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THE STRUCTURE OF ORGANS OF ADMINISTRATION OF JUSTICE IN POLAND

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1. The structure model of organs administering justice in Poland was shaped over the past decades by two theoretical concepts. On the one hand there was the tradition of Polish law particularly prior to World War II when the model corresponded to that existing in the democratic countries of Western Europe; on the other, it was a concept characteristic for the legal system of countries of so-called real socialism. True, Poland never broke fully with its national tradition, but the impact of the integration of the socialist countries left its mark and many legal institutions from the inter-war period transformed after World War II. Especially far-reaching changes were introduced in 1950 to the judicature and public prosecutors' office, when the system was largely made to reflect the model existing in the erstwhile USSR.[1] The structure of the system of administration of justice was modified after 1956 in the wake of the democratic changes which were then introduced in Poland. Many elements typical of socialist law remained, however. The memory also never faded of how the Polish administration of justice was committed to the short-term purposes of the communist authorities, to become - particularly in the Stalinist period - an important tool of political terror;[2] the conviction emerged that guarantees should be established that the administration of justice may never again be used in contravention of its sworn calling.

Hence, the systemic changes introduced in Poland in 1989, particularly of basing the concept of Poland's political system on the idea of a democratic state ruled by law,[3] among other things led to the necessity to make a critical evaluation of existing legal regulations as regards the structure of organs of the administration of justice, from the viewpoint of how they could be used in the new socio-political conditions. The result of the evaluation is that many old rules are being substituted by new ones, upholding those solutions which do not contradict the principles of a democratic state ruled by law. The consequence was that after 1989 many substantial changes were made to constitutional

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[1] A. Murzynowski, A. Rezler, *Wymiar sprawiedliwości w Polsce w latach 1944-1970* [Administration of Justice in Poland between 1944 and 1970], Warszawa 1972.

[2] A. Rzepliński, *Sądownictwo w PRL* [Judicature in the Polish People's Republic], Hove, Sussex 1990.

[3] As the result of amendment to the Constitution of 29 Decemberl989 (Journal of Laws, further cited as Journal of Laws, No. 75, item 444).

provisions as well as provisions of ordinary laws which regulated the structure of the system of administration of justice. The amending of the law on the structure of common courts in December 1989[4] and the the prosecutor's office law of March 1990[5] introduced particularly essential changes.

The work at present under way on the new constitution is notably inspiring the discussion on the future shape of the administration of justice in Poland and on the specific practical steps which have to be taken. The manner in which questions related to the administration of justice are resolved constitute a weight fragment of this work.[6] A wide exchange of views has been expressed in juridical literature in connection with this. The thing is that, though consensus exists on fundamental issues like the need to construct anew the meaning of law and legality as basic factors in shaping social relations, the need to consolidate the role played by the courts in the system of state organs, ensuring the independence of the judiciary etc., many specific issue still arouse controversy.

2.1. So above all what was attempted was to bolster the role of the courts as organs of a "third power" in the state. The provision expressing the concept of triple-power rule was awarded high ranking. Since 1992 the constitutional provision is stating that the legislative power of the state are the Sejm (Lower House of Parliament) and Senate, as regards executive authority - the President and the Council of Ministers and as regards judicial authority - the independent courts.[7] This opened the possibility of control by the Constitutional Tribunal of whether ordinary laws concerning organisation of state authorities are compatible with the concept of triple-power rule and the principle of an independent judiciary.

The powers of the courts were greatly enhanced. This enhancement, constituting the implementation of the citizens right to trial by court and also the reconstruction of the economic system towards a market economy, resulted in the number of court cases rising by more than 125 % within a few years. This was not accompanied by a similar rise in the number of judiciary personnel which had the practical negative effect of prolonging the time of court procedures and the increase in the backlog of unfinished cases. At the same time, due to the poor wages earned by judges compared with earnings available in other juridical professions, particularly in private lawyer's practice,

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[4] Law of 20 November 1989 changing laws - Law on the structure of common courts of law, on the Supreme Court, on the High Administrative Court, on the Constitutional Tribunal, on the structure of military courts and the Law on the notary public (Journal of Laws No. 7 3, item 436).

[5] Law of 22 March 1990 changing the Law on the Prosecutors Office of the Polish Republic, the Code of the penal procedings and the Law on the Supreme Court (Journal of Laws No. 20, item 121).

[6] Cf.: A. Murzynowski, A. Zieliński, "Ustrój wymiaru sprawiedliwości w przyszłej konstytucji" [Structure of the Administration of Justice in the Future Constitution], *Państwo i Prawo* 1992, No. 9, p. 3 and W. Skrzydło: "Władza sądownictwa w projektach Konstytucji RP" [Judicial Power in Projects ot the Constitution of the Polish Republic], *Rejent* 1995, No. 5, p.2-4 i J. M. Karo1czak, "Władza sądowa i instytucja ochrony prawa w tekstach siedmiu projektów konstytucji" [Judicial Power and the Institution of Legal Protection in the Texts of Seven Drafts of the Constitution], *Przegląd. Sądowy* 1995, No. 10, p. 3.

[7] Art. 1. of the Constitutional Act of 17 October 1992 on mutual relations between legislative and executive authorities and local self-government (Journal of Laws No. 84, item 426).

a rising exit of experienced judges from the courts has become increasingly evident while serious problems are encountered in recruiting new candidates for court posts. The outcome is that the courts are experiencing a serious crisis. This in no way, however, changes the conviction of the need for further enhancement of the powers of the courts according to the principles of a state ruled by law. This conviction has, for instance, dictated the recent delivery to the sole competence of the courts of decisions on temporary detention (above 48 hours). To the present, the public prosecutor decided on temporary detention prior to presentation of the indictment, while the court's control of a prosecutor's decision was solely of the nature of subsequent control. The right to trial by court recognised as one of the basic human rights rooted in the principles of a democratic state ruled by law not only influences the trend to continue the process of expansion of the powers of the courts but also to critically evaluate the solutions contained in ordinary laws which restrict that right. One of the Constitutional Tribunal's decisions can service as an example in which it was accepted that to refuse, on the basis of an ordinary law, the right of officials of the Frontier Guards to appeal to the courts against a decision to resolve their service relationship - contravenes the Constitution. A conviction also exists of the need, at a future date, to dispossess the State Tribunal - which was set up in principle to bring to constitutional justice persons occupying supreme posts in the state[8] - of its present competence to investigate criminal aspects of such cases and, at the same time, to entrust such criminal cases to common courts of law.

It is acknowledged that should any adjudicating bodies exist outside the courts for any cases, then it should be possible for the decisions of these bodies to be appealed before the courts. The system of passing judgements on the smallest violations of the law, that is petty offences, is an issue of the scope of the judicature in penal matters. Adjudication in such matters is so far effectuated by the so-called boards of petty offences.[9] It is the majority view that courts should adjudicate in petty offences which often are of very great importance to the punished party and are a typical administration of justice. At present, with the courts experiencing a crisis situation, it would be impossible to deliver these matters to the courts. But being aware of the need for future fundamental model transformations in the adjudication of petty offences, a number of steps were taken post-1989 to bring the petty offences boards nearer to the judicature. The principal step was to remove these boards from under the supervision of the Minister of Internal Affairs and to include them in the courts. This was but an organisational inclusion since the boards did not become courts by the fact of such inclusion. The next step was to restrict the penalties which the boards may sentence. Thirdly, the possibility of appealing to a court against a board verdict was extended.

The financial independence of supreme level courts from the executive authorities was consolidated by introducing the principle that the draft budgets of the Supreme Court and the High Administrative Court, as well as the Constitutional Tribunal and the Commissioner for Civil Rights Protection are presented directly to Parliament, which

[8] Law of 26 March 1982 on the State Tribunal (Journal of Laws of 1993 No. 38, item 172).

[9] Law of 20 May 1971 on the structure of petty offences boards (Journal of Laws No. 12, item 113 with subsequent amendments).

passes its decisions on them after hearing the opinion of the Finance Minister. Discussions are presently under way as to whether that principle should be applied to the entire judicature, the draft budget of the judicature to be submitted to Parliament by the National Judicature Council. The purpose here would be that the executive authorities (Finance Minister and Government) would perform the role of an opinion-expressing and not deciding body as is the case at present when the national budget, including the component budget for the judicature is drafted by the Finance Minister and approved and presented to Parliament by the Government.

2.2. Many amendments concerned increased guarantees and independence of the judges.[10]

For instance, in December 1989 the National Judicature Council[11] was established, modelled on many other countries.[12] This Council is composed mostly of judges elected by the judges themselves, though also of parliamentary deputies and senators, a person nominated by the President of Republic, also the Justice Minister, the First President of the Supreme Court, the President of the Supreme Court responsible for the work of the Supreme Court Military Chamber, as well as the President of the High Administrative Court. The National Judicature Council, whose principal purpose is to ensure that the independence of judges and courts is protected, exerts a deciding influence on nominations to the posts of judges, since the President of Republic - who is solely entrusted with the nomination of judges - may nominate judges exlusively from among candidates presented by the National Judicature Council. Admittedly, the President may refuse to nominate such a candidate but he may not nominate a person who is not recommended by the National Judicature Council. It has to be said, however, that the of Republic President has never yet refused to accept a person approved by this Council. The National Judicature Council also takes decisions on the continued employment of a judge who is more than 65 years of age, up to his 70th year, and also on transferring a judge to another post for the good of the service. Judicial decisions and part of the doctrine allow the possibility of a judge to appeal to the National Court of Administration against these two latter kinds of decisions. The National Judicature Council also enjoys a number of entitlements of a general nature, in particular it can present views on draft legislation concerning judges and courts of law. Demands have been presented during the present discussions on the new constitution that the National Judicature Council could present such drafts to Parliament on its own initiative.

The role of the Justice Minister has been limited, as regards supervision of court activities, to the purely administrative, with the substantial parallel extension of the rights of self-government bodies comprising judges: general assemblies of judges and court colleges. In particular, only general assemblies of judges and the Justice Minister may present the National Judicature Council with candidates to the posts of judges. In practice

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[10] Independence of the Courts. Material from a Scientific Conference, Warszawa 1990.

[11] Law of 20 December 1989 on the National Council of Judicature *(Dziennik Ustaw* of 1990 No. 53, item 306 with subsequentamendments).

[12] T. Ereciński, "Rola rady sądownictwa w państwie demokratycznym [The Role of a Council of Judicature in a Democratic Country], *Przegląd Sądowy* 1994, No. 5, p. 3.

only general assemblies of judges present such candidates. The Justice Minister does this exclusively in relation to judges nominated to higher posts, who have been delegated to perform activities within the Ministry of Justice. The general assemblies of judges would have insufficient material to evaluate the work of such judges. A general assembly of common court of law judges can also oppose the Justice Minister's nomination of a candidate to the post of law court president; in practice this signifies that candidates to the posts of law court presidents must be consulted with the appropriate milieu of judges. The Constitutional Tribunal has accepted, when acknowledging the unconstitutional nature of the previous principles of nominating law court presidents, that the principle of independence of the judicature expressed not only in setting the judicature separate from other authorities but also in freedom from intervention by executive and legislative organs during performance of court of law functions, does not allow the Justice Minister to have a major voice in the procedure of nominating presidents of courts of law.

The so-called Supreme Court's administration of justice guidelines which were general Supreme Court declarations on interpreting the law and which were binding on judges have been liquidated; under postulates presented by the judges' milieu it was accepted that the independence of judges requires that judges be bound solely by legislation. In this connection, a discussion is under way as to whether it is purposeful to uphold the present institution of the Constitutional Tribunal setting the so-called obligatory interpretation of law,[13] or at least to accept that such interpretation is not binding on courts. Opinions on this subject are divided since the institution of a generally obligatory interpretation of laws helps to uphold uniform functionning of various state bodies.

The bad experience of the past as regards the political manipulation of judges has led to a statutory ban on judges being members of political parties and of judges participating in political activities. This ban on political activities is not valid for a parliamentary deputy and senator, which could be seen as a lack of consistence on the part of the legislator. During work on the new constitution, thought is being given to granting this ban the rank of a constitutional provision, though awareness exists that in various international documents, *e.g.* in the basic principles of independence of the administration of justice,[14] and in the draft European statute on magistrates courts,[15] judges are ensured the same political rights as are available to other citizens, but under the assumption that such rights are wielded with respect for the dignity of the profession, impartiality and independence of the judicature. To the majority of Polish public opinion, the non-political nature of judges is still a fundamental proof of their impartiality.

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[13] Art. 5 of the Law of 29 April 1985 on the Constitutional Tribunal (Journal of Laws of 1991, No. 109, item 470, with subsequent amendments).

[14] Adopted by the 7-th U.N Congress on crime prevention and treatment of offenders, Milan 1985, and Confirmed by U.N. General Assembly in Resolutions 40/32/1985 and 40/146/1985. Human Rights. A Compilation of International Instruments, New York 1988, p. 265.

[15] Drafted by the Magistrats Européens pour la Démocratie et les Libertés, (in:) Le role des magistrats dans les sociétés démocratiques d'Europe, Strasbourg 1995, p. 53.

Another subject under discussion is whether a provision be introduced to the future constitution envisaging that the salaries of judges should set at a value taking the nature of their work and the dignity of the profession into consideration. It is hard to predict how such a provision would function in practice, apart from expressing the legislator's declaration of intent. A Constitutional Tribunal judicial decision recognised a judge's material self-sufficiency as an important element assisting to guarantee his independence; it also stated that it would be impossible to draw a simple relationship between the principle of independence and a judge's material status; in consequence it did not question - as inconsistent with the constitutional principle of a democratic state ruled by law[16] - those provisions of the law on judges' remuneration which is less advantageous than previously, since the real value of such remuneration has not been reduced.

2.3. Weighty amendments have been introduced to the model of court procedure. Previously, as in other countries of so-called real socialism, the principle was of a two-instance court procedure in civil and penal cases. This meant that a sentence delivered by a first-instance court could be appealed against by what was called a revision which comprised some elements of an appeal consisting of having the matter investigated in full by the second-instance court, and cassation characterised by controlling the appealed sentence solely from the viewpoint of more serious violations of the law. The Justice Minister, Attorney General, the First President of the Supreme Court and, in certain matters, also other bodies, could - however - present to the Supreme Court an extraordinary appeal against final sentence as regards any legally valid court sentence, due to particularly serious violations of the law. The case which was the subject of such an extraordinary review was finally decided upon by the Supreme Court. This system was universally criticised mainly because decisions of the Supreme Court were made dependent on the introduction of an extraordinary review against final sentence which was a stand-point taken by an administrative body. So it was decided to amend this model and reinstate the model of review and cassation existing prior to World War Two and, at present, also in West European countries. Under this system a decision handed down by a court of the first instance may be appealed against and, as a result, a second-instance court will examine it, while a motion of cassation against the sentence of the second -instance court may be presented. The initiative of moving such instruments of appeal will belong to the parties concerned. The new solutions concerning appeals and cassations are already in force in penal procedure and will be introduced in civil cases in 1996.

The model of court procedure is based, in Poland, on the principle of contradictiveness, meaning that court procedures are a dispute between equal parties. The draft of the new code of penal procedures presented by Government to Parliament aims at consolidating this contradictiveness of penal procedure by strengthening the position of the persons against whom the procedure has been opened, such strengthening also to concern procedure before a prosecutor. It has also been generally acknowledged that

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[16] Decision of the Constitutional Tribunal of 8 November 1994 1/94. "Orzecznictwo Trybunału Konstytucyjnego" 1994, part II item 37.

a prosecutor who participates in civil procedures has enjoyed law-suit privileges which go much too far. Hence amendments are being drafted to legislation which would restrict such privileges so as to ensure full equality of parties in civil procedures.

2.4. The present system of Polish courts consists of: common courts - competent in civil and penal cases, military courts sentencing mainly in cases of crimes committed by soldiers, and the High Administrative Court - competent for cases appealing against administrative decisions.

Previously two levels of common courts existed: regional courts, comprising an administrative area of one or several boroughs, and province (voivodship) courts comprising the administrative area of a province. In preparing the introduction of a new system of appeal instruments (appeals proper and cassation) a third level of courts of common law was established by the law of the 13 July 1990: appeal courts covering the administrative area of several provinces.[17]

It is a matter of controversy whether military courts as special courts acting outside the structure of common courts of law, should exist in Poland at a time of peace. Various solutions exist in other countries in this matter, for which essential though contradictory arguments are presented. In Poland, to the present, those who support a separate structure of military courts are ascendance, the arguments they quote being: that the existence of a structure ready to operate should war breaks out is sensible, as is the need for military judges to have a knowledge of the principles of military service, also the need to hold procedures in a manner protecting military secrets and also at a speed which would be effective from the aspect of maintaining military discipline. However, there are many confirmed critics of such a concept.[18] The system of military courts comprises: military garrison courts, military regional courts and the Military Chamber of the Supreme Court. The demand that a military court of appeal, similar to courts of common law, be established was not heeded mainly due to the small number of cases examined by military courts. Military courts are competent in cases of offences perpetrated by soldiers in active military service, civilians employed in military units should the act be related to their employment and prisoners of war, also offences of betrayal of the fatherland and certain other crimes. Opinions exist of the need to restrict the scope of the competences of the military courts to cases of offences committed by soldiers connected with military service.

A National Court of Administration operates in Poland since 1981 to which complaints may be presented against administrative decisions inconsistent with the law, and also administrative decisions not being delivered in statutory time.[19] This Court which played such an important part in consolidating the rule of law in the functioning of state

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[17] Cf. final text of the 20 June 1985 Law on the structure of common courts of law (Journal of Laws of 1994 No. 7, item 25).

[18] A. Ratajczak, "Trzecia władza w konstytucji" [The Third Power in the Constitution], *Rzeczpospolita* No. 224 of the 27 September 1995 1995, p. 17.

[19] Presently: Law of 11 May 1995 on the High Administrative Court (Journal of Laws No. 74, item 368).

administration bodies in the 1980s, expanded the scope of its competence after 1989. The High Administrative Court was, in particular, entrusted with complaints against the resolutions of borough bodies, including the resolutions of such organs constituting local law regulations, against provisions and activities of the administration which were not administrative decisions, against acts of local law issued by bodies of government administration, against acts of supervision of the work of local government bodies and also issuing decisions on conflicts of competences between local self-government and local bodies of the central government.[20] The High Administrative Court issues decisions in single-instance procedures, i.e. like Verwaltungsgerichtshof in Austria.[21] To make contacts between parties and the court simpler, 10 local centres of the High Administrative Court were established operating in the largest Polish cities and covering several provinces each. But these are not courts of lower instance and their decisions have the same legal force as those delivered by the High Administrative Court in Warsaw. The system of a single-instance of judicature is critcised since it offers poorer possibilities of delivering correct decisions. It is, in any case, stressed that in no other European country as large as Poland are courts of administration of single instance. On the other hand it should be noted that administrative procedure in Poland is two-instance in nature. Those who support the present system highlight that the introduction of a two-instance system of administrative judicature would substantially prolong the duration of procedure in particular cases, which would then comprise two administrative instances and two court instances. Admittedly, an increasing number of cases are delivered to local Selfgovernment, in which appeals in the administrative procedure against decisions of borough bodies are examined by so-called local government boards of appeal[22] which are more like courts than administration bodies and on the basis of which it would be simple to create future courts of administration of the first instance inter alia due to the large number of lawyers issuing decisions within them. But that apart, the issue still evokes controversy. Since the new constitution would establish the principle of two-instance court procedure in all cases, it is also being studied whether a transitional provision might be introduced which would anticipate the principle of two-instance court procedure at a later date.

The Constitution defines the Supreme Court[23] as the supreme judicial body excercising supervision over the operating of all other courts in adjudication matters. It is composed of chambers, with the Military Chamber of the Supreme Court differing from the others: it does not only deal with adjudication in matters belonging to the military courts but may, on the basis of an order delivered by the Minister of National Defence, perform those administrative supervisory functions in relation to those courts, which the Minister of Justice performs in relation to common courts of law. The Su-

[20] J. Świątkiewicz, Commentary to the Law on the High Administrative Court, Warszawa 1995, p. 10.

[21] A. Zie1ińsкi, U źródeł koncepcji ustrojowej Naczelnego Sądu Administracyjnego [At the Sources of the Structural Concept of the High Administrative Court], *Państwo i Prawo* 1983, No. 6, p. 5.

[22] Law of 12 October 1994 on local government boards of appeal (Journal of Laws No. 122, item 593).

[23] Law of 20 September 1984 on the Supreme Court (Journal of Laws of 1994 No. 13, item 48).

preme Court is the only court whose composition underwent fundametal change following 1989. Previously, Supreme Court judges were nominated for terms of office. The change to nominations for unlimited duration, similar to other courts, led to the need for new Supreme Court justices nominations and resulted in this Court being reshaped to a very large extent. There are three issues arousing discussion from the viewpoint of the future Supreme Court model. The first is the extent of Supreme Court competences when examining cassation, the assumption here being that only the Supreme Court would examine cassation cases. Since a fear exists that the number of cassation cases could exceed this Court's practical capacity, a possibility is envisaged of entrusting appeal courts with competences for limited duration to examine cassation against sentences in certain kinds of penal cases which are dealt with by regional courts in the first instance. How to regulate this matter in civil cases is under study. The second controversial issue is the way of nominating the First President of the Supreme Court, which is - at present - the sole post in the courts of law administration system to which Parliament nominates for unlimited duration on a motion presented by the President of Republic. The dominating view is that nomination should be for a statutory defined term of office, as in the common courts. Another principle which is being discussed is whether the First President of the Supreme Court should best be elected by an assembly of justices of that Court, or at least - while upholding the principle of nominating the Supreme Court First President by Parliament - that he should be chosen from among candidates submitted by that assembly. The third issue is the relationship between the Supreme Court and the High Administrative Court. The present principle is that, as every other legally valid judicial sentence, a decision of the High Administrative Court can also be appealed against by specific bodies to the Supreme Court by extraordinary review against valid sentence. It is envisaged that when such extraordinary reviews are done away and cassation is introduced, these same bodies can present motions of cassation to the Supreme Court against decisions handed down by the High Administrative Court. However, at the moment when a two-instance system of administrative adjudication is established, the High Administrative Court will become a court entirely independent of the Supreme Court and equal to it.[24]

2.5. The wide participation of the social factor was a characteristic feature of the previous organisation system of the judiciary system. This took the form, in particular, of courts ruling in the first instance with the participation of lay judges elected by national councils for terms of office (one professional judge and two lay judges) and of making use of the institution of social court-apppointed wardens in the process of supervising the performance of penal sentences against adults and juveniles, and also social inspectors assisting courts in exercising care of minors.

No overall amendment to that system is expected. In particular there is no intention to introduce in Poland the institution of trial by jury. But the excessive extent to which the social factor participates in the work of the judicial system is criticised. That is why

[24] R. Hauser, "Sądownictwo administracyjne w przyszłej konstytucji" [Administrative Judicature in the Future Constitution], *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 1995, No. 2 p. 57.

the number of cases examined with the participation of lay judges has been restricted in successive novélisations of judicial procedures. A new system of probation rooted in a professional apparatus of judicial guardianship is also being introduced.

3. In 1950 the public prosecutor's service was shaped in Poland[25] according to the Leninist model. It became a body organisationally separate from the courts and independent of the Ministry of Justice, up to and including the Prosecutor General's Office. Not only was it equipped with powers to prosecute crimes but also of general supervision of adherence to the law by state bodies, nationalised economic units, social institutions and private individuals. The legal status of a public prosecutor enjoyed an enormously strong position in trial procedures. He possessed a whole series of powers including that of temporary detention (above 48 hours) during preparatory procedures, and also the possibility of concluding indictment procedures, by the so-called conditional remission of penal procedure linked with the imposition of various duties on an accused person, i.e. decisions which related closely to judicial decisions. This model of the public prosecutor, reaching back the model created by Tzar Peter the Great who established the public prosecutor as an organ to control public life in 18th century Russia, made it very easy for the prosecutor's office to engage in political activities.

This model of the public prosecutor's office underwent change even before 1989 but the basic transformation took place following the December 1989 amendments to the Constitution and the March 1990 amendment to the Public Prosecutor Office Law.

In particular it was accepted that the function of Prosecutor General is excercised by the Minister of Justice, the Prosecutor General's Office was done away with, a Public Prosecutor's Department being set up in its place in the Justice Ministry, the institution of general supervision was liquidated, a ban similar to that for judges was imposed on political activity, wide rights were granted to prosecutors self govemment bodies, the independence of operation of a prosecutor managing proceedings in a specific case was consolidated, while a number of law-suit powers held by prosecutors were placed in the hands of the courts. At the same time a verification review of prosecutors was undertaken, only those prosecutors who had not abused their profession in the past remaining in employment.

A discussionn is presently under way on the future model of the public prosecution service. Since regional, province and appeal prosecutor offices exist at present, the topmost post which can be occupied in a professional career is the rank of appeal prosecutor, apart - that is - from the Prosecutor General (Justice Minister) and his deputies, it is postulated that the post of national public prosecutors be set up, who would appear before the Supreme Court and the High Administrative Court. This would also induce the establishment of a National Public Prosecutors Office. The even greater strengthening of the independence of a prosecutor managing proceedings in a specific case is also planned. However, the question of where the public prosecutor is situated in the system of state bodies has reappeared. Those who support one concept demand the public prosecutor be removed from the Justice Ministry, the argument being that, since the Justice Minister is not bound by the ban on political activity, while it happens that such ministers are leading members of political parties in a government coalition, the

nonpolitical nature of the public prosecutor's office could be endangered. Those who support another concept suggest that the pre-war model be reinstated, presently used in many countries, viz. that the public prosecutor's office is organisationally linked with the courts. Voices have also appeared, though they are in a definite minority, calling for the reinstatement of judges of interrogation. The discussion continues and it is impossible to say which model will win the day. Similar debates are proceeding in other post-socialist countries.[25] [25] [26]

4. The Bar (legal profession) largely maintained its erstwhile organisational structure following World War Two, as well as its professional identity. It remained, in particular, one of the learned professions though it was in the soties subject to rather wide supervision by the Justice Minister. A further step was the attempt to question the right of the lawyers' self-government bodies to speak out on public affairs. Two major organisational changes consisted of introducing the obligatory membership of barristers in so-called lawyers units, the purpose of which was to make it easier to keep an eye on the work of lawyers, and also the separation of the barrister's profession from that of counsellor at law serving the needs of nationalised economic units. The reason for the removal of barristers from serving nationalised companies was the desire to exclude barristers from using the knowledge they gained during employment in nationalised economic units, during legal disputes such units. The outcome was the appearance of two parallel legal professions: barrister[27] and counsellor at law.[28]

The performance by a barrister of his profession in individual private lawyers' practice, but with the consent of the Justice Minister, was established prior to 1989. Barristers are making increasingly frequent use of this possibility, though an evident trend exists, common to many western countries, to form large law firms. The parallel existence of the two professions of barrister and counsellor at law creates, however, many more problems. Very strong unification trends exist within the milieu of counsellors at law to grant the latter the status of barrister and, in consequence, the right to appear before the courts in penal and family law cases, and not only in economic and labour issues. Frequent reference is made to the example of France where such unification has happened. But barristers, who are in the minority, are in opposition, claiming that the very nature of the barrister's profession would change by mixing the two professions. The barrister's profession has always been one of the so-called "free professions" while most counsellors in law are accustomed to work under employment contracts. Indeed, many counsellors in law are unacquainted with the law applied in courts where barristers operate. In effect what is at stake is a conflict of interests, what with the legal services market being far from unlimited. Since each of these corporations has its own

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[25] Law of 20 June 1985 on the Office of Public Prosecutor (Journal of Laws of 1994 No. 19, item 70).

[26] G. Kalman, "Prokuratura w okresie przejściowym" [The Prosecutor's Office in the Transient Period], *Prokuratura i Prawo* 1995, No. 1, p. 11.

[27] Law of 6 May 1982 - Law on the Bar (Journal of Laws No. 16, item 124 with subsequent amendments).

[28] Law of 6 July 1982 on Counsellors at Law (Journal of Laws No. 19, item 145 with subsequent amendments).

professional self-government body, the state does not want to intervene in this dispute, encouraging both parties to enter into a dialogue. That is presently happening and it may well be that the whole issue will be resolved by the two professions gradually coming closer together.

In any case, the state intervenes in the issues tackled by both self-government structures to a limited extent. For instance new entries to the list of barristers and of counsellors in law are made by the appropriate self-government bodies.

5. The institution of notaries public was nationalised following World War Two. State notary public offices were established which were also entrusted with managing land and mortgage registers. But these state-run notary public offices displayed low efficiency and one had to wait a very long time, as a rule, for any operation to be performed.

February 1991[29] witnessed a fundamental change, when the institution of notary public was privatised. A notary public become a private person, though being able to claim the protection offered to state officials. The Justice Minister nominates a person to the post of notary public after consulting with notary public self-government bodies. The notary public rapidly became the most profitable of all legal professions in the wake of the appearance of a free market, the need for various forms of loan security and the upsurge in real estate trading. One of the reasons here was that the financial system existing in state-run notary public offices remained unchanged while the costs involved in the functioning of private notary public offices proved substantially smaller.

When the institution of notary public was privatised, matters of land and mortgage registers returned to the regional courts, though this process revealed a huge backlog of unsettled matters. In consequence the work of the notaries public has been notably streamlined while proceedings in matters of land and mortgage registers have become of particularly long duration.

6. It is evident from the above that changes in the system of administration of justice in Poland are still under way, the present system displaying a duality characteristic of all transitory periods. It is composed of legal norms rooted in various contemporary legal systems, in particular systems of socialist law and of the Romanesque-Germanic family, as the outstanding French comparatist René David put it.[30] It is of unusual importance that the proportions of both these systems are changing at so rapid a pace, to the benefit of elements characteristic for existing West European models and that these latter elements are very definitely in ascendance.

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[29] Law of 14 February 1991 - Law on the Office of Notary Public (Journal of Laws No. 22, item 91).

[30] R. David, Les grands systèmes de droit contemporains, Paris 1966.