From Communist Legality to the Rule of Law

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Compared to other East and Central European countries Poland's history under communism shows some important peculiarities, which have to be mentioned at the very beginning of this paper in order to clarify what will follow.

First of all, it should be stressed that in Poland — like in no other communist country — two important traditional forces of this nation, namely private farmers and the Catholic Church, were never defeated by the communists. They were able to survive the worst, Stalinist period, which turned out to be too short for Polish communists and their Soviet patrons to succeed. Probably, because of that successful act of diffusion, the majority of Polish society could later demonstrate so many times its defiance to the communist rule. The number of important acts of rebellion against the system in Poland — 1956, 1968, 1970, 1976, 1980-81 and 1989 — is considerably bigger than the number of similar events in the so-called socialist countries taken altogether.

Weak Social Base

The above statements should lead to the conclusion that the communist system in Poland disposed of a relatively weak social base and that it was not by accident that the whole process of liberation of East and Central Europe has started in a so spectacular way with the birth of Polish Solidarity, in August 1980.

Obviously, it does not mean that the basic features of communist rule in Poland were considerably different from those in other countries. They were probably the same everywhere and it seems to me that their catalogue, being universal, may be applied to any communist state. Let me call this catalogue "the ten commandments of communist law and order" and present it as follows:

1. Law is subordinated to political aims and interests of the ruling group (party); politics prevail over law which does not limit it anyhow;
2. Law is a political instrument of the ruling party which makes it possible for that party "to elevate to the rank of a statute" anything it wishes, thus making it obligatory for the whole society;
3. Society as a whole and social groups outside the ruling party exert no actual influence on the contents of law and the manner of its making;
4. Human rights and civil liberties are protected only to the extent to which they do not clash with the interests of the group in power;
5. Political authorities are not bound by law and are the only group to change or infringe that law;
6. Law presents its democratic externals which never function in practice;
7. Law is created by a legislative agency which is permanently dominated by the ruling party, and by other state agencies, fully subordinated to that party;

8. There is no independent agency to assess the compatibility of laws with the constitution or international conventions. As far as concerns the protection of human rights and civil liberties, both the constitution and international pacts are treated as collections of declarations of no immediate use in social practice;

9. The official propaganda depicts law as the expression of a struggle of most citizens or society as a whole;

10. Theory of law and legal studies are to justify the need for the existing legal system and have a duty to observe it, and to consolidate it; legal professions are obliged to co-operate with the authorities, the interests of which they should protect and support.

Law of Authority
The principles quoted above constitute a system which may be called the law of authority. This system was questioned and challenged for many years in Poland, since the majority of the Poles were in favour of another legal system, which may be called the law of society. However, since most of its common basic principles and values are still based on entirely different assumptions, one cannot speak of a single and universally accepted system of the law of society. The following assumptions may be mentioned, among them first and foremost:

1. subordination of politics to law;
2. participation of different social groups in the making and application of that law;
3. protection of human rights and civil liberties to the broadest extent, and
4. independent review of the compatibility of 'internal law' with international conventions.

Finally, after many years of struggle, Poland got a chance to change the communist system and to create the law which fits the needs of society better. The Round Table Talks and the successful elections of June 4, 1989 have started a new era in Poland's post-war history.

Enthusiasm and Optimism
The first year after the collapse of communist rule went by in a very optimistic atmosphere. All basic legal reforms have commenced and some of them have even been accomplished.

From the very beginning, the need to create a new Constitution was the most important issue. In 1989, two constitutional commissions started their work, both in the Sejm (lower chamber) and in the Senate. It should be mentioned, that some reforms in the area of constitutional law have already been