Poland Holocaust Law

Comments by Professor Dan Michman

I was pleased to accept the invitation of the editors of Justice to review the article by Wojciech Kozłowski. Let me point out at the outset that my expertise lies in history and not in legal affairs, and thus I am not particularly familiar with the subtleties of the Polish legal system. This notwithstanding, I found the article most interesting due to the legal claims and considerations brought forward by the author. His claim – that there is relatively little chance of successful litigation if personal rights infringement suits are filed against those who make statements about Poland’s or the Polish Nation’s responsibility for the Holocaust or against historians or journalists who simply write about Polish involvement therein – was of singular interest.

From my perspective as a historian who closely observes what is happening in Poland, there is reason to emphasize the following:

1. Even if Kozłowski’s assertion will be proven correct, there are still right-wing organizations (some openly antisemitic) who, I believe, will actually be able to successfully sue individuals once they have found the moment in time that works for them. The defendant, who is likely to be an individual lacking the financial means of a powerful organization, will then be forced to raise funds to obtain legal representation – a time-consuming and costly process. Consequently, the possibility of harassment resulting from the law is a real one. In light of the broad array of current activities emerging from different groups in Poland against anyone who demonstrates by scholarly means that (a considerable number of) ethnic Polish individuals were involved in either murdering Jews or denouncing those who hid the Jews, this possibility is not a figment of the imagination. 1

2. The main effect of the law is deterrence. The law highlights and brings to public awareness the core elements of the current Polish government’s policy that it has initiated toward various levels of historical research. This includes the provision of funds to researchers investigating involvement of Polish individuals in saving Jews during the Holocaust. It also exerts pressure on scholars and educators who critically explore the following two issues: Polish individuals involved in murdering Jews, and Polish individuals who denounced those who courageously hid the Jews. Furthermore, the law can lead to the removal of dissenting museum curators from their positions, as happened in the World War II museum in Gdansk in April 2017;2 and more recently with the intentionally delayed approval of the nomination of the re-elected director of POLIN, the Museum of Polish Jewish History. 3 It can also lead to the altering of the narrative of museums (as was the case with that same museum in Gdansk, where the original broader context of World War II narrative was replaced with a more Poland-centered narrative). The establishment of the museum of Polish Righteous among the Nations in Markova, and the forthcoming Warsaw Ghetto museum will thus likely focus on

Poland’s heroic past and will compete with the relatively recently inaugurated POLIN museum, which is situated almost next door to the Jewish Historical Institute, with the latter two looking at the history of Poland through a more differentiated lens. Furthermore, there is the joint statement of Prime Minister Morawiecki of Poland and Prime Minister Netanyahu of Israel on June 27, 2018, which presented a distorted picture of the Holocaust in Poland. Educators, history teachers, tour guides and research students in Poland already comment on a changing atmosphere, in which dealing with sensitive aspects of wartime Polish-Jewish relations is monitored, and the issue of Poles-rescuing Jews is disproportionately promoted.

Consequently, even if the law here discussed in Kozlowski’s article will likely not be detrimental from the legal point of view (as the author claims), it has already had noticeable repercussions on the broader public. Therefore, it is important to keep in mind that the impact of laws is not limited to their direct legal effect, but that they also have broader public implications and significance.

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