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Background Report

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POLISH LAWYERS UNDER REGIME PRESSURE

The Polish regime is once again earnestly pushing toward the complete abolition of private legal practice in that country.

Although a general trend toward an increased measure of "freedom of speech" in the Polish world of science has been discernible in press articles by Party member scientists since the conclusion of the Soviet 22nd Party Congress, what is equally apparent is that the relaxation of Party censorship where pure science is concerned has not been extended to cover any other area of professional endeavor. Least of all the Polish judiciary.

Speaking at the Ninth Polish Plenum, which followed close after the Soviet Congress, Party Chief Wladyslaw Gomulka made it clear that he had completed Poland's de-Stalinization process immediately following his return to power in October 1956, that current Party policies would continue to proceed along routine lines, without undergoing serious change. The Polish judiciary, and especially defense lawyers, have been under ever-increasing fire throughout 1961. It is clear now that the second de-Stalinization congress in the USSR brought with it no softening of the attacks against barristers in Poland.

Defense Lawyers Brought to Trial

According to "Trybuna Ludu" of November 8, some 100 of a total of 6,000 defense lawyers have been brought to trial in recent months for alleged breaches of ethics (charges of improper influence on officials, bribes, false witness, acceptance of fees above the fixed rates set by the state, etc.). Pursuant to these trials (and to a series of violent press attacks on defense lawyers), a two-day plenum of the Polish Lawyers' Association was convoked for December 3-4, whose purported intention was to raise the ethical standards of the profession. The plenary resolution (PAP, December 4) suggested that lawyers' ethics would improve if lawyers' cooperatives were to base on genuine collective principles, in contrast to the current state of affairs in which lawyers' organizations are cooperative in name only. In addition, said the resolution, lawyers should have a "proper social attitude" and fulfill their functions "in a manner corresponding to the role played by the bar in a socialist state".

The chairman of the Polish Lawyers' Association, Marian Mazur, stressed at the plenum that private legal practice in Poland should be entirely abolished. The plenum was assured by Chairman Mazur that the state will continue to intervene to punish lawyers who do not conform to the "true ethics" of their profession. Among other things, it was suggested at the lawyers' plenum that the various so-called lawyers' self-government groups hold meetings throughout the country at which the alleged unethical behavior of those defense lawyers who, acting independently of the cooperative, and arriving at private cash arrangements with clients would be condemned. These groups were urged to set about organizing themselves on "more genuine collective principles". Such meetings have indeed been held over the past two weeks, however their conduct has not been, by far, all the regime would desire. Many barristers have spoken out, at these meetings, against the blanket regime denunciation of the corps of defense lawyers - a denunciation based solely on allegations of the unethical dealings of a handful of barristers. As even Marian Mazur's deputy, W. Zywicki, has put it: "Each profession requires an atmosphere of trust and respect in order to function properly. When these are denied - work breaks down." ("Prawo i Zycie", November 26.)

It seems that some defense lawyers are just too good at their work for the regime's liking. Some lawyers put forth their clients' cases with such resolution and skill that state attorneys for the prosecution often come in for considerable embarrassment. Appalled, the Party organ "Trybuna Ludu" of November 8, wrote that lawyers are abusing the freedom of speech: "... how many (lawyers) followed the tactics of 'defense at any price', how many exceeded the limits of free speech! There is a big problem, it cannot be hidden." "Trybuna Ludu" adds the consideration that "... it would be worthwhile thinking about controlling and verifying the lists of people who have been admitted to the bar in previous times."

It seems reasonable to conclude that, if such a "verification" process were to take place, those defense lawyers in possession of a good measure of the skill of their craft would no longer be allowed to practice it. The regime cannot hope to influence judicial decisions as much as it would like so long as defense lawyers are obviously superior to the state prosecution.

Since the meetings held by the lawyers' self-government groups have not been producing the desired results, the regime has concluded that the role of self-government will have to be altered - the self-government is too obviously out of step with the Communist government in power. "Zycie Warszawy", December 5:

"The reaction of the lawyers' self-government was in many cases marked by a wrongly understood solidarity, the self-government was unable to counteract, with sufficient energy, many negative occurrences. It is

therefore obvious that the role of self-government must be changed, offering a guarantee of the appropriate attitude necessary to our society."

"Zycie Warszawy" (of the previous day) also makes it clear that if self-government groups do not sufficiently curb the professional zeal of defense counsels, then the state would undertake to do this itself:

"The present disciplinary commissions (of the bar) are too lenient - for that reason it seems indispensable that state organs should, in certain definite cases, be entitled to interfere concerning the poor work of some lawyers. The sequence of the various controls should be as follows: first the self-government and disciplinary organization, and only if they should prove tardy or inactive - state control."

Jerzy Mayzel complained in "Prawo i Zycie" of January 7 about the "Resolution No.533 of the Council of Ministers of 13 December 1961 on legal service of state enterprises, trusts and banks" which bars private defense lawyers from exercising the functions of a legal advisor to a state enterprise. Mayzel stated that the Resolution had been preceded by a discussion of some years' duration within the Union of Polish Lawyers. Neither in the discussion nor in the draft of the Resolution prepared by an inter-ministerial committee had such a ban been envisaged.

A scrutiny of the respective Resolution published in "Monitor Polski" No.96 of 21 December 1961 shows that "defense lawyers practising their profession cannot be legal advisors" (para 7, item 2, 1). Defense lawyers who at the moment of the entry in force of the Resolution (1 January 1962) exercise their profession (i.e. private practice) and at the same time are legal advisors to state enterprises can continue in both these jobs for two more years (till 31 December 1963) provided that they do not spend more than 46 hours a week for their legal advisor job (para 20 of the Resolution).

Pressure on the Supreme Court

Not only lawyers, but the Supreme Court itself is to be subjected to more interference from the state. On December 1, a new law on the Supreme Court proposed by the Council of State and the government was presented to the Sejm for discussion and enactment by the secretary of the Council of State, Julian Horodecki ("Trybuna Ludu" and "Zycie Warszawy" of December 2).

Although the projected new law emphasizes the full independence of the Supreme Court and its position as supreme arbiter over the whole Polish judicial system, an examination of the individual points of the projected new law indicates that the Supreme Court would in fact lose at least part of its

independence by a greater subjugation to the Council of State if the projected law is passed.

While judges are now elected to the Supreme Court for life by the Council of State, under the new law they would be elected by the Council of State to five-year terms. In addition the Council would have the right to fill vacated posts and would also be able to remove a judge for the following reasons: if he resigns, reaches age 70, becomes incapable of fulfilling his duties through illness or accident, or "is unable to provide adequate guarantees that he can fulfill his tasks". In addition, the First Chairman of the Court would be required to make regular reports on its work to the Council of State, which would also have the right to decide on the internal organization of the court and to review Supreme Court decisions involving serious disciplinary punishment.

In addition, the new law would consolidate the whole of the Polish judicial system under the Supreme Court which would thus become the top judicial body over not only the normal civil and criminal courts (as it has always been), but also over military tribunals and social security courts. According to the proposed law, the Supreme Court would therefore be composed of a First Chairman responsible for its entire activity, and of four Benches, the Civil Bench, Criminal Bench, Military Bench and Social Security Bench, each headed by a Chairman.

Thus the Benches are to report to the First Chairman of the Supreme Court, while he in turn must report to the Council of State. The Supreme Court becomes an arm of the Council of State. There can be no thought of governmental "checks and balances" in the People's Republic, since all the major functions of power -- executive, legislative and judicial -- now reside with the Council of State.

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