

# Violations of Holocaust Memory in Art

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## Abstract

Artists sometimes choose the martyrial legacy of the Holocaust as the topic for their works of (broadly defined) art. The motivations of the artists may vary from the most noble, such as reverence and full-throated commemoration, through warnings, remembrances of Nazi crimes, other socially significant values, therapy for trauma suffered during the Holocaust, criticism of certain attitudes or current historical narration, simple unthinkingness or the search for publicity, to hatred, anti-Semitism and denialism. Even if art has a scopious legitimacy to operate on the edges of the binding social order, which also includes legal goods such as national memory or cults of remembrance of the fallen, there still exists a border that should not be crossed. In the present article, the author cites selected examples of works of art in an attempt to determine the intentions of their creators and whether or not the memory of the Holocaust has been violated. It would be difficult to implement a form of strict legal protection of the martyrial heritage and national memory because these concepts do not possess a normative definition and estimations of their value may depend on subjective beliefs. Each case of a violation of memory requires individual evaluation, and it is impossible to adopt objective criteria that would be conducive to the stipulations of criminal law.

The tragic events of the Second World War required comment both in the form of reliable accounts (descriptions) and in the form of cultural or ethical criticism. Not infrequently, however, do the various manifestations of creative activity regarding this subject matter unjustifiably violate the memory of the victims and bear a charge of social harm.

### Violations of memory

“Violations” refer to certain phenomena that, whether through human action or omission, cause harm to the latter concept in the term, i.e. “memory,” which is understood here as a common good with positive value. Such violations of memory will therefore be judged negatively in principle.

The violations discussed in this article can be viewed as crimes in the broadest sense, which the author understands as all kinds of anti-social behavior – that is socially harmful phenomena – as described by several German, American (Hołyst, 2016, p. 51), and Polish (Horoszowski, 1965, p. 27) criminologists. Any encroachment on Holocaust memory that is not sufficiently justified and, at the same time, constitutes a violation of existing social norms and is socially harmful, will be included here in the category of a crime regardless of whether there is a corresponding provision of criminal law to penalize such a violation.

### Legal goods at risk of violation

Jurisprudence concerning the protection of martyrial heritage is neither exhaustive nor coherent. Never has a category of such goods subject to legal protection been explicitly distinguished, and the matter of a system of legal protection for this heritage remains open. The concept itself is a relative recent addition to legal doctrines (Jakubowski, 2016).

The concept of memory, understood in the present text as a legal good, has a different meaning from memory in the psychological sense. Herein it refers to collective memory, a certain validated and generally accepted means to narrate the past, or a body of prevalent knowledge. It can be defined as “national memory” in order to emphasize its intersubjective nature linked with a strong educational influence and the formation of a national identity (not necessarily only Polish identity) or appropriate moral attitudes.

### Scope of the study

The Holocaust (*Shoah*) is a fragment from the whole of the heritage of martyrdom resulting from the Second World War; in the author’s estimation,

however, it is currently the most symbolic, contemporary and most often discussed theme of martyrdom in modern European culture. Thus does it necessarily become the first choice for artists wishing to examine such a topic. In artistic works, victims of other nationalities than Jews are sometimes omitted intentionally (e.g. for ideological reasons) or due to superficial historical knowledge. Not infrequently are conscious violations of martyrdom legacy motivated by purely anti-Semitic intent and are not directed against the representatives of other nations. While still remembering all the victims whose suffering is encompassed in the martyrology of the Second World War, the author has adopted the Holocaust as a symbol that most clearly represents the issues under examination.

The concept of art is broadly understood in this study, and goes beyond the boundaries of fine art with esthetic value. Art is understood as original manifestations of creative activity, which can delight, move or shock by recreating phenomena, constructing forms or retelling experiences (Tatarkiewicz, 1988, p. 52). In this way, creators of art may be motivated by various intents, the working typology of which will be proposed below.

### Examples of artistic works on Holocaust-related martyrdom

**Noble intent.** The first category includes examples of artistic activity whose creators had specific and, in their opinion, noble intent.

It may seem difficult to find any violations of the memory of Holocaust victims in the case of the exhibitions of the State Museum at Majdanek – it is, after all, an institution established specifically for the cultivation of this good. Nevertheless, the question must be asked whether the tools used by the Museum to perform its functions are appropriate in relation to other legal assets. This concerns one of the three parts of the Monument to the Struggle and Martyrdom of the Polish Nation and Other Nations, designed by Wiktor Tołkin and unveiled in 1969, and more specifically the Mausoleum that dominates the area of the former camp (*75 lat Państwowego Muzeum na Majdanku*, 2019). This structure is a concrete dome perched atop an earthen mound that conceals a depression holding a pile of human ashes.<sup>1</sup> While the reasoning behind this monument may be laudable, the appositeness of using human remains as part of the monument should be assessed.<sup>2</sup> Human corpses and remains, including ashes (*Rozpo-*

1 This information is contained on a stone tablet before the Mausoleum.

2 The Column of the Three Eagles, which stands in Field III of KL Lublin, is slightly different in nature. The prisoners of the Majdanek concentration camp secretly immured the ashes from the crematorium in order to commemorate their comrades. This work was conducted for a different purpose and at a different time than the

rzządzenie Ministra Zdrowia, 2001, art. 8 para. 1 pt. 1 and 2) are a specific kind of material object, which as a matter of principle should be interred (*Ustawa z dnia 31 stycznia 1959 roku o cmentarzach i chowaniu zmarłych*, 1959, art. 9 and 10). Nevertheless, it is often the case that this does not happen; on the contrary, they are kept and exhibited for various purposes, for example as relics or museum exhibits (Gardocka, 2015, pp. 280–281).

Judgments of the Supreme Court present the position that the obligation to respect human remains arises primarily from provisions on the protection of personal property in the form of the cult of the deceased and the right to burial (*Uchwała Sądu Najwyższego...*, 2016). In this context, the display of a mixture of ashes from numerous people does not respect this cult. On the other hand, it is difficult in this case to discuss the desecration of human remains or the profanation of a “burial” site as described in article 262 of the Penal Code (*Ustawa z dnia 6 czerwca 1997 roku Kodeks karny*, 1997), as the entire monument serves to commemorate the victims of Nazi crimes and is held in reverence. Failure to bury the remains could at most be considered a petty crime under article 18 of the Act on cemeteries and burial of the dead, which, as a socially harmless act, likely does not merit prosecution when confronted with the Museum’s mission (*Ustawa z dnia 20 maja 1971 roku Kodeks wykroczeń*, art. 1, 1971). In any case, even without criminal punishment, it may be worth initiating a discussion on the ethical foundations of displaying a mound of human ashes even for the most noble of purposes.

An entirely different motive guided the organizers and actors of a performance that took place at the entrance gate to the former Auschwitz concentration camp in March 2017. Under the pretext of an anti-war protest, two people prepared an artistic event in which a group stripped naked beneath the infamous scrollwork reading “Arbeit Macht Frei” and covered it with a banner reading “LOVE.” They had also planned to stack their clothes and set them on fire, and say love prayers in English for the people of Donetsk and Palestine, but this part of the event was not carried out as the actors improvised chaining themselves to the fence. Meanwhile, the organizers tossed flares over the fence of the camp, and one proceeded to remove a live sheep from a case and inflict numerous stab wounds on the animal. According to the perpetrators themselves, the actors were performing in order to protest war in general (and the wars in Syria, Palestine, and Ukraine in particular), and their nudity was not meant to be offensive, but to symbolize their joining in pain with the civilian victims of armed conflict. They treated the event as an artistic and media performance designed to draw attention to the presence of war in

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Mausoleum; it was intended to lift prisoners’ spirits and unite them in common suffering. It cannot therefore be considered a violation of memory.

the world. The main organizer even claimed that he had committed a noble act, and that the Auschwitz-Birkenau State Museum had committed a greater desecration of the memorial site by selling food and conducting “various kinds of business” on the site. There was no doubt at the court of first instance, which judged the incident at the gate that is “the worldwide symbol of the entrance to Hell” as extremely socially harmful. The organizers were convicted of having defamed a memorial site and slaughtering an animal, while the actors were convicted of only the former charge.<sup>3</sup> The court of appeals reduced the sentence slightly, although it agreed that the behavior “violated the public interest, the honor and the dignity not only of the persons being commemorated but also of other persons honoring or commemorating a historical event” (*Wyrok Sądu Okręgowego w Krakowie z dnia 21 maja 2019 r.*, 2019). It is difficult to disagree with the courts of both instances that the social harm caused by the perpetrators’ behavior far exceeded the feasible expected benefits from the anti-war protest, and the choice of location for the performance was exceptionally misguided. The gateway to the former death camp was intended to serve as a tender point that would earn greater publicity for the performance, but the place dedicated to the commemoration of the tragedy of the victims of Nazi concentration camps and their memory was also violated at the same time.

A similar mechanism could be observed in a campaign headed by PETA (People for the Ethical Treatment of Animals). The animal rights organization intended to publish seven posters in the Federal Republic of Germany and on the internet from a series entitled *The Holocaust on Your Plate*, in which the suffering of animals in the meat production industry was compared to the suffering of Holocaust victims (*Wystawa objazdowa oraz 7 plakatów...*, 2004). Members of the Central Council of Jews in Germany applied to national courts to prohibit the dissemination of the material, and the case was brought before the European Court of Human Rights in Strasbourg following a complaint submitted by PETA Deutschland (*Wyrok Europejskiego Trybunału Praw Człowieka...*, 2012). Interestingly, the tribunal, which, like American courts, usually defends the unfettered application of freedom of speech even in cases involving the most offensive and shocking overtones, unanimously recognized a limit to this freedom in the face of such a violation of the personal rights of Holocaust survivors in the form of a trivialization of their suffering (Nowicki, 2013, pp. 290–292; Warecka, 2012). In doing so, the court did not base its ruling on national memory, but on the disjunction between a laudable goal (seeking to minimize animal suffering) and the personal well-being of living witnesses of the Holocaust.

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3 Criminal proceedings before the District Court in Oświęcim, file no. II K 653/17 (*Wyrok Sądu Rejonowego w Oświęcimiu z dnia 17 stycznia 2018 r.*, 2018), concluded with final judgment, file no. IV Ka 867/18 (*Wyrok Sądu Okręgowego w Krakowie z dnia 21 maja 2019 r.*, 2019). The quotation is taken from the grounds of judgment.

Justified (?) motives. This category includes examples of works that teeter on the edge of legitimate discussions of martyrdom, and often go beyond it for, in the opinion of the author, justifiable reasons.

In the musical piece *Birkenau*, Przemysław Gintrowski sings lyrics in a serious tone that contain the phrase, “porządny w przyzmach marnuje się opał i zimny komin zbędne ma przestoje” [“good fuel goes to waste in heaps, and a cold chimney is unnecessarily stopped”] (Gintrowski, 2009). In a purely literal sense, it may be assumed that the lyrical content expresses a regret that the crematoria at Auschwitz-Birkenau are no longer in operation, however after even a cursory examination of the work as a whole there can be no doubt that such an assessment would be unfair. The negatively charged words (the fuel “goes to waste” and the stoppages in the work of the chimney are “unnecessary”) are evidence of an encroachment on the boundary of acceptable narration regarding the history of the Nazi death camps, which nevertheless is not crossed even if the words succeed in reinforcing the artistic message and causing shock.

A discussion concerning a crossing of this boundary can be made in the case of Zbigniew Libera’s works *Lego. Obóz koncentracyjny* (Libera, 1996) and *Mieszkańcy* (Libera, 2002–2003). The former was a composition of seven boxes containing sets of LEGO blocks which were arranged on the packaging to form a model of a concentration camp. The latter work was a staged recreation of a photograph of prisoners in the camp in a positive setting; the figures were smiling, dressed in pajamas instead of striped uniforms, and separated from the photographer by clotheslines instead of barbed wire. These expressions of creativity were manufactured to be provocative and to deliberately transgress the barrier that surrounds a sacred and untouchable subject, and thus to undermine the integrity of the prevailing historical narrative (Bojarska, 2007). Such iconoclasm, assumed in advance to be a criticism of modernity, is evidence of an intentional violation of memory. According to the artist himself, this is a justifiable reason. It is nevertheless easy to see inconsistency: while challenging the instrumental treatment of victims in the contested Holocaust narrative and simultaneously deconstructing its iconicity (Pajączkowska, 2017, p. 486), the artist is using martyrology solely as a tool. The depiction of the camp as a children’s toy, or the stripping of grim overtones from authentic photographs of prisoners were made without regard for the respect of the memory of the dead. They simply do not matter in Libera’s works.

Artur Żmijewski also proposed giving martyrology a more cheerful context with his film *Game of Tag* (Żmijewski, 1999; *Berek, Artur Żmijewski*, n.d.). By depicting the playful games of naked subjects in the gas chambers of Auschwitz, the artist intended to take the ghastliness of the theme of martyrology and create something of an “antidote” to official historical narration (Jakubowicz, 2009, p. 190). The title of the work in turn was meant to symbolize the transparency of anti-Semitism in Poland

(Chałupnik, 2017, p. 207). It is possible to identify the artist's intentions in his statement:

We did not go there to bow our heads in reverence, but to aggressively violate that space, to fill it with real struggle, cunning, effort, and laughter; to enter into conflict with the tranquility of that space, with dead memory that is satiated by wreath-laying ceremonies, with memory closed to experience; to enter that world in a different way than through ritualistic speeches and the lighting of candles (Jakubowicz, 2009, p. 192).

When asked whether an artist may refer to the Holocaust via means of expression that go beyond the commonly accepted canon in which the issue is more usually raised, Żmijewski replied: "that canon does not get the job done – it does not allow for history to be experienced" (p. 193). The artist appears to feel entitled to aggressively violate the memory of the Holocaust and the serenity of the memorial itself when those values inhibit his need to "experience history."

A separate category of potentially justifiable motivations of creators whose works cross the border with violations of memory can be found in how people who actually have to work through their memories of the Holocaust cope with their trauma. One example of this is the documentary film depicting the journey of Danny Chanoch, a Holocaust survivor who visits the Auschwitz-Birkenau State Museum with his children (Zimmerman, 2008). The protagonists eat pizza and smoke cigarettes in a former prisoner barracks and laugh. Although it is possible that the protagonist needed such an experience in order to cope with his trauma, it is difficult to justify the filming and distribution of a documentary containing such excesses of individual therapy. The key question, however, is whether survivors of tragic events have a legitimacy to treat carriers of memory about these events in any way they please. The answer must be negative, and has its foundation in the very nature of the legal good that is national memory. An individual victim, with all due respect to his or her suffering, is not the sole proprietor of the memory of the Holocaust, and the traumatic experience does not give entitlement to insult a memorial site, to break into barracks that are now museum exhibitions, etc.

Another way of coping with trauma may have been the stream of pornographic pulp literature that emerged in Israel in the 1950s and 60s. The books, referred to as *Stalag literature*, had a mostly similar plot in which an Allied prisoner of war<sup>4</sup> is sexually abused and tortured by sadistic

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<sup>4</sup> This was a deliberate literary misrepresentation in order to avoid a direct reference to the *Shoah*.

female ss officers, frees himself, rapes and murders his tormentors, then escapes. The literature became very popular, with the trauma being overcome via identification with the protagonist who eventually exacts revenge and triumphs in spite of oppression. It is important to note that Stalag literature attracted numerous readers with its controversial content and thus played a role in raising the surprisingly low level of knowledge about the Holocaust among Israeli citizens (Libsker, 2007) and as such may have been socially beneficial in spite of its undeniably inappropriate context.

**Negligence.** Works that address the Holocaust only with a superficial mode of thought and a lack of reflection on their own interpretations require a separate category. A scandal was caused in Germany by the nominations for the Echo Music Prize (Lepiarz, 2018), which included the work of two rappers who used the lyrics “mein Körper definierter als von Auschwitz-Insassen” [“my body is sculpted better than the body of an Auschwitz prisoner”] in one of the songs on the album *Jung Brutal Gutaussehend 3* (Farid Bang & Kollegah, 2017a). In common parlance for gym-goers, the line references a pronounced sculpturing of musculature with as little body fat as possible. Thus, the authors of the piece evoked the memory of concentration camp victims who were starved (often to death), only to describe their own low body fat. Similarly, another song from the same album contains the line “mache wieder mal ‘nen Holocaust, komm’ an mit dem Molotow” [“I’m coming with a Molotov cocktail to make another Holocaust”] (Farid Bang & Kollegah, 2017b). Placed among other phrases designed to incite aggression, this line was apparently intended to evoke a loose association of death in fire (through the use of incendiary weapons) with the burning corpses of victims in the crematoria of concentration camps. Both of the lyrics cited above were meant to reinforce an aggressive message via an instrumental reference to martyrdom with the intention to add to the controversy in the texts.

Another interesting case was the story of Shahak Shapira’s online project “YOLOCAUST”<sup>5</sup> (2017a, 2017b), which sought out photographs showing inappropriate behavior on the premises of Berlin’s Memorial to the Murdered Jews of Europe. The rows of concrete blocks, which for many people represent the tombstones of Holocaust victims (Szostak, 2017), is sometimes deemed by visitors to be a visually appealing installation in which to photograph themselves performing various activities, such as yoga or juggling. Twelve such photos were published by the author of the project on a website and then juxtaposed with authentic photographs of Holocaust victims, over which he pasted the images of the tourists’

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5 “YOLO” is an acronym of the motto *You Only Live Once*, used by the younger generations as an equivalent to *carpe diem*. In practise, however, it serves more to encourage reckless behaviour rather than reflection on the evanescence of life.

inappropriate behavior. This is an example of two-level project. The first is the creation of photographic works by various people documenting their own behavior; the second is the subsequent processing of photographs presenting an evident violation of the space of a Holocaust memorial. Shapira's project was intended to draw attention to inappropriate behavior at sites commemorating the victims of Nazi crimes. Almost all of the original photographers expressed remorse and requested that their image be removed from the website (Shapira, 2017a). It may be considered whether the use of such drastic means on the second of these levels, namely pasting fragments of contemporary photographs onto authentic photographs of Holocaust victims, was adequate for the intended purpose. Nevertheless, it is difficult to discuss the social harm caused by the project when bearing in mind its educational context and influence in encouraging more appropriate behavior. "YOLOCAUST" was viewed 2.5 million times before the website was taken down, and resonated around the world (Shapira, 2017a).

Condemnable motives. Examples that fall into this category also require discussion, due to the egregious and intentional nature of their violations of the memory of the Holocaust. They include instances found in the lyrics of songs, particularly in the genres of rap and metal music. These songs may, for example, glorify the perpetrators of Nazi crimes (Conquista 88, 2012), incite to racial, national or religious hatred (Satanic Warmaster, 2001) and even to a repetition of the Holocaust (Unearthly, 2003), or present a viewpoint of denialism (Hammer, 2008). Even though the legal good under violation in these cases is generally not historical memory, but the contemporary intangible goods of specific social groups, it is abused indirectly and used as a tool to spread hatred.

It was not only pulp literature (the *Stalag* books mentioned above) that became a vehicle for Holocaust-related pornography. A trend of B-movies, primarily of American or Italian production, began to make an appearance in cinemas in the 1970s; these films treaded the border of the *gore* and *exploitation* genres<sup>6</sup> and can be collectively described as *Nazi sexploitation*, *Naziploitation* or *Sadiconazista* (Evers, 2011, p. 52). The foundations for the genre were scenes of elaborate torture, sexual abuse and violence committed against prisoners. The plot of these films was set in German concentration camps, and the storylines shared many similarities with those presented in the *Stalag* novels. These films, however, no longer had any context of coping with trauma, and so it is impossible to find any justification for the use of martyrdom as a means to display sex and violence. Dyanne Thorne, the actress cast in the most iconic role

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6 Some examples of films of this kind include: *Love Camp 7* (Frost, 1969), *Nazi Love Camp 27* (Caino, 1977), *ss Lager 5: L'inferno delle donne* (Garrone, 1977), and *L'ultima orgia del III Reich* (Canevari, 1977).

of the genre, Commandant Ilsa,<sup>7</sup> described the character as “heinous,” but she did not reflect on the appropriateness of using martyrdom in juxtaposition with pornography (Paffendorf, 2003). On the contrary, she explained that filmmakers in the 1970s were convinced that the horror of those events had dissipated, and that it was now permissible to make an “action documentary” about them (*HFC Interview with Howard and Dyanne*, 2011). Any hesitation that arose was not the product of an internalized moral norm, but of an awareness of the risk of social outcry to the shocking images in the films. Florian Evers notes, however, that a deeper meaning lurks beneath the purely pornographic layer in cinema of this genre, and that such a carnivalesque breaking of taboos under controlled conditions and for short intervals can serve as a “safety valve” in society when dealing with difficult – and, in some ways, sanctified – subject matter (Evers, 2011, p. 69). It should be noted that Libera and Żmijewski also attributed to their own works a meaning similar to that seen by Evers in *Sadiconazi* cinema.

On the other hand, the aims pursued by the creator of a certain “watercolor” were identical with those of Libera and Żmijewski, although the means employed by the artist generates a qualitative difference in the assessment of their motivations. The Swedish artist visited the State Museum at Majdanek in 1989, stole remains containing human ashes from the then unsecured crematorium furnace, transported them in a jar to Sweden, and in 2010 mixed them with water and used them to paint a brown rectangle on a white background (Wróbel, 2012). His work was exhibited as a watercolor at a gallery in Lund. Thus, while Libera and others crept on the cusp of violating the abstract concept of memory, the Swedish artist directly attacked the substrate of that memory and other more important legal goods related to the cult of the dead with his numerous forbidden actions,<sup>8</sup> thus exceeding civilizational norms. Stealing human remains and using them as an ingredient in paint is not justified in the context of any cultural values. This is made all the more significant by interviews published in Swedish media, in which the artist maintained that he intended to be provocative through art. It only remains to be said that the director of the Majdanek Museum stated at the prosecution proceedings that the artist’s actions were an incomprehensible act of barbarism against the victims of the Second World War, as well as an act of

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7 The character is clearly based on the historical figure of Ilsa Koch and appeared in *Ilsa, She Wolf of the SS* (Edmonds, 1975).

8 Namely the desecration of human remains by removing them, storing them in a jar in a private home for 21 years, and then mixing them with water and using them as a colorant for painting an image (art. 262, para. 1 of the Penal Code), as well as the theft of a museum exhibit and the transfer of human remains across an international border in noncompliance with legal regulations in force, etc.

profanation of their remains, resting place and memory (file no. 1 in case no. 2513/12, n.d.).<sup>9</sup>

## Conclusion

This study cites only a few of the many examples of creative activity in which artists have toyed with the boundaries of violating the memory of the Holocaust with varying degrees of success. These violations were often intended to be justified by the existence of a conflict of values between national memory and artistic freedoms opposed to it, and the right of artists to provoke or even to rebel.

In the author's opinion, such a conflict has an simple resolution as it is unreasonable to render absolute the unfettered artistic freedoms or freedoms of expression as intrinsic cultural value in instances when exercising this right seeks to damage the axiomatic civilizational foundations of a given community. Art as a field enjoys the right to operate at the limits of the existing social order, but it has no legitimacy to cross over them. Creative freedom may therefore be restricted when the artist intends to violate the dignity and memory of the dead or national memory, especially when the artistic provocation treats the martyrology of the Holocaust in an instrumental manner only to gain publicity and does not bring any other significant cultural value. Possible artistic value cannot be preemptive justification for socially harmful acts.

Another issue is whether criminal law and the penalization of certain behaviors are a proper solution to the conflict of values described herein. From the preventive function of criminal law follows the practicability of punishing negative social phenomena (broadly understood as crime) for influencing desired attitudes with regard to national memory. The problem here is that one of the most important principles of criminal law is that a prohibited act should be defined as specifically as possible. Criminal law must precisely indicate what is and is not permitted (Giezek, Kłaczyńska & Łabuda, 2012, pp. 28–29), otherwise the constitutional principle of *nulla poena sine lege* (*Konstytucja Rzeczypospolitej Polskiej...*, 1997, art. 42) might be violated, as it should find expression in avoiding evaluative and non-statutory criteria in the description of a prohibited act (*Wyrok Trybunału Konstytucyjnego...*, 2003). Meanwhile, martyrial heritage and national memory have never received a normative definition, and the assessment of their importance in comparison with other legal goods is

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<sup>9</sup> These words were included in the report of a suspected offense, submitted by the director of the State Museum at Majdanek.

largely determined by individual appraisal<sup>10</sup> which is based among others on political ideology.<sup>11</sup> This is likely the reason why there has not yet been any relevant criminal legislation with regards to the protection of the martyrial heritage of the Holocaust.

In some instances, the legislator explicitly allows the boundaries of permissible behavior within the framework of artistic activity to be extended, even though the behaviors in question are prohibited by law. This role is played by justifications, which exclude the unlawfulness of certain acts if the perpetrator has committed them as part of an artistic activity, such as article 256 paragraph 3 of the Penal Code and the now-defunct article 55a(3) of the act concerning the Institute of National Remembrance (*Ustawa z dnia 18 grudnia 1998 roku*, 2019).

(transl. by Ian Stephenson)

## Bibliography

### Legal acts, judgments, criminal proceedings:

- Akta sprawy o sygn. 1 ds. 2513/12 Prokuratury Rejonowej w Lublinie [Files of the District Prosecutor in Lublin for case no. 1 ds. 2513/12] (n.d.)
- Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 roku [Constitution of the Republic of Poland of 2 April 1997] (1997). *Journal of Laws of the Republic of Poland*, 1997, no. 78, item 483 as amended. Retrieved from: <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19970780483> [accessed: 22.08.2021].
- Rozporządzenie Ministra Zdrowia z dnia 7 grudnia 2001 roku w sprawie postępowania ze zwłokami i szczątkami ludzkimi [Ordinance of the Minister of Health of 7 December 2001 on the handling of human bodies and remains] (2001). *Journal of Laws of the Republic of Poland*, 2001, no. 153, item 1783. Retrieved from: <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20011531783> [accessed: 22.08.2021].
- Uchwała Sądu Najwyższego z dnia 29 czerwca 2016 roku [Resolution of the Supreme Court of 29 June 2016] (2016). File no. III CZP 24/16. Retrieved from: [http://www.sn.pl/sprawy/SitePages/Zagadnienia\\_prawne.aspx?ItemsID=775-16544171-be1b-4089-b74b-413997467af2&ListName=Zagadnienia\\_prawne&Rok=2016](http://www.sn.pl/sprawy/SitePages/Zagadnienia_prawne.aspx?ItemsID=775-16544171-be1b-4089-b74b-413997467af2&ListName=Zagadnienia_prawne&Rok=2016) [accessed: 22.08.2021].
- Ustawa z dnia 31 stycznia 1959 roku o cmentarzach i chowaniu zmarłych [Act of 31 January 1959 on cemeteries and burial of the dead] (1959). *Journal of Laws of the Republic of Poland*, 1959, no. 11, item 62. Retrieved from: <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19590110062> [accessed: 22.08.2021].

<sup>10</sup> For example: in contrast to the author, an extremely negative understanding of the nature of the aforementioned goods is provided by Prof. Ewa Domańska, who both emphasizes an aspect of instrumentalization of remains and stresses that burial places and human remains are significant in the formation of communities and nations solely in the context of anthropocentric memory and political and socio-cultural history, which, she believes, is a manifestation of cultural atavism and necronationalism (Domańska, 2017, p. 105).

<sup>11</sup> This is true in, for example, the case of Domańska, who criticizes national memory in the sense presented herein as part of what she admits to be a leftist manifesto of modern humanities (counter-history) (Domańska, 2006, pp. 18–21 and 221–226).

- Ustawa z dnia 20 maja 1971 roku Kodeks wykroczeń [Act of 20 May 1971 – the Code of Petty Offenses] (1971). Journal of Laws of the Republic of Poland, 2019, item 821, amended following the judgment of the Constitutional Tribunal of 26 June 2019, file no. K 17/17, Journal of Laws of the Republic of Poland, 2019, item 1238. Retrieved from: <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu20190001238> [accessed: 22.08.2021].
- Ustawa z dnia 6 czerwca 1997 roku Kodeks karny [Act of 6 June 1997 – the Penal Code] (1997). Journal of Laws of the Republic of Poland, 1997, no. 88, item 553 as amended. Retrieved from: <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu19970880553> [accessed: 22.08.2021].
- Ustawa z dnia 18 grudnia 1998 roku o Instytucie Pamięci Narodowej – Komisji Ścigania Zbrodni przeciwko Narodowi Polskiemu [Act of 18 December 1998 concerning the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation] (2019). Journal of Laws of the Republic of Poland, 2019, item 1882. Retrieved from: <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu20190001882> [accessed: 22.08.2021].
- Wyrok Europejskiego Trybunału Praw Człowieka w Strasburgu, Izba (Sekcja v), z dnia 8 listopada 2012 roku, skarga nr 43481/09, sprawa PETA Deutschland przeciwko RFN [Judgment of the European Court of Human Rights in Strasbourg, Chamber (Section v), of 8 November 2012, application no. 43481/09, in the case of PETA Deutschland v. Germany] (2012). Retrieved from: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%222001-114273%22%5D%7D> [accessed: 22.08.2021].
- Wyrok Sądu Okręgowego w Krakowie z dnia 21 maja 2019 roku [Judgment of the Regional Court in Kraków of 21 May 2019] (2019). File no. IV Ka 867/18.
- Wyrok Sądu Rejonowego w Oświęcimiu z dnia 17 stycznia 2018 roku [Judgment of the District Court in Oświęcim of 17 January 2018] (2018). File no. II K 653/17.
- Wyrok Trybunału Konstytucyjnego z dnia 26 listopada 2003 roku [Judgment of the Constitutional Tribunal of 26 November 2003] (2003). Journal of Laws of the Republic of Poland, 2003, no. 206, item 2012. Retrieved from: <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu20032062012> [accessed: 22.08.2021].

#### Audiovisual media:

- Caino, M. (dir.) (1977). *Nazi Love Camp* 27. Italy.
- Canevari, C. (dir.) (1977). *L'ultima orgia del III Reich*. Italy.
- Edmonds, D. (dir.) (1975). *Ilsa, She Wolf of the SS*. USA.
- Frost, L. (dir.) (1969). *Love Camp 7*. USA.
- Garrone, S. (dir.) (1977). *SS Lager 5: L'inferno delle donne*. Italy.
- Libsker, A. (dir.) (2007). *Stalags. Holocaust and pornography in Israel*. Israel.
- Zimmerman, M. (dir.) (2008). *Pizza in Auschwitz*. Israel.
- Żmijewski, A. (dir.) (1999). *Berek*. Poland.

#### Music:

- Farid Bang, Kollegah (2017a). 0815. In: *Jung, Brutal, Gutausschend* 3. Stromberg, Germany: Banger Musik/Alpha Music Empire.
- Farid Bang, Kollegah (2017b). *Gamechanger*. In: *Jung, Brutal, Gutausschend* 3. Stromberg, Germany: Banger Musik/Alpha Music Empire.
- Gintrowski, P. (2009). *Birkenau*. In: *Kanapka z człowiekiem i trzy zapomniane piosenki*. Warszawa, Poland: Polskie Radio.
- Hammer (2008). *Shoax*. In: *Shoax*. Lappeenranta, Finland: Werewolf Records.
- Konkwista 88 (2012). *Waffen SS*. In: *M.A.T. PROJEKT – Nasza Walka Trwa!* (s.l.), Poland: Radical Voice.
- Satanic Warmaster (2001). *Wolves of Blood and Iron*. In: *Strength and Honour*. Northern Heritage.
- Unearthly (2003). *Zyklon B (Second War Holocaust)*. In: *Black Metal Commando*. São Paulo, Brazil: Encore Records.

#### Artworks:

- Libera, Z. (1996). *LEGO. Obóz koncentracyjny* installation.
- Libera, Z. (2002–2003). *Pożytywy* photography series.
- Shapira, S. (2017b). *YOLOCAUST* photography series.
- The traveling exhibition and 7 posters from PETA's campaign *The Holocaust on Your Plate* (2004).

## Publications:

- 75 lat Państwowego Muzeum na Majdanku (2019). Retrieved from: [http://www.majdanek.eu/pl/page/75\\_lat\\_panstwowego\\_muzeum\\_na\\_majdanku/214](http://www.majdanek.eu/pl/page/75_lat_panstwowego_muzeum_na_majdanku/214) [accessed: 11.10.2019].
- Berek, Artur Żmijewski (n.d.). Retrieved from: <https://zacheta.art.pl/pl/kolekcja/katalog/zmijewski-artur-berek> [accessed: 11.10.2019].
- Bojarska, K. (2007). *Obecność Zagłady w twórczości polskich artystów*. Retrieved from: <https://culture.pl/pl/artykul/obecnosc-zaglady-w-tworczosci-polskich-artystow#po> [accessed: 11.10.2019].
- Chałupnik, A. (2017). *Komin*. In: J. Kowalska-Leder, P. Dobrosielski, I. Kurz, M. Szpakowska (eds.), *Ślady Holokaustu w imaginariu kultury polskiej* (pp. 198–218). Warszawa: Wydawnictwo Krytyki Politycznej.
- Domańska, E. (2006). *Historie niekonwencjonalne. Refleksja o przeszłości w nowej humanistyce*. Poznań: Wydawnictwo Poznańskie.
- Domańska, E. (2017). *Nekros. Wprowadzenie do ontologii martwego ciała*. Warszawa: Wydawnictwo Naukowe PWN.
- Evers, F. (2011). *Vexierbilder des Holocausts. Ein Versuch zum historischen Trauma in der Populärkultur*. Berlin: Lit.
- Gardocka, T. (2015). *Czy zwłoki ludzkie są rzeczą i co z tego wynika?*. In: J. Kołaczyński, J. Mazurkiewicz, J. Turłukowski, D. Karkut (eds.), *Non omnis moriar. Osobiste i majątkowe aspekty prawne śmierci człowieka. Zagadnienia wybrane* (pp. 268–280). Wrocław: Wydział Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego; Oficyna Prawnicza.
- Giezek, J. (ed.), Kłaczyńska, N., Łabuda, G. (2012). *Kodeks karny. Część ogólna. Komentarz*. Warszawa: Wolters Kluwer.
- HCF Interview with Howard and Dyanne* (2011). Retrieved from: <http://209.200.31.169/2016/04/23/hcf-interview-with-howard-dyanne/> [accessed: 13.10.2019].
- Hołyst, B. (2016). *Kryminologia*. Warszawa: Wolters Kluwer.
- Horoszowski, P. (1965). *Kryminologia*. Warszawa: Państwowe Wydawnictwo Naukowe.
- Jakubowicz, R. (2009). *Ekstaza pamięci. Z Arturem Żmijewskim rozmawia Rafał Jakubowicz. Pro Memoria. Pismo Muzeum Auschwitz-Birkenau*, no. 2 (29), pp. 190–194.
- Jakubowski, O. (2016). *Przestępczość przeciwko dziedzictwu martyrologicznemu związanemu z Holocaustem – zarys zagadnienia*. In: M. Trzciniński, O. Jakubowski (ed.), *Przestępczość przeciwko dziedzictwu kulturowemu. Diagnostyka, zapobieganie, zwalczanie* (pp. 103–114). Wrocław: Katedra Kryminalistyki Wydział Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego.
- Lepiarz, J. (2018). *Raperzy Kollegah i Farid Bang w muzeum Auschwitz*. Retrieved from: <https://www.dw.com/pl/raperzy-kollegah-i-farid-bang-w-muzeum-auschwitz/a-44123755> [accessed: 07.10.2019].
- Nowicki, M. A. (2013). *Europejski Trybunał Praw Człowieka: Wybór Orzeczeń 2012*. Warszawa: Lex a Wolters Kluwer Business.
- Paffendorf, F. (2003). *Dyanne Thorne. Interview*. Retrieved from: [http://www.wicked-vision.com/artikel/DyanneThorne/e\\_interview.php](http://www.wicked-vision.com/artikel/DyanneThorne/e_interview.php) [accessed: 13.10.2019].
- Pajączkowska, A. (2017). *Zdjęcie*. In: J. Kowalska-Leder, P. Dobrosielski, I. Kurz, M. Szpakowska (eds.), *Ślady Holokaustu w imaginariu kultury polskiej* (pp. 473–506). Warszawa: Wydawnictwo Krytyki Politycznej.
- Shapira, S. (2017a). *Yolocaust*. Retrieved from: <https://yolocaust.de> [accessed: 11.10.2019].
- Szostak, N. (2017). *„Yolocaust”: berliński satyryk przerabia selfie zrobione przy pomniku Pomordowanych Żydów*. Retrieved from: <http://wyborcza.pl/7,75410,21264906,yolocaust-berliński-satyryk-przerabia-selfie-zrobione-przy.html> [accessed: 11.10.2019].
- Tatarkiewicz, W. (1988). *Dzieje sześciu pojęć*. Warszawa: Państwowe Wydawnictwo Naukowe.
- Warecka, K. (2012). *Strasburg: Holocaust nie może służyć obronie praw zwierząt*. Retrieved from: <https://www.prawo.pl/prawnicy-sady/strasburg-holocaust-nie-moze-sluzyc-obronie-praw-zwierzat,47644.html> [accessed: 07.10.2019].
- Wróbel, K. (2012). *Szwedzki malarz wykradł prochy ofiar Holokaustu z Muzeum na Majdanku*. Retrieved from: <http://rynekisztuka.pl/2012/12/07/szwedzki-malarz-wykradl-prochy-ofiar-holokaustu-z-muzeum-na-majdanku/> [accessed: 14.10.2019].