



UPA members caught by Polish soldiers 1947.

## MEMORY BATTLEFIELD ON THE EAST FRONT: UKRAINE AND POLAND

For those interested in Central and Eastern Europe (CEE) it is hardly surprising that the first annual report from the new publication series by the CBEES was dedicated to the topic of memory management in the region.<sup>1</sup> Indeed, one could go as far as to say that the post-Cold War Europe is in a state of yet another war: a *memory war* over the historical assessment of two totalitarian regimes that have shaped the political and social landscape of the continent in the past century. To paint a very simplified picture, it is “West” versus “East,” i.e. the collective Western European mnemonic narrative shaped around the Nazi regime and WWII versus its Eastern European counterpart that is constructed around the communist regime and the Cold War. However, since this memory struggle takes place

simultaneously on several levels that partially overlap, the line dividing Europe in “West” and “East” is blurry, flexible, and relative.<sup>2</sup> Also, even when identified as a “particular region of memory,”<sup>3</sup> the CEE landscape is far from being uniform.

**DISCUSSIONS ABOUT** the assessment of historic events have always had their place in the public discourse in democratic societies, whereas totalitarian regimes such as the Communist one preferred an official version of history that is not up for debate. This is why a conflict-prone memory boom in the CEE was to be expected after the fall of the Iron Curtain. The only recently intensified trend is to fight memory wars with the means of *memory laws*, i.e. by using laws prescribing and proscribing certain representations of historic events as a weapon to protect one’s national col-

lective memory from divergent interpretation by others. Such approach to governing memory wars are detrimental to the neighborly relations, i.e. turning them into unneighborly ones. There are more adequate ways to engage in mnemonic discussions in order to achieve reconciliation over the common historical past. In the following, the counterproductivity of memory laws as well as the potential and real dangers of memory wars will be demonstrated against the backdrop of intra- and interstate relations of Ukraine and Poland.

### Memory laws in West and East

Memory laws are a Western European invention.<sup>4</sup> The term first appeared in France in the 2000s and was used to describe the relatively novel development in



Polish civilian victims of March 26, 1943. The mass killings committed by Ukrainian Insurgent Army (UPA) in the village of Lipnik (Kostopol County). Reichskommissariat Ukraine.

law primarily concerned with the provisions penalizing Holocaust denial. The first bill of this kind was passed in Germany in 1985. Understood in a broader sense, memory laws comprise all state regulations concerning the collective representation of the past. Since a certain degree of memory governance is always present in the state function, e.g. public education, official holidays, toponymy etc., a very wide range of legislative efforts could be included. Therefore, in order to be an operable term, memory laws should be applied only to such commemorations that “are aimed at eliminating alternative narratives of the past from public circulation,” i.e. they are defined by focusing on the intention of the legal activity rather than its nature.<sup>6</sup>

**MEMORY LAWS** are problematic from the legal dogmatics point of view first and foremost because they restrict the freedom of speech, and, as the historians point out, also the freedom of research as a consequence.<sup>7</sup> The very idea of the existence of such a category of laws is a highly “contentious normative issue.”<sup>8</sup> Particularly the so-called “decommunization” laws, which appeared in CEE after the collapse of the Soviet Union, are criti-

cized throughout the academia. These regulations are characterized by their intention to protect “the good name” of the respective state, to present it in a favorable historic light at all times, “only as victims of major atrocities, never as perpetrators.”<sup>9</sup> Thus, the classic Western memory laws are “self-inculpatory,” whereas the mnemonic legislation in CEE is “self-exculpatory.”<sup>10</sup> This is congruent with the different approaches to history: the novel “non-national, self-critical, and cosmopolitan” in the West versus traditional, treating “the past as a source of collective national identities and values such as heroism or sacrifice” in the East.<sup>10</sup>

The lamented consequences of the recent memory law boom in CEE is the deterioration of public discourse, and as such the rule of law in the new democracies. This in turn leads to the instrumentalization of the historical truth to suit the official historical assessment of events by those in power, support of the far-right populist agenda and growth of nationalism, discrimination of minorities, and, ultimately, the aggravation of intra-national and international conflicts. Thus, the new generation of memory laws changed from being a means of maintaining peace and seeking reconciliation to “one of the



Monument to victims of Volhynia massacre 1940–1945 at cemetery in Liszka.

preferred instruments of the memory wars within and between many European countries.”<sup>11</sup>

### Memory wars between Ukraine and Poland

The term memory wars was coined by the historian Nikolay Koposov to describe the phenomena of mnemonic legislation protecting the CEE countries’ sovereignty and national identity triggered by the “newfound Russian assertiveness in the area.”<sup>12</sup> However, not all memory wars involve Russia. There is a number of historic incidents that have caused tensions in Ukrainian-Polish relations for decades.<sup>13</sup> The two main events that have deteriorated the Ukrainian-Polish relations during and after the WWII, and are still the most important sign of mistrust and disagreement between both nations, are the mass killings of Poles in Volhynia and Galicia in 1943–1945 on the one hand, and the so-called “Operation Vistula” and the mass deportations of Ukrainians within Poland in 1947 on the other hand.

In 1943, a prominent member of the Organization of Ukrainian Nationalists (OUN), Mykola Lebed’, “proposed to cleanse the entire revolutionary territory



Bullet marks on the tower of the Pockarnien Abbey, where many Poles sought refuge, which was stormed by the UPA on 12 March 1944.

of the Polish population.”<sup>14</sup> The mass killings in Volhynia and Galicia were carried out by the partisans of the Ukrainian Insurgent Army (UPA). The historical background of the region and its population is very complex, so are the developments that culminated in the atrocities committed there during World War II.<sup>15</sup> Both, Poland and Ukraine present the Volhynian events in the light of their respective nation’s suffering and hardships during the war, and blame each other for it. Particularly the number of victims is debated: the Polish side speaks of 100,000 Polish victims, and 12,000 Ukrainian ones, while the Ukrainian statistics puts the number of killed Poles much lower, at 35,000, and the number of the Ukrainian victims higher, at 15,000.<sup>16</sup> Consequently, the respective national interpretations of the mass killings vary: Ukrainians speak of “Volhynian tragedy,” while the Polish side calls it “Volhynian massacre.”<sup>17</sup> The qualification of the mass killings as “genocide” by the Polish Parliament in 2016 gave rise to new controversial discussions.

The so-called “Operation Vistula” is



Ukrainians are forcibly moved from their land by Polish soldiers in 1947.

sometimes referred to as an “attempted genocide” to underline the declared intent of the Polish government to “solve the Ukrainian problem in Poland once and for all.”<sup>18</sup> In September 1944 the Polish Communist government (the Polish National Liberation Committee), and Soviet Union signed an agreement about the exchange of populations along the so-called “Curzon Line.” This allegedly friendly and voluntary resettlement agreement turned out to be a forced deportation and displacement of about 700,000 Ukrainians from Poland to Soviet Ukraine between the years of 1945 and 1946. Later on, in 1947, about 150,000 Ukrainian national minorities, such as e.g. Lemkos, remaining on the Polish territory were forcefully displaced by the Polish government from the Southern and Eastern border regions to the North-West of the country in the so-called “Operation Vistula.”<sup>19</sup> The Ukrainian minority in Poland was regarded across-the-board as a potentially dangerous supporter of the OUN and UPA. Therefore, charged with collective responsibility,

the ethnic Ukrainians were discriminated against in terms of religion, culture, and language.

**THE BIGGEST** international, bilateral Ukrainian-Polish, and internal Ukrainian controversy developed around the historical assessment of the OUN and UPA organizations as well as their leaders. Particularly contentious is the historical figure of Stepan Bandera, who is presented as a fighter for Ukraine’s independence by some Ukrainians, while being seen as a leader of a terrorist fascist organization that has committed numerous war crimes during the World War. If by the vast majority comprised of, among others, Ukrainians, Poles, Russians, and Jews,<sup>20</sup> The award of the title “Hero of Ukraine” to Bandera was harshly criticised by the European Parliament,<sup>21</sup> and the respective memory laws caused an outcry of protest in the academic circles.<sup>22</sup> On the one hand, one could argue that any organization of Ukrainians fighting for independence from Poland before, during, and after the World War II is bound to be

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## “THE USAGE OF MILITARY JARGON IN POLITICS IS ALWAYS POTENTIALLY DANGEROUS AS IT CAN LEAD TO AGGRAVATION OF EXISTING AND SPURRING UP OF NEW CONFLICTS.”

seen as a terrorist unit by the Polish state. However, on the other hand, accepting and endorsing actions of a Nazi collaborator implicated in war crimes for the sake of “the wholesale condemnation of the entire Soviet period as one of occupation of Ukraine”<sup>25</sup> goes too far, and cannot be covered by the principles of militant democracy.

### Memory laws impacting Ukraine–Poland relations

Both Poland and Ukraine have institutionalized their collective memory governance by establishing respectively the Polish Institute of National Memory (*Instytut Pamięci Narodowej*) in 1991, and the Ukrainian Institute of National Memory (*Ukrainskyi Instytut Natsionalnoy Istorii*) in 2006.<sup>26</sup> These “ministries of memory”<sup>25</sup> act as “mnemonic warriors”<sup>26</sup> on behalf of the respective government “using history to pursue ideological agendas” by “popularizing scholarship, gate-keeping of archives, and instrumentalization of history.”<sup>27</sup> The Polish and the Ukrainian Institutes of National Memory are equally well-known for their numerous legislative efforts. This commentary, however, focuses only formal memory laws passed by the respective Parliament (the *Verkhovna Rada* in Ukraine, and the *Sejm* in Poland) that directly impact the Ukraine–Poland relations.

The relevant Ukrainian provisions consist first of all of the posthumous award of the “Hero of Ukraine” title to Stepan Bandera, the leader of the main faction of the OUN, and to Roman Shukhevych, the supreme commander of the UPA in 2004.<sup>28</sup> Secondly, the law no. 2538 “on the legal status and honoring the memory of participants in the struggle for the independence of Ukraine in the 20<sup>th</sup> century” from the memory package of four laws passed in April 2015 by the Ukrainian parliament is relevant.<sup>29</sup> The first stage of the mentioned memory

laws was a controversial back-and-forth commemoration process in Ukraine, depending on the president in power, the region, and the international pressure<sup>30</sup> until the law no. 2538 bindingly “declared the OUN and UPA to be fighters for Ukrainian independence and made it illegal for Ukrainian citizens or foreigners to express public disrespect to members of these organizations.”<sup>31</sup> It is worth mentioning that the 2015 memory laws package drafted by the Ukrainian Institute of National Memory was “passed with a speed rarely seen in the Ukrainian legislative body and by overwhelming majorities,”<sup>32</sup> which can only be explained with the Russian–Ukrainian conflict over Crimea in 2014.

**THE POLISH SENATE** reacted to the Ukrainian memory laws by qualifying the Volyn mass killings as genocide in 2016, after the legal declaration of the anti-Polish actions of the UPA and the OUN during WWII to be “ethnic cleansing with signs of genocide” in 2013.<sup>33</sup> Another Polish reaction to the legal glorification of the OUN and UPA in Ukraine is the 2018 Amendment to the Act on the Institute of National Memory from 1998. Among other things, the Amendment authorizes the Polish Institute of National Memory to investigate “crimes of Ukrainian nationalists” committed between 1920 and 1950, as well as “crimes and gross human rights violations against Polish nationals and citizens committed between 8 November 1917 and 31 July 1989.”<sup>34</sup> Remarkably, the wording of the law juxtaposes “Ukrainian nationalists” and “Polish nationals and citizens” even though the majority of the former held Polish citizenship for the most of the mentioned time period. This could suggest an exclusively ethnic understanding of the “Polish nation.”<sup>35</sup> It certainly fits the selective approach of the Polish historical discourse, where e.g. Polish Jews are “silently subsumed into the number of Polish victims of fascism,

but at the same time excluded from the Polish nation in ethnic terms.”<sup>36</sup>

As a consequence, the mutually exclusive Ukrainian and Polish memory laws lead to a situation where nobody can discuss the historical events in question without being (criminally) liable in one of the countries.<sup>37</sup>

### Memory laws as an instrument in memory wars

The negative impacts of the Ukrainian–Polish memory wars can hardly be exaggerated. First of all, the usage of military jargon in politics is always potentially dangerous as it can lead to aggravation of existing and spurring up of new conflicts. Secondly, such memory battles are detrimental to the countries’ internal as well as external relations, and security. Memory laws are meant to provide ontological security through the unification of the nation’s identity via prescribed collective memory. Yet, they are counterproductive to this goal.<sup>38</sup> Not only memory wars by means of memory laws are “nesting Orientalisms” (using the conceptual variant of Edward Said’s Orientalism suggested by Milica Bakic-Hayden) as they try to glorify one’s own nation at the cost of demonising the Oriental, i.e. the inferior “other.”<sup>39</sup> More significantly, such legalised memory practice takes the controversial historical narrative out of the sphere of political, out of the public discourse by prescribing the one and only acceptable version of the events.<sup>40</sup> Particularly in the post-Communist countries this is a remarkable approach to history as it replaces the totalitarian Communist non-talk by penalising the “other” historical memory with the help of the so-called “decommunization laws.”<sup>41</sup> Thus, one could claim that World War II has caused the Cold War, which in turn has caused the present memory wars inCEE.

In the case of Ukraine, the legal glorification of the OUN, UPA, and their leaders

has declared the minority’s assessment of the historical past a non-negotiable collective memory, and, hereby, “contributed to the de facto breakup of Ukraine manifested by the secession and the Russian annexation of Crimea and the civil war in Donbas.”<sup>42</sup> Poland, on the other hand, is one of Europe’s most homogenous countries, whose population is for sure more unified in terms of ethnicity, language, and religion than Ukraine. However, this does not mean that all the poles subscribe to one and only historical narrative. Thus, in spite of the legal efforts of the ruling PiS party to mainstream “the cognitive patterns of Poles,” “the Polish culture is still far from unity.”<sup>43</sup> Particularly the efforts to restore and develop “the ethnic-centered version of national histories”<sup>44</sup> are bound to lead to internal conflicts in both countries in the long run.

**THE BILATERAL** Ukrainian–Polish relations have moved away from the reconciliation and cooperation course held up until the middle of the 2010s. There is a clear decline in cooperation efforts, and lack of mutual interest in each other’s affairs apart from the confrontation regarding the memory politics.<sup>44</sup> Previously, the disagreements about the assessment of historical events were significant primarily on the local level, i.e. in the border regions in West Ukraine. While arguably being artificially over-emphasized by the (local) politicians on both sides, these memory debates neither influenced the people-to-people relationships as such, nor the mainstream politics in whole of Poland, and Ukraine. Just over a decade later, the respective memory fronts are significantly hardened, with both countries having memory laws in place, protecting their respective view on the historical events, prescribing and prescribing collective historical narratives for their own people, and the “others.”

After recognizing the fact that memory wars cannot be won by means of “memory laws,” one should give up on this strategy as counterproductive not only to the ontological but also real security of one’s country. Furthermore, one could acknowledge that complete mnemonic security cannot be achieved, and embrace a

national narrative that constantly renews itself instead of aiming at an utopic static one.<sup>45</sup> Such a position of being prepared to question oneself and respect the right of the other, fellow countrymen and foreigners alike, to hold different views on important historic events in principle, without having to agree, only appears to be weaker – agonistic political discussion with unlimited freedom of speech, i.e. the very basis of a democratic society, will win in the long run.<sup>46</sup>

### Conclusions

Memory wars are potentially dangerous and certainly detrimental to the present Ukrainian–Polish relations. These “wars” cannot be won by means of “memory laws.” On the contrary, the latter tend to amplify the conflict and harden the fronts. In case of post-communist countries such as Ukraine and Poland, it is several times harder to obtain that the assessment of historic events is being legalised instead of being politicised by the very laws that claim to deal with the totalitarian communist past. In order to achieve true reconciliation over the tragic events in common history, both Ukraine and Poland need to firstly acknowledge the right of the respective other to hold a different view in principle. Secondly, they should seek an agonistic political dialogue intra- and internationally. And, last but not least, they ought to concentrate on the present more than on the past, and work to revive the positive developments of the 2010s in mutually beneficial cooperation recognizing the benefits of good neighborly relations. Surely, this requires strength and a feeling of security, and it is not easy or a fast fix, but there is simply no other way. ■

Anna Grinberg, Hanken School of Economics, is a student in the Interdisciplinary Master’s School in Russian and East European Studies coordinated by the Aleksanteri Institute at the University of Helsinki.

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- Aleksandra Gliszczynska, "Law and Memory," *Verfassungsblog on matters constitutional* (04 January 2018), accessed June 4, 2021, doi:10.17176/20180104-103227. Also, there is a fundamental discussion whether freedom of speech is "just another" right or a "condition for both democracy and human rights," see Heinze, "Law and Historical Memory."
- 8 Heinze, "Law and Historical Memory." See also Florence Fröhlig, "Victimhood and Building Identities on Past Suffering," *CBEES State of the region report 2020* (December 2020): 23–28, accessed June 4, 2021, <https://www.diva-portal.org/smash/get/diva2:1523899/FULLTEXT01.pdf>.
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