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The New Yorker Magazine
The New Yorker, 1 World Trade Center,
New York, NY 10007.

Statement by Filomena Leszczyńska's Lawyers

On behalf of Ms. Filomena Leszczyńska we would like to express our grave concerns over the amount of untrue, misleading and inaccurate information regarding the case of Leszczyńska v. Engelking and Grabowski presented in the article "*The Historians Under Attack for Exploring Poland's Role in the Holocaust*". We would like to take this opportunity to rectify some of the information featured in the said article.

We encourage and urge the Editor-in-Chief of *The New Yorker* to publish our letter so that readers can learn about the other side of the proceedings, that of the plaintiff, Filomena Leszczyńska. We firmly believe that *The New Yorker's* readership deserves a full picture of both sides. The elderly and disabled Filomena Leszczyńska also deserves to be heard.

I. It is untrue that "*Scholars face defamation suits, and potential criminal charges, in the Polish government's effort to exonerate the nation of any role in the murders of three million Jews during the Nazi occupation.*"

First of all, the plaintiff in the case was F. Leszczyńska, an 81-year-old, disabled woman of modest means, living in a small village in Poland with no internet access, excluded because she is neither rich nor famous, nor educated to university level. Her uncle E. Malinowski was described in an academic publication (sponsored by the Polish government) as a thief complicit in the murder of several Jews, with no substantive evidence to prove his guilt. Filomena Leszczyńska was the only plaintiff in the case. No other plaintiff participated in the litigation (neither the Polish government, nor any Polish organisation, including foundations or institutions). **The Polish government has nothing to do with the lawsuit except for the fact that they financed the book (the Polish Ministry of Science and Higher Education allotted a \$140,000 research grant to the authors).**

Secondly, Filomena Leszczyńska never filed any criminal charges against the scholars. Under Polish law, she would be the only person with the right to do so (art. 212 of the Polish Criminal Code). We would like to emphasize that F. Leszczyńska never wanted or planned to file any criminal charges against the scholars, nor is she contemplating it now.

Thirdly, the civil court's task in these proceedings was not to establish historical facts but to scrutinize the scholars' methodology and answer the following questions:

- a. Did the scholars have the right to represent E. Malinowski as a denouncer, thief and criminal based on the many documents available to them (some of which contained contradictory accounts)?
- b. Did the scholars have sufficient evidence to accuse Malinowski of complicity in murdering several Jews and stealing personal items from Jewish Survivors?

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- c. Did the scholars carry out their research using a professional methodology appropriate for historical analysis, and did they ensure the accuracy of their findings?
 - d. Did the scholars carry out their research with due diligence?

The court ruled that the scholars had failed to exercise due diligence and apply a valid methodology.

II. It is untrue and slanderous that Malinowski “led Germans to Jews who were in hiding, and, as the mayor of the village, he represented a connection between the Polish state and Nazi atrocities.”

First of all, Malinowski did not represent “a connection between the Polish state and Nazi atrocities.” During War World II there was no Polish state at all. The territory of pre-war Poland had been divided up by Soviet Russia and Nazi Germany. The Germans appointed the village mayors. It was neither a job, nor were the mayors volunteers (they faced punishment if they refused the position or failed to follow German orders). Detailed information about the duties and responsibilities of mayors can be found in Bogdan Musiał’s book *Kto dopomoże Żydowi* (Who Will Help the Jew?).

Secondly, there is no evidence that Malinowski betrayed any Jews. The court indicated that the author, Barbara Engelking:

- a. Had confused two men of the same name (merging their biographies into one) – Engelking admitted to having confused and merged two different Edward Malinowskis.
- b. She had misrepresented the number of Jews killed in Malinowo – she writes of “several dozen Jews,” but according to the historical documents 18 Jews were killed.
- c. She relied on unproven, unchecked and moot gossip to accuse a man of complicity in murdering Jews and stealing Survivors’ possessions – according to the court, the scholar accused Malinowski with no substantive evidence.

The court also brought attention to the fact that the Jewish woman on whose testimonies Engelking relied had altered her testimony several times during different periods. During the proceedings it turned out that there were other, different, testimonies by her (at least five different versions), some of which were known to the author, B. Engelking.

We would also like to point out that:

- a. The sons of the Survivor (who were called as witnesses by the defendants) denied that the Survivor had ever represented E. Malinowski as the man who had betrayed a group of Jews in Malinowo in 1943 to them.
- b. In the book, B. Engelking omitted the testimonies of other Jews who testified in defence of E. Malinowski after the war – for example the absolutely crucial testimony of **Lejba Prybut**. Prybut testified that he had been in hiding at Malinowski’s and that he witnessed the killing in Malinowo in 1943. The historical documents also prove that he was a Jewish guerrilla fighter at the time. After World War II, he was not afraid to accuse another Polish mayor of betraying a group of Jews and testified against him. During Malinowski’s trial, he attested to Malinowski’s innocence and identified the real denouncer (a forester from a nearby village who was killed by

Jewish guerrillas after the denouncement and massacre of the group of Jews). Lejba Prybut's testimony was of vital significance in establishing the innocence of E. Malinowski. B. Engelking was aware of these facts, since she cited Prybut's biography in the same book.

Therefore representing Edward Malinowski as a denouncer violates the personal rights of F. Leszczyńska.

III. It is untrue that "Two Polish historians of the Holocaust, Jan Grabowski and Barbara Engelking, are fighting a court ruling that pronounced them guilty of defaming a long-deceased Polish village official."

First of all, we are dealing with a normal civil (not criminal) lawsuit similar to other lawsuits well-known in almost every legal system. The scholars were neither sued nor accused. According to the Polish civil procedure, a civil court cannot "find a defendant guilty" – it is only able to affirm or dismiss the claims of the plaintiff. By using the word "guilty" the article suggests that we are dealing with a criminal case.

Second, the court did not pronounce the scholars "*guilty of defaming a long-deceased Pole*. **The court adjudicated, addressed, and affirmed the personal rights of F. Leszczyńska, not those of the late Edward Malinowski.** The deceased cannot be defamed under Polish law. However, it is possible to defame the relatives of deceased persons by publishing untrue, unproved, imprecise, inaccurate, and moot information that harms the family's good memory of the late relative. Every human being has the right to keep good memories of their loved ones. The European Court of Human Rights has reiterated this right in dozens of rulings. The European Court defines this right as part of the human right to private and family life (article 8 of the European Convention on Human Rights and Fundamental Freedoms).

The court therefore did not pronounce the defaming of a deceased person, but only confirmed that F. Leszczyńska's personal right to keep a good memory of the late Edward Malinowski had been violated.

IV. It is untrue that Malinowski "had been instrumental in the deportation of a young woman from his village to Germany. Away from the people who knew she was Jewish, the woman became just another Pole."

The woman in question was not an inhabitant of Malinowski's village. In fact, she was completely unknown to E. Malinowski. Her sister, child, and her sister's children had been caught in the forest near Drohiczyn (approximately 20 km from Malinowo), an event she saw from a distance. She ran to Malinowo, where she asked to see the mayor. She then told E. Malinowski (the mayor) that she was a Jew and asked him to present her as a Pole before the German authorities so that she could be sent to Germany, which would save her life.

It is important to keep in mind that in German-occupied Poland providing any help to Jews was prohibited and punished by death. Often the helper would be punished along with his or her family, or even the whole village. The Germans had no qualms about killing even little children.

E. Malinowski's household included 16 family members, among them several children. Jeopardising their lives, along with possibly the lives of the entire village, he nonetheless agreed to assist an unknown Jewish woman. We can only imagine what would have happened

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had the Germans realized that she was Jewish. Perhaps many people would have been killed that day, including children.

V. **The information that "*In postwar Poland, the woman testified that Malinowski saved her life*" is not entirely accurate.**

After the war, a handful of people from Malinowo accused E. Malinowski of having denounced Jews and of having been in contact with the Polish anti-communist resistance under Soviet occupation.

During Malinowski's trial, almost the whole village testified on his behalf, including the rescued Jewish woman. It should also be noted that three Jews testified on behalf of Malinowski during the proceedings, including two eyewitnesses (Lejba Prybut and Chuna Kaplan). All of them stated that they had hidden at Malinowski's during the war; they pointed to the forester of Czarna (a nearby village) as the denouncer, and they confirmed that the traitor had been killed by guerrilla fighters.

It needs to be stressed that the Jewish woman only knew about the massacre by hearsay. She was not in Malinowo at the time, unlike the two other Jews and the Malinowo inhabitants who testified at Malinowski's trial.

VI. **It is untrue that "the Polish League Against Defamation conscripted Malinowski's ailing niece, Filomena Leszczyńska, who is eighty-one, to bring the lawsuit."**

The plaintiff testified that she had heard a program about Engelking's and Grabowski's book on Polish radio. During the program, the story of her uncle was presented. She didn't know what to do, how to react. Some time later M. Świrski arrived in Malinowo, checking the facts in the scholars' book. He asked about E. Malinowski's family and was welcomed by Filomena Leszczyńska. Ms. Leszczyńska told him about her uncle and it was she who asked him to help her file a lawsuit. Ms. Leszczyńska is 81 years old, disabled, excluded, and of modest means. She could not afford to pay an attorney specialised in human and personal rights or even to pay the court fee.

Summary:

1. F. Leszczyńska's lawsuit has no bearing on any contemporary or future Holocaust research. The judgement does not set a precedent and affects only the parties to the proceedings and no one else. In no way does the judgement prohibit or restrict Holocaust research. Scholars who carry out their research with due diligence run no risk of being sued.
2. The lawsuit was a civil, not a criminal one, the scholars were not accused. The plaintiff was a private individual and not the Polish government or any other Polish organisation or institution. The Polish government's only involvement was limited to having allotted funding for the scholars' publication (a research grant worth approximately 140,000 USD).
3. The proceedings were based on the Polish civil code which has protected personal rights since 1964. One of the personal rights existing in entrenched and acknowledged legal doctrine is the right to keep good memories of deceased relatives. Besides the Polish civil code, no other legal acts were invoked in the lawsuit.

4. The object of the lawsuit was not to establish historical facts. The court's task was only to examine whether the scholars had analyzed the available documents (many of them contradictory) with due diligence. The Polish court pointed out that unfortunately the scholars had failed to apply due diligence, which violated the rights of E. Malinowski's niece (F. Leszczyńska).
5. It was not a Strategic Lawsuit against Public Participation.
6. The case has no influence on Holocaust research or debate. If scholars carry out their research with due diligence the court dismisses the claims of potential plaintiffs.

To conclude, we would like to say that it is with great pain that we have been following how the lawsuit brought by our client, Filomena Leszczyńska, has been made out to be an attempt to restrict or even suppress Holocaust research and to curtail academic freedom. We have even heard opinions that the litigation should not have taken place, Filomena Leszczyńska should not have filed a lawsuit, and the court should have dismissed the case at the very beginning with no hearings or analysis of the evidence.

What such opinions suggest is that F. Leszczyńska should be denied the right to a fair trial, this being a basic human right, one of great significance, guaranteed by multiple statutes, constitutions, and conventions across the world. **As lawyers, we are profoundly saddened to hear of the denial of human rights to anybody**. Nothing justifies depriving our client of her human rights, and modern society based on equal rights and equality before the law cannot justify this form of discrimination. As a woman, a lawyer, but in particular as a feminist, I – Monika Brzozowska-Pasięka, must strongly object against any form of discrimination of women (in particular older, disabled, and excluded ones).

There are many similar proceedings all over the world. Recent examples include lawsuits filed against historians or institutions:

- A. 2020, Germany: Dr. Anna Hájková, a Czech historian, announced that a Jewish woman Survivor had had an intimate, lesbian relationship with a German Nazi guard. At the moment of publication, the Survivor had been dead for 10 years. The Survivor's daughter filed a lawsuit with a German court seeking apology and compensation. As in Leszczyńska's case, the German court held in favour of the plaintiff (the Survivor's daughter). <https://www.theguardian.com/education/2020/oct/08/survivors-daughter-sues-historian-claim-lesbian-liaison-nazi-guard>
- B. 2011, Poland: Adam Michnik, editor-in-chief of a daily newspaper, filed a lawsuit against the Polish Institute of National Remembrance for violating the memory of his father, Ozjasz Szechter, in a historical article. At the moment of publication Ozjasz Szechter hadn't been alive for years. As in Leszczyńska's case, the court held in favour of Adam Michnik (plaintiff). <https://www.newsweek.pl/polska/ipn-ma-przeprosic-michnika-michnik-wygral-proces-z-ipn/pe188rh>
- C. 2021, Germany: Just a week after Leszczyńska's judgement, a court in Germany held in favour of Georg Friedrich Ferdinand, Prince of Prussia, in a lawsuit filed against the German historian Winfried Suess. The historian was brought to court for a statement he made about the Hohenzollern family during a historians' debate in 2019. The

prince of Prussia won the litigation. <https://www.reuters.com/article/us-germany-royals/germanys-ex-royal-family-win-legal-case-against-historian-idUSKBN2AI2RI>

Similar cases have also been heard by the European Court of Human Rights – and mostly concluded in favour of the plaintiff and against the historians. An extensive list of similar cases against historians can be found in various legal publications, including online articles.

The above-mentioned lawsuits reflect a simple truth: there are many similar cases, and Leszczyńska's case is by no means unique. There were no massive complaints, debates, public support for the sued historians or institutions in the above-mentioned cases. We have not observed massive concerns in the above-mentioned cases over possible limitations of historical debate. We don't know why it is only our client who is being denied the right to a fair trial and the protection of her personal rights. **We find no legal argument to prevent Ms. Leszczyńska from enjoying her rights (including her right to a fair trial and her right to protect the good memory of her late uncle), taking into account that other plaintiffs all over the world have exercised the same rights and were not accused of trying to stifle historical research or debate. Why then is our client being accused of restraining historical debate? Is it because of her nationality (Polish), her disability (almost blind), her age (81 years old), her gender (female), her faith (Roman Catholic), her place of residence (a village), her education status (not having an academic degree), her social status (not being a famous and rich man)?**

What are the criteria that exclude her from exercising her rights? From our legal perspective, we cannot see any. Moreover, if Ms. Leszczyńska was to be deprived of her rights on any count, it would mean discrimination. As lawyers, we must oppose all discrimination on grounds of race, skin colour, gender, sexual orientation, age, education, beliefs, etc.

At the end of our letter, we believe that an article in *The New Yorker* is necessary in order to clarify that F. Leszczyńska had every right to bring the lawsuit.

If F. Leszczyńska had not brought the lawsuit against the scholars, everyone would be entitled to call E. Malinowski a traitor and denouncer with no legal consequences. Why? It would be enough to invoke the academic publication authored by well-known Holocaust scholars (the author, B. Engelking, is a doctor of sociology and a professor at the University of Warsaw). Readers of academic publications are entitled to assume that a scholar accusing someone of murdering or of having been complicit in murder must have absolutely substantive and undisputed evidence. Accusing anybody of complicity in murder is one of the worst accusations. Therefore any accusation must be supported by undisputed documents, unequivocal eyewitness testimony, and indisputable accounts. Every scholar (in any field) needs to carry out their research with due diligence and accuracy.



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Please do not hesitate to contact us should you have any further questions. We can present all the documents and we are open to attend and take part in podcasts, meetings, webinars or conferences.