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Statement on behalf of Filomena Leszczyńska

Observing the amount of false, untrue, and inaccurate information currently circulated in the media, on behalf of Filomena Leszczyńska we would like to present a number of corrections regarding the case of Leszczyńska v. Engelking and Grabowski.

We urge journalists, editors-in-chief, politicians, and historians to use this information when preparing their articles, speeches, statements or announcements (CC Licence). We firmly believe that the elderly and disabled Filomena Leszczyńska deserves to be heard.

I. **It is untrue that the case will restrict or prevent Holocaust research.**

**The case has no impact on past, contemporary, or future Holocaust research. The court has not barred any Holocaust research, nor does the case affect it. The purpose of the hearing was never to determine or establish historical facts or order anyone to abstain from carrying out research on the Holocaust in Poland or elsewhere.** The civil court's task in these proceedings was 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 of stealing personal items from Jewish survivors?
- 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. The judgment does not set a precedent nor has precedential influence on any other civil case. **There have been many similar cases before this one and there are certainly more to come, with no impact on any historical or academic research.**

II. **It is untrue that a Polish court found the scholars guilty or that the scholars faced criminal charges or that the scholars were accused/sentenced.**

First of all, it was a typical civil lawsuit similar to many identical lawsuits filed in courts all over the world. In the past there have been many similar cases against scholars or historical institutions and no one was forced to abstain from carrying out historical or academic research or publishing their findings.

Secondly, the scholars were neither sued nor accused nor sentenced. They faced a civil lawsuit (a civil complaint). As they were never charged or accused, the court could not sentence them or find them guilty. F. Leszczyńska never brought or intended to bring criminal charges against B. Engelking and J. Grabowski.

**III. It is untrue that the Polish government or any Polish governmental agency or institution took part in, paid for, or was otherwise involved in the case.**

First of all, all the attorneys handling the case worked *pro bono*. A Polish non-governmental organization, the Polish League Against Defamation, paid the court fee on behalf of Filomena Leszczyńska, who could not afford it. **The Polish government has nothing to do with the lawsuit except for the fact that they financed Engelking and Grabowski's book (the Polish Ministry of Science and Higher Education had allotted a \$140,000 research grant to the scholars).**

Neither F. Leszczyńska nor her lawyers ever contacted or were contacted by the Polish government or any member thereof, or a Polish governmental agency, whether prior to filing the lawsuit, during the court proceedings or after the issuing of the judgement. The lawyers have no knowledge as to whether the Polish government (or any member thereof) was even aware of the case before the judgement was handed down.

**IV. It is untrue that the Polish court held in favour of or addressed the rights of a deceased person.**

The legal basis of the judgement was F. Leszczyńska's personality right to keep her late relative in remembrance. The court adjudicated, addressed, and affirmed the personality rights of F. Leszczyńska, not those of the late Edward Malinowski. The right to keep a good memory of one's loved ones is part of the human right to private and family life (guaranteed in many international statutes and conventions, including the European Convention on Human Rights and Fundamental Freedoms, article 8).

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

V. **It is untrue that the plaintiff Filomena Leszczyńska was manipulated/forced/persuaded/conscripted by the Polish government (or any member thereof) or by any Polish organisation to bring the lawsuit.**

The plaintiff testified that she had heard a defamatory statement about her late uncle on the radio. She did not know what to do about it. Her uncle E. Malinowski had been 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 it. It was she who asked a Polish NGO to help her, not the other way around.

It should be noted that F. Leszczyńska is 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. Filomena Leszczyńska was the only plaintiff in the case and it was she who made her independent choice to file a lawsuit and bring the case before a Polish court.

VI. **It is untrue and slanderous that Malinowski led Germans to Jews or betrayed Jews or was an accomplice/complicit in murdering Jews in Malinowo.**

The Polish court held that there was no evidence that Malinowski had been involved in exposing the Jews. Secondly, the author of the chapter in which he is mentioned, B. Engelking, testifying in court admitted to having confused two men bearing the same name. She had also confused the number of Jews killed (according to Malinowski's court records there were 18 Jews, while Engelking speaks of "several dozen"). Third, the sons of the survivor (who were called as witnesses by the defendants) denied that the survivor had ever represented E. Malinowski to them as the man who had betrayed a group of Jews in Malinowo in 1943.

It is worth noting that three Jews (two of whom were eyewitnesses and were hiding in Malinowski's house at the time) and almost the entire village of Malinowo testified in defense of Malinowski at his trial after the war. The Jews admitted that Malinowski had hidden them unpaid. One of the testimonies is crucial – that of Lejba Prybut. Prybut was an eyewitness of the events in 1943; he was a Jewish guerrilla fighter and he was helped by Malinowski gratuitously. After the war L. Prybut fearlessly accused the mayor of another Polish village of betraying a group of Jews and testified

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against him. We may therefore suppose that he would also have testified against Edward Malinowski had there been any grounds to do so. His testimony was vital in demonstrating Malinowski's innocence. It should be noted that B. Engelking must have been aware of these facts, since she cited Prybut's biography in the same book. She must also have been aware of the inconsistencies in Estera Drogicka's (Wiltgren's – i.e., the Jewish survivor's) testimonies given after the war (during Malinowski's trial, when she claimed he was innocent) and in her 1996 interview for the Shoah Foundation (when she incriminated *a* Malinowski – and there were several in the village – but also admitted to only knowing about the events of 1943 from hearsay). Despite these numerous doubts (and the fact that the sole potentially incriminating statement was made 53 years after the events), the scholars nonetheless chose to represent Edward Malinowski as a denouncer and despoiler though no unequivocal proof existed.

**Summary:**

1. The case has no influence on Holocaust research or debate. If scholars carry out their research with due diligence – even in the case of a potential libel lawsuit – the court must dismiss the claims of plaintiffs. It must be noted that anyone (including scholars, politicians, journalists, etc.) can be sued for libel. It is the court that assesses the evidence and issues a judgement.
2. F. Leszczyńska's lawsuit and the court judgement affect only the parties to the proceedings and no one else. In no way does the judgement prohibit or restrict Holocaust research.
3. 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 140,000 USD).
4. The proceedings were based on the Polish Civil Code which has protected personality rights since 1964. One of the personality rights protected in entrenched and acknowledged legal doctrine is the right to keep a good memory of deceased relatives. Besides the Polish Civil Code, no other legal acts were invoked in the lawsuit.
5. 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 and drawn reasonable conclusions. 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).
6. It was not a Strategic Lawsuit against Public Participation.



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Below is a short summary of the historical facts relevant to Filomena Leszczyńska's lawsuit (none of which were established by the court). The historical facts are presented only for the benefit of readers.

Year	Event
1942	The Germans liquidated the ghetto in Drohiczyn. The survivor and her family were hiding in the forest. The survivor's family (her sister along with her children as well as the survivor's son) were captured. The survivor ran from the scene and arrived in Malinowo. She asked the mayor to rescue her and present her to the German authorities as a Pole who had escaped from forced labor. Malinowski complied with her request, saving her life.
1943	The Germans murdered 18 Jews in Malinowo. According to eyewitnesses (including Jews – the guerrilla fighters Lejba Prybut and Chuna Kaplan) the Jews had been denounced by the forester from the nearby village of Czarna.
1944	The survivor came to Malinowo on "leave" from Germany. She stayed in the house of another Edward Malinowski (hereinafter "young Edward Malinowski") – the last name was common in Malinowo. She became friends with the young Edward Malinowski's family. One day the wife of the forester of Czarna came to young Malinowski's house complaining that the guerrilla had killed her husband for betraying Jews in hiding – events that the survivor had not witnessed and only knew about from hearsay.
1948	The survivor submitted her resume to the UB (Security Office) – she was a teacher at a summer camp for children of UB officials. In this resume she presented a different version of her escape to Germany and of the death of her family from the one in the account recorded for the Shoah Foundation.
1948	A handful of Malinowo inhabitants, including the young E. Malinowski in whose house the survivor had stayed in 1944, wrote a letter to the Security Office, alleging E. Malinowski to have been a denouncer during WWII and to have had contacts with the anti-communist underground after the war. The prosecutors launched an investigation and filed charges. If convicted, Edward Malinowski could have received the death penalty.
1949	Almost the whole village of Malinowo sent a statement to the Stalinist prosecutor on behalf of Malinowski's innocence pointing out in particular that Malinowski had not betrayed the hiding place of the Jews in 1943.
	At approximately the same time the wife of E. Malinowski and his son were accused and

	sentenced to a term in prison for contacts with the anti-communist underground.
1950	<p>Almost the whole village testified on behalf of Edward Malinowski during his trial. Three Jews, two of whom were eyewitnesses of the 1943 events and had been helped by Malinowski during the war, testified during the proceedings. One of the testimonies is of vital significance – that of Lejba Prybut. Not only had he been a Jewish guerrilla fighter during WWII, but he was also a courageous man who accused the mayor of another village – Józwiak – of having betrayed Jews. Prybut’s testimony was crucial in establishing the innocence of Malinowski. The author B. Engelking must have been aware of Prybut’s testimony in Malinowski’s trial since she described his indictment of mayor Józwiak in the same book (in the same chapter).</p>
1950	<p>The communist court acquitted Malinowski despite the letter to the Security Office in which the informers accused Malinowski of contacts with the Polish anti-communist underground (a serious charge in postwar Poland).</p> <p>Interestingly, the court file contains information that Malinowski had helped unknown Jews and an injured Soviet soldier during WWII. After the war his family had contacts with the Polish anti-communist underground.</p>
1996	<p>The survivor, Estera Drogicka (Wiltgren) recorded her testimony for the USC Shoah Foundation. In the recording she mentions 5 Malinowskis: Edward Malinowski – the mayor of Malinowo since 1942/43; Adolf Malinowski – former mayor of Malinowo; the young Edward Malinowski; Edmund Malinowski, and a Malinowski with no name (whom she describes as a cousin of the young Edward Malinowski). She describes a visit by the denouncer’s wife (the forester of Czarna) at the house of the young Edward Malinowski in 1944. Of the massacre the survivor says that before it occurred the traitor “<i>and a Malinowski went to the gendarmerie</i>” (presumably to denounce the Jews hiding in the forest). The survivor does not explain which of the Malinowskis went to the gendarmerie, nor why a Malinowski went to the gendarmerie with the traitor. It must be noted that in fact nobody knows whether or not <u>any</u> Malinowski went to the gendarmerie. The survivor knew about the massacre of Jews by hearsay from the young Malinowski (who denounced Malinowski the mayor to the Security Office after the war) – she was not in Malinowo in 1943 to witness it.</p> <p>Moreover none of the people present in Malinowo on the day of the massacre confirmed that a Malinowski had gone to the gendarmerie. In fact they testified that it was the Germans who arrived at Malinowski’s (the mayor’s) house, ordered Malinowski to take a few men from the village, and ordered one of the inhabitants to summon the forester of Czarna. The forester</p>

	<p>(whom Prybut and Kaplan later identified as the denouncer) went with the Germans at the head of the group, Malinowski and the forcefully summoned inhabitants of Malinowo went behind. The Germans were shown the Jews' hiding place by the forester. When the Germans started to shoot at the Jews the group of inhabitants of Malinowo had not reached the forest yet (they were in a nearby field). After the massacre, the Germans made them bury the bodies.</p> <p>And even assuming that a Malinowski had gone to the gendarmerie before the massacre – which one was it? Edward Malinowski – the mayor, Adolf Malinowski – the former mayor, Edmund Malinowski, the young Edward Malinowski, or the young Malinowski's cousin?</p> <p>Assuming that it was Edward Malinowski (the mayor) nobody knew what he went to do there – was he there to accompany the denouncer, was he summoned by the Germans – what role (if any) did he play?</p> <p>It should also be pointed out that during WWII the Germans forcibly appointed a mayor in every village whose duty was to report any Jews to the Germans on pain of death to himself, his family, or the entire village. It would have taken extraordinary courage to assist any Jews, as Malinowski did by helping Estera Drogicka (Wiltgren) and the Jewish guerrilla fighters, whom he regularly provided with food and shelter.</p>
2019	<p>The survivor's sons (called as witnesses by the defense) testified that the survivor never represented Edward Malinowski to them as the man responsible for the betrayal of a group of Jews and complicit in the massacre in the Malinowo forest in 1943.</p>

*For the record, the second son of Edward Malinowski – Henryk – hijacked a plane from Gdańsk and fled to Sweden in 1949. He asked for asylum which he was granted. It is a famous story of an escape from communist Poland.*



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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.