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The Rosenburg Project – Federal Ministry of Justice of the Federal Republic of Germany in the Shadow of National Socialist Past in Poland

Although more than 75 years have elapsed since the end of the Second World War, the magnitude of human rights violations between 1939 and 1945 and their long-term effects both on the macro scale (e.g. the division of Europe by the Iron Curtain for long 45 years or the enormous social, economic and cultural impoverishment of Central and Eastern Europe) and on the micro scale (loss by the citizens of the occupied countries of their loved ones, most often in very dramatic circumstances[1], and often all their belongings, either due to wartime destruction or ruthless ownership shifts, an aftermath of the Red Army activities) makes the subject of liability of the state in the context of the Second World War ever topical and valid. Despite an attempt made in 1945 to create an international community based on a ban on inter-state aggression, massive human rights violations have taken place and continue to take place, and many countries, including the EU Member State Croatia, are confronted with the need to restore justice after a period of lawlessness and chaos.

Historia magistra vitae est, and the process of learning from history should in this case cover not only the years 1933–1945, but also the entire post-war period, because after a time of injustice and lawlessness[2], justice was neither restored nor meted out. This refers to the macro level (e.g. in the form of concluding a peace

[1] D. Brewing, *W cieniu Auschwitz. Niemieckie masakry polskiej ludności cywilnej 1939–1945*, Poznań 2019, e.g. p. 113ff. p. 193, p. 193.

[2] German documents and legal act use the term *NS-Unrecht* (national socialist lawlessness) cf. 'Świadczenia Niemiec związane z bezprawiem narodowosocjalistycznym dla ofiar w państwach środkowo- i wschodnioeuropejskich, jak również dla ofiar reżimu SED. Dokumentacja z dnia 10 października 2017 r. przygotowana przez Służby Naukowe Bundestagu,' in: M. Bainczyk, 'Raporty Służb Naukowych Bundestagu w sprawie reparacji wojennych dla Polski i odszkodowań dla polskich obywateli,' *IZ Policy Papers*, 1918, no. 26, p. 79, https://www.iz.poznan.pl/plik,pobierz,2721,ea91761886de622fcde600b1b566318e/IZ%20Policy%20Papers%2026.pdf (accessed 15.01.2021).

treaty and regulating reparations[3], or the return of stolen works of art[4]) and to the micro level (e.g. meting out justice to individuals responsible for the crimes committed during the Second World War, or the payment of compensation to the victims for the losses incurred at that time[5]). D. Brewing strongly claims that 'The history of the legal settlement of the massacres on Polish civilians is a history of defeat'.[6] In this context, the establishment of the International Military Tribunal in Nuremberg was of historic importance for the development of international criminal law, but given the process of administering justice to war criminals, it is of individual importance. The Court's activities have not, by any means, become a signpost for the German justice system with regard to crimes committed during the Second World War[7]. In this volume, the Court's activity is assessed by A. Eichmüller. In the text titled 'Die strafrechtliche Verfolgung von nationalsozialistischen Verbrechen in der Bundesrepublik Deutschland – Bilanz und Weichenstellungen' (Prosecution of Nationalist Socialist Crimes by the Criminal Law of the Federal Republic of Germany – balance and strategy), he presents striking results of his long-term studies in different bodies of the justice system concerning the number of proceedings and sentences passed as well as the types of sanctions adjudicated on. The results of studies are staggering – given the millions of victims of the Third Reich, only 6,700 convictions for National Socialist crimes were handed down by West German courts.

While unprecedented human rights violations led to the creation of international and national systems for their protection, paradoxically, these systems were almost exclusively future-oriented and did not include the victims of World War II, whose suffering was at the heart of the UN Charter: – "We the People of the United States determined to save succeeding generations from the scourge

[3] K.H. Roth, H. Rübner, *Wyparte. Odroczone. Odrzucone. Niemiecki dług reparacyjny wobec Polski i Europy*, Poznań 2020, p. 209ff. This volume also contains very interesting source documents: 26. Interview by Federal Chancellor Kohl with the President of the United States G. Bush in Camp David (excerpts). Consent as to the rejection of Polish reparation claims; 27. Presentation by Government Director Mertes and Legislative Counsellor Hinz to Federal Chancellor Kohl. Rejection by Poland of reparations as a compensation for the international legal recognition of the border on the Oder and the Neisse by a united Germany; 28. Counsellor rapporteur Ueberschaer to Ministerial Director Teltschik. Polish claims for damages; 29. letter from Federal Chancellor Kohl to Prime Minister Mazowiecki (excerpt). Recognition of the Oder-Neisse border by the united Germany and waiver of reparations and compensation by Poland.

[4] E.g. M. Tureczek, *Dzwony pożyczone. Studia historyczne i prawne nad problematyką strat dóbr kultur*, Poznań 2020.

[5] M. Bainczyk, 'Asymetria odszkodowań dla obywateli Polski za szkody poniesione w II wojnie światowej w stosunku do odszkodowań wypłaconych obywatelom innych państw', *Przegląd Zachodni*, 2019, no. 1, p. 83ff.

[6] D. Brewing, op. cit., p. 333.

[7] C. Safferling, 'Aufarbeitung von NS-Unrecht durch die deutsche Nachkriegsjustiz', in: A. Koch, H. Veh (eds.), *Vor 70 Jahren – Stunde Null für die Justiz*, Baden-Baden 2017, p. 35f.

of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person"[8], the Statute of the Council of Europe – "the Governments (...) convinced that the pursuit of peace based upon justice and international cooperation is vital for the preservation of human society and civilisation"[9], of the Basic Law of the Federal Republic of Germany (hereinafter BL FRG)[10] – the preamble which lays out that "Conscious of their responsibility before God and man, Inspired by the determination to promote world peace as an equal partner in a united Europe, the German people, in the exercise of their constituent power, have adopted this Basic Law" and Art. 1 BL, enshrining the principle of respect for human dignity[11]. The concept of the responsibility of the German people, which opens up the text of the German constitution of 1949, is significant in the context of this topic. In the relevant literature, however, the historical context of this part of the preamble is now being relativised[12]. This is somewhat in line with the practice of the state authorities over the next few decades.

One of the reasons for the lack of administration of justice after the Second World War, both on a macro and a micro scale, was Germany's conscious policy of personal continuity after the Second World War. The year 1949 turned out to be only a symbolic beginning of a new state based on the principles of respect for human dignity, democracy and the rule of law, in relation to the political principles of the Third Reich[13]; the above principles are defined as immutable in light of Art. 79 section 3 BL[14]. The first decades of Germany were marked by personal and material continuations from the Third Reich period[15], especially as regards the functioning of state authorities, both at federal and national level; they

[8] United Nations Charter, Journal of Acts of 1947, no. 23, item 90.

[9] Statute of the Council of Europe adopted in London on 5 May 1949, Journal of Acts of 1994, no. 118, item 565.

[10] Basic Law for the Federal Republic of Germany (German Grundgesetz für die Bundesrepublik Deutschland of 23 May 1949 (Bundesgesetzblatt, Federal Journal of Acts, hereinafter referred to as BGBl., p. 1), recently amended by the Act of 29 September 2020 (BGBl. I p. 2048).

[11] M. Bainczyk, 'Wpływ europejskiej Konwencji Praw Człowieka na interpretację praw podstawowych w RFN', *Krakowskie Studia Międzynarodowe*, 2018, no. 4, p. 35ff and the relevant literature indicated there, https://repozytorium.ka.edu.pl/handle/11315/19685?locale-attribute=en (accessed 15.01.2021).

[12] H. Dreier, *Grundgesetz-Kommentar*, Bd. I: *Präambel*, Tübingen 2013, para. 42; P. Kunig, 'Präambel', para. 19, in: I. v. Münch, P. Kunig (eds.), *Grundgesetz. Kommentar*, Bd. I, München 2012.

[13] K.-P. Sommermann, 'Art. 20 GG', in: H. von Mangoldt, F. Klein, C. Starck (eds.), *Grundgesetz*, München 2018, para. 20ff.

[14] M. Sachs, 'Art. 79 GG Änderungen des Grundgesetzes', para. 27ff, in: M. Sachs (ed.), *Grundgesetz. Kommentar*, München 2018.

[15] Cf. N. Frei, *Vergangenheitspolitik. Die Anfänge der Bundesrepublik und die NS-Vergangenheit*, München 1996; N. Frei, *Hitlers Eliten nach 1945*, Frankfurt am Main 2001.

failed to restore a state of justice in both domestic[16] and international relations. The widely promised denazification[17] was very limited in scope.

According to the authors of the exhibition 'Rosenburg – Federal Ministry of Justice in the Shadow of Nationalist Socialist Past', to be discussed below, K. Adenauer's objective was reached. Only 1.4% of people subject to denazification procedure were considered to be "principally guilty" or "guilty", and as a result of the rationale adopted, also former Gestapo or SS members acquired the right of re-employment.[18]

The personal and material continuity in the bodies of state authority of the Federal Republic of Germany after 1949 were crucially analysed by research teams, which in the early 21st century gained access to the archival records of the above authorities. The first such analysis concerned the careers begun in the Third Reich and continued in the German Ministry of Foreign Affairs[19]. No less important for the functioning of the state was the examination of the recent past of the Federal Ministry of Justice and Consumer Protection, which acts as a kind of centre of federal legislation and has a significant impact on the functioning of the federal justice system due to the exceptionally broad competence of the Minister of Justice in administering the federal judiciary and prosecution service[20].

In 2012, the Federal Ministry of Justice and Consumer Protection (hereinafter as FMJ) appointed an independent commission of scholars led by historian M. Görtemaker and lawyer C. Safferling. The commission was tasked with analysing personal and material continuations from the period of the Third Reich within this Ministry in the three decades following the war. The report, which came out in 2016 and numbered over 500 pages, bears the title *Die Akte Rosenburg*[21] (*The Rosenburg Files*). The title refers to the FMJ headquarters in the years 1950–1973, i.e. the Rosenburg villa in a district of Bonn. The work and findings

[16] E.g. the film *The People vs. Fritz Bauer* [original title: *Der Staat gegen Fritz Bauer*] dir. Lars Kraume, Germany 2015. As for victims-citizens of the Federal Republic of Germany the monography by A. Pross, *Wiedergutmachung: Der Kleinkrieg gegen die Opfern*, Berlin 1988 under the telling title "Redress: a small war against victims", interesting data on the amounts of compensation paid out to former officials of the Third Reich and those paid out to their victims. By 2000, the former received EUR 306 billion and the victims EUR 52.51 billion, K.H. Roth, H. Rübner, op. cit., p. 285f.

[17] Critically H.A. Winkler, *Długa droga na Zachód*, vol. II: *Dzieje Niemiec 1933–1990*, Wrocław 2007, p. 123ff.

[18] *Rosenburg – Federalne Ministerstwo Sprawiedliwości Niemiec w cieniu narodowosocjalistycznej przeszłości. Publikacja towarzysząca wystawie*, transl. M. Bainczyk, https://www.iz.poznan.pl/plik,pobierz,3298,91f27b643892ae4937b2adafd6af61f2/BMJV%20Rosenburg%20Katalog%20wystawy.pdf (accessed 15.01.2021), p. 21f.

[19] E. Conze, N. Frei, P. Hayes, M. Zimmermann, *Das Amt und die Vergangenheit: Deutsche Diplomaten im Dritten Reich und in der Bundesrepublik*, München 2010.

[20] M. Bainczyk, 'Wybrane aspekty prawne niezawisłości władzy sądowniczej w RFN', *IZ Policy Papers*, 2019, no. 30, https://www.iz.poznan.pl/plik,pobierz,3026,1cf079cc57256ac2eeaa534c581c132a/IZ%20Policy%20Papers%203=0.pdf (accessed 15.01.2021).

[21] M. Görtemaker, Ch. Safferling, *Die Akte Rosenburg. Das Bundesministerium der Justiz und die NS-Zeit*, München 2016.

of the commission are summarised in a text by one of its leaders, M. Görtermaker, entitled 'Das Bundesministerium der Justiz 1949–1973 und die NS-Zeit: Kontinuität und demokratischer Neuanfang – Ein historischer Rückblick' (Federal Ministry of Justice 1949–1973 and the Nazi period: continuity and a democratic new beginning – a historical retrospective). One of the most striking findings of the committee was the extent to which the FMJ management positions continued to be staffed by the same people.

The work of the commission headed by M. Görtemaker and C. Safferling was based on the concept of "public history", while both interim and overall results of the work have been repeatedly presented and debates at open meetings targeted at various social groups. A major part of the "public history" project was moreover the development of an exhibition that concisely and transparently presents the findings of an independent commission of scholars. The itinerant exhibition, excellent in terms of content and form, has since 2017 toured Germany and since been shown 2019 abroad, in an English version. Poland was the second country, after the United States of America, where the FMJ in cooperation with the Institute for Western Affairs in Poznań decided to show the exhibition. This logistically complicated undertaking could not have been made possible without the great commitment of the FMJ staff, especially Ms. I. Hanke.

One should emphasize at this point the superb graphics of the exhibition, in perfect harmony with the content presented. The exhibition panels depict the double face of the FMJ in the post-war years; the light front of the exhibition panel is contrasted with its dark back side. One side demonstrates the superior competence of many lawyers, whereas the other side shows their dark past and deep entanglement with the Third Reich. The slanting and crooked forms of the exhibition panels increase the feeling of ambiguity, while the oversized office lamps literally bring to light what has long remained hidden in the shadows and was the subject of scientific research of M. Görtemaker and C. Safferling's commission.

The exhibition toured three Polish cities: Wrocław, Krakow and Poznań, and was accompanied by scholarly and popular events and the publication of a comprehensive catalogue in the Polish language[22]. The scholarly events included the international conference *Liability for International Crimes. Conclusions and Perspectives/Verantwortung für Völkerverbrechen. Konklusionen und Perspektiven* on 5–6 November 2019 in Krakow and a seminar titled *Post Conflict Justice* on 21–22 January 2020 in Poznań. Importantly, both events gathered scholars and students from Poland and the Federal Republic of Germany. The texts reviewed and collected in this volume and in one published in Polish grew out of the context of the exhibition, the curatorial tour of the FMJ Ministerial Counsellor

[22] *Rosenburg – Federalne Ministerstwo*..., op. cit.

A. Grapentin, speeches and debates of the above scholarly events.

Events popularising the subject of the personal continuation in the West German judiciary were reviews of films related to the subject of the exhibition, prepared by M. Wagińska-Marzec from the Institute for Western Affairs. The screenings, held in Wrocław, Krakow and Poznań, included three films: *Labyrinth of Lies* [original title: *Im Labyrinth des Schweigens*], dir. Giulio Ricciarelli, Germany 2014; *The People vs. Fritz Bauer* [original title: *Der Staat gegen Fritz Bauer*] dir. Lars Kraume, Germany 2015; *The Nuremberg Epilogue* dir. Jerzy Antczak, Poland, 1969.

Research on the settlement of the post-war history of the German state authorities and in particular of the justice system continues to this day. In early 2018, the General Prosecutor's Office set up a scientific committee for this purpose, headed by lawyer C. Safferling and historian F. Kießling. The findings of this committee are as appalling as those of other bodies: 50% of the Prosecutor General's Office staff were NSDAP members.[23]

In February 2020, the then President of the Federal Constitutional Court of the Federal Republic of Germany (hereinafter FCC) A. Vosskuhle announced during an annual meeting with communications media representatives that both the FCC Senates had passed a regulation on the study of personal continuations from the socialist nationalist period in the operation of the Court, set up in 1951.[24] Compared to other German authorities and offices, the continuation of careers from the Third Reich period was relatively limited in the FCC. Out of 24 judges appointed in 1951, 9 were persecuted during the Third Reich, which was rather an exception in Germany's post-war personnel policy. It was even believed that the composition of the FCC was a kind of compensation for those not connected with the Third Reich, who in other bodies and offices could not continue their careers interrupted between 1933 and 1945. This does not mean, however, that the FCC had no people with a controversial past. Among the cases examined so far, the following are mentioned: H. Höpker-Aschoff, President of the FCC between 1951 and 1954, member of the NSDAP, chief lawyer of the Central Trust Office East (German: *Haupttreuhandstelle Ost*, HTO). This particular office was responsible for the collection and administration of the property of Polish citizens in the area annexed by the Third Reich.[25] In addition, there was W. Geiger, an FCC justice between 1951 and 1977, a member of the NSDAP and SA, prosecutor at the Special Court in Bamberg in the years 1941–1943,

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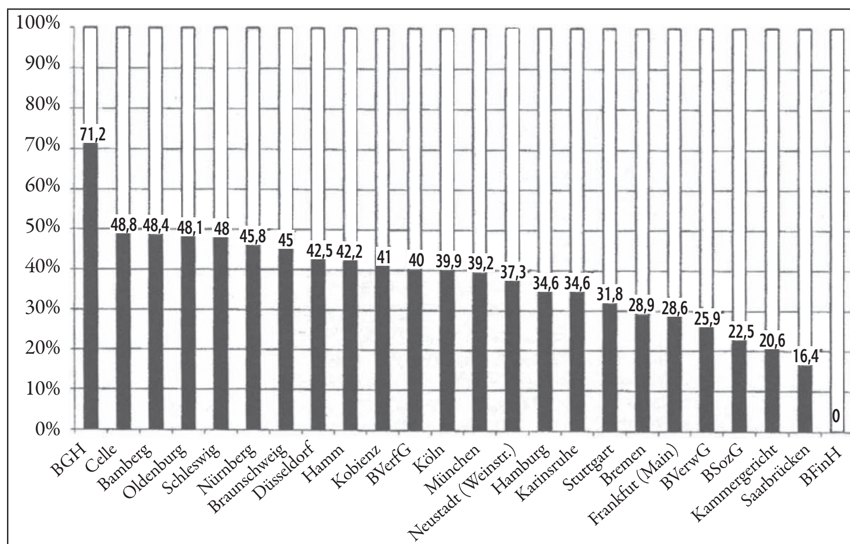
[23] K. Hempel, *Eine belastete Behörde*, https://www.tagesschau.de/inland/gba-ns-vergangenheit-101.html (accessed 15.01.2021).

[24] *BVerfG will NS-Erbe aufarbeiten lassen*, Redaktion beck-aktuell, 19 February 2020 (dpa), https://rsw.beck.de/aktuell/daily/meldung/detail/bverfg-will-ns-erbe-aufarbeiten-lassen (accessed 15.01.2021).

[25] B. Rudawski, *Grabież mienia w Kraju Warty 1939–1945. Działalność Urzędu Powierniczego w Poznaniu*, Poznań 2018.

responsible for the delivery by that court of five death sentences, including two for Polish citizens. In addition, four more FCC judges continued their careers began in the Third Reich.[26]

At present, a commission of scholars is looking into the socialist nationalist past of the post-war judges of the Federal Supreme Court (German *Bundesgerichtshof*, BGH). The continuation of employment of persons previously involved in the Third Reich machinery was 71.2% in the BGH in 1964 and over 40% in nine Higher Land Courts (German *Oberlandsgericht*, OLG). It was the BGH which delivered a number of controversial rulings in cases concerning Third Reich war criminals, e.g. an acquittal of the judges who sentenced to death Admiral W. Canaris and the Reverend D. Bonhoeffer.[27] In the context of this ruling, J. Perels pointed to the discrimination of victims of national socialism by the legal system of the Federal Republic of Germany and further violations of their rights under Art. 1ff. BL FRG, which he called an "outrage of constitutional law".[28]



Continuations in Higher Land Courts and Highest Federal Courts in 1964.

Source: H. Rottleuthner, *Karrieren und Kontinuitäten deutscher Justizjuristen vor und nach 1945*, Berlin 2010, p. 69.

[26] M. Görtemaker, C. Safferling, op. cit.

[27] A. Koch, 'Der „Huppenkothen-Prozess". Die Ermordung der Widerstandskämpfer um Pastor Dietrich Bonhoeffer von der Schranken der Augsburger Justiz', in: A. Koch, H. Veh (eds.), *Vor 70 Jahren – Stunde Null für die Justiz*, Baden-Baden 2017, p. 131ff; J. Perels, *Das juristische Erbe des „Dritten Reiches". Beschädigungen der demokratischen Rechtsordnung*, Frankfurt am Main 1999, p. 181ff.

[28] J. Perels, 'Die Würde des Menschen ist unantastbar. Entstehung und Gefährdung einer Verfassungsnorm', in: J. Perels, *Recht und Autoritarismus*, Baden-Baden 2009, p. 18ff.

The continued staffing of higher courts and supreme courts is very controversial. Between 1933 and 1945, the German justice system was deeply involved in the policy of the Third Reich. This is perfectly illustrated by W. Kulesza's text, shocking for contemporary lawyers, entitled 'Criminal bending of the law by German special courts in occupied Poland. A contribution to further research', in which the author analyses the crimes committed by judges of German special courts (German *Sondergerichte*) in their judicial decisions. The justices, adjudicating exorbitant penalties under a special regulation on criminal proceedings of Poles and Jews, delivered judgements *per analogia iuris*, thus violating the elementary principles of criminal law: *nullum crimen sine lege, nulla poena sine lege, nullum crimen sine lege certa, lex retro non agit, cogitationis poenam nemo patitur*.

The active participation of members of the Third Reich regime, including judges of all court instances, in the post-war state authorities at the federal and *Länder* level, undoubtedly had an impact on the prosecution, or rather the failure to prosecute war criminals in West Germany. German literature even uses the term *Krähenjustiz* (literally crows' justice), meaning that crows will not harm another crow.[29]

The negative balance is no doubt one of the main reasons why the responsibility of a state for international crimes should be considered more broadly and the restoration of justice after massive human rights violations should be analysed. We are taking here about a state that has transformed itself in political terms and as to its system, abiding by the values of democracy, respect for human rights and the rule of law, and has established numerous institutions to implement these values. In view of the fundamental structural problems outlined above, even the establishment of specialised institutions to assist in the prosecution of war criminals has not fundamentally affected the restoration of justice. Such institutions include the Central Unit of the National Administration of the Judiciary for the Investigation of National Socialist Crimes in Ludwigsburg (German *Zentrale Stelle der Landesjustizverwaltungen zur Aufklärung nationalsozialistischer Verbrechen*). Its task is to conduct preliminary investigations, on the basis of which prosecutors in the *Länder* can bring charges against perpetrators from the Third Reich. Since 1958, 7600 preliminary investigations have been carried out. The Central Office is still in operation today. The practical aspects of the activity of public prosecutors in such proceedings were discussed during the *Post Conflict Justice* seminar by Chief Prosecutor J. Lehman (General Prosecution Authority Celle).

Apart from internal settlements with national socialism and its legacy in Germany, issues concerning Germany's liability for the effects of the Third

[29] H. Rottleuthner, Karrieren und Kontinuitäten..., op. cit., p. 95.

Reich's action in international relations and the reaction of national legal systems to crimes of international law remain extremely important. In particular, to date, the process of post-war settlements has not been completed and the damage suffered by citizens affected by warfare has not been redressed. This is pointed out by M. Bainczyk in the text entitled 'Constitutional courts vs. jurisprudence of international tribunals in a question of just compensation for the losses incurred as a result of international crimes', where the author presents the question of fair compensation and redress for the victims of the Third Reich in light of case of law of national constitutional courts: of the Italian Constitutional Court, Federal Constitutional Court of the Federal Republic of Germany and the Polish Constitutional Court, as well as the International Court of Justice. The fact that compensation was not dealt with in the post-war period has resulted in significant relevant decisions of national and international supreme courts over the last decade. They also provide interesting material for analysing the relationship between constitutional law and public international law.

The far-reaching consequences of the massive human rights violations during the Second World War in German-Polish relations of a legal nature are shown in three other texts in the volume. They refer to the so-called "Polish concentration camps" and various ways of eradicating this expression from public discourse. The above term is most painful for the Poles who remember the times of World War II and the horrors of German concentration camps located within the borders of present-day Poland. The attempts to introduce legal regulations in this area prove the urgency of this problem in Polish society, despite the passage of years. They moreover indicate how emotionally charged statements denying the crimes committed by Third Reich functionaries or attributing these crimes to Poles are. At the same time, they show how difficult it is to regulate these issues effectively by means of legal provisions. A. Strzelec in the text 'Polish death camps…', referring to the amendment of the Act on the Institute of National Remembrance – Commission for the Prosecution of Crimes Against the Polish Nation of 26 January 2018 presents the genesis of this untrue yet widespread concept and discusses the attempt to criminalise its use in the public domain. Particular attention should be paid to analyses to verify whether the new criminal law regulations have reduced the frequency of use of such defective memory codes. The research carried out shows, however, that the emergence of provisions in the Polish legal system ensuring criminal liability for the use of such terms has had the opposite effect to that intended, and has even led to these phrases being perpetuated in the public domain.

At the same time, a regulation of a civil law nature has appeared in Polish law, which is intended to prevent the falsification of Polish history and to protect the

good name of the Republic of Poland and the Polish Nation. This regulation is addressed by A. Kubiak Cyrul in the text 'Protection of the good name of the Republic of Poland and the Polish Nation in the Act on the Institute of National Remembrance'. The author presented an analysis of the new provisions of the Act on the Institute of National Remembrance (IPN) against the background of the civil law *acquis* to date with regard to general provisions on the protection of personal rights, and in particular the protection of the sense of national identity. The new provisions are a source of numerous doubts as to their subjective and material scope and the means available to the "wronged party". Their analysis leads to the conclusion that these provisions in their current form will not contribute to the elimination of statements which falsify Polish history, either at home or abroad. In Poland, on the other hand, they may constitute a restriction on public debate and on the freedom of scientific research.

The practical aspect of this question is addressed by P. Mostowik and E. Figura-Góralczyk in the text 'Polish Death Camps' as an 'Opinion' of which Expressing is Protected by German Law? Questionable *Bundesgerichtshof's* Judgement of 19.7.2018'. The authors present problems related to the enforcement of decisions of Polish courts in civil matters in the Member States of the European Union, issued in cases involving statements about "Polish concentration camps". They point to a specific example of the refusal to enforce a judgment issued by the Court of Appeal in Krakow in the case against the German television ZDF. In these proceedings, the Federal Supreme Court of Germany challenged the Polish court's assessment of the use of the term "Polish death camps" by the ZDF and invoked the public order clause. The authors demonstrated beyond doubt that this decision of the German court is a violation of EU law, private international law and public international law.

The passage of time is one of the important elements of the process of compensating for the wrongs associated with warfare, in relations between the participating countries. This issue is analysed in the next two texts in this volume relating to the statute of limitation. In the text entitled 'Evolution of the statute of limitations of crimes under international law in international law' by K. Banasik discusses the development of the statute of limitation of crimes of international law in instruments of international law. In turn, R. Pawlik in the text 'Scope of the exclusion of the statute of limitations on prosecution in Article 105 § 1 of the Polish Penal Code in the context of the State's responsibility for crimes under international law', presents considerations on the principle of non-applicability of the statute of limitation with regard to war crimes and crimes against humanity in the context of the Polish Penal Code. Both authors draw attention to problems concerning the definition of the scope of the concept of crimes of international law in national and international law, which