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"The Works on the Codification of the Substantive Misdemeanors Law in People's Poland (1960-1971)", Marcin Łysko, Białystok 2016 : [recenzja]

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MARCIN ŁYSKO, THE WORKS ON  
THE CODIFICATION OF THE SUBSTANTIVE  
MISDEMEANORS LAW IN PEOPLE'S POLAND  
(1960-1971), WYDAWNICTWO TEMIDA 2,  
BIAŁYSTOK 2016, PP. 351

Marcin Łysko's monography is unique in its own matter, because no-one in Poland except the author carries out historical and legal research on the misdemeanors law. In the title, the author outlined the time frame of the period covered by the research, and this choice is not accidental. In the years 1960-1971 there was a breakthrough because for the first time after 1932 the thorough reconstruction of the codification of misdemeanors took place, 'which despite the collapse of the communist system to the present day constitutes the core of the system of substantive misdemeanors law' (p. 11). The aim of the work, according to the author's intention, was to assess the course of codification works in the field of substantive misdemeanors law and determine their significance for the development of this branch of law.

The research method adopted by the author is based on an analysis of historical and legal facts. The author made an attempt to carry out the reader through individual drafts and analyzed the content of the most controversial regulations in the legal circles as well as in the Ministry of Internal Affairs and party authorities. It was not possible, therefore, to omit the thread of political influence on the course of work, because in People's Poland the law was shaped with emphasis on the primacy of strengthening the communist government. Therefore, Marcin Łysko analyzed the connection of codification drafts with the socialist conception of the educative influence of law on offenders and the evolution of this concept to the final codification of 1971.

It is done on many levels, ranging from dogmatic concepts to the analysis of specific legal provisions, which may pose a danger that the work will become unreadable. Therefore, the researcher rightly decided to divide the monograph into two parts. Both parts are divided into thematic blocks – chapters discussing successive drafts of the law in the title, and as part of these chapters he discussed each issue in turn signaling the problem with an appropriate subtitle.

The first part of the book focuses mainly on the analysis of misdemeanors law drafts drawn up to 1963. An important element of this part is the introductory thesis presented by the Codification Commission, i.e. the so-called the general

part of the substantive misdemeanors law. The second part, in turn deals with the work on the Code of Misdemeanors started in 1967 and culminated in the adoption of the Code of Misdemeanors in 1971.

Each discussion of the draft is crowned with a broad report on the course of public discussion on the issues. The whole work is arranged in a clear composition with preserved chronology and logical connections.

The monograph opens with a brief discussion of the work of a few researchers dealing with the misdemeanors law. The analysis of problems over codification works is preceded by a comprehensive presentation of the legal status at the end of the 1950s, which I consider to be purposeful and justified. Without specifying what was considered to be the premises for commencing codification proceedings one cannot, after all, conduct a convincing discussion on the need for change.

The author also presented a historical outline of the law of offenses, succinctly outlining the genesis of the problem which was and still constitutes a dispute about the place of the misdemeanors law in the legal system. The reader may feel a bit unsatisfied in the issue of presenting the original position of the doctrine, because the author limited himself to presenting an outline of the theses put forward by criminal law theorists without justifying them. It compels the insightful reader to reach for other sources, because understanding the essence of the offense is a starting point to explore further issues.

Since 1932, the issues related to offenses have been included in a separate regulation of the misdemeanors law (Journal of Laws No. 60, item 572), but this was an incomplete regulation, which resulted from Article 2 *Misdemeanors Law*, where some of the provisions of the General Part of the Code of Criminal Procedure were ordered to be applied for minor offences. This indicates the incompleteness of the regulations contained in the regulation. The misdemeanors law typified offenses against public order, safety, public health, individual persons and property, which certainly did not exhaust the range of offenses, and the bodies of administration were entrusted with handling the cases. This situation lasted until the end of the 1940s with minor modifications, mainly in the scope of increasing the upper limit of fines.

However, there were the first symptoms of the growing role of administrative bodies in adjudicating in cases of minor offenses, especially in relation to new facts created in special laws (p. 34). By virtue of the Act of 15 December 1951 on the criminal and administrative jurisdiction, colleges were appointed to adjudicate. As a consequence, the criminal jurisdiction of administrative bodies was perceived as the application of administrative measures of a socio-educational nature (p. 35). Marcin Łysko emphasized this problem, rightly showing the causal relationship between the progressing Stalinization and the increase in the repressiveness of the misdemeanors law penetrating deeper and deeper into the private sphere of citizens.

Groundbreaking changes took place in 1958, when the current regulations on misdemeanors were criticized as ineffective in Polish reality. The socialist concept of educational punishments has been rejected as ineffective, for the sake of heightened severity of penal measures. A number of acts have been reformed, in particular concerning hooliganism<sup>1</sup> and criminal and administrative jurisdiction<sup>2</sup>.

It must be admitted that the content of the proposed changes in the regulations has been thoroughly developed by the author. 'The amendment of December 1958 was treated in terms of meeting expectations of the practice of the jurisprudence of the reform, which was necessary due to the distant perspective of commencing codification of misdemeanors law', (M. Łysko (p. 47). The Act became the leading and widely used legal act, which pushed the misdemeanors law of 1932 into the role of a secondary legal act from the point of view of the practice of criminal and administrative jurisdiction.

In the following chapters of this part of the study, the author focuses on the effects of work carried out by the Commission appointed in 1960 by the Ministers of Internal Affairs and Justice to develop a draft law on misdemeanors. The composition of the Commission, which included mainly representatives of the doctrine of administrative law, pointed to tendencies aimed at breaking the misdemeanors law from the criminal law (p. 54). This can be seen by following the course of the discussion on the notion of misdemeanors, where the most important was to emphasize the social danger of an act defining the minor offense 'as an act prohibited by the law in force at the time of its commission, socially dangerous, not being a crime and threatened with administrative penalties' (pp. 56-57). There was also the concept of guilt as the premises for liability in the misdemeanors law. Interesting are also the arguments for the lowering of the age limit of minors, which determines the criminal and administrative liability to 10 years. This is just an example of a part of the general substantive law given to the Commission.

Marcin Łysko basing on rich archival materials also reconstructed the works on the special part of the misdemeanors law, which is all the more interesting because the subject scope of the current law was much dispersed. 'The Secretariat pointed to the fact that more than 200 legal acts were in force, the provisions of which contained about 1500 facts of actual offenses subject to the jurisdiction of the colleges' (p. 68). Plans for solutions for this state of affairs were very ambitious and promising from comprehensive changes to fragmented modifications. All these concepts together with justification are presented in a sufficiently transparent manner, although sometimes the reader may get lost in the shortcuts used by the author when presenting formal and legal issues.

<sup>1</sup> Act of May 22, 1958 on strengthening criminal liability for hooliganism (Journal of Laws No. 34, item 152).

<sup>2</sup> Act of December 2, 1958 on amending the Act of December 1951 on criminal and administrative jurisdiction (Journal of Laws No. 77, item 396).

On the basis of the analysis of subsequent drafts, we can observe a crystallizing concept of the construction of misdemeanors law, which primarily would become a regulation independent of criminal law. The proposed formal definition has also evolved, distracting the notion of a minor offense from the previous penalty criterion, replacing it with a negligible degree of social danger. The result of such an approach became the 'stratification' of minor offences according to a new criterion, whose measure was the value of the object. This approach gained the support of the authorities, struggling with the problem of petty crime and incurring the costs of litigation disproportionate to the detriment (page 115). Of particular interest to the authorities was the issue of gradual transfer of cases characterized by a low degree of social harm from the courts under the jurisdiction of the colleges. The discussion on the problem of separating the minor offense from the actual state of the offenses which has been recognized so far has turned out to be extremely turbulent.

The draft of referring cases to colleges in the scope of 'minor offenses' was even found to be contrary to the current Constitution of the Polish People's Republic. The Constitution provided for the examination of criminal cases by independent courts. An opinion of L. Kubicki, who was the only one who opposed the transfer of these 'minor offenses' to the criminal-administrative jurisdiction is of particular interest (pp. 118-119). It is worth getting acquainted with it and even confront it with today's reality. Perhaps his reasons should have been considered right and in this way, today's disputes over the Code of Misdemeanors and further 'halving' of offenses would not have taken place at all.

The author started the second part of the study with the chapter devoted to the *Transfer Act*, which has its justification because it was a legal act indicating a new direction of further work on the codification of offenses. This chapter should be of interest to anyone who is intrigued by the reason for shifting the misdemeanors law towards the criminal law. Next the author extensively reports the resumption of codification works suspended in 1963 due to the veto posed by the party authorities, which up to now have not shown much interest in the problem of codification of the misdemeanors law (pp. 133 and following). The task of preparing the draft was entrusted to the Committee II, jointly established by the Ministers of the Internal Affairs and Justice of February 28, 1967, 'although formally they did not resolve the previous Commission' (p. 153). This time the composition of the Commission pointed to the view, already established in the 1960s, about the affiliation of the misdemeanors law to the area of criminal law (p. 154). Among the most important concepts discussed by the author, the draft developed political accents "in the form of a new, adapted to the needs of practice inclusion of a number of offenses committed by priests and so-called »Church activism«" (pp. 174 and following). This was the Ministry's response to the problem of the growing influence of the Church in the society. The author writes more broadly about this topic in chapter 13th, where he published critical remarks of the Catholic Church (pp. 272-278).

The environmental discussions cited by M. Łysko indicate tendencies to excessive penalization, which Gomułka government treated as a tool to solve social problems. Moreover, before the draft was passed on to the legislative procedure it underwent a thorough verification of the Colleges of the Ministry of Internal Affairs and the Ministry of Justice. It is a pity that the author was not tempted to comment on this chapter. The political control over the creation of law affected all of its branches including the codification of misdemeanors, so it would be worth sharing one's own reflections with the reader.

Generally, the rhetoric of the study may have its appeal, although sometimes it seems to be overloaded with the excess of information and the mental shortcuts mentioned above that disturb the content and may cause difficulties in reading the meaning.

Summing up the book by Marcin Łysko one can say that the construction of considerations seems to be thought out, and the issues are arranged in a logical sequence not only within the chapters themselves, but also in the context of the entire discourse in the work. Undoubtedly, the subject matter is interesting and the individual issues discussed by the author can be read with interest because the analysis of the misdemeanors law is certainly not an easy thing. However, it is noteworthy that the author limits himself to presenting existing views of other researchers of the history of law not engaging in polemics with them or proposing his own concepts.

An undoubted advantage of the monograph are numerous and diverse archival materials. On the basis of these archives and printed sources M. Łysko conducted the reader through numerous drafts of codification of misdemeanors. Thanks to this work, the reader has the opportunity to trace the history of misdemeanors, interesting because passed in the communist system of the Polish People's Republic.

The book is included in the category of historical and legal studies and it certainly accomplishes the goal intended by the author in an exhaustive way. It is an important book from the point of view of the history of law as well as today's legislation, because the provisions of the passed Act still remain in force. The Code of Misdemeanors is one of those branches of law that affects the entire society in its everyday functioning and therefore it is worth knowing its assumptions, its *ratio legis* in order to learn to respect its provisions. After all, *legum ministri magistratus, legum interpretes iudices ...*

*Ewa Strug*