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POLITICAL CRIME IN POLISH SYSTEMIC CONDITIONS IN THE 20TH CENTURY

Political offences are a specific 'set' of prohibited acts listed by the legislator, undertaken by the perpetrator in specific political and normative conditions, and determined by the shape of the state's political system. The legislator in the Penal Code of 1932, 1969 and 1997, as well as numerous non-code criminal law acts (e.g. in 1928, 1934, in the years 1944–1946), distinguished acts directed against a state that have features of criminal acts of a political nature. In the period of the Second Polish Republic, despite changes to systemic conditions in 1926, the state's attitude towards these prohibited acts have yet to be uniformly assessed. The first normative act defining the perpetrator's action against the state was the Regulation of the President of the Republic of Poland against espionage of 1928. After 1944/1945, the term 'counter-revolutionary crime' emerged in the doctrine of communist criminal law. Counter-revolutionary action was explicitly treated as a political crime. Systemic changes in 1956 significantly modified the interpretation of this act prohibited by law enforcement and judicial authorities, but until 1989, the legal status set out in the Criminal Code of 1969 remained. After 1956, the interpretation of political provenance changed, however the code solutions introduced in the system remained in force. Yet, after the turn of 1989, in the new normative and political reality it was necessary to refer the legislator to acts (political) committed under the previous system, consistent with the legal norms of that time but classified in new legal and political circumstances as crimes committed on behalf of state organs or as state crimes. Similarly, it turned out that the legislator had to respond to acts committed in the previous system and considered illegal; however, after the system was changed in 1989, they were already treated as acts directed towards the Polish state. In the Penal Code of 1997, the catalog of acts directed against the state, which are described as political crimes, was stipulated in articles 127–137.

Keywords: political crime, crime against the state, state security.

1. INTRODUCTION

The term 'political offense' does not appear "explicitly" as a specific criminal act in the Polish criminal law system. Both codex and non-codex solutions do not use this term. In Poland in the 20th century, despite the existence of three different political systems: democratic, authoritarian and totalitarian; in each of these systems a codex criminal law solution was adopted, and it was the political conditions that significantly influenced the shape of these solutions, especially in the case of acts directed against the state and its institutions, the legislator did not introduce into the legal system in any criminal law act throughout the 20th century the notion of 'political crime'. Problems with the precise

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definition of this term, the characteristics of a prohibited act, the issue of determining primarily the subjective and objective side, did not favor direct legal regulation of this crime. The recognition that for the occurrence of a ‘political crime’ it is necessary for two independent social phenomena to occur, namely the form of a criminal act and the occurrence of the political nature of this act, sufficiently complicates reflection on this subject. 'Political crime' belongs to the 'two' independent but yet functionally connected 'worlds' – the 'world of legal sciences' and the 'world of political sciences'. There is no subordination between them: the legal is not more important than the political, and vice versa. Without specific, prohibited actions by the perpetrator, there is no question of a ‘crime’, while without the potential of politics assigned to the good attacked by the perpetrator, or the motive accompanying the perpetrator, there is no political crime.

I will treat as a political offense an act committed by the perpetrator considered in the context of the theory of these prohibited acts. I assume that it is the legal good under attack, in this case the state, its territorial indivisibility, sovereignty, independence from all internal and external entities, independence in the exercise of authority, internal and external security, the unrestricted functioning of its organs; creating internal social order, independent implementation of foreign policy, constitutional system and functioning of constitutional organs; these are goods with such a great political potential that every act directed against these goods should be treated as a political crime. At the same time, I believe that the interpretation of a political crime based on subjective theory, when the motive, incentive guiding the perpetrator and the purpose of the action, although very useful in the area of scientific inquiry and research (e.g. I believe that acting against state symbols of a Polish state or symbols of a foreign state if, of course, this state ensures reciprocity to Poland in this respect, will constitute a ‘political crime’ only if the perpetrator of the act is accompanied by a political motive or the purpose of his action is political. Therefore, the determinants of subject theory are dominant here. In another case, when the perpetrator, e.g. steals the flag of the Republic of Poland for the purpose of selling it, for profit, it will be an ordinary criminal act, without political connotation), in the presented analysis it has no dominant significance. Similarly, we should consider the theory of preponderance (assessment of the origin of a crime from the point of view of comparing the importance of political and criminal factors occurring in the procession of a crime) and the theory of civil disobedience (the perpetrator acts consciously “on the border of the law” or exceeds the legal norm, taking into account the penal consequences, he does so at his own risk, but in the name and for the benefit of, in his opinion, the oppressed community, the nation, against despotic, irrational or incompetent power.) In other categories, mixed theory should be assessed, which is a combination of fulfilled conditions relating to subject and object theory (subjective and objective theory) and in the analyzed text it can be treated as a kind of complement to subject theory.

In modern criminal legislation, but also in the Basic Law, terms convergent and related to the concept of political crime have been introduced. Thus, in the Constitution of the Republic of Poland of April 2, 1997 in art. 55 item 2 point 4 the following statement was made: “4. Extradition is prohibited if it concerns a person suspected of committing a non--violent crime for political reasons or its execution will violate human and civil rights and freedoms” (Article 55, Constitution of the Republic of Poland of April 2, 1997 adopted by the National Assembly on April 2, 1997, adopted by the Nation in a constitutional referendum on May 25, 1997, signed by the President of the Republic of Poland on July 16, 1997, Journal of Laws 1997 No. 78, item 483). In the Code of Criminal Procedure of 6 June

1997 in art. 604 § 1 point 8 the following statement was used: “§ 1. The extradition is inadmissible if: [...], 8) relates to a person prosecuted for committing a non-violent crime for political reasons [...]” (Article 604, Act of 6 June 1997 – Code of Criminal Procedure, Journal of Laws 1997 No. 89 item 555); while in § 2 of the CCP, it was indicated: “The extradition may be refused in particular if: 1) the person to whom the application relates has a permanent place of residence in the Republic of Poland; [...] 6) the offense in relation to which extradition is requested is a criminal offense of a military or fiscal nature or of a political nature other than specified in § 1 point 8; [...]” (Ibid.) In turn, in the Executive Penal Code of 1997 in Art. 107, the legislator stated: "§ 1. Convicts for a crime committed for political, religious or ideological reasons are serving the sentence separately from convicts for other offenses; have the right to use their own clothing, underwear and footwear and are not subject to the obligation to work” (art. 107, Act of June 6, 1997 – Executive Penal Code, Journal of Laws 1997 No. 90 item 557). The terms used therefore refer to 'committing a crime without violence, for political reasons' or 'committing a crime of a political nature'. These are synonymous terms; however, the term ‘political crime’ does not appear in the Polish legislation.

Finally, the concept of ‘political crime’ should be considered – but fundamentally differently – in the conditions determined by the shape of the political system. Essentially, this crime was treated differently in Poland during the Second Polish Republic, when, despite the democratic system being replaced after 1926 by the authoritarian system, the influence of political factors did not play a fundamental role in this respect. It was obviously significant; however, we do not observe direct political influence on the shape of normative provisions in connection with these acts. The period from 1944/1945 until 1989 in Poland should be treated separately, when criminal law regarding acts directed against the state, therefore political crimes, was simply political criminal law and served as an instrument useful for achieving specific goals: ideological, political, but also particular. In a democratic system, or just moving towards democracy, criminal law within acts directed against the state separated from ideological connotations, but – obviously – it protected a particular political system, in this case a democratic system.

2. DEFINING POLITICAL CRIME IN POLITICAL SYSTEMS – THEORETICAL CONSIDERATIONS

The concept of ‘political crime’ depends on the shape of the political system, so it will be defined differently in a political system of a democratic nature, differently in a totalitarian system, and differently in authoritarianism. In Poland in the 20th century all these systems existed. In the years 1918–1926 we were dealing with a democratic system (the period of building the democratic system), then after the May Coup the authoritarian system began to shape. After 1944/1945 a totalitarian system was introduced, the basic modification of which occurred after 1956 and with various fluctuations, the communist system operated until 1989, when after a period of systemic transformation (it always occurs in the transition from one political system to another, but in different ways, depending on whether we are moving towards democracy – then the process is slow and evolutionary, or from democracy – then the changes take place almost immediately and revolutionary), the democratic system becomes binding again in the country.

When defining the concept of ‘political crime’ in these systems, on the example of Poland and Polish criminal legislation, several explanatory reservations should be

introduced. First, assuming that a 'political crime' is a kind of vector of the shape of the political system, it determines the shape of criminal law solutions which formally determine what goods (political) connected with the functioning of the state and its institutions and bodies are protected and in what way they introduce the scope of criminalization of individual acts and the intensity of their criminalization; it should be recognized that in the years 1918–1926, at least on the normative level (codex and non-codex), it will not be possible to refer to this concept. The first criminal law solutions criminalizing certain behaviors directed against the state appeared in the system only in the years 1928–1934, therefore after the May coup, that is in the moment when we can talk about the beginning of the construction of the authoritarian system in the state.

Secondly, the May coup itself is widely regarded as a coup d'état. Potentially, because the offenses related to a possible coup d'état were only stipulated by Polish legislation in the penal code of 1932. The May coup could be penalized by Russian legislation in force in the former Russian partition (after changes made already after 1918 by Polish authorities), so by the so-called Tagancew Code of 1903. In this legal act in art. 99 it was stated: "Guilty of an attempt on the life, health or freedom of a person holding the highest state authority in Poland, will be punished by a severe indefinite imprisonment" (Article 99, Penal Code of 1903, taking into account the amendments and additions in force in the Republic of Poland on May 1, 1921), while in art. 100 the following statement was used:

> Guilty of an attack on the state system of Poland established by fundamental laws or of the whole of its territory will be punished by a severe indefinite imprisonment. [...] If the purpose of the attempt was to forcefully remove members of the government in power and replace them by other people, after all, without changing the basic state system in Poland, the guilty person would be imprisoned in a heavy prison for 10 to 15 years. The attack will be understood as both the commission of one of the above crimes as well as attempting it" (art. 100, Ibid).

In turn, the Polish Penal Code from 1932 in art. 93 § 2 indicates: "Anyone who attempts to change the system of the Polish State by force of violence shall be punishable by imprisonment for not less than 10 years or for life" (art. 93, Regulation of the President of the Republic of July 11, 1932 – Penal Code, No. 60, item 571), while art. 95 explicitly states:

> Whoever attempts to remove by force the Sejm, the Senate, the National Assembly, the Government, the Minister or the Court, or seize their authority, shall be subject to the penalty of the imprisonment for not less than 10 years (Article 95, Ibid).

Considering the solutions of art. 100 in Tagancew Penal Code of 1903 and art. 93 § 2 of the Penal Code from 1932, in these cases we are talking about an attack on the state system – therefore an attack on a fundamental good protected by law. Therefore, such an act should be described simply as an attack on the state. However, referring to the content of art. 99 of the Tagancew Penal Code and art. 95 of the Criminal Code from 1932, the highest offices and institutions of the state were the good protected by law – it is therefore an attack on the constitutional body of the state. The terminology indicating a 'coup d'état'

is not entirely accurate from the legal point of view. However, even using this terminology, it must be pointed out that the May coup is a successful coup – there are no unsuccessful coups, because either there is a coup or there is not. If the coup is unsuccessful, there was no coup, only preparation for it or attempt to do so. The coup has therefore a zero-one form. On the other hand, after a successful coup, the attacker seizes power in the country, consequently, the attributes of the state associated with law enforcement and the law itself become controlled by him. The effect of this is that criminal law does not apply to successful coups.

Thirdly, although the period before 1956 and after the October turn should be treated as two different political systems, the criminal law solutions adopted in 1944–1946, and therefore in the totalitarian system were in force in Poland until the entry into force of the Penal Code of 19 April 1969. The Code in this respect played an essential but not fundamental role. Changing the system – a departure from totalitarianism, and thus from the hyper-discrimination and hyper-penalization of political crimes in favor of procriminalization and propenalization tendencies after 1956, while maintaining criminal law solutions in this respect and only changes in the criminal policy towards 'political criminals' causes that the entire period of People's Poland should be treated homogeneously in this context. The attitude of law enforcement and judicial authorities towards 'political criminals' regarding the criminal basis for the act or the sentence imposed changed, but the perception of political crime as a counterrevolutionary act directed against "the gains of the revolution".

Finally, fourthly, any change in the political system defines certain acts (this issue has already been raised before) that were previously considered to be actions for the benefit of the system, but after its change they are considered directed against the state. It is about settling the past, the so-called 'backward criminalization of politics' or the settlement of earlier political crime carried out on behalf of the state. On the other hand, individuals involved in activities directed against the old system "undergo a rehabilitation process". Acts committed both 'on one' and 'on the other' side, were and are treated as political crimes in certain circumstances. For obvious reasons, these actions, after changing the system, escape code solutions, and should be considered in relation to special laws.

Thus, when defining the concept of political crime in Poland in the 20th century, we should refer to three periods, to 1926–1939 (and criminal law solutions from 1928, 1932 and 1934), 1944–1989 (criminal law solutions from 1944–1946 and from 1969) and the period after 1989 (and the Penal Code of 1997, or laws dealing with the problem of "settling the past") and within the political conditions that occur. We should try to specify the dominant determinants affecting the interpretation of 'political crime'.

In the authoritarian system in Poland, in the years 1926-1939, a political crime – as indicated earlier – was not "explicitly" specified in criminal law solutions, but on the basis of the regulation of the President of the Republic of Poland of February 16, 1928 on espionage and some other crimes against the State, the Regulation of the President of the Republic of July 11, 1932 – The Penal Code (Articles 93–113 – Chapter XVII: State Crimes, Chapter XVIII: Crimes against external interests of the state and international relations) and the Regulation of the President of the Republic of October 24, 1934, on certain crimes against the security of the State, a set of acts was described that should be treated as criminal acts of a political nature directed against the security of the state. In the espionage ordinance of 1928 in various forms and at the level of different stages of committing an act, an espionage offense was defined (art. 1–14, Ordinance of the President of the Republic of

Poland of February 16, 1928 on espionage penalties and some other offenses against the State, Journal of Laws of 1928 No. 18, item 160). However, the penalties provided for this prohibited act were not particularly repressive, e.g. in art. 1 § 1 and 2 referred to the disclosure of documents constituting secrets for the good of the state, also during the war, providing for criminal sanctions, at the maximum level up to 10 years in prison. (Ibid.) A similar scope of criminal sanctions was introduced in the Regulation of 1934 (cf. Article 2, Regulation of the President of the Republic of Poland of 24 October 1934 on certain offenses against the security of the State, Journal of Laws of 1934, item 94, No. 851). In the penal code of 1932, the legislator also did not introduce specific criminal repressions for acts directed against the security of the state. It is true that the death penalty was envisaged for the most serious crimes, such as attempting to deprive the state of its independent existence and detachment of part of its territory, assassination of the President of the Republic and undertaking military actions during the war against the Commonwealth. However, as a rule, the provisions of the Code did not have any special scope of penalization (cf. Articles 93–113, Regulation of the President of the Republic of Poland of July 11, 1932 – Penal Code, Journal of Laws of 1932, item 571, No. 60).

Political, or more broadly social, and consequently normative conditions determined the criminal sanctions and the form of this prohibited act. Therefore, it is particularly important and interesting from a research point of view that both the dangers arising from two powerful totalitarian systems (since 1933 in Germany) and the recently completed process of institutionalization of public organs, completed warfare related to the Polish-Bolshevik war, also newly stabilized state borders, conflicts resulting from historical past a few years earlier (plebiscites, Silesian uprisings and the Greater Poland Uprising, Polish-Ukrainian war), cultural differences, including civilizational in the territories of the three former partitions, also impoverishment of the society, and above all political and party conflicts in the country, which in consequence led to the May coup and the development of undemocratic movements, especially of communist provenance; did not lead to the repression of criminal solutions having a repressive nature into the criminal law system in the country. Despite the unstable situation of the state, facilitated activity – by the sum of the above determinants – for the political opponents of the Polish state (external and internal – communist groups), therefore geopolitical, but also internal circumstances, and all these factors could indicate, however, did not affect the legislator's design of criminal law solutions regarding political crimes with a high degree of repression. The coup d'état and the creation of the authoritarian system could also favor this tendency. However, none of these factors affected the specific treatment of this category of offenses. Treating the state in a special way in authoritarianism and its institutions as carriers of special historical values, but also accepted by society, played a crucial role. Treating the values associated with the state and its institutions as timeless and special was supposed to be a panacea for the political, social and state crisis of that period (Paruch, 2009). It was “[...] the attitude to these political values that became the basic factor shaping competition in public space” (http://dlibra.umcs.lublin.pl/dlibra/plain-content?id=6049; as of June 16, 2020).

Therefore, the fundamental issue in Poland in the years 1926–1939 was the concept, never actually questioned, that this state has a fundamental duty to have control over its own territory, over the fate of society. It was the basic determinant. However, this attachment to state institutions, in Pilsudski’s thought, was not destructive to potential opponents of that state. His glorification and fight with political opponents occurred at that time, but the sovereign perception through the prism of his (Józef Pilsudski) universal

acceptance and position in society gave this process positive connotations. That is why – above all – action was taken for the benefit of this state and its institutions, not destructively against opponents potentially threatening that state to maintain these institutions. Basically therefore, power decisions were directed differently than in the totalitarian system. This was reflected in criminal law solutions which, in terms of political acts against the state, were not characterized by hyper-discrimination or hyper-penalization.

As it was noted, this process was fundamentally different in the totalitarian system in Poland until 1956 and in 1956–1989. Legislative criminal law acts adopted in 1944–1946, in which the issue of political crimes was addressed, were extremely repressive, characterized by indeterminacy and a rubber form, an unusually wide range of criminal sanctions, and often also of a retroactive nature. Their specificity was that they were constructed in such a way that at the "appropriate" political moment they could be used as a tool for political struggle, but also directed at physical destruction against the enemies of the system. Their most important function, apart from the repressive function, was to intimidate the society, political opponents, but also potential political opponents. Their capacity and indeterminacy enabled them to be extremely easy to apply in practice by law enforcement and judicial authorities. The most important criminal law acts of this nature include: Decree of August 31, 1944 punishing fascist-Nazi criminals guilty of homicide and mistreatment of civilians and prisoners of war as well as traitors to the Polish Nation (Journal of Laws of 1944, No. 9, item 377); Decree of the Polish Committee of National Liberation of September 23, 1944 – Criminal Code of the Polish Army (Journal of Laws of 1944 No. 6, item 27); Decree of the Polish Committee of National Liberation of October 30, 1944 on the protection of the state (Journal of Laws of 1944, No. 10, item 50); Decree on particularly dangerous crimes during the rebuilding of the State of June 13, 1946 (Journal of Laws of 1946, No. 30, item 192); Decree of the Polish Committee of National Liberation of 30 October 1944 on the protection of the state (Journal of Laws of 1944, No. 10, item 50); Decree on responsibility for the September defeat and Nazification of state life of January 22, 1946 (Journal of Laws of 1946, No. 5, item 46).

The political purpose of these legal acts was obvious. They were an ideological tool in the brutal political struggle against political opponents. Criminal law of this period was simply a representation of the political system of the state. The political system was totalitarian and criminal law was totalitarian. This statement is valid primarily for political crimes.

Political offenses (criminal law provisions) included in the penal code of 1969, in the chapter entitled *Offenses against the political and economic interests of the Polish People's Republic* in art. 122–135, are no longer retaliatory. The catalog of these offenses was sorted out, but the political potential of the provisions related to these behaviors was still quite high. I am talking here first and foremost about the protection of the political activist defined in art. 126 of the Penal Code (Article 126, Act of 19 April 1969 – Penal Code, item 13, No. 94). For individual acts, after 1956 a different criminal law basis was used than before October 1956, or a different (lower) penalty was imposed, but the nature of criminal law solutions regarding political offenses, both from 1944–1946, and those punished in the Penal Code of April 19, 1969 was similar. Undoubtedly, the hypercrinminalization and hyperpenalization characteristic of the post-war years were separated at that time, however, the codex solutions are also indefinite, they are quite capacious in interpretation, the scope of criminal sanction was broadly defined. These provisions primarily protect a specific ideology, not a constitutional system, but the ideology of communism. Prohibited acts

directed against the state, stipulated in the code and referred to as political offenses, are somehow a reflection of the social relations and the political system as a whole at the time. The system became 'slightly civilized', so the normative notion of political crime was 'civilized' as well.

Basically, the period after 1989 should be treated differently as first a systemic transformation, then building of a democratic system, unconsolidated and finally consolidated democracy. As mentioned in the first part of the text, in this case the concept of political crime was associated with normative acts settling positively or negatively the past. In this case we can refer to, among others, the Act of 18 December 1998 on the Institute of National Remembrance - Commission for the Prosecution of Crimes against the Polish Nation, (Journal of Laws 1998 No. 155 item 1016) and the Act of 23 February 1991 on recognition of invalid decisions issued against persons repressed for activities for the sake of the independent existence of the Polish State (Journal of Laws 1991 No. 34 item 149).

However, enumerated prohibited acts recognized as political offenses under the theory of crime were specified in the penal code of June 6, 1997. The legislator listed here the entire catalog of prohibited acts directed against the internal and external security of the state, against its system, territory, constitutional organs of the state, state symbols, etc. Conditions characteristic for a democratic system meant that these provisions were not directed against specific social groups, against opponents of the political system, despite the fact that they protect political institutions operating in this (democratic) system and protect the shape of this system, but they separate from ideological content. These provisions are much more specific or casuistic, the scope of criminal penalties has been significantly reduced, and excessive repressiveness has been abandoned. Very 'legally limited' provisions protecting political activists or penalizing the crime of the betrayal of the motherland were also abandoned. At the same time, the nature of individual provisions was adapted to the requirements of modern times, especially in the area of espionage.

Political conditions of the democratic system, therefore, are guided by normative provisions regarding political crimes. Criminal law in the analyzed area becomes a democratic criminal law, thus the concept of 'political crime' has also become democratized. If we consider that criminal law in the field of offenses directed against the state is a mapping of the shape of the political system in force in a given country, it is irrelevant in this case whether the system is totalitarian or democratic. In any case, criminal law solutions in the field of political offenses are almost inherent to this system.

3. POLITICAL CRIME AS A CRIMINAL LAW CATEGORY

When treating a political crime as a specific criminal law category, this term should be used as a criminal act related to the sphere of politics, with a variable juridical description, depending on the political conditions determining the form of the crime, and in particular the political crime, an act that reflects the functioning of the political system, at a given time and on a given territory, determining the interpretation and orientation of this concept. Finally, the act can be taken by the perpetrator as a result of a specific motive or motive of a political nature, however, this is not – according to the Author, and this is also indicated by supporters of the theory of the political crime in question – an obligatory determinant. However, it must be oriented towards the good that is protected by law and has a political character. That good will be the state, its territorial integrity, independent existence and sovereignty, constitutional system, independence from all external and internal

international and supranational entities, external and internal security of the state, internal political and social order as well as independent and stable functioning of constitutional organs of the state. These may also be organs of a foreign state, if this state ensures reciprocity in this respect, also state signs and symbols, and here also, signs and symbols of foreign states, if these states ensure reciprocity in this respect.

Such a description of the concept of political crime, in the author's opinion, is relatively exhaustive and is adapted to the requirements of modern times. By introducing the concept of 'supranational entities', also the term 'possibly' should be treated in such a way that if the perpetrator attacks a specific good, which is the flag, national emblem, although the political aspect of this good is obvious, the attack on this good is of a completely different nature than, among others, attack on the life of the President, constitutional system of the state or its external security. In these cases, it is difficult to compare the scale of the attack on these goods attributed to the state. Therefore, I consider that in the case of 'minor attacks' it is necessary for the perpetrator to have a political motive with a simultaneous attack on this minor interest having a political nature. Therefore, in this case I give up using only subject theory to classify political crimes, in favor of using a mixed theory (subject-object, or subjective-objective). Because if the perpetrator, for example, stole the Polish flag, without a political motive (for sale), it seems that it is difficult to treat such an act as a political crime. However, if he did it for the purpose of desecration, due to his preferred ideology or political views, this act should be treated as a political offense. I accept a similar caveat in the event of an attack on representatives of a foreign country, but only 'formalized', accredited (consul, ambassador, governor, legitimate representative), only if it is the country that ensures the reciprocity to the Republic of Poland. Thus, if the Polish representative will be similarly protected by criminal law solutions of a foreign country on its territory. This is not about the analogous scope of criminal sanction, but rather about the form of the act being punished and its juridical description. I accept a similar reservation in the case of foreign state emblems, state signs and symbols.

When assessing the form of a 'political crime' in Poland in various political systems, several conditions should be pointed out, which fundamentally require a specific interpretation of this act, depending on the conditions in the given political system. Thus, in the period 1926-1939, taking into account the formal and legal provisions resulting from the president's ordinances of 1928 and 1934 and codex solutions from 1932, it should be noted that in the Code the legislator did not refer to the crime of espionage at all as a basic political crime, as it was in a way standard and commonly found in criminal codes. However, it is both of the President's ordinances (1928, 1934) that relate to this prohibited act and should be treated as legal acts almost immanent and genetically related and complementing the code solution. In the criminal code, in turn, the legislator referred to political crimes in art. 93-102, art. 104 and art. 106-113. So in art. 93 the protected good was the independent existence of the Polish state, the territory of the Republic of Poland and the state system. (Article 93, Regulation of the President of the Republic of Poland of July 11, 1932 – Penal Code, Journal of Laws of 1932, No. 60, item 571). It must be stated for the clarification that the attempt to attack these goods should be treated as an accomplishment in this case, because the attempt becomes conceptually excluded (Makarewicz, 1935). In further parts of the code, the life and health of the President of the Republic of Poland was protected, as well as official activities performed by him. (art. 94, Regulation of the President of the Republic of July 11, 1932 – Penal Code). The president representing the highest state body is a representative of a political body, and the attack on

this good must at the same time be a political crime. Similarly, Art. 95, in which reference was made to attempts to remove by force or seize the powers of the constitutional organs of the Republic of Poland: the Sejm, the Senate, the National Assembly, the Government, the Minister and the Courts (Article 95, Ibid.). Articles 96–98 describe the preparation and conclusion of an agreement in order to commit the above-mentioned acts. (Articles 96–98, Ibid.) Entering into an agreement with a representative of a foreign country for this purpose, undertaking warfare against the Republic of Poland, disseminating information directed against the Polish state, acting against the Republic of Poland by an authorized person (mandate), counterfeiting, altering, damaging, hiding documents to the detriment of the state, taking actions aimed at deterioration of Polish diplomatic relations and the exposure of the state to danger, dissemination of false information to the detriment of the state, acting against Poland's neutrality, assault on a representative of an (accredited) foreign state, insults or damage to the symbol of a foreign state, and incitement to an offensive war, and therefore actions directed at external security of the Republic of Poland, have been characterized in art. 99–113 of the Penal Code (See Articles 99–113, Ibid.).

During the period of the Second Polish Republic, political crime was relatively comprehensively typified, taking into account the solutions of the penal code and two non-codex legal acts. The goods protected by law were relatively precisely defined, thus both the subjective and objective side of individual acts. The scope of the criminal sanction is not particularly repressive, and their range was clearly defined. The deeds were also quite precisely defined, which prevented their free interpretation and the goods protected by law were also relatively precisely defined. In the cases of solutions from 1928 and 1934 (espionage crimes and acts related to this crime), it was the external security of the Republic of Poland, similarly in the case of art. 99–113 of the Penal Code. In addition, constitutional bodies were indicated: the Sejm, the Senate, the National Assembly, the Government, the Ministers and the courts, and the President of the Republic of Poland was listed separately. Finally, the good protected by law was the independent existence of the Polish state, its constitutional system and territorial integrity. Given that all of the abovementioned legal acts were adopted in Poland under the rule of the authoritarian system, attention should be paid to the lack of repressiveness of criminal sanctions in connection with these acts, the relative specificity of individual criminal acts, and the elimination of unspecified provisions enabling their free interpretation. In addition, despite the unstable geopolitical situation of the state, there was no special focus on the crime of espionage, and crimes related directly or indirectly to this act.

Political acts classified as crimes directed against state institutions should be treated in a fundamentally different way, i.e. political crimes marked in the so-called clearing decrees adopted in 1944–1946. They defined various forms of betrayal of the homeland (art. 1–2, Decree of 31 August 1944 in terms of punishment for fascist-Nazi criminals guilty of murder and abuse of civilians and prisoners of war and traitors of the Polish Nation), an attack on the state and an attack on the constitutional body of the state, as well as stadium forms related to the possibility of committing these acts and various forms of espionage (Articles 85–90, Decree of the Polish Committee of National Liberation of 23 September 1944 – Criminal Code of the Polish Army). The attack on the system of the state was typified, the crime of sabotage and influencing the activities of state institutions or bodies (Articles 1, 3, 5–7, Decree of the Polish Committee of National Liberation of 30 October 1944 on the protection of the state), an attack on the Polish armed forces, on a state or political official and other political crimes related to the betrayal of the homeland and

espionage (Articles 1–18, Decree on particularly dangerous crimes during the rebuilding of the State of June 13, 1946) and acts related – as defined – to the betrayal of the nation, exerting illegal influence on the shape of the state's system and dissemination of false information in order to commit a criminal act directed at legal goods related to the functioning of the state (Articles 1–3, 6, Decree on responsibility for the September defeat and Nazification of state life of January 22, 1946).

The listed normative acts were characterized by outstanding flexibility, inaccuracy, imprecision, and the phrases used enabled the prosecution of offenders to a very wide extent. The scope of the criminal sanction used was on the one hand extremely wide, often indefinite, and on the other, it had a particularly repressive nature. They were retaliatory acts aimed at settling political opponents. Referring to the nature of these legal acts, the Decree of 30 October 1944 on the protection of the state can be presented as an example (other decrees from 1944–1946 can be treated in similar categories), which was distinguished by specific features. Piotr Kładoczny conducted a detailed analysis and pointing out to

> the incredible severity of the law, which was to be a recipe for the effectiveness of law and was the result of the view about the omnipotence of the state. This last idea is also connected (with the impossibility of actually enforcing the prohibition) with going to the forefront of the act and prohibiting acts that were neutral in normal conditions. The use of sanctions with the widest possible range of limits (sometimes an indefinite sanction), which was to facilitate disposable judges to pass arbitrary judgments. As far as possible blurring the subjective side of the crime in question by promoting value and indeterminate features and referring regulations, due to which the law completely lost its warranty function. The dominant role of the subjective side of the crime, which often determined the legal classification of the act with the same objective side, proving the appropriate type of guilt, in the presence of available judges was often very simple. Introduction to the category of offenses against the state of types of offenses that protected the economic and social system of the communist state (something previously unknown in Polish legislation); modeling, and often copying Soviet solutions, which strengthened the non-sovereignty of the state. A tendency to equalize in terms of criminal sanction and placing in one criminal law regulation acts having nothing in common in terms of traits, whether it is the subjective or the objective side, in order to achieve a certain social engineering effect, e.g. to disdain the activities of patriotic and non-conformist people; equating such persons in one act or decree with the perpetrators of criminal offenses was to draw an odium on the former (Kładoczny, 1998).

However, the basic concept determining the form of a political crime, both in the totalitarian period and after 1956, was a counterrevolutionary crime. Every act directed against the institution of the state, against public and political entities, and thus against the political goods of the state, consequently constituted an action against the proletarian revolution, thanks to which it constituted the ‘new socialist state’. Therefore, any such act against the socialist state was a political crime. As pointed out by J. Feldman:

> [...] the criminal legislation of the People's Poland in its content not only does not constitute a continuation of the capitalist-territorial Polish legislation, but is quite the opposite [...]. Counter-revolutionary activity often manifests itself in the form of a whole chain of related homogeneous acts, such as, for example, the successive collection and transmission to imperialist intelligence of messages constituting a state secret, the systematic dissemination of hostile propaganda and others, or various, such as participation in a counter-revolutionary organization and carrying out acts of terror, storing firearms, more or less advanced preparations for espionage etc. [...] Therefore, if we weigh the homogeneity of the subject of counterrevolutionary offenses, homogeneity of their subject (intentions and counterrevolutionary motives), homogeneity of their subject (enemy of People's Poland), it should be concluded that the difference between individual forms of counterrevolutionary offenses is primarily determined by their objective side and sometimes also some elements of the subject (counter--revolutionary purpose) or direct subject of the crime" (Feldman, 1954). The Polish interpretation of the counterrevolutionary crime was a mapping and extension of the Soviet provision contained in Art. 58, after the amendment in 1926, of the Penal Code of 1922, concerning counterrevolutionary crimes in the Stalinist period (Bosiacki, 1998).

The concept of ‘counter-revolutionary crime’ dominated the category of ‘political crime’ in the period after 1944/1945 in Poland. This interpretation also influenced the characteristics of acts directed against political and economic interests in the Penal Code of 1969. The legislator within chapter XIX of the Penal Code distinguished the crimes of betrayal of the homeland, an attack on the state, espionage, an attack on a public official and a political activist, sabotage and damage, stadium forms in connection with the acts specified in art. 122–127, diplomatic betrayal, intelligence misinformation, establishing an agreement with a person acting for the benefit of a foreign state in order to cause damage to the Polish state, also calling for acts directed against allied unity, the great economic scandal, and in art. 135 – a great foreign currency scandal (art. 122–135, Act of 19 April 1969 Penal Code, Journal of Laws of 1969 No. 13 item 94). As pointed out by A. Krukowski, the nature of the offenses against the political and economic interests of the state should be treated in an integral way, because the deciding factor here is:

> [...] the dialectical unity of political and socio-economic interests, characteristic of states with a socialist system. Each attack on the external security of the People's Republic of Poland threatens the systemic achievements of the working masses, just like the attacks on the systemic foundations (political or socio-economic) pose a danger to the existence of independent Poland (Krukowski, 1969).

Therefore, the acts stipulated in the penal code were associated with a specific ideology (the attack on the state was a political attack and an action against the dominant ideology on which ‘working people of cities and villages’ based their functioning). Thus, the concept of counterrevolutionary crime as an act directed against the socialist state – as a political crime – was sustained. In turn, if this type of crime was particularly severe for the functioning of this country, then in order to ‘effectively enable’ law enforcement and

judicial authorities to prosecute the perpetrators of these acts, their juridical description consisting of vagueness and generality enabling (or not – in this way as in the case of settlement decrees) any interpretation was maintained. Criminal law in this regard was a tool supporting the state system and public (political) authorities. Thanks to it, in the majesty of law, individuals with a different mind were discriminated against. Thus, totalitarian ideology must have resulted in the fundamental repressive nature of criminal law in this regard (Lityński, 2005 and 2002).

Fundamentally, the form of 'political crime' should be treated differently in the systemic conditions in force in the country after 1989. The system is in the 'gray zone' (see Antoszewski, Herbut, 2004) and then moving towards democracy was based on completely different principles than its predecessor before 1989 (Antoszewski, 2012). In this case, 'political crime' should be interpreted from the perspective of the past, as a negative or positive act related to previous activities – analogically – pro-system or anti-system activity, as well as in classical conditions resulting from the code solutions. In the first case, acts directed against the totalitarian system and at the same time for the existence of an independent Polish state should be considered as political (see Act of 23 February 1991 on recognition as invalid of judgments issued against persons repressed for activities for the independent existence of the Polish State, Journal of Laws 1991 No. 34 item 149; Kauba 1995, Wilk 1993). Whereas 'negative political offenses' should be typified in connection with the previous criminal activity of state organs or individuals acting on behalf of these organs (see Act of 18 December 1998 on the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation, Journal of Laws 1998 No. 155 item 1016).

In the classical sense – codex, the legislator in the penal code of June 6, 1997 in chapter XVI entitled *Offenses against the Republic of Poland* enumerated the following prohibited acts which, according to subject theory (art. 127–130, art. 132-135), supplemented with a mixed theory (art. 136–137), should be considered political crimes: 1) in art. 127 of the Penal Code it is an "attack on the state"; 2) in art. 128, "an attack on a constitutional organ of state"; 3) in art. 129 – diplomatic betrayal; 4) in art. 130 – espionage; 5) in art. 132 – intelligence misinformation; 6) in art. 133 – insulting the Nation or Polish state; 7) in art. 134 – assassination of the President of the Republic of Poland; 8) assault and insult of the President of the Republic of Poland is typified by art. 135; 9) assault and insults of a representative of a foreign state are defined in art. 136, 10) insult of Polish state symbols and symbols of a foreign state are indicated in art. 137. (see Articles 127–130, 132-137, Act of 6 June 1997 – Penal Code, Journal of Laws 1997 No. 88, item 553).

The new Penal Code was based on democratic values, therefore criminal law in this respect is no longer a tool to fight political opponents, while the concept of 'political crime' is not related to the concept of counter-revolutionary act. The legislator also separates from ideological connotations, although the law in this respect protects – obviously – a particular political system, in this case a democratic system. The provisions are, however, relatively precise, if possible specific. Vague provisions have been abandoned, specific criminal repression has been waived, the criminal act has a specific character, the scope of individual criminal sanctions has been clarified and reduced. The provisions of Chapter XVI protect basic political goods related to the state, such as independence, sovereign existence, territorial integrity, external and internal security of the state, constitutional system, functioning of constitutional organs of the state, etc. However, these provisions are not used in any way in the political struggle against specific individuals, social groups or society as

such. The legislator resigned from acts related to economic turnover within the crimes against the Republic of Poland, from the crime of treason of the homeland as a doubtful act in modern 'borderless' Europe (in favor of an extensive form of espionage), specifying the juridical description of individual prohibited acts indicating that, e.g. there is a constitutional system of the state, not simply a system. It was pointed out that individual acts were punishable, but provided that they were directed against the Republic of Poland, and not only by the fact of their occurrence.

To sum up, if we are dealing with the interpretation of the notion of political crime in a democratic system, this should be done within democratic political conditions. Therefore, if the system is democratic, then also criminal law regarding these acts is of such nature. It fulfills the warranty and protective role. At the same time, this group of prohibited acts does not include, even if they are politically motivated: "war crimes, genocide and other crimes against groups of the population, as well as terrorist attacks involving human casualties or posing such a threat" (Wojciechowska, 1999).

4. SUMMARY

Political crime, its form and normative interpretation, usually not explicitly specified in criminal law solutions, both codex and non-codex, depends to a large extent on political conditions. It is the shape of the political system that determines the form of political crime. In addition to the classic forms of this offense, defined in criminal law solutions (generally comprehensively in criminal codes), such as an attack on the state and its constitutional organs, and goods attributed to the state itself: the constitutional system, independence from external entities, and state security; in political systems, after changing these systems (it does not matter if democratic or undemocratic), there are tendencies to settle the past. This is a negative settlement, 'traitors of the nation', 'responsible for the defeat of the state', 'troublemakers' (e.g. "criminal liability of the traitors of the Nation are governed by the following provisions: 1. Art. 100 of the Penal Code of 1932, 2. Art. 100 and 185 of the Polish Penal Code, 3. Decree of 31 August 1944 on punishment for fascist-Nazi criminals guilty of murder and abuse of civilians and prisoners of war and traitors of the Polish Nation, 4. Decree of November 4, 1944 on protective measures towards the traitors of the Nation" – Sawicki, Chojnowski, 1945), as in Poland after 1944/45 (settlement decrees). It is also accounting for the past by attempting to prosecute, possibly politically, persons responsible for the implementation of previous state crime, or crime carried out on behalf of the state or under state supervision (e.g. Act of 18 December 1998 on the Institute of National Remembrance – Commission for the Prosecution of Crimes against Polish Nationality, Journal of Laws 1998 No. 155 item 1016). But after the system change, there is also a tendency to settle 'positive' political crimes consisting in restoring dignity and rehabilitation to individuals previously working for the independence of the state, against the system of e.g. totalitarian and totalitarian state (e.g. Act of February 23, 1991 on declaring invalid the judgments issued against persons repressed for their activities for the sake of the independent existence of the Polish State (Journal of Laws 1991 No. 34 item 149).

Summing up, the shape of the political system determines the interpretation of a political crime and the shape of criminal law provisions defining this prohibited act. The more the system moves away from the democratic equivalent, the more vague the juridical description of this crime is, the features of the act are of an assessment nature, the scope of

the criminal sanction is very wide, and the punishment itself is extremely repressive, sometimes indefinite. The act may be subject to free interpretation by law enforcement agencies and judicial authorities, which makes it possible to use this part of criminal law as a tool to fight political, real and imaginary opponents and to intimidate society. On the contrary, in a democratic system, the juridical description of a prohibited act is much more specific, precise, devoid of judgmental values, the scope of sanctions is precisely defined, and usually there is a departure from hyper-discrimination of these acts. Of course, a 'set of goods' of a political nature is protected, that is, a certain shaped political system, however democratic, and the provisions are devoid – in principle – of ideological connotations.

Finally, the form of political crime can be considered from the perspective of various scientific theories: subjective, objective, mixed, preponderance and civil disobedience. According to the author, the most useful for the analyzed research problem in Polish systemic conditions (nowadays) will be the use of object theory, when only the form and nature of the attacked good protected by the law will have a high level of political nature (goods inherently belonging to the state), then the act should be defined as a political crime. In the case when these goods have less significance (emblems, signs and symbols, protection of representatives of foreign countries), it seems necessary to use a mixed theory, ordering the occurrence of specific factors on the side of the perpetrator (political motive), supplemented by the political nature of the attacked good.

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