbrechen-nazi-kollaborateur-papon-aus-haft-entlassen-172809.html> (access: October 2013).

¹⁸ “Und sie riß ehemals mächtige Männer aus kleinbürgerlicher Idylle – wie Kurt Bolender, der einmal Teillagerführer im polnischen Vernichtungslager Sobibor war und nach dem Krieg als Portier in Hamburg nur noch Schlüssel aufhängen wollte [...]” (author’s emphasis); in: JUSTIZ; NS-VERBRECHEN; Peitsche bewahrt, *Der Spiegel* 52/1966 (19 December

Topography proves a weak excuse in the apologies and corrections written by those who use the inaccurate wording. The explanation left is that of a mistake.

With these false expressions being used by the media of so different stripes, it is worth having a closer look at specific cases. This article is a case study of their use by the German press between 2011 and 2013.

Case study is a qualitative method that allows to build a detailed picture of an unusual phenomenon, and to draw conclusions about its causes, consequences, features, and social conditions.¹⁹ According to David A. Snow and Leon Anderson, what enables a comprehensive analysis is the application of many different research methods and techniques, and the efficient use of triangulation, i.e. comparison of data from different sources.²⁰ Such choice of research methods makes it no doubt easier to remain axiologically neutral, and achieve inter-subjective verifiability. According to Stake's typology, I conducted a collective case study, analysing a series of cases.²¹ In accordance with Robert K. Yin's classification,²² it is of exploratory nature. Its primary objective is to identify circumstances in which erroneous designations of Nazi extermination and concentration camps are used.

My case study should be treated as an introduction to further and broader studies. I have not exhausted all research methods. Findings made so far suggest that it would be necessary to interview managing editors and text authors, and examine editorial stylebooks, especially the procedures and habits connected with their use. Of particular value would be focus interviews with recipients of media coverage. They should be conducted among the readers immediately the material with the incorrect phrase has been released, which makes it much more difficult to apply this qualitative research method. Alternatively, the method of competent judges could be resorted to. Qualitative research among editorial staff and recipients of media coverage could help determine the intentions of those who broadcast these messages, and the feelings of those who receive them. However, the

1966), p. 57; as published at: <http://wissen.spiegel.de/wissen/image/show.html?did=46415595&aref=image036/2006/03/22/cqsp196652056-P2P-058.pdf&thumb=false> (access: October 2013).

¹⁹ Description of the research method can be found, among others, in: R.D. Wimmer, J.R. Dominick, *Mass media: Metody badań*, Wydawnictwo Uniwersytetu Jagiellońskiego, Kraków, 2008, pp. 191–197.

²⁰ Cf.: D.A. Snow, L. Anderson, "Researching the Homeless. The Characteristic Features and Virtues of the Case Study", in: *A Case for Case Study*, eds. J. Feagin, A. Orum, G. Sjoberg, University of North Carolina Press, Chapel Hill (NC), 1991, pp. 147–173.

²¹ R. Stake, *The art of case research*, Sage Publications, Newbury Park (CA), 1995.

²² R. Yin, *Applications of case study research*, Sage Publications, Newbury Park (CA), 1993.

scope of this study had to be limited given the implementation time, and the planned volume of the publication. Principally, I conducted quantitative and qualitative analyses of journalistic materials. This makes it possible to discover the explicit (quantitative analysis) and partly intentional (qualitative analysis) content of messages. It helps to establish what was communicated and how, by and for whom, and sometimes leads to conclusions about the effects a message has had.

I worked on a purposive sample, drawing on a record of cases posted on the MFA website, in which Polish diplomatic missions intervened against the expressions “Polish concentration camps” and “Polish extermination camps”. Press titles (including their online editions) were selected according to whether archival materials were easily available. The MFA list of German papers that used defective codes of memory is long for an untypical phenomenon. It includes supra-regional dailies, such as *Bild*, *Die Welt*, *Süddeutsche Zeitung*, *Frankfurter Allgemeine Zeitung* and *Junge Welt*; regional dailies: *Der Tagesspiegel*, *Westdeutsche Zeitung*, *Berliner Zeitung*, and *Rheinische Post*; and local ones, such as: *Gäubote – Die Herrenberger Zeitung*, and *Trierischer Volksfreund*. It also features magazines: *Der Spiegel*, *Stern*, *Focus*, *Elbe Wochenblatt*, *Kölner Wochenspiegel*, and *rtv*; there is also the online edition of the film magazine *filmab.jmmv.de*. This compelled me to introduce a time limit. Choosing recent years seemed to make the most sense from the point of view of the study’s usefulness for the MFA. I analysed a total of 14 press articles.

Table 4: Sample under content analysis

No.	Press title	Date	Article title
1	<i>Die Welt</i> (Kompakt and Online editions)	10.02.2011	“Die Kinder von Paris”: Razzia vor der Deportation
2	<i>Frankfurter Allgemeine Zeitung</i>	7.03.2011	Beweisanträge ohne Ende
3	<i>Augsburger Allgemeine</i>	13.04.2011	Prozess gegen mutmaßlichen KZ-Wachmann. München: Überlebende von Sobibór wollen Demjanjuks Schuldspruch
4	<i>Berliner Zeitung</i>	4.05.2011	Nazis auf der Flucht. Die verbannte Nazi-Jägerin
5	<i>filmab.jmmv.de</i>	6.05.2011	Das 21. Filmkunstfest 2011, Spielfilme
6	<i>Trierischer Volksfreund</i>	16.01.2013	Den Trierer Opfern ihren Namen wiedergeben
7	<i>Die Welt</i>	14.02.2013	Filmmacher Claude Lanzmann erhält Ehrenbär der Berlinale

8	<i>Focus</i> (online edition)	18.02.2013	Filmmacher Claude Lanzmann erhält Ehrenbär der Berlinale
9	<i>Elbe Wochenblatt</i>	9.03.2013	Stricknadeln für das KZ
10	<i>Focus</i>	18.04.2013	19 April 1943: Aufstand im Warschauer Ghetto. Symbol des jüdischen Kampfes gegen die Nazis
11	<i>Gäubote – Die Herrenberger Zeitung</i>	20.04.2013	Der Jugend Geschichte vermitteln. Herrenberg: Mordechai Ciechanower singt in der Alten Turnhalle
12	<i>Kölner Wochenspiegel</i>	4.07.2013	Die Hölle überlebt Auschwitz-Überlebende Anita Lasker-Wallfisch besuchte Europaschule
13	<i>Rheinische Post</i>	27.08.2013	Überlebende aus Konzentrationslagern zu Gast in Xanten
14	<i>Kölnische Rundschau</i>	25.10.2013	Schleidener Weg der Erinnerung

I took advantage of my familiarity with the German media system when presenting the wider context of the phenomenon under scrutiny, in particular when presenting the media's public reach; defining the social functions of the media; highlighting elements of the debate about historical truth and its artistic vision triggered by the screening of the *Our Mothers, Our Fathers* series; characterising individual press titles; and defining the legal framework of the media's activities. I also used the available statistical data, examined legal regulations, and did a critical review of the extensive literature on the subject.

3. *Our Mothers, Our Fathers*

The public debate on the Second World War, the responsibility for starting it and its course is part of the social context of the phenomenon under scrutiny. Leaving aside the impression the *Death Mills*²³ documentary made

²³ *Death Mills* ("Die Todesmühlen") was part of a programme to re-educate the Germans. From January 1946, the 22-minute documentary was shown in cinemas in Bavaria, and from March 1946 in Hesse, Hamburg and Berlin. The British occupational authorities decided not to screen it. The film contains authentic footage recorded during the liberation of the concentration and extermination camps Auschwitz, Bergen-Belsen, Buchenwald, Dachau and Majdanek. In 2006, it was shown again in Hamburg's Metropolis cinema as a starting point for a discussion on its propaganda effect. See: L. Wendler, "Die Todesmühlen – erschütternder KZ-Film im Metropolis", *Hamburger Abendblatt* of 4 April 2006. Article available in the

on the Germans from the American occupation zone, it was German writers of Group 47, Günter Grass and Heinrich Böll, who initiated the discussion about the past²⁴. The guilt of genocide was driven home to the German public by the American four-part series *Holocaust – Die Geschichte der Familie Weiss*, which was broadcast from 22 to 26 January 1979 on channel three of federal states' public TV stations forming the ARD group. From 10 to 15 million Germans are estimated to have learnt about the existence of Auschwitz at the time.²⁵ The campaign of playing down guilt began with an article by Ernst Nolte entitled "The Past That Will Not Pass," which was published in the *Frankfurter Allgemeine Zeitung* on 6 June 1986. The author argued for ending the reckoning with Nazism.²⁶ The article started off a "historians' dispute" (*Historikerstreit*), which caused quite a sensation in Germany and Europe. Continuing for several months in the media, the controversy about memory ended inconclusively. As Magdalena Latkowska observed, it was followed by many "attempts to reconstruct the events and memory of the Third Reich and the Second World War, undertaken on many levels, including scientific, literary and artistic."²⁷ One such artistic attempt is the TV series *Our Mothers, Our Fathers* ("Unsere Mütter, unsere Väter"), produced by the public TV broadcaster ZDF. Screened in Germany between 18 and 20 March 2013, it drew a multi-million viewership, breaking ZDF's previous rating records. Much of the audience were viewers aged between 14 and 49, who only had a chance to watch the *Death Mills* or the *Holocaust* on the Internet (chart 4).

Channel one of Polish television (TVP1) broadcast the film on 17–19 June 2013. German media would comment on the Polish criticism of the way Home Army partisans were portrayed both before and after the series premièred in our country. An example is Gerhard Gnauck's article in *Die Welt* of 26 March.²⁸ References were made to official protest letters sent

online archive of the daily: <http://www.abendblatt.de/kultur-live/article389818/Die-Todesmuehlen-erschuetternder-KZ-Film-im-Metropolis.html>.

²⁴ Cf.: K. Wóycicki, *Niemiecki rachunek sumienia. Niemcy wobec przeszłości 1933–1945*, Atut Oficyna Wydawnicza, Wrocław, 2004.

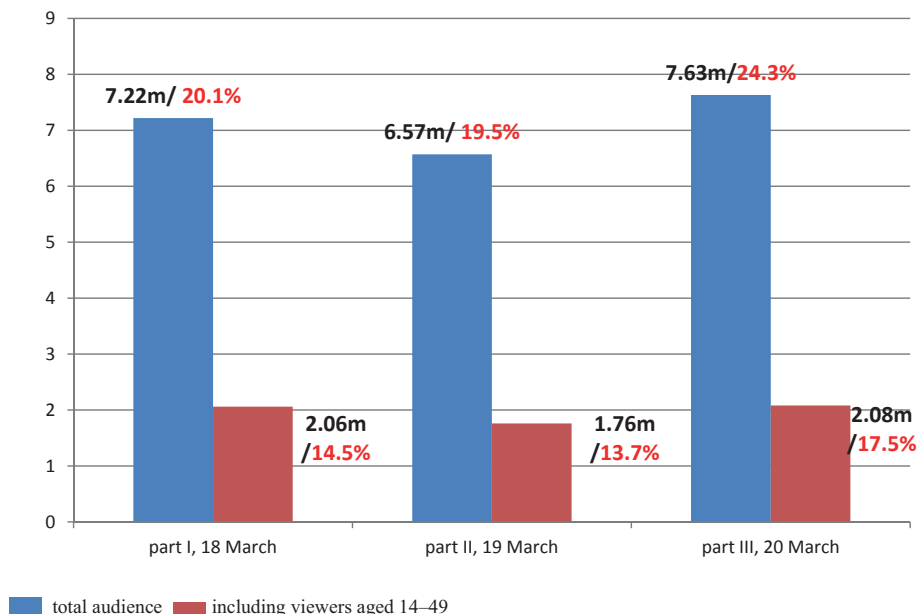
²⁵ F. Bösch, "Film, NS-Vergangenheit und Geschichtswissenschaft", *Vierteljahrshefte für Zeitgeschichte* 54 (2007), p. 2.

²⁶ E. Nolte, "Die Vergangenheit, die nicht vergehen will. Eine Rede, die geschrieben, aber nicht gehalten werden konnte", *Frankfurter Allgemeine Zeitung* of 6 June 1986. Available at: http://www.hdg.de/lemo/html/dokumente/NeueHerausforderungen_redeNolte1986/ (access: October 2013).

²⁷ M. Latkowska, "Historikerstreit – przyczyny i skutki jednego z najważniejszych niemieckich sporów o historię w XX wieku", *Studia Interkulturowe Europy Środkowo-Wschodniej* 6 (2012), pp. 4–24, at p. 24.

²⁸ G. Gnauck, "Polen werfen Weltkriegs-Epos Ignoranz vor", *Die Welt* of 26 March 2013.

Chart 4: Viewership of *Our Mothers, Our Fathers* episodes in millions of people/percent of market share²⁹



to the ZDF and the *Bild* daily. In March, the weekly *Die Zeit* wrote about Ambassador Jerzy Margański's letter to the ZDF³⁰, and in September it published an interview with minister Radosław Sikorski, who said that the film was "evidence of (German) selective historical memory about the East."³¹ On 27 March, the online edition of *Der Spiegel* reported on a protest by TVP president Juliusz Braun.³² On 23 June, a report about a television discussion after the film's screening in Poland was posted on the ZDF's website.³³

²⁹ Author's chart based on data from: "*Unsere Mütter, unsere Väter*: 7,63 Millionen sahen Finale", *Spiegel Online*, <http://www.spiegel.de/kultur/tv/quotensteigerung-fuer-den-zdf-dreiteiler-unsere-muetter-unsere-vaeter-a-890128.html> (access: January 2014).

³⁰ "Polens Botschafter verärgert über 'Unsere Mütter, unsere Väter'", *Zeit Online* of 28 March 2013 at: <http://www.zeit.de/politik/deutschland/2013-03/weltkriegsdrama-polen-protest> (access: October 2013).

³¹ A. Bota, J. Lau, "Wir wollen keine Wiederkehr des Kalten Kriegs", *Zeit Online* of 27 September 2013 at: <http://www.zeit.de/2013/40/interview-aussenminister-polen-sikorski-russland-europa> (access: October 2013).

³² "*Unsere Mütter, unsere Väter*: Polnischer Fernsehchef empört über ZDF-Kriegsepos", *Spiegel Online* of 27 March 2013, <http://www.spiegel.de/kultur/tv/unsere-muetter-unsere-vaeter-polnischer-tv-chef-kritisiert-dreiteiler-a-891261.html> (access: October 2013).

³³ *Kampf ums Überleben. Polen unter deutscher Besatzung*, at: <http://dokumentation.zdf.de/ZDF/zdfportal/programdata/ec7f5086-a119-3282-b350-36a3816e802f/20187948> (access: October 2013).

These are only some of the German media reactions, but they go to show an interest in Polish attitudes to history. It is therefore all the more difficult to understand the following five cases of erroneous wording used after 18 March 2013 to describe concentration and extermination camps: *Focus* (18 April 2013), *Gäubote – Die Herrenberger Zeitung* (20 April 2013), *Kölner Wochenspiegel* (4 July 2013), *Rheinische Post* (27 August 2013) and *Kölnische Rundschau* (25 October 2013 – even after *Die Zeit* interview with Sikorski). A mistake?

4. Press titles using defective codes of memory

A declared mistake may stem from a poor work organisation of the editorial staff. The editorial workflow has been changed by new technologies, including digitised press production and distribution. Print and online editions of newspapers are serviced by one newsroom, where managerial functions rotate among editors who run specific entities making up the media enterprise. Although it ensures quick content production, this solution results in fewer original journalistic materials, and leads to reproducing a one-off mistake in several news stories featured by seemingly different newspapers. All of the titles under scrutiny work on the cross media model, except for *Elbe Wochenblatt*, *Kölner Wochenspiegel*, *Gäubote – Die Herrenberger Zeitung* (published in the Böblingen district of Baden-Württemberg), and the filmab.jmmv.de web portal.

Table 5: Newsrooms working for the discussed papers

Title/ circulation/ reach	Newsroom shared with
<i>Die Welt</i> 225,291 copies cross-regional	dailies: <i>Welt Kompakt</i> , <i>Berliner Morgenpost</i> weekly: <i>Welt am Sonntag</i> three online editions: welt.de , morgenpost.de , Weltonline TV
<i>Frankfurtet Allgemeine Zeitung</i> 334,928 copies cross-regional	information portal: FAZ.NET local daily: <i>Frankfurter Rundschau</i> weeklies: <i>Frankfurter Allgemeine Sonntagszeitung</i> (on Sundays) and <i>FAZ Weekly</i> (in English), <i>FAZ-Magazin</i>
<i>Augsburger Allgemeine</i> 220,340 copies regional	dailies: <i>Südkurier</i> , <i>Main-Post</i> , and <i>Allgäuer Zeitung</i>
<i>Berliner Zeitung</i> 123,646 copies regional	dailies: <i>Kölner Stadt-Anzeiger</i> and <i>Mitteldeutsche Zeitung</i>
<i>Rheinische Post</i> 325,000 copies regional	dailies: <i>Aachener Nachrichten</i> , <i>Saarbrücker Zeitung</i> , <i>Trierischer Volksfreund</i> , <i>Lausitzer Rundschau</i> , <i>Pfälzischer Merkur</i>

	news website: RP Online 5 local radio stations 3 local TV stations magazines advertising papers
<i>Kölnische Rundschau</i> local	Fed regional news by <i>General Anzeiger</i>
<i>Focus</i> 566,414 copies	online edition magazines: <i>Focus Money</i> , <i>Focus Gesundheit</i> , <i>Focus Diabetes</i> , Focus-TV

The *Elbe Wochenblatt*, a free local advertising weekly owned by the Springer company, has an editorial staff of eight people. An even smaller editorial team (five people) makes the *Kölner Wochenspiegel*, a local advertising weekly with a circulation of 528,000 copies. In both cases, it is users who co-create the content, which lowers the quality of journalism. The film portal filmab.jmmv.de is run by the Jugendmedienvorband Mecklenburg-Vorpommern e.v., which provides media education to young people. The website's team consists of 14 young, inexperienced people, who are only learning the craft of journalism. It is issued in print form as the *Filmab!* magazine, to accompany the arts festival in Schwerin. The partner in both projects is the Friedrich Ebert Foundation and the regional Press Club. It may therefore come as a surprise that such respectable patrons did not keep watch over their protégés.

Another reason for the mistake could have been the low quality of journalism. Prestigious titles contract work to external staff. The economic recession along with the changing sources of funding for journalistic activity lead to the common practice of reducing editorial staffs, and relying more on flat-rate (*Pauschalist*) or service-contract employees, including outsourcing. Stefan Niggemeier, a long-time editor of the *Frankfurter Allgemeine Sonntagszeitung* and author of a critical blog on the media called the *BILDblog*, asserts that news agencies are treated by the media like an official source. This means that journalists knowingly neglect their duty to vet the information they have obtained.³⁴ Such carelessness could have been the reason for three agency pieces containing mistakes published by:

- the *Augsburger Allgemeine* from 13 April 2011, entitled "Prozess gegen mutmaßlichen KZ-Wachmann. München: Überlebende von Sobibór wollen Demjanjucks Schuldspruch;"

³⁴ <http://www.stefan-niggemeier.de/blog/klare-ansage-bei-dpalieber-spaet-als-falsch> (access: March 2013).

- the online edition of *Die Welt* from 14 February 2013, entitled “Filmemacher Claude Lanzmann erhält Ehrenbär der Berlinale;”
- the website of the *Focus* magazine from 18 February 2013, entitled “Filmemacher Claude Lanzmann erhält Ehrenbär der Berlinale.”

The last reason for these types of errors could be the widespread practice of “copy-paste” journalism. Cases of plagiarism have even cropped up among journalists of quality German papers, as reported by Ronnie Grob³⁵ and others.

5. Results of content analysis

My content analysis of communications with “defective codes of memory” leads to the following conclusions:

1. the use of defective codes of memory by the German media is not decreasing (2011 – five times, 2013 – nine times);
2. in the discussed cases, defective codes of memory were used: four times in reports on current global and domestic affairs (*Focus* article on the celebrations of the 70th anniversary of the Warsaw Ghetto Uprising; *Berliner Zeitung*, *Frankfurter Allgemeine Zeitung* and *Augsburger Allgemeine* reporting on Demjanjuk’s trial); three times in culture sections (*Die Welt* review of the film *Die Kinder von Paris*; *Die Welt* report on the award-winning film; filmab.jmmv.de in its film review); six times in the regional section (*Kölnische Rundschau* describing preparations in the run-up to the 75th anniversary of Kristallnacht in Schleiden; *Rheinische Post* coverage of a meeting organised by the Maximilian-Kolbe-Werk association from Germany; *Kölner Wochenspiegel* reporting on a school visit by a former Auschwitz prisoner; *Elbe Wochenblatt* relating memories of a former concentration camp inmate; *Trierischer Volksfreund* describing the history of the city; *Gäubote – Die Herrenberger Zeitung* in a piece on Mordechai Ciechanower’s meeting with residents);
3. reporting that contained defective codes of memory was accompanied by photos, which made them more graphic;
4. defective codes of memory were not featured in the headlines (but did appear in the leads twice) – it was not until the reader got to the text body that they would come across defective codes of memory;

³⁵ R. Grob, “Slumdog Billionaire”, *BILDblog* 29 November 2010, <http://www.bildblog.de/25710/slumdog-billionaire> (access: March 2013).

5. none of the analysed materials explored the topic of responsibility for the crimes of genocide. None of the sentences containing defective codes of memory would have been less informative if the incorrect expression had been omitted, as in the material from the *Rheinische Post*: “Zwölf polnische Überlebende aus den polnischen Konzentrationslagern und Ghettos.”

6. Conclusions

The conducted case study has not provided evidence to disprove the thesis that the use of defective codes of memory was only a mistake, but neither has it delivered arguments to support it.

7. Suggestions

The requirement to publish information that is accurate, checked against several sources, and objective (i.e. without the author's commentary) is laid down in the provisions of press acts of federal states (*Landespressegesetze*), the treaty on broadcasting, and notably the ethics code (*Pressekodex*) adopted by the German Press Council (*Deutscher Presserat*), a body monitoring the compliance with professional standards. It is a 16-point set of guidelines for professional conduct. Envisioned measures also include protests against unethical conduct of journalists. Such protests, especially collective ones, have led the German Press Council to formulate guidelines for professional conduct.

The right to reply to and correct **false** or imprecise information, the publication of which has implications for a specific person, is an important tool that can be used to eliminate defective codes of memory in press materials, and an important element in protecting personal interests. The obligation of a media outlet to publish/broadcast a correction or reply arises from the aforementioned regulations: the press acts of federal states and the treaty on broadcasting. They all specify press materials where such rights cannot be asserted (accurate reports on public sessions of the European Parliament and federal and state legislatures, sessions of local government representatives, and court sittings). They set out formal conditions to be met by corrections and replies. These include the following: a media outlet must receive a written demand for reply within three months from the publication of the material that is being called into question. The reply and correction are published free of charge in the next issue (or broadcast in

the next programme after the receipt of notification – no later than within one month), in the same place as the material that caused the demand in the first place or in a comparable place. For print media, there is the additional obligation to use the same size and kind of font. Regulations also govern the content of replies and corrections, stipulating that replies must be limited to factual information, may not contain criminal content, and that editors cannot comment on the corrections. The obligation to fulfil this category of personal rights rests with the responsible editor and publisher/broadcaster. Any claims related to the non-publication of a correction or reply are enforced by common courts.

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DEFECTIVE CODES OF MEMORY, OR ABOUT THE REACTION OF GERMAN INTERNET USERS TO MEDIA CONTENT

Marta Jas-Koziarkiewicz

1. Introduction

Since the mid-nineties, the Internet has been determining the scope and form of communication, and the way it has been changing. The Internet affects both the media, e.g. their adaptation of the forms of communication they use, and recipients who have new ways of participating in the communication process. What makes the Internet unique are such of its features as simultaneous synchronicity and asynchronicity (comments and information can be posted in real time, and accessed later), lack of restrictions on the time and space of communication, anonymous participants of the process, multimedia character (combination of different communication forms), interactivity, change of the existing division between the author and recipient of a message, and interchangeability of these roles (dialogism).¹

The Internet's uniqueness, especially the fact that those who have hitherto been recipients now become senders,² offers many opportunities for researchers of the communication process. It also makes it possible to identify what, how and when is commented on, which in turn allows to specify the way of interpreting media content. However, research is made difficult by the range of online information, the number of posts, blogs, websites and files. This highlights the importance of defining the problem and research questions, and selecting the sample.

¹ For more about online communication see: A. Przybylska, *Internet i komunikowanie we wspólnocie lokalnej*, Wydawnictwa Uniwersytetu Warszawskiego, Warszawa, 2010, pp. 82–92.

² The possibility of the recipient taking part in the communication process and changing his/her role to that of a sender was highlighted in: F. Rebillard, A. Touboul, "Promises unfulfilled? 'Journalism 2.0,' user participation and editorial Policy on newspaper websites", *Media Culture Society* 32/2 (2010), pp. 328 ff.

2. Methodology

The article aims to examine online comments by German readers about defective codes of memory posted in online services of German quality media.

The study is based on the premise that online posts feature the same actors and themes as in the press articles. The analysis set out to help answer the following questions: What actors and themes appear in press articles and comments by Internet users? How are the themes presented in publications and statements by commentators? How was the use of the phrase “Polish concentration camps” assessed in editorials and by Internet users? Were these assessments the same?

To verify the research questions and hypothesis, I used the qualitative analysis of online content, which “does not mean a specific, new method, but rather took its name from the object of study: online content or online communication.”³ So we are dealing here with a classic, media studies method of content analysis,⁴ the only difference being the technique of disseminating information.

The qualitative content analysis made it possible to discuss the way topics are presented by Internet users, and in selected articles. This allowed the identification of main topics, and actors. Moreover, it provided data for assessing the use of defective codes of memory. For the purposes of the study, the author applied specific research techniques which include: operationalising concepts and creating a categorisation key. Identical for articles and online comments, the key identifies and defines: the categories of themes, the types of actors, and the tone of comments. The identified themes include: information about the person making the mistake, information about the circumstances of the mistake, reactions and actions by

³ F. Zeller, J. Wolling, “Struktur- und Qualitätsanalyse publizistischer Onlineangebote”, *Media Perspektiven* 3 (2010), p. 146.

⁴ The method’s author is believed to be B. Berelson, who identified it with quantitative analysis. However, content analysis is used both in quantitative and qualitative terms. The use of qualitative analysis allows to determine what and how the media wanted to communicate. M. Kafel, *Prasoznawstwo. Wstęp do problematyki*, PWN, 2nd ed.: Warszawa, 1969, p. 111. The Polish literature on the subject does not provide clear definitions of the terms *analiza zawartości* and *analiza treści*. The article uses the latter (*analiza treści*, content analysis) to denote qualitative analysis. For more, see: M. Lisowska-Magdziarz, *Analiza zawartości mediów. Przewodnik dla studentów: wersja 1.1*, Uniwersytet Jagielloński, “Nieruchomości i Finanse”, Kraków, 2004; W. Pisarek, *Analiza zawartości prasy*, Ośrodek Badań Prasoznawczych, Kraków, 1983; R.D. Wimmer, J.R. Dominick, *Mass media. Metody badań*, Wydawnictwo Uniwersytetu Jagiellońskiego, Kraków, 2008, pp. 209–248.

Polish authorities and politicians, reactions by Poles, Polish-German relations, Polish attitudes during the Second World War, different interpretations of the use of defective codes of memory, German responsibility for the Second World War, and others. While studying data, each topic raised in articles and comments was isolated, but only chief topics (featured in at least 4 posts) were presented in the description of analysis results. The content of press articles was discussed on purpose, as this made it easier to interpret online posts, which cannot be examined outside their context.⁵

The group of actors includes both persons who can be identified by their last name or name of function, and collective entities. Identified were the following categories of actors: a Polish politician, a German politician, a politician of different nationality, a public figure, Poles, the media, and others. The tone of publications is the last category under scrutiny. Five possible tones were identified for the purpose of the study:

- positive: accepting the use of defective codes of memory, commendatory phrases;
- negative: not accepting the use of defective codes of memory, unfavourable phrases prevail, understated irony possible;
- ambivalent: attitude towards a particular issue cannot be determined, the statement/text includes both positive and negative assessments;
- neutral: only factual information about the use of defective codes of memory;
- the tone cannot be established – the author of an article/comment does not raise the topic under analysis or presents it in a way that makes categorization according to the above criteria impossible.

3. Sample selection

Given the number and frequency of defective codes of memory in media coverage, the subject of this study was limited.⁶ The analysis covered com-

⁵ The importance of a statement's context is emphasised in studies from the field of social sciences. Two basic levels of context analysis are identified as follows: "linguistic (textual, co-text): a set of words, fragments of statements or complete texts that precede and follow a given statement (context can also be made up of visual materials) [...] social (situational, context): a situation in which communication takes place." J. Bielecka-Prus, "Problem kontekstu w teoriach komunikowania społecznego", *Studia Socjologiczne* 204 (2012), No. 1, p. 21.

⁶ According to "Information on MFA actions against the phrase *Polish camps*," the ministry intervened 103 times in 2010 and 73 times in 2011; http://www.msz.gov.pl/pl/p/msz_pl/aktualnosci/wiadomosci/informacja_o_dzialaniach_msz_przeciw_frazie_polskie_obozy (10 January .2014).

ments which German-speaking readers posted on websites of press titles, under reports about President Barack Obama's use of the expression during a ceremony of posthumously awarding the Presidential Medal of Freedom to Jan Karski (29 May 2012). In his speech, the president used the misnomer "Polish death camp" referring to the Nazi transit camp in Izbica.⁷

The study focuses on cases where the Polish Ministry of Foreign Affairs (MFA) does not intervene because it does not treat an expression as the use of defective codes of memory by the media. The choice was dictated by the fact that media outlets usually use the controversial phrase in their coverage of other topics, such as a film premières, memoirs, etc. When this happens, readers do not refer to the incorrect wording, but rather the central topic of the article.⁸ Such comments accompany reports about the use of the misnomer in public debate.

The analysis covered online comments by German-speaking readers posted under articles in the *Frankfurter Allgemeine Zeitung* (FAZ), *Der Spiegel* and *Focus*. The sample group is made up of one supra-regional quality daily and two prestigious weeklies coming out in Germany. The choice of titles is justified by their importance in the German media system.⁹ With 355,300 copies, the FAZ is second only to the *Süddeutsche Zeitung* (SZ, 431,800)¹⁰ in terms of circulation among the prestigious German-language dailies (SZ published no texts about the event under scrutiny). What also speaks in the FAZ's favour is its popular online service, which ranks third among the German quality dailies after *Die Welt* and the SZ. *Die Welt* was not included in the study due to the number of comments under its article.¹¹

⁷ *Fatalne słowa Obamy: polski obóz śmierci*, <http://tvp.info/informacje/swiat/fatalne-slowa-obamy-polski-oboz-smierci/7515404> (13 January 2014).

⁸ Following MFA interventions, editors usually delete such mistakes and publish corrections, for example B. Wyglenda, "Überlebende aus Konzentrationslagern zu Gast in Xanten", *Rheinische Post* of 27 August 2013. In this case, there were no online comments by readers, <http://www.rp-online.de/nrw/staedte/xanten/ueberlebende-aus-konzentrationslagern-zu-gast-in-xanten-aid-1.3632237> (access: 10 January 2014).

⁹ The importance of supra-regional dailies and quality magazines, such as *Der Spiegel* and *Focus*, in the German media system is highlighted, e.g., by E. Stasiak-Jazukiewicz, *Zmiana paradygmatu? Niemiecki system medialny*, ASPRA-JR, Warszawa 2013, pp. 127–130 and 134–136.

¹⁰ W.J. Schütz, "Deutsche Tagespresse 2012", *Media Perspektiven* 11 (2012), p. 593. In the 3rd quarter of 2013, the FAZ had a circulation of 410,756 copies, of which 334,928 were sold, the SZ, respectively: 497,2331, and 403,029. Information based on data from *Informationsgemeinschaft zur Feststellung der Verbreitung von Werbeträgern e.V.* (IVW) at: <http://daten.ivw.eu/index.php?menuid=12&u=&p=&t=Alphabetischer+Gesamtindex&b=s> (access: 10 January 2014).

¹¹ Two comments were posted under the article. The first asks for correcting a typographical error; the second refers to a slip of the tongue suggesting Germany's responsibility

Also, the *FAZ* online service had the largest share of visits by foreign users (Table 1). Another reason for choosing this daily is the profile of its readers. According to the concept of the “virtual recipient” (“inscribed reader”), the message addressee can be established on the basis of how a given outlet communicates, including the content and way of providing information.¹² The *FAZ* reader already has knowledge about events; what he or she looks for is more comprehensive information. This is corroborated by members of the Bundestag and federal state parliaments (Landtags), who point to the *FAZ* as an important source of information.¹³

The German weeklies selected for the analysis rank top of their category in terms of circulation and number of online visitors. In the third quarter of 2013, the *Focus* had a circulation of 677,494 copies with sales of 538,149, while the respective figures for *Der Spiegel* were 1,104,232, and 896,298. For details about the number of online visits, see Table 1.

The analysis covered three online articles published by these three newspapers, and 63 comments by Internet users. Excluded from the examination were online comments that did not refer to Barack Obama's statement. Information about the number of analysed units for each title is shown in Table 2.

for the Second World War and raises issues that are not identified in the categorisation key, e.g. racism at stadiums, G. Gnauck, *Wie Obamas KZ-Versprecher ganz Polen verletzt*, <http://www.welt.de/politik/deutschland/article106405358/Wie-Obamas-KZ-Versprecher-ganz-Polen-verletzt.html> (access: 10 January 2014).

¹² The concept of “inscribed reader” originated in media research in the cultural context. The issue was raised by Pierre Bourdieu and John Fiske. Colin Sparks and Michelle Campbell conducted an in-depth analysis of readers of the British quality press. As they noted: “This reader is not an actually existing reader or a journalistic notion of the average or typical reader, but a reader that emerges from issues discussed in articles [...]”: C. Sparks, M. Campbell, “The ‘Inscribed Reader’ of the British Quality Press”, *European Journal of Communication* 4 (1987), No. 2, p. 458. In Poland, the problem was addressed, among others, by Irena Tetelowska. For more, see: D. McQuail, *Teoria komunikowania masowego*, Wydawnictwo Naukowe PWN, Warszawa, 2007, pp. 380–381.

¹³ In surveys, the *FAZ* was indicated as the title to which readers devoted the most attention. W. Schulz, *Komunikacja polityczna. Koncepcje teoretyczne i wyniki badań empirycznych na temat mediów masowych w polityce*, Wydawnictwo Uniwersytetu Jagiellońskiego, Kraków, 2006, p. 10. It is worth noting that studies were carried out to look at content reception by readers of print and online papers. While some results suggested that people using traditional media were able to recall more information and details than people reading online editions, others did not confirm this pattern. K. Schoenbach, E. de Waal, E. Lauf, Research Note: Online and Print Newspapers: Their Impact on the Extent of the Perceived Public Agenda, *European Journal of Communication* 20 (2005), No. 2, p. 248.

Table 1: Use of online services of quality German dailies and weeklies

Title	Total page views		Percentage of visits from abroad	
	June 2012	December 2013	June 2012	December 2013
Spiegel Online	168,580,373	129,699,148	18.10	17.73
Focus Online	43,450,690	44,885,898	12.90	11.63
Die Welt	43,873,450	38,921,492	15.69	15.71
Süddeutsche.de	38,587,931	36,573,197	16.02	14.33
Die Zeit Online	24,464,852	26,504,716	18.64	18.20
faz.net	24,472,077	24,436,370	20.73	19.24

Source: own compilation based on: *IVW Online Nutzungsdaten Juni 2012*, *IVW Online Nutzungsdaten Dezember 2013*, data from the website: <http://daten.ivw.eu/index.php?menuid=12&u=&p=&t=Alphabetischer+Gesamtindex&b=alle> (access: 10 January .2014).

Table 2: Number of articles and online comments by readers in the analysed titles

	FAZ	<i>Der Spiegel</i>	<i>Focus</i>	Total
Number of articles	1	1	1	3
Number of comments	24	30	9	63
Number of analysed comments	18	19	9	46
Number of comment authors ¹⁴	15	16	7 ¹⁵	38

Source: own compilation; data as of 10 January 2014.

4. FAZ: “In Poland, but not Polish”¹⁶

This was the title of an article published in the online edition of the daily. Based on the thematic categorisation key prepared for the purposes of the study, it was possible to determine its central topics. These were:

- information about the circumstances in which the phrase was used
- presentation of the posthumous award to Jan Karski, including speech by Barack Obama;

¹⁴ Includes only the authors of comments that qualified for the analysis.

¹⁵ Three comments were not signed. The number of comment authors was established on the assumption that the unsigned comments were written by different people, other than those who signed their comments.

¹⁶ K. Schuller, *In Polen, aber nicht polnisch*, 31 May 2012, <http://www.faz.net/aktuell/politik/ausland/obamas-kz-verortung-in-polen-aber-nicht-polnisch-11769482.html> (access: 13 January 2014).

- the possibility of a different interpretation of the expression – authors considered the use of the adjective “Polish” to be problematic; it can be interpreted geographically (location of the camp), but can also suggest Polish cooperation with the occupiers, and even Polish responsibility for the Holocaust;
- reactions by Poles – the journalist notes that there is no agreement in Poland for this phrase to be used. It is not accepted by the media, Polish public opinion or politicians. This is fed by concerns that the Poles could be regarded as being partly responsible for the Holocaust. The journalist has understanding for this sensitivity, given the loss of Jewish and non-Jewish citizens during the Second World War on the one hand, and suspicions that the Poles “took part in the German crimes” on the other hand;
- Polish attitudes during the Second World War – reference was made both to “individual crimes against the Jewish population” and to the help they received. The text concluded that “nowhere in occupied Europe did the population help persecuted Jews as much as in Poland;”
- reactions by Polish officials and politicians – it was reported that the use of the phrase caused indignation across party lines. The assessment was supported by statements of politicians who described the slip of the tongue, among others, as: an insult to the Polish nation, lack of competence and professionalism, and denial of German responsibility.

Apart from Barack Obama, among the actors featured in the article dominate Polish officials and politicians. These are, in the order of appearance: Jarosław Kaczyński, Leszek Miller, Radosław Sikorski, Bronisław Komorowski, and Donald Tusk. Other actors are Jan Karski and Adolf Hitler, as well as collective entities – the Poles and the Germans. Owing to the arguments and information quoted in the article, its tone must be considered negative, as is indeed demonstrated by the very title.

4.1. Online comments by FAZ readers

There were 24 comments posted under the discussed article, 18 of which qualified for further analysis. They raised all the topics identified in the thematic categorisation key. Discussed herein are only those which can be found in at least four comments.

The dominant topic was referencing the person who used the misnomer (15 times). The readers commented on Barack Obama, his position and role in the international arena, with some users also trying to explain why he had used this term in the first place. They pointed to a slip of the

tongue (Peter Kupisz),¹⁷ a mistake (Wolfgang Richter), and a “grave” *faux pas* (Peter Goldstein). They also judged the president based on his knowledge – “...he’s not only an economic, but also an historical ignoramus” (Paul Banaschak), and university education – “It’s hard for me to imagine that a man who studied political science and was a human rights defender [...] is spreading such nonsense” (Martin Schmitt). Critics also pointed out that more can be expected of people holding high offices (Michael Martensen).

The Polish reaction to Obama’s words was another topic picked by the readers (six times). In their comments, they referred to statements by politicians, and reactions of the Poles. Assessments of the latter can be divided into positive and negative. Polish reactions are justified by such historical events as partitions, abortive insurrections, World War Two, and falling under Soviet control (Peter Kupisz). One reader noted that the Poles objected to the misnomer because if used repeatedly, it could lead to the conclusion that it was the Poles who had built and run concentration camps (Martin Schmitt). Commenters who dismissed Polish reactions pointed to their roots in a complex, or urged the Poles to “reckon” with history, and deal with “the historical gaps” (Eberhard Stoeckel).

Online readers were also interested in the reactions of Polish politicians (5 times), whose indignation is viewed as unfounded, and even embarrassing (Stefan Schaller). The only politician referred to directly was Jarosław Kaczyński. The reaction of this politician, described as populist and nationalist in one post (Michael Martensen), “is not surprising.” His arguments serve to heat the atmosphere, to profile himself and create the right mood, even though his nationalism disqualifies him from assessing Barack Obama’s speech (Peter Goldstein).

German responsibility for the Second World War was another theme explored in the comments. They pointed out that the Germans had already reckoned with their past (Andreas Müller) or, reversely, emphasized the German repression of Nazi history (Peter Kupisz). Most often, though, they denied that Obama’s words called into question German responsibility for the Holocaust (e.g. Peter Goldstein).

The last of the analysed topics was the possibility of a different interpretation of the expression. One reader noted that the adjective ‘Polish’ denoted geographical location of the camps (Andreas Müller). Another one, emphasising syntactical matters, also discusses geography: “Whether I say ‘Polish concentration camps’ or ‘concentration camps in the Polish territory’ depends only on the syntax and sentence melody.” Both should be read as a reference to the geographical location (Eberhard Stoeckel).

¹⁷ Nicknames according to original spelling.

4.2. Actors appearing in FAZ readers' posts

People cropping up in comments usually fall into the category 'politician of different nationality' (17 times). References to Barack Obama come as no surprise. Readers would mention him, his policy, and his blunders in office. George Bush was another politician referred to by commenters. Poles (6) and Polish politicians (5) were other categories of entities appearing in the texts. Readers would mainly point out and evaluate their reactions. J. Kaczyński is the only Polish politician cited by name. The Americans formed another collective category. Here, references were made primarily to their level of knowledge.

4.3. Tone

Out of 18 comments, 13 were critical of Barack Obama's misnomer "Polish death camps." The assessments were not always explicit, sometimes the tone could only be determined based on adjectives appearing in the comment. In 3 cases, establishing the tone was impossible, as readers took up a thread that was unrelated to the subject of the analysis, e.g. offending a head of state. Authors of two comments accepted the expression, which they believed referred to the geographical location of the camp.

5. *Der Spiegel*: "Obama upsets the Poles"¹⁸

Two main topics can be identified in the article published by the weekly: information about the circumstances of the mistake, and reactions and actions by Polish politicians and officials.

The magazine reported on the medal's presentation to Jan Karski, and the fact that the president spoke about 'Polish death camps.' *Der Spiegel* gave a profile of Karski and described his involvement in the struggle against the occupier during World War Two. Also covered were actions taken by the White House in the wake of the presidential address.

More attention was paid to statements by Polish officials and leaders of political parties, who responded to the situation with "anger." The weekly wrote that Poland had opposed the use of Barack Obama's misnomer in public debate for years. It quoted at length the following Polish politicians: D. Tusk (Poland was the country where effects of the Second World War

¹⁸ *Patzer bei Ehrung: Obama empört Polen mit KZ-Äußerung* (heb/dpa/AFP), 30 May 2012, <http://www.spiegel.de/politik/ausland/us-praesident-obama-empoert-polen-mit-kz-aeusserung-a-836051.html>, (access: 10 January 2014).

were most acutely felt; such statements could imply lack of responsibility on the part of the Germans and Hitler), Jarosław Gowin (the use of historically inaccurate expressions could shift responsibility for the Holocaust onto the Poles) and Lech Wałęsa (apologies by important politicians could be exploited to counteract such phrases in public debate). Other Polish politicians featured in the article are not quoted in so much detail. Rather, reference is made to their activities (protest letter of B. Komorowski) or opinions about the expression: “scandalous mistake” (R. Sikorski), “Polish nation was hurt” (J. Kaczyński). Zbigniew Brzeziński and A. Hitler are other actors mentioned in the text. The tone of the article can be described as negative, given the way of presenting the topic and selecting quotes.

5.1. Readers’ online comments about *Der Spiegel* text

A total of 30 comments were posted under the article. Eleven were not included in the analysis, as the authors raised topics that had no relation to Obama’s speech.¹⁹ The dominant theme was the person that made the mistake. The second topic in terms of frequency of reference was the possibility of a different interpretation of the controversial expression. Other topics cropped up sporadically.

Some comments about the president focused on the level of his knowledge and education. Commenters asserted that Obama and the Americans had little knowledge about history: “every child knows that the Americans haven’t a clue about geography and history” (brux). Sometimes the opinions were softened. For example, Toskania2 noted that whereas a politician should have knowledge about history, a politician would always be a politician, not a historian. Though rare, there were also some harsher comments, e.g. about Obama’s use of drugs at young age (rolandjulius). Some commenters emphasised that “more can be expected of a president” (qvoice). For this reason, aides are hired to write speeches, which are repeatedly vetted to forestall such mistakes (Ion). A president should observe particular diligence and attention to detail, especially in matters of life and death (axel09). The readers also referred to Obama’s foreign policy (rabenkrähe, about the “killing of a sleeping man”) and the award of the Nobel Prize (Rainer Helmbrecht).

How can the use of the controversial expression be interpreted? – this was the second topic most often addressed by the readers. One of the arguments mentioned was the linguistic justification for the use of the phrase,

¹⁹ They were mostly concerned with the educational system in the USA and the level of knowledge of Americans.

and the need to interpret it in its context. Then, there would be no doubt that “it wasn’t about concentration camps set up by the Poles, but those located in the territory of Poland” (vlumpe). Other commenters noted that they could not agree with the linguistic interpretation of the expression. They argued that geographical designations did not apply to other cases: “[...] no one is trying to describe Guantanamo as a Cuban camp” (Ion), or the terrorist attacks of September 11, 2001 as American. The camps should therefore be referred to as German (Ion). Sometimes, the use of the controversial phrase was attributed to shortening the speech in the wrong place (rainer_daeschler). Such mental shortcuts in the public debate could distort history and perpetuate this error. Similar simplifications cropped up in media reports about celebrations marking the end of the war and liberation. Given this trend, Polish concerns were not exaggerated (TheoCat). This comment corresponds to another one, whose author writes about the image of Poles in American WW2 films. They were dominated by the image of “a Pole going about his life as usual,” while Jews were being killed all around, or the image of a Polish collaborator. While this may be no historical misrepresentation in itself, the accumulation of such information and the salience of such images could lead to placing part of the blame on the Poles, and consequently to seeing them more often as perpetrators than victims of the Second World War (Yossarian22).

5.2. Actors appearing in online comments of *Der Spiegel* readers

The main topics of comments determine the kind of authors that appear in them. Politicians of different nationality were the most frequent category that was isolated in the key. This was usually Obama (12 times), with comments focusing on circumstances of the mistake, his function and level of knowledge; a handful of readers mentioned other politicians as well (Winston Churchill, Z. Brzeziński). Actors classified in the ‘others’ category also appeared quite often (8 times). These were usually collective entities: the Americans, and less frequently the Russians and the Germans. The third category were the Poles (5 direct references). No references were made to Polish politicians or public figures.

5.3. Tone

The dominant tone in the analysed comments was that of disapproval for Barack Obama’s words (17 comments). Assigned to this category were comments which flatly objected to the use of the controversial phrase (e.g. Ion), described Obama’s statement as incorrect, and branded it as

“a terrible lapse” (Europa!). One of the comments was recognised as accepting the use of the defective code of memory, as it is known which camps are meant (vlumpe). The tone of one of the comments could not be determined (f.orenstöpsel).

6. *FOCUS*: “Obama angers the Poles with his slip of tongue about death camps”²⁰

The article discussed some of the topics identified in the thematic categorisation key. It featured information about the circumstances of the mistake, and about J. Karski, though with a focus on statements by Polish officials and politicians. The weekly presented views of Polish politicians by quoting the former foreign minister Adam Rotfeld, and justice minister J. Gowin. The former attributed responsibility for the president’s error to his advisers. According to the then justice minister, the misnomer should not be underestimated, as it could lead to placing responsibility for the Holocaust on the Poles rather than the Germans. These opinions are balanced out by quotes from a White House statement and Z. Brzeziński (“misstatement”).

Within this thread, it is also possible to identify information about actions by Poland’s diplomacy. Concerns that Poland could be considered responsible for the Holocaust are behind efforts to monitor and follow the global discussion on World War Two, and the rejection of the misnomer. Therefore, the Polish Ministry of Foreign Affairs prefers the wording “Nazi extermination camps in the Polish territory.”

The actors mentioned in the article are foreign (B. Obama, Z. Brzeziński) and Polish (A. Rotfeld, J. Gowin) politicians, as well as people falling within the “others” category (J. Karski, Tommy Vietor).

6.1. Online comments by *FOCUS* readers

A recurring theme in the comments is the possibility of a different interpretation of the controversial expression (7 times). The readers themselves noted that Barack Obama’s use of it could imply that the Poles shared in the responsibility for the Holocaust. “During the Second World War, Poland was an occupied country and, just as Polish Jews, it was exposed to Nazi terror,” reference to geography is misleading (comment 1). In this context,

²⁰ *Präsident tritt ins Fettnäpfchen. Obama verärgert Polen mit KZ-Versprecher*, http://www.focus.de/politik/ausland/praesident-tritt-ins-fettnaepfchen-obama-patzt-bei-ehrung-von-widerstandskampfer_aid_760150.html.

attention to the correct wording was dictated by concern for disseminating historical truth (comment 1, Thomas Hempel). The phrase that is accepted by the Polish side is also recommended by UNESCO. Moreover, it is justified by the fact that during World War Two there was no Poland (comment 5). The readers also highlighted the term's inadequacy due to the fact that Polish camps did exist after World War Two (e.g. Axel Müller, comment 2).

The second dominant topic is the Polish reaction (4 times). Most commenters writing about this issue agreed that Poles had every right to be "outraged," "protest," and feel "angry" (comments 1 and 2, Thomas Hempel). Others labelled the misstatement as a "slip of the tongue," sometimes also pointing out the need to "accept" its use in the public debate (Thomas Weinert), and "let bygones be bygones" (Günter Munz), or describing "the irritation of Poles" as ridiculous (Daniel Döring).

6.2. Actors appearing in online comments by *Focus* readers

The Poles are a category of actors most often invoked in online comments (5). This is dictated by the dominant topics. Barack Obama is another actor appearing in the comments, sometimes only in their titles (4). In terms of frequency of references, the Institute of National Remembrance, UNESCO, and Jews are the third category of actors identified in the thematic categorisation key (others, 3).

6.3. Tone of readers' online posts under *Focus* article

Most commenters (6) criticized Barack Obama's use of the controversial expression. They highlighted that it was historically untrue, and considered the Polish reaction justified. Two commenters were ambivalent. On the one hand, they admitted it was a mistake, on the other hand, they said Poles should get used to it, or described the Polish reaction as ridiculous. One comment could not be assigned to any of the categories.

7. Conclusions

The results of the qualitative content analysis have only partially confirmed the hypothesis about the convergence of themes and actors in press articles and online comments.

As for the *FAZ*, all the themes raised in the article were reflected in readers' posts. Moreover, the commenters broached a topic which was absent from the article, namely the German responsibility for the Second

World War. Similarly, the catalogue of actors mentioned in the comments corresponds to those indicated in the article (except for G. Bush). It was also observed that the readers tended to refer to collective entities (Polish politicians, the Americans), rather than pointing to specific individuals, as in the article. Also, the tone of the article overlaps with the tone dominating in the comments.

In the quality weeklies, the main themes in the articles are not identical with those taken up by the readers. The latter focus on topics the editors left aside or mentioned in passing. The choice of other topics also led to the appearance of different actors, though some did feature in both the articles and comments, for example B. Obama, Z. Brzeziński, and J. Kaczyński. As in the *FAZ*, the readers tend to use the categories of collective entities, for example the Poles, Germans, Americans, Jews. Even though the themes and partly also the actors are not the same, there is a prevailing negative tone in both the comments and articles, expressing disapproval for the use of the controversial expression.

It is the media and their coverage that provide us with an interpretation framework of events; they contribute to changing the defined reality and constructing new meanings by recipients.²¹ For this reason, the way they present information is so important. The conducted study has revealed that when assessing media activity, an important element – apart from the way the audience is informed – is also the nature of a media outlet, which can affect both the form of presenting information, and its reception.

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²¹ M. Colombo, "Theoretical Perspectives in Media-Communication Research: From Linear to Discursive Models [30 paragraphs]", *Forum Qualitative Sozialforschung/Forum: Qualitative Social Research* 5 (2004), No. 2, Art. 26, <http://nbn-resolving.de/urn:nbn:de:0114-fqs0402261> (access: 10 January 2013).

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ETHNICISATION OF RESPONSIBILITY: PSYCHOLOGICAL ASPECTS OF DEFECTIVE CODES OF MEMORY

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1. Death camps – Polish, German or Nazi?

When during the ceremony to posthumously award the Presidential Medal of Freedom to the hero of Underground Poland, Jan Karski, Barack Obama used the expression “Polish death camps,” the Poles gathered in the room got upset. It was not long before Internet users started to voice their reactions, demanding an apology in writing or even calling to break off diplomatic relations with the US. Leading Polish politicians also expressed their indignation about these words, spoken in an otherwise warm speech, friendly to Poland.

For many years, Polish Americans have protested against phrases that incorrectly suggest Poland’s responsibility for the Holocaust and from time to time appear in the American media. It was, among others, thanks to their efforts that two leading US press agencies have issued an official instruction for their journalists not to use the term “Polish death camps.” Despite that, in 2012 alone, the Polish Ministry of Foreign Affairs intervened in this matter more than 100 times. The phrase in question, spoken during the ceremony by the US president, renewed the debate on the need to counteract this kind of simplifications in thinking about history.

Outraging to the Poles, the ahistoricism hidden behind the attribution of Polish origin to concentration camps attracted the greatest interest among the Poles themselves, focusing the attention of the English-speaking Internet users only for a short time. This is demonstrated by an analysis of Google searches which we conducted for the years 2005-2013 (using the Google Trends tool on 8 October 2013). We decided to check how often Polish and American Internet users, using the Google search engine, search for “Polish death camps” (“polskie obozy zagłady”), and – for comparison

– “German death camps (“niemieckie obozy zagłady”) and “Nazi death camps” (“hitlerowskie obozy zagłady”) (see Chart 1 a and b).

Chart 1. Interest of Internet users in individual designations of concentration camps – the frequency of search in terms of time

a. Google in the world



b. Google in Poland



The above diagrams show that the English-speaking Internet users practically do not use the term “Polish death camps” – more often, trying to find information about the annihilation camps they enter “German camps” and “Nazi camps.” Thus, the widely publicised media cases of the use of these phrases do not have any impact on the behaviour of media consumers who do not use the defective codes of memory while looking for information. Hence, it is not true that Internet users perceive the Poles as responsible for the crimes of the Holocaust.

Even more interesting is the analysis of searches for individual terms by the Polish users of the Google search engine. In addition to far more frequent searches for the phrase “Polish camps” (presumably in connection

with the cases of its use in the international press publicised by the Polish media – indeed, we see a considerable increase after President Obama’s statement received wide media coverage), it is also worth paying attention to a clear trend towards their ethnicisation – whereas between 2005 and 2007 the Poles searching for information about the extermination camps entered in the Google search engine “Nazi camps,” today the search for “German camps” predominates in such situations (Fig. 1b). Currently, the expression “German camps” definitely prevails over the phrase “Nazi camps” in terms of search frequency. This is probably related to the tendencies to deny the alleged Polish responsibility and indicate the German responsibility – instead of the actual responsibility of the criminal totalitarian system, which was Nazism, or the Nazi type of fascism. We call this process the “ethnicisation of memory,” and in this chapter we intend to look closely at this phenomenon and its possible consequences.

In recent years, the necessity for a clear identification of the perpetrators of historical crimes and counteracting misunderstandings which could lead to incorrectly holding the Polish people responsible has become an argument in favour of changing the names of many Polish memorial sites. More and more often, they include a direct indication of the responsibility of an ethnic group, and less and less frequently – of the responsibility of the totalitarian ideology behind these crimes. The UNESCO World Heritage Committee agreed to the change of the name functioning before – “Former Concentration Camp of Auschwitz-Birkenau” to “Auschwitz-Birkenau. German Nazi Concentration and Extermination Camp”, likewise, in 2012 “Concentration Camp of Krakow-Plaszow” by decision of the councillors of Krakow’s Podgorze district became “German Nazi Concentration Camp ‘Plaszow’.”

The tendency to refute the charge inherent in the term “Polish camps” by making a similar mistake – pointing out the ethnic responsibility of the Germans – signals a peculiar deadlock that Polish memory has reached. The purpose of this paper is to indicate the defectiveness of the resultant ethnicising code of memory on the basis of classic and most recent research in social psychology. The following sections will outline the psychological reasons explaining the mechanism of ethnicisation in relation to the responsibility for historical crimes, as well as its implications for contemporary intergroup relations.

2. Problems of Polish memory

In recent decades, social sciences have been looking with great interest at the role of social memory in creating identity and modelling of contemporary attitudes. Theoreticians and researchers of this issue showed how impor-

tant remembering about the past is for shaping the knowledge of where our group comes from, where it is going, and what its role in the world is. James Liu and Denis Hilton, referring to the concept of Bronisław Malinowski, proposed the notion of a “charter” as the most important part of a socially shared vision of history.¹ Such a charter provides a clear interpretative key with respect to current events and relations with others.² Therefore, memory ensures not only a sense of continuity in time and belonging, but also a sense of control – conviction of the knowledge of rules which in the future can prevent one from taking wrong decisions or danger lurking on the part of former adversaries.

Memory plays a special role in creating and maintaining a positive assessment of a group. Founding myths, i.e. stories which make the essence of the group and confirm its achievements in the fields important to its image, allow meeting the need for its positive self-assessment.³ This involves both a tendency to present one’s own group in a favourable light, and the occurrence of systematic errors and distortions in the content of our social memories.⁴ Identification with a group has an impact on which historical events get remembered and what their interpretation is.⁵ Maria Lewicka showed that identification with a group may also increase memory bias,

¹ J.H. Liu, D.J. Hilton, “How the past weighs on the present: Social representations of history and their role in identity politics”, *British Journal of Social Psychology* 44 (2005), pp. 537–556; B. Malinowski, *Myth in Primitive Psychology*, WW Norton, New York, 1926, as cited in: Liu, Hilton, “How the past weighs”.

² J.H. Liu, M.S. Wilson, J. McClure, T.R. Higgins, “Social identity and the perception of history: cultural representations of Aotearoa/New Zealand”, *European Journal of Social Psychology* 29 (1999), pp. 1021–1047.

³ H. Tajfel, J.C. Turner, “An integrative theory of intergroup conflict”, in: *The Social Psychology of Intergroup Relations*, eds. W.G. Austin, S. Worehel, CA: Brooks/Cole, Monterey, 1979, pp. 33–47.

⁴ N.R. Branscombe, D.L. Wann, “Collective self-esteem consequences of outgroup derogation when a valued social identity is on trial”, *European Journal of Social Psychology* 24 (1999), pp. 641–657; R. Luhtanen, J. Crocker, “A collective self-esteem scale: Self-evaluation of one’s social identity”, *Personality and Social Psychology Bulletin* 18 (1992), pp. 302–318; R.F. Baumeister, S. Hastings, “Distortions of collective memory: How groups flatter themselves”, in: *Collective Memory of Political Events. Social Psychological Perspective*, eds. J.W. Pennebaker, D. Paez, B. Rimé, Lawrence Erlbaum Associates, Mahwah (NJ), 1997; M. Lewicka, “Historical ethnic bias in urban memory: The case of central European cities”, *Magazine for Urban Documentation: Opinion + Theory* 2008, pp. 50–57; M. Lewicka, “Historical ethnic bias in collective memory of places: Cognitive or motivational?”, in: *Perspectives on Thinking, Judging, and Decision Making*, eds. W. Brun, G. Keren, G. Kirkeboen, H. Montgomery, Universitetsforlaget, Oslo, 2011, pp. 262–273; M. Lewicka, *Psychologia miejsca*, Scholar, Warszawa, 2012.

⁵ Liu, Hilton, “How the past weighs”.

involving the overestimation of the role of one's own group in the history of places of residence, thus legitimising its right to the occupied territory.⁶

In the light of the psychological knowledge cited, the threat to the Polish memory, associated with the emergence of the phrase "Polish death camps" in the Western media, becomes obvious. For many European societies, especially for those whose territories were occupied by the Third Reich, the years of the Second World War proved to be an extremely important period for the formation of their modern identity. Polish respondents mention the events of 1939–1945 as the most important in the history of their places of residence and in the history of the nation.⁷ In spite of sharing a general tendency to indicate events in which the main actors were members of the same national group, in Poland the memory of the annihilation of the Jews is present far more often than e.g. Ukraine. Similarly, Polish history books not only devote a lot of space to the period of the Second World War, but also mention the Holocaust, at the same time emphasising help provided to the Jews by the Poles risking their lives – which sometimes leads to an incomplete presentation of the actual attitudes of the Poles toward the Jews under the Nazi occupation.⁸ The time of the Second World War, interpreted in this special way, has become a very important element of Polish identity.

Therefore, indication of the Polish provenance of death camps strikes at Poland's dominant narrative of the past. Such statements pose a threat to the schematic perception of the occupation years developed as part of school education: distinguishing Poles, who were only saving the Jews, from their executioners – solely of German origin. This clash of historical narratives overlaps with the actual erroneousess of the phrase "Polish death camps," which not only the Poles protest against – but also American Jewish organisations (e.g. the American Jewish Committee).

3. Divisions too simple to be true

In the face of the Holocaust, a tragedy of unprecedented proportions, the return to a normal life seemed unimaginable for many Europeans, witnesses of the carnage of their Jewish neighbours. The struggles of successive generations born in post-war Germany must have been all the more difficult,

⁶ Lewicka, "Historical ethnic bias in urban"; Lewicka, "Historical ethnic bias in collective".

⁷ Lewicka, *Psychologia*.

⁸ H. Węgrzynek, „Prezentacja Holokaustu i dziejów Żydów w aktualnych podręcznikach historii”, in: *Nauczanie o Holokauście*, ed. A. Żbikowski, ASPRA-J, Pułtusk, 2006, pp. 13–74; R. Szuchta, *Czego uczeń polskiej szkoły może się dowiedzieć o Holokauście na lekcji historii w dziesięć lat po "dyskusji jedwabieńskiej"?*, typescript submitted for publication.

where even posters on the streets cried: "These crimes are your fault!" (Ger. *Diese Schandtaten: Eure Schuld!*), and history lessons in schools were dominated by discussions about the Nazi years.⁹

The memory of millions of European Jews murdered in areas occupied by the Third Reich left the mark of Cain on post-war Europe, which long after peace treaties were signed could not shake off the nightmare of the war. The newly established borders sealed the division between those who should feel guilty and others, authorised to assign blame, at the same time predestining members of each of these groups to experience different emotions and to certain mutual attitudes.¹⁰

Building of the post-war Polish identity as an antithesis of German identity expresses a tendency, still common in the 1950s, to ascribe the reasons for the war tragedy to the criminals' peculiar personality traits, specifically related to German culture and history.¹¹ This is not too far from the narrative still dominant in the studies on the Holocaust. It is based on the triad proposed by Raul Hilberg: "perpetrators-victims-witnesses," which – not quite in line with the author's intentions – tends to be simplified to the ethnic triad: "Germans-Jews-Poles."¹² The most prominent follower of this concept is Daniel Goldhagen, who places the responsibility for Nazi crimes explicitly on the cultural characteristics of the Germans as a nation¹³

The obvious advantage of this division is the pretence of security which is created by indicating the guilty ones and clearly separating them from other participants of the events. However, this otherwise convenient approach turns out to be an unauthorised simplification, corresponding to the psychological needs rather than historical facts. Knowledge of successive exceptions to this rule – German communists persecuted by the Nazis (and thus also Germans), members of the German Resistance, and on the other hand: of the Lithuanian Riflemen, Ukrainian guards and torturers in death camps,

⁹ M. Janowitz, "German reactions to Nazi atrocities", *American Journal of Sociology* 52 (1946), pp. 141–146, as cited in: R. Imhoff, M. Bilewicz, H.-P. Erb, "Collective regret versus collective guilt: Different emotional reactions to historical atrocities", *European Journal of Social Psychology* 42 (2012), pp. 729–742.

¹⁰ M.J.A. Wohl, N.R. Branscombe, Y. Klar, "Collective guilt: Emotional reactions when one's group has done wrong or been wronged", *European Review of Social Psychology* 17 (2006), pp. 1–37.

¹¹ J. Duckitt, "Psychology and prejudice: A historical analysis and integrative framework", *American Psychologist* 47 (1992), pp. 1182–1193.

¹² R. Hilberg, *Sprawcy, ofiary, świadkowie. Zagłada Żydów 1933–1945*, Centrum Badań nad Zagładą Żydów, Wydawnictwo Cyklady, Warszawa, 2007.

¹³ D. Goldhagen, *Gorliwi kaci Hitlera: Zwyczajni Niemcy i Holokaust*, Prószyński i Ska, Warszawa, 1999.

finally of the Blue Police obedient to the occupier and the so-called *szmalcowniki* of Polish nationality – leaves no doubt. These crimes were not only German: these were the crimes of the Nazi system of power, which found obedient executors also among other nations of occupied Europe.

4. Why ideology?

The role of an ideology in shaping human behaviour is often underestimated, and this is partly because of common mechanisms governing the conclusion about causality, i.e. *the fundamental* and *the ultimate attribution error*. *The fundamental attribution error* is when people spontaneously seek the causes of behaviour in the characteristics of the acting person (e.g. his or her personality), and underestimate situational conditions.¹⁴ This mechanism, originally referring only to behaviours and attributions exhibited by individuals, is also reflected in intergroup relations. Thomas Pettigrew demonstrated that while assessing the negative behaviour of alien groups (e.g. the perpetrators of historical violence) people generally make internal attributions of the reasons for such behaviour (i.e. they decide that a given group behaved this way and not differently, “because they are like that”), whereas in the case of positive behaviour external causes are considered much more often (e.g. the situation).¹⁵ In the case of assessing behaviour of one’s own group, this pattern is exactly the opposite – which has been called the *ultimate attribution error*.¹⁶

Assigning responsibility for intergroup violence to nations rather than ideologies is also connected with the universality of their essentialist understanding.¹⁷ In accordance with the concept of psychological essentialism, groups of people are not only collections of individuals distinguished on the basis of certain characteristics, but they also have a common “essence”

¹⁴ E.E. Jones, V.A. Harris, “The attribution of attitudes”, *Journal of Experimental Social Psychology* 3 (1967), pp. 1–24; L. Ross, “The intuitive psychologist and his shortcomings: Distortions in the attribution process”, in: *Advances in Experimental Social Psychology*, ed. L. Berkowitz, Academic Press, New York, 1997, pp. 173–220.

¹⁵ T.F. Pettigrew, “The ultimate attribution error: Extending Allport’s cognitive analysis of prejudice”, *Personality and Social Psychology Bulletin* 5 (1979), pp. 461–476.

¹⁶ M. Hewstone, “The ‘ultimate attribution error’? A review of the literature on intergroup causal attribution”, *European Journal of Social Psychology* 20 (1990), pp. 311–335; Pettigrew, “The ultimate attribution”.

¹⁷ D.L. Medin, “Concepts and conceptual structure”, *American Psychologist* 44 (1989), pp. 1469–1481; D. Medin, A. Ortony, “Psychological essentialism”, in: *Similarity and Analogical Reasoning*, eds. S. Vosniadou, A. Ortony, Cambridge University Press, Cambridge, 1989, pp. 179–195.

or “nature.” Due to this essence these groups are seen as entities which move through time.¹⁸ Because of this type of convictions, it is very easy to assume that today’s Germans are just like their ancestors, who murdered the Jews in the 1940s.

Despite the widespread overestimation of the role of the permanent features of an actor in determining his/her behaviour, social psychology studies show consistently that it is the situation in which given behaviour occurs that determines it much more strongly than any individual features. A strong ideology, which is a collection of views of the world, shapes the way of seeing this world by people subscribing to them, while interpretation of the situation results in behaviour adapted to this interpretation.

5. Situational determinants of behaviour

Very important evidence in favour of situational determinants of any violent behaviour was provided by two classic and highly controversial experiments conducted by the American psychologists, Stanley Milgram and Philip Zimbardo.¹⁹ Just after the Second World War, social scientists, and among them many psychologists, asked themselves the question of what makes individuals and groups of people commit such terrible acts as the Holocaust. During the Nuremberg Trials, Nazi criminals consistently explained that they are innocent, because they were only obeying orders given by their superiors. Their testimonies provided support for the researchers’ hypothesis about the role of obedience to authorities for the crimes of Nazism.

Driven by the question as to the sources of Nazi crimes, Milgram designed an experiment the objective of which was to determine the sources and limits of obedience to authorities. The study involved volunteers who responded to a newspaper advertisement regarding participation in an experiment on the mechanisms of learning. Volunteers were seemingly randomly assigned the role of a “teacher” or a “learner” (in reality, all volunteers were “teachers” and the “learner” was an associate of the researcher).

¹⁸ F. Sani, M. Bowe, M. Herrera, C. Manna, T. Cossa, X. Miao, T. Zhou, “Perceived collective continuity: Seeing groups as entities that move through time”, *European Journal of Social Psychology* 37 (2007), pp. 1118–1134; F. Sani, M. Herrera, M. Bowe, “Perceived collective continuity and ingroup identification as defence against death awareness”, *Journal of Experimental Social Psychology* 45 (2009), pp. 242–245.

¹⁹ C. Haney, W.C. Banks, P.G. Zimbardo, “Interpersonal dynamics in a simulated prison”, *International Journal of Criminology and Penology* 1 (1973), pp. 69–97; S. Milgram, *Obedience to Authority; An Experimental View*, Harper-Collins, New York, 1974.

The research procedure assumed that the “learners” would memorise pairs of words. The “teachers” were to test memory of the “learners,” whereas every mistake was to be punished by applying more and more powerful electric shocks to the “student.” Even though the “learners” in fact did not suffer any shocks, the whole research situation was arranged in such a way as to persuade the “teachers” that it was true. After consecutive errors of the “learner,” the “teachers” used current of greater and greater intensity. More and more intense sounds of pain were coming from the room where the “learner” was kept. Sooner or later, the “teachers” stopped feeling comfortable with causing pain to the “learner.” Then, they turned for advice to the experimenter, dressed in a white lab coat, who was staying with them in the same room all the time. The experimenter exerted an increasing pressure on them, saying: “Please continue,” “It is essential that you continue” or “You have no other choice, you must continue.” Due to these simple messages participants of the study obediently administered stronger and stronger electric shocks to the “learner.” This way, all subjects reached the shock strength of 285V, and 65 percent (26 people) the maximum voltage, marked as very dangerous, of 450V.

The results of the preliminary study were truly shocking: ordinary people, in a special situation, turned out to give in to the pressure from the person conducting the study so much that they were willing to administer another person a mortally dangerous electric shock. These results were explained by the specificity of the situation in which participants of the study found themselves. The white lab coat of the researcher, representing a reputable institution (Yale University), easily evoked the norm of respecting authorities, rooted in the socialisation process. Moreover, the situation was something new for the participants, which was further conducive to trusting the informational social impact – i.e. the increased reliance on the instructions of the researcher and faith that he “knows what he’s doing.”

A similarly shocking testimony to the role of a situation in shaping human behaviour is the prison experiment conducted by Zimbardo at Stanford University.²⁰ A group of 24 students, coming from the middle class, without a criminal history, characterised by completely balanced personalities, were randomly assigned the roles of “prisoners” and “guards” in an experiment on prison behaviour. Participants were placed in the basement of one of the university buildings converted into a prison. Also in this case, the experimental situation was arranged so as to imitate the real context as closely as possible, i.e. a true prison. The guards were given uniforms and truncheons, the prisoners had to get change into identical clothes. Already

²⁰ Ibid.

after the first day of the experiment, its participants identified with their roles very strongly. The “guards” were becoming increasingly aggressive and harassed the “prisoners” more and more strongly. The situation surpassed the wildest expectations of the experimenter and the entire experiment was terminated prematurely (in relation to the planned length) – after only 6 days. As in the Milgram experiment, here it also turned out that it was the situation, rather than the participants’ individual features, that affected their behaviour. It is worth remembering that the selected students were randomly assigned their roles and their behaviour changed only after entry into the role.

6. The role of convictions regarding groups of victims

The image of a persecuted group formed in a given historical period is an important part of the context which facilitates the understanding of the crimes of the past. A common feature of ideologies that led to genocides in such diverse places as Germany, Rwanda or Turkey was the creation of a specific image of the future victims. This image was characterised, on the one hand, by assigning them intentions dangerous for a group of perpetrators and blaming them for the group’s failures, and on the other – by their exclusion from the “moral community.”²¹

An analysis of two examples of contemporary genocide, in Rwanda and in Turkey, reveals similar mechanisms to justify committed crimes. The Tutsis in Rwanda as well as the Armenians in Turkey were portrayed as groups politically threatening the groups of perpetrators. The Armenians were hailed by the then Turkish propaganda as the pro-Russian “fifth column.” The Tutsis, enjoying privileges and power in colonial times, began to be treated by the Hutu national ideology as a separate race that had appropriated the privileged position they did not deserve and was striving for greater and greater domination over the Hutus.

In both of the above and many other cases, the key role in feeding the spiral of violence was played by dehumanisation of the victim group – denying individuals and groups human features, associated with their exclusion from the circle where principles and moral values apply.²² The exclusion of

²¹ S. Opatow, “Moral exclusion and injustice: An introduction”, *Journal of Social Issues* 46 (1990), pp. 1–20; E. Staub, “Psychologia świadków, sprawców i ratujących bohaterów”, in: *Zrozumieć Zagładę: Społeczna psychologia Holokaustu*, eds. L.S. Newman, R. Erber, PWN, Warszawa, 2009, pp. 15–42.

²² N. Haslam, “Dehumanization: An integrative review”, *Personality and Social Psychology Review* 10 (2006), pp. 252–264.

the victims of dehumanisation from the human community allows avoiding the negative consequences of the use of violence against them.²³ The natural reaction of a man who is a witness to the suffering of another human being is feeling discomfort close to that when we experience pain.²⁴ The exclusion of victims from the human community, resulting in a lack of empathy for their suffering, allows avoiding these unpleasant feelings and negative assessments of one's own behaviour.²⁵ Moral principles underlying the existence of groups of people (e.g. prohibition of killing) no longer apply to groups excluded from the moral community. Haslam has distinguished two types of dehumanisation: animalistic, connected with assigning representatives of a foreign group animal features, and mechanistic, consisting in treating them as having no key elements of human nature, such as emotionality, warmth or cognitive flexibility, and consequently, perceiving them as close to emotionless robots.²⁶ The first type is characteristic of the intergroup context.

Ideology was one of the main tools to propagate dehumanisation of the future victims both in Nazi Germany and in Rwanda, ravaged by tribal conflicts. Nazism and racial ideas advocated by the Hutus shared many similarities in terms of creating the image of victims. Nazi propaganda presented the Jews as representatives of an inferior race, and compared them to rats, lice and spiders, often referring to the metaphor of their "sucking out" the Aryan blood. The Tutsis were portrayed as cockroaches.

Such an image of victim groups invited their abuse, including physical extermination. As a social and psychological process, dehumanisation is not limited to groups of perpetrators of past crimes, but accompanies all sorts of intergroup conflicts. Psychological analyses of genocides show conclusively that they are connected by a peculiar ideology – which was by no means uniquely German, Turkish or Rwandan.²⁷ What is worse, studies by Milgram or Zimbardo suggest that similar crimes could also be committed by us: contemporary Americans, British, French or Poles.

²³ A. Bandura, "Selective moral disengagement in the exercise of moral agency", *Journal of Moral Evaluation* 31 (2002), pp. 101–119.

²⁴ M. Jha, A.P. Botvinick, L.M. Bylsma, S.A. Fabian, P.E. Solomon, K.M. Prkachin, "Viewing facial expressions of pain engages cortical areas involved in the direct experience of pain", *NeuroImage* 25 (2005), pp. 312–319.

²⁵ Bandura, "Selective moral disengagement".

²⁶ Haslam, "Dehumanization".

²⁷ M. Bilewicz, J.R. Vollhardt, "Evil transformations: Psychological processes underlying genocide and mass killing", in: *Social Psychology of Social Problems. The Intergroup Context*, eds. A. Golec De Zavala, A. Cichocka, Palgrave Macmillan, New York, 2012, pp. 280–307.

7. The effects of ethnicisation of memory

Overlooking the role of ideology, which results in blaming national groups for historical crimes, as well as essentialist beliefs about nations (i.e. that their past and contemporary members share a common nature, and hence the common characteristics), are associated with negative consequences both for the descendants of perpetrators and for relations between the descendants of perpetrators and victims nowadays.

Recalling crimes committed by one's own group in the past results in experiencing unpleasant moral emotions, even if you yourself are not a direct perpetrator of violence.²⁸ Roland Imhoff and colleagues indicated that the perpetrators' descendants, feeling guilt for their ancestors' acts, are strongly motivated to free themselves from this unpleasant mental experience through reparative actions (e.g. financial compensation). However, their desire to relieve discomfort is associated with their reluctance to contact the stimulus which causes it, that is the descendants of victims.²⁹ An important consequence of ethnicisation is therefore a significant hindrance of contact between the descendants of perpetrators and the victims, and thus indirectly – consolidating mutual dislike and mistrust.

A series of studies by Michael Wohl and Nyla Branscombe yields convincing results on the impact of ethnicisation of memory on the attitude of the descendants of victims towards the descendants of perpetrators.³⁰ The subjects (American Jews) in two experimental groups were reading a short text about the Holocaust. In one, it was presented as harm done by some people to other people (universal categorisation); in the other, as harm done by the Germans to the Jews (intergroup, ethnicising categorisation). The experiment showed that the intergroup categorisation involves assigning contemporary Germans significantly more collective guilt and less willingness to forgive them. Subsequent studies confirmed this hypothesis and additionally revealed that the intergroup categorisation intensifies the aversion to contacts with contemporary Germans. The mechanism responsible for more positive attitudes towards Germans – a greater willingness to forgive and lesser collective guilt assigned to them – involved convictions about the universality of genocide, i.e. treating genocide not as typical of the Germans but a phenomenon which can occur in different contexts.

²⁸ Wohl, Branscombe, Klar, "Collective guilt".

²⁹ Imhoff, Bilewicz, Erb, "Collective regret".

³⁰ M.J.A. Wohl, N.R. Branscombe, "Forgiveness and collective guilt assignment to historical perpetrator groups depend on level of social category inclusiveness", *Journal of Personality and Social Psychology* 88 (1995), pp. 288–303.

These results seem consistent with the views of Ervin Staub, who has been working for reconciliation in Rwanda for years.³¹ His workshop's programme includes teaching members of the Rwandan community about social and psychological processes leading to genocide. Workshop participants discuss how the genocide which happened in their country was not a unique event. The author argues that this leads to the formation of a belief that "if such things have also happened elsewhere, and if they are human processes which can be grasped, the crimes committed in Rwanda, regardless of their cruelty, do not exclude their perpetrators from human species" – this kind of convictions can ultimately lead to reconciliation between the former perpetrators and their victims.³²

8. Never Again!

Assigning responsibility for historical crimes to national groups is both unfair and inconsistent with the facts. It qualifies people fighting against the dominant ideology to the group of perpetrators (e.g. German communists or persons from the Hutu group helping the murdered Tutsi) and excludes from it many actual perpetrators, only because of different ethnicity (e.g. Lithuanian, Belgian or Ukrainian SS collaborators). Ethnicisation also implies serious consequences for contemporary intergroup relations – both for the descendants of victims, and the perpetrators of violence. On the one hand, classifying an entire nation (e.g. the Germans) as guilty of the injustice caused in the past dooms it to isolation, bearing the costs of negative group self-assessment and public ostracism. On the other hand, narrowing the responsibility for the tragedy (e.g. for the extermination of the Jews) to one national group may limit the ability to understand this event by the victims and the outside observers. Consent to ethnicisation of responsibility reduces the ability to understand the processes which led to the tragedy and weakens sensibility to the threat of development of extremism in one's own nation, and ultimately leads to the failure to notice early alarming signals.

Shortly after the liberation of the Buchenwald camp, its walls got covered with the inscriptions: *Never Again!* This imperative, repeated in several languages, became the main lesson and mission for civilisation after

³¹ E. Staub, "Genocide and mass killing: Origins, prevention, healing and reconciliation", *Political Psychology* 21 (2000), pp. 367–382; E. Staub, "Reconciliation after genocide, mass killing, or intractable conflict: Understanding the roots of violence, psychological recovery, and steps toward a general theory", *Political Psychology* 27 (2006), pp. 867–894.

³² Staub, *Genocide*, p. 378.

Auschwitz.³³ An important tenet of European education systems entails the thought that a similar tragedy can be averted in the future through historical education and, in particular, the introduction of the Holocaust theme to schools. Topics related to the annihilation of Jews have been introduced to Polish schools, but results still leave much to be desired, as shown by a recent study of our team.³⁴ Ethnicisation of responsibility which, by focusing students' attention on the national issues, distorts the perception of ideology as the main mechanism responsible for genocide, is a simplification which we as a society cannot afford.

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³³ T. Adorno, "Kulturkritik und Gesellschaft", in: *Prismen. Kulturkritik und Gesellschaft*, ed. T. Adorno, Suhrkamp, Berlin–Frankfurt am Main, 1955; Y. Klar, N. Schori-Eyal, Y. Klar, "The 'Never Again' State of Israel: The emergence of the Holocaust as a core feature of Israeli identity and its four incongruent voices", *Journal of Social Issues* 69 (2013), pp. 125–143.

³⁴ M. Bilewicz, A. Stefaniak, M. Witkowska, "Polish youth confronting Jewish past: Antagonistic history and pathways to reconciliation", in: *Reconciliation in the Bloodlands*, ed. J. Kurczewski, Peter Lang, Frankfurt am Main, 2003; R. Schuchta, „Nauczanie o Holokauście – zalecenia programowe a praktyka szkolna”, in: *Nauczanie o Holokauście. Konferencja na Wydziale Nauk Politycznych Wyższej Szkoły Humanistycznej im. Aleksandra Gieysztora w Pułtusku 19 XII 2005*, ed. A. Żbikowski, Wyższa Szkoła Humanistyczna im. Aleksandra Gieysztora, Pułtusk, 2006, pp. 75–83.

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DEFECTIVE CODES OF MEMORY ABOUT GENOCIDE CRIMES: FUNDAMENTAL PROBLEMS OF AXIOLOGICAL AND LEGAL ASSESSMENT

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We were filthy and died real deaths. They were aesthetic and carried on subtle debates.

There can be no beauty if it is paid for by human harm, nor truth that passes over that harm in silence, nor moral virtue that condones it.

Tadeusz Borowski (No. 119198), "U nas, w Auschwitzu" [Here, in Our Auschwitz], in: *Byliśmy w Oświęcimiu* [We were prisoners of Oswiecim], eds. Janusz Nel Siedlecki (Nr 6643), Krystyn Olszewski (Nr 75817), Tadeusz Borowski (No. 119198), Oficyna Warszawska na Obczyźnie, München, 1946

1. Introduction

Defective codes of memory are a kind of elliptical syntagms which are usually emotively and informationally neutral, but contain a defective message. Most often, their defectiveness manifests itself by a mingling of expressions which explicitly meet the eligibility requirements of the truth with expressions which either do not meet these requirements, or use ambiguous expressions or brachylogy (especially in the form of metonymy), which – when referring to people not aware of essential elements of the context which these expressions concern – may or even are to lead them to erroneous conclusions. Thus, defective codes of memory lead to the formulation of false conclusions about the historical reality expressed with the use of these defective codes. They can also have a significant impact on the collective memory of entire societies. In the days of global exchange of information, they can result not only in the creation of parallel narratives about important historical events, some of which will be essentially false, but also

in the spread of false narrative on a transnational scale – which should be opposed.

An example of the use of a defective code of memory in a syntagm is the use, by some media abroad, of an incorrect phrase “Polish concentration camps.” For people who know the context in which this syntagm appears it may raise either astonishment, or – possibly – an internal rationalisation that will neutralise this astonishment (actually, the cognitive dissonance). As it seems, astonishment showed in this group of people most often stems from the surprise resulting from prefixing the phrase “concentration camps” by the adjective “Polish” – which, given the historical truth known to these people, sounds like an oxymoron – for the phrase may falsely suggest some responsibility of Poland as a state or its citizens for organising concentration camps (especially camps of mass extermination), which by decision of the Third Reich’s criminal authorities were located in Poland. Rationalisation neutralising the said astonishment is based on making some inner exegesis of this, after all astonishing, predicate by referring to the wider semantic and syntactic context of such a statement.

This kind of defective syntagms (and similar models of rationalisation neutralising cognitive dissonance) may refer to any communications concerning the crime of genocide. Hence, the analysis presented here goes beyond the experience of one state and nation – although in this respect it seems to be richest and best-recognised in relation to Poland and the Poles, both in science and practice of international media monitoring.

2. Defective codes of memory in public discourse: contexts and functions

Using defective codes of communication, the special kind of which are defective codes of memory, is a rhetorical measure known in the history of social discourse. Its essential effect, and often even objective, is to bring about lasting changes of the description, assessment, understanding and even perception of reality, not only individually, but above all in a wider dimension – referring to collective memory. Based on the works of Karl Mannheim, collective memory can be defined as a remembered image common to a social group of its past, resulting from its collective experience.³⁵ In the intergenerational approach of Barry Schwartz, collective memory is treated as a cultural system which connects publicly available representa-

³⁵ K. Mannheim, “The problem of generations”, in: *Essays on the Sociology of Knowledge*, ed. K. Mannheim, Routledge-Kegan Paul, London, 1952, pp. 276–322.

tions of the past (in any form) with the present experiences in order to construct the sense of the present and ensure community with successive generations.³⁶

The said defective codes of communication especially include euphemisms, whose function in the modern history of the world has often been a thorough falsification of the essence of what they referred to. Euphemisation perceived in this way gained a programmatic nature in the Third Reich – which was perfectly identified and described by Victor Klemperer, who called these euphemisms by the German name *Schleierwörter*.³⁷ It also had a clear pragmatic dimension: its purpose was to distort reality in order to adequately, for the criminal purposes of the system, shape social attitudes, in particular to put the moral reflexes to sleep. In victims, *Schleierwörter* were to raise a sense of inferiority, resignation and put distrust of the actions of the Nazi perpetrators to sleep. As also indicated by the analysis of Ronald J. Berger, these measures were mostly limited to the neutralisation of evil through the euphemisation of the narrative, including in particular through depriving it of subjective predicates or incorrect assignment of these predicates.³⁸ In other words, this procedure consisted in the creation of a false narrative aimed at impersonalisation of the victims, neutralisation of the moral qualification of the planned and implemented actions, and confusion of the future victims.

Defective codes of memory are certain defective codes of communication. They concern the collective historical memory which they distort in relation to its essential predicates. They do this by euphemisation or by including significantly distorted information in syntagms used in them – usually, of course, contrary to the reality of what they are related to. Thus, defective codes of memory are a distortion of historical memory, which after all for every reasonable person is a component of the knowledge about the world and himself or herself, and thus an individual and group identity. This in turn influences the model of decoding the surrounding world, is a source of justifications for one's own forms of existence and functioning – also in the international community. Because of this, it is a kind of phenomenon defined by William H. Sewall as “human agency,” the essence of which is to create such situations (including linguistic situations) which allow obtaining by any person or group of people some degree of control over the relations

³⁶ B. Schwartz, “Memory as a Cultural System: Abraham Lincoln in World War II”, *American Sociological Review* 61 (1996), pp. 908–927.

³⁷ V. Klemperer, *LTI – Notizbuch eines Philologen*, Aufbau Verlag, Berlin 1947.

³⁸ R.J. Berger, *Fathoming the Holocaust: A Social Problem Approach*, Aldine de Gruyter, New York 2002, pp. 1–19.

in which other people are embedded. This influence may be so great that it may lead to their targeted transformation of these relations.³⁹

In the area of the philosophy of language, e.g., according to Ludwig Wittgenstein, defective codes of memory can be regarded as a kind of tools for conducting the so-called language games (Ger. *Sprachspiele*) – naming things in the discourse to a large extent determines its broader content, even establishes its logical context, and thus defines the rules of the discourse.⁴⁰ Thus, this form of *Sprachspiele* can be considered one of the executive forms of Sewell's "agency."

In this context, the use of a defective code of memory, especially when it is related to the essence or essential themes of a given discourse, is always an intentional action. After all, it consists in:

- (a) deliberate interruption of the continuation of the current correct (i.e. first and foremost, truthful) code of collective memory by replacing it with the defective code (while individual goals of this measure may be varied here), or
- (b) conscious acceptance of one's own incompetence (ignorance of the correct code of memory) and the use – in such conditions – of the defective code of memory, which should be associated with taking into account at least some of the likely consequences of such ignorance, including acceptance of the possible perverse effects.

In every case like this, the continuation of narrative about the historical truth is distorted – what follows can be defined as the overturn of discourse paradigms. In conditions where the negative social reaction to such distortion is not strong enough, the seizure of the dominant position in the inter-subjective interaction (in this case, in the discourse) by the one using the defective codes of memory can occur – leading to what is defined in the German science as *Interaktionsherrschaft* (with its antithesis – *Herrschaftsfreie Interaktion*).⁴¹

The lack of socially effective mechanisms preventing the use and – already on the basis of a specific "imprint" or semantic priming – popularisation of defective codes of memory as automatic syntagms can, at least in some contexts, be interpreted as a deliberate social consent to a language game, whose content is in principle defined by these defective codes of

³⁹ W.H. Sewell, "A theory of structure: duality, agency, and transformation", *American Journal of Sociology* 98 (1992), No. 1, p. 20.

⁴⁰ L. Wittgenstein, *Philosophische Untersuchungen*, Suhrkamp, Berlin, 2003, paragraph 27 (pp. 22–23).

⁴¹ E.g. J. Habermas, *Erkenntnis und Interesse*, Suhrkamp, Frankfurt am Main, 1968, p. 177.

memory. It is worth mentioning that in the political agenda of the Third Reich what we define as defective codes of memory became an important element of the Nazi vision of rebuilding the world (Ger. *Weltanschauung*) implemented with an unusual intensity – whose component was to involve the creation of a “new” history, with a “new” interpretation of the facts, their “new” names and a new indication of the cause-and-effect relationship.⁴²

The phenomenon of the use of defective codes of communication, including defective codes of memory, is very old. The planes or areas of discourse which may involve defective codes of memory are and were very diverse. For example, in the history of Polish-German relations, the area of their use was long determined by conflicts over the definition of a territorial area which was to be considered “naturally” legitimised to be included within the borders of the national state. This overtone of conflicts was even strengthened with the fundamental logic of the Treaty of Versailles, for which more important criterion of affiliation of individual areas to a specific state was its “ethnic identity.” Thus, for example, in German and Polish publications of the Versailles period, defective codes of memory were used deliberately – passing over the issue which party did this with greater intensity and weaved it more into the global and regional policy consistently pursued.⁴³ However, only the Third Reich used defective codes of memory (and more broadly, of discourse/communication) in its policy and, all in all, in many cases, with the perverse effectiveness, using widely all the media of mass communication.⁴⁴

As mentioned, the use of defective codes of memory affects the content of the communication concerning historical reality. Some part of memory

⁴² See especially *Hitler's Table Talk 1941–1944: His Private Conversations*, introd. and with a new preface by H.R. Trevor-Roper, transl. by N. Cameron, Phoenix Press, London, 2000, p. 88. In a broader sense, see this agenda in: A. Hitler, *Mein Kampf*, Zentralverlag der NSDAP, Frz. Nachf., München, 1939, pp. 376–431, especially pp. 413–441.

⁴³ Defective codes of memory crept in even to scientific discussion, e.g. in the area of prehistory. A representative example in this regard is the work by G. Kossinna, *Die Deutsche vorgeschichte – eine hervorragend nationale Wissenschaft*, Johaann Ambrosius Barth Verlag, Leipzig, 1941.

⁴⁴ See, e.g., an overview of measures in: E.C. Król, *Propaganda i indoktrynacja narodowego socjalizmu w Niemczech 1919–1945. Studium organizacji, treści, metod i technik masowego oddziaływania*, Rytm, Warszawa, 1999, pp. 281–507. With regard to specific types of media, see, e.g., K. Witte, “Film im Nationalsozialismus. Blendung und Überblendung”, in: *Geschichte des Deutschen Films*, hrsg. W. Jacobsen, A. Kaes, H.H. Prinzler, J.B. Metzler Verlag, Stuttgart, 2004, pp. 117–166; K. Kanzog, “Staatspolitisch besonders wertvoll.” *Ein Handbuch zu 30 deutschen Spielfilmen der Jahre 1934 bis 1945*, Diskurs Film Verlag, München, 1994, pp. 13–53; K. Hickethier, *Geschichte des deutschen Fernsehens*, J.B. Metzler Verlag, Stuttgart, 1998, pp. 33–59.

codes used in national historiographies and public space is diverse from the point of view of the communities which generate them. This diversity stems from the difference in assessments and perspectives related to historical facts.⁴⁵ Defective codes of memory *sensu stricto* are not only an expression of this diversity – they “map” the historical reality quite wrongly, contrary to the facts that once raised no doubts. They constitute an open or slightly veiled form of forgery. In this respect, their key function is to disturb the semantic stability of the terminology used not only to narrate history, and through this – in societies for which it has significance – express and interpret group identity.

The use of a defective code of memory may be important to the way the social groups which it is related to are perceived by other groups; it may also be designed to form a particular model of self-perception of a given group. It was this particular property of defective codes of memory which induced the inspirer and performers of the criminal *Weltanschauung* to recognise the significant usefulness of the “new” writing of the history in the implementation of the plan of colonisation of Eastern Europe. It would allow reprogramming historical consciousness of this region’s nations, and thus would affect their own identity.

The very concept of identity can be related to the features which – because of their own uniqueness or occurrence in a unique conjunction with other features – determine the possibility of clearly distinguishing the phenomenon(s), subject(s) or persons having them from among all others. In this case, the ascertainment of identity means the recognition of the possibility of separating them based on the accepted objectified criteria for assigning things, persons and phenomena features and their evaluations. This approach is close to the concept of identity as used in everyday language. Those using the concept of identity usually refer to a more subjective, but also based on fairly objective qualifying factors, sense of community. In social psychology, it is presented as a “streamlike consciousness” providing for a distinction and survival of a group.⁴⁶ In sociological approach, for example, of Peter L. Berger, identity shows relations with psychological reality; in such dimension, it determines the psychological ties with a specific, socially constructed world; a determinant of identity is not only

⁴⁵ There are many studies in this area, e.g., with regard to historical discrepancies of assessment of the key facts from the history of Polish-German relations in Prussia, see the wide analysis: H. Boockmann, *Deutsche Geschichte im Osten Europas. Ostpreußen und Westpreußen*, Siedler Verlag, Berlin, 1992, pp. 11–74, and an exemplary narrow one: S. Ekdahl, “Tannenberg/Grunwald – ein politisches Symbol in Deutschland und Polen”, *Journal of Baltic Studies* 22 (1991), No. 4, pp. 271–324.

⁴⁶ E.g., O. Flanagan, *Consciousness Reconsidered*, MIT Press, Cambridge, 1994, p. 155.

self-identification, but especially the location of an individual/groups in this world – their identification by others.⁴⁷ Therefore, identity is also an important category of social psychology and sociology. It can be applied to social groups by distinguishing and describing them. In the simplest terms, a feature which allows isolating social groups and determining the degree of similarity between them is their *raison d'être*, thus the purpose for which they exist, even implicitly accepted by their members. Separateness of this purpose is a fundamental determinant of the group identity. On the other hand, if one can participate in many social groups at the same time, such an account of the case leads to the conclusion that one can derive multiple identities from such participation. It also provides a basis for formulating further conclusions about the nature of identity as a social category: that it reflects the context of social interactions which are the “structural background of their creation,” that it determines social relations, that it is a source of motivation for actions, and that it is subject to a continuous process of social negotiation in which evoking individual responses to structural incentives is of great importance.⁴⁸

In the approach using a wider context of social functioning, larger social groups care for their continuation by teaching their members “identity.” They do this by using historically conditioned means of indoctrination and persuasion (understood by me neutrally). In the process of this “learning,” groups use a variety of institutions and attributes – both of a physical (e.g. monuments) and non-physical nature (e.g. the ideas given to members of the group, expressed in monuments).

What is the model result of using defective codes of memory? The answer to this question is difficult, as it involves two models of these codes’ functioning. The first one requires reference to the intentions of a particular person who uses defective codes of memory and assessment of the suitability of this person’s actions, including the use of the defective code of memory, to the objectives assigned to him/her. The second model requires the identification of objective effects of the use of a defective code of memory – regardless of the intentions of the person using this code.

The answer referring to the second of the identified models is simpler than the answer relating to the first one. The objective effect of the use of a defective code of memory (except the very fact of this use, which is by definition of consecutive nature) is the introduction of incorrect information

⁴⁷ P.L. Berger, “Identity as a problem in the sociology of knowledge”, *European Journal of Sociology* 7 (1966), No. 1, pp. 105–115.

⁴⁸ B. Simon, *Identity in Modern Society: A Social Psychological Perspective*, Blackwell Publishing, Malden, 2004, pp. 23–26, 156–179.

into the public space, which may (but do not need to) be the basis of syllogisms relating to the matters to which such a defective code of memory applies. The scope of impact is then determined by a community's resistance in which the defective code of memory was used to this type of distorting communication incentives. This resistance is determined by the existence of:

- (a) public knowledge of the truth which the defective code of memory is inconsistent with,
- (b) efficient communication media, allowing quick detection of defective codes of memory and public correction of wrong information present in such codes,
- (c) efficient model for stigmatising the use of defective codes of memory.

In the case of memory codes which are short syntagms and have the form of statements which, without taking into account the specific context, have an ambiguous form, the above-mentioned resistance is lowered. Lowering of the resistance of a given society in the described range may also stem from the underestimation of the negative social significance of such syntagms, or even from widespread social approval for them. In a system in which a given syntagm constituting a defective code of memory is related to social groups other than the one which given persons belong to, these people may also not be able to generate a sufficient level of resistance.

The model referring to the intention of the person using the defective code of memory should analyse the reasons followed by this person in his/her actions. This approach shifts the focus of the assessment from the very use of the defective code of memory and its possible effects to the assessment of the motives which prompted someone to use such code, and possibly to the assessment of the efficiency of the adopted model of action in the implementation of the identified objectives attributed to a given person. It is worth noting that this very model is used in the evaluation of the use of defective codes of memory in different legal systems, if it only meets the criteria of a tort under civil or criminal law, or is in any other way legally qualified.

3. Particular responsibility for the quality of statements about genocide

A common belief of the international community is that in the case of the genocide crimes a greater degree of accountability is required for the quality of comments concerning them. Some communication codes are even believed to be morally, and sometimes legally, unacceptable. Inadmissibility applies both to the form and the content of such codes. Hence, it is considered

morally wrong to present genocide without maintaining the seriousness and caution as to the substance of the act or acts which meet its criteria. Statements which would distort moral order of responsibility for the genocide crimes – in particular, assigning the victims the features of the executioners and the executioners – those of the victims, are treated the same.⁴⁹ The primary source of assessments in this regard is axiological criteria: moral or cultural. Some legal systems, including Austria, France, the Netherlands, Israel, Canada, Lithuania, Germany, Romania and Switzerland, have made it a crime to deny the Holocaust, which essentially involves the denial of the fact of the existence of concentration camps during the Second World War (and the fact of the Holocaust); some of these legal orders also prohibit the denial of the genocide against the Armenians. Thus, the use of certain defective codes of memory (which imply the non-existence of these camps or of the genocide) is not an ambivalent phenomenon in the law of these countries.

For the axiological, moral, and even legal criteria to work properly, individual generations must effectively fulfil their moral obligation to pass on undistorted historical knowledge. Taking this issue very broadly (and without strictly legal definitions of genocide which cannot refer to very old events), this means that the truth about the Spartan *κρυπτεία* must remain a story of crime of the Spartans against helots, each account of the massacre of Indians on Santo Domingo – in light of Bartolomeo de Las Casas' account – must ascribe the role of oppressors to the Spaniards, the truth about the extermination camps in Poland – to the Germans, and about the genocide in Rwanda – to the Hutus. It is even a moral obligation to provide such a truth which – if possible – identifies the victims and the executioners even by name. Of course, subjective particularisations, especially those aimed at clarifying the mechanisms which enabled the genocide to happen, are also possible and permissible in this regard – however, on no account can they lead to the falsification of history, also by complete replacement of a specific code, indicating the identity of the executioners, with a general code, reducing the narrative only to the experience of unspecified groups of people, and therefore a peculiar generalising parenesis about the “evil” treated archetypically.

However, understood in that manner, responsibility for the quality of statements about history varies in specific situational dimensions. Basically,

⁴⁹ G.H. Stanton of non-governmental organisation Genocide Watch recognises this reversion of the order even as the last stage of widely understood process of genocide. See G.H. Stanton, *The 8 Stages of Genocide*, www.genocidewatch.org/aboutgenocide/8stagesof-genocide.html.

it depends on the broadly understood context of a statement, and especially on its social convention. At the same time, much greater responsibility for the right quality of a statement – as to both the form and content – rests with members of the community from which the executioners prevailingly, and sometimes even uniformly, descended. The community of the victims has a slightly greater freedom in this regard – although it also is responsible for the essential quality of discourse. With regard to witnesses (including witnesses-victims) of the crime of genocide, the requirement is formulated in science to respect the principle of integrity of presentation/account. For example, as described by Frances Guerin and Roger Hallas, this requirement is defined as the obligation to give an account “in a manner that empathises with, rather than violates, the silent victim.”⁵⁰ This requirement is even more valid with regard to all those who speak only – in relation to the artefacts of genocide and accounts of its witnesses – metalanguage. This group includes in particular members of the communities which were directly involved in the events constituting the groundwork of private and public metalinguistic narrative about them. In this regard, there is a strong moral argument in favour of demanding from such narrative special care of complying with the requirement of truth – at least as regards the subjective indication of who played what roles in specific events.

The fundamental justification for the requirement of the quality of statements about the genocide crimes (as to both the choice of the scope and the sense of the used content and its form) is the moral responsibility of the living ones for the proper (and therefore, first and foremost, truthful) account of the history of those who have no voice – that is, the victims of crimes. The primary objective of such a narrative is to restore the moral order of collective memory. This order is to serve as a source of imperatives of conduct for those who survived and the following generations. Therefore, it allows a continuous process of recomposition of this memory according to the forms used by a given generation – however, always in accordance with the essential requirements of compliance with the objective truth (at least in the already indicated scope of keeping the proper indication of the roles of participants of the described events).

The special level of responsibility for the quality of discourse on genocide stems from the social roles performed by its individual participants, as well as specific configurations of social situations in which this discourse can take place. As already mentioned, the role of direct witnesses of genocide (victims and executioners) differs here from that of those who in relation to

⁵⁰ F. Guerin, R. Hallas, introduction to: *The Image and the Witness: Trauma, Memory and Visual Culture*, eds. F. Guerin, R. Hallas, Wallflower Press, London, 2007, p. 15.

their accounts and material evidence can only use a kind of metalanguage. The non-public or public nature of a statement also changes the level of axiologically justified expectations about the quality of a given statement. For we expect higher quality – and above all, respect for the memory of the victims – from public discourse.

Also, the social nature of discourse defines the basic requirements of its communication code – e.g., in artistic interpretation of genocide, significant departure from the truth is permitted (on the basis of *licentiae poeticae*), nevertheless, maintaining the essential elements of the correct code of memory (especially not distorting the subjective order designating the “victim-executioner” relations). In the sphere of scientific interpretation, which lies in a somewhat opposite dimension to artistic performances, the truth is the basic criterion of the required quality of discourse – here, in particular, undervaluation or exaggeration in presenting the facts is unacceptable; in this case, a reliable documentation of the cited facts, formulated arguments and assessments is required.

Particular responsibility for the quality of statements about the genocide rests with the mass media. It is a responsibility for maintaining the essential code of truth in the message. Thus, the media have to truthfully give an account of the course of the genocide crimes, as well as truthfully describe the role played by individuals and social groups in them. Their duty is, therefore, to indicate those responsible for the crimes and their victims – specifically, if possible, if not – by identifying the essential features distinguishing them enough from members of the international community – also by identifying their ethnicity, nationality or affiliation to organisations. The predicates used in the media transmission are necessary, especially when individuals have ascribed themselves the causative role in a given mechanism of genocide according to the ethnic, national or organisational criteria. This is important, since it allows not only identifying and condemning the perpetrators, but also indicating the closest and distant accomplices of genocide, as well as showing its – sometimes very complex – mechanism. This means that in the case of relatively short media statements (including those which are in the form of syntagms, short by nature) they should be an intellectual nucleus of further truthful (not expressed in them) narratives – *a contrario*, they should not be formulated in a way insinuating narratives inconsistent with the truth.

The special responsibility of mass media stems from the mission, which they ascribe to themselves, as well as from the technology providing them with a considerable power of persuasion. A widely identified mission of the media is to inform. At the same time, it is recognised that actions in this area also include the interpretation of current or historical events – according

to the so-called programme policy of a given medium. This means that the message they offer is somehow intellectually programmed. As such, it is subject to both moral and customary assessments, and legal ones. In this latter dimension of assessment, the media have the obligation to abide by the law in force: in the legal systems with the prohibition of the above-mentioned “Holocaust denial” people creating the media message (and sometimes the media, if in a given legal order they have such passive capacity) are subject to criminal penalties for its violation. These entities may – also through the use of defective codes of memory in a specific situational context – also violate other legal norms, in particular protecting the fundamental social order in terms of relations with national minorities, other states and nations, and in the broadest sense, ensuring respect for fundamental rights. It is worth emphasising that these, in turn, mostly originate from the concept of personal dignity – in a form which – as it seems – ultimately is the result of intellectual tumult of the Enlightenment.⁵¹

It should be noted, however, that the European Court of Human Rights has already ruled on the conflict between the said obligation to maintain the required rigour of discourse on genocide crimes and individual right to freedom of expression. In *Perinçek v. Switzerland* of 17 December 2013,⁵² this authority stated that the Member States of the Council of Europe do not apply a uniform approach to the issue of denial of genocide crimes. According to the Court, where the criminal regulation is clearly in conflict with the right to freedom of expression (Article 10 of the European Convention on Human Rights) it leads to the violation of Article 10 of the ECHR.

Even the European Court of Human Rights, however, noticed a deep axiological complexity of the above matter and the need to establish a limit on the use of the conventional powers. It is worth mentioning that – especially after the experience of the Holocaust – a number of attempts have been made to determine the overall moral canon of discourse on this particular form of genocide. The most known canon in this area is the one which requires considering unacceptable such statements which a decent person would not make in the presence of a victim being murdered. Due to the adoption of this canon not all language games are morally acceptable which we encounter in the context of the Holocaust (and – more widely – the genocide at any place and time). From this perspective, it is particularly

⁵¹ See especially: J.I. Israel, *Radical Enlightenment: Philosophy and the Making of Modernity 1650–1750*, Oxford University Press, Oxford, 2001, pp. 258–274; J.I. Israel, *Democratic Enlightenment: Philosophy, Revolution, and Human Rights 1750–1790*, Oxford University Press, Oxford, 2011, pp. 1–35.

⁵² Judgement in *Perinçek v. Switzerland*, App. No. 27510/08.

unacceptable to reverse the fundamental “order” of genocide, designated by the identity of executioners and victims.

4. Semiotics of defective codes of memory

The semiotic approach to defective codes of memory primarily allows intellectual organisation of specific fields of discourse about them. In this approach, defective codes of memory should be considered as communication tools with a socially significant (albeit incorrect – because contrary to the truth) material content. Classic approach by Ch.S. Peirce allows locating them within the act of semiosis, done within the framework of interaction of three factors, namely the so-called triad of signs (also referred to as sign-vehicles and representamens), their objects and interpretant (currently, more often referred to as the referent).⁵³ Moreover, semiotics knows, also considered classic, approaches to the semiosis as a two-element phenomenon, in which its two components are distinguished: *signifiant* and *signifié*, and thus what it signifies (in the form of a statement), and what is signified (in the form of an image of a particular referent).⁵⁴ This does not mean the non-existence of the referents, but rather the reduction of the systemic analysis to the relation between the two ontological systems in which it is no longer relevant to take them into account.⁵⁵

In this approach, defective codes of memory lead to semiosis which results in a significant distortion in the reception of the message: instead of the referent corresponding to the truth (in semantic approach, in which the true opinion is the one corresponding to the objectively existing reality – even in its historical perspective) the receivers form a different image of reality, inconsistent with the truth. In this approach, it becomes clear why the special responsibility for the quality of statements, also referred to in the category of truth, is attributed to the media. The media have the ability to create a particularly intense communication message – due to which the process of semiosis is also very intense here, and thereby also persuasive, and thus even capable of eliciting the already mentioned imprinting and semantic priming.

At the same time, the semiotic approach requires noting that the context in which a given process occurs is particularly important in the process

⁵³ Ch.S. Peirce, *The Collected Papers*, vol. 1: Principles of Philosophy, eds. Ch. Hartshorne, P. Weiss, Cambridge University Press, Cambridge, 1931.

⁵⁴ F. de Saussure, *Cours de linguistique générale*, Payot & Rivages, Paris, 1916, pp. 23–27.

⁵⁵ See, e.g., B.S. Jackson, *Semiotics and Legal Theory*, Routledge & Kegan Paul, London, 1985, p. 15.

of semiosis. It creates an unbreakable connection with the very content of the message. Thus, in the ethical, customary, and even legal assessment this context must be taken into account. This context is created, in particular, by the social situation in which a given message is conveyed, the medium through which it is transmitted/received, the intentions and all other relevant properties of the communicating entities and those to whom the communication is addressed. In this regard, it is worth emphasising that the very intentions of those communicating do not form the context of the semiosis process. Thus, they are not its essential element. In other words, the logical sense, social resonance, or moral or legal assessment of a given communication is determined by both the content delivered in it, and all elements of the context in which this communication occurs. This means in particular that, for example, from the point of view of legal liability, the person who communicates anything bears the risk of liability, the extent of which can be determined not only by reference to his/her intentions, but also – and this is essential – by taking into consideration what resonance he/she causes in people whom this message concerns or outside persons in the rationalisation model in which their possible reactions are assessed taking into account some stereotype of communication under conditions taking into account especially the form, moment and convention of a given message. With respect to any defective codes of memory related to the genocide crimes, assessment (moral, customary and legal) includes not only the intention of the person who used them, but also the intellectual qualifications of this person and the persons whom the message was addressed to, motives of the message, medium of the message, as well as the above-mentioned convention in which the message and its reception took place.

From the point of view of many areas of social life (social systems), in particular the law, such assessment model is not unique. From the point of view of the law, each person undertaking any action bears the risk of violating its norms. This violation is not assessed only by reference to the person's intentions, but requires analysing this event in a much wider scope, in particular through thorough examination of the results (in criminal law, it is in this area that the criteria of punishable acts are defined). What is important with respect to defective codes of memory is not only what the person using them declares as a model for own action, particularly referring to own intentions, but what is the real effect and model of this action.

According to Dariusz Tkaczewski, who was analysing the processes of linguistic manipulation in the communist Czechoslovakia, at least a number of uses of defective codes of memory (on the basis of *cui bono* – especially the use by the members of the groups which have some interest in misrepresenting the truth about the genocide) have a nature of specific performative

statements (according to Austin's classification),⁵⁶ in which "by changing the semantic context of a given term the redefinition of the term and giving the new meaning to the fragment of reality occurs"⁵⁷ through which the intended depreciation, neutralisation or reversal of assessment takes place. In other words, the purpose of such action is manipulation aimed at a permanent change in the perception of a given phenomenon or event.

5. Models of use of defective codes of memory

As was already mentioned, the use of defective codes of memory can always be interpreted as a language game. Thus, it always has a pragmatic dimension, regardless of its disclosure, non-disclosure or deceitful identification of intentions of the persons using them. It manifests itself in a particular reaction of the recipients of the communication with their use depending on their competence and – as was already emphasised – social resistance to them. Such practice corresponds to the mechanisms of linguistic manipulation as presented by Rupert Lay, who stressed that it feeds on making intentional mistakes, firstly, on the side of the message's sender (in particular by providing information deliberately incorrect, incomplete, inaccurate, etc.) and, secondly, on the side of the recipient – when he/she intellectually improperly processes the received content.⁵⁸

It should be noted that the examination of the "model" of use of defective codes of memory assumes taking into account all the relevant contextualising factors – because they determine whether we are dealing with defectiveness of the code of memory. Let us consider the following hypothetical example of statement by a teacher addressed to pupils who for the first time hear about German Nazi concentration camps:

In the times of Nazism, the Germans established a number of concentration camps. First, they were located in the Reich, but after the Anschluss of Austria, the occupation of the Czech Republic, and especially after the beginning of the occupation of Poland, also in these countries. Of all these, the biggest one was the Polish camp – Auschwitz-Birkenau, located in Oswiecim and nearby Brzezinka. Its current, internationally recognised name is "the former German Nazi concentration camp of Auschwitz-Birkenau."

⁵⁶ J.L. Austin, *How to Do Things with Words*, Harvard University Press, Cambridge, 1962, p. 261.

⁵⁷ D. Tkaczewski, *Mechanizmy wpływu społecznego i manipulacja językowa – czeskie przypadki*, Wydawnictwo Uniwersytetu Śląskiego, Katowice, 2010, p. 19.

⁵⁸ R. Lay, *Manipulation durch Sprache. Rethorik, Dialektik und Forensik in Industrie, Politik und Verwaltung*, Ullstein-Buchverlage, Frankfurt am Main, 1990, pp. 17–27.

This statement rather does not have to raise specific doubts regarding interpretation leading to a distortion of historical truth. The syntagm “Polish camp” used here does not constitute a defective code of memory, because in the context of the statement constructed here it is metonymy (enjambment) using an acceptable mental shortcut to indicate that of all the camps located in different countries, the one situated in Oswiecim was the largest.

However, let us consider another statement of the same hypothetical teacher, who says the following words to the same group of recipients with still narrow historical knowledge:

In the times of Nazism, the largest concentration camp of all was a Polish concentration camp located in Oswiecim. Its name was Auschwitz-Birkenau.

In the case of an incomplete control of the situation by the teacher (e.g. by his relying only on further questions from the pupils), the meaning of this statement can be decoded as follows:

- (a) that in the times of Nazism (here, the teacher may explain that it is the totalitarian regime of the Third Reich), there were many concentration camps (the teacher may explain that it was a kind of a high-security prison also for completely innocent people persecuted for their nationality, beliefs, sexual orientation or lifestyle; the teacher may note that some of the concentration camps were at the same time camps of mass extermination – especially of the Jews),
- (b) that these concentration camps were of different sizes,
- (c) that of them all the “Polish” camp was the largest,
- (d) that this camp was “Polish,” because it was located in Oswiecim (and thus a town now situated in Poland),
- (e) that this camp was called Auschwitz-Birkenau.

The same syntagm which was used in the first statement correctly, in the second statement is already a defective code of memory. Its defectiveness comes from the pupil’s incomplete knowledge about the matter which the whole statement concerns, as well as from an irresponsible additional communication which, even though facilitates the creation of an additional context for the problematic syntagm used in the statement, cannot lead to the conveying of the essential truth about concentration camps.

In short media comments (the press, television, radio and the Internet), the problem of using defective codes of memory is even greater. This is, firstly, because these comments tend to be very short and devoid of context. Secondly, the common nature of these media is remixing, reappropriation

or recirculation⁵⁹ – which involves decontextualisation of codes of memory. For the very reason of completely weak contextualisation, a defective code of memory would be used as the following title of a brief press release about the visit of the head of state X: “Chancellor X pays a visit to a Polish concentration camp” or placing this or a similar phrase in extended press coverage of such a visit, which would include no further explanation what exactly the concentration camps were.

Graphically separated headlines of press and online items are a quite specific category of defective codes of memory. Although they can be contextualised by the text which they relate to, they perform an independent function, especially in iconic terms. They are not only information, but above all a kind of “bait” – they are to draw attention to the material. So for most customers – those who did not want to familiarise themselves with the contextualising text – only these headlines become the autonomous communication code. Therefore, they should not be defective codes of memory. This implies the requirement of special diligence in the formulation of such headlines and graphically separated materials.

6. The use of defective codes of memory in the model of infringement of legally protected interests

There is no doubt that the use of defective codes of memory in some social contexts is a violation of ethical, moral, and sometimes legal standards. It certainly is a serious betrayal of the principle of honesty of relations, which has already been discussed here. However, can the use of defective codes of memory infringe on somebody’s interests, especially legally protected interests?

To answer this question, first, it should be noted that – particularly with regard to the sensitive issue of the existence of the phenomenon of defective codes of communication – legal systems of individual countries may be athetic reflection of the axiological assessment, primarily moral, prevailing in these countries’ societies. With reference to defective codes of memory, such possible assessment must be sufficiently strongly negative for the mechanism ensuring the effective functioning of the standards prohibiting their use to work both in legal norms and the practice of their use. This mechanism must operate on the basis of a duly established legal standard,

⁵⁹ S. Gregory, “Human Rights Made Visible: New Dimensions to Anonymity, Consent, and Intentionality”, in: *Sensible Politics: The Visual culture of Nongovernmental Activism*, eds. M. McLagan, Y. McKee, Zone Books, New York, 2012, p. 555.

based on which it is possible, in relation to the use of the defective code of memory in a particular social situation, to reconstruct the criteria of the prohibited act (either civil or criminal), what in turn determines making the right subsumption of such a standard by the court to the specific configuration of events in which some role is played by defective codes of memory.

As was already indicated, regulations prohibiting the so-called Holocaust denial are the example of legal regulation used to counteract some defective codes of memory. However, it should be noted that these regulations have a very limited application due to the extremely narrow criteria of a prohibited act established in them. Most defective codes of memory do not fulfil these criteria. This is an important reservation, especially when we take into account the above-mentioned judgement of the ECHR in *Perinçek v. Switzerland*.⁶⁰

In relation to defective codes of memory, the application of the construction of infringement of personal interests seems to be most convenient. In Europe and North America, the best known examples in this regard are actions brought by individuals who are seeking to demonstrate that the use of a specifically indicated defective code of memory in the mass media violated their personal interests. In its most developed form, this trial concept was applied in Poland, where it also found some support in law education.⁶¹

The fundamental structure which underlies the said concept of complaint is the infringement of personal interests, which encompasses the national identity as one of its essential elements. In other words, plaintiffs complain here that by the use of the defective code of memory in a specific medium of mass communication their personal interests were infringed: the sense of national identity whose component is specific collective historical memory.

It is worth mentioning that the said structure is essentially rooted in the concept of national identity, one of the constituent parts of which is in fact the aforesaid historical memory. This concept is consistent with the opinion, important from the legal and international point of view, expressed in 1960 by the United Nations General Assembly, which commented on the attributes of this identity (in the context of considering the existence of nations' right to self-determination), including among them – as an auxiliary criterion – the fact that a given territorial group also has own history.⁶²

⁶⁰ The judgement in the case *Perinçek vs. Switzerland*, App. No. 27510/08.

⁶¹ See especially comprehensive study by F. Rakiewicz, "Poczucie tożsamości narodowej jako dobro osobiste w świetle polskiego prawa cywilnego", part 1: *Studia Prawa Prywatnego* 6 (2011), No. 2, pp. 93–113; part 2: *Studia Prawa Prywatnego* 6 (2011), Nos. 3–4, pp. 69–101; part 3: *Studia Prawa Prywatnego* 7 (2011), No. 1, pp. 59–92.

⁶² General Assembly Resolution 1541, Annex, Principle V.

The said structure is at the same time interesting enough that while considering the issue of its substantiation the courts will have to refer to the concept of damage (infringement of personal interest), which must be proven or made believable in most of legal systems in such situations. If the case was decided in England, the well-established principle of law would apply which requires demonstrating that the infringement has somehow hindered the plaintiff's life (in particular by reducing his/her social status, thereby creating social barriers to social functioning). William Blackstone wrote that the trial can be initiated:

[...] for scandalous words [...] that may endanger a man in law, may exclude him from society, may impair his trade [...], without proving any particular action to have happened, but merely upon the probability that it might happen.⁶³

Currently, Blackstone's words must be interpreted by reference to the present context in which the legally protected subjectivity of a person has a wide territorial dimension – which, in the context of globalisation processes and technologies of information flow – results from its potential global reach. Thus, the above-mentioned “hindrance to life” must now be assessed so that this extension is properly taken into account and the extent of impact of the medium used for it appropriately considered.

An important issue in cross-border cases concerning infringement of personal interests through the use of defective codes of memory is also the construction of where the damage originated, which may determine the applicable law and court jurisdiction. In this cross-border approach, a universal construction of damage requires identifying it “at its source.” This source does not need to be conceptually limited to the perpetrator's act exactly as it was committed, especially as it is subjectively construed by the perpetrator of the damage. The construction of the source refers rather to the effects of the act in its full situational development. Hence the concept of damage used in the regulation concerning cross-border situations also includes the objective reconstruction of the damage in places where the effects of perpetrator's actions occurred. This objective reconstruction may also aim at finding infringement of personal interests – in the construction applied in the law of the place where the damage occurred.

As regards the use of defective codes of memory, this means that people who use them in cross-border (and actually intersemiotic) space must take into account the significant risk arising from the varied contextualisation of the (intersemiotic) assessment of their act. Briefly put, the use of some

⁶³ W. Blackstone, *Commentaries on the Laws of England*, Book 3, Clarendon Press, Oxford, 1768, p. 124.

defective codes of memory does not have to be assessed uniformly in the law of different countries – however, one must take into account that in some countries there will be a special contextual sensitivity relating to these defective codes of memory. Consequently, the legal systems of these countries, as well as their practice of law, may have a lower tolerance for such codes, and thus treat them relatively harshly.

This means taking a significant risk of not only social criticism, but even criminal liability by the people who use defective memory codes in the public space. However, this risk is somewhat “spatially” proportional to the effort undertaken by these persons to propagate their views, together with any syntagms expressing them. So if anyone to this end uses the mass media published in the world’s most popular languages (in particular English, French, Spanish and German), he or she for this reason runs the appropriate risk of incurring liability for any resultant damage in different cultural areas, varied according to the sensitivity of these areas of liability.

7. Conclusions

Defective codes of memory are a type of elliptical syntagms which contain false information about history, and because of this, they are the nucleus of incorrect historical narrative. In the context of discourse on the genocide crimes, they have an important role as tools of language games potentially resulting in the establishment of the new, currently socially unacceptable order of historical discourse that would reverse the moral order of responsibility for the genocide crimes.

Currently, there is no uniform level of resistance of individual societies to the influence of defective codes of memory. Hence, in some countries social consent to them is greater than in others. The consequence of this diversity is the variety of reactions of legal systems to the so-called Holocaust denial, as well as to other forms of misrepresentation of history – also in the form of the use of defective codes of memory. This morally urgent issue concerns even the legal systems of those countries whose historical experience refers to the genocide crime. This problem is only more important due to the fact that defective codes of memory are increasingly often a component of content propagated by some mass media with an international or even global reach. This creates a serious threat of losing the continuity of true historical narrative, which the present and future generations are morally obliged to preserve to the “silent victims” of genocide.

Pressure campaigns prove effective in the fight against defective codes of memory by the authorities of countries which actively seek that (e.g. the

Polish Ministry of Foreign Affairs). Filing complaints by individuals about infringement of personal interests by the use of defective codes of memory is one of the interesting legal procedures aimed at social condemnation of entities using defective codes of memory, and therefore the elimination of such codes from public space. A special group here involves the Polish cases in which the complainants presented the construction of legally protected personal interests the main component of which is the national identity.

These complaints perfectly illustrate the fact that the social importance of defective codes of memory varies across countries. The fundamental reason for this diversity is the resistance, resulting from the established practice, of a given society to the influence of such codes coming from the force/lack of force of their social condemnation. At the same time, these complaints illustrate the essential codes of discourse which individual societies are ready to begin about their own identity and the place of collective memory in it.

There is no doubt, however, that it is time international actions against defective codes of memory were taken. It is our duty. Defective codes of memory reduce the discussion about important historical experience to a make-believe discussion. They harm the victims through the conscious creation of ostensible media "truths." It is therefore essential to stand against their influence, destructive for the global historical memory.

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REFERENCES TO THE SO-CALLED “POLISH CONCENTRATION CAMPS” AS AN INFRINGEMENT OF PERSONAL INTERESTS: A CIVIL-LAW PERSPECTIVE

Filip Rakiewicz

1. Introductory notes

Civil-law protection of personal interests is geared directly towards ensuring the inviolability of values strictly connected with the personality of human beings, constituting a premise that they have the right to self-actualisation, and involving such issues as psychological integrity, individuality and dignity as well as position within society.¹ According to Article 23 of the Civil Code:² “A man’s personal interests, notably his health, liberty, dignity, freedom of conscience, family-name or pseudonym, image, privacy of correspondence, inviolability of home and scientific, artistic, inventive or rationalising achievement, shall be protected by civil law independently of the legal protection contemplated by other provisions.” The catalogue of personal interests, enumerated as an example in the Civil Code, is open and dynamic over time, and it ensures efficiency of the protection of personal interests.³ The list of personal interests and their content (scope) as well as

¹ See for instance: Z. Radwański, A. Olejniczak, *Prawo cywilne – część ogólna*, C.H. Beck, Warszawa, 2013, p. 157; J. Panowicz-Lipska, *Majątkowa ochrona dóbr osobistych*, Wydawnictwo Prawnicze, Warszawa, 1975, p. 29; M. Pazdan, in: *System prawa prywatnego*, vol. 1: *Prawo cywilne – część ogólna*, ed. M. Safjan, C.H. Beck, Warszawa, 2012, pp. 1233–1234 and the references quoted therein.

² The Act of 23 April 1964 – Civil Code (consolidated text: *Journal of Laws of the Republic of Poland* [henceforth: Dz.U.] of 2014, item 121).

³ Cf. Resolution of the Supreme Court (7) of 16 July 1993 and I PZP 28/93, OSNCPiUS 1994, No. 1, item 2; judgement of the Supreme Court of 12 September 2001, V CKN 440/00, OSNC 2002, No. 4, item 68; P. Księżak, in: *Kodeks cywilny. Komentarz. Część ogólna*, ed. M. Pyziak-Szafnicka, Wolters Kluwer, Warszawa, 2009, p. 242; P. Sobolewski, in: *Kodeks cywilny. Komentarz*, vol. 1: *Przepisy wprowadzające (art. 1–LXV PWKC)*, *Część ogólna, Własność i inne prawa rzeczowe (art. 1–352 KC)*, C.H. Beck, Warszawa, 2013, p. 390.

the notion (manner) of breaching these interests are ever-changing, which enables us to react to different threats to a strictly personal dimension of human existence without the need to resort to law. Public law regulations, which are sometimes delayed, are not always distinguished by such a structural nature.⁴ An essential advantage of civil-law protection of personal interests is also its exceptional feature, namely the ability to claim protection as early as at the stage of threat, and not only when such interests have already been violated, resulting in a situation which is hard to redress.⁵ Based on Article 24 § 1 sentence 1 of the Civil Code, an individual whose personal interests are endangered by the action of another, may seek to have such action abandoned, unless it is not unlawful.

The expression (syntagm) “polskie obozy koncentracyjne” (and its counterparts e.g. in German or English – “Polish concentration camps”) and similar expressions (such as “Polish death camps”) used by the international media are fundamentally false as they suggest the responsibility of Poland and Poles for crimes committed by the Germans in the Second World War. Such statements may lead to a false belief that it was Poles, not Germans, who set up German concentration camps located on the occupied Polish territory, or that they were the perpetrators of crimes committed in these camps. A serious risk exists that such statements might instil a false memory code on the history of Nazi Germany and the events from that time.

Statements about “Polish camps” deal a blow to the values that lie at the heart of the protection of personal interests – especially dignity in both its aspects (i.e. dignity defined as reputation – the image of an individual in the eyes of others, and dignity defined as personal dignity, i.e. personal value, respect for oneself and expectation to be treated with dignity by others).⁶

⁴ This does not change the fact that sanctions for infringing personal interests, including honour, envisaged mostly in the Act of 6 June 1997 – Penal Code (Dz.U., No. 88, item 553 as amended), are essential. Cf. more broadly: A. Nowicka, “Pomawianie a cywilnoprawna ochrona dóbr osobistych”, in: *Prawnokarne granice dopuszczalnego pomawiania. Materiały Zjazdu Katedr Prawa Karnego (Gniezno, 26–29 września 2006 r.)*, ed. A.J. Szwarc, Wydawnictwo Poznańskie, Poznań, 2008, p. 25 ff.; judgement of the Polish Constitutional Tribunal of 30 October 2006, P 10/06, OTK ZU 2006, series A, No. 9, item 128.

⁵ See: A. Cisek, “Dobra osobiste i ich niemajątkowa ochrona w kodeksie cywilnym”, *Acta Universitatis Wratislaviensis* 1016 (1989), Prawo CLXVII, p. 32.

⁶ On the notion of dignity, compare e.g.: Radwański, Olejniczak, *Prawo cywilne*, pp. 160 ff.; Pazdan, in: *System prawa prywatnego*, pp. 1238 ff.; Resolution of the Supreme Court (7) of 28 May 1971 and III PZP, 33/70, OSNCPiUS 1971, No. 11, item 188; judgement of the Supreme Court of 29 October 1971, II CR 455/71, OSNCPiUS 1972, No. 4, item 77; judgement of the Supreme Court of 25 April 1989, I CR 143/89, *Orzecznictwo sądów polskich* 1990, vol. 9, item 330; judgement of the Supreme Court of 15 November 2000, III CKN 473/00, LEX No. 51881; judgement of the Supreme Court of 21 March 2007, I CSK 292/06, LEX No. 308851.

They deform the image of who Poles are to themselves and to other communities, in the sense of the biography (history) of the national community in which they live or with which they at least identify.

However, an analysis of statements on "Polish camps" with regard to infringement of interests under Article 23 of the Civil Code requires a different point of view than the one applied while evaluating infringement of dignity when the accusation is directed towards a specific community and when it refers to a specific person within this community (which, when it comes to ascertaining infringement of dignity, requires fulfilment of certain defined conditions⁷). It is necessary to take a deeper view which boils down to the notion that these messages directly infringe values strictly associated with a man's personality already in its individual dimension, if only that man is of Polish nationality. This approach is enabled by the value of the "sense of national identity."

The purpose of this study is to prove that formulating and disseminating statements on death camps functioning in the time of the Second World War in occupied Poland with making simultaneous references (through different linguistic means) to Poland and the Polish in a way that makes suggestions (even unintended ones) that the Polish took part in creating these camps and were involved in the crimes committed there, may constitute infringement of personal interests in the form of (Polish) national identity. The justification of this thesis must incorporate several stages: (1) determination of the meaning and characteristics of the notion of national identity as a value commonly acknowledged in society, as well as accepted by the law;⁸ (2) classification of the sense of national identity as belonging to a group

⁷ The legal classification of statements on "Polish concentration camps" as damaging to dignity has faced difficulties. These concern not only the level of the negativity of the expression, but also other premises for an assessment that such valuation actually took place. In order to ascertain such an infringement, it is necessary to successfully determine that the accusation concerns a person who demands protection of his/her dignity. Cf. e.g.: J. Wierciński, *Niemajątkowa ochrona czci*, C.F. Müller, Warszawa, 2002, pp. 73 ff.; J. Barta, R. Markiewicz, in: *Media a dobra osobiste*, eds. J. Barta, R. Markiewicz, Wolters Kluwer, Warszawa, 2009, pp. 36 ff.; judgement of the Supreme Court of 26 October 2001, V CKN 195/01, LEX No. 53107; judgement of the Supreme Court of 21 September 2006, I CSK 118/06, OSNC 2007, No. 5, item 77. The expression "Polish camps" itself does not really fulfil this requirement, i.e. the premise that dignity in the form of a person's identity (in the assumed meaning) has been infringed. The possibility of a different evaluation would appear only if the content of the accusation or the context of its expression included additional guidelines in this matter, which would present grounds for referring a defaming statement to an individual.

⁸ Each personal interest is a value commonly acknowledged in society, and axiological arguments justifying the distinction of each individual type of these interests are approved by the law.

of personal interests within the meaning of the Civil Code; and (3) determination of situations leading to unlawful interference in its scope. This problem was more broadly and deeply examined by the author in a three-part study called *Poczucie tożsamości narodowej jako dobro osobiste w świetle polskiego prawa cywilnego*, published in the *Studia Prawa Prywatnego* quarterly edited by Zbigniew Radwański (part 1 – SPP 2011, vol. 2, part 2 – SPP 2011, vol. 3-4, part 3 – SPP 2012, vol. 1). The reflections presented below have been supplemented with issues concerning the jurisdiction and applicable law in cases of trans-border nature concerning protection of personal interests in the context of “Polish concentration camps” remarks.

2. The notion and characteristics of the sense of national identity as a value acknowledged in society and law, as well as its classification as one of personal interests within the meaning of the Civil Code

2.1. The sense of national identity in general

The very word “identity” includes a certain distinctive duality of meaning. In its original, etymological sense (*idem* – means “the same”) it points to a certain quality of being identical (*identity*). The second sense is expressed in difference, individuality. The answer to the question about someone’s identity should therefore consider both these aspects.⁹

The purpose of the basic sociological and anthropological categories is usually to relate an individual to society or some other social entity; they concern the relation between an individual and a defined collectivity. Identity is a conceptual category by means of which we attempt to connect an individual with a defined collective group (groups).¹⁰ In general, the notion of “identity” may refer to an individual or a group. Such terms as “group identity,” “collective identity” or “cultural identity” concern certain whole social entities. When talking about the “identity of an individual” (but also that of a group), one usually means its “objective,” “external” sense, i.e. a certain way of perceiving an individual (or a group) through others,

⁹ See M. Melchior, “Kategoria tożsamości jako wyzwanie badawcze”, in: *Kulturowy wymiar przemian społecznych*, eds. A. Jawłowska, M. Kempny, E. Tarkowska, IFiS PAN, Warszawa, 1993, p. 231.

¹⁰ See: Melchior, “Kategoria tożsamości”, p. 229. Broadly on this topic with references to extensive literature: Z. Boksański, *Tożsamości zbiorowe*, Wydawnictwo Naukowe PWN, Warszawa, 2007, pp. 13 ff.

their attempt at answering the question "who are they?" (an individual or a group). On the other hand, the term "the sense of identity of an individual" (but not a group in this instance) is used when referring to a subjective manner of perceiving oneself through an individual when the person tries to answer the question "who am I?"¹¹ When analysing a given group one may also take interest in the subjective dimension of its identity, but in that situation one should speak of "collective consciousness" of a group rather than "the sense of identity." According to Małgorzata Melchior, each person has identity in the "objective," "external" sense as long as they are distinguished from among other people by some "other" person (e.g. by a researcher or interaction partner), and it does not matter whether their uniqueness or typicality is discerned. On the other hand, in order to be able to speak of "the sense of identity" of a given person, they need to have – at least to some extent – the consciousness of their own attributes and experiences which make up both their individuality and likeness to others, their "sense of continuity in time and space and the notion of being part of the ever-changing network of social relations." The self-identities of an individual designate their place in the world, in social space, and their inveteracy.¹²

A significant increase in sociological interest in an individual was triggered by the "discovery" of the issue of identity by anthropologists, who subsequently pronounced culture to be one of the main categories that marked the nature of reality of today's world. This, in turn, influenced the research of national phenomena. A nation is currently seen as one of the most important natural groups formed within the objective process of social evolution – it has become part of culture, an "experienced convolution of meanings," a "record of individual experience of values common with other people."¹³ Researchers from different fields of the humanities agree that the

¹¹ Robert Frank, reflecting on the mutual relationship of such terms as "identity," "consciousness," and "feeling," proposes the following definition of "identity:" "it is a feeling of belonging to the same collectivity: familial, rural, urban, regional, national or supranational;" the coexistence of belonging to different collectivities also means coexistence of different identities. Thus, identity is a phenomenon from the sphere of consciousness. See: R. Frank, "Identités, conscience et construction européennes: phases et déphasage du politique, de l'économie et de l'imaginaire", in: *L'Europe au XXe siècle. Eléments pour un bilan*, ed. T. Schramm, Instytut Historii UAM, Poznań 2000, pp. 31 ff. Quotation and translation: T. Schramm, *Wyznaczniki polskiej tożsamości narodowej u progu odzyskania niepodległości*, <http://jazon.hist.uj.edu.pl/zjazd/materialy/schramm.pdf> (access: 15 December 2013). Also cf. M. Budyta-Budzyńska, *Socjologia narodu i konfliktów etnicznych*, Wydawnictwo Naukowe PWN, Warszawa, 2010, pp. 99 ff.

¹² See: Melchior, "Kategoria tożsamości", p. 231.

¹³ See more broadly: J. Kurczewska, the entry: "Naród", in: *Encyklopedia socjologii*, ed. H. Domański et al., vol. 2: K–N, Oficyna Naukowa, Warszawa, 1999, p. 294.

nation is a dynamic, stateless, layer-less and classless historical community, equipped with objective characteristics (conditions) (e.g. territory, state, language)¹⁴ and subjective attributes, expressed in the consciousness of belonging to a community, and that the significance of this consciousness in today's world is increasing.¹⁵ The new secondary sources mostly abound in approaches which refer to this consciousness and identity in different manners.¹⁶ For the purpose of further reflection, I have assumed Zygmunt Ziemiński's definition of a nation:

A nation is a community group based on a common reference to certain values associated with common history, common cultural elements and aspirations to maintain distinctness.¹⁷

The quoted author conveys the essence of this notion appropriately, for he also includes elements which distinguish the "nation" from other collectivities, allowing for generally accepted nation-forming factors (culture and tradition, which are created in the course of a nation's historical development), and accepts the role of the consciousness factor, expressed in a reference to certain values, which is common to members of a nation. This definition is also common with the intuition included in legal discourse, applied in such fields as the sociology of law.

Antonina Kłoskowska remarks that an actual person constituting the subject of studies as a whole individual is like a work of art. He or she creates their identity partly under the influence of biological needs and partly under situational, social influence. "They fulfil and crown their creation from a free – or at least more and more endogenous – choice, succumbing to teleological models of class, profession and nation."¹⁸ A human being is

¹⁴ One cannot assume, however, that the mentioned factors are necessary for a nation to exist and last in time. It is possible to indicate nations which speak several languages (such as the Swiss). Jews lived for over a thousand years without their own state territory and they are still scattered around the world. During partitions, the Polish nation continued to exist within three different socio-economic systems. See: A. Redelbach, *Wstęp do prawoznawstwa. Podstawowe pojęcia nauk o władzy, państwie i prawie w perspektywie Unii Europejskiej*, Dom Organizatora, Toruń, 1999, p. 94.

¹⁵ See: Kurczewska, "Naród", p. 289.

¹⁶ For different notions of "nation", see: Rakiewicz, *Poczucie tożsamości*, part 1, p. 101, and sources cited therein.

¹⁷ Z. Ziemiński, in: *Kompedium wiedzy o społeczeństwie, państwie i prawie*, eds. S. Wronkowska, M. Zmierzak, Wydawnictwo Naukowe PWN, Warszawa, 1998, p. 27. This approach is the closest to a "nation" from the cultural point of view.

¹⁸ A. Kłoskowska, *Kultury narodowe u korzeni*, Wydawnictwo Naukowe PWN, Warszawa, 1996, pp. 91 ff.

a member of many communities, such as family, many other collectivities, action groups and societies. This means that an entity identifies itself with many societies and groups in different dimensions and to different degrees. A human being is placed (or they place themselves) within these diverse relationships without totally exhausting themselves in any of them, but rather deriving certain elements of their self-determination from each of them. It is the entire set of those elements drawn from different relations along with other, psychological factors, which make up a person's identity.¹⁹ The feeling of nationality is an important and often "very important conscious set of cultural factors of identity."²⁰ Of course it does not exhaust individual identity, but it usually exerts influence on identity in its entirety, which is stronger than other numerous and fragmentary identifications (e.g. those associated with a profession, membership in action groups, etc.). Some individuals exhibit lasting and strong display of national identification; they are "virtuosos of national culture," or, to put it simply, patriots.²¹ Kłoskowska remarks that "the convergence of subjective attitudes expressed by many people and referring to their own cultural groups may be recognised as collective national identity" and that "it is justified to assume that the complete formation of a nation requires both consciousness of certain separateness from others and a feeling of connection to one's own kind as well as a consciousness of continuity, historical existence of this group and its collective filiation – the quality of deriving from common ancestors or ancestor. These factors may be defined as a form of collective sense of identity."²²

In the light of the mentioned comments, and allowing for the cultural understanding of a national collective presented in sociology, we may propose the following definition of the sense of national identity as a set of behaviours, beliefs and views of a person associated with their membership in a national community with which they identify. Here we need to explain that even though the presented definition derives from non-legal sciences, it is also systemically relativised: this concerns the legal view of the studied issue, accounting for different normative solutions included in a number of legislative acts applying in Poland (which we will touch upon later on). Moreover, the suggested definition expresses the essence (of the feeling) of

¹⁹ Ibid., pp. 103 ff.

²⁰ A. Kłoskowska, "Tożsamość i identyfikacja narodowa w perspektywie historycznej i psychologicznej", *Kultura i Społeczeństwo* 36 (1992), No. 1, pp. 138 ff.; also: ead., *Kultury narodowe*, p. 141.

²¹ See: Kłoskowska, "Tożsamość", pp. 138 ff.

²² Ibid., p. 134.

national identity in its individual dimension, although the author does not negate, but shares the thesis about the admissibility of this category also referring to the collectivity of a national community. In this last aspect, the sense of national identity will be defined as “national consciousness.”²³

2.2. Sense of national identity as a value acknowledged in society and law

It is common for a number of explanations to treat the essence of personal interests as the category of “values” while at the same time emphasising the connection of these values to the personality²⁴ and dignity²⁵ of a human being. This is also how personality rights are understood in many judicial decisions.²⁶ The value catalogue from Article 23 of the Civil Code, created by the legislator as open, allows the identification of separate types of values

²³ Due to the already emphasised conceptual distinctions. Apart from that, from the perspective of the civil-law protection of personal interests, national identity in its individual aspect is of primary importance, as Polish law does not foresee “collective” personal interests and laws which serve to protect them. Individual welfare and legal right always serves a specific, individual person. There is no “community” of welfare and rights here.

²⁴ See: B. Gawlik, “Ochrona dóbr osobistych. Sens i nonsens koncepcji tzw. praw podmiotowych osobistych”, *Zeszyty Naukowe Uniwersytetu Jagiellońskiego* 1985, *Prace z Wynalazczości i Ochrony Własności Intelektualnej*, vol. 41, p. 124. Cf. Pazdan, in: *System prawa prywatnego*, pp. 1229 ff.

²⁵ E.g. according to Paweł Sut (P. Sut, “Problem twórczej wykładni przepisów o ochronie dóbr osobistych”, *Państwo i Prawo* 9 [1997], pp. 35 ff.) and Marek Safjan (M. Safjan, “Refleksje wokół konstytucyjnych uwarunkowań rozwoju ochrony dóbr osobistych”, *Kwartalnik Prawa Prywatnego* 1 [2002], pp. 243 ff.), personal interests are strictly correlated with a human being in a sense that the protection of these values is protection of broadly understood dignity of every person. Similarly T. Sokołowski (in: *Kodeks cywilny. Komentarz*, vol. 1: *Część ogólna*, ed. A. Kidyba, Wolters Kluwer, Warszawa, 2009, p. 110), for whom differentiated personal interests constitute an expression of the protection of a single, most important status quo, i.e. “personal, dignified dimension of human existence” (“deserving general protection of dignity of a living human being”). Cf. Pazdan, in: *System prawa prywatnego*, pp. 1232, 1271.

²⁶ E.g. in a judgement of 19 September 1968, OSNCPiUS 1969, No. 11, item 200, the Supreme Court stated that personal interests were “values associated with the internal side of human life.” On the other hand, in a judgement of 21 March 2007, I CSK 292/06, loc. cit., the Supreme Court gave the following definition of personal interests: “Personal interests are non-material, individual values belonging to the sphere of psychological experiences associated with the personality of a person, defining their integrity and position in society within the framework acknowledged by law. As such, their nature is innate, non-transferable and unalienable.” On the other hand, in a judgement of 16 December 2009, I CSK 160/09, OSNC 2010, No. 7–8, item 114, the Supreme Court assumed that the essence of personal interests is the “relation to human personality”, defining them as “non-materialistic values which are constituted by every person’s: physical and psychological integrity and display of creative activity.”

that are not mentioned in the law by the judicature which is not concerned with such aspects as functioning social evaluations.²⁷ One argues that "the legal, moral and social opinions within a given society decide whether we deal with a personal interest in a given situation."²⁸ Values defined as personal interests mentioned in Article 23 of the Civil Code and in other provisions of law, and those established through judicial decisions, are protected by law with regard to their objective (intersubjective) significance in the public opinion; this objectification is made ethnocentrically²⁹ – personal interests are those values whose character in a given social environment can be recognised as common. The target benchmark of evaluation within this scope should firstly be the views of people who are reasonable and just thinkers, followed by moral sciences derived from competent people who enjoy unquestionable authority.³⁰

One of the bases for positive response to the question whether the sense of national identity is a value in the common social opinion, is brought by the outcome of empirical studies of public opinion, recently carried out by TNS Polska³¹ and CBOS,³² which show the significance of the sense of national identity in the Polish society from different points of view. These studies particularly concentrated on: (1) the degree of the sense of national identity (national consciousness) in comparison with other structures of group membership (sources of self-identification of an individual), including the so-called "European identity," (2) national pride of the Polish and (3) criteria deciding on the sense of belonging to the Polish Nation.³³ The results of these studies fully justify the thesis that the sense of national identity is a value in the common public opinion – "a highly valued status

²⁷ See: Radwański, Olejniczak, *Prawo cywilne*, p. 158; judgement of the Supreme Court of 26.10.2001, V CKN 195/01, loc. cit. Compare also: Księżak, in: *Kodeks cywilny*, p. 241; Resolution of the Supreme Court (7) of 16 July 1993 and I PZP 28/93, OSNCPIUS 1994, No. 1, item 2.

²⁸ A. Szpunar, *Ochrona dóbr osobistych*, PWN, Warszawa, 1979, p. 106. Cf. A. Wojciszke, "Katalog dóbr osobistych w świetle przepisów Konstytucji i Kodeksu cywilnego", *Gdańskie Studia Prawnicze* 7 (2000), p. 663.

²⁹ On ethnocentrism and absolutism, as two ways of value objectification, see more broadly: Z. Ziemiński, *Wstęp do aksjologii dla prawników*, Wydawnictwa Prawnicze, Warszawa, 1990, pp. 60 ff.

³⁰ Compare judgement of the Supreme Court of 25 April 1989, I CR 143/89, loc. cit. See also: Szpunar, *Ochrona dóbr*, p. 107; Wojciszke, "Katalog dóbr", p. 663; J. Sadowski, *Konflikt zasad – ochrona dóbr osobistych a wolność prasy*, Oficyna Naukowa, Warszawa, 2008, pp. 59 ff.

³¹ Public opinion polling entity (formerly known as TNS OBOP).

³² Public Opinion Research Center.

³³ See more broadly: Rakiewicz, *Poczucie tożsamości*, part 1, pp. 108 ff., together with quoted and discussed findings.

quo.” The Poles declare their Polish national belongingness and pride to a great extent, they feel connected to the Polish nationality and they place great emphasis on the criterion of the notion of being Polish within their own identity self-definitions. Thus, this value appears not only as a “potential” one from a general axiological (theoretical) point of view, but also as an “existing” one, i.e. one that is experienced by the Poles, although – in comparison to other criteria (sources) of self-identification of an individual – to a differentiated degree, depending on the assumed study perspective. Considering identity in its collective dimension, one may generally claim that the Polish are distinguished by their national consciousness. According to the results of the National Population and Housing Census carried out in 2011,³⁴ the majority of Poland’s population (i.e. 36,157 thousand people, or 93.9% of the population) demonstrates a uniform Polish national identity.³⁵

The axiology of a specific legal system is made up of a set of values relativised to evaluation standards referred to by the legal system, as well as the ones *explicite* or *implicite* contained in this system itself.³⁶ In the legal system of the Republic of Poland, the fundamental values of law are expressed or declared in the Constitution, acts (especially codes) and in international agreements ratified by Poland, mostly concerning human rights. These values exist in the form of catalogues of rights assigned to people (citizens) and catalogues of rights protected by law or those accessible through it.³⁷ The sense of national identity is not only a value in common public opinion (evaluation), but it is also acknowledged by the legal system – from the Constitution, through different international law acts applying in Poland all the way to ordinary legislation. A detailed discussion on this issue would go beyond the scope of this study,³⁸ which is why only fundamental remarks on this topic will be contained herein.

The provisions of the Constitution of the Republic of Poland of 2 April 1997,³⁹ especially those concerning the freedom and rights of humans and

³⁴ It was carried out between 1 April and 30 June 2011.

³⁵ See more broadly: *Raport z wyników. Narodowy Spis Powszechny Ludności i Mieszkań 2011*, Główny Urząd Statystyczny, Warszawa, 2012, pp. 105 ff., http://www.stat.gov.pl/cps/rde/xbcr/gus/lud_raport_z_wynikow_NSP_2011.pdf (access: 15 December 2013).

³⁶ See: W. Lang, “Aksjologia prawa”, in: *Filozofia prawa a tworzenie i stosowanie prawa. Materiały Ogólnopolskiej Konferencji Naukowej zorganizowanej w dniach 11 i 12 czerwca 1991 roku w Katowicach*, ed. B. Czech, Studia i Prace Instytutu Wymiaru Sprawiedliwości Ośrodka Terenowego przy Sądzie Wojewódzkim w Katowicach, vol. 1, Katowice, 1992, p. 125.

³⁷ Ibid., p. 127.

³⁸ See more broadly: Rakiewicz, *Poczucie tożsamości*, part 2, pp. 69 ff., and legal regulations discussed therein.

³⁹ Dz.U., No. 78, heading 483 as amended.

citizens, constitute an especially important basis for acknowledging further personal interests.⁴⁰ The term “identity” is applied to the Nation in Article 6(1) of the Constitution, according to which “the Republic of Poland shall provide conditions for the people’s equal access to the products of culture which are the source of the Nation’s identity, continuity and development.” The Constitution uses the word “Nation” (Preamble, Article 4(1) and (2), Article 104(1) and (2), Article 127(1), Article 130) and derivative wording, in the form of adjectives “national” or “ethnic” (Article 5, Article 6(2), Article 13, Article 27 and Article 35(1) and (2)). The tendency to refer to Nation has become particularly strong in Poland as a result of partitions, annexations, occupation and post-Yalta dependency. Since the Constitution of 3 May and the Kościuszko Uprising, the feeling of national self-identification has been associated with aspirations to restore full state sovereignty. This explains the importance attached to the use of the word “Nation” both in common language and in legal acts, which – as emphasised by Andrzej Kubiak⁴¹ – “acquires a special historical and emotional undertone in specifically Polish conditions.”⁴² Even the Preamble speaks of regard for “the existence and future of our Homeland,” of gratitude to “our ancestors for their labours, their struggle for independence achieved at great sacrifice, for our culture rooted in the Christian heritage of the Nation and in universal human values,” of an obligation to “bequeath to future generations all that is valuable from our over one thousand years’ heritage;” there are also references to “the best traditions of the First and the Second Republic.”

The Constitution allows us to claim that a relationship (bond) between an individual and the Nation,⁴³ that constitutes a premise of the sense of national identity, is an approved value that deserves protection. This is

⁴⁰ Cf. Radwański, Olejniczak, *Prawo cywilne*, p. 158; Safjan, “Refleksje”, pp. 226 ff.; Wojciszke, “Katalog dóbr”, p. 659 et al.; Pazdan, in: *System prawa prywatnego*, p. 1232 et al. The “radiation” of the Constitution over specific branches of law is especially manifested in the influence on statutory interpretation (e.g. of civil law) as well as in the adaptation legislative activity that implements demand for introducing appropriate legal instruments to the system of positive law, which actualise constitutional guarantees associated with the position of an individual in a country.

⁴¹ See: A. Kubiak, “Określenie podmiotu suwerennej władzy państwowej (Uwagi *de lege fundamentalis ferenda*)”, *Państwo i Prawo* 1 (1989), vol. 1, p. 8, fn. 22.

⁴² Cf. M. Gulczyński, “Zasada zwierzchnictwa narodu”, in: *Zasady podstawowe polskiej Konstytucji*, ed. W. Sokolewicz, Wydawnictwo Sejmowe, Warszawa, 1998, p. 109.

⁴³ I.e. with a “Nation” within cultural meaning, established in the already proposed definition, and not only with a “Nation” in the political sense (community of all citizens of the Republic of Poland). For more on the topic of different meanings of the term “Nation” from the point of view of the Constitution, see: Rakiewicz, *Poczucie tożsamości*, part 2, pp. 70 ff., and sources cited therein.

justified by conclusions drawn from the interpretation of Article 6(2) of the Constitution, which says that: "The Republic of Poland shall provide assistance to Poles living abroad to maintain their links with the national cultural heritage." On the one hand, this concerns the link of the "Poles" rather than just the citizens of the Republic of Poland, just as it is not only about the citizens of the Republic of Poland in the Preamble, which says: "bound in community with our compatriots dispersed throughout the world." On the other hand, the Constitution speaks only of a link of the "Poles" and not of people with other national identities. Next, it needs to be emphasised that the second subjective pole of this link is not the Polish Nation as a political organisation of citizens, but "national cultural heritage." Culture, on the other hand, under Article 6(1) of the Constitution, is the "source of the Nation's identity, continuity and development." "National heritage shapes national identity, which means that it can be claimed that, apart from the language and history of a nation, it is its fundamental element."⁴⁴ Considering the above, a link to national cultural heritage is a display of the sense of national identity of an individual – the sense of Polish national identity of Poles who want to maintain their bond not only with the Polish Nation as in the state, but most importantly with the Polish Nation as in the people that form it; in other words – the manifestation of Polish national identity. This means – if we place the second subjective pole of this relationship on a slightly different level – a connection with the Homeland, understood as a combination of features that also distinguish the Nation from other collectivities, such as e.g. culture (cultural heritage).⁴⁵ When analysing Article 6(2),⁴⁶ Bogusław Banaszak accurately remarks: "The sheer declaration of bonds with compatriots scattered around the world in the Preamble does not suffice, according to the legislator, to accept the role of these bonds; hence, the imposition of the obligation to provide assistance to Poles living abroad to maintain their links with the national cultural heritage on public authorities. This is significant for the maintenance of national identity thanks to the possibility of discovering and using the material and

⁴⁴ K. Zeidler, "Pojęcie 'dziedzictwa narodowego' w Konstytucji RP i jego prawna ochrona", *Gdańskie Studia Prawnicze* 12 (2004), p. 345.

⁴⁵ On the notion of "Homeland", cf. e.g.: S. Ossowski, *O ojczyźnie i narodzie*, PWN, Warszawa, 1984, *passim*; Kłoskowska, *Kultury narodowe*, pp. 52 ff.; A. Pawelczyńska, *O istocie narodowej tożsamości. Polacy wobec zagrożeń*, Wydawnictwo Polihymnia, Lublin, 2010, pp. 21 ff.

⁴⁶ This provision applies only to the people who live abroad and have Polish nationality, and clearly expresses the need to maintain the sense of Polish national identity of an individual, who, while living abroad, most often in conditions of strong influence of alien cultural models, is prone to losing this dimension of their own identity to a greater extent.

spiritual national heritage.”⁴⁷ Piotr Winczorek expresses a similar opinion when he says: “all Poles have the right to maintain their national identity and relations with the homeland. This also applies to our compatriots abroad. The Republic of Poland promises that it will aid them in this respect materially, organisationally, technically, politically and morally.”⁴⁸ The sense of Polish national identity underlies a link to national cultural heritage, which to that purpose forms a value deserving of legal protection.⁴⁹ The adoption of the Act of 7 September 2007 on the Pole’s Card,⁵⁰ which exposes value in the form of a sense of national identity of Poles living abroad⁵¹ even in its Preamble,⁵² definitely constitutes fulfilment of this constitutional imperative contained in Article 6(2).

⁴⁷ B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, C.H. Beck, Warszawa, 2009, p. 56.

⁴⁸ P. Winczorek, *Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 roku*, Liber, Warszawa, 2008, p. 27.

⁴⁹ The Constitution also respects the sense of national identity (national consciousness) of the citizens of the Republic of Poland who are of a different nationality. This is expressed e.g. in the obligations of public authorities under Article 35(1) (ensuring freedom to maintain and develop language, to maintain customs and traditions, and to develop culture) and the rights of national minorities from the second paragraph of the same article (the right to establish educational and cultural institutions, institutions designed to protect religious identity, as well as to participate in the resolution of matters connected with their cultural identity). It follows from Article 35 that it is forbidden for public authorities to take any assimilative (Polonising) actions towards national minorities. “On the contrary, the state guarantees that they are able to maintain and strengthen (develop) their separateness and national identity.”, *ibid.*, p. 93.

⁵⁰ Dz.U., No. 180, heading 1280 as amended.

⁵¹ This Act determines the rights of a person who was granted the Pole’s Card, the rules based on which it is granted, expiry and annulment as well as the jurisdiction and procedures to be followed by authorities in these cases (Article 1). The Pole’s Card may be granted to a person who declares their belonging to the Polish Nation and meets all the requirements mentioned in this legal act (e.g. demonstrates their connection to Polishness by at least basic command of the Polish language which they consider to be their native tongue as well as acknowledges and nurtures Polish traditions and customs – see: Article 2 of the Act). The Pole’s Card is a document which acknowledges that its holder belongs to the Polish Nation and certifies the entitlements resulting from the aforementioned Act. For more on the topic of the regulations of the discussed Act, see: J. Jagielski, D. Pudzianowska, in: *Ustawa o Karcie Polaka. Komentarz*, ed. J. Jagielski, Wolters Kluwer, Warszawa, 2008, *passim*.

⁵² *In extenso*, it has the following wording: “implementing the resolutions of the Constitution of the Republic of Poland within the scope of granting aid to Poles living abroad in maintaining their link to the national cultural heritage, fulfilling the moral duty towards Poles in the East, who, due to the ever-changing fate of our Homeland, have lost their Polish citizenship, meeting the expectations of those who have never been Polish citizens but wish to obtain acknowledgement of their belonging to the Polish Nation due to their sense of

The legal system acknowledges the sense of national identity even clearer, as a value which deserves protection, on other levels of this system, according to the assumed aim and method of a given regulation (criminal and administrative law institutions, etc.). This applies both to the sense of Polish national identity and the national consciousness of national minorities in Poland (sense of national identity of the members of these minorities). For in their essence, constitutional regulations are characterised by a large degree of generality, which results from their special role, as they constitute the basis of the whole legal system.⁵³

In ordinary legislation,⁵⁴ the sense of national identity is protected firstly from the “negative” point of view, i.e. from the perspective of equality, through the prohibition of discrimination in different spheres of social relations. For instance, according to Article 11³ of the Labour Code,⁵⁵ any form of discrimination in the workplace, both direct and indirect, especially due to nationality, is prohibited. The Penal Code prohibits, under pain of fine: behaviours which are aimed at destroying the whole or part of a national group (see: Article 118 of the Penal Code), using unlawful violence or threats towards a group of people (individual person), especially due to their national belonging (see: Article 119 of the Penal Code), exhorting to hatred in public, e.g. due to ethical differences (see: Article 256 of the Penal Code) and insulting a group of people (individual person) in public, including due to nationality, relatively – violating another person’s bodily integrity for that reason (see: Article 257 of the Penal Code). What is more, Article 133 of the Penal Code⁵⁶ typifies the crime of insulting the Polish Nation.

Secondly, the Polish legal system includes “positive” instruments, i.e. those which create conditions to maintain the sense of national identity

national identity, in order to strengthen bonds that connect Poles in the East to the Motherland and supporting their effort to maintain the Polish language and cultivate national traditions, we hereby establish as follows.”

⁵³ Cf. e.g. P. Tuleja, in: *Prawo konstytucyjne RP*, ed. P. Sarnecki, C.H. Beck, Warszawa, 2008, pp. 49 ff.

⁵⁴ When it comes to the acts of international legislation (both the universal system of the UN and systems of the European Council) and the law of the European Union, see: Rakiewicz, *Poczucie tożsamości*, part 2, pp. 82 ff. We also cannot forget Treaties of Good Neighbourship and Friendly Cooperation, concluded between Poland and all its neighbouring countries. These types of agreements mostly guarantee the right to protection of national identity, including that of the Poles abroad.

⁵⁵ The Act of 26 June 1974 – Labour Code (consolidated text: Dz.U. of 1998, No. 21, item 94, as amended).

⁵⁶ “Whoever insults the Nation or the Republic of Poland in public shall be subject to the penalty of imprisonment for up to 3 years.”

through cultivating separateness. For instance, according to the content of Article 13(1) of the Act of 7 September 1991 on the Education System,⁵⁷ schools and public institutions “enable pupils to maintain the sense of national, ethnic, linguistic and religious identity, especially through the study of language, history and culture.”

However, the aforementioned acts and other laws⁵⁸ protect the analysed value only fragmentarily, considering only some of its aspects, referring to a selected, regulated “excerpt” of social relations. Hence, they do not foresee a number of potential threats which may occur in practice. It is in private law, within the institution of personal interests, that the broadest protection of the sense of national identity can be ensured.

2.3. Classification of the sense of national identity as a personal interest within the meaning of the Civil Code

All personal interests are inherently (inseparably) linked to a person, his or her personality and dignity. The sense of national identity fulfils all of these features and constitutes a personal interest within the meaning of the Civil Code.⁵⁹ One may suggest the following definition of this term: it is a state free from interference in a set of behaviours, beliefs and opinions of a human being, associated with their membership in a national community with which they identify as a human. Hence, we talk here of sovereignty and the resulting inviolability of the sphere of human personality that is connected with membership in a national community with which a person identifies and considers as theirs. This value is a personal interest not only of people of Polish nationality, but also members of national minorities in Poland.⁶⁰

⁵⁷ Consolidated text: Dz.U. of 2004, No. 256, item 2572, as amended.

⁵⁸ See e.g.: Article 21 of the Act of 29 December 1992 on broadcasting (Dz.U. of 2011, No. 43, item 226, as amended).

⁵⁹ Following F. Rakiewicz, the sense of national identity has already been acknowledged (within a legal evaluation of the controversial miniseries *Generation War*, produced by the German public television, ZDF, which was criticised for slandering the memory of Home Army soldiers and depicting Poles of the Second World War as extreme anti-Semites) as a personal interest by Arkadiusz Radwan and Magdalena Jabczuga-Kurek in “Wasza produkcja, nasze roszczenia”, *Dziennik Gazeta Prawna* of 26 August 2013, No. 164, p. B9; “Kto może pozwać za niemiecki serial”, *Dziennik Gazeta Prawna* of 6–8 September 2013, No. 173, p. C6. This feeling is also classified as a personal interest by Lech Obara and Szymon Topa (L. Obara, S. Topa, “Tożsamość narodowa podlega ochronie”, *Dziennik Gazeta Prawna* of 8 October 2013, No. 195).

⁶⁰ It remains open to discussion whether the sense of national identity is a personal interest only for the members of national minorities in Poland within the meaning of Article

The field of analysis of the identity of a person is formed by his or her personality – an intriguing “product of culture and nature,”⁶¹ intuitively associated mostly with different displays of psychological life and their organisation within an individual. The efficiency of the former category referred to personality consists in the fact that it allows us to perceive a “person” from a determined angle. In other words, it does not have to be the question of the identity of the “total,” holistically perceived human personality, but rather of its certain aspect, relativised to selected sides of human existence. With this approach in mind, one may ask about identity connected e.g. with professional or private life, sex and national self-identification. It is indisputable that human personality has a social character, i.e. one that “participates” in different twists of interpersonal interactions, to put it generally. “A person is born ‘human,’ but their personality is shaped under the influence of society and culture.”⁶² “Personality is not only an ‘existential’ phenomenon, but also a cultural one. I am not a person if I do not belong to a number of collectivities which I am a part of (which does not mean that I am nothing more than a part of collectivities or that I am literally nothing without belonging to collectivities).”⁶³ “All of us bring innate biological endowment to this world, which may result in thousands of different biographies. However, from the moment we are born, the physical and particularly social environment starts to lay out directions of development for us.”⁶⁴ Thus, the overall “becoming” of a human, i.e. the whole life, is possible in the context of broadly defined social existence. Society is a carrier and guarantor of various values, which constitute a “collective property of the community,” and it is characterised by the whole system of their formation, accumulation, storage, processing and utilisation.

2 of the Act of 6 January 2005 on national and ethnic minorities and on the regional languages (Dz.U., No. 17, item 141 as amended), which also includes people who identify with a “nation organised in their own country.” There have been nations deprived of their own statehood in history. One cannot exclude situations in which it is necessary to base on a pure objective criterion focused only on the sociologically ascertainable fact of the existence of a nation for the purpose of protecting the analysed value.

⁶¹ Cf. P.K. Oleś, *Wprowadzenie do psychologii osobowości*, series: *Wykłady z psychologii*, ed. J. Brzeziński, vol. 11, Scholar, Warszawa, 2005, p. 15.

⁶² J. Turowski, *Socjologia. Wielkie struktury społeczne*, Towarzystwo Naukowe KUL, Lublin, 1994, p. 42; id., *Socjologia. Małe struktury społeczne*, Towarzystwo Naukowe KUL, Lublin, 1999, pp. 37 ff.

⁶³ L. Kołakowski, “O tożsamości zbiorowej”, trans. S. Amsterdamski, in: *Tożsamość w czasach zmiany. Rozmowy w Castel Gandolfo*, ed. K. Michalski, Wydawnictwo ZNAK, Kraków, 1995, p. 48.

⁶⁴ R.J. Dubos, *Pochwała różnorodności*, Państwowy Instytut Wydawniczy, Warszawa, 1986, p. 85.

As a framework for the continued experience of values concerning the material, spiritual, intellectual, moral and religious sphere, society delineates their preferences and provides them to human individuals.⁶⁵ This axiological dimension of very broadly defined community is realised primarily and particularly intensely in one of its natural, fundamental and most important forms, which is (apart from family) national community.

The life of a human being is crossed with the fate of national collectivity and the process of inclusion in the national community usually begins in childhood. In part, this initially occurs without reflection, through direct contact and imitation of the closest mature members of a national group. On this path, the majority of people learn their mother tongue, which is a very important element of nationality. The very term "mother tongue" (expressed similarly in other cultures, e.g. as *Muttersprache* in German) emphasises the correlation with upbringing in close contact with the first person who influences a child in a family.⁶⁶ This process accelerates as a result of contact with other members of the same national group and the influence of various institutions thanks to which a person "absorbs" symbols and values that make up the culture of a given nation, discovers its history and traditions, and passes that knowledge on to the next generation.⁶⁷ Educational institutions try to spread these objectified symbolic configurations, which are particularly respected by the national community. "Each field of culture, art, environmental sciences and jurisprudence carries a mark of social national self-consciousness of its participants. Despite the universality of truth and beauty, these criteria are influenced by collective national consciousness, which individualises outputs."⁶⁸ National institutions celebrate nationality in connection with anniversaries of famous compatriots, national heroes, great writers, etc. Military institutions are associated with the nation; national flags bear national colours; state holidays are national holidays that celebrate great compatriots and great events from national history.⁶⁹ In time, due to multifaceted participation in the life of a national collectivity, a reflective sense of nationality blossoms and develops in a person, accompanied by heightened self-knowledge and internal cognitive or external active national self-identification.⁷⁰ This way, the sense of national

⁶⁵ See H. Skorowski, in: *Preambula Konstytucji Rzeczypospolitej Polskiej*, Biuro Trybunału Konstytucyjnego, Warszawa, 2009, p. 97.

⁶⁶ See: Kłoskowska, *Kultury*, p. 108.

⁶⁷ Cf. more broadly: *ibid.*, pp. 108 ff.

⁶⁸ E. Shils, "Naród, narodowość i nacjonalizm a społeczeństwo obywatelskie", trans. K. Kwaśniewski, *Sprawy Narodowościowe. Seria Nowa* 1996, vol. 5, No. 1, p. 11.

⁶⁹ *Ibid.*

⁷⁰ Cf. Kłoskowska, *Kultury*, p. 87.

identity, which determines a reflective approach of subjects to themselves and defines the manner of perceiving other members of the same national collectivity, as well as the members of separate national groups (and *vice versa*), becomes a natural element of personality and a premise of a person's self-realisation in society.⁷¹ Participation in a national community deepens human subjectivity. Nationality corresponds with the need of our existence. "Finding *sacrum* not only in the spiritual transcendental sphere, but also in the transcendental sphere of primitiveness comes from the need of the human mind."⁷²

National culture is "what makes a man as a man become more human: it makes him 'be' more. [...] For a nation is this huge community of people who are interconnected by different bonds, but above all – by culture. The nation exists 'from culture' and 'for culture.' And this is why culture is this illustrious educator that teaches us to 'be more' in a community, whose history is longer than the history of a single human being and their family."⁷³ "There is a fundamental sovereignty of a society, which is expressed in the culture of a nation. It is also this sovereignty that simultaneously makes a man most sovereign."⁷⁴ National culture guarantees "personal integrity, it expresses [a man's] way of being in the world, in short – it attests to their personal and social identity."⁷⁵ Indeed, even though in private, in the current problems of everyday life, the sense of national identity may not be specially exposed, it permanently shapes our present and our "way of being."⁷⁶

The validity of classifying the sense of national identity as belonging to a set of personal interests is supported – apart from the argument concerning the social dimension of a man's personality and its "placement" in the cultural reality of a nation – by the social aspect of human dignity.

An important foundation for acknowledging personal interests is Article 30 of the Constitution, which concerns human dignity,⁷⁷ i.e.: "The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities." The dignity of the human is determined by their innate value which they

⁷¹ See: Rakiewicz, *Poczucie tożsamości*, part 2, p. 96.

⁷² Shils, "Naród", p. 22.

⁷³ John Paul II, *Pamięć i tożsamość. Rozmowy na przełomie tysiącleci*, Wydawnictwo ZNAK, Kraków, 2005, p. 89.

⁷⁴ Ibid., p. 90.

⁷⁵ J. Bakalarz, "Duszpasterstwo a tożsamość emigrantów. Kościół a emigracja", *Znaki Czasu* 4 (1986), p. 79.

⁷⁶ See: Rakiewicz, *Poczucie tożsamości*, part 2, p. 96.

⁷⁷ Cf. Radwański, Olejniczak, *Prawo cywilne*, p. 158.

represent due to their humanity, socially determined needs and skills, which allow an individual to function in a social organism.⁷⁸ As a social being, a person “exists in different societies and communities (nation, religious communities and ethnic groups) and is a member thereof. Slander, ridicule and contempt for these communities are a form of spiritual violence, cunningly applied to their members. This violence is a sign of humiliation of their dignity.”⁷⁹ The social component of human dignity is observed not only in legal sciences,⁸⁰ but also in case law⁸¹ – for the constitutional command to respect and protect this value includes among others the necessity to ensure a certain sphere of autonomy, within which a human being can fully realise himself or herself socially. As a product of the development of human nature, dignity is culturally determined.⁸² In a judgement of 28 October 1998⁸³ the Court of Appeals in Lodz emphasised: “Personal interests cannot be comprehended in an abstract way without reference to tradition, culture and historical experience of the collective in which physical persons live and function.”

It is directly in dignity that the social nature of a human being is grounded in the dimension determined in Article 1 of the Universal Declaration of Human Rights⁸⁴ as brotherhood.⁸⁵ In Article 30 of the Constitution, on the other hand, human dignity has a constitutional meaning and becomes

⁷⁸ See: W. Kulesza, *Zniesławienie i zniewaga (Ochrona czci i godności osobistej człowieka w polskim prawie karnym – zagadnienia podstawowe)*, Wydawnictwa Prawnicze, Warszawa, 1984, p. 165.

⁷⁹ F.J. Mazurek, *Godność osoby ludzkiej podstawą praw człowieka*, Wydawnictwo KUL, Lublin, 2001, p. 83.

⁸⁰ Also cf. e.g. L. Garlicki, in: *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. L. Garlicki, vol. 3, Wydawnictwo Sejmowe, Warszawa, 2003, p. 17.

⁸¹ See e.g. judgements of the Polish Constitutional Tribunal: of 4 April 2001, K 11/00, OTK ZU 2001, No. 3, item 54, of 24 February 2010, K 6/09, OTK ZU 2010, series A, No. 2, item 15, and of 7 March 2007, K 28/05, OTK ZU 2007, series A, No. 3, item 24.

⁸² As the Supreme Court in the judgement of 25 April 1989, I CR 143/89, loc. cit.

⁸³ I ACa 612/98, OSA 1999, No. 6, item 26.

⁸⁴ Universal Declaration of Human Rights, adopted by the UN General Assembly on 10 December 1948, English text published: <http://www.un.org/en/documents/udhr/> (access: 15 December 2013), Polish text published in: *Prawo międzynarodowe publiczne. Wybór dokumentów*, comp. by A. Przyborska-Klimczak, Lubelskie Wydawnictwa Prawnicze, Lublin, 1995, pp. 184 ff.

⁸⁵ See: M. Piechowiak, *Filozofia praw człowieka. Prawa człowieka w świetle ich międzynarodowej ochrony*, Towarzystwo Naukowe Katolickiego Uniwersytetu Lubelskiego, Prace Wydziału Filozoficznego 81, Lublin, 1999, pp. 345, 100 ff. In the original English version, Article 1 of the Declaration is as follows: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

a baseline for the value system around which the Constitution revolves, as well as a foundation of the whole judicial order in the State.⁸⁶ If personality and dignity of a human being constitute a “link” for all personal interests, being a reference point in actions aimed at e.g. distinguishing subsequent personal interests, then we cannot forget about the social determination of a human. In turn, this aspect of both dignity and personality of a human being requires us to legally protect this sphere of its existence which is connected to participation in communities that constitute “natural environment” for the development of human beings and their personality, which at the same time constitute a source of their self-identification (identity). This kind of community is not only family, but also a nation.⁸⁷ The sense of national identity, stemming from the foundation of national culture, which is shaped e.g. by the past (history) of a national community and social remembrance of this past (history) without which a nation cannot exist (which will be elaborated on later on), is an important, permanent element of human personality and dignity, deserving of legal protection as a personal interest within the meaning of the Civil Code.

3. Violation of the sense of Polish national identity by means of comments on “Polish concentration camps”

3.1. The essence of Polish national identity – basic concepts

People are not only subject to a sequence of events, they do not only act in a defined way, they do not only behave as individuals and as members of a group, but they have the capacity to reflect on their own history and to objectify, describe its related paths of occurrences. Nations, in the same way as an individual person, are endowed with historical remembrance. The history of nations is one of essential elements of culture – an element which determines a nation’s identity in temporal dimensions.⁸⁸ A nation is a historical community and history itself is one of the fundamental and most important nation-shaping factors without which a nation cannot appear or exist. Some events from the past, as well as the way they are “experienced” in the present, unite members of a national community. In order for works of national culture to be formed and its symbols and values to be engraved, there first needs to be a certain historical process. Therefore, the consciousness

⁸⁶ As the Polish Constitutional Tribunal in judgement of 4 April 2001, K 11/00, loc. cit.

⁸⁷ See: Rakiewicz, *Poczucie tożsamości*, part 2, p. 101.

⁸⁸ John Paul II, *Pamięć*, pp. 78 ff.

of historical and cultural continuity is extremely important.⁸⁹ As was noted by Jadwiga Żylińska, "...walls can be pulled down, landscape can be ploughed with tanks, writings on the wall can be painted over, borders can be changed, people can be decimated, resettled or imprisoned, but the symbols present in the consciousness of successors cannot be erased."⁹⁰ A nation "is not only a collective of individuals inhabiting a given state. It is not only the current generation. It is also past and future generations."⁹¹ Given the above, it is not necessary to prove that national identity (consciousness) requires "historical remembrance." No nation can exist without awareness that its current existence is an extension of its existence in the past, and that the further this remembrance delves into the past, the stronger the national identity becomes.⁹² In this sense, social remembrance acts "for the benefit of" the identity of a national community.⁹³ It is a carrier of values and models of behaviours accepted and desired by a given group, co-shaping its identity, whose foundation is common past, common existence and temporal continuity, common fate, ancestors and a range of symbols. As such, social remembrance is a centre of tradition⁹⁴ and a certain type of

⁸⁹ A. Ławniczak, "Ewolucja pojęcia 'Naród' w polskich konstytucjach", *Acta Universitatis Wratislaviensis* 1290 (1992), Prawo CC, p. 141: "Thus, the notion of a nation is made up of history, culture, remembrance about ancestors and hope for existence in national community."

⁹⁰ J. Żylińska, "Jeszcze o polskości", *Znak* 3 (1988), p. 72.

⁹¹ R. Pietrzyński, *Naród w państwie*, Awangarda, Warszawa, 1934, p. 86.

⁹² See: Kołakowski, "O tożsamości", p. 49.

⁹³ See more broadly: Rakiewicz, *Poczucie tożsamości*, part 3, p. 70 ff., and sources referred to therein. Social remembrance, which includes differently celebrated personae and events from the past of a national community, consists of two segments: objective (facts) and subjected (interpretation). The former includes a sequence of facts, names, and dates, such as "Jaruzelski, martial law, 1981", existing independently of an individual or a group, which invokes a given event. On the other hand, the subjective part comprises opinions and emotions which are inseparable from an individual or a group, which created them. The first component is passive – it is basically a data basis. The second one, however, constitutes a mechanism of reconstruction and awareness. It is a dynamic process, whose course is influenced by various factors: context, group experience and language. This is precisely what serves identity. See: A. Grabowska, "Pamięć zbiorowa w służbie tożsamości", in: *Wokół tożsamości: teorie, wymiary, ekspresje*, eds. I. Borowik, K. Leszczyńska, Zakład Wydawniczy „Nomos”, Kraków, 2008, p. 363.

⁹⁴ Although tradition creates a phenomenon which is hard to grasp within specific knowledge, it is a permanent element of social life, also in the sphere of national communities. Budyta-Budzyńska, *Socjologia narodu*, p. 103, observes: "National identity has its sources in tradition. Reference to tradition gives a national community a sense of continuity and roots, so it is hard to imagine the existence of a national community without it. Tradition includes the part of cultural heritage which is the most significant and has a special value for a group in a given moment."

material binding the community rather than a catalogue of events.⁹⁵ A specific, legally relative essence of the sense of national identity of a human being constitutes a sort of a reflection of the essence of national identity of a national community.⁹⁶

The contemporary Polish national consciousness was shaped among others by the accumulated memory of ruthless oppression, solidified in collective culture, which accompanied conflicts of successive generations of Poles with their neighbours, especially Germany and Russia. The years of the Second World War are significant in this context, due to the form, extent and intensification of the oppression which the Polish nation had to cope with.⁹⁷ In the years of occupation, the Poles faced physical annihilation and the resultant threat of total destruction, not only within the scope of national consciousness and culture, but also in the sense of biological existence. The criminal policy of the Third Reich assumed slaughter of a significant part of the Polish and reduction of survivors to the role of slave labour force.⁹⁸ To put it simply, the conviction about the need to fight against the occupant in the Second World War and resist invaders (including the awareness of an immeasurable number of victims and injustice towards Poles) constitutes an explicit, universally experienced element of the Polish national consciousness. One may say that it is an element of national tradition and essentially – awareness of historical facts. It is reflected in the sphere of Polish national identity, co-shaping the essence of the so-called personal interests. This element is related among others to strong public remembrance of the concentration camp in Auschwitz (since 2007, according to the suggestion of the Polish government, called “Auschwitz-Birkenau. German Nazi Concentration and Extermination Camp [1940–1945]” by the World Heritage Committee)⁹⁹ as a place of extermination of Jews and martyrdom of the Polish nation, among others.¹⁰⁰

⁹⁵ Grabowska, “Pamięć zbiorowa”, p. 362; cf. Pawełczyńska, *O istocie narodowej*, pp. 72 ff.

⁹⁶ See more broadly: Rakiewicz, *Poczucie tożsamości*, part 3, p. 68 f.

⁹⁷ See more broadly: *ibid.*, pp. 75 ff., and sources contained therein, including those concerning empirical studies.

⁹⁸ Cf. e.g.: M. Bogucka, *Kultura, naród, trwanie. Dzieje kultury polskiej od zarania do 1989 roku*, Wydawnictwo Trio, Warszawa 2008, p. 427; Pawełczyńska, *O istocie narodowej*, pp. 154 ff.

⁹⁹ *Auschwitz Birkenau. German Nazi Concentration and Extermination Camp (1940–1945)*. See: Decision of the UNESCO World Heritage Committee on the modification of the name of the facilities of the former Auschwitz-Birkenau concentration camp, 27 June 2007, New Zealand, <http://whc.unesco.org/en/decisions/1306> (access: 15 December 2013).

¹⁰⁰ See more broadly: Rakiewicz, *Poczucie tożsamości*, part 3, p. 76 and studies indicated therein.

In the light of the statements about "Polish concentration camps," the aforementioned element needs to be protected. Its distinction within the framework of the sense of Polish national identity eliminates doubts as to the debatable (within civil-law protection of honour) establishment of which collectivity the phrase "Polish camps" refers to. They can and should refer to the national community, whose existence is a certain extension of existence in the past. The adequate plane of reference and perception of statements about "Polish camps" is the sense of Polish national identity, including e.g. beliefs connected with the participation in the Polish national community, with which people identify. The author of the words "Polish concentration camp" offends the mentioned belief of the participants of the national community, contradicting its validity. In social perception these words may be interpreted as an opposite view (conviction), i.e. that the Polish nation acted, rather than opposed and fought, with the Germans in the most terrible way – by committing manslaughter and other crimes against humanity with the hands of their representatives in death camps. Thus, the belief which is an element of the sense of Polish national identity is severely violated not only in the subjective, emotional layer of the social remembrance solidified therein. Such a statement contradicts even the essence of its objective, factorial element, as it is a historical fact that it was Nazi Germans who committed crimes in these camps.¹⁰¹

Therefore, the formulation and dissemination of statements about extermination camps functioning during the Second World War within occupied Poland with generalising references to the Poles (using different linguistic means such as the adjective "Polish"), may lead to the violation one of personal interests, i.e. the sense of national identity. These messages offend the internal conviction of human beings of their own (unblemished) value as members of the Polish nation, and their sense and will of maintaining the existing bonds with their national community. These expressions violate the psychological integrity of a human being by invoking fully justifiable anxiety about how he or she is or may be perceived as a Pole by the members of other groups (nations). The discussed messages create a danger of a false, negative image of the members of the Polish nation. Both of the discussed situations are about this way of perceiving personal dignity and good name of all Poles; let us emphasise once again: it is about personal dignity and good name of all members of the Polish nation.¹⁰² Another aspect of the analysed violation is the sense of injustice and wrongdoing which takes place as a result of such messages – in combination with the

¹⁰¹ See: *ibid.*

¹⁰² *Ibid.*, p. 77.

remembrance of the victims and the immensity of suffering and damage done to Poles by Germans during the Second World War. The adequate and, *de lege lata*, only method of protecting this individual personal sphere is civil-law protection of personal interests.

It is not essential to include reference to a specific person as belonging to the Polish national community in the content of statements about “Polish concentration camps” in order to acknowledge the resultant violation of the sense of national identity. These statements directly offend values which are associated with the participation of human beings in the social community that naturally shapes their personality, and which accompany this personality already in the individual dimension. On the other hand, if it follows from the content of the statement that it concerns the sense of Polish national identity, then it is essential that a person should experience this feeling, i.e. the sense of (Polish) national identity in order to be granted legal protection. This last fact should be established by the court in a personal interests protection case – and in this sense, for the claims foreseen in the Civil Code to be made, it is essential to positively establish that the statement concerns a person who demands protection of his/her personal interests. The court has means which allow the verification of the statements of the plaintiff from an objective point of view, and the fulfilment of objective factual criteria.¹⁰³

In order to ascertain (unlawful) violation of the sense of national identity as a result of the “Polish concentration camps” expression, it is essential to allow for all circumstances of the analysed situation, including the degree of the complexity of the media message, the manner of dissemination and possible different interpretations. However, the mere dissemination of these expressions is illegal, if they are published by the press. This is because they violate the obligations of the press associated with the freedom of speech and the accurate depiction of the discussed phenomena (see: comments contained in point 2 below).

Obviously, the sense of (Polish) national identity includes other elements of the content. Namely, “each and every” sense of national identity (i.e. both the sense of Polish national identity and all other identities contained within the scope of personal interests) can boil down to a common substantial basis, consisting in the separation of its two spheres: separateness and continuity.¹⁰⁴ These create the contours of personal interests.

¹⁰³ See more broadly: *ibid.*, pp. 60 ff., 78 ff. The sense of national identity assumes that a human being identifies with a specific national community and a supposed lack of such self-identification revokes the need for protecting this personal interest.

¹⁰⁴ Cf. Bokszański, *Tożsamości*, pp. 109 ff.; J. Błuszkowski, *Stereotypy a tożsamość narodu*, Elipsa, Warszawa, 2005, pp. 143 ff.

The first sphere includes what decides on separateness in the self-consciousness of a subject; it is focused on elements which allow an individual person to distinguish himself or herself from other entities (i.e. outside a given national community) and *vice versa*. On the other hand, the sphere of continuity is made up of elements that allow the maintenance of continuity, "being the same," in the sense of national identity. On the plane of the contours of personal interests designated in this manner, it is a lot easier to find examples of generically (typologically) formulated behaviours, included in the sense of "every" national identity. Thus, the sphere of separateness encompasses: participating in actions and ceremonies connected with the expression of national consciousness by a given national community (e.g. during national holidays), creating and participating in organisations in order to implement tasks resulting from participation in a national community (e.g. associations dealing with the protection and expression of national consciousness, dissemination of knowledge about a given national community), proclaiming one's beliefs and opinions connected with national identity, raising children in accordance with these beliefs and opinions, maintaining contact with other members of a national community in the language of that community and using sources of information on it. On the other hand, the sphere of continuation includes: freedom to choose to be treated as belonging or not belonging to a given national community, without any unfavourable effects associated with such a choice or with using laws connected with it, no obligation, otherwise than based on an act, to disclose information on a person's own national identity (remaining silent on national self-identification), prohibition against the use of measures aimed at assimilation of a person with a given national belonging against their will.

As can be seen, the former sphere is more "positive" as it consists in the manifestation of a person's own sense of national identity, whereas the latter is more "negative" as it boils down to non-interference in certain issues. However, both these spheres are not fully separated but mutually penetrating (e.g. maintaining contact with other members of a national community in the language of that community serves the continuation of the sense of national identity, but at the same time it often allows distinguishing a person from entities from outside that community). As contours of personal interests, they also form a common area free from interference, an area of a person's "sovereignty," freedom of decision on certain issues.¹⁰⁵

¹⁰⁵ See: Rakiewicz, *Poczucie tożsamości*, part 3, pp. 66 ff.

3.2. Statements on “Polish concentration camps” in the light of provisions regulating the freedom of expression, speech and the press

Formulating and disseminating statements about “Polish concentration camps” cannot be justified by guarantees concerning the freedom of “expression,” “speech,” “the press” (see: Articles 14 and 54(1) of the Constitution and Article 10(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms).¹⁰⁶

As has already been mentioned, by offending the sense of (Polish) national identity, the analysed examples result in a situation where the sphere of values underlying protection of dignity is breached. It is characteristic that both in the light of Article 31(3) of the Constitution and Article 10(2) of the ECHR (here in express terms), it is admissible to limit “freedom of expressing one’s own beliefs” and “freedom of expressing one’s own opinions” respectively, due to the need to ensure the right to legal protection of “honour and good reputation” (“protection of good reputation”). The rights to protection of “honour and good reputation” (Article 47 of the Constitution) and the freedom to express opinions, to acquire and to disseminate information (Article 54(1) of the Constitution) are formulated in the same normative order, which means that none of them is hierarchically subordinate to the other.¹⁰⁷ Strong axiological reasons, expressed in a close similarity between the discussed example and violation of honour justify attention given to the decision of the Supreme Court of 22 June 2004.¹⁰⁸ Interpreting Article 54(1) of the Constitution and Article 10(2) of the ECHR in the context of the crime of defamation (Article 212 of the Penal Code), the Supreme Court shared the opinion contained in the doctrine¹⁰⁹ and explicitly declared that: “A lie is the boundary between the freedom of speech and the press; the freedom of the press ends where a lie begins.” The Court added that: “The violation of dignity and good reputation by making and disseminating false accusations is negatively evaluated in our civilisation and cultural milieu for fundamental moral and ethical reasons. Therefore, within this scope the interference of the law – which respects these reasons – does not violate the freedom of expression, which is not equivalent to the right to absolute freedom, nor with agreement to the free market of verbal evil, but rather a positive value of a mature and responsible freedom.

¹⁰⁶ Dz.U. of 1993, No. 61, item 284 as amended.

¹⁰⁷ Nowicka, “Pomawianie”, p. 54.

¹⁰⁸ V KK 70/04, OSNKW 2004, No. 9, item 86.

¹⁰⁹ J. Sobczak, *Ustawa Prawo prasowe. Komentarz*, Muza, Warszawa, 1999, p. 92.

Untruth does not realise the idea of the freedom of expression and does not serve any other values, or the protection of a socially justified interest, as causing evil does not cause good. Neither is it expected by the information receivers, if it does not realise their right to reliable information, but instead disregards, misinforms them and treats them as an object. Untruth goes against the idea of the freedom of expression, depreciating its core essence. A different interpretation of the freedom of expressing beliefs, including the right to criticise, would mean approval of a continuous decrease in cultural standards and decency, sensitivity and responsibility." "Making objectively untrue accusations, regardless of whether it stems from gross carelessness, unreliability and irresponsibility, or from intentional use of untruth (as is the case here) – does not realise the idea of the freedom of expression and remains *ab ovo* outside the boundaries of acceptable criticism. Neither does it protect any socially justifiable interest, which is self-explanatory. It may only serve short-term interests of the defamer, but never the public interest, which does not benefit from a false piece of information that confuses the public opinion and hence cannot be used in accordance with this interest, as it does not contribute to the description of reality. On the contrary, untrue information harms this interest by decreasing the level of its receiver's trust in the source of information. Even though it is indisputable that the private interest may also be socially justified, the deliberation on this issue in the event that the accusation is untrue, is downright groundless."¹¹⁰ The opinion of the Supreme Court met with wide approval in judicature.¹¹¹ The expression "Polish concentration camp" warrants being called false – the recipient may interpret it as informing about the complicity of the Polish nation in creating concentration camps that were once situated on the territory of Poland (or complicity in the crimes committed on that territory). To be sure, in some cases the context in which this expression is used will probably allow us (with an assumption of the lack of bad will of the author when it comes to the real depiction of reality) to determine that what is meant is the historical geographical location of German

¹¹⁰ The key thesis of the Supreme Court is: "Slander which is committed with the consciousness of untruthfulness of information and evaluation of the acts and characteristics of another person (Article 212 § 1 and 2 of the Penalty Code) does not serve protection of a socially justified interest (Article 213 § 2 of the Penal Code)." "Such behaviour does not benefit from the protection of the freedom of expression and right to criticism by Article 31(3) of the Constitution of the Republic of Poland, or Article 10(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms." For more on this judgement see: Nowicka, "Pomawianie", pp. 28 ff.

¹¹¹ See: Rakiewicz, *Poczucie tożsamości*, part 3, p. 82, fn. 154, and judicial decision contained therein.

concentration camps, which were situated in the area of Poland during World War II; however, despite all that, such a statement is objectionable due to its ambiguity, especially in mass reception. The neutral (i.e. non-slandering and non-libelling) sense may not “break through” the background of frequently schematic (simplified) and concise messages (e.g. on television).¹¹² This fear is additionally justified by the scant knowledge of the Second World War in some communities (countries).¹¹³

The dissemination of the mere expression “Polish concentration camps” and similar ones (e.g. “Polish extermination camps”) is illegal when these statements are published by the press, whose representatives unfoundedly describe them as the so-called “mental shortcuts.” The provisions of the Press Law¹¹⁴ allow us to infer the most important, specific obligations of the press, which are grounded in constitutional regulations, including Article 14, interpreted in connection with Article 54(1) and Article 31(3). Now, the press is obliged – as was concisely stated by the Supreme Court in its judgement of 22 June 2004¹¹⁵ – to: (1) realise the right of citizens to reliable information, i.e. that which is “honest, not confusing when it comes to the essence of the described events;” (2) truthfully depict the discussed phenomena; (3) act according to professional ethics, rules of social co-existence and within the boundaries determined by law; (4) ensure special care and diligence in collecting and using press materials, especially to verify correctness of the obtained information, or provide its source, as well as (5) protect personal interests. Meeting these requirements each time constitutes a prerequisite for acting in accordance with the rule of the freedom of the press, understood as the “realisation of the right of citizens to reliable, i.e. true, honest, clear and non-confusing, responsible information.”¹¹⁶ The tasks of journalists (the press) do not consist merely in providing information, but also in its interpretation for the readers.¹¹⁷ The obligations of a journalist exclude

¹¹² This also concerns publication in printed press and on the Internet – many a time the readers limit their attention to the wording of the title, without reading the whole article.

¹¹³ See more broadly: *ibid.*, pp. 77 ff.

¹¹⁴ The Act of 26 January 1984 – Press Law (Dz.U. No. 5, item 24 as amended).

¹¹⁵ V KK 70/04, *loc. cit.*

¹¹⁶ Judgement of the Supreme Court of 29 September 2000, V KKN 171/98, OSNKW 2001, Nos. 3–4, item 31, and subsequently, the Constitutional Tribunal in the judgements of 29 September 2008, SK 52/05, OTK ZU 2008, series A, No. 7, item 125, and of 30 October 2006, P 10/06, *loc. cit.*

¹¹⁷ Thus, tellingly, the Supreme Court in its decision of 7 February 2007, III KK 236/06, OSNKW 2007, No. 6, item 50, refers to the judgement of the European Court of Human Rights of 8 July 1986 in the case of *Lingens vs. Austria*, appeal No. 9815/82, Series A, No. 103.

the existence of any manipulation, such as e.g. fragmentary character of information,¹¹⁸ which would constitute a basis for different references and which might create a likelihood of confusion.

The expression “Polish concentration camp” (and similar) contradicts the reliable portrayal of the described phenomena. Its dissemination remains at odds with the obligation of journalists to act according to professional ethics, which assume truthful description of reality; it does not constitute acting for the benefit of the society, but rather brings about negative effects. Owing to its ambiguity that results in a likelihood of confusion (to say the least), such a statement violates the obligation of reliable use of press material. In this context, one cannot agree with the opinion that what we are dealing with here is a simple “mental shortcut.” Criticising the reduction of meaning to “geographical designation” and noticing how “hard it is to bring the truth about the events from 60 years ago home to such countries as Canada, the United States, Italy or Norway,” a lecturer and former Polish Minister of Foreign Affairs, Adam Daniel Rotfeld, was right to point out a few years ago: “No one has ever called Auschwitz ‘a Jewish concentration camp’ simply because Jews were exterminated in the camps.”¹¹⁹

3.3. Jurisdiction and legislation in trans-border cases concerning the protection of Polish national identity

A Pole whose sense of (Polish) national identity is unlawfully threatened by a foreigner’s action may demand discontinuation of this action. In case of a violation, he or she may also demand that the person who perpetrated this violation take actions needed for removing its effects, especially that they make an appropriate statement in a relevant form.¹²⁰ Based on the Civil Code, they may also demand financial compensation or payment of a suitable amount for an indicated social cause (Article 24 § 1 of the Civil

¹¹⁸ See: I. Dobosz, *Prawo i etyka w zawodzie dziennikarza*, Wolters Kluwer, Warszawa, 2008, p. 56; B. Michalski, *Podstawowe problemy prawa prasowego*, Elipsa, Warszawa, 1998, p. 81. When speaking of the obligation to “spread the truth”, I. Dobosz treats the prohibition of the mentioned manipulations as applying to “the press” in the broad sense of this term, which means that this obligation lies not only with all journalists (press, radio and television ones), but also with editors and publishers as well as broadcasters, and even people who participate in broadcasts, such as operators and photojournalists. Consequently, manipulations are not acceptable from the legal point of view at any stage of media operations.

¹¹⁹ “Nie pozwolimy na szkalowanie naszego kraju. Rozmowa z Ministrem Adamem Danielem Rotfeldem”, interview conducted by Piotr Zychowicz, *Rzeczpospolita* of 25 January 2005, No. 20, p. A6.

¹²⁰ E.g. a statement in the press or on television, colloquially called “an apology.”

Code).¹²¹ If, as a result of the infringement of the sense of (Polish) national identity, there is pecuniary loss, the injured party may demand compensation in accordance with general principles (Article 24 § 2 of the Civil Code). The above claims may be brought against parties who formulate and disseminate messages about “Polish concentration camps,” including foreign press. It is worth emphasising that when it comes to legal claims for the cessation and removal of the effects of the violation of personal interests, responsibility is objective, which means that it is independent of the guilt of the perpetrator.¹²² Invoking the violator’s purposes or intentions (e.g. claiming that a given press publication concerned only historical geographical location of German concentration camps, situated in the area of Poland during the Second World War) is of no consequence to liability. The mentioned provisions of the Civil Code also determine the minimum standard of protection, i.e. other possible regulations, provided that they concern the protection of the sense of national identity, do not eliminate the protection claims indicated above (Article 23 *in fine* in connection with Article 24 § 3 of the Civil Code).¹²³

Polish regulations on court and law jurisdiction concerning the protection of personal interests in the context of broadcasts that refer to “Polish concentration camps” allow the submission of a claim for the protection of the sense of (Polish) national identity to the Polish court, which then will adjudge based on Polish law. Due to the fact that statements about “Polish concentration camps” are disseminated by foreign entities, i.e. based outside Poland (mostly in the press), these cases will often be (and already are) trans-border in nature.

Since Poland is an EU Member State, the issue of jurisdiction in the cases discussed herein, understood as the power of a court of a given Member State to hear these cases, is regulated by Council Regulation (EC)

¹²¹ According to Article 448 of the Civil Code, in case of violation of personal interests, the court may, in addition to ordering actions required to redress the offence, adjudge in favour of the injured persons an appropriate sum of money as damages for the wrong they suffered, or at their request adjudge an appropriate sum of money in favour of some social purpose specified by them.

¹²² Cf. Radwański, Olejniczak, *Prawo cywilne*, p. 170.

¹²³ Compare: *ibid.*, p. 178. In order to counteract statements about “Polish camps”, in some cases it is possible to apply the institution of press correction (reply). However, the threat of violation or violation of personal interests by a media message most importantly justifies the civil law liability of the press from Articles 23 and 24 of the Civil Code, which is independent of the mentioned institutions. Apart from that, past attempts at the correction of these expressions often met with opposition or even refusal on the part of those responsible for their dissemination.

No. 44/2001 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters¹²⁴ (so-called Brussels I), replaced by Regulation 1215/2012.¹²⁵ Based on Article 5(3) of this Regulation, persons domiciled in a Member State may be sued in another Member State in the courts for the place where the harmful event occurred or may occur, in matters relating to tort, delict or quasi-delict. In the judgement of 25 October 2011,¹²⁶ the EU Court of Justice recalled that according to the previous case law in cases concerned with the protection of personal interests,¹²⁷ the expression “the place where the harmful event occurred” (currently included in Article 5(3) of the mentioned Regulation) includes both the place where the harmful event occurred and the place where the harm materialised. When it comes to the application of these two connectors to the claim for compensation for harm resulting from publication, in the case of the violation of personal interests through press material disseminated in a number of countries, the injured party may bring legal proceedings either before the court of the state in which the publisher has its seat (these are relevant to compensation for the whole harm caused to the injured party) or before the court of any other state in which the publication was disseminated and in which their personal interests were breached (these courts are relevant only to compensation for the harm received in the state of its seat). Secondly, confirming the validity of this opinion, the CJEU also applied it to a situation where personal interests are violated on the Internet, and also allowed bringing legal proceedings before the court of the state of vital interests of the injured party in such cases. Moreover, the latter court may also adjudge on the liability for the whole harm and damage caused (which heretofore was possible only in proceedings before the court applicable to the seat of the publisher).¹²⁸

¹²⁴ *Official Journal of the European Union* (henceforth: OJ EU) 2001 L 12, p. 1 as amended.

¹²⁵ OJ EU 2012 L 351, p. 1. This Act is applicable as of 10 January 2015.

¹²⁶ Judgement of the CJEU (Grand Chamber) in joined cases C-509/09 and C-161/10 *eDate Advertising GmbH versus X and Olivier Martinez, Robert Martinez versus MGN Limited*, Court Reports 2011, p. I-10269. For more on this judgement compare: M. Kręcis, *Glosa do wyroku TS z dnia 25 października 2011 r., C-509/09 i C-161/10*, LEX/el. 2013; A. Radwan, M. Jabczuga-Kurek, “Za niemiecki serial można pozwać przed sąd polski”, *Dziennik Gazeta Prawna* of 2 October 2013, No. 191.

¹²⁷ Judgement of the CJEU of 7 March 1995 in case C-68/93 *Shevill et al. v. Presse Alliance SA*, ECR 1995, pp. I-415.

¹²⁸ On 10 January 2015, Brussels I Regulation will be replaced by the Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters (OJ EU 2012 L 351, p. 1). In Article 7(2), the new Regulation contains a solution analogous to the regulation from Article 5(3) of the currently applicable Regulation.

The CJEU case law is reflected in the practice of Polish courts.¹²⁹ In a case related to the protection of Polish national identity against a defendant publisher with a seat in the Federal Republic of Germany (in connection with the use of the expression “Polish concentration camp” in Majdanek in an article published in *Die Welt*, which is also available on the Internet), in a decision of 27 October 2010, the Court of Appeals in Warsaw¹³⁰ stated that “the sheer availability of the indicated article on the World Wide Web (the Internet) e.g. in Poland, allows us to claim that the place of violation of the plaintiff’s personal interests is also Poland. Moreover, [...] the paper edition of *Die Welt* is also disseminated on the territory of Poland.”

The Polish court having jurisdiction in a case concerning the protection of the sense of national identity filed by a Polish citizen adjudges in compliance with Polish law as the applicable law, based on provisions of the Act of 4 February 2011 – private international law.¹³¹ Pursuant to Article 16(1) thereof, personal interests of natural persons are subject to their *lex patriae*. This law determines a catalogue of personal interests and associated legal rights, decides on their formation, content, scope and cessation.¹³² However, when it comes to the governing law for the determination of institutions that serve legal protection of personal interests, a catalogue and premises of claims which are at the disposal of the aggrieved, as well as the premises and scope of indemnification liability, these need to be established in accordance with Article 16(2) of the aforementioned Act. According to its provisions, a natural person whose personal interest may be or has been violated, may demand protection pursuant to the law of the state on whose territory the threat of violation or violation of personal interests occurred or pursuant to the law of the state on whose territory the effects of such

¹²⁹ It needs to be emphasised that in cases with an alien element to which Brussels I Regulation does not apply (i.e. mostly in cases concerning defendants from outside the European Union), the jurisdiction of the court should be established based on international agreements with Poland, concerning jurisdiction and in case of a lack thereof – in accordance with the provisions of the Act of 17 November 1964 – the Code of Civil Procedure (consolidated text: Dz.U. of 2014, item 101 as amended) on domestic jurisdiction in proceedings (see: Article 1103⁷ point 2). Cf. A. Hrycaj, “Komentarz do art. 1103(7) Kodeksu postępowania cywilnego”, in: *Kodeks postępowania cywilnego. Komentarz*, eds. H. Dolecki, T. Wiśniewski, vol. 5: *Artykuły 1096–1217*, LEX, commentary No. 5.

¹³⁰ I ACz 1602/10, unpublished.

¹³¹ Dz.U., No. 80, item 432. Referring to a national act on conflict of jurisdiction is necessary due to the exclusion of the issue of personal interests from the scope of Regulation (EC) No. 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) (OJ EU 2007 L 199, p. 40) – see: Article 1(2)(g) of this Regulation.

¹³² M. Pazdan, *Prawo prywatne międzynarodowe*, LexisNexis, Warszawa, 2012, p. 115.

violation have occurred. Taking into consideration the former comments, it needs to be assumed that this is Polish law.¹³³

6. Summary

Upon consideration of the open catalogue of personal interests from Article 23 of the Civil Code, the author of this study has formulated a principal thesis, namely that the “sense of national identity” is in fact a personal interest. It is a value commonly acknowledged in society as well as accepted by the Polish legal system. It meets all requirements necessary to be qualified as a personal interest within the meaning of the Civil Code. The author defines the mentioned personal interest, proves that it is well-grounded in the social dimension of human personality and dignity, defines its scope (content), and discusses the manners of its legal protection. The need to protect the sense of national identity within personal interests exists mainly as a result of numerous statements about “Polish concentration camps.” These statements are not indifferent to the image of who Poles are to themselves and to other communities, in the sense of the biography (history) of the national community in which they live or with which they at least identify. The quoted statements debase the internal notion of a human being about his own value as a member of the Polish nation and make him uneasy about the way in which he may be (is) perceived as a Pole by members of other social groups (nations). Such statements give rise to an acute sense of injustice and wrongdoing – compared with the memory of the victims and the immensity of suffering and damage inflicted on the Poles by the Germans during the Second World War.

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¹³³ Cf. *ibid.*; M. Pilich, “Prawo właściwe dla dóbr osobistych i ich ochrony”, in: *Współczesne wyzwania prawa prywatnego międzynarodowego*, ed. J. Poczobut, Wolters Kluwer, Warszawa, 2013, pp. 234 ff.

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DEFECTIVE CODES OF MEMORY VERSUS COLLECTIVE MEMORY AS A GENERAL INTEREST UNDER THE PROTECTION OF CRIMINAL LAW

Witold Kulesza

1. Crimes against humanity committed in occupied Poland as a subject of common knowledge and collective memory

As it is estimated, Poland has lost six million of its citizens to the Second World War, including half of the victims murdered by the German occupier just because they were Jewish, and therefore deemed to be of an inferior race. The size of the committed crimes also nowadays makes it difficult to find a family in the country which would not retain in the generational memory their loved ones as the victims of war and occupation. Poland is home to several thousand places where the occupier committed crimes, which are marked as the “National Remembrance Sites” with information about the time, perpetrators, and victims.

The systematic murder of the Polish population began from the first days of the war, i.e. from early September 1939, in the implementation of the plan prepared in the Reich Main Security Office (RSHA) in Berlin, still before the Third Reich's attack on the neighbouring country. This plan corresponded to the perceived challenges of the future, which motivated, among others, Hermann Voss when he wrote in his diary four years before: “The Polish nation multiplies two times faster than the German and this is crucial! This very primitive Slavic nation will devour the German [nation], if it does not grow enough.”¹ This author, appointed professor of anatomy at the “University of the Reich” in Poznań by the German authorities, said:

¹ G. Aly, “Das Posener Tagebuch des Anatomen Hermann Voss”, in: *Biedermann und Schreibtischtäter, Materialien zur deutschen Täter-Biografie*, Beiträge zur nationalsozialistischen Gesundheits- und Sozialpolitik 4, hrsg. G. Aly, P. Chroust, H. D. Heilmann, H. Langbein, Berlin, 1989, p. 19. The original diary of H. Voss can be found in the archives of the Western Institute (Instytut Zachodni) in Poznań.

"I think that the Polish issue (*polnische Frage*) should be looked at purely biologically. We must annihilate (*vernichten*) them, otherwise they will annihilate us. And that's why I'm happy with each Pole already dead."² Extermination was to target Poles who could put up resistance against the invaders, thus hindering the implementation of the plan to bring Polish society to the role of mindless labour force, as well as the mentally ill unable to execute commands of the occupant, and all the Jews. Mass extermination was committed as an implementation of the plan of the Reich government formed in full, with the identification of the ways and stages of its implementation, in the minds of Hitler, Himmler and Heydrich, as proven by documents generally known today and comments to them, showing – as synthetically determined by Dieter Schenk – that "it was intended to make the Polish nation slaves of the German race."³

Wilm Hosenfeld, an eyewitness German officer, in letters to his wife described the action to liquidate Polish leadership in Pabianice and Lodz, where they were arresting "every Pole who stands out above the ordinary," because they "want to exterminate the intelligentsia after the Russian fashion (*die Intelligenz ausrotten Vorbild will nach dem der Russen*).⁴ The author describes these actions of the authorities in his own country towards the Poles as "crimes against humanity" (*Verbrechen an der Menschheit*).⁴ The action of murdering the intelligentsia (*Intelligenzaktion*) in autumn 1939 and at the beginning of 1940 took, as estimated, more than 100 thousand victims, shot in mass executions. However, the invader found out that carrying out this action did not break the Polish spirit of resistance and planned an "extraordinary pacification action" (*AB – Ausserordentliche Befriedungsaktion*) for the spring of 1940, aimed at further shattering of the "leadership layer" through successive raids, arrests and executions

² Ibid., p. 19. Managing the Institute of Anatomy at the University of the Reich in Poznań, Voss offered European museums the skulls of "subhuman" Poles and Jews dissected from the corpses of persons killed by German police and judicial authorities, which were to serve as exhibits in the "offices of races." The corpses were then burnt in a crematorium furnace of the institute – between 1939 and 1945, 4,916 corpses were burned. In 1941, Voss wrote in his diary: "I really like the City of Poznań, but all the Poles must disappear from it, and then it will be very beautiful here.", *ibid.*, p. 36.

³ D. Schenk, *Hitlers Mann in Danzig. Gauleiter Forster und die NS-Verbrechen in Danzig-Westpreußen*, J.H.W. Dietz Nachf. Verlag, Bonn, 2000, p. 164. Polish ed.: *Albert Forster gdański namiestnik Hitlera: zbrodnie hitlerowskie w Gdańsku i Prusach Zachodnich*, Polnord – Oskar, Gdańsk, 2002, p. 236.

⁴ W. Hosenfeld, *"Ich versuche jeden zu retten". Das Leben eines deutschen Offiziers in Briefen und Tagebüchern*, hrsg. Th. Vogel, Deutsche Verlags-Anstalt, München, 2004, p. 286. Polish ed.: *"Staram się ratować każdego". Życie niemieckiego oficera w listach i dziennikach*, eds. E.C. Król, W. Lipscher, Oficyna Wydawnicza Rytm, Warszawa, 2007, p. 137.

of people suspected of offering resistance. This action was presented in the official diary by the Governor General, Hans Frank, who, referring to the Führer's order to "eliminate the layer of Poland's leadership, and take out whatever grows back," thus argued at a meeting in his headquarters at Wawel Castle in Krakow: "I admit quite openly that it will cost the lives of several thousand Poles, mainly spiritual leaders. This time imposes on us as the National Socialists an obligation to ensure that no resistance is born in the Polish nation again. [...] it is clear that we can and must do this."⁵

At the same time, a decision was taken to create a new place of detention for mass arrests in Oswiecim, which was justified by the overcrowding of many prisons and camps run by the security police, in which the imprisoned were kept in autumn 1939. In the first half of June 1940, 728 Polish political prisoners were brought to the KL Auschwitz camp organised in Oswiecim pursuant to the order of Himmler of the end of April 1940. In the following months, it was the destination for transports of Poles accused of underground activities, as well as captured in the round-ups and during house searches. Until March 1942, Polish political prisoners constituted the largest group of prisoners incarcerated in KL Auschwitz. Expansion of the camp was described by its commandant, Rudolf Höss, in the evidence given as a witness before the International Military Tribunal in Nuremberg (15 April 1946): "In the summer of 1941, I was summoned to Berlin to Reichsführer of the SS, Himmler, who was to personally give me some orders. He told me, more or less – I don't remember the exact words – that Führer ordered the definitive solution of the Jewish issue. We, the SS, have to execute this order. If it wasn't done at that moment, the Jews would have destroyed the German nation later. We chose Oswiecim, because it had good rail connections and because we could easily build a large, well isolated camp there." Then, he repeated his account of using cyclone, thrown in the form of crystals to the gas chambers, each of the four built in Brzezinka "housed 2,000 people at once (3 to 15 minutes was enough to kill people... We learnt as to whether these people were dead when the cries ceased; usually, we waited half an hour)," and of removing rings and pulling out golden teeth from the jaws of corpses before burning them in crematoria.⁶

⁵ Dintsttagebuch (official diary) 1940/II record under the date 30 May 1940. The original in the Archives of the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation, ref. 336. See also: S. Piotrowski, *Dziennik Hansa Franka*, Wydawnictwo Prawnicze, Warszawa, 1957, p. 55.

⁶ The full record of Höss' evidence is in: T. Cyprian, J. Sawicki, *Sprawy polskie w procesie norymberskim*, Instytut Zachodni, Poznań 1956, pp. 427–441; the official record of the whole trial is in: *Trial of the Major War Criminals before the International Military Tribunal. Official Text in the English Language*, Nuremberg, 1947–1949, vols. 1–42.

Next, witness Höss described the selection on the railway ramp carried out by two doctors of the SS “in view of the ability to work” – those able to work were sent “to Oswiecim or camp in Brzezinka, and those unable to work were taken... to the newly constructed crematoria.”⁷ The witness pointed out that: “Small children were usually put to death, because they were too young to work.” He also stressed: “[...] in Auschwitz, we applied a better policy [than in Treblinka], seeking to deceive the victims that they have to go through delousing” or “go to the shower.” The above-described method of killing was used for each series of rail transports carrying Jews from Germany, the Netherlands, France, Belgium, Poland, Hungary, Czechoslovakia, Greece and other countries in which, as described by commandant Höss, “some actions were carried out at irregular intervals, so one cannot speak of a continuous inflow.” Those actions that involved arrest of the Jews in the said countries resulted in everyday transports carrying them to Auschwitz, for a period of “four to six weeks.” Every day, two or three trains arrived at the ramp in Birkenau, and “each of these trains included about two thousand people.” Rudolf Höss confirmed his account in full a year later, when he gave evidence as the accused before the Polish Supreme National Tribunal, in own trial in Warsaw from 11 March to 2 April 1947.⁸ He included additional details in his autobiography, written in Polish custody awaiting the trial, revealing that he was present when the victims were undressing and described the shocking scenes, then emphasising “I myself had to observe death through the window of the gas chamber” and adding “day and night, I was present when the corpses were being removed and burnt, for hours I watched pulling teeth [...]”⁹ His confessions included the sentence: “Standing at night by the transports, by the gas chambers, by the flames – I often thought about my wife and children without paying closer attention to all that was happening around.”¹⁰ At the end of the manuscript, he points out: “These notes include 114 pages. I wrote down all this voluntarily and of my free will. Rudolf Höss.”¹¹

⁷ The term “newly constructed crematoria” referred to the four gas chambers connected to the crematoria which were built in a part of the camp known as Birkenau (Brzezinka). The first gas chamber and crematorium was organised in the “old Auschwitz.”

⁸ J. Gumkowski, “Procesy oświęcimskie”, in: *Zbrodniarze hitlerowscy przed Najwyższym Trybunałem Narodowym*, eds. J. Gumkowski, T. Kułakowski, Wydawnictwo Prawnicze, Warszawa, 1967, pp. 81 ff.

⁹ *Wspomnienia Rudolfa Hössa komendanta obozu oświęcimskiego*, Główna Komisja Badań Zbrodni Hitlerowskich w Polsce, Warszawa 1965, p. 157.

¹⁰ Ibid., p. 159.

¹¹ Ibid., p. 183.

On the basis of the same giant body of evidence on which the Supreme National Tribunal relied while sentencing the commandant of Auschwitz, between 25 November and 22 December 1947 in Krakow, the trial of 40 members of the camp staff subordinate to him was conducted. This material was collected from April 1945 by the Commission for the Investigation of German Crimes in Poland established in the areas liberated from German occupation. The Commission generally assumed that the indictment and trial of the organisers and perpetrators of the genocide in Auschwitz should be based on the collected and preserved evidence, hundreds of testimonies of survivors and other witnesses, detailed visual inspection of the entire camp area, barracks, gas chambers, crematoria, incineration pits (in which corpses of the gassed victims were burnt when it turned out that the crematoria had insufficient “capacity”) and all other equipment, as well as extensive expert opinions accurately describing the stages of expansion and operation of the extermination machinery, as well as all the stored documents. Records of the trial consisted of about 15 thousand cards.

2. The defendants plead not guilty, claiming that they did not know about the crimes

In Poland, investigations were carried out into almost 100,000 people suspected of crimes prosecuted under the decree of 31 August 1944 on *the punishment for the Nazi criminals guilty of murders and abuse of civilians and prisoners and for the traitors to the Polish nation*. Nearly 18,000 defendants were sentenced after court proceedings, including 5,450 Germans, Austrians and *Volksdeutsche*. From their zones of occupation of Germany, the Allies extradited 1,817 people suspected of war crimes and crimes against humanity for trial in Poland, of which 193 were validly sentenced to death penalty. In total, more than 900 persons accused of Nazi crimes were sentenced to this punishment, of which 767 sentences were executed. Court proceedings in which the perpetrators of these crimes were judged met the conditions defined by the notion of a fair trial, because the accused had the full right to defence, and the principles of hearing of evidence were respected.¹²

¹² In the above-mentioned trial of the members of Auschwitz-Birkenau staff, which resulted in 22 sentences of capital punishment, due to the lack of sufficient evidence and in accordance with the principle *in dubio pro reo*, Dr. Hans Münch, accused of performing criminal medical experiments, was acquitted. In an interview in the *Der Spiegel* weekly, No. 40/1998 (B. Schirra, *Die Erinnerung der Täter*), Münch described his activities in a way that

What was said by the accusing prosecutors, witnesses, experts, defendants and their defence counsels in courtrooms during hearings was listened to by the crowds and also thus the common knowledge of the crimes, their perpetrators and motives which guided them in committing crimes on a scale hitherto unknown, was growing and seared in memory.

During the trials of main criminals who led the extermination system (differently than in the trial of Höss, the commandant of Auschwitz), the accused denied not so much the crimes documented in detail by the prosecution, described by witnesses and explained by experts as the fact that they had any knowledge of the crimes enumerated in the indictments against them.

The trial in Poznań in 1946 before the Supreme National Tribunal against the administrator of the Reich, Gauleiter Artur Greiser, who held the highest authority in this part of occupied Poland, which had then been incorporated into the Third Reich as the *Reichsgau Wartheland* (*Wathegau*), revealed the scale of crimes committed in this area, which were to ensure permanent Germanisation of the territory. The objective was to be achieved through total annihilation of the Jewish population and the physical liquidation or displacement of all Poles unsuitable for various reasons to be used as servants of the German race of masters to the remaining part of the occupied country (in which the so-called General Government was created, with Hans Frank as the chief administrative officer of the Reich). Defendant Greiser explained: "I received Hitler's order to Germanise the country" and added: "Himmler was crazy about race. This is primarily demonstrated by his decision to move the so-called German national border to the east."¹³ He argued that he did not know about the "methods of acting in the Jewish case, which the German nation and the rest of the world have not been

showed that he carried out medical experiments and participated in the selection on the ramp in Birkenau. The new investigation in this case was discontinued in 2000 by the Chief Commission for the Prosecution of Crimes against the Polish Nation, because, as established by the German public prosecution service, suspect Münch due to his health condition was unable to participate in criminal proceedings. W. Kulesza, "Kriegsverbrecherprozesse in Polen – historische Dimensionen und weitere Forschungen", in: *Historische Dimensionen von Kriegsverbrecherprozessen nach dem Zweiten Weltkrieg*, hrsg. H. Radtke, D. Rössner, T. Schiller, W. Form, Studien zum Strafrecht Bd. 9, Nomos, Baden-Baden, 2007, p. 191.

¹³ "Stenogram 'mowy osk. Greisera'", in: *Proces Artura Giséra przed Najwyższym Trybunałem Narodowym*, Główna Komisja Badania Zbrodni Niemieckich w Polsce, Warszawa, 1946, pp. 151–160. More about Greiser's trial: W. Kulesza: "Der Beitrag der polnischen Nachkriegsjustiz zum europäischen Rechtskulturerbe am Beispiel zweier Prozesse wegen der Massenmorde im Warthegau (Posen, Kulmhof)", in: *Gerechtigkeit nach Diktatur und Krieg. Transitional Justice 1945 bis heute: Strafverfahren und ihre Quellen*, hrsg. C. Kuretsidis-Heider, W.R. Garscha, CLIO Verein f. Geschichts- & Bildungsarbeit, Graz. 2010, pp. 125 ff.

familiar with until now [i.e. after the war]”¹⁴ and denied, contrary to the evidence, that he had ever visited the extermination camp established in the area subordinate to him in Chelmno (*Kulmhof*), where the victims brought from the ghetto in Lodz were killed in gas chambers installed on lorries. He claimed that he did not know about the mass executions of Poles, because as the highest officer in the Warthegau: “You could say that I was locked in a castle. It seemed to me that I felt like a passenger of an airplane who is looking far away in political terms, but who is losing direct connection with the earth.”¹⁵ Defendant Greiser’s explanations, which were listened to by the audience gathered in the largest auditorium of the University of Poznan where the trial was held (during the war, Greiser would deliver blustering speeches about a thousand-year Third Reich there), and also thanks to the loudhailers placed outside, thousands of city inhabitants, gathering every day in the streets around the building, were confronted in a gloomy silence with their memories of the executions announced by German posters signed “Reichsstatthalter Greiser.” The defendant claimed before the court that this signature was put by his subordinates on announcements the content of which he did not know, and that he felt responsible only for the content of documents which he signed personally.

Richard Hildebrandt, a higher commandant of the SS and the police in Gdansk and West Prussia, accused in a trial in 1949, challenged the probative value of his own personal signature before the appellate court in Bydgoszcz. He had drafted a report for Himmler on the activities of the of SS-Wachsturmbann Eimann subordinate to him, in which he wrote about the “liquidation” by this unit of 3,400 mentally ill people and “securing” transports of the Jews from Vienna and Bratislava (Ger. *Pressbug*), and indicated that the unit was prepared to carry out the planned deportation of 400,000 people referred to as the “Polish element” from the area under his responsibility to central Poland. Defendant Hildebrandt was convincing the court that his power over this branch was only ostensible, not real, as that he had no influence on who was imprisoned in KL Stutthof, which was inspected by him, and during the trial he thus argued in his defence: “I had the impression that some are imprisoned in the camp just because they are Poles, but Gestapo officers denied this.”¹⁶

¹⁴ “Stenogram ‘ostatniego słowa oskarżonego’”, *ibid.*, pp. 384–400.

¹⁵ “Wypowiedź oskarżonego w sprawie publicznej egzekucji 100 Polaków 20.03.1942 r. w Zgierzu”, *ibid.*, p. 85.

¹⁶ W. Kulesza, “Volkermord vor Gericht in Polen. NS-Verbrechen im Reichsgau Danzig-Westpreußen im Lichte des Strafprozesses gegen Richard Hildebrandt”, in: *Kriegsverbrechen, NS-Gewaltverbrechen und die europäische Strafjustiz von Nürnberg bis Den Haag*, hrsg. H. Halbrainer, C. Kuretsidis-Heider, Verlag CLIO, Graz, 2007, p. 209. A detailed report complete

Behaviour of defendants who pleaded not guilty and denied knowledge about the crimes stated in the indictments and reported in detail by the witnesses during the trials was treated as exercising their rights to defence, and the creation of real possibilities of unlimited use of this right during court proceedings gave the trials judicial legitimacy. The courts patiently listened to the assurances of the defendants that they knew nothing about what was happening in occupied Poland under their authority; additional questions were addressed to the defendants to understand the line of defence adopted by them. Sometimes, the defendants' arguments caused a reaction of the audience which was noted in the case transcript as: "a stir in the courtroom."¹⁷

The trial of Josef Bühler, the second person after the Governor General (Hans Frank was put on trial in Nuremberg),¹⁸ carried out in Krakow in 1948, preceded with the investigation which produced 139 volumes of documentary evidence of crimes committed in that part of occupied Poland, was described as follows: "In a moment, a trial will begin, a case sensational for the residents of Krakow and entire Poland, and at the same time a case of historic importance and reverberating in the international public

with personal signature was prepared by Jakob Lölgen, who, as the commandant of Einsatzkommando 16, in the period from 2 October to 17 November 1939, ordered execution by firing squad in Bydgoszcz of 349 people (teachers, attorneys, notaries public, financial officials and municipal administration servants, representatives of other professions), reporting that: "The action against the Polish intelligentsia is almost finished.", Schenk, *Hitlers Mann*, p. 168 (Polish ed.: id., *Albert Forster*, p. 241). Lölgen accused in the trial before the national court in Munich in 1966 explained that he had been telling untruth in the report and had overstated numbers of the executed, because he wanted to please his superiors and feared deportation to a concentration camp in the case of disobeying orders. The Munich court acquitted defendant Lölgen assuming that he acted in the belief that there was a state of necessity due to a military order (*Befehlsnotstand*), while also acknowledging that there is no evidence to the contrary. W. Kulesza, "Die Ausstrahlung der bundesdeutschen NS-Strafverfolgung auf andere Staaten, insbesondere Polen", in: *Festakt und Symposium aus Anlass des 50-jährigen Bestehens der Zentralen Stelle der Landesjustizverwaltungen zur Aufklärung nationalsozialistischer Verbrechen am 1. und 2. Dezember 2008 in Ludwigsburg. Die Ausstrahlung der Zentralen Stelle auf die juristische und gesellschaftliche Auseinandersetzung mit der NS-Verbrechensgeschichte. Dokumentation*, hrsg. Justizministerium Baden-Württemberg, Stuttgart, 2009, pp. 147–148.

¹⁷ The remark "cheerfulness in the courtroom" in the case transcript follows Greiser's reassurance that if he had completed the task of Germanisation of the *Warthegau* under his responsibility, as he said with reference to the Poles, he "[...] would have tried very strongly that those who had been displaced to the General Government would be also returned to me," *Proces Artura Gisera*, p. 156.

¹⁸ S. Piotrowski, *Proces Hansa Franka i dowody polskie przeciw SS*, Wydawnictwo Prawnicze, Warszawa, 1970, pp. 23 ff.

opinion.”¹⁹ Defendant Bühler was the head of government of the General Government and in this role, as Frank’s envoy, he attended the Wannsee Conference (20 January 1942), expressing – as recorded in the minutes – “a request: to solve the Jewish issue in this area as soon as possible.” Standing before the Supreme National Tribunal, he refuted the charge of complicity in genocide in a way that astonished and upset all those following the trial. Without denying his participation in the conference and his call to immediately solve the *Judenfrage*, he claimed that he was not aware of what it meant for the Jews, because the words of Heydrich, the organiser of the conference explaining this issue, “slipped his memory.”²⁰ Bühler repeatedly and firmly ensured that he did not know about the concentration camps, did not know the name *Konzentrationslager* Majdanek (he “only heard” that in one of the camps prisoners were used to perform some work and added elsewhere that it involved “processing of furs”), allegedly did not know that people were transported to Auschwitz in large numbers, and “did not imagine that some devices for killing people were there.” Answering the prosecutor, who pointed out as the evidence of the defendant’s lie his letter to Hitler of June 1943 which mentioned Majdanek and Auschwitz, Bühler replied in a way that surprised all those present in the courtroom: “I used the word «Majdanek», like «Oswiecim», believing that these were the names of towns located outside the territory of the General Government.”²¹

The line of defence adopted in the 1946 trial before the Supreme National Tribunal by Amon Göth, the commandant of the labour camp in Plaszow n. Krakow accused of taking part in genocide, involved denying all allegations and explaining categorically that he was only following orders as regards allegations for which there was irrefutable evidence, including unchallengeable eye witness testimonies. In the case transcript his last words were noted as: “I did not answer the relevant question from Mr. Prosecutor of whether there could have been a right for the rapid solution of the Jewish issue. This remained beyond my competence. The fact is that if this war had not broken out, I as a civilian would not have had any reason to kill people.”²²

Book analyses showing the course of the above-mentioned criminal proceedings were based on the original files of investigations conducted by the Chief Commission for the Investigation of Nazi Crimes in Poland and

¹⁹ Ibid., p. 178.

²⁰ T. Kułakowski, “Proces Józefa Bühlera szefa rządu Generalnego Gubernatorstwa”, in: *Zbrodniarze hitlerowscy*, p. 223.

²¹ Ibid., p. 227.

²² *Proces ludobójcy Amona Leopolda Goetha przed Najwyższym Trybunałem Narodowym*, Centralna Żydowska Komisja Historyczna w Polsce, Warszawa–Łódź–Kraków, 1947, pp. 463–464.

on the case files, and emphasised the body of evidence which the Supreme National Tribunal accepted as the basis for its decisions. These publications appeared in large numbers, which extended the readers' knowledge from family accounts by additional information about the size and details of the crimes.

3. Denial of the crimes – *Auschwitzlüge*

The general knowledge of crimes committed during the Second World War made it unimaginable that anyone in Poland should deny their existence, just as praising fascism was considered equally improbable.²³ Therefore, Poland reacted with astonishment to comments accompanying the great trial of the members of Auschwitz staff in Frankfurt am Main (1963–1965), from the course of which – according to press reports at that time – the German public opinion for the first time in nearly twenty years after the defeat of the Reich had learned about the existence of this death camp and the crimes committed there. However, the fact was that it was as late as 1964 that representatives of the German judiciary had come to KL Auschwitz for the first time to conduct crime scene investigation of the camp site.²⁴ Polish side contributed significant evidence to the Frankfurt trial (60 witnesses came from Poland).

Looking from the Polish perspective, it also seemed that the continuous cooperation with the Central Office for the Investigation of National Socialist Crimes in Ludwigsburg, created in 1958, where the launched investigations were handed over along with their evidence (the largest collection of copies of documents – 80,000, comes from Poland) made it completely improbable to assume that anyone except for the perpetrators exercising the right

²³ Criminal liability for public praising of fascism was established in Polish criminal law in 1944, before the end of the war. Giving publicly the Hitler salute, as well as displaying swastika in a public place, nowadays occurring incidentally, is also regarded by the courts as behaviour constituting an offence. In the court practice, explanations of young perpetrators that such behaviour was just a “prank” are not accepted as an excuse. W. Kulesza, “Pochwalanie faszyzmu i komunizmu w świetle prawa karnego (uwagi de lege praevia, lata et ferenda), in: *Teoretyczne i praktyczne problemy współczesnego prawa karnego. Księga jubileuszowa dedykowana Profesorowi Tadeuszowi Bojarskiemu*, eds. A. Michalska-Warias, I. Nowinkowski, J. Piórkowska-Flieger, Wydawnictwo Uniwersytetu Marii Curie-Skłodowskiej, Lublin, 2011, pp. 415 ff.

²⁴ W. Kulesza, Przedmowa do polskiego wydania, in: H. Langbein, *Auschwitz przed sądem. Proces we Frankfurcie nad Menem 1963–1965. Dokumentacja*, Instytut Pamięci Narodowej – Komisja Ścigania Zbrodni Przeciwko Narodowi Polskiemu, Państwowe Muzeum Auschwitz-Birkenau, Via Nova, Wrocław–Warszawa–Oświęcim, 2011, p. XVII.

to defence should deny these crimes or declare ignorance of their existence. Therefore, the Polish public opinion first distrusted the press reports, and then was shocked at Germany's public denial of the Nazi genocide, which took the form of inscriptions hung around the necks of right-wing extremists, participants of demonstrators in 1978 in Hamburg, which said: "I, a donkey, still believe that the Jews were 'gassed' in German concentration camps;" "I, a donkey, believe in the lie of gassing...;" "I, a donkey, still believe in the propaganda lies of the victorious powers." Scenes from the "march of donkeys" were shown time and again for a long time by the Polish television, causing the same reactions full of understandable indignation among the public regardless of political divisions and the attitude towards this measure of political propaganda.

4. Polish reaction to *Auschwitzlüge* – the genesis of criminalisation

It has been a long-time belief in Poland that sufficient response to the denial of Third Reich crimes would be to continue publishing the documentation of these crimes, reports of eye witnesses, and historical and legal studies, showing the many dimensions of crimes committed by the German occupier and the issue of their perpetrators' criminal liability. Hundreds of major publications appeared in large quantities, which still continue to be of documentary and scientific value today. Highlighting the need to oppose the denial of crimes in Germany, the documentation of Hans Biebow's trial, the commandant of the ghetto in Lodz, was published.²⁵ Because the phe-

²⁵ The introduction to the transcript, published in 1987, of the trial of Hans Biebow, the commandant of the ghetto in Lodz, which took place before the Regional Court in Lodz in 1947, read that it appeared in response to the phenomenon of *Auschwitzlüge* growing in Germany, seen from the Polish perspective as a deliberate and cynical attempt to deny the practice of genocide and get rid of the terrible legacy. *Proces Hansa Biebowa. Zagłada getta łódzkiego. Akta i stenogramy sądowe*, ed. J. Lewiński, introd. J. Waszczyński, Główna Komisja Badania Zbrodni Hitlerowskich w Polsce – Instytut Pamięci Narodowej, Warszawa, 1987, p. 5. Biebow, earlier appearing as a witness in Greiser's trial, testified that he was ordered to deliver to this supreme officer of the Reich in the Wathegau gold "which was to be used to make a larger table service" and "later a request was placed for a delivery of silver in the amount of 40 to 50 kg." When the prosecutor asked whether the officials reporting to Greiser knew that the valuables and clothing had come from those murdered in Chelmno, he replied: "I am deeply convinced that they did." He also testified that he had personally travelled to Chelmno to collect valuables "three or four times" and that: "One could believe that the Jews who had been brought there were dead.", *Proces Artura Greisera*, pp. 302, 304. In his own trial, defendant Biebow claimed – as recorded in the transcript of the hearing – that he "had

nomenon of *Auschwitzlüge* surfaced abroad, it was assumed that there was no need to counteract it with an appropriate provision of Polish criminal law which would qualify denial of historical facts as a prohibited act, assuming that such behaviour would not occur in the country where the German occupier had committed these crimes.

Work on the draft of relevant solution in Polish criminal law was somehow forced by the question addressed in the mid-1990s to the Main Commission for the Investigation of Crimes against the Polish Nation about the criminal law assessment of the statements registered at that time for the purpose of a documentary in the camp of Auschwitz-Birkenau by a German neo-Nazi, which constituted *Auschwitzlüge* within the meaning of the German criminal law. Presentation of this issue requires quoting fragments of what Ewald Althans said to the camera.²⁶ Buying a book about the Holocaust at a stand next to the camp gate, he read from it the words: "Here, in our Auschwitz" and added "willingly!" and a moment later he added "We will have something to laugh at on the way back." Walking along the street of the camp he commented: "This is a load of crap what I see here. That is just absolute nothing. And after all hardly anyone comes to Birkenau, except for the pope, for example." In the gas chamber, Althans questioned that it was used for murdering victims with cyclone B. ("How does cyclone B work? What is cyclone B [...] Cyanide oxide and brick produce Prussian blue when mixed!"), and when reprimanded by a senior German present there ("How is it that you, as a German, can come here! I'm ashamed [of you]. Get out of here!"), he replied, "Yes, I as a German come here and defend against this that millions of people come here before these dummies. I defend myself against that lies are being spread here and then young people quite simply believe in what they are." A moment later, in a conversation with a young American, he said about Auschwitz, "[...] it was a concentration camp, but not a death camp." He said about the Jews in Auschwitz: "We didn't destroy them, because they all survived and now all receive money from Germany. All over the world, there are the ones who survived and are spreading propaganda against us." At the end he said, "I am fighting for the truth" and described Auschwitz as a "Disneyland for Eastern Europe!"

Semantic analysis of the cited confessions led to the conclusion that they do not give in to the criminal law qualification in terms of praising

no absolute certainty" that the Jews taken away in rail transports, which he had personally sent off from the Lodz ghetto, were murdered in the death camp in Chelmno, because, as he argued, "officially he was not supposed to know.", *Proces Hansa Biebowa*, p. 94.

²⁶ All quotations from the typescript written by Rolf Seubert from the soundtrack of the documentary "Nazi von Beruf".

fascism, described in Article 270 § 2 of the then applicable Penal Code of 1969. Nor was it possible to justify regarding them as the crime of incitement to hatred based on national or racial differences within the meaning of Article 272 of the Penal Code, or as meeting the criteria of humiliation of a group of people, which was defined in Article 274 § 1 of the Penal Code. Hence, provision of Article 284 § 2 of the Penal Code establishing criminal liability of the person “who insults a monument or other work exhibited to the public in order to commemorate a historical event or commemorate a person” was used as the basis for the establishment of their illegality. The expressions “a load of crap,” “dummies,” “Disneyland for Eastern Europe” used by Althans without doubt – also as regards the intention of the speaker – were of an insulting nature, and therefore it was assumed that they were spoken with the intent to insult. However, there were doubts as to whether the perpetrator insulted a “monument,” or whether the legislator included within this term the extermination camp of Auschwitz-Birkenau as the statutory feature of an offence. According to the commentary to Article 284 § 2 of the Penal Code of 1969, a “monument” is an architectural or architectural and sculptural work in the form of a statue, plaque, etc., erected to commemorate and celebrate a person or a historical event.²⁷ Auschwitz was neither “erected” nor “exhibited,” but kept in a state in which it was during the liberation of the camp in January 1945, so as to be preserved as evidence of the genocide committed in it. Taking into account many legal aspects, an intensive interpretation of the regulation was carried out in such a way as to include in its content historical monuments, an example of which this preserved extermination camp undoubtedly is. Such an interpretation, however, did not solve the issue of criminal liability for the verbal statements and publications which essentially deny genocide, if their form does not have an insulting nature. In other words, the question remained open whether the statement by Althans would have constituted lawlessness in the light of Polish criminal law if it had been worded differently – that is, whether with an unchanged content, its form would not have given grounds for the accusation of an insult of a historical monument which is a place of national remembrance.

The difficulties which arose in connection with the need to qualify statements containing *Auschwitzlüge* under the Polish law justified the demand for the introduction of a provision which would allow judges to give an unambiguous ruling, if the perpetrator were to stand before the Polish courts. Taking into account the evolution of the German criminal law, the

²⁷ I. Andrejew, W. Świda, W. Wolter, *Kodeks karny z komentarzem*, Wydawnictwo Prawnicze, Warszawa, 1973, p. 846.

following wording was proposed: “Anyone who, contrary to the historical facts, publicly raises or spreads untruth about the crimes of genocide committed against the Polish Nation or on the territory of the Polish state during World War II, shall be punishable by imprisonment of up to three years.”²⁸ In a modified stylistic form, the provision was included in the Act of 18 December 1998 on the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation, whose Article 55 reads: “Anyone who publicly and contrary to facts denies the crimes mentioned to in Article 1, clause 1 [Nazi crimes, communist crimes, as well as crimes against peace, humanity or war crimes, perpetrated from 1 September 1939] shall be subject to a fine or imprisonment of up to three years. The judgement shall be made publicly known.”

5. Collective memory as an interest under the protection of criminal law

The interest afforded protection under the above-cited provision is collective memory, which is part of a broader concept of human dignity of all those who, on account of nationality or race, would be classified as “subhuman” according to the criteria of the National Socialist ideology.²⁹ It was assumed that the modern collective memory includes the Polish nation’s war and occupation experience beginning from 1 September 1939, understood as a legal category which covered – even before the war – not just citizens of Polish nationality, but all the “ethnic elements” making up Polish society.³⁰ This understanding of the concept of Polish nation allows claiming that currently it is an insult to the national dignity to deny the crimes committed against victims who belonged to Polish society before

²⁸ W. Kulesza, “Zaprzeczenie prawdy o ludobójstwie dokonanym w okresie II wojny światowej w świetle prawa karnego”, *Acta Universitatis Lodzianensis, Folia Iuridica* 63 (1995), pp. 59 ff.

²⁹ W. Kulesza, “Kłamstwo o Auschwitz’ jako czyn zabroniony w polskim i niemieckim prawie karnym, in: *Aktualne problemy prawa karnego. Księga pamiątkowa z okazji jubileuszu 70. urodzin Profesora Andrzeja J. Szwarca*, ed. Ł. Pohl, Wydawnictwo Naukowe Uniwersytetu im. Adama Mickiewicza, Poznań, 2009, p. 307.

³⁰ J. Makarewicz, “Wykładnia kodeksu karnego. Naród Polski”, *Gazeta Sądowa Warszawska* 1934, No. 26; and id., *Kodeks karny z komentarzem*, Zakład Narodowy im. Ossolińskich, Lwów, 1938, pp. 402–405. The reason for which Makarewicz adopted this understanding of the nation, see: W. Kulesza, in: *System prawa karnego*, vol. 4: *O przestępstwach w szczególności*, part 2, eds. I. Andrejew, L. Kubicki, J. Waszczyński, Ossolineum, Warszawa, 1989, p. 736.

the war outbreak, regardless of their nationality, i.e. both against the Poles and the Jews, as well as the Gypsies.³¹

The historical truth about crimes committed during the Second World War is part of the national consciousness of contemporary people, which is the basis for self-determination of individuals in their sense of belonging to the nation and the sense of their own dignity associated with it, as members of the community of memory. Contemporary collective memory therefore is a functor of human dignity of all those who had created Polish society when it became the victim of crimes committed in the name of fulfilment of the National Socialist ideology. Denying historical facts which are particularly deeply rooted in the national consciousness, also when they refer to the individual parts making up the Polish nation in the legal sense, may thus be assessed as an act violating collective memory, and by this, the dignity of all individuals feeling a part of the community of memory. This way, the criminal provision protects not only the surviving members of families of Nazi and communist victims, fully deserving special consideration, but also – more broadly – protects the nation's memory of the fact that before the war it was also composed of non-Polish "ethnic elements" which accounted for a third of it. In other words: the memory of the fate of all those who formed the nation and other nationalities living in Poland at the moment of the WWII outbreak, who became the victims of crimes against humanity and war crimes, is a legally protected basis for national self-identification of Poles today, regardless of their nationality and place of residence.

From this perspective, statements constituting *Auschwitzlüge* even though they cannot change or even endanger the historical truth about Nazi crimes because as such it remains immutable, are the acts of lawlessness against contemporary people's collective memory of these crimes and their perpetrators. The legal basis for assessing such statements in terms of illegality has become the provision of the Act on the punishability of "anyone who publicly and contrary to facts denies" Nazi crimes. This way, Auschwitz-Birkenau has become one of the main links in the genetic chain of the code of memory, while the criminal law protection includes the memory of all the victims murdered there, regardless of their citizenship,

³¹ This understanding of the subject of protection refers to the main thesis of the indictment submitted to the International Military Court in Nuremberg, in which it was written: "The accused have been guilty of deliberate and systematic genocide, i.e. the extermination of racial and national groups... in order to destroy predetermined races and classes, and national, racial or religious groups, most especially the Jews, the Poles, the Gypsies and others.", *Trial of the Major War Criminals before the International Military Tribunal. Official Text in the English Language*, Nuremberg, 1947–1949, vol. 1, pp. 43–44.

nationality and country from which they were brought. Therefore, the Polish solution anticipated the philosophy which underlay the Framework Decision of 2008 indicating the need for protecting the collective memory of the Holocaust in the EU countries.

It should be emphasised that the latest comparative study of legal solutions adopted in Germany, France, Poland and England leads to the conclusion that their common purpose is to protect legal interest which is the collective memory defined the same way. Establishment of the criminal law protection in these countries gives rise to the treatment of the relevant provisions of law as forming its new branch – “criminal law of memory” (*Erinnerungsstrafrecht*), a term which was used as the title of a thorough comparative law study and illustrates well the essence of the analysed statutory solutions.³²

Therefore, it becomes particularly important to understand that the “chain of the genetic code of collective memory” is subject to the criminal law protection as a legal interest in the interest of the European community, and not only because of the protection of national interests in various European countries where crimes against humanity were committed, which are not time-barred. From this point of view, it should be noted that the denial of what happened in Auschwitz-Birkenau violates this legal interest protected both in Poland and in other European countries, including – of course – Germany.³³

6. The term “Polish concentration camps” and punishable denial of Nazi crimes

The use of the phrase “Polish concentration camps” in a statement, which in itself remains in obvious contradiction to the generally known historical facts, is relevant from the point of view of criminal law. This phrase is perceived as implying Polish perpetration of crimes against humanity carried out in the camps. The semantics of the phrase “Polish concentration camp” is not read by the Polish society as indicating a German camp in occupied Poland, but – in common reception – in terms of ascribing to the Poles

³² M. Matuschek, *Erinnerungsstrafrecht. Eine Neubegründung des Verbots der Holocaustleugnung aus rechtsvergleichender und sozialphilosophischer Grundlage*, Schriften zum Strafrecht 231, Duncker & Humblot, Berlin, 2012, pp. 130 ff., 195 ff., 247.

³³ W. Kulesza, “Auschwitz – Lüge”, in: *Vergleichende Strafrechtswissenschaft. Frankfurter Festschrift für Andrzej J. Szwarc zum 70. Geburtstag*, Schriften zum Strafrecht 231, hrsg. J.C. Joerden, U. Scheffler, A. Sinn, G. Wolf, Duncker & Humblot, Berlin, 2009, pp. 336 ff.

the organisation of such a camp and responsibility for what happened in it. Such interpretation of the phrase, regardless of the intentions of the person who used it, justifies the protest of all those feeling part of the community of memory. In the collective memory including generally known facts, there is no referent of the phrase "Polish concentration camp," hence its use evokes strong opposition because of an obvious and gross contradiction, recognisable to everyone, with what has been encoded in this memory. Such a statement – in fact, in denial of the facts – is understood as containing implicit simultaneous negation of the German perpetration of crimes against humanity. At the same time, it should be emphasised that speaking publicly about "Polish concentration camps" remains in gross conflict not only with the collective memory of Polish society, but also the memory of societies of other countries occupied by the Third Reich from which the victims were brought to the German concentration camps and extermination centres organised by the occupier in Poland defeated in September 1939.

The condition of punishability of statements understood by the listeners or readers as denial of Nazi crimes depends on whether the author of the incriminated enunciation, being aware of historical facts included in common knowledge available to him or her, deliberately, i.e. wishing that his/her words were understood as a statement that the facts of the crime did not take place, or anticipating the possibility that they are received like this, agrees to it. Article 55 of the Act on the Institute of National Remembrance enacts criminal liability only for intentional denial of crimes, leaving unpunishable statements whose authors unintentionally violate the collective memory as an interest protected by law. This means that the violation of a legal interest, which is collective memory, through the use of the phrase "Polish concentration camps" in a public statement appears as a punishable act in accordance with the Polish law in those cases in which the speaker, being aware that Poland occupied by the Third Reich was home to a criminal system that encompassed German concentration camps, calls them "Polish," thus denying historical facts and at the same time through this phrase indicating the alleged Polish perpetration of the genocide committed in them.

Statements containing the phrase "Polish concentration camps," whose authors explain *ex post* that their only intention was to identify the camps' geographical location outside the borders of Germany, not denying the German perpetration of their creation and the genocide committed in them, remain elusive from the point of view of criminal law. However, it must be noted that the phrase "Austrian concentration camp Mauthausen" is not used to indicate that it was outside Germany, nor is Dachau called the German camp to indicate its location, being only described as "Nazi."

When faced with the objection to using the words “Polish concentration camp,” the authors in their explanations sometimes merely assert that it was a “mental shortcut,” which was to be justified by the “fever of editorial work,” as well as length restrictions on the column text. Public statements, i.e. made in the presence of larger audiences, are usually explained by the fact that the speaker assumed that the words he spoke would be understood in accordance with his or her intention, i.e. as referring to the German concentration camps located in Poland occupied during the Second World War. The shortest explanation would be to admit that the statement was a *lapsus linguae*. Although explanations of the authors of such statements can appear as a kind of self-justification, not speaking well of them in professional terms – as journalists, publicists, or participants of public life – however, in general, it is not possible to prove that these statements sought to pursue an intention to deny Nazi crimes contrary to the facts and in public.

It must be clearly emphasised that the code of memory is not contradicted by designations which do not deny the fact that the Third Reich implemented the extermination plan on the seized territory and which do not contain suggestions of Polish perpetration of crimes, but indicate the names of places where crime stages, i.e. ghettos, were organised. Therefore, phrases such as the “Warsaw Ghetto,” “Łódź ghetto” (where the Jews from entire occupied Europe were brought),³⁴ “Auschwitz camp,” “centre of immediate extermination in Chelmno on the Ner,” “Majdanek concentration camp,” remain in accordance with the collective memory. Phrases such as the “Polish ghetto in Warsaw” or the “Polish concentration camp Majdanek” would be inconsistent with the facts well-established in the collective memory and as such unlawful.

7. Conclusions

The unlawfulness of the phrase “Polish concentration camps” is implied by the criminal law protection of collective memory which is a general interest protected under Polish criminal law, as well as the legal systems of states that regard public statements constituting *Auschwitzlüge* as prohibited acts. This interest under the protection of law is, therefore, of a transnational and cross-border nature, therefore, regardless of the place of occurrence, the use of the adjective “Polish” with reference to a German concentration camp has

³⁴ See A. Löw, *Getto łódzkie / Litzmannstadt Getto. Warunki życia i sposoby przetrwania*, Wydawnictwo Uniwersytetu Łódzkiego, Łódź 2012.

to be treated as an unlawful act causing harm to the interest of a universal importance. Being generally available, the knowledge about the genocide – its victims, places and perpetrators – is the hallmark of contemporary societies' civilisation. The use of the incriminated phrase "Polish concentration camp" is in every case an unlawful behaviour in the light of the legal standard protecting collective memory, whereas the condition of the perpetrator's criminal liability involves establishing whether he/she acted with intent, i.e. with the awareness and will to deny the German crimes. The lack of this intent, with the simultaneous violation, out of carelessness or negligence, of the rules of prudence while formulating public enunciations with collective memory formed on the basis of generally known historical facts, is not a sufficient condition for finding that the author performed the prohibited act intentionally in the light of criminal law. The intentionality of the perpetrator with which he or she denies the facts of crimes is a condition for his/her criminal liability – a constitutive element of the crime of the "Auschwitz lie." Even though it excludes the perpetrator's criminal liability, the lack of intentionality behind the constituent elements of the offence does not deprive the violated standard of criminal law of the function condemning the perpetrator unintentionally attacking the interest protected by law. In other words – in those cases in which the person talking about Polish concentration camps does not act *cum animo negationis* (with the intention of denying) the facts of Nazi crimes, his or her criminal liability does not apply, but the unlawfulness of the statement is not repealed.

As noted by social psychology, the assessment of the lawlessness manifested in the public use of the phrase "Polish concentration camps" requires taking into consideration that press publications are entitled to the presumption of good faith in which the recipients of the mass information relate to the content of the published enunciations. Therefore, the impossibility of proving to the speaker that he or she does so with the intention of denying historical facts does not cancel the lawlessness included in the content of his/her statement that insults the collective memory. Even though the penal provision on denying Nazi crimes contrary to the facts is not applicable as a justification for sentencing authors who use the incriminated phrases, it is the basis for condemning their statements as unlawful in the light of legally protected collective memory of the genocide during World War II. This provision also includes the memory of the crime victims, as a basis for the assessment in terms of lawlessness of statements contrary to the elementary cultural standard based on historical truth. Hence, making the accusation of the use of a defective code of memory and condemning the statement must be regarded in every case as a kind of act of necessary defence of the legal interest, which is the collective memory of nations involved in World

War II. This form of reaction to the words "Polish concentration camps" seems to be appropriate and necessary to also protect human dignity of those who feel morally responsible to remember and shape the language used nowadays to speak about what was written on the twentieth century history's black pages. Even though the incriminated phrase does not cause erosion of the code of memory where Auschwitz-Birkenau, Belzec, Kulmhof, Majdanek, Sobibor and Treblinka are saved as its basic links, because the historical truth, included in permanent memory and documented, remains invariable, the use of the phrase "Polish concentration camps" is an act of perversion of the spoken and written language used to describe the places of extermination. The necessity to react and condemn such statements also stems from the danger that degenerate language poses to young people, because the phrase, when left without condemnation, may give them an impulse to assume that it is within the generally accepted formula of speaking and writing about the crimes against humanity committed during the Second World War in occupied Poland. Finally, public opposition to the aberrations of speech and drawing attention to the legal aspect seem to be necessary to protect the speaker from the danger of recidivism – as a criminal law attorney would say, i.e. the repetition of words which constitute an unlawful assault on the dignity of fellow human beings who are nowadays connected with the cross-generational community of memory.

The establishment in 1998 of the punishability of public denial of Nazi crimes against the facts, which meant criminalisation, within the scope presented above, of the phrase "Polish concentration camp" in the Act of 7 May 1999 on the protection of former Nazi extermination camps, has led to normative definition of the concept of the "Monument of Extermination," including: the Monument to the Martyrdom in Oswiecim, the Monument to the Martyrdom in Majdanek, the "Stutthof" Museum in Sztutowo, the Gross-Rosen Museum in Rogoznica, the Mausoleum of Struggle and Martyrdom in Treblinka, the Museum of Martyrdom – Camp in Chelmno on the Ner, the Museum of the Former Death Camp in Sobibor, and the Former Extermination Camp in Belzec. The Polish government reacted to references to the Nazi death camps as "Polish death camps" recurring in the foreign media with the request to the UNESCO for giving the Auschwitz-Birkenau camp a new name. The UNESCO World Heritage Committee complied with the request at its meeting on 27 June 2007, deciding to change the name to: "Auschwitz-Birkenau. The German Nazi Concentration and Extermination Camp 1940–1945."

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ACCESSIBILITY OF LEGAL RECOURSE AGAINST DEFECTIVE CODES OF MEMORY IN GERMANY

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1. Introduction

In recent years, international media have frequently used the erroneous phrase (the so-called defective code of memory) “Polish concentration camps” to describe Nazi German concentration camps. One such situation led Zbigniew Osewski to bring a lawsuit against the Axel Springer publishing house before the Regional Court in Warsaw. The plaintiff demanded that the publishing house apologize to him and all the Poles, and pay 500,000 zlotys in compensation to a public benefit organisation.¹ The suit was caused by an article published in *Die Welt* on 24 November 2008, entitled “Asaf’s journey around the world,” which included the following sentence: “A group of Israeli students had the photo with them during their trip to the former Polish concentration camp Majdanek.”² Thomas Schmid, the editor-in-chief, gave his written apologies for that sentence, which were published on 26 November 2008 in *Die Welt*. The plaintiff considered the apologies as inadequate, and filed a suit based on the Polish substantive law. This study aims to present legal consequences of a violation by the press of the general right to personality³, and its enforcement by the means provided for in Germany’s civil law.

¹ For more about the case, see: <http://www.lex.pl/czytaj/-/artykul/die-welt-przed-polskim-sadem-za-polski-oboz-koncentracyjny> (access: 02 January 2014).

² German: “Eine israelische Schulgruppe hatte das Foto auf ihrer Reise in das ehemalige polnische Konzentrationslager Majdanek dabei.”

³ German: “allgemeine Persönlichkeitsrecht.”

2. Protection under the right to personality derived from the German Constitution

The so-called right to personality is a fundamental right⁴ serving to protect human personality against attacks on life and freedom. German law does not regulate the right to personality in an explicit way. After the Federal Constitutional Court was established in 1951 and began to develop law through interpretation by Court justices, the general right to personality has been derived from Article 1.1 of the German Constitution and its concept of human dignity, in conjunction with Article 2.1 sentence 1 of the German Constitution which deals with the protection of the free development of personality. In the meantime, the general right to personality has gained the status of a fundamental right.⁵ With this right being broad and comprehensive, the German Constitutional Court's case law has developed categories of cases which are aimed at putting in order and specifying the scope of this right's application. The most important – although this list is not exhaustive – categories of cases developed by the Constitutional Court include protection of the private, confidential and intimate spheres, which also guarantees protection of the isolated scope of personal development. This group of cases includes records documenting, e.g., medical history. The right to the spoken word ensures protection against surreptitious recording. The right to the written word protects against unauthorised publication of diaries. The claim for proper citation stems from the protection against the distortion or attribution of a statement. These categories also include the individual's right to decide how data about them are used and stored as the right to informational self-determination.⁶

In the group of cases concerned with protecting the right to personal image, the question often arises about relative public figures and public

⁴ Germany's constitutional law uses the term *Grundrechte* (fundamental rights) to describe what is commonly referred to as human rights (German: *Menschenrechte*), i.e. the individual's rights which are supranational and independent of their recognition in the national constitution. Unlike some other international regulations, the catalogue of fundamental rights contained in the German Constitution (henceforth: GC) stipulates that some of these rights can be enjoyed only by German citizens, not every person, as follows from the norms of international law (e.g., exercising the freedom of association – Article 9 of the GC). For more about the concept of *Grundrechte*, see *Creifelds Rechtswörterbuch*, C.H. Beck, München, 2011, pp. 554 ff.

⁵ T. Maunz, G. Dürig et al., *Kommentar zum Grundgesetz*, C.H. Beck, München, 2013, Article 2 of the GC, n.b. 127.

⁶ *Ibid.*, 142.

figures *par excellence*⁷. Note should be taken of the considerable practical significance given to the protection of personality in connection with press and radio coverage of private matters of prominent figures, and publication of photos depicting their private sphere. Private law protection is primarily directed against insults and lies of third parties.⁸ While the German law in principle allows for telling the truth, there should be no acceptance for making false statements.⁹

3. Legal consequences of violating personality right

Media rights and freedoms are at odds with partly conflicting interests of a victim of media coverage. Whereas the media should receive enough protection to be able to freely perform their activities and functions, the person affected by media reports must be protected against their negative impact, or against such person's unwanted depiction in the media.¹⁰

3.1. Claim for abandonment (Der Unterlassungsanspruch)

It should be noted that the German civil law has no regulations concerning the protection of personal rights of an individual similar to Articles 23 and 24 of the Polish Civil Code.¹¹ The claim for abandonment is based on the analogy to section 823.1 of the German Civil Code¹² in conjunction with section 1004 of the GCC¹³, and provides protection against future

⁷ German: "relative und absolute Personen der Zeitgeschichte."

⁸ Maunz, Dürig, *Kommentar*, Article 2 of the GC, n.b. 142.

⁹ O. Stegmann, *Tatsachenbehauptungen und Werturteil in der deutschen und französischen Presse*, Mohr Siebeck, Tübingen, 2004, p. 527.

¹⁰ D. Dörr, J. Kreile, M.D. Cole, *Handbuch des Medienrechts*, C.H. Beck, München, 2009, p. 384.

¹¹ For more about tort liability in German civil law and closing this gap by way of interpretation, see J. Kuźmicka-Sulikowska, *Odpowiedzialność deliktowa w prawie wybranych państw obcych*, Wydawnictwo Uniwersytetu Wrocławskiego, Wrocław, 2011, pp. 83–207.

¹² Section 823.1 of the GCC reads as follows: "A person who, intentionally or negligently, unlawfully injures the life, body, health, freedom, property or another right of another person is liable to make compensation to the other party for the damage arising from this." (German: "Wer vorsätzlich oder fahrlässig das Leben, den Körper, die Gesundheit, die Freiheit, das Eigentum oder ein sonstiges Recht eines anderen widerrechtlich verletzt, ist dem anderen zum Ersatz des daraus entstehenden Schadens verpflichtet").

¹³ According to section 1004 of the GCC, if the ownership is interfered with by means other than removal or retention of possession, the owner may require the disturber to remove the interference. If further interferences are to be feared, the owner may seek a prohibitory

violations of the individual's legal interests. In practice, this claim, along with the claim for presenting a contrary opinion, is the most frequent instrument of the victim's defence against press publications.¹⁴ Conditions that are necessary to assert this claim include law violation, illegality, and the risk of an infringement (risk of repetition or first-time commitment).

The general right to personality is protected by section 823.1 of the GCC. As part of the burden of proof arising under this section, the victim must sufficiently demonstrate that a specific depiction is false or unacceptable for other reasons, and has violated their right. The claim may be directed against statements about facts, and statements about opinions.¹⁵ In particular, the claim for abandonment may be lodged against untrue statements about facts, true statements about facts that violate the law, and against statements of opinions which contain **insulting** criticism. In this situation, the freedom of expression must give in, because only true statements about facts can contribute to the formation of opinions.

It was indicated above that the violation of the general right to personality must be against the law. As opposed to the violation of other legal interests, protected by section 823.1 of the GCC, the conflict with law must be established, since the scope of influence of the general right to personality is of a general clause nature, and is not as limited as other facts covered by the disposition of this section.¹⁶ The case law has yet to give a comprehensive description or definition of the scope of protection. On the contrary, the Federal Constitutional Court emphasises openness to the development of the protection of this right.¹⁷ As part of it, it should also be examined how a statement will be received by an average reader, and whether the statement corresponds to the facts. However, it does not depend on whether the infringement of law stems¹⁸ from a deliberate or

injunction. The claim is excluded, if the owner is obliged to tolerate the interference. (Ger. [1] Wird das Eigentum in anderer Weise als durch Entziehung oder Vorenthaltung des Besitzes beeinträchtigt, so kann der Eigentümer von dem Störer die Beseitigung der Beeinträchtigung verlangen. Sind weitere Beeinträchtigungen zu besorgen, so kann der Eigentümer auf Unterlassung klagen. [2] Der Anspruch ist ausgeschlossen, wenn der Eigentümer zur Duldung verpflichtet ist").

¹⁴ H.-P. Götting, Ch. Schertz, W. Seitz, *Handbuch des Persönlichkeitsrechts*, C.H. Beck, München, 2008, § 47, n.b. 1.

¹⁵ R. Ricker, J. Weberling, *Handbuch des Presserechts*, C.H. Beck, München, 2012, ch. 44, n.b. 1.

¹⁶ Bundesgerichtshof, file No.: VI ZR 9/56 of 2 April 1957, BGHZ 24, 72, 80.

¹⁷ Maunz, Dürig, *Kommentar*, Article 2 of the GC, n.b. 147, see judgement of the FCC, file No. 1 BvR 185/77 of 3 June 1980, BVerfGE 54, 148 (153).

¹⁸ M. Paschke, W. Berlitz, C. Meyer, *Hamburger Kommentar Medienrecht*, Nomos, Baden-Baden, 2008, p. 39, n.b. 1 ff.

reckless breach of the duty of journalistic diligence.¹⁹ Since the claim for abandonment also applies to the future, it may cover the reporting of facts which were shown to be untrue only after publication. If the obligated party originally fulfilled their duty of diligence and acted in defence of legitimate interests, they should refrain from making statements in the future, if their untruthfulness was revealed at a later point.²⁰ The claim for abandonment is not excluded either when it comes to different interpretations of a statement, but then the so-called principle of privilege applies. According to it, if different, not mutually exclusive meanings of a statement are possible, legal assessment should be undertaken with respect to the one which is more favourable to the defendant, and which is less harsh for the person affected by the statement.²¹

The claim for abandonment assumes the risk of committing an act, which means that there must be a serious concern about the infringement of law. In practice, the main case is the risk of recommitting an act. Under the established case law, if a publication infringing the law has already appeared, this assumption is vindicated by the very fact that a similar publication could repeat.²² The risk of committing an act for the first time, which exists before the publication, presupposes serious and palpable starting points for an infringement of law which may take shape in the near future.²³ According to the legal presumption, the risk of recommitting an act after a statement infringing the law exists so long as the person responsible for such statement does not make a declaration about ceasing further infringements which carry a penalty.²⁴

The person against whom the claim is made must be disrupting the legal order. We can talk about a disrupting person when an adequate causal link exists between their acts or omissions that run counter to their duties, and the infringement.²⁵ Law is also infringed by a person that maintains the

¹⁹ The duty of journalistic care is provided for in the acts on press law of individual federal states, e.g., in Rhine-Westphalia, it is regulated by § 6 of the Act of 24 May 1966, Press Law for Rhine-Westphalia.

²⁰ A. Beater, *Medienrecht*, Mohr Siebeck, Tübingen, 2007, n.b. 1917.

²¹ Bundesgerichtshof, file No. VI ZR 205/97, judgement of 16 June 1998, BGH Z 139, p. 95.

²² Bundesgerichtshof, publ. *Neue Juristische Wochenschrift*, 1998, pp. 1392, 1393.

²³ E. Wanckel, "Die Durchsetzung von presserechtlichen Unterlassungsansprüchen", *Neue Juristische Wochenschrift*, 2009, pp. 3353, 3354.

²⁴ K. Wenzel, E. Burkhardt, W. Gamer, *Das Recht der Wort- und Bildberichterstattungen*, OVS, Köln, 2003, ch. 12, n.b. 17.

²⁵ O. Palandt, *Bürgerliches Gesetzbuch, Kommentar*, C.H. Beck, München, 2013, § 1004, n.b. 6.

state of infringement where the elimination of this state is at least indirectly dependent upon their will, and such person is able to eliminate this state. If the interference involved a large group of people, the claim may be directed against any one of those disrupting the legal order.

It is the person who made the statement that should be held accountable for it in the first place. In principle, however, part of responsibility for statements or unlawful publications may fall on a person who did not prevent them despite the obligation of supervision. Held accountable may also be a person who is able to forestall the repetition of the statement or elimination of the statement's consequences.²⁶

If the above premises are met, the adversary should call for a declaration about ceasing the infringements on pain of penalty.²⁷ Through this declaration, the person in question should undertake not to use or cease spreading a specific statement. Should they fail to honour this obligation, they must pay a contractual penalty to the person concerned. Due to the need for an effective reaction, the claim for abandonment can be asserted both in the course of proceedings for obtaining security against a press company, and by way of a lawsuit.²⁸

3.2. Claim for presenting views of the other side (*der Gegendarstellungsanspruch*)

Careful assessment is necessary whenever opinions that have been uttered or publicized by the media are offensive or violate similar values. Fundamental right requires an effective protection against the media interfering in a person's individual sphere.²⁹ Therefore, it is required from the point of view of constitutional law that an effective right be guaranteed to present a contrary opinion.³⁰

It is chiefly federal states' parliaments that have legislative competence in respect of press law. As a result, apart from the claim for abandonment, norms applicable in a given federal state enable the injured party to demand

²⁶ For more, see Beater, *Medienrecht*, n.b. 1896–1913, along with the quoted judicial decisions and literature.

²⁷ *Ibid.*, n.b. 1920 and 1984, along with judicial decisions quoted there.

²⁸ *Ibid.*, n.b. 1920.

²⁹ FCC, file No. 1 BvF 1/84, judgement of 4 November 1986, BVerfGE 73, 118/201.

³⁰ FCC, file No. 1 BvL 20/81, judgement of 8 February 1983, BVerfGE 63, 131/142f., FCC, file No. 73, 118/201. In this judgement, the Federal Constitutional Court found the statutory norm introducing the obligation to report the right within two weeks after the challenged programme to be unconstitutional and invalid, see also H. Jarass, B. Pieroth, *Grundgesetz für die Bundesrepublik Deutschland, Kommentar*, C.H. Beck, München, 2011, Article 2 n.b. 71.

that their version of the story be presented. The claim in question represents a strong entitlement which in a way should ensure respect for the equality of arms. It assumes that facts were disseminated which may not necessarily be false. The issue of whether statements are about facts or values is resolved according to whether the statement can generally be proven before the court, without the need for evidence in a particular case to actually succeed.³¹ The right to the claim for presenting views of the other side is based on a substantive presentation of the challenged statement,³² but the media, despite the obligation to publish it, may distance themselves from its content. The point is to enable the person entitled to the claim to set out their position.

The victim must have a legitimate interest in disseminating the alternative stance. Such interest exists when the person has been affected in their own sphere of the general right to personality. Whether the statement about the facts is true or false is irrelevant.³³

The other side's opinion must be presented in the proper form,³⁴ which should be assessed in terms of the length and distinctness of the first message against which it is directed. The other side's view must be published within a short period of time (specified by the law) after the original story, and be personally signed, depending on press law provisions applicable in specific federal states.³⁵

3.3. Correction and retraction (*Berichtigung und Widerruf*)

Apart from the claims for abandonment and presenting a contrary opinion, the German case law has developed a claim for removing the effects of an unlawful act, in particular a claim for correction, drawing on the analogous application of the provisions of sections 823 and 1004 of the GCC. As with the claims for abandonment and financial compensation, there is no explicit statutory regulation. Rather, it is more about the claim being shaped as a product of legal practice.³⁶ The party concerned is entitled to a claim for placing their own statement in the media outlet which is responsible for the challenged publication.³⁷

³¹ F. Fechner, *Fälle und Lösungen zum Medienrecht*, Mohr Siebeck, Tübingen, 2012, case No. 6.

³² BVerfG-K, *Neue Juristische Wochenschrift*, 2008, pp. 1658 f.

³³ Dörr, Kreile, Cole, *Handbuch*, p. 392.

³⁴ BVerfG-K, FCC judgement of 25 August 1998, *Neue Juristische Wochenschrift* 1999, p. 484.

³⁵ For more, see Dörr, Kreile, Cole, *Handbuch*, pp. 392–393.

³⁶ Götting, Schertz, Seitz, *Handbuch*, § 49, n.b. 1.

³⁷ Dörr, Kreile, Cole, *Handbuch*, p. 393.

The subject of correction can only be statements about facts, i.e. statements whose correctness can be examined by evidentiary means, as opposed to judgements about values.³⁸ In order to justify a claim for correction, the unconditional assumption has to be met that a specific statement is untrue. Therefore, it should be borne in mind that the burden of proof of an untrue statement about facts rests with the claimant. Producing this proof, however, is somewhat facilitated by the asserting person's extended obligation of substantiation, or indicating all the facts supporting demands made in the suit.³⁹

Moreover, the claim for retraction assumes that the party making the claim has been injured by statements about false facts, which means that it does not include the mere dissemination of these facts.⁴⁰ Violation of the right to personality must persist. Such a state is not brought about by the fact that the person who committed the violation will not repeat the statement or will distance themselves from it. A persistent violation is assumed, for example, when a statement about facts that offends someone or damages their reputation becomes engraved in public memory, so that the violation of the right to personality continues and damage is to be expected in the future as well.

Correction may take the form of retracting, changing (followed by rectifying/correcting) or complementing the statement. Retraction applies to statements which are generally false, rectification is possible when part of a statement is inaccurate, and complementation occurs when certain facts are missing which are essential for the description to be correct. The need for correction may be obviated by a voluntary declaration of the editorial board resulting in the violation having no more impact. In such a situation, the claim for correction may also drop out. Even so, it is necessary to check formal premises concerning the type of correction, as well as – and here both the case law and literature point to the equality of arms of a claim for presenting a contrary opinion – such formal requirements as publication in the same place as the false statement. At this point, it should be noted that the purpose of correction is not to compensate the aggrieved person, as the German Supreme Court repeatedly made clear.⁴¹

³⁸ Pursuant to established case law, cf. Bundesgerichtshof judgement of 4 June 1974, published in: *Neue Juristische Wochenschrift* 1974, p. 1371.

³⁹ Götting, Schertz, Seitz, *Handbuch*, § 49, n.b. 15.

⁴⁰ Beater, *Medienrecht*, n.b. 1945.

⁴¹ For more, see Dörr, Kreile, Cole, *Handbuch*, p. 393, cf. Götting, Schertz, Seitz, *Handbuch*, § 49, n.b. 37 with further references.

3.4. Compensation (*der Schadensersatz*)

If the right to personality has been violated intentionally or unintentionally by an unacceptable statement, and caused a material damage to the aggrieved party, they may seek financial compensation from the person who has violated their right, pursuant to section 823.1 of the GCC. Unlike the claim for abandonment and correction, the claim for compensation arises not only in respect of false statements about facts, but also in the event of all statements which are unacceptable and violate the right to personality. If the violation of the right to personality brings benefits, they should be relinquished to the aggrieved person.⁴²

In certain circumstances, a financial compensation is possible in addition to or following natural restitution by way of retraction and presentation of an contrary opinion relative to the previous violation of the right to personality, as a compensation for intangible damage. While section 253.2 of the GCC gives rise, at most, to compensation for bodily harm in the broadest sense, the claim for compensation of intangible damage is guaranteed by the case law also for violations of the general right to personality⁴³, with financial compensation having its roots in constitutional law and not constituting a criminal sanction.⁴⁴

The claim for compensation for intangible damage concerns ideal components of the right to personality, and is only enjoyed by living natural persons, mainly due to the necessity of compensation and prevention. Without this claim, grave violations of human dignity and honour would often go unsanctioned. Compensation, based on the order of protection contained in Articles 1 and 2 of the German Constitution, arises directly from section 823 of the GCC (rather than section 253.2 of the GCC), and is not a punishment. According to the incontrovertible constitutional case law, there are two restrictive assumptions. First, there must be a serious violation of the general right to personality, where, second, due to its nature and violation, the interference cannot be compensated in any other satisfactory manner (compensation by cessation, publication of a contrary opinion or retraction). Following an examination of all the circumstances of the case, it should be possible to tell whether this type of violation has occurred.⁴⁵

⁴² For more, see Beater, *Medienrecht*, n.b. 1978–1979, along with the quoted literature and case law.

⁴³ German: “Geldentschädigung für immateriellen Schaden.”

⁴⁴ Bundesgerichtshof, file No. VI ZR 255/03, judgement of the German Supreme Court of 5 October 2004, *Neue Juristische Wochenschrift*, 2005, p. 215.

⁴⁵ H. Sprau, in: Palandt, *Bürgerliches Gesetzbuch*, § 823, n.b. 124, judgement of the German Supreme Court of 5 December 1995, *Neue Juristische Wochenschrift* 1996, p. 984’ of

The presented solutions of the German law and judiciary show that despite the shortcomings of statutory regulations, the case law of both the Constitutional Court and the Supreme Court has arrived at legal solutions that ensure effective protection of the individual in the event of a violation of their right to personality. These solutions aim primarily to remove the effects of violations by affording the possibility to demand correction and publish a contrary opinion, but also draw on civil law institutions to protect the individual against a repeated violation of their interest by the unfair statement. From the point of view of Polish law, it seems particularly interesting to use the institution of contractual penalty as a means for counteracting repeated violations in the future. In the context of the conference's topic, and the pending and potential proceedings against entities using the phrase "Polish concentration camps," it is important to note that the compensatory claim in such proceedings should not be treated as a criminal sanction, given this institution's roots in another branch of law. This means that the German law or judicial decisions give no grounds on which to claim high compensations as a measure for preventing the use of the misnomer "Polish concentration camps" in the future.

Appendix:

Abridged selection of court judgements arranged according to the amount of financial compensation

- (a) 5,000 Deutschmark (2,500 euro)
 - for publishing the photo of a student without her consent to illustrate readers' accounts of their early sexual experiences.⁴⁶
- (b) 10,000 Deutschmark (5,000 euro)
 - for press publication before the deadline for disclosing personal assets; a serious violation of the right to personality that justified the claim for compensation.⁴⁷
 - for lampooning the plaintiff in a press article as a "laughing stock" and lazy office worker, who receives full salary despite low quality of work. The court held that the defendant ridiculed the

1 December 1999, *Neue Juristische Wochenschrift* 2000, pp. 2195–2197; of 20 March 2012, *Neue Juristische Wochenschrift* 2012, p. 1728.

⁴⁶ OLG Hamburg, AZ: 3 U 106/94, judgement of 22 September 1994: *Neue Juristische Wochenschrift – Rechtsprechungsreport* 1995, p. 220.

⁴⁷ OLG Bremen, file No.: 1 U 20/92, judgement of 20 May 1992: *Monatsschrift für Deutsches Recht* 1992, p. 1033.

plaintiff in the wide circle of his friends and neighbours, greatly understated his professional skills, and libelled him personally in a grave way.⁴⁸

- for opining in a supra-regional daily that a prominent politician would agree to be photographed nude for 80,000 mark, or may have already done so.⁴⁹
 - for alleging in an article that the plaintiff was guilty of the death of an athlete and had not been held accountable because Stasi covered up for him. Even though the plaintiff was not mentioned by name, he was identified by friends, acquaintances and family.⁵⁰
 - for a false press account about the punishable behaviour of a person whose full data were given. The court found that the person's recognisability was irrelevant. The financial compensation should be moderate, rather than too high.⁵¹
- (c) 15,000 Deutschmark (7,500 euro)
- for the headline of an advertising newspaper, describing a high-ranking administration official as the “biggest fool” (German: “*allergrößte Pfeiffe*”) without giving grounds.⁵²
- (d) 70,000 euro

The above amount was awarded after a minor participant of a beauty pageant had been mentioned (because of her name) in TV pornography shows. The court justified the amount of compensation with the following reasoning: while setting the compensation, attention should be paid (also from the point of view of general prevention) to deliberate violation of the right to personality as a way to increase the circulation or audience of a programme, with a view to advancing commercial interests. Compensation should be set high enough to make sure press and TV journalists think twice in the future when deciding whether to disseminate publications violating the right to personality.⁵³

⁴⁸ OLG Frankfurt, file No.: 16 U 61/92, judgement of 4 March 1993: S. Hacks, A. Ring, P. Böhm, *Schmerzensgeld Beträge 2011*, ed. 29, Bonn, 2010, item 1098.

⁴⁹ OLG Hamburg, file No.: 3 U 49/86, judgement of 21 May 1987: *Neue Juristische Wochenschrift – Rechtsprechungsreport* 1988, pp. 737–738.

⁵⁰ OLG Hamburg, file No.: 3 U 49/86, judgement of 21 May 1987: *Neue Juristische Wochenschrift – Rechtsprechungsreport* 1993, p. 735.

⁵¹ OLG Karlsruhe, file No.: 14 U 67/94, judgement of 25 November 1994: *Neue Juristische Wochenschrift – Rechtsprechungsreport* 1995, p. 477.

⁵² LG Oldenburg, file No.: 5 O 932/94, judgement of 27 October 1994: *Neue Juristische Wochenschrift – Rechtsprechungsreport* 1995, p. 1427.

⁵³ OLG Hamm, file No.: 3 U 168/03, judgement of 04 February 2004: *Neue Juristische Wochenschrift – Rechtsprechungsreport* 2004, pp. 919–923.

(e) 75,000 euro

The court awarded compensation in this amount for a violation of the right to personality. The violation consisted in publishing nine articles, each of which contained photos of a newly born daughter, taken secretly and without the consent of her parents, Princess Caroline von Hannover and Prince Ernst August von Hannover. The amount of compensation was justified with the following reasoning: children require special protection against exposure to an interest in them and their images, shown by the media and their consumers. The court also recalled that the award of financial compensation has its roots in civil and constitutional law and does not constitute a criminal sanction.⁵⁴

(f) 90,000 euro

This amount was awarded for a grave violation of the right to personality by three publications in an illustrated magazine, with made-up content. One of them was a fabricated interview about private problems and mental health of Princess Caroline of Monaco, with statements she did not make. In the justification, the court found that in order to increase magazine sales and gain commercial profit the defendant exposed the plaintiff's private sphere to the curiosity and greed for sensation of hundreds of thousands of readers. In setting the amount of damages it is extremely important to take into account the issues of compensating the victim, and prevention in relation to the perpetrator.⁵⁵

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⁵⁴ Bundesgerichtshof, file No. VI ZR 255/03, judgement of 05 October 2004: BGHZ 160, p. 298.

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ON THE SO-CALLED “POLISH CONCENTRATION CAMPS”: A LOGICAL PRAGMATIC PERSPECTIVE

Ewa Rosiak-Zięba

If the phrase “Polish concentration camps” (referring to the German Nazi concentration camps in the territory of occupied Poland during the Second World War) appears in the public discourse, it does so mostly in foreign countries.¹ For obvious reasons, cases of its use in German media arouse particular interest². As a matter of fact, this article is concerned not only with the titular phrase, but with a whole group of expressions. This is because besides “Polish concentration camps”, world media feature expressions such as “Polish extermination camps” and “Polish death camps.” Though not always used interchangeably,³ these terms raise Polish

¹ In Poland, we rather talk about cases of using the term “Polish concentration camps”; it is not used in the abovementioned relation of denotation. In other words: if it occurs, it is in the so-called material supposition.

² On its website, the Polish Foreign Ministry publishes information about successful interventions, including with German media (from local media outlets through the German news agency DPA to services of some German TV stations). See: http://www.msz.gov.pl/pl/p/msz_pl/polityka_zagraniczna/przeciw_polskim_obozom/ (access: 30 October 2013). It should be emphasised that interventions are undertaken not only by the Polish authorities; Polish media are also active. For example, in January 2005, *Rzeczpospolita* daily issued an appeal against the “Polish death camps.” As part of this campaign, a letter of the former editor-in-chief, Grzegorz Gauden, was sent to leading media outlets in other countries (see *Apel przeciw „Polskim Obozom Śmierci” / Appeal against “Polish Death Camps,”* open letter, website of *Rzeczpospolita* daily, 18 May 2009, at: <http://blog.rp.pl/listotwarty/2009/05/18/apel-przeciw-polskim-obozom-smierci-appeal-against-polish-death-camps/>). Individual interventions are also made by Polish citizens. For example, Polish public opinion has recently been dismayed by the case of a German state TV broadcaster which was sued by a former Polish prisoner of Auschwitz, Mr Karol Tendera, for using the wording “Polish concentration camps” (see Z. Bartuś, “Więzień Auschwitz skarży Niemców za ‘polskie obozy’”, *Dziennik Polski* of 22 July 2013).

³ The inmates of concentration camps (generally without a court sentence) were subjected to a slow death through hard labour, hunger and extremely cruel treatment. ‘Death camps’ and ‘extermination camps’ denote concentration camps where deportees were not detained,

objections for the same reasons. Accordingly, in this essay we shall only examine the phrase “Polish concentration camps,” but conclusions will be applicable to other expressions from this group as well.

The use of such expressions is often explained away by a kind of “mental short cut,” the fact that the adjective “Polish” means geographical location of these camps, and excludes responsibility for creating them. The problem is that other expressions of a similar structure are also current in language, and carry different interpretations. Let us have a look at three of them (quoted here as examples only):

- (A) “Croatian concentration camps”
- (B) “German concentration camps in (South West) Africa”
- (C) “British concentration camps during the Boer War”

Phrase (A) denotes concentration camps established and run by Croatians (the fascist Ustasha) in the territory of the Independent State of Croatia, which was proclaimed during the Second World War.⁴ Thus, the adjective “Croatian” indicates not only the geographical location of the camp, but also the nationality of those who ran it.

In turn, term (B) refers to camps which were operated in the early 20th century in the then German colony of South West Africa (now Namibia).⁵ This expression differs from (A) by an additional component which specifies the location of these camps (“in South West Africa”). In the context of a clear geographical reference in (B), the adjective “German” points directly to the nationality of those who ran them, and only indirectly

but mass-murdered (mainly in gas chambers) immediately upon arrival. Some camps were combined facilities (e.g. Auschwitz-Birkenau). For more about camps, see the educational website of the Institute of National Remembrance: *Truth About Camps / W imię prawdy historycznej*, at www.truthaboutcamps.eu (access: 30 October 2013).

⁴ See, i.a., *Jasenovac and the Holocaust in Yugoslavia: Analyses and Survivor Testimonies*, ed. B. Lituchy, Jasenovac Research Institute, New York, 2006. It is worth noting that not all Croatians were affiliated with the Ustasha.

⁵ See especially D. Olusoga, C.W. Erichsen, *The Kaiser's Holocaust: Germany's Forgotten Genocide and the Colonial Roots of Nazism*, Faber & Faber, London, 2010. Little is still being said about this chapter in the camps' history, as is the case with camps that were established by Italian fascists. Some operated in Italy (e.g. at Gonars), others in Italian-occupied areas, including on the island of Rab (in today's Croatia) (see, e.g., J. Pirjevec, “The Strategy of the Occupiers”, in: *Resistance, Suffering, Hope. The Slovene Partisan Movement 1941–1945*, eds. J. Pirjevec, B. Repe, National Committee of Union of Societies of Combatants of the Slovene National Liberation Struggle, Ljubljana, 2008, pp. 24–35; and the Audiodoc project's website “I Campi Fascisti”, www.campifascisti.it (access: 30 September 2013). It is worth emphasising that apart from Slovenes, prisoners of these camps also included numerous Croatians.

to location. Although it is not hard to guess that it was an area under some kind of German control (given the adjective in (B)), the two interpretation components are indicated separately in this expression.

Ethnic interpretation of the adjective before the phrase "concentration camps" is also prevalent in expression (C). It denotes camps which the British set up for the Boers during the so-called Second Boer War.⁶ Unlike (B), the additional information in (C) ("during the Boer War") says nothing directly about the location of the camps, but rather describes historical circumstances of their establishment, and only the latter give a clue about geographical location. In contrast, like "German" in (B), the adjective "British" in (C) conveys the perpetrators' nationality, rather than location (even though here too it is easy to guess that what is meant are territories under British control at the time).

The above examination leads to the conclusion that it is by no means the rule that adjectives in these expressions should be interpreted in terms of location, without having regard to the issue of perpetration. Their role in (A)-(C) does not boil down to pinpointing geographical location of the camps. It is precisely thanks to these adjectives that we can tell who was responsible for setting up the camps. The analysis of (B) and (C) suggests that the latter function is sometimes even more important than the former. This assumption seems to be confirmed by some current phrases in which the term "concentration camp" occurs in conjunction with an adjective derived from the name of a specific person. This is well illustrated by expressions such as "Hitlerite concentration camps" and "Francoist concentration camps." The latter describe the camps which General Franco's supporters established and ran in Spain in the 1930s and 1940s.⁷ The adjective "Francoist" points directly to the person who is held responsible for the creation of these camps. What is more, this is done at the expense of clearly stating where they were situated (though it is easy to guess that it was an area under Francoists' control). It would therefore seem that when interpreting expressions in which the term "concentration camps" is preceded by ethnic adjectives (and adjectives derived from proper names), it is of utmost importance to ask who is responsible for a given crime, rather than in what territory it took place. This does not mean that issues of location are irrelevant. While asking about the place where a crime was committed

⁶ See, i.a., *The Times History of the War in South Africa*, ed. E. Childers, Sampson Low, Marston, London, 1907, pp. 22–26.

⁷ See, i.a., H. Graham, *The Spanish Civil War. A Very Short Introduction*. Oxford University Press, Oxford, 2005, pp. 129–130; J. Bandrés, R. Llavona, "Psychology in Franco's Concentration Camps", *Psychology in Spain* 1 (1997), No. 1, pp. 3–9.

is very important, it is not always more important than the question of who committed the crime in the first place.

The term “Polish concentration camps” is of a similar structure to (A), where the ethnic adjective conveys both the perpetration, and the location of the camps. Let us now consider two statements:

- (*) *You brought up the topic of concentration camps which the Germans established in the occupied countries of Europe. The Polish camps stood out on account of the number of people (mostly Jews) who were brought there by the German Nazis from all over Europe.*
- (**) *This picture shows an unknown woman. She probably died in a Polish concentration camp in mid-1944.*

In example (*), the context clearly dictates the term’s interpretation. The adjective “Polish” means geographical location of the camps (for identification purposes). Example (**) is no longer so self-evident. The fundamental problem with the titular expression arises in statements where the recipient has no explicit guidelines for interpretation. Thus, it is to be feared that he or she may interpret them the way (A) is read. But this way of understanding the phrase “Polish concentration camps” raises serious reservations. First, it flagrantly contradicts historical facts. Unlike the fascist Ustasha, the Poles neither set up nor ran the camps in question. The Poles who found themselves there (and this group was sizeable) were victims, not executioners.⁸ Even the territory where these camps were operated was in

⁸ According to German occupation policy, the Poles were to be degraded to a nation of slaves, “subhumans” deprived of their own culture. One element of this strategy was to systematically eliminate members of the broadly defined Polish intelligentsia and establishment (people with aristocratic pedigree, scholars, artists, clergymen, teachers, doctors, lawyers, social activists, politicians, etc.). The campaign was carried out in various ways – by direct physical liquidation (including numerous mass executions), and by placing Polish intellectuals in concentration camps (for more about the so-called *Intelligenzaktion*, see M. Wardzyńska, in: *Był rok 1939. Operacja niemieckiej policji bezpieczeństwa w Polsce “Intelligenzaktion”*, Instytut Pamięci Narodowej, Warszawa, 2009; B. Musiał, “Niemiecka polityka narodowościowa w okupowanej Polsce w latach 1939–1945”, *Pamięć i Sprawiedliwość* 6 [2004], No. 2, pp. 15–21). For example, although the camp in Auschwitz is mainly associated with the extermination of Jews, it began life following mass arrests of Poles; see, among others, Musiał, “Niemiecka polityka”, p. 19. According to estimates, Poles were the second largest ethnic group among the prisoners of Auschwitz-Birkenau. It should be added that it was not only intellectuals who were sent to concentration camps. The same fate met civilians who were caught in different German operations aimed at intimidating Polish society, including those detained during street round-ups, and victims of displacements; cf. *Auschwitz-Birkenau. Historia i teraźniejszość*, brochure of the Auschwitz-Birkenau State Museum, 2010, pp. 4, 8, 12,

German rather than Polish hands at the time. Following the German invasion, part of Poland's pre-war territory was incorporated directly into the Third Reich (as the so-called Warthegau), with other provinces lumped together in the so-called General Government which was entirely under German Nazi administration. In contrast to some other European countries which also came under German occupation, Poland had no collaborating government or other official representation of authorities which (even in name only) would govern a carved-out part of the pre-war state territory. Consequently, during the period in which they were active, the above-mentioned camps were in the territory of the Third Reich⁹ or areas under its direct administration. Given the historical context, there are no grounds to describe them as "Polish."

Second, if the expression in question is interpreted in the spirit of (A), a misconception could arise that responsibility for setting up and running the camps should be attributed to the Poles. The presence of such a notion in the public discourse causes serious reservations of not only factual, but also moral nature. That is because it leads to shifting the blame for Nazi crimes from executioners to some of their victims. In this interpretation, the use of the term "Polish concentration camps" entails some dangerous abuse. And this is the proper cause of Polish protests against the misnomer.

Herbert Paul Grice's theory of conversational implicature comes in handy when trying to explain how such false beliefs come to be. The starting point for his concept is the observation that a conversation which could be described as rational usually presupposes some kind of cooperation between the participants. In order to achieve the purpose of their exchange (e.g. providing/obtaining information), the parties must observe certain rules of conduct.¹⁰ Grice formulates the general principle of conversation, i.e. the Cooperative Principle, in the following terms:

available (in different language versions) at: http://pl.auschwitz.org/m/index.php?option=com_docman&task=cat_view&gid=85&Itemid=82; F. Piper, *Number of Victims*, in: http://en.auschwitz.org/h/index.php?option=com_content&task=view&id=14&Itemid=13&limit=1&limitstart=1.

⁹ Strictly speaking, it was not until after WW2 that some of the camps described as "Polish" found themselves in the Polish territory (e.g. Stutthof, or Sztutowo, which was situated in the territory of the Free City of Danzig in the interwar period).

¹⁰ See H.P. Grice, „Logika a konwersacja”, trans. B. Stanosz, in: *Język w świetle nauki*, wyb. i wstęp B. Stanosz, Czytelnik, Warszawa, 1980; pp. 96–101; M. Tokarz, *Elementy pragmatyki logicznej*, PWN, Warszawa, 1993, pp. 219–220; R. Wójcicki, *Wykłady z logiki z elementami teorii wiedzy*, Scholar, Warszawa, 2003, pp. 170–171.

- (CP) *Make your contribution such as it is required, at the stage at which it occurs, by the accepted purpose or direction of the talk exchange in which you are engaged.*¹¹

Connected with the chief principle are certain more specific rules, called conversational maxims. According to them, in a conversation we should speak as clearly and lucidly as possible (maxim of manner), essentially stick to the topic (maxim of relevance), give neither more nor less information than required at a given stage of exchange (maxim of quantity), and refrain from making false contributions or at least ones lacking sufficient justification (maxim of quality).¹² It should be emphasised that the rules of cooperative conversation are descriptive rather than prescriptive. In other words, this concept was not put forward with a view to inducing anyone to observe the CP. Grice describes rules which people comply with when they want to communicate effectively, i.e. achieve certain objectives through conversation (e.g. providing information). Not everyone must be willing to, and not everyone does follow these principles skilfully (for example, there are people who speak a lot, but rarely to the point). When the principles described by Grice are not sufficiently respected in conversation, its objective will simply not be achieved.¹³ Such conversations also happen in our everyday life.

For each participant in a conversation, observing the chief principle entails different tasks. The task of the message sender, provided he wants to effectively attain his conversational goal (e.g. inform someone), is to formulate the statement in such a way to make it compatible with the CP and its related maxims. During the interpretation, the recipient (who wants e.g. to obtain this information) is in turn expected to assume – as long as possible – that the sender is trying to respect these principles. What does it mean? If the recipient notices that the sender's contribution violates a maxim (or maxims), he will try to interpret this contribution again, if possible in such a way that it remains consistent with the chief principle. This is called exploitation of conversational maxims.¹⁴ It is key for explaining how we are able to interpret jokes, detect irony, understand allusions, suggestions and insinuations. The process is based on a reasoning that seeks to square the

¹¹ Grice, "Logika", p. 96; Tokarz, *Elementy*, p. 220. In the Polish literature, the name of the chief principle ("Cooperative Principle") is translated as "Zasada Kooperacji" or "Zasada Współpracy."

¹² Cf. Grice, "Logika", pp. 97–98; Tokarz, *Elementy*, pp. 219–220.

¹³ Cf. Tokarz, *Elementy*, p. 219; J. Malinowski, "Pragmatyczne interpretacje wypowiedzi", *Kognitywistyka i Media w Edukacji* 2003, Nos. 1–2, pp. 229–230.

¹⁴ Cf. Grice, "Logika", pp. 102–103; Malinowski, "Pragmatyczne interpretacje", pp. 228–229.

interpretation of a “peculiar” message with the chief principle. This is done by determining what needs to be assumed for the statement to be consistent with the CP. Let us have a look at the following exchange:

- (i) Customer: Does this series of equipment often break down?
Assistant: Hardly anyone buys it.

At first glance, the Assistant’s answer would seem to violate the maxim of relevance. The Customer is interested in the product’s quality, and not how many people buy it. However, there is no sufficient reason for the Customer to reject the assumption that the Assistant is trying to cooperate with him, i.e. tell him what he wants to know, even though his answer seems off the point. The Customer’s train of thought can be presented as follows:

- (1) I have no reason to believe that the Assistant does not want to respect the CP.
- (2) The Assistant’s answer would be consistent with the CP assuming that the equipment was highly unreliable and almost no one bought it.
- (3) The Assistant probably realizes that the assumption in (2) is necessary for me to be able to interpret his statement.
- (4) The Assistant did nothing to refute the assumption in (2) (e.g. he did not add that the product had just appeared on the market, and had no established reputation yet, etc.)

As a result, the Customer concludes that the Assistant wants to tell him that the equipment is unreliable, although he does not say it outright. Using Grice’s terminology, by saying “Hardly anyone buys it” the Assistant conversationally implies that the equipment in question is unreliable.¹⁵

Implicatures are detected in statements in a process of reasoning that draws on some pre-existing knowledge. In order for this process to be effective, interlocutors should share some (at best: sufficient for communication purposes) knowledge. For example, in (i) it is highly relevant that the exchange is taking place in a store, so the Assistant should answer customers’ question about the offered goods, something both the Assistant and Customer are aware of. The latter probably also knows that it would not be right for the Assistant to say bad things about the products in his store. Thus, what plays an important role in this example is not only the situational context, but also familiarity with practices of social life. Different conversations may entail different scopes of common knowledge that is

¹⁵ Cf. Grice, “Logika”, pp. 102–104, 114.

required. One should not expect that each participant will have sufficient knowledge, nor that each exchange will fulfil the requirements of a rational conversation. For obvious reasons, it is indispensable to speak the language in which the conversation is taking place, and to be accustomed to using the CP. The meta-pragmatic level of cooperative conversation also needs to be mentioned: each participant assumes that it is not only them, but also the others who comply with the CP.¹⁶ The Assistant in (i) would not have ventured his suggestion if he had not believed that the Customer would be able to interpret it (by exploiting the violated maxim of relevance). In turn, the Customer would not have been able to figure it out if he had not assumed that the Customer did after all want to cooperate with him (in other words, that he was observing the CP, despite the apparent violation of the maxim of relevance). Therefore, the conversation would not have been fruitful, if this condition had not been met.

What does this imply for issues related to the expression “Polish concentration camps?” Let us assume that Poles would agree to take seriously “locational” justifications for this term even when the context does not prompt any specific interpretation (as in (**)). To avoid factual errors, the scope of required common knowledge would then have to include some familiarity with the history and geography of our part of Europe. It is far from realistic to expect everyone who says or writes so to meet this condition. Interlocutors may have sufficient knowledge about this or not. If the recipient of a message featuring the expression “Polish concentration camps” has such knowledge, he will be able to adequately interpret the wording, regardless of its context. A recipient who does not possess the required knowledge is in an altogether different situation. Problems begin in cases like (**), which lack clear guidance as to how to interpret the term “Polish concentration camps.” The recipient must fall back on other parts of his knowledge, which could prove insufficient. It is to be feared that a key role may be played by the linguistic habit of interpreting expressions like (A). So far as the recipient is convinced that he is participating in a rational conversation, he will seek to maintain the assumption that the interlocutor is trying to follow the CP. Consequently, the recipient will assume that since the interlocutor uses the term “Polish concentration camps” he probably considers this to be somehow legitimate. The recipient would need more knowledge than he actually has to assess whether or not these reasons are indeed sufficient (i.e. whether the maxim of quality has been violated). As a result, provided that the context in which this phrase is used does not

¹⁶ Cf. Malinowski, “Pragmatyczne interpretacje”, pp. 229–240.

exclude it,¹⁷ the recipient may come to the conclusion that everything he should know about these camps is contained in the expression "Polish concentration camps." And he will interpret the latter in accordance with the convention represented by (A). In other words, he will come to the (false) conclusion that Poles bear responsibility for these camps.¹⁸

There are more elements of general knowledge which the recipient can use in such a situation. For example, an additional circumstance that may be favourable to enacting the above scenario is, *inter alia*, how often the phrase in question occurs in the public discourse. If it occurs regularly in language, the recipient may, in his reasoning, take into consideration the fact that "everyone says it" and come to the conclusion that the use of this term is somehow justified.¹⁹ Especially when this expression is used by role-models (e.g., authors of school textbooks, and prominent politicians). First, because role models are usually believed to know what they say. Second, if some phrase is used by a role model, this often translates into how popular this phrase becomes. Usually, it is hard to eradicate expressions which turn into set phrases – even if they raise moral objections. This explains the determination with which Poles undertake interventions when the discussed phrase appears in the public discourse.

If the intention of the sender of a message is to identify perpetrators, the expression "Polish concentration camps" violates the maxim of quality as factually incorrect. However, if the sender only wants to indicate the

¹⁷ Therefore, the broadly defined context of a statement will not indicate that, for example, the sender is distancing himself from such statement in some way (e.g. the statement is ironic), that the phrase in question is used in a given statement in material supposition (i.e. what is meant is only the name "Polish concentration camps"), etc.

¹⁸ An interesting example of this can be found in a letter by Edmund Lewandowski to *Rzeczpospolita* entitled "Moratorium o zakazie szerzenia nienawiści" (Convention to stop Hate-Mongering), in which he describes, among others, a conversation with secondary school pupils (*Rzeczpospolita* of 15 December 1998; English version translated by W. Kolankiewicz, available at: <http://www.poloniasf.org/english/article9801n01.pdf> [access: 30 September 2013]).

¹⁹ In conjunction with insufficient knowledge of geography of this part of Europe, it may sometimes lead to strange results. This would seem to explain at least some phrases such as "Polish camp in Dachau" (after: J. Przybylski, "New York Times: obóz Dachau był w Polsce", *Rzeczpospolita* of 20 March 2011). A German town, Dachau is not (and has never been) Polish. The notorious camp was run by Germans. So it was indisputably a German camp, in terms of both perpetration and location (also historically). Another noteworthy example comes from the Second World War memoirs of an American pilot, who writes that he was detained in the "Polish concentration camp in Berlin" (the capital of Germany both then and today): R.D. Cox, *World War II and Prisoner of War Experiences*, in: TRACES Center for History and Culture, <http://www.traces.org/USPOW.cox.html> (access: 30 September 2013).

current geographical location of these camps, leaving aside the question of responsibility, he violates the maxim of manner, as this way of using the term (for reasons presented above) may be misleading. One can also talk about the violation of the maxim of quantity, since the range of content they intend to convey may differ from the implied content. All these accusations may be levelled provided that it is uncertain whether the recipient of the message has the right knowledge, the sender does not signal his own intentions in a different way, and the broadly defined context of the expression does not impose such "locational" interpretations.

It should be emphasised that the use of the discussed expression need not be malicious. Such suspicion may arise when the sender is aware that this term may raise justified objections, realises that they are justified, and uses this expression for manipulative purposes. Naturally, such doubts may arise when the term "Polish concentration camps" is used by Germans. It is of them in particular that we can expect sufficient knowledge about the history of their own country (or knowledge about who ran the discussed camps), and special attention so that such terms as "Polish concentration camps" do not appear in their public discourse. Still, aside from the obvious cases, there is no reason to assume that bad faith is at play in all or even many incidents of this kind. They may also result, among others, from insufficient knowledge, outright negligence or a peculiar kind of convenience (e.g. the fact that the term "Polish concentration camps" is shorter than "Nazi German concentration camps in occupied Poland" may also contribute to this indirectly). Which, of course, does not mean that interventions should not be undertaken in such cases. In addition to the reasons set out above, yet another one deserves to be briefly mentioned.

Language allows us not only to provide information, but also to exert influence on our interlocutors – we can, among others, evoke specific emotional reactions. This feature of language can be used for the purposes of persuasion, i.e. to shape the attitudes and beliefs of other people. Expressions of a natural language can be divided into emotionally active and emotionally neutral. The former carry some emotional charge – either positive (e.g. a hero) or negative (e.g. a villain). Emotionally neutral expressions usually do not have such charge (e.g. the word iron).²⁰ It should be noted that the

²⁰ See T. Pawłowski, "Definicje perswazyjne", in: id., *Pojęcia i metody współczesnej humanistyki*, PWN, Warszawa, 1986, pp. 125–129; M. Tokarz, *Argumentacja, perswazja, manipulacja. Wykłady z teorii komunikacji*, GWP, Gdańsk, 2006, pp. 194–197; J. Maciaszek, „Performatywny aspekt perswazji językowej: kilka uwag o definicjach perswazyjnych profesora Tadeusza Pawłowskiego”, *Ruch Filozoficzny* 2006, No. 3, pp. 409–410. In this short review, I omit issues related to the theory of speech acts.

emotional charge referred to here cannot be purely subjective, otherwise persuasion would not be effective. What is meant are emotional connotations associated with a given term in keeping with a certain social convention.

The emotional overtone of an expression is not permanent. Due to various factors, expressions with a positive emotional charge can become negative (or *vice versa*), or become neutral. On the other hand, a neutral expression may acquire an emotional charge – either positive or negative. There are more possible transformations.²¹ Several of them will be discussed on examples related to the topic of interest to us.

First of all, we should note that the term "concentration camp" is not emotionally neutral. It has a strong, negative emotional charge. This is not without significance for the emotional overtone of the term which is correlated with it. After World War Two, the phrase "Hitlerite concentration camps" gained currency in Poland, while "Nazi concentration camps" was the name used in the West. Both were treated as substitutes for "German concentration camps" (hereinafter: GCCs). The transformation referred to above consists in the replacement of the ethnic adjective "German" with another expression – derived from the name of the person responsible for the creation of the Nazi regime ("Hitlerite") or the name of ideology and people who committed crimes in its name ("Nazi"). The latter terms were supposed to take over the function of an ethnic adjective. In other words, negative emotional associations were supposed to shift onto it. Such attempts were no doubt dictated by the desire to reduce the negative emotional attitude towards representatives of the German nation, a sentiment that was very strong after the war's trauma. In the first case, the negative emotional attitude is *de facto* directed against Adolf Hitler, in the second – against Nazism (without any direct ethnic references), and its representatives.

"Nazi German concentration camps" is another expression used in language as a substitute for the GCCs. In this case, being Nazi is an additional requirement imposed on the set of people who may be blamed for the GCCs (according to the convention represented above in (A)). The change of scope entails the conclusion that not all Germans are guilty of the crimes of the Third Reich, but only those who were Nazi. (Which, incidentally, is quite right, because there were also Germans who tried to resist or were subjected to repression by the regime for other reasons.) Such a limitation of the GCC scope results in narrowing the group of those responsible for the

²¹ Cf. Pawłowski, "Definicje perswazyjne", p. 128. Pawłowski distinguishes between various types of definitions, based on some of these measures, including those appearing later on in this article.

camps down to the German Nazis. In effect, negative emotional attitudes only affect the latter.

In the above context, the expression “Polish concentration camps,” even when used in the locational sense, appears to have a similar function to the GCC substitutes discussed above. The problem is that unlike phrases such as “Hitlerite concentration camps” or “Nazi concentration camps,” the adjective “Polish” is of an ethnic nature. Using the titular expression may thus lead to a transfer of negative emotional connotations associated with concentration camps to the Poles, that is, as we have already signalled, from the executioners to some of their victims. In this context, it can be said that the term “Polish concentration camps,” even when used for locational purposes and without malice, may have unexpected and undesirable consequences. Through the latter, it could become a convenient tool for manipulation not only in terms of historical memory, but also for short-term political goals. Thus, regardless of how this term appeared in language and is excused, it should be the subject of Polish interventions also for the above reason.

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SCOPE FOR CHALLENGING STEREOTYPES IN THE CONTEXT OF DEFECTIVE CODES OF MEMORY

Zbigniew Greń

The subject of our analysis, conducted with the use of linguistic tools, is the phrase “Polish concentration camps.” Our task is to place this phrase in the emotionally charged lexicon, i.e. among language stereotypes, and to suggest actions in the framework of so-called language policy. I will try to make the point that efforts to change this phrase, and even eliminate it from circulation, should not be limited to countering its automatic (conscious or unconscious) reproduction in the media, but need to be accompanied by a policy of eliminating the notion of Polish anti-Semitism (regardless of the elimination of all manifestations of anti-Semitism from Polish public life). This conclusion is drawn from a linguistic, especially lexicological, analysis of the discussed expression and its semantic field (lexical context). I will also propose semiotic methods of conducting language policy regarding the analysed expression, treated as a “pseudo-cognitive” category that distorts the flow of communication.

The phrase “Polish concentration camps” functions in public circulation in this form as a cliché. Its meaning is the sum of meanings of its constituents: the ethnic adjective “Polish” (or its equivalents in foreign languages), the locative noun “camp”, and the noun “concentration.” A shift in meaning within the first part makes the phrases in circulation (in English, German) false. We assume that the phrase is false, does not correspond with truth, because the referents were not what they claimed to be – they were not “Polish camps” but “camps in Poland” (in territories attributed to Poland in the past and today). What we have here is a semantic shift/falsification, where the locational adjective “Polish” derived from the locative noun “Poland” becomes an adjective that characterises a group of Poles by its agentive meaning. Thus, a “Polish camp” means “made = established and run by the Poles.” What makes this falsification possible is the polyfunctionality of ethnic adjectives. Additionally, this expression was stripped of its “initial” meanings, and turned into a set phrase that began to live its own life.

What are the reasons for this? This kind of “falsification of meaning” is possible when a term is subject to stereotyping. It assumes a meaning that is largely independent of the initial meanings, a meaning that is simplified and carries a significant affective charge. This affectivity has two sources. On the one hand, it concerns a sphere of meanings charged with affectivity – by its very nature, the issue of concentration and death camps is an emotionally charged matter. On the other hand, this phrase is part of a largely stereotyped semantic field of inter-ethnic relations, where all relationships are particularly prone to stereotyping.¹ To a large extent this determines the lifespan of a phrase, but also sets possible courses of action in terms of its destereotyping and elimination as “pointless,” not corresponding to reality.

Stereotypes are the subject of various studies in the humanities and social sciences, as this phenomenon operates in different areas and has different aspects that are relevant to its analysis and description. Within these domains, mental processes are identified in carriers (psychology), processes of their social dissemination are captured (sociology), manifestations in different ways of human functioning, e.g. in literature, culture (popular, sometimes also high), are described, and the history of specific categories is characterised.

Stereotypes are of a sign character that is verbalised or conveyed non-verbally (making human prejudices social). Their sign character justifies a semi-otic approach in analysis, while a linguistic approach is called for when they are verbalised in the texts of language or lexicon.

From the linguistic point of view, stereotypes are a kind of terms/concepts which bring oversimplification and excessive (usually negative) affectivity into language communication. On the scale of cognition, conceptualisation and verbalisation of the world ranging from neutral to marked ingredients (emotional, oversimplified and excessively stiff), they come

¹ The phenomenon of stereotyping in inter-ethnic relations has a rich literature, for example: D. Maison, *Jak powstają stereotypy narodowe*, Oficyna Wydawnicza WPUW, Warszawa, 1997; *Stereotyp jako przedmiot lingwistyki. Teoria, metodologia, analizy empiryczne*, eds. J. Anusiewicz, J. Bartmiński, *Język a Kultura* 12, Towarzystwo Przyjaciół Polonistyki Wrocławskiej, Wrocław, 1998; *Stereotypes and Stereotyping*, eds. C.N. Macrae, Ch. Stangor, M. Hewstone, Guilford Press, New York–London, 1996 (Polish translation: *Stereotypy i uprzedzenia. Najnowsze ujęcie*, trans. M. Majchrzak et al., Gdańskie Wydawnictwo Psychologiczne, Gdańsk, 1999); *Stereotypy i uprzedzenia. Uwarunkowania psychologiczne i kulturowe*, eds. M. Kofta, A. Jasińska-Kania, Scholar, Warszawa, 2001; *Stereotypy narodowościowe na pograniczu*, ed. W. Bonusiak, Wydawnictwo Uniwersytetu Rzeszowskiego, Rzeszów, 2002; J. Błuszkowski, *Stereotypy narodowe w świadomości Polaków. Studium socjologiczno-politologiczne*, Elipsa, Warszawa, 2003; J. Błuszkowski, *Stereotypy a tożsamość narodowa*, Elipsa, Warszawa, 2005; J. Bartmiński, *Stereotypy mieszkają w języku. Studia etnolingwistyczne*, Wydawnictwo Uniwersytetu Marii Curie-Skłodowskiej, Lublin, 2009.

closer to the marked pole in opposition to the terms/concepts which are closer to the unmarked pole.²

Stereotypes are only one of the ways the world can be conceptualised. The rules governing the perception and conceptualisation of the world in different cultures and languages can be found in the so-called linguistic image of the world.³ The linguistic image of the world stands for one of the possible images of the world, formed as a result of conceptualisation of the world in the process of categorising its components. This categorisation yields a model of mapping the real world which comes closest to everyday conceptualisation.⁴ In the linguistic image of the world, stereotypes sit at a pole that is (mostly negatively) marked, emotional, excessively stiff, overly simplified and relatively far from objectivity.⁵

Consequently, stereotypes pose a threat to the objectivity of information conveyed in verbal communication. Once they become permanently attached to a specific form – as in the analysed example – they can completely distort language communication, with all the negative consequences. At the same time, the more durable and semantically unjustified a fixed stereotype is, the more difficult it is to change it.

According to the linguistic typology of stereotypes, in this case we can talk about a stereotype which is permanently attached to a specific form, whose meaning is derived from the sum of constitutive meanings, and whose falsehood consists in the falsehood of one of its constituent units: “Polish”. Thus, it represents the so-called formula in the typology of J. Bartmiński, understood as “stable semantic and formal connections, i.e. connections with an established form of realisation.”⁶ At the same time,

² I presented my views on this matter in the article: Z. Greń, „Stereotypy jako fenomeny językowe”, in: *Stereotypy i uprzedzenia. Uwarunkowania psychologiczne i kulturowe*, pp. 67–79; and in the book: Z. Greń, *Tradycja i współczesność w językowym i kulturowym obrazie świata na Śląsku Cieszyńskim*, Sławistyczny Ośrodek Wydawniczy, Warszawa, 2004.

³ Literature on this subject is already quite rich, particularly in Polish linguistics, for example: *Językowy obraz świata i kultura*, eds. A. Dąbrowska, J. Anusiewicz, *Język a Kultura* 13, Wydawnictwo Uniwersytetu Wrocławskiego, Wrocław, 2000; A. Niewiara, *Wyobrażenia o narodach w pamiątnikach i dziennikach z XVI–XIX wieku*, Wydawnictwo Uniwersytetu Śląskiego, Katowice, 2000; J. Kajfosz, *Językowy obraz świata w etnokulturze Śląska Cieszyńskiego*, PRO-print, Czeski Cieszyń, 2001; *Obraz Polski i Polaków w Europie*, ed. L. Kolarska-Bobińska, Instytut Spraw Publicznych, Warszawa, 2003; Greń, *Tradycja i współczesność*; J. Bartmiński, *Językowe podstawy obrazu świata*, Wydawnictwo Uniwersytetu Marii Curie-Skłodowskiej, Lublin, 2013.

⁴ See Greń, *Tradycja i współczesność*, pp. 12–13.

⁵ For my understanding of the place of stereotypes in the LIW, see: Greń, *Stereotypy*; Greń, *Tradycja*.

⁶ *Słownik stereotypów i symboli ludowych*, ed. J. Bartmiński (ed.), vol. 1: *Kosmos*, Wydawnictwo Uniwersytetu Marii Curie-Skłodowskiej, Lublin, 1966, pp. 14–15.

given that it becomes so automatic, and the user does not perform a full semantic decomposition, or reflect on the semantic value of the component “Polish”, accepting instead the expression as a whole, it is on the right track to idiomaticisation – creating an entirely “thoughtless idiom” symbolising the alleged Polish anti-Semitism. And due to the semantic rigidity of idioms, they resist any change. This is not to say, however, that it is impossible to modify or eliminate stereotypes as expressions prone to falsehood.

Such phrases are not detached from the rest of vocabulary. As in the case of neutral notions that function in the lexicon in specific fields of meaning, e.g. ethnonyms in the field of ethnic names, or the concept of camp in the field of names of places set up and organised by humans (camp, camp-site, encampment, camping; to camp out, to encamp...), stereotypes too co-create interconnected lexical networks that additionally mutually reinforce each other due to their affective nature, cf. the field *Gypsy* (n.), *Gypsy* (adj.).

On the other hand, as each language element is characterised by form and function, in the world of notions there are also interdependencies between the units of meaning, forming conceptual networks, e.g., the network of ethnic concepts in the subsystem of Polish neighbours includes Russians and Germans on equal terms, with their stereotypical counterparts, expressed by pejorative terms, such as: *Szwaby* (“Krauts”) and *Moskale* (“Muscovites”).

Let us now try to figure out the conceptual and lexical network in which the formula “Polish concentration camps” functions. The meaning of this unit is dominated by the semantic components “anti-Semitism” and “participation in the Holocaust.” This is, as it seems to me, the common denominator of an entire conceptual and lexical network that has various manifestations, such as idioms, formulas and topical expressions.⁷ For example, they include the designations: *szmalcownik* (person blackmailing Jews during WW2), “pogroms” (“the Kielce pogrom”), “blue policeman.”⁸

It is beliefs (sometimes blending into prejudices) passed on in the conceptual traditions of different nations that form the basis for the creation of these kinds of networks of expressions that carry a negative charge, as well as all topical expressions (of variable linguistic form) that expose the assumed anti-Semitism of Poles, and their alleged participation in the Holocaust. This is evident from a number of surveys, interviews, interpretations of texts in this field, etc.

In the opinion of many nations, anti-Semitism is a constitutive feature of the Poles. This is the distinguishing feature and the original cause of terms

⁷ See Bartmiński, *op. cit.* [????? – nie wiadomo, która z jego cytowanych prac??]

⁸ Let us note attempts to create an opposite network, with a positive charge, not anti-Semitic, possibly philo-Semitic, e.g., Żegota, *helping the Jews in the ghetto*, etc.

such as “Polish concentration camps” and their false meanings. It is irrelevant whether some “heart of truth” lies at the root of this belief, and how big it is. At this point, let us refer to the findings of sociological research.

For example, in a 1998–2001 research project of the Institute of Public Affairs, which was led by Lena Kolarska-Bobińska and looked at the perception of Poland and the Poles in Europe, young people from France⁹ and Germany¹⁰ pointed to anti-Semitism when asked what they associated with the Poles. It should be noted, though, that studies conducted in other Western countries featured no questions about free associations, while closed questions did not cover this matter. Similarly, in the Institute’s report on a press survey covering several Western European countries in 2000–2001, this feature was confirmed in the materials from Austria, France, Spain and Germany.¹¹

These types of public beliefs are often fuelled by the media, especially popular outlets. The analysed phrase also carries and reinforces these stereotypes.

The fight against the reproduction of the falsified phrase cannot be limited to this unit. Let us assume that we will manage to eliminate them from public life thanks to an intensive language policy of making people aware of the inadequacy of this expression. Should, however, the view of Poles as anti-Semites persists in Europe and the US (which are decisive for the shape of today’s international, media and political dialogue), another misnomer may appear at any moment, attributing to the Poles features and blame which lack substantiation in reality. It is of course indispensable to eliminate all manifestations of xenophobia and anti-Semitism from Polish public life and attitudes. Even the slightest anti-Semitic incident fosters beliefs about Polish anti-Semitism, sitting at the so-called heart of truth of the stereotype (along the lines: there must be something to it, if this or that happened again).

What can be done to influence the semantic sphere of stereotypes – to change or eliminate them? It should be kept in mind that the stereotype is a cognitive and communication category, so language policy actions should take into account this categorial character. Let us recall that in the categorial

⁹ Z. Boksański, “Młodzież krajów członkowskich Unii Europejskiej o Polakach. Opinie studentów fińskich, francuskich i niemieckich”, in: *Obraz Polski i Polaków w Europie*, pp. 46–63; M. Warchał, “Polska – Francja. Wzajemny wizerunek”, in: *Obraz Polski i Polaków w Europie*, pp. 140–172.

¹⁰ X. Dolińska, M. Fałkowski, “Polska – Niemcy. Wzajemny wizerunek”, in: *Obraz Polski i Polaków w Europie*, pp. 203–266.

¹¹ *Wizerunek Polski w prasie krajów Unii Europejskiej*, ed. M. Warchał, Instytut Spraw Publicznych, Warszawa, 2002.

sense, this cognitive category is analogous to the concept, but overly simplified and emotional, and therefore quasi-cognitive.

It is a known fact that concepts are constantly changing in language, meaning that lexicon is variable over time, too. Does the same happen with stereotypes, and if so, is it possible to change stereotypes, if durability is part of their definition? At the same time, they serve to create a simplified image of the world, and as such are “easy to handle.” They are a handy tool for staking out the “our – alien” opposition, with some downsides in communication: they usually limit the potential for conflict-free public communication, and spark conflicts. In periods dominated by the pursuit of cooperation between groups – carriers of various stereotypes – stereotypes are an unwanted burden. Despite their durability, they are also subject to change, only slower than emotionally neutral notions. It is therefore possible to look for tools for accelerating change, and that is what is actually being done.

And so, the hypothesis of contact¹² was formulated in the USA already in the 1930s, calling for the mixing of members of different social groups. It was hoped that this would result in better mutual understanding, and lead to conclusions that would break mutual stereotypes functioning in these groups. This method of collecting information that challenges stereotypes was called the strategy of accounting, systematic collection and storage of information. Another strategy drawn upon in the fight against stereotypes was conversion – the result of a shock sustained in the wake of an event that has been caused by the negative influence of stereotypes (e.g. after the death of Martin Luther King).

It is strictly from the linguistic basis of stereotyping that one departs when taking actions relating to cognitive processes and their categorial nature. Three phases can be distinguished in the process of cognition: perception of reality, its conceptualisation in categorial forms, and possible verbalisation in the process of sharing information – in the communication process. Given its excess, the information surrounding us is selected and classified in specific language categories: more regular (grammatical) and less regular (the lexicon). This way, the reflected world we obtain is more or less ordered; enough so for these reflections – conceptual and linguistic units – to become operational. The same principle governs stereotypes, but in a maximally simplified form.

¹² I. Kurcz, “Zmiana stereotypów: jej mechanizmy i granice”, in: *Stereotypy i uprzedzenia. Uwarunkowania psychologiczne i kulturowe*, pp. 1–25; p. 14 ff; P. Boski, “O stereotypach niestereotypowo, czyli jak badać wiedzę o kulturze grup społecznych i unikać ich stereotypów”, in: *Stereotypy i uprzedzenia. Uwarunkowania psychologiczne i kulturowe*, pp. 164–213.

Thus, psycholinguistics and sociolinguistics have developed concepts of influencing the categories that order the world. In the case of stereotypes, the main area where efforts were made to introduce changes, it is about relationships between groups of people, especially ethnic ones. Proceeding from the concept of social identity, three types of them were distinguished as part of operations on categories¹³:

- decategorisation,
- subcategorisation,
- recategorisation.

The concept of **decategorisation** promotes all individual forms of contact between members of different groups in the hope that sharp intergroup boundaries will disappear in these contacts.

The concept of **recategorisation** assumes creating categories that are superior to social, ethnic and other groups in conflict, e.g., the category of the European as being superior to national groups in Europe.

The concept of **subcategorisation** seeks to divide a stereotyped category into minor categories that blur it and have features other than stereotyping features. This makes it possible to create breaks in stereotypic categories, along the lines: those whom we assess negatively due to their group membership include people whom we assess positively, so the group feature becomes uncertain.

Another procedure is the so-called crossing of categorisations,¹⁴ by establishing that certain individuals are members not of one category assessed negatively, but of many, some of which may have a positive charge (and may even be shared by us, e.g., the hypercategory of the European).

The fact that changing stereotypes is possible is proven by cyclical studies (e.g., in the USA since 1933, in 10-year intervals, and by OBOP since 1975).¹⁵ The reasons for these changes and whether they can be accelerated is a separate issue. However, this certainly takes place in the categorial layer – the conceptualisation of the world.

Let us also add that stereotypes can change spontaneously. This may, for example, result from the spread of political correctness. However, it is an uncertain tool. It may have only a temporary effect, eliminating the stereotype from controlled consciousness, without subliminal changes. Stereotypes then pass into a “**dormancy**,” only to come to the light at a convenient moment, e.g. in the event of a conflict or loss of self-control by an individual or a group. If the “dormancy” was forced, stereotypes (and the

¹³ Kurcz, “Zmiana stereotypów”, pp. 15–16.

¹⁴ Boski, “O stereotypach niestereotypowo”, pp. 201–202.

¹⁵ Kurcz, “Zmiana stereotypów”, p. 10.

so-called “demons of the past” accompanying them) wake up with increased strength; compare the Yugoslavian situation.

Stereotypes are subject to change (without receding) also **under the influence of the current situation**, especially one with clearly negative emotional features; compare the impact of the Serbo-Croatian war on the image (stereotype) of the Serb and the Croatian. Vague or dormant stereotypes and terms that have not been stereotyped yet are the ones most susceptible to such change.

Stereotypes can also disappear along with the **loosening** of the relationship between the stereotyping subject and the stereotyped object; compare the disappearance of the Jew stereotype in some Polish communities, the stereotype of the Armenian (but not of the Cossack).¹⁶ In such cases, the stereotype is reinforced by literature and tradition (i.e., film); compare the longevity of the Cossack stereotype under the influence of Sienkiewicz's *Trilogy*, the stereotype of the Teutonic knight under the influence of *The Teutonic Knights* novel.

Which of the above-mentioned three mechanisms (decategorisation, recategorisation and subcategorisation) could be applied in this case? When it comes to the major and prototypical unit in the stereotyped semantic field under consideration, i.e. the stereotype of the anti-Semitic Pole, each of the above mechanisms could be applied within the category. Consequently, increased contact between Polish youth and any other group of young people harbouring the stereotype of the anti-Semitic Pole, assuming that no anti-Semitic incidents occur in this contact, could result in decategorisation of the anti-Semitic Pole. As part of recategorisation mechanisms, young people from, say, France¹⁷ could be educated that Polish youth is no different from them, being European youth without prejudice against other nations. The subcategorisation mechanism should be used in the event of any anti-Semitic incidents, pointing to specific subgroups that enjoy respect, e.g. the large group of Poles honoured by *Yad Vashem*.

But how does this relate to the place of the stereotypical field under discussion – to the titular “Polish concentration camps”? The weakening of the stereotype about the anti-Semitic Pole will no doubt eliminate the social and sign background of this phrase.

¹⁶ See M. Strycharska-Brzezina, *Kozak ukraiński: studium językowe*, Towarzystwo Autorów i Wydawców Prac Naukowych Universitas, Kraków, 2005; see also Z. Greń, “Wizerunek Kozaka we współczesnej prasie czeskiej”, in: *Silva rerum philologicarum. Studia ofiarowane Profesor Marii Strycharskiej-Brzezynie z okazji Jej jubileuszu*, eds. J.S. Gruchała, H. Kurek, Księgarnia Akademicka, Kraków, 2010, pp. 109–117.

¹⁷ Cf. stereotype of the anti-Semitic Pole harboured by these young people, as confirmed by studies, see fn. 9.

However, some direct actions are possible, too. As a starting point, let us recall that stereotypes function primarily in the domain of everyday image of the world. From there, they make their way into the media image of the world, to the ideological image in the case of political discourse, sometimes directly to specific visions of the world offered by certain press titles, political groups, politicians. Apart from the everyday, media, and ideological (for the purposes of politics) images of the world, there is also the scientific image of the world functioning in public space. On account of its nature, the aspiration to objectivity and truth, it is or should be the most objective image, the one closest to reality. Although it predominates in scientific communication and statements, the scientific image of the world radiates into other ways of exploring reality, other ranges of public discourse, usually in the popular form, but not only. It may affect the media image (in popular science press targeting the mass reader, in quality press), and even the everyday image. Thus, the only concrete and direct way to affect the false everyday and media images of the world is by appealing to the scientific image – drawing on science when making the point against falsehoods in public circulation. What is meant by this is naturally the results of historical research. In the fight against such false expressions, including in media and legal dealings, one should take advantage of scientific and historical arguments. Otherwise, these actions will carry little weight.

On the other hand, given that this stereotype is largely disseminated by certain foreign press titles which offer a vision of Polish-Jewish relations that is centred around the concept of the anti-Semitic Pole, and formulas such as “Polish concentration camps,” it is necessary to confront them with our own objectified media visions, in which “Poland” and the adjective “Polish” find their proper, locative application, such as “concentration camps in the territory of Poland/in Polish territories,” and to back these expressions with arguments from the scientific image of the world. These visions should be tirelessly created and propagated in our own and foreign media.¹⁸

For all these immediate measures, it is imperative that the prototypical category in a given field be changed and eliminated – the category of the anti-Semitic Pole. In public life and relations with other nations it is equally important to avoid situations in which carriers of the stereotype of the anti-Semitic Pole could discern the so-called heart of truth. In other words, we must fight against concrete anti-Semitic and xenophobic attitudes and actions.

¹⁸ In extreme cases, this does not rule out resorting to other tools, e.g. legal ones.

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CONCLUSIONS

Artur Nowak-Far

1. Defective codes of memory (DCM) are a type of elliptical syntagms that refer to historical phenomena (including events) which the users of these syntagms claim (explicitly or, most often, implicitly) to be true, but which do not meet the criterion of truth (in classic terms). The semantic or syntactic layer of such syntagms is therefore (in the light of the truth criterion) defective, which means that they can give rise to a new, also false narrative about the events defective codes of memory refer to. If not corrected, their consistent use in communication could lead to a permanent reprogramming of the narrative about the phenomena or events DCMs refer to, and thus change the collective memory of even large social groups, such as nations and countries. Defective codes of memory may also be subject to idiomatisation, which is understood as introducing a linguistic cluster with an autonomous, new meaning into language. In the case at hand, this would deeply distort communication, and could even produce serious stereotyping consequences.
2. It is not desirable to use defective codes of memory in historical narrative in any type of discourse. In terms of science, this would undermine the basic point of scientific activity, which is to discover and learn the truth. DCMs make it completely impossible to achieve the objective of historical narrative, which should be to facilitate reasoning about the present, draw “lessons from the past.” After all, DCMs lead to a completely falsified communication – they open up a language game aiming to reformulate the intellectual core of conclusions which can be drawn from history. Also from an axiological point of view, the use of defective codes of memory is undesirable in a correct narrative, because it leads to the blurring of truth, sometimes to the extent which rules out moral interpretations of historical events which are the most serious “lesson” of history – in particular genocide and other serious international crimes committed in the past. DCMs may even change interpretation of these events in a way that is contrary to the fundamental principles of morality. This happens when they attribute the role of executioners to the victims

of these crimes, and the role of victims to the executioners. If we agree that knowledge about this fundamental order is a moral duty to the victims, defective codes of memory must be eradicated from discourse and efforts must be undertaken to eliminate them permanently, especially when such discourse focuses on the most serious crimes under international law, where no doubt should exist about their objective essence and subjective fault of those who are responsible for them. In many cases, e.g. genocide, counteracting DCMs should go hand in hand with individual identification of victims and executioners; nor should group qualifications of these groups be omitted when group membership was the basic code for committing crimes. Therefore, it is necessary to note that crimes against the Tutsi in Rwanda were committed by the Hutu, and crimes against the Jews, Poles and many other nations considered inferior were committed by the Germans during the Second World War.

3. In reaction to the natural ellipticity of DCMs, there is a growing interest in many countries in fixing the knowledge about the specific nature, course and results of the most serious crimes of international law. This interest also involves efforts to fix the knowledge about the ethnic nature of such crimes, with a clear indication of the nationality of perpetrators and the possible motivational model (including ideology) which prompted the perpetrators to commit these crimes. The predisposition to ethnicise responsibility can also be explained by a number of psychological factors (including the fundamental and ultimate error of attribution and essentialist beliefs) – what occurs in such a case is impoverishment of the motivational model that has been accepted as the starting point for formulating suppressive actions, as this usually leads to underestimating the role of ideology and situational factors in shaping human behaviour. The use of DCMs, and the pure ethnicisation of responsibility, have important repercussions for modern-day intergroup relations. The main consequence is that in such a discourse much attention is focused on these issues. In addition, this triggers a modification of intergroup behaviour leading to the avoidance of mutual contact and the suppression of criticism of extremist movements in one's own group. The former phenomenon manifests itself more strongly in a group of which perpetrators of the most serious crimes of international law were once members; the second group includes more representatives of groups from which victims of such crimes originally came.
4. Once important reasons have been articulated for eliminating defective codes of memory as codes of discourse (especially public discourse),

mechanisms should be developed to identify their use and publicly stigmatise perpetrators who are deliberate and grossly negligent. At present, none of these tasks is performed well enough where DCMs are used in the intergroup (even international) space. The reaction by the groups some members of which use these codes is usually insufficient to eliminate DCMs; legal regulations can also be unreliable, an ineffectiveness that is exacerbated by the low sensitivity to these codes in many communities, as well as the damage they can cause to group consciousness and intergroup relations. Nevertheless, this does not mean that it is not possible to stigmatise the use of DCMs, especially by the media, for modern information technologies cause the resulting damage to spread globally, thus exposing a given message to assessment and legal interpretation in different legal and cultural contexts. For DCMs users in some jurisdictions, this increases the risk of formulating and effectively enforcing against them the claim for abandoning this act, and paying damages.

5. DCMs can also be suppressed in public space by conducting an adequate language policy. Its objective should be to substitute the everyday and media image of the world for a scientific and accurate image, and to employ other tools which may affect people's behaviour in public space (including their motivation, knowledge and attitudes). What is also important in these actions is to eliminate the negatively marked social background of specific DCMs, particularly to eliminate any strong negative stereotypes.
6. The analysis of procedural strategies in this area shows that one should not abandon non-legal measures of combatting DCMs, in particular demanding that media outlets modify their stylebooks, which also set the policy of avoiding certain syntagms. When it comes to legal possibilities of fighting DCMs, an analysis of measures that could be brought before US courts to eliminate them from the public discourse shows considerable limitations in this regard. In the American system, there is no satisfactory framework for legal interpretation of DCMs. It is only when the use of DCMs is persistent and suggests malicious intent to humiliate specific individuals or groups that legal mechanisms become more effective. In German law, complaints against the use of DCMs can be formulated in the context of protection of the "general right to personality" (identity), which has been developed in Germany and is recognised as the fundamental right of every individual. While its origins are in case law, this concept also has a strong constitutional basis, similar to the protection of ownership rights. A person who has been aggrieved by statements or publications about them (also in the context of their functioning in

a social group) may demand that these activities be stopped, and that any reported information be corrected; the person may also seek compensation for a non-material damage. However, as such compensation may not exceed the size of the actually suffered damage, it lacks a strictly penal substratum. As part of the claim for cessation of prohibited activities, the plaintiff may also demand that the person who used DCMs issue a representation on refraining from violations in the future. With regard to fighting defective codes of memory, it could also be effective to address claims to the media, formulated on the basis of press regulations applicable in specific German federal states, i.e. claims for correction (presentation of a contrary opinion). According to the case law on compensations for non-material damages, the awarded compensation should not be of punishment character within the meaning of criminal law, which is important when determining its amount.

Polish law has neither an established concept of DCMs, nor a widely recognised method of asserting claims arising from their use. However, there are good grounds for recognizing such claims pursuant to Article 23 of the Civil Code which provides for protection of a long list of personal interests – including personal interests in the form of a “sense of national identity.” What speaks for such an understanding of the scope of protection of this provision is the fact that the sense of national identity (which is a broad concept that also includes specific narratives about oneself that are generally known and have evidentiary basis) is a value commonly recognised in Polish society. This value meets the requirements necessary to qualify as one of personal interests within the meaning of the Civil Code, the principal source of which is the concept of dignity, with its important element of a socially recognised self-narrative. In this context, DCMs are a negation of this value. In a wider context, they are a tool of deprecating the inner (but legitimate) belief of the social group these codes refer to, about such group’s own value both as an individual entity and as a member of a larger community – in particular the national community. Polish criminal law does not know the concept of DCMs. However, collective memory is protected in Article 55 of the Act on the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation (INR-CPCPN), which penalises public denial of Nazi or Communist crimes committed since the outbreak of World War Two (which in Polish law is considered to have begun on 1 September 1939). In the light of this provision, DCMs regarding these crimes, including the most common one “Polish concentration camps,” are unlawful. That is because in Poland they are generally perceived as implying denial of the German perpetration of crimes committed in this country during

Nazi occupation, and even assigning responsibility for them to the Poles. Criminal liability for committing the offence provided for in Article 55 of the INR-CPCPN Act applies when the perpetrator acted wilfully and publicly, and the context of their statement indicates the intention of denying German crimes. The lack of such intention, however, does not repeal the illegality of statements which constitute a breach of the legally protected code of memory.

6. Different communities have different sensitivities to the use of DCMs and to the assessment of their social effects. Sometimes they even show a special selectivity in this respect, which also determines the selective functioning of social mechanisms of suppressing these codes. This is the case with society in the Federal Republic of Germany, where – at least to the extent reflected in mass media discourse – there is a significant degree of selectivity when it comes to forming memory (both individual and collective) of the narrative (including interpretation) about the most serious crimes committed by the Germans during World War Two. This selectivity sometimes also results in shifting responsibility for Nazi crimes onto other entities – especially the victims of these crimes. DCMs are used particularly extensively by revisionist circles, where Nazi crimes in occupied Poland are openly denied.
7. Due to relatively low sensitivity levels to DCMs in a number of countries, these codes appear quite frequently in the mass media. Studies of German press reveal that DCMs do not follow a single model; accordingly, no single model can explain why DCMs are used, though certain behavioural trends are noticeable in this respect (also resulting from increasing ignorance, and negligent preparation of media materials). These patterns of behaviour could lead the existing correct historical narrative to be recoded into a narrative that reverses the moral order of this narrative, and thus also assigning the role of the victim to the executioner and vice versa. This of course calls for suppressive measures against the false narratives where DCMs are an important constituent of communication. Studies of German media (press and online content created in Germany) point to considerable differences in this respect. With regard to the press, suppressive reactions are neither so socially strong nor so dispersed as on the Internet. A clear and sharp critical reaction by German readers is noticeable in the wake of Barack Obama's remarks on 29 May 2012, in which he used DCMs. In their online comments, German readers tried to highlight the true picture of the historical reality that the US President referred to in his statement.

ABSTRACTS

Libel actions in the USA against the use of defective codes of memory (*Martin Mendelsohn*)

Litigative scope of manoeuvre in libel actions before US courts with the aim to eliminate defective codes of memory from the public discourse is rather limited, as the analysis of such actions indicates. This implies that in the US legal system, there is no satisfactory purely legal recourse to any measure which could effectively stop and deter people from using logically defective phrase “Polish concentration camps”. Rather, non-legal persuasive measures appear to be effective and efficient. Interventions by the Polish government which contacts respective publishers and requests adequate changes to these publishers’ style codes is the best example of such a practical, persuasive solution. Moreover, such an approach can create a satisfactory basis for further legal action, as failing to meet the request to stop using defective codes of memory can be interpreted by US courts as acting in manifest negligence with regard to expressly notified, legitimated interests.

Defective codes of memory: Bad habits, intentional lies, or negligence? **The German law perspective and historical revisionism** (*Dieter Schenk*)

The analysis of the social and legal content of defective codes of memory, as well as of their use in social life of the Federal Republic of Germany indicates that there is an important selectivity in shaping individual as well as collective memory in this country. A consequence of this selectivity is the inter-subjective transfer of historical responsibility for the Nazi-era crimes. This transfer most often occurs from those who committed these crimes to other groups, even to their victims. Such transfer takes place most frequently in groups where defective codes of memory are widespread, i.e. in supporters of historical revisionism. It is also the group where the negation of Nazi crimes in occupied (within the period of 1939-1945) Poland is no doubt most prevalent.

Media context of defective codes of memory: A case study on German press recourse to false predicates to describe Nazi annihilation camps and concentration camps established by the Germans in occupied Poland (*Ewa Stasiak-Jazukiewicz*)

The aim of the study, which looks at cases where defective codes of memory were used in German press, was to identify the reasons for such recourse. As no explanative research could be undertaken, this objective was not achieved. Nevertheless, the study succeeded in identifying a broader social context in which defective codes of memory are normally used. It was also possible to exclude a one-fits-all explanation to this phenomenon. The study can thus be considered an introduction to further investigation of defective codes of memory in the media.

Defective codes of memory, or about the reaction of German Internet users to media content (*Marta Jas-Koziarkiewicz*)

The Internet, or more precisely its specific nature, is changing the established division into creators and recipients of information. The Internet also determines how traditional media and the process of communication as such change. To be full, any analysis of such matters as public image, and the way of presenting and discussing events, should not exclude the Internet. This article examines online posts that appeared under articles about Barack Obama's remarks of 29 May 2012. The articles were published on German websites. The author assumed that the actors and themes featured in online comments were identical with those in the press articles. This hypothesis has been tested by using the qualitative online content analysis.

Ethnicisation of responsibility: Psychological aspects of defective codes of memory (*Michał Bilewicz, Anna Stefaniak, Marta Witkowska*)

Ethnic explanations of the Holocaust are increasingly popular within Polish society. The motivation to blame the Germans as a nation, rather than Nazi ideology, for the Holocaust can be explained as a consequence of several psychological mechanisms, such as the fundamental and ultimate errors of attribution and a tendency to essentialise national groups. A simplistic attribution of guilt to ethnic groups is not only inconsistent with historical facts but bears serious consequences for current intergroup relations. Descendants of the former perpetrators suffer from a self-esteem threat and

experience collective guilt which leads them to avoid current members of the former victim group. The latter may become immune to the wrongdoings of their own group. Recognising the ideological underpinnings of group violence helps to avoid the aforementioned consequences and to build more harmonious intergroup relations today.

Defective codes of memory about genocide crimes: Fundamental problems of axiological and legal assessment (*Artur Nowak-Far*)

Defective codes of memory (DCMs) are a type of elliptic syntagms which contain false information about the past. Since they create logical premise fabric for historical narrative, they form nuclei for the development of distorted collective memory. When considered from the linguistic perspective, DCMs have high potential to be idiomatised – especially when they are used frequently in the media. In the context of the discourse about past acts of genocide, DCMs are used (intentionally or not) in the Wittgensteinian language play setting. In such a setting, at the same time, they invisibly distort the so far truthful accounts of history through penetrating the language used in the historical (as well as legal, ethical, social) discourse.

Various societies appear to have different propensity and public resistance with respect to DCMs. In low resistance societies, DCMs can be damaging to their collective memories. In the most pronounced cases, DCMs can even reverse the moral content of genocide accounts attributing the role of victims to their executioners and vice versa. Such a process is bound to trigger differentiated reactions of various national legal systems to DCMs. With regard to DCMs used in global mass media, this reaction would lead to simultaneous application of different legal standards. As a result, in order to avoid any negative legal ramifications, terms used in these media would have to meet the highest national legal standard applicable. At the same time, differentiation of possible consequences of using DCMs would increase legal uncertainty.

Thus, also non-litigative efforts to contain the scope of recourse to DCMs in mass media can be interpreted not only as activities fulfilling moral duty, but also as important measures preventing legal friction arising from the differentiation of legal qualification of DCMs in different fora.

References to the so-called “Polish concentration camps” as an infringement of personal interest: A civil-law perspective (*Filip Rakiewicz*)

The aim of this paper is to prove that, with regard to, e.g., the non-exhaustive list of personal interests provided for in s. 23 of the Civil Code, a “sense of national identity” constitutes a personal interest. It is a value that is widely acknowledged in society and recognised by the Polish legal system. It meets all the requirements necessary to recognise it as a personal interest within the meaning of the Polish Civil Code. The author hereof defined the said personal interest, proved that it is well grounded in terms of human dignity and personality in the social dimension, determined its scope (content) and discussed the judicial protection thereof. The need to protect the sense of national identity as a personal interest is particularly justified by numerous references to “Polish concentration camps.” Such references influence the image of a person who is a Pole in his or her own eyes and in the eyes of the other members of the community – meaning the biography (history) of the national community – in which such person lives or with which he or she identifies. They deprecate the inner conviction about one’s own value as a member of the Polish Nation and they arouse anxiety regarding the way such a person, as a Pole, is or may be regarded by members of other social groups (nations). They awake a sense of gross injustice and harm – especially when juxtaposed with the remembrance of the victims and a sea of suffering and damage caused to the Poles by the Germans during World War Two.

Defective codes of memory versus collective memory as a general interest under the protection of criminal law (*Witold Kulesza*)

In Poland, the knowledge about crimes committed during the Second World War is passed on between generations as well as being captured in historical studies documenting the trials of Nazi war criminals convicted in Poland. The defendants in those trials generally did not deny the occurrence of crimes against humanity in occupied Polish territories under their authority, yet argued that they did not know of such crimes taking place. The only exception was Rudolf Höss, commandant of Auschwitz-Birkenau, who presented in his detailed testimony the circumstances of murdering Jews in this extermination camp. The term “Polish concentration camps” in use today has no referent, and insults the contemporary collective memory of the victims of those crimes, their perpetrators and the places where those crimes against humanity and genocide were committed, which were

German concentration camps. Collective memory is a social interest that is protected under Article 55 of the Act of December 18, 1998 on the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation. This provision states that it is punishable by law to publicly and contrary to facts deny the Nazi or Communist crimes committed since the outbreak of the Second World War (September 1, 1939). Under this provision the term “Polish concentration camps” is unlawful, because it is perceived in Poland as negating German perpetration of the crimes committed in the occupied country and assigning their commission to the Poles. Criminal liability for wrongful denial of Nazi crimes is justified only in cases where the offender intentionally and publicly says or publishes a statement about the “Polish” concentration camps, and the context of an expression suggests the intention of denying German crimes. Lack of such intention, however, does not repeal the illegality of statements that constitute a breach of the legally protected memory code.

Accessibility of legal recourse concerning defective codes of memory in Germany (*Natalia Sienkiewicz-Bożyk, Magdalena Sykulska-Przybysz*)

This article presents German law and judicial decisions concerning the general right to personality developed in German constitutional jurisprudence, recognised as a fundamental right of every individual. The German Civil Code does not contain norms directly protecting personal interests of an individual. Still, the case-law has developed claims, analogous to the protection of property, which give persons who have been injured through statements or publications an effective protection of their rights by way of a claim for violations and failure to appeal, a claim for rectification and claims for compensation for non-pecuniary damages. In the context of a claim of abandonment, it is possible to call for a declaration of abandonment of violations in the future under the threat of punishment. Different legislative acts governing press law in each federal state (Land) of Germany grant the person concerned the right to submit a statement with a contrary view. The case-law on compensation for non-pecuniary damages indicates that the adjudicated amount should not be a punishment within the meaning of criminal law, which is important in determining its amount.

On the so-called “Polish concentration camps”: A logical pragmatics perspective (*Ewa Rosiak-Zięba*)

One of the explanations for using the expression in the title points to the present geographical location of camps run by German Nazis in occupied Poland during World War Two – sidestepping the question of responsibility. This term, however, seems to be sometimes interpreted in quite a different way. The paper examines some of these issues from the viewpoint of the Gricean theory of conversational implicature and looks at selected aspects of linguistic persuasion.

Scope for challenging stereotypes in the context of defective codes of memory (*Zbigniew Greń*)

The aim of this paper is to present an analysis of the phrase *polskie obozy koncentracyjne* (“Polish concentration camps”) from the point of view of the theory of linguistic image of the world and language stereotypes. It can be noted that the point of view predominating in the case of this expression is that of mass media or ideology. It is possible to define the lexical background of the phrase, i.e. a network of terms describing Polish relations with other nations, especially the Jews. The lexical background is also stereotyped. The right kind of language policy, i.e. substituting the everyday picture of the world with a scientific one, would be a way to eliminate this phrase and destereotype the term “Polish concentration camps.” This does not rule out other actions, for example legal ones.

Therefore, to eradicate this phrase we should eliminate the negative background, especially the image of Poles as anti-Semites. Some possibilities are offered by the mechanisms of world categorisation, in which stereotypes represent specific, negatively charged, cognitive quasi-categories.

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LIST OF ABBREVIATIONS

Art.	– Article
CC	– Civil Code
CJEU	– <i>Court of Justice of the European Union</i>
DCM	– Defective codes of memory
DPA	– German Press Agency
Dz.U.	– Journal of Laws
EC	– European Commission
ECHR	– European Convention for the Protection of Human Rights and Fundamental Freedoms
FCC	– Federal Constitutional Court
FRG	– Federal Republic of Germany
GC	– German Constitution
GCC	– German Civil Code
KL	– <i>Konzentrationslager</i>
LEX	– Lex Legal Information System
NGO	– Civic anti-Nazi organisation
NPD	– National Democratic Party of Germany
OJ UE	– Official Journal of the European Union
PC	– Penal Code
StGB	– German Criminal Code
ZDF	– Second German Television

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