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## “Right to Truth” and Memory Laws: General Rules and Practical Implications<sup>1</sup>

**Abstract:** The “right to truth” relates to the obligation of the state to provide information about the circumstances surrounding serious violations of human rights. Despite its increasing recognition, the concept raises questions as to its scope and implementation as well as its existence as a free-standing right. Similarly, “memory laws” relate to the way states deal with their past. However, there are certain „memory laws” that, while officially serving as a guarantee for accessing historical truth, lead to its deformation. As a result, an “alternative” truth, based on the will of the legislators, is being imposed. In this article the authors elaborate on the general nature of the new legal phenomenon of the „right to truth”, as a tool of transitional justice, in particular in the context of both providing and abusing historical truth by the legislators, through the instrument of “memory laws”.

**Keywords:** *right to truth; memory laws; Ukraine; Poland; Russia*

### The Origins and the Scope of the “Right to Truth”

The “right to truth” relates to the obligation of the state to provide information about the circumstances surrounding serious violations of human rights. The genesis of the “right to truth” dates back to the adoption of the Additional Protocol to the Geneva Convention in

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1977 which provides in Article 32 that the parties to an armed conflict as well as humanitarian organizations “shall be prompted mainly by the right of families to know the fate of their relatives.” However, the “right to truth” is more broadly defined in international human rights law (for example in the International Convention for the Protection of All Persons from Enforced Disappearance, art. 24.2), which extends the “right to truth” not only to relatives but to all persons who suffered as a result of the enforced disappearance, and in addition expands the definition of the right to include not only information about the fate of the victim, but also including the right to know the circumstances surrounding the disappearance as well as the progress and/or results of any and all official investigations.<sup>2</sup> The development of the “right to truth” has been influenced and shaped by the actions of families of disappeared persons (Garibian, 2014; Kovras, 2017). While it has gradually expanded to other human rights violations, so far the only universal treaty containing a “right to truth” is the International Convention for the Protection of All Persons from Enforced Disappearance.

According to the study on the “right to truth” published by the Office of the High Commissioner of Human Rights in 2007, “while the right to truth is an individual right of victims and their families, it also has a collective and a societal dimension” (par. 83). The individual aspect of the “right to truth” refers to the right to knowing the truth about the circumstances of human rights violations and the victim’s fate. The collective dimension concerns the right of society in general to know the truth about past events concerning heinous crimes, as well as circumstances and reasons that led through massive or systemic violations, to those crimes.<sup>3</sup> This has also been confirmed by the international jurisprudence. The “right to truth” is especially strongly present in the Inter-American system (MacGregor, 2016), but also the European Court of Human Rights has confirmed the existence of both an individual and collective dimension of the “right to truth.”<sup>4</sup> Despite its increasing recognition, the concept of a “right to truth” raises questions as to its scope and implementation as well as its existence as a free-standing right (Mendez & Bariffi, 2012).

## Memory Laws and Intersection Between Them and the “Right to Truth”

Memory laws (*lois mémorielles*; *Erinnerungsgesetze*) enshrine state-approved interpretations of crucial historical events, commemorating the victims of past atrocities as well as

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<sup>2</sup> For more on the “right to truth” in connection with enforced disappearances, see: Perez Solla, 2006, pp. 91-100; Naqvi, 2006, pp. 245-273; Brunner & Stahl 2016; Naftali 2016.

<sup>3</sup> See principle 2 and 4 of the Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher. Updated Set of principles for the protection and promotion of human rights through action to combat impunity, E/CN.4/2005/102/Add.1

<sup>4</sup> So far in following judgments: *El-Masri v. the former Yugoslav Republic of Macedonia*, § 191; *Al-Nashiri v. Poland*, § 495; *Abu Zubaydah v. Poland*, § 489; *Association “21 December 1989” and others v. Romania*, § 144.

heroic individuals or events emblematic of national and social movements. Such regulations date back centuries and continue to spread throughout Europe and the world. Memory laws are used by states not only to prescribe, but also to promote a particular view of persons or events from the past. In their punitive form, memory laws impose limits on democratic freedom of expression, association, the media, or scholarly research. At the same time, memory laws reach far beyond the bounds of criminal law: school books concerning history, national memorial ceremonies, or public monuments are state-approved as well (Belavusau & Gliszczyńska-Grabias, 2017; Appleton, 2013).

Memory laws are aimed at protecting what is considered to be ‘objective historical knowledge’. Similarly the “right to truth” implies knowing the full and complete truth about historical events concerning the perpetration of serious crimes. Memory laws are often associated with Europe, as they are widespread in this region and both the EU and Council of Europe have built their normative concepts upon the value of acknowledging past crimes and avoiding future ones (Sierp, 2014, pp. 125-127). Nevertheless it should be born in mind, that laws affecting memory go beyond the conventional *lois mémorielles* forming a broader category of laws affecting historical memory and are not limited to the European continent. The historical origin and place of development of the second analysed concept – the “right to truth” – lies in Latin America, particular with local transitional justice initiatives (Garibian, 2014). An important role has been played by the Inter-American Commission and Court of Human Rights, which brought the concept to reality, inferring it from the right of access to justice. In an enforced disappearance case the Court stated, that the right to the truth is subsumed in the right of disappeared or his next of kin to obtain clarification of the facts relating to the violations and the corresponding responsibilities of the competent state organs. The Court invoked the right to a fair trial (art. 8 of the Inter American Convention on Human Rights) and right to judicial protection (art. 25).<sup>5</sup> While their origins, character and role differ, memory laws and the “right to truth” both relate to the way in which states deal with their past.

The collective dimension of the “right to truth” covers the right of the society in general to know the truth about past events concerning heinous crimes. Conventionally understood memory laws, such as holocaust denial laws, most often realize this aspect of the “right to truth”. Nevertheless, sometimes memory laws also implement the “right to truth” in its individual dimension, for example in the Spanish Historical Memory Act, which – among

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<sup>5</sup> Inter-American Court of Human Rights, *Bámaca-Velásquez v. Guatemala*, Judgment on merits, 25 November 2000, par. 201. For more on the evolution of the way in which the “right to truth” has been interpreted in the Inter-American system, see MacGregor, 2016, pp. 121-139. Importantly, the “right to truth” has not been recognized in a similar way by the European Court of Human Rights (see for example part. 3.2 of the cited text). While the Human Rights Chamber for Bosnia and Herzegovina has inferred the “right to truth” from the right not to be subjected to torture or to inhuman or degrading treatment or punishment (see for example: Human Rights Chamber for Bosnia and Herzegovina, *Selimovic v. Republika Srpska* (the ‘Srebrenica Cases’), 7 March 2003, par. 191), this has not had any effect on other international courts.

other measures – provides help for the victims of the Franco regime.<sup>6</sup> In order to show the intersection between the concepts in practice, two examples can be given: First, a UN document describing the content of the “right to truth”; and second a preamble of a national memory law, explaining the state’s duties with regard to past crimes.

As stated by Patricia Naftali, the “right to truth” has gained momentum in UN human rights bodies, which accommodate a maximalist vision of the concept (Naftali, 2017, p. 13). An example of this approach is the 2005 ‘Updated Set of principles for the protection and promotion of human rights through action to combat impunity’<sup>7</sup>. In the context of memory laws, its third principle (“The duty to preserve memory”), located in the part relating to the ‘right to know’, is of special significance, and reads as follows:

A people’s knowledge of the history of its oppression is part of its heritage and, as such, must be ensured by appropriate measures in fulfilment of the State’s duty to preserve archives and other evidence concerning violations of human rights and humanitarian law and to facilitate knowledge of those violations. Such measures shall be aimed at preserving the collective memory from extinction and, in particular, at guarding against the development of revisionist and negationist arguments (E/CN.4/2005/102/Add.1, principle 3).

Under that principle, the obligation to preserve collective memory from extinction and to prevent the development of revisionist and negationist attitudes, forms part of the “right to truth”. Clearly, the majority of memory laws are adopted for precisely these reasons. The document states that this can be achieved by “appropriate measures”. Memory laws may therefore be either regulatory or non-regulatory measures (i.e. encompassing both punitive and/or non-punitive actions),<sup>8</sup> as well as other methods. This shows, that the UN interpretation of the “right to truth” also includes an obligation to introduce some forms of memory laws, which may take a non-regulatory form. It must be stressed that from the “right to truth” derives the right of individual persons and society to know the factual truth about past crimes, but does not encompass an obligation to introduce specific regulations such as the prohibition of the denial of certain crimes by criminal law.

The second example is the Spanish Historical Memory Act, which was adopted in 2007 and is aimed at recognizing victims of the Spanish Civil War and Franco’s regime, promoting

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<sup>6</sup> Spanish Historical Memory Act, 2007; for more on the situation in Spain, see: Urdillo, 2011/12, p. 4; Davis, 2005, p. 27; Encarnacion, 2007/2008; Salsench i Linares, 2013, pp. 464–469.

<sup>7</sup> Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher. Updated Set of principles for the protection and promotion of human rights through action to combat impunity, E/CN.4/2005/102/Add.1

<sup>8</sup> For more on the distinction between regulatory and non-regulatory memory laws, see: Heinze, 2017.

moral reparations, and reclaiming personal and family memory.<sup>9</sup> Its preamble closes with the following words:

It is not the task of the legislator to implant a certain collective memory. But it is the duty of the legislature, and the task of the Law, to make amends to the victims, to consecrate and protect, with maximum legal vigour, the right to personal and family memory as an expression of full democratic citizenship, to promote constitutional values and to promote knowledge and reflection concerning our past, in order to avoid situations of intolerance and violations of human rights as they were lived (Spanish Historical Memory Act, 2007).

to promote constitutional and social values, promote knowledge and reflection on our past, to avoid situations of intolerance and violation of human rights as they were lived.

The phrase “right to truth” does not appear. The law was justified, however, by a duty to protect the memory of victims and their families, which forms the essence of the “right to truth”. It contains measures to provide information about the victims, especially the disappeared, and deals with both individual (for example through introducing measures for the identification and location of victims, (Art. 12)), and collective memories (for example through removing symbols and public monuments which glorify the military uprising, the Civil War and the repression of the Dictatorship, (Art. 15)). While the law is not without flaws,<sup>10</sup> it is victim-oriented and can help both the families of victims of human rights violations and society as whole to receive information about past crimes.

### **A Matrix of Memory Laws: Poland, Russia and Ukraine**

The concept of the “right to truth” is based on noble intentions, which are to discover the true version of events, clarify the typically dramatic circumstances that surround the death of individuals and entire groups, and ensure at least a minimum of redress for those who suffered as a result of the falsification of the truth. However, as soon as the “right to truth” is enshrined in the law in the form of an established historical record featuring designated historical heroes and visions of worthy historic events, disagreements arise over various aspects of history as a result of the official view being challenged by those who see such heroes as criminals, and view the cherished historical events as acts of terror perpetrated against a state and a nation. An example of such a “matrix” of conflicting historical memories enshrined in law are the memory laws in place in Poland, Russia and, since recently, also

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<sup>9</sup> See Art. 1 of the Spanish Historical Memory Act.

<sup>10</sup> See, for example, the Report of the Working Group on Enforced or Involuntary Disappearances, Mission to Spain, A/HRC/27/49/Add.1, par. 21.

Ukraine. Without engaging in a detailed discussion regarding the scopes of each package of memory legislation enacted in the above countries, it is certainly worth to bring up some of their key provisions.

### *Poland*

Currently, the main memory law provision binding in Poland and relevant for the discussion on the right to historical truth in the present context, is Article 55 of the Institute of National Remembrance Act, which stipulates that *Anyone who publicly and contrary to facts denies crimes referred to in Article 1(1) shall be subject to a fine or the penalty of imprisonment of up to 3 years. The sentence shall be made public*<sup>11</sup>. Those crimes include primarily Nazi crimes, communist crimes, and other crimes against peace and humanity as well as war crimes, perpetrated on persons of Polish nationality or Polish citizens of other nationalities between 8 November 1917 and 31 July 1990.

However, as announced on the eve of the 2018 International Holocaust Remembrance Day (27<sup>th</sup> of January) and approved by the Polish Parliament just a week later,, a bill amending the Institute of National Remembrance Act provides for the following new legal measures, aimed at the protection of the good name of the Republic of Poland and the Polish Nation:

#### **Article 53o.**

The relevant provisions of the Civil Code Act of 23 April 1964 (Journal of Laws of 2016, items 380 and 585) concerning the protection of personal rights shall apply to the protection of the good name of the Republic of Poland and the Polish Nation. An action for the protection of the good name of the Republic of Poland and the Polish Nation may be filed by a non-governmental organisation acting in accordance with its statutory objects. Damages, whether special or general, shall be payable the State Treasury<sup>12</sup>.

#### **Article 55a.**

1. Anyone who publicly and falsely holds either the Polish Nation or the Polish State responsible for crimes committed by the German Third Reich, as specified in Article 6 of the Charter of the International Military Court – Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis, signed

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<sup>11</sup> Act of 18 December 1998 on the Institute of National Remembrance—Commission for the Prosecution of Crimes against the Polish Nation, Polish Official Journal (Dz.U.) No.155, item 1016.

<sup>12</sup> In the subsequent paragraphs the planned provision reads: “Art. 53p. An action for the protection of the good name of the Republic of Poland and the Polish Nation can also be filed by the Institute of National Remembrance.

Art. 53r. The provisions of Article 53o and Article 53p shall apply whatever the governing law.”

in London on 8 August 1945 (Journal of Laws of 1947, item 367), or for any other crimes against peace or humanity or for war crimes, or who otherwise glaringly trivialises the responsibility of their actual perpetrators, shall be subject to a fine or penalty of imprisonment of up to 3 years.<sup>13</sup>

The implementation of the new law caused fierce reactions from the side of Israel, but also US Administration and all others concerned about the freedom of historical research and the right of Jewish Holocaust survivors to present their memories from the darkest moments of their lives, when often these were the *Polish shmaltsovniki*, who were blackmailing or selling them to the Nazis. Even though the official reason<sup>14</sup> for submitting the amendment has been to rightfully stop the use of the term “Polish concentration camps” and “Polish death camps” primarily by the foreign press, the bill expands the scope of responsibility to include instances other than the abuse of the term “Polish concentration camps,” including those where Poles are responsible or jointly responsible for e.g. the Jedwabne Pogrom, where in July 1941 Poles burned their Jewish neighbours in a barn<sup>15</sup>. Clearly, no “Polish concentration camps” have ever existed. There have been, however, a number of German Nazi concentration camps designed and operated fully by the German occupiers of Poland<sup>16</sup>. And yet, the legal approach taken to stop the use of the term “Polish camps” appears not only to be ineffective but also to suppress the freedom of historical research and generally the freedom of speech by restricting the range of acceptable interpretations of historical events with a view, primarily, to eliminating those that present Poles as anything less than heroic. It is important to note here that while generally Holocaust denial bans find their convincing explanation in the need of protecting historical truth, the memory of those who perished in the Holocaust as well as those who survived and may be victims to racist hatred spread by negationists, the contested Polish memory law oversteps these frames of acceptable legal limitations of historical debates. As rightly noted by T.T. Koncewicz: “The expression “Polish death camps” is (...) but one example of the types of cases that might fall within the provisions of the

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<sup>13</sup> In the subsequent paragraphs the provision reads: 2. If the conduct of the perpetrator of the act specified in sub-para 1 has been unintentional, he shall be subject to a fine or the penalty of imprisonment.

3. No offence shall be committed if the perpetrator of an act prohibited under sub-para 1 and sub-para has perpetrated it as part of his artistic or scientific activities.

Art. 55b. Where such offences as referred to in Article 55 and Article 55a are committed, this Act shall be applicable to a Polish or foreign national, accordingly to the applicable provisions in the place where a prohibited act was perpetrated.”

<sup>14</sup> See the explanatory note to the project of the bill, available at <http://www.sejm.gov.pl/sejm8.nsf/druk.xsp?nr=806>.

<sup>15</sup> Such phrases appear mostly in the US and German media and are claimed to be only a reference to the geographical location of the camps. See the statistics of the Polish Ministry of Foreign Affairs on the scale and forms of this phenomenon *Niemieckie obozy koncentracyjne. Interwencje*, 2017.

<sup>16</sup> On „defective codes of memory” present in the public sphere see: Nowak-Far, Zamęcki, 2015.

new law. Its scope is much broader, as “the good name of the Republic (Rzeczpospolita)” and “the Polish nation” will cover an infinite number of statements that the majority may disapprove of at any given time as not being “sufficiently Polish” (Koncewicz, 2017).

### *Russia*

Article 354 para. 1 of the Russian Criminal Code provides for liability for “the Rehabilitation of Nazism” defined as “the denial of facts established by the verdict of the International Military Tribunal for trial and punishment of the main military criminals of the European countries of the Axis, support of crimes established by such verdicts, or disseminating such information on the activities of the USSR during World War II as is known to be false”<sup>17</sup>. In addition, the binding memory laws include Federal Law 80-FZ of 19 May 1995 “On the Entrenchment of the Victory of the Soviet People in the Great Patriotic War of 1941-1945” whose Article 6 “Combating Manifestations of Fascism” (the term “Fascism” in the context of this law is similar to “Nazism”) takes a firm stance against the restoration of the fascist regime, the usage of symbols and attributes related to it and any established collaborating organizations, and the denial of the facts established by the Nuremberg Tribunal as well as other national, military or occupational tribunals based on the Nuremberg Tribunal.

The Russian memory laws have already been invoked in the courtrooms where it has been proven that, in the context of historical justice and the “right to truth”, the individual right to honourable and dignified treatment may be interpreted very broadly. In October 2015, the Moscow City Court Presidium (case N 44r-127/15) found blog posts that negatively assess the “sacralization” of the Great Patriotic War (WW II) to be potentially offensive to the memory of the War itself and consequently, of the whole Russian nation (especially, those Russians who participated in the war. In other words, disrespect for certain patriotic traditions, beliefs and historically significant facts was found to be illegal. In particular, the court noted that:

- (a) the first claimant was himself a WWII combatant and a Hero of the Soviet Union, and that “in his opinion, the formulation of and support for a positive public view of the Victory in the Great Patriotic War and respect for the veterans, memorials and symbols of that Victory is central to national memory, and a foundation for his own personal subjective interest in stopping acts that dishonor him and undermine his dignity...”
- (b) the second claimant was a “Regional Federation of Public Associations of the Hero City of Moscow”, establish for the purpose of furthering patriotic, cultural and moral education of Moscow citizens; raising the international prestige of Hero Cities; propagating the contributions of Hero Cities to the Victory in the Great Patriotic

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<sup>17</sup> Information achieved from Russian legal scholars, decision of the Court not available online.



War and during the post-war period and other similar purposes related to the commemoration of the Soviet past.

Based on the foregoing, the court concluded that claimants had a subjective legal interest to lodge the claim and were parties to the relevant legal relationship in question” (the court seems to apply here a legal analogy and broad interpretation in this particular case, allowing a legal entity to act as a claimant). This suggests that the Russian understanding and interpretation of memory laws may pose danger for those who express even the slightest doubt or criticism regarding the role of Stalinist heroes and their conduct during the WW II<sup>18</sup>. Needless to say, such vision clashes drastically with the past experiences and suffering of many states and nations occupied by the Soviets during and after the wartime.

### *Ukraine*

Recent (2015) memory legislation in Ukraine is a package of four laws, heralded by the Ukrainian Institute of National Memory, which include: (1) legislation condemning the Communist and National-Socialist (Nazi) totalitarian regimes in Ukraine and criminalizing the production and dissemination of their symbols and propaganda; (2 and 3) two laws commemorating, respectively, fighters for Ukraine’s independence in the twentieth century and Ukraine’s victory over Nazism in World War II, and (4) a law guaranteeing access to the archives of repressive Soviet-era institutions<sup>19</sup>. The legislation that is crucial for the purpose of our analysis here are laws (2) and (3), on commemorating Ukrainian fighters and on victory over Nazism. The law ‘On the legal status and honoring the fighters for Ukraine’s independence in the twentieth century’ includes a list of names of fighters for the independence of Ukraine, underlines their service for the homeland, grants them with a specific legal status, obliging by law to honour their memory. The law also regulates the issues of restoration, preservation and honouring of the national memory of the independence struggle and its fighters and, as put by Malkoss “deems the public denial of the legitimacy of such struggle an ‘insult’ to the respective memory, ‘disparagement of the Ukrainian people,’ and thus unlawful” (Malksoo 2017, p. 7). The law ‘On the perpetuation of the victory over Nazism in World War II of 1939-1945’ introduces a rather unknown in other legal provisions

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<sup>18</sup> For a detailed account and analysis of another case concerning the same provisions, where the Perm Regional Court in Russia convicted Vladimir Luzgin of intentionally disseminating false information about the USSR’s involvement in World War II by publishing an article that alleged that communists cooperated with Nazi Germany to invade Poland, “The Case of Vladimir Luzgin”, 2016.

<sup>19</sup> The laws: ‘On the Condemnation of the Communist and National Socialist (Nazi) Regimes, and Prohibition of Propaganda of Their Symbols’; ‘On the Legal Status and Honoring the Memory of Fighters for Ukraine’s Independence in the Twentieth Century’; ‘On Perpetuation of the Victory over Nazism in World War II of 1939-1945’; ‘On Access to Archives of Repressive Organs of the Totalitarian Communist Regime, 1917-1991’. The listing of laws and translation of laws’ titles, as well as references by M. Malksoo, 2017, p. 2-3.

of this kind construction of declaring shared responsibility of the Nazi Germany and the USSR in the outbreak of World War II. Thus, the law clearly situates itself in the catalogue of legal measures undertaken by East and central European and Baltic states with the aim of introducing historical narratives equating both murderous regimes. In order to guarantee that the “true”, responsibility-shared version of historical events is being presented and disseminated to the next generations, the law provides also measures aimed at preventing the falsification of the history of the WW II.

As observed by Malksoo:

“The Ukrainian laws are consequently seen as problematic attempts to establish historical truth by legislation, police freedom of speech on issues of national importance for Ukraine’s ‘historical consciousness’ and, as such, have a significant potential for closing down discussion and silencing criticism by prescribing a single state-endorsed narrative.” (Malksoo 2017, p. 15)

The Russian reaction to these laws was predictable, in view of their direct contradiction to the Russian memory law, which prescribe a positive role of the Soviets in the WW II (but also in its aftermath, and the Ukrainian provision that enshrines in law the shared responsibility of the USSR for the outbreak of World War II). However, in Polish-Ukrainian relations, the provision of the Ukrainian law that defends the honour of the Ukrainian Insurgent Army is, by any measure, unacceptable<sup>20</sup>.

## Conclusions

Historical complexities and relationships among these three countries result in the situation where to this day, their dramatic fates define their mutual relations or, rather, fuel disputes, animosities and conflicts. However, once memory laws are adopted, the disputes are no longer mere historical and social arguments as legal, even criminal liability enters the picture. Both Russia and Ukraine impose criminal liability on persons found to disseminate views that are well-established and uncontested in Poland: Poland and its citizens associate the role of the Soviet Union in WWII mainly with aggression, conquest, devastation and repressions. Simultaneously, many of Ukraine’s national heroes, whose good name and legacy are legally protected by the Ukrainian law, were, as is the case of the Ukrainian Insurgent Army, criminals who have perpetrated mass murders on the Polish population. On the other hand, some historical events viewed in Poland as “historically unavoidable” (this refers mainly to Operation Vistula<sup>21</sup>), are times of national tragedy for the Ukrainians, although there

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<sup>20</sup> On the Polish-Ukrainian relations in the context of the Ukrainian Insurgent Army and Wołyń Massacre 1943-44 see for example “Wołyń 1943 – rozliczenie”, 2010.

<sup>21</sup> “Operation Vistula” was a codename for the 1947 forced resettlement of Ukrainian minority

is no legal obligation in Poland to pay tribute to the Polish commanders of that dramatic fighting.. The only feature shared by the three national historical narratives, which have been forced into a legal framework, are the reluctance of the legislators to set straight the record of the transgressions and crimes committed by their own states and nations. All of the above-mentioned laws are designed to prevent the condemnation of one's country's history, often by threatening, as in the case of Russia and Poland, to impose sanctions for "unfairly" accusing their nations of involvement in past crimes.

Is it possible in the above examples of Poland, Russia and Ukraine, to legally impose "the truth" that is different for each of the parties involved? What will legal liability be (including criminal liability) for pinning the blame for murders on a historical figure in a given state, whose honour and memory are legally protected in another state? How can a nation repressed by a totalitarian regime comply with the legal obligation to honour a grand triumph of the regime's army? For now, at least, such questions remain mainly theoretical, as the complexities are still to be resolved by the national courts of the concerned states.

#### References:

- Additional Protocol to the Geneva Convention of 12 August 1949 Concerning the Protection of Victims of International Armed Conflicts.
- Appleton, J. (2013, April 3). "Freedom for history? The case against memory laws". *Free Speech Debate*. Retrieved from: <http://freespeechdebate.com/discuss/freedom-for-history-the-case-against-memory-laws/>
- Belavusau, U., & Gliszczyńska-Grabias, A. (2017). "Memory Laws: Mapping a New Subject in Comparative Law and Transitional Justice". In U. Belavusau & A. Gliszczyńska-Grabias (Eds.) *Law and Memory: Addressing Historical Injustice through Law* (pp. 1–26). Cambridge: Cambridge University Press 2017.
- Brunner, J., & Stahl, D. (2016). *Recht auf Wahrheit. Zur Genese eines neuen Menschenrechts*. Göttingen: Wallstein Verlag.
- Davis, M. (2005), "Is Spain Recovering Its Memory? Breaking the Pacto del Olvido". *Human Rights Quarterly*, 27(3), pp. 858–880.
- Encarnacion, O.G. (2007/2008). "Pinochet's Revenge: Spain Revisits Its Civil War". *World Policy Journal*, 24(4), pp. 39–50.
- European Court of Human Rights, *Association "21 December 1989" and others v. Romania*, no. 33810/07, judgment of 24 May 2011.
- European Court of Human Rights, *El-Masri v. the former Yugoslav Republic of Macedonia*, no 39630/09, Grand Chamber judgment of 13 December 2012.
- European Court of Human Rights, *Al-Nashiri v. Poland*, no. 28761/11, judgment of 24 July 2014.
- European Court of Human Rights, *Abu Zubaydah v. Poland*, no. 7511/13, judgment of 24 July 2014.
- Federal Law 80-FZ of 19 May 1995 "On the Entrenchment of the Victory of the Soviet People in the Great

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including Boykos and Lemkos from the south-eastern provinces of post-war Poland, to the Recovered Territories in the west of the country. See Motyka, 2011.

- Patriotic War of 1941-1945”; unofficial translation of the law retrieved from: <http://cis-legislation.com/document.fwx?rgn=70802>.
- Garibian, S. (2014). “Ghosts Also Die. Resisting Disappearance through the ‘Right to the Truth’ and the Juicios por la Verdad in Argentina”. *Journal of International Criminal Justice*, 12, pp. 515-538.
- Gliszczyńska-Grabias, A., & Baranowska, G. (2016). “The European Court of Human Rights on Nazi and Soviet Past in Central and Eastern Europe”. *Polish Political Science Yearbook*, 45, pp. 117–129. DOI: [dx.doi.org/10.15804/ppsy2016009](https://doi.org/10.15804/ppsy2016009).
- Heinze, E. (2017). “Epilogue: Beyond ‘Memory Laws’: Towards a General Theory of Law and Historical Discourse”. In U. Belavusau & A. Gliszczyńska-Grabias (Eds.) *Law and Memory: Addressing Historical Injustice through Law* (pp. 413–434). Cambridge: Cambridge University Press 2017.
- Human Rights Chamber for Bosnia and Herzegovina, *Selimovic v. Republika Srpska* (the ‘Srebrenica Cases’), 7 March 2003
- Koncewicz, T.T. (2017). “On the Politics of Resentment, Mis-memory, and Constitutional Fidelity. The Demise of the Polish Overlapping Consensus?”. In U. Belavusau & A. Gliszczyńska-Grabias (Eds.) *Law and Memory: Addressing Historical Injustice through Law*. Cambridge: Cambridge University Press 2017, pp. 263-290.
- Kovras, I. (2017). *Grassroots Activism and the Evolution of Transitional Justice the Families of the Disappeared*. Cambridge: Cambridge University Press.
- Ley 52/2007, de 26 de diciembre, por la que se reconocen y amplían derechos y se establecen medidas en favor de quienes padecieron persecución o violencia durante la guerra civil y la dictadura.
- Mac-Gregor E.F. (2016). “The Right to the Truth as an autonomous right under the Inter-American Human Rights System”. *Mexican Law Review*, 9, pp. 121–139.
- Malksoo, M. (2017). “Ukraine’s Decommunisation Laws: A Hard Case for the EU Policy on Transitional Justice?”. EUSA Fifteenth Biennial Conference, Miami, May 4–6, 2017.
- Mendez, J.E., & Bariffi F.J. (2012). “Right to truth”. In R. Wolfrum (Ed.) *Max Planck Encyclopedia of Public International Law*. Oxford: Oxford University Press.
- Motyka, G. (2011). *Od rzezi wołyńskiej do akcji Wisła*. Warszawa: Wydawnictwo Literackie.
- Naqvi, Y. (2006). “The right to truth in international law: fact or fiction?”. *International Review of the Red Cross*, 862, pp. 245–273.
- Naftali, P. (2016). “Crafting a ‘Right to Truth’ in International Law: Converging Mobilizations, Diverging Agendas?”. *Champ penal/Penal field*, Vol XII (2016). Retrieved from: <https://champpenal.revues.org/9245>.
- Naftali, P. (2017) “The ‘Right to Truth’ in International Law: the ‘Last Utopia?’”. In Belavusau, U. & Gliszczyńska-Grabias, A. (eds.) *Law and Memory: Addressing Historical Injustice through Law* (pp. 70–88). Cambridge: Cambridge University Press 2017.
- “Niemieckie obozy koncentracyjne. Interwencje” (July 2017). *Ministerstwo Spraw Zagranicznych*. Retrieved from: [http://www.ms.gov.pl/pl/polityka\\_zagraniczna/niemieckie\\_obozy\\_koncentracyjne/interwencje\\_msz/](http://www.ms.gov.pl/pl/polityka_zagraniczna/niemieckie_obozy_koncentracyjne/interwencje_msz/).
- Nowak-Far A., & Zamęcki Ł. (2015). *Defective codes of memory. How the memory of international crimes is distorted in public discourse*, Warszawa: Ministry of Foreign Affairs of the Republic of Poland.
- Perez Solla, M.F. (2006). *Enforced Disappearances in International Human Rights*. Jefferson & London: McFarland.
- Projekt ustawy z o zmianie ustawy o Instytucie Pamięci Narodowej – Komisji Ścigania Zbrodni przeciwko Narodowi Polskiemu, ustawy o grobach i cmentarzach wojennych, ustawy o muzeach, ustawy

o odpowiedzialności podmiotów zbiorowych za czyny zabronione pod groźbą kary oraz ustawy o zakazie propagowania komunizmu lub innego ustroju totalitarnego przez nazwy budowli, obiektów i urządzeń użyteczności publicznej. (August, 2016). Retrieved from: [http://orka.sejm.gov.pl/druki8ka.nsf/projekty/8-020-307-2016/\\$file/8-020-307-2016.pdf](http://orka.sejm.gov.pl/druki8ka.nsf/projekty/8-020-307-2016/$file/8-020-307-2016.pdf).

Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher. Updated Set of principles for the protection and promotion of human rights through action to combat impunity, E/CN.4/2005/102/Add.1.

Report of the Working Group on Enforced or Involuntary Disappearances, Mission to Spain, A/HRC/27/49/Add.1, par. 21.

*Right to truth*, Report of the Office of the High Commissioner for Human Rights, A/HRC/5/7.

Salsench i Linares S. (2013). “Francoism Facing Justice. Enforced Disappearances before Spanish Courts”. *Journal of International Criminal Justice*, 11(2), pp. 463–483.

Sierp, A. (2014). *History, Memory and Trans-European Identity: Unifying Divisions*. New York: Routledge.

“The Case of Vladimir Luzgin” (2016). [www.globalfreedomofexpression.columbia.edu](http://www.globalfreedomofexpression.columbia.edu). Retrieved from: <https://globalfreedomofexpression.columbia.edu/cases/case-vladimir-luzgin/>.

The Law on the Condemnation of the Communist and National Socialist (Nazi) Regimes, and Prohibition of Propaganda of Their Symbols (2015, 26, 219). Retrieved from: <http://zakon4.rada.gov.ua/laws/show/317-viii>.

The Law on the Legal Status and Honouring the Memory of Fighters for Ukraine’s Independence in the Twentieth Century (2015, Nr 25;190). Retrieved from: <http://zakon2.rada.gov.ua/laws/show/314-viii>.

The Law on Perpetuation of the Victory over Nazism in World War II of 1939-1945. 2015, Nr 25; 191. Retrieved from: <http://zakon4.rada.gov.ua/laws/show/315-viii>.

The Law on Access to Archives of Repressive Organs of the Totalitarian Communist Regime, 1917-1991. 2015, r 26; 218). Retrieved from: <http://zakon2.rada.gov.ua/laws/show/316-viii>.

Urdillo U. (2011/2012). “Impunity for enforced disappearances in contemporary Spain: the Spanish search for truth”. *Interdisciplinary Journal of Human Rights Law*, 6(1), pp. 41–60.

Ustawa z dnia 18 grudnia 1998 o Instytucji Pamięci Narodowej - Komisji Ścigania Zbrodni przeciwko Narodowi Polskiemu. *Dziennik Ustaw*, 155, 1016.

“Wołyń 1943 – rozliczenie” (2010). Retrieved from: <https://ipn.gov.pl/pl/publikacje/ksiazki/12810,Wolyn-1943-rozliczenie-Materialy-przegladowej-konferencji-naukowej-W-65-rocznice.html>

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