

Rhetoric of violence. On eristic methods used by Stalinist courts in the perspective of Chaïm Perelman's theory

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Abstract: Eristic methods of the Stalinist courts are a phenomenon, on the one hand, well-documented, yet on the other hand, insufficiently explored from the theoretical perspective. They can be understood as forms of violence occurring in the language of the judicial discourse participants (judges, prosecutors), aimed at the total elimination of political opponents. The article is an attempt to characterise these methods using the conceptual instruments, developed by Chaïm Perelman and presented in the work *Logique juridique. Nouvelle rhétorique and L'empire rhétorique. Rhétorique et argumentation*. What weighs in favour of using Perelman's theory are its roots in the abundant achievements of the ancient rhetoric. More importantly, however, one of the main objectives of Perelman was the development of the modern theory of legal argumentation, including judicial one. In this regard, the views of the philosopher are adopted as a counterpoint in the rhetorical analyses of the abuses of the Stalinist courts discussed on the example of the Trial of the Sixteen and the Trial of General A. E. Fieldorf „Nil”.

Keywords: Chaïm Perelman, rhetoric, eristic, Stalinist courts, political trials

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1. Introduction

The aim of this essay is to present, on the basis of Chaïm Perelman's¹ thought, eristic misuses of politicized judiciary. The foundation constitutes the records of two famous trials during which Polish leaders and combatants of World War II were condemned by Stalinist courts with imprisonment or life sentence. The first of them, the trial of the sixteen leaders of the Polish Underground State abducted to Moscow, is one of the best documented postwar demonstration trials². On the other hand, the second example – the trial of General A. Fieldorf „Nil”, is a characteristic case of „court murder” in Stalinist Poland³. Nonetheless, the presentation below is only of an exemplary, illustrative character, taking into consideration that in the years 1944–1956 there were a dozen thousand similar politicized trials⁴.

The importance of the problem at issue is connected with Perelman's view that legal, and especially judicial argumentation is a model example of all possible kinds of argumentation⁵.

¹ Chaïm Perelman (1912–1984) was a philosopher of law, logician and an ethics of Jewish descent. He was born in Warsaw, from where in 1925 his family emigrated to Belgium. Perelman was academically associated with the Université Libre in Brussels and his most important works were published in French.

² Other examples of demonstration trials include the trial of the President of the Board of Directors of the Association of Freedom and Independence – F. Niepokólczycki and his associates, and that of S. Mierzwa, the Deputy Secretary General of the PSL Executive Committee (1947); the trial of four priests of the Cracow Curia (1953); the trial of the bishop of Kielce Stanisław Kaczmarek (1953).

³ Other examples of “court murders” are the trials of W. Pilecki (1947); T. Bejt (1949); and Ł. Ciepliński (1951).

⁴ Military District Courts only, formed on the basis of the decree of the PKWN decree of 23.09.1944 rendered about 3,500 death sentences (more than 1300 were executed). Most of them have been issued for political reasons. Cf. Rafał Leśkiewicz, *Dokumentacja wojskowego wymiaru sprawiedliwości jako źródło do badań nad historią aparatu represji* [Documentation of the military judiciary as a source for research on the history of the repression system], after: <http://ipn.gov.pl/pl/archiw/dzialalnosc-naukowa-i-p/publikacje-internetowe/32836,Rafal-Leskiewicz-Dokumentacja-wojskowego-wymiaru-sprawiedliwosci-jako-zrodlo-do-.html?search=61073>.

⁵ Perelman's abovementioned perception is mutatis mutandis related to the beginnings of rhetoric influenced by the rules

Thinking in this vein, the indicated eristic misuses of judges, prosecutors and defenders can be assumed as mirroring all possible methods of communist propaganda⁶.

The essay has the following structure: Perelman's theory of argumentation and the notion of eristic will be presented at first. Next, the two abovementioned political trials will be briefly described, constituting the basis for the presentation of eristic misuses. In the subsequent part of the essay the indicated misuses will be characterized in more details, on the basis of Perelman's views as presented in his books *Logique juridique. Nouvelle rhétorique*⁷ and *L'empire rhétorique. Rhétorique et argumentation*⁸.

2. Chaïm Perelman's rhetoric. Eristic.

2.1. Ancient rhetoric and Perelman's theory of argumentation

Rhetoric⁹ is defined from ancient times as a skill and good art, namely effective persuasion (Greek: *techne rhetorike*; Latin:

of constructing court speeches, written in the fifth century B.C. in Sicily and applied during property ownership trials. After: Mirosław Korolko, *Sztuka retoryki. Przewodnik encyklopedyczny [The art of rhetoric. Encyclopedic guide]*, Wiedza Powszechna, Warszawa 1990, p. 33.

⁶ For example, on 16 June 1945 in the "Life of Warsaw" there was published an announcement of the Polpress agency which repeated the argumentation used in the indictment in the "Trial of the Sixteen": "The public in Poland indignantly learned of the exploits of Okulicki and his accomplices who were accused of that they organized a diversionary action against the Red Army". Access in: the Jagiellonian Library, reading room of IV and V format magazines, 25.1.2016. Cf. Jerzy Bralczyk, "O języku polskiej propagandy politycznej" ["About the language of Polish political propaganda"], in: Halina Kurkowska (ed.), *Współczesna polszczyzna. Wybór zagadnień [Contemporary Polish language. Selected issues]*, Wydawnictwo PWN, Warszawa 1981, pp. 336–354.

⁷ Chaïm Perelman, *Logique juridique. Nouvelle rhétorique*, Published: Dalloz, Paris 1976. Footnotes based on the Polish edition: Chaïm Perelman, *Logika prawnicza. Nowa retoryka [Legal logic. New rhetoric]*, Wydawnictwo PWN, Warszawa 1984.

⁸ Chaïm Perelman, *L'empire rhétorique. Rhétorique et argumentation*, Librairie Philosophique J.VRIN, Paris 1977. Footnotes and quotations based on the Polish edition: Chaïm Perelman, *Imperium retoryki. Retoryka i argumentacja [Empire of rhetoric. Rhetoric and argumentation]*, Wydawnictwo PWN, Warszawa 2002.

⁹ The term "rhetoric" comes from the Greek noun *rhétor*, etymologically derived from the form of the verb *reo* not preserved in the

ars oratoria)¹⁰. The hellenist T. Zieliński emphasized that as early as in its beginnings, rhetoric developed as the art of judicial speech¹¹. The theory proposed by Chaïm Perelman and Lucie Olbrechts-Tyteca in *Traité de l'argumentation. La nouvelle rhétorique*¹² (1958) was an attempt to renew antique tradition the basis of which were established, among others, by Aristotle¹³ and Cicero¹⁴. At the same time, however, Perelman intended to create a modern and coherent theory of argumentation¹⁵. His initial disappointment with logical positivism, both in the field of ethics and jurisprudence, motivated him to look for another, more universal argumentative philosophy¹⁶. Perelman concluded that it was to be the rhetoric which refers to legal¹⁷, and especially to judicial reasoning¹⁸.

classical Greek – “I speak purposefully, appropriately, beautifully”. After: M. Korolko, *Sztuka retoryki...*, op. cit., p. 27.

¹⁰ Mirosław Korolko, *Retoryka i erystyka dla prawników [Rhetoric and eristic for lawyers]*, Wydawnictwa Prawnicze PWN, Warszawa 2000, p. 7.

¹¹ T. Zieliński pointed out that the term *rhéton* meant in ancient Greece a strictly and clearly formulated legal norm. Over time, however, the centre of gravity shifted from the literal meaning of the norm to interpretative and argumentative meaning, aiming to grasp the legislator's thought expressed by imperfect words. Cf. Tadeusz Zieliński, „O czytaniu mów sądowych Cyncerona w Szkole” [“About reading Cicero's courtroom speeches in School”], *Kwartalnik Klasyczny*, No. 2 (1928), p. 13.

¹² Chaïm Perelman, Lucie Olbrechts-Tyteca, *Traité de l'argumentation. La nouvelle rhétorique*, Éd. de l'Université de Bruxelles 2008.

¹³ Cf. Aristotle, *Rhetoric*, Dover Publications, New York 2012. Footnotes based on the Polish edition: Aristotle, *Retoryka. Retoryka dla Aleksandra. Poetyka [Rhetoric. Rhetoric for Alexander. Poetics]*, Wydawnictwo PWN, Warszawa 2014.

¹⁴ Cf. Marcus Tullius Cicero, *De oratore, or his three dialogues upon the character and qualifications of an orator*, Ed. R.P.&C. Williams, Boston 1822.

¹⁵ Its basis should be “dialectical and rhetorical reasoning”. After: Ch. Perelman, *Logika prawnicza...*, op. cit., p. 144.

¹⁶ *Ibidem*, pp. 140–142.

¹⁷ Perelman writes, among others, about “the superiority of the juridical thought over philosophical one” which results from the fact that “the latter may rest on general and abstract formulas, and the former must overcome the difficulties arising from their application to specific problems”. After: *ibidem*, p. 163.

¹⁸ In addition to the judicial argumentation, Perelman characterizes, among others, typical arguments of the legislator and the lawyer. *Ibidem*, p. 180ff.

Moreover, he claimed that judicial reasoning is of paradigmatic character and constitutes a model example of every practical argumentation¹⁹. For these reasons Perelman is considered one of the leading contemporary theorists of legal argumentation²⁰.

Perelman therefore indicated the passage from particular legal discourse to a general argumentation theory.²¹ Consequently, on the basis of his thought it is possible to point out rhetoric misuses which were present in the practice of the Stalinist judicature. Moreover, it is possible to link them with the entire propaganda argumentation used in that period²².

According to Perelman, the measure which is applied to a specific argumentation is its effectiveness in a dispute²³.

¹⁹ Cf. Jerzy Stelmach, Ryszard Sarkowicz, *Filozofia prawa XIX i XX wieku [The philosophy of law of the nineteenth and twentieth century]*, Wydawnictwo Uniwersytetu Jagiellońskiego, Kraków 1998, p. 149.

²⁰ Among the theoreticians of legal argumentation there should be mentioned, in particular, R. Alexy, J. Habermas, R. Dworkin, M. Atienza and P. Ricoeur (in the last period of creation). Cf. Robert Alexy, *A Theory of Legal Argumentation: The Theory of Rational Discourse as Theory of Legal Justification*, Oxford University Press, Oxford 2010; Jürgen Habermas, *The Theory of Communicative Action*, Vol. 1, Beacon Press, Boston 1985; Ronald Dworkin, *A matter of principle*, Harvard University Press, Cambridge 1985; Manuel Atienza, *Las razones del derecho: teorías de la argumentación jurídica*, Universidad Nacional Autónoma de México, México 2003; Paul Ricoeur, *The Just*, University of Chicago Press, Chicago and London 2000.

²¹ Jerzy Stelmach, *Współczesna filozofia interpretacji prawniczej [Modern philosophy of legal interpretation]*, Wydział Prawa i Administracji UJ, Kraków 1995, p. 123.

²² As for the relations of the ideology of real socialism with the propaganda rhetoric of the Polish People's Republic in the perspective of anthropological theory, cf. Janusz Barański, "Ideologia i historia albo epos ideologiczny" ["Ideology and history or ideological epic"], in: Socjotechnika, między magią a analogią. Szkice o masowej perswazji w PRL-u i III RP [*Social engineering, between magic and analogy. Sketches of mass persuasion in the Polish People's Republic and the third Republic of Poland*], Wydawnictwo Uniwersytetu Jagiellońskiego, Kraków 2001, pp. 41–62. J. Barański's considerations directly concern martial law.

²³ Ch. Perelman, *Logika prawnicza...*, op. cit., pp. 177–178. Cf. Jolanta Jabłońska-Bonca, *O prawie, prawdzie i przekonywaniu [About law, truth and conviction]*, Wydawnictwo Uczelniane Bałtyckiej Wyższej Szkoły Humanistycznej, Koszalin 1999, p. 135.

Also legal discourse is measured neither by the logical truth nor by falsehood but rather by the force of persuasiveness²⁴. According to Perelman the aim of every argumentation is to encourage or reinforce the support of the statements submitted to the acceptance of certain auditorium²⁵. In order to reach this goal, the speaker must match his speech to his audience.²⁶ In this context, Perelman states: “*A priest who preaches to the faithful of his church has the right to count that they recognize, as all the faithful, sacred texts and accepted dogmas. But the same sermon presented at the meeting of philosophers, among whom there would be many non-believers or followers of another religion, would certainly be fun*”.²⁷ However, argumentative discourse is valid only after being accepted by so called “universal audience”²⁸. Perelman writes: *If one wants to define the audience in the way which is useful for the development of argumentation theory, it must be understood as all those people whom the speaker wants to influence by means of his argumentation*.²⁹ Consequently, the idealizing, Kantian – like the notion of “universal audience” becomes the key to understand Perelman’s theory of discourse³⁰. It should be noticed that the philosopher introduced also a concept of particular

²⁴ Ch. Perelman, *Logika prawnicza...*, op. cit., p. 147.

²⁵ Ibidem, p. 156.

²⁶ Ibidem, pp. 147–150.

²⁷ Ibidem, p. 159.

²⁸ Perelman writes “(...) it is important to recognize the superiority of the arguments that would be accepted by everyone – namely, by the universal auditorium: so we are saying that we are directing our call to the reason, that we use arguments that should be accepted by every intelligent being” (ibidem, p. 148.) The concept of a universal auditorium is essentially ideal and formal in nature. It was shaped, among others, under the influence of the concept of the transcendental entity and the categorical imperative of I. Kant. After: J. Stelmach, R. Sarkowicz, *Filozofia prawa...*, op. cit., p. 150.

²⁹ Ch. Perelman, *Imperium retoryki...*, op. cit., p. 27.

³⁰ Perelman writes that in the argumentation, “the philosopher is addressing the reason, namely a universal audience, all persons considered to be reasonable and competent”. After: Ch. Perelman, *Logika prawnicza...*, op. cit., p. 166. Cf. Jolanta Jabłońska-Bonca, *Prawnik a sztuka negocjacji i retoryki [Lawyer and the art of negotiation and rhetoric]*, Wydawnictwo Prawnicze LexisNexis, Warszawa 2003, p. 50.

audience³¹; in the case of the latter, the argumentation is effective when it is accepted by at least part of it³².

One should stress that acknowledging certain arguments by universal audience means that a specific argumentation is objective and rational³³. In other words, guarantees of rationality are included in the construction of universal audience itself, which should be persuaded by the force of more effective, i.e. better argument. The criterion of effectiveness understood in this way is supplemented by Perelman with the postulate of openness for criticism in the course of the discourse and with the requirement of tolerance. One should add that the philosopher agrees for pluralism in the cognition field; consequently, two counter-arguments can be acknowledged by the same audience. In this context, Perelman advocates a “principle of inertia”, which should not be rejected without justification for once accepted beliefs.³⁴ That is why when discussing the nature of reasoning the philosopher claims that it does not always lead to unequivocal conclusions; it rather justifies conclusions carried out earlier. As a result, also in case of courts, one cannot always talk about one correct and unquestionable decision³⁵.

All these postulates allow to take a critical insight at the rhetoric of the Soviet judiciary. As it will be discussed below, Stalinist courts could not agree, as a rule, to any pluralistic consequences of argumentation, treating instrumentally the fundamentals of rhetoric, such as its discursive character or the requirement of persuading the audience by means of a better argument.

³¹ Ch. Perelman, *Logika prawnicza...*, op. cit., p. 148. Cf. J. Jabłońska-Bonca, *O prawie, prawdzie i przekonywaniu...*, op. cit., 143.

³² Perelman gives, among others, an example of a parliamentary speech in which “a speaker can divide the audience into as many groups as there are political parties”. After: Ch. Perelman, *Logika prawnicza...*, op. cit., pp. 147–148. Cf. J. Stelmach, *Współczesna filozofia...*, op. cit., p. 124.

³³ Critically on the assumptions of the concept of rationality proposed by Perelman the in the context of formal justice: Neil MacCormick, Ota Weinberger, *An Institutional Theory of Law: New Approaches to Legal Positivism*, Springer Science & Business Media, Dordrecht 1986, pp. 213ff.

³⁴ J. Stelmach, R. Sarkowicz, *Filozofia prawa...*, op. cit., p. 151.

³⁵ Cf. J. Stelmach, *Współczesna filozofia...*, op. cit., p. 126.

2.2. Eristic

At this point, the fundamental difference between rhetoric and eristic should be signalled. From the very beginning of its existence, the latter was understood to be the art of conducting warring disputes (Greek *techne eristike* is derived from *éristike* – a quarrel, a dispute),³⁶ in which there were applied disloyal methods, i.e. sophisms³⁷.

Aristotle writes in *the Treatise on Sophistic Evidence: in the same way as there is a kind of dishonesty in competition, a certain dishonest fight, in the discussion such a dishonest way of verbal fight is eristic. Just like those who want to win at all costs, they grasp all means, eristics do the same here.*³⁸ It should be pointed out that in the pantheon of Greek deities Eris was a goddess of conflict and dispute³⁹.

B. Brożek and J. Stelmach indicate that in ancient times eristic's goal was to win disputes, using all possible means, both allowed and forbidden ones, whilst maintaining the appearance of having good arguments⁴⁰. So, in case of eristic conclusions what mattered most was their form, whilst the statements themselves, namely their content, only seemed to be true⁴¹. For this reason, Aristotle argued that one should (...) *fight eristics in general, not as those who actually rebut evidence, but as those who are doing so ostensibly. We deny that they actually proved their view (...)*⁴². That is why Aristotle in *Rhetoric* deems as approvable only logical and dialectic argumentative methods⁴³.

³⁶ M. Korolko, *Retoryka i erystyka dla prawników...*, op. cit., p. 212.

³⁷ Aristotle lists sophisms among the five ways of attaining the goal in the sophistic and eristic argumentation. The others are elenchos, paradox, solecism and “bringing the enemy to talking nonsense”. See: Aristotle, *Topiki. O dowodach sofistycznych* [*Topics. About sophistic evidence*], Wydawnictwo PWN, Warszawa 1978, p. 242ff.

³⁸ *Ibidem*, p. 265.

³⁹ Marek Kochan, *Pojedynek na słowa. Techniki erystyczne w publicznych sporach* [*Battle for words. Eristic techniques in public disputes*], Wydawnictwo Znak, Kraków 2005, p. 15.

⁴⁰ Jerzy Stelmach, Bartosz Brożek, *Metody prawnicze* [*Legal methods*], Wyd. Zakamycze, Kraków 2004, pp. 168–169.

⁴¹ Aristotle combines eristic with “the apparent syllogism (enthymeme)”. See Aristotle, *Retoryka...*, op. cit., 167–168.

⁴² Aristotle, *Topiki...*, op. cit., p. 265.

⁴³ More precisely, Aristotle distinguishes between apodeictic syllogism (proper for scientific argumentation) and dialectic syllogism.

Consequently, according to Brożek and Stelmach, one cannot agree with A. Schopenhauer who claims that the goal of eristic is showing rightness⁴⁴. It was the goal of ancient rhetoric and contemporarily it is the goal of Perelman's theory of argumentation⁴⁵. To the contrary, eristic discourse has one goal, i.e. winning, and one criterion to fulfill, neutral from moral point of view – effectiveness⁴⁶. It must be added that Schopenhauer distinguished between logic and dialectics, and within the latter he distinguished the eristic dialectic. In the philosopher's opinion, logic was a "science of the laws of thought", while the dialectic – "the art of debate"⁴⁷. The "eristic dialectic" was supposed to be "a science of innate human desire to be right". At the same time, in Schopenhauer's view, it constituted the art of discussing in such a way as to preserve the appearance of righteousness, i.e. *per fas et nefas*⁴⁸.

As discussed above, in Perelman's theory, the effectiveness of argumentation also plays an important role. However, the basic criterion of acceptance of the rhetoric discourse is its reasonability that fulfils the function of the universal auditorium.⁴⁹ In addition, the effectiveness in Perelman's theory is limited by the above-mentioned "postulates". Furthermore, in Perelman's theory the requirement of persuading the audience entails respect for often contradictory values⁵⁰. To the contrary, in eristic there is no similar limitation⁵¹.

Cf. Aristotle, *Retoryka...*, op. cit., pp. 49–54.

⁴⁴ Schopenhauer argued at the same time that the righteousness was to be distinguished from the objective truth. "Proving righteousness" instead of "proving the objective truth" was, according to the philosopher, the result of the fact that man is naturally evil. Cf. Arthur Schopenhauer, *Erystyka czyli sztuka prowadzenia sporów* [*Eristic. The art of controversy*], Wydawnictwo Literackie, Kraków 1973, p. 24.

⁴⁵ Ch. Perelman, *Logika prawnicza...*, op. cit., p. 144.

⁴⁶ Cf. Kamil Zajdler, "Erystyka w praktyce prawniczej" ["Eristic in legal practice"], *Legal, Economic and Sociological Movement*, Vol. LXXI, Book 4 (2009), p. 54.

⁴⁷ A. Schopenhauer, *Erystyka czyli sztuka...*, op. cit., pp. 21–22.

⁴⁸ *Ibidem*, pp. 22–23.

⁴⁹ J. Stelmach, B. Brożek, *Metody prawnicze...*, op. cit., pp. 168–169.

⁵⁰ Ch. Perelman, *Imperium retoryki...*, op. cit., pp. 40–43.

⁵¹ Cf. Gloria Beck, *Podręcznik manipulacji. Zakazana retoryka* [*Handbook of manipulation. Forbidden rhetoric*], Wydawnictwo Sen-sus, Gliwice 2007, p. 10.

K. Zajdler points out that also in judicial legal practice eristic, unlike rhetoric, is not the art of persuasion by means of reliable methods, but of overcoming the opponent in an oral argument *per fas et nefas*⁵². The eristic paradigm does not therefore fit into the model of legal argumentation proposed by Perelman, whose final result is to be the compromise, expressed in the operative part of the ruling, “*acceptable in a given environment and at a given moment*”⁵³. Perelman is aware that “*in every court case there is disagreement and dispute*”, yet he believes that the role of the judge is to find a solution that is “*reasonable and acceptable, namely neither subjective nor arbitrary*”⁵⁴. For the reasoning undertaken in this essay there is crucial a practical temptation of a transfer from rhetoric (in both classic and Perelman’s understanding) to eristic, according to which victory in a dispute justifies application of all possible argumentative techniques⁵⁵.

He points out that the “eristic turn” in the case of both the Soviet and the Nazi laws allowed the assumption of legal positivism⁵⁶. For example, the thesis on the content of the law made by the will of the sovereign allowed the authorities to subordinate the courts to ideologized laws. This has led to a disturbance in the relationship between the effective application of the law by the “mouth of the law” and the rule of law. In a similar context, Gustav Radbruch writes that *positivism believes (...) that the legitimacy of the law is already proved by the fact that it has enough force in it to guarantee effectiveness. However, in the best of circumstances force can be the basis of compulsion and never – of duty and legitimacy.*⁵⁷ Perelman expresses a similar view, pointing out that “*in a democratic society one cannot sustain*

⁵² K. Zajdler, “Erystyka w praktyce prawniczej...”, op. cit., p. 51.

⁵³ Ch. Perelman, *Logika prawnicza...*, op. cit., p. 188.

⁵⁴ *Ibidem*, p. 213.

⁵⁵ On the criteria for acceptability of legal argumentative discourse: Jerzy Stelmach, *Kodeks argumentacyjny dla prawników [Code of argumentation for lawyers]*, Wyd. Zakamycze, Kraków 2003, p. 14ff.

⁵⁶ Cf. Stelmach, *Współczesna filozofia...*, op. cit., pp. 34–35.

⁵⁷ See Gustav Radbruch, „Ustawowe bezprawie i ponadustawowe prawo” [“Statutory lawlessness and extra-statutory law”], in: Gustav Radbruch, *Filozofia prawa [Philosophy of law]*, Wydawnictwo PWN, Warszawa 2009, p. 249.

*a positivistic vision of law, according to which it would be merely an arbitrary expression of the will of the sovereign. The effective functioning of the law requires that it be accepted, not imposed only by coercion*⁵⁸.

3. The Stalinist trials

Below there will be presented two model examples of political trials in order to enlighten a context in which eristic replaced rational argumentation in the court discourse of “Stalinist night”⁵⁹.

3.1. The trial of “the Sixteen”

The so-called trial of “the Sixteen” was preceded by the arrests, undertaken by NKVD in Pruszków and deportation to Moscow of the leaders of the Polish Underground State⁶⁰. Amongst them there was L. Okulicki, the late commander of the Home Army, the chief of the Armed Forces in the country and J. S. Jankowski, the vice-Prime Minister, the Delegate for the Government in the country⁶¹.

⁵⁸ Ch. Perelman, *Logika prawnicza...*, op. cit., p. 230.

⁵⁹ As for the Stalinist period in Poland, see Wojciech Roszkowski, *Historia Polski 1914–1991 [History of Poland 1914–1991]*, Wydawnictwo PWN, Warszawa 1992, pp. 151–217; Witold Pronobis, *Polska i świat w XX wieku [Poland and the world in the 20th century]*, Wydawnictwo Edicions Spotkania, Warszawa 1991, pp. 381–420; Norman Davies, *Powstanie '44 [The Uprising of '44]*, Wydawnictwo Znak, Kraków 2004, pp. 663–759.

⁶⁰ Jan Kochanowski, *Proces Szesnastu [The trial of the “Sixteen”]*, Wydawnictwa Szkolne i Pedagogiczne, Warszawa 1993, p. 57. Cf. Eugeniusz Duraczyński, *Generał Iwanow zaprasza: przywódcy podziemnego państwa polskiego przed sądem moskiewskim [General Ivanov invites: leaders of the underground Polish state before the Moscow court]*, Wydawnictwa Alfa, Warszawa 1989. Cf. W. Roszkowski, *Historia Polski...*, op. cit., p. 153; W. Pronobis, *Polska i świat...*, op. cit., pp. 333–334.

⁶¹ The remaining persons accused were to K. Pużak, A. Bień, A. Pajdak, S. Jasiukowicz, K. Bagiński, A. Zwierzyński, J. Chaciński, E. Czarnowski, S. Mierzwa, F. Urbański, Z. Stypułkowski, S. Michałowski, K. Kobylański and J. Stemler. Cf. Eugeniusz Duraczyński, “Wprowadzenie” [“Introduction”], in: *Sprawozdanie sądowe w sprawie organizatorów, kierowników i uczestników*

The right to be deported and prosecuted was derived by the Soviet side from the agreements signed on 26 July 1944 by E. Osóbka – Morawski and V. Molotov on the relations between the Soviet command and the PKWN administration and on the Polish – Soviet state border⁶². After being deported, general Okulicki and others spent almost three months in prison in Łubianka where they were intensely interrogated and “prepared” to a trial for effect⁶³. During that period they were forced to reveal, *inter alia*, the fact of existence of confidential anti-communistic organization “NIE” (“No”) established by general A. E. Fieldorf “Nil” This information was confirmed in the course of the trial⁶⁴.

The “show trial” was arranged from June the 18th to June the 21st 1945 before the Military College of the Supreme Soviet of the USSR. The trial itself was carried out in the following way: after deporting the Poles from Łubianka, they were seated on a stage, in two rows of chairs. There were guards standing face to face with the prisoners, carrying rifles with bayonets⁶⁵. The trial took place in the same courtroom that the one of the thousands of Bolsheviks sentenced with death penalty in the great Stalin purge in the years 1936-1938⁶⁶.

polskiego podziemia w zapleczu Armii Czerwonej na terytorium Polski, Litwy oraz obwodów zachodnich Białorusi i Ukrainy Kolegium Wojskowe Sądu Najwyższego ZSRR, 18–21 czerwca 1945 r. w Moskwie [Court report on the organizers, managers and participants of the Polish underground in the Red Army hubs on the territory of Poland, Lithuania and the western districts of Belarus and Ukraine. Military College of the Supreme Court of the Soviet Union, 18-21 June 1945 in Moscow], Wydawnictwo KAW, Rzeszów 1991, pp. II–V. The publication is a reprint of the original report published by the Legal Publishing House of the People’s Commissariat of Justice of the USSR, Moscow 1945.

⁶² According to point 7 of the first of the aforementioned agreements the crimes committed by the Polish people against the Soviet troops in the zone of war operations were subject to the “jurisdiction of the Soviet chief commander”. See E. Duraczyński, “Wprowadzenie...”, *op. cit.*, p. VI.

⁶³ J. Kochanowski, *Proces Szesnastu...*, *op. cit.*, pp. 64–65.

⁶⁴ Cf. the fragments from court report, in: Maria Fieldorf, Leszek Zachuta, *Generał „Nil” August Emil Fieldorf* [General “Nil” August Emil Fieldorf], Instytut Wydawniczy PAX, Warszawa 1993, pp. 148–169.

⁶⁵ Visible on documentary photos of the trial.

⁶⁶ Among others, the marshal of the Soviet Union M. N. Tuchaczewski. Cf. J. Kochanowski, *Proces Szesnastu...*, *op. cit.*, p. 67.

The indictment included the following charges, divided into five chapters⁶⁷:

1. *organizing underground armed units of the Home Army at the rear of the Red Army;*

2. *forming underground military-political organization “Niepodległość” (“NIE”);*

3. *terrorist-sabotage and spy activity of underground military units of the Home Army and “NIE”;*

4. *the activity of illegal transmitting-receiving radio stations of the Home Army and the Polish ‘underground’ government at the rear of the Red Army;*

5. *the plan of preparing warfare together with Germany against USSR*⁶⁸.

The prosecution deemed “illegality” of the Home Army and it subjected to utter criticism still internationally recognized Polish emigration government in London⁶⁹. Not surprisingly, the final argumentation reflected the above-mentioned “crimes” of these organizations⁷⁰. One should add that the Soviet court-appointed defenders met the accused not earlier than in the courtroom. Moreover, some of the accused were puzzled by their defenders pleadings since the latter condemned their conspiratorial activity and pleaded guilty⁷¹.

⁶⁷ The basis of this was art. 58 of the Criminal Code of the USSR of 1926 on the grounds of which people were charged for counter-revolutionary activities.

⁶⁸ The entire indictment in: *Sprawozdanie sądowe w sprawie organizatorów...*, op. cit., pp. 8–34.

⁶⁹ Simultaneously to the trial in Moscow there took place the discussions on the establishment of the Interim Government of National Unity. Nevertheless, diplomatic recognition for the London Government of the Polish Republic in exile was withdrawn by the United States and Great Britain only on July 5, 1945.

⁷⁰ From the final accusation speech: “From the dark alleys of its dark underground, all these „underground ministers” and members of the so-called „parliament”, Okulicki, and others with him, puppets playing with the politics who are now sitting on the bench of criminals, reached their criminal hands trying to put the Red Army’s blow in the back”, in: *Sprawozdanie sądowe w sprawie organizatorów...*, op. cit., p. 239.

⁷¹ In particular, in the defence speech of Bień and Jasiukowicz there appeared the accusations addressed to L. Okulicki. After: *ibidem*, p. 279. Cf. footnote 134.

The barristers also assured that their clients felt remorse and they asked court for showing real Soviet magnanimity⁷². As a consequence, three Poles, including general Okulicki, resigned from legal representation and defended the case on their own⁷³.

At the end of the trial, the prosecutor delivered an argumentation in which he outlined the Stalinist vision of the recent Polish history. He stated that the trial *summed up criminal activity of the Polish reaction which for many years fought against the Soviet Union and it sold the interests of its nation*⁷⁴. He aimed to prove, referring also to J. Stalin's opinion, that prewar Polish leaders *preferred to carry out a game between Germany and the Soviet Union, which led to sanctioning government to the September defeat, and then exposed the Soviet Union to the great danger*⁷⁵. The prosecutor's discourse included the strong assessment of the Home Army which *bombed, murdered Soviet citizens (...) cruelly treated and harassed in a gruesome way and by doing it they were hardly different from German cruelty*⁷⁶. Due to this propaganda, in the rendered judgment there was nothing about the death penalty⁷⁷. As a result of "the Soviet mercy" thirteen accused were sentenced to relatively lenient punishment, and the three of them have been acquitted⁷⁸. Nonetheless, general Okulicki, sentenced to 10 years of imprisonment, according to the Soviet files died on 24 of December 1946. Similarly, J. S. Jankowski, sentenced to 8 years of imprisonment, died in prison on

⁷² After: Ibidem, p. 281.

⁷³ Okulicki delivered a one and a half hour defence speech. Cf. Ibidem, pp. 269–278.

⁷⁴ Ibidem, p. 238.

⁷⁵ Ibidem.

⁷⁶ Ibidem, p. 256.

⁷⁷ Ibidem, pp. 318–319.

⁷⁸ In the trial there were imposed the following penalties of deprivation of liberty: L. Okulicki – 10 years; J. S. Jankowski – 8 years; S. Jasiukowicz – 5 years; A. Bień – 5 years; A. Pajdak (in a separate trial) – 5 years; K. Pużak – 1,5 years; K. Bagiński – 1 year; A. Zwierzyński – 8 months; E. Czarnowski – 6 months; J. Chaciński – 4 months; S. Mierzwa – 4 months; Z. Stypułkowski – 4 months; F. Urbański – 4 months. Found not guilty: S. Michałowski, K. Kobylański and J. Stemler.

13 of March 1953⁷⁹. In the Soviet camp on 22 October 1946 there also died S. Jasiukowicz. The other defendants were subjected after the punishment to various repressions of the communist authorities in Poland⁸⁰.

3.2. The Trial of General Fieldorf “Nil”

The second discussed trial is a model example of Stalinist judicial murder and it concerns Polish general, August Emil Fieldorf “Nil”⁸¹. During World War II he was the commander of the Kedyw (special operations executive) of the Main Headquarter of the Home Army and deputy commander-in-chief under general L. Okulicki⁸². As mentioned above, amongst his activities he established an anticommunist organization “NIE”⁸³. In the year 1945 “Nil” was accidentally caught by NKVD and without being recognized was deported to Ural, where he worked for two years in the labour camps⁸⁴. After coming back to Poland he revealed himself, was arrested on November the 9th 1950 and put in prison⁸⁵. There he was offered a collaboration, consisting, *inter alia*, of signing appropriate appeal to the previous soldiers of the Home Army to follow communist’s authorities⁸⁶. Fieldorf refused and then, before the trial, he was told by the officers of security service that he would be hanged⁸⁷.

⁷⁹ According to a letter from the MFA of the USSR to the Polish authorities of 3 November 1989, L. Okulicki and J. Jankowski died of heart disease.

⁸⁰ J. Kochanowski, *Proces Szesnastu...*, op. cit., pp. 82–86.

⁸¹ Cf. W. Roszkowski, *Historia Polski...*, op. cit., p. 207; W. Pronobis, *Polska i świat...*, op. cit., p. 400.

⁸² M. Fieldorf, L. Zachuta, *Generał „Nil”...*, op. cit., pp. 89–112.

⁸³ The concept and the general principles of organization formation are known from the message of General T. Bór-Komorowski to General K. Sosnkowski of 23 November 1943. The assumptions of the organization were formulated in the Statute and Instruction of “NIE” („NO”). After: M. Fieldorf, L. Zachuta, *Generał „Nil”...*, op. cit., pp. 113–122.

⁸⁴ Fieldorf was hiding then under the pseudonym Walenty Gdanicki. As for his stay in the camps see: *ibidem*, pp. 169–192.

⁸⁵ Cf. N. Davies, *Powstanie ’44...*, op. cit., p. 755.

⁸⁶ M. Fieldorf, L. Zachuta, *Generał „Nil”...*, op. cit., p. 201.

⁸⁷ *Ibidem*, p. 262.

A formal indictment accused “Nil” of the crimes stated in the decree about punishing Nazi murderers and collaborators, i.e. of participation in killing civilians, military men and prisoners of war⁸⁸. The indictment was approved and announced during the trial (held in camera) on the 16th April 1952. Despite several months of trial general “Nil” announced that he did not plead guilty⁸⁹.

The evidence presented by prosecution consisted in battle dispatch about fights with the Soviet guerrilla and the units of Polish pro-Soviet guerrilla (the People’s Army). It was also based upon a forced testimony of two officers of the Home Army who knew the general from Kedyw⁹⁰. Nil’s defender issued a motion of appointing an expert witness and then about the right to appoint additional witnesses. Both these motions were dismissed “*as a result of a sufficient explanation of the said issue and the documentation at hand*”⁹¹. The prosecutor asked for judging the defendant pursuant to article 1 of the abovementioned decree, which provided only for capital punishment. Ultimately, only after few hours of the trial, the court decided: *To find August Fieldorf “Nil” guilty of alleged charges stated in the indictment on the basis of article 1 point 1 of the decree of 31st August 1944 about punishing Nazi murderers and to sentence him to death penalty. In the merits of reason of the judgment the court stated that it did not find any circumstances that could alleviate the defendant’s guilt. (...) Fieldorf was guilty not only of the blood of victims of fratricide murders and even the blood of victims murdered by the German fascists – because by his activity, the accused hindered the country’s liberation*⁹².

The opinion of the composition of the court, issued after the judgement to the Supreme Court, stated as follows:

⁸⁸ Ibidem, p. 236.

⁸⁹ The protocol of the main hearing of 16 April 1952 of the Provincial Court for Warsaw, case files: IV, K.311/51, vol. III.

⁹⁰ These were T. Grzmielewski “Igor” and W. Liniarski “Mścisław”.

⁹¹ M. Fieldorf, L. Zachuta, *Generał „Nil”...*, op. cit., pp. 245–246.

⁹² M. Fieldorf, L. Zachuta, *Generał „Nil”...*, op. cit., p. 248. Cf. Tadeusz M. Pużański, “Mordercy generała Nila” [“The murderers of general Nil”], *Tygodnik Solidarność*, No. 13/1999.

(...) *Fieldorf does not deserve mercy. The accused showed great will of crime. (...) According to court there is no possibility of the resocialization of the accused*⁹³. On the 20th October 1952 the Polish Supreme Court kept the verdict of the capital punishment in force. Also, president B. Bierut did not take advantage of the right of grace requested by Fieldorf's wife, daughter⁹⁴ and 87-year old father⁹⁵. The sentence was carried out by hanging on 24th February 1953⁹⁶.

4. Communist eristic compared with rhetoric in the light of Ch. Perelman's theory

4.1. Eristic in the action of the Stalinist courts — general remarks

One should indicate that in the two presented cases the argumentation used by prosecutors and judges aimed, by any costs, to effective elimination of political opponents. Considering the latter fact, in the context of the described trials there will be subject to analysis eristic misuses perpetrated by the Stalinist courts⁹⁷.

From the birth of the ancient rhetoric, in the court oratory art there is applied the so-called "judging type" (Greek: *dikainikón génos*; Latin: *genus iudicale*). It includes persuasive statements regarding the past time that are used to prosecute or defend⁹⁸. However, in keeping with the requirements of rhetoric art, the use of the judging type by the participants in court proceedings is not *per se* identical with eristic⁹⁹. As mentioned above – eristic, from its definition, aims at

⁹³ Case files, vol. III, K. 70. After: M. Fieldorf, L. Zachuta, *General „Nil”...*, op. cit., p. 259.

⁹⁴ N. Davies, *Powstanie '44...*, op. cit., p. 756.

⁹⁵ M. Fieldorf, L. Zachuta, *General „Nil”...*, op. cit., p. 258.

⁹⁶ *Ibidem*, p. 262.

⁹⁷ The illustrative citations from court reports, protocols and judgments were for the sake of clarity included in the footnotes.

⁹⁸ M. Korolko, *Sztuka retoryki...*, op. cit., p. 48.

⁹⁹ Cf. Lech Morawski, *Argumentacje, racjonalność prawa i postępowanie dowodowe* [Argumentations, rationality of law and evidence proceedings], Wydawnictwo Uniwersytetu im. Mikołaja Kopernika, Toruń 1988.

winning the dispute under the pretext of having good arguments and with the use of all means, both allowed as well as prohibited ones¹⁰⁰. One can point out four of the most typical eristic methods, namely: 1) using the so-called “eristic expansion”, namely behaving and acting in such way as to cause chaos in argumentation and lead to disorientation of the opponent; 2) referring to actual or alleged approval of the public by proving that the opponent’s views are inconsistent with the views of this audience, irrespective of the fact whether such inconsistency in fact exists; 3) “fabricating the consequences” which consists in inferring, by means of groundless (false) conclusions, such statements from the opponent’s speech which were not in fact included in it; 4) hiding the goal that the argumentation really aims at.¹⁰¹

These methods were applied, in a representative way, during the abovementioned trials. The fact of deporting the sixteen leaders of the Polish Underground State to Moscow is the best example of “physical” use of the first method¹⁰². What can be also included therein are the tortures used during the investigations, for example, those taking place in respect of witnesses before general Fieldorf’s trial¹⁰³. As a consequence, defendants’ testimonies in courtrooms were often ambiguous and uncertain¹⁰⁴. A typical method used

¹⁰⁰ The practical “guide” to the modern application of eristic methods is G. Beck’s book titled: *Podręcznik manipulacji. Zakazana retoryka...*, op. cit. The book contains, however, a “scale of ethical uncertainties” concerning the various methods, cf. pp. 327–328.

¹⁰¹ J. Stelmach, B. Brożek, *Metody prawnicze...*, op. cit., pp. 168–169.

¹⁰² P. Ricoeur calls the deceit “a distorted form of irony and dexterity” and considers it a manifestation of evil at the interpersonal level. Paul Ricoeur, *O sobie samym jako innym [Oneself as another]*, Wydawnictwo PWN, Warsaw 2005, p. 366.

¹⁰³ Cf. footnote 75. W. Liniarski was brought to the hearing room on the stretcher. He was so devastated that Fieldorf did not recognize him at first. After: M. Fieldorf, L. Zachuta, *Generał „Nil”...*, op. cit., p. 240.

¹⁰⁴ For example, T. Grzmielewski „Igor” testified on 28 February 1957, during the trial of W. Liniarski, that the testimony against Fieldorf was enforced on him. Grzmielewski said: “For 4 days I was constantly interrogated, beaten, that at the end of the hearing I did not know what was going on with me”. Quote from the case file (case file number: IV. K. 13/57, pages 33-34), after: M. Fieldorf, L. Zachuta, *Generał „Nil”...*, op. cit., p. 268.

by the communist courts was also referring to supposedly common social approval of the Red Army liberators and new communist authorities by “the nation” or “the people”¹⁰⁵. It was one of the most common arguments of the propaganda, justifying the committed political crimes, which, as one can see, followed the scheme of the second of eristic methods. The third method was also used in the courtrooms. Statements about being a member of the Home Army and the authorities of the Polish Underground State, presented by the defendants, constituted the basis to draw the conclusion about anti-Soviet activity or about the murders on civilians and soldiers of the Red Army¹⁰⁶. This argument was brought to the limits of eristic by connecting the membership in the Home Army with collaborating with the Nazis; the justification of the judgement of capital punishment issued in general Fieldorf “Nil” trial can serve as a model example¹⁰⁷. Not surprisingly, Stalinist courts to a smaller (like in case of Fieldorf) or to a bigger extent (like in case of the trial of the Sixteen) applied also the fourth eristic method, hiding the real motive of their activity. One should note that the specificity of propaganda carried out in the Stalinist period directed towards the western states, was manifested in acting under the pretext of democratic and fair society¹⁰⁸. In the field of judiciary it was manifested in maintaining

¹⁰⁵ The prosecutor in speech at the end of the trial of the Sixteen: “The Polish nation, grateful to the Soviet people, grateful to the Red Army – its liberator, took its breath away again”. After: *Sprawozdanie sądowe w sprawie organizatorów...*, op. cit., p. 244.

¹⁰⁶ Public prosecutor at the end of the trial of the Sixteen: “We bow our heads in front of the bright memory of hundreds of Red Army officers and soldiers, hundreds of Soviet citizens killed and tormented by criminals from the «the Home Army». We will be forever honouring the memory of major 134 (...) motorized battalion, the Hero of the Soviet Union, Kanarczuk, killed and then burnt by bandits from the «Home Army» on 24 August 1944 near the village of Grodno”. After: *ibidem*, p. 239.

¹⁰⁷ Cf. footnote 77.

¹⁰⁸ The example is a picture of happy Soviet Russia created by the Bolshevik authorities during a trip organized for Bertrand Russell and other British left-wing representatives in 1920. See Bertrand Russell, *The practice and theory of bolshevism*, Cosimo. Inc., New York 2007. Cf. Paul Johnson, *Intelektualiści [Intellectuals]*, Editions Spotkania, Warsaw 1988, p. 227.

an illusion of fair trial. The opinion expressed by British ambassador Archibald Clark Kerr in Moscow after the trial of the Sixteen that “*nobody was sentenced with capital punishment, the defendants could defend themselves*”, can serve as the evidence of how effective that method was¹⁰⁹.

Perelman’s theory allows for a deeper characterization of signalled, eristic abuse of Stalinist courts. On its basis it will be analyzed how communist prosecutors and judges violated the principles of *ars bene dicendi*¹¹⁰. The further argument will be divided into three points, devoted to: 1. the role of the auditorium, the truth and the hierarchy of values in the argumentation; 2. the role of authority and discourse in the courtroom; 3. other argumentative methods of the Soviet courts. These issues are not disjoint; in reference to the *Empire of rhetoric*, however, they allow to sort out the varied aspects of the eristic abuse of the “Stalinist” judicial system.

4.2. Auditorium, the truth and the hierarchy of values

According to Perelman’s abovementioned opinion, *the aim of every argumentation is to win or foster already won audience (...). To reach this goal the speaker must adjust his speech to the audience*¹¹¹. Totalitarian power used quite the opposite scheme, preliminarily creating a dependent audience – the defendants, the press, etc.¹¹². Perelman stresses that: *Adjusting to the audience primarily consists in choosing such premises as argumentation of these thesis which were acknowledged by the audience*.¹¹³ At the same time, the philosopher points out that argumentation is correct only when it involves undermining the obvious¹¹⁴. From this point of view, in the communist courts, the argumen-

¹⁰⁹ Cf. N. Davies, *Powstanie ’44...*, op. cit., pp. 615–616.

¹¹⁰ Cf. M. Korolko, *Sztuka retoryki...*, op. cit., p. 42.

¹¹¹ Ch. Perelman, *Imperium retoryki...*, op. cit., p. 22, 34.

¹¹² The courtroom during the trial of the leadership of the Underground State was filled by a carefully selected audience, including the representatives of the Western press. Cf. J. Kochanowski, *Proces Szesnastu...*, op. cit., p. 67.

¹¹³ Ch. Perelman, *Imperium retoryki...*, op. cit., p. 36.

¹¹⁴ *Ibidem*, p. 19.

tative process was based on purely parsimonious rhetoric, which underlies the adjustment of the audience to the uttered thesis of accusation. Consequently, courts were able to act under the pretext of common approval of prosecutors' propositions and forced their acknowledgement without the necessity of searching for compromise, of changing argumentation, etc. The degree of the adaptation of the auditorium gathered in the courtroom during the trial of the Sixteen reflects its reaction of ridiculing the accused's statements¹¹⁵.

The audience was additionally manipulated during the trial, particularly by means of misuses in the sphere of such notions as the truth, fact, supposition and value. Perelman writes: *Within the range of the approved propositions among which the speaker chooses the point of departure for his speech, the ones that should be sectioned off, are those which concern reality, namely facts, truths, suppositions; and these which concern most desired things, namely value[s](...). If we award "fact" or "the truth" with the status of objective element (...) we will be able to assume facts and the truth as unchangeable data, so that a bigger support of the audience for them will not be necessary any more. (...) However, at the moment when a fact or the truth are questioned by the audience, the speaker cannot use them, unless the opponent is wrong or, at least, he notes that there is no reason to take into account his opinion, that is disqualifying the opponent by means of depriving him of the features of a competent and wise interlocutor*¹¹⁶. In a similar context, Perelman points out in *Legal Logic* that a wrong qualification of facts can be used in practice to persecute political opponents¹¹⁷. One may say in a comment that the Stalinist courts, subordinating the audience, simultaneously imposed arbitrary interpretation of "facts" concerning the activities of the Home Army

¹¹⁵ For example: [Prosecutor]: "The defendant is the chief commander. There was systematic diversionary work carried out in the eastern districts, terrorist acts were undertaken in the rear of the Red Army. Who is responsible for these acts? Okulicki: I am not guilty of this, but I am responsible (laughing in the courtroom)". After: *Sprawozdanie sądowe w sprawie organizatorów...*, op. cit., p. 156.

¹¹⁶ Ch. Perelman, *Imperium retoryki...*, op. cit., pp. 36–37.

¹¹⁷ Ch. Perelman, *Logika prawnicza...*, op. cit., p. 193.

and accorded them with the status of “objective truth”¹¹⁸. At the same time, the leaders of the Underground State representing different views on the “facts”, were deprived of the actual position of the “interlocutor”, i.e. the party in the litigation.

Furthermore, according to Perelman, *apart from facts and truth we also count on suppositions which do not have the same degree of certainty (...) but they constitute a sufficient basis to support a fair belief. Suppositions are usually associated with events which are likely to occur and on which it is wise to support the argumentation.*¹¹⁹

Similarly, a number of false charges against the defendants in the trial of the Sixteen and against general Fieldorf were formulated by means of suppositions, including those about murdering the civilians and political opponents¹²⁰. One may note that defamatory arguments towards the accused were often formulated in aprioric way¹²¹.

According to Perelman, the argumentation on its basis must appeal to a specific hierarchy of values. The philosopher explains that (...) *the word “value” can be always applied in case of doing away with uniformity or equity between things, in any place where one of the things must be situated before or above another, in every place where it is*

¹¹⁸ The public prosecutor in the speech at the end of the trial of the Sixteen: “The terrorist-subversive character of the underground troops of the Home Army and «NIE» has been undoubtedly established. They were created for this purpose. Terror, diversion and spying were the basis of the program, if it is at all possible to use the term «program» against the bandits”. After: *Sprawozdanie sądowe w sprawie organizatorów...*, op. cit., p. 156.

¹¹⁹ Ch. Perelman, *Imperium retoryki...*, op. cit., p. 38.

¹²⁰ From Fieldorf’s indictment: “Pursuant to the politics of «the London government» and the Home Army, in the mid 1943 Fieldorf August issued an order to the district commanders of the Home Army «Kedyw» to fight and liquidate left-wing conspirators, in particular the PPR and AL, and their respective activists, partisans and Soviet jumpers”. Reprint of indictment in: M. Fieldorf, L. Zachuta, *General „Nil”...*, op. cit., p. 328.

¹²¹ For example: [Prosecutor]: “So already in December the defendant sanctioned diversionary-terrorist operations in (...) eastern districts? Okulicki: I ordered to carry out organizational work throughout Poland in order to create «NIE»”. After: *Sprawozdanie sądowe w sprawie organizatorów...*, op. cit., p. 152.

*assumed as superior and that which deserves to be desired*¹²². In this way the notion of value and hierarchy of values may be used in argumentation to formulate conclusions of an assessing character, which aims at discrediting the opponent's argument. *Such definition of a value concerns particularly hierarchies in which the ordered elements are clearly recommended. Negative or positive values very often indicate favourable or unfavourable attitude in relation to the things (...) without comparing them to other things*¹²³.

Perelman therefore considers as the centre of argumentation to be in favour of or against certain values, or a certain hierarchy. At the same time, the philosopher writes that “[rhetoric – M.P.] reasoning is intended to reach an agreement on values and their applications in a situation of dispute”¹²⁴. Likewise, Perelman believes that the key task of a judge is to resolve the conflict between the values preferred by the parties consisting in expressing the “acceptable compromise” in the judgment¹²⁵.

In the rhetoric of the Stalinist courts positive values were expressed in a favourable attitude towards the authority of *Generalissimus*¹²⁶, the operations of the Red Army¹²⁷, Marxist philosophy, etc. After assuming such “universal” axiology, Stalinist courts *a priori* regarded the activity of Polish underground army as incoherent and criminal. It was the reason why the prosecutor in his discourse, delivered in the trial of the Sixteen, accused the Polish emigration government in London of dishonest politics¹²⁸.

¹²² Ch. Perelman, *Imperium retoryki...*, op. cit., p. 39.

¹²³ Ibidem.

¹²⁴ Ibidem, p. 144.

¹²⁵ Ibidem, p. 180.

¹²⁶ Stalin was given this title on 27 June 1945.

¹²⁷ Public prosecutor in his speech at the end of the trial of the Sixteen: “the Red Army, in heavy battles, defeated the Nazi war machine and rescued the peoples of Europe from being held down by the Nazi imperialism and saved them from extinction”. After: *Sprawozdanie sądowe w sprawie organizatorów...*, op. cit., p. 238.

¹²⁸ Public prosecutor in his speech at the end of the trial of the Sixteen: “The reactionary Polish „government” in London, in the hands of pro-Nazi elements, has sometimes given the impression that it cannot exercise the will of the nation, but, on the contrary, it pursues its policy so that it always goes along with the Nazi Germany”. After: *ibidem*, p. 242.

Imposed axiological assumptions made by court, in Fieldorf's trial, came to the conclusion about "demoralization and impossibility of resocialization"¹²⁹. Simultaneously, two presented cases dealt with depreciation of values connected with the activity of Polish resistance movement and Polish Underground State, assuming its continuity with pre-war government¹³⁰. On this account from the very beginning of World War II the Soviet Union representatives, such as People's Commissar of Foreign Affairs, W. Molotov, talked about "bankruptcy of Polish country"¹³¹ – referred as "an ugly product of Versailles [treaty]"¹³². The basis of this rhetoric was a presupposed superiority of communist values over "bourgeois" ones and, in consequence, unquestionable argumentation of Stalinist courts over the leaders of the Polish Underground State.

One remembers that during the discussed trials the courts countered all manifestations of polemics with the presupposed hierarchy of values assumed by the prosecution. Consequently, "the defence" in the trial of the Sixteen accepted all charges formulated in the indictment¹³³. Perelman seems to be particularly significant in this context, saying that: *The description which seems to be neutral reveals its partiality, when we can contrast it with a different one (...)*

¹²⁹ Cf. N. Davies, *Powstanie '44...*, op. cit., p. 756.

¹³⁰ From the justification of General Fieldorf's judgment: "During the occupation in Poland, the sanctioning clash, despite the September defeat, did not give up the desire for power. Both in the so-called government in exile and in the right-wing military organizations that were formed (...) in the country, the main positions are taken by (...) the sanctioners and fascists". Reprint of files in: M. Fieldorf, L. Zachuta, *General „Nil”...*, op. cit., p. 333.

¹³¹ *The German-Polish war revealed the internal bankruptcy of the Polish state*. Wording from the note sent by W. Molotov to the embassy of the Republic of Poland in Moscow, justifying the entry of the Red Army to Poland on 17 September 1939. Cf. Jacek Ślusarczyk, *Polska a Państwo Radzieckie. Kalendarium 1918–1939 [Poland and the Soviet State. Calendar 1918–1939]*, Wydawnictwo AWM, Warsaw 1996, p. 156.

¹³² Cf. Jeane J. Kirkpatrick, *Legitimacy and Force: Political and moral dimensions. Volume one*, Transaction Books, New Brunswick, New Jersey, 1988, p. 49.

¹³³ More broadly about the specifics of the lawyer's argumentation in court litigation: Ch. Perelman, *Logika prawnicza...*, op. cit., pp. 208–212.

It was Aristotle who pointed out at this phenomenon: Orestes can be called a “matricide”, in a different context he can be referred to as “father’s avenger”. Each of these expressions (...) shows only one aspect of the reality. Perelman writes in the next sentence as follows: Such descriptions assume certain arrangement in hierarchy performed earlier. (...) Particular classes can be established by means of conjunctions “and” or “neither”. Associating one element with another one, we bring them together and we try to find a common denominator for them.¹³⁴

Such technique of common denomination was used by the Soviet courts in the presented cases. Since the activities of the Polish Home Army and the Underground State did not reflect the communist hierarchy of values, they were considered to belong to the same category as the actions undertaken by Nazi Germany¹³⁵. The achievement of a “compromise of value” through argumentative discourse was thus excluded by the Stalinist jurisprudence in a priori manner¹³⁶. In summary of this point it should be pointed out that the falsified auditorium, the arbitrary concept of truth, and the imposed hierarchy of values constituted, from the perspective of Perelman’s views, the essence of the eristic abuse in the discussed trials.

4.3. Authority and discourse

The concept of truth in the argumentative discourse is correlated by Perelman with the issue of the authority supporting it. According to the philosopher, *the status of the truth or a fact is not a property given forever unless we assume the*

¹³⁴ Ch. Perelman, *Imperium retoryki...*, op. cit., p. 61.

¹³⁵ Consequently, in the Soviet newspapers there appeared articles regarding the trial of the Sixteen. “Destroy the agents of Nazi Germany”; “Polish fascist bandits posing for democrats”; “Executioners acting in the name of Hitler”. After: N. Davies, *Powstanie ’44...*, op. cit., p. 613.

¹³⁶ From the justification of the judgment of General Fieldorf: “The Soviet Army was a more dangerous enemy for the capitalist minions than the Nazis, bringing the national and social liberation of the working masses from the Nazi occupant which in fact killed the people and devastated the Polish culture, but was an ally, it did not threaten the possession – in the social battle it was on the same side of the barricade”. Reprint of files in: M. Fieldorf, L. Zachuta, *General „Nil”...*, op. cit., p. 333.

*existence of authority of a certain divine creature whose statements and revelations would be irrefutable*¹³⁷. It should be pointed out that the argument “from authority” is sometimes regarded as decisive also in legal discourse (*Argumentum ab auctoritate est fortissimum in lege*¹³⁸). Perelman adds, however, that (...) *in the face of the lack of absolute guarantee, in the face of the lack of obviousness or necessity which would suggest itself to every wise being, facts and the truth acknowledged by common opinion or by specialists’ opinion can be questioned.*¹³⁹

The philosopher’s abovementioned remarks refer to the mechanism of “truth verification” in totalitarian systems. Also in the courtrooms where the discussed trials took place, Stalin’s divine-like authority¹⁴⁰, based on the foundations of Marxism – Leninism ideology¹⁴¹, was a guarantee of pushing through every legally relevant “fact”¹⁴² and “truth”¹⁴³.

¹³⁷ Ch. Perelman, *Imperium retoryki...*, op. cit., p. 37.

¹³⁸ Cf. Herbert Broom, *A Selection of Legal Maxims: Classified and Illustrated*, T. & J.W. Johnson, Philadelphia 1864.

¹³⁹ Ch. Perelman, *Imperium retoryki...*, op. cit., p. 37.

¹⁴⁰ Public prosecutor at the end of the trial of the Sixteen: “In this war [Great Patriotic War – M.P.] the Soviet people defended the righteous and holy cause and defended it (...) under the leadership of the brilliant Red Army commander, the Soviet Union Marshal, Joseph Stalin”. After: *Sprawozdanie sądowe w sprawie organizatorów...*, op. cit., pp. 238–239.

¹⁴¹ The similarities of Marxism and religion are drawn attention to, among others, by Nikolai Berdyaev and Raymond Aaron. Cf. Nikolai Berdyaev, *Christian Existentialism; A Berdyaev Anthology*, Harper Torchbooks, Harper & Row, New York 1965; Nikolai Berdyaev, *Markszizm i religia [Marxism and religion]*, Wydawnictwo Głosy, Poznań 1984; Raymond Aron, *Opium intelektualistów [Opium of the intellectuals]*, Wydawnictwo Muza, Warsaw 2000.

¹⁴² The defender in the speech at the end of the trial of the Sixteen: “Everyone knows the enthusiasm the Polish nation welcomed the Red Army, everyone knows how much the Red Army has done for the Polish nation”. After: *Sprawozdanie sądowe w sprawie organizatorów...*, op. cit., p. 280.

¹⁴³ The public prosecutor at the end of the trial of the Sixteen: “The Red Army, says Comrade Stalin, is an army that defends peace and friendship among nations of all countries. It was created not to conquer other countries but to defend the borders of its country. The Red Army was always respectful of the rights and independence of all peoples”. After: *ibidem*, p. 239.

In the discussed trials, the argumentation based on the Red Army's authority was often used in order to depreciate any action taken by the Home Army and "NIE"¹⁴⁴. However, Perelman points out that the power of the argumentation *ab auctoritate* is at the same time its greatest weakness. *The argument of authority is valid only in the situation of a complete lack of persuasive evidence. It will constitute the basis of other arguments and the person using them will not overlook any occasion to emphasize the authority which is consistent with its thesis and undermines the thesis of the opponent. Unquestionable authority in the last instance is divine authority.*¹⁴⁵

Since the courts mirrored Stalin's unquestionable will¹⁴⁶ the accused could not formulate any effective argument in favour of their defence. It was also consistent with the practice of the Soviet courts, just like in Fieldorf "Nil" trial, of virtually determining the judgments even before the beginning of the trial.

The question of *ab auctoritate* argumentation in Perelman's conception is related to the question of the possibility of real discourse in which the power of a better argument should prevail. According to the philosopher, there is a danger that discourse – authority relation will become inversely proportional. Perelman emphasizes: Argumentation aims at influencing the listeners, at modifying their beliefs and attitudes by means of speech whose goal is to obtain their

¹⁴⁴ The public prosecutor at the end of the trial of the Sixteen: "The heroic battle of the Red Army during the Great War of the Nations will stay forever on the cards of world history, as an immortal manifestation of heroism (...) Our victory today is celebrated by all peace loving nations, all those who sincerely desire peace throughout the world and freedom for all humanity (...) And against this heroic army, against the liberating army, there were turned the criminal plans of the defendants. These gentlemen, bypassing the limits of impudence and shamelessness, allowed themselves to call the «Red Army» new occupant". After: *ibidem*, p. 239.

¹⁴⁵ Ch. Perelman, *Imperium retoryki...*, *op. cit.*, p. 112.

¹⁴⁶ In a similar context, H. Arendt writes that "in the Nazi Germany, the Führer's will was the source of law, and his order was in force by law". After: Hannah Arendt, *Odpowiedzialność i władza sądenia* [*Responsibility and authority to judge*], Wydawnictwo Prószyński i S-ka, Warsaw 2006, p. 274.

approval rather than imposing one's will by means of training or compulsion (...) ¹⁴⁷.

Not surprisingly, investigative methods applied during the discussed trials, particularly aimed at imposing prosecutors' standpoint by means of compulsion, were an ultimate negation of the requirement of discursive interaction ¹⁴⁸. Also, another of Perelman's opinion should be quoted in this place: *As can be seen, the whole argumentation assumes first the contact between people, which can be fostered or hindered by social institutions. It is enough to think about a monopoly of the means of communication, characteristic for absolute states, as well as about all possible means of enabling or preventing the contact between people* ¹⁴⁹. As pointed out, "social institutions" of the Stalinist system, including courts, did not agree for any discursive interaction; moreover, the attempt of a real defence was understood as an activity aiming to limit the authority of the communist power. H. Arendt writes that the "mark of assurance" of authority is the absolute recognition of those by whom the obedience is demanded; therefore, neither coercion nor persuasion is needed ¹⁵⁰. One may say in this context that Okulicki's self-defence was treated as "blasphemy" and resulted in his retaliatory death in the Soviet prison ¹⁵¹.

In the summary of this point, it should be pointed out that an unrestricted argumentation from authority in connection with the elimination of interactions in the discourse was an effective eristic method used by the Stalinist courts. It is clear that in the rhetorically acceptable court case, the measures applied by the communist prosecutors and judges would discredit the undertaken argumentation. As Perelman writes (...) *an attitude which would humiliate the speaker*

¹⁴⁷ Ch. Perelman, *Imperium retoryki...*, op. cit., p. 23.

¹⁴⁸ Cf. Michał Głowiński, „O dyskursie totalitarnym” [„About totalitarian discourse”], in: *Dzień Ulissesa i inne szkice na tematy niemytologiczne* [Ulisses day and other sketches on non-mythological topics], Wydawnictwo Literackie, Kraków 2000, pp. 37–50.

¹⁴⁹ Ch. Perelman, *Imperium retoryki...*, op. cit., p. 24.

¹⁵⁰ Hannah Arendt, *O przemocy. Nieposłuszeństwo obywatelskie* [About violence. Civil disobedience], Wydawnictwo Aletheia, Warszawa 1999, p. 58.

¹⁵¹ Cf. J. Kochanowski, *Proces Szesnastu...*, op. cit., pp. 81–82.

would be to develop argumentation without paying attention to the reactions of the interlocutor who obligatorily passes from the role of a passive listener to active participant of the conversation. The person who sermonizes and utters prophecies without paying attention to the interlocutor's reactions, will be soon deemed rather fanatical (...) more than a wise person who is trying to persuade others to his point of view.¹⁵²

4.4. Further characteristics of the arguments of the Soviet courts

Further three aspects of the argumentative process, pointed out by Perelman, which in a deformed form were used in the eristic of the Stalinist courts, need to be analysed

4.4.1. Uniformity of the sources of law

The philosopher writes: *Addressing the groups which, what can be assumed, accept certain thesis on the account of their profession or religion, the author has the right to count on the support of these propositions. Therefore, the attorney can expect support from the fact that the judge's standpoint assumes complying with the legislation of a particular country and every legal provision irrespective of their origin, starting from the moment of their acknowledgement by judicature.*¹⁵³ *Mutatis mutandis*, in cases where a rational legal discourse is possible, the sources of law, common for the participants, objectify the conditions of the trial (both formal and substantive-legal ones). To the contrary, totalitarian sources of law, common for a judge, attorney and prosecutor, in their ideological roots exclude the defendant's right to expect independent defence and they enfeeble his position¹⁵⁴. Perelman's postulate of pluralism is contrary to the "monolithic" axiology of the totalitarian system of law. Similarly, the inaccessibility [hermeneutic nature]

¹⁵² Ch. Perelman, *Imperium retoryki...*, op. cit., p. 29.

¹⁵³ *Ibidem*, p. 45.

¹⁵⁴ Ideologization of the sources of the Soviet law is well illustrated on the example of criminal law. For example, in 1924, "the Basic Principles of Criminal Law of the USSR and the Republics" were adopted. There was challenged the division into crimes, misdemeanours and offences, and there was introduced a division into offences against the foundations of the Soviet system and all other groups of crimes. After: Katarzyna Sójka-Zielińska, *Historia prawa [History of law]*, Wydawnictwo Prawnicze LexisNexis, Warszawa 2005, p. 370.

of the Soviet sources of law in the trial of the Sixteen caused that an attorney “obtains support” but rather for acknowledging the guilt – presupposed from the beginning – of some accused (Okulicki)¹⁵⁵.

4.4.2. Formal aspects of court argumentation

What is also worth mentioning are some formal aspects of the argumentation used by the Stalinist courts. This problem also needs to be raised because according to Perelman, the theory of argumentation is procedural in nature¹⁵⁶. The philosopher writes: *Arguments which are quasi-logical are the ones which could be understood by means of comparing them with formal thinking, of logical or mathematical character*¹⁵⁷. It must be pointed out that “quasi-logical” methods, typical for legal positivism¹⁵⁸, conjoined with a strict proceduralism, were effectively used in the Stalinist trials against ideological enemies¹⁵⁹. The Soviet judges applied, *inter alia*, legal syllogism which was to guarantee indisputability of reasoning and to create the pretense of their objectivity¹⁶⁰.

¹⁵⁵ In a defence speech of Bien and Jasiukowicz, the attorney emphasized the guilt of Okulicki: “Okulicki refuses to admit that people here are charged with specific crimes. He tries to prove by any means that the „Home Army” commanded by Okulicki did not fight with the Red Army, which was sufficiently proved by convincing facts. But we know that the matter is different”. After: *Sprawozdanie sądowe w sprawie organizatorów...*, op. cit., p. 279.

¹⁵⁶ After: J. Stelmach, R. Sarkowicz, *Filozofia prawa...*, op. cit., p. 152.

¹⁵⁷ Ch. Perelman, *Imperium retoryki...*, op. cit., p. 65.

¹⁵⁸ As for the problem of the logical character of the methods developed by legal positivism, see J. Stelmach, R. Sarkowicz, *Filozofia prawa...*, op. cit., pp. 34–35.

¹⁵⁹ In a similar perspective, G. Radbruch writes about the law of the Third Reich: “(...) positivism, believing that „law means law” has made German legal practice defenceless against law established arbitrarily or with criminal intentions”. After: G. Radbruch, *Ustawowe bezprawie...*, op. cit., p. 249.

¹⁶⁰ G. Radbruch also analyses the abuses made by the courts of the Third Reich and draws attention to the formal aspects of legal reasoning. The author cites the opinion of the post-war German prosecutor general: “Legal methods are only the means which a responsible lawyer makes use of whenever he wishes to obtain a judgment with legal justification”. After: G. Radbruch, *Ustawowe bezprawie...*, op. cit., p. 247.

In a similar vein, Perelman states that in practice there “*occur twists*” in the attempt to “*hide the role of a judge in the legal syllogism*”¹⁶¹. The philosopher justifies the thesis of a narrow perspective of quasi-logical legal reasoning in the following manner: *In order to use these arguments reality must come down to a particular scheme of logical or mathematical character, which constitutes the basis of reasoning, shifting the conclusion to particular reality*¹⁶². Such a shift, hiding ideology under the pretext of formal legal thought was for the Stalinist courts a useful eristic method. As Perelman notices: *Quasi-logical argument requires, if we can say so, including reality in spatial structure which would exclude characteristic particular situations, like permeating, interacting, fluidity*¹⁶³. Similarly, the Soviet courts used black-or-white regulatory reasoning¹⁶⁴ where “new Soviet man” was placed on one side and “reactionist” or “fascist” on the other¹⁶⁵. The abovementioned method was also applied against the Polish commanders of the Home Army. It was then a quasi – logical necessity that the one who did not cooperate with the Red Army, behaved similarly to the Nazis¹⁶⁶.

¹⁶¹ Ch. Perelman, *Logika prawnicza...*, op. cit., p. 213.

¹⁶² Ch. Perelman, *Imperium retoryki...*, op. cit., p. 66.

¹⁶³ *Ibidem*.

¹⁶⁴ Cf. Urszula Wieczorek, „O dychotomicznym widzeniu świata, czyli o zwalczaniu wroga za pomocą słów” [„About the dichotomous vision of the world, that is, how to fight the enemy with words”], *Język Polski* LXXIV, Vol. 4–5 (1994), pp. 268–277.

¹⁶⁵ The public prosecutor at the end of the trial of the Sixteen: “The geographic and economic position of Poland is such that it must either live in friendship with the Soviet Union or conclude an agreement with Germany. There is not and there will not be another way. The Polish underground, which was entirely headed by the „government” in exile, chose an agreement with Germany”. After: *Sprawozdanie sądowe w sprawie organizatorów...*, op. cit., p. 258. Cf. U. Wieczorek, „O dychotomicznym widzeniu świata...”, op. cit.

¹⁶⁶ The public prosecutor in a speech at the end of the trial of the Sixteen: “The commander of the underground unit of the Home Army, Stankiewicz [witness – M.P.] told the Court how his unit (...) was conducting terrorist acts against the representatives of the Soviet authorities, officers and soldiers of the Red Army (...) The whole world is outraged by the bloody bestialities of the German fascist thugs, but the bandits from the «Home Army» are not much different from them”. After: *Sprawozdanie sądowe w sprawie organizatorów...*, op. cit., pp. 255–156.

4.4.3. Sociotechnics of the courtroom

Furthermore, according to Perelman: *The choice of certain elements which are held and presented in speech, places these elements in the foreground of awareness and in this way awards them with the feature of presence which makes it impossible to ignore them. Presence directly influences our sensitivity. It is the truth, presenting a given object, like raising by Antonius Cesar's the tunic stained with blood or like the presence of the defendant's children can move the listeners or the members of the jury*¹⁶⁷.

In the context of this quotation one can think about soldiers keeping rifles with unsheathed bayonets in the courtroom during the trial of the Sixteen¹⁶⁸. Their presence was aimed, naturally, to raise on the part of the defendants the feeling of threat. The abovementioned laughter in the courtroom during the trial of the Sixteen was also a sociotechnical method that depreciated the viewpoint of the accused¹⁶⁹. J. Kochanowski emphasizes that *the performance was impeccably directed*^{170, 171}.

4.4.4. Argumentation of efficiency

Last but not least, the Stalinist courts used the argumentation based directly on the concept of efficiency – crucial to eristic.

¹⁶⁷ Ch. Perelman, *Imperium retoryki...*, op. cit., p. 49.

¹⁶⁸ Cf. N. Davies, *Powstanie '44...*, op. cit., p. 613.

¹⁶⁹ For example: “The chairman [of the panel]: After receiving this letter from Piemienoy, the defendant appeared and was arrested? Okulicki: Yes. The chairman: And the criminal activity of the defendant against the Soviet Union has ended? Okulicki: Yes (laughter in the courtroom)”. After: *Sprawozdanie sądowe w sprawie organizatorów...*, op. cit., p. 170.

¹⁷⁰ J. Kochanowski, *Proces Szesnastu...*, op. cit., p. 67.

¹⁷¹ Sociotechnical operations are applied in the courtrooms in different totalitarian systems. For example, such measure was to take away the trouser belt, braces and false teeth from 67-years old German Field Marschall Ervin von Witzleben accused in front of Nazi “People’s Court” (*Volksgerichtshof*) of an attempt of Hitler’s life in 1944. Since the defendant was forced to hold his trousers all the time during the trial and was unable to pronounce clearly, the presupposed effect was to humiliate him in front of the audience and depreciate his authority. Von Witzleben was tried and sentenced to death on August 7, 1944. Judgment was executed the following day. Cf. Nigel Jones, *Countdown to Valkyrie: The July Plot to Assassinate Hitler*, Casemate Publishers, London 2008, p. 250.

Perelman defines this type of argumentation as “pragmatic”: *it is the argument which allows to judge a particular activity on the basis of its results. According to Bentham, it is the only important argument when talking about acknowledging a particular legal norm. What does good justification of legal norm consist in? – In referring to good and bad effects that it can evoke. What does a false justification consist in? – In referring to any other thing, for or against the norm, whether in that which is good or what is bad*¹⁷².

The pragmatic argument in the rhetoric of the Soviet courts served to justify Stalin’s method of facts occurred. Eristic remained here in a feedback loop with the actions undertaken by the Soviets in reality. Simplifying, in the Stalinist narrative, “bourgeois Poland went bankrupt¹⁷³”, namely it lost credibility and legal and international subjectivity because of the ineffectiveness of the policy¹⁷⁴. This fate was shared by the Polish Underground State, represented, among others, by L. Okulicki and J. S. Jankowski¹⁷⁵. Among other things, because the Second Republic of Poland suffered a defeat in the September campaign, the Soviet Union gained the right to “take care of” the population living in its Eastern Border¹⁷⁶. *Pragmatic argument*, as Perelman writes, *which seems to reduce the value of the cause to the value*

¹⁷² Ch. Perelman, *Imperium retoryki...*, op. cit., pp. 98–99.

¹⁷³ Cf. the text of Molotov’s note of 17 September 1939 (footnote 111).

¹⁷⁴ From the final speech of the prosecutor in the trial of the Sixteen: “They [the «representatives of the criminal reaction of the Poles»] were referred to by the companion Stalin in the following words (...): They preferred the policy of playing between Germany and the Soviet Union. And naturally they reaped their awards”. After: *Sprawozdanie sądowe w sprawie organizatorów...*, op. cit., p. 238.

¹⁷⁵ From the final speech of the prosecutor in the trial of the Sixteen: “The role of the leader in the Polish «government» in exile belongs to the pre-September 1939 fascist clique in Poland; it is precisely the main culprit of the catastrophe that Poland faced in 1939”. After: *ibidem*, p. 242.

¹⁷⁶ The motto of Molotov’s memorandum of 17 September 1939 is the following passage from the final speech of the prosecutor in the trial of the Sixteen: “This cabal [about the government of the Republic of Poland before the break-out of the war – M.P.] was not guided by the good of the Polish nation, but by the interest of a small group of magnates, feudals and senior military dignitaries oppressing not only Ukrainians, Belarussians and Lithuanians, but also the Polish masses”. After: *ibidem*.

of its results, gives the impression that all values belong to the same order, hence the authenticity of one point of view can be judged just like in pragmatism only by means of its results and a failure of a particular undertaking or a man can be even treated as a measure of irrationality of the undertaking or non-authenticity of a man¹⁷⁷. The argument of efficiency corresponded therefore with Stalin's political goals and complemented the range of eristic techniques used in the courts against the leaders of the Polish Underground State.

4.4.5. Other argumentative techniques

To complement the analysis, one may indicate three other rhetoric methods pointed out by Perelman, which were in practice misused by the communist courts. These were as follows:

– argumentation through intensified example, in plural, “to make that what is singular the value of archetype which induces to generalization”. In case of the trial of the Sixteen, these were such expressions as “gangsters”, “criminals”, “terrorists”, “saboteurs”, “murderers”¹⁷⁸, etc.;

– argumentation from “anti-pattern”, which was used both in the trial of the Sixteen and in general Fieldorf's trial, in order to trigger in the members of the audience the disgust and *the urge to be distinguished*¹⁷⁹. For example, in the justification of the sentence in “Nil's” trial, when describing the authorities of the Polish Underground State, there was used the phrase “fascist cabal”¹⁸⁰. In turn, in the speech of the prosecutor at the end of the trial of the Sixteen there were used the words “blind moles of the underworld”, “puppets of marionette playing politics”, “puppies” [about President W. Raczkiewicz, General K. Sosnkowski and the Prime Minister T. Arciszewski – M.P.]¹⁸¹; “a handful of politicians”¹⁸², etc;

¹⁷⁷ Ch. Perelman, *Imperium retoryki...*, op. cit., p. 99.

¹⁷⁸ The phrases in the prosecutor's speech at the end of the trial of the Sixteen, after: *Sprawozdanie sądowe w sprawie organizatorów...*, op. cit., pp. 238–264.

¹⁷⁹ Ch. Perelman, *Imperium retoryki...*, op. cit., p. 99.

¹⁸⁰ After: M. Fieldorf, L. Zachuta, *Generał „Nil”...*, op. cit., p. 333.

¹⁸¹ The phrases in the prosecutor's speech at the end of the trial of the Sixteen, after: *Sprawozdanie sądowe w sprawie organizatorów...*, op. cit., pp. 238–243.

¹⁸² The phrase in the prosecutor's speech at the end of the trial of the Sixteen, after: *ibidem*, p. 280.

– argumentation from ideal pattern. Perelman writes that: *the advantage of an ideal model consists in the fact that it does not require perspicacity, it is sufficient to subordinate one's behaviour to it in order to be on the right way. Although there is no obstacle to adjust divine pattern to the role which we want to give it.*¹⁸³ One may indicate that a 'new Soviet man', especially the soldier of the Red Army, was an ideal personal pattern which moderated the argumentation in the discussed cases. For example, in the justification of General Fieldorf's judgment, we can read that (...) [the Soviet officers – M.P.] *murdered* [by the Home Army – M.P.] *died with a shout "For Stalin – for the family"*¹⁸⁴.

5. Conclusion

In this essay there were analysed the assumptions of the theory of rhetoric, developed by Chaïm Perelman. They served to discuss the argumentative abuse used by the courts during the Stalinist period. The undertaken characteristics referred to two model examples, namely the demonstration trial of the Sixteen leaders of the Polish Underground State and the "court murder" of General A. Fieldorf "Nil". The point of the argument was the difference between rational rhetoric, aimed at convincing the audience by the power of a better argument and the eristic, aiming *per fas et nefas* at a complete victory in the dispute.

In view of Perelman's argumentative theory, the eristic abuse of the Stalinist courts consisted of negating the fundamental assumptions of rhetoric. Firstly, they relied on the instrumentation of the auditorium, that is, on the rejection of the mechanism for assessing the rationality of the arguments raised in the discourse in the courtroom. As a result, the prosecution forced through the non-discursive concept of "truth" as well as the "hierarchy of values", justifying the Soviet worldview and legitimizing the prosecution. Secondly, there was applied the technique of argumentation from the indisputable authority (of Stalin, of the Red Army, etc.),

¹⁸³ Ch. Perelman, *Imperium retoryki...*, op. cit., p. 129.

¹⁸⁴ Reprint of files in: M. Fieldorf, L. Zachuta, *Generał „Nil”...*, op. cit., p. 335.

which led to the loss of the interaction in the discourse and resulted in a practically impossible defence. The situation of the accused was even more deteriorated by the inaccessibility of ideologized sources of the Soviet positive law. Further techniques used by the communist courts consisted, *inter alia*, in hiding the ideological content in formalized legal reasoning and in sociotechnical manipulation in the courtroom. Finally (what cannot raise surprise from the perspective of the assumptions of eristic), the Stalinist courts fostered efficiency as the legitimizing value of both the judgments handed down and the actual actions of “the people’s authority”. These and other signalled abuses of rhetorical techniques have resulted in the exclusion of the adversarial element in court proceedings and in the actual prejudgment before the beginning of the trial.

One could see that the basis of the Stalinist judicial eristic were settled on quite strong foundations. Following Perelman, the presented arguments “*established the structure of reality*” and because of the coherence with the Soviet “axiological axioms” they were not questionable. The defendants acted against the presupposed “reality”, both during the investigation and in the course of the trial; therefore there was no possibility of exempting them from the charges. In this context, there comes to mind H. Arendt’s remark that Stalin has questioned one of the last two binding commandments – *do not say false testimony*¹⁸⁵.

Repeatedly used, the totalitarian thesis has become an argument, settling the court dispute.

In conclusion it should be pointed out that according to Perelman’s view, the independent judicial authority is a prerequisite for the existence of the rule of law. According to the philosopher, it corresponds to the tripartite of the authority, the irrevocability of the judges and the prohibition of the existence of special courts¹⁸⁶. From the perspective of “new rhetoric”, in the case of the erosion of the rule of law and the loss of independence by the courts, there arises the danger of their “eristic turn”. In these cases, the legal rhetoric, which in Perelman’s view is a model for every

¹⁸⁵ The second, according to Arendt, is “do not kill”. H. Arendt, *Odpowiedzialność i władza...*, op. cit., p. 182.

¹⁸⁶ Ch. Perelman, *Logika prawnicza...*, op. cit., p. 194.

argument, can create the most effective propaganda tools¹⁸⁷. Therefore, in the presented approach, the eristic methods of prosecutors, judges and even attorneys which violate the rules of rational argumentative discourse¹⁸⁸, become a form of violence on the part of the totalitarian power¹⁸⁹. A similar view was expressed, among others, by Paul Ricoeur, affected by the mechanisms of the Nazi propaganda during internment in the POW camp¹⁹⁰. In his ethical-semiotic analyses, Ricoeur emphasizes that *violence can be hidden in language as a function of speech*¹⁹¹. In that case, according to the philosopher, *it is easy to indicate the line descending from the influence, a mild form of "the power over" to torture, the extreme form of abuse*¹⁹². May the understanding of the

¹⁸⁷ For example, after the trial of the Sixteen, there was published a report addressed to a wide auditorium, of court minutes, complemented by the propaganda introduction by A. Baliński. There are phrases such as "executors of the will of the group of London's bankrupts" (p. 3–4); "assassin murderers of officers and Soviet soldiers" (p. 4); "liars to all" (page 5). Cf. *The trial of Okulicki and others in Moscow before the Military College of the Supreme Court of the USSR on 18-20 June 1945*, Printing: Czytelnik, Warszawa 1945. Cf. Jerzy Bralczyk, „Strategie propagandy politycznej” [„Strategies of political propaganda”], in: Jerzy Bartmiński, Renata Grzegorzczkova (Eds.), *Język a kultura [Language and culture]*, Vol. 4: „Funkcje języka i wypowiedzi” [„Functions of language and expression”], Wydawnictwo Wiedza o Kulturze, Wrocław 1991, pp. 105–115.

¹⁸⁸ J. Stelmach writes that legal argumentation should be conducted in a manner that respects the principles of freedom and equality. This means, inter alia, that each participant in the discourse should have the same privileges and be subject to the same restrictions. Cf. J. Stelmach, *Kodeks argumentacyjny...*, op. cit., pp. 47–49.

¹⁸⁹ "Mutatis mutandis" this problem is addressed by G. Radbruch, analysing the issue of the independence of the Third Reich courts. The author cites the opinion of the post-war prosecutor general: "(...) I think it is important to accuse the judges who pronounced judgments contrary to elementary humanity, and because of the triviality they condemned defendants to death penalty". G. Radbruch, *Ustawowe bezprawie...*, op. cit., p. 248.

¹⁹⁰ Ricoeur spent five years in Oflag. The philosopher writes: "I was attracted, along with many others – the propaganda was intense – to certain aspects of Pétainism". Cf. Paul Ricoeur, *Critique and Conviction: Conversations with François Azouvi and Marc de Launay*, Columbia University Press, New York 1998, pp. 16–20.

¹⁹¹ P. Ricoeur, *O sobie samym...*, op. cit., p. 365.

¹⁹² Ibidem.

eristic methods of the Stalinist courts, possible through the research of Ch. Perelman and other argumentative theorists, helped to avoid similar abuse in the future.

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