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Articles 55a and 55b of the IPN Act and the Dialogue about the Holocaust in Poland

1. Introduction

Asked by a friend about this paper I replied: I am trying to describe a controversial January 2018 amendment (hereinafter: “the IPN Amendment Act”)² to the Act on the Institute of National Remembrance (hereinafter: “the IPN Act”)³ in the context of a dialogue on the crimes of Poles against Jews during World War II. “And what is the dialogue?”, asked my friend. This short conversation is a good introduction to the main topic of this paper.

On 26 January 2018 the IPN Amendment Act, which introduced Articles 55a and 55b to the IPN Act, was passed by a majority of votes by the ruling Law and Justice (Polish: *Prawo i Sprawiedliwość*, PiS) party and Kukiz15 movement. The law penalized ascribing responsibility or co-responsibility to the Polish nation or State for the Nazi crimes, committed by the Third Reich. The amendment unleashed mounting criticism abroad, stormy debate in Poland, increased antisemitism in the Polish political discourse, and a diplomatic crisis in relations between Poland and Israel. It was withdrawn relatively soon⁴ as a result of an agreement concluded between Poland and Israel, and signed by prime ministers of both countries. This agreement stipulates conditions which have to be met to maintain the dialogue on the Holocaust undisturbed by law.

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² Act of 26 January 2018 Amending Act on The Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation, Act on War Graves and Graveyards, Act on Museums and Act on the Liability of Collective Entities for Punishable Offences (Polish: Ustawa z 26.01.2018 r. o zmianie ustawy o Instytucji Pamięci Narodowej – Komisji Ścigania Zbrodni przeciwko Narodowi Polskiemu, ustawy o grobach i cmentarzach wojennych, ustawy o muzeach oraz ustawy o odpowiedzialności podmiotów zbiorowych za czyny zabronione pod groźbą kary, Dz. U. poz. 369).

³ Act of 18 December 1998 on The Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation (Polish title: Ustawa z 18.12.1998 r. o Instytucji Pamięci Narodowej – Komisji Ścigania Zbrodni przeciwko Narodowi Polskiemu, tekst jedn.: Dz. U. z 2016 r. poz. 1575 ze zm.).

⁴ See: Act of 27 June 2018 Amending Act on The Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation and Act on the Liability of Collective Entities for Punishable Offences (Polish title: Ustawa z 27.06.2018 r. o zmianie ustawy o Instytucji Pamięci Narodowej – Komisji Ścigania Zbrodni przeciwko Narodowi Polskiemu oraz ustawy o odpowiedzialności podmiotów zbiorowych za czyny zabronione pod groźbą kary, Dz. U. poz. 1277).

From a purely legal point of view, these articles might seem irrelevant as an example of an invalid, badly designed law, which was withdrawn after only five months and can be forgotten. On the contrary, I suggest that an in-depth reading of Articles 55a and 55b of the IPN Act shows that something important has happened at the intersection of law, memory, politics, and the social dialogue in Poland after a political transition. My objective is to demonstrate that these provisions are a symptom of tensions between various opinions in the Polish society in the conversation on attitudes of Poles towards Jews and the Holocaust during World War II and memory about these attitudes. This conversation is an important component of negotiating the collective attitude towards the past, present and future after 1989. It is not possible to understand the meaning of this law without an attempt to describe the dialogue from which this law originates, to which it refers, and which it tries to shape.

To show the context and the meaning of the IPN Amendment Act I will adopt the concept of dialogue of Leszek Koczanowicz, the concept of transnational memory of the Holocaust, its relation to the local memory and the ethics of never again of Nathan Sznajder, Daniel Levy and Alahandro Baer, the analysis dedicated to the memory laws of Nikolay Kuposov, and the analysis of conspiracy of silence of Eviatar Zerubavel.

This paper consists of three main parts. In the first one I refer shortly the IPN Amendment Act. In the second one, I adapt the concept of dialogue. In the third one, I show the law as a result of a certain dialogue, a voice in the dialogue, and an attempt to limit this dialogue – as well as the effects of such limitation.

2. Articles 55a and 55b of the IPN Act as a memory law

Articles 55a and 55b, added to the IPN Act, were passed by the lower house of the Polish parliament (the *Sejm*) on 26 January 2018, and were revoked five months later on 27 June 2018. The bill's apparent aim was to fight distortions of history. The provisions read as follows:

Article 55a. 1. Whoever claims, publicly and contrary to the facts, that the Polish Nation or the Republic of Poland is responsible or co-responsible for Nazi crimes committed by the Third Reich, as specified in Article 6 of the Charter of the International Military Tribunal enclosed to the International agreement for the prosecution and punishment of the major war criminals of the European Axis, signed in London on 8 August 1945 (Polish Journal of Laws of 1947, item 367), or for other felonies that constitute crimes against peace, crimes against humanity or war crimes, or whoever otherwise grossly diminishes the responsibility of the true perpetrators of said crimes – shall be liable to a fine or imprisonment for up to 3 years. The sentence shall be made public.

2. If the act specified in clause 1 is committed unintentionally, the perpetrator shall be liable to a fine or a restriction of liberty.

3. No offence is committed if the criminal act specified in clauses 1 and 2 is committed in the course of one's artistic or academic activity.

Article 55b. Irrespective of the regulations in force at the location of committing the criminal act, this Act shall apply to Polish and foreign citizens in the event of committing the offences referred to in Articles 55 and 55a⁵.

⁵ I refer to an unofficial translation by Toi Staff, published in The Times of Israel: T. Staff, Full text of Poland's controversial Holocaust legislation, "The Times of Israel", 1 February 2018, <https://www.timesofisrael.com/full-text-of-polands-controversial-holocaust-legislation/>, accessed on: 25 April 2020. This translation is quoted by Marta Bucholc and Maciej Komornik in their text: M. Bucholc, M. Komornik, *The Polish "Holocaust Law" Revisited: The Devastating*

The immediate consequences of the bill are described by a Holocaust researcher and educator, Jolanta Ambrosewicz-Jacobs:

the bill caused a severe reaction by Israel, condemnation by the United States Holocaust Museum (USHMM), Polish Centre for Holocaust Research, American Jewish Committee and many more institutions and survivors. USHMM issued a statement with remark that ‘The law would chill free and open dialogue addressing Poland’s history during the Holocaust, including in Polish schools and universities as well as in the media.’ After international protests and an outcry by survivors, the new law was amended five months later in June 2018 withdrawing the penalty of imprisonment. Alleged ‘defamation of the Polish nation’ for complicity with Nazi Germany remained subject to civil suits and financial penalties⁶.

The removal of Articles 55a and 55b from the IPN Act followed the Joint Declaration of prime ministers, Mateusz Morawiecki and Benjamin Netanyahu, on what might be called “the terms of shared memory” of the Holocaust in Poland and Israel⁷. This declaration, nevertheless, was called a betrayal in Israel⁸.

The emergence, the short but stormy life, the disappearance, and the afterlife of those amendments raise important questions about the relations between the memory of the Holocaust and the law. These provisions should be considered on the one hand in the light of the history of legal responses to the Holocaust, which aimed at judging perpetrators, protecting memory and working out legal instruments for prevention of similar crimes, and on the other hand as a manifestation of a new trend. As observed by Nikolay Koposov, in the last two decades there was a rapid growth of memory laws penalizing certain visions of the past. According to him, the purpose of enacting memory laws has also changed from laws protecting memory of the crimes in order to prevent their future reoccurrence to laws which give force to national narratives⁹. Referring to the laws criminalizing Holocaust negationism (adopted e.g. in Germany, France or Austria in the 1980s and 1990s), Koposov underlines that:

They were important evidence of a new democratic culture of memory based on sympathy for the victims of state-sponsored atrocities and on notions of shared responsibility and of state repentance for the crimes of the past. The European Union gave its full support to this legislation, with the combined goal of overcoming self-congratulatory national narratives, creating a common European memory, and diminishing the danger of new armed conflicts¹⁰.

In his commentary on Articles 55a and 55b of the IPN Act, Koposov states that these are special sub-types of memory laws “that give a force of law to national narratives” adopting and responding to the memory laws which banned the denial of the Holocaust or/and other genocides. Thus, Articles 55a and 55b of the IPN Act constitute a specific *response to response* to the Holocaust.

Effects of Prejudice-Mongering, “Cultures of History Forum”, 19 February 2019, <https://www.cultures-of-history.uni-jena.de/politics/poland/the-polish-holocaust-law-revisited-the-devastating-effects-of-prejudice-mongering/>, accessed on: 25 April 2020.

⁶ J. Ambrosewicz-Jacobs, *The Uses and the Abuses of Education about the Holocaust in Poland after 1989*, “Holocaust Studies” 2019/3, p. 350.

⁷ *Joint declaration of prime ministers of the State of Israel and the Republic of Poland*, premier.gov.pl, 27 June 2018, <https://www.premier.gov.pl/mobile/en/news/news/joint-declaration-of-prime-ministers-of-the-state-of-israel-and-the-republic-of-poland.html>, accessed on: 25 April 2020, hereinafter: “Joint Declaration”.

⁸ M. Bucholec, M. Komornik, *The Polish “Holocaust Law”*...

⁹ N. Koposov, *Memory Laws, Memory Wars. The Politics of the Past in Europe*, Cambridge 2017, pp. 9–10.

¹⁰ N. Koposov, *Is Poland’s New Memory Law a Case of Holocaust Denial?*, CambridgeBlog, 16 March 2018, <http://www.cambridgeblog.org/2018/03/is-polands-new-memory-law-a-case-of-holocaust-denial/>, accessed on: 25 April 2020.

Laurence Douglas states that studying legal responses to the Holocaust, especially the Holocaust trials against perpetrators and negationists, reminds us about “the extraordinary power of the law to submit unprecedented atrocity to its institutional will and of the limits of the law to speak adequately on behalf of humanity’s most traumatic histories”¹¹. What then is it to be learned from Articles 55a and 55b of the IPN Act about the power of law and its limits to be able to speak adequately about the Holocaust? To answer this question, one has first to clarify in what way this memory law relates to the existing dialogue on memory of the Holocaust in Poland and how it affects this dialogue.

3. Leszek Koczanowicz’s idea of non-consensual dialogue

A starting point for my analysis is a presentation of the dialogue on which the concept of non-consensual democracy developed by Leszek Koczanowicz is based¹². The concept of non-consensual democracy is rooted in the philosophy of dialogue of the Russian thinker Mikhail Bakhtin. In the opinion of Koczanowicz, Bakhtinian philosophy of dialogue makes it possible to describe social and political life without having to sympathise with one of two opposing concepts of relations between individuals, groups or institutions in the philosophy of politics: either a vision of dialogue which, thanks to observance of appropriate rules, will lead to a rational consensus or a vision of unremovable antagonism penetrating the society and leading to decisions being imposed by one of the parties of the conflict. Koczanowicz emphasises that using Bakhtin’s concept of dialogue one can create a theory of democratic society based on dialogue seen as a vehicle of understanding, rather than agreement.

According to Koczanowicz’s reading of Bakhtin: 1) the essential element of Bakhtin’s concept of dialogue is an utterance, which represents a basic unit of the language; 2) an utterance is not neutral, but is always a result of interaction of interlocutors and the social situation; 3) an utterance may be considered in three dimensions: the individual one, the social one, and in the dimension of an event. An utterance is therefore a continuation of a dialogue ongoing inside and between social languages, and at the same time it is an expression of dialogue between two unique individuals, which gives each statement a feature of a unique event. Furthermore, 4) this is the reason for essential instability of the meaning of words. These meanings consist not only of layers of dialogues between social languages, but also of senses activated by each new use and unrepeatable references resulting from intentions of the speakers.

What is more, 5) the process of assigning meaning is shaped by two types of contrary tendencies: uniformization of meaning versus heteroglossia, and monologue versus dialogue and polyphony. Both tendencies – to uniform and to soliloquise – threaten the potential of dialogue at two different levels. The tendency of uniformization tries to quieten plurilingualism and dialogue of social languages, and submits them to a process of imposing a selected set of meanings. On the contrary, orientation at monologue means an aspiration to control the meaning of words according to one’s intention through cutting it off from relations with other meanings, which other participants of a conversation

¹¹ L. Douglas, *Memory of Judgement. Making Law and History in the Trials of the Holocaust*, New Heaven–London 2001, p. 261.

¹² I refer to the chapter *Dialogue, Carnival, Democracy: Mikhail Bakhtin and Political Theory*, in: L. Koczanowicz, *Politics of Dialogue: Non-consensual Democracy and Critical Community*, Edinburgh 2015, pp. 42–90.

ascribe to these words. Thus, 6) there is a monologic potential present in dialogue and a dialogic potential present in monologue. Activating a dialogic potential is a specific ethical challenge that consists in an ethical decision to be involved in the process of understanding. According to Koczanowicz, a dialogic potential means a possibility of orientation of one party towards understanding another party of the dialogue. Finally, 7) according to Bakhtin, a statement is targeted not only at its addressee, but also at a super-addressee, i.e. a remote undetermined ethical horizon of understating an utterance. An utterance is directed to a superaddressee, thanks to which a dialogue is unending.

Koczanowicz has worked out a normative concept of dialogue which covers the whole spectrum of forms of utterances – from utterances which maintain dialogue to the ones which aim at invalidating it and closing it shut. This enables researching and diagnosing the dialogic potential of utterances and interactions. In the light of this concept, each utterance has a feature of a dialogue, as it is an element of a dialogic relation. Yet, not each statement supports a dialogue: a monologue or an authoritative statement not allowing another voice are statements which lack such a feature. The central idea of the Koczanowicz's concept of non-consensual dialogue is the power of ethical decision to engage in dialogue that can lead to understanding. This understanding is possible because of one's willingness to welcome the word of the other in one's own conceptual horizon. Koczanowicz emphasizes that "an ethical decision to engage in the process of understanding is a crucial point capable of redirecting the whole trajectory of political struggle"¹³.

To probe the issue of controversial memory law and responses to it from the perspective of Koczanowicz's/Bakhtinian conception of dialogue it is necessary to focus on several issues: 1) what the dialogue to which the law relates is really about; 2) how we can characterize the amendment and responses to it from the perspective of the concept of non-consensual dialogue, and 3) does the law generate – despite its aims – a potential space for genuine dialogue that leads to understanding?

4. Articles 55a and 55b of the IPN Act and dialogue

An important conversation on the Polish-Jewish past, the Holocaust, and attitudes of non-Jewish Poles towards Jews during World War II, and also on consequences of this dialogue for the community is ongoing in the post-transformational Polish society. If we look at this discussion (or, rather, many various conversations) from the dialogue perspective set out by Koczanowicz, we will notice that this conversation activates social languages bringing disparate semantic, symbolic, historical and emotional loads. This dialogue involves ongoing translation inside the language – between generations and between various idiolects of everyday language and specialist languages – as well as interlinguistic and intercultural translation. Although Poland is the country which had the largest number of Jews in Europe before World War II and where the Holocaust took place, in post-war times the memory of the Holocaust was carved elsewhere. Geographically, the memory of the Holocaust originated in Eastern Europe, but developed in the West and returned to Eastern Europe in a westernized form. The memory of the Holocaust played a minimal role in Central and Eastern Europe during the times of communism, because the dominant direction of commemoration was the struggle and victory of the Soviets over fascists. Dialogue regarding the Holocaust in Poland is

¹³ L. Koczanowicz, *Politics of Dialogue...*, p. 85.

being shaped by both the dialogue with transnational memory of the Holocaust, which is assimilated with a delay, and in translation of and dialogue with the testimonies of Polish and Jewish witnesses of the Holocaust. The Polish memory of the Holocaust after 1989 has been subjected to dynamic transformations in parallel with the transformation of collective identity and culture.

In this dialogue on the Holocaust and the Polish (non-)memory of the Holocaust, which with various intensity is conducted at the private, public, political, academic, educational and artistic level, it is possible to distinguish moments of activation of both monologic and dialogic potential. At the one edge of the spectrum there are authoritarian attitudes which try to impose certain meanings onto notions, and also onto people participating in the dialogue, and at the other edge there are statements which support dialogue, creating space for other meanings, other voices in one's own cognitive horizon.

An ethical objective of this dialogue is, as I suppose, recognition of the testimony of the Jewish victims and witnesses of the Holocaust within the conceptual horizon of the non-Jewish Poles. These testimonies may also offer a new perspective on Poles' own history. Recognition of these voices in the individual and social conceptual horizon represents a step towards understanding – which according to Koczanowicz is the essence of dialogue – the Jewish experience and memory of the Holocaust, and leads to transforming the Polish social *imaginarium*. How to interpret the controversial memory law in the context of this dialogue and its ethical challenges?

4.1. Articles 55a and 55b of the IPN Act as a response to transnational memory of the Holocaust

The process of the emergence of transnational memory of the Holocaust has been described over the past twenty years by Natan Sznajder and Daniel Levy¹⁴. The authors of *Holocaust and Memory in the Global Age* show that the memory of the Holocaust exceeds the framework of the memory of nations or ethnic groups, becoming a globalized and cosmopolitan memory, and as such feeds a moral consensus on human rights. In the development of transnational ethics based on the memory of the Holocaust, the primary role was played by legal responses universalizing the Holocaust, such as the concepts of genocide and crimes against humanity, the 1948 Universal Declaration of Human Rights, and trials of perpetrators of Nazi crimes. The universalized memory of the Holocaust represents a paradigm of perception of the past and future crimes, as well as the basis of future-oriented, cosmopolitan ethics, which aims to prevent similar events¹⁵. Moreover, the memory of the Holocaust is one of the main elements constituting the European identity and intended to unite citizens of different nationality, class, or ethnic roots in cosmopolitan ethics founded on never again principle.

The basic theoretical issue described by Sznajder and Levy is the universalization of a particular experience and the particularization of a universal one. This means that the memory of the Holocaust, which grew out of a particular Jewish experience of the catastrophe, was symbolically encoded in human rights, and became a reference point

¹⁴ D. Levy, N. Sznajder, *The Holocaust and Memory in the Global Age*, Philadelphia 2006; D. Levy, N. Sznajder, *Human Rights and Memory*, Pennsylvania 2010; A. Bauer, N. Sznajder, *Memory and Forgetting in the Post-Holocaust Era. The Ethics of Never Again*, New York 2017.

¹⁵ D. Levy, N. Sznajder, *The Holocaust...*, pp. 1–20.

for the articulations of other collective memories and identities. The authors highlight the inclusiveness of the transnational memory of the Holocaust and the ethics of never again, indicating that it is not based on the “either/or” logic but rather on the logic of conjunction. Thus, it favours the emergence of new memory constellations and is a point of reference for other ethical projects based on the never again ethics. Nevertheless, Sznaider and Levy also underline that this cosmopolitan memory of the Holocaust and the ethics of never again were developed on the west side of the Iron Curtain in Europe. Thus, after the fall of communism in Eastern Europe,

Holocaust remembrance has become a battleground of contested memories, particularly centred on the issue of competing images of victimhood and suffering during the Second World War (Jewish vs. non-Jewish local population) and beyond (Nazi vs. Stalinist crimes in Eastern Europe)¹⁶.

I suggest that Articles 55a and 55b of the IPN Act should be read as a response to the transnational memory of the Holocaust. I am referring to the latest book by Nathan Sznaider and Alejandro Bauer *Memory and Forgetting in the Post-Holocaust Era*, in particular to the chapter *Jedwabne: emerging cosmopolitan memory in Poland*¹⁷, which is directly devoted to Poland. The book was published in 2017, and the authors could not know that the IPN Act would be passed one year later. What is interesting is that their account is helpful for framing the story of appearance and disappearance of those articles.

Sznaider and Bauer are right to assume the breakthrough significance of the publication of Jan Tomasz Gross’s *Neighbors*¹⁸, in which the history of the massacre of Jewish residents of the Jedwabne village by their Polish neighbours was described. The book led to a nationwide debate, an IPN investigation, the exhumation of mass graves in Jedwabne, and to a commemoration event held on the anniversary of the massacre on 10 July 2001. During the ceremony the then President Aleksander Kwaśniewski publicly apologized:

For this crime we should beg the souls of the dead and their families for forgiveness. This is why today, as a citizen and as the president of the Republic of Poland, I beg pardon. I beg pardon in my own name, and in the name of those Poles whose conscience is shattered by that crime¹⁹.

Sznaider and Baer underline that “a part of society understood that remembering the Holocaust within the framework of an all-European space of memory has created a new imperatives with far-reaching political consequences”²⁰. The authors point out that the President’s apology, the desire to learn the truth (through investigation and exhumation), as well as historical research could be the beginning of a redefinition of the Polish collective identity. This could lead to de-glorifying of Poles’ own history, and to critical review of the myth of innocence in order to build a sense of responsibility and to recognize that being a victim does not exclude being a perpetrator. Yet, Sznaider and Baer are also aware of the fact that of Kwaśniewski’s speech has provoked the opposite reaction – immediate criticism of the apology and denial of the Jedwabne massacre.

¹⁶ A. Baer, N. Sznaider, *Memory...*, p. 14.

¹⁷ A. Baer, N. Sznaider, *Memory...*, pp. 121–128.

¹⁸ J. T. Gross, *Neighbors: The Destruction of the Jewish Community in Jedwabne*, Princeton 2001.

¹⁹ Aleksander Kwaśniewski’s speech is quoted after: A. Baer, N. Sznaider, *Memory...*, p. 125.

²⁰ A. Baer, N. Sznaider, *Memory...*, p. 125.

Sznaider and Baer focus on describing the trajectory of Poland's joining the European memory of the Holocaust through universalizing the memory of Jedwabne. According to Schnaider and Baer, Polish society confronted their past through recognizing guilt and their own responsibility for the pogrom and its memory. The Polish memory of Jedwabne contributes to the global memory of the Shoah²¹. This attitude, however, is not commonly shared. It represents a horizon of "social ontology of expectations" of only a part of the society. According to Koczanowicz, the social ontology of expectations is a relatively stable orientation towards the past, present or future – it shapes dispositions and attitudes toward contemporary events, as well as memory frames and anticipations of the future²².

Seen from the perspective of Koczanowicz's diptych *Politics of Time* and *Politics of Dialogue*, Articles 55a and 55b of the IPN Act – which manifested the historical politics of the ruling Law and Justice party – constitute a very special kind of utterance in the dialogue on expectations of different generations of Poles about the future and the presence of the past in it. As Koczanowicz argues, during a political transition, there is an intense tension in societies between social time and political time, namely between the group's perception of time (depending on generation, class, gender, and other factors) and political attempts to hegemonize the social time through institutional means and strategies such as the calendar of national holidays, monuments, street names, and so on.

According to Koczanowicz, dialogue includes a whole spectrum of utterances: from those supporting dialogue to those undermining it; it is a never-ending story with a variety of voices and contradictory perspectives, which is why the dialogue is not about consensus but about understanding of the other party²³. From the dialogical perspective, Articles 55a and 55b constitute an utterance in an ongoing (national, international, cosmopolitan) dialogue, but also an utterance about the dialogue itself.

On one of possible readings, Articles 55a and 55b of the IPN Act, without even literally mentioning of the Holocaust or Jews, attempt to frame an important dialogue at a time which became dangerously "out of joint"²⁴ after the Jedwabne debate made reproducing old myths seemingly impossible. The provisions (re)introduce the borders of what might be said publicly, broken by the Jedwabne debate after 2000 and by different related scientific, educational and artistic initiatives (including museums, films and monuments) that fill the gap between the historical event and the present.

4.2. Articles 55a and 55b of the IPN Act against or as Holocaust denial

As has been clearly stated by critics of the amendment – including Elżbieta Janicka, Joanna Tokarska-Bakir, Jacek Leociak, Larry Ray, Sławomir Kaprański, Maciej Komornik, and Marta Bucholc²⁵ (although they do not speak with one voice) – the law should be perceived as part of the Polish struggle with the (unwanted) memory and

²¹ A. Baer, N. Schnaider, *Memory...*, p. 125–127.

²² L. Koczanowicz, *Politics of Time: Dynamics of Identity in Post-Communist Poland*, New York 2008, pp. 67–97.

²³ L. Koczanowicz, *Politics of Dialogue...*, p. 51.

²⁴ W. Shakespeare, *Hamlet*, Act 1, Scene 2, <https://www.opensourceshakespeare.org/search/search-results.php>, accessed on: 25 April 2020.

²⁵ E. Janicka, *Niewinność odzyskana* [Eng. *Innocence Regained*], "Krytyka Polityczna" 2018/46, pp. 40–73; J. Tokarska-Bakir, *Wę władzy szczerolapa* [Eng. *In the Power of Rat-catcher*], "Krytyka Polityczna" 2018/46, pp. 95–107; J. Leociak, *Światło w ciemności świeci* [Eng. *The Light Shines in the Darkness*], "Krytyka Polityczna" 2018/46, pp. 108–123; L. Ray, S. Kaprański, *Introduction to the special issue – disputed Holocaust memory in Poland*, "Holocaust Studies" 2019/3, pp. 209–219; M. Bucholc, M. Komornik, *The Polish "Holocaust Law"...*

post-memory of the Holocaust and the role of Polish “bystanders” in it. It remains in constant tension with the European memory that focuses on the centrality of the Shoah memory for the ethics of never again. Although the proponents of the provisions defended the law as a tool to fight the distortions of facts about World War II contained in the expression “Polish death camps”, the obvious context of the law is the historical politics aimed at shaping the memory about Polish attitudes toward Jews during World War II at home and abroad.

Bucholc and Komornik correctly state the following:

In that respect, Article 55a is a refracted prohibition of Holocaust denialism. Instead of punishing individuals for saying that the Holocaust did not happen or that Germans were not responsible for its atrocities, it punishes those who argue that other agents, namely the Polish nation or the Republic of Poland were responsible or co-responsible for this genocide. What the law prohibits is thus not a denial, but a positive statement pertaining to the responsibility of the Polish nation and the Republic of Poland²⁶.

The main consequence is the risk of the instrumentalization and manipulation of history and memory by means of the law. What does this manipulation consist of? Janicka diagnosed the law as a part of historical politics aimed at re-establishing the myth of pure innocence of the Polish nation and Poles during World War II and its aftermath²⁷. It is associated with a simultaneous effort to establish the Righteous as a metonymic figure of the Polish nation. Tomasz Żukowski, who analysed the instrumental uses of the figure of the Polish Righteous in Poland in detail, has argued that commemorative monuments and other representations use the image of families as a symbol of the whole nation, making the exception a rule²⁸. Establishing the Polish National Day of Remembrance of Poles Rescuing Jews under German occupation on 24 March (in 2018) together with the day of death of the Ulm Family from Markowa in 1944 (and the Ulm Family Museum of Poles Saving Jews in World War II) is a way to distinguish the memory of the Polish Righteous from the European Day of the Righteous celebrated on 6 March and established by the European Parliament in 2012. The formula of the European commemoration begins with an effort to honour the “great moral significance of the Garden of the Righteous in Jerusalem, initiated by the late Moshe Bejski”, but it also honours all “those who challenged crimes against humanity and totalitarianism with individual responsibility”²⁹.

Bucholc and Komornik argue that the Joint Declaration, signed by Poland and Israel on 27 June 2018, under pressure from the US, can be seen as a *success* of the Polish historical politics in terms of imposing the “Polish perspective” upon the adversary. In return for removing the abovementioned provisions, prime ministers declared the wish to continue the dialogue in the field of Holocaust research, and to reject the term “Polish concentration/death camps” and “actions aimed at blaming Poland or the Polish nation as a whole”. “Every single case of cruelty against Jews” is condemned and

²⁶ M. Bucholc, M. Komornik, *The Polish “Holocaust Law”...*

²⁷ E. Janicka, *Niewinność...*, p. 49.

²⁸ T. Żukowski, *Wielki retusz. Jak zapomnieliśmy, że Polacy zabijali Żydów* [Eng. *Great Retouching. How we Forgot that Poles Killed Jews*], Warszawa 2018, pp. 187–320. It is worth mentioning that the 2020 commemorative poster consists of a photograph of the Kowalski’s family killed by the Nazis because of helping Jews with a commentary “They behaved right” (Polish: *Zachowali się jak trzeba*).

²⁹ Declaration of the European Parliament of 10 May 2012 on support for the establishment of a European Day of Remembrance for the Righteous (2013/C 261 E/07), OJEU C 261E, 10.9.2013, p. 40.

excused: “the sad fact is that some people – regardless of their origin, religion or worldview – revealed their darkest side at that time”³⁰. The violence against Jews described in the Joint Declaration is conceived as an exception and goes beyond the boundaries of the Polish nation.

From the perspective of the relations between the memory, the law, and the Holocaust, the following statement in the Joint Declaration is of particular significance:

We support free and open historical expression and research on all aspects of the Holocaust so that it can be conducted without any fear of legal obstacles, including but not limited to students, teachers, researchers, journalists and – with all certainty the survivors and their families – who will not be subject to any legal charges for using the right to free speech and academic freedom with reference to the Holocaust. No law can and will change that³¹.

This statement affirms the free dialogue on the Holocaust on the academic, educational, and private levels. Contrary to the authors’ intention, the above passage might be read as a description of the real consequences of the Polish memory law, namely the fear of the force of law which imposes limits on public discussion and memory. Given the context, affirming the free dialogue on the Holocaust with the sentence “No law can or will change that” sounds ambivalent at best. Such a promise casts a shadow on the future. The threat is included in the very negation of the law that could and would change that. The *dangerous legacy* of the controversial law is inherent in the possibility of its return.

4.3. Articles 55a and 55b of the IPN Act as a means of introducing a conspiracy of silence or parallel dialogue

The controversial memory law was repealed, but the memory about it remains. We might perceive Articles 55a and 55b of the IPN Act as a screen where different groups can project their social imaginaries. For some people (scholars, memory activists, educators, teachers, and others), the law introduces the dynamics of a conspiracy of silence, as described in Eviatar Zerubavel’s sociological study titled *Elephant in the Room*³². The metaphor hidden in the title describes a secret that everyone knows in private, but does not mention in public.

The conspiracy of silence requires cooperation of those who know but do not want to reveal the truth, and those who do not want to know it. According to Zerubavel, the intersubjective dynamics of the conspiracy of silence is symbolically expressed by the Japanese Three Wise Monkeys, which “see no evil, hear no evil, and speak no evil”. To this triad, the author of *Elephant in the Room* adds the fourth monkey – a potential or actual silence breaker who is condemned by his/her own group as a betrayer³³. The conspiracy of silence is primarily aimed at protecting the “face” of the individual and the group, often against those who, by breaking the pact of inattention and silence, threaten individuals and the group with a “loss of face”. Yet, at the same time, “ironically, partly in an effort to preserve group solidarity, conspiracies of silence often undermine that very solidarity by impeding the development of honest, trusting relations”³⁴. It follows

³⁰ Joint Declaration...

³¹ Joint Declaration...

³² E. Zerubavel, *Elephant in the Room. Silence and Denial in Everyday Life*, Oxford 2006.

³³ E. Zerubavel, *Elephant...*, p. 62.

³⁴ E. Zerubavel, *Elephant...*, p. 85.

that breaking the silence plays a crucial role: it releases the channelled energy in efforts to uphold the pact of not speaking, not seeing, and not hearing about certain events. One who breaks the conspiracy of silence is considered a traitor by some and by others as a hero, who liberates the community of the secret and necessity to remain silent. The conspiracy of silence is aimed at maintaining solidarity, which, because of the conspiracy itself, is weakened, corroded, or even petrified.

Articles 55a and 55b of the IPN Act can be perceived as a blocker of the dialogue that began to arise after 1989 and again after 2000, the dialogue that made “the Elephant in the room” publicly acknowledged, at least by some parts of society. The dynamic of the conspiracy of silence, with mechanisms of silencing and with breaking the silence perceived as a betrayal, is thus retained despite the accessibility of knowledge of the past expressed by archives, literature, and films³⁵.

Blocking one dialogue means giving a voice to another, which is the dialogue of some parts of society that felt unheard and unrepresented in the narrative of the past adopted by the elites. Kapralski and Ray in their introduction to a special issue of “Holocaust Studies” devoted to the memory law in question claim that the emergence of a cosmopolitan memory of the Holocaust in Poland resulted in

a split of cultural frames of memory as well as a growing gap between elitist and popular discourses that contributed to the political divide and unrest. This result supports Levy and Sznajder’s thesis that globalization does not mean homogenization of standpoints but rather ‘divides each national political culture into several competing worldviews, some of which are more globalized than others. This gap has complicated and deepened when the popular, anti-elitist resentment started to be represented and supported by counter-liberal, nationalist groupings³⁶.

Articles 55a and 55b of the IPN Act are elements of a memory policy which refers to discontent, fear, and disappointment of a part of the society. This part, as shown by Kapralski and Ray, “perceived their situation as a passage from one form of the ideological control of memory to another, equally not allowing them to express the vision of the past they would like to call their own”³⁷.

This process might be seen from a wider perspective of *illiberal transformation* which is taking place in Poland (and Hungary) and which is being implemented, as Weronika Grzebalska and Andrea Pető noticed, “in the framework of the post-communist transformation and subsequent EU accession, and merged human rights and liberal democratic standards with neoliberal economic policies and governance principles”³⁸. The criticism and/or rejection of liberal democracy is associated with opposing globalization, transnational institutions like the European Union, human rights, and equality politics. Articles 55a and 55b of the IPN Act were undoubtedly an inseparable part of this criticism.

³⁵ An excellent example of the event in response to the reinforcement of the aforementioned conspiracy of silence is the conference *Defiling One’s Own Nest. Culture, Law, Society* (Polish: *Kalanie własnego gniazda. Kultura, prawo, społeczeństwo*) that took place at Jagiellonian University in Kraków in May 2018. Its keynote lecturers were Polish Ombudsman, Adam Bodnar, who spoke about Articles 55a and 55b of the IPN Act; Jan Grabowski and Joanna Tokarska-Bakir, researchers devoted to the history of Polish violence against Jews; and other scholars who discussed the appearance of the betrayal discourse in Poland.

³⁶ L. Ray, S. Kapralski, *Introduction...*, p. 214.

³⁷ L. Ray, S. Kapralski, *Introduction...*, p. 213.

³⁸ W. Grzebalska, A. Pető, *The Gendered Modus Operandi of the Illiberal Transformation in Hungary and Poland*, “Women’s Studies International Forum” 2018/68, p. 165.

We have no access to everyday dialogues which refer to the issues raised by the amendment and the related debate. Research on everyday dialogues would demand an ethnographic approach an example of which are the studies of the Polish-Polish and Polish-Jewish dialogue conducted by Erika Lehrer³⁹. During the debate on the controversial law, the Centre of Research of Prejudice (Polish: *Centrum Badań nad Uprzedzeniami*) prepared the report commissioned by the Office of the Ombudsman, which formulates essential conclusions on the law's social impact. According to the report, the amendment and the accompanying debate resulted in polarisation of the vision of the past among Poles. One could observe a growth of the number of people trusting critical insight in history, but also a similar growth of the number of people supporting the law, which shared an idealistic vision based on the conviction about universality of moral attitudes of Poles during World War II. Antisemitic statements (both anti-Jewish and anti-Israel) also appeared in the public debate, and included resorting to conspiracy theories and even a negation of the Holocaust and its historical significance⁴⁰. This, in turn, led to a growth in antisemitic statements in online discourse. The authors of the report emphasise that the debate could have also positive result: "a level of awareness of the scale of Jewish sufferings among some Poles"⁴¹.

These conclusions do not determine the fate of a series of conversations which make up the dialogue on the Holocaust. They enable us to continue asking whether this dialogue will ever lead to an encounter of two polarized visions of future and will initiate understanding?

5. Concluding remarks

In this paper I have reflected on the significance of the IPN Amendment Act in the light of the impact of this law on the dialogue from which it originates, to which it refers, and from which it withdraws. I have shown a variety of meanings assigned to this amendment: from its justification as a necessary tool to fight the distortions of facts about World War II and to defend of good name of Poland – to its perception as a means of manipulation of the history by limiting the scope of dialogue and memory in the direction of glorification of a collective rather than providing the space to account for crimes and taking responsibility for them⁴²; from the law which is intended to protect memory of the Holocaust to the law which negates part of the truth about the Holocaust; from an attempt to restore the conspiracy of silence to enhance parallel dialogue of those who felt humiliated by apologies and acceptance of the Polish faults towards Jews as a response to the Jedwabne debate and a response to transnational memory of the Holocaust.

Using Koczanowicz's concept of dialogue, I briefly characterized frames of dialogue from which this law results, as well as an ethical challenge contained in the dialogue on the Holocaust in Poland. I described it as a task of recognizing in the Polish conceptual

³⁹ E. Lehrer (ed.), *Na szczęście to Żyd. Polskie figurki Żydów/Lucky Jews. Poland's Jewish Figurines*, Kraków 2014; E. Lehrer, *Jewish Poland Revisited. Heritage Tourism in Unquiet Places*, Bloomington 2013.

⁴⁰ M. Babińska, M. Bilewicz, D. Bulska, A. Haska, M. Winiewski, *Stosunek do Żydów i ich historii po wprowadzeniu ustawy o IPN. Analiza przygotowana na zlecenie Biura Rzecznika Praw Obywatelskich* [Eng. *Attitude toward Jews and their history after introduction of the amendment of the Act on IPN. The report commissioned by the Office of the Ombudsman*], Warszawa 2018, p. 17.

⁴¹ M. Babińska, M. Bilewicz, D. Bulska, A. Haska, M. Winiewski, *Stosunek do Żydów...*, p. 37.

⁴² The alternative "either glorification of the past or taking responsibility" was described by Aleida Assmann in: A. Assmann, *Europe's Divided Memory*, in: U. Blacker, A. Etkind, J. Fedor (eds.), *Memory and Theory in Eastern Europe*, New York 2013, p. 38.

horizon the Jewish experience and memory of the Holocaust. This might initiate a critical dialogue regarding the past, including tradition and myths, among members of the society, the dialogue which will be a vehicle of understanding. I was trying to voice a yet unasked question: have the amendment and the debate initiated only the monologic potential of the dialogue or also the dialogic potential leading to understanding. The answer to this question, in spite of appearances, is not easy. On the one hand, this memory law constitutes an attack on an important conversation, excluding from it a question about the extent of co-responsibility of non-Jewish Poles for the fate of Polish Jews during the Holocaust. However, this is not all.

Koczanowicz emphasises continuity between the dialogue in everyday life and the dialogue in the political or public space. In the political and public dialogue certain standpoints are voiced that individuals express in the dialogue ongoing among people in everyday life. So, the significance of the political dialogue is immense, as it may support monologic tendencies (hegemony of one voice over another, muting other voices) or dialogic tendencies (supporting understanding) and this resonates with the dialogues that are ongoing in the society. Dialogue is omnipresent: it penetrates all human interactions, even in the conditions of totalitarian enslavement⁴³. The question is if this law, embarrassing for many reasons, and the debate which followed, may initiate the conversation which will contribute to building a critical community constantly verifying its foundations and accepting inclusion of new values and perspective, remains, in my opinion, open. Such dialogue consisting in inclusion of conflicted voices on the Holocaust is essential for Poland and it is not meaningless for the transnational memory of the Holocaust. A starting point of this dialogue may be the following questions: How did the attempt to construct the politics of time by passing Articles 55a and 55b of the IPN Act affect the social time, namely the time-words and social ontologies of expectations of the groups and individuals who create relations with the past, present, and future? How is the memory of Jedwabne and other crimes against Jews committed by Poles going to be remembered, known, discussed, and transmitted in the future?

The Holocaust memory in a globalized age may be defined as a kind of cosmopolitan memory characterized by a circulation between the particular and the universal as well as the local and the global. This exchange is happening through dialogue which, as shown by Koczanowicz idea of dialogical cosmopolitanism, encompasses “different ideological perspectives, different sets of cultural values, and even different political point of views”⁴⁴. The major vehicles of this type of memory are human rights, their institutions, practices, and awareness. Nevertheless, the processes of universalizing the Holocaust memory and the contexts of its remembrance are particular. The moral weight of this memory consists in its orientation not only towards the past, but also towards the future. The ethics of never again constitute a minimal utopia based on a sense of hope that it is possible to avoid repetition of a past catastrophe in the future. The memory of the past is hence crucial for this ethical project: one needs to know what happened in order to prevent it in the future. Memory laws penalizing negationism of the Holocaust protect simultaneously memory of the past and a possibility of building a minimal utopian idea aimed at avoiding the evil which happened and may happen again. Thus, it may be the case that the IPN Amendment Act caused such resolute and

⁴³ L. Koczanowicz, *Politics of Dialogue...*, p. 163.

⁴⁴ L. Koczanowicz, *Cosmopolitanism and its Predicaments*, “Studies in Philosophy and Education” 2010/29, p. 148.

general objection as it “refracted” the specific memory law which guards the historical truth being the basis of particular minimal utopian idea based on the imperative of never again the Holocaust. In the case of Articles 55a and 55b of the IPN Act, the law – which is to protect history against manipulation – becomes an instrument of creating the vision of the past for the use of politics of a specific time and for shaping the dialogue on its past, which is ongoing in the Polish society.

Articles 55a and 55b of the IPN Act and the Dialogue about the Holocaust in Poland

Abstract: Relations between the Holocaust, memory, and law are constantly reconceptualized. In the second decade of the 21st century there is no clear consensus on the way the Holocaust, memory, and law are or should be interconnected, especially in Central and Eastern Europe. A striking example of the new dynamics of those tensions is an amendment to the Act on the Institute of National Remembrance, which in January 2018 inserted Articles 55a and 55b. The paper states that these controversial provisions (later withdrawn) should be understood as specific memory laws in response to the transnational memory of the Holocaust and the non-consensual dialogue on the Jedwabne pogrom in Polish society. The paper shows the law as a result of a certain dialogue, a voice in the dialogue, and an attempt to limit this dialogue – as well as the effects of such limitation. The paper adopts Leszek Koczanowicz’s conception of dialogue, Natan Sznaider’s description of the transnational Holocaust memory, as well as the idea of the future-oriented ethics of never again, and Eviatar Zerubavel’s concept of a conspiracy of silence in order to frame the context and meaning of the emergence, short life, disappearance, and traces of the law. Although these articles “refract” criminalization of the Holocaust and genocide negationism, understood in the context of Polish historical politics, they are themselves close to a specific form of denial, i.e. denial of the Jedwabne massacre. A recollection of the Polish memory law casts a shadow on the future, as a threat exists that the law might appear again.

Keywords: transnational memory of the Holocaust, ethics of never again, politics of time, dialogue, dialogical cosmopolitanism, Jedwabne debate, memory law

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