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The United States and the Defense of the Good Name of Poland and the Polish Nation in the Context of the Holocaust

Stany Zjednoczone a obrona dobrego imienia Polski i narodu polskiego w kontekście Holokaustu

ABSTRACT

The aim of the paper is to analyze and evaluate the reaction of the United States to the changes to the Act on the Institute of National Remembrance, which were to defend the good name of Poland and the Polish nation in the context of the Holocaust. The paper explains the significance of these changes for Polish-American relations. The assessment takes into account the important context of recent legal changes preventing the restitution of private Jewish property in Poland, lost after World War II. In criticizing the legal changes to the Act on the IPN carried out by the American authorities, respecting the

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freedom of expression and public debate was of the greatest importance. Since the Polish authorities resigned from the regulations that would have infringed these values, the United States did not limit cooperation with Poland. However, the controversy surrounding the act has shown that the legal restriction of basic democratic values, including the freedom of speech, may cause a more decisive response from the USA, decreasing the importance of relations with Poland. This, however, depends on the current appraisal of the strategic interests in the United States.

Key words: Holocaust, Institute of National Remembrance, Polish-American relations, good name of Poland and Poles, freedom of speech

STRESZCZENIE

Celem artykułu jest analiza i ocena reakcji Stanów Zjednoczonych na zmiany w ustawie o Instytucie Pamięci Narodowej, które miały bronić dobrego imienia Polski i narodu polskiego w kontekście Holocaustu. Artykuł wyjaśnia znaczenie tych zmian dla stosunków polsko-amerykańskich. Ocena uwzględnia ważny kontekst ostatnich zmian prawnych uniemożliwiających restytucję prywatnego mienia żydowskiego w Polsce utraconego po II wojnie światowej. W krytyce zmian prawnych dotyczących ustawy o IPN przeprowadzonej przez amerykańskie władze największe znaczenie miało uszanowanie wolności słowa i debaty publicznej. Ponieważ polskie władze zrezygnowały z przepisów godzących w te wartości, Stany Zjednoczone nie ograniczyły współpracy z Polską. Kontrowersje wokół ustawy pokazały jednak, że prawne ograniczanie podstawowych wartości demokratycznych, w tym wolności słowa, może spowodować bardziej zdecydowaną reakcję USA, obniżającą znaczenie stosunków z Polską. To jednak zależy od bieżącego wartościowania strategicznych interesów w Stanach Zjednoczonych.

Słowa kluczowe: Holocaust, Instytut Pamięci Narodowej, stosunki polsko-amerykańskie, dobre imię Polski i Polaków, wolność słowa

INTRODUCTION

The use of the terms „Polish death camps” by politicians and journalists around the world is particularly detrimental to the good name of Poland and Poles. The most glaring example was the unintentional use of this phrase in May 2012 by President Barack Obama during the ceremony of posthumously honoring Jan Karski with the Presidential Medal of Freedom. Despite the fact that the American president apologized for this mistake several times, it caused great indignation in Poland. Since its establishment in 1998, a special role in the prosecution of all crimes committed during the Second World War has been taken over by the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation (Instytut Pamięci Narodowej – Komisja Ścigania Zbrodni przeciwko Narodowi Polskiemu – IPN)¹. According to article 1

¹ H. Kuczyńska, *Nazi Crimes in Poland. A Never-Ending Search for Justice*, „Contemporary Central & East European Law” 2020, 1 (133), s. 147.

point 1 and article 45 of the IPN act, investigations in the cases of Nazi crimes, communist crimes, crimes of Ukrainian nationalists, and other crimes against peace, humanity, or war crimes, perpetrated on persons of Polish nationality or Polish citizens of other nationalities between 8 November 1917 and 31 July 1990, are commenced and conducted by the prosecutor of a departmental commission².

Compared to other Central and Eastern European countries, Poland has great achievements in discovering the dark pages of the history of the Holocaust. Researchers, including – in particular – Barbara Engelking, Jan Grabowski, Martyna Grądzka – Rejak, Jacek Leociak, Dariusz Libionka, Aleksandra Namysło, Sebastian Piątkowski, Adam Puławski, Andrzej Żbikowski and many others, discovered the most controversial aspects of relations between Poles and Jews during the Second World War. According to critics, the amendment to the Act on the Institute of National Remembrance of February 2018 threatened the freedom of research, and the accompanying narrative of the Polish authorities questioned both the results of some of studies and even the patriotism of those who carried them out³. Criticism fell on both domestic and foreign researchers, including the American citizen born in Poland – Jan Tomasz Gross.

The aim of the paper is to analyze and evaluate the reaction of the United States to the changes to the Act on the Institute of National Remembrance, which were introduced to defend the good name of Poland and the Polish nation in the context of the Holocaust. These changes are considered in the context of their impact on Polish-American bilateral relations. The paper explains the importance of this issue for the American authorities. It is not intended to determine the truthfulness and credibility of theses and research results concerning individual examples of the participation of Poles in crimes against Jews during World War II. The main research problem is the question of what impact the issue of the freedom of debate on the Holocaust has for the US attitude towards Poland. The main thesis is that the most important thing is not the Jewish question itself, but the protection of freedom of expression and public debate. The statements of the State Department and statements of some American politicians suggested limiting relations with Poland, but in practice this did not happen because the Polish authorities removed laws that limited freedom of expression in this respect. The lack of readiness to introduce

² Ustawa z dnia 18 grudnia 1998 r. o Instytucie Pamięci Narodowej – Komisji Ścigania Zbrodni przeciwko Narodowi Polskiemu, Dziennik Ustaw Rzeczypospolitej Polskiej 1998, poz. 1016, <http://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu19981551016> [dostęp: 12.01.2022].

³ R. Pankowski, *The Resurgence of Antisemitic Discourse in Poland. The Resurgence of Antisemitic Discourse in Poland*, „Israel Journal of Foreign Affairs” 2018, 12 (1), s. 23.

sanctions against Poland in the context of the Jewish question itself is confirmed by the US response to legal changes regarding property lost by Jews after World War II. The paper uses the method of analyzing text sources and the method of institutional-legal analysis.

BACKGROUND

In the first half of the 20th century, two visions of Poland and the Polish nation clashed. One, represented by Józef Piłsudski, presenting multiethnic and multicultural vision of „political” patriotism. The second, personified with Roman Dmowski, the idea of a much more ethnically homogeneous state and nation, with anti-Semitic overtones, including those resulting from the separatism of the Litvaks. These two contradictory visions torn the collective memory of Poles⁴. This legacy affects the perception of national minorities by Poles, including Jews, to this day.

Until January 1, 2021, Poles were awarded 7,177 out of 27,921 Righteous Among the Nations awards for helping Jews during World War II⁵. This is an impressive number, and each of these stories is associated with great courage and sacrifice, because in the occupied Poland, helping Jews was punishable by death. In the tragic conditions of war, however, there were also cases of denunciation and crimes by Poles against Jews. Poles were encouraged to do this type of activity by the German occupier⁶.

Both before and after the Second World War, anti-Semitic moods appeared in Poland, as in other European countries. In Poland, Jews were treated as strangers and often subjected to harassment. They were accused of some kind of „occupying” Poland, as capitalists, under the stereotype of a „Jew-exploiter”, or as communists, in the form of the stereotype of „Jew-communist” („Żydokomuna”)⁷. After the war, there were approximately 250,000 Jews in Poland, some of whom fell victim to crime, including property-related crime. The significant participation of Jews in the communist apparatus, including the Security Office (Urząd

⁴ M. Kotwas, J. Kubik, *Symbolic Thickening of Public Culture and the Rise of Right-Wing Populism in Poland*, „East European Politics and Societies and Cultures” 2019, 33 (2), s. 448–449.

⁵ Yad Vashem, *Names and Numbers of Righteous Among the Nations – per Country & Ethnic Origin, as of January 1, 2021*, <https://www.yadvashem.org/righteous/statistics.html> [dostęp: 12.01.2022].

⁶ B. Engelking, *Murdering and Denouncing Jews in the Polish Countryside, 1942–1945*, „East European Politics and Societies” 2011, 25.

⁷ C. Snochowska-Gonzalez, *Post-colonial Poland—On an Unavoidable Misuse*, „East European Politics and Societies and Cultures” 2012, 26 (4), s. 718.

Bezpieczeństwa – UB) (about 40% of management posts) and the censorship and propaganda department, aroused reluctance. This deepened anti-Semitic sentiments, supported by the UB, which even led to pogroms, such as in Kielce on July 4, 1946, where over forty people were killed⁸. In communist Poland, the moments of the rise of the anti-Jewish narrative appeared many times, including those that were particularly vivid in March 1968. In Poland, as in the Soviet Union, Jews became scapegoats, blamed for internal failures. Even after regaining sovereignty, the Jewish question has been returning to the public debate with the appearance of newspaper articles, history books, movies, and documents about the Holocaust. Similar impulses were also given by the diplomatic quarrels between Poland and Israel as well as legislative initiatives harming the interests of one of the partners. Despite this, in recent decades in Poland, there has been a revival of the Jewish community and culture, which was practically destroyed by Nazi Germany during the Holocaust.

Moreover, anti-Jewish incidents in Poland are less frequent than in many established liberal democracies, such as Sweden, Germany, or the Netherlands⁹. Even radical nationalist organizations, such as All-Polish Youth (Młodzież Wszechpolska – MW), removed the clearest evidence of anti-Semitism¹⁰. Occasionally, however, extreme anti-Semitic incidents continue to occur, such as the burning of a Jewish effigy.

HISTORICAL NARRATIVE OF THE LAW AND JUSTICE GOVERNMENT ON THE HOLOCAUST

The Second World War, including the tragic events of the Holocaust and its geopolitical consequences, changed Poland from a multi-ethnic and multi-religious country into a monolith¹¹. The memory of the tragedy of that period and the demographic change in Poland did not lead to the disappearance of anti-Semitic sentiments in the country. The so-called secondary anti-Semitism appeared, which is „a form of anti-Jewish

⁸ K. Korycki, *Memory, Party Politics, and Post-Transition Space: The Case of Poland*, „East European Politics and Societies and Cultures” 2017, 31 (3), s. 533.

⁹ A. Zdravkovski, *Polish Politics, April 1989–October 2015*, w: *Civic and Uncivic Values in Poland. Value Transformation, Education, and Culture*, red. S.P. Ramet, K. Ringdal, K. Dośpiał-Borysiak, Budapest–New York 2019, s. 16.

¹⁰ E. Sidorenko, *Which way to Poland? Re-emerging from Romantic unity*, w: *Reinventing Poland. Economic and political transformation and evolving national identity*, red. M. Myant, T. Cox, London–New York 2008, s. 115.

¹¹ C. Snochowska-Gonzalez, *op. cit.*, s. 719.

prejudices based on the denial of guilt towards Jews; its manifestations are: denying responsibility for crimes, denying one's own prejudices and concealing historical facts that cast a bad light on compatriots in the context of their behavior towards Jews"¹². An additional fuel for the secondary anti-Semitism in Poland is also the controversy surrounding unresolved issues of Jewish property restitution¹³.

The Polish Government of Law and Justice (Prawo i Sprawiedliwość – PiS) runs the „politics of history” campaign, which in its opinion is directed against falsifying history and blaming Poland and Poles for the tragic events of the past. The narrative of the Polish authorities presents the image of Poles as victims of the policy of great powers, and Polish heroes as martyrs who gave their lives for statehood and freedom. Its essence is to promote the „heroic martyrdom” of the Polish nation¹⁴. One of the best-known examples is the strong opposition and reaction to the use of the term „Polish death camps”. Another manifestation of this approach was the criticism of the Museum of WWII in Gdańsk, which, according to PiS, was a „cosmopolitan” approach to the history of the war, diminishing the tragedy of Polish experiences. The positive image of Poles defending Jews was to be promoted by the Markowa Ulma-Family Museum of Poles Who Saved Jews in World War II, which opened in March 2016. Scholars of the Holocaust lost their positions – Barbara Engelking, chair of the Auschwitz Council, and Adam Puławski, head of the IPN. According to critics of this decisions, the reason for the dismissal was to present in their research not only positive but also negative attitudes of Poles towards Jews during World War II, including in Markowa¹⁵. On the other hand, there were voices about incomplete scientific reliability, for example, presented by Tomasz Domański from the IPN about the book co-edited by B. Engelking¹⁶. Polish authorities have decided to build the Museum of „Memory and Identity” in Toruń, which is to present a thousand years of Christianity in Poland,

¹² Own translation for: M. Bilewicz et al., *Marzec w lutym? Studium stosunku Polaków do Żydów i historii Holokaustu w kontekście debaty wokół ustawy o IPN*, „Nauka” 2018, 2, s. 7.

¹³ P. Pokrzywiński, P. Zawada, *Diplomatic Crisis Between Poland and Israel in Right-Wing Dailies*, „Polish Political Science Review” 2019, 9 (1), s. 40.

¹⁴ A. Yatsyk, *Biopolitical conservatism in Europe and beyond: the cases of identity-making projects in Poland and Russia*, „Journal of Contemporary European Studies” 2019, 27 (4), s. 469–470.

¹⁵ J. Hackmann, *Defending the „Good Name” of the Polish Nation: Politics of History as a Battlefield in Poland, 2015–18*, „Journal of Genocide Research” 2018, 20 (4), s. 600.

¹⁶ T. Domański, *Korekta obrazu? Refleksje źródłoznawcze wokół książki Dalej jest noc. Losy Żydów w wybranych powiatach okupowanej Polski, t. 1–2*, red. Barbara Engelking, Jan Grabowski, Warszawa 2018, Warszawa 2019.

the intellectual achievements of the Polish Pope – John Paul II, and the protection of Jews by Poles during World War II. It was speculated that Father Tadeusz Rydzyk from the Redemptorist Order could become the director of the museum.

Right-wing foundations and associations also engage in defending the good name of Poland and Poles in the context of the Holocaust. For example, since November 2014, the Good Name Redoubt – Polish League Against Defamation (Fundacja Reduta Dobrego Imienia – Polska Liga przeciw Zniesławieniom) has been operating. In February 2021, the Ordo Iuris Institute for Legal Culture (Fundacja Instytut na rzecz Kultury Prawnej Ordo Iuris) inaugurated a program to protect Poland's good name. One of the issues they take up is the alleged defamation of Poles in the context of their participation in the Holocaust. In turn, the scientific base for research on Polish-Jewish relations during World War II became, among others, the journal „Polish - Jewish Studies” published by the IPN.

AMENDMENT OF THE ACT ON THE INSTITUTE OF NATIONAL REMEMBRANCE AND THE RESULTING CONTROVERSY IN POLAND

To put an end to the use of terms as „Polish death camps”, „Polish concentration camps” or „Polish Jewish ghettos”, the Polish authorities decided to regulate this issue by law. The first such attempt was made in 2006, as the so-called Lex Gross, an amendment to the Penal Code passed in 2006¹⁷. The motive for the 2006 amendment was the publication of the book by J. T. Gross, a sociologist and historian from Princeton University, *Neighbors*¹⁸, which describes the killing of Jewish residents by their Polish neighbors in Jedwabne village in 1941. Another attempt appeared in 2016, as an amendment to the Act on the Institute of National Remembrance, which did not enter into force¹⁹. Another Amendment to the Act

¹⁷ M. Bucholc, M. Komornik, *The Polish 'Holocaust Law' revisited: The Devastating Effects of Prejudice-Mongering*, „Cultures of History Forum” 2019, <https://www.cultures-of-history.uni-jena.de/politics/the-polish-holocaust-law-revisited> [dostęp: 23.01.2022].

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

¹⁹ *Projekt ustawy o zmianie ustawy o Instytucie Pamięci Narodowej – Komisji Ścigania Zbrodni przeciwko Narodowi Polskiemu, ustawy o grobach i cmentarzach wojennych, ustawy o muzeach, ustawy o odpowiedzialności podmiotów zbiorowych za czyny zabronione pod groźbą kary oraz ustawy o zakazie propagowania komunizmu lub innego ustroju totalitarnego przez nazwy budowli, obiektów i urządzeń użyteczności publicznej*, Druk nr 806, Warszawa, 29 VIII 2016, <http://orka>.

on the IPN, known as the „Holocaust Law”, was adopted at the turn of January and February 2018. President Andrzej Duda signed the bill on February 6, 2018, at the same time referring it to the Constitutional Tribunal with a request to review its compliance with the Constitution. Chapter 6c of the Act *Protection of the Reputation of the Republic of Poland and the Polish Nation* contained the most controversial provisions concerning criminal liability for ascribing „contrary to the facts” co-responsibility to Poland and Poles for Nazi crimes:

Art. 55a. 1. Whoever publicly and contrary to the facts attributes to the Polish Nation or to the Polish State responsibility or co-responsibility for the Nazi crimes committed by the German Third Reich, as specified in Article 6 of the Charter of the International Military Tribunal – Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis, executed in London on 8 August 1945 (Journal of Laws of 1947, item 367), or for any other offences constituting crimes against peace, humanity or war crimes, or otherwise grossly diminishes the responsibility of the actual perpetrators of these crimes, shall be liable to a fine or deprivation of liberty for up to 3 years. The judgment shall be communicated to the public.

2. If the perpetrator of the act specified in section 1 above acts unintentionally, they shall be liable to a fine or restriction of liberty.

3. An offense is not committed if the perpetrator of a prohibited act set out in sections 1 and 2 above acted within the framework of artistic or scientific activity.

Art. 55b. Irrespective of the law applicable at the place of commission of the prohibited act, this Act shall be applicable to a Polish citizen as well as a foreigner in the event of the commission of the offenses set out in art. 55 and art. 55a²⁰.

The President of the IPN, Jarosław Szarek, argued that the act did not threaten freedom of speech, as it did not cover scientific and artistic activity. He believed that the act was necessary to defend the good

sejm.gov.pl/Druki8ka.nsf/0/EA4AD50371FF6D17C12580250039936A/%24File/806.pdf [dostęp: 12.01.2022].

²⁰ *Ustawa z dnia 26 stycznia 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. 2018 poz. 369, <http://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=W-DU20180000369> [dostęp: 12.01.2022]; Ministerstwo Sprawiedliwości, *Nowelizacja ustawy o IPN – wersja w języku angielskim*, 2 II 2018, <https://www.arch.ms.gov.pl/pl/informacje/news,10368,nowelizacja-ustawy-o-ipn--wersja-w-jezyku.html> [dostęp: 12.01.2022].

name of Poland and Poles, and that only people who „persistently and maliciously” use „untrue and insulting” expressions towards Poland, such as „Polish concentration camps”, were to be penalized. A similar position was presented by the Vice-President of the IPN, Mateusz Szpytma, who also emphasized that the IPN does not create, but only implements the law. Despite these assurances the imprecision of the provisions of the act raised concerns that any person questioning the historical narrative of the Polish authorities regarding the Holocaust could be brought to trial. Only by mid-March 2018, the prosecutor’s office received 44 reports of insulting the Polish nation related to the event of the Holocaust.

As the media statements of the authorities showed, the main intention of the legislators was to fight against terms that could suggest the shared responsibility of Poles for the Holocaust. In the act itself, there were no forbidden phrases, like „Polish death camps”, but a much broader wording was used instead. The amendment to the law sparked a political and legal debate in the country. There were many controversies, including how to undoubtedly determine what is inconsistent with the facts and how charges would be executed worldwide²¹. The lawyers indicated numerous objections to the act, including whether it had been properly specified and narrowed so as not to harm the freedom of expression and other rights protected by Human Rights Law. It was problematic that „the rights of the individual can be attributed solely to persons who can be subjects of civil law relationships. Neither the Republic of Poland nor the Polish Nation is such a subject”²². The Act also introduced the category of non-material damage which was not harm, for which there were in Polish law no general provisions²³. Moreover, lawyers indicated the lack of appropriate references to notions and principles of international law, especially in the context of the international crimes indicated in the act. Doubts were also raised by the severe punishment of up to three years’ imprisonment²⁴. The act met with negative opinions from numerous national and international entities, including

²¹ J. Hackmann, *op. cit.*, s. 602.

²² J. Skrzypczak, *Ochrona dobrego imienia Narodu Polskiego i Rzeczypospolitej Polskiej*, „Środkowoeuropejskie Studia Polityczne” 2019, 3, s. 70.

²³ A. Pyrzyńska, *Cywilnoprawna ochrona dobrego imienia Rzeczypospolitej Polskiej i Narodu Polskiego w świetle ustawy o Instytucie Pamięci Narodowej*, „Zeszyty Prawnicze Biura Analiz Sejmowych Kancelarii Sejmu” 2019, 4 (64), s. 57.

²⁴ P. Grzebyk, *Amendments of January 2018 to the Act on the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation in Light of International Law*, „Polish Yearbook of International Law” 2017, 37, s. 288.

Helsinki Foundation for Human Rights, Polish Ombudsman, Polish Center for Holocaust Research, POLIN Museum of the History of Polish Jews, Polish PEN Club, and „Open Republic of Poland” – Association against Antisemitism and Xenophobia²⁵.

The legislative procedure was rushed, including a night-time vote in the Senate. The process was accompanied by the marches of the extreme right-wing groups – the National Movement (Ruch Narodowy – RN) and the National-Radical Camp (Obóz Narodowo-Radykalny – ONR). They used anti-Semitic banners and slogans to put pressure on parliamentarians and the President. On the other hand, there was international pressure, mainly from Israel and the USA, to stop the legislative process. The Israeli embassy in Warsaw, the Israeli Government, the Israeli Ministry of Foreign Affairs, the Knesset and the World Jewish Congress (WJC) protested especially strongly against the act. They pointed out that this was a blackout of history and even an attempt to deny the Holocaust. There was also a media spot in which people of Jewish origin talked about the possibility of being sent to prison for talking about crimes committed by Poles against Jews, deliberately using the phrase „Polish Holocaust”. At the same time, they called for the signing of a petition that Israel would break diplomatic relations with Poland. While commentators in Poland favoring the Polish government usually described it as a provocative and unfair attack on Poland by extreme Jewish communities, its opponents saw it as a consequence of the inept policy and diplomacy of the PiS.

The legislative proposal was accompanied by a wave of resentment and even hostility towards Jews and Israel, which spread through the public media in Poland and some right-wing circles. The anti-Semitic narrative was surprising because for many years Polish-Israeli bilateral relations were relatively cordial and fruitful²⁶. At the beginning of 2018, hundreds of statements with anti-Semitic accents appeared, made by both commentators, journalists, and also prominent politicians²⁷. One of the most striking examples was the tweet of the Polish TV commentator Rafał Ziemkiewicz: „For many years I have convinced people that we must

²⁵ Obserwatorium Demokracji, *Ustawa o zmianie ustawy o Instytucie 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*, 26 I 2018, <https://obserwatoriumdemokracji.pl/ustawa/ustawa-o-zmianie-ustawy-o-instytucie-pamieci-narodowej-komisji-scigania-zbrodni-przeciwko-narodowi-polskiemu-ustawy-o-grobach-i-cmentarzach-wojennych-ustawy-o-muzeach-oraz-ustawy-o-odpowie/> [dostęp: 20.01.2022].

²⁶ R. Pankowski, *op. cit.*, s. 24–25.

²⁷ M. Bilewicz et al., *op. cit.*, s. 7–41.

support Israel. Today, because of a few stupid and greedy scabs, I feel like an idiot". Among politicians, Jacek Żalek from the Poland Together (Polska Razem) spoke out, questioning the responsibility of Poles for the pogroms in Jedwabne in 1941 and Kielce in 1946. He shifted this responsibility onto the German Nazis and the Polish Communist security services. The rejection of Poles' co-responsibility for the Holocaust also appeared in the statements of other politicians, including Paweł Kukiz from the Kukiz'15 or Kornel Morawiecki from the Free and Solidary (Wolni i Solidarni). The statement of Prime Minister Mateusz Morawiecki from Munich on February 17, in which he used the phrase „Jewish perpetrators of the Holocaust” transferring the responsibility for the tragedy to Jews as well, was also controversial. There were also those who warned against the influence of the Jewish lobby in the USA and its hostility towards Poland, including Ryszard Czarnecki from the PiS²⁸. In the debate on the „Holocaust Law”, there were arguments that the crisis in Polish-Israeli relations was related to the efforts of Jews to regain property lost in Poland during World War II. Such a suggestion appeared in the speech of Adam Andruszkiewicz from the PiS, but also archbishop Stanisław Gądecki, the chair of the Polish Bishops' Conference. The clergyman's statement met with a strong reaction from Israeli Ambassador in Poland Anna Azari, accusing that combining these issues was a manifestation of „an antisemitic stereotype” of a greedy Jew²⁹. The increase in anti-Semitic tendencies in the public debate around the act was confirmed by an analysis by the Center for Research on Prejudice (Centrum Badań Nad Uprzedzeniami) conducted at the request of the Polish Ombudsman³⁰. Critics of the government tried to place the legal change in a broader political context, suggesting that these actions were a symptom of an increase in anti-Semitic tendencies in the CEE countries departing from liberal democracy, mainly in Hungary and Poland³¹.

Without waiting for the ruling of the Constitutional Tribunal, on June 27, 2018, another Amendment to the Act on the Institute of National Remembrance was adopted by the Sejm and Senate and signed by the President in just one day. It repealed article 55a with stipulations concerning criminal prosecution and article 55b on the application of the provisions

²⁸ R. Pankowski, *op. cit.*, s. 24–29.

²⁹ *Ibidem*, s. 31–32.

³⁰ M. Babińska et al., *Stosunek do Żydów i ich historii po wprowadzeniu ustawy o IPN. Centrum Badań nad Uprzedzeniami*, Warszawa 2018, https://bip.brpo.gov.pl/sites/default/files/Analiza_Skutki_ustawy_o_IPN.pdf [dostęp: 20.01.2022].

³¹ H. Appel, *Can the EU Stop Eastern Europe's Illiberal Turn?*, „Critical Review. A Journal of Politics and Society” 2019, 31 (3–4), s. 260.

to Polish citizens and foreigners³². After this change, the accusations against Poland and Poles for participating in the Holocaust were to be the subject of civil, not criminal, proceedings³³. The Polish Government argued that this amendment was necessary to settle the international dispute. The prime ministers of Poland and Israel issued a joint declaration in which they opposed both anti-Semitism and anti-Polonism³⁴. However, there were accusations pointing to the low quality of the legislation and the lack of its transparency, caused by the fast legislative process³⁵. The amendment did not fix everything, including the wording of „crimes of Ukrainian nationalists and members of Ukrainian formations collaborating with the German Third Reich”, which was criticized by the Ukrainian parliament³⁶. Moreover, the controversy in Polish-Jewish relations did not end. On August 11, 2021, the Polish Parliament adopted amendment to Poland’s administrative law that would prevent property ownership and other administrative decisions from being declared void after 30 years. It negatively affected the rights of Holocaust survivors and their descendants to property expropriated by the Polish communist regime after the Second World War.

THE REACTION OF THE UNITED STATES TO THE AMENDMENT TO THE ACT ON THE INSTITUTE OF NATIONAL REMEMBRANCE

The United States is of key importance in Polish security and defense policy, which has traditional, threat-centric motivations³⁷. The US is perceived as the main external guarantor of Poland’s security, mainly in the context of the growing threat from Russia. For this reason, the PiS authorities are in favor of a unipolar world in which the US would maintain a position of military primacy³⁸. Poland has been striving for a per-

³² Ustawa z dnia 27 czerwca 2018 r. o zmianie ustawy o Instytucie Pamięci Narodowej – Komisji Ścigania Zbrodni przeciwko Narodowi Polskiemu oraz ustawy o odpowiedzialności podmiotów zbiorowych za czyny zabronione pod groźbą kary, Dz.U. 2018 poz. 1277, <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20180001277> [dostęp: 12.01.2022].

³³ D.E. Mix, *Poland: Background and U.S. Relations*, 25 VI 2019, s. 10, <https://fas.org/sgp/crs/row/R45784.pdf> [dostęp: 20.01.2022].

³⁴ J. Hackmann, *op. cit.*, s. 603.

³⁵ G. Makowski, *Nowelizacje ustawy o Instytucie Pamięci Narodowej i siedem grzechów głównych państwa PiS*, „Technical Report” 2018, s. 2–4.

³⁶ P. Grzebyk, *op. cit.*, s. 300.

³⁷ E. Goh, R. Sahashi, *Worldviews on the United States, alliances, and the changing international order: an introduction*, „Contemporary Politics” 2020, 26 (4), s. 379.

³⁸ A. Lanoszka, *Poland in a time of geopolitical flux*, „Contemporary Politics” 2020, s. 460.

manent US military presence on its territory, one of the manifestations of which was the „Fort Trump” concept. During the debate on the Act on the Institute of National Remembrance, some journalists suggested that in the event of a crisis in Polish-Israeli relations, the Israeli lobby in the USA could try to block the financing of the stationing of American soldiers in Poland³⁹. There had also been speculations in the American media that legal changes could deepen Poland’s isolation in the international arena, which, given its geopolitical position, could have catastrophic consequences⁴⁰.

On January 27, 2018, during the 73rd anniversary of the liberation of Auschwitz-Birkenau, Secretary of State Rex W. Tillerson at the Warsaw Ghetto Heroes Monument commemorated the tragedy of millions of concentration and extermination camps victims, camps „under the Nazi reign of terror”. He honored the courage of people who, under the threat of the death penalty, sheltered Jews. He quoted the words of the Polish Pope John Paul II: „No one is permitted to pass by the tragedy of Shoah”⁴¹. However, the situation quickly got complicated in relation to legislation in Poland regarding crimes committed during the Holocaust. On January 31, State Department spokeswoman Heather Nauert said she understood that phrases such as „Polish death camps” were „inaccurate, misleading, and hurtful”. At the same time, however, she expressed concerns that the Act on the IPN could have undermined free speech and academic discourse. This concerned, among others, American citizens, including J. T. Gross, the author of controversial books blaming Poles for co-responsibility for the Holocaust. Nauert also stated that the enactment of the law would have a negative impact on Poland’s strategic interests and its relations with the United States and Israel. According to her, in order to maintain an effective Polish-American partnership, it was necessary to re-evaluate the legislation⁴². The tone of the statement was decisive, and therefore some commentators interpreted it as a risk of a serious

³⁹ R. Pankowski, *op. cit.*, s. 32.

⁴⁰ V. Gera, *Media, Holocaust bills test Poland’s ties with US, Israel*, „ABC News” 12 VIII 2021, <https://abcnews.go.com/International/wireStory/poland-faces-harmed-ties-us-israel-disputed-bills-79419676> [dostęp: 20.01.2022].

⁴¹ Department of State, *Remarks at a Wreath Laying Ceremony at the Warsaw Ghetto Heroes Monument Rex W. Tillerson, Secretary of State*, 27 I 2018, <https://2017-2021.state.gov/remarks-at-a-wreath-laying-ceremony-at-the-warsaw-ghetto-heroes-monument/index.html> [dostęp: 15.01.2022].

⁴² Department of State, *Legislation in Poland Regarding Crimes Committed During the Holocaust. Press Statement. Heather Nauert, State Department Spokesperson*, 31 I 2018, <https://2017-2021.state.gov/legislation-in-poland-regarding-crimes-committed-during-the-holocaust/index.html> [dostęp: 15.01.2022].

threat to Polish-American strategic relations⁴³. On the same day, eight congressmen from the US Congress Bipartisan Task Force for Combating Antisemitism wrote a letter to President Duda expressing the hope that he would veto the bill. They expressed concern that the act could have a chilling effect on dialogue, science and responsibility in Poland towards the Holocaust. In the letter, they emphasized the contribution of Poles to the protection of Jews during World War II and their leading role in research on the Holocaust⁴⁴.

After President Duda signed the bill and referred it to the Constitutional Court, Secretary Tillerson expressed his disappointment. He noted that criminal penalties for attributing Nazi crimes to the Polish state would limit freedom of speech and academic inquiry⁴⁵. The US authorities, like those of Israel, Ukraine, Germany, and many other Western European countries, strongly criticized the legal changes⁴⁶. They described them as a threat to free speech, and an act of historical revisionism. Moreover, they indicated that the provisions of the act were in practice unenforceable⁴⁷. In addition to that, it was commented in the United States that the act could have wrecked the reconciliation that was hardly built between Poland and America's strategic ally, Israel.

In early March, the onet.pl website informed that if Poland did not change the controversial provisions of the Act on the IPN, it was to take into account serious sanctions from the USA. It based this report on a memo by employees of the Embassy of the Republic of Poland in Washington on February 20, 2018. It was supposed to describe the course of the meeting of embassy representatives with representatives of Donald Trump's administration – Molly Montgomery, Special Advisor to the Vice President Mike Pence for Europe and Eurasia, Thomas K. Yazdgerdi, Special Envoy for Holocaust Issues in the European and Eurasian Bureau at the DoS, and A. Wess Mitchell, Assistant Secretary

⁴³ M. Świerczyński, *Atomowe oświadczenie Waszyngtonu. Nasze relacje z USA mogą ucierpieć*, „Polityka” 1 II 2018, <https://www.polityka.pl/tygodnikpolityka/kraj/1736574,1,atomowe-oswiadczenie-waszyngtonu-nasze-relacje-z-usa-moga-ucierpiec.read> [dostęp: 20.01.2022].

⁴⁴ PAP, USA: *Grupa kongresmenów apeluje do prezydenta Dudy o weto ws. ustawy o IPN*, 31 I 2018, <https://www.pap.pl/aktualnosci/news%2C1269946%2Cusa-grupa-kongresmenow-apeluje-do-prezydenta-dudy-o-weto-ws-ustawy-o-ipn.html> [dostęp: 20.01.2022].

⁴⁵ Department of State, *Recent Legislation in Poland. Press Statement. Rex W. Tillerson, Secretary of State*, 6 II 2018, <https://2017-2021.state.gov/recent-legislation-in-poland/index.html> [dostęp: 15.01.2022].

⁴⁶ D.E. Mix, *op. cit.*, s. 10.

⁴⁷ M. Santora, *Poland's Holocaust Law Weakened after 'Storm and Consternation'*, „New York Times” 27 VI 2018, <https://www.nytimes.com/2018/06/27/world/europe/poland-holocaust-law.html> [dostęp: 20.01.2022].

of State for European and Eurasian Affairs. Mitchell was particularly critical of the bill, threatening that until it was changed, bilateral meetings at the highest level would be suspended. American diplomats suggested that the Congress, in which the anti-Polish sentiment was to grow, was to consider blocking funding for the stationing of the US Armed Forces in Poland. In addition, the note was to contain information that if the Polish prosecutor's office began to prosecute any US citizen under the Act on the IPN, the effects would be „dramatic”⁴⁸. If this information was true, then this issue was so important for the USA that it was ready to lower the rank of relations with Poland⁴⁹. It would be particularly surprising considering that the PiS government and Donald Trump's administration shared ideological closeness and a similar negative attitude towards Western European political elites. Deputy Minister of Foreign Affairs Bartosz Cichocki stated that the Americans had not issued any ultimatum to Poland regarding the act. A spokeswoman for the DoS admittedly informed that the reservations of the American administration regarding the act had been transferred to the Polish government, but she denied that Polish-American relations fell into crisis⁵⁰. The US Department of State under the leadership of Mike Pompeo was much more restrained in critically assessing legal changes in Poland.

Following the introduction of further amendments to the Act on the IPN, on June 27, 2018, Heather Nauert issued a statement expressing the State Department's satisfaction with the decision. She stated that this was an underlining by the Polish legislator of its attachment „to open debate, freedom of speech and academic inquiry”⁵¹. The US Ambassador to Poland, Paul W. Jones, said that the amendment would contribute to warming Polish-American relations. Moreover, he stated that the best way to fight the terms that harm Poland and Poles was „greater freedom

⁴⁸ A. Gajcy, A. Stankiewicz, *Amerykańskie sankcje wobec polskich władz*, 5 III 2018, <https://wiadomosci.onet.pl/tylko-w-onecie/sankcje-usa-z-powodu-ustawy-ipn-uderza-w-andrzej-dude-i-morawieckiego/qv9mme6> [dostęp: 20.01.2022].

⁴⁹ B. Szklarski, P. Ilowski, *Searching for Solid Ground in Polish-American Relations in the Second Year of the Trump Administration*, „International Studies. Interdisciplinary Political and Cultural Journal” 2019, 23 (1), s. 79.

⁵⁰ PAP, *Departament Stanu zaprzecza, że stosunki polsko-amerykańskie znalazły się w kryzysie*, „Newsweek Polska” 9 III 2018, <https://www.newsweek.pl/swiat/polityka/usa-zaprzecza-ze-stosunki-polsko-amerykanskie-znalazly-sie-w-kryzysie/zvt8lzf> [dostęp: 20.01.2022].

⁵¹ Department of State, *Legislation in Poland Regarding Crimes Committed During the Holocaust. Press Statement. Heather Nauert, Acting Under Secretary for Public Diplomacy and Public Affairs and State Department Spokesperson*, 27 VI 2018, <https://2017-2021.state.gov/legislation-in-poland-regarding-crimes-committed-during-the-holocaust-2/index.html> [dostęp: 20.01.2022].

of speech, discussion, and dialogue". At the end of July, Foreign Minister Jacek Czaputowicz visited Washington, meeting, among others, with Secretary Pompeo. During the visit, he said that it was a good thing that the Act on the IPN had been changed because it dispelled the American authorities' concerns about freedom of expression in Poland. He assured that both good Polish-American relations and President Duda's visit to Washington planned for September had been in no way endangered⁵².

However, the controversy over the Jewish question in Polish-American relations has not ended. Three years later, the United States reacted to legislation restricting the ability of Holocaust survivors and their families to recover property confiscated in Poland by communist authorities. On August 11, 2021, Secretary of State Antony Blinken called on President Duda to veto or refer the bill to the Constitutional Court. According to him, the seizures were unlawful and the victims of these actions deserved justice⁵³. After President Duda signed the law, Secretary Blinken expressed his deep regret over this fact and called on the Polish authorities to work with victims, including Holocaust victims, on a fair procedure enabling their claims to be settled⁵⁴. The climate was unfavorable as the US simultaneously criticized the legal changes in Poland regarding the freedom of the media, including the operation of the TVN24 news station, owned by the American Discovery Group. At that time, Prime Minister Morawiecki suggested that the U.S. officials did not understand the Polish bills and should have analyzed them more closely.

While in Poland the law preventing Jews from regaining their lost property was not significantly publicized, it met with strong criticism from Israel. Foreign Minister Yair Lapid said that it: „damages both the memory of the Holocaust and the rights of its victims”⁵⁵. Despite the negative assessment of the legal change concerning the possibility of recovering property by Jews, the United States did not limit political, economic and, most importantly, military cooperation with Poland. The strategic interests of the United States determine the intensity of these relations. The accumulation of armed forces by Russia in the vicinity

⁵² M. Roszak, *Szef MSZ: dobrze, że ustawa o IPN została zmieniona, wątpliwości USA zostały rozwiązane*, 31 VII 2018, <https://dzieje.pl/aktualnosci/szef-msz-dobrze-ze-ustawa-o-ipn-zostala-zmieniona-watpliwosci-usa-zostaly-rozwiane> [dostęp: 20.01.2022].

⁵³ Department of State, *Poland's Troubling Legislation. Press Statement Antony J. Blinken, Secretary of State*, 11 VIII 2021, <https://www.state.gov/polands-troubling-legislation/> [dostęp: 15.01.2022].

⁵⁴ Department of State, *Update on Recent Legislative Developments in Poland. Press Statement Antony J. Blinken, Secretary of State*, 14 VIII 2021, <https://www.state.gov/update-on-recent-legislative-developments-in-poland/> [dostęp: 15.01.2022].

⁵⁵ V. Gera, *op. cit.*

of Ukraine in February 2022 meant that the USA decided to send an additional 1.7 and then 3 thousand soldiers to Poland. Work on contracts for the purchase by Poland of the fifth generation F-35 Lightning II multirole fighters, M1 Abrams tanks and other types of weapons and military equipment has not been suspended. Cooperation in the energy area is also being tightened, including the purchase by Poland of large and small nuclear reactor technologies. This confirms that the Jewish question has no priority in Polish-American relations. On November 23, 2021, Marek Magierowski took the position of Polish ambassador to the USA. Earlier, from June 25, 2018, i.e. two days before the adoption of the amendment to the controversial Act on the IPN, he was appointed the Polish ambassador to Israel. After the introduction of legal changes preventing Jews from regaining property in Poland, the Israeli Ministry of Foreign Affairs suggested that ambassador Magierowski should not return to Israel.

CONCLUSION

The legal changes introduced in Poland in recent years regarding the Holocaust and its consequences have caused negative reactions of the US authorities. The most decisive answer came to the attempt to limit the debate on the participation of Poles in crimes against Jews during World War II. This was due to a breach of the interests of the US ally, Israel. However, more emphasis was placed on the protection of freedom of expression, which is of fundamental importance in the American political culture. For the United States, the opportunity to conduct unfettered research and discussion of the history of the Holocaust was of particular importance. Some politicians and media even suggested the possibility of imposing sanctions on Poland, if it would not change the law in this regard. Ultimately, the Polish authorities decided to remove the most controversial provisions of the act.

So far, the US response to legislative changes on Jewish issues has been limited to negative statements and diplomatic pressure. It did not translate into limiting cooperation with Poland in the political, economic and military dimensions. This is because the strategic interests of the United States, which have not been infringed, decide about that. This approach was confirmed by the introduction of a law that made it impossible for Jews to regain property left in Poland after the war. In this case, the Polish authorities did not succumb to pressure from Israel and the US, and yet Washington decided not to impose any sanctions against Poland. Importantly, this law was introduced at a similar time as the law restricting media freedom in Poland. This, however, was vetoed by President Duda.

Although so far there has been no US response to legal changes in Poland going beyond diplomatic pressure, there is no guarantee that it will not change in the future. The US Congress and administration are anxiously watching the actions of the Polish authorities limiting the independence of the judiciary and freedom of the media, seeing them as a democratic backsliding process. The departure of some Central and Eastern European countries from the values of liberal democracy is detrimental to the strategic interests of the United States in the region and in the world. However, given the outbreak of war in Ukraine, the United States is currently focusing on cooperation with Poland to help Ukraine and is avoiding controversial issues.

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