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First Attempts at Undoing the Consequences of Violating the Rule of Law in 1944–1956**

I. DEVELOPMENT OF LEGAL AND FACTUAL CONDITIONS ENABLING THE APPLICATION OF SEVERE REPRESSIVE PUNISHMENTS

The end, in May 1945, of World War II in Europe and the liberation of the Polish territory from the German occupation did not bring Poland full independence. The new authorities, recognizing the superior role of the Soviet Union, did their best to break any resistance on the part of the society that objected to limitation of the Polish state's sovereignty. In order to achieve the purpose, state terror was applied in 1944–1956[1].

Criminal law, enforced with the help of the system of justice and investigative bodies ensured effective fight against political opponents. Care was taken to create adequate conditions which would make it possible to apply severe repressions, among others, through the enforcement of decrees passed by the Polish Committee of National Liberation: the Criminal Code of the Polish Army[2] of 23 September 1944 and the Decree on the protection of the State[3] of 30 October 1944, with the sanction of capital punishment in every provision, as well as the Decree of Council of Ministers of 16 November 1945 on crimes particularly dangerous at the time of rebuilding the country[4], replaced with the Decree of the same name of 13 June 1946[5] (the so-called 'little criminal code'). The severity of repressions was further enhanced by the Decree of the Council of Ministers of 16 November 1945 on summary proceedings[6], allowing the imposition of capital punishment or life imprisonment

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1 For more details, see M. Stanowska, *Rehabilitation of People Repressed for Activity for the Independence of Poland in the Years 1944–1956 in the Practice of the Warsaw Court*, Prawo w Działaniu 32(2017), 7 et seq.
2 Polish journal of laws Dz.U. No. 6, item 27, as amended.
3 Dz.U. No. 10, item 50.
4 Dz.U. No. 53, item 300.
5 Dz.U. No. 30, item 192.
6 Dz.U. No. 53, item 301.

regardless of whether the law provided for such punishments for a given offence, with no possibility of appealing judgments issued in summary proceedings[7].

Changes made in the criminal procedure gradually phased out the independence of the investigating magistrate[8] to finally eliminate it altogether when the Code of Criminal Procedure of 1928 was amended[9]. Preparatory proceedings were entrusted to the prosecutor (or military prosecutor) and public security officers (or Polish Army Intelligence Service officers). These bodies were also authorized to apply pre-trial detention. This state of law made it easy to detain people in relation to whom proceedings had not even been formally instituted. The absence of any control over the preparatory proceedings made it possible to ruthlessly deal with real or alleged political opponents. All too often, detention was also excessively extended. The prosecutor's office became actually subordinated to special services. The trial was in turn dominated by the prosecutor who actually directed the court proceedings. Thus, it was the public security or Military Intelligence Service authorities that had the decisive voice in the court proceedings.

The communist authorities also had ensured monopoly in appointing judges. The appointment of judges, with the requirement of the procedure being repeated every year, was entrusted to the Minister of Justice. Pursuant to the Decree of 22 February 1946 on the registration and compulsory employment in the system of justice of people qualified to take the position of a judge[10], the Minister of Justice could, until the end of 1946, employ these people to work in the system of justice for a period of one year with a possibility of extension for another year. The Decree, extended by subsequent amendments, remained in force until the end of 1952. In addition, what was abandoned in the Decree of 22 January 1946 on the exceptional admission to taking the positions of judges, prosecutors and notaries as well as to being entered on the list of attorneys-at-law[11] was the previously absolute requirement of completing university studies in law and judicial training[12]. Pursuant to this instrument, the Minister of Justice could, during the 5 years from the entry in force of the Decree, appoint, among others, for the position of a judge, a person exempt from the obligation to have law studies and judicial training. The binding force of the Decree was also extended[13]. It was thus obvious that judges of this kind would offer full cooperation to the authorities. In addition, the hitherto effective ban, forbidding judges from being members of a political party, resulting from Article 121 of the Law on the Organization of General Courts ('and in particular a judge must not belong to any political faction')[14], guaranteeing judges'

[7] Summary proceedings were applied only in general courts.
[8] A. Lityński, *O prawie i sądach początków Polski Ludowej*, Białystok, 1999, 117–122.
[9] Law of 27 April 1949 on Amendments to the Provisions on the Criminal Procedure, Dz.U. No. 32, item 238.
[10] Dz.U. No. 9, item 65.
[11] Dz.U. No. 4, item 33.
[12] Interestingly, attorneys-at-law were not released from the obligation of completing law studies and passing examinations required by the law. According to I.S. Grat, the opinion of the Ministry of Justice seemed to indicate that the abandonment of this obligation could adversely affect 'the professional and ethical standards of the Bar' – I.S. Grat, *Uchwalenie dekretu z 22 stycznia 1946 r o wyjątkowym dopuszczeniu do obejmowania stanowisk sędziowskich, prokuratorskich i notarialnych oraz do wpisania na listę adwokatów*, Miscellanea Historico-Iuridica, 6/107(2008), p. 107.
[13] The last extension was made by the Law of 29 December 1951.
[14] Order of the President of the Republic of Poland of 6 February 1928 – Law on the System of General Courts, Dz.U. No. 12, item 93.

impartiality, was repealed by the Decree of the 14 March 1945 on amendments to the Law on the Organization of General Courts[15].

The communist authorities' lack of confidence in general courts resulted in a significant limitation of the competence of general courts in favour of military courts[16]. The system of military courts was organized from scratch and this provided full control over their activity. Military courts did what they were expected to do. The sentences were very severe. There were approximately 100,000, perhaps even 150,000 of political prisoners sentenced to long-term imprisonment for anti-state offences. In the years 1944–1947 alone, over 2,500 people were convicted to capital punishment for political offences[17]. J. Paśnik reports that in 1945–1953 military courts convicted over 81,000 people[18] (including 65,000 people in 1946–1953 alone) of crimes against the state and the penalties imposed were very severe. According to Z. Leszczyńska, who presented profiles of the persons convicted by the Military Court of the Garrison of Lublin and the Military Court in Lublin in 1944–1945, at the Lublin Castle alone 210 people were sentenced to capital punishment and 125 of them were executed. The sentenced were (apart from 26 deserters from the army) people who had fought for independence, predominantly Home Army soldiers[19]. More than half of those convicted in 1950–1953 were sentenced to imprisonment for over 5 years, life sentences, and capital punishments[20]. A. Lityński estimates that in 1945–1954 approximately 5,860 people were sentenced to capital punishment for offences against the state and 70% of those sentences were carried out[21].

The authorities did not stop at providing legal safeguards. What guaranteed strict performance of the new tasks was – following the Soviet model – adequate cadre. It was the tried and tested Soviet officers who were entrusted with the formation of the Military Intelligence Service. At the beginning of 1946, 90.3% of executive posts in the MIS were still occupied by Soviet officers. Although the situation gradually changed as the Polish cadre were being prepared[22], there is no doubt that Soviet officers in the Polish Army Intelligence Service formations, with Dmitry Voznesenski, head of the Main Board of the Polish Army Intelligence Service, played a significant role in the development of a repressive policy in the armed forces[23]. Soviet officers also acted as prosecutors in the Supreme Military Prosecutor's Office, judges in the Supreme Military Court, as well as advisors

[15] Dz.U. No. 9, item 46.
[16] It was only the Law of 5 April 1955 on the Transfer to General Courts of the Hitherto Jurisdiction of Military Courts in Criminal Cases Concerning Civilians, Public Security Officers, Citizen's Militia and Prison Service (Dz.U. No. 15, item 122) that restored the jurisdiction of general courts over a vast majority of these offences (with the exception of espionage).
[17] M. Turlejska, *Te pokolenia żałobami czarne… Skazani na śmierć i ich sędziowie*, Warszawa, 1990, 26, 106–107.
[18] J. Paśnik, *Prawne aspekty represji stalinowskich w Polsce*, Dziś 7/101(1991), p. 101.
[19] Z. Leszczyńska, *Ginę za to co najgłębiej człowiek ukochać może. Skazani na karę śmierci przez sądy wojskowe na Zamku Lubelskim (1944–1945)*, Lublin, 1998, 22.
[20] J. Paśnik, *Wybrane problemy orzecznictwa sądów wojskowych w sprawach o przestępstwa przeciw państwu w latach 1946–1953*, Materiały Historyczne 32/34(1991), 1.
[21] A. Lityński, *Historia prawa Polski Ludowej*, Warszawa, 2008, 51.
[22] The training was conducted in the Officers' Intelligence School, opened in September 1945, whose commander was Lt. Konstantin Lobanov, a Soviet officer.
[23] J. Poksiński, *'TUN'. Tatar-Utnik-Nowicki. Represje wobec oficerów Wojska Polskiego w latach 1949–1956*, Warszawa, 1992, 62–63.

to these bodies. It was those officers who imposed the style of work and took care of their subordinates' formation. They applied the Soviet interpretation of criminal law with high repressiveness[24]. It is worthwhile to point out that part of the Soviet officers holding responsible functions in the above bodies, were put on the list of people co-responsible for violating the rule of law in criminal proceedings[25].

The role of the military prosecutor's office consisted in issuing a decision to apply pre-trial detention not only without any evidence, but even without any contact with the detained[26]. This is confirmed in the report of the Military Prosecutor of the Garrison in Katowice dated 20 September 1945, which reveals that in every prison (out of the twenty in the territory covered by that prosecutor's office), approximately 30 to 50% detainees were kept without any sanction[27]. Sentences which the public security bodies did not approve of were immediately appealed against by prosecutors and overturned by the Supreme Military Court[28]. The authorities interfered with the work of courts. A court could not interview an investigation officer of the Public Security Office. Where the president of the adjudicating panel did not repeal the motion to interview an investigation officer, he risked the initiation of explanatory proceedings. Unsurprisingly, the security bodies demonstrated utter contempt for the military court. Where the court returned the files of the case with a request that the investigation be completed, pages from case files were often torn out and new ones with new evidence were bound in[29].

In addition, a quasi-court body was established with the power of passing prison sentences (placement in a labour camp for up to 2 years)[30]. Proceedings before the Special Commission resembled inquisition trials, because the Commission was simultaneously the body in charge of conducting preparatory proceedings and the adjudicating body[31]. Though a defence attorney could formally take part in proceedings before the Special Commission, in practice, this was not allowed. Moreover, the Commission's judgments could not be appealed against. Members of the Special Commission did not have to have legal education. Consequently, it was easy to make them act unlawfully. And thus the Commission accepted cases referred to it with a motion for passing a two-year labour camp sentence without the pre-trial detention being counted towards it. This was done upon request of the Prosecutor General's Office. The practice was commonplace, in particular where the pre-trial detention lasted more than two years and the point was to further

[24] E. Romanowska, *Karzące ramię sprawiedliwości ludowej. Prokuratury wojskowe w Polsce w latach 1944 –1955*, Warszawa, 2012, 242.
[25] *Raport tzw. Komisji Mazura (Wasilewskiego)*, published in Gazeta Wyborcza daily on 22 January 1999.
[26] J. Borowiec, *Aparat bezpieczeństwa a wojskowy wymiar sprawiedliwości. Rzeszowszczyzna 1944–1954*, Warszawa, 2004, 66.
[27] E. Romanowska, n. 24 *supra*, 328.
[28] J. Borowiec, n. 26 *supra*, 66.
[29] J. Borowiec, *Aparat bezpieczeństwa*…, 179–180 and 204–206.
[30] The body was established by the Decree of 16 November 1945 on the establishment and scope of activity of the Special Commission for Fight with Economic Abuse and Sabotage (Dz.U. No. 53, item 302), repealed by the Decree of 23 December 1954 (Dz.U. No. 57, item 282).
[31] Numerous publications are available on the Special Commission. One of them seems to be particularly valuable, the monograph by P. Fiedorczyk, *Komisja Specjalna do Walki z Nadużyciami i Szkodnictwem Gospodarczym. 1945–1954. Studium Historyczno-prawne*, Białystok, 2002. Among the latest publications, I would recommend the synthetic study by B. Sekściński, *Komisja Specjalna do Walki z Nadużyciami i Szkodnictwem Gospodarczym (1945–1955)*, Roczniki Humanistyczne, LIX/2(2011), and the extensive selection of literature to be found there.

deprive the detainee of freedom[32]. Prosecutors also referred to the Special Commission motions to place in labour camps completely innocent people (e.g. the sister of a defected sailor, simply because her brother defected abroad)[33]. The scope of the Commission's powers was practically unlimited. The Special Commission dealt with what they wanted or what they were told to deal with[34]. After the amendment to the Decree on the establishment of the Special Commission extended the substantive jurisdiction of the Commission to include the offence of 'causing panic to the detriment of the interests of working people'[35], political offences also came to be covered by its jurisdiction. In 1950–54, a vast majority of the penalties were imposed for the offence defined in Article 22 of the little criminal code[36], with almost 4,500 people placed in labour camps on this account[37]. Over 84,000 persons were sentenced to labour camps by the Special Commission, while fines were imposed on more than 200,000. Though the Special Commission could not impose such severe penalties as courts, the fact that its powers were practically unlimited and that in the inquisition-like trial they could send even completely innocent people to labour camps allows one to state that the only aim of the institution was to exert intensified terror[38].

After 1956, more than 4,500 people convicted by the Special Commission appealed to the Prosecutor General's Office that the judgments be overruled. Only of a few of those appeals were granted[39]. Attempts at having the damage done by judgments of the Special Commission repaired and compensation awarded were resumed after 1989. The First President of the Supreme Court, to whom the requests for an extraordinary revision of judgments of the Special Commission were addressed, submitted to the Supreme Court a question of law concerning the challenging of the legally binding judgments of the Commission. The difficulty resulted from the fact that pursuant to the provisions of the Code of Criminal Procedure an extraordinary appeal (as well as a motion for a resumption of proceedings) was foreseen only for legally binding judgments ending court proceedings and thus there was a legal gap in this field. In their resolution of 21 December 1994, I KZP 33/94, the Supreme Court sitting as a panel of 7 judges declared that 'a legally binding adjudication terminating proceedings before the Special Commission for Fight with Economic Abuse and Sabotage or its representative offices can be appealed against in the procedure extraordinary appeal as well as in the procedure of resumption of proceedings'[40]. In the statement of reasons for the resolution, the Court says that the solution is possible thanks to the application of *analogia iuris*,

[32] The total imprisonment happened to last even 6 years – P. Fiedorczyk, n. 31 *supra*, 231.
[33] The information quoted after A. Lityński, n. 8 *supra*, 200–201.
[34] P. Fiedorczyk, n. 31 *supra*, 164–165.
[35] Act on 20 July 1950 on the amendment to the Decree of 16 November 1945 on the establishment and scope of activity of the Special Commission for Fight with Economic Abuse and Sabotage, Dz.U. No. 38, item 350.
[36] Proliferation of false information which can cause significant damage to the interests of the Polish State or significantly lower the position of its supreme bodies.
[37] A. Zaćmiński, *Przestępstwa polityczne w orzecznictwie Komisji Specjalnej do Walki z Nadużyciami i Szkodnictwem Gospodarczym 1950–1954*, Pamięć i Sprawiedliwość 1(2008), 335, 341.
[38] P. Fiedorczyk, n. 31 *supra*, 325.
[39] J. Bednarzak, *Rewizje nadzwyczajne Prokuratora generalnego PRL* [in:] *Prokuratura PRL w latach 1950–1960*, Warszawa, 1960, 175 – quoted after P. Fiedorczyk, n. 31 *supra*, 330.
[40] 1–2 OSNKW 1995, item 2.

which is permissible because it will be applied only for the benefit of the 'accused'. This analogy is also indispensable, because it is impossible to tolerate a situation in which there would be no procedural possibilities of repealing or modifying a legally binding judgment of the Special Commission, which drastically violated the rights of a groundlessly 'punished' person. If the law creates such possibilities in relation to legally binding judgments of sovereign courts, issued – after all – in the conditions of respect for the right of the accused to defence, they must be all the more so provided and observed in relation to very similar repressive judgments issued by a non-judicial body adjudicating in the absence of the of basic procedural guarantees of the repressed persons. The same arguments apply to the possibility of appealing, by means of an extraordinary cassation, the legally binding judgments ending proceedings before the Special Commission. Hence, in subsequent commentaries to the Code of Criminal Procedure of 6 June 1997[41] the possibility of an extraordinary cassation appeal against judgments of the Special Commission was confirmed[42]. This is further confirmed by T. Grzegorczyk in the first thesis of his commentary on Article 521 of the Code of Criminal Procedure[43], though P. Fiedorczyk quotes the same author putting forward an opposite thesis[44].

Special courts were also established. The task of the special criminal courts was to judge fascist-Nazi criminals guilty of homicide and atrocities affecting civilians and prisoners of war as well as traitors to the Polish Nation[45]. In 1946, these courts were abolished and their competences were taken over by general courts.

The second special court was the Supreme National Tribunal[46] competent to judge people responsible for the nazification of state life and Poland's defeat in September 1939[47] as well as war criminals[48]. In 1946–1948, 46 Nazi criminals were judged in massive court trials (20 of them were sentenced to capital punishment)[49].

The so-called secret sections were established in general courts. In 1950–1954, they operated in the Ministry of Justice as well as in the Court of Appeal and Voivodeship Court in Warsaw and also in the Supreme Court. Though the sections formally operated within the general court system, they were in fact separated and worked undercover.

[41] Consolidated text: Dz.U. 2018, item 1914.

[42] J. Grajewski, S. Steinborn, *Komentarz aktualizowany do art. 521 Kodeksu postępowania karnego* [in:] L. Paprzycki, J. Grajewski, S, Steinborn (eds.), *Komentarz aktualizowany do Art. 425–673 ustawy z dnia 6 czerwca 1997 Kodeks postępowania karnego (Dz.U. 97.89.555)*, Lex/el. 2015.

[43] T. Grzegorczyk, *Kodeks postępowania karnego. Komentarz*, Kraków, 2003.

[44] T. Grzegorczyk, *Kodeks postępowania karnego. Komentarz*, Kraków, 1998 – quoted after P. Fiedorczyk, n. 31 *supra*, 330.

[45] Decree of PKWN (*Polish Committee of National Liberation)* of 12 September 1944, Dz.U. No. 4, item 21. There were six of them operating throughout the country. A special criminal court was composed of a professional judge and two lay judges. The judgments could not be appealed against. The participation of a defence lawyer was obligatory.

[46] Established with the Decree of the Council of Ministers of 22 January 1946, Dz.U. No. 5, item 45.

[47] By virtue of the Decree of the Council of Ministers of 22 January 1946 on responsibility for the September defeat and nazification of state life, Dz.U. No. 5, item 46.

[48] The establishment of the Supreme National Tribunal was linked to Poland's accession to the London Agreement of 8 August 1945 and the adoption of the Moscow Declaration of 1 November 1943 in accordance with which war criminals had to be handed over to the victim states and judged by the courts of those states. The Supreme National Tribunal adjudicated as a panel of three professional judges and four lay judges, its judgments being final. The participation of a defence attorney was obligatory.

[49] After 1948 the Supreme National Tribunal ceased to work though it was not formally abolished. More on the subject in A. Lityński, n. 8 *supra*, 169–170.

The proposal to arrange for a special procedure of examining criminal cases of great importance for the interests of the state and the Polish United Workers' Party was put forward by the Ministry of Public Security ('MPS'). The ministry claimed that this concerned mainly cases falling under the Decree of 22 January 1946 on responsibility for the September defeat and nazification of state life[50]. The establishment of the secret section was approved by Henryk Świątkowski (Minister of Justice), Wacław Barcikowski (First President of the Supreme Court), and Henryk Cieśluk (Vice-Minister of Justice)[51]. The cases were examined by fully trusted judges (Polish United Workers' Party members), while public defenders were appointed from a special list. The trials were held in absolute secrecy, mostly in the Mokotów prison[52]. In 1952, the trials were moved to a small room in the court building where the only 'public' were the investigation officers of the MPS in charge of a given case.

During the over four years of the activity of the secret section, it examined 506 cases against 626 people. The Supreme Court examined appeals in 370 cases. 585 people were convicted. The court of first instance imposed capital punishment in 34 cases, in 14 cases the sentences were upheld, nine persons were executed[53]. In addition, 20 people died in prison, while dozens of others died soon after release[54]. The latter was beyond any doubt closely linked to the unauthorized and inadmissible methods applied during the investigations.

Application of sophisticated and perverse torture was everyday practice in the proceedings conducted by security or Military Intelligence officers. The scale of the phenomenon was confirmed by testimonies of the repressed people and even by testimonies given by the persecutors themselves both in their own trials or rehabilitation trials as well as during the work of the commissions established to examine violations of the rule of law in criminal proceedings.

The problem of the interrogations conducted with the use of unauthorized and inadmissible methods returned in debates held by different groups of people. Already in 1945, it was discussed during a meeting of presidents and heads of military courts in the Supreme Military Court or during the plenary sessions of the Central Committee of the Polish United Workers' Party. Yet, it had no consequences in practice. The prosecutor did not respond to complaints about the use of torture made by the accused, even if they were eyewitnesses of the beating. Similarly, the court did not give much attention to the accused's complaints about the use of torture, treating them as devious and groundless. It was anyway 'safer' for the adjudicating courts, because they avoided the danger of initiation of potential explanatory proceedings[55].

The violations of law in criminal proceedings was not limited to merely extorting testimonies out of the accused or witnesses in cases in which accusations concerned

[50] The proposal was put forward by Gen. Roman Romkowski, Vice-Minister of Public Security, who referred to the top party leadership in the years 1949–1956, that is, Bolesław Bierut, Jakub Berman, and Hilary Minc. I quote it after A. Lityński, n. 8 *supra*, 174–175.
[51] J. Kubiak, *Sekcja tajna*, Prawo i Życie 28(1991).
[52] That is why the accused called that court the 'crapper court'.
[53] Among them were August Emil Fieldorf, Bronisław Chajęcki, Bolesław Kontrym, Zbigniew Ejme, Julian Czerwiakowski.
[54] J. Kubiak, *Sekcja tajna*, Prawo i Życie 31(1991).
[55] J. Borowiec, n. 26 *supra*, 204–206.

the actually committed crimes. Evidence was repeatedly falsified and accusations happened to be made of crimes not committed. In situations of this kind it was necessary to extort admission of guilt and orchestrate evidence.

II. REHABILITATION MEASURES IN MID-1950S

The unauthorized and inadmissible methods applied by officers of investigation bodies came to be revealed by Józef Światło, deputy director of Department X of the MPS, who himself had made considerable use of these practices, in the Radio Free Europe broadcasts towards the end of September 1954. In response, the Central Committee of the Polish United Workers' Party set up two commissions: for matters of rehabilitated persons and for examining methods of work applied in security bodies (which be discussed further in section III).

In response to a motion of the Commission for matters of rehabilitated persons, on 10 March 1955 the Political Office of the party adopted the rules of treatment of persons released from prison and rehabilitated at that time. They related mainly to financial or welfare questions, e.g. granting a one-off allowance or compensation, or even a disability pension; the possibility of medical treatment; payment of an equivalent for losses resulting from liquidation of a flat, etc.[56] However, the most important measures were those intended to alleviate the sentence or even to fully rehabilitate the person.

In the second half of 1954, examination begun of cases of the so-called 'conspiracy in the army'. In March 1955, the first conclusions from the examinations were ready. On 3 November 1955, a special commission of the Political Office of the Polish United Workers' Party was set up to examine rehabilitation appeals submitted by the Supreme Military Prosecutor's Office and the Prosecutor General's Office. On 19 April 1956, the commission presented the results of their work to the Political Office. Once the Political Office accepted the rules of work of the commission which had looked into the results of the examination of cases of the so-called 'conspiracy in the army', the commission ordered the Supreme Military Prosecutor's Office to resume and subsequently discontinue the proceedings due to absence of evidence of guilt in the majority of the cases[57].

As a result of the rehabilitation trials (concerning not only cases of the so-called 'conspiracy in the army') a few hundred convicts were rehabilitated by the autumn of 1957. Also, measures taken in the procedure of court supervision led to sentences being reduced. Yet the largest number of people benefited from the Amnesty Act of 27 April 1956[58], as approximately 5,000 to 6,000 political prisoners were released on its basis[59]. However, that was not equivalent to full rehabilitation of the persons the proceedings against whom were discontinued by virtue of the amnesty.

Let us have a closer look at the effects of the examination of cases of the so-called 'conspiracy in the army' conducted by officers of the Supreme Military Prosecutor's

[56] J. Poksiński, n. 23 *supra*, 143–144.
[57] J. Poksiński, n. 23 *supra*, 144–145.
[58] Dz.U. No. 11, item 57.
[59] M. Turlejska, *Te pokolenia*…, 60 and 108.

Office[60]. The main case was the 'case of the central group of the conspiracy', also called as the 'trial of generals' as the defendants in the trial were generals Stanisław Tatar, Stefan Mossor, Jerzy Kirchmayer, and Franciszek Herman; colonels Marcin Jurecki, Marian Utnik, and Stanisław Nowicki and also major Władysław Roman and commander second lieutenant Szczepan Wacek.

The first arrests took place back in 1949 and after a brutal investigation all the accused, with the exception of Gen. Stefan Mossor, admitted their guilt. The public trial was to perform a propaganda task and show that the party and the communist authorities in Poland vanquished the 'diversion-espionage centres of the enemy which worked for Anglo-American imperialists'.

Invitations to attend the trial before the Supreme Military Court[61] held in the rooms of the Ministry of Justice were extended to the radio, national and international press as well as the Polish Newsreel. The officers accused in the 'trial of generals', as the only ones who had a trial among all cases involving participation in the 'conspiracy in the army', could have defence attorneys. Only one of these attorneys was given access to the court files, yet without the right to take notes.

MPS representatives were present close to the trial room and exerted all sorts of pressure on the contents and course of the hearing. No witnesses were called by the defence and the prosecutor called in 18 witnesses, all of whom had been subjected to brutal investigations. Part of them had already been convicted to death, while the remaining ones were waiting for their own trials in which some of them were also subsequently sentenced to death[62].

The sentence was pronounced on 13 August 1951. Generals S. Tatar, J. Kirchmayer, S. Mossor, and F. Herman were given life sentences[63], M. Utnik, S. Nowicki and M. Jurecki were sentenced to 15 years' imprisonment, W. Roman to 12 years' imprisonment, while Sz. Wacek received a 10-year sentence. In addition, all of them received an additional punishment in the form of loss of civil and public rights for a period of 5 years.

Towards the end of 1952, generals S. Mossor and F. Herman were again subjected to a brutal investigation aimed at extorting from them testimonies incriminating Marshal Michał Rola-Żymierski and Gen. Wacław Komar. Gen. F. Herman did not survive the investigation and died of heart attack in a cell of the detention ward of the Main Board of the Polish Army Intelligence Service[64].

As a result of the examination of the 'trial of generals', on 24 April 1956, the Supreme Military Prosecutor's Office motioned that the proceedings be resumed. On the same day, the Supreme Military Court accepted the motion, repealed the sentence and sent the case back to the prosecutor's office with a request that the investigation be completed.

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[60] Lt. Col. Franciszek Mateja, Capt. Edward Wiącek, Capt. Andrzej Kaszycki and Capt. Zbigniew Domino – quoted after J. Poksiński, n. 23 *supra*, 142.

[61] The adjudicating bench was presided over by Lt. Col. Roman Waląg from the District Military Court in Białystok. With him sat Lt. Col. Roman Bojko and Mjr Teofil Karczmarz.

[62] J. Poksiński, n. 23 *supra*, 128–129.

[63] Article 86(1) and (2) of the Criminal Code of the Polish Army, which provided grounds for the conviction and punishment, did not provide for a life imprisonment.

[64] J. Poksiński, n. 23 *supra*, 142.

The Supreme Military Prosecutor's Office, also on the same day, discontinued the proceedings due to absence of evidence of guilt. On 26 January 1990, that decision was changed as it was assumed that the grounds for the discontinuation of the case was the ascertainment that Gen. S. Tatar, Col. M. Utnik and Col. S. Nowicki did not commit the acts they were accused of[65].

What was also examined were the so-called 'sliver trials'. Investigations in these cases were conducted by boards of the Polish Army Intelligence Service, mainly by the Main Board of the Polish Army Intelligence Service, which supervised the conduct of investigations and made all the major decisions. According to the script prepared by the Military Intelligence Service, 86 officers – alleged members of a conspiracy organization working for western powers – were accused.

In 53 trials conducted behind closed doors, before the Supreme Military Court, the District Military Court and the Regional Military Court in Warsaw, as well as the Navy Military Court in Gdynia, 40 death penalties were adjudicated (20 carried out), 8 persons were sentenced for life, while 37 received long prison sentences (ranging from 8 to 15 years) on the basis of fabricated evidence and extorted testimonies. Two officers died in prison while serving their sentences, many suffered irretrievable health impairments as a result of the brutal investigations and inhuman prison conditions[66].

The examination of the 'sliver trials' led to the submission by the Supreme Military Prosecutor's Office of motions for the resumption of proceedings, overruling of sentences by the Supreme Military Court, and remand of cases in order for investigation to be completed, finally ended with discontinuation of proceedings due to absence of evidence of guilt.

The defendants in the case of the so-called new management of the military conspiracy were colonels Franciszek Skibiński, Stefan Biernacki and Adam Jaworski as well as majors Apoloniusz Zawilski and Kornel Dobrowolski. The Supreme Military Court judgment of 28 April 1952 sentenced all of them to capital punishment. The sentence was upheld on 20 May 1952 by the Assembly of Judges of the Supreme Military Court. President Bolesław Bierut did not exercise his right of pardon, but execution of the sentences was suspended at the request of the head of the Main Board of the Polish Army Intelligence Service, who wanted to use the convicts as witnesses in other cases related to the 'conspiracy in the army'.

On 21 January 1954, less than two years from the adjudication of the capital punishment, Col. Antoni Skulbaszewski concluded that it was no longer necessary to suspend the execution of the sentences. Prosecutor Gen. Stanisław Zarakowski then lodged with the Council of Ministers a motion for granting pardon to all the above-mentioned persons and on 25 January 1954 the Council of Ministers accepted the motion replacing the capital punishment with life sentences. After the resumption, on 4 April 1956, of proceedings in the cases of those convicted, the proceedings were discontinued on 6 April 1956 because of absence of evidence of guilt[67].

A similar case of execution of capital punishments being suspended also took place in the trial of officers of the General Staff of the Polish Army. Defendants in the case

[65] S. Przyjemski, *Ja po 39 latach*, Prawo i Życie 19(1990).
[66] J. Poksiński, n. 23 *supra*, 149.
[67] J. Poksiński, n. 23 *supra*, 149–153.

were lieutenant colonels Marian Orlik, Aleksander Kita and Ludwik Głowacki as well as major Władysław Skoczeń. In the judgment of 8 August 1952, the Supreme Military Court sentenced all of them to capital punishment. The sentence was upheld by the Assembly of Judges of the Supreme Military Court on 23 August 1952 with respect to M. Orlik, A. Kita and W. Skoczeń, and on 28 August 1952 with respect to L. Głowacki. President B. Bierut did not exercise his right of pardon in any of the cases. The M. Orlik and A. Kita were executed, but in the case of L. Głowacki and W. Skoczeń, the execution was suspended so that they could be used as witnesses in other 'conspiracy in the army' cases. Here again, on 21 January 1954, A. Skulbaszewski decided that the sentences could be carried out. Then Gen. S. Zarakowski motioned that L. Głowacki and W. Skoczeń be granted pardon and the Council of Ministers accepted the motion on 25 January 1954, changing the death penalty to life imprisonment. Once the proceedings were resumed on 9 April 1956, the Supreme Military Court discontinued the proceedings due to absence of evidence of guilt[68].

The execution of sentences of capital punishment was also suspended in the case of the second group of aviation officers, in which Lt. Col. Roman Rypson, Lt. Col. Zygmunt Sokołowski, Mjr. Konstanty Sabiłło, and Mjr. Roman Kurkiewicz were the defendants. With the judgment of 18 October 1952, the Supreme Military Court sentenced all of them to capital punishment. The sentence was upheld by the Assembly of Judges of the Supreme Military Court on 19 December 1952. On 15 April 1953, the Council of Ministers applied the right of pardon to K. Sabiłło, changing the capital punishment to 15 years' imprisonment, but did not exercise the right of pardon with respect to the others.

The sentence was carried out with respect to R. Rypson, while suspended with respect to Z. Sokołowski and R. Kurkiewicz, so that they could be used as witnesses in other 'conspiracy in the army' cases. However, already in August 1953, it was concluded that Z. Sokołowski would not say anything more and his sentence was carried out. R. Kurkiewicz had more luck as in response to a motion of the supreme military prosecutor the Council of Ministers granted him pardon, replacing the capital punishment with a life sentence. Once the proceedings were resumed on 24 April 1956, the Supreme Military Prosecutor's Office discontinued the proceedings for absence of evidence of guilt on 27 April 1956[69].

On 26 April 1956, proceedings were resumed only to be discontinued on the following day for absence of evidence of guilt in the cases of the colonels Bernard Adamecki, August Menczak, Józef Jungraw, lieutenants Władysław Minakowski, Szczepan Ścibior and Stanisław Michałowski (all of whom were sentenced to death and sentences carried out) and colonels: Stanisław Ziach and Aleksander Majewski, who were sentenced to life imprisonment[70]. On 21 January 1993, that decision was modified on the assumption that the proceedings were discontinued on the basis of the conclusion that colonels B. Adamecki, A. Menczak, J. Jungraw and lieutenants W. Minakowski, S. Ścibior, S. Michałowski, S. Ziach and A. Majewski had not committed the acts they had been accused of[71].

[68] J. Poksiński, n. 23 *supra*, 164–165.
[69] J. Poksiński, n. 23 *supra*, 168–169.
[70] J. Poksiński, n. 23 *supra*, 156–157. They were referred to as the conspiracy heading group in the Air Force.
[71] Quoted after J. Poksiński, *'Pisek w wojsku'. Victis honos*, Warszawa, 1994.

Similarly, on 24 April 1956, proceedings were resumed in the case of the sentenced-to-death navy captains Zbigniew Przybyszewski, Stanisław Mieszkowski, and Jerzy Staniewicz (sentences carried out) and Robert Kasperski and Marian Wojcieszka (pardoned) as well as navy captains Wacław Krzywiec and Kazimierz Kraszewski, who were sentenced to life imprisonment, only to be discontinued for absence of evidence of guilt on 26 April 1956[72].

On 7 May 1956, proceedings were resumed and discontinued on the same day for absence of evidence of guilt with respect to colonels Aleksander Rode and Feliks Michałkowski, who had been sentenced by the Supreme Military Court to capital punishment on 27 January 1953 (sentences executed)[73]. Finally, on 28 April 1956, proceedings were resumed and on 7 May 1956 discontinued for absence of evidence of guilt with respect to Mjr. Benno Zerbst, sentenced to death (sentence carried out), Lt. Col. Tomasz Kostucha, sentenced to life imprisonment, and Lt. Col. Leopold Dobrowolski, sentenced to 15 years' imprisonment[74].

In individual 'sliver' trials closely linked to the 'conspiracy in the army' case, 43 persons received sentences. In ten cases these were death sentences, of which four were executed: Col. Mieczysław Oborski, Lt. Col. Zdzisław Barbasiewicz, Mjr. Zefiryn Machalla, and Lt. Zdzisław Ficek. Capital punishment was changed to life imprisonment in six cases: Gen. Józef Kuropieska, Col. Maksymilian Chojecki, Lt. Col. Józef Bochenek, Mjr. Jerzy Lewandowski, Mjr. Henryk Godlewski, and chief petty officer Mieczysław Skibiński. In all those cases, proceedings were resumed in the first half of 1956 and finally discontinued by the prosecutor's office due to absence of evidence of guilt.

Attention should be drawn to the fact that in all those proceedings the case was returned to the prosecutor's office which made a decision to resume the investigation and then discontinue it. What was thus avoided was the public exposure of the mechanism of orchestrated trials.

It was different in the trial of Kazimierz Moczarski, who insisted on an open rehabilitation trial. He was found not guilty on 11 December 1956 by the Voivodeship Court in Warsaw in the presence of numerous people watching. His defence attorney, Aniela Steinsbergowa pointed to the fact that nowhere but in Poland was rehabilitation conducted in open trials which would allow to reveal the hidden underpinnings of political repressions[75].

In the second half of 1956, the Supreme Court overruled legally binding convictions in cases falling under the jurisdiction of general courts and found not guilty the defendants in over 45 cases, while in over 60 cases, after overruling the convictions, either remanded the cases to be re-examined or decided that the proceeding be resumed.

In 1954–1956, in cases within the jurisdiction of military courts, the Supreme Military Court overruled legally binging sentences and discontinued proceedings with respect to 540 persons[76].

The rehabilitation trial of K. Moczarski was quickly followed by a rapid growth in the number of rehabilitation petitions (by the end of December 1956, the

[72] J. Poksiński, n. 23 *supra*, 160–163. They were referred to as the heading the conspiracy in the Navy.
[73] J. Poksiński, n. 23 *supra*, 170.
[74] J. Poksiński, n. 23 *supra*, 171–173.
[75] A. Steinsbergowa, *Widziane z ławy obrończej*, Warszawa, 2016, 177–178.
[76] D. Maksymiuk, *Problem rehabilitacji w latach 1956–1957*, Miscellanea Historico-Iuridica, 8(2009), 227–229.

Ministry of Justice received almost 1,300 applications). The Rehabilitation Commission, which was established to examine the cases in June 1956, informed that by the end of May 1957 the Ministry received 1,717 rehabilitation requests. 557 of them were rejected (due to total groundlessness of the requests or purposelessness of seeking a judicial revision) and in 161 cases the minister instituted an extraordinary revision.

In 124 revisions, judgments of former district military courts and the Supreme Military Court were appealed against, while in 37 revisions – judgments of the general courts (including 14 revisions of judgments of the Voivodeship Court in Warsaw passed in its secret section).

What was requested in the first place was acquittal (63 cases), discontinuation of proceedings (52 cases), overruling of sentences and re-examination of cases (18 cases), and reduction of punishments (25 cases).

The information presented at the session of the Parliamentary Justice Commission on 9 July 1957 indicated that out of the total number of 4,400 applications for rehabilitation 2,500 were rejected (because the sentences were correct). In 900 cases, the persons were rehabilitated, while 1,000 judgments were revised as regards punishment.

In addition, within the framework of activities aimed at repairing the damage to the innocently convicted persons or persons who were given too severe penalties, an inter-ministerial commission assisting the rehabilitated persons was set up by the Council of Ministers Office. The Commission extended assistance of various kinds: financial allowances (to over 600 persons), apartments (over 200 persons), provision of healthcare or stay in convalescent homes (over 350 persons), disability pensions granted to people groundlessly convicted or their family (150 persons), help in finding a job (130 persons)[77].

Nevertheless, there is no doubt that the authorities wanted to deal with the rehabilitation campaign quickly and preferred to keep the trials secret. Ironically, rehabilitation sentences were often passed by judges who had earlier passed sentences groundlessly convicting people even to capital punishment. It was also then when at a meeting of a Ministry of Justice college the following words signaling the inevitable end of the 'thaw' period were heard: 'Instead of limiting themselves to the rehabilitation of specific people from groundless accusations courts attempted to perform socio-political rehabilitation of entire circles hostile to us'[78]. Thus, given that the rehabilitation measures of those days were only half-hearted, it is unsurprising that rehabilitation trials concerning cases from the Stalinist period had to be conducted after 1989.

III. DETERMINATION OF THOSE GUILTY OF VIOLATING THE RULE OF LAW IN COURTS, PROSECUTOR'S OFFICE, THE MILITARY INTELLIGENCE SERVICE AND SECURITY OFFICES

In October 1954, the Political Office of the Polish United Workers' Party established a Commission for examining the methods of work in security bodies

[77] Quoted after D. Maksymiuk, n. 76 *supra*, 230–231.
[78] These were the words of the then minister Marian Rybicki – quoted after D. Maksimiuk, n. 76 *supra*, 232.

(the Commission was composed of Franciszek Jóźwiak, Franciszek Mazur, and Adam Doliński)[79]. The Commission accused, among others, Roman Romkowski, Vice-Minister of Public Security, Anatol Fejgin, Director of Department X of the Ministry of Public Security (previously deputy head of the Main Board of the Intelligence Service), and Józef Różański, Director of the Investigation Department of the Ministry of Public Security of violating the rule of law.

That resulted in an investigation instituted against J. Różański and his detention on 8 November 1954[80]. In its judgment of 23 December 1955, the Voivodeship Court in Warsaw sentenced J. Różański to 5 years' imprisonment (reduced on the basis of the Amnesty Act of 22 November 1952[81] to 3 years and 4 months).

After the extraordinary revision of the Prosecutor General to the disadvantage of the defendant had been granted, the Supreme Court overruled the judgment of the Voivodeship Court, remanding the case to this court for re-examination. The court in turn returned the case to the Prosecutor General's Office for the investigation to be complemented. The investigation against J. Różański was consequently resumed on 31 December 1956 and combined with the investigation instituted in April 1956 against A. Fejgin and R. Romkowski[82].

On 11 November 1957, the Voivodeship Court in Warsaw passed a judgment sentencing R. Romkowski and J. Różański to 15 years' imprisonment. A. Fejgin was sentenced to 12 years in prison[83]. On 2 October 1958, the Supreme Court reduced Różański's sentence to 14 years[84]. Prosecutors K. Kukawka and Antoni Ferenc, who presented the case in the trial, sent to the Prosecutor General, already on 22 November 1957, a letter requesting that Jakub Berman and Stanisław Radkiewicz, members of the Commission of the Political Office of the Central Committee

[79] The establishment of the Commission was preceded by Romkowski's dismissal from the position of the Vice-Minister of Public Security – quoted after Cz. Kozłowski, *Namiestnik Stalina*, Warszawa, 1993, 153.

[80] The investigation concerning the abuse of power was conducted by prosecutor Kazimierz Kukawka. It was initiated on the basis of the decision made by General Prosecutor Stefan Kalinowski – quoted after S. Marat, J. Snopkiewicz, *Ludzie bezpieki. Dokumentacja czasu bezprawia*, Warszawa, 1990, 31–32. In order to avoid misunderstandings, an explanation needs to be added that the same first name and surname were borne by a specialist in criminal law prof. dr hab. S. Kalinowski (1913–1996), graduate of the University of Warsaw. Prof. S. Kalinowski was vice-dean of the Faculty of Law and Administration of the University of Warsaw in 1956–1957 and 1965–1968. He was also, among others, the author of monograph: *Rewizja nadzwyczajna w polskim procesie karnym*, Warszawa, 1954; *Opinia biegłego w postępowaniu karnym*, Warszawa, 1972; *Rozprawa główna w polskim procesie karnym*, Warszawa, 1975, as well as a textbook for students: *Polski proces karny w zarysie*, Warszawa, 1979. See A. Murzynkowski, *Stefan Kalinowski (1913–1996)*, Studia Iuridica 1997, Vol. XXXIV, 223–225.

[81] Dz.U. No. 46, item 309.

[82] The substance of the Military Court's judgment and the result of the extraordinary revision are quoted after S. Marat, J. Snopkiewicz, n. 80 *supra*, 67–69. The investigation against R. Romkowski and A. Fejgin was instituted by decision of Prosecutor General Marian Rybicki. It was also conducted by prosecutor K. Kukawka – See S. Marat, J. Snopkiewicz, n. 80 *supra*, 138, 179.

[83] Conducted against A. Fejgin was also a proceeding concerning his activity in the Main Board of the Intelligence Service in the so called 'conspiracy in the army' cases, which ended with a decision of the Supreme Military Court issued in October 1958 whereby the proceedings were discontinued by virtue of the amnesty of 1956, because the punishments would not exceed 5 years' imprisonment – quoted after S. Marat, J. Snopkiewicz, n. 80 *supra*, 182–185. It should be added that R. Romkowski was degraded to the rank of a private on the basis of resolution of the Council of Ministers of 23 March 1960 – R. Kurek, *Kaci bezpieki na tle marca 1968: Roman Romkowski, Anatol Fejgin i Józef Różański w oczach SB, (1964–1968)*, 1(10) Aparat Represji w Polsce Ludowej 1944–1989, 241(2012).

[84] All of them were released from prison in October 1964 benefiting from the pardon granted by the Council of the State – quoted after S. Marat, J. Snopkiewicz, n. 80 *supra*, 374–375. See also R. Kurek, n. 83 *supra*, 237–256.

of the Polish United Workers' Party (the latter was at the same time the Minister of Public Security) be held criminally liable[85].

Investigations were also conducted with respect to investigation officers of security bodies. Following a trial which lasted several years, from 13 July 1955, the Voivodeship Court in Warsaw, passed on 23 February 1959, a legally binding judgment sentencing Józef Dusza (head of the Investigation Department of the Ministry of Public Security) to 7 years 6 months of imprisonment, Jerzy Kaskiewicz to 6 years 6 months of imprisonment, while Jan Kieres to 3 years of imprisonment. The proceedings against Jan Misiurski and Jerzy Kędziora were finally discontinued by virtue of the amnesty of 1956[86].

In the investigation conducted against J. Dusza and others, evidence was collected against other investigation officers and prison guards which confirmed that they had applied unauthorized and inadmissible methods of investigation. In spite of those findings, as soon as on 24 September 1955, a decision was made 'not to institute criminal proceedings' in relation to the people concerned, the alleged (though not true) reason being the lapse of five years since their last use of extortion.

The decision was even more surprising considering that prosecutor K. Kukawka declared, in a note made on 7 July 1956, that there were full grounds for holding criminally liable Adam Humer, Deputy Director of the Investigation Department of the Ministry of Public Security, and Ludwik Serkowski, head of division in that Department, and around ten others[87]. Those were the first signs of the authorities being reluctant to identify the actual perpetrators of violations of the rule of law and hold them criminally liable.

Concurrent with the investigations was the activity of the Commission headed by Roman Nowak (Chairman of the Central Revision Commission of the Polish United Workers' Party), established in October 1956 to examine the activities of the Commission of the Political Office of the Polish United Workers' Party for Public Security. The Commission (composed of: Ostap Dłuski, Zenon Kliszko, Marian Rybicki, and Edmund Pszczółkowski) confirmed that the application by public security officers and Military Intelligence Service officers of unauthorized and inadmissible, almost criminal, methods of investigation had been widespread. The Roman Nowak Commission submitted motions for exclusion from the party of J. Berman, S. Radkiewicz and Vice-Minister of Public Security Mieczysław Mietkowski, as well as for dismissal from the Central Committee of the party of H. Minc[88]. B. Bierut, Chairman of the Commission of the Political Office for Public Security, was then no longer alive.

Apart from the accounts of J. Światło, publicizing the methods of work of the Public Security Office in Radio Free Europe, the supreme state and party authorities received

[85] Not only were such proceedings not instituted, but in December 1983 Berman was honoured with the medal of the Polish National Council, while S. Radkiewicz, in his obituary of December 1987, was described as 'patriotic and greatly devoted in his service to Homeland' – quoted after S. Marat, J. Snopkiewicz, n. 80 *supra*, 340, 358–359.

[86] I refer the reader to my own study in which I present the course of the trials – M. Stanowska, *Próby rozliczenia z przeszłością w wymiarze sprawiedliwość* [in:] *Ius et lex. Księga jubileuszowa ku czci profesora Adama Strzembosza*, A. Dębiński, A. Grześkowiak, K. Wiak (eds.), Lublin, 2002, 306–307.

[87] In the study already referred to above, I present a list of some 20 investigation officers of security authorities and prison guards guilty of use of inadmissible methods towards the repressed in 1944–1956, in relation to whom the execution of criminal liability was abandoned. Compare: L.M. Stanowska, n. 86 *supra*, and S. Marat, J. Snopkiewicz, n. 80 *supra*, 253–257.

[88] Cz. Kozłowski, n. 79 *supra*, 192–198, 202.

other information about the violations of law in the criminal proceedings. The information came from the repressed persons and their families. The latter appealed for the examination of cases in which serious infringements of law had taken place. Rehabilitation requests were yet another source of information about violations of the rule of law.

On 10 December, following an agreement between the Minister of Justice, the Minister of National Defence, and the Prosecutor General, a commission was established to examine violations of the rule of law by former employees of the Main Board of the Intelligence Service, Supreme Military Prosecutor's Office and the Supreme Military Court. The Commission had at their disposal ample material from the analysis of the 'conspiracy in the army' case, which resulted in resumption of proceedings, overruling of judgments passed in trials conducted in glaring contravention of the law and ended with discontinuation of the proceedings due to absence of evidence of guilt. The Commission was headed by Marian Mazur, Deputy Prosecutor General. On 18 March 1957, Mazur was replaced by Jan Wasilewski (Deputy Prosecutor General) as he himself became the Prosecutor General. Hence the name – the Mazur (Wasilewski) Commission.

Members of the Commission included two representatives of the Ministry of National Defence: Col. Mieczysław Majewski and Col. Adam Uziembło, as well as President of the Voivodeship Court for the Warsaw Voivodeship, Stanisław Kotowski, and Supreme Court judge Mieczysław Szerer, who had been a judge in the secret section of the Supreme Court[89].

Judge M. Szerer stopped taking part in the works of the Commission on 13 May 1957. The official reason was excessive professional workload, but he filed in a report which constitutes a sort of dissenting opinion vis-à-vis the official report of the Commission, which was delivered on 29 June 1957[90].

Attention should be drawn to the fact that two members of the Commission were groundlessly accused. J. Wasilewski was temporarily detained for two years under a false accusation of cooperation with the German occupants[91]. A. Uziembło was accused under the 'conspiracy in the army' case and temporarily detained for 4 years and 8 months (from 1 November 1949 to 2 July 1954 he was held in the basement of the Main Board of the Polish Army Intelligence Service), but finally acquitted[92].

The report of the Mazur (Wasilewski) Commission was eventually delivered on 29 June 1957, with the four-strong Commission (J. Wasilewski, S. Kotowski, M. Majewski, and A. Uziembło) fully unanimous.

The Commission worked on the basis on materials and documents made available to them by the former bodies of the Intelligence Service, Supreme Military

[89] J. Kubiak, *Sekcja tajna*, 30 Prawo i Życie (1991).
[90] Quoted after J. Poksiński, *'My, sędziowie, nie od Boga…'. Z dziejów sądownictwa wojskowego PRL 1944 –1956. Materiały i dokumenty*, Warszawa, 1996, 239–243.
[91] From 29 November 1952 to 2 November 1954, i.e. until the investigation was discontinued – quoted after J. Poksiński, n. 90 *supra*, 240.
[92] A positive role was played by Capt. E. Wiącek, who performed prosecutor's supervision in the case of A. Uziembło from the beginning of 1954. He accepted from him the withdrawal of self-incriminatory testimony given as a result of the use of unauthorized and inadmissible investigation methods and filed with the Supreme Military Prosecutor's Office a petition for his acquittal. In spite of protests on the part of the Intelligence Service, the petition received political acceptance from the Secretary of Central Committee of the Polish United Workers' Party and the Supreme Military Court passed an acquittal judgment, the only one in the 'conspiracy in the army' cases – J. Poksiński, n. 23 *supra*, 184–185.

Prosecutor's Office and Supreme Military Court, as well as on court, investigation, control and operational files of specific cases. The Commission also held numerous talks with former and present employees of the law enforcement bodies and the administration of justice, as well as the former detainees and convicts.

The Commission focused on the 'conspiracy in the army' cases. The examinations did not cover cases from the first years of the communist regime, when fundamental criminal law provisions were commonly violated and death penalties frequently executed. The activity of regional, district or garrison military courts or military prosecutor's offices was not analysed. This led the Commission to the erroneous conclusion that the violations of the rule of law reached their peak in 1948–1954.

The Mazur (Wasilewski) Commission for the examination of the activity of military investigation and court bodies was in a relatively comfortable situation as they began their work after all the convicted in the so-called 'conspiracy in the army' cases had been rehabilitated and the rehabilitation processes declared the conspiracy accusations to have been orchestrated, the judgments having been based on doubtful evidence, on testimonies extorted with unspeakable torture. This made it easier for the Commission to formulate accusations in relation to military investigation bodies and courts. The majority of those charges applied also to criminal proceedings left outside the scope of the Commission's work.

The Commission grouped the charges in three chapters: I – against the bodies of the former Polish Army Intelligence Service, II – against the Supreme Military Prosecutor's Office, III – against the Supreme Military Court. Simultaneously, they indicated those guilty of violating the rule of law in these bodies. They also presented conclusions with proposals of various consequences for those responsible for the use of repression within criminal proceedings.

There was no doubt that the management of the Intelligence Service were responsible not only for fabricating individual accusations, but even whole cases. The 'conspiracy in the army' cases are a perfect illustrations of the thesis. The fabrication involved extortion of false self-accusations and accusations of other people according to scripts prepared well in advance through the application of criminal methods of investigation. The co-defendants were artificially divided into groups in spite of having been accused of the same offence committed at the same time, of participation in the same organization and allegedly in mutual agreement, which served to turn co-defendants into 'witnesses'. In absolute absence of any substantive evidence, false evidence was thus obtained of uncommitted crimes. The report described a variety of sophisticated and perverse tortures causing serious bodily injuries, health impairment, permanent mental disease, suicidal attempts (successful or not), mentioning even cases of deaths caused by the investigating officers (e.g. Lt. Col. Łucjan Załęski[93], Corp. Witczak[94]).

[93] This death occurred on 22 July 1948. The forensic medicine doctor was forced to hide the actual cause of death. Only a commission of specialists from the Institute of Forensic Medicine of the Medical Academy in Warsaw issued on 6 December 1957 an opinion on the causes of death on the basis of investigation files and stated that death resulted from the methods applied towards Załęski and the prison conditions. The case is described in more detail by J. Poksiński, n. 23 *supra*, 42–44.

[94] More detailed information is lacking.

Other instances of violations of the rule of law included mass detentions without a prosecutor's sanction (that is, without the detention having been approved by a prosecutor); applying for a prosecutor's sanction without any substantive grounds; blackmailing the detainees with the application of repressions towards their families; concluding 'agreements' with the detainees to give false testimonies and self-incriminate in exchange for the promise of lenient sentences or relief in investigations; extending the investigations for years in spite of it being clear that there was no evidence of guilt; fabrication of the act of confrontation in such a way as to obtain signatures under extorted testimonies previously agreed on with enforcement officers; refusing the detainees the possibility to get acquainted with the collected evidence or failing to make the investigation files available to the defendants before the final court hearing; the prosecutor manipulating the defendants during the final hearing so as to keep the extortion of evidence secret and so as to not allow the defendants to withdraw the extorted testimonies; frequently hiding from the prosecutor and the court interrogation records and other evidence in favour of the detainees; manipulating the prosecutor and the court so as to not admit questions inconvenient to those in charge of the investigation to be asked; presence at secret hearings of investigation officers from a given case as the 'audience' to influence the court, the prosecutor and the defence attorney, and above all, the defendants and the witnesses.

Any withdrawal of testimonies, either before the prosecutor or at the hearing, led to the detainee being tortured. The defendants and the witnesses were beaten, even during the few-hour-long breaks in the hearings where testimonies other than those recorded in the records containing extorted testimonies were made. What was particularly drastic was the detention of those sentenced to death for years with the threat of the execution of the sentence pending so as to extort further false testimonies. However, once the role of the witness was performed, or the extorted testimonies withdrawn following the sentence, the postponed death penalties were executed[95].

Having presented the accusations against the Intelligence Service bodies, the Commission named the people guilty of violating the rule of law in those bodies. The main authors of the so-called 'conspiracy in the army' scenario, colonels Dmitry Voznesenski and Antoni Skulbaszewski escaped any consequences. They were Soviet officers and the Commission did not put forward any motions in their regard.

The Commission accused a significant group of Military Intelligence Service staff of applying inadmissible and unauthorized methods of investigation, motioning that criminal proceedings be instituted against Władysław Kochan, Mieczysław Notkowski, and Mateusz Frydman. Simultaneously, the Commission stated that the Military Prosecutor's Office had at their disposal indisputable evidence of homicide or grievous bodily harm being committed by several of them in the course of investigation[96]. The only persons sentenced by the Supreme Military Court on 28 March 1959 were Władysław Kochan (5 years' imprisonment) and Mieczysław

[95] What I discussed above were the few cases where, after suspension of the execution of death sentences, the Council of Ministers responding to the initiative of the Supreme Military Prosecutor granted pardon and the death penalty was replaced with life imprisonment.

[96] Józef Kulak, Jan Jurkiewicz, Mieczysław Wojda, and Edmund Czekała were charged with homicide, while Marian Urbaniak with grievous bodily harm. In addition, the Commission formulated a charge of criminal activity towards Eugeniusz Niedzielin in the case of the executed navy officers – Report of the Mazur (Wasilewski) Commission.

Notkowski (3 years' imprisonment)[97]. Proceedings against the others, after they were proved to have committed the crimes, were discontinued by virtue of Amnesty Acts of 1952 and 1956. The Supreme Military Court decided to adopt this course of action assuming that any penalties would not exceed 5 years' imprisonment[98].

In addition, the Commission indicated two groups of Intelligence Service officers responsible for the application of inadmissible and unauthorized investigation methods. With respect to the first group (16 officers) with a higher degree of guilt, the Commission motioned that they be degraded by two military ranks and with respect to seven of them the Commission motioned that they be discharged for disciplinary reasons[99]. As for the second group with a lower degree of guilt (24 officers), the Commission motioned that they be degraded by one military rank or that they be discharged from work due to their uselessness or transferred to other Polish Army bodies[100].

There are serious doubts whether the recommendations made by the Commission as regards officers of the Military Intelligence Service were acted upon, the more so that the leaders of the Polish United Workers' Party recommended liberalization that the severity of the prosecution of security and intelligence officers. During the National Security Service briefing in December 1957, Jan Wasilewski, Deputy Prosecutor General and Chairman of the Mazur (Wasilewski) Commission, made excuses for conducting proceedings against Security Service officers. Though, as he explained, over two thousand cases of this kind were lodged, the majority of them (1,990) were discontinued, most frequently because the limitation periods had expired. Courts received also petitions for discontinuation on the basis of amnesty and where the prosecutor was reluctant to treat the officers in an indulgent way, the Prosecutor General's Office would take over the proceedings[101].

The Commission found numerous abnormalities in the activity of the Supreme Military Prosecutor's Office. They established that part of the top officers of the Supreme Military Prosecutor's Office bore liability, among others, for: mass issuing of decisions on temporary pre-trial detention (and its extension) without consulting any materials; frequently issuing those decisions long after the actual detention; lack of supervision over the investigations conducted by the Intelligence Service and security bodies as well as uncritical acceptance of the indictments fabricated by investigation bodies in spite of stark contradictions, absence of material evidence,

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[97] Both were degraded in 1960 to the rank of a private – quoted after J. Poksiński, n. 90 *supra*, 54, 70.

[98] This was done in the case of Polish Army Intelligence Service officers taking part in the investigation in the so called 'bydgoska' and 'zamojsko-lubelska' cases, including M. Frudman, J. Kulak, J. Jurkiewicz, and M. Urbaniak as well as in the case of A. Fejgin, W. Kochan, Stefan Kuhl, Mieczysław Lis, Czesław Markiewicz, Zygmunt Lindauer – S. Marat, J. Snopkiewicz, n. 80 *supra*, 182–185. There is no information whether similar investigations were conducted with respect to E. Czekała, E. Niedzielin and M. Wojda.

[99] This group included: Lucjan Bajraszewski, Anatol Borel, Stanisław Dymek, Benedykt Knapiuk, Jerzy Kornek, S. Kuhl, Mikołaj Kulik, Władysław Kurek, Lucjan Leśniewski, M. Lis, Jan Litwinionek, Kazimierz Matela, E. Niedzielin, Henryk Olejniczak, Bernard Walczak, and Henryk Żytomierski. Those dismissed for disciplinary reasons were: S. Dymek, B. Knapiuk, J. Kornel, W. Kurek, K. Matela, H. Olejniczak, and H. Żytomierski – Report of the Mazur (Wasilewski) Commission.

[100] Those included: Józef Bartczak, Bratkowski (no name available), Tadeusz Jurczak, Zbigniew Krauze, Ignacy Krzemień, Leonard Kuźniak, Antoni Łatka, Władysław Mirosławski, Franciszek Ostrowski, Marian Popiołek, Stanisław Potemski, Stanisław Patla, Ryszard Rębak, Kazimierz Słabiak, Stefan Staszczuk, Michał Stern, Jerzy Stępniewski, Jerzy Szerszeń, Czesław Świstek, Antoni Troncik, Wiesław Trukowski, Kazimierz Turczyński, and Jerzy Wenelczyk – Report of the Mazur (Wasilewski) Commission.

[101] Wasilewski's statement is presented in a more extensive way by H. Dominiczak, *Organy bezpieczeństwa PRL 1944–1990. Rozwój i działalność w świetle dokumentów MSW*, Warszawa, 1997, 122–124.

and doubtful testimonies given by witnesses; accepting artificial divisions of one case into several separate cases so as to make the co-defendants witnesses; participation in orchestrating political trials; limiting the final hearing of the detained by the prosecutor (solely in the presence of an investigation officer) to asking whether the detained confirmed the earlier testimonies made before the investigation officer; approving the indictment without the final hearing by the prosecutor; objecting to legitimate motions of the defendant and the defence attorneys.

Moreover, the prosecutor's office failed to inspect prisons and detention wards, which was tantamount to surrendering the imprisoned persons to the total authority of investigation bodies. Neither did the prosecutor's office respond to reports of lower-rank prosecutors about unauthorized methods applied in the investigation, nor to complaints about extortion of testimonies, occasionally supported with visible evidence of beating (with prosecutors sometimes even witnessing the beating). The prosecutor's office also failed to respond to defendants' complaints about extorted testimonies voiced in court, branding them as defamation of the investigation bodies. Moreover, the Prosecutor's Office accepted the fact that repeated investigations were instituted against people already sentenced in legally binding way as well as detention of people sentenced to death, often for two years, in order to use them as witnesses in the 'conspiracy in the army' cases.

The Commission named specific people in the Supreme Military Prosecutor's Office who were guilty of violating the rule of law: four prosecutors being Soviet officers and 11 Polish prosecutors[102]. The Commission did not make any recommendations as regards the Soviet officers, but lodged motions for criminal proceedings to be initiated against prosecutors S. Zarakowski and H. Ligięza. As for the remaining nine prosecutors, the Commission recommended that their military ranks be lowered and four of them be additionally forbidden to work in the judiciary[103].

It is doubtful whether the recommendations of the Commission as regards the prosecutors were implemented. What is certain is only that even before the Commission's work was over, the Minister of National Defence expelled H. Ligięza and S. Zarakowski from the army. H. Ligięza was dishonourably discharged from the army by the order of the Minister of 29 April 1955[104], while S. Zarakowski was transferred to the reserve by the order of 19 April 1956 'in connection with the disclosed abnormalities in the work of the Military Prosecutor's Office and unacceptable lack of supervision over the investigative functions of the Military Intelligence Service bodies'[105]. According to J. Poksiński, the proceedings instituted against S. Zarakowski were discontinued due to amnesty[106].

[102] The Soviet prosecutors were: Antoni Skulbaszewski, Antoni Lachowicz, Jan Amons and Leonard Azarkiewicz. The Polish prosecutors were: Stanisław Zarakowski, Henryk Ligięza (or Ligęza), Feliks Aspis (assessed in the chapter on military justice), Józef Feldman, Maksymilian Lityński, Marian Frenkiel, Stanisław Banaszek, Mieczysław Dytry, Zenon Rychlik, Mieczysław Mett, and Helena Wolińska – Report of the Mazur (Wasilewski) Commission.

[103] The ban on work in the judiciary and the lowering of military ranks were to apply to J. Feldman, M. Lityński, M. Frenkel and S. Banaszek. In addition, the first three of the prosecutors listed were forbidden to leave the country and to occupy high public positions in the country for five years – Report of the Mazur (Wasilewski) Commission.

[104] K. Szwagrzyk, *Zbrodnie w majestacie prawa 1944–1955*, Warszawa, 2000, 115.

[105] It should be added that he was degraded to the rank of private by decision of President of the Republic of Poland, Lech Wałęsa, of 28 March 1991 – *ibid*., 186, 193.

[106] J. Poksiński, n. 23 *supra*, 249–250. The author does not provide more detailed information on the subject.

In Chapter Three, the Commission discussed the charges against the military judiciary. In fact, each of the charges made by the Commission disqualifies the judges responsible for such proceedings.

Pre-trial detention was commonly extended so as to last for years in spite of absence of any reasons. Hearings were conducted behind closed doors in the buildings of the Intelligence Service and even in prisons. The courts did not attempt to clarify obvious contradictions, did not demand presentation of substantive evidence, and not in a single case were the case files sent back for the investigation to be completed. Special benches were appointed to examine the cases, with judges submissive to the Supreme Military Court and gladly taking suggestions from the prosecutor and investigation bodies. The right of defence was entirely violated, a defence attorney – occasionally admitted – was limited in his/her ability to contact the defendant, had no freedom in access to case files, nor could he /she collect notes made from the files in order to prepare an appeal. As a rule, the motions of the defendant and the defence attorney were rejected. In the course of the hearing, procedural rules, such as directness, adversarial proceedings, and, first and foremost, oral character of statements, were violated glaringly. The last kind of violations manifested itself in the reading of testimonies extorted in the investigation, frequently being the only evidence.

The judges accepted the way of conducting the hearing and the sentence imposed by the investigation bodies. This was helped by the fact that cases were artificially divided so that the co-defendants could become 'witnesses' in the trials of others, blackmailed with the possibility of the postponed death sentence being executed or the tortures applied earlier being resumed. Judges did not react to the withdrawal of testimonies or to complaints about the extorted testimonies, even though self-incrimination or testimonies of 'witnesses' – co-defendants – were frequently the only piece of evidence. What was particularly deplorable was the adjudication of death penalties without even the grounds for finding the defendants guilty because, after all, total rehabilitation followed in all the 'conspiracy in the army' cases. In cases conducted without the participation of defence attorneys (which was in fact very common), where death and long-term prison sentences were passed, the court was not interested whether the defendants lodged appeals. In the course of appeals before the Assembly of Judges of the Supreme Military Court practically all sentences were upheld, with the complicated cases, in which death penalty was adjudicated, being often dealt with in less than a quarter of an hour. The judges adjudicating a death sentence also objected to pardon being granted and thus agreed to the execution of the sentences. Supreme Military Court judges received 'praise' for passing drastically harsh sentences in contradiction of the evidence gathered in the case and in spite of the general conditions indicating obvious fabrication of the case.

Summing up the charges made against the investigation bodies and the judiciary, the Commission found it their duty to say that the responsibility and liability for those crimes rested in the first place with the Polish Army Intelligence Service, but it was the courts that must have seen the violation of law, that must have been able to predict the possibility of the criminal effect of their actions and accepted it, therefore the courts bore the greatest responsibility. The Commission came

to the conclusion that the liability for adjudicating and administering the draconic penalties in such conditions constituted an offence of excess or abuse of power or failure to perform the duty (Article 130 of the Criminal Code of the Polish Army), prosecuted as a criminal case. The case should be investigated since the activity of some of the judges not only constituted an offence defined in Article 130 of the Criminal Code of the Polish Army, but also exhibited the features of a judicial murder. What can seem surprising in the light of these materials is the position of M. Szerer expressed in his report. In his view, none of the judges were aware of convicting innocent people and there was no evidence of the judges consciously violating the rule of law (sic!)[107]. I fully share the position of Prof. A. Kaftal that given the glaring violations of law and the way the hearings were conducted, the judges of military courts must have known why they were acting in such a way and what was expected of them[108].

In the Commission's opinion, the judges, who by virtue of their position in the Supreme Military Court not only had access to many cases, but also adjudicated in many of those cases, were able to get thoroughly and comprehensively acquainted with the alleged military conspiracy. Hence, in relation to several judges: Feliks Aspis, Juliusz Krupski, Teofil Karczmarz, and Mieczysław Widaj, who had heard many cases, the Commission made a recommendation that an investigation be carried out to determine whether they had committed judicial murder or had been, in the least, guilty of an abuse of power or failure to perform their duty.

Also the behaviour of Oskar Karliner deserved, in the Commission's view, a very negative assessment, but they did not motion for an investigation to be made as the proceedings were most likely to be discontinued because of the amnesty. Given the circumstances, the Commission proposed other consequences to be applied – a ban on work in the judiciary and degradation to a lower military rank[109].

The negative assessment of the Commission concerned two Soviet officers: Wilhelm Świątkowski (President of the Supreme Military Court) and Aleksander Tomaszewski (Vice-President of the Supreme Military Court), who were sent back to the Soviet Union. The Commission did not make any motions in their regard.

The Commission also indicated five other judges who should bear the consequences of their participation in violating the rule of law in the judiciary[110]. Three judges were given the option of transfer to a regional military court, while four were demoted in military rank[111].

Unfortunately, there are all signs that the recommendations of the Mazur (Wasilewski) Commission were not implemented. Valuable information in this respect is provided by Diana Maksimiuk, who examines archival documents concerning the liability of military judges and prosecutors for violating the rule of law

[107] M. Szerer, *Procesy przed Najwyższym Sądem Wojskowym*, Tygodnik Solidarność 36(1981).
[108] A. Kaftal, *Sędziowie mogli odejść*, Prawo i Życie 44(1988).
[109] The Commission proposed the application of the same consequences with respect to Leo Hochberg – Report of the Mazur (Wasilewski) Commission.
[110] They were: Józef Warecki, Piotr Parzeniecki, Stefan Michnik, Zygmunt Krasuski, and Kryspin Mioduski – Report of the Mazur (Wasilewski) Commission.
[111] Transfer was was suggested with regard to K. Mioduski, Z. Krasuski, and S. Michnik, degradation of military rank with regard to J. Warecki, P. Parzeniecki, Z. Krasuski, and K. Mioduski, and additional consequence in the cases of O. Karliner, L. Hochberg, and J. Warecki was a five-year ban on leaving the country or holding a high public position in the country – Report of the Mazur (Wasilewski) Commission.

before 1956[112]. According to her findings, the implementation of the Commission's recommendations began on the request of Prosecutor General Andrzej Burda of 14 November 1956. It resulted in the presentation on 10 February 1958 of a framework plan for an investigation of the liability of military judges and prosecutors for violating the rule of law in 1948–1954. The investigation was intended to cover not only the activity of judges F. Aspis, T. Karczmarz, J. Krupski, and M. Widaj (in accordance with the final motion of the Commission) but also O. Karliner and P. Parzeniecki. In addition, the investigation was to be conducted with respect to prosecutors S. Zarakowski and H. Ligięza (as recommended by the Commission) and also M. Frenkiel, M. Lityński, J. Feldman and H. Woliński. Deputy Prosecutor General, Władysław Taraszkiewicz, sent that framework investigation plan to the Prosecutor General with a request for consultation[113]. However, already in the letter of 12 May 1958, addressed to the General Prosecutor, he asked for refusal to prosecute the persons covered by the framework investigation plan of 10 February 1958, attaching draft decisions on instituting an investigation and presenting charges to H. Ligięza and F. Aspis (this time as a prosecutor). It is unknown whether the refusal to prosecute was granted nor whether the draft decisions on the institution of new investigations were implemented. The only certain thing is that until the end of the Peoples' Republic of Poland no judge or prosecutor who worked in 1944–1956 was brought before court[114]. A question arises whether they bore any consequences at all (apart from being transferred to the reserve still before the Commission started work), whether the ban on working in the judiciary was applied. Could they have been demoted? This is doubtful. It is known that T. Karczmarz, not having any legal education, having been transferred to the reserve on 5 August 1955, became a Supreme Court judge as soon as in August of the same year and remained in that position until 30 April 1957. Hochberg was delegated to the Supreme Court in May 1955 and, despite the ban on working in the judiciary, held the position of a judge until 31 March 1957. Also Z. Krasuski and K. Mioduski worked in the Military Chamber of the Supreme Court until early 1970s[115].

There was also an understood need to examine the activity of the general (as opposed to military) prosecutors' offices in terms of the observance of law by its bodies. The initiative to establish a commission of this kind was presented at an open meeting of the Basic Party Organization of the Polish United Workers' Party by the Prosecutor General's Office. Following the resolution adopted at the meeting on 29 October 1956, the Prosecutor General set up a Commission for the examination of violations of the rule of law by employees of the Prosecutor General's Office

[112] D. Maksimiuk, *Rozliczanie stalinizmu na fali 'odwilży' 1956 roku. Dokumenty archiwalne dotyczące odpowiedzialności sędziów i prokuratorów wojskowych za łamanie praworządności w latach 1948–1954*, Miscellanea Historico-Iuridica 9(2010), 109–143.

[113] Simultaneously, in the cover letter, he informed about the existence of a difference of positions among the prosecutors dealing with the case.

[114] S. Maksimiuk, n. 112 *supra*, 115–116.

[115] K. Szwagrzyk, *Prawnicy czasu bezprawia. Sędziowie i prokuratorzy wojskowi w Polsce 1944–1956*, Kraków–Wrocław 2005, 343–344 and 378–379. Only O. Karliner was degraded to the rank of a private by the order of the Minister of National Defence of 1980 – quoted after J. Poksiński, n. 90 *supra*, 57, 80–81, 156, 276 and 283.

and the Prosecutor's Office of Warsaw[116]. The Commission was initially chaired by Marian Mazur, who was replaced on 14 March 1957 by Jan Wasilkowski. Members of the Commission included prosecutors from the Prosecutor General's Office: Wojciech Gawlikowski, Antoni Hapan, M. Kulczycki, and Józef Kucharski (a voivodeship prosecutor delegated to the Prosecutor General's Office).

The Commission based their studies on the examination of case files, trial documents, complaints submitted by citizens, and statements made by employees of the Prosecutor's Office. The examinations brought much the same results as the report of the so-called Mazur (Wasilewski) Commission, which examined military investigation bodies and military courts.

The Commission established that what was the direct source of wrongdoings was the submissive attitude of the then key staff of the prosecutor's office vis-à-vis public security bodies. The Commission pointed to a definitely negative role performed in the Prosecutor General's Office by the Special Department, which tolerated numerous violations of the rule of law by the Ministry of Public Security. The Department was supervised by Henryk Podlaski, previously Deputy Supreme Military Prosecutor in charge of special cases and from September 1950 until the end of March 1955, Deputy Prosecutor General of the Peoples' Republic of Poland. Though at that time the Prosecutor General was Stefan Kalinowski (not even a lawyer), it was H. Podlaski who was actually in charge of the work of the general prosecutors' offices. It was with his active support that secret sections were established in general courts. H. Podlaski exerted various forms of pressure on judges, not only judges of the secret sections. At joint meetings of judges and prosecutors he chastised judges for being 'guilty' of passing 'mild' sentences. Prosecutors did not allow the defendants to disclose any forms of extortion used against them in the course of the investigation. Investigation procedures were initiated against judges who allowed for unauthorized and unlawful practices of security bodies in the investigation to be revealed.

The Commission concluded that those guilty of violating the rule of law included, apart from the top-ranking staff of the Prosecutor General's Office, all prosecutors working in the Special Department as well as several prosecutors from the Supreme Military Prosecutor's Office closely cooperating with the Prosecutor General's Office. Yet before the conclusion of the works of the Commission, S. Kalinowski, H. Podlaski, Władysław Dymant and Beniami Wajsblech were discharged from their positions.

The Commission presented a definitely negative assessment of three prosecutors and concluded that they should be discharged from work in the prosecutor's office[117]. As for the remaining six prosecutors, the Commission was of the opinion that it was enough to have them transferred to field prosecutor's offices[118]. The Commission presented the report to the Prosecutor General of the Peoples' Republic of Poland, Marian Mazur, motioning for a possibly fast implementation of the recommendations.

After the breakthrough of October 1956, yet another commission was set up by Zofia Wasilkowska, the then Minister of Justice. It was a Commission for

[116] Report of the Commission of 11 April 1957 was published in Zeszyty Historyczne Paris, 67(1984).
[117] They were: Maciej Majster, Paulina Kern, and H. Wolińska.
[118] They were: Kazimierz Kosztirko, Zofia Bielec, Jan Traczewski, Benedykt Jodelis, Mieczysław Dytry, and Zenon Rychlik.

examining the work of the so-called secret sections operating in 1950–1954 at the Ministry of Justice and also in the Court of Appeal and the Voivodeship Court in Warsaw. The Commission included Supreme Court judge Julian Potępa as its chairman, Prof. Stanisław Ehrlich and doc. Leon Schaff from the University of Warsaw, Prof. Józef Liwtin from the University of Łódź, doc. Sylwester Zawadzki, Vice-President of the Main Board of the Association of Polish Lawyers, Michał Kulczycki, President of the Supreme Bar Council, and Zygmunt Opuszyński, Director of the Legislative Department of the Ministry of Justice. As soon as on 9 February 1957, the Commission presented a report after making an independent analysis of 114 from among 506 cases heard in secret sections.

The irregularities found by the Commission in the examined cases were very similar to those established by the Mazur (Wasilewski) Commission. By way of an example, I will indicate the most serious of them. Temporary detentions measured in years, hearings before the court of the 1st instance held most frequently in the Mokotów prison and latter in a special room in the court building, limited right of defence (limitation of the list of defence attorneys permitted to defend, inability of the defence attorneys to take notes from case files). Judgments were issued on the basis of scarce and dubious evidence. Frequently, sentences were passed merely on the basis of self-incrimination or testimonies of 'witnesses' (actually co-defendants) in spite of testimonies being withdrawn due to extortion in the course of investigation. Judges did not respond to any complaints about the use of extortion even when signs of torture were shown at the hearing. Simultaneously, the Commission examining the cases of the so-called secret sections correctly, although as if in justification, underlined that the course of trials held in secret sections did not differ from the trials conducted outside of the secret sections at the same time. Unfortunately, the Commission did not attempt to assess the prosecutors involved in secret trials, limiting themselves to passing the information obtained to the Prosecutor General's Office.

Opinions of the Commission members differed. Some members themselves justified the system and the law of the Stalinist period. According to Prof. Ehrlich, 'a group of people can be identified who should possibly be made criminally liable'. Prof. Schaff, on the other hand, believed, though the criminal trial was his specialty, that 'adjudication in a secret section was court proceedings and thus it should not in itself discriminate the judges who took part in it'[119]. Unsurprisingly, the recommendations of the Commission that disciplinary proceedings be instituted against five most active judges were passed by a majority of votes. Those were judges: Ilia Rubinow – responsible for the secret section in the Warsaw courts; Emil Merz – responsible for the secret section in the Supreme Court; Marian Stępczyński, Kazimierz Czajkowski, and Feliks Roszkowski (information about F. Roszkowski is missing). Disciplinary procedures was initiated against the first four of them, which ended with sentences passed by the Supreme Court, acting as the Higher Disciplinary Court, on 31 December 1957[120].

Only I. Rubinow was found guilty of infringing on the dignity of the office of a judge with violation of fundamental principles of the rule of law in connection with heading the so-called secret section in the period from September 1950 to September 1955.

[119] J. Kubiak, *Sekcja tajna*, Prawo i Życie 31(1991).

[120] The first sentence ref. No. SDW 18/57 covered all four of them, the second one, with ref. No. SDW 35/57 covered only M. Stępczyński.

He received a disciplinary punishment of being transferred to the reserve without a decline in salary, while being acquitted of part of the charges[121].

The proceedings against K. Czajkowski and E. Merz were discontinued on the assumption that their professional errors referred to the period not extending beyond 1950 and thus over five years had elapsed from the initiation of the proceedings and, moreover Merz was found not guilty of having created and administered the secret section at the Supreme Court.

M. Stępczyński was acquitted from all the charges in both sentences. The court dismissed the charge of failure to reveal in the records of hearings of the complaints of B. Chajęcki, E. Grzybowski and A. Jaroszewicz about torture being applied in the course of their investigations. In the Court's view there were no grounds to accept the existence of 'ill will' on the part of the accused or to adjudicate against better knowledge. While examining the case, the Disciplinary Court completely ignored the fact that M. Stępczyński (while a bench member) pronounced a death penalty on B. Chajęcki without any grounds whatsoever (the sentence was carried out)[122]. Also the remaining charges (of contributing to passing a death penalty in contravention of regulations as well as to sentencing for 10 years' imprisonment in spite of absence of features of an offence) were dismissed. In the statement of reasons for the acquittal judgment, the Disciplinary Court stated that judge M. Stępczyński 'while examining the cases in point, exhibited high qualifications in the field of court practice and legal knowledge'. In this way, judge M. Stępczyński was given full recognition for his activity in the secret section. It should thus be reminded that it was judge M. Stępczyński who took part (as a bench member) in imposing death penalty on: Z. Ejme and J. Czerwiakowski (sentences executed) as well as K. Moczarski, E. Krak and J. Rycelski, while their rehabilitation trials revealed complete lack of grounds for their sentences[123].

In spite of the fact that, as Prof. Adam Lityński correctly observed, the Commission attempted to soften the drastic picture of the activity of courts in secret sections and relieve judges of liability for violating the law, occasionally to the point of a judicial murder[124], no effort was spared in order not to make the Commission's report known to the public.

Z. Wasilkowska, who was an adherent of making the conclusions reached by the Commission available to the public, was dismissed from her post shortly after preparing the report. The report in its full text version was not made available even to the Parliamentary Committee for the Judiciary[125].

It should be added that judges who had played a negative role in the secret sections, not only did not lose the trust of the authorities, but were even in a way rewarded for their activity. Judge M. Stępczyński, who was delegated to perform the duties of

[121] He was acquitted of secretly keeping records of cases of the secret section, exerting administrative pressure concerning the judgments made by judges and refusing to provide families with information on what happened to the accused.

[122] The Military Court judgment of the Military Law Court for the capital city of Warsaw of 16 May 1958, ended with full rehabilitation, proved that B. Chajęcki, who was tortured in the investigation, did not commit the crimes of espionage and the crimes defined in the August Decree on the punishment for fascist-Nazi criminals guilty of murder and torture of civilians and prisoners of war as well as traitors to the Polish nation.

[123] J. Rycelski, K. Moczarski and E. Krak were acquitted already in 1956 and in those trials the application of torture in investigations was revealed.

[124] A. Lityński, n. 8 *supra*, 172.

[125] D. Maksymiuk, *Jeszcze w sprawie sekcji tajnych w sadownictwie polskim w latach pięćdziesiątych XX wieku,* 11 Miscellanea Historico-Iuridica 407(2012), p. 407.

a Supreme Court judge from 16 December 1955, became a Supreme Court judge on 16 September 1958 and remained in this position until his death in 1964[126]. Also E. Merz and K. Czajkowski continued to be Supreme Court judges, the former until 1962[127] and the latter until 1972.

Although only very few of the conclusions and recommendations of the Commission were implemented, their crucial role was to recognize the immense scale of the lawlessness in the activity of bodies established specifically to ensure the observance of law. The role of the report of the Mazur (Wasilewski) Commission examining the activity of military investigation bodies and military courts should be assessed as positive. The thorough analysis made by that Commission, preceded by rehabilitation trials in the cases of the so-called 'conspiracy in the army', resulted in specific manifestations of the rule of law violation being named, in particular, the notion of a judicial murder was introduced, and allowed for an attempt to identify the people responsible for violations of law.

Abstract

Maria Stanowska, *First Attempts at Undoing the Consequences of Violating the Rule of Law in 1944–1956*

The article discusses initiatives taken in the mid-1950s to examine the state of the rule of law in 1944–1956 in courts, prosecutor's offices, Polish Army Intelligence Service and public security authorities. Attention is given primarily to the Report of the Mazur (Wasilewski) Commission, which was established as a result of an agreement between the Minister of Justice, the Minister of National Defence, and the Prosecutor General. The Commission's task was to determine the extent of violations of the rule of law by the Supreme Military Court, the Supreme Military Prosecutor's Office and the Military Intelligence Service. The article discusses in detail the manifestations of violations of the rule of law disclosed by the Commission, often criminal in character, as well as the specific conclusions with proposals of a variety of consequences for the people guilty of violating the rule of law in the aforementioned authorities. The Report findings are presented against the background of the rehabilitation proceedings conducted with respect to the victims of the alleged 'conspiracy in the army'. Also discussed are the works of two other Commissions dealing with the examination of violations of the rule of law in general courts and prosecutor's offices. The Prosecutor General established a Commission for examining the state of the rule of law in the Prosecutor General's Office and in the Prosecutor's Office in Warsaw, while the Minister of Justice set up a Commission for examining the work of the so-called secret sections operating in 1950–1954 at the Ministry of Justice, in the Court of Appeal and the Voivodeship Court in Warsaw.

I also present the results of the first criminal trials conducted against public security and Military Intelligence Service officers guilty of the application of inadmissible and unauthorized methods in the course of investigation.

Keywords: *detention, summary proceedings, convictions, death penalty, judicial crime, judicial murder, infringing on the dignity of the judicial office, rule of law, crimes particularly dangerous at the time of rebuilding the country, military courts, Supreme Military Court, secret sections, Polish Committee of National Liberation, Ministry of Public Security, Mazur (Wasilewski) Commission, Wasilkowska's Commission*

[126] In 1963 he was honoured with the Officer's Cross of the Order of Polonia Restituta.

[127] Together with Igor Andrejew and Gustaw Auscaler he had his share in upholding the judgment sentencing to death A.E. Fieldorf, who was fully rehabilitated in 1989. The investigation into the judicial murder of Gen. Fieldorf was instituted in 1992. At present, none of those suspected of participation in that murder is alive.

Streszczenie

Maria Stanowska, *Pierwsze próby naprawienia skutków łamania praworządności w latach 1944–1956*

W artykule omówiono działania podjęte w połowie lat 50. XX w. w celu zbadania stanu praworządności w latach 1944–1956 w sądach, prokuraturach oraz organach Informacji Wojska Polskiego i bezpieczeństwa publicznego. Najwięcej uwagi poświęcono Raportowi Komisji Mazura (Wasilewskiego), powstałej w wyniku porozumienia Ministra Sprawiedliwości, Ministra Obrony Narodowej i Prokuratora Generalnego, której zadaniem było ustalenie zakresu naruszania praworządności przez Najwyższy Sąd Wojskowy, Naczelną Prokuraturę Wojskową oraz organy Informacji Wojskowej. W artykule szczegółowo omówiono ustalone przez Komisję przejawy łamania praworządności będące niejednokrotnie działaniami przestępczymi, a także konkretne wnioski z propozycjami różnego rodzaju konsekwencji wobec osób winnych łamania praworządności w tych organach. Przedstawiono wyniki Raportu na tle działań rehabilitacyjnych prowadzonych wobec ofiar rzekomego „spisku w wojsku". Omówiono także działania dwóch innych komisji zajmujących się badaniem przejawów łamania praworządności w powszechnych sądach i prokuraturze. Prokurator Generalny powołał Komisję do zbadania stanu praworządności w Generalnej Prokuraturze i Prokuraturze miasta stołecznego Warszawy, zaś Minister Sprawiedliwości – Komisję do zbadania pracy tzw. sekcji tajnych działających w latach 1950–1954 w Ministerstwie Sprawiedliwości oraz w Sądach: Apelacyjnym i Wojewódzkim w Warszawie. Poznajemy też rezultaty pierwszych procesów karnych prowadzonych wobec funkcjonariuszy organów bezpieczeństwa publicznego oraz Informacji Wojskowej winnych stosowania niedozwolonych metod podczas śledztwa.

Słowa kluczowe: *areszt, tryb doraźny, wyroki skazujące, kara śmierci, zbrodnia sądowa, mord sądowy, uchybienie godności urzędu sędziowskiego, praworządność, organy Informacji Wojska Polskiego, sądy wojskowe, Najwyższy Sąd Wojskowy, Naczelna Prokuratura Wojskowa, sekcje tajne, Ministerstwo Bezpieczeństwa Publicznego, Komisja Mazura/Wasilewskiego, Komisja Wasilkowskiej, działania rehabilitacyjne*

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