



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

Application no. 10613/07  
Jürgen Hösl-Daum and Others  
against Poland  
lodged on 24 February 2007

**STATEMENT OF FACTS**

**THE FACTS**

The applicants, Mr Jürgen Hösl-Daum, Mr Stephan Roth and Mr Robert Göpfert, are German nationals who were born in 1978, 1980 and 1982 respectively and live in Brüggen, Oybin and Zittau. They are represented before the Court by Mr S. Böhmer, a lawyer practising in Erlangen.

**A. The circumstances of the case**

The facts of the case, as submitted by the applicants, may be summarised as follows.

The applicants arrived in Poland on 20 July 2004. During the night of 20 to 21 July 2004 they put up posters, described below, at bus stops and poster pillars in Bolesławiec, a town near the border between Poland and Germany. On 22 July 2004 the applicants were arrested by the police when taking photographs of the places where they had put up the posters.

*1. Posters*

There were two posters of A3 format with text in German and a number of graphic photographs of unknown origin depicting, *inter alia*, mass graves, massacred bodies and a group of people in an open train carriage.

The first poster read as follows:

**“The Poles and the Czechs – a heartfelt welcome to the EU!**

Our justice system is working diligently, because murder is not subject to statutory limitation.



### **Documents [concerning] Polish and Czech atrocities on the Germans**

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“From the land of the dead”

A Jewish émigré and a native Berliner – Robert Jungk – later a famous author and a critic of technologies (“Brighter than a Thousand Suns”), even before the so-called “regular” expulsion had begun, published in the Zurich “Weltwoche” a report about the conditions prevailing in the eastern regions of Germany occupied by the Poles based on his own experience. His report was entitled “From the land of the dead”.

We quote some passages:

“Whoever leaves the Polish zone and reaches the territory occupied by the Russians can immediately breathe again. He leaves behind totally looted towns, plague-stricken villages, concentration camps, barren fields, streets full of corpses, in which thieves lurk, and rob the expellees of their last belongings ... It is true that on a public square in town G. girls, women and old women were raped by relatives of the Polish militia. It is true that at the railway station in S. all trains transporting refugees were systematically looted to such an extent that the people in them had to travel west naked. It is true that in the heart of Silesia not one child under one year of age is still alive, because all of them have died of hunger or been killed. It is true that in Upper Silesia women suffering from syphilis (who were earlier raped –editor) received as a “therapy” a shot in the head. It is true that there has been a wave of suicides in the country, in some towns one-twelfth and in some even one-tenth of the population have taken their lives. It is true that in the so-called labour camps in C. and S. prisoners are made to spend the whole night up to their necks in icy water and that they are beaten until they lose consciousness.”

[close frame]

### **Was the year 1945 a liberation?**

#### **Mass deaths in the foreign extermination camps**

**After the end of the war 7 million Germans were robbed, expelled, raped, attacked and murdered**

After the end of the war millions of German civilians also had to perform forced labour for years on end. Towards or after the end of the war in 1945 almost a million of them, including children were displaced in inhuman conditions to the Soviet Union. Nearly 500,000 German civilians from the regions by the rivers Oder and Neisse (Lower and Upper Silesia, Pomerania, East Brandenburg, Posen, West and East Prussia) and Poland, 30,000 Sudeten Germans and 160,000 German civilians from southern Europe were deported in 1945 from their homeland to the Soviet Union in order to perform forced labour, [and] were exploited for years. During their journey to Russia ten percent of the victims of deportation died as a result of ill-treatment, hunger and cold.

However, the journey was just an anteroom to hell. Nearly half of the so-called displaced forced labourers died in camps. A German Jewess, full of fear and uncertain of the fate of young women, wrote about the inhuman conditions prevailing in the camps in Kolyma, which were among the worst in the Soviet Union:

‘Why did the Soviet officers break the clavicles of the 17-year-old girls they interrogated and stamp with heavy soldier boots on their ribs? The life of a woman in Kolyma was unhappy, was short.’

The American Federation of Trade Unions stated with disappointment in its manifesto of 1947: ‘Paradoxically this country, which calls itself “socialist” and which declares the form of its government as “the republic of the workers”, is the centre of the most far reaching and the worst slavery which still exists in the world.’

Germans were deported for forced labour not only to the Soviet Union. There were labour and extermination camps for millions of Germans in Poland, Czechoslovakia

and Yugoslavia too. Until their expulsion by those countries, practically all Germans were enlisted for forced labour, also outside the camps.

More Germans died in Poland and on the territories occupied by the Poles in 1,255 camps than those who died in transit following expulsion. In the Lamsdorf camp in Upper Silesia, of the 8,000 [people] held there 6,048 died. In the other labour camps in Upper Silesia unspeakable cruelty reigned too. It was common practice in the different camps to shoot, as planned in advance, those who were too old, unable to work or ill.

After the war, 2,061 labour, penal and internment camps were retained in Czechoslovakia. It is impossible to describe the cruelty in those camps. In the Mährisch Ostrau camp alone 350 detainees were tortured to death before the beginning of July 1945. Different methods were applied: from beating until death to Chinese methods, in accordance with which rats slowly bite into the stomach of the tortured person. It speaks for itself that those who survived that terrible camp went white or became mentally ill in just one night.

The conditions in the Yugoslavian camps were even worse. The tracing service of the German Red Cross reported about 1,562 camps and prisons in this area. In May 1945 nearly all surviving Yugoslav Germans were held in them and had to perform forced labour. Officially there was a distinction between a central labour camp, eastern camp and concentration camp for those unable to work. The latter were also unofficially called final or extermination camps.

According to the surviving notes of a camp doctor, in the largest camp of this kind alone, Rudolfsgnad, of the 33,000 people held there 9,503 Germans died, including 8,012 adults and 491 children under the age of 14.

In those reports Gakovo, Jarek and Rudolfsgnad in the former Yugoslavia, Potulitz, Lamsdorf or Schwientochlowitz in the German areas under the Polish rule and Olmütz-Hodolan in Czechoslovakia are mentioned.

All the above occurred in the period when the Nuremberg trial was taking place and Nazis were sentenced to death for deportations and forced labour.

The forced labour and suffering in a camp cannot be compensated with money, regardless of the amount. What is necessary is awareness of those crimes in the countries where the atrocities occurred. What is also necessary is that the surviving responsible parties be judged. As for that, there is total silence surrounding the issue of the German victims.”

The second poster read as follows:

**“Documents on Polish and Czech atrocities ... Are our EU-friends avoiding a new evaluation of their history?? 15,000,000 Germans were robbed and expropriated, hundreds of thousands were sent to concentration camps and to forced labour ... 3,500,000 Germans were killed ... Where there is no accuser, there is no judge ... there were only Germans ... Second-class people??**

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**Recorded in the memory of our nation**

**German losses during and after the Second World War**

**Between 1939 and 1945 died:**

3,250,000 German soldiers

1,000,000 women, children and the elderly as a result of bombing terror directed against the nation

3,242,000 of German soldiers held by the Allies

**And after 8 May 1945:**

2,000,000 in Soviet camps

1,000,000 in American camps  
120,000 in French camps  
100,000 in Yugoslavian camps  
22,000 in Poland and Czechoslovakia  
3,000,000 women, the elderly and children during expulsion from their homeland after 1945  
500,000 killed after the entry of the Soviets into eastern and central Germany  
60,000 killed after the entry into Austria  
120,000 Germans died in Soviet concentration and death camps

**For each nation to remember its dead is an act of honour of the highest morality**

The dead indicate the path to the conscience of history, the spiritual foundation of the national conscience.

The blood-letting of our nation – 7 million dead who died at the hands of the enemy after the end of the war – is a matter as yet unknown to our nation and [which] has not yet reached its heart. [The dead] must be ‘recorded in the nation’s memory’ and saved from oblivion.

There is no lack of documents concerning the expulsion of Germans and crimes committed against them. They lie in tens of thousands in State archives, church archives and those of the Red Cross. They are, however, separated from the nation by a curtain of silence. The sources, however, remain accessible.

**Overall 11 million Germans died, including 7 million after the end of the war.**

[close frame]

A peaceful Europe may exist only on the foundation of law and truth. The restitution of houses and plots of land expropriated against the law of nations should be a given in the now democratic Poland and Czech Republic.”

*2. Prosecution and initial court decisions*

On 28 December 2004 the prosecution filed a bill of indictment against the applicants with the Jelenia Góra Regional Court. They were charged with the commission of two offences: publicly insulting the Polish nation (Article 133 of the Criminal Code; “CC”) and incitement to hatred based on national differences (Article 256 of the CC). It was alleged that between May and July 2004 the applicants had put up no less than thirty-two posters at bus stops and on poster pillars in Jelenia Góra, Piechowice, Szklarska Poręba, Karpacz and Bolesławiec (close to the Polish-German border). According to the prosecution, the posters contained untrue statements about alleged mass crimes committed by Poles against the German civilian population during and after the Second World War and graphic photographs of unknown origin. Furthermore, the applicants had created tension between the Polish and German nations on account of their demand for land and property left by the German population on Polish territory to be returned. They had further unsuccessfully attempted to put up another two hundred and fifty-one posters.

On 7 February 2005 the Jelenia Góra Regional Court decided that it did not have jurisdiction to examine the applicants’ case and transferred it to the Jelenia Góra District Court. It found that the acts imputed to the applicants were to be considered administrative offences against public order. The

prosecution appealed against that decision. On 25 February 2005 the Wrocław Court of Appeal quashed the decision and remitted the case to the Regional Court. It held that the Regional Court could not review the soundness of the prosecution's legal classification of the alleged offences at the preliminary stage of the proceedings to determine jurisdiction.

On 12 May 2005 the Regional Court gave judgment. It held that the applicants had committed the impugned offences and decided to suspend the criminal proceedings against them for a two-year probation period. Each applicant was ordered to pay 2,000 Polish zlotys (PLN) to a children's home and bear some of the costs of the proceedings.

The Regional Prosecutor appealed against the judgment. She argued, *inter alia*, that the Regional Court had erred in finding that the degree of guilt and social danger of the acts imputed to the applicants had been negligible. On 14 September 2005 the Wrocław Court of Appeal quashed the Regional Court's judgment and remitted the case.

### *3. Trial court's judgment*

On 7 April 2006 the Regional Court gave judgment. The applicants were convicted of insulting the Polish nation and inciting hatred between the Polish and the German nations in that on 20 July and on the night of 20 to 21 July 2004 in Bolesławiec they had put up in public places (bus stops and poster pillars) posters containing untrue statements about alleged mass crimes committed by the Poles against the German civilian population during and after the Second World War and (containing) graphic photographs of unknown origin; they had further created tension between the two nations by demanding the return of land and property left by the German population on Polish territory. They were also convicted of attempting to put up other similar posters.

The Regional Court sentenced the first applicant to ten months' imprisonment and the two remaining applicants to eight months' imprisonment. It conditionally suspended the prison sentences for a three-year probationary period. The applicants were also ordered to bear some of the costs of the proceedings.

At the trial the applicants admitted that on the night of 20 to 21 July 2004 they had put the posters up at bus stops and on poster pillars in Bolesławiec. The first applicant (Jürgen Hösl-Daum) stated that he was interested in history, including the issue of the expulsion of Germans. He was aware of the content of the posters and considered it to be factually based. The posters had been aimed at informing the Polish public about the suffering of Germans during that period.

The second applicant (Stephan Roth) stated that the posters represented pure historical facts and that their content was intended to inform people that during the period of expulsion Russians, Poles and Czechs had massacred Germans. The posters were aimed at disclosing those facts and bringing them to the attention of the Polish and the German media and triggering a debate on the subject. The second applicant had not intended to insult anyone or to incite hatred between the nations, but to raise awareness about what had happened in the past.

The third applicant (Robert Göpfert) had wanted to show that other nations, and not only the Germans, had been the perpetrators of murder, and

that Germans had been victims too. He had learnt from his grandparents, who had been expelled from Silesia and Pomerania, about their suffering. He had intended to show people the truth, not to incite hatred towards the Polish nation.

The Regional Court found that there was no evidence supporting the allegation that the applicants had put posters up in towns other than Bolesławiec.

The court based its findings on an opinion prepared by three professors from the law, history and sociology departments of Wrocław University. Two of the experts were also members of the Commission for the Examination of Nazi Crimes in Poland.

The Regional Court, having regard to the collected evidence, found the applicants guilty of publicly insulting the Polish nation and of inciting national hatred. It found, in so far as relevant:

“The offence specified in Article 133 of the CC is committed, *inter alia*, by a person who publicly insults the Polish nation. The interpretation of the term “insult” can be made on the basis of the system of values existing in a given society, whereas the meaning of this word should reflect the meaning attributed to it in ordinary language. To insult is to offend somebody or something by word or act. ... It is an act which consists of showing contempt, damaging respect or reputation.

The term “insult” belongs to the category of value judgments and can have various meanings. It is accepted that the interpretation of this term should be made on the basis of criteria which are as objective as possible and of commonly accepted values. An insult amounts to an expression of contempt, humiliation and affront. (...)

The offence specified in Article 256 of the CC is committed, *inter alia*, by a person who publicly incites hatred on the basis of national differences. Such act consists in sowing the seeds of dislike and hostility ....”

With regard to the applicants’ motives, the court noted that they claimed to have put up posters in Bolesławiec with a view to informing the Polish public about the massacres of the German population during the period of its expulsion. It did not accept that claim as credible and held as follows:

“The posters contain many untruths concerning the Poles. It transpires from the expert opinion that the information with regard to the death rate among the Germans and to the deportations were deliberately presented in a chaotic manner – without making a distinction as to whether they took place under the Polish or Russian administration, or on the territory of Czechoslovakia – and were presented in such a way as to give grounds for accusation mainly against the Poles.

The numbers cited on the posters were taken from some biased anti-Polish political pamphlets. The information quoted from the article by R. Jungk about the situation prevailing on the territories transferred to Polish administration following the undertakings of the Potsdam Conference is untrue –information about the real perpetrators of, *inter alia*, the ordinary criminal acts was deliberately omitted. The information about Germans held in concentration camps in Poland after the end of the war is also untrue, since such camps did not exist, and the photographs on the posters have no documentary value and it is impossible to identify them.

A relevant circumstance concerning the posters is not only their content, but also their layout. ... Attention is drawn to the fact that the key statements included in the headlines [and] beginnings of the paragraphs are written in large fonts and in bold. This layout is supplemented by the confrontational and ironic combination of the highlighted statements; for example, ‘a heartfelt welcome to the European Union’ is followed by the statement ‘the justice [system] is working diligently, because murder is not subject to statutory limitation’.

The posters did not indicate the Polish as murderers, but referred to ‘the Poles and the Czechs’ – such a statement attributes [responsibility for] the German victims to the Poles and the Czechs.

The numbers included in the headlines of the posters and their context indicate that they concern Poland and the Czech Republic. ...

The experts clearly affirmed in their opinion that the contents of the posters are untrue and are not supported by the research of Polish and German historians.

The accused put up the posters at night so as to avoid being seen. This circumstance indicates that they were afraid of being noticed by third persons and possible arrest by the police.

It is of particular importance that the accused were previously sentenced in Poland for the commission of an administrative offence under Article 63a § 1 of the Code of Administrative Offences, which consisted of putting up about one hundred crosses with the inscription ‘The Germans 1945-46’. This act of the accused had significant social repercussions, and the fact that they were sentenced indicates that they had to be aware of the legal and social consequences of putting up the posters.

The above-mentioned circumstances, with regard to the untrue contents of the posters, the manner of putting up the posters, the previous conviction of the accused in Poland for an administrative offence, the behaviour of the accused on the day of their arrest, i.e. taking photographs attempting to document their actions, the awareness of the accused of the ironic tone of the headlines in the posters and their interest in history, in particular the period of the Second World War and expulsions – indicates that the accused were aware of the untrue contents of the posters at least in respect of the most relevant issues, [and] indicates that their intention was to insult the Polish nation and to incite hatred.

The accused insulted the Polish nation by putting up the posters. The untruths included in the posters insult the Polish nation, since imputing to the Poles the alleged crimes – which are not scientifically proved – is an affront to the Polish nation. This interpretation of the posters is based, among other things, on the assessment of their contents by third persons and on the reactions of the people who saw the posters.”

The trial court further held:

“The contents of the posters may obviously arouse feelings of unrest, dislike or antagonism between the Polish and German nations. The emphasis in the posters on the alleged Polish crimes, and the inclusion of groundless demands for the return of houses and land left by the German population on Polish territory, may presently revive or arouse antagonism on the part of the Germans towards the Poles. In accordance with the expert opinion the inclusion in one of the posters of a photograph of a skull was solely aimed at stirring up hatred. ...

The degree of social danger of the offence imputed to the accused is high. The putting up of the posters triggered extensive comment in Poland and in Germany. The media publicised it, and articles were published in the press [in which] the event was criticised as damaging to Polish-German relations. Although the posters were in the German language, they were put up in an area where knowledge of German is relatively good, and thus many people were able to understand their content.”

With regard to the sentence, the court had regard to the applicants’ previous conviction by a judgment of the Wrocław-Śródmieście District Court of 9 May 2003 for an administrative offence specified in Article 63a § 1 of the Code of Administrative Offences. It noted that despite that conviction, the applicants had continued their activities, which they regarded as a sort of “mission”. The court underlined that the activities of the accused had not led to similar events in the region, and thus they could be seen as incidental. In those circumstances, suspending their prison terms

was justified as there were no grounds to believe that the applicants would reoffend.

#### *4. The applicants' appeal*

The applicants filed an appeal against the Regional Court's judgment. Firstly, they alleged that the court had committed a number of procedural errors. They claimed, *inter alia*, that when considering whether the offence of insulting the Polish nation had been committed, the trial court had blindly followed the expert opinion prepared by historians and failed to properly consider the matter itself and to examine the contents of the posters. The experts, for example, had failed to notice that the posters distinguished between German deaths in Soviet, American and other camps and wrongly assumed that since the posters were addressed to the Poles, the latter could automatically be considered as being held responsible for those deaths. Furthermore, the court had wrongly assumed that inclusion in the poster of inaccurate data related to historical events had implied that the content was insulting and incited hatred.

The applicants contested the trial court's refusal to admit certain evidence and alleged that it had arbitrarily assessed the evidence. In particular, they challenged its refusal to admit a second expert opinion alleging that the first one had been contradictory. For example, the experts had concluded in their opinion that the content of the posters had been entirely untrue, while at the hearing they had admitted that some of the information contained therein had been true. Furthermore, they had wrongly assumed that a concentration camp was equivalent to an extermination camp. They also contested the refusal to admit in evidence the files in the cases against C.G. and S.M., who had been charged with crimes against humanity as commanders of Polish [post-war] camps for Germans.

Secondly, the applicants argued that the trial court had wrongly assessed the factual circumstances of the case. In their view, the trial court had erred in considering that the contents of the posters was capable of stirring up unrest, dislike and antagonism and that they had acted with the intention of insulting the Polish nation and inciting hatred.

They averred that the exaggerated manner of their expression concerning the relations between the Poles and the Germans had been exclusively aimed at prompting a discussion about their relations with a view to reconciliation, and could not be considered in any way as an insult. In this connection, they claimed that the posters contained some true historical information and some which was the subject of historical dispute.

With regard to the alleged insult to the Polish nation, they argued that the trial court had failed to distinguish between statements which were unfavourable to the Polish nation and those which were insulting. Furthermore, Article 133 of the CC should have been construed narrowly in a modern State based on the rule of law and could not be used as a tool to protect one interpretation of history.

With regard to the trial court's findings concerning incitement to hatred, the applicants submitted that they had been based, *inter alia*, on their demands for the return of German property expropriated by Poland. They underlined that they had not advocated the shifting of borders but had argued in favour of the return of privately owned property, and the trial

court had failed to justify why such an opinion could be considered an incitement to hatred.

Lastly, the trial court had erred in dismissing the applicants' submission that they had been solely motivated by their wish to inform the Polish public about the mass murder of the German civilian population.

### *5. Court of Appeal's judgment*

On 30 August 2006 the Wrocław Court of Appeal dismissed the applicants' appeal and upheld the first-instance judgment. It ordered the applicants to bear some of the costs of the appeal proceedings.

The Court of Appeal found that the trial court had committed no breaches of procedure. The evidence collected in the case had been comprehensive and sufficient to examine the case and there was no need to admit the evidence proposed by the applicants. In particular, there was no need to admit in evidence the files in the cases against the commandants C.G. and S.M. since they could not be used to determine the soundness of the charges against the applicants.

The Court of Appeal noted that it had been necessary to examine the applicants' actions in the historical context of the Second World War and the period following it. To this end the court had ordered the preparation of an opinion by professors from Wrocław University. They had been asked to consider the content of the posters and had stated that:

“the contents of the posters were entirely untrue and contained false information about the situation prevailing on the territories transferred to Polish administration following the undertakings of the Potsdam Conference. The posters also contained untrue information about German losses which did not correspond to the results of research carried out by Polish and German historians”.

The Court of Appeal dismissed the applicants' arguments that the opinion had been incomplete and contradictory. It also rejected their view that the experts had not been in a position to assess whether the contents of the posters had been insulting to the Polish nation or had incited national hatred. The court noted that history was not only a science which determined whether certain facts existed or not, but also drew conclusions from them and examined the reasons for and consequences of historical events in a social and political context. It was within the experts' competence to state that the untrue contents of the posters amounted to an insult to the Polish nation, and to state consequently that the posters were capable of inciting hatred between the two nations, arousing a retaliatory sentiment and antagonism towards the Germans on the part of the Poles. Those findings could not be considered tantamount to a determination of the applicants' guilt, which had been established by the trial court following a consideration of their intent.

The Court of Appeal noted that in historical studies there could be certain differences of opinion as regards, for example, the extent of German losses after the end of the war. The experts had, however, considered this issue, referring to the results of Polish-German research. Furthermore, it observed that although the human tragedies experienced by the Germans, occasioned by their expulsion in particular, could not be disregarded, those events could not be detached from the historical context, namely, the reasons for and the

consequences of the Second World War, including the undertakings of the Potsdam Conference.

The layout of the poster was also analysed by the experts. One of them, Professor W. Sitek, considered that the layout, which consisted in emphasising the numbers of victims and the nationalities involved (the Poles and the Czechs) in the context of photographs depicting the victims, solicited an unambiguous interpretation. The mere visual assessment of the poster by a person with intermediate knowledge of the German language would allow that person to conclude that a vast number of crimes had been committed by the Poles and the Czechs.

With regard to the applicants' intent in respect of the offence of insult, the Court of Appeal found:

"The layout of the posters is one of the elements [which has been taken into consideration] in the assessment of the role which the posters were to play, and was consequently a relevant consideration in the determination of the intent of the perpetrators. The accused consequently assert that their intent was solely to inform the Polish public about the massacres of the German population. The trial court did not accept that line of defence and the Court of Appeal rejects it. [It] is contradicted by the content of the posters, their layout and the conduct of the accused. The contents of the posters are untrue, even deceitful (the experts discuss them in their opinion). The photographs depicting some unknown crimes which supplemented the text have propagandist overtones and no documentary value. Those circumstances alone, together with the elements of irony and maliciousness, ground the conclusion that [the putting up of] the posters cannot be treated as dissemination of information. Moreover, they lose – contrary to the argument of the defence – their educational "enlightening" value on account of their untrue contents. By putting up the posters in Poland the accused were not taking part in a historical discourse on the Second World War, including the fate of their nation, because discussions on such subjects are taking place in different circumstances and at different forums. It is not apparent from the case file that the accused, who are young people (in their early twenties), have genuine historical knowledge. Neither does their education or their life experience so far allow such a conclusion to be drawn. They put up the posters at night, so as to be unseen. On the following day they took photographs of the places where they had put up the posters. Such conduct does not demonstrate that their actions were prompted by motives of "enlightenment". To the contrary, the accused knew that they were acting in breach of the law, carried out their task deliberately, and were well prepared for large scale action, which is evidenced by the significant number of posters that were to be put up.

The Regional Court rightly found that the dissemination, in the form of the impugned posters, of statements which are contrary to the facts, and which attributed to the Poles the role of the murderers, is contradictory to the historical facts accepted by objective historical sources, including by Polish and German historians, and amounts to insulting the Polish nation. The Regional Court thoroughly examined the interpretation of the term "insult" and its analysis merits approval. ... An insult to the Polish nation does not necessarily have to be expressed by the use of epithets, [or] words commonly considered offensive or vulgar. It can also consist of smear (calumny) of the kind which, due to the weight of the untrue statements, is so serious that in light of objective moral values it insults the nation and deprives it of respect and dignity.

In other words, an insult to the Polish nation could consist of the presentation of contents whose [lack of] meritorious substance is an affront to the nation's dignity, undermines its authority and holds it in contempt. To malevolently impute to the Poles a number of acts during and after the Second World War, including massacres [of Germans], and to state that "also in Poland there were forced labour and extermination camps for millions of Germans", is [to state an] untruth, which is an affront to the Polish nation, the first victim of the aggression of Nazi Germany. The weight of such

content is very significant and has far-reaching social repercussions, especially since it is contradictory to historical fact and harmful to the Poles. Taking into account the malicious [and] ironic tone of the impugned posters, it should be excluded that the accused acted with good [and] commendable motives. Accordingly, there is no doubt that the accused were guilty of the offence of publicly insulting the Polish nation, that is, the act specified in Article 133 of the CC.”

With regard to the offence of inciting hatred, the Court of Appeal held:

“To make out the statutory element of [the act of] “inciting” (within the meaning of Article 256 of the CC) it suffices that the perpetrator intends to stir up feelings of hostility towards the persons specified in this provision. He must intend to arouse such feelings. The inciting must then consist of content which is capable of arousing hatred, that is, hostility, and intense dislike of someone. ....

Through their content the impugned posters were capable of arousing such negative feelings, which is evidenced by the reaction of people[who saw them], and the assessment of the experts, which confirms the findings of the trial court as regards the making out of the statutory elements of the act specified in Article 256 of the CC. The intent of the accused manifests itself in the manner of their conduct, and, taking into account their previous activities, including their conviction for an administrative offence under Article 63a § 1 of the CAO, there is no doubt about the soundness of their conviction of the ... offences imputed to them in the judgment.”

Lastly, the Court of Appeal held that the penalties imposed on the applicants were commensurate with the degree of their guilt and the social danger of their acts.

## B. Relevant domestic law

### Article 133 of the Criminal Code

“Anyone who insults the Nation or the Republic of Poland in public shall be subject to deprivation of liberty for up to three years.”

### Article 256 of the Criminal Code

“Anyone who publicly promotes a fascist or other totalitarian system of state or incites hatred based on national, ethnic, racial or religious differences or for reason of lack of any religious denomination shall be subject to a fine, restriction of liberty or deprivation of liberty for up to two years.”

## COMPLAINT

The applicants complain that their conviction for insulting the Polish nation and incitement to hatred was in breach of Article 10 of the Convention. They argue that Articles 133 and 256 of the Criminal Code should be narrowly construed in order not to stifle historical debate for political reasons. They could not be punished for the dissemination of facts, even if those facts were damaging to the honour of a nation. Even if some figures quoted in the posters were not accurate, it is beyond dispute that terrible crimes against German civilians were committed during the period of expulsion by Polish civilians, civil servants and soldiers. There are well-documented sources confirming those and other events, such as the existence of camps for Germans in post-war Poland. They draw parallels between Article 133 of the Polish Criminal Code and Article 301 of the

Turkish Criminal Code, which criminalises statements denigrating the Turkish State.

**QUESTION TO THE PARTIES**

Has there been a violation of the applicants' right to freedom of expression, in particular their right to impart information and ideas, contrary to Article 10 of the Convention? Specifically, did Article 133 of the Criminal Code meet the "quality of the law" requirements established in the Court's case-law (cf. *Dink v. Turkey*, nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, §§ 112-116, 14 September 2010; and *Altuğ Taner Akçam v. Turkey*, no. 27520/07, § 85-96, 25 October 2011)?