From Sovietization to Democratization of Justice in Poland (1944 – 1997)

By *Bronisław Sitek* and *Albert Pielak*

I. Introduction

The justice system in Poland after the Second World War underwent thorough systemic transformations caused by the military introduction of the new communist political system. Poland was established within this political framework, in which the communist assumptions were introduced into the justice system. This period runs from 1944 to 1989. The road from Sovietization to the democratization of the justice system includes three main stages.

The first part covers the years 1944 – 1955 – the period of the introduction by force of a new political system in Poland, modeled on the solutions of the Soviet system. The judiciary was completely subordinated to political needs.

The second period covers the years 1956 – 1981, so the time from the so-called the Polish Thaw initiated by the 20th Congress of the Communist Party of the Soviet Union (CPSU) in Moscow (Russia). The effect of these events was a strong public hope for changes aimed at the normalization of the organization and functioning of the judiciary in Poland. However, this period is characterized by the stabilization of the communist justice system in Poland. The beginning of the efforts to democratize the judiciary in Poland was the establishment of Solidarność movement in 1980 and the articulation of the multifaceted needs of democratic changes on its forum. Ultimately, a symbolic act of defending the communist order was the introduction of martial law in Poland in 1981 and the banning of Solidarność Movement.

The third period covers the years from 1982 to 1997, and thus the time of the evolutionary democratization of the judiciary in Poland. These are events which included the political transformation in Poland as well as Central and Eastern Europe. It is worth noting that in the Polish model, the institutions characteristic for the rule of law in the judiciary[1] began to function even before the complete system transformation in 1989. The year 1997 symbolically ends these changes with the adoption of the new Constitution of the Republic of Poland in Poland.

[1] For example, the Constitutional Tribunal or the Supreme Administrative Court.

The authors used mainly the historical-legal and formal-dogmatic methods. It is worth noting, however, that the times of the communist rule in Poland are characterized by a large discrepancy between law in books and law in action. Therefore, it was necessary to make comments on the sociological and psychological determinants of the law of the Polish People's Republic. This approach is close to the method of legal realism.

Due to the wide time frames and because of multiplicity of detailed issues, the authors made an appropriate selection and hierarchy of content. The authors focused on the most important phenomena, but also tried to indicate at least some specific problems. The conclusions attempt to present generalized reflections, which may be helpful in interpreting the Polish model of democratization of the justice system.

II. Part I: Period 1944 – 1956, Introduction of the Soviet Model of Justice

1. Introductory Issues

The subject of this part of studies is the process of the sovietization of the Polish justice system in 1944 – 1956. Such a determination of the time interval is justified by historical facts. The year 1944 was the time when the Soviet Army entered the territory of the present Republic of Poland – it means they crossed the Curzon line agreed, by the leaders of the three power countries: Russia, United States of America, and Great Britain, during the Tehran Conference as the border between Poland and Russia. On 22nd July 1944, the so-called The Lublin Committee, a provisional government, a puppet body of executive power, completely dependent on the Soviet authorities, issued the first ideological document called the Manifesto of the Polish Committee of National Liberation. Thus, the period of Sovietization, or Stalinist terror, began in Poland, and its greatest intensity lasted until 1956, when the period of the Polish Thaw began, which started with the 20th Congress of the Communist Party of the Soviet Union. It was then that Khrushchev publicly criticized the cult of personality in the political system of the Union of Soviet Socialist Republics.

At the very beginning, it is necessary to clarify the meaning of the term "Sovietization". This concept covered a number of procedures implemented in Poland as well as in other Central and Eastern European countries, which, as a result of the agreements with Yalta and then with Potsdam, became the sphere of influence of the USSR. Sovietization is primarily the military imposition of a new system in Poland, including the army, police, public administration, and the judiciary. It was also a time of intense Marxist indoctrination of the whole society. Following the Soviet solutions, a security system was developed with very broad powers to surveillance every sphere of life. Often, political opponents were physically eliminated, control of social and youth organizations was taken, the struggle against the Catholic Church was in-

itiated and, in fact, civil rights and liberties were not respected. There was also no freedom of speech during that period.

The effect of sovietization was to create a unified society in terms of world outlook. The individual, in such a society, was to be directed according to the will of the party. The Russian dissident – Alexander Zinoviev began to describe a member of such a target society as *homo sovieticus.* This concept was explained by the famous Polish philosopher Józef Tischner in the second half of the 20th century.

Soon enough, the new communist authorities in Poland, with the great support of numerous Russian advisers present in Poland, subjugated the police, army, and public administration. Using the salami tactic (Hungarian: *Szalámitaktika*), the representatives of democratic parties were gradually eliminated, accusing them with fascist and anti-Soviet views. Police, army, and public administration became essential components of the new totalitarian system.[2]

In this view of the political changes which took place in Poland after World War II, a fundamental question arises about the functioning and role of the judiciary in creating the new totalitarian state?

2. Characteristics of the Functioning of the Judiciary

Prima facie, it would seem that the justice system in Poland looked quite good after defeating Nazi Germany. This erroneous belief can be based on the fact that during the German occupation in the General Government[3], so on a small part of the pre-war territory of Poland, Polish courts operated under German control with quite well educated pre-war legal staff, especially judges. Such courts did not function in the areas incorporated directly into the Third Reich, for example: in the Warta or in Silesia. The scope of jurisdiction of Polish courts was limited mainly to civil and criminal cases which did not fall within the competence of German courts. After the war, these judges found employment in courts organized by the communist authorities within the newly shaped state borders.

The Soviet authorities, along with the Polish communists who favored them, tried to maintain the appearance of legalism. This was reflected in the preservation of a large part of the pre-war legislation. Only the April Constitution of 23rd April 1935, which legitimized the political system of the Sanation (Sanacja) in interwar Poland, was rejected. In this way, the illusion of introducing the new regime through

[2] *S. Phillips*, The Cold War: Conflict in Europa and Asia, Heinemann 2001, p. 33.

[3] The General Government was created on the basis of the ideas from World War I when Germany wanted to create a puppet state of the Kingdom of Poland within Central Europe. See: *C. Madajczyk*, Generalna Gubernia w planach hitlerowskich, Warszawa 1961.

democratic changes, not revolution was given. However, new tasks were placed before the judiciary.[4]

In the above-mentioned Manifesto, it was stated that the task of independent Polish courts will be to ensure the speedy administration of justice. This seemingly calm phrase was in fact a reference to the summary courts introduced in the USSR under NKVD (The People's Commissariat for Internal Affairs) order No. 00447 of 30th July 1937.[5] The purpose of these courts was the rapid, mostly physical, elimination of "anti-communist elements." The indication in the Manifesto of the need to ensure the speed of court proceedings was a clear encouragement for the judges to join the process of supporting the building of the communist system and the fight against the political opposition.[6]

For the sake of appearances, the pre-war legislation, including the 1932 criminal code, was preserved. However, it was supplemented or rather amended by decrees issued quite frequently in that period, which will be discussed below. The model for the new legal solutions introduced in the decrees was, of course, the legal and judicial system of the Soviet Union. The further in time, the more the law and the judiciary became dependent on political power.[7] The law quickly lost its normativity and became an instrument of violence in the hands of the authorities. The law was illegible for citizens, and judges and prosecutors were granted the right to interpret it freely. Moreover, the fundamental principle of *lex retro non agit* was notoriously violated. Intimidating citizens has become the basic function of state organs, including the judiciary.[8]

Due to the need of protection the interests of the new government and to combat the anti-communist opposition in Poland, the simplification of adjudication of judgments has been introduced. An example of this was the ad hoc procedure conducted

[4] *A. Lityński*, Sowietyzacja wymiaru sprawiedliwości w Polsce w latach 1944–1950, Roczniki Administracji i Prawa 20 (2020), vol. 3, p. 104.

[5] NKVD order No. 00447 on the operation of repressing former kulaks, criminals, and other anti-Soviet elements. See *A. Lityński*, Dokumenty nieludzkiego terroru w związku z ukazaniem się zbioru: Z dziejów terroru w państwie radzieckim 1917–1953. Wybór źródeł. Wstęp, tłumaczenie i opracowanie Jakub Wojtkowiak, Poznań 2012, Roczniki Administracji i Prawa 14 (2014), pp. 334 (323–337).

[6] *A. Lityński*, Sovietization, op. cit., p. 104. What can be significant here is the reply from the Chairman of the Polish Committee of National Liberation, Edward Osóbka-Morawski, addressed to Leon Chajn, who was entrusted with the organization and management of the justice system in post-war Poland. Leon Chajn asked whether the pre-war legislation was still in force. In response, the Chairman of the Polish Committee of National Liberation said that the action program in this regard was included in the Manifesto. I quoted after *A. Lityński*, Sovietization, op. cit., p. 105, fn. 15.

[7] *P. Kładoczny*, Kilka uwag na temat dekretu z 30 października 1944 r. o ochronie państwa, "Studia Iuridica", vol. 35: 1998, pp. 137–158.

[8] *A. Bosiacki*, Prawo stalinowskie i jego recepcja w Polsce 1944–1956 – zarys problematyki, in: W. Kulesza/A. Rzepiński (eds.), Przestępstwa sędziów i prokuratorów w Polsce lat 1944–1956, Warszawa 2000, pp. 42–43.

by a prosecutor, in fact an officer of the public security organs. The *ad hoc* procedure was completely politicized. The accused did not have the opportunity to appeal, and the proceedings themselves were usually conducted without a prior investigation.[9] Therefore, it was not possible to speak of the independence of the judge or the right of the accused to a fair sentence.

3. Characteristics of the Organization of the Judiciary

Initially, it means in the years 1944 – 1946, the trials under the decree of 31st August 1944 were settled in special criminal courts in which judges and prosecutors delegated from common courts. From October 1946 to 1949, these cases were heard by district courts, and from 1949 to 1951 – courts of appeal.[10] In 1951, these cases returned to the jurisdiction of voivodship courts. Originally delegated judges to special criminal courts were selected in terms of cooperation with the authorities.

In January 1946, the Military District Courts were established, which operated until 1955 in 17 voivodship cities. The jurisdiction of these courts covered not only soldiers, officers of the Citizens' Militia and officers of the Security Office, but also civilians who were accused of committing the crime under article 85 – 88 of the Criminal Code of the Polish Army. It should be said that three-quarters of the death sentences out of a total of approx. 5,000 judgments issued in the years 1944 – 1989 were passed before military courts. In addition, many sentences for alleged anti-state activities were imprisoned for many years, including life imprisonment. The number of death sentences and the severity of the punishments imposed indicate the use of revolutionary methods similar to those used in the times of terror in the USSR in the 1930s (during the Great Purge).

In the years 1944 – 1956, the function of the investigative body was taken by the Ministry of Public Security. It was an employee of this ministry who decided on the arrest and the length of time the detainee remained in custody. The prosecution was only an advisory body reporting directly to the investigating officers. It was at the meeting of the political bureau of the Central Committee of the Polish Workers' Party and then of the Polish United Workers' Party, that decisions were made on specific court trials, on the appointment of prosecutors, on the moment of initiating a trial, and on the power of pardon. The communist party had full control over the common judiciary in 1949.[11]

[9] *A. Lityński*, Na drodze ku nowej procedurze karnej: o postępowaniu przygotowawczym w latach 1943 – 1950, in: W. Kulesza/A. Rzepiński (eds.), Przestępstwa sędziów i prokuratorów w Polsce lat 1944 – 1956, Warszawa 2000, p. 56.

[10] *A. Kornbluth*, "Jest wielu Kainów pośród nas". Polski wymiar sprawiedliwości a Zagłada, 1944 – 1956. Zagłada Żydów. Studia i Materiały 9 (2013), p. 158 (157 – 172).

[11] *M. Zaborski*, Ustrój sądów wojskowych w Polsce w latach 1944–1955, Lublin 2005, p. 15 and the following.

Most of the cases were conducted in violation of basic procedural steps. The accused most often did not have the opportunity to benefit from professional legal assistance, they did not have access to the case files, and the verdict was *de facto* decided at a meeting of the Party's Central Committee.

4. Personnel Selection

As it has already been mentioned, until the turn of the 1940s and 1950s judges and prosecutors educated still in the interwar period worked in the courts. They were often graduates of renowned pre-war Polish universities, including the Jagiellonian University, the University of Warsaw, the University of Lviv or even the Catholic University of Lublin. Often, Soviet officers with Polish-sounding surnames or with Polish roots were added to the judge panel. Military discipline and the structure of military subordination facilitated the passing of judgments favorable to political decisions.

The original model of selecting judges, which was using pre-war lawyers, was done in 1948. The new authorities were not satisfied with the functioning of judges due to their lack of full political availability. Hence, a decree was issued on 2nd January 1946 on the exceptional admission to hold positions of judges, prosecutors, and notaries and to be entered on the list of attorneys.[12] Already in the first article of that decree, it was decided that the performance of prosecutorial judges' duties may be entrusted to people who have not completed university law studies, have not completed a judicial apprenticeship, and have not passed the judicial examination.[13] Candidates for judges did not have to present a matriculation examination. Peasant or working-class origin was preferred. As a result of the decree, the Minister of Justice established six law schools in various parts of Poland. The course for candidates for judges lasted from six to fifteen months and was aimed not only at the practical preparation of students for the profession of judge or prosecutor, but above all, the appropriate ideological formation of future legal staff.[14] In total, 1,130 students graduated from these courses.[15]

These schools, however, did not have the status of a higher education institution, therefore, on 1st June1948, the Teodor Duracz Central Law School was established which on 1st April 1950 was transformed into the Higher Law School. This school existed until 1953 and 421 people graduated from it. The principles of selecting candidates for this school were similar to those of the previous schools. In the years

[12] Dz. U. (Journal of Laws) no. 4 item 33.

[13] *A. Lityński*, Sowietyzacja, op. cit., p. 113.

[14] *M. Zaborski*, Szkolenie "sędziów nowego typu" w Polsce Ludowej, cz. 1, Palestra 1998, vol. 1–4.

[15] *F. Westerman*, Inżynierowie dusz, trans. S. Paszkiet, Warszawa 2007, p. 34; *Z. Ziemba*, Przygotowanie i rozwój kadr sądownictwa Polski Ludowej, in: XXV lat wymiaru sprawiedliwości PRL, Warszawa 1969, p. 143.

1948 – 1954, the legal staff was also educated at the Officers' School of Law, which was then transformed into the Military and Legal Faculty at the Feliks Dzerzhinsky Military Political Academy.[16] Of course, educating new staff at a rapid pace, available to the communist authorities, and without proper legal training, was modeled on the solutions previously used in Soviet Russia.

Acquiring new human recourses was associated with the removal of old judges. A new phenomenon was the affiliation of judges to a political party. Almost half of the judges, especially those without legal training, were members of the Communist or satellite parties. The highest level of politicization of judges was in provincial courts and in the Supreme Court. In this perspective, it was difficult to talk about the independence of the judges of that time, even though the communist propaganda proclaimed something completely different. It can be repeated after A. Lityński that the communist system was the most mendacious political system.[17]

5. Ruling in the Courts

a) Characteristics of Ruling

The severity of the new provisions of the criminal law, introduced by decrees, was manifested primarily in the fairly frequent sentencing of the death penalty, often combined with the confiscation of the convicted person's property. The regulations applied in Soviet Russia were the model for the new solutions. Hence, forced labor camps were introduced in Poland and court judgments were issued retroactively.

Despite archival research conducted for a long time, it is impossible to establish the exact number of people sentenced to death in the years 1944 – 1956. A register of such judgments was kept by the Ministry of Public Security, but it is known that this register is not complete. The greatest number of death sentences was issued in the period from 1944 to 1948, it is nearly 70% of the total number of 5,000 of all death sentences issued during the Polish People's Republic, it means until 1989.[18] About 70 percent of these sentences have been carried out.

An additional ailment of those sentenced to death was keeping them in the uncertainty of the execution of the sentence or in a narrow cell without windows with a constantly burning light. Sometimes convicts were allowed to write a farewell letter to their family, but many of them ended up in the prison archives. The motive behind the military judges deciding the death penalty was not always the degree of gravity of the offense, but the position that the accused occupied in a political or anti-govern-

[16] *A. Lityński*, Sowietyzacja, op. cit., p. 114; *M. Zaborski*, Oficerska Szkoła Prawnicza, "Palestra" 1998, vol. 5 – 6, p. 131 – 141; *A. Machnikowska*, Wymiar sprawiedliwości w Polsce w latach 1944 – 1950, Gdańsk 2008.

[17] *A. Lityński*, Sowietyzacja, op. cit., p. 115.

[18] O karach śmierci w latach 1944 – 1956, in: https://www.polska1918-89.pl/pdf/o-karach-smierci-w-latach-1944-1956,5994.pdf, last visit 14. 08. 2021.

ment organization. As a rule, the death penalty was imposed on commanders of partisan units or anti-communist social organizations. There were judges who handed down about 300 death sentences, 180 of which were carried out.[19] Death sentences were also issued by Soviet judges in Polish uniforms.[20]

The trials were sometimes propagandistic in nature, which was a transfer of solutions used in Russian courts in the 1930s. The purpose of this was to intimidate the public. Attempts were made to publicly discredit the accused, accusing him or her of collaborating with the Nazis, foreign intelligence, or murdering representatives of public authorities. It was done according to the principle "lie, lie and there will always be something of it", very often used by Goebbels, Lenin, and Stalin.

The accused were often physically and mentally tortured, and the mere admission of the suspect's guilt was the basis for the conviction. The falsification of evidence against the accused was on the agenda. Gestapo's (the Secret State Police) forms and stamps were used for this. Sometimes the Nazis in Polish prisons were forced to give false testimony.[21]

b) Legal Grounds for Issuing a Criminal Conviction

Court's ruling, especially in criminal cases, was theoretically based on the pre-war penal code of 1932. However, the legal system was fairly quickly supplemented with new normative solutions issued in the form of decrees, which was already mentioned. On the basis of the first decree of 31st August 1944, the death penalty was imposed on people collaborating with the German occupation authorities. This cooperation could consist in murdering civilians, prisoners of war, and their mistreatment or persecution. Moreover, the punishment could have happened to those who showed the Nazi authorities place of stay of the wanted person.[22] However, this seemingly correct directive was used to condemn the political opponents of communism to death, especially members of the Home Army, the largest armed organization in all territories occupied by the Germans, accusing them of collaborating with the occupation authorities.

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[19] Ibidem.

[20] *K. Szwagrzyk*, Prawnicy czasu bezprawia. Sędziowie i prokuratorzy wojskowi w Polsce 1944–1989, Kraków 2005; *Ł. Bojko*, Kilka uwag o sądach tajnych stalinowskiej Polski, in: Studia nad Autorytaryzmem i Totalitaryzmem, 37(2015), pp. 35–50.

[21] *R. Stokowiecki*, Specyfika sądownictwa w Polsce w latach 1944–1956 (część 2); *J. Poksiński*, "TUN". Tatar-Utnik-Nowicki, Warszawa 1992, pp. 43–44; *A. Werblan*, Stalinizm w Polsce, Warszawa 2001, p. 72.

[22] Decree of the Polish Committee of National Liberation of 31st August 1944 on the penalty for fascist-Nazi criminals guilty of murdering and tormenting civilians and prisoners, and for traitors of the Polish Nation. Journal of Laws of 1944, No. 4, item 16. In addition to the death penalty, additional penalties were envisaged, such as: loss of public and civil rights of honor, confiscation of all property, and even confiscation of property of the accused's spouse and his children, with the exception of property from their own assets.

On the basis of the decree of August 1944, approximately 3,000 members of the Union for Armed Struggle-Home Army were sentenced to death in Poland for activities hostile to the socialist homeland during the war. Most of these sentences were carried out, including those against the famous general of the Polish underground Nile Fieldorf. The problem, however, was that during the war, when the Home Army fought against the German occupiers, the Polish People's Republic did not yet exist. Thus, it was obvious to the communist authorities that the law could operate retroactively, and the courts could break the basic principles of the rule of law and human rights.

An important issue was the resolution of the effectiveness of judgments issued by German and Polish courts operating during World War II in the territory of the General Government. According to the article 1 of the decree of 6th June1945 on the binding force of court decisions issued during the German occupation in the territory of the Republic of Poland, it was decided that judgments and other decisions issued by German courts during the occupation were invalid and deprived of legal effects. In turn, the article 11 of the decree stated that the proceedings before Polish courts during the occupation in the territory of the former General Government and the decisions issued by these courts were valid. This legal act also regulates a number of other issues, including effectiveness of initiated proceedings, value of collected evidence. However, this issue is not of great importance in our discussion, but it is an important supplement to the image of the ruling system in the period from 1944 to 1956.

Further rules of imposing penalties and the size of penalties were included in the Criminal Code of the Polish Army of 23rd September 1944.[23] In the article 5 of the Code, the subjective scope of the act was defined. It was decided that it concerns soldiers, persons obliged to military service, prisoners of war and other people. In the last case, civilians were brought before military courts. In the article 34 provided for, inter alia, the death penalty, which could have been carried out by shooting. The death penalty was provided for in the articles 85 and 86 for acts classified as crimes against the state. Such acts included an attempt to deprive the Polish State of its independence or an attempt to forcibly remove any body of supreme authority. These wording, not very precise, became an excellent legal basis for classifying any act which would raise concerns on the part of the new authorities as a crime against the state and the death penalty imposed on the accused.

The decree on the protection of the state of 30th October 1944[24] was issued during the war, hence it regulated acts related to the war, including undertaking sabotage activities, activities aimed at overthrowing the democratic Polish State, obstructing the implementation of land reform, collecting, and storing weapons. These activities were punishable by imprisonment or the death penalty.

[23] Dz. U. (Journal of Laws) 1944 no. 6 item 27.

[24] Dz. U. (Journal of Laws) 1944 no. 10 item 50.

Another legal act was the decree of 16th November 1945 on crimes particularly dangerous in the period of state reconstruction, modified by the decree of 13th June 1946, introducing provisions of substantive criminal law related to the category of offenses defined as particularly dangerous crimes. These acts include, among others: sabotage, collecting and storing firearms, cooperation with foreign intelligence, misleading the Polish authorities by providing forged documents of importance to the security of the state or counterfeiting money. In total, the death penalty could be imposed in as many as 13 cases. These acts were punishable by imprisonment or the death penalty. Fighting this type of crime, and with all severity, was particularly important for the construction of the system of totalitarian power. From this perspective, the death penalty has ceased to be an exceptional punishment, but it has become a fairly commonly served punishment.

The decree of 22nd January 1946 on the responsibility for the September defeat and the fascization of state life was extremely interesting.[25] The communist authorities, fearing the reaction consisting in attempts to restore the system of pre-war Poland, identified such actions with fascist actions. An equal sign was made between the Sanation and fascism. For such actions, one could be sentenced to death or long imprisonment.

Finally, on 22nd July 1952, the Constitution of the Polish People's Republic was adopted.[26] This basic law was written according to Soviet models and even to Stalin's handwritten instructions. The solutions adopted in it did not bring anything new, but only sanctioned and strengthened the hitherto gains of the "people's power" also in the area of the justice system. Nevertheless, attention should be paid to the article 48 of the Constitution, in which the socialist legislator decided that *the courts guard the system of the People's Republic of Poland, protect the gains of the Polish working people, and protect the rule of law of the people.* Undoubtedly, such formulation of goals for the judiciary involved a far-reaching politicization of the courts.[27] According to S. Włodyka, the article 46 of the Constitution is of key importance. It shows that the administration of justice is to be administered by courts. According to this author, there are only one doubt as to the nature of this provision, namely whether it was a directly applicable standard or a legislative recommendation. S. Włodyka believes that the second explanation is correct, because in the light of the article 46 of the Constitution of the People's Republic of Poland, the competence of the court arises from the statute, and these acts are created by the political authority.[28]

[25] Dz. U. (Journal of Laws) 1946 no. 5 item 46.

[26] Dz. U. (Journal of Laws) 1952 no. 33 item 232.

[27] *Z. Resich*, Pojęcie sprawiedliwości w świetle ostatniej nowelizacji Konstytucji PRL, Nowe Prawo 3 (1977), p. 311 (303–313).

[28] *S. Włodyka*, Konstytucyjna zasada sądowego wymiaru sprawiedliwości w PRL, Państwo i Prawo 19 (1964), z. 11, p. 664. (654–668).

6. Summary

As it is rightly noted by P. Kładłoczny, the law and justice for the communist system, introduced in Poland by the strength of the Soviet army and the Potsdam Agreement, played an important role in creating a new political order in Poland.[29] The communist authorities in Poland, adopting the Soviet models, quickly carried out the process of sovietization of the judiciary. By creating the appearance of the continuity of the legal system and organization of the judiciary in Poland, they, *de facto*, created new legal foundations for the introduction of judicial terror in the years 1944 – 1956. For this purpose, the staff was replaced, allowing people to court ruling not only without legal education, but even without high school diploma.

During this period, most judges were party members. In this perspective, it was not possible to speak of judicial independence, fair trials, and the implementation of the human right to a fair trial.

III. Part II: Period 1956 – 1981, Stabilization of the Soviet Model of Justice

1. Introductory Issues

October 1956 was a period of political turning point in the People's Republic of Poland, which resulted in a change in the leadership of the Polish United Workers' Party. According to the overwhelming opinion of historians, this is a time mark, the basis of which was the transition from a totalitarian regime to an authoritarian regime in Poland.[30] While this thesis seems a bit exaggerated[31], it is necessary to point out some reforms in the field of the judiciary which were undertaken, but which, however, did not meet the social expectations placed on them.

It should be noted that the political system of the People's Republic of Poland, like the USSR, did not develop any other change of the political leader of the state (the

[29] *P. Kładoczny*, Kształcenie prawników w Polsce w latach 1944 – 1989, Studia Iuridica 35 (1998): 89 – 114.

[30] *R. Backer*, Totalitaryzm w Polsce lat 1948 – 1956, Czasy Nowożytne, vol VI/1999, pp. 7 – 16; *K. Kersten*, Rok 1956 – przełom? Kontynuacja? Punkt zwrotny? Polska 1944/45 – 1989, Studia i materiały, vol III/1997, p. 18.

[31] For example, J. Kofman believes that "roughly until 1988 – 1989, there was a system in Poland characterized by a decisive predominance of the elements of totalitarianism contained in it". *J. Kofman*, Totalitarianism and the People's Republic of Poland, Civitas. Studies of the philosophy of politics, 14/2012, p. 55. L. Mażewski, who described the years 1956 – 1989 as "post-totalitarian authoritarianism of the People's Republic of Poland", made an in-depth analysis of the paradigm shift in communism in the People's Republic of Poland, which should be regarded as an intermediate position. See *L. Mażewski*, Post-totalitarian authoritarianism of the People's Republic of Poland. The years 1956 – 1989. Political system analysis, Warsaw 2010, pp. 1 – 233.

First Secretary of the Party), other than his death or overthrow. The phenomenon of "gerontocracy" as manifested by the lack of circulation of the elite has often been mentioned. Political changes most often took place in the period when the inefficiency of the centrally planned economy was revealed, which was not able to meet the basic living needs of citizens in the system of unity of state power, along with the leading role of the Party.[32]

During the so-called the "Polish Thaw", numerous measures were taken to soften the totalitarian face of the authorities,[33] but in no case did they mean the democratization of the political and judicial system of the People's Republic of Poland. Despite the release of approx. 35 thousand people unjustly deprived of their liberty, including Cardinal Stefan Wyszyński, the judiciary continued to be under the control of the only political party – Polish United Workers' Party,[34] which was not directly expressed in any legal act. It should be noted that the Polish United Workers' Party stood above the sovereignty,[35] constituting in the nomenclature of that time "the vanguard of the working class".[36]

The party stood above the constitutional system of state organs,[37] and had the impact and the influence on the constitutional principle of the judiciary and its understanding.[38] By rejecting the principle established in Western democracies of the Montesquieu's tripartite division of powers, the principle of the uniformity of state power was introduced.[39] The sovereign in the People's Republic of Poland was not, as the sham Constitution of 1952 proclaimed, "working people of towns and villages", but the party. The limitation of state autonomy in favor of party monopoly, which, according to M. Foucault, is the essence of totalitarianism, was still far-reaching.

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[32] See: *A. Łopatka*, Kierownicza rola partii marksistowsko-leninowskiej w procesie budownictwa socjalistycznego, Poznań 1962.

[33] For example, the following were carried out: the reinstatement of the expelled professors at universities, the removal of the name of Stalin from the official name of the Palace of Culture and Science in Warsaw, the recognition of monuments and the name of the Warsaw Uprising Square in 1944, the change of the name of the city from Stalinogród to Katowice.

[34] There were indeed the so-called satellite political parties, however, should be denied any role in influencing decisions. They were called the "licensed opposition" because it only gave the appearance of democracy.

[35] *J. Gutt*, O przodującej roli PZPR kilka uwag, ND nr 1/1958, p. 20; *A. Łopatka*, Kierownicza rola partii marksistowsko-leninowskiej w systemie demokracji socjalistycznej, Nowe Drogi no 2/1970, p. 18 i n.

[36] *I. Loga-Sowiński*, Partia na czele narodu w walce o wolność i socjalizm, Nowe Drogi no 1/1967, pp. 4 – 18.

[37] *T. M. Jaroszewski*, Kierownicza rola partii w warunkach intensywnego rozwoju, Nowe Drogi no 3/1971, p. 111.

[38] It was then written enigmatically about the "superior management" of *S. Włodyka*, Konstytucyjna zasada, op. cit., p. 656.

[39] *Z. Izdebski*, Rewizja teorii podziału władzy, Państwo i Prawo nr 11/1957, p. 787 i n.; *L. Mażewski*, O stanie polskiej doktryny jednolitości władzy, Państwo i Prawo nr 2/1984, pp. 52 – 64.

2. Justice System of the Polish People's Republic in the Years 1956 – 1970

The state of the judiciary in relation to the party in 1957 was correctly diagnosed by M. Cieślak.[40] The momentary possibility of more freely expressing views, which lasted after the thaw more or less until the end of 1957, and the equally temporary trend of searching for the "Polish road to socialism", allowed him to articulate his doubts, which he closed in the rhetorical question "the principle of judicial independence correspond to the fundamental assumptions of the socialist system – is it possible to reconcile with the principle of the party's leading role?"[41]

Then, he distinguished five institutionalized elements in which the party influences the judiciary. He noticed them in the areas of shaping statutes, shaping personnel matters, political work, meetings of judges with the participation of representatives of party organs[42] and discussions in national councils.[43]

In terms of shaping the acts, it is worth noting that their role in the legal system was reduced, in line with the phrase by the First President of the Supreme Court of the People's Republic of Poland, to "expressing the will of the people who built socialism, the people who implemented the Party's policy".[44] It resulted that "the act may not be interpreted by the judge in a manner inconsistent with the basic principles of Marxism and Leninism, which define the guidelines for the construction of the socialist system".[45] For judges, the model of the semi-secret *lex telex*, described in the further course of the discussion, was more important than the classic *lex*, which in democratic countries are subject to judges.

With regard to the shaping of the judiciary system, the changes were introduced after the thaw of 1956, which, despite the initial hopes for democratization, consolidated the principles of the judiciary introduced just after World War II.

In 1957, the amendment to the law on the system of common courts[46] formally ensured the participation of judges in the court management process, but they were actually under the control of the presidents of Voivodship Courts appointed by party appointments.[47] However, the tightening of the requirements for candidates

[40] *M. Cieślak*, Niezawisłość sędziowska a Partia, Palestra, no 2/1957.

[41] Ibidem, pp. 6 – 7.

[42] In the course of compulsory meetings and training of judges, the Party's jurisprudence policy was dictated.

[43] *M. Cieślak*, Niezawisłość, op. cit., pp. 11 – 14.

[44] Quote after: *A. Rzepliński*, Sądownictwo w PRL, Londyn 1990, p. 23.

[45] *Z. Resich*, Nauka o ustroju organów ochrony prawnej, Warszawa 1970, p. 55.

[46] Ustawa z dnia 29 maja 1957 r. o zmianie przepisów prawa o ustroju sądów powszechnych (Dz. U. nr 31, poz. 132 i 133). The Act of 29th May 1957 amending the provisions of the law on the system of common courts (Journal of Laws No. 31, items 132 and 133).

[47] *K. Niewiński*, PZPR a sądownictwo w latach 1980 – 1985. Próby powstrzymania solidarnościowej rewolucji, Białystok 2016, p. 10.

for judges should be assessed positively, by including in the article 57 the necessity to complete "university law studies", "undergo a judicial training" and "pass a judge's examination". However, the theoretical and façade nature of this regulation is illustrated by the fact that in the period from 1st January 1959 to 1st May 1960, seventeen party members, who had previously been state officials, were appointed to held the office of judge. The act could not restrict the Party's personnel policy towards the judiciary.

Despite the emancipation of the Supreme Court from the common judiciary in 1962,[48] its far-reaching dependence on the Council of State and the Minister of Justice was maintained.[49]

It is also worth paying attention to the significant reform of the common court system of 1963,[50] which was introduced by the article 64 § 1 stating: "The Council of State, at the request of the Minister of Justice, dismisses a judge, if he or she does not guarantee the proper performance of the judge's duties". In practice, this meant the possibility of removing any judge who did not like the party's decision-makers on the basis of a voluntarily and instrumentally assessed legal condition. A. Murzynowski, for example, made an attempt to generalize it, pointing out that a judge should be "a supporter and creator of the socialist system".[51] In practice, this approach meant that a judge who was not a supporter of the political system of the Polish People's Republic could not hold his office.

The introduction and frequent application in practice of the condition of "failure to guarantee the proper performance of the duties of a judge" drained the core of the principle of judicial independence and ultimately broke with the principle of irremovability of judges. The far-reaching possibility of dismissing judges influenced their jurisprudence, in particular those judges who did not internalize Marxist-Leninist doctrine but rules along the party line due to the fear of being dismissed from the profession.

The enforcement of the obedience of judges and the instrumental treatment of the judiciary for the Party's purposes is illustrated by the show trials for economic crimes in 1956 – 1970.[52] The economic criminals were a special group which, after the temporal exhaustion of political processes, was stigmatized by the authorities. They were

[48] Ustawa z dnia 15 lutego 1962 r. o Sądzie Najwyższym (Dz. U. nr 11, poz. 54). The Act of 15th February 1962 on the Supreme Court (Journal of Laws No. 11, item 54).

[49] *K. Niewiński*, PZPR a sądownictwo w latach 1980 – 1985. Próby powstrzymania solidarnościowej rewolucji, Białystok 2016, p. 10.

[50] Ustawa z dnia 19 grudnia 1963 r. o zmianie prawa o ustroju sądów powszechnych The Act of 19th December 1963 on Amending the Law on the System of Common Courts (Dz. U. nr 57, poz. 308).

[51] *A. Murzynowski*, Istota i zasady procesu karnego, Warszawa 1984, p. 210.

[52] See: *K. Madej*, Prawo i wymiar sprawiedliwości wobec przestępczości gospodarczej (1956 – 1970), Pamięć i Sprawiedliwość 5/2(10), 2006, pp. 143 – 166.

blamed for the failure of social and economic reforms, which resulted in lowering the standard of living of the population.

Therefore, people were sentenced to death for the crime of theft. Thanks to demonstrative economic trials, the government has also achieved the effects of disciplining judges towards imposing the most severe penalties in cases relating to state property.

Despite the social expectations expressed in 1956, the turn of the 1960s and 1970s in the People's Republic of Poland "reversed the pendulum movement, brought about a strengthening of the formal and actual supervision of the Party and the executive over the judiciary."[53]

At that time, the task of the courts was not to administer justice, as is the case in democratic systems, but to uphold the system and the interests of the state and the Party.

3. Justice System of the Polish People's Republic in 1970 – 1980

The Party's supervision over the administration of justice continued to deepen and to some extent also institutionalized.

In the 1970s, the phenomenon of achieving budgetary benefits from the administration of justice became apparent. The party was looking for all sources of income for an inefficient economy. Significant increases in fees and court costs in criminal cases were introduced[54], and property confiscation was widely used.

The terms *lex telex* and *ius telefonicum* were also created to describe the phenomenon of "duplicated law",[55] which is characteristic for the entire period of ruling the people in Poland. The phenomenon consisted in instructing judges on a mass scale by means of remote communication how to adjudicate. A specific "telephone monitoring" was very broad, as A. Rzepliński states, it covered matters "from the trials of workers in 1970 and 1976, to the trivial family matters of local Party secretaries."[56]

A very dangerous phenomenon, which intensified in the 1970s, was the hollowing out of the scope of the judicial system of justice for the benefit of out-of-court ruling bodies.[57] Thus, the citizens of the state were deprived of legal proceedings in favor of a completely controlled administration.

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[53] *A. Rzepliński*, Sądownictwo w PRL, Londyn 1990, p. 51.

[54] Ustawa z dnia 23 czerwca 1973 r. o opłatach w sprawach karnych (Dz. U. nr 27, poz. 152). Act of 23rd June 1973 on fees in criminal cases (Journal of Laws No. 27, item 152).

[55] Za *A. Rzepliński*, Sądownictwo w PRL, Londyn 1990, p. 62.

[56] Ibidem, p. 62.

[57] *J. Brol*, Kierunki reformy sądownictwa (Propozycje rozwiązań prawo-organizacyjnych), Państwo i Prawo no 9 – 12/1981, p. 24.

Tort law disputes: for expropriated real estate, for damage caused by wild animals, for damage caused by geological works were transferred to administrative proceedings, which until the establishment of the Supreme Administrative Court in 1980, were deprived of judicial control.[58]

Numerous cases were also removed from the judicial system by handing them over to the competences of newly created bodies: misdemeanor boards, mining committees, commissions for the enfranchisement of peasants, ruling colleges of the Patent Office, state's company disputes committees, supervisory boards of the Social Insurance Found or the Board of Appeal operating under the Minister of Communications.[59]

Thus, the material scope of the administration of justice, which was exercised by the courts, was severely limited. And if at the last stage, judicial control was allowed under the so-called "hybrid cases", the administrative route was tedious and in practice ultimately shaped the rights and obligations of citizens.[60] In fact, despite the formally granted judicial review, it was a "ladder without rungs".

The open debate on the pathological state of the justice system in the People's Republic of Poland was brought about only in 1980, when the centrally planned economy plunged into a deep crisis, which caused numerous social unrests and the emergence of "Solidarność" movement.

4. The Rise of "Solidarność" Movement and the Introduction of Martial Law

The year 1980 brought the emergence of a broad social movement known as "Solidarność". Formally, "Solidarność" was registered as a trade union[61], and in the period until the introduction of martial law in December 1981, that is, the so-called during the "carnival of Solidarność", almost every third Pole was a member of this movement, including every fourth judge.[62] It should be emphasized that independent trade unions were much more popular among office workers of courts (47.7% of all court's clerks). It was an unimaginable change in communist Poland,

[58] Ibidem, pp. 24–25.

[59] Ibidem, p. 25.

[60] For example, it concerned compensation under the water law, compensation for issuing an incorrect employee opinion, remuneration for employee inventiveness.

[61] Full name: Independent Self-Governing Trade Union Solidarność. It is worth noting that the so-called autonomous unions that grouped employees of a specific industry, such as the Independent Self-governing Union of Justice Workers based in Poznań.

[62] Information on the situation in the trade union movement in the Ministry of Justice and its organizational units – prepared by the Administrative Department of the Central Committee of the Polish United Workers' Party on March 2, 1981. AAN, 1354 KC PZPR WA, Wa file no. LI / 22. Quoted after: *K. Niewiński*, PZPR a sądownictwo w latach 1980–1985. Próby powstrzymania solidarnościowej rewolucji, Białystok 2016, pp. 49–54.

the political system was teetering on the verge of collapse. Thus, the first step towards the democratization of the judiciary in post-war Poland was made.

As indicated, "Solidarność" was a strong movement with which also part of the judiciary was sympathetic. They began to articulate demands for a reform of the judiciary aimed broadly at separating the judiciary from the Party's influence. The necessity to introduce the principle of irremovability of judges was raised by abolishing the obligation to provide political guarantees and derogating from the provisions on the term of office of judges of the Supreme Court.[63]

An important role was played by an organizational unit in the form of the National Coordination Committee for Justice Employees of "Solidarność", which supervised the implementation of the demands of "Solidarność" in the area of justice reform.[64] A union cell of "Solidarność" was established at many courts in Poland, also at the Supreme Court[65] and the Ministry of Justice.[66]

First of all, and most importantly, during this period, the party's political position, weakened by the economic crisis, did not block the free exchange of views, diagnoses, and proposals for systemic improvements to the justice system in the People's Republic of Poland. It should be emphasized that not everyone was thinking about the democratization of the entire political system. The Solidarność movement was a broad freedom movement and within it also functioned fewer radical fractions in terms of the complete democratization of the judiciary. The communist reality was so established and over the years so strong that the fall of the "Iron Curtain" exceeded the most daring expectations.

The works carried out at the Ministry of Justice aimed at calming the public mood by meeting some of the demands of "Solidarność" regarding the justice system were brutally interrupted by the introduction of martial law throughout the country on 13th December 1981. This event, described by N. Davies as "the most perfect military coup in modern history of Europe"[67] restored Party rule, which was significantly out of control. The period of martial law was a time of widespread internment, repression against families, and the liquidation of the Solidarność activists who were most disturbing the authorities.

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[63] Ibidem, p. 100.

[64] *A. Strzebmosz*, Sądownictwo polskie u początków "Solidarności", w stanie wojennym i w okresie poprzedzającym przełom w 1989 roku, in: A. Strzebmosz/M. Stanowska, Sędziowie warszawscy w czasie próby 1981 – 1988, Warszawa 2005, pp. 44 – 45.

[65] *S. Rudnicki*, NSZZ "Solidarność" w Sądzie Najwyższym – refleksje z perspektywy lat, in: Ius et lex. Księga jubileuszowa ku czci profesora Adama Strzembosza, Lublin 2002, pp. 293 – 300. It is worth emphasizing that the author of the publication was the chairman of this union unit.

[66] *A. Strzebmosz*, Sądownictwo polskie u początków "Solidarności", w stanie wojennym i w okresie poprzedzającym przełom w 1989 roku, in: A. Strzebmosz/M. Stanowska, Sędziowie warszawscy w czasie próby 1981 – 1988, Warszawa 2005, pp. 46 – 47.

[67] *N. Davies*, Europa. Rozprawa historyka z historią, Kraków 1999, p. 1181.

Until the end of martial law, numerous purges in the judiciary were introduced, numerous blackmailing and threats were committed against judges who proposed changes in 1980 – 1981. A program of increased political indoctrination of judicial trainees was implemented, and administrative supervision over the activities of the courts was strengthened.[68]

5. Summary

After the political turning point in the party leadership in 1956, the reforms introduced did not meet the social expectations of healing the judiciary. Worse still, they made judges more available to the authorities by performing showcase political trials.

The party carried out showcase economic trials, and the judicial system was significantly reduced in favor of quasi-judicial proceedings. The Constitution and statutory law continued to serve as a façade for the core of judicial decision-making in key issues which were fulfilled by the will of party decision-makers.

Only the year 1980 was the first, small step towards the evolutionary democratization of the judiciary in Poland, mainly by allowing the aggregation and articulation of broad social demands with regard to the justice system.

The legal activity of Solidarność movement was quickly stopped due to the introduction of martial law in 1981 in Poland. Systemic changes had to wait. They began to take off right after the suspension of the martial law in 1982. Social pressure, motivated by a strong sense of injustice, could not be stopped later.

IV. Part III: Period 1981 – 1997, The Road to the Democratization of the Judiciary

1. Constitutional Court

The commencement of the functioning of the Constitutional Tribunal was an important event at the institutional level. In the legal debate after World War II in Poland, initially, the need to establish an institution whose task would be to control the constitutionality of the law enacted in Poland was not recognized.[69] This was reflected in the Constitution of the People's Republic of Poland of 22nd July 1952. In the 1960s and 1970s, there were timidly presented voices which considered the idea of constitutional review of law in a socialist state.[70]

[68] *K. Niewiński*, PZPR a sądownictwo w latach 1980 – 1985. Próby powstrzymania solidarnościowej rewolucji, Białystok 2016, pp. 247 – 249.

[69] *S. Rozmaryn*, Kontrola konstytucyjności ustaw, Państwo i Prawo nr 11 – 12/1948; *J. Makowski*, Materiały do projektu przyszłej konstytucji, Państwo i Prawo no 11/1947.

[70] *K. Biskupski*, Problemy ustrojoznawstwa, Toruń 1968, pp. 75 – 76; *L. Garlicki*, Sąd Najwyższy a Sejm, Studia Prawnicze no 38/1973, pp. 33 – 34.

The initial implementation of this idea was to give the State Council, in connection with the amendment to the Constitution of the People's Republic of Poland of 10th February 1976, the role of a guardian of the law's compliance with the Constitution (article 30, paragraph 3, point 3 of the Constitution of the People's Republic of Poland). However, this power did not cover the acts as it would be contrary[71] to the principle of the uniformity of state authority.[72] It should be recognized that such an institutional solution was ineffective not only due to the politicization of the State Council and the narrow scope of the regulations, but also due to the lack of specific procedures for removing from the legal system the legal acts deemed unconstitutional.

The beginning of the process of shaping the institution of the Constitutional Tribunal in Poland was the amendment to the Constitution of the People's Republic of Poland of 26th March 1982,[73] which provided for the Constitutional Tribunal in the system of state organs. After numerous debates and social pressure,[74] the introduced regulation was elaborated on in the form of the Act of 29th April 1985 on the Constitutional Tribunal. Pursuant to the Act, the Constitutional Tribunal was ruling on the compliance with the Constitution of legislative acts and the compliance with the Constitution and legislative acts of other normative acts issued by the State Council and the supreme and central organs of state administration (article 1 of the Constitutional Tribunal Act). The Parliament had the right to veto a judgment of the Constitutional Tribunal on statutes by a majority of 2/3 votes in the form of a resolution (article 6, paragraph 4 of the Act). The control to which the Constitutional Tribunal was entitled was only subsequent (article 3 of the Constitutional Tribunal Act). The Constitutional Tribunal consisted of 12 judges elected by the Parliament for an eight-year term, with the reservation that every four years, half of the judges were replaced (article 34 of the Constitutional Tribunal Act).

It should be noted that this was an important step towards controlling the actions of state power. Symbolic "guards" appeared in the political system of the state, who, despite the lack of wide-ranging competences, could evaluate statutory law. Not used until now, the guarantees of protection of rights and freedoms contained in the Constitution of the People's Republic of Poland of 1952 could have been subtly woven into the legal system in small steps.[75]

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[71] *Z. Witkowski*, Rada Państwa jako organ czuwający nad zgodnością prawa z Konstytucją, Państwo i Prawo no 7/1977, pp. 41 – 42.

[72] *R. Alberski*, Trybunał Konstytucyjny w polskich systemach politycznych, Wrocław 2010, pp. 105 – 106.

[73] Dz. U. 1982, nr 11, poz. 83. Journal Of Laws 1982, No. 11, item 83.

[74] *R. Alberski*, Trybunał Konstytucyjny w polskich systemach politycznych, Wrocław 2010, pp. 109 – 125.

[75] It is worth emphasizing that the Constitutional Tribunal enjoyed great authority from the beginning of its ruling, and judicial decisions were made independently of the state authorities. *Z. Czeszejko-Sochacki*, Sądownictwo konstytucyjne w Polsce na tle porównawczym, Warsaw 2003, p. 58.

The Constitutional Tribunal began its operation on 1st January 1986, and it gained a special role after the political transformation in 1989. It contributed to the introduction and consolidation of the principle of a democratic state of law[76], the principles of correct legislation and the protection of human rights. The achievements of the jurisprudence of the Constitutional Tribunal were of considerable importance in the construction of the Constitution of the Republic of Poland, which was adopted on 2nd April 1997.

2. Supreme Court and Supreme Administrative Court

Testing time for judicial independence and independence of the Supreme Court was the introduction of martial law in the territory of the People's Republic of Poland.[77] It should be stated that the Supreme Court did not cope with this task during the martial law period.[78] This mainly concerned criminal matters. The Supreme Court accepted the breach of the lex retro non agit[79] principle, allowed for backdating of normative acts[80] or treated the principles of criminal law in an instrumental manner, including the principles on the type and level of criminal penalties. The process of adjusting the jurisprudence of the Supreme Court in the field of criminal law established under martial law took place after 1989.

A year after the end of martial law in Poland, a new law on the Supreme Court was passed.[81] It stated that "the Supreme Court guards the political and socio-economic system of the Polish People's Republic, protects the gains of the working people, social property, and the rights of citizens protected by law" (article 1, paragraph 2). Already in this legal norm, it can be noticed that the rights of citizens are treated less favorably due to their placement at the very end of the provision. The political issues were also emphasized, instead of, for example, the rule of law.[82] As A. Lityński points out, the Supreme Court still remained politicized, for example, out of 113 newly appointed judges of the Supreme Court, 99 belonged to the Polish United Workers'

[76] *M. Safjan*, Trybunał Konstytucyjny po 1997 roku – przełom czy kontynuacja, in: F. Rymarz/A. Jankiewicz (eds.), Trybunał Konstytucyjny. Księga XV-lecia, Warszawa 2001, p. 78.

[77] Martial law was formally introduced by the decree of 12 December 1981 on martial law (Journal of Laws 1981, No. 29, item 154).

[78] *M. Kuć*, "Najwyższy Wymiar Niegodziwości" – orzecznictwo Sądu Najwyższego w okresie stanu wojennego, in: A. Grześkowiak (ed.), Prawo karne stanu wojennego, Lublin 2003, pp. 163–180.

[79] This was in contradiction not only with Art. 15 of the United Nations Covenant on Civil and Political Rights, but also the national penal code.

[80] *M. Kuć*, "Najwyższy Wymiar Niegodziwości" – orzecznictwo Sądu Najwyższego w okresie stanu wojennego, in: A. Grześkowiak (ed.), Prawo karne stanu wojennego, Lublin 2003, pp. 171–172.

[81] Ustawa z dnia 20 września 1984 r. o Sądzie Najwyższym (Dz. U. 1984, nr 45, poz. 241). Act of 20th September 1984 on the Supreme Court (Journal of Laws 1984, No. 45, item 241).

[82] *A. Lityński*, Historia prawa Polski Ludowej, Warszawa 2013, p. 68.

Party and satellite parties.[83] Judges were appointed by the State Council for a 5-year term of office and could still be dismissed by it if "they did not guarantee the proper performance of the duties of a Supreme Court judge" (article 38, paragraph 1, point 4).

After the systemic transformation in 1989, the Act on the Supreme Court was thoroughly amended, introducing the irremovability of judges of the Supreme Courts, eliminating the 5-year term of office and removing the competence to issue guidelines for the administration of justice and judicial practice. The latter were to ensure uniformity of the jurisprudence of common courts and its compliance with the principles of "people's rule of law". It should be emphasized that it was often a politically used instrument that restricted the independence of common court judges.

The Supreme Court also exercised judicial supervision over the Supreme Administrative Court established in 1980.[84] This concerned an extraordinary review due to a serious violation of the law by the Supreme Administrative Court and the provision of answers to legal inquiries of the adjudicating panels.[85] The Supreme Administrative Court was the first step towards the democratization of issuing administrative decisions, as it was to control the legality of the activities of public administration. However, its cognition was very limited. The scope of cognition was successively expanded after 1989.[86] The assessment of the activities of the Supreme Administrative Court in the times of the Polish People's Republic is positive. It also allowed for the formation of the doctrine of administrative law and procedure focused on the principle of legality of the public administration activity. Ultimately, the shape of the administrative judiciary was formed by the Constitution of the Republic of Poland of 1997. It based the administrative judiciary system on the principle of two-instance, separate from common courts and judicial independence.

3. State Tribunal

The State Tribunal was established in 1982. Its task was to enforce the responsibility of people occupying the highest state positions (article 1, paragraph 1). Initially, the State Tribunal was to judge the members of the State Council, members of the Government, the president of the Supreme Audit Office, the President of the National Bank of Poland, the prosecutor general of the People's Republic of Poland and heads

[83] Ibidem, p. 69.

[84] Ustawa z dnia 31 stycznia 1980 r. o Naczelnym Sądzie Administracyjnym oraz o zmianie ustawy – Kodeks postępowania administracyjnego (Dz. U. 1980, nr 4, poz. 8). The Act of 31st January 1980 on the Supreme Administrative Court and amending the Act – Code of Administrative Procedure (Journal of Laws 1980, No. 4, item 8).

[85] *J. Borkowski*, Zakres nadzoru sprawowanego przez Sąd Najwyższy nad orzecznictwem Naczelnego Sądu Administracyjnego, Studia Prawno-Ekonomiczne XXIX/1987, p. 52 and the following.

[86] *B. Adamiak/J. Borkowski*, Postępowanie administracyjne i sądowoadministracyjne, Warszawa 2021, pp. 110 – 111.

of central state offices. This liability was limited to constitutional transgression in the scope of office or in connection with the position held. It should be noted that the leadership of the Polish United Workers' Party, which was in fact the heart of the political decisions in the Polish People's Republic, was not subject to such responsibility.

The judges of the Tribunal of State received guarantees of independence and immunity. They were elected by the Parliament for the period of its term of office. It should be noted that proceedings before the Tribunal of State are very rare. And if they do, they end, with two exceptions,[87] with dismissal or acquittal.

The Act of 1982 on the Tribunal of State, after several amendments, functions in the Polish legal system to the present day. The State Tribunal found its foundation in the 1997 Constitution (articles 173, 199–201). It is an organ of judiciary separate from the courts. In the doctrine of Polish constitutional law, it is disputed whether the State Tribunal participates in the administration of justice.[88] From the point of view of procedural law, it is a special criminal court.[89] The judges of the Tribunal of State are independent, subject to the Constitution of the Republic of Poland and statutes shall not be liable to disciplinary action.

4. The Legal Bar

The legal bar (advocacy) played an important role in the transformation of the justice system in Poland. Many lawyers were actively involved in the activities of Solidarność movement. It is worth mentioning that the lawyers Wiesław Chrzanowski, Jan Olszewski and Władysław Siła-Nowicki were the authors of the statute of the first independent trade union in post-war Poland (Solidarność).[90]

In 1982, a new act on the advocacy was passed.[91] The new law guaranteed a fairly strong independence of the bar association. The act stipulated that the advocacy was established to provide legal assistance, cooperate in the protection of civil rights and

[87] The only people convicted by the Tribunal of State in Poland were Dominik Jastrzębski and Jerzy Ćwiek in 1997. They were respectively: the minister of economic cooperation with foreign countries and the president of the Central Customs Office. Both judgments were issued in connection with the so-called an alcohol scandal involving irregularities in the import of alcoholic beverages.

[88] For example, J. Zaleśny expresses the view on the exercise of the judiciary by the Tribunal of State in the material sense. He relates it to both constitutional and criminal liability enforced by the Tribunal of State. *J. Zaleśny*, Charakter prawny Trybunału Stanu. Zagadnienia wybrane, Przegląd Sądowy no. 7–8/2007, pp. 54–56; *L. Garlicki*, Polskie prawo konstytucyjne, Warszawa 2021, p. 434.

[89] *S. Waltoś/P. Hofmański*, Proces karny. Zarys systemu, Warszawa 2016, pp. 41–42; *C. Kulesza/P. Starzyński*, Postępowanie karne, Warszawa 2020, p. 87.

[90] *A. Redzik/T. J. Kotliński*, Historia adwokatury, Warszawa 2014, p. 329.

[91] Ustawa z dnia 26 maja 1982 r. Prawo o adwokaturze (Dz. U. 1982, nr 16, poz. 24). Act of 26th May 1982, Law on the Bar (Journal of Laws 1982, No. 16, item 24).

freedoms, and in shaping and applying the law. Thus, the individual rights are more strongly emphasized in opposition to the issues related to the maintenance of the socialist system in Poland.

Lawyers acted in cases of people repressed by the communist authorities during and after the end of martial law in Poland. The establishment of an independent advocacy was another factor limiting the voluntarism of the state authorities.[92] The quality of protection of the rights of individuals also benefited.

In the article 17 of the Constitution of 1997, professions of public trust, including the profession of an advocate and later legal advisers,[93] received strong guarantees of independence and self-government.

5. Transnational Justice in Poland

Undoubtedly, Poland after 1989 had to deal with its communist past. It is worth noting that the concept of transitional justice was introduced into the legal debate precisely because of the fall of the Iron Curtain.[94] It covers a wide spectrum of processes of various transformations.[95] After 1989, Poland was progressing towards adjusting to the Western model of democracy and the rule of law, including the judiciary.[96]

The immediate starting point of the changes was year of 1989. From 6th February to 5th April 1989, the famous "Round Table" sessions took place. The communist authorities, representatives of the democratic opposition and church hierarchs were involved in the talks. The deliberations included: appointment of the Senate (the parliament's upper house), appointment of the President of the People's Republic of Poland in place of the Council of State, increasing the role of the Parliament and holding semi-democratic elections, as well as allowing the democratic opposition to establish its own media. This allowed for the conclusion of a pact concerning the transformation of the political system in Poland.

Penal justice, including criminal liability for the crimes committed by the communist regime, did not involve the international judiciary. It should also be stated that the model of victor's justice has not been implemented in Poland. In the Polish reality, this could be revealed by the revenge of the political class originating from Solidarność movement over a whole range of people occupying important positions

[92] Ibidem, pp. 340 – 347.

[93] The profession of a legal advisor was conceived in the People's Republic of Poland as a legal base for state-owned enterprises. Currently, it is a profession similar to that of an advocate.

[94] *M. Kritz* (ed.), Transitional Justice: How Emerging Democracies Reckon with Former Regimes, vol. 1 – 3, Washington D.C. 1995.

[95] *R.G. Teitel*, Transitional Justice, Oxford 2000, pp. 6 – 9.

[96] *L. E. Fletcher/H. M. Winstein/J. Rowen*, Context, Timing and Dynamics of Transitional Justice: A historical Perspective, Human Right Quarterly vol. 31, 2009, p. 166.

in the People's Republic of Poland. There are no special criminal courts for this purpose, and there were no truth commissions. Criminal liability of functionaries of the People's Republic of Poland was carried out before military and common courts to a very limited extent.

The right to the truth,[97] in terms of remembering and explaining to society,[98] is exercised by securing documents from the communist period[99] and historians' free access to archives. However, it is said that many documents during the political transformation have been destroyed,[100] especially of high-ranking politicians. Anniversaries of special events of resistance are commemorated in various forms, such as the events in Poznań in 1956, the 1970 massacre on the coast, the 1976 strikes in Radom and Warsaw-Ursus, the rise of Solidarność in 1980 or the victims of martial law in 1981.

The rehabilitation of victims of political persecution during communism was least controversial issue in Poland. Quite quickly (in 1991), the law on declaring invalid judgments issued against people repressed for activities for the sake of the independent existence of the Polish State was passed.[101] It was connected with indemnity issues: compensation for damages and compensation for wrongs.

Problem of political vetting gave rise to much more disputes. Lustration in Poland after 1989 was carried out according to various models[102], and after 2007 it is based on the model of verification of lustration declarations.[103]

[97] Also known as right to know the truth or right to know.

[98] *T. Antkowiak*, Truth as Right and Remedy in International Human Rights Experience, Michigan Journal of International Law, vol. 23, 2001–2002, pp. 997–1013.

[99] First of all, within the framework of the Institute of National Remembrance.

[100] *A. Paczkowski*, Archiwa aparatu bezpieczeństwa PRL jako źródło: co już zrobiono, co można zbadać, Pamięć i Sprawiedliwość, 2/1(3), 2003, pp. 9–21.

[101] Ustawa z dnia 23 lutego 1991 r. o uznaniu za nieważne orzeczeń wydanych wobec osób represjonowanych za działalność na rzecz niepodległego bytu Państwa Polskiego (Dz. U. 1991, nr 34, poz. 149). The Act of 23rd February 1991 on declaring invalid judgments issued against persons repressed for activities for the sake of the independent existence of the Polish State (Journal of Laws 1991, No. 34, item 149).

[102] For example, also according to the model of the so-called a thick line, consisting in reluctance towards historical accounts. This model was implemented in the first years after the political transformation.

[103] See more: *M. Krotoszyński*, Lustracja w Polsce w świetle modelu sprawiedliwości okresu tranzycji, Warszawa 2014.

6. The Constitution of the Republic of 1997

The Constitution of the Republic of 1997, which is in force in Poland to this day, based the organization of power in the state on the principle of the separation of powers.[104]

This was reflected in the article 10 of the Polish Constitution, which states that "The system of government of the Republic of Poland shall be based on the separation of and balance between the legislative, executive and judicial powers". Judicial power has been delegated to the exercise of courts and tribunals.

However, the doctrine states that the article 10 of the Polish Constitution "remains partially lex imperfecta as a principle devoid of operational sanction".[105] It is perceived, inter alia, as the lack of action against acts of legislative and executive interference in judicial matters, which are not normative acts or administrative decisions.[106] This deficit of guarantees of the principle of separation of powers in the context of the judiciary may lead to imbalances of individual powers.[107]

The entire Chapter VIII of the Constitution of the Republic of Poland (articles 173 – 201) is devoted to the organization and guarantees of a fair justice system in Poland. It includes, among others the separateness and independence of courts and tribunals (article 173), the structure of the judiciary (article 175), the instance of judicial proceedings (article 176), judicial independence (article 178), the procedure for appointing judges (article 179), the principle of irremovability of a judge (article 180), judicial immunity (article 181), participation of citizens in the administration of justice (article 182) and supervision over the activities of courts (article 183).

The principle of judicial independence has been particularly developed in the jurisprudence of the Constitutional Tribunal. In accordance with the jurisprudence of the Constitutional Tribunal, the content of the principle of judicial independence consists of five elements: impartiality towards participants in the proceedings; independence from extrajudicial bodies; independence of the judge from the authorities and other judicial bodies; independence from the influence of political factors and internal independence of the judge.[108]

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[104] *M. Chmaj*, Sejm Rzeczypospolitej Polskiej w latach 1991 – 1997, Warszawa 1999, pp. 271 – 271.

[105] *E. Łętowska*, Władza sądownicza a pozostałe władze – stan równowagi czy jej zachwiania, in: R. Piotrowski (ed.), Pozycja ustrojowa sędziego, Warszawa 2015, p. 129.

[106] This applies, for example, to a large extent: the prerogatives of supervisory acts, financial control, or personnel issues. *E. Łętowska*, Władza sądownicza a pozostałe władze – stan równowagi czy jej zachwiania, in: R. Piotrowski (ed.), Pozycja ustrojowa sędziego, Warszawa 2015, pp. 127 – 132.

[107] Ibidem, p. 129.

[108] The justification for the judgment of the Constitutional Tribunal of 24th June 1998, K 3/98, K 3/98, Orzecznictwo Trybunału Konstytucyjnego 1998, nr 4 poz. 52.

In the jurisprudence of the Constitutional Tribunal, numerous guarantees of judicial independence were created or developed so that, after the experiences of the Constitution of the People's Republic of Poland of 1952, it did not become just an empty talk. These include, for example: the finality and enforceability of court judgments,[109] clear rules for promotion of judges[110] or restriction of the legislator's freedom in shaping the status of a judge.[111] The numerous social guarantees (salary, retirement age, working hours, and retirement status) have also been not forgotten.[112]

V. Conclusions

The Soviet model of the judiciary was highly politicized. The actual failure to separate the judiciary from the legislative and executive powers in favor of the Leninist principle of unity of power with the party's central role, along with the possibility of removing judges for political reasons, meant that judges remained at the disposal of party decision makers. The lack of guarantees of the independence of the judiciary resulted in the lack of grounds for developing the principle of independence and irremovability of judges.

This concerned primarily cases submitted to rule, in which the broadly understood interest of the state and the party were protected, as well as the particular interest of individual party members. As A. Rzepliński notes, distinguishing between the notion of the independence of a judge and the impartiality of a judge, "The history of the People's Republic of Poland provides a lot of evidence for the existence of judges who were notoriously available to successive party teams, but ruled impartially in matters of indifference to the interests of these teams, issuing fair judgments in civil cases or cases related family, criminal or labor law".[113]

[109] Wyrok Trybunału Konstytucyjnego z dnia 16 kwietnia 2008 r., K 40/07, OTK-A 2008, nr 8, poz. 97 (Judgment of the Constitutional Tribunal of 16th April 2008, K 40/07, OTK-A 2008, no. 97).

[110] Wyrok Trybunału Konstytucyjnego z dnia 8 maja 2012 r., K 7/10, OTK-A2012, nr 5, poz. 48 (Judgment of the Constitutional Tribunal of 8 May 2012, K 7/10, OTK-A2012, No. 5, item 48).

[111] Wyrok Trybunału Konstytucyjnego z dnia 27 marca 2013, K 27/12, OTK-A 2013, nr 3, poz. 29 (Judgment of the Constitutional Tribunal of 27 March 2013, K 27/12, OTK-A 2013, No. 3, item 29).

[112] Wyrok Trybunału Konstytucyjnego z dnia 7 maja 2013 r., SK11/11, OTK-A 2013, nr 4, poz. 40; wyrok Trybunały Konstytucyjnego z dnia 12 grudnia 2012 r., K 1/12, OTK-A 2012, nr 11, poz. 134; wyrok Trybunału Konstytucyjnego z dnia 4 października 2000 r., P8/00, OTK 2000, nr 6, poz. 189 (Judgment of the Constitutional Tribunal of 7 May 2013, SK11 / 11, OTK-A 2013, no. 40; judgment of the Constitutional Tribunal of 12 December 2012, K 1/12, OTK-A 2012, no. 11, item 134; judgment of the Constitutional Tribunal of 4 October 2000, P8 / 00, OTK 2000, no. 189).

[113] *A. Rzepliński*, Sądownictwo w PRL, Londyn 1990, p. 9.

New conceptual categories should also be highlighted. Judiciary theorists more often considered the concept of legal protection instead of the concept of "justice system". It was defined through the prism of civic duties – enforcing the observance of the law and socialist principles by the citizens of the state.[114] The function of legal protection was dependent, subordinate to the distribution or educational function of the state. It was dominated by the social element (public order), while the protection of individual rights was relegated to the background.[115] Legal protection was closely related to the systemic statutes of common courts and the massive apparatus of repression.

In the practice of the functioning of the judiciary, opposing the will of the party's decision-makers, when the Party's interests materialized in a court case, required deep heroism from the judge, who took serious consequences for him or herself. The judges were put to the test, which could result in the deprivation of their profession and discrimination in access to rationed goods.

This situation was difficult, taking into account the lack of prospects for departure or systemic transformation in Poland in the years 1956 – 1983. Thus, one should agree with the view that "the less heroism a given legal or social system requires from a judge, the better this law and that system is".[116]

It is worth noting that in the Polish model, democratic institutions began to function even before the complete system transformation. The Constitutional Tribunal, the Supreme Administrative Court, or the decreeing of ever greater guarantees of judicial independence were the elements facilitating the transformation of the political system, which finally took place in 1989. Perhaps this is why the systemic changes in Poland were not burdened with civil war and numerous deaths.

This fact shows that the democratization of the judiciary is stretched over time. It should be said that this is a process which requires not only institutional guarantees, but also shaping the legal awareness of the society. One can risk a statement that without the social postulates of freedom and the enormous need of people to live in a better political and economic reality, systemic changes could not take place.

As it is well known, changes in Poland prompted the fall of the Iron Curtain and the dismantling of the communist system in the USSR. The enactment of the Constitution of the Republic of Poland in 1997 was a symbolic culmination of the period of political changes in Poland.

[114] *W. Berutowicz/J. Mokry*, Organizacja ochrony prawnej w PRL, Warszawa 1987, pp. 36 – 40.

[115] Ibidem, p. 11.

[116] *A. Rzepliński*, Sądownictwo w PRL, Londyn 1990, p. 12.