

The Genocidal Extermination of the Polish Intelligentsia

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Abstract

The paper deals with the question of whether the extermination of the Polish intelligentsia in the years 1939–1945 should be regarded as legally falling into the category of genocide. Although widely researched by historians, the genocide of the Poles in the period 1939–1945, and especially of the Polish intelligentsia, has received little attention from both Polish and German legal scholars. The occupiers appropriated Polish territory of which they had seized control in violation of international law, using brutal violence, considering themselves members of the “master race” and bringing the Polish population down to the level of “nationally alien elements”. The author argues that the Poles as a national group were granted legal protection under international law. Polish elites, in turn, formed a special subgroup within the nation and as such were singled out by the Nazis as the first to be eliminated. There is also a number of other criteria specified in international law and the relevant case law that justify considering the crimes against these elites to bear the hallmarks of genocide. The paper discusses also self-identification of the Polish intelligentsia and its identification by the occupier, as well as documents German policy against the Polish intellectuals. The author concludes that under the German Code of Crimes against International Criminal Law, the extermination of the Polish intelligentsia must be regarded as having the characteristics of genocide.

The term *genocide* was originated by a Polish lawyer, Rafał Lemkin, who in 1941 emigrated from Poland through Sweden to the US, where in 1944 he began serving as an adviser at the United States Department of War; his book entitled *Axis Rule in Occupied Europe* was published in the same year. The English word *genocide* comes from the Greek *genos* (nation) and the Latin *caedere* (to kill). The term quickly achieved broad acceptance, and already before the end of the War came to be used to describe the extermination of Jews in the concentration camp of Auschwitz-Birkenau. The criminal provision itself is based on the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, which was drafted by Lemkin and adopted on 9 December 1948 (Creifelds, 2017).¹

Under the Convention, the crime of genocide is a denial of the right of existence of entire groups of peoples, just as homicide is the denial of the right to live of individual human beings. Genocide is also referred to as an ungradable “crime of crimes” (Ambos, Heinze & Penkuhn, 2014, issue 123). Genocide is subject to the principle of universal prosecution (Ipsen, 2014, pp. 585 ff.) and is punishable regardless of whether the location where the crime was committed and/or the perpetrator are in any way connected with a given country; moreover, criminal prosecution of the crime of genocide and the enforcement of the sentence are not subject to a statute of limitations (Art. 1, 5 VSTGB of 26 June 2002, BGBl. 2002, I p. 2254; cf. Creifelds, 2007, footnote no. 2).

The main motive behind pursuing policies that are contrary to the rule of law are ideologically-based actions which are intended to produce specific consequences in the future with the objective of changing or transforming a given society within a short time period and using violence (Brehl, 2015, July 13).

According to numerous sources, a long-term aim of the National Socialist leaders – second only to the extermination of Jews – was the annihilation of the Poles, with the exception of those members who were to be left as forced laborers. As Himmler put it in his barbaric memorandum of 1940: “The surviving Poles will remain at the disposal of the German nation as a workforce

¹ Under the International Convention on the Prevention and Punishment of the Crime of Genocide of 09.12.1948 – to which the Federal Republic of Germany acceded by the law of 09.08.1954 (BGBl. I 1954 II 729) – and under the Rome Statute, the crime of genocide is punishable by law, which is also in accordance with the German Code of Crimes Against International Law (Völkerstrafgesetzbuch, VSTGB). Under Art. 6 of the Code, which in principle corresponds with revoked Art. 220A of the German Penal Code (StGB), whoever with the intent of destroying as such, in whole or in part, a national, racial, religious or ethnic group, kills members of the group, causes serious bodily or mental harm to members of the group, inflicts on the group conditions of life (food, medical care) calculated to bring about its physical destruction in whole or in part, imposes measures intended to prevent births within the group (sterilization) or forcibly transfers children of the members of the group to another group, shall be subject to a term of life imprisonment (cf. Stein & Butlar, 2016, issue 1163, 1164).

with no culture of their own and will be used for roadworks, quarrying, etc.” (Nürnberg-Dok. 1919-PS; IPN – AGK file no. II 218, pp. 1–6).

In September 1941, the fanatical Gauleiter Arthur Greiser announced that “the Führer has sent me here to carry out the *extermination* of the Poles” (IPN – GK 196/37 of 14.9.1941, pp. 122–126).² Governor-General Hans Frank (1980), in turn, was perfectly aware of the meaning of his words when he shouted in 1944: “When we finally win this war, we will grind to dust all Poles, Ukrainians and others who are still around” (14.1.1944).

Undoubtedly, the top Nazi leaders devised plans that went far beyond the extermination of the intelligentsia; drunk with power, they did not even try to conceal their intentions. Despite the fact that the Polish Criminal Regulation (*Polenstrafrechtsverordnung*) (Official Journal of the Reich RGBl. 1941 I, of 4.12.1941, pp. 759 ff.) already in force envisaged the mass extermination of Polish citizens, in October 1942 Otto Thierack, the Minister of Justice of the Reich, discussed further plans for “freeing the German nation from the Poles” with Martin Bormann, Chief of the Reich Chancellery. To this end he wanted to entrust criminal proceedings against Poles to the Reichsführer-ss – that is, Himmler – because the system of justice could contribute to the *extermination* of members of the Polish nation only to a slight degree (Nürnberg-Dok no-1784).

Professor Boris Barth (2006), a historian, points to the fact that the Master Plan for the East (*Generalplan Ost*) of the National Socialists provided for the resettlement of the majority of Poles beyond the Urals, where the exiles would have a slim chance of survival (p. 103). Hannah Arendt (1986), in turn, wrote that at some point Poles began to fear the moment when the extermination of Jews would be considered complete (p. 879, footnote 86). The Polish historian Czesław Madajczyk (1987) had no doubts that the total annihilation of the Polish people was the main aim of Nazi Germany (p. 614). In 1986, Władysław Bartoszewski remarked that to this day, many Germans are unaware that apart from the “final solution to the Jewish question”, it is the Polish problem that constitutes a “historical mortgage” of sorts, even if some try to ignore the fact (p. 13).

Bartoszewski (1983) wrote:

To our utmost terror, we realized that the National Socialists were actually implementing their plans. We were to be wiped out as a people, as a country, as a nation. Our language, culture and religion were to be destroyed. First of all, they planned to

² Also the judgement of the Supreme National Tribunal of 9.7.1946, by which Greiser was sentenced to death, mentions the annihilation of the Polish nation through planned acts of genocide as a long-term aim of the convict (sentencing part of the judgment, point 17, IPN GK 196/541 and Kr_1_19 and BAB-B 162/22016 of the judgment in the German language).

get rid of the intellectual elites – to literally liquidate them. Already in the first months, thousands of the intelligentsia were executed (p. 61; 1986, p. 13).

Genocide against a part of the Polish nation, particularly against the intelligentsia, is a historical fact. Nevertheless, both in German and Polish legal literature, the question of applying provisions of international law with regard to this crime has still not received sufficient attention.³

My reasoning centers around the question of whether in the case of the extermination of the Polish intelligentsia we can talk about genocide in the legal meaning of the term. Therefore, we need to consider the legal aspects of the crime of genocide in light of concrete historical facts.

Under Art. II of the UN Convention on the Prevention and Punishment of the Crime of Genocide, the crime of genocide is, among others, an act committed with the intent to destroy, in whole or in part, a *national group as such*. The notion of “national group as such” has a precise definition in international law, as we are not concerned here with general classifications of a political, economic, or cultural nature; the term “genocide” does not apply to them, and only in isolated cases do they meet the criteria of a crime against humanity or a war crime.

According to the National Socialists, neither the Polish nation nor the Polish state existed during the War. Under Hitler’s decree of 8 October 1939 on the division and administration of the Eastern territories, Polish territories occupied by German forces – in violation of international law – were incorporated into the German Reich, and in consequence three new provinces of the Reich were established: Gdańsk/West Prussia, Wartheland/Poznań, and East Prussia/Królewiec (BA R 43 II/1332, p. 43R; see Broszat, 1961, pp. 34 ff.). Further, Hitler’s order established the General Government as “an important part of the German Reich”, and Governor-General Hans Frank (1980) used to call it a “neighboring territory of the Reich” (*Reichsnebenland*). It was Kraków, not Warsaw, that was chosen as the capital city of the General Government, because another of Hitler’s orders demanded that Warsaw “be degraded to a provincial town”. Despite this decision, however, Warsaw remained the main bastion of the resistance – the heart of the Polish Underground State. The authorities of the General Government were perfectly aware of the fact, and at a meeting devoted to the situation, held on 8 May 1944 at Wawel Castle, ss-Obergruppenführer Wilhelm Koppe called Warsaw a dangerous metropolis of conspiracy, declaring that: “Perhaps we should consider whether it would not be advisable to evacuate all Germans from this pesthole. The majority of Warsaw’s residents are staunch supporters

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See A. Basak, in: *Acta Universitatis Wratislaviensis*, no 1169 (1991), 1283 (1993) i 1715 (1995).

of the resistance movement and await some breakthrough in their camp” (Frank, 1980, 8.05.1944). Furthermore, the Germans were on the whole convinced that “the worst thing was that the Poles had overcome their fear of us” (Szarota, 1985, p. 263).

Throughout the occupation, the actual function of Warsaw as the capital city was much broader than that of the focal point of the struggle against Nazism. It was in Warsaw that ideas about the future state – based on social justice – blossomed, and where plans were made for rebuilding the country, bringing up the next generation in the spirit of humanism and the democratization of culture (Szarota, 1985, p. 319).

Following the attack on Poland, Governor-General Hans Frank declared with his typical arrogance and cynicism:

From now on, the swastika will fly over this country forever. [...] The Polish state will never be reborn. The experience of past decades clearly indicates that having their own state has disastrous consequences for the Poles themselves. I am inclined to think that it was a kind fate that intervened on behalf of the Poles and made the German Reich take some interest in the Polish territory (Landau, 1962, pp. 645 ff.).

The definition of a “state” encompasses such notions as nation, territory and form of government (Jellinek, 1900). As *Reichsdeutsche*s and *Volksdeutsche*s, the Germans took control of the occupied Polish territories, exercising their power in a brutal manner and calling themselves “the master race” (*Herrenvolk*); during public gatherings they chanted: “One People, One Nation, One Leader!” (*Ein Volk, ein Reich, ein Führer*). The Polish population was thus brought down to the level of a “nationally foreign element” (*Fremdvölkische*). This resulted in Poles coming within the category of national groups protected under international law.

The elites of the Polish nation were in a position of prominence, and therefore they were the first to be targeted by the National Socialist extermination machine. The Polish elites were characterized by:

- a hierarchical structure headed by one leader;
- a high degree of organization;
- continual involvement in the fight against the enemy throughout the German occupation.

These were the distinctive features of the Polish Underground State, which was divided into sections occupied with political, social, cultural and military matters. The organizational structure of this “Polish phenomenon” is clear proof of the effective operation of a national group (of resistance) “as such”, which was forced to defend itself against the destruction of its identity (Werle & Jeßberger, 2016, issue 819) – a destruction that was to be

achieved through the systematic eradication of its sense of togetherness and the physical elimination of its spiritual and political leaders (Kohlrausch & Lange, 1961, Art. 220a no. iv).

In order to protect themselves, to legitimize their existence and motivate themselves to action, the defenders of freedom adopted ethical norms that were written down in the Polish Code of Civic Morality During the Occupation (Szarota, 1985, pp. 282–291).

Summing up, international law protects the “leader of opinion” of the oppressed nation – who is seen as a supraindividual entity – and also the group “as such” and its right to live (Ambos et al., 2014, issue 161; cf. Hobe, 2014, pp. 587 ff.).

The Polish Underground State was the emanation of the self-awareness of Poles and a testament to the fierceness of their resistance. This phenomenon was very convincingly described by Christoph Kleßmann already in 1971, in his work *Die Selbstbehauptung einer Nation* (see Lesser, 1988).

The Polish Underground State was never defeated; on the contrary, following the defeat at Stalingrad, Germany found itself on the losing side, and the Polish resistance began to push National Socialist security forces into a hopeless position, which was discussed at cabinet meetings held at Wawel Castle in an atmosphere of increasing helplessness. Quotes from the journal of the Governor-General (Frank, 1980):

- 14 March 1944: “As the authority of the German leaders has collapsed, none of the 3,700 foreigners answered the summons to show up for work”;
- 19 April 1944: “We have encountered between four and fourteen acts of sabotage on the railway per day, and critical lines are paralyzed for up to 5 days”; “Whispering campaign grows in intensity day by day”; “1,657 telegraph lines were destroyed by the bandits”;
- 6 May 1944: “For the first time, the bandits took control of whole districts”;
- 7 July 1944: “The security situation in the Warsaw district has worsened dramatically over the last couple of weeks”;
- 26 July 1944: “The complete disappearance of the Baudienst [building service] men is a clear sign of growing insecurity. Nearly all of 20,000 men employed in the Baudienst ran away as if ordered to do so”.

Despite being inundated with dismal news, Frank (1980) believed that they should be received “with calm and dignity”, and demanded that his subordinates display “unwavering faith in victory and exemplary behavior” (26.7.1944).

After the fall of the Warsaw Uprising on 2 October 1944, the Polish Underground State did not cease to fight, continuing its effort until the declaration of surrender by Germany – the journal of the Governor-General bears testimony to that.

Poles had nothing to lose at the time: the Nazi terror eliminated all aspects of the state's national and cultural autonomy, deeply wounding the pride of this nation, so profoundly conscious of its identity (Kleßmann, 1971, p. 185).

Our resistance did not result merely from the hard facts of the situation, but also from our moral judgment: in our view what they did was a crime, and the very occurrence of this crime represented a challenge. We worked, therefore, to provide the nation with a foretaste of freedom. Our resistance was a moral act (Cz. Wycech as cited in Kleßmann, 1971, p. 185).

Let us now return to legal requirements: a national group that undertakes action against an assault on the physical existence of its individual members is legally protected. It is the group, not individual victims as such, that constitutes the target of purposeful destruction (Werle & Jeßberger, 2016, issue 877). For their strategic, tactical and operational actions, the Nazi leaders used the term "intelligentsia action" (*Intelligenzaktion*) (Ambos et al., 2014, pp. 124–127, 152).

In accordance with the objective features of a prohibited act, attempts at exterminating the Polish intelligentsia constituted an attack against a legally protected national group. The Polish elites functioned as the executive of the Government of the Republic of Poland in Exile, which was based in London, and identified themselves in the exact same way (*self-identification* is a term used in international law). On orders from London and remaining in constant secret contact through radio and couriers, the Polish elites organized and implemented resistance actions. The broad scope of activities included both civilian operations and the armed struggle of the Home Army – carried out with the help of the underground press, clandestine universities and schools, an underground police force and courts – as well as the campaign of sabotage organized by the Polish people (for instance Action Turtle – the deliberately slow performance of work). The Polish Underground State also comprised Polish scouts, who fought as the so-called "Grey Ranks" (Schenk, n.d.). They distinguished themselves with assisting in daring prisoner escapes, espionage activities, partisan actions and retaliatory strikes (Szarota, 2010, pp. 319–348).

Since they had many points in common, it is often impossible to draw a line between military and civilian elites; moreover, this would not be advisable, as all members of the organization engaged in various activities and carried out different tasks.⁴

4 For instance Catholic priests did not take part in the armed struggle, but they supported the army ideologically and provided social and pastoral aid. Or to take another example: Dr. Karolina Lanckorońska was a member of the Polish Central Welfare Council, which provided supplies to prisoners, and as an officer of the Home Army she used her position to gather intelligence in various prisons.

From a sociological perspective, the Polish governing class should be viewed as a group of “carefully selected, widely acclaimed and accomplished persons”, so for example the functional elite (professors, the clergy), the creative elite (scholars, artists), the elite of status (functionaries, lawyers, public clerks) and the power elite (political, military or economic positions) (Reinhold, 2000, pp. 127–131, 300–304).

We can get a clear picture of the group also thanks to actual victims, as grouped by Czesław Madajczyk (1987, pp. 637–660) in an appendix to his fundamental work on the Nazi occupation of Poland. The division included professors of Polish institutions of higher learning; writers, pedagogues, cultural activists and other distinguished representatives of education and culture; eminent personalities of political and social life; famous public figures working in governmental and self-governmental bodies, experts in the field of administration and economy and the clergy (pp. 637–660).

A national group can also be defined on the basis of a classification adopted by the perpetrator (Ambos et al., 2014, issue 128), i.e. on the basis of the subjective designation introduced in accordance with the ideas and intentions of the Nazi criminals (*identification by others*). This aspect can be seen to have considerable importance, as the Nazi leaders classified the elites earmarked for extermination as instigators of clandestine and resistance activities (Werle & Jeßberger, 2016, issue 829). According to Governor-General Hans Frank (1980), it was “an active ruling class that relied in its energetic efforts on the intelligentsia” (30.5.1940).

As specified in a memo of the Office of Racial Policy (*Rassenpolitisches Amt*) in Berlin, dated 25 November 1939, the Polish intelligentsia included the Polish clergy, teachers – including university lecturers, doctors, dentists, veterinarians, officers, higher-ranking civil servants, prominent merchants and landowners, writers, journalists and other persons who had a secondary or higher education. Poles who were particularly patriotic and manifested their Polishness were also included in this group (Wetzel & Hecht, 1939, pp. 17 ff.; Nürnberg-Dok NO-3732).

This is probably the most exhaustive description of the group given by the Nazis. Other sources further supplement the list with representatives of “Polish Western thought” and people who “hated the Germans” and “incited hatred against the Germans” (BA zst, B 162/bill of indictment of Dr. Best, p. 895).

As indicated by international case law, all social classifications should be complemented by subjective criteria pertaining to particular persons. First of all it should be taken into account that very often the perpetrators themselves regularly defined groups of their victims (Werle & Jeßberger, 2016, issue 831). Over the course of time, the subjective-objective approach attained the status of international custom (issue 832).

Czesław Madajczyk (1987) estimated the total number of victims murdered under the plan of extermination known as the “intelligentsia action” at 51,000 Poles (pp. 306, 360). Chief prosecutors Adalbert Rückerl and Willy Dreßen, in turn – both of whom headed the Central Office for the Investigation

of National Socialist Crimes in Ludwigsburg (*Zentrale Stelle der Landesjustizverwaltungen zur Aufklärung nationalsozialistischer Verbrechen*) – put the figure at 60,000–80,000 victims (Rückert, 1979, p. 18; Benz & Graml, 1997, p. 524; cf. Benz, 2006). According to my calculations, in the Gdańsk/West Prussia province of the Reich alone, up to 60,750 people may have died as a result of the criminal activity of the *Selbstschutz* (Schenk, 2000, pp. 294 ff.).

The first phase of criminal activity reached its culmination in the autumn of 1939 and in the winter of 1939/1940. In the middle of October 1939, the Head of the Reich Main Security Office (*Reichssicherheitshauptamt*), Reinhard Heydrich – unmatched in his zeal for criminal activity and contempt for others – ordered the “complete liquidation of all leading proponents of Polishness by 1 November 1939” (BAB, R 58/825, Minutes of meetings of the heads of offices (14.10.1939); cf. Böhler, 2009, pp. 131–136).

Nevertheless, the annihilation of the Polish intelligentsia was pursued up until the end of the War by the SS, the SD, and the Gestapo – the Security Police – with active support from the German army and all civil authorities of the occupier.

In the spring of 1943, the SS and the Gestapo estimated the number of members of the elite who were involved in the resistance at 50,000. Such a figure was given by Friedrich-Wilhelm Krüger, the Higher SS and Police Leader and State Secretary for Security of the General Government. On the orders from the resistance movement, the majority of these people worked in the German administration as “loyal” civil servants, “thus obtaining access to detailed information and having an opportunity to detect the weaknesses of the enemy, who could then be targeted with subversive activities” (Nürnberg-Dok. NGC-4621).

It is impossible to provide a precise and reliable number of victims for the people who worked for the Polish Underground State.

The impressive exhibition organized at the Museum of the Second World War in Gdańsk shows that the number of Polish victims totaled 300,000 soldiers and 5,300,000 civilians, including 3,000,000 Poles of Jewish origin (Machcewicz, 2016, p. 214; cf. Madajczyk, 1987, p. 617).

As far as the subjective features of a prohibited act are concerned, the law assumes specific intent to commit an act of extermination, which should be understood as will oriented to the attainment of an objective (Werle & Jeßberger, 2016, issue 875, 876). The decisive factor is whether the perpetrator acts with direct intent (*dolus directus*), as neither conditional intent (*dolus eventualis*) nor gross negligence satisfy legal requirements in this respect (issue 871).

The carrying of this intent into effect consists in killing members of a national group. When in September 1939 in Poznań Arthur Greiser assumed the post of Gauleiter and Reich Governor of the Wartheland, he immediately issued an order to draw up – in the greatest secrecy – lists of names of Polish leaders and members of the Polish intelligentsia, which were then to be classified as *Geheime Reichssache* and sent to his home address. Greiser also

ordered “that all Poles who are charged in connection with our actions be publicly executed”, which resulted in many massacres in the Wartheland (IPN – GK 196/11 of 29.9.1939, p. 9).

The Nazis were often guided by revenge or acted in retaliation. Following the successful assassination of the SS and Police Leader Franz Kutschera, which was carried out on 1 February 1944 in Warsaw, 300 Poles were killed. According to German announcements, from 16 February to 1 August 1944 – so in less than six months – 1,140 people were executed in Warsaw, while according to data gathered by the resistance the number of victims amounted to more than 4,100 (Präg & Jacobmeyer, 1975, p. 832, footnote no. 20).

During the so-called *AB Aktion* (*Außerordentliche Befriedungsaktion*, AB) – implemented on the orders of the Governor-General – 7,500 people were murdered between May and June 1940. In making this decision, Frank (1980) relied on what Hitler had allegedly told him: “All members of the existing Polish ruling class must be liquidated with exemplary ruthlessness, and should they have any successors, our task will be to hunt them down and get rid of them in due course” (30.05.1940, 12.07.1940).

Intent to cause serious bodily or mental harm to members of the group of the intelligentsia is another defining feature of genocide.

The professors from Lwów who were murdered on the night from 3 to 4 July 1941 had initially been arrested and interrogated at the Abrahamowicz dormitory, where they were subjected to torture, among others in the form of mock executions. In the basements, the SS men fired single shots which resounded through the building, and other SS criminals would then say to the arrestees, “One more down”. The son of a surgeon, Dr. Stanisław Ruff, was shot in front of his parents after he suffered an epileptic fit (Schenk, 2007, pp. 121–124). Already on 6 September 1939, as a result of the so-called *Sonderaktion Krakau*, professors from Kraków had fallen victim to German pacifications targeting the intelligentsia (Lesser, 1988, p. 5; cf. Schenk, 2010, pp. 52–54).

As described by historian Professor Tomasz Szarota (1985), who used the example of the occupation of Warsaw, the category of deliberate mental harm also includes any prearranged action aimed at:

- the pauperization of the intelligentsia;
- its social degradation;
- suppressing all scientific and cultural activity;
- the compulsory replacement of intellectual work with physical labor;
- attempts at disgracing the intelligentsia by means of propaganda;
- causing it to live in “fear and anxiety” (pp. 49, 53, 57).

SS men and a trustee (*Treuhänder*), the criminal Pieter van Menten, were also responsible for robbing the property of the victims, including that of three Lwów professors – Tadeusz Ostrowski, Kazimierz Bartel and Jan Grek (Schenk, 2007, pp. 135–141).

The deliberate imposition upon the intelligentsia of conditions of life calculated to bring about its physical destruction in whole or in part also carries all the features of a prohibited act.

Physical destruction was carried out en masse in Nazi extermination camps – the camp in Auschwitz, established in 1940, was originally intended for the Polish intelligentsia. As ss doctor Hans Münch testified during the Second Auschwitz Trial, in later years an average prisoner would live for some three months counted from his or her arrival there.⁵

Forced deportations were another type of prohibited act. From 1 November to 17 December 1939 – thus within a month and a half – 87,883 Poles and Jews were forcibly moved from the Wartheland province of the Reich to the General Government and left there to await their fate (IPN – GK 196/13, pp. 37–46). Thousands of laborers in the Nazi arms industry were worked to death as a result of malnourishment and privation.

The above examples give only a brief overview of what should be construed as genocide against the Polish people. We should also bear in mind that these crimes affected not only the elites, but virtually each and every Polish family.

The German postwar judiciary is guilty of gross negligence, as numbers concerning the prosecution of Nazi criminals are simply catastrophic (Central Office for the Investigation of National Socialist Crimes in Ludwigsburg, n.d.; cf. Eichmüller, 2008; Görtemaker & Safferling, 2016). In the years 1945–2005, proceedings were initiated against 172,294 named defendants, but only 1,147 of them – just 0.7 percent – were convicted of murder. This unfortunate development is known as the so-called “second German guilt” (Giordano, 2000). Lawyers of the postwar period justified their earlier participation in the Nazi system of justice – which, as they argued, meant “merely applying the laws in force” – by saying that “what was legal yesterday cannot be considered illegal today” (see Klee, 2007, p. 152).⁶

In Poland, 5,450 Germans and Austrians were convicted of Nazi crimes after the War; of these, 193 were sentenced to death, with the majority being executed. 1,817 war criminals were extradited by the Allies from Germany to Poland through the Polish Military Mission in Berlin.⁷

In postwar Germany, the criminal provision concerning the crime of genocide was practically inapplicable to Nazi crimes because of the principle

⁵ Closing argument of Prosecutor Joachim Kügler, 13.5.1965, 157. day of the trial.

⁶ Statement made by Hans Filbinger, former naval judge and Minister President of Baden-Württemberg; see E. Klee, *Das Kulturlexikon zum Dritten Reich*, Frankfurt am Main 2007, p. 152.

⁷ W. Kulesza: “Publication of Dieter Schenk’s book titled *Hans Frank. Hitlers Kronjurist und Generalgouverneur*” during the presentation of the book by the S. Fischer Verlag publishing house held on 26 September 2006 in the Topography of Terror Documentation Center in Berlin.

of non-retroactivity of the law (*nulla poena sine lege*) codified in the German constitution (see www.generalbundesanwalt.de).

The Public Prosecutor General of the Federal Court of Justice (*Generalbundesanwalt*, GBA) in Karlsruhe is responsible for prosecution of the crime of genocide. The competent prosecuting body is the Central Unit for Combating War Crimes and Other Offences pursuant to the Code of Crimes against International Law (*Zentralstelle für die Bekämpfung von Kriegsverbrechen und weiteren Straftaten nach dem Völkerstrafgesetzbuch*) at the Federal Criminal Police Office (*Bundeskriminalamt*). Currently, its proceedings are focused on crimes of genocide, mass rape and torture perpetrated mainly in Syria and by the so-called “Islamic State” (“Verfolgung”, 2017, April 27, pt. 1).

Genocide always leads to resistance on the part of its victims – resistance in the meaning given to the term by Dr. Fritz Bauer (1998), the Hessian Attorney General who himself had been persecuted by the Nazis. This opposition begins as soon as democratic principles and the rule of law have to be defended (p. 41). Resistance is also a strategy of survival. In one of the letters written in occupied Warsaw in the spring of 1944, we read thus: “The combative attitude that we have adopted from the very beginning makes our lives bearable. An uncompromising stance is not only a practical, but also a political and psychological imperative, a vital condition of life” (as cited in Szarota, 1985, p. 261).

Summing up, I would like to state that I have arrived at the conclusion that Nazi crimes committed against the elites involved in the activities of the Polish Underground State should be qualified as bearing all the hallmarks of genocide under international criminal law. Genocide in Poland constituted an attack on civilized mankind in general. Taking into consideration the Nazis’ approach to activity of the Polish Underground State, we can see that in using the notion of “sub-humans” (*Untermenschen*) they showed utter contempt and disrespect for other people. As it turned out, the Polish elites were a force to be reckoned with, a force which managed to substantially undermine the power of the occupier.

Another act of genocide was committed in the Stalinist era, when members of the Polish Underground State were absurdly and outrageously slandered as “collaborators” of the Nazis, and tried by military tribunals. It is a major scandal that some people were sentenced to death or long-term imprisonment in these trials. In his book titled *Crimen laesae iustitiae*, Professor Witold Kulesza (2013) points out that to this very day not one of the complicit Polish judges and prosecutors has been convicted by a legally binding verdict for the 6,000 death sentences passed during the Stalinist Terror of 1944–1956 (pp. 514–516).

In later years, the struggle for freedom was continued by the Solidarity movement, whose aim was to overthrow the Communist dictatorship. As Władysław Bartoszewski (1986) said:

It was the duty of our people to put up resistance. In Poland, freedom is the cause of the entire nation, and the lack of free-

dom is like a lack of air. Those who once experienced such intellectual suffocation learn to truly cherish freedom. They need freedom as much as the air they breathe (pp. 90, 98).

These words continue to be relevant in the present day.

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