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# Counteracting Antisemitism with Tools of Law: An Effort Doomed to Failure?

## 1 Introductory Remarks

Antisemitism is an everlasting phenomenon—and while its manifestations keep changing over the ages, this “longest hatred,” as rightly emphasized by Robert Wistrich, refuses to give up and remains resistant to various attempts to counteract it.<sup>1</sup> Debates over the most effective ways of combating antisemitism, racism, and xenophobia have been going on for decades, and legal instruments are very often floated as one potentially useful remedy.<sup>2</sup> This approach, however, is frequently met with opposing voices arguing that offensive attitudes bred by hatred and discrimination based on race, ethnicity, nationality, or religion, so deeply rooted in social and historical contexts, do not lend themselves to legal definitions and should not be tackled with legal norms.

When these debates are waged against the backdrop of the American doctrine of freedom of speech, one point that is obviously and immediately brought to the fore is that freedoms may be restricted by law in very few cases alone.<sup>3</sup> This is very much unlike the situation in the member states of the Council of Europe, one fundamental reason for this being the impact the Holocaust had on the historical heritage of what is today a free Europe. The values and principles underpinning the European human rights protection system, which also rests on the European Convention on Protection of Human Rights and Fundamental Freedoms, call for legal steps to be taken against manifestations of hatred.<sup>4</sup> Council of Europe member states are therefore required to counteract phenomena such as antisemitism with legal measures. However, when those values and principles are ostensibly disrespected and not applied, this may be seen as a breach of multiple fundamental rules all democratic states based on the rule of law must observe, and also as a mockery of law which, while duly promulgated and in force,

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1 R. Wistrich, *Antisemitism: The Longest Hatred* (New York: Pantheon Books, 1991).

2 Cf. A. Gliszczyńska-Grabias, *Przeciwdziałanie antysemityzmowi. Instrumenty prawa międzynarodowego*, (Warszawa: Wolters Kluwer, 2014).

3 Cf. F. Abrams, *The Soul of the First Amendment* (New Haven: Yale University Press, 2018).

4 Cf. J. Roubache, “The Council of Europe was the First to Recognize the Relationship between Racism and Antisemitism,” *Justice* 23 (2000): 8.

is either ignored or misapplied by authorities and institutions tasked with properly and effectively implementing it.

All this, however, should not stop us from discussing what may turn out to be the most adequate and effective legal measures in our efforts to eliminate antisemitism and other displays of hatred and discrimination like it. Some might say that in this age of fake news and increasingly uncontrollable cyberspace, whatever legal strategy we come up with will be futile anyway in confrontation with this alternative reality, immune to the regular processes we have grown accustomed to.<sup>5</sup> Also, in this age of populisms, most of them fueled by xenophobic and nationalistic ideologies and slogans, maintaining respect for the principles of equality and nondiscrimination is an increasingly steep challenge. Populists often openly defy these principles which serve as justification for the legal instruments designed to safeguard equality and nondiscrimination.<sup>6</sup> These are all problems that require diagnosing and should not tempt us into giving up on law as a possible cure.

It would appear that everything had by now been said and written about hate speech, including antisemitic hate speech, about its manifestations and consequences, and about efforts to counteract it.<sup>7</sup> For years now, legal scholars and practitioners have been contributing legal analyses to the ongoing discussions on the social, psychological, and cultural factors responsible for the presence of hate speech in the social arena. It turns out however that all of them—all of us—stand largely powerless when faced with an image of Judas made to look like a stereotypical Jew being hanged and burned in effigy in the town of Pruchnik in south-eastern Poland as a part of an Easter ritual with hundreds of people including children taking part.<sup>8</sup> One does not have to be a Jew to be profoundly hurt and offended—and perhaps even frightened—by the message so conveyed. What one can, and indeed must do is look for ways in which the law may be applied to deal with hateful language of this kind.

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5 Cf. A. Alemanno, “How to Counter Fake News? A Taxonomy of Anti-fake News Approaches,” *European Journal of Risk Regulation* 9, no. 1 (March 2018): 1–5.

6 Cf. J.-W. Müller, *What is Populism?* (Philadelphia: University of Pennsylvania Press, 2018).

7 Cf. W. Laqueur, *The Changing Face of Anti-Semitism: From Ancient Times to the Present Day* (New York: Oxford University Press, 2006).

8 For the full statement of the World Jewish Congress on the incident, see: “World Jewish Congress condemns antisemitic effigy burning in Poland,” World Jewish Congress, issued April 21, 2019, accessed May 10, 2019, <https://www.worldjewishcongress.org/en/news/world-jewish-congress-condemns-antisemitic-effigy-burning-4-0-2019>.

## 2 When Law Fails—the Case of Poland

Needless to say, Poland is not the only country grappling with antisemitism in its various guises and levels of intensity. Antisemitism, obviously, is a global phenomenon. However, for the purpose of this analysis, I would like to focus on the example of Poland, which is representative of Europe for two major reasons. Firstly, the legal regulations applicable to acts of antisemitism in Poland match those in place in the vast majority of Council of Europe member states, and secondly, the intensity of manifestations of antisemitism is on the rise in this country despite the legal tools in place that are supposed to stifle such upward tendencies.<sup>9</sup>

In Poland, the Penal Code, true to the requirements that go with Poland's membership in international systems of human rights protection, prohibits public promotion of fascist and other totalitarian systems, and public incitement to hatred and abuse of persons or entire communities for reasons of their nationality, ethnicity, race, or religious affiliation. It is also unlawful to threaten such persons and communities. So far all the inspections and reviews of the relevant laws applicable in Poland carried out by international human rights agencies have shown these laws to be appropriate.<sup>10</sup> The problem therefore is not the wording of these regulations but their application. To show how these regulations are applied—or rather not applied—in practice, I will cite a few examples from among the many recorded and presented by the Polish Ombudsman's office<sup>11</sup> and the *Open Republic Association Against Anti-Semitism and Xenophobia* organization when proper legal protection against antisemitic or pro-Nazi hate was denied. This is just the tip of a veritable iceberg of hundreds of incidents of racist, xenophobic, and homophobic hate speech that have been misinterpreted-

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<sup>9</sup> Cf. “European Anti-Semitism: Trends to Watch in 9 Countries in 2018,” Anti-Defamation League, issued March 28, 2018, accessed May 10, 2019, <https://www.adl.org/blog/european-anti-semitism-trends-to-watch-in-9-countries-in-2018>.

<sup>10</sup> See for example concluding observations to the periodic reports of Poland issued by the UN Committee on the Elimination of Racial Discrimination. These can be found in the UN Office of the High Commissioner Treaty Body Database filed under “Poland” at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=6&DocTypeID=29](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=6&DocTypeID=29).

<sup>11</sup> Cf. “30 przykładów spraw ‘mowy nienawiści,’ w których działania prokuratury budzą wątpliwości,” Polish Commissioner for Human Rights (Ombudsman), issued February 23, 2019, accessed May 10, 2019, <https://www.rpo.gov.pl/pl/content/30-przykladow-mowy-nienawisci-w-ktorych-dzialania-prokuratury-budza-watpliwosci-RPO>.

ed by prosecutors and courts despite the existence of robust legal grounds for taking action to counter them.<sup>12</sup>

- Demonstration staged by far-right Młodzież Wszechpolska and ONR organizations on 1 August 2015 in Warsaw and on 25 August 2015

The District Prosecutor's Office for the Śródmieście District in Warsaw found that a display of flags emblazoned with the Celtic cross does not in itself constitute promotion of a totalitarian system (prohibited under Article 256 §1 of the Penal Code) if it is not accompanied by praise of specific systemic solutions embraced by the Nazi Third Reich, fascist Italy, the USSR, or other communist countries. If the flag display was not accompanied by manifestly racist or xenophobic gestures, statements, or slogans, it cannot be deemed as having the hallmarks of criminal incitement to racial, nationalistic, ethnic, or religious hatred. The Prosecutor's Office refused to launch an investigation.

- Celebrations of the 82<sup>nd</sup> anniversary of the foundation of the far-right ONR organization: anti-Islamist and antisemitic slogans chanted during a march through Białystok on 16 April 2016.

The Regional Prosecutor in Białystok discontinued the investigation, claiming to have found no evidence of the demonstration participants chanting the antisemitic rhyming slogan of "Zionists will be hanging from trees instead of leaves" although the slogan was reported in the police documentation provided to the Prosecutor's Office and recorded by the media.

- Public speeches by the now defrocked Catholic priest Jacek M.

During these same celebrations of the 82<sup>nd</sup> anniversary of ONR, father Jacek M. delivered a sermon which may have borne the hallmarks of the crime of public incitement to hatred and public insulting of Jews or followers of the Judaic faith. An investigation was initially launched by the District Prosecutor's Office for Białystok-Południe, to be subsequently taken over by the Regional Prosecutor's Office in Białystok which eventually discontinued it. The prosecutors quoted the sermon in detail and argued that all the negative references to Jews made in it by father Jacek M. had to do with specific historical facts and events (such as the Jews' enslavement in Egypt) and as such were just expressions of opinions lacking any hallmarks of unlawful acts.

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<sup>12</sup> See the database of hateful incidents reported to the Open Republic Association: <https://zglosnienawisc.otwarta.org/?lang=en>.

- Public promotion of the fascist system during celebrations of the pagan feast of Kupala’s Night organized by the Zadruga Nationalist Association in June 2016 in Babia Góra.

The highlight of the feast was a flaming swastika. Some of the event organizers and participants were wearing red armbands on their left arms, reminiscent of Nazi swastika armbands. A video recording of the Kupala’s Night celebrations was posted on the Association’s website. Nevertheless, on 29 November 2016 the District Prosecutor’s Office in Białystok discontinued the investigation into the event, having found nothing to suggest it was unlawful. The prosecutors decided that the event could not be construed as an instance of public promotion of a fascist system because the celebrations were held in a forest and could be attended by only a select group of people.

- Incitement to nationalist and ethnic hatred and promotion of a fascist system during the Third March to Commemorate the Cursed Soldiers (members of the post-war anti-Communist resistance) held on 24 February 2018 in Hajnówka.

On 17 September 2018, the District Prosecutor in Białystok approved the discontinuation of an investigation into the actions of the organizers and participants of the March who displayed Celtic crosses, *Totenkopf* skull-and-crossbones badges with the acronym ŚWO standing for “Death to Enemies of the Fatherland.” The prosecutor found no evidence of any of the crimes set out in Article 256 §1 and 257 of the Penal Code having been committed. The skull-and-crossbones badge, although a faithful reproduction of the *Totenkopf* Nazi SS symbol, was interpreted as an entirely different historical artifact, namely an honorary badge created in December 1945 by the Nationalist Military Union (NSW), an underground anti-communist organization operating in Poland in the decade following the Second World War, although the prosecutor himself admitted that no graphic representation of the badge survives. The prosecutor also concluded that public displays of the Celtic cross may not be interpreted in terms of racism, hate speech, or promotion of totalitarian systems and made no references whatsoever to the slogans and chants uttered during the March.

- A post on Facebook (31 August 2018) which read: “*It was the Khazar Jews who murdered Poles in Katyń*” (a reference to the 1940 massacre of 20,000 + Polish army officers in Soviet captivity).

This was accompanied by a cartoon drawing of a Jew next to a Star of David with a hammer and sickle inscribed into it and a banner above saying “Communism is a Jewish Conspiracy.” On 28 December 2018, the District Prosecutor’s Office for

the Śródmieście District in Warsaw refused to launch an investigation, having found no evidence of an unlawful act having been committed.

- An illustration posted on Facebook on 18 September 2018 with an inscription saying: *“The world in disbelief. The Holocaust was the handiwork of Jews, committed with their active involvement and the involvement of organizations they created. This sounds ILLOGICAL to the civilizes world, AND YET THAT IS WHAT THE EVIDENCE AND THE FACTS ATTEST TO...!!!”*

On 31 December 2018, the District Prosecutor’s Office for the Śródmieście District in Gdańsk discontinued the investigation into the post without stating any reasons for its decision.

- Stanisław M. speaking on the “CEPowiśle” YouTube channel: *“One of these days the Jews will be brought to account for this [their alleged communist crimes] ... they should not be surprised that people then want to use them for fuel in ovens ... the people’s patience will finally run out and a Hitler will once again show up on the scene ... let this terrible liability rest on the Jews’ shoulders for their participation in such villainous acts”.*

On 31 October 2018, the District Prosecutor’s Office for the Śródmieście District in Warsaw refused to launch an investigation, having found no evidence of an unlawful act having been committed.

- Stanisław M. speaking in a video posted on the “CEPowiśle” YouTube channel, commenting on, among other things, a letter addressed by the Polish Council of Christians and Jews to the Rector of the Catholic University of Lublin and the Metropolitan Bishop of Lublin, protesting against antisemitic statements made by father Tadeusz Guz: *“This shows what is in store for us under Jewish occupation. Poles will be trained [like animals] to tweet to a key set by the Jews. And those who will refuse to so tweet will be subjected to severe disciplinary measures.”*

On 2 January 2019, the District Prosecutor’s Office for the Śródmieście District in Warsaw refused to launch an investigation, having found no evidence of an unlawful act having been committed.

The statistics presented above show just how few cases concerning antisemitic hate end with convictions of the hate mongers. What is also important is that this kind of lenient attitude of Poland’s law enforcement agencies and courts has been in evidence for very many years now, which may be due to a variety of factors, such as the lack of proper education about—and shortages of sensitivity to—

wards—the issues of protection and non-discrimination of minorities.<sup>13</sup> These examples from Poland are therefore a good illustration of the fundamental problem we are facing here: the effectiveness of the laws in force.

### 3 Effective Remedies

The foremost problem when setting out to deal with issues such as antisemitism is that what we are up against are not traditionally conceived crimes or felonies such as theft or assault but actions and words arising from emotions and superstitions, or from centuries-old prejudices deeply entrenched in communities. This is the subsoil that nourishes the kinds dislikes and even hatreds leading to public manifestations of antisemitic sentiments.

As shown above, the penal law remedies providing for penalties commensurate with the seriousness of the problem they were designed to counteract do not produce the desired effects—for a number of reasons operating in parallel. This could change if at least some of the solutions proposed by Poland’s Ombudsman to give more punch to laws leveled against hate speech and hate crime could be adopted.<sup>14</sup> While devised specifically to improve the situation in Poland, these solutions should definitely be in place in very many—if not all—of the Council of Europe member states struggling to deal with this same problem of ineffectiveness of the law.<sup>15</sup> Here are some of the Ombudsman’s recommendations:

- Making membership in organization promoting or inciting to racial hatred punishable

This proposal is in line with General Recommendations No. 35 from the UN Committee on the Elimination of Racial Discrimination of 26 September 2013 as well as Article 13 of Poland’s Constitution which prohibits organizations whose pro-

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**13** For analysis of the prosecutors’ decision denying legal protection for the victims of antisemitism in Poland, see: Open Republic Association against Anti-Semitism and Xenophobia, “Przestępstwa nie stwierdzono. Prokuratorzy wobec doniesień o publikacjach antysemitkich,” (Warszawa: Stowarzyszenie “Otwarta Rzeczpospolita,” 2006), <http://otwarta.org/wp-content/uploads/2012/03/Przestepstwa-nie-stwierdzono.pdf>.

**14** “Jak walczyć z mową nienawiści. 20 rekomendacji RPO dla Premiera,” Polish Commissioner for Human Rights (Ombudsman), issued February 21, 2019, accessed May 10, 2019, <https://www.rpo.gov.pl/pl/content/jak-walczyc-z-mowa-nienawisci-20-rekomendacji-rpo-dla-premiera>.

**15** See in particular the latest state reports on Russia, Hungary, and France, prepared by the European Commission against Racism and Intolerance (ECRI), “Country Monitoring,” <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/country-monitoring>, accessed May 10, 2019.

grams are based upon totalitarian methods and the modes of activity of Nazism, fascism, and communism, as well as those whose programs or activities sanction racial or national hatred. The problem here is that the mechanism for identifying and banning the kind of organizations referred to in Article 13 of the Constitution is inadequate as it has no preventive effect on groups bent on broadcasting hate-filled ideologies under different labels and employing ever-changing structures.

- Introducing a statutory definition of hate speech

Hate speech is not currently defined in Poland's statutory laws. The felony described with this colloquial term is identified based on, among other things, separate provisions of the Penal Code. A statutory definition of hate speech should be modelled on the definition proposed in Recommendation no. R (97) 20 of the Committee of Ministers of the Council of Europe adopted on 30 October 1997, categorizing as hate speech all forms of expression which spread, incite, promote, or justify racial hatred, xenophobia, antisemitism, or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination, and hostility against minorities, migrants, and people of immigrant origin.

- Development of best practices codes by internet providers and NGOs

One of the most frequently recommended measures aimed at combating online hate speech is the creation of best practices codes by internet services providers, NGOs, trade organizations, as well as professional and consumer associations. Each member state is required to support such actions under Article 16 of Directive 2000/31/EC of the European Parliament and the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce in the Internal Market. The European Commission against Racism and Intolerance (ECRI) in Recommendation no. 6 adopted on 15 December 2000 also called for such codes. The UN Committee on the Elimination of Racial Discrimination (CERD) likewise recommends that codes of this nature be put in place.

- Alerting administrators of commercial internet news portals to their mandatory obligation to moderate, filter and remove comments likely to amount to hate speech

Administrators of commercial news portals featuring comments sections and encouraging readers to post their comments online must be prepared to implement a broad range of actions with regard to hate speech posts. While pre-moderation (i. e., preventing offending messages from being posted) is not required, all posted content needs screening for potentially law-violating comments that merit deletion.



- Introduction of the obligation for internet service providers to report hate crimes to law enforcement agencies

In accordance with the E-Commerce Directive, member states may impose an obligation on service providers offering information services to immediately report all prohibited actions to law enforcement agencies. Member states may also obligate service providers to disclose, if requested to do so by relevant authorities, information enabling the identification of customers. Consequently, in the context of hate speech, it seems advisable to introduce the obligation to report each suspected case of hate speech to law enforcement authorities and to secure such content for evidentiary purposes. This obligation, if sanctioned by administrative penalties, could be a requisite measure supplementing the *notice and takedown* procedure provided for in the E-Commerce Directive, which in essence boils down to the obligation to have unlawful content removed.

Other suggested changes with regard to social and legal awareness include:

- Social campaigns targeted at school youth; school training sessions and workshops detailing the harm hate speech can cause; teacher training; trainings on legal aspects of hate speech for police officers, prosecutors, and judges; similar trainings for advocates and legal advisers;
- Comprehensive external review of the reactions of the Parliamentary Ethics Committee to hate speech;
- Review of all investigations discontinued by public prosecutors in the last three years in which hate speech charges could have been prosecuted;
- Encouraging political parties to sign the Charter of Political Parties for a Non-Racist Society;
- Encouraging municipal authorities and local governments to fight hate speech.

The changes and amendments proposed above predominantly refer to criminal law and country-level obligations. At the same time, in such circumstances, a more effective legal solution seems to be filing civil lawsuits against those engaged in spreading antisemitism. The legal construction of personal interest (personal rights) that is to be found in many European jurisdictions, that can be violated by antisemites, includes, among others, such values as good name, dignity, ethnicity, and religion. For their breach, compensation, apologies etc., can be claimed. There are also other civil law remedies available against defamatory, insulting statements or actions with antisemitic motifs.

Here, however, some difficulties appear. Like with the example of Poland, in order to rely on the personal goods construction, one normally needs to prove that antisemitic words were directed exactly at a given person and hurt him/

her personally. The court usually requires harm to be “personalized,” directed against a particular person. However, this deadlock could be perhaps overcome if more Jewish people, for example members of Jewish organizations such as religious communities, would decide to take this civil legal path, supported by their organizations.<sup>16</sup> However, this is difficult in countries such as Poland, where there is generally a reluctance to publicly appear in such matters and where the Jewish community is in fact small. In addition, the civil court process may involve high financial costs and a long wait for the final outcome.

Thus, it seems that also different tools need to be employed, provided that, like all others, they are being developed and implemented in a healthy pro-democratic and rule-of-law-obeying environment. One such tool can be strategic litigation and legal advisory services provided by professional legal representatives in cooperation with non-governmental organizations or individual victims of antisemitic hatred. Such legal measures have a much greater potential to bring about a real change, for example, in the judicial interpretation of certain provisions. Such cooperation may also include the drafting of legal bills on the basis of guidelines provided by NGOs dealing with the issues of combating racial and ethnic hatred. After all, NGOs know best which laws need amending. One other substantial advantage of cooperation of this kind is that the legal services are usually provided on a full or partial pro bono basis, which makes high-quality legal counselling and representation that much more accessible to victims of antisemitism (or relevant NGOs). Another strategy worth considering is lobbying for legal changes that will permanently and effectively improve the system of counteracting antisemitism, including, above all, the adoption of the *Working Definition of Antisemitism*.<sup>17</sup> Although this solution will not automatically lead to antisemitic cases being treated differently by the prosecution or courts, some “soft” law instruments (like programs of actions, best practices guides, etc.) will be mandatory to put into public circulation. This strategy also calls for coordinated efforts and, above all, the identification of what changes are really needed most in a given jurisdiction. Thus, the postulated step would be to conduct a comprehensive and extensive review of the Council of Europe countries’ legal measures, including their case law, regarding antisemitism. Only a compre-

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**16** A telling example of such a strategy is a lawsuit directed by the Polish Holocaust survivors against the publisher of antisemitic books. Cf. T. Zieve, “Polish Survivors Sue Publisher Over Holocaust Denial Books,” *Jerusalem Post*, April 9, 2018, <http://www.jpost.com/Diaspora/Polish-survivors-sue-publisher-over-Holocaust-denial-Books-549254>.

**17** Cf. “Working Definition of Antisemitism,” International Holocaust Remembrance Alliance, issued May 26, 2016, <https://www.holocaustremembrance.com/news-archive/working-definition-antisemitism>.

hensive, in-depth diagnosis will allow further desirable steps and legal changes to be identified. Moreover, due to the vast differences between the two approaches to the administration of justice with respect to various forms of antisemitism (and other forms of hatred), i.e., the American and European, a comparison of the effectiveness of tactics adopted by EU countries would make it possible to confront the situation in Europe with the American model and its consequences. A project of this kind would naturally require appropriate funds and resources and a team of legal experts capable of drawing correct conclusions from the analyses, but it does seem a worthwhile effort to make if we do not want to spend many more years to come complaining about the ineffectiveness of the legal methods of counteracting antisemitism. It seems a very reasonable idea to turn law into a potent ally in this fight.

## 4 Concluding Remarks

Antisemitism is a social, political, religious, and cultural phenomenon that wreaked havoc on this persecuted and discriminated group, bringing it to the verge of almost complete annihilation. Antisemitism continues to have a destructive effect on the societies in which this form of discrimination, prejudice, and hatred is present. For centuries, however, the problem of antisemitism, same as racism, xenophobia, and discrimination against minorities, has remained outside the remits of any legislative efforts counteracting these phenomena. Moreover, throughout history, legal regulations have served primarily to sanction antisemitism, including its most drastic manifestation—the planning and perpetration of the Holocaust.<sup>18</sup> This adverse situation began to change with the rise of international human rights protection systems. The gradual extension of the scope of protection afforded to individuals under international human rights treaties has had a stimulating effect on the national legislations in countries which subscribed to the universal and European system of human rights protection and which, therefore, also had to accord protection to victims of antisemitism. In this day and age we no longer ask whether or not we should fight antisemitism with legal regulations, but we discuss how this is to be done in the most effective way while, at the same time, respecting the rights and freedoms of the individual, including, above all, the freedom of expression.

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<sup>18</sup> Cf. D. M. Seymour, *Law, Antisemitism and the Holocaust* (London: Routledge-Cavendish, 2007).

A sense of physical and mental security is one of the most important factors in every person's life, and its importance tends to acquire an even greater dimension when it comes to members of minority groups.<sup>19</sup> Most certainly, the very awareness that special mechanisms of legal protection against aggression, humiliation, or persecution are in place brings relief to people who are likely to be on the receiving end of hate speech, but in fact what really matters most is the actual effectiveness and implementation of the law.

The effectiveness of hate speech laws is impaired by several factors. These include difficulties with forging a precise definition of phenomena like antisemitism or xenophobia, the victims' reluctance to report this type of offences to law enforcement agencies, and finally the fundamental issue of whether or not criminal sanctions to hatred and prejudice-inspired behavior are likely to prove efficient and adequate. However, all such difficulties take on a completely different meaning and proportions in situations where they are buttressed by the generally prevailing social climate (and sometimes spurred on by the ruling circles) of consent and leniency towards those who speak antisemitic, racist, and xenophobic language and even commit acts of hatred. This can lead to situations where laws formally meeting all the hate crime legislation requirements remain virtually useless in practice, while the level of verbal and physical aggression against the "Others" goes soaring. This happens for instance when those fond of making fun of the victims of the Holocaust and posting antisemitic tweets about "Jewish scabs" find a safe haven in the mainstream public debate, not disturbed by legal or social consequences.<sup>20</sup>

And if we are to take seriously the question once posed by Professor Ruth Wiese: "What are we going to do with antisemitism? No, seriously, what?"<sup>21</sup>

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**19** On the insecurity aspect of antisemitism experienced by the Jews nowadays in Europe, see: Fundamental Rights Agency, *Experiences and Perceptions of Antisemitism: Second Survey on Discrimination and Hate Crime against Jews in the EU* (Luxembourg: Publications Office of the European Union, 2018), <https://fra.europa.eu/en/publication/2018/2nd-survey-discrimination-hate-crime-against-jews>.

**20** These incidents have been widely covered in the foreign press. See for example "Polish TV Host Suggests Calling Nazi Death Camps 'Jewish Camps'", *Jerusalem Post*, January 31, 2018, <https://www.jpost.com/Diaspora/Polish-TV-host-suggests-calling-Nazi-death-camps-Jewish-camps-540330>. See also the reports on points of sale throughout Poland, including in the Polish Parliament, with the extremely nationalistic *Tylko Polska* [Only Poland] weekly on sale, loaded with antisemitism, carrying lead articles titled like "How to Spot a Jew: Anthropological, Physical and Character Traits." Cf. "Jak rozpoznać Żyda," *Tylko Polska*, March 14, 2019.

**21** R. Wiese, "How Do We Put an End to Antisemitism? No, Really, How Do We?" filmed August 2010 at YIISA/IASA Global Antisemitism: A Crisis of Modernity Conference, Yale University,

with regard to legal mechanisms, we must in the first place institute a policy of “zero tolerance” for any individuals using antisemitic rhetoric or committing other antisemitic offenses. To this end, we need a full, comprehensive review (and one using comparative law tools at that) of the effects of law enforcement against antisemitic hatred, the involvement of local lawyers (as well as organizations representing Jewish communities), financial support for legal measures, inclusion of courses in racist and other hate speech/hate crime issues in academic curriculums, and, last but not least, the reinforcement of civil society. All of the above must still be shored up by an uncompromising and unequivocal stance on this matter taken by public authorities, which must firmly react and enforce hate crime laws against any and all antisemitic acts.

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