



## ARTICLES

### HISTORICAL MEMORY IN POST-COMMUNIST EUROPE AND THE RULE OF LAW – FIRST PART

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## ON THE FRONTLINE OF EUROPEAN MEMORY WARS: MEMORY LAWS AND POLICY IN UKRAINE

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ABSTRACT: In April 2015, Ukraine adopted the so-called decommunization package which reflects its attempts to deal with the past and defines directions of its current memory policy. To cope with the communist past and create a new pantheon of national heroes, Ukraine is re-writing its history, selectively choosing among the several memories those that can foster its national identity and cohesion. This is a controversial process which divided Ukraine's society and resulted in so-called memory wars – a clash of the State-sponsored historical narratives – with Russia and Poland. The internal and external contradictions which are a feature of decommunization in Ukraine give a reason to state that the frontline of European memory wars goes across this country. The present *Article* provides an overview of memory laws from Ukraine's decommunization package, analyses Ukraine's "official" historical narratives, and discusses the memory wars with Russia and Poland that it has been recently involved in.

KEYWORDS: memory laws – memory wars – memory policy – decommunization – Ukraine – Russia – Poland.

### I. INTRODUCTION

Collective memories matter politically as they are closely related to national identity and a State's self-legitimation.<sup>1</sup> This explains why States are preoccupied with collective

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memories and their legal regulation, as they prescribe by so-called memory laws what ought to be remembered or forgotten. In Europe, whose past contains the traumas of World War I, World War II, fascism and communism, the legal regulation of collective memories has become so widespread that one can speak about a “new subject in comparative law and transitional justice”.<sup>2</sup>

The collapse of the Soviet Union and the end of the Cold War have both shifted historical narratives and released memories that were hitherto frozen. This is the reason behind the current “memory boom” and the Europe-wide proliferation of memory laws. In this context, the Ukrainian laws on decommunization, adopted in April 2015, are not a unique case: they reflect attempts to overcome the communist past that is common to the Central and Eastern European countries. Yet, decommunization in Ukraine has been a controversial and complicated process: first, it has polarized Ukraine’s society; second, it has caused a conflict about the past and its interpretation (“memory war”) not only between Ukraine and Russia – a supporter and caretaker of the Soviet “glory” and “heroes”, but also between Ukraine and Poland – a country which has largely turned the page on its communist past. The internal and external contradictions resulting from the Ukrainian memory policy give reason to state that the frontline of European memory wars goes across Ukraine.<sup>3</sup>

To analyse the complexity of the current decommunization process in Ukraine, this *Article* addresses the following questions: what are the methods of decommunization in Ukraine? What are the historical narratives supported by Ukraine during this process? Why and to what extent have they been selected as an “official” truth? What are the reasons behind memory wars between Ukraine and Russia, on the one hand, and Ukraine and Poland, on the other?

The *Article* consists of two parts. It first provides a brief overview of the decommunization process in Ukraine and the memory laws stemming from the decommunization package to describe Ukraine’s memory policy and its contradictions. The second part is devoted to the conflicts over history and its interpretation – memory wars – between Ukraine and both Poland and Russia, their reasons and consequences.

<sup>1</sup> J.-W. MÜLLER, *Introduction: The Power of Memory, the Memory of Power and the Power over Memory*, in J.-W. MÜLLER (ed.), *Memory and Power in Post-War Europe: Studies in the Presence of the Past*, Cambridge: Cambridge University Press, 2002, pp. 1-2.

<sup>2</sup> U. BELAVUSAU, A. GLISZCZYNSKA-GRABIAS, *Memory Laws: Mapping a New Subject in Comparative Law and Transitional Justice*, in U. BELAVUSAU, A. GLISZCZYNSKA-GRABIAS (eds), *Law and Memory: Towards Legal Governance of History*, Cambridge: Cambridge University Press, 2017, p. 1 *et seq.*

<sup>3</sup> For a discussion of the populist context in which memory wars arise in Eastern Europe, see N. KOPOSOV, *Historians, Memory Laws, and the Politics of the Past*, in *European Papers*, Vol. 5, 2020, No 1, [www.europeanpapers.eu](http://www.europeanpapers.eu), p. 107 *et seq.* particularly section IV.

## II. DEALING WITH THE COMMUNIST PAST: THE UKRAINIAN CASE

### II.1. UKRAINE'S WAVES OF DECOMMUNIZATION

All post-totalitarian societies face the difficult question of how to deal with the past: to condemn past wrongdoings or deny them, punish or forgive, remember or forget. Decommunization in Ukraine is moving between these extremes. Since decommunization began in the early 1990s, it followed the process of Ukraine's State-building and a search of national identity. For a long time, the process of decommunization had been haphazard and unsystematic, although nowadays it remains controversial and asymmetric, and finds strong support in Ukraine's western region, while the country's east and south display an active hostility to the process.

There have been three periods of decommunization in Ukraine: *i)* from the prohibition of the Communist Party of Ukraine (1991) to its re-establishment (1993); *ii)* from the Orange Revolution (2004) to Viktor Yanukovich's victory in the presidential elections (2010); and *iii)* from Euromaidan and the laws on decommunization (2015) to the present.

The first attempt to condemn the communist past was made in 1991, some months before the collapse of the Soviet Union, with the adoption of the Law on Rehabilitation of Victims of Political Repressions in Ukraine. The Preamble to the Law reads:

"After 1917, during the Civil War and subsequent decades, a lot of human blood has spilled on the land of Ukraine. [...] The mass repressions committed by the Stalinist regime and its leaders in the Republic left the hardest legacy [...] The Verkhovna Rada of Ukraine condemns repressions and distances itself from the terrorist methods of the governing state, expresses condolences to the victims of unreasonable repressions and their relatives, declares its intention to restore justice, to eliminate the consequences of arbitrariness and violations of civil rights [...], and guarantees the people of Ukraine, that this negative experience will never be repeated [...]"<sup>4</sup>

Notably, the Law refers not to the communist regime but to the Stalinist regime, condemning only crimes related to Stalin. Accordingly, it does not raise the question about the Communist Party's involvement in the repressions, its responsibility and prohibition.

The decision to ban the Communist Party of Ukraine was made on 26 August 1991,<sup>5</sup> two days after Ukraine proclaimed its independence. However, the ban did not prevent

<sup>4</sup> Law of Ukraine no. 963-XII of 17 April 1991 "Pro reabilitaciu politychnyh repressiy v Ukraini" [On rehabilitation of victims of political repressions in Ukraine], zakon.rada.gov.ua.

<sup>5</sup> Decree of the Verkhovna Rada of Ukraine no. 1435-XII of 26 August 1991 "Pro tymchasove pryvynennia diialnosti komunistychnoi partii v Ukraini" [On suspension activities of the Communist Party of Ukraine], zakon.rada.gov.ua; Decree of the Verkhovna Rada of Ukraine no. 1468-XII of 30 August 1991 "Pro zaboronu diyal'nosti Kompartiyi Ukrayiny" [On prohibition of the Communist Party of Ukraine], zakon.rada.gov.ua.

the Communist Party of Ukraine from reestablishing itself in June 1993.<sup>6</sup> Over the next two decades, from the parliamentary elections of 1994 to the parliamentary elections of 2014, the Communist Party of Ukraine was represented in the Verkhovna Rada of Ukraine, the parliament. Moreover, until the aftermath of the Orange Revolution in 2004, the Communist Party was one of the most influential political forces in Ukraine. In the parliamentary elections of March 1998, the party gained almost 25 percent of the vote, becoming the largest party in Parliament. In December 2001, the Constitutional Court of Ukraine ruled that the parliamentary decrees to ban the Communist Party of Ukraine in 1991 were unconstitutional.<sup>7</sup>

In 2004, decommunization in Ukraine received further impetus. During the second wave of decommunization, which coincided with Viktor Yushchenko's presidency, there were three major initiatives in Ukraine's memory policy: *i*) the establishment of the Ukrainian Institute of National Memory;<sup>8</sup> *ii*) the State campaign promoting the recognition of the Holodomor famine as genocide against Ukrainians;<sup>9</sup> and *iii*) the attempts to glorify Stepan Bandera, a leader of the Organization of Ukrainian Nationalists (OUN), which provoked heated debates inside Ukraine<sup>10</sup> and negative international reactions.<sup>11</sup>

<sup>6</sup> The Parliamentary Decree 3220-XII explicitly said that the citizens of Ukraine are allowed to create political organization in accordance with Ukrainian legislation. See: Decree of the Verkhovna Rada of Ukraine no. 3220-XII of 14 May 1993 "Pro Ukazy Prezydiyi Verkhovnoyi Rady Ukrayiny vid 26 i 30 serpnia 1991 roku 'Pro tymchasove pryypnennya diyal'nosti Kompartiyi Ukrayiny', 'Pro zaboronu diyal'nosti Kompartiyi Ukrayiny'" [Decrees of the Presidium of the Verkhovna Rada of Ukraine of 26 and 30 August 1991 On suspension activities of the Communist Party of Ukraine, On prohibition of the Communist Party of Ukraine], zakon.rada.gov.ua.

<sup>7</sup> Decision of the Constitutional Court of Ukraine no. 20-pn/2001 of 27 December 2001 "Sprava pro ukazy Prezydiyi Verkhovnoyi Rady Ukrayiny shchodo Kompartiyi Ukrayiny, zareyestrovanoi 22 lypnia 1991 roku" [Case of the prohibition of the Communist Party of Ukraine, registered on 22 July 1991], zakon5.rada.gov.ua.

<sup>8</sup> Decree of the Cabinet of Ministers of Ukraine No 764 of 31 May 2006 "Pro utvorennia Ukrayins'koho instytutu natsional'noyi pam'yati" [On the establishment of the Ukrainian Institute National Memory], zakon.rada.gov.ua.

<sup>9</sup> The Law on the Holodomor 1932-1933 in Ukraine condemned "the criminal acts of the totalitarian regime of the USSR, aimed to organize the Holodomor, which caused annihilation of millions people, destruction of the social foundations of the Ukrainians, their centuries-old traditions, spiritual culture and ethnic identity' and prohibited the Holodomor denial". See: Law of Ukraine no. 376-V of 28 November 2006 "Pro Holodomor 1932-1933 rokiv v Ukraini" [On the Holodomor of 1932-33 in Ukraine].

<sup>10</sup> In 2010, President Yushchenko awarded Stepan Bandera the title of "National Hero of Ukraine". Bandera has always been a divisive figure: a hero in the West of Ukraine and Kiev and a Nazi criminal everywhere east of the Dnieper river. There were several attempts to challenge the constitutionality (legality) of the President's Decree. The Verkhovna Rada of the Crimea Autonomous Republic appealed to the Constitutional Court of Ukraine arguing that this decision violates Ukrainian legislation (Law on the State Awards of Ukraine) arguing that the title "National Hero of Ukraine" can be granted only to a person with Ukrainian citizenship. Bandera, due to obvious historical reasons, had never been a citizen of Ukraine. The Constitutional Court of Ukraine refused to consider the claim and found it inadmissible. Yet, the President's Decree was declared illegal by the District Administrative Court of the Donetsk region.

The Euromaidan and the Revolution of Dignity, accompanied by the spontaneous demolition of Lenin's monuments (the so-called "Leninopad", or "Lenin fall"), started a new phase of decommunization, which culminated in April 2015 when the decommunization package was adopted. The methods of decommunization gave reason for some to assert that decommunization in Ukraine is similar to totalitarian practices of the bygone era.<sup>12</sup> These critics have stressed that the decommunization package was adopted in a "conspirator manner"<sup>13</sup> without public discussion and with violation of parliamentary procedures. In addition, they argue, it would have a chilling effect for historical discussion and research because of the imposition of harsh criminal sanctions. Particularly, the Open Letter from scholars and experts on Ukraine regarding the so-called "anti-communist" law stresses that the decommunization package contradicted freedom of speech: "Over the past 15 years, Vladimir Putin's Russia has invested enormous resources in the politicization of history. It would be ruinous if Ukraine went down the same road [...] Any legal or 'administrative' distortion of history is an assault on the most basic purpose of scholarly inquiry: pursuit of truth. Any official attack on historical memory is unjust. Difficult and contentious issues must remain matters of debate"<sup>14</sup>

## II.2. UKRAINIAN MEMORY LAWS: THE DECOMMUNIZATION PACKAGE

For the purpose of this *Article* a brief overview of the decommunization package should be made: what are the Ukrainian memory laws about? What historical narratives do they construct? Why have they been criticized in the context of free speech and academic freedom?

The decommunization package includes four laws: Law on the condemnation of the Communist and National Socialist (Nazi) regimes, and prohibition of propaganda of their symbols;<sup>15</sup> Law on the legal status and honouring the memory of fighters for Ukrainian's independence in the 20<sup>th</sup> century;<sup>16</sup> Law on perpetuation of the victory over

<sup>11</sup> See European Parliament Resolution P7\_TA(2010)0035 of 25 February 2010 on the situation in Ukraine.

<sup>12</sup> M. HAUKHMAN, *The Case of Decommunization*, in *Krytyka*, May 2015, krytyka.com; D. R. MARPLES, *Ukraine in Conflict. An Analytical Chronicle*, Bristol: E-International Relations, 2017, p. 190 *et seq.*

<sup>13</sup> M. HAUKHMAN, *The Case of Decommunization*, *cit.*

<sup>14</sup> *Open Letter from Scholars and Experts on Ukraine Re. the So-Called "Anti-Communist Law"*, in *Krytyka*, April 2015, krytyka.com.

<sup>15</sup> Law of Ukraine No 317-VIII of 9 April 2015 "Pro zasudzhennya komunistychnoho ta natsional-sotsialistychnoho (natsysts'koho) totalitarnykh rezhymiv v Ukrayini ta zaboronu propahandy yikhnoyi symboliky" [On the condemnation of the Communist and National Socialist (Nazi) regimes, and prohibition of propaganda of their symbols], zakon3.rada.gov.ua.

<sup>16</sup> Law of Ukraine no. 314-VIII of 9 April 2015 "Pro pravovyy status ta vshanutannya pam'yati bortsiv za nezalezhnist' Ukrainy u XX stolitti" [On the legal status and honoring the memory of fighters for Ukrainian's independence in the 20th century], zakon3.rada.gov.ua.

Nazism in the Second World War of 1935-1945;<sup>17</sup> Law on access to the archives of repressive agencies of the Communist totalitarian regime of 1917-1991.<sup>18</sup> Although, these four laws are united by a general purpose to regulate Ukraine's memory policy, they are different in terms of their methods, instruments and specific aims.<sup>19</sup> Three laws from the package – the Law on condemnation of totalitarian regimes, the Law on fighters and the Law on the Victory – are memory laws aimed to (re)construct historical narratives: the first condemns the totalitarian past and prohibits Nazi and communist propaganda and totalitarian symbols; the second one aims at shaping the national identity by glorifying the history of the struggle for Ukrainian statehood; the third one reflects current attempts to rethink the Second World War, its legacy and lessons for Ukraine. The proponents of the decommunization package see it as an ideological weapon in the conflict with the Russian Federation whose memory policy is largely based on the glorification of the Soviet past. For example, the Law on condemnation of totalitarian regimes mentions the elimination of the threat to independence, sovereignty, territorial integrity and national security of Ukraine among its aims.

The following discussion analyses three memory laws from the decommunization package to explain their role in European memory wars, reveal their shortcomings and internal controversies.

The Law on the condemnation of the Communist and National Socialist (Nazi) regimes, and prohibition of propaganda of their symbols is the central one for the process of decommunization. This law:

- equates the communist and Nazi regimes and condemns them as criminal and incompatible with fundamental human rights and freedoms; both regimes are labelled as regimes that “exercised a policy of state terror” (Art. 2);
- prohibits propaganda of totalitarian regimes (Art. 3) banning three different actions: “public denial of the criminal nature of the communist totalitarian regime of 1917-1991 in Ukraine and of the Nazi totalitarian regime”; “dissemination of information aimed to excuse the criminal nature of these regimes”; “production and/or dissemination and public use of products containing the symbols of the communist and Nazi totalitarian regimes” (Art. 1, para. 2);
- bans the symbols of totalitarian regimes (Art. 3) according to the provided list;

<sup>17</sup> Law of Ukraine no. 315-VIII of 9 April 2015 “Pro uvichnennya peremohy nad natsyzmom u Druhiy Svitoviy Viyni 1939-1945 rokiv” [On perpetuation of the victory over Nazism in the Second World War of 1935-1945], zakon3.rada.gov.ua.

<sup>18</sup> Law of Ukraine no. 316-VIII of 9 April 2015 “Pro dostup do arkhiviv represyvykh orhaniv komunistychnoho totalitarnoho rezhymu 1917-1991 rokiv” [Law on access to the archives of repressive agencies of the Communist totalitarian regime of 1917-1991], zakon3.rada.gov.ua.

<sup>19</sup> Law no. 316-VIII which opens access to the secret archives is not a memory law, rather a technical one. It does not regulate historical narratives or directly affect historical debates. It facilitates historical research by providing new sources. For this reason, Law no. 316-VIII will not be analyzed in this *Article*.

- prohibits creation or activity of any entity which propagates totalitarian regimes or uses totalitarian symbols;
- sets procedures and timeframes for the toponymic changes across the country as well as the dismantling of monuments which propagate the communist regime and its symbols.

The Law has been widely criticized in the context of free speech. Particularly, the Venice Commission pointed out that it introduces criminal punishment for “totalitarian propaganda” without providing a clear definition of this notion. As it noted:

“...the combination of broadness, vagueness, openness, lack of objective detectability and ambiguity in meaning, places the applicability of the Law’s provisions – both in terms of what can be forbidden and which acts in relation to such a symbol may be forbidden – almost completely at the authorities’ discretion. It does so to a degree that may lead to a situation where individuals could transgress provisions of the Law accidentally and without intent. It is near to impossible for individuals to properly anticipate lawful or unlawful behavior based on the text of the Law”.<sup>20</sup>

Moreover, since the Law’s key concepts – “propaganda” and “criminal nature of communist regime” – are too unclear, it has introduced a confusing provision to the Criminal Code of Ukraine. New Art. 436-1 of the Criminal Code of Ukraine which is titled “Production, dissemination of communist and Nazi symbols and propaganda of communist and national socialist (Nazi) totalitarian regimes” does not mention “propaganda” in the main text, setting criminal responsibility for “production, dissemination and public use of totalitarian symbols” and for “public performance of the anthems of Ukrainian SSR, USSR, other union or autonomous Soviet republics”. This wording raises questions not only about the meaning of “propaganda” but also whether it is punishable.

Additionally, the prohibition to perform the Soviet anthems can spark a diplomatic scandal between Ukraine and other post-Soviet republics whose national anthems have derived from the Soviet ones. For instance, the contemporary anthem of the Russian Federation and the Republic of Belarus are a “reincarnation” (with some minor changes) of the USSR’s and the Belarusian SSR anthem, accordingly; Uzbekistan and Tajikistan use music from the anthems of their Soviet predecessors. Since Art. 436-1 makes no exception regarding the anthems, their performance is illegal.

It should be noted that Art. 436-1 provides severe criminal sanctions: up to five years imprisonment with or without confiscation or from five to ten years imprisonment in case of repeated acts, or acts committed by a person holding public office or an

<sup>20</sup> European Commission for Democracy through Law (Venice Commission), OSCE Office for Democratic Institutions and Human Rights, Joint *Interim* Opinion on the Law of Ukraine on the Condemnation of the Communist and National Socialist (Nazi) Regimes and Prohibition of Propaganda of Their Symbols, of 21 December 2015, CDL-Ad (2015) 041.

organized group. The article is an example of misuse of criminal responsibility as it imposes disproportional punishment.<sup>21</sup>

The Venice Commission was right to criticize the Law on condemnation of totalitarian regimes. To meet the Commission's requirements, Ukraine was expected to shape the definition of "communist propaganda" (for instance, instead of "criminal nature" of the communist regime, the Law should refer to the concrete crimes committed), to ease sanctions and limit their use to the exceptional cases which constitute acts of hate speech. But it has never happened, and the Commission's recommendations were ignored. Moreover, in July 2019 the Constitutional Court of Ukraine confirmed constitutionality of the Law on condemnation of totalitarian regimes and, by implication, the policy of decommunization and its methods.<sup>22</sup>

Ukraine is going through a contradictory process of re-writing its history, selectively choosing among the concurring memories those that can foster its national identity. This explains why the laws from the same decommunization package – particularly, the Law on the condemnation of totalitarian regimes and the Law on perpetuation of the Victory over Nazism in the Second World War of 1939-1945 – contradict each other. The first law made it illegal to use the Soviet symbols of the Great Patriotic War, including the Banner of Victory, which for years was an inalienable element of the Victory Day celebration. Moreover, the Banner of Victory, before 2015, was protected by the Law on perpetuation of the Victory in the Great Patriotic War.<sup>23</sup> This law has been replaced by the Law on perpetuation of the Victory over Nazism in the Second World War of 1939-1945 from the recent decommunization package. Although the Law in force does prescribe a respectful attitude to the Banner of Victory, it demands, as "a sacred duty of the state and citizens of Ukraine", that the war veterans (the Red Army's former soldiers) be respected. "Duty to respect" implies the veteran's right to use the Banner of Victory and other military symbols during the Victory Day celebrations, even though they contain communist symbols. Yet, the prohibition of communist symbols has a priority over "an attitude of respect" towards war veterans: there have been several criminal prosecutions against those who tried to raise the Banner of Victory celebrating the 9<sup>th</sup> of May.

<sup>21</sup> To compare: intended grievous bodily injury (Art. 122 of the Criminal Code of Ukraine), illegal confinement or abduction of a person (Art. 146 of the Criminal Code of Ukraine), and rape (Art. 152) are punished as severely as propaganda or use of totalitarian symbols. See in: Criminal Code of Ukraine (English translation), [www.legislationline.org](http://www.legislationline.org).

<sup>22</sup> Judgment of the Constitutional Court of Ukraine no. 9-p/2019 of 16 July 2019 "Pro konstytutsiynost' Zakonu Ukrayiny 'Pro zasudzhennya komunistychnoho ta natsional-sotsialistychnoho (natsyst-s'koho) totalitarnykh rezhymiv v Ukraini ta zaboronu propahandy yikhnoyi symvolik'" [On constitutionality of Law on the condemnation of the Communist and National Socialist (Nazi) regimes, and prohibition of propaganda of their symbols], [zakon.rada.gov.ua](http://zakon.rada.gov.ua).

<sup>23</sup> Law of Ukraine no. 1684-III of 20 April 2000 "Pro uvichnennya Peremohy u Velykyi Vitchyznyaniyi viyni 1941-1945 rokiv" [On perpetuation of the Victory in the Great Patriotic War], [zakon.rada.gov.ua](http://zakon.rada.gov.ua).



The legal initiative to amend the Criminal Code and allow the use of the Banner of Victory during the Victory Day celebration has not been supported.

The fact that within a short period Ukraine had two laws – the Law on perpetuation of the Victory in the Great Patriotic War (adopted in 2000) and the Law on perpetuation of the Victory over Nazism in the Second World War of 1939-1945 (adopted in 2015) – which are devoted to the same historical event reflects a tectonic shift in Ukraine's understanding of history. The old law continued the Soviet tradition of glorifying the past, promoting historical narratives of the Great Patriotic War. It was focused on the war, its heroes and victory: "Victory Day is a day of celebration of the immortal feat of the people – the winner over fascism, the national memory of its struggle for freedom and independence of the Motherland" (Art. 1).

The old law was very similar to Russia's Law on perpetuation of the Soviet people's Victory in the Great Patriotic War 1941-1945 and its current memory policy aimed to protect the glory of the past.

The new law brings Ukraine closer to European narratives of stateless victimhood and reconciliation. Considering the victory over Nazism in the context of the Second World War, the law recognizes historical responsibility of the USSR for the outbreak of war. It also introduces a new date for commemoration – the 8<sup>th</sup> of May, the Day of Memory and Reconciliation, which, however, does not exclude the 9<sup>th</sup> of May, the Victory Day.

The new law is aimed to construct a narrative of "united victory" to present Ukraine not as a part of the USSR but as one of the allied countries, together with the USA, France and the United Kingdom, who won the war. With its adoption, the Soviet narrative of "Great Patriotic War" and "great victory" has lost its monopoly in Ukraine.

Ukraine's memory policy has two opposite directions – positive and negative – operating simultaneously: the negative one is aimed at destroying historical myths of the communist past (the Law on condemnation of totalitarian regimes), while the positive memory policy seeks to create a new pantheon of national heroes, who were forgotten or even condemned in Soviet time. Thus, the implementation of memory policy transforms former heroes into villains and, on the contrary, former villains into heroes.

The positive direction of memory policy is represented in the Law on the legal status and honouring memory of fighters for Ukrainian's independence in the twentieth century. As can be seen in its title, this law constructs a narrative of "fighters for Ukraine's independence in the 20th century", meaning from the October revolution to the collapse of the Soviet Union. It is a controversial document from historical, sociological and legal perspectives. First, the list of fighters provided (Art. 1) is too wide and, from the historical point of view, is too simplistic to be taken seriously.<sup>24</sup> It includes all

<sup>24</sup> See M. HAUKHMAN, *The Case of Decommunization*, cit.: "The list contains organizations, members of which, through their resistance to Soviet power, in the best case risked finding themselves behind bars, as well as organizations in which membership did not even cause career troubles. In the latter case I have

structures, organizations and persons who fought for independence – from the Ukrainian People’s Republic of 1918 to the People’s Movement of Perestroyka (Narodniy Ruch), and from the Organization of Ukrainian Nationalists to the Ukrainian Helsinki Group – without any differentiation. As noted, “The various organizations are vastly different. How can one compare, for example, the intellectual leaders of the Ukrainian People’s Republic (UNR) with the young hotheads of the Organization of Ukrainian Nationalists (OUN) in the 1930s or the ruthless insurgents of the Ukrainian Insurgent Army (UPA)?”<sup>25</sup>

Second, treating the Ukrainian Military Organization (UVO), the Organization of Ukrainian Nationalists (OUN) and the Ukrainian Insurgent Army (UPA) as heroes, the Law on fighters imposes a regional narrative of history (these structures and their leaders are only respected in Western Ukraine) to the entire country. The problem here is that the paramilitary units of Ukrainian nationalists fought against the Red Army. For the populations of South and East Ukraine, these “fighters” are traitors and Nazi collaborators that cannot be accepted as national heroes.

The legal critique of the Law on the fighters for independence is focused mainly on two problems: first, the Law makes no exception from the list of “fighters” regardless of the means of struggle they used; second, it imposes a positive interpretation of the past under a vague threat of punishment.

Art. 2 of the Law proclaims that Ukraine “considers as legal all forms and methods of struggle for its independence in 20th century”. This means that a self-reflective and self-critical approach towards the struggle for independence has been rejected. Ukraine does not distance itself from the crimes committed by the “fighters”; moreover, it denies these crimes.

The Law on the fighters for independence thus whitewashes the past. This is clearly reflected in the amendments to the Law on the status of war veterans and guarantees of their social protection<sup>26</sup> which were introduced in accordance with the Law on the fighters for independence. Before December 2018, the status of war veterans could be granted to the soldiers of the Ukrainian Insurgent Army “who fought against Nazi invaders on the temporarily occupied territory of Ukraine in 1941-1944 and who did not commit crimes against peace and humanity...”.<sup>27</sup> With the reference to the Law on fighters, this provision was changed, so that a status of war veterans could be given to “persons who participated in all forms of armed struggle for Ukraine’s independence in

in mind the ‘Popular Movement of Ukraine for Perestroika’ [Rukh] and other oppositional organizations from 1989–1991. It is strange to see them included in the same list as the organization of Ukrainian Nationalists (OUN) and the Ukrainian Insurgent Army (UPA)”.

<sup>25</sup> D. R. MARPLES, *Ukraine in Conflict*, cit., p. 132 *et seq.*

<sup>26</sup> Law of Ukraine no. 3551-XII of 22 October 1993 “Pro status veteraniv viyny, harantiyi yikh sotsial’noho zakhystu” [On the status of war veterans and guarantees of their social protection], zakon.rada.gov.ua.

<sup>27</sup> *Ibidem.*

the 20<sup>th</sup> century as members of the Ukrainian Insurgent Army, the Ukrainian Rebel Army of Ataman Taras Borovets (Bulba) 'the Polissya Sich', the Ukrainian People's Revolutionary Army (UNRA), and armed units of the Organization of Ukrainian Nationalists" (Art. 6, para. 16).<sup>28</sup> Thus, the wording "crimes against peace and humanity" has been removed from the legislation to erase memories about awkward moments when Ukraine's heroes were perpetrators.

Furthermore, to protect past glories, the Law on fighters introduces responsibility for "a public display of disrespectful attitude" toward fighters for independence and "a public denial of legitimacy of the struggle for Ukraine's independence" (Art. 6). It should be noted that neither meaning of "disrespectful attitude" nor liability measures have been specified.<sup>29</sup> However, even without clear sanctions, the Law can effectively freeze historical discussion suppressing questions about crimes committed by fighters for independence during the Second World War.

### III. UKRAINE IN THE EUROPEAN MEMORY WARS

Ukraine's attempts to re-think the past resulted in its involvement in the European memory wars, particularly, with Russia and Poland. The notion "memory war" refers to a conflict regarding the past and its interpretation. Memory war is a clash of State-sponsored (i.e. imposed by law) historical narratives, when several States adhere to different interpretations of the same historical events: State A promotes a position which contradicts the position of State B and can be punishable under its legislation; in the last case (when criminal sanctions are used to protect "official" truth), there is no chance to end a memory war through open dialog and reconciliation. Usually, a memory war occurs from the attempts of self-victimization or self-glorification – in the modern world no one wants to be pictured as a perpetrator.<sup>30</sup> This is the case of Russia, Poland and Ukraine.

In European memory wars, Russia finds itself on the defensive: to legitimize its geopolitical claims, it has to protect its mantle as Europe's liberator. This historical narrative has been challenged by Central and Eastern European States. In December 2010, six EU countries from the former Soviet bloc (Lithuania, Latvia, Bulgaria, Hungary, Romania and the Czech Republic) petitioned the European Commission to criminalize denials of

<sup>28</sup> Law of Ukraine no. 2325-VIII of 13 March 2018 no. 2325-VIII "Pro vnesennya zmin do deyakykh zakonodavchykh aktiv Ukrayiny shchodo udoskonalennya protsedury reabilitatsiyi zhertv represiyi komunistychnoho totalitarnoho rezhymu 1917-1991 rokiv" [On Amendments to Some Legislative Acts of Ukraine on Improving the Rehabilitation Procedure for Victims of Repression of the Communist Totalitarian Regime of 1917-1991], zakon.rada.gov.ua.

<sup>29</sup> After amendments Art. 6 of the Law on the legal status of war veterans reads: "Ukrainian nationals, foreigners and stateless persons who publicly express disrespect for [fighters for independence] stipulated in Article 1 of this law [...] bear liability in accordance with current Ukrainian legislation".

<sup>30</sup> In this sense, criminal responsibility for the Holocaust denial in Germany and Austria is a rare exception.

crimes committed by the Communist regime and to adopt a document similar to the Framework Decision on Combating Racism and Xenophobia. Although the proposal was rejected on the EU level, the criminal codes of these countries include articles to punish the denial of crimes committed by both totalitarian regimes. In response to these legal initiatives, Russia introduced Art. 354-1 “Rehabilitation of Nazism” to its penal code, where the equalization of Nazi Germany and the USSR as totalitarian regimes was deemed “falsification of history” and even a threat to the country’s national security. This law was adopted in April 2014, at the beginning of the conflict with Ukraine.

Art. 354-1 is aimed to protect Russia’s glory of the past: this is a crime to “deny the facts established by the International Military Tribunal”, “approve the crimes adjudicated by said Tribunal” as well as “spread knowingly false information on the activities of the Soviet Union during the Second World War”.<sup>31</sup> Thus, any historical discussion about pre-war cooperation between Hitler and Stalin, war crimes committed by the Red Army or the post-war Soviet occupation can be qualified as “rehabilitation of Nazism”. Accordingly, everyone who opposes the Russian official truth can be accused of being a “Nazi”. In September 2016, Russia’s Supreme Court upheld the conviction of Vladimir Luzgin under Art. 354-1 who was fined about 2,800 euros for reposting in the popular Russian social network *Vkontakte* a link to an online article *Fifteen facts about the ‘Banderovtsy’, or: What the Kremlin Is Silent About*. The article countered what its author perceived as Russian misconceptions about the Ukrainian independence movement during the Second World War, particularly, the Ukrainian nationalists and their leader Stepan Bandera (1909-59).<sup>32</sup> The statements that the Soviet Union and Nazi Germany “actively collaborated in dividing Europe according to the Molotov-Ribbentrop Pact, jointly attacked Poland and unleashed the Second World War” were problematic in the context of Art. 354-1. The Supreme Court found that Luzgin’s repost of the claim – though seen by few people – that the USSR and Germany both attacked Poland in September 1939, contributes to forming a negative opinion of the Soviet Union’s activities during the Second World War and assists in the “rehabilitation of Nazism”.

It should be stressed that an official understanding of the Molotov-Ribbentrop Pact (1939) and the Soviet role in the origins the Second World War differed over the years. For fifty years the Kremlin denied the existence of a secret Protocol to the Pact, which effectively divided Eastern Europe in German and Soviet “spheres of influence” and mapped out in detail the territory each party expected to gain at the expense of Poland, Finland, Latvia, Lithuania and Estonia. Only in 1989, during Gorbachev’s *perestroika*, this act of secret diplomacy was admitted and condemned. The Decree on political and legal

<sup>31</sup> Notably, Art. 354-1 partly repeats provisions of Art. 190-1 of the Soviet Russia’s criminal code, which punished the “spreading of knowingly false fabrications” about the Soviet system; in the Soviet time it was widely used against the dissidents.

<sup>32</sup> An analysis of *Luzgin* case see in M. EDELE, *Fighting Russia’s History Wars: Vladimir Putin and the Codification of World War II*, in *History and Memory*, 2017, p. 90 et seq.

assessment of the Treaty of Non-aggression between Germany and the Soviet Union adopted on 24 December 1989 by the First Congress of people's deputies stated: "[...] the Secret Protocol signed on 23 August 1939, and other secret protocols signed with Germany in 1939-1941, both by the method of drafting them and by their content, deviated from the Leninist principles of Soviet foreign policy. From a legal point of view, the delineation of 'spheres of interest' between the USSR and Germany [...] contradicted sovereignty and independence of third countries concerned".<sup>33</sup>

The Decree referred to a number of the peace treaties between the USSR and Latvia, Lithuania and Estonia as well as the Soviet Union's similar obligations in respect to Poland and Finland, which were violated. In intrinsic essence and form, the Secret Protocol was an "act of Stalin's personal power and did not represent the will of the Soviet people, who were not responsible for the collusion". Based on this, the Congress of the people's deputies declared the Secret Protocol "legally void from the moment of its signing".

In 2009, President Vladimir Putin stated that Russia condemned the Pact and the Secret Protocol as an "immoral" act of collaboration with Nazi Germany and called upon other European States to follow Russia's example and condemn their past agreements with Nazis, and the Munich agreements in particular. 10 years on, the Pact is treated as a great achievement of Soviet diplomacy: the USSR had to sign an agreement with Nazi Germany to protect own security when it became clear that the Soviet efforts to form an anti-Hitler coalition failed. The Molotov-Ribbentrop Pact continued European policy, started in 1938 with the German annexation of Czechoslovakia and the Munich agreements. As Putin noted in 2014: "People are still arguing about the Molotov-Ribbentrop Pact to the present day. And they accuse the Soviet Union of carving up Poland. But what did Poland itself do when the Germans occupied Czechoslovakia? They grabbed a piece of Czechoslovakia! (Laughs) They did that before the end of May [1939]! (Laughs) And then they got their payback".<sup>34</sup>

Considering that condemnation of the Molotov-Ribbentrop Pact in 1989 legitimated the Baltic countries' claims for independence (in this context it was the starting point of the Soviet Union's dissolution) and that praise for the treaty became Russia's official narrative after the Crimea annexation in 2014, the changes in the Kremlin's rhetoric indicate the political direction Moscow has taken over the last decades.

Thus, Luzgin's conviction, supported by the Supreme Court, was in line with the recent shift in Russia's memory policy. After Russia's Supreme Court, Luzgin appealed to the European Court of Human Rights to test Art. 354-1 of the Russian Penal Code within Art. 10 of the European Convention on freedom of speech.

<sup>33</sup> Decree of the USSR Council of the People's Deputies no. 979-1 of 24 December 1989 "O politicheskoy i pravovoy otsenke sovetsko-germanskogo dogovora o nenapadenii ot 1939 goda" [On the political and legal assessment of the soviet-german non-attackment agreement of 1939], [www.lawmix.ru](http://www.lawmix.ru).

<sup>34</sup> R. COALSON, *Turning Back Time: Putting Putin's Molotov-Ribbentrop Defense into Context*, in *Radio Free Europe - Radio Liberty*, 15 May 2015, [www.rferl.org](http://www.rferl.org).

Although Art. 354-1 of the Russian Penal Code is an extreme case of legislating on the issues of the past (it explicitly defends the reputation of an oppressive regime), in terms of sanctions, it is less hard than Art. 436-1 of the Ukrainian Penal Code: in Russia, “rehabilitation of Nazism” can be punished by fine or imprisonment, while in Ukraine imprisonment for totalitarian (communist) propaganda has no alternatives. This explains why the defendants under Art. 436-1 are ready to plead guilty in exchange for probation – it allows them to avoid prison.<sup>35</sup> This is the reason why the Ukrainian cases of “communist propaganda” are highly unlikely to reach the European Court of Human Rights.

Russia’s cult of the Great Patriotic War, which entirely attributes victory over Nazi Germany to the Red Army, cannot tolerate anti-Soviet historical narratives. In this vision, anti-Soviet means anti-Russian and, at the same time, pro-Nazi. This is a simplistic interpretation of history, but it is successfully used by Russian propaganda. For instance, it is applied to the Russian-Ukrainian conflict: pro-Russian separatists in the Donetsk and Luhansk regions are presented as “anti-fascist fighters”, while the government of Ukraine are labelled as “Nazis”. As a result of this binary “fascist”-“anti-fascist” rhetoric within the Russian-Ukrainian conflict, the Red Army’s symbols have received a new meaning in Ukraine. For instance, the Saint George Ribbon which was a symbol of commemoration of the veterans of the Eastern Front during the Second World War became a symbol of Crimea’s annexation and of the Russian-Ukrainian conflict after 2014 because it was used by pro-Russian separatists. In May 2017, Ukraine outlawed this symbol: Art. 173-3 on “Manufacturing and propaganda of the Saint George Ribbon”, introduced to the Ukrainian Code of Administrative Offences, imposes a fine for the “use, public demonstration or wearing” of the Saint George ribbon.

Adopting the Law on condemnation of totalitarian regimes, which equates the communist regime with the Nazi regime, Ukraine confronted Russia’s historical narratives and joint “anti-Russian” coalition on the European memory front. At the same time, Ukraine’s attempts to forge national identity using a heroic myth of fighters for independence have resulted in a memory clash with Poland.

Although, these two countries were the “bloodlands” during the Second World War,<sup>36</sup> Ukrainians and Poles have different war memories.<sup>37</sup> Timothy Snyder outlines

<sup>35</sup> Since 2015 Art. 354-1 has been invoked many times. All cases of communist propaganda are very similar: a bare demonstration of the communist symbols (such as red star, hammer and sickle, Lenin’s portrait or communist slogans on the T-shirt or Facebook page) was a ground for imprisonment. To avoid it, all defendant plead guilty. For an overview of the cases see: glavcom.ua.

<sup>36</sup> T. SNYDER, *Bloodlands: Europe Between Hitler and Stalin*, New York: Basic Books, 2012.

<sup>37</sup> See T. SNYDER, *Memory of Sovereignty and Sovereignty over Memory*, in J.-W. MÜLLER (ed.), *Memory and Power in Post-War Europe*, cit., pp. 41-42: “[F]or patriotic Ukrainians the Organization of Ukrainian Nationalists (OUN) created a moment of Ukrainian sovereign action by declaring a Ukrainian state under Nazi occupation in 1941 and a lasting memory of national heroism by their doomed struggle; for Poles its UPA was the organization which cleansed Poles from Western Ukraine in 1943 and 1944. Ukrainian patriots... are unwilling to accept that the UPA did commit mass race murder in 1943-4. Poles... are apt to believe that the anti-Ukrainian

the problem well when he argues that: "Cleansing actions (the word used at the time) [...] were carried out in the name of the Ukrainian nation against Poles and in the name of the Polish nation against Ukrainians".<sup>38</sup>

Hence, Ukrainian heroes are criminals for Poland and *vice versa*. Thus, any attempt, to whitewash the past using the law undertaken by any party to the conflict, will be perceived as an act of hostility by its counterpart and push for further, even more aggressive, legislation on memory to protect an official truth. The Law on fighters for Ukraine's independence says: "public denial of the legitimacy of the struggle for Ukraine's independence is desecration of the memory of fighters for Ukraine's independence in the 20th century, denigration of the dignity of the Ukrainian people and is unlawful" (Art. 6). It means that the Law on fighters forbids:

"to question the legitimacy of an organization (UPA) that slaughtered tens of thousands of Poles in one of the most heinous acts of ethnic cleansing in the history of Ukraine, [...] exempt[s] from criticism the OUN, one of the most extreme political groups in Western Ukraine between the wars, and one which collaborated with Nazi Germany at the outset of the Soviet invasion in 1941. It also took part in anti-Jewish pogroms in Ukraine and, in the case of the Melnyk faction, remained allied with the occupation regime throughout the war".<sup>39</sup>

The Law on fighters for Ukraine's independence made it impossible to continue an open Ukrainian-Polish dialogue on the legacy of the Second World War, particularly, the Volyn events:<sup>40</sup> a claim that the Organization of Ukrainian Nationalists (OUN) and the Ukrainian Insurgent Army (UPA) participated in murders of Polish civilians in the Volyn region can be deemed as "denigration" of the Ukrainian people.

Reacting to the Ukrainian memory law, in July 2016 the Polish parliament proclaimed the Volyn massacre to be a genocide of Poles committed by the Ukrainian Nationalists and declared 11 July the National Day of Volyn Genocide Victims Remembrance.<sup>41</sup> In February 2018, Poland took a further step to protect the memory of the Volyn massacre's victims and introduced criminal responsibility for denial of the crimes

military operations of 1944-7 were a direct result of the UPA's earlier ethnic cleansing. Both views are substantially incorrect. The UPA did indeed brutally murder [...] Polish civilians in 1943-3. But in 1944-7 the Polish communist regime acted to 'resolve the Ukrainian question in Poland', not only to liquidate the UPA".

<sup>38</sup> *Ibidem*, p. 42.

<sup>39</sup> *Open Letter from Scholars and Experts on Ukraine Re. the So-Called "Anti-Communist Law"*, in *Krytyka*, April 2015, krytyka.com.

<sup>40</sup> See more on the Volyn tragedy in A. PORTNOV, *Clash of Victimhoods: the Volhynia Massacre in Polish and Ukrainian memory*, www.opendemocracy.net.

<sup>41</sup> *Polish MPs Adopted Resolution Calling 1940s Massacre Genocide*, Polish Radio, 22 July 2016, www.thenews.pl.

committed by the Ukrainian Nationalists through amendments to the Law on the Institute of National Remembrance (Art. 2, let. a).<sup>42</sup>

Reacting to the amendments, the Ukrainian Foreign Ministry expressed “concern about the attempts to portray Ukrainians exclusively as ‘criminal nationalists’ and ‘collaborators of the Third Reich’”.<sup>43</sup> In turn, the Ukrainian Parliament stressed that “the Amendment contradicts the nature and spirit of the strategic partnership between Ukraine and Poland” and warned against “incitement of conflicts between traditionally friendly Ukrainian and Polish peoples” as these conflicts are in the interests of their common enemies “which were the Nazi and communist regimes in the past” and “the Russian aggressor today”.

Memory legislation from both countries threatened the first achievements of a long and very difficult process of mutual forgiveness and commemoration of innocent victims killed during the 1940s, including Ukrainians and Poles.<sup>44</sup> Instead of a reconciliation process, Ukraine and Poland had a “memory” war: Ukrainian heroes were declared culprits under Polish legislation, which, in turn, “denigrated the dignity of the Ukrainian people” and was “unlawful” in Ukraine.

The amendments to the Law on the Institute of National Remembrance regarding the crimes of the Ukrainian nationalists (Art. 2, let. a) were almost unknown outside Poland and Ukraine. The main cause for concern were, however, Art. 55, let. a) and b), labelled as “the Polish Holocaust Bill”. These provisions were aimed to protect the “reputation of the Republic and the Polish Nation”. Art. 55, let. a), provided that:

“Whoever claims, publicly and contrary to the facts, that the Polish Nation or the Republic of Poland is responsible or co-responsible for Nazi crimes committed by the Third Reich [...], or for other felonies that constitute crimes against peace, crimes against humanity or war crimes, or whoever otherwise grossly diminishes the responsibility of the true perpetrators of said crimes – shall be liable to pay a fine or imprisonment for up to 3 years”.<sup>45</sup>

<sup>42</sup> Amendment to the Act on the Institute of National Remembrance, [orka.sejm.gov.pl](http://orka.sejm.gov.pl).

<sup>43</sup> Comment of the Ukrainian Ministry of Foreign Affairs of 26 January 2018, [mfa.gov.ua](http://mfa.gov.ua).

<sup>44</sup> The two countries have made a number of joint statements concerning the conflict in the 1940s between Poles and Ukrainians: Statement by the Presidents of Ukraine and Poland on Concorde and Reconciliation of 21 May 1997; Statement by the Parliaments of Ukraine and Poland on the 60th Anniversary of the Volyn Tragedy dated 10 July 2003; Joint Statement by the Presidents of Ukraine and Poland on Reconciliation on the 60th Anniversary of the Volyn Tragedy dated 11 July 2003; Address by Greek-Catholic bishops of Ukraine and Roman-Catholic bishops of Poland on the Act of mutual forgiveness and reconciliation of June 2005; Joint Statement by the Presidents of Ukraine and Poland on the occasion of the 60th anniversary of the Wisla event dated 27 April 2007; Joint Declaration between the Ukrainian Greek-Catholic Church and the Roman-Catholic Church on the 70th anniversary of the Volyn crime dated 28 June 2013. These statements are listed in the Ukrainian Parliament's Statement on Resolutions on Volyn Tragedy approved by Polish Senate and Sejm on 7 and 22 July 2016 (8 September 2016), available at: [rada.gov.ua](http://rada.gov.ua).

<sup>45</sup> As no official English translation has as yet been made available, we refer to an unofficial English translation provided by the Times of Israel (1 February 2018), retrieved 24 January 2019. For the original



Art. 55, let. b), stipulated that criminal sanctions applied to Polish and foreign nationals irrespective of the regulations in force in the location where the criminal act was committed. In addition to criminal sanctions, civil sanctions were also expressly provided for.

"The Polish Holocaust Bill" provisions sparked a real diplomatic row between Poland and Israel; it was strongly criticized by the USA<sup>46</sup> and inside the EU.<sup>47</sup>

The Israeli Foreign Ministry stated: "The State of Israel opposes categorically the Polish Senate decision. Israel views with utmost gravity any attempt to challenge historical truth. No law will change the facts".<sup>48</sup>

As a countermeasure, the Israeli Parliament was ready to amend Israel's law on Holocaust denial to criminalize diminishing or denial of the role played by those who aided the Nazis in their persecution of Jews; it was also suggested that Israel should provide a legal defence to everyone prosecuted under the new Polish law.<sup>49</sup>

On 27 June 2018, to cope with one of the biggest diplomatic crises in its recent history and yielding to international pressure, Poland repealed Art. 55, let. a) and b), of the Law on the Institute of National Remembrance, "breaking the national record in speed of proceeding a bill in Parliament and getting it signed into the law by the President".<sup>50</sup> On this wave, on 17 January 2019, the Constitutional Tribunal of Poland declared Art. 2, let. a), of the said Law – the provisions regarding the Ukrainian nationalists' crimes against Poles – unconstitutional. Thus, memory war between Ukraine and Poland had a lull in the battle. Its further development – towards reconciliation or new escalation of the memory conflict – depends on Ukraine and its readiness to revise the heroic narratives using a self-critical approach.

#### IV. CONCLUSIONS

Memory wars in which Ukraine participates, prove that politicization and instrumentalization of history is the worst way of dealing with the past. Although States always have a temptation to use "selective amnesia" in their memory policies, they should be aware that this method can succeed in the short term, but it is doomed in a longer perspective: na-

see: Ustawa z dnia 26 stycznia 2018 r. o zmianie ustawy o Instytucie Pamięci Narodowej, Dziennik Ustaw (2018), Item 369. For a discussion of this law in the Polish context, see M. WYRZYKOWSKI, "National Untruth": *Controversial Law on the Polish Institute of National Remembrance?*, in *European Papers*, Vol. 5, 2020, No 2, [www.europeanpapers.eu](http://www.europeanpapers.eu), forthcoming.

<sup>46</sup> R. NOACK, *Poland's Senate passes Holocaust Complicity Bill Despite Concerns from U.S., Israel*, in *The Washington Post*, 2 February 2018, [www.washingtonpost.com](http://www.washingtonpost.com).

<sup>47</sup> BBC News, *Poland Holocaust Law: France criticizes 'ill advised' text*, 7 February 2018, [www.bbc.com](http://www.bbc.com).

<sup>48</sup> The Israeli Ministry of the Foreign Affairs Statement on Polish Senate decision, 1 February 2018, [mfa.gov.il](http://mfa.gov.il).

<sup>49</sup> M. BACHNER, *Lawmaker Proposes Israeli Legislation to Counter Polish Holocaust Bill*, in *The Times of Israel*, 1 February 2018, [www.timesofisrael.com](http://www.timesofisrael.com).

<sup>50</sup> J. JARACZEWSKI, *Fast Random-Access Memory (Laws) – The June 2018 Amendments to the Polish "Holocaust Law"*, in *Verfassungsblog*, 23 July 2018, [verfassungsblog.de](http://verfassungsblog.de).

tional identity built on national myths that inspire pride but not regret about the past wrongdoings will certainly result in a constant return to the unsolved problems and suppressed historical traumas, especially in the light of clashes over memory with neighbours.

Despite the fact that Ukraine, Russia and Poland protect mutually exclusive collective memories, their memory policies are very similar: the three countries promote historical narratives of self-glorification (myth of fighters for Ukraine's independence, cult of the Great Patriotic War, "the Polish Holocaust bill") or self-victimization (the process of decommunization in Ukraine, Polish attempts to introduce criminal responsibility for crimes committed by the Ukrainian nationalists) without critical self-reflection. This type of memory policies results from the State's attempt to be the sole caretaker of national memory. Protecting an "official" truth, Ukraine, Russia and Poland treat freedom of speech as a secondary value, using similar "totalitarian" approaches to history. The proliferation of memory laws with criminal sanctions reflects an escalation of memory wars, in which historians, journalists and civil activists are the first victims. Indeed, "remembering the past and writing about it no longer seem the innocent activities they once were taken to be".<sup>51</sup>

<sup>51</sup> P. BURKE, *History as Social Memory*, in T. BUTLER (ed.), *Memory: History, Culture and the Mind*, Oxford: Blackwell, 1989, p. 98 *et seq.*