

# INTERFERENCES OF THE MAIN OFFICE OF CONTROL OF PUBLICATIONS AND PERFORMANCES DURING MARTIAL LAW IN POLAND (1981-1983) IN THE WRITING ON THE RULE OF LAW – SELECTED EXAMPLES

*INTERFERENZE DELL'UFFICIO CENTRALE DI CONTROLLO DELLE  
PUBBLICAZIONI E DEGLI SPETTACOLI DURANTE LA LEGGE MARZIALE  
IN POLONIA (1981-1983) NEL DIBATTITO SULLO STATO DI DIRITTO –  
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*Abstract English:* The aim of the article is to present processes and changes that took place in the Polish People's Republic in the early 1980s in connection with the activities of the Independent and Self-Governing Trade Union „Solidarność”. In this context, it is necessary to show how the then state authorities understood the rule of law (socialist or popular) perceived through the prism of the views of Marx, Engels and Lenin). Taking into account the one party rule in Poland at that time, this article will analyze literature in the field of law. It will investigate, first, the writings of Jerzy Bafia, who for many years had an influence on shaping the law in Poland, first as president of the Supreme Court (1972-1976) and then as Minister of Justice (1976-1981). Second, this article presents an analysis of historical sources located in the Archive of Modern Records in Warsaw in the group entitled the Main Office of Control of Press, Publications and Performances in Warsaw. State censorship bodies during martial law in Poland influenced the discussion on the rule of law by controlling the press. Through censorship, the authorities attempted to weed out undesirable perceptions of the political system in Poland. From these documents, a picture emerges of the strategy of institutional censorship regarding the political and legal situation in the years 1981-1983.

*Keywords:* rule of law; Polish People's Republic; censorship in communist Poland; martial law in Poland.

*Abstract Italiano:* L'intento di questo contributo è di presentare processi e cambiamenti che presero piede nella Repubblica Popolare di Polonia sull'inizio degli anni Ottanta del secolo scorso, in relazione alle attività del Sindacato autonomo ed indipendente „Solidarność”. In questo contesto, è necessario mostrare come le autorità statali di allora intesero il concetto di Stato di diritto (socialista o popolare) percepito attraverso il prima

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delle idee di Marx, Engels e Lenin). Prendendo in considerazione il sistema monopartitico in allora vigente, questo articolo analizzerà specialmente la letteratura giuridica. Indagherà, anzitutto, gli scritti di Jerzy Bafia, che per molti anni influenzò lo sviluppo della legge polacca, dapprima quale presidente della Corte Suprema (1972-1976) e poi come Ministro della Giustizia (1976-1981). In secondo luogo, esso presenterà un'analisi delle fonti storiografiche collocate presso l'Archivio dei Registri Contemporanei di Varsavia nella sezione dedicata all'Ufficio Centrale di Controllo della Stampa, delle Pubblicazioni e degli Spettacoli in Varsavia. Organismi statali di censura nel periodo della legge marziale in Polonia impattarono sulla discussione relativa allo Stato di diritto controllando gli organi di stampa. Attraverso la censura, le autorità tentarono di sradicare rappresentazioni indesiderate del sistema politico del paese. Da questi documenti emergerà quindi un quadro della strategia di censura istituzionale che venne dispiegata politicamente e giuridicamente negli anni 1981-1983.

*Parole chiave:* Stato di diritto; Repubblica Popolare Polacca; censura nella Polonia comunista; legge marziale in Polonia.

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## 1. Introduction

August 1980 is a period that had a huge impact on the history of the Polish People's Republic. It went down in history because of the strikes, which ended with the conclusion of agreements between activists representing protesting workers and the government side. The agreements provided for the establishment of new, self-governing trade unions that would be authentic representatives of the working class. Thanks to this, Independent Self-Governing Trade Union "Solidarity" was registered. Moreover, the Polish government committed to submitting to the Sejm (the one-chamber parliament of the Polish People's Republic in existence between 1952 and 1989) a law on limiting censorship<sup>1</sup>. The period from August 1980 until the introduction of martial law on 13 December 1981 (the period commonly called „the Carnival of Solidarity”)<sup>2</sup>, was characterized by the relative freedom of civil liberties and the restriction of censorship. Restrictions on censorship have allowed independent media to flourish, including some press titles. In this way, the monopoly of the communist press on information was broken, giving space for the exchange of ideas and – as it seemed – free civil debate<sup>3</sup>.

The authorities wanted to stop social unrest and destroy the emerging and growing social movement whose main force was Independent Self-Governing

<sup>1</sup> Kamiński, 2010, p. 424.

<sup>2</sup> Semka, 2020, pp. 46-47.

<sup>3</sup> Janowski, 2020, p. 110.

Trade Union "Solidarity". Finally, on the morning of 13 December 1981, a speech was broadcast on radio and television, in which General Wojciech Jaruzelski announced the introduction of martial law throughout the Polish People's Republic. Considering the legal order in force at that time, even in the Polish People's Republic, the introduction of martial law was in fact a coup d'état. The formation of the Military Council of National Salvation (abbreviated to WRON), headed by General Jaruzelski, was announced, although no legal basis was invoked in doing so. The act establishing martial law was the Decree of the Council of State of 12 December 1981 on martial law<sup>4</sup>. As indicated in Article 31 sec. 1 of the Constitution of the Polish People's Republic adopted by the Legislative Sejm on 22 July 1952 (as amended): «In the intervals between sessions of the Sejm, the Council of State issues decrees having the force of law. The Council of State submits the decrees to the Sejm for approval at the next session»<sup>5</sup>. However, on 13 December 1981, the Sejm of the Polish People's Republic was still in session. Martial law in Poland was suspended on 31 December 1982<sup>6</sup> and abolished on 22 July 1983<sup>7</sup>.

This article analyzes documents from the years 1981-1983, collected in the Archives of New Records (Polish: Archiwum Akt Nowych, abbreviated to AAN) in Warsaw in the group entitled the Main Office of Control of Press, Publications and Performances in Warsaw (Polish: Główny Urząd Kontroli Prasy, Publikacji i Widowisk, abbreviated to GUKPiW). The archive contains monthly reports with selected examples of censorship interference. During this period, this mentioned body was called the Main Office of Control of Publications and Performances (Polish: Główny Urząd Kontroli Publikacji i Widowisk, abbreviated to GUKPiW) in Warsaw. The omission of the word "Press" from the new name was clearly intentional, as it was undoubtedly intended to create the impression that the GUKPiW did not control the press, which was, of course, not true, as will be further demonstrated in this article.

The strategic goal of censorship during martial law in Poland was, among others, eliminating from the press and other publications (and, consequently, from the awareness of recipients of Polish press and literature or, in a broader sense, Polish society) all manifestations of polemics against the official ideology. Therefore, a conscious strategy was used to keep silent about uncomfortable

<sup>4</sup> Roszkowski, 1992, p. 378.

<sup>5</sup> Obwieszczenie Przewodniczącego Rady Państwa z dnia 16 lutego 1976 r. w sprawie ogłoszenia jednolitego tekstu Konstytucji Polskiej Rzeczypospolitej Ludowej uchwalonej przez Sejm Ustawodawczy w dniu 22 lipca 1952 r. (Dz.U. 1976 nr 7 poz. 36). Transl. from the Polish by W. A. Święch.

<sup>6</sup> Uchwała Rady Państwa z dnia 19 grudnia 1982 r. w sprawie zawieszenia stanu wojennego (Dz.U. 1982 nr 42 poz. 275).

<sup>7</sup> Uchwała Rady Państwa z dnia 20 lipca 1983 roku w sprawie zniesienia stanu wojennego (Dz.U. 1983 nr 39 poz. 178).

topics raised by journalists or scientists. In this situation, it sometimes did not matter whether the authors of the texts were associated with the opposition. The authorities attempted to maintain their predominate position by eliminating all political messages that were a continuation of the so-called "the Carnival of Solidarity". The strategy of censorship was based on the assumption that even allusions that refer to a current or specific political event or social phenomenon were undesirable. The Communist Party rulers were afraid not only of the moral assessment of the existing system, but also, above all, of undermining the legal basis for its functioning. For this reason, the censors eliminated telling the truth about the reality of the Polish People's Republic, which was at a given moment inconsistent with the official political message and the prevailing ideology.

Control of the public transmission of information and restrictions on the ability to express thoughts and beliefs were, of course, present during the entire period of communist rule in Poland. But martial law was particularly dark period for Polish society, including journalists and scientists who wanted to express their opinions freely.

It is therefore justified to conduct a more detailed analysis of the strategy adopted by censorship towards journalists and scientists who tried to deal with matters related to the rule of law during martial law in Poland. As a result of the authority's actions censorship of the Polish People's Republic, some of the texts prepared for printing could not reach the public and even fragments of these documents were eliminated. It is worth looking at martial law in Poland through the prism of censored writing on the rule of law.

## *2. The principle of the rule of law in the Polish People's Republic*

There is an opinion in Polish scientific literature that the concept of the rule of law was rejected on 24 February 1942<sup>8</sup>, in the proclaimed Declaration of the Government of National Unity<sup>9</sup>. The document was later adopted by communists who used the concept of the rule of law to build and consolidate the socialist reality in Poland after the end of World War II<sup>10</sup>. The rule of law was mentioned in the Polish Constitution adopted by the Legislative Sejm on 22 July 1952 (as amended) several times, but with the adjective „people's” – in relation to: the People's Councils (art. 48: «The People's Councils shall ensure the maintenance of public order and watch over the observance of the people's rule of law, shall protect social property, shall safeguard the rights of citizens, and shall co-operate

<sup>8</sup> Nowacki, 1995, p. 19.

<sup>9</sup> Uchwała Rady Ministrów z dnia 21 lipca 1943 r. oraz tekst deklaracji rządowej przedstawionej przez Prezesa Rady Ministrów Generała Władysława Sikorskiego Radzie Narodowej R.P. w dniu 24 lutego 1942 r. (Dz.U. 1943 nr 8 poz. 40).

<sup>10</sup> Nowacki, 1995, p. 19.

in strengthening the defence capacity and security of the State»<sup>11</sup>), the Courts (art. 58: «The Courts shall be custodians of the social and political system of the Polish People's Republic, they shall protect the achievements of the Polish working people, they shall safeguard the people's rule of law, social property and the rights of citizens; they shall punish offenders»<sup>12</sup>), the Public Prosecutor General (art. 64 sec. 1: «The Public Prosecutor General of the Polish People's Republic shall safeguard the people's rule of law; shall watch over the protection of social property; shall ensure that the rights of citizens be respected»<sup>13</sup>).

However, the addition („people's”) specifying the type of rule of law itself suggested the ideological nature of the system. The rule of law was intended primarily to achieve the goals of socialism<sup>14</sup>. As indicated in Article 8 sec. 1 of the Constitution adopted by the Legislative Sejm on 22 July 1952 (as amended): «The laws of the Polish People's Republic shall express the interests and the will of the working people»<sup>15</sup>. Moreover, sec. 2 of the above-mentioned the editorial unit of the Constitution declared: «Strict observance of the law shall be the fundamental duty of every organ of State and of every citizen»<sup>16</sup>. Art. 8 sec. 3 of the Constitution was also important in the context of the rule of law: «All the organs of State authority and administration shall work on the basis of the law»<sup>17</sup>. Jerzy Bafia, who for many years had an influence on shaping the law in Poland, as he was the first president of the Supreme Court (1972-1976) and then the Minister of Justice (1976-1981) indicated how these provisions create the principle of rule of law in Poland: «Only those rights which are the expression of the interests and will of the working people make amends for the rule of law; rights which do not meet this requirement would be contrary to the constitution and therefore unlawful»<sup>18</sup>.

By the first half of the 1950s, the following view was proclaimed: «The rule of law is essentially related to the will of the ruling class, to the goals pursued by the ruling class (...). The state will of the working masses is expressed in our law. It follows from this that the people's rule of law is one of the methods of carrying out the tasks of the dictatorship of the proletariat (...)»<sup>19</sup>.

Interpretation of the law in this way had to logically lead to recognition that state authority had been placed above the law. The law was to be merely an

<sup>11</sup> Constitution of the Polish People's Republic, July 22, 1952, <http://libr.sejm.gov.pl/tek01/txt/kpol/e1976.html> (accessed on 20.06.2024).

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Ziembinski., 1968, pp. 285–303.

<sup>15</sup> Constitution of the Polish People's Republic, July 22, 1952, op. cit.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Bafia, 1985, p. 26.

<sup>19</sup> Podlaski, Auscaler, Jaroszyński, Seidler, Wróblewski, 1954, p. 339. Transl. from the Polish by W. A. Święch.

instrument of political power and a variant of class dictatorship<sup>20</sup>. Hence, the state authorities were apparently but not actually bound by the rule of law. In the political practice of the Polish People's Republic organs, the „concept of exclusivity of statute” was widespread. According to this concept (which was even given the rank of a „constitutional principle”)<sup>21</sup>, specific issues could only be regulated in a statute or in a legal act issued on the basis of statutory delegation. Therefore, legal regulations in other matters did not have to be contained in statute or an executive act, the decision in this respect belonged to the legislator<sup>22</sup>. However, until 1980, there was no administrative judiciary, which made it impossible to report violations of the law. This was a major failure of the political system in Poland<sup>23</sup>.

In Poland, in the first decade after the adoption of the Constitution of 1952, the terms „people's rule of law” or „revolutionary law” were used in the literature. It was only when the Constitution was amended and it was written that Poland was a socialist state that the term „socialist rule of law” began to be widely used<sup>24</sup>.

The State Council of the Polish People's Republic on 14 July 1979, adopted a Resolution on monitoring conformity of law with the Constitution and determining the generally applicable interpretation of statutes. As indicated in paragraph 2 of this legal act: «The State Council aims to strengthen the socialist rule of law and to increase the clarity of the law and its compliance with the legal sense of society (...). The State Council considers information from state bodies that are particularly responsible for the state of the law and the correctness of its application, and, if necessary, requests the supreme bodies of mass social organizations to provide information on the compliance of the application of the law with the legal sense of society»<sup>25</sup>.

### *3. Institutional state censorship*

In accordance with Article 83 of the Constitution adopted by the Legislative Sejm on 22 July 1952 (as amended), the Polish state provided its citizens (i. e. the working people and their organizations) with freedom of speech, press, assemblies and rallies, marches and demonstrations<sup>26</sup>. It should be emphasized that the fundamental rights and duties of the citizens were included only in Chapter 8 of the July Constitution, which indisputably indicated their dependence

<sup>20</sup> Lityński, 2007, pp. 113-114.

<sup>21</sup> Rozmaryn, 1964, p. 174.

<sup>22</sup> Jarosz, 1997, pp. 168-169.

<sup>23</sup> Ożóg, 2021, pp. 259-260.

<sup>24</sup> Lityński, 2007, pp. 117-119.

<sup>25</sup> Uchwała Rady Państwa z dnia 14 lipca 1979 r. w sprawie czuwania nad zgodnością prawa z Konstytucją oraz ustalenia powszechnie obowiązującej wykładni ustaw (M.P. 1979 nr 19 poz. 113).

<sup>26</sup> Constitution of the Polish People's Republic, July 22, 1952, op. cit.

on the basic principles of the socialist state previously written in accordance with Stalinist standards<sup>27</sup>.

In fact, the constitutional law significantly limited citizens' exercise of freedom, because in practice it was interpreted and applied according to Marxist-Leninist ideology. This was manifested in the activities of the Main Office of Control of Publications and Performances, which „made sure” that citizens read texts by journalists, but also sometimes scientists, that were consistent with official propaganda. Thus, the issue of freedom of speech expressed in Art. 83 of the July Constitution should be looked at through the prism of the newspeak language of the Polish People's Republic.

Specific organization, technique and work methods were binding on each censor during the scrutiny of a given publication. Procedures were basically identical throughout the entire period of the existence of the office controlling the disclosure of information. Only the political circumstances, the socio-economic situation, and the staff changed, but the censorship system used similar methods and principles of working on the submitted text (with editors and authors). The censors applied the principle that the exercise of even a limited freedom of speech could only be used by those who acknowledged the authority of the communist political system, did not intend to fight against it, recognized socialism as the only appropriate social system. The censors adapted to situations related to the next „turns” in Polish history, but the basic principle were always in accord with the absolute application of guidelines set by the Communist Party authorities. Officials occasionally allowed limited criticism of people or groups associated with previous secretaries (although this was not always the case, as shown in this article), but not of current governments. The actual principles of institutional censorship, as well as detailed tasks regarding its work depended only on the leading body of the Communist Party. The law in force in Poland at that time was therefore a fiction, because it was interpreted in a cynical way to serve the interests of one party. The censorship office – throughout its existence – therefore became an important tool of authoritarian power. The Main Office of Control of Publications and Performances took care of the system, blocking mention of inconvenient activities that might undermine public support for the regime<sup>28</sup>.

During martial law in Poland (1981-1983), the basis of the Main Office of Control of Publications and Performances interference in publications was first of all, the Act of 31 July 1981 on the control of publications and performances. It should be noted that in the course of the Sejm work on this legislative act, the authorities did not take into account some of the proposals, although the social side was certainly a success, as the previously unclear rules regarding censorship interference. Finally, according to a legal act that entered into force on 1 October

<sup>27</sup> Szymaniak, 2001, p. 32.

<sup>28</sup> Romek, 2010, pp. 37-38.

1981, freedom of speech was not an individual right, but resulted from the will of the authorities. State authorities were obliged to protect freedom of speech at the same time it was to be regulated solely on the basis of statute<sup>29</sup>.

Zdzisław Czeszejko-Sochacki, President of the Polish Supreme Bar Council in the years 1972-1981 (who was the rapporteur of the legal act of 31 July 1981) stated directly at a meeting of the Sejm that the constitutional mandate to ensure freedom of speech and printing also requires substantive and legal guarantees and conditions for the functioning of institutional censorship. Censorship was to protect the implementation of the goals and ideas of the socialist state and society, and to protect their interests<sup>30</sup>.

As stated in Article 2 of the legal act adopted on 31 July 1981 in the exercise of the right to freedom of expression and of the press, it was not possible to:

- undermine the independence or territorial integrity of the Polish People's Republic;
- call for the overthrow, revile, mock or humiliate the constitutional system of the Polish People's Republic;
- undermine the constitutional principles of the foreign policy of the Polish People's Republic and its Alliance;
- make war propaganda;
- incite or praise the commission of a crime;
- violate the religious feelings and feelings of non-believers;
- promote national and racial discrimination;
- promote morally harmful content, in particular alcoholism, drug addiction, cruelty and pornography<sup>31</sup>.

The Act on the Control of Publications and Performances of 31 July 1981 came into force on 1 October 1981 and was in force until 13 December 1981, i.e. for only a little over two months. Article 5 was of great importance for the issue of freedom of speech. In this editorial unit of the legal act, censorship bodies were prohibited from establishing bans on publications and performances of specific authors and from providing interpretative guidelines on the manner of presenting events, activities of institutions and individuals<sup>32</sup>. The possibility of introducing non-statutory restrictions was also excluded, altering the previously applicable provisions, which were often found in instructions provided to censorship bodies<sup>33</sup>.

On the other hand, Chapter II of the Decree of 12 December 1981 on martial law introduced further restrictions on citizens' rights. In accordance with Article

<sup>29</sup> Mielczarek, 2010, p. 39.

<sup>30</sup> 15. posiedzenie Sejmu PRL. 8 kadencja (1981-07-30 i 31). Sejm PRL. 8 kadencja (1980-1985). Lp. PRL/08/15, [https://bs.sejm.gov.pl/exlibris/aleph/a22\\_1/apache\\_media/54N22SNVCKX57FNAA2M86FM1BL87P4.pdf](https://bs.sejm.gov.pl/exlibris/aleph/a22_1/apache_media/54N22SNVCKX57FNAA2M86FM1BL87P4.pdf) (accessed on 20.06.2024).

<sup>31</sup> Święch, 2023, p. 102.

<sup>32</sup> Mielczarek, 2010, p. 40.

<sup>33</sup> Domska, 2011, p. 84.

17 sec. 1 of that act, the distribution of most printed publications with a few exceptions required prior authorization from the authorities. At the same time, the same decree, allowed the President of the Main Office of Control of Publications and Performances the power to issue an Ordinance (with the consent of the Prime Minister) concerning the rules and procedure for granting permits for printing materials. Finally, in "Monitor Polski" (an official journal issued by the Prime Minister of the Council of Ministers for the official announcement of internal legal acts) was published the Ordinance of the President of the GUKPiW of 12 December 1981. This legal act – in the form of an ordinance only – contained a regulation that the decision refusing to issue a permit was final and could not be appealed to an administrative court<sup>34</sup>.

In the years 1981-1983, even after the introduction of martial law, there was some progress in terms of liberalization of censorship regulations. However, in the author's opinion, this was a deliberate action by the authorities, as they tried to create the appearance of discussion and create the impression that they were striving for national reconciliation. They were also aware that society had access to publications outside of official circulation, and that too invasive censorship interference could lead to additional tensions. However, after the end of martial law, the Act of 28 July 1983 amending the Act on the Control of Publications and Performances was issued. According to this legal act, the scope of censorship's competences was almost the same as before the introduction of the Act of 31 July 1981<sup>35</sup>.

#### *4. Examples of censorship interference in the writing on the rule of law (1981-1983)*

A state or society in which legal norms are universally observed is, of course, a state or society that is ruled by law<sup>36</sup>. In addition, the authority should also act in accordance with the broader axiological system and the objectives of the society concerned (in particular to meet the requirements of justice)<sup>37</sup>. The law should be equal for everyone and respect the basic freedoms and rights of people and citizens.

The Polish press attempted to question the nation's legal system, but the result was no different than December 1981, at the beginning of martial law. The censors

<sup>34</sup> Zarządzenie Prezesa Głównego Urzędu Kontroli Publikacji i Widowisk z dnia 12 grudnia 1981 r. w sprawie zasad i trybu udzielania zezwoleń na rozpowszechnianie publikacji i widowisk oraz postępowania przy użytkowaniu zakładów, urządzeń i aparatów poligraficznych w czasie obowiązywania stanu wojennego (M.P. 1981 nr 30 poz. 278).

<sup>35</sup> Ustawa z dnia 28 lipca 1983 r. o zmianie ustawy o kontroli publikacji i widowisk (Dz.U. 1983 nr 44 poz. 204).

<sup>36</sup> Kaźmierczyk, 2008, pp. 206-207.

<sup>37</sup> Ziembinski, 1980, p. 476.

questioned such statements as: «Monopolistic party power» exists «outside the law», is «illegal, contrary to the Constitution. The provision on the leading role of the party is absurd from a legal point of view» („Student”). «Classic examples of this form of government were the parties of Mussolini and Hitler» („Kwadrat” – the biweekly of Independent Self-Governing Trade Union „Solidarity”)<sup>38</sup>.

The Polish scientist Wojciech Lamentowicz tried to discuss the problems of the political system as a whole and the manner in which the authorities exercised power. However, his paper, which was to be published in a study (with an edition of 100 copies) prepared by the Institute of State and Law Sciences of the University of Warsaw, was questioned in May 1983 by the censorship. Lamentowicz stated that political relations in the Polish People's Republic were characterized by «monopolization of political power by one of the parties» and an «instrumental attitude towards the law» of the ruling groups «without sufficient social control and public competition of ideological programs»<sup>39</sup>. Moreover, he pointed out that «where the law is in conflict with the principle of maximizing citizens' freedom, the succession of power is rarely lawful»<sup>40</sup>. Lamentowicz also expressed the opinion that

real socialism, as a political system requiring validation, has encountered numerous difficulties in Poland resulting from the cultural heritage, the vital force of Catholicism, the vitality of pluralistic-democratic traditions in popular consciousness, and finally, the patriotic attachment to freedom<sup>41</sup>.

The authorities were even afraid of reviewing a book in the field of social history (E. Kaczyńska, 1982, *Człowiek przed sądem: społeczne aspekty przestępcości w Królestwie Polskim 1815-1914*, Warszawa, Państwowe Wydawnictwo Naukowe). For this reason, a review of the book was not allowed to be published in July 1983 in the Catholic weekly „Tygodnik Powszechny”. According to the censor, the author overemphasized fragments of the work stating that the citizens of the Congress Kingdom of Poland «treated the law as imposed by those others standing on the other side of social barriers» and therefore breaking certain

<sup>38</sup> *Informacje o ingerencjach dokonywanych w okresie XI-XII 1981 w czasopismach, publikacjach nieperiodycznych, utworach literackich, programach estradowych i rozrywkowych, filmach, serialach, wystawach. Opracowania, rozdziały. Główny Urząd Kontroli Prasy, Publikacji i Widowisk. Archiwum Akt Nowych w Warszawie, ref. no. 2/1102/0/7.4.5/3913, p. 20.*

<sup>39</sup> *Informacje miesięczne o ingerencjach dokonywanych w okresie I-VI 1983 w czasopismach, publikacjach nieperiodycznych, utworach literackich, programach estradowych i rozrywkowych, filmach, serialach, wystawach. Opracowania. Główny Urząd Kontroli Prasy, Publikacji i Widowisk. Archiwum Akt Nowych w Warszawie, ref. no. 2/1102/0/7.4.5/3916, p. 99.*

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid., p. 100.*

regulations was «treated as a praiseworthy act»<sup>42</sup>. The reviewer also emphasized that these problems should constitute «warning lights that should be turned on» and stated: «the prestige of law increases when the state is recognized as its own and the majority of citizens identify with the existing government (...)»<sup>43</sup>.

Jerzy Bafia declared: «Justice is the central social value, as well as the highest ethical value, and therefore a general measure of the values of the legal system, and therefore the rule of law»<sup>44</sup>. However, there were many doubts about the functioning of the justice system during martial law in Poland. An article criticizing the functioning of the Committee for Misdemeanors (an extrajudicial body in the Polish justice system that operated alongside the administrative bodies) was eliminated by censorship in May 1982 from „Życie Literackie” (weekly whose editorial staff supported the introduction of martial law). The author of the text pointed out cases of «insufficient compliance with procedural rules», and also stated: «sometimes they are even openly disregarded» and «members of the Citizens' Militia who stand as witnesses are not fully objective». Moreover, he added: «not all accused are treated equally». According to the journalist, there were cases where some people were treated better because they «held various dignified or important positions». In the eliminated article, the journalist also dared to express the following opinion: «All this raises social opposition and a sense of injustice and undermines the principle of compliance of law with the social sense of justice»<sup>45</sup>.

Censorship also blocked discussion of criminal trials of prominent members of the Party related to the previous secretary of the Communist Party. Journalists very often raised the issue of inequality before the law. Several press publications were censored in April 1982. Censors eliminated the following comments: «one shop assistant for tens of thousands of cash shortage got more» than «a former minister for copper, deputy prime minister» („Sprawy i Ludzie” – a weekly that represented the orthodox trend in the Polish United Workers' Party) and «in what proportion they have in this situation e. g. 3-4 year prison sentences for young people scribbling on the fence with their fingers?» (“Głos Nowej Huty”)<sup>46</sup>. The

<sup>42</sup> *Informacje miesięczne o ingerencjach dokonywanych w okresie VII-XII 1983 w czasopismach, publikacjach nieperiodycznych, utworach literackich, programach estradowych i rozrywkowych, filmach, serialach, wystawach. Opracowania. Główny Urząd Kontroli Prasy, Publikacji i Widowisk. Archiwum Akt Nowych w Warszawie, ref. no. 2/1102/0/7.4.5/3917, p. 9.*

<sup>43</sup> Ibid.

<sup>44</sup> Bafia, 1985, pp. 60-61. Transl. from the Polish by W. A. Święch.

<sup>45</sup> *Informacje miesięczne o ingerencjach dokonywanych w okresie I-XII 1982 w czasopismach, publikacjach nieperiodycznych, utworach literackich, programach estradowych i rozrywkowych, filmach, serialach, wystawach. Opracowania, rozdzielniki. Główny Urząd Kontroli Prasy, Publikacji i Widowisk. Archiwum Akt Nowych w Warszawie, ref. no. 2/1102/0/7.4.5/3914, p. 65.*

<sup>46</sup> Ibid., p. 45.

following month, Polish censorship also did not allow the publication of opinions on social justice and the justice system: «Putting responsibility usually takes place after a deal is broken and a certain group leaves. This creates the impression that our country is always ruled by thieves and criminals, or at least by immoral and irresponsible people» („Kontakty”)<sup>47</sup>. In a deleted fragment of an article prepared in December 1982 in “Głos Wielkopolski”, the author wrote about the doubts that law students had «comparing the legal consequences and penalties that people suffered for years of abusing power and the trust of fellow citizens, and now received suspended sentences, and those who posted leaflets in the heat of the moment and summarily received several-year prison sentences»<sup>48</sup>. Censorship also eliminated text in the weekly „Rzeczywistość” (that represented the national-conservative faction in the Polish United Workers’ Party). In March 1983, the statement of one of the communist activists of Small Car Factory in Bielsko-Biała was not allowed to be printed: «I have an example from Bielsko. Here we had a man holding high positions who did a lot of evil (...). The famous great strike of 1981 (...) was caused because of him. . There was also another man, the chairman of the factory committee. He hid during martial law and tried to be active (...). The court and the sentence - 6 years (...). But the first one, the one without whom there would be no other - got two years... in suspension. Where’s the justice?»<sup>49</sup>.

In August 1982, part of a text in the weekly „Argumenty” was questioned by censorship. The journalist pointed out that in the trials of «minor former prominent figures», responsible for e.g. «deregulation of an important economic ministry or irresponsible economy in the entire voivodeship, they were convicted only of illegal trading car vouchers or hunting without appropriate permission». The author further wrote: «at this point, the logic of law and the operation of the justice system clearly and drastically differs from the social sense of law and justice. This discrepancy is so great that sometimes these legal interventions are considered a clever cover or a clever play of appearances»<sup>50</sup>.

The author of a report in September 1982 in the weekly „Tygodnik Kulturalny”, about the trial of people associated with the state authorities, including former minister, stated: «They had no idea about the regulations, even in the field of their industry, about the legal principles in force in the country they ruled or co-ruled, but it didn’t even occur to them that these regulations could be applied to them – dignitaries. They are assured of inviolability»<sup>51</sup>. For obvious reasons, this text was not published because a report was questioned by the censorship.

<sup>47</sup> Ibid., p. 65.

<sup>48</sup> Ibid., p. 221.

<sup>49</sup> *Informacje miesięczne o ingerencjach dokonywanych w okresie I-VI 1983*, op. cit., p. 56.

<sup>50</sup> Ibid., p. 131.

<sup>51</sup> Ibid., p. 151-152.

In the opinion of many journalists, high sentences were imposed by courts during martial law only for certain people. The following opinion was eliminated by the censorship from the daily newspaper „Dziennik Polski” in October 1982:

the result is that for a leaflet you can get 5 years, and at the same time a minister or a high official from Gierek’s period (such as the head of the Central Customs Office) receives 2 years with suspension. Another example: on the one hand, the flats of those who sometimes accidentally find themselves abroad are quickly handed over to others, but there is not a single case of a large working-class family being awarded a flat belonging to a former prominent figure who came into possession of this flat to the detriment of national wealth<sup>52</sup>.

Maciej Szczepański lost in 1981 his position as president of Polish Radio and Television and was put on trial for the acts he committed in the 1970s. Szczepański in 1984 was sentenced to 8 years in prison<sup>53</sup>. However, the Polish press had problems reporting the trial. During the trial, Szczepański asked whether the lack of prosecution in the case of the management of audio cassettes was due to the fact that the cassettes contained the then highest decision-makers of the political and economic life of the Polish People’s Republic, or whether it was significant that the cassettes were also received by the management of the General Prosecutor’s Office<sup>54</sup>. However, information about this did not appear in „Argumenty” due to censorship intervention. In February 1983, censorship did not allow the publication of a column in the pro-government weekly „Tu i Teraz”, in which the author pointed out: «Szczepański’s trial has been going on for 14 months, while the largest tribunals of our century involving 22 defendants – Subsequent Nuremberg trials lasted only ten month»<sup>55</sup>.

Even in July 1982, a Polish engineering magazine “Przegląd Techniczny” tried to publish a text about the problems of the rule of law in the Polish People’s Republic. The journalist then stated:

It was not the Sejm that made the most important decisions, it was not the trade unions that represented the interests of employees, it was not the case that people were equal before the law, it was often not in court that decisions were made about what and when the verdict would be passed (...). In the pathologically centralized system of exercising power, the law was almost completely subordinated to the authorities, so there was no basis for the state system to fight with its own tool (...). And if the authorities had difficulties in regulating something according to their wishes through statute, blank delegations for implementing acts and unpublished resolutions of the Council of Ministers were always at their disposal<sup>56</sup>.

<sup>52</sup> Ibid., p. 173.

<sup>53</sup> Szarłat, 2012, pp. 114-116.

<sup>54</sup> *Informacje miesięczne o ingerencjach dokonywanych w okresie I-XII 1982*, op. cit., p. 152.

<sup>55</sup> *Informacje miesięczne o ingerencjach dokonywanych w okresie I-VI 1983*, op. cit., p. 35.

<sup>56</sup> *Informacje miesięczne o ingerencjach dokonywanych w okresie I-XII 1982*, op. cit., p. 109.

However, censorship did not allow the text to be published.

In August 1982, "Przegląd Techniczny" wrote about the punishment of employees (including three dismissed for disciplinary reasons) of one of the workplaces for smoking a cigarette on May 13 at 12:00 (on the month anniversary of the introduction of martial law). The author of the article concluded in the questioned by censorship fragment: «Starting in the name of the law with a nightstick against demonstrators who deserved at most a smile is worth regretting at least. It is neither lawful nor political – it is simply stupid»<sup>57</sup>.

Taking into account these Press reports, the draft act on proceedings against people who avoid work must have raised concerns. According to the press, the provisions proposed by the government were inconsistent with international conventions. For this reason, the magazine of the Association of Polish Lawyers "Prawo i Życie" even proposed: «It is better to terminate conventions than to sit in the dock of the accused in search of dubious legal tricks»<sup>58</sup>. According to the Catholic weekly „Tygodnik Powszechny", the government intended to use the legal act as an instrument to fight political opponents (there were grounds for fear, especially in the case of dismissals motivated by personal or political reasons). The magazine published in Cracow drew attention to the fact that the emergency situations provided for in the act – contrary to the government's assurances – could also be used after the end of martial law in Poland. There were fears that this would not promote normalization in social life<sup>59</sup>. However, as indicated in the censorship report for September 1982, these comments regarding problems of the rule of law were eliminated. The Act of 26 October 1982 on proceedings against people who avoid work<sup>60</sup> entered into force on 1 January 1983. Despite this, the press still tried to express critical opinions about this act.

In January 1983, the censorship removed a fragment of the article in which the author pointed out that the legally ambiguous situation of graduates in the light of the Act on proceedings against persons avoiding work was the result of the lack of clarity and ambiguity of the provisions of the act. As the journalist stated:

whether not working is a crime or not is not decided by law or an independent court, but is each time determined by a basic state administration body. Until now, no act could be a reason for applying any repression, unless it was clearly and unambiguously defined in the act. And as a complement there was also the principle of universality of law (magazine "Merkuriusz")<sup>61</sup>.

<sup>57</sup> Ibid., p. 131.

<sup>58</sup> Ibid., p. 151.

<sup>59</sup> Ibid.

<sup>60</sup> *Ustawa z dnia 26 października 1982 r. o postępowaniu wobec osób uchylających się od pracy* (Dz.U. 1982 nr 35 poz. 229).

<sup>61</sup> *Informacje miesięczne o ingerencjach dokonywanych w okresie I-VI 1983*, op. cit., p. 16.

The mentioned legal act on the so-called “parasitism” was also sharply criticized in April 1983. Censorship eliminated open criticism in the Catholic weekly „Niedziela”. Therefore, the reader could not read the following opinion: «In fact, the act allows (...) the possibility of applying sanctions, which are in fact equivalent to punishments, disregarding the fundamental principle (there is no crime outside the law. The law must make it a crime). That is why the resistance to this act was so strong and widespread. This law jeopardizes the authority of the state to satisfy mindless demagoguery»<sup>62</sup>. Censorship also eliminated the negative opinion from the weekly „Kierunki”. This magazine represented the Catholic community promoting cooperation with the communist party<sup>63</sup>. It was tolerated by the authorities, although the censorship subjected the weekly to control, which led to the removal of the following fragment: «forcing someone to work is possible in penal camps, but it is not appropriate in a society of free citizens. After all, we will not build „concentration” camps for parasites»<sup>64</sup>.

However, the true method of operation of the communist authorities is shown by the case of the Decree of 12 December 1981 on martial law, which was announced in *Dziennik Ustaw* (English: *Journal of Laws*, abbreviated *Dz. U.*) only two days later. It must be emphatically mentioned that *Dziennik Ustaw* is the only official source of law for promulgation of Polish laws. The weekly „*Tygodnik Powszechny*” was not allowed to publish in November 1982 material containing statements by three lawyers regarding the purpose and functioning of the legal provisions of martial law and the „post-December” trials. They claimed, among other things, that these provisions were absurdly strict. This was due to the fact that the decree on martial law was designed in the event of a real war. They pointed out that bringing cases for acts of protest in the first days after the introduction of martial law was unacceptable because the decree on martial law had not yet been announced in the *Journal of Laws*, so there should be annulment of the judgments from the first days after the declaration of martial law<sup>65</sup>. The following opinion was also not allowed to appear in a Catholic magazine:

those accused and tried under the decree enjoy the respect and sympathy of the public, and the image of the post-December trials should be a signal to the justice system that the social elite is on trial. People who are judged by society are unanimously considered to be the best<sup>66</sup>.

In February 1983, the “Open Letter – to the Minister of Justice, Prof. Dr. Sylwester Zawadzki” signed by attorneys – members of the The Łódź Bar Association was

<sup>62</sup> Ibid., p. 80.

<sup>63</sup> Pamuła, 1989, pp. 309-332.

<sup>64</sup> *Informacje miesięczne o ingerencjach dokonywanych w okresie I-VI 1983*, op. cit., p. 80.

<sup>65</sup> *Informacje miesięczne o ingerencjach dokonywanych w okresie I-XII 1982*, op. cit., pp. 197-198.

<sup>66</sup> Ibid., p. 198.

removed from "Ład" (a weekly associated with Catholics laity who believed in the possibility of influencing the system of the Polish People's Republic in order to evolve it<sup>67</sup>). These attorneys asked the Minister to take appropriate decisions aimed at changing judgments that were contrary to applicable law, which were decided in the cases of persons sentenced for „conflict” with the provisions of the decree on martial law on 13 December 1981, i.e. on the eve of the legal announcement of the decree on martial law in the Journal of Laws. The people issuing the judgment broke a basic principle (the law does not apply retroactively)<sup>68</sup>. The law monthly „Palestra” was not allowed to publish in April 1983 a text regarding the retroactivity of the criminal law in the context of the provisions of the martial law decree. The meeting, which took place in September 1982, was attended by representatives of The Łódź Bar Association, including defense lawyers in the trial of two people accused of continuing trade union activities, detained on 13 December at 1:40 p.m. and sentenced to 6 years in prison. During the discussion, it was explained that in this case there had been a violation of two cardinal principles of the criminal process (nullum crimen sine lege and lex retro non agit) widely accepted and applied in civilized legal conditions and confirmed in the international Human Rights Covenants, ratified by the Polish People's Republic. The discussants argued the validity of the interpretation about the lack of features of a crime adopted by the defense, citing an unpublished commentary on the martial law decree and the position of the heads of the Ministry of Justice. They also expressed the opinion that these verdicts were a failure for the defense lawyers, but probably an even greater failure for the justice system<sup>69</sup>.

The suspension of martial law did not limit the discussion on the rule of law. It even raised further doubts. The study was not allowed to be published (the censorship in monthly report did not specify what kind of publication it was about) in February 1983, in which the author referring to the provisions of the Act on special legal regulation during the suspension of martial law, adopted in the Sejm on 18 December 1982 and the Resolutions of the Council State of 31 December 1982, drew attention to their questionable legal basis («For the second time we are dealing with the power of the State Council to act during a session of the Sejm»)<sup>70</sup>. Moreover, the author pointed out the contradiction of some arrangements (regarding strikes and workers' self-government) and the repressive nature of them. and the rigor of specific regulations (regarding restrictions on labor law, an act announcing special disciplinary proceedings – in relation to persons holding managerial positions who have committed a gross violation of the legal order or official duties causing serious social damage – New

<sup>67</sup> Tasak, 2021, pp. 20-21.

<sup>68</sup> *Informacje miesięczne o ingerencjach dokonywanych w okresie I-VI 1983*, op. cit., p. 34.

<sup>69</sup> Ibid., p. 79.

<sup>70</sup> Ibid., p. 34.

provisions of the Penal Code). Author of the study questioned by censorship suggested that there was a real fear that these stricter regulations would be adopted also after the complete abolition of martial law<sup>71</sup>.

### 5. Conclusion

The class approach to freedom meant the right to discuss, provided that it met the criterion of engagement to „progressive traditions” within the meaning of Marxist-Leninist ideology. This interpretation of the law meant that all guarantees of the rule of law and freedom were illusory and could be treated instrumentally by the authorities. This was evidenced by the activities of the Main Office of Control of Press, Publications and Performances, which in many cases limited citizens' rights to discuss the issue of fully benefiting from the achievements of civilization in the field of a legal system based on the rule of law and freedom of speech. However, the opposition had to act, taking into account the political situation at that time. It was only able to force through the introduction in July 1981 of regulations respecting to some extent the rights of the controlled and imposing specific obligations and the basis for censorship. The latter was still intended to protect the constitutional system of the Polish People's Republic. Therefore, it was the state authority that administered the freedom of speech and printing and was also supposed to ensure that it was not abused, i.e. that it did not undermine the existing system. Censorship was treated by the communist authorities as alleged guarantee factor for the implementation of constitutional law<sup>72</sup>. The Act of 31 July 1981 on the control of publications and performances was, after all, a success for the social side because it limited, to some extent, the arbitrariness of censorship by introducing strict concepts regarding the principles of its operation. However, legal acts issued in connection with the introduction of martial law significantly limited or even „annihilated” the previous provisions.

Monthly censorship reports from the martial law period showed that little remained of the relative freedom of the so-called „the Carnival of Solidarity” period. The authorities realized that they were not acting in a lawful manner. However, they didn't care much about it. The communists made only semblance of the rule of law, proclaiming that the justice system would hold prominent figures associated with Edward Gierk's former team to account. However, discussion of this topic was limited in the press. The matter was allowed to be presented in such a way as not to violate the party's interests. Critical texts about former representatives of the government who committed abuses appeared not only in the opposition press. However, it was a game of appearances. The party not only eliminated opinions about the rule of law expressed by the opposition, but also

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<sup>71</sup> Ibid.

<sup>72</sup> Bafia, 1988, pp.239-244.

moderated the discussion between factions within its party using censorship, in accordance with the divide and rule principle.

There is no doubt that the rules of the rule of law were not respected also with regard to opposition representatives, who were sentenced to several years in prison. The rule of law could only be revolutionary, popular or socialist. The rule of law was therefore defined using newspeak, which resulted in nothing, and citizens were deprived of the right to substantive discussion about the rule of law in Poland.

In non-socialist countries with a democratic system, all public authorities in the period described had to operate within the limits set by law, in accordance with democratic values and fundamental rights, under the control of independent and impartial courts. In Poland in the 1980s we were dealing with a sham democracy defined by vague newspeak concepts.

Nowadays, we do not appreciate the right to a real and broad discussion. We sometimes underestimate the value of the rule of law. Having the opportunity to vote in democratic elections, we sometimes believe politicians who spread populist slogans that provide apparent solutions to our problems. However, going back to the not-too-distant past shows that political systems in which there is no rule of law or only apparent rule of law do not guarantee democracy.

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