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The System of Legal Protection Authorities in Poland (1944–1989): Selected Issues[1]

Abstract

The system, organization, and practice of the judicial authorities in communist Poland (1944–1989) as instruments of a totalitarian and authoritarian system are well known. Over the past 35 years, numerous studies have been published on the judicial crimes of that period, especially from 1944 to 1956. Most of these studies are historical, while some are legal. Meanwhile, during the communist era, the state organized the activities of the legal protection organs not only to protect the existing political situation, but also to regulate and stabilize social relations, as in any other country. These aspects of the activities of the legal protection organs were widely discussed in legal literature until 1989 when the focus shifted to describing the judiciary as an instrument for maintaining communist authority. This is not surprising; it was the closing of a gap that had existed for many years. However, enough time has passed since the collapse of the communist system to take a fresh look at how the system of legal protection bodies – i.e., courts (including administrative courts since 1980), the Constitutional Tribunal (since 1986 only), the prosecution service, the bar, the bar of legal advisors, notaries, state commercial arbitration, misdemeanor boards, and other minor institutions that existed on a temporary basis – was organized and operated. Of particular interest is how the independence of bodies that are self-governing by nature and for historical reasons has been curtailed (the bar and the notary). The fundamental research question is whether the legal protection system in the People's Republic of Poland protected citizens' rights, and how much it was merely a façade designed to conceal an organized apparatus of repression and coercion, especially after 1956. This question is important because the political transformation of 1989 brought only partial changes to the organization of the system in terms of both structure and personnel. This suggests that the system functioning until 1989 could be adapted to the conditions of a democratic constitutional state. To this end, it is necessary to examine the similarities and differences between the Polish system and those in other countries with established traditions of the rule of law.

Keywords: bar, notary, legal protection body, administrative court, Constitutional Tribunal, prosecution service

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Introduction

The legal system of Poland between 1944 and 1989 has been the subject of numerous studies,[2] but far fewer examine the judiciary itself,[3] although some do address the court system's functioning.[4] The publications that focus on judges explore judicial crimes and political issues. For forty-five years, the primary activity of judges and courts concerned much more mundane matters – resolving disputes between citizens and penalizing those who violated the law. Institutions had to exist to prosecute crimes, defend the accused, provide legal assistance (both judicial and extrajudicial), and ensure the stability of legal transactions. In the People's Republic of Poland, the term "legal protection" was commonly understood as "activities undertaken specifically for the protection of the law,"[5] encompassing both its objective meaning (as a legal order) and its subjective meaning (as individual legal rights). Legal protection authorities were defined as "institutions specifically established for the purpose of legal protection and organized with that function in mind."[6]

Today, "legal protection bodies" are understood as institutions established to safeguard the legal order and protect rights, encompassing broadly defined adjudicative bodies (primarily courts), supervisory bodies, and bodies providing legal assistance. This contemporary understanding differs from what prevailed in communist Poland. In Włodyka's widely used 1968 study[7] and in the late-PRL textbook by Berutowicz and Mokry,[8] the tasks of legal protection bodies were conceived mainly in terms of maintaining the socialist legal order and protecting the "social interests, goods and values" of the state – entirely in line with the ideological coloring of that period.

The legal protection system in Poland between 1944 and 1989 comprised several key institutions, which can be categorized as follows:

a) The judiciary, including the common courts, the Supreme Court (since 1962, when it was separated from the common judiciary structure), social insurance courts, the Supreme Administrative Court (established in 1980), and military courts.
b) The prosecutor's office.
c) The Bar.
d) The legal advisers.
e) The notary system.
f) State Economic Arbitration (*Państwowy Arbitraż Gospodarczy*).
g) Misdemeanor boards (*kolegia ds. wykroczeń*).

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[2] Even excluding publications from the communist period, see: Lityński, *O prawie i sądach*; Lityński, *Historia prawa*; Machnikowska, *Prawo własności w Polsce*; Radwański, "Prawo cywilne PRL."

[3] Turlejska, *Te pokolenia żałobami czarne…*; Strzembosz, Stanowska, *Sędziowie warszawscy*; Szwagrzyk, *Prawnicy czasu bezprawia*; Szarycz, *Sędziowie i sądy w Polsce*.

[4] Bereza, *Sąd Najwyższy w latach 1945–1962*; Rzepliński, *Sądownictwo w PRL*; Rzepliński, "Przystosowanie ustroju sądownictwa;" Machnikowska, *Wymiar sprawiedliwości w Polsce*.

[5] Włodyka, *Ustrój organów*, 9–10.

[6] *Ibid.*, 24.

[7] *Ibid.*, 9–10.

[8] Berutowicz; Mokry, *Organizacja ochrony*, 39–40.

h) Other dispute resolution bodies, including maritime chambers (*Izby Morskie*), workplace conciliation commissions (*zakładowe komisje rozjemcze*), and social courts (*sądy społeczne*).

Many of these institutions functioned merely as facades during the communist period. Bar self-governance remained under the strict tutelage of the political authorities until 1982, despite being formally maintained – which was an anomaly among communist states.[9] Other legal protection institutions established in the 1980s, while representing genuine reforms, were carefully designed with "safeguards" to prevent them from exerting greater influence on public affairs than permitted by actual authorities.[10]

1. Judiciary

The communist authorities interpreted the principle of judicial irremovability in their own way. Judges were in fact vetted after 1944. Officially, no such process was acknowledged. In reality, at least two verification procedures were conducted. The first was "positive," though not in the sense of being beneficial. Judges from the interwar period were not automatically reinstated in the judiciary of the newly re-established state. On the contrary – despite significant personnel shortages – an initial, fundamental selection process was carried out. Only those who were newly appointed after July 1944 were recognized as judges. All others – regardless of their previous experience or employment – were deemed not to be judges. This status was formally confirmed by the 1946 Decree on the Temporary Regulation of the Service Status of State Officials (*dekret o tymczasowym unormowaniu stosunku służbowego funkcjonariuszów państwowych*).[11]

Initially, the decree was intended to remain in force only until the end of 1947, but its validity was repeatedly extended until it was ultimately repealed in 1975.[12] The decree applied to a broad range of public officials, including judges, prosecutors, and employees of state institutions (with the exception of the military, security services, teachers, and academic staff). It granted them the right to have their service prior to September 1, 1939, counted towards their tenure, provided they rejoined state service within three months of the decree's enactment. The state authorities retained absolute discretion over whether to reappoint any individual who applied after July 22, 1944 – including judges and prosecutors.

The government acquired extensive powers to modify employment conditions – it could freely change salary classifications, reassign officials, compulsorily retire them or dismiss them without adhering to standard procedures or notice periods. This decree was instrumental in securing communist control over the administrative apparatus. After the war, a significant portion of the judicial and prosecutorial staff inevitably consisted

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[9] Gałędek, "Czas fasadowego samorządu," 131.

[10] Maziarz, "Przemiany ustroju PRL," 710.

[11] Dekret z dnia 14 maja 1946 r. o tymczasowym unormowaniu stosunku służbowego funkcjonariuszów państwowych, Dz.U. 1946 nr 22 poz. 139.

[12] See: Article IV § 1 pt 8 ustawy z 26 czerwca 1974 r. – Przepisy wprowadzające Kodeks pracy, Dz.U. 1974 nr 24 poz. 142.

of individuals with pre-war backgrounds, whom the communist authorities perceived as politically unreliable. The 1946 decree facilitated the selective removal of those deemed disloyal to the new regime while ensuring that administration positions remained filled with individuals acceptable to the authorities. It also provided the government with flexibility in determining salaries and working conditions, which made it easier to appoint personnel ideologically aligned with the new political system.

The 1946 Decree gave the government unlimited power to transfer or dismiss officials – including judges and prosecutors – in order to shape the new political regime. The decree allowed the "supreme authority" to retire any official "without adhering to the conditions and time frames stipulated in the relevant service regulations." For reasons that remain unclear, the new authorities favored forced retirements over outright dismissals, even though both measures were legally available. The decree also empowered the Minister of Justice to reassign judges to different positions within the judiciary, and such transfers did, in fact, occur. They primarily involved demotions, with judges from voivodeship courts reassigned to lower-ranking district courts – a process carried out without any involvement from the President (until 1952) or the Council of State (since 1952).[13]

The practice created chaos in judicial salaries. According to the letter of the law, a judge transferred to a lower position should receive the minimum salary designated for that rank. In cases where a judge was reassigned to a higher position, their salary could not be lower than what they had previously earned. The resulting discrepancies were significant, with some salary disparities reaching nearly 60% of a district court judge's salary.[14]

In 1956, the newly appointed Minister of Justice, Zofia Wasilkowska, publicly declared that she would refrain from exercising her authority under the 1946 Decree to remove judges from office.[15] Her successors did not adhere to this commitment. Instead, they maintained that such powers would still be exercised but only with the approval of the Council of State and a three-month notice period.[16] By 1959, even this restriction was deemed too limiting. At the request of the Minister of Justice, the Council of State adopted a resolution – without introducing any formal legislative amendments – modifying the procedure for judicial dismissals. Under this new framework: judges who had reached 65 years of age and acquired pension rights could now be dismissed by the Minister of Justice without Council of State approval, provided their physical or mental condition hindered their ability to fulfill judicial duties; judges who had exceeded 75 years of age were to be compulsorily retired, regardless of their health status.

The change prioritized administrative efficiency over judicial tenure guarantees. A 1961 review of the judiciary found that 11 judges over the age of 75 were still actively presiding over cases. These included: two Supreme Court judges (Jan Kamiński, appointed to the Supreme Court in 1956,[17] and Mieczysław Szerer, who had served on the

[13] See: decision of the Minister of Justice of 25 September 1954, K 10261/I/54, AAN, 2/285/24/1445, 79.

[14] See: letter of the President of the Voivodeship Court in Gdańsk, dated 11 October 1954, Prez. 10319/I-2/54, AAN, 2/285/24/1445, 81.

[15] "Jak najwięcej śmiałych inicjatyw i twórczych myśli." Wywiad z Ministrem Sprawiedliwości Zofią Wasilkowską, 3.

[16] Letter of the Deputy Head of the Chancellery of the Council of State of 10 February 1961, PF/80b/10/61/Pr, AAN, 2/285/24/1244, 119.

[17] Bereza, *Sąd Najwyższy 1917–2017*, 320.

Supreme Court since 1947[18]), three judges in voivodeship courts, two judges in district courts and four judges in the Social Insurance Tribunal.

In practice, judges were subject to administrative directives issued by the Prime Minister on the procedures heads of state institutions and nationalized enterprises were to follow when employees were temporarily detained.[19] If a judge was temporarily arrested – often without the approval of the disciplinary court – this almost invariably led to immediate dismissal either under the 1946 Decree or, later, through removal by the Council of State.[20] While these directives had no formal legal status, they were frequently cited in applications submitted by presidents of voivodeship courts requesting the dismissal of detained judges.

The case of Leon Łoziński illustrates the mechanism. Before the war he sat on Warsaw's Court of Appeals; after 1944 he became a voivodeship court judge.[21] One of the most serious offenses attributed to judges after 1944 was, ironically, their pre-war rulings. These cases were not widespread, as pre-war judges were swiftly removed, and only in regions with severe staffing shortages could a pre-war judge still be found in office after 1950. Such was the case in Łódź, where the judicial staffing situation was dire. The Minister of Justice initially rescinded his own decision to force Judge Łoziński into retirement, citing an acute lack of qualified personnel. The official reason for his previous removal had been his health condition, while the unofficial reason was simply that he had been a pre-war judge. This reversal turned out to be a critical mistake. The regime's rather unsophisticated methods of identifying class enemies included systematically searching pre-war newspapers for mentions of trials involving communists and identifying the judges who had presided over them. This process brought Łoziński's name to light. In October 1953, the authorities discovered that his judicial record included numerous rulings against communist activists. He had presided over a trial of Władysław Gomułka – who at that time was himself imprisoned for "right-wing nationalist deviations" – as well as numerous other communist figures, many of whom did not survive the subsequent purge of the Communist Party of Poland (*Komunistyczna Partia Polski*; *KPP*).[22] The case caught the attention of the Central Party Control Commission of the Polish United Workers' Party, which launched an inquiry into his past rulings.[23] Just one month later, in November 1953, Łoziński was definitively retired by the Minister of Justice, despite the fact that the same minister had only weeks earlier overturned his removal due to personnel shortages in Łódź courts.

After the war, communist authorities wanted total control over the judiciary. This meant reorganizing its structure and creating a new judicial workforce. The legal frame-

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[18] *Ibid.*, 251–2.

[19] "Monitor Polski" 1952 nr 44 poz. 634.

[20] Cf. Request of the President of the Voivodeship Court in Bydgoszcz, dated October 30, 1960, Prez. 3587/60 Ps 262, AAN, 2/285/24/1429, 81.

[21] Letter of the Director of the Personnel Department of the Ministry of Justice dated August 21, 1953, 10087/23, AAN, 2/285/24/1228, 59.

[22] Letter of the Acting President of the Voivodeship Court for the Capital City of Warsaw dated October 14, 1953, Tjn 85/53, AAN, 2/285/24/1228, 61–3.

[23] Excerpt from the letter of the Central Party Control Commission of the Polish United Workers' Party dated October 26, 1953, 4708/53, AAN, 2/285/24/1228, 86.

work of the Second Polish Republic was formally retained, but the communist leadership systematically transformed the judicial system to serve party interests.

The communist leadership distrusted pre-war judges and prosecutors, accusing them of "reactionary tendencies" and opposition to the new socialist order. To create a "new, democratic judicial cadre," an extraordinary training system for judges and prosecutors was implemented. This approach bypassed the traditional academic path, allowing for the rapid appointment of legally unqualified but politically loyal individuals into the judicial system.

A decisive step in restructuring the Polish judiciary under communist rule was the Decree of January 22, 1946, which allowed the appointment of judges and prosecutors without formal legal education, provided they possessed "appropriate personal and political qualifications."[24] This decree facilitated the establishment of legal training schools under the Ministry of Justice, designed to rapidly educate cadres loyal to the new socialist regime. Party organizations, trade unions, and other institutions subordinated to the communist authorities played a central role in the recruitment process, selecting candidates who met the required political criteria. The key institution in this system was the Central School of Law named after Teodor Duracz, founded in 1948 in Warsaw, primarily intended for graduates of newly created secondary legal schools,[25] which were established in six cities across Poland: Gdańsk, Łódź, Szczecin, Toruń, Wrocław, and Zabrze. Each of these schools offered intensive courses lasting from six months to approximately one year, after which graduates were immediately assigned to work in courts or the prosecutor's office. In total, about 1,130 students completed these programs, with over 1,000 entering the judiciary or Prosecutor's Office.[26] The curriculum of these schools was designed not only to provide basic professional training – which, given the compressed timeframe, was entirely inadequate for proper legal education – but also to instill strong ideological alignment with the communist system. The educational framework was dominated by socio-political subjects, with a heavy emphasis on Marxist-Leninist doctrine, dialectical materialism, and the history of the Soviet Union. This intensive ideological indoctrination ensured that graduates of the program were politically reliable functionaries of the state, even though their legal competence was highly questionable.[27]

In 1950, the Central School of Law (*Centralna Szkoła Prawnicza*; *CSP*) was transformed into the Higher School of Law (*Wyższa Szkoła Prawnicza*; *WSP*), and obtained the status of a state vocational higher-education institution. The school operated under the direct supervision of the Minister of Justice, ensuring strict ideological and political control over legal education. Igor Andrejew, a judge of the Supreme Court, known for his role in issuing the death sentence for General August Emil Fieldorf "Nil," was appointed as the school's director.

The recruitment process for CSP and WSP prioritized political loyalty over legal competence. Candidates were selected by the Communist Party and affiliated social organizations, emphasizing ideological commitment as the primary qualification for ad-

[24] Dekret z dnia 22 stycznia 1946 r. o wyjątkowym dopuszczaniu do obejmowania stanowisk sędziowskich, prokuratorskich i notarialnych oraz do wpisywania na listę adwokatów, Dz.U. 1946 nr 4 poz. 33.

[25] Zaborski, "Szkolenie," 106–7.

[26] Ziemba, "Przygotowanie i rozwój," 145.

[27] Pasek, "Szkoły prawnicze," 259–60.

mission. Students at both institutions received scholarships and free accommodation, but in return, their academic and daily life were strictly regulated by political directives. The curriculum continued to emphasize Marxist-Leninist theory, and the institutions served as training centers for politically reliable legal professionals.

By 1953, the school ceased operations, and its final graduates completed their studies in 1954. In total, 421 individuals graduated from the institution.[28] The closure of the school was a result of the communist government's decision that enough Marxist-oriented lawyers had already been trained through regular university programs, making such specialized ideological legal education unnecessary.

The ideological and political pressures decreased after 1956, yet they did not disappear completely. This becomes particularly apparent when analyzing the cases of those judges who received their appointments after the war. Although their independence was purely fictional and their real power an illusion, political considerations still did not allow entrusting a judicial position to a person who failed to meet ideological criteria or had improper social origins. Even in a system where it was impossible to regard the judiciary as an independent third branch of government, the regime would not tolerate real or imagined "enemies of the people" among judges. Even after 1956, a judge could be immediately removed from office without disciplinary proceedings for reasons such as unfavorable (though carefully concealed) social origins or for issuing a decision in a seemingly trivial case that could be interpreted as opposition to the existing system.

Although this was not a widespread phenomenon, several cases of repression after 1956 can be identified, linked to their social origins, improper attitudes toward the political system, or judicial decisions. The relatively well-known cases are those of judges dismissed by the Council of State following the introduction of martial law in December 1981.[29] I will present three previously unknown examples of judges who faced repression by the authorities based on political criteria.

Zofia Mazanowska, who faced dismissal from her position as a judge at the District Court in Bytom in 1959 when it was discovered that her father, Ferdynand Zarzycki, had served as Minister of Trade and Industry from 1930 to 1934, and later as a senator until 1939.[30] Ultimately, however – for reasons unknown – she retained her position.

Another case involved three judges from the District Court in Mielec: Franciszek Janas, Bronisław Barłowski, and Jerzy Bańdo. These judges reviewed an appeal lodged by a local priest, Henryk Arczewski, who had been penalized by the criminal-administrative board for illegally raising funds for the construction of a church. Although the penalty itself was relatively minor, the authorities confiscated the entire sum collected. When the administrative board refused to transfer the case to judicial proceedings, the District Court in Mielec, composed of these three judges, intervened and declared the board's decision invalid.[31] Unfortunately for Arczewski, this ruling was quickly reversed by the

[28] *Ibid*.

[29] Niewiński, *PZPR a sądownictwo w latach 1980–1985. Próby powstrzymania „solidarnościowej" rewolucji* (PhD diss., Białystok, 2016), 207–9.

[30] Letter of the Minister of Justice, January 7, 1959, K 9338/I/58, AAN, 2/294/38/61, 25.

[31] Decision of the District Court in Mielec, October 7, 1959, Kad 17/59, AAN, 2/294/58/22, 14–7. Letter of the Minister of Justice [no reference number], October 28, 1959, AAN, 2/294/58/22, 12–12v.

Voivodeship Court in Rzeszów,[32] and the three judges from Mielec were dismissed by the Minister of Justice just a month later.[33]

Roman Żelemirski, a judge at the Voivodeship Court in Wrocław, experienced a comparable outcome. In 1960, he had the courage to rule that the Archdiocesan Curia in Wrocław was the legal successor to the German Archbishopric, which had existed there until 1945.[34] This ruling carried significant implications for property rights concerning numerous buildings in Wrocław.[35] Żelemirski not only lost his judicial position but was also expelled from the Communist Party, to which he had belonged since its "unification," and previously had been a member of the Polish Workers' Party (*Polska Partia Robotnicza; PPR*). His long-standing party affiliation had enabled him to serve as a judge for nearly 40 years, having begun his career in 1922 at the court of first instance in Kulików.[36]

In the 1980s changes followed. The Alliance of Democrats (*Stronnictwo Demokratyczne; SD*) – a satellite party serving as a "transmission belt to the intelligentsia" – had long advocated for systemic reforms which during the Stalinist period were considered irreconcilable with the principles of the communist state. Although SD lacked real agency, its postulates were eventually implemented, due to a favorable course of events: administrative courts and the State Tribunal were restored, the Constitutional Tribunal was established, and the institution of the Ombudsman was introduced.[37]

The first harbinger of change was the restoration – after more than 40 years – of administrative courts. Propaganda proclaimed that this became necessary solely due to "achieved social and political progress."[38] Outside the jurisdiction of the administrative court remained all those matters that were too important for the authorities to risk losing control over them. This concerned in particular freedom of association, freedom of assembly, religious matters, and even intellectual property law. [39]

In 1982, the authorities went even further and decided to amend the Constitution of the People's Republic of Poland by establishing the Constitutional Tribunal and the State Tribunal. This was not at all the result of constitutional reflection. Stanisław Rozmaryn – one of the main architects of People's Poland's system – in 1946 described the review of constitutionality of statutes by "extra-parliamentary bodies, particularly judicial and quasi-judicial ones" as a "reactionary institution" for which "there is no place either in a socialist state." The initiative emerged in response to the events of 1980–1981, when the authorities sought instruments of legitimization. The Party needed gestures of concessions toward society, but simultaneously mechanisms of control over potential changes.

[32] Decision of the Voivodeship Court in Rzeszów, October 24, 1959, V Kow 423/59, AAN, 2/294/58/22, 21–2.

[33] List of persons dismissed from judicial positions with the consent of the Council of State, AAN, 2/294/58/22, 41–7.

[34] Letter of the Minister of Justice, May 25, 1960, K 4243/I/60, AAN, 2/294/58/22, 28–28v.

[35] Differently: Resolution of the Supreme Court (panel of seven judges), December 19, 1959, 1 CO 42/59, AAN, 2/294/58/22, 29–32.

[36] Letter of the Minister of Justice, May 25, 1960, K 4243/I/60, AAN, 2/294/58/22, 28–28v.

[37] Maziarz, "Przemiany ustroju PRL," 709, 718.

[38] Projekt ustawy zmieniającej ustawę Kodeks postępowania administracyjnego, Sejm PRL VII kadencji, druk sejmowy 131.

[39] Maziarz, "Przemiany ustroju PRL," 702.

The project of constitutional judiciary aroused deep controversies even in legal circles loyal to the system. Andrzej Burda described the State Tribunal in 1981 as a "relic of monarchical systems."[40] This did not prevent him from becoming a member a year later.[41]

The composition of the Constitutional Tribunal remained under strict party control. Although formally candidates were elected by the Sejm, actual decisions were made in the Political Bureau of the Central Committee of the PZPR. This mechanism guaranteed that even an institution established to review the conformity of law with the constitution would remain in the hands of the system. Both tribunals fit into the strategy of façade reforms characteristic of the declining PRL. The authorities created institutions characteristic of the rule of law but deprived them of real powers, making them a decorative element.

2. The Prosecutor's Office

A profound reform of the Prosecutor's Office took place in 1950,[42] aligning it with the Soviet model. Subsequent modifications were introduced in 1967[43] and 1985,[44] but the fundamental structure established in 1950 remained largely intact. The reform led to the formal separation of the Prosecutor's Office from the Ministry of Justice, making it directly subordinate to the Council of State, which held the authority to appoint and dismiss the Prosecutor General. The new organizational structure was based on centralization, hierarchical subordination, and uniformity, which marked a sharp departure from the model in place during the Second Polish Republic (1918–1939), where the prosecutor's office was closely integrated with the judiciary. The ruling Polish United Workers' Party (PZPR) exercised full control over the prosecutor's office, just as it did over all other state institutions. Throughout the entire communist period, the prosecutor's office primarily served as an instrument of the Party's political agenda, enforcing state policies and acting as a tool of repression aimed at consolidating the communist rule.

Aside from its political function, the prosecutor's office also carried out typical prosecutorial duties, including the supervision of law enforcement, prosecution of crimes, participation in judicial proceedings, and oversight of the execution of sentences. Its jurisdiction did not extend to the highest levels of state and Party leadership, meaning that the most powerful political and administrative structures operated outside the reach of legal scrutiny. This lack of oversight reinforced the unchecked authority of the communist elite.

The 1950 reform granted prosecutors full authority over criminal investigations, leading to the elimination of the investigating judge, a position that had previously ensured greater judicial oversight of pretrial investigations. Prosecutors were empow-

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[40] *Ibid.*, 709.

[41] *Ibid.*

[42] Ustawa z dnia 20 lipca 1950 r. o Prokuraturze Rzeczypospolitej Polskiej, Dz.U. 1950 nr 38 poz. 346.

[43] Ustawa z dnia 14 kwietnia 1967 r. o Prokuraturze Polskiej Rzeczypospolitej Ludowej, Dz.U. 1967 nr 13 poz. 55.

[44] Ustawa z dnia 20 czerwca 1985 r. o prokuraturze, Dz.U. 1985 nr 31 poz. 138.

ered to conduct investigations directly or delegate them to the Citizens' Militia (*Milicja Obywatelska*) and the security services, increasing the politicization and repressive nature of legal proceedings. The reform lowered professional qualifications for prosecutors, which facilitated the appointment of politically loyal individuals rather than legally competent ones. By 1950, nearly half of all prosecutors lacked a law degree, with many recruited directly from the security apparatus.[45]

The Polish communist Prosecutor's Office was closely modeled after the Soviet system, characterized by a hierarchical, centralized structure with exceptionally broad powers. The Act of 20 July 1950 on the Prosecutor's Office granted prosecutors the power of general supervision (*nadzór ogólny*) over the observance of law by all state authorities and citizens, effectively transforming the prosecution into an instrument for surveilling and enforcing legality across the entire government administration.[46] At the same time, the Prosecutor's Office was separated from the judiciary and formally made independent from other branches of government. In practice, however, this "independence" was largely nominal. The Prosecutor's Office of the PRL was subordinated to the ruling Party: prosecutors were expected to be Party members and to maintain close cooperation with local Party committees, serving as active supporters of the Party's ideological objectives and the socialist order. Any prosecutors who refused to align with this political agenda were systematically excluded from the service.[47]

Although the 1952 Constitution and subsequent legislation formally positioned the prosecution as a guardian of legality, in practice, it remained accountable to the communist authorities.[48] In the 1960s, additional structural and functional reforms were introduced, strengthening the prosecutor's role in overseeing state administration and the nationalized economy. In theory, prosecutors were expected to ensure compliance with legal regulations in the public sector. Their responsibilities were largely focused on monitoring the state bureaucracy and preventing abuses that could threaten the stability of the communist regime.[49] Over time, the prosecutor's office became increasingly politicized, with strong ties to the Polish United Workers' Party (*Polska Zjednoczona Partia Robotnicza; PZPR*). By the 1960s, more than 70 percent of prosecutors were Party members, ensuring that their actions were closely aligned with the political interests of the ruling elite.

The prosecutor's office played a particularly significant role during the martial law period (1981–1983), serving as one of the main instruments of repression against the democratic opposition. Prosecutors actively participated in politically motivated trials, issuing harsh sentences against the dissidents, striking workers, and activists of the Solidarity movement. This period cemented the prosecutor's office as a tool of state oppression, rather than an independent legal institution safeguarding justice.

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45 Kozioł, "Polityczna i ustrojowa rola prokuratury," 106.

46 Drogoń, *Z dziejów prawa*, 168–9. Obara, „Organizacja prokuratury powszechnej," 250–2.

47 Lityński, *Historia prawa*, 80–1.

48 Drogoń, *Z dziejów prawa*, 168–9.

49 *Ibid.*, 109.

3. The Bar

Like the judiciary, the newly established communist government undertook a vetting process of lawyers to ensure their loyalty to the regime. Between 1945 and 1954, at least two major vetting waves took place. The first, conducted immediately after World War II, focused on identifying collaborators with Nazi Germany.[50]

The second wave, conducted between 1950 and 1954, had an explicitly defined political objective – verifying the "political correctness" of Bar members concerning their attitude toward the new authorities of the country. The second wave, initiated in 1950, aimed at removing individuals perceived as hostile to the new authorities.[51] The verification commissions were structured to ensure the dominance of the political element: the commission chairman was a judge appointed by the Minister of Justice, and its composition also included a lawyer and a representative of the 'social factor' appointed by local state administration authorities.[52]

The 1950 Law on the Legal Profession granted the political authorities discretionary power to admit individuals to the legal profession who might have had no connection to law whatsoever.[53] As Jan Frankowski, a member of parliament and rapporteur on the draft legal profession law, stated in 1956:

> The provisions giving the Minister of Justice the right to exempt candidates from the requirements of education, apprenticeship, and even examination [...] led to a certain contamination of legal ranks with many individuals whose only distinguishing title was a complete lack of professional qualifications, often coupled with a lack of moral qualifications.[54]

An eyewitness to those events – Zygmunt Skoczek, later the long-serving editor-in-chief of the bar journal *Palestra* – recalled that he himself transferred to the bar from legal work in military administration in 1950, years later he assessed extremely critically the process of admitting persons lacking appropriate qualifications to the legal profession. He wrote that:

> the personnel policy of the Ministry of Justice produced disastrous results. People began flowing into the bar without preparation, without necessary knowledge of law and – worst of all – without ethical principles essential to this profession. These people were attracted to the bar by high earnings at that time, for there were few lawyers and many cases, especially in military courts, to which all the most serious criminal, political and ordinary cases were statutorily assigned.[55]

Despite growing restrictions, the legal profession in Poland was never dissolved. Lawyers remained the only legal profession that retained a degree of self-governance throughout the communist era. Even the 1950 Law on the Legal Profession maintained

[50] Dekret Rady Ministrów z dnia 24 maja 1945 r. o tymczasowych przepisach uzupełniających prawo o ustroju adwokatury, Dz.U. 1945 nr 25 poz. 146.

[51] Ustawa z dnia 27 czerwca 1950 r. o ustroju adwokatury, Dz.U. 1950 nr 30 poz. 275. See: Zaborski, "Pierwsza weryfikacja adwokatów," 198; Gałędek, "Czas fasadowego samorządu," 141.

[52] Gałędek, "Czas fasadowego samorządu," 141–2.

[53] *Ibid.*, 142.

[54] Quoted in: *ibid.*, 143.

[55] Skoczek, quoted in: Gałędek, "Czas fasadowego samorządu," 143.

the existence of bar associations, albeit under strict state control. In practice, the independence of lawyers was severely curtailed. Political pressure was most visible in political trials, where defense attorneys were expected to align their arguments with the government's directives. During the Stalinist period (1948–1956), many lawyers engaged in a purely formal representation of defendants, refraining from mounting active legal defenses out of fear of political repercussions or repression. Although the legal profession in Poland was never dismantled, its autonomy was highly restricted. Lawyers were required to conform to state policies, and any deviation from the official party line could result in disciplinary measures or exclusion from the profession. The legal community remained under constant political scrutiny, and its members were frequently pressured to prioritize the interests of the state over those of their clients.

Following the political thaw of 1956, a partial relaxation of political repression led to limited liberalization of the legal profession. The bar association regained some of its authority, but it remained under the close supervision of the Ministry of Justice. While lawyers gained greater freedom in handling civil and commercial cases, significant restrictions persisted in criminal proceedings, particularly in cases related to political opposition activities. The October Thaw of 1956 brought a brief loosening of state-party supervision over the bar.[56] At that time, broader discussions were initiated on regulations for legal advisers, including for the first time consideration of establishing their professional self-governance.[57] The liberalization proved short-lived, however, and supervision soon returned in full force.

During the 1970s, despite the formal preservation of self-governance, the legal profession was still regarded as an integral part of the state's legal system, expected to operate in accordance with the ruling party's policies. Lawyers were not allowed to take actions contrary to the interests of the communist authorities, and their professional activities were subject to administrative oversight.

During the 1970s, the first lawyers began defending members of the democratic opposition. Their role became increasingly significant as political tensions grew, particularly during the rise of the Solidarity movement in the 1980s, when some lawyers began to provide legal assistance to dissidents despite state-imposed constraints. The new Law on the Bar enacted in 1982 was based on a draft prepared by the bar community itself and, despite certain modifications, corresponded to the fundamental expectations of the bar.[58] Because of its broadly drafted, democratic solutions, the act remained in force – albeit amended – after 1989.

4. Civil-law notaries (the notariat)

After World War II, the Polish notarial profession initially continued operating based on the pre-war Notary Law of 1933, but as the communist legal system was established, significant reforms were introduced. Authorities debated whether to adapt the

[56] Gałędek, "Czas fasadowego samorządu," 131.
[57] Niewiński, *Dzieje zawodu radcy prawnego*, 10.
[58] Gałędek, "Czas fasadowego samorządu," 13–4; cf. Gałędek, "Zjazd poznański," 163–209.

existing notarial structure or completely reorganize it according to socialist principles, ultimately choosing comprehensive reform. In 1951, the self-governing notarial profession was abolished, and civil-law notaries were reorganized into State Notarial Offices (*Państwowe Biura Notarialne*). The reform was modeled on Soviet solutions. It was openly acknowledged that the notariat was to become an organ of the communist state, tasked with safeguarding the "legality of transactions" in accordance with the objectives of the command economy[59].

Each office comprised at least one notary, assessors, notarial trainees, and administrative staff. As a result, civil-law notaries ceased to operate as independent professionals and were transformed into state employees, subject to civil service regulations.[60] This transition entailed the dissolution of the notarial self-government and placed civil-law notaries under strict supervision by the Ministry of Justice, with regional court presidents exercising partial oversight.[61] State Notarial Offices were classified as legal protection bodies, distinct from courts and prosecutors, yet tied to the administration of justice through supervisory regimes and public duties.[62] The abolition of notarial self-governance and the subordination of notarial functions to state control were consistent with Marxist-Leninist doctrine, which viewed civil-law notaries as part of a unified, state-controlled apparatus of justice. The property of the notarial self-government was nationalized, and notarial training and assessorship were temporarily abolished altogether[63]. The State Notarial Offices remained in operation even during the transitional period (1989–1991), when private notarial practice was tentatively reintroduced.[64] Ultimately, by the end of 1991, the state-run notarial system was abolished, and the profession was reprivatized.[65]

During the communist period, State Notarial Offices were assigned numerous responsibilities that, in other legal systems, and in post-1989 Poland, were handled by courts. Starting in 1955, they were responsible for issuing payment orders in civil proceedings and receiving declarations of accepting or rejecting an inheritance[66] – a competency that remains with civil-law notaries to this day. In 1964, with the introduction of the new land and mortgage registers, civil-law notaries took over the maintenance of land and mortgage registers, a function traditionally reserved for courts.[67]

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[59] Woś, "Pozycja ustrojowa," 156–7.

[60] *Ibid.*, 156–8.

[61] Malec, *Dzieje notariatu polskiego*, 217–8.

[62] Tymecki, "Notariat w systemie," 66.

[63] Woś, "Pozycja ustrojowa," 168.

[64] Ustawa z dnia 24 maja 1989 r. – Prawo o notariacie, Dz.U. 1989 nr 33 poz. 176.

[65] Zarządzenie Ministra Sprawiedliwości z dnia 19 grudnia 1991 r. w sprawie zniesienia państwowych biur notarialnych i ich oddziałów, „Dziennik Urzędowy Ministerstwa Sprawiedliwości" 1992 nr 1 poz. 2.

[66] Dekret z dnia 18 lutego 1955 r. o przekazaniu państwowym biurom notarialnym niektórych dotychczasowych czynności sądowych, Dz.U. 1955 nr 9 poz. 56.

[67] Ustawa z dnia 16 listopada 1964 r. o przekazaniu państwowym biurom notarialnym prowadzenia ksiąg wieczystych, Dz.U. 1964 nr 41 poz. 278.

5. State economic arbitration

State Economic Arbitration (*Państwowy Arbitraż Gospodarczy, PAG*) was established under the Decree of 5 August 1949[68] as a specialized system for resolving disputes between state-owned enterprises, state institutions, cooperatives, agricultural circles, craft organizations, and companies in which the State Treasury or state-controlled entities held at least a 50% share of the capital. Additionally, government bodies and administrative authorities could also be parties to proceedings before these arbitration bodies. Cases falling under the jurisdiction of these commissions were explicitly excluded from the competence of the common courts, creating a dualistic and plan-oriented system of dispute resolution in Poland's centrally planned economy[69]. In organizational terms, PAG was subordinated to the Council of Ministers and, in substance, to the State Planning Commission (*Państwowa Komisja Planowania Gospodarczego*); from 1956 supervisory competences shifted to the Minister of Finance.

Despite the label "arbitration," it was not an alternative-dispute-resolution (ADR) mechanism in the modern, consensual sense. Parties were not free to opt out of this system or submit their disputes to the common courts or other arbitration tribunals.[70] In practice, State Economic Arbitration combined adjudication with an explicit duty to safeguard plan execution, and lacked guarantees of adjudicatory independence. PAG also exercised oversight over the organization of legal services in state entities, which tightened the administrative, rather than contractual, character of economic dispute handling[71].

The system consisted of: Regional Arbitration Commissions, functioning similarly to voivodeship courts (*sądy wojewódzkie*), and the Main Arbitration Commission, which operated as a counterpart to the Supreme Court (*Sąd Najwyższy*). The recruitment and career path for state arbitrators followed a bureaucratic ladder (including apprenticeship and assessorship), reinforcing its hierarchical nature.

In 1975, the 1949 decree was replaced by a new act that largely preserved the institutional design and the plan-disciplinary logic of state economic arbitration, including the exclusion of PAG cases from the common courts' jurisdiction and priority for economic-policy directives in decision-making.[72]

In 1989, as part of the transition to a market economy, State Economic Arbitration was abolished and replaced by commercial divisions of the common courts (*sądy gospodarcze*).[73]

[68] Dekret z dnia 5 sierpnia 1949 r. o państwowym arbitrażu gospodarczym, Dz.U. 1949 nr 46 poz. 340.

[69] Włodyka, *Ustrój organów*, 163.

[70] Stawarska-Rippel, "O prawie cywilnym w początkach Polski Ludowej uwag kilka," 191–5.

[71] Burchacki, "Kierunki działalności Państwowego Arbitrażu Gospodarczego," 68–9.

[72] Ustawa z dnia 23 października 1975 r. o Państwowym Arbitrażu Gospodarczym, Dz.U. 1975 nr 34 poz. 183.

[73] Ustawa z dnia 24 maja 1989 r. o rozpoznawaniu przez sądy spraw gospodarczych, Dz.U. 1989 nr 33 poz. 175.

6. Legal advisers

Just as State Economic Arbitration mirrored the judicial system, the institution of legal advisers (*radcowie prawni*) was a counterpart to the bar, fulfilling similar functions within the judicial framework. Initially, legal advisers operated as in-house lawyers in state-owned enterprises, but they were fully subordinated to the state administration.[74] It was not until the 1980s that they began forming their own self-governing structures.

A pivotal moment in the development of legal advisers in the People's Republic of Poland was the Resolution of the Council of Ministers of December 13, 1961, which obligated state enterprises, industrial associations, and state-owned banks to use only the services of employed legal advisers.[75] This decision aimed at centralizing legal services in the state sector and eliminating external legal consultancy.

The resolution made it impossible for state enterprises (and there were essentially no others) to commission services from external lawyers, especially advocates. Instead, they had to employ legal advisers providing in-house legal assistance. The transitional provisions gave advocates performing the functions of legal advisers time until the end of 1963 to make a decision about choosing their professional path[76].

The significance of this regulation was reinforced in 1963, when a new Law on the Bar was enacted, prohibiting advocates from simultaneously practicing as legal advisers.[77] This prohibition became an element of a fundamental restructuring of the system of legal services provision in the socialist economy. Advocates were to represent individual clients and defend the accused, while legal advisers were to provide services to the „socialized economy," that is, the state economy.

As a result, legal advisers became the only professional group authorized to provide legal assistance in state institutions. In the centrally planned economy, their role extended beyond legal consulting – they became a key mechanism for overseeing and controlling the activities of state-owned enterprises. As full-time employees subject to strict administrative supervision, they acted as guardians of socialist legality, ensuring that managerial decisions complied with legal regulations. Their presence within organizational structures was not only intended to safeguard legal interests but also served as an instrument of state oversight in the command economy system.

Legal advisers, unlike advocates, were subject to the supervision of State Economic Arbitration, which maintained lists of registered legal advisers and exercised control over their professional activities. The President of the Main Arbitration Commission played the most important role in deciding who could be admitted to the profession.[78] These were not merely registration powers. The arbitration authorities issued guidelines concerning the

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[74] Łabieniec, "Podmiotowość, odpowiedzialność, historyczność profesji i profesjonalisty," 34.

[75] Uchwała Rady Ministrów nr 533 z dnia 13 grudnia 1961 r. w sprawie obsługi prawnej przedsiębiorstw państwowych, zjednoczeń oraz banków państwowych, M.P. 1961 nr 96 poz. 406.

[76] Niewiński, *Dzieje zawodu radcy prawnego*, 104–5.

[77] According to article 70, individuals registered on the list of attorneys who held positions such as academic staff or legal advisers were not removed from the list; however, during this period, they were not permitted to practice as attorneys. Cf. Ustawa z dnia 19 grudnia 1963 r. o ustroju adwokatury, Dz.U. 1963 nr 57 poz. 309.

[78] Niewiński, *Dzieje zawodu radcy prawnego*, 107.

organization of legal services, established principles for the remuneration of legal advisers, and monitored the quality of legal services. Unlike advocates, who retained a certain degree of autonomy, legal advisers were embedded directly within state structures.[79] The self-governing body for legal advisers was established in 1982, marking the first step toward greater professional autonomy.[80] Under the 1982 law, legal advisers initially did not gain full professional autonomy. Unlike advocates, who had a centralized national council since pre-war times, legal advisers operated through regional councils without a unified national governing body, reflecting their subordinate position within the legal system of that era. Despite these limitations, the creation of the legal advisers' profession was crucial, as it explicitly acknowledged the need for specialized legal assistance distinct from that provided by advocates, specifically tailored to serve state enterprises and institutions.[81] The establishment and development of legal advisers from internal counsel to a regulated profession with regional self-governance laid important foundations for their later independence and growth after 1989. This evolution completes the broader picture of legal professions in socialist Poland, encompassing not only judges, prosecutors and advocates, but also legal advisers who played a significant role in the later years of the socialist system.

For the history of the legal adviser profession, the years 1980-1984 proved decisive. The events of August 1980 and the emergence of Solidarity also stirred the legal advisers' community, which did not possess its own professional organization and was forced into the framework of state administration.[82] After August 1980, independent legal adviser organizations were established: associations, a trade union, and a professional section of Solidarity.[83] Even after the introduction of martial law in December 1981, the authorities already in the following year adopted the law on legal advisers,[84] which led to the establishment of their professional self-governance.

After 1989, the legal adviser profession increasingly resembled that of an advocate, which led to ongoing discussions regarding the merger of both professions and their self-governing bodies.

7. Misdemeanor boards

During the interwar period, proceedings concerning misdemeanors were generally conducted before administrative bodies.[85] After World War II, the communist authorities transferred these competences to institutions rooted in civic participation – initially citizen courts, and from 1950 onwards, to quasi-judicial bodies known as criminal-administrative boards, later renamed misdemeanor boards (*kolegia ds. wykroczeń*). These boards remained a part of the legal protection system in Poland until 2001, when they were abol-

[79] *Ibid.*
[80] Ustawa z dnia 6 lipca 1982 r. o radcach prawnych, Dz.U. 1982 nr 19 poz. 145.
[81] Mrowczynski, "Self-Regulation," 183–185.
[82] Niewiński, *Dzieje zawodu radcy prawnego*, 10.
[83] *Ibid.*
[84] *Ibid.*, 10–11.
[85] Maziarz, "Postępowanie karnoadministracyjne," 299–316.

ished following the adoption of a new constitution, which prohibited delegating criminal adjudication, even in the broad sense (including misdemeanors), to anybody other than courts. The organizational framework of the misdemeanor boards was not formally regulated by law until 1971.[86]

The misdemeanor boards operated under local administrative authorities – initially at the county level, and after the dissolution of counties in 1975, at the municipal level. Some boards also functioned within specialized state administration bodies, such as maritime offices and mining offices. Members of the boards were appointed by national councils (*rady narodowe*), which were quasi-self-government bodies, for a four-year term. No legal education or theoretical preparation was required, only a "good civic reputation" and a "guarantee of proper performance of duties." Throughout the entire communist period in Poland, the misdemeanor boards operated as a two-tier system.

The role of the misdemeanor boards became particularly controversial in the 1970s and 1980s, when they evolved into a tool of political repression. After the imposition of martial law in Poland on December 13, 1981, these boards imposed penalties on more individuals than the common and military courts combined, even though the severity of sanctions and procedural intensity remained lower than in formal court proceedings.[87]

Summary

An analysis of the legal protection authorities in Poland between 1944 and 1989 reveals several distinct characteristics. The major institutional reforms of these bodies did not occur until 1950; prior to this, the legal system continued to rely on pre-war solutions, as the new communist authorities did not yet feel strong enough to completely overturn the existing framework. The reforms introduced during this period primarily focused on eliminating professional self-governance and subordinating legal professionals to state control. Certain judicial competences were transferred to non-judicial institutions, either specially created for this purpose (such as the State Economic Arbitration) or existing institutions assigned new functions (such as the civil-law notaries). Tasks that traditionally belonged to courts were transferred to non-judicial bodies – although in communist Poland courts did not enjoy independence and judges lacked judicial autonomy, such fragmentation of judicial power allowed for even more extensive control and weakened the potential for resistance.

A defining feature of judicial and legal changes between 1944 and 1989 was the systematic erosion of the judicial independence and autonomy of legal institutions. The 1946 Decree provided the authorities with legal tools to verify and selectively dismiss judges and other legal officials, allowing for arbitrary employment and salary decisions. The stability of this system rested not on constitutional arrangements but on the nomenklatura (the communist party's prerogative to control appointments), duplicating regulations, and directives that rendered even theoretical guarantees of the rule of law

[86] Ustawa z dnia 20 maja 1971 r. o ustroju kolegiów do spraw wykroczeń, Dz.U. 1971 nr 12 poz. 118.

[87] Cf. Łysko, "Działalność kolegiów do spraw wykroczeń," 83–99.

meaningless. The prosecutor's office was transformed into a political instrument of repression, eliminating its ability to function independently. From an institution combating crime, it became an organ disciplining administration and the economy – a guarantor of socialist legality. The bar association, although formally retaining self-governance, was subjected to strict state supervision, while the notarial profession was nationalized. The most important mechanism ensuring the proper functioning of the legal protection system proved to be personnel selection, which had far greater significance than any normative solutions.

These changes also reshaped the institutional structure of the legal system. New bodies such as the State Economic Arbitration and the Misdemeanor Boards were introduced, serving quasi-judicial functions but remaining fully controlled by the state. Legal advisers were subordinated to state administration, and their role was not merely advisory but also supervisory over state-owned enterprises.

These reforms gradually subordinated the legal system to political objectives, eroding institutional independence. Instead of acting as an independent arbiter, the judiciary became an instrument of control and repression. Only after 1989 did significant reforms restore the independence and self-governance of the legal institutions, eliminating the most repressive elements of the socialist legal system. Paradoxically, the façade reforms of the 1980s contributed neither to legitimizing the regime nor to maintaining it in communist hands – it turned out that liberalizing a system in decline proved of no help whatsoever.

Some legal solutions from the communist era, which were discarded after 1989, may warrant reconsideration. One notable issue is the excessive judicialization of disputes, meaning the tendency to refer too many cases to formal court proceedings. The PRL legal system included quasi-judicial institutions, such as the Misdemeanor Boards, the State Economic Arbitration, and even certain notarial competences (e.g. handling land registries and inheritance matters). While these institutions had significant flaws, particularly their political subordination, they also served as an alternative to overburdened courts. In a modern democratic state, some of these solutions – in a politically neutral form – could be reconsidered to increase judicial efficiency and reduce the burden on the common courts.

The key challenge for the future is not only to enhance judicial independence and protect citizens' rights, but also to strike a balance between judicial and non-judicial dispute resolution, ensuring that courts can focus on the most socially significant cases. This does not mean dejudicialization lacks merit. On the contrary – it can be an excellent solution aimed at improving the accessibility and efficiency of legal protection mechanisms, but it should not serve – as it did in communist Poland – as a means of circumventing an (even ostensibly) independent judiciary.

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