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**THE POLISH CRIMINAL
JUSTICE SYSTEM AND RECENT
POLITICAL DEVELOPMENTS
IN POLAND**

A public lecture delivered at the
University of Hong Kong
on 1 May 1990

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INTRODUCTION*Jon Vagg*

In April 1990, the Department of Sociology invited Dr Holda to deliver a seminar to its postgraduate students on the Masters course in Criminology, and a public lecture on developments in criminal justice in Poland. Dr Holda's visit was the second in a programme of visitors to the Department. The purpose of the programme is to bring eminent scholars in various fields of sociology and public policy to Hong Kong, and thereby to contribute - sometimes directly, sometimes by means of comparative materials - to debates on issues of interest to Hong Kong. The paper which follows is the text of Dr Holda's public lecture.

Zbigniew Holda lectures and researches in penal and penitentiary law at the Maria Curie-Skłodowska University, Lublin, and since 1990 he has concurrently held a position in the Faculty of Law at the Jagellonian University, Krakow. He obtained his Doctorate in Jurisprudence from Maria Curie-Skłodowska University and was recently awarded his Habilitation Doctorate (a precondition for appointment to a Chair in German-style educational systems) by the Institute of State and Law at the Polish Academy of Sciences, Warsaw. His major publication to date - not yet translated into English - concerns the legal status of sentenced prisoners in Poland, and was published by the Maria Curie-Skłodowska University Press in 1988. He has been active in the Solidarity movement since its inception, and during the period of martial law in Poland which he describes in his lecture, he was himself held for a short time as a political prisoner. In addition to his academic work, Dr Holda is a member of the Polish Ministerial Commission for the Reform of Criminal Law and a member of the Lublin Regional Council of Solidarity.

The Polish situation has moved on since Dr Holda's paper was delivered, and it may be helpful to offer a few comments on these developments. In late 1990 it became apparent that Poland would not, as Dr Holda hoped, be admitted to the Council of Europe until a fully democratic electoral process had been implemented. And it also became clear that significant Western aid would be tied to the development of a Western-style democracy. Major domestic events have been the division of Solidarity into two separate entities, a trade union and a political party; the 1990 presidential campaign resulting in the election of Lech Walesa as president; strains within Solidarity, with some members becoming critical of its leadership (one sometimes hears the inner cabinet of Solidarity being referred to, somewhat sarcastically, as the 'new nomenklatura'); and the rise of problems such as unemployment, arising out of the restructuring of the Polish economy. Most recently the US has provided aid indirectly, in the form of debt forgiveness.

That such factors would have an impact on his area of concern - the criminal justice system - Dr Holda explicitly acknowledged in his lecture. However, the main thrust of his lecture concerned criminal justice in Poland during and after the collapse of the communist government and the coming to power of Solidarity. In such a situation, he points out, criminal justice is one of the key issues. Criminal justice issues are also, and necessarily, issues of human rights. And while some regimes use extra-legal means and martial law in order to attack their political opponents, the criminal law can equally be used in this way. In Poland, in addition to its use of martial law, the

INTRODUCTION

regime passed new laws and utilized old ones in order to criminalize its political opposition, to reduce the discretion of the courts and remove the independence of the judiciary, and to hold political activists in prison without trial. Part of the impetus for the reform of Polish criminal law arises out of the fact that many of those who now sit in the Polish parliament found themselves, at the time of the martial law, in jail.

Dr Holda's paper is, then, an account of what happened in Poland in the late eighties, by one of those who made it happen. It is a sufficiently gripping story to warrant publication simply on that basis. But his paper is not only about Poland: it is relevant to any situation in which the criminal law is used strategically to smother political protest, and to non-democratic societies at the points in time where a popular movement moves from being in opposition to being the government.

**THE POLISH CRIMINAL JUSTICE SYSTEM
AND RECENT POLITICAL DEVELOPMENTS
IN POLAND**
Zbigniew Holda

Historical remarks

In the second half of the 18th Century, Poland was partitioned by Russia, Austria, and Prussia. Polish territories were - shortly speaking - annexed by these three states. So when Poland recovered its independence in 1918, it inherited three criminal justice systems and three legal and political traditions.

After 1918 Poland was a democratic republic with a political regime similar to France. After May 1926 (when there was a coup d'état), and especially after 1930, the regime became more and more autocratic. And although the legal system continued to be based on the rule of law, and the courts were independent, after 1930 the government abused its power in several fields, notably in relation to political opposition and racial minorities.¹

In the period 1918-39, the Polish criminal justice system was established and developed. The system was founded on a liberal penal ideology. In 1928 the Code of Criminal Procedure and some other relevant acts were issued, followed in 1932 by the Criminal Code and the Law on Transgressions. In 1939, a new Prison Act was issued, replacing an earlier Prison Act of 1928. The Criminal Code of 1932 was - according to communist opinion - one of the best products of independent Poland. Criminal policy, for many years rather lenient, became harsher after 1934, even though in the second half of the 1930s recorded criminality was not increasing.²

The courts made decisions in criminal cases. But crimes were divided into two categories: crimes *sensu stricto* and transgressions. Transgressions were dealt with by administrative authority; however, the accused might appeal to the court. The Polish law on transgressions was thus similar to the German system.

The first ten years

On 1 September 1939, Germany attacked Poland; the Second World War began. The Polish Army was still fighting hard when on 17 September the Soviet Army entered Poland on the German side. The Polish territory was occupied by Germany and the Soviet Union; in 1941, however, Germany attacked the Soviet Union and the whole Polish territory was occupied by Germany. The war and the occupation were disastrous for Poland. About six million Polish citizens were murdered or killed in battles.

The Polish government and the Polish Army continued their activities in exile, or

underground. However, Poland was betrayed by the USA and Great Britain at conferences in Teheran in 1943, Yalta in 1945 and Potsdam again in 1945.³

Soviet troops entered into Poland in 1944. The Soviet authorities established a new government, dominated by communists and subordinated to the Soviet Union. The majority of society was against the new regime, but Poland was forced to enter the road to totalitarianism.⁴

In the period 1944-56, the communist party (the Polish Workers' Party, and since 1948 the Polish United Workers' Party) applied really terroristic policies against society. Ideology, especially the Marxist-Leninist theory of class struggle with enemies, was to justify severe measures (definitions were vague and anybody could be called an enemy).

The whole of public life was subordinated to the Party (actually to the Party bureaucracy, called the 'nomenklatura'), according to 'the principle of the ruling role of the Party'. The separation of powers was abolished, replaced by Lenin's 'theory of unified state powers'. As a result, the courts were deprived of their independence and the powers of administrative authorities to punish - without judicial review - were developed considerably.⁵

In 1944-54 the new regime issued more than 100 parliamentary acts and decrees containing criminal law provisions. They covered several political and economic matters. The criminal justice system was one of the most important measures in the hands of the regime, used as an instrument devoted to destroying political opposition and resolving economic problems. It was subordinated to the interests of the nomenklatura and dominated by the security police (a very important part of the nomenklatura), and influenced by Party officials. And it was very repressive and harmful.

However, the regime kept in force the Criminal Code of 1932, the Code of Criminal Procedure of 1928, and several other legal acts. Although amended in many points and accompanied by the numerous legal provisions mentioned above, they shaped, at least partly, the criminal justice system. The 'old' law was mitigating the new, making it less 'socialist' than in other Eastern European countries.⁶

As a result, the Polish criminal justice system, deeply reformed during 1944-54, has become a hybrid. However, new 'socialist', or perhaps it is better to say 'Stalinist', elements have prevailed. Falandysz describes its characteristics as: (1) excessive punitiveness, (2) broad penalization of social life, especially political and economic life, (3) the protection of the interests of the state at the expense of the rights of citizens, (4) the violation of the principle of 'equality under law', (5) too easy and far-reaching interference of the state authorities in the domain of fundamental human rights and freedoms, and (6) a 'pseudo-scholarly' mask.⁷

Stalinist scholars, submissively justifying 'illegal law' and its barbarous application, had their own theory of crime. They claimed that in a socialist society crime would disappear. And the explanation of crime in so-called socialist states was very simple: criminal behaviour was caused by the relics of capitalism. However, criminological research was officially banned. Only the Department of Criminology of the Polish

Academy of Sciences survived.⁸

December 1956 and after

A few years of communist rule in Poland (the 'Stalinization' of Poland had been intensified since 1949) led to a deep economic crisis, although the government - despite its efficiency in damaging many fields - was not able to destroy private farmers and the independent Catholic Church. After the death of Stalin in 1953, the political climate started to change. As a result, in 1954-55, the Polish communists began to make the criminal justice system less severe, especially in political cases. And the security police were reformed, obviously to reduce their illegal activities.

In 1956, after workers' strikes and demonstrations (in June 1956 workers in Poznan demanded 'bread and freedom') accompanied by the revolt of intellectuals (including Party members, dubbed 'revisionists'), part of the power elite decided to reform the regime. In December 1956 the Party leadership was changed. The regime became less dependent on the Soviet Union and more liberal in many fields, and the fundamental principles of the rule of law were revived - at least in theory.⁹

However, the criminal justice system - although less repressive than before - remained the same in its essence. It was a hybrid system, with some liberal elements. However, the Stalinist matter injected into it in 1944-54 was so immense that it shaped the foundations of the whole system.

In the late fifties and in the sixties, several parliamentary acts, dealing with some institutions of criminal justice, were issued. However, the Party pressed for new, 'socialist' criminal codes. After long disputes, the Criminal Code, Code of Criminal Procedure, and the Code of Execution of Penalties were issued in 1969. In 1971 the Code of Transgressions and the Code of Procedure in Transgressions were issued, and in the same year the Financial Penal Act was also published. So the process of codification of new Polish penal legislation was completed, at least so far as adults were concerned (the new Juvenile Act was issued in 1982).

Official statements and many scholars claimed that the new codes were modern, rational, humane, etc. However, I agree with the opinion (especially of Falandysz) that although the codes were new, the criminal law - and the criminal justice system as a whole - remained the same as before. The new codes preserved many essential Stalinist elements of the 1944-54 legislation. The hybrid system survived.¹⁰

In the seventies, new codes were tested. Although the Party was looking for its legitimization in more and more pragmatic justifications, and the official crime rate was decreasing, criminal policy became more and more repressive. An average of 13 death sentences were passed each year between 1970 and 1979, while the average for the decade 1960-69 had been seven. Imprisonment was applied for increasingly longer periods. The average period of imprisonment increased from 19 to 25 months. The average fine also increased. The total number of prisoners was in the region of 100,000, and the detention rate was about 270-300 inmates per 100,000 inhabitants.¹¹

It is not easy to explain why, in the seventies, the punitiveness of the criminal justice system increased, especially since the increase was greatest in the first half of the decade, when the economic situation was better and the standard of living rising. Undoubtedly, several provisions of the codes, especially of the Criminal Code, contributed to the increase of the punitiveness. But a very important role was played by the Party and the government; they were in favour of the severe criminal policy, obviously believing that harsh punishments were efficient measures in dealing with social problems. And they influenced the Supreme Court and also the sentencing policies of other courts.¹²

To be quite frank I must say that the Criminal Code has also introduced some new penal measures devoted to making criminal policy more liberal. The most important are conditional discharge (that is, conditional discontinuance of proceedings), and the penalty of limitation of liberty. Conditional discharge has been widely applied since 1970: there have been some 30,000-45,000 cases annually, with the penalty used in most cases by public prosecutors, seldom by the courts. The penalty of limitation of liberty has become accepted in practice after some hesitation. In 1970 there were 11,294 such sentences, and in 1979, 28,182. This amounted to between about five and 14 per cent of all penal measures applied annually, while conditional discharge makes up between about 16 and 22 per cent. Let me also mention that the most popular measure, imprisonment with suspension (roughly speaking, a form of probation) in most years amounts to between 28 and 38 per cent of all sentences, while imprisonment accounts for between 25 and 33 per cent, and the fine (where it is applied as the only penalty, not in conjunction with other sentences) between about seven and 14 per cent. Imprisonment and suspended imprisonment were usually - that is, in about 60 to 70 per cent of cases - combined with a fine.¹³

The Party and the government (especially the police) attempted to influence public opinion, to make it support the severe criminal policy. The effects of that propaganda are not known for sure. But several studies conducted in the sixties and seventies revealed high degrees of punitiveness across most of Polish society.¹⁴ However, scholars launched more and more open criticism of the criminal justice system. Many were for the deep reform of it, making criminal policy more lenient, and more human rights oriented. Studies of the criminal justice system were made not only by lawyers, but also criminologists. In the sixties, and especially in the seventies, Polish criminology had developed considerably.¹⁵

After 1956, and especially after 1970, the Party was more pragmatic. It seems that it referred more often to the ideology of 'law and order' than to the ideology of socialism. In the seventies the regime claimed 'the moral and political unity of society'. So the regime was far less repressive in the field of politics than it had been before 1956. However, from time to time political trials were organized, while the security police were operating - very often illegally - all the time.

In 1968 students and intellectuals, and in 1970 and 1976 workers, challenged the regime. The government answered with brutal repressions, but later, especially in 1970, political and economic changes occurred (the scenario of 1956 was repeated). After 1976, independent human rights movements such as KOR, as well as free trade unions, independent cultural bodies, and *sensu stricto* political opposition groups

started their activities. They were supported by the Catholic Church and independent Catholic intellectuals and their institutions. And at the end of the seventies the economy was in bad condition again.¹⁶

Summer 1980 and the sixteen months

In summer 1980, Polish society challenged the regime seriously. Workers' strikes were supported by other classes of society and the Party and government (and probably the Soviet Union, still controlling Poland) were forced to allow the free trade union 'Solidarity' and other independent social organizations (but not political parties). Solidarity, with about nine million members and widely supported by society, has become a very important factor in public life.¹⁷

Solidarity's programme was to change the regime gradually, by way of peaceful evolution. The criminal justice system was to become one of the main issues in the great political struggle between Solidarity and the Party and government, still controlled by the Party. Public opinion - better informed than before - rather supported demands for a more lenient criminal justice system, and one which respected human rights.

In October 1980, the Minister of Justice appointed the Commission for the Reform of Criminal Law. In 1981, the 'Centre for the Civic Legislative Initiatives of Solidarity' was established. Both the Ministerial Commission and the Solidarity Centre prepared drafts of the Criminal Code, the Code of Criminal Procedure, and the Code of Execution of Penalties. The Centre also prepared drafts of other parliamentary acts, covering the whole field of the criminal justice system.

The Ministerial Commission and the Solidarity Centre both shared the opinion that the Polish criminal justice system should respect human rights and should be more lenient. Both planned the amendments of the codes, undoubtedly important amendments, but not complete new codes. Of course, there were differences between the drafts. However, the disputes were promising.

In 1981 - although the criminal law had not been changed - the criminal policy was more lenient than in the seventies. The codes allowed this, notwithstanding their 'dark sides'. Public prosecutors and especially the courts conducted a less repressive policy.¹⁸ Let me mention here that Solidarity strongly demanded the restoration of judicial independence and several judges fought for necessary reforms in this field.¹⁹

And what about crime in 1981? According to the official police and public prosecutors' statistics, in 1970 424,217 crimes (excluding transgressions) were registered. In 1979 the figure was 337,502; in 1980 it was 337,935; in 1981 it rose to 379,762. The increase might have been caused by the political and economic crisis and the new social climate.²⁰ But I suppose that the increase was due - at least partly - to the changed pattern of police activities. While in the seventies, both Party and government wanted to have a diminishing crime rate ('moral and political unity of society'), in 1981 they wanted evidence that reforms, democratization, and liberalization lead to unrest and crime.

The regime tried to use the criminal justice system for political purposes even during Solidarity's 'sixteen months'. Let me mention that leaders of the 'unofficial' political party KPN were imprisoned for several months. And the police continued illegal activities, even against Solidarity, although on a smaller scale than before.

December 1981 and the last seven years

The communist regime attempted once more to defend the status quo and the power and privileges of the nomenklatura. After Martial Law had been proclaimed, on 13 December 1981, the regime made the criminal justice system more severe, and human rights were seriously violated. The criminal justice system was used as an instrument in the war against Solidarity and the whole opposition. However, criminals were also treated much more harshly. Although formally, Martial Law was in force until the end of 1982, several of its provisions, especially the ban on Solidarity and other independent social organizations, lasted for a much longer time.²¹

In the eighties, the Party referred rather to the ideology of 'law and order' than to the ideology of socialism (this is easy to understand, as it conducted war against the working class). In 1982-85 the criminal codes were amended several times - usually now the provisions were to make the criminal policy more severe. However, it seems that this time the judges were not ready to obey, to the extent expected by the regime, the suggestions of the Party or the police. This was due to the effects of the great debate on the independence of the judiciary in 1981.

So the regime decided to issue, in May 1985, two parliamentary acts - the so-called 'May Acts'. The first amended the criminal codes, while the second, an extraordinary Act valid for three years, was extremely harsh, violating fundamental human rights, for example the right to defence and the right to the aid of a barrister. The 'May Acts' reduced judicial discretion considerably, leading to very severe punishments. They were really shocking, even in Poland after the Martial Law.²²

After December 1981, the communist regime was in the grip of a 'legislation fever'. They issued several parliamentary acts relevant to the criminal justice system. The Act Concerning the Treatment of Persons Evading Work, of 1982, enabled the police and the administration, and even the courts, to repress so-called 'social parasitism' - a favourite target of communist criminal justice systems.²³ And a series of acts were devoted to crucial institutions: the Act on the Minister of the Interior (1983), the Act on the Supreme Court (1984), the Act on Courts (1985), and the Act on Public Prosecutors (1985). Their aim was to strengthen the regime, even at the expense of human rights. Other acts appearing during this period included, in 1982, the Juvenile Act²⁴ and also the Act on the Prevention of Alcoholism, followed in 1985 by the Act on Prevention of Narcotic Drugs Abuse.

By the mid-eighties, the regime seemed to be satisfied with the criminal justice system; legal provisions were shaped in such a way as to meet its expectations. The criminal police were subordinated to the security police, public prosecutors and even judges were under political control, and the criminal law was severe. The

Governmental (that is, ministerial) Committee for Public Order, Law, and Social Discipline, established in 1983 to promote this very harsh criminal policy, might well have felt satisfied. The Committee was dominated by the Minister of the Interior and its membership included, among others, the First President of the Supreme Court, the Minister of Justice, and the General Public Prosecutor.

The official data showed that the number of crimes had grown since 1982 (it exceeded 400,000 and even 500,000). Courts meted out more severe punishments, and conditional release was granted much less often than it was, for example, in 1981. The prison population exceeded 100,000, while in 1981 and 1982 it was about 80,000.²⁵ The highest number of prisoners in prisons administered by the Minister of Justice in the eighties was on 30 April 1986 - 115,545.

Suddenly, in autumn 1987, the Minister of Justice appointed a new Commission for the Reform of the Criminal Law. Several official statements supported the reform of the criminal law, making it more human rights orientated and less severe. The abolition of capital punishment was officially considered. The Commission was asked to proceed quickly. Finally, in the summer of 1988, the report of the Commission was distributed; nevertheless no drafts had been prepared. Incidentally, the report was rather disappointing.

Why did the Party decide to establish the Commission and to talk about the reform of the criminal law? Frankly speaking, it is not easy to answer this question. Falandysz was of the opinion that the authorities just wanted to give a new mask to the old criminal justice system.²⁶

According to the legal provisions, on 30 June 1988 the extraordinary 'May Act' of 1985 expired. Only some of its provisions were introduced into the criminal codes, although some prominent officials, for example members of the above-mentioned Committee for Public Order, Law, and Social Discipline, were openly for the preservation of the whole of the 'May Act'. Meanwhile the criminal policy was becoming less severe.

In 1986, political prisoners were released and from that time the activities of Solidarity (officially banned) and other kinds of cultural, social and political work were - despite their illegality - tolerated to a considerable degree. It was no longer the courts, but rather special administrative bodies dealing with transgressions ('kolegium'), which were used as a measure of struggle with the opposition.

The 'Round Table' and the transition from communism to democracy

In 1988, the communist power elite was in the throes of internal discussions, and several options were considered. However, the decisive role was played by two waves of workers' strikes, in spring and summer 1988. Even the Party realized that its policy had collapsed and that a severe criminal policy failed to resolve any social problems.

The Polish road to democracy had begun. It is a peaceful way, based on several compromises. The 'Round Table' talks (February-April 1989) between the Communist Party and its satellites on the one side, and Solidarity on the other, were

very important. The criminal justice system was one of the main topics of the talks. Solidarity stressed the importance of the human rights issue and demanded the independence of the judiciary, reform (de-Stalinization) of the public prosecutor's office, and several amendments to the criminal codes and other acts, such as the Act on the Minister of the Interior. It also demanded rapid depenalization of political activities, penalization of which had been enlarged in the eighties.

The talks were difficult. 'Round Table' agreement in the field of the criminal justice system was not one of Solidarity's great successes. However, several important issues were agreed to, namely a new model for the judiciary, incorporating a separation of powers, the independence of the judiciary, and a National Judiciary Council. The Party promised some amendments to criminal codes, but they were far less than Solidarity had demanded.

In May 1989 - before parliamentary elections - the Constitution and criminal codes were amended according to the 'Round Table' agreement. Nevertheless, the road to a new criminal justice system seemed to be long and winding; but Professor A. Strzembosz, the chief Solidarity negotiator on the issue, expressed optimism. The amendment to the Constitution established, *inter alia*, a National Judiciary Council. Some provisions of the Criminal Code, prohibiting a wide range of political activities, were abolished. Amendments to the Code of Criminal Procedure established judicial control of arrest.

As a result of the 'Round Table' agreements, semi-democratic elections to parliament were held in June 1989. Solidarity won, the Communist Party was defeated. The Party was not able to form a cabinet and its allies decided to break the coalition and to support Solidarity. Finally the coalition government was formed, Solidarity playing the leading role. All parliamentary forces started to cooperate: the great reforms were based on the Solidarity programme. Undoubtedly, since summer 1989, the prospects for radical reform of the criminal justice system - reform deeper than that agreed to in the 'Round Table' talks - has been better than had been expected before.

The nomenklatura is now in retreat, although with resistance. The Communist Party was dissolved by its Congress in January 1990. Its successors - two parties, calling themselves social-democratic - are weak. Policemen have been fighting for their independence from the security police, and against the old leadership of the police. The newly-created Trade Union of Policemen is very active in the field of reform. The security police, seriously reduced lately, will be wound up soon. A new Deputy Minister of the Interior, Dr K. Kozłowski, a Senator and Solidarity member, was appointed in March 1990, with the obvious task of deeply reforming the police system. Three acts, on the police and the Office for the Protection of State (a new institution which will replace the security police) were issued by parliament on 6 April 1990.

In December 1989, the Constitution was amended once more. And in the same month, the Act on the Supreme Court and the Act on Courts were amended, and a new Act on the National Judiciary Council issued; the independence of the judiciary has been restored.

New presidents of the courts were nominated by the Minister of Justice recently (candidates had been proposed by the judges). However, none of the judges will be

removed from court for political reasons - even those who had been sentencing under the influence of the Communist Party or police in the past. Professor Strzembosz, the Deputy Minister of Justice, is of the opinion that the 'courts will improve themselves'. Nevertheless, new judges of the Supreme Court will be nominated by the President soon.

A new model for the public prosecutor's office has been accepted by parliament; it has been subordinated to the Minister of Justice, and is again intended to 'de-Stalinize' the institution. The new Act on the Public Prosecutor's Office came into force on 1 April 1990. All the public prosecutors will be dismissed and some - probably most of them - will be nominated again by the Minister of Justice.

The criminal law itself has also been changed. In February 1990, the criminal codes were amended. The amendments are very important, since they have abolished many Stalinist elements of the Polish criminal justice system, thus making it more European. In the Criminal Code, the special measures against recidivists, namely (1) confinement in a centre for social re-adaptation for up to five years, and (2) special supervision after release, were abolished. However, the Criminal Code is still very severe in the field of recidivism. On this point, the Criminal Code has been criticized for many years. And the equal protection of private and state (or 'social') property has been restored. Finally, the confiscation of property has been abolished (it had often been applied before). The Code of Execution of Penalties has been seriously amended, too. First, the judicial review of prison administration has been established; prisoners may now appeal to the courts against any decision of the prison administration and the court can abolish any decision which violates a law. The second amendment is also very important; several legal provisions on prisoners' labour have been made similar to general labour law provisions (for example in relation to remuneration, social security, and holidays). The third amendment reduces disciplinary penalties in prisons. The new version of the Code of Execution of Penalties states also that since 28 June 1990, no person under preliminary detention or sentenced to imprisonment shall be confined in police or military jails - for years, many people have been confined in police jails.

In the autumn of 1989, the Minister of Justice reconstructed the Commission for the Reform of Criminal Law. Some of its members were dismissed, and several new members appointed. The Commission is currently working on drafts of a new Criminal Code, Code of Criminal Procedure, and Code of Execution of Penalties. The government is for deep reform of the whole criminal justice system, and the drafts should be completed before the summer of 1990. The first versions will be distributed in April or May 1990. I think that one of the reasons for the hurry is the desire to have the Polish criminal justice system consistent with the Council of Europe standards; Poland applied for the membership of the Council of Europe some months ago.

Not only the government, but also - and this is even more important - parliament is for the reform of the criminal justice system. The Senate, especially - which was elected in free elections - is for a considerable reduction in the punitiveness of the criminal justice system. Members of parliament submitted a draft act to abolish the death penalty some months ago. In the autumn of 1989, parliament issued the act on an amnesty - however, long parliamentary disputes and the final effect of the legislation process contributed to the great prison riots in December 1989. Seven prisoners were killed.

In 1989 and 1990, criminal policy seems to be more lenient than before. The data have not yet been published; nevertheless, the current size of the prison population - less than 50,000 - confirms this supposition. On the other hand, there are opinions that criminality has increased, so that public opinion demands better protection. However, the police have disintegrated and become inefficient.

The struggle for the reform of the criminal justice system has been conducted over about the last ten years. But today, due to anomie, fear of crime, and the inactivity of the police, large parts of society may oppose reform. The struggle for reform has to be the struggle, mostly or even exclusively, for public opinion.²⁷

Notes

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(摘要)

本文主要從波蘭的政治發展這角度，去論述波蘭社會的刑事公義制度的特色及其演變。自從1944年蘇軍入侵後，波蘭的政治及其刑事法律及司法制度均深受蘇聯社會主義的左右及操縱。這一種有史大林主義色彩的刑事制度有下列的特點：(1) 高壓及嚴懲的手段；(2) 很多政治及經濟行為均可構成刑事罪行；(3) 國家的利益永遠凌駕市民的權利；(4) 平等的法律地位不存在；(5) 國家廣泛地及輕易地侵犯基本人權及自由。誠然，這些特點未能完全取締了波蘭社會在大戰前遺留下來的刑事法律，而這些法律是較傾向自由主義及有較明顯的歐陸特點。所以在史大林時期，波蘭的刑事法制是一種混合體；但無可否認，蘇聯的影響(上述的五個特點)佔了優勢。

這種情況在史大林死後有了轉變：「後史大林時期」大抵從1956年開始，至七十年代末期。這時期的特點是波蘭共產黨採納了務實的方針，不以政治意識型態去領導社會，而著重社會的秩序重整。波蘭政府對蘇聯的依賴減少了。政治行為被刑事法的程度是明顯減少了。秘密警察亦被改革。在政治的範疇，高壓及嚴懲的作風是改善了。而民間社會力量的湧現(尤以1976年後為甚)，廣泛反對政府及波蘭共產黨的勢力的出現，構成了政治發展上的重要轉捩點。但這時期的刑事制度歸根仍是史大林時的混合體，而黨及國家的本質也未改變。七十年代的刑事制令及施行程度的壓制性依然不減，甚至超越史大林時期：1970-79 這十年的平均每年死刑數目、入獄刑期及監犯數目均超過六十年代的情況。

踏入八十年代，政治刑勢的改變令到刑事法律制度有了改革的契機。政府在1981年宣佈軍法統治，在1985年通過「五月法令」，主要是打擊以「團結工會」為首的民間反對力量。刑法及司法制度變成了當權者打擊異己者的政治工具。但改革的種子已被撒下。在1981年政府與民間(團結工會)各自提出全盤改革刑律的方案。兩個方案不約而同認許一種溫和及尊重人權的制度。但這些方案均未能付實。波蘭政府在1987年再設立刑法改革委員會，考慮取消死刑等變法。但真正揭開改革之頁的是團結工會的政治演變。從在野到執政這過程中，民間對刑法制度的改革意願終於可以落實。1989年團結工會與政府對話，刑罰法制度重要項目之一。繼1989年的選舉勝利是一連串的改革、司法制度、警隊的改革。刑事法的改革也在1990年如火如荼地開展，其目的是令波蘭的刑事制度與歐洲共同體相一致，有利波蘭申請加入這共同體一事。