

CRIMINAL LIABILITY FOR STATEMENTS IN THE LIGHT OF THE CASE LAW GENERATED BY REGIONAL COURTS IN REGIONS INCORPORATED INTO POLAND FOLLOWING WORLD WAR II

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Abstract

The Decree of June 13, 1946, on offences posing a particular threat to state reconstruction (the so-called Little Criminal Code) was one of the key legislative instruments incorporated into Poland's communist penal law. The Decree was intended not only to combat political opposition but also to force Polish society into obedience towards the communist authorities. This particular aim was also achieved by adopting rules which penalized spreading gossip, insulting the state's political system and the possession of disloyal writings. Of special interest in this context is the commission of such crimes by persons displaced into the formerly German land incorporated into Poland at the end of World War II. The author outlines the findings of research on political crimes at a time when new social and state structures were being constructed.

Keywords: political crime, communist law, prosecution of state critics, Poland

Introduction

In early 1944, the Red Army crossed the border of the Second Republic of Poland, as delineated in the Treaty of Riga of 1921. On July 22, 1944, the formation of the communist-dominated Polish National Liberation Committee was publicly proclaimed.² Set up on the order of Joseph Stalin, the body became a power centre competing with Poland's lawful government in exile in London.³ Within a relatively short period of time, supported by the Soviet Union, the Communists usurped all power in those parts of Poland liberated from German occupation. In July 1945, the government, which consisted mainly of communists, gained approval in the international arena, mostly from Great Britain and the USA. Immediately after the communists seized power in Poland they started to organize a new political system. Military courts and common courts played a highly important role in that process.⁴ Some opponents of the new system were tried in unjust lawsuits which today would be unequivocally regarded as 'court crimes'.⁵

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² W. Pobóg-Malinowski, *Najnowsza Historia Polityczna Polski t. III 1939 – 1945 (Poland's most recent political history, vol. III 1939-1945)*, (London, 1960) p. 592.

³ *Ibid*, pp. 591-592.

⁴ Between 1945-1950 the structure of civil (common) courts in Poland consisted of the Supreme Court, appeal courts, regional courts and municipal courts which examined minor civil and criminal cases. Additionally, there were many military courts which also examined certain selected acts of

The end of World War II saw significant state border shifts in Central and Eastern Europe. Poland's borders were moved substantially to the West by incorporating areas of Warmia, Mazuria, Pomerania, Lubusz Land and Lower Silesia all held by Germany prior to 1939. Meanwhile, Poland lost Eastern Little Poland, Volhynia, Polesie and the Vilnius Region which were incorporated into the Soviet Union. As the state borders shifted the population was forced to migrate. The Poles inhabiting the former Eastern Poland were moved mainly to Poland's new lands incorporated into the country after the end of the war. On the other hand, the Germans residing in the latter areas were displaced, predominantly to the Russia-occupied zone of Germany.⁶ The new arrivals from the east of Poland would commonly urge the German residents to speed up their departures to Allied-occupied areas.⁷ Without a doubt, the post-war displacements of Polish and German populations had the effect of breaking prior bonds and tearing down existing social structures. The displaced Poles were forced to live in radically different social and cultural environments with the majority having no ties to their new places of residence.

1 The Little Criminal Code

Shortly after coming to power in Poland, the Communists began to adopt new criminal legislation modelled on Soviet law. One of the key instruments of communist criminal law was the decree of June 13, 1946, on crimes which posed a particular threat to state reconstruction, known commonly as the Little Criminal Code.⁸ Undoubtedly, one of the aims of that particular decree was to impose obedience on society for the new, communist authority. Rules and regulations introducing legal sanctions for dissemination of unfavourable information or criticism of the new political system were methods used to achieve this.

The decree comprised of 72 articles subdivided into seven chapters. The first three specified the categories of offences. Chapter IV laid down, among other things, detailed provisions governing the criminal liability of public officials and rules on the application of additional

civilians. Specifically, Military District Courts and the Military Court of the Polish National Railway need to be mentioned. The Supreme Military Court was the superior court of the military court structure.

⁵An example of an unjust lawsuit which may be described as a 'court crime' are the proceedings against an anti-communist resistance soldier and Auschwitz camp prisoner Witold Pilecki: see *W.J. Wysocki, Oskarżenie Witolda Pileckiego i współtowarzyszy. Charakter śledztwa, procesu publicznego i procesów odpryskowych [in:] Przestępstwa sędziów i prokuratorów w Polsce lat 1944 – 1955*, edited by W. Kulesza, A. Rzepliński, (Warszawa, 2001).

⁶Holzer, *Europa zimnej wojny (Europe during the Cold War)*, (Kraków, 2012), p. 37

⁷N. Naimark, *Ethnic cleansing in twentieth-century Europe*, (Harvard 2002), p. 128.

⁸K. Siemaszko, *Law which serves politics. Communist Little penal code in judgments of the regional court in Cracow 1946 – 1950. Access to research*, in *Naděje právní vědy*, (ed.) V. Knoll, (Plzeň, 2011), p. 98.

penalties, the forfeiture of property, the application of the general section of the criminal code of the Polish Armed Forces and the durations of prison terms. Chapter V contained procedural rules whereas Chapter VI set forth entitlements to issue implementing regulations. Chapter VII of the Decree set forth transition rules. Additionally, the criminal cases governed by the Decree were heard in specific proceedings adopted in the Little Criminal Code.

Notably, the categories of offences provided for in Chapter I of the Little Criminal Code ('crimes against public order') fell under the subject matter jurisdiction of military courts regardless of whether the perpetrator was a military person or a civilian. The subsequent two chapters, entitled 'crimes against public order' and 'crimes against national economic interests' fell under the subject matter jurisdiction of the common courts. Up until 1949, such cases were examined in the first instance by district courts and between 1949 and 1950 the jurisdiction was transferred to the courts of appeal. Following the judicial reform of 1950, cases of crimes posing particular threats to the reconstruction of the state were heard by regional courts and this remained the case until the Decree was repealed in 1970. Chapter II ('crimes against public order') of the Decree provided, amongst others, three categories of offences: establishing criminal liability for spreading false information with a potential to jeopardize state interests, the production, dissemination and/or holding of literature and other printed matter containing such information, and insulting the Communist system.

This paper focuses on the rulings issued in the above cases as passed by two district courts operating in regions incorporated into post-World War II Poland: the District Court of Zielona Góra and the District Court of Głogów (with headquarters in Nowa Sól). The area covered by the jurisdictions of these two courts before 1945 had been a part of Germany. Both courts were established in 1945 and ceased their activity in December 1950 owing to a reform of the justice system implemented by the communist regime, which resulted, inter alia, in the closure of regional courts. So far there has been no comprehensive research concerning migration influence on the type of minor political crime committed in the first years of World War II. Over recent years a few studies have been published devoted to the case law of the common courts concerning political crime prohibited by the Little Criminal Code.

Issues regarding the case law of the common courts were discussed in the work of Krzysztof Sidorkiewicz, *Repressions of the judiciary system in political lawsuits in Pomerania*

*Voivodeship between 1945-1956.*⁹ The publication concerns activities of all judicial authorities in the area of Bydgoszcz Voivodeship, the author devotes one of the sub-chapters to the Kujawy regional courts in 1945-1956 presenting particular legal cases examined by these courts and also showing the conviction statistics for various crimes from regulations included in the Little Penal Code. Other significant work on the subject is Zdzisław Biegański's monograph *Judiciary system and people sentenced to capital punishment due to political reasons in Pomerania Voivodeship between 1945-1956.*¹⁰ The subject matter of the monograph is more comprehensive than the title suggests. The author gives a concise description of post-war decrees which were to introduce so called 'new criminal law' and the organization and activity of the judiciary including the common judiciary in Poland in 1944-1956. It is worth mentioning other publications concerning court crimes in a more general context. For example, the collection of works: *Offences committed by judges and prosecutors in Poland 1944-1955* edited by Witold Kulesza and Andrzej Rzepliński, which comprises a collection of articles devoted to a wide spectrum of issues connected with the organizational system of the judiciary, functioning of quasi-judicial authorities and the criminal law of that time and how it was applied at various levels by the common and military judiciary.¹¹

The primary objective of this paper is to assess the impact of post-war migrations on the incidence of minor political offences consisting mostly of making statements unfavourable to the communist authorities of the time and disseminating printed matter containing such content. The aim of this research is to determine what kind of attitude the people settling in the area of so called Recovered Territories held towards the new, communistic authorities. Arguably, one of the best criterion of how to define such attitude is the enforcement and response to political crime, especially that concerning the dissemination of unfavourable information with regard to the authorities. The research carried out to date indicates that a number of the crimes and the manner in which they were committed as well as the punishments imposed on those convicted were basically homogeneous in the area

⁹ K. Sidorkiewicz, *Represje wymiaru sprawiedliwości w sprawach politycznych w województwie pomorskim (bydgoskim) w latach 1945–1956* (Toruń, 2005).

¹⁰ Z. Biegański, *Sądownictwo i skazani na śmierć z przyczyn politycznych w województwie pomorskim (bydgoskim) w latach 1945–1956*, (Bydgoszcz, 2003).

¹¹ *Przestępstwa sędziów i prokuratorów w Polsce lat 1944–1955*, (ed.) W. Kulesza, A. Rzepliński, (Warszawa, 2001). This monograph contains many interesting articles on, inter alia, the case law of the Regional Military Courts in Mid-Pomerania and also concerning issues of specific, yet typical and symbolic for that period, political lawsuits e.g. W.J. Wysocki, *Oskarżenie Witolda Pileckiego i współtowarzyszy. Charakter śledztwa, procesu publicznego i procesów odpryskowych. (Charges against Witold Pilecki and his companions. Characteristics of the investigation, public lawsuit and 'spin-off' lawsuits.)*

constituting Poland after 1945.¹² Age, sex or education of the perpetrators were also similar.¹³ Results of the research concerning the case law between 1946-1950 of the Regional Court in Kraków connected with crime controlled by the Little Criminal Code¹⁴ confirm the above mentioned facts.¹⁵ The result of the research showed that the most frequent penalty imposed on perpetrators was a sentence of imprisonment from 6 months to 1 year.¹⁶

2 The Offence of Disseminating False Information

Criminal liability for spreading false information with a potential to significantly harm state interests or undermine the authority of its supreme bodies had been laid down in Art. 22 of the Little Criminal Code

Whoever disseminates false information which may inflict damage upon interests of the Polish State or reduces authority of the Superior Bodies is subject to the penalty of deprivation of liberty up to 5 years or penalty of custody.

The provision could be applied when sentencing individuals who spread such false information non-publicly, i.e. in private social interactions within the confines of their homes. Contemporary interpretations have stressed that Art. 22 denied individuals their fundamental freedom of speech.¹⁷ Yet, even during the period in question, liability for the non-public spreading of false information gave rise to certain misgivings. This is evidenced by the Supreme Court judgement *Po. K. (1948)*.¹⁸ In this ruling, the Supreme Court considered a cessation appeal from a decision by the District Court of Ostrów Wielkopolski. The appeal submitted that the act in question bore no characteristics of the crime as set forth in Art. 22 including the spreading of information, as the defendant never disseminated information to a

¹² K. Siemaszko, *Przestępstwo rozpowszechniania fałszywych wiadomości, tzw. szeptanka (Art. 22 małego kodeksu karnego) w orzecznictwie Sądu Okręgowego w Krakowie w latach 1946–1950 (Dissemination of false information so called 'szeptanka' (Art. 22 Little Criminal Code) in the light of case law generated by Regional Courts in Kraków 1946-1950; Studia z dziejów państwa i prawa polskiego, Studies of history of Poland and the law, (2011), no 14, 284–287.*

¹³ *Ibid.*, p. 282.

¹⁴ The Decree of June 13 1946 on offences posing a particular threat to the state reconstruction, the so-called Little Penal Code was an act of communist law which upheld the Polish Criminal Code of 1932. This decree partially replaced and supplemented the criminal code of 1932, therefore in the legal doctrine this decree was called the Little Penal Code.

¹⁵ Results were published in K. Siemaszko, *In difficult period of Poland's reconstruction. So called Little Criminal Code in the light of jurisdiction of Regional Court in Kraków in the years 1946-1950*, (Warszawa 2015), p. 351.

¹⁶ *Ibid.*, p. 325.

¹⁷ M. Gajdus-Ciborowska, A. Kuźmiuk, *Sprawy o szeptanki osądzone przez Sąd Najwyższy w II instancji do 1956 roku (Rumor-spreading cases heard by the Supreme Court in the second instance prior to 1956) in Przestępstwa sędziów i prokuratorów w Polsce lat 1944–1955 (The crimes of judges and prosecutors in Poland between 1944 and 1955)*, (ed.) W. Kulesza, A. Rzepliński, (Warsaw, 2001), p. 245.

¹⁸ *Po. K. 320/47* March 19, 1948.

large and unlimited group of people. Nevertheless, the Court found that 'the cessation appeal claim whereby the defendant did not disseminate information as he never spread information to a large and unlimited group of people is void'¹⁹ as, in its opinion, the spreading of information included the act of facilitating false information that could reach a significant number of people. Such facilitation did not necessarily require resorting to means of mass communication or even publicly proclaiming such false information.²⁰

The Supreme Court maintained that the criterion for spreading information was satisfied when a perpetrator passes false messages to multiple people over time. In order for an offence punishable under Art. 22 to occur, it was therefore not necessary for a statement to be addressed to a group of people. The only necessary condition was for the message to be passed to separate individuals within a specified time period.²¹ The Supreme Court found additionally that an offence set out in Art. 22 could also be committed by mail. In its judgement *K 857/50* of October 11, 1950, the Court found that

the spreading of messages within the meaning of art. 22 of the Little Criminal Code may also take place by mail addressed to one person as long as the perpetrator agrees to the possibility that the recipient will pass its content on to further people. The crime shall be deemed to have been committed if, under such circumstances, a letter containing the incriminated information reaches the addressee. It is not necessary, however, for the perpetration of the crime for the recipient to communicate the message received to further individuals – a sufficient criterion is the sheer possibility of passing on the message.²²

Such interpretation undoubtedly widened the criteria of the crime under Art 22 and as a result clearly led to excessive interference of the authorities as regards freedom of speech and confidentiality of correspondence.

3 The Offence of Disseminating, Producing and Possessing Printed Matter Containing False Information

A qualified form of the offence of spreading false information was that set out in Art. 23 of the Little Criminal Code: 'Whoever disseminates or creates, stores or transports for the purpose of dissemination papers, printed matter or images.' This offence was satisfied if the spreading of information or textual printed matter or images produced for the purposes of spreading information would lead to the incitement to commit crime or praise criminal

¹⁹ The Supreme Court Rulings Collection. Criminal Chamber Rulings, 1948, Book 4, p. 218.

²⁰ Z.A. Ziemia, *Prawo przeciwko społeczeństwu. Polskie prawo karne w latach 1944-1956 (The law against the public. Polish criminal law from 1944 to 1956)*, (Warsaw, 1997), p. 238.

²¹ *Orzecznictwo Sądu Najwyższego z zakresu materialnego prawa karnego (1945–1957) (Case Law of the Supreme Court pertaining to substantive criminal law (1945–1957))*, (ed.) S. Śliwiński, (Warsaw, 1958), p. 801.

²² *Ibid*, p. 803.

activity, or such dissemination contained false information or was intended to be kept secret from the relevant authorities. Notably, the rule established criminal liability for the mere production of textual printed matter or images whose content was to be kept secret from the authorities. Under the doctrine of the period, it was claimed that this could extend to literature containing any *true content* which the public authorities found to be inconvenient or unacceptable for their own particular reasons or distaste.²³

The dissemination of hand-written or printed content containing false information did not require their duplication. The offence was deemed to have been committed by an individual who had simply produced and handed to another just a single such copy of a hand-written or printed document. This opinion was shared by the Supreme Court. In its ruling *Kr K 1451/49* September 23, 1949, the Court noted that

the crime shall be deemed perpetrated if hand-written notes, printed content or images have been spread by the direct passing of a single copy thereof or if a single copy of a hand-written note, printed matter or an image has been produced with such content as specified in art. 23 § 1 of the Little Criminal Code with the intention of its dissemination.²⁴

This is another example of the widening judicial interpretation of the formally expressed definitional criteria in Art. 23 creating criminal liability for the mere possession of such type of printed matter. Undeniably, this judicially approved regulation was to further limit freedom of speech and the expression of citizen's opinions in printed form and paper.

4 The Offence of Insulting the State's Political System

Another provision of the Decree of June 13, 1946 in relation to offences posing a particular threat to state reconstruction established criminal liability for statements perceived as unfavourable to communist authorities was provided in Art. 29 of the Little Criminal Code:

Whoever publically insults, derides, humiliates the system of the Polish State or approves of fascism or any of its form or fascist crimes or whoever publically incites to their commitment or to introduce in Poland a fascist institution is subject to the penalty of deprivation of liberty up to 10 years.

Accordingly, whoever publicly insulted, derided or degraded the political system of the state, praised or endorsed fascism in any shape or form, praised or promoted Nazi crimes, publicly incited their commission or publicly advocated the establishment of fascist organizations in Poland committed this offence. The provision was generally intended to protect the

²³W. Bogucki, *Mały kodeks karny. Dekret z dnia 13 czerwca 1946 roku o przestępstwach szczególnie niebezpiecznych w okresie odbudowy państwa. Z objaśnieniami i przepisami związkowymi* (Little Criminal Code. Decree of June 13, 1946 on crimes posing particular threat to state reconstruction. With explanations and trade union regulations), (Warsaw, 1946), p. 47.

²⁴ *Orzecznictwo Sądu Najwyższego (Case Law of the Supreme Court)* p. 806.

institutions and system of the People's Republic. The notion of system was defined broadly to refer not only to the system of government but also the economic system based on agricultural reform, the social economy and nationalized industries as well as the social structure and its political and youth organizations.²⁵ Art. 29 emphasises that the offending acts in question must be 'public'. The definition of acting 'publicly' was formulated in the Supreme Court judgment *K 2251/49* February 18, 1947. The Court noted that acts become public when 'they are taken at a location that is generally accessible to any third party individuals who may directly become aware of the message in question.'²⁶ The definition encompasses liability for crimes laid down in Art. 29 not only of persons who performed such acts in public places but also those who criticized the systemic reform in multiple, successive conversations held with single individuals.²⁷ A further ruling which extended the scope of crimes punishable under Art. 29 was the decision *IV KO 2/56* of the Supreme Court, May 10, 1956, which stated that such crimes may also involve insulting members of political and social organizations, Members of Parliament, members of national councils and state officials provided the perpetrator, driven by counter-revolutionary aims, offends such individuals in connection with their posts or memberships in organizations, with the intention to deride or insult the state's political system.²⁸ What is especially notable here is the Supreme Court's implicit admission that such crimes may be perpetrated by the telling of a joke or holding an event. Therefore, criminal liability could be ascribed to a person who in a private conversation would tell a joke that was critical of the authorities or system of that time.

Piotr Kłodoczny stresses that adjectives such as 'insulting, offending, deriding and degrading' used in connection with the political system allowed one to classify jokes as deriding or insulting the political system of the People's Republic of Poland.²⁹ They also created uncertainty amongst the public as to the applicable legal status and what behaviour and activities would be prosecuted, where would the line between lawful conduct and criminal conduct fall?³⁰ Again it is beyond question that such an extended interpretation of the rule was clearly meant to intimidate the public.

²⁵ M. Siewierski, *Mały kodeks karny. Komentarz i orzecznictwo* (*The Little Criminal Code. A Commentary and Case Law*), (edn. II, Łódź, 1949), pp. 78-79.

²⁶ *Państwo i Prawo* ('The State and the Law'), no. 2, 1948 r., p. 149.

²⁷ P. Kłodoczny, *Prawo jako narzędzie represji w Polsce Ludowej (1944-1956). Prawna analiza kategorii przestępstw przeciwko państwu* (*The law as an instrument of repression in Communist Poland (1944-1956). Legal Analysis of the Categories of Crimes against the State*), (Warsaw, 2004), p. 342.

²⁸ *Orzecznictwo Sądów Polskich i Komisji Arbitrażowych* (*The Case Law of Polish Courts and Arbitration Commissions*), 1958, Sec. 160, p. 362.

²⁹ P. Kłodoczny, *Prawo jako narzędzie represji...* (*The Law as an instrument of repression ...*) p. 343.

³⁰ *Ibid.*

5 Case law from District Court of Głogów (with headquarters at Nowa Sól) and District Court of Zielona Góra

The above categories of offences were modelled not only on solutions derived from the period of the Second Republic of Poland.³¹ The offences of spreading false information, producing, possessing or disseminating printed matter containing such information and degrading the political system of the state were clearly copied out of the Soviet penal code and grafted directly into the Polish system of criminal law.³²

So far there has not been any detailed research concerning jurisdiction in particular regional courts within the scope of highly dangerous crimes in Poland in the period of reconstruction of the state.³³ According to accessible statistical data 195,400 criminal cases were submitted in total to the regional courts in 1947. In the period of reconstruction there were 19,800 highly dangerous crimes, which constituted just 10% of criminal cases considered by these courts.³⁴ The scale of political crime was therefore relatively small when compared to the overall number of criminal cases prosecuted in the period following World War II.

The case law of the District Courts of Zielona Góra and Głogów (with headquarters in Nowa Sól) that has been researched so far shows that the crimes were committed predominantly by men. No surviving files have been found of any case heard by the District Court of Głogów where the defendant was a woman. In the case of the District Court of Zielona Góra, one such case has been discovered thus far. The crimes in question were committed predominantly by persons aged 35 to 50, most of whom had elementary education.

A critical discussion of the above types of offences which brought criminal liability for statements unfavourable to the state authorities and/or state political system into the Polish penal system could benefit from several examples of such cases as heard by the District Courts of Zielona Góra and Głogów. The examples will help to illustrate the practical application of substantive criminal law at a time when new social structures were being built in areas incorporated into Poland after the end of World War II. One of the cases concerning

³¹ Art. 22 of the Decree describing criteria for the crime of spreading false information was partly modelled on Art. 11 of the Decree of the President of Poland of November 22, 1938 on the protection of certain state interests, *Official Journal* 1938, No. 91, Item 623.

³² cf. H. J. Berman, *Soviet Criminal Law and Procedure*, (Harvard, 1972, edn. 2), p. 24.

³³The only work dedicated completely to highly dangerous crimes in the period of reconstruction of the state in the light of case law of regional courts is the work by Karol Siemaszko on case law of the Regional Court in Kraków in the years 1946–1950, cf. K. Siemaszko, *In the difficult time of the state reconstruction, the so called Little Penal Code of in the light of case law of the Regional Court in Cracow in the years 1946–1950*, (Warsaw, 2015), p. 352.

³⁴ Statistical Yearbook 148, sect. XIX, Judiciary, Bar, Crime, table. Activities of common courts in 1947.

the spreading of false information heard by the Głogów Court related to Mr. R.H., a farmer of German nationality. The case reflected the sense of anticipation and temporariness among the inhabitants of the western lands acquired by Poland upon the conclusion of World War II. The man was suspected of having said, in February 1947, that 'the English support the Germans' and that 'Poles will be forced to flee the Recovered Land'.³⁵ Furthermore, he is claimed to have said to settlers arriving in the village of Czolnik that 'your Poland is in Tarnopol, Stanisławów and Lvov'.³⁶ The suspect pleaded innocence but as a precaution he was placed under temporary arrest. The indictment was lodged with the District Court of Głogów on April 17, 1947. The trial for the case was held on June 2, 1947. The defendant was examined during the proceeding through a court-appointed interpreter. R.H. denied his guilt while arguing that he had been forced to join the German National Socialist Workers' Party to protect his interests.³⁷ In its judgement of June 2, 1947, the District Court of Głogów found the R.H. guilty as charged for having committed an act punishable under Art. 22 of the Little Criminal Code and convicted him to the punishment of one year in prison reduced by the duration of his temporary detention between April 15, 1947 and June 2, 1947. No appeal from the first-instance ruling was filed in the case.

An interesting example of a proceeding concerning a crime under Art. 23 of the Decree, with respect to the production, possession and dissemination of literature containing false information posing a threat to state interests, is a case heard by the District Court of Głogów regarding the tailor Mr. C.O. who was said to have disseminated, on February 8, 1949, in the town of Żary, the content of a typewritten leaflet held at his home, containing false information which posed a threat to state interests and had the potential of undermining the authority of the state's supreme institutions.³⁸ The indictment against C.O. was submitted to the District Court of Głogów with the justification stated that

in January 1949, while travelling by train, C.O. received, from unknown individuals, a typewritten leaflet written in verse, which he then brought to Żary to spread its contents, which included false information regarding the Warsaw Uprising period, among his acquaintances, thereby undermining the authority of President Bierut and other government officials³⁹.

³⁵ Protokół przesłuchania podejrzanego R.H. (Record from examination of the suspect R.H.), file ref. AP ZG 89/576/71, book 8.

³⁶ *Protokół przesłuchania podejrzanego R.H. (Record from examination of the suspect R.H.), file ref. AP ZG 89/576/71, book 8.*

³⁷ Ibid.

³⁸ Akt oskarżenia w sprawie C.O. (Statement of indictment in the case of C.O.), file ref. AP ZG 89/576/34, book [b.p.a].

³⁹ Ibid.

It was also made clear that the defendant pleaded guilty while stressing that he had spread the content of the leaflet unaware that he was committing a criminal offence. In its judgement of August 23, 1949, the District Court found the defendant C.O. guilty while reclassifying his crime from one punishable under Art. 23 of the Little Criminal Code to one subject to Art. 22 of that code, i.e. the spreading of false information posing a substantial threat to state interests. He was sentenced to one year in prison reduced by the duration of his temporary detention between February 14, 1949 and August 23, 1949. In addition, the Court ordered the evidence, i.e. the leaflet containing the words of the incriminating song, to be destroyed.

In its justification, the court noted:

based on witness testimonies, the court concludes that the act perpetrated by the defendant meets the criteria laid down in art. 22 of the Little Criminal Code but not those set out in art. 23 of the Little Criminal Code as the facts of the case show the acts committed did not consist in inciting to or praising of crime but only in spreading, among a small group of people, of information which undermined the honour and dignity of the highest officials of the democratic state of the People's Republic of Poland.⁴⁰

With respect to the severity of the punishment, the court noted that it had considered, as a mitigating circumstance, the absence of the defendant's criminal record as well as the fact that:

his [i.e. the defendant's – K.S.] offence followed major events in the life of the nation, i.e. the common universal parliamentary and presidential elections in which the majority of the nation supported the current heads of state and government. Hence, the court could not approach the matter too strictly and refrained from finding the defendant to have praised a crime or incited a crime.⁴¹

Without a doubt, the above judgement of the District Court of Głogów was relatively favourable to the defendant. By reclassifying the offence from one punishable by no less than 3 years in prison subject to Art. 23 to one subject to Art. 22 punishable by up to 5 years in prison or detention, the court could impose the punishment of one year in prison, which would have been regarded as lenient at the time.

An appeal from the judgement was filed by the prosecutor with the Wrocław Court of Appeals. The prosecutor argued that the facts of the case were misconstrued by classifying the offence under Art. 22 and that the punishment was grossly disproportionate. In his justification, the Prosecutor noted rightfully that under Art. 23 the position taken by the Głogów Court was groundless as irrespective of the circumstances named by the Court, any written statement containing such false information as may harm the interests of the state or

⁴⁰ Akt oskarżenia w sprawie C.O. (Statement of indictment in the case of C.O.), file ref. AP ZG 89/576/34, book [b.p.a].

⁴¹ Ibid.

undermine the authority of its supreme institutions must fall under Art. 23 of the Little Criminal Code

In its decision of November 4, 1949, the Wrocław Court of Appeals nevertheless upheld the contested judgement. In its rebuttal, the Court remarked that

nothing in the incriminated leaflet praises crime nor incites one to commit one. The defendant did not disseminate the contents of the leaflet as he only passed it over and dictated it to one person, namely J. He never disclosed it to any greater number of people nor was he ill-intentioned as he expressed his indignation over the content of the leaflet which the witness J. took to be a joke. All in all, one cannot deem the act to constitute a dissemination of the leaflet within the meaning of art. 23 of the Little Criminal Code as the leaflet was never spread any further.⁴²

At the request of the Prosecutor of the Wrocław Court of Appeals, an extraordinary appeal to this judgement was filed with the Supreme Court by the First Prosecutor of the Supreme Court. In decision *K 15/50* of March 15, 1950, the Supreme Court repealed the contested ruling of the Wrocław Court of Appeals and the judgement of the District Court of Głogów while pronouncing the defendant guilty of the crime expressed in Art. 23 of the Little Criminal Code. As a consequence, the Wrocław Court sentenced C.O. to 3 years in prison reduced by the duration of his temporary detention and deprived him of public and honorary civic rights for the duration of 5 years.⁴³ In its clarification, the Supreme Court stated that:

spreading such false information as may significantly harm state interests or undermine the authority of Poland's supreme institutions meets the description of the crime laid down in art. 22 of the Little Criminal Code whereas the dissemination of printed matter and images containing, among others, false information, is punishable under art. 23 of the Little Criminal Code. The latter article constitutes a special case of the crime described in art. 22 of the Little Criminal Code which differs from the latter by the method in which information is spread⁴⁴

What stands out in this case is the Prosecutor's determination to punish the defendant as severely as possible. This can clearly be seen in the appeals of the judgement of the court of first instance as well as the Court of Appeals. The approach shows that matters of this kind were treated as seriously as political offences.

An example of a crime falling under Art. 29 of the Decree, i.e. a crime of insulting the political system of the state, is the case of Mrs. J.B., a housewife and a mother of seven heard by the

⁴² Uzasadnienie wyroku Sądu Apelacyjnego we Wrocławiu z 4 listopada 1949 (Justification of judgement of November 4, 1949 by the Wrocław Court of Appeals), file ref. AP ZG 89/576/34, book [b.p.a].

⁴³ Ibid.

⁴⁴ Wyrok Sądu Najwyższego z 15 marca 1950 roku (Supreme Court judgement of March 15, 1950), file ref. K 15/50, file ref. AP ZG 89/576/34, book [b.p.a].

District Court of Zielona Góra. The woman was charged with having insulted the political system of the state on October 17, 1947 in a state-owned property in Swarzynice. According to the Principal of the local school, parents of the pupils attending the school chose to have their children go to a state farm after classes to help harvest potatoes and beets. The income earned in this manner would be donated to the reconstruction of Warsaw after its war-time devastation. Upon seeing her children spend the afternoon working on a farm, the defendant allegedly called the teachers 'child oppressors' and the Principal 'a German oppressor of her children'. When the Principal attempted to calm her down, J.B. allegedly replied by calling him 'an oppressor and a kolkhoz builder' adding she would not let her children build kolkhozes. She also used an insulting word with reference to the political system of the Polish People's Republic. During pre-trial proceedings, the defendant denied having said the above. She stressed she went to the field with another woman, B.W., to see if her children were dressed warmly enough. Furthermore, the two women allegedly told the Principal it was heartless of him to keep children working in the field on empty stomachs but claimed she did not use words insulting the political system of the state in the exchange that followed.

An indictment was filed with the District Court of Zielona Góra on November 30, 1947. In its ruling of January 18, 1949, the Court found J.B. guilty of the crime of insulting the state's political system and sentenced her to 6 months in prison suspended for 2 years. No cessation appeal was submitted with respect to the above decision.

Conclusions

The above cases concerning the offences of disseminating false information, producing, disseminating and possession of literature containing such information and insulting the state's political system show that these categories of offence were established primarily to keep members of the public from expressing their views freely. Courts often regarded constructive criticism of communist authorities and jokes regarding their representatives as crimes.

The analysis presented here confirms that the social conditions in place in the Western Territories which had been freshly incorporated into Poland had little effect on the incidence of such political crimes, the *modus operandi* or perpetrator profiles. The nature of the crime of dissemination of false information or insulting the state's system committed in the incorporated area of Poland was not different from those committed in other parts of Poland. It also seems difficult to state that the motive for the actions of these perpetrators was

considerable aversion to the communistic authorities. The perpetrators from the analysed cases expressed their negative opinions about authorities or people's state as by accident or under the influence of emotions. Such findings cannot be used to form an opinion that the attitude of people towards the communistic authorities on so-called Recovered Territories was particularly negative.

Notably, the main purpose for which the above three offence categories were established was to intimidate the public and keep it from expressing opinions unfavourable to the new authorities as well as from ridiculing them by telling jokes about their representatives. Another goal of the regulation was to isolate persons unfavourable to the communist authorities from the rest of society so as to ensure their disloyal views would not be spread through society.

It is clearly the case that Arts. 22, 23 and 29 of the Decree constituted an attempt by the totalitarian regime to control the opinions of its citizens and eliminate people whose views posed any perceived danger to the project of turning Poland into a communist state. By establishing the specific categories of offence, the authorities effectively suppressed the enjoyment of freedom of expression as both a civic and civil liberty in the mid-1940s.⁴⁵

⁴⁵ Freedom of speech was enshrined in Art. 104 of the Polish Constitution of March 17, 1921, Official Journal of 1921, No. 44, Item 267. In its tenets, the Polish National Liberation Committee found the Constitution to be binding.