

Kamil Słomiński*

University of Warsaw

Criminalization of communist propaganda in the jurisprudence of the Supreme Court of the Second Republic of Poland

1. Introduction

The issue of combating totalitarianism and totalitarian thinking has featured in academic discussion for years. These topics concern philosophical-legal¹ and historical-legal² analyses as well as issues arising within the dogmatics of specific branches of law. The most far-reaching mechanism of legal protection against totalitarianism is criminalization, through which the protective function of criminal law is realized.

In the Polish Act of 6 June 1997 – Criminal Code (consolidated text: Journal of Laws of 2025, item 383; hereinafter: C.C. 1997) there are provisions criminalizing both the public propagation of the totalitarian system and the public propagation of totalitarian ideology (Article 256(1) and (1a) of C.C. 1997). There is also a related type of offence – public incitement to hatred based on national, ethnic, race or religious differences or for lack of religious beliefs, which gives rise to questions of interpretation.³

* ORCID: 0000-0002-8851-6284; e-mail: k.slominski@uw.edu.pl

¹ See: K. Kuźmich, *Antytotitarne przesłanie filozofii prawa Immanuela Kanta* [Eng. *The anti-totalitarian message of Immanuel Kant's philosophy of law*], "Studia nad Autorytaryzmem i Totalitaryzmem" 2020, vol. 42, no. 4, pp. 307–326.

² See: A. Bosiacki, *Reconciliation, transformation, historical policy. Legal aspects of settlements with totalitarian systems toward Poland since 1989* [in:] *Dealing with totalitarian regimes and human rights. A Polish-German dialogue*, eds. M.E. Geis, A. Bosiacki, C. Safferling, Springer, Cham 2024, pp. 213–222.

³ M. Błaszczak, *Odpowiedzialność za przestępstwa „mowy nienawiści” stypizowane w art. 256 § 1 i 257 k.k. – wybrane problemy normatywne i praktyczne* [Eng. *Responsibility for crimes of "hate speech", as defined in Article*

Nowadays, the need to maintain the criminalization of such behaviour should not be doubted in light of the need to protect public order as well as to discharge international obligations.

It seems legitimate to address the issue of the criminalization of communist propaganda from the perspective of legal history. The criminal law of the Second Republic of Poland provides a particular example of the legal basis for preventing the development of this ideology. The legitimacy of certain institutions and their development can be well illustrated by turning to the historical development of law. The criminalization of communist propaganda in the Second Republic of Poland is all the more engaging because, between 1918 and 1939, Poland was subject to existential threats from the Soviet Union – a state aiming to spread communist ideology. After 1944, the Polish state functioned as a satellite state of the Soviet Union – a state with a totalitarian regime.

The issue of criminalization of communist propaganda in the interwar Poland was only partially addressed in legal history and dogmatics. Pre-war studies emphasized the delimitation of the judicial application of criminal law norms against communists and outlined a dogmatic-legal perspective on the criminalization of communism.⁴ The legal history of the Polish People's Republic pointed to the considerable punitive nature of interwar law.⁵

This article aims to show the extent of the criminalization of communist propaganda in the Second Republic of Poland (1918–1939). In order to do so, it is necessary to analyse the legal foundations, the interpretation of the relevant provisions, and their application in jurisprudence regarding communist activists in specific criminal cases. The dominant lines of interpretation of the provisions criminalizing manifestations of communist propaganda are reflected most comprehensively in the Supreme Court's jurisprudence.

2. Communist structures in the Second Republic of Poland – an outline of the problem

At the outset, it is worthwhile to briefly address the characteristics of communist activity in the Second Republic of Poland that may have triggered a particular need for a criminal law response in connection with the use of anti-state propaganda.

On 16 December 1918, the Communist Workers' Party of Poland was founded by the merger of the Social Democracy of the Kingdom of Poland and Lithuania and the Polish Socialist Party – Left, parties operating in the former Russian partition. From 1925, the

256(1) and 257 of the Polish Criminal Code – selected normative and practical problems], "Studia Iuridica" 2021, vol. 88, pp. 10–24.

⁴ J. Makarewicz, *Propaganda komunizmu a kodeks karny (dokończenie)* [Eng. *Propaganda of communism in the context of the Criminal Code (part two)*], "Gazeta Sądowa Warszawska" 1937, no. 25, pp. 365–367.

⁵ M. Sobolewski, *Prawa i wolności obywatelskie i praktyka sądów przedwrześniowych* [Eng. *Citizens' rights and freedoms and the judicial practice before September 1939*], "Kwartalnik Historyczny" 1954, no. 2, pp. 35–60.

party began to be called the Communist Party of Poland. The party was a member of the Third International, formed on Lenin's initiative, and constituted the organizational core of communism in interwar Poland. The Bund, a left-wing, anti-Zionist Jewish party, was also regarded as a communist party in jurisprudence.⁶

The fundamental axionormative and organizational influence on the communist movement in the interwar period, was the activity and propaganda of the Soviet communists. Polish communists saw the state as a coercive, class-based organization that should be abolished. From this fundamental view embedded in Marxist thought arose a pejorative attitude towards the development of Polish statehood. Leninist political and legal thought questioned the system of separation of power, political pluralism, and the concept of the rule of law.⁷

Rosa Luxemburg appears to have exerted the greatest influence on the political programme of the Polish communists. She was an advocate of mass strike, she also developed concepts of class struggle and opposed the struggle for Polish independence. At the same time, she argued that the social democratic party should give up the temptation "to command the working class".⁸

The fundamental aim of the Communist Party of Poland was to overthrow the capitalist system and introduce communism.⁹ The concept of the political system put forward by the ideologists of the Communist Party of Poland did not differ much from the Leninist concept of state power. The desired aim of revolutionary activity was to introduce the dictatorship of the proletariat following the Russian model.¹⁰ In terms of the state's economic system, industry's primary role was postulated, with nationalization of the means of production.

Polish communists in the Second Republic of Poland were often directly linked to Soviet intelligence. Communist activists were also trained in agitation and propaganda courses. The spread of communist propaganda in the army was particularly dangerous. This is because the communists aimed to make soldiers rebel against their commanders.¹¹ However, it is estimated that by the end of the 1920s, more communist activists were arrested for communist activities than for espionage.¹²

⁶ Cf. *Collection of Supreme Court Judgments. Judgments of the Second Criminal Chamber* [hereinafter: *Collection*], Warsaw 1923, pp. 324–325, item 215, *Szpajzer and others case*.

⁷ See: A. Bosiacki, *Utopia. Władza. Prawo. Doktryna i koncepcje prawne „bolszewickiej” Rosji 1917–1921* [Eng. *Utopia. Power. Law: The doctrine and legal concepts of Bolshevik Russia, 1917–1921*], Liber, Warszawa 1999, pp. 15–42.

⁸ R. Luksemburg, *Obrachunek polityczny* [Eng. *Political settlement*] [in:] *Wybór pism* [Eng. *Selected works*], vol. 1, Książka i Wiedza, Warszawa 1959, p. 364.

⁹ K. Trembicka, *Między apologią a negacją. Studium myśli politycznej Komunistycznej Partii Polski w latach 1918–1932* [Eng. *Between apologia and negation. A study of the political thought of the Communist Party of Poland in 1918–1932*], Wydawnictwo Uniwersytetu Marii Curie-Skłodowskiej, Lublin 1995, p. 67.

¹⁰ *Ibidem*, pp. 100–105.

¹¹ S. Drabik, *Służby II Rzeczypospolitej wobec komunistów (KPP)* [Eng. *Secret services of the Second Republic of Poland against the communists (Communist Party of Poland)*], „Komunizm” 2022, no. 11, pp. 38–39.

¹² *Ibidem*, p. 38.

The communist movement in interwar Poland was united by three basic features: approval of the systemic changes in Russia and a desire to create a "Polish Soviet Republic"; opposition to the apparatus of the newly formed Polish state, including sabotage activities against it; the pursuit of revolutionary upheaval, including through collaboration with the services of foreign countries.¹³ The aforementioned manifestations of communist activity provoked a response from the Polish state, aiming to protect its institutions.

3. Offences of "communist propaganda" in the criminal law of the Second Republic of Poland¹⁴

Criminalization is nowadays legitimized by the need to protect the legal good [Ger. *Rechtsgut*].¹⁵ Thus, socially harmful acts can be criminalized.¹⁶ In the Second Republic of Poland, the necessity of criminalizing communist propaganda was linked with concern for the very continuation of the independent Polish state. Juliusz Makarewicz¹⁷ believed that high treason was a socially harmful act in any cultural formation being a natural result of association, which "cannot tolerate acts constituting an attack on the existence of the community"¹⁸ [Pol. *nie może tolerować czynów stanowiących zamach na egzystencję wspólnoty*]. Such acts are a model example of a socially harmful act.

Already at this point it should be noted that this period saw a fragmentation of legal bases in the area of criminal law. Indeed, it was only in 1932 that a single Criminal Code (hereinafter: C.C. 1932)¹⁹ became applicable in the whole area of Poland at that time. In the Second Republic of Poland, until 1932, the criminal laws of the former partitioned states were in force in the sphere of criminal law. In particular, the provisions stipulating crimes against the state in the Russian Criminal Code of 1903 (hereinafter:

¹³ K. Trembicka, *Między utopią a rzeczywistością. Myśl polityczna Komunistycznej Partii Polski (1918–1938)* [Eng. *Between utopia and reality. The political thought of the Communist Party of Poland (1918–1938)*], Wydawnictwo Uniwersytetu Marii Curie-Skłodowskiej, Lublin 2007, pp. 171–195.

¹⁴ In sections 3 and 4, I draw on some of the findings presented in: K. Słomiński, *The combat of communist ideology and propaganda in the legal order of the Second Republic of Poland, 1918–1939* [in:] *Dealing with Totalitarian Regimes...*, pp. 140–147.

¹⁵ L. Gardocki, *Zagadnienia teorii kryminalizacji* [Eng. *Problems of the theory of criminalization*], Wydawnictwo Naukowe PWN, Warszawa 1990, pp. 45–52; H.H. Jescheck, T. Weigend, *Lehrbuch des Strafrechts. Allgemeiner Teil* [Eng. *Handbook of criminal law. General part*], Duncker & Humblot, Berlin 1996, pp. 7–8.

¹⁶ L. Gardocki, *Zagadnienia teorii...*, p. 46.

¹⁷ Juliusz Makarewicz was a professor of criminal law at the Lviv University, the main drafter of the Polish criminal codification.

¹⁸ J. Makarewicz, *Wstęp do filozofii prawa karnego w oparciu o podstawy historyczno-rozwojowe* [Eng. *An introduction to the philosophy of criminal law on a historical and developmental basis*], Wydawnictwo KUL, Lublin 2009, p. 145.

¹⁹ Ordinance of the President of the Republic of Poland of 11 July 1932 – Criminal Code, Journal of Laws, No. 60, item 571.

R.C.C. 1903) remained in force. In Tsarist Russia, this legislation was quite often used as a measure in the fight against the communists.

Both the laws in force in the partitions and the 1932 criminal codification contained provisions that formed the basis for decoding norms geared towards fighting communism. Based on these legal foundations, numerous judicial rulings were issued, which enables assessing the actual extent of the criminalization of communism in the Second Republic of Poland and learning about the historical conditions of combating an ideology perceived as hostile to the state.

It should be emphasized that in interwar Poland jurisprudence repeatedly determined that mere membership of the Communist Party of Poland constituted an offence.²⁰ In turn, Articles 129 and 130 of the R.C.C. 1903 played a key role in combating communist propaganda before the 1932 Criminal Code came into force. They made it a serious offence to provide, read, distribute or make public in any form works that incited the overthrow of the state system, disobedience to legislation or state authority, as well as hatred between social groups. Moreover, the above-mentioned acts were penalized even if they were not publicly committed.

At that time, legal scholarship already made a clear distinction between incitement and instigation. Instigation was interpreted as inducing specific persons to commit an act, while incitement could be aimed at an indefinite mass or group (*ad personam incertam*).²¹

In 1932, the President issued the Criminal Code, which unified criminal law in Poland. The Code contained similar regulations aimed at combating communist propaganda. Article 154(1) of C.C. 1932 penalized public incitement or praise of an offence. Again, emphasis was put on the dogmatic differentiation between the component aspects of the criminal acts of incitement and instigation. A specific person or group of persons could be instigated. Incitement was an expression that encouraged an unspecified group of people to commit an offence.²² The court was required to clearly identify the offence to which the offender had incited. Article 154(2) of C.C. 1932 criminalized incitement to or praise of an act which was considered a crime against the state. This provision was applied against communist activists who incited a revolt or a strike. It was accepted in the jurisprudence of the Supreme Court that carrying a banner with communist and revolutionary slogans could be qualified as an offence under Article 154(2) of the Criminal Code.²³

It is worth mentioning that in 1937 Makarewicz issued two publications directly related to the problem of criminalization of communist propaganda. He published them

²⁰ See: Judgment of the Supreme Court of 13 January 1937, I K 1038/36, unpublished.

²¹ N. Tagancev, *Criminal Code (Kodeks karny)*, 22 March 1903, vol. 2: *Articles 73–197*, trans. J. Dąbrowo, R. Lobman, Księgarnia F. Hoesicka, Warszawa 1922, p. 75.

²² K. Słomiński, *The Combat of communist ideology...*, p. 142.

²³ Judgment of the Supreme Court of 20 September 1934, I K. 549/34, Collection, Warsaw 1934, pp. 172–173, item 107.

in "Gazeta Sądowa Warszawska" weekly. The author stated that the axiological basis of communism was the abolition of property rights.²⁴ This view was in contradiction with the principles of the Polish state system, which protected private property. The anti-state character of communist propaganda is clearly shown in the promotion of so-called collective property, which is supposed to be a "camouflage" for the abolition of private property of the means of production.

The author of the article *Propaganda komunizmu a kodeks karny*, starting from the premise of the constitutional protection of freedom of research and freedom of opinion, makes a distinction between "propaganda of thought" [Pol. *propaganda myśli*] and "propaganda of deed" [Pol. *propaganda czynu*]. In this view, a pure appreciation of common property cannot be considered a criminal offence.²⁵ A similar position was taken at the time by Leon Peiper, who argued that "adherence to communist principles, confession to them and membership of the communist party do not in themselves constitute a crime, provided that the individual concerned has not undertaken any active or supportive action"²⁶ [Pol. *wyznawanie zasad komunistycznych, przyznawanie się do nich i przynależność do partii komunistycznej nie stanowią same przez się przestępstwa, o ile dany osobnik nie przedsięwziął żadnej akcji czynnej lub wspierającej*]. According to Makarewicz, the punishability of communist propaganda was limited to "propaganda of deed". "The decisive factor for the criminality of an action (agitation) is the intention to use violence immediately or in the future"²⁷ [Pol. *Czynnikiem decydującym dla karygodności działania (agitacji) jest zamiar użycia przemocy natychmiast, bądź w przyszłości*]. The most important issue was to verify whether one incited to changing the system using violence. Therefore, it can be argued that communist propaganda, according to the views of legal scholars, was not, on the grounds of C.C. 1932, a punishable act if: (a) no intention to overthrow the state system by means of violence was manifested; (b) no actions were taken with the aim of realizing communist demands; (c) the person did not act with the intention to use violence, even if only in the future. Assuming such an approach to the criminalization of communist propaganda, it is worth noting that the scope of criminalization would be defined more narrowly than under the current legislation, which provides for a criminal prohibition of public propagation of communist ideology (Article 256(1a) of C.C. 1997).

²⁴ J. Makarewicz, *Propaganda komunizmu a kodeks karny* [Eng. *Propaganda of communism in the context of the Criminal Code*], "Gazeta Sądowa Warszawska" 1937, no. 24, p. 349.

²⁵ J. Makarewicz, *Propaganda komunizmu a kodeks karny (dokończenie)*..., p. 365.

²⁶ L. Peiper, *Komentarz do kodeksu karnego i prawa o wykroczeniach* [Eng. *Commentary on the Criminal Code and the Law on Petty Offences*], Księgarnia L. Frommera, Kraków 1936, p. 250.

²⁷ J. Makarewicz, *Propaganda komunizmu a kodeks karny (dokończenie)*..., p. 366.

4. Criminal law against communist propaganda in the jurisprudence of the Supreme Court of the Second Republic of Poland

It is worthwhile to juxtapose the quoted content of the legal norms, as well as their doctrinal understanding, with examples of the application of the provisions that criminalized communist propaganda in the jurisprudence of the Supreme Court of the Second Republic of Poland.

A key role in criminal law protection of the state against communist propaganda was played by the types of criminal acts set out in Article 129 of R.C.C. 1903 (public incitement to overthrow the existing social system in Poland by making or reading a speech or work, or distributing or publicly exhibiting a work or image) and Article 130 of R.C.C. 1903 (non-public dissemination of doctrines or views inciting to overthrowing the social system). The Supreme Court's approach to the interpretation of Article 129 of R.C.C. 1903 is highlighted in specific criminal cases.²⁸

In one of these, the accused, called Szymczakowski, was charged with incitement to change the existing social order by violence, i.e., an act described in paragraph 2 of part 1 of Article 129 of R.C.C. 1903. Szymczakowski was charged in connection with an act committed during the 1922 May Day march in Żyrardów. His conduct consisted of carrying a banner with the inscription: "Long live the Polish Soviet Republic", which a co-accused called Kuziemska later hid. The Supreme Court accepted that the punishability of incitement under Articles 129 and 130 of R.C.C. 1903 was independent of the performance of the act to which the perpetrator incited. For the fulfilment of the verbal phrase of incitement, "any intentional influencing of listeners, spectators or readers in order to instil in them a readiness to act in a certain direction"²⁹ was sufficient. The Supreme Court advocated a broad interpretation of incitement. In the view of the Supreme Court, the terms "speaker", "work" and "image" used in Article 129 of R.C.C. 1903 were to be understood very broadly, subsuming both complete speeches and casual statements, a slogan thrown into a crowd or inscribed on a banner, as well as a demonstrative drawing or emblem.³⁰ The analysed interpretation of the criminal provisions leads to the conclusion about the broad scope of application of the sanctioning norms of Articles 129 and 130 of R.C.C. 1903. The Supreme Court adopted an understanding of the elements of the criminal act that covered a wide spectrum of facts. Undoubtedly, this interpretation corresponded to the purpose for which the application of these norms was envisaged in the reborn Poland: combating anti-state propaganda, in particular communist propaganda.

The interpretation of Articles 129–130 of R.C.C. 1903 adopted by the Supreme Court was of fundamental importance in combating communist propaganda with judicial

²⁸ See: Collection, Warsaw 1923, pp. 142–147, item 93.

²⁹ *Ibidem*.

³⁰ *Ibidem*, p. 144, item 93.

rulings. The Supreme Court in the case of the accused Soboń adopted the following thesis: "The Legislative Sejm may be the object of the crime of audacious disrespect for the Supreme Power or criticism of the form of government established by the Fundamental Laws by making or reading a speech or work in public, or by distributing or publicly displaying a work or image"³¹.

In turn, in its ruling in the Toeplitz case³², the Supreme Court expressed the view that joining the Union of Communist Youth [Pol. *Związek Młodzieży Komunistycznej*] in order to overthrow the political system of Poland should be qualified as participation in a conspiracy to overthrow the state system (Article 102 of R.C.C. 1903).

Combating communist propaganda in the Second Republic of Poland under the C.C. 1932 often amounted to attributing the offence of public incitement to a crime against the state to the accused. This type of offence was criminalized in Article 154(2) of C.C. 1932. This provision was included in Chapter XXV of the Code, titled "Offences against public order".

As early as in 1932, the Supreme Court expressed the view that "carrying a banner with communist-revolutionary slogans may be qualified as a crime from the Article 154(2) of C.C. 1932"³³. Two years later, it was added that this act "proves sympathizing with the slogans written in the banner, which is sufficient for the existence of an offence from Article 154 of the Criminal Code"³⁴. It was also stated that "the form in which incitement to commit a crime manifests itself is indifferent to the essence of the offence under Article 154 of the Criminal Code. The notion of incitement includes not only verbal calls to a larger number of persons to commit a crime"³⁵. In another case, the criminalization of the mere repetition of vile shouts was considered. It concerned chanting slogans "Long live CPP, USSR". The Court considered that "there is no significant difference between the shouting of slogans by participants of a certain gathering and their repetition by other participants of the same gathering, as they are actions with the same purpose"³⁶. Consequently, it held that "the public shouting and therefore public repetition of such shouts as: "Long live the Communist Party of Poland", the aim of which is to overthrow the system of the Polish State by violence, was rightly considered by both sentencing Courts as incitement to change by violence the system of the Polish State to the Soviet system"³⁷.

These quotes from the jurisprudence of the Supreme Court, concerning the interpretation of Article 154 of the Criminal Code, lead to several conclusions. First, what was relevant to liability for public incitement to a state crime was, according to the

³¹ Collection, Warsaw 1920, pp. 34–36, item 20.

³² Collection, Warsaw 1924, pp. 93–99, item 46.

³³ Collection, Warsaw 1933, pp. 61–62, item 30.

³⁴ Collection, Warsaw 1934, pp. 172–173, item 107.

³⁵ *Ibidem*, p. 173, item 107.

³⁶ Collection, Warsaw 1937, pp. 233–234, item 115.

³⁷ *Ibidem*.

Supreme Court, the acceptance of the purpose of the activity, which is to change the state system by violence. Secondly, the mere shouting or carrying a banner with subversive slogans could suffice for classification as public incitement to change the state system by violence. Thirdly, publicly proclaiming support for the Communist Party of Poland could fulfil the elements of the offence defined in Article 154(2) of the C.C. 1932.

The Supreme Court also considered that since passive membership in the communist party already constituted a crime (joining an agreement to change the social system by means of violence), active collaboration in the criminal activity of this party was even more criminal. Active collaboration with this party without being formally affiliated to it, e.g., in the form of providing assistance to at least one member in his subversive activity, related to his affiliation to this party, constituted a crime.³⁸

It seems that the presented broad interpretation of the elements of the analysed offences could have had a direct bearing on the degree of criminal repression against persons propagating communism in the Second Republic of Poland. In the Polish People's Republic, history of law pointed to the excessive repressiveness of courts and administrative bodies towards communists. As estimated at that time, a total of 5,143 people were arrested for communist activities in 1927 and the number grew to 15,639 in 1932.³⁹ On the other hand, some contemporary scholars point to how rarely harsh sentences were imposed on communist activists in the Second Republic of Poland.⁴⁰ In turn, in the interwar period, legal scholarship pointed out that Polish criminal law in the 1920s was regarded as "manifesting the pursuit to cover citizens (...) with a network of prohibitions and requirements accompanied by criminal sanctions"⁴¹ [Pol. *odznaczało się nadzwyczajnym dążeniem do obstawiania obywatela (...) siecią nakazów i zakazów zaopatrzonych w sankcje karne*].

5. Conclusions

The legitimacy of the criminalization of communist propaganda seems obvious at first glance in a state directly threatened militarily and politically by a totalitarian state preaching communism. The Second Republic of Poland functioned under such a threat. It should be considered accurate to justify penalizing communist propaganda with the very endeavour to secure the existence of the Polish state. It should be recalled that an attack on the existence of a community was perceived by Juliusz

³⁸ *Ibidem*, pp. 384–386, item 175.

³⁹ See: J. Ławnik, *Represje policyjne wobec ruchu robotniczego. 1918–1939* [Eng. *Police repression against the worker's movement. 1918–1939*], Książka i Wiedza, Warszawa 1979, p. 221.

⁴⁰ Cf. S. Drabik, *Służby II Rzeczypospolitej...*, p. 38.

⁴¹ A. Mogilnicki, *Prawo karne w pierwszym dziesięcioleciu odrodzonego Państwa Polskiego* [Eng. *Criminal law in the first decade of the reborn Polish State*], "Gazeta Sądowa Warszawska" 1928, no. 46, p. 723.

Makarewicz as a model example of a socially harmful act.⁴² In the case of communist propaganda, it was not necessarily a case of high treason *par excellence*, but possibly of supporting it and seeking to abolish the state.

In criminal law, however, the sense of penalization must be related to specific types of criminal acts and the legal good protected by them.⁴³ In the case of incitement to overthrowing the existing social order in the state (Article 129 of R.C.C. 1903), or public incitement to commit a crime (Article 154 of C.C. 1932), the direct object of the attack can be defined as public order. Makarewicz's reflections on the need to limit the criminalization of communist propaganda to "propaganda of deed" should be regarded as extremely valuable in this context. Incitement must in turn be limited to specific behaviour. If there is no type of prohibited act directly protecting the system of the state,⁴⁴ one can understand the observation expressed with respect to the C.C. 1932 that the criminalization of communist propaganda would be determined by the intention to use violence, even if only in the future. The contemporary criminal law protection of public order against the propagation of totalitarianism is, however, broader, covering also incitement to hatred.⁴⁵ This is justified in the light of the thesis formulated in interwar period, concerning communist propaganda, that "the beginnings of a revolution are often humble".⁴⁶

In this context, it should be noted that attempts to enact a separate anti-communist law failed in the Second Republic of Poland. No such separate normative act was enacted in the whole period of the Second Republic of Poland. Literature emphasizes that the main inhibitors to the introduction of such a law were the left- and centre-left-wing parties and the Sanation Movement, dominated by the pro-independence left-wing politicians.⁴⁷ Anti-communist legislation was also opposed on the basis of arguments concerning the legislative technique and the need to avoid proliferation of laws. However, it appears that a significant area of communist propaganda was covered by the criminal legislation in force in the Second Republic of Poland.

The criminal law of interwar Poland not only sanctioned anti-communism, but became a means of defending the established political system. As a complex social phenomenon, criminal law catered to the needs of the authorities, due to the mechanism

⁴² J. Makarewicz, *Wstęp do filozofii...*, p. 145.

⁴³ L. Gardocki, *Zagadnienia teorii...*, pp. 45–52.

⁴⁴ See Article 256(1) of C.C. 1997: Anyone who publicly promotes a nazi, communist, fascist or other totalitarian system of state or incites hatred based on national, ethnic, race or religious differences or for not being religious, is liable to imprisonment for up to three years

⁴⁵ It should be noted that the R.C.C. 1903 already criminalized incitement to hatred between particular groups or classes of people, between states, or between employers and workers (Article 129(6) of the R.C.C. 1903).

⁴⁶ J. Makarewicz, *Propaganda komunizmu a kodeks karny (dokończenie)...*, p. 367.

⁴⁷ K. Sacewicz, *Komunizm i antykomunizm w II Rzeczypospolitej. Państwo – społeczeństwo – partie* [Eng. *Communism and anti-communism in the Second Republic of Poland. State – society – parties*], Instytut Historii i Stosunków Międzynarodowych Uniwersytetu Warmińsko-Mazurskiego, Olsztyn 2016, p. 127.

of criminalization, as a basic tool for the realization of the protective function. The jurisprudential trend was clearly towards including the widest possible range of behaviours within the scope of the sanctioning norms.

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Abstract

Kamil Słomiński

Criminalization of communist propaganda in the jurisprudence of the Supreme Court of the Second Republic of Poland

Combating totalitarian propaganda is a topic that continues to challenge the law, including criminal law dogmatics. The criminalization of totalitarian propaganda plays a special role in countries which have been affected by these regimes. Polish law currently criminalizes the propagation of communist ideology. It is worth presenting how this concept was shaped against the historical background of the regulations in force in the Second Republic of Poland. The article addresses the issue of criminalization of communist propaganda in the Second Republic of Poland. It analyses the rulings of the Supreme Court and scholars' views concerning this issue from the period 1918–1939.

Keywords: criminalization, communism, propaganda, jurisprudence, Supreme Court