Evolution of the Polish Criminal Justice System After World War Two - An Overview

1. INTRODUCTION

In June 1989, opposition forces led by the Trade Union Solidarity won a spectacular electoral victory by gaining a majority in the two chambers (Seym and Senat) of the Polish National Assembly (hereinafter Parliament). Since the Polish Communist Party had ruled the country with an iron fist for 45 years, the opposition's total triumph at the ballot box was understandably a breathtaking event not just for the citizens of Poland, but for the entire world community. Tadeusz Mazowiecki, a long-time associate of the Union's charismatic leader, Lech Walesa, became Prime Minister.

The first non-communist government in Poland's post World War II history was faced with numerous daunting tasks of unprecedented magnitude, above all, the disestablishment of the communist system of government which was based on two cardinal tenets: monopoly of power of the communist party and the centrally governed, state owned economy. This system was imposed upon Poland at the Yalta Conference by the Soviet Union with the Western powers' connivance. Now, it was to be replaced by a system based on the totally opposite principles of Western-style democracy (above all, the Rule of Law and separation of powers) and a private, market-oriented economy. No country had ever embarked on this uncharted road.

2. THE STALINIST EPOCH

Although between 1944 and 1989 Poland was formally a sovereign nation, the Soviet Union exercised strong dominance over almost every aspect of her political, economic, and cultural life. This dominance was especially heavy during the Stalinist era (1944-1955) when the 'sovietization' process was in full swing. The communist ruling elite resorted to brute force while dealing with real as well as imaginary opponents of the regime. Several important positions within the criminal justice system were occupied by Soviet 'advisors' who, usually

1. Professor Stanislaw Frankowski taught for many years at the University of Warsaw School of Law. Since 1983 he has been a member of the faculty of the Saint Louis University School of Law (Missouri, USA). Professor Andrzej Wasek is a professor at the Maria Skłodowska-Curie University School of Law in Lublin (Poland). He also teaches full time at Lublin Catholic University.
acting behind the scenes, played a major role at every stage of criminal proceedings involving politically-sensitive cases.2

Curiously enough, the new regime, which then wanted to be considered as a successor of the pre-war Polish government, did not discard, as matter of strategy, the appearance of ‘normalcy’. The old legislation, including the 1921 Constitution and two fairly liberal criminal codes (the 1928 Code of Criminal Procedure and the 1932 Penal Code), was retained although the communist rulers realized very well that it was no longer suitable under the new political conditions. Therefore, the Party leadership pushed for the promulgation of several new ‘revolutionary’ laws designed to make the system politically failsafe and consistent with the new realities. As a result, unrestrained repression co-existed for some time in a strange fashion with the ‘bourgeois’ law and several emergency-type laws imposed by the communist authorities.

The new communist laws reached the very core of the pre-war criminal justice system and especially its criminal procedure component. Following the Soviet example, the powers of courts of general jurisdiction, at that time still staffed largely by pre-war judges, were severely restricted. This was accomplished by establishing special courts and by expanding the jurisdiction of military courts. Simultaneously, criminal procedure was simplified in several categories of criminal cases.

For example, the Penal Code of the Polish Army, promulgated on September 1944 when the War was still in full swing, rescinded Chapter 17 of the 1932 Code covering Offences against the State.3 The Code empowered military tribunals to try civilians charged with one of many anti-state crimes loosely defined by the very same Code. In October of the same year the communist authorities promulgated the Decree on the Protection of the State which widened the scope of anti-state crimes and simplified procedural rules4. The investigation was to be conducted by a military prosecutor or by agents of the Public Security bodies. This Decree was ultimately replaced in June 1946 by the extremely severe Decree on Offences Particularly Dangerous in the Period of Rebuilding the State which remained in force until 1970, well beyond the ‘Period of Rebuilding’.5

Another law, namely the Decree of November 16, 1945, created an extra-judicial body, the Special Commission for Combatting Economic Abuses and Corruption.6 The nature of the agency was highly unusual since it was an investigatory as well as an adjudicatory body. The investigatory powers of the Commission’s agents were wider than those of the prosecutors. In particular, they had the power to place the ‘offender’ in a work camp for up to two years (Art. 10). No right of appeal was provided (Art. 14).

It was certainly not accidental that both the military courts and the Commission applied a separate set of highly simplified procedural rules. But the Decree on Emergency Proceedings

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