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Durability of the Polish Supreme Court positions in criminal cases in the perspective of the influence of Soviet law on Polish criminal law (on the example of the Polish Penal Code of 1969)

The aim of the this article is to provide a synthetical study on the stability of the Supreme Court's jurisprudence in criminal cases. The discussed concept of stability is a circumstance in which the views of a certain period from the past are related to the contemporary criminal law regulations. Given an intention to sustain the analysis within a capacity appropriate for the standards of a scientific paper, the elaborations were limited to positions relatable to applicable legal order: particularly those existing within the present context of Polish criminal law via the influence of Soviet legislation.

Keywords: *criminal law, penal code, polish law, supreme court, jurisprudence*

1. Introduction

Spanning over a century, the history of Poland's Supreme Court has gone through a multitude of revisions in the functioning of judicature. Among the factors contributing to them, were the transformations of the state's political system. Interestingly, 20th-century Polish courts began functioning even before the reclamation of the country's independence[1]. Nevertheless, historical factors are not the sole argument that makes their activity worth exploring. The motivation also lies in the peculiar significance of statements provided by the Supreme Court. They would often constitute a source of multi-faceted inspiration for the broadly understood legal community in Poland. Since the very beginning, the contents of these statements have been used, and continue to be utilized, as source material for theorists interested in the dogmatic application of particular judicial branches.

The purpose of the following paper is to synthetically elaborate on the stability of the Supreme Court's jurisprudence in criminal cases. In the context of the titular issue, stability is understood as a circumstance in which the views presented in the past are related to the currently applicable criminal law regulations. In order to keep the analysis within a reasonable capacity appropriate for the standards of a scientific article, further elaborations were limited to selected positions expressed in

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1 The beginning of the Polish judiciary falls a year before the Polish state regained independence after the period of partitions – *Pietrzak M.*, Sąd Najwyższy w II Rzeczypospolitej, Czasopismo Prawno-Historyczne, Vol. XXXIII, №. 1, 1981, 101 (in Polish). It is also worth adding that the moment of the rebirth of Polish statehood falls on 11 November 1918, while on 1 September 1917 the Polish justice system formally passed into the hands of the temporary "royal-Polish" authorities, and the inaugural session of the Supreme Court took place on 14 December 1917 – *Izdebski H.*, U progu odrodzonego sądownictwa II Rzeczypospolitej, Zeszyty Naukowe Sądownictwa Administracyjnego, №. 2, 2019, 13 (in Polish).

relation to the currently applicable legal order as those existing in the context of Polish criminal law via the influence of Soviet legislation[2].

The aforementioned limitation establishes the research as sufficiently attractive. It is worth noting that the legal standards currently in force in Poland are radically separated from the ideas of Soviet law. Thus, the validity of the Supreme Court's positions expressed in judgments issued under an outdated and inactive legal and political regime may seem confusing. Especially since they concern an undoubtedly crucial issue that is the matter of criminal law: a branch of law whose interference is final.

Selecting exemplary positions from the period when the Supreme Court's activity was influenced by Soviet criminal law, the focus was centered on the 1969 regulations of the Criminal Code of 1969[3]. This is due to the adequacy of this act in regard to the title issue. The approach to crime adopted in this code is in line with the socialist interpretation of crime that originated in the doctrine of criminal law following the Soviet Revolution. From this perspective, crime is a manifestation of class society and constitutes an attack on the interests of the ruling worker-peasant class[4].

2. The Influence of Soviet Law on Polish Criminal Law – an Outline

Assuming that the Soviet teaching of criminal law is fundamentally different from the legal standards currently prevailing in Poland is far from groundbreaking. To preserve the reliability of this study, it is necessary to state several important remarks that will allow us to outline the general features of this law as well as its fundamental assumptions.

First and foremost, the foundations of the Soviet criminal law model are based on the Marxist-Leninist approach to the issue of criminal liability. In this approach, criminal law serves to protect and empower the socialist state of workers and peasants. What is quite specific here, is the transparent partisanship and social classism that imposes the postulate of an open condemnation of different penal philosophies. It is even claimed that Soviet criminal was intended to serve as a tool for ruthless criticism of trends opposing the idea of Marxism-Leninism. The idea of punishment was thus permeated by militant Bolshevik partisanship and its principle of maintaining the Soviet legal regime[5]. Likewise, worth noting is the fact that in Bolshevik Russia criminal law was recognized as the fundamental field of law, which is why it was sometimes unambiguously associated with the entire legal system[6].

Like any other legal system, Soviet criminal law also went through various periods. The years between 1917 and 1939 deserve special attention as they brought upon numerous changes. They were

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2 It should be clearly stated that this text does not pretend to be exhaustive. It is intended to highlight observations that may contribute to deepening the topic.

3 Act of 19 April 1969 – Polish Penal Code (Journal of Laws №. 13, item 94, as amended).

4 *Królikowski M.*, *Zabłocki R.*, Prawo karne, Warsaw, 2020, 143 (in Polish).

5 *Giercenzon A.A.*, Prawo karne. Część ogólna. Wydanie czwarte, przerobione (przekład z rosyjskiego), Warsaw, 1952, 15-17 (in Polish); also *Wyszynskij A.*, Teoria dowodów sądowych w prawie radzieckim, (trans.) *Litwin J., Schaff L.*, Warsaw, 1949, 27 (in Polish).

6 *Maciejewski T.*, Historia powszechna ustroju i prawa, Warsaw, 2007, 818 (in Polish).

the consequence of natural evolutionary processes that translated into ideological modifications. Moreover, they were a product of a ruthless pursuit of the socio-political reconstruction of the Soviet state by the revolutionary dictatorship of the proletariat[7]. Over time, the rigors associated with it slightly weakened, and the law itself began to liberalize[8]. After World War II, there was a noticeable shift that moved it further away from the Stalinist system of penal repression. Noticeably, public discussions on the shape of criminal law were allowed[9], and the death penalty was abolished, although only temporarily for periods of peacetime[10].

Concurrently, the beginnings of the transformation of Polish substantive criminal law coincided with the activity of the Polish Committee of National Liberation. Although the Committee existed for only half a year in 1944, it managed to create a political structure that was completely subordinated to the Soviet Union. This structure, including modifications that would not affect its foundations, would endure until 1989[11]. Polish criminal law was also shaped by this politicization: one of its main functions was to "suppress the resistance of the class enemy" following the blueprint set by Soviet criminal law[12].

Likewise, following the Soviet model, Polish criminal law was associated with a strict criminal policy. This applies to the entire period before 1989. The 1960s and 1970s were a particularly outstanding period that brought about a clear tendency to use criminal law as a means of repression. This is clearly demonstrated by statistical data on the frequency of imposing medium-term and long-term prison sentences, which would systematically increase until the first half of the 1970s, and continue to sustain this high level[13]. What is important for the title issue is that at that time, specifically on January 1, 1970, the Polish Penal Code of 1969 came into effect. This date and event

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7 *Mohyluk M.*, Wacław Makowski o radzieckim prawie karnym, Miscellanea Historico-Iuridica, Vol. VII, 2009, 86 (in Polish).

8 *Lityński A.*, Prawo Rosji i ZSRR 1917–1991 czyli historia wszechzwiązkowego komunistycznego prawa (bolszewików). Krótki kurs, Warsaw, 2017, 185-204 (in Polish).

9 *Lityński A.*, O Podstawach ustawodawstwa karnego ZSRR z 1958 r. oraz o kodeksie karnym RSFRR z 1960 r., Miscellanea Historico-Iuridica, Vol. VII, 2009, 175, (in Polish).

10 The death penalty in times of peace was abolished on May 26, 1947, and reinstated on January 12, 1950, with subsequent consequences extending the list of crimes punishable by death – *Laskowska K.*, Podstawowe zagadnienia instytucji kary śmierci w świetle prawa i praktyki wymiaru sprawiedliwości w dziejach Rosji, Miscellanea Historico-Iuridica, Vol. VII, 2009, 57 (in Polish).

11 *Lityński A.*, Prawo karne Polski "lubelskiej" (1944), Studia Iuridica Toruniensia, Vol. 31, №. 2, 2023, 129-144 (in Polish).

12 *Andrejew I., Lernell L., Sawicki J.*, Prawo karne Polski Ludowej. Wiadomości ogólne, Warsaw, 1954, 220 (in Polish).

13 Lech Gardocki's analyses are useful here. They show that convictions for sentences exceeding 2 to 5 years were as follows: in 1963 – 4,303, in 1966 – 6,408, in 1968 – 7,770, in 1970 – 8,297 (6.6%), and in 1975 – 12,543 (10.5%). It is easy to see that since 1963 the number of convictions for sentences of imprisonment in the above-mentioned lengths has increased almost three-fold. In turn, sentences of 5 to 15 years of imprisonment were imposed: in 1970 – 899, in 1971 – 993, in 1972 – 1,147 and in 1975 – 2,045, which constitutes a more than two-fold increase in the ratio of convictions in the period between 1970 and 1975 – *Gardocki L.*, Prawo karne lat osiemdziesiątych, Reforma praw karnego propozycje i komnetarze. Księga pamiątkowa Profesor Barbary Kunickiej-Michalskiej, *Jakubowska-Hara J., Nowak C., Skupiński J.* (*eds.*), Warsaw, 2008, 65 (in Polish).

serve as a mark that undeniably set this act as a certain symbol of the tendencies prevailing in criminal law during that period[14].

The Polish Penal Code of 1969 was intended to implement the legacy of socialist doctrine in this field. The Code was also intended to become a legal act of a new socio-political nature. At multiple points, it would call for a departure from the prior interpretations of similar regulations[15]. According to the creators' intentions, this code was set to correspond with the ideas of socialist humanism, take into account both the socio-political and economic conditions, as well as consider the structure of crime in Poland. The implementation of the idea of humanism – according to the justification of the draft Polish Penal Code of 1969 – materializes as the protection of the socialist state as a body that ensures the conditions for the cultural and economic development of the society. It also serves to protect social property that constitutes the economic basis of this state, maintain the rights and interests of every citizen, and preserve the rule of law and its effectiveness[16].

Despite the noticeable emphasis on the protection of values that are important within the modern legal standards of European culture, such as the rule of law and the interests of the individual, the Soviet idea of criminal law – through the political structure of the state – continued to permeate into the doctrine of Polish criminal law. Of course, Soviet law also had its aspirations, which, although idealistic, would even appear rational to a certain extent. Indeed, by definition, the public interest should harmonize with the state interest. Any counterweight within this area was not advisable. However, it is difficult to talk about securing the interests of an individual in the context of currently existing standards. The very theory of socialist law denies this: Soviet dogma, for instance, does not believe that the division into public and private law should apply to socialist law. The argument is that such a division is justified when the means of production are under private ownership[17]. Within that particular model of an ideal socialist state, that form of ownership would not exist.

At this point, it is worth emphasizing the important role that judicial decisions play in reading the law. For the purposes of the study presented here, it is sufficient to point out that the judicial understanding of specific legal regulations, especially when developed in the jurisprudence of higher instances, may serve functions similar to those of an act[18]. In other words, court decisions can in some sense shape the law, moving them closer to precedents: this issue will be covered in more detail later in the study. Assuming this view is correct, there is no need to argue further about the importance of a properly conducted process of interpretation, the aim of which is to properly read the content of the law. In this context, it is worth noting that despite Poland remaining in the sphere of influence of the

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14 It should be noted, however, that the criminal policy of the state is not exhausted in statistics. It also includes legislative processes aimed at expanding criminal law protection (criminalization) and narrowing it (decriminalization). During the existence of the Soviet Union, the ease of criminalizing various social phenomena periodically decreased. This applies to periods in which life was liberalized and democratized. In Poland, such periods occurred after 1955 and in the years 1980-1981 – *Gardocki L.*, Zagadnienia teorii kryminalizacji, Warsaw, 1990, 39 (in Polish).

15 *Bafia J., Mioduski K., Siewierski M.*, Kodeks karny. Komentarz, Warsaw, 1971, 3 (in Polish).

16 *Andrejew I., Świda W., Wolter W.*, Kodeks karny z komentarzem, Warsaw, 1973, 7 (in Polish).

17 *Seidler G.L., Groszyk H., Malarczyk J.*, Wstęp do teorii państwa i prawa, Lublin, 1963, 355, 357 (in Polish).

18 *Wiatrowski P.*, Dyrektywy wykładni prawa karnego materialnego w judykaturze Sądu Najwyższego, Warsaw, 2013, XLVIII (in Polish).

USSR, Polish jurisprudence retained a significant degree of autonomy when it came to methodological concepts in the interpretation of legal provisions. Despite the strong impact of the so-called Marxist legal theory on individual legal disciplines, the work of Polish legal theorists was never completely ideologically dependent on Soviet law. This allowed those theorists to develop various concepts of legal interpretation that remain applicable to this day[19]. Therefore, one may reach a bold, but not unfounded conclusion that during the time of Soviet law's influence on Polish criminal law, interpretative tools could serve as channels through which divergent values could be smuggled. The only condition was that they should be based on a legal text.

For obvious reasons, the preparation of the exegetes themselves, i.e. the people interpreting the law, was of key importance. The correct use of developed, frequently very complex concepts of legal interpretation requires substantive competencies. While Polish jurisprudence retained a certain degree of autonomy in the post-war period, the availability of properly qualified individuals was an issue. In retrospect, it is estimated that until 1989 the courts in Poland did not indulge in deeper self-reflections, often supplementing or even replacing rational reasoning with political arguments. This is what Tomasz Kaczmarek sees as a pathological circumstance: seeing the source of judges' self-justification in the form of following political directives in the practice of justice[20]. On the other hand, according to Lech Gardocki, the main reason for the constant tightening of criminal policies during the Polish People's Republic, especially in the 1960s and 1970s, were the incorrect assumptions made by those who were shaping them. These individuals are said to have assumed that negative social phenomena could be eliminated by harsh courts. This comes down to equating the strengthening of legal rights protection with increasing criminal penalties for violating them[21].

In light of the remarks made above, several general conclusions can be already drawn. First and foremost, there is no doubt that connections between Polish criminal law and Soviet law existed throughout the pre-1989 period. These influences were intended to be implemented based on the Polish Penal Code of 1969: its entry into effect coincided with the tendencies to tighten criminal policies in Poland. In light of this comparison, it is easy to notice the conjunction between the functions of Polish criminal law and the implementation of the postulates shaping the idea of Soviet criminal law. Naturally, the effects of this unification had to be visible in the activities of the Polish judiciary system. Particularly noteworthy in this respect is the activity of the Supreme Court, bearing significant importance regardless of the given period in time.

3. The importance of the jurisprudence of the Supreme Court in Poland

The activities of the Supreme Court functioning in Poland can be discussed from various angles. Methodologically, each discussion requires an emphasis on different issues, depending on the goals

[19] *Kotowski A.*, Wykładania orientacyjna. Teorie wykładni prawa i teoria orientacyjnego badania wykładni prawa, Warsaw, 2018, 141-149 (in Polish).

[20] *Kaczmarek T.*, Materialna treść przestępstwa jako problem kodyfikacyjny, Rozważania o prawie karnym. Księga pamiątkowa z okazji siedemdziesięciolecia urodzin Profesora Aleksandra Ratajczaka, *Szwarc A.J.* (*ed.*), Poznań, 1999, 172-173 (in Polish).

[21] *Gardocki L.*, Prawo karne lat osiemdziesiątych, Reforma praw karnego propozycje i komnetarze. Księga pamiątkowa Profesor Barbary Kunickiej-Michalskiej, *Jakubowska-Hara J., Nowak C., Skupiński J.* (*eds.*), Warsaw, 2008, 67 (in Polish).

that are being set. For the title issue, it is important to illustrate the role that the jurisprudence of the Supreme Court played during the period in which the Polish Penal Code of 1969 was in force, while also presenting the role it plays now. This will serve to extend the analysis undertaken in this article. Moreover, it provides grounds for a clearer presentation of the ambiguous validity of the Supreme Court's positions expressed in judgments issued at a time when Polish criminal legislation was influenced by Soviet thought.

At this juncture, one should start by pointing out that in the period from February 22, 1964, to October 2, 1984, one of the competencies of the Supreme Court was to establish guidelines for the administration of justice and judicial practice[22]. When it comes to creating an image of law in society, the importance of these guidelines has to be appreciated as they were binding all courts and legal bodies where jurisprudence was subject to the supervision of the Supreme Court[23]. These guidelines not only followed the trend of intensifying criminal law repressions: having come as far as even navigating judicial practice in a direction favouring more severe punishment. Some acts even explicitly stated the need to toughen criminal policy[24].

By abolishing the competence to establish guidelines, the Polish legislator slightly modified the function and role of the Supreme Court's activity. Nevertheless, it still directed it towards the practice of lower courts. However, this influence has been extended to involve practices of interpreting criminal law provisions. The Supreme Court began to gain competence to issue resolutions containing guidelines on the interpretation of law and judicial practice in order to standardize the case law of all courts. Obviously, this concerned case law that was subject to the supervision of the Supreme Court. The statutory purpose of this competence was to clarify provisions that raised doubts in practice, as well as situations where their application resulted in discrepancies in case law[25]. The discrepancy in case law, which was tackled by the Supreme Court, occurred when courts adjudicating in specific cases issued different decisions, or even the same decisions: but based on different interpretations of the same provisions. Therefore, the requirement for meeting this condition was the character of the interpreted provisions[26]. The Supreme Court lost this competence on December 29, 1989.[27]

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22 Article 24 point c of the Act of 15 February 1962 on the Supreme Court (Journal of Laws №. 11, item 54, as amended).

23 *Wróbel W.*, Zmiana normatywna i zasady intertemporalne w prawie karnym, Kraków, 2003, 162 (in Polish).

24 A characteristic example is the announcement of the First President of the Supreme Court of 28 April 1967 on the guidelines of the justice system and court practice in the matter of procedure and sentencing of recidivists (M. P. of 1967, №. 27, item 125), which openly questioned the previous judicial practice, indicating that: "The analysis of court decisions leads to the conclusion that the reaction of the courts to the phenomenon of growing recidivism does not always correspond to the principles of proper application of the law and the postulates of criminal policy. In many cases, the courts show leniency towards recidivists, not taking into sufficient consideration the social danger resulting from the fact that they repeat attacks on the people's legal order. This state of case law requires improvement."

25 Article 13 item 3 of the Act of 20 September 1984 on the Supreme Court (Journal of Laws №. 45, item 241, as amended).

26 *Iwulski J.*, Podejmowanie przez Sąd Najwyższy uchwał na podstawie art. 13 pkt 3 ustawy o Sądzie Najwyższym, Przegląd Sejmowy, № 11-12, 1994, 35 (in Polish).

27 Article 3 item 9 of the Act of 20 December 1989 amending the Acts – the Law on the Organization of Common Courts, on the Supreme Court, on the Supreme Administrative Court, on the Constitutional Tribunal, on the Organization of Military Courts and the Law on Notaries (Journal of Laws №. 73, item 436).

It comes as a surprise that during the period when these guidelines were in effect, the Supreme Court would sometimes express judicial positions that conveyed the message about the need to rationalize criminal policy. Nevertheless, they were not given much attention in practice. This predominantly concerns views in which similarities can be drawn in comparison to the current standards of criminal policy in Poland. Examples include the idea of confiscation of property, which was introduced into the catalog of additional penalties via the Polish Penal Code of 1969.[28] The jurisprudence of the Supreme Court indicated that the entire confiscation of property should be ordered for committing the most serious crimes and when, concerning the circumstances of the case, it can be assumed that a significant part of the perpetrator's property was obtained through this offense[29]. The Supreme Court also indicated that when adjudicating confiscation, courts should maintain reasonable proportions between the value of the seized property, and the value of the property subject to confiscation. The amount of monetary compensation was also taken into consideration[30].

In principle, the above-mentioned views cannot have their correctness denied in the context of rationalizing criminal policy. By referring to proportions, they may even appear comparable to current European legislative standards and interpretations[31]. Yet, the legal reality turned out to be different. Confiscation began to gain importance over time, and by the 1980s it served as an important instrument of criminal policy aimed at eliminating private property[32]. Dismissal of the positions of the Supreme Court that aimed to rationalize the use of property confiscation was facilitated by situations when the legislator would not link confiscation to the amount of damage caused by the crime. Thus, there was no textual basis for relativizing the value of confiscation to the size of the crime committed. As a result, the basis for assessing the validity of the confiscation order was the perpetrator of the crime: especially their financial status[33]. Given the other positions of the Supreme Court, even the lack of assets was not an obstacle when confiscation was being ordered[34].

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28 The penalty of confiscation of property was abolished only by virtue of Article 2 of the Act of 23 February 1990 amending the Penal Code and certain other acts (Journal of Laws №. 14, item 84), which entered into force on 28 March 1990.

29 Judgment of October 3, 1972, V KRN 339/72 of the Supreme Court in Poland.

30 Judgment of March 29, 1977, VI KRN 395/76 of the Supreme Court in Poland.

31 In the cited positions, one can see a certain kind of weighing of goods, and thus the implementation of the postulates arising from the principle of proportionality of the current legal system, which is a directive that meets the requirement of axiological rationality of law. In particular, to the extent to which an element of necessity is derived from the principle of proportionality, which is the basis for the principle of subsidiarity of criminal law, which requires treating criminalization as the *ultima ratio* – *Wojtyczek K.*, Zasada proporcjonalności jako granica prawa karania, Racjonalna reforma prawa karnego, *Zoll A.* (*ed.*), Warsaw 2001, 301-303 (in Polish).

32 Interesting analyses supported by statistics – *Rzeplińska I.*, Polityka stosowania kary konfiskaty mienia w PRL, Archiwum Kryminologii, Vol. XVIII, 1992, 154-167 (in Polish); also *Czechowska M.*, Konfiskata mienia obowiązująca na gruncie kodeksu karnego PRL jako instrument totalitarnego systemu komunistycznej dyktatury, Studia nad Autorytaryzmem i Totalitaryzmem, Vol. 43, № 4, 2021, 41-50 (in Polish).

33 *Spotowski A.*, Konfiskata mienia i przepadek rzeczy (uwagi de lege ferenda), Państwo i Prawo, № 3, 1989, 102 (in Polish).

34 This position was expressed by the Supreme Court. As it stated, if the provision states that the imposition of an additional penalty (e.g. confiscation) is obligatory, then the statement that the accused has no assets, in

The Supreme Court's positions postulating rationalization of confiscation had no practical significance; despite the undoubted theoretical importance of the judgments themselves. Therefore, one can point to another irregularity of this period, namely the pretense of thought oriented towards the rationalization of criminal law repression, which was supposed to favor the individual interest of the perpetrator. One can also risk hypothesizing that the stability of the Supreme Court's positions was selective in the sense that the activity of the Polish judiciary consistently implemented a policy of harsh repressions. In other words, the views of common courts used the views of the Supreme Court when they constituted the basis for more severe treatment of the criminal perpetrator.

Nowadays, the function of the Supreme Court is vastly different. But that does not signify its futility. On the contrary, the importance of this court's positions is vital for the perception of the law. At this juncture, this issue should be discussed further.

Firstly, it is necessary to emphasize that the judgments of the Polish Supreme Court are not a source of generally applicable law. Basically, no law is created as a result of the activities of any court in Poland[35]. In any case, they do not create it in the sense in which the setting of precedents is related to the law-making process. This is about precedents in their traditional understanding, i.e. as court decisions that have binding force in relation to future judgments issued in similar cases. The fact that the jurisprudence of the Supreme Court does not constitute traditional precedents results from the characteristics of the continental legal system, in which statutory law (written in legal acts) is the only source of law. This is contrary to countries with a common law system[36]. Yet, is worth noting that there are justifiable doubts as to whether all positions expressed in legislative decisions constitute precedents[37].

Nevertheless, case law is an important argument in the process of decoding the proper content of the law. Sometimes this involves a need to make a certain addition: in some situations, this will not have a clear textual basis. In other, it may even display features going beyond the textual meaning or those that will break the textual meaning. The judgments of the Supreme Court thus become important

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the light of the provisions of the Penal Code, does not provide a basis for departing from its imposition – Judgment of February 22, 1978, IV KR 33/78 of the Supreme Court in Poland.

35 This remark does not apply to those rulings of adjudicating bodies that are of a constitutive nature. An example of such a ruling is a divorce ruling, by virtue of which a marriage is dissolved, which shapes the legal relationship between spouses. Another thing is the activity of the Constitutional Tribunal, which, however, conceptually does not overlap with courts (Article 173 and 174 of the Constitution of the Republic of Poland) and whose activity is not related to the administration of justice (Article 175 of the Constitution of the Republic of Poland).

36 In *common law* systems, precedent is a form of creating law through judicial practice. They are therefore not a product of the legislative process, but a product of practice. In this version, precedent is a principle of resolution contained in a judicial decision. At the same time, it constitutes a formal binding of courts when making future decisions in the same type of matter as the one in which the decision was made based on the precedent – *Kmieciak Z.*, Precedens sądowy – Istota i znaczenie. Zeszyty Naukowe Sądownictwa Administracyjnego, № 5, 2011, 9-10 (in Polish).

37 The doubts raised here concern primarily precedents created through the precedent-setting procedure. This procedure displays many similarities to legislative procedures. For this reason, they are often treated on a par with legislative acts in terms of the method of their creation – *Morawski L.*, Czy precedens powinien być źródłem prawa?, W kręgu problematyki władzy, państwa i sądownictwa. Księga Jubileuszowa w 70-lecie urodzin Profesora Henryka Groszyka, *Malarczyk J.* (*ed.*), Lublin, 1996, 188-189 (in Polish).

tools that can be used to support the results of interpretations with such features. Their importance stems from the authority of the body that shapes the sense of recognition of the accuracy of its decisions. In this sense, it is even assumed that the Supreme Court's ruling is something more than just a "reading of the norm[38]. From this perspective, the Supreme Court basically explains the legal text in different. Such a role of this court, in turn, justifies the above-mentioned statement that the Supreme Court's activity is given a function similar to a statute in its traditional sense: as a source of generally applicable law.

It should be emphasized that these analyses are in no way intended to give the judgments of the Supreme Court binding legal force. Nor do they attempt to convince anyone to believe that they should have such force. The point is rather to notice certain interpretative arguments existing within them: ones that are difficult to refute as they serve to read the content of the law. This also applies to legal principles established by the Supreme Court. The Polish legal system lacks regulations from which the obligation of common courts to respect these principles can be derived. Therefore, the resolutions adopted by the Supreme Court do not automatically influence the jurisprudence of common courts. In this case, the influence of the Supreme Court on the Polish judiciary is supposed to stem either from the respect for the position in the structure of the justice system or via a specific positive attitude towards the considerations carried out in the Supreme Court's judgments. Therefore, invoking the resolutions of the Supreme Court is based on the same principles as in the case of invoking the established jurisprudence of the Supreme Court. It is still up to the adjudicating panel of the Polish common court to decide whether they will accept the view presented therein or not. Positions from resolutions may therefore be used in judicial practice, just as any view expressed in literature or other judgments can be used, as long as the interpretation of the law is consistent with the principles of a democratic state of law[39]. In other words, a common court may depart from the position of the Supreme Court expressed in the resolution if the interpretative process does not contain any shortcomings that would take effect[40] outside the standard framework of contemporary legalistic principles.

Both models of the reception of Supreme Court positions presented above, i.e. the reception taking place before 1989 and the one currently, serve as means to unify judicial practice. However, it should be noted that they are vastly different. It is very apt to base this division on the criterion of the nature of the impact on jurisprudence. The former are based on the "argument of force" because they are formally binding; as were the guidelines issued until 1989. The latter model of the impact of the Supreme Court's positions works on the principle of the "force of arguments", which so far only aims

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38 More extensively and interestingly on this topic – *Wiącek M., Żółtek S.*, Niekonstytucyjność normy ustalonej w drodze orzecznictwa Sądu Najwyższego, Jednolitość orzecznictwa. Standard – instrumenty – praktyka. Materiały z konferencji naukowej Warszawa, Sąd Najwyższy, 21 listopada 2013 r., Studia i Analizy Sądu Najwyższego Materiały Naukowy, Vol. I, *Grochowski M., Raczkowski M., Żółtek S.* (*eds.*), Warsaw, 2015, 50-53 in Polish).

39 Resolution of May 5, 1992, KwPr 5/92 of the Supreme Court of the Republic of Poland.

40 In the case of criminal courts, it is a decision made in the form of a procedural decision (orders and judgments, including judgments and resolutions).

to convince people to accept these positions. This, in turn, it is closely associated with the current legal system in Poland[41].

From this perspective, it is reasonable to conclude that common courts, since they do not have to refer to the positions of the Supreme Court currently referred to, should not look for solutions to interpretation problems in positions that the Supreme Court expressed during the period of the pre-1989 legal regime. As indicated, it was based on a different axiological system, as well as completely different ideological assumptions. It also remained prone to irregularities, which sometimes were the results of errors in the reasoning of the adjudicators themselves.

4. On the treatment of the material element of a crime by the Supreme Court

There is no doubt that jurisprudence in general, and therefore also the positions derived from the jurisprudence of the Supreme Court, are products of the interpretation of law from legal provisions. Therefore, within the system of law and legal provisions, one should be a reflection of the other.

Among the fundamental conditions for assigning criminal liability under the Polish Penal Code of 1969 was the statement regarding behavior meeting the characteristics of a socially dangerous act[42]. This, in turn, enriches the concept of crime with the so-called material element. It is worth emphasizing that in European countries where Soviet law did not exert its influence, criminal laws do not provide for the material element of a crime. This justifies the presumption of the connotation of the aspect of "social danger" with the political conditions characteristic of systems in totalitarian states[43]. This, in essence, is undeniable, and Igor Andreev's explanation could be brought up a this point. The author points out that in the doctrine of criminal law in socialist countries, the material approach to a crime treated as a socially dangerous act has two meanings, namely: theoretical-cognitive and practical. The first approach emphasizes the relationship between crime and social life but is understood within the bounds of the concept of the principles of historical materialism regarding the class structure of society. Seeing crime as a socially dangerous act, the science of criminal law is opposed to metaphysical concepts of crime, such as seeing it as a violation of the laws of nature, a disregard of God's will, or perceiving it through the lens of ethical considerations. Social danger, as a structural element of a crime, means that it is a threat to social relations. These relations are connected with the interests of the ruling class, which decides what acts are socially dangerous and, as a result,

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41 *Leszczyński L.*, Jednolitość orzecznictwa jako wartość stosowania prawa, Jednolitość orzecznictwa. Standard – instrumenty – praktyka, Materiały z konferencji naukowej Warszawa, Sąd Najwyższy, 21 listopada 2013 r., Studia i Analizy Sądu Najwyższego Materiały Naukowy, Vol. I, *Grochowski M., Raczkowski M., Żółtek S.* (*eds.*), Warsaw, 2015, 14-16 (in Polish).

42 According to Article 1 of the Polish Penal Code of 1969: "Only a person who commits a socially dangerous act, prohibited under penalty by a statute in force at the time of its commission, shall be subject to criminal liability."

43 *Zoll A.*, Materialne określenie przestępstwa, Prokuratura i Prawo, № 2, 1997, 8 (in Polish). Similarly, Lech Gardocki points out that: "The material nature of the definition of a crime was raised in the science of criminal law in socialist countries, especially in the USSR, to the rank of a fundamental feature of socialist criminal law" – *Gardocki L.*, Pojęcie przestępstwa i podziały przestępstw w polskim prawie karnym, Annales Universitatis Mariae Curie-Skłodowska, sectio G (Ius), Vol. 60, № 2, 2013, 32 (in Polish).

punishable. It was claimed that crime was a class phenomenon that fit into the framework of historical ideas of Soviet law[44]. This went to a point where the element of danger was decisive in deciding the punishment of the perpetrator, and not during the reasoning of the court[45].

As a consequence of the political change in Poland in 1989, the idea of creating a new penal codification based on axiological assumptions different than the previously accepted ones was a natural outcome. This, in turn, remains tantamount to taking a new direction in the state's criminal policy. Departure from the connotations that characterize totalitarian states was strongly advocated in the literature[46]. Interestingly enough, the material element of the crime was retained despite the obvious negative connotations. However, there was a change with "social danger" being replaced by "social harmfulness"[47]. Naturally, in the present legal system, Polish courts (the Supreme Court included) rely on the second definition. This, in turn, means that the considerations conducted in them are intended to differ from those based on the previous approach to the material element of the crime.

At this point, it should be noted that Marxism, on which Soviet law was based, in regard to its program for society, was not a productive condition. It projected nothing, serving only as an ideology based on generalities and a tool in the hands of an anti-bourgeois government[48]. On top of this, until 1989, Polish criminal law continued to adopt a simplified version of Marxism. Especially during the 1950s, when most authors referred not so much to the essence of the philosophical or methodological assumptions of Marxism, but only to its phraseology[49]. Thus, it should not be surprising that the contemporary program deficiencies in the functioning of the practice of criminal law were being patched with the discretion of the ruling class, i.e. socialist policy. This was how demands for pursuing interests far different from those currently in force would enter the Polish judiciary. This, in turn, explains more than the acceptance of the politicization of court rulings: including the Supreme Court, as formulated on the basis of the 1969 Polish Penal Code. Frequently, as a result of intellectually poor arguments, the decisions they contained took extremely inhumane directions. The politicization of the Supreme Court's rulings also explains the fundamental difficulty in recognizing the current concept of "social harmfulness" concerning the concept of "social danger". If the programmatic power of the doctrine is negligible, it must constitute a gateway for smuggling in less-than-well-thought-out relationships of private interest and public interest.

However, it seems that determining the social danger of an act manifests certain flexible features. This is corroborated by the positions taken by the Supreme Court after the process of changes

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44 *Andrejew I.*, Zarys prawa karnego państw socjalistycznych, Warszawa, 1979, 79-80 (in Polish).

45 *Szerer M.*, Karanie a humanizm, Warsaw, 1964, 29 (in Polish).

46 E.g. *Filar M.*, O niektórych ogólnych zasadach odpowiedzialności karnej w projekcie kodeksu karnego z sierpnia 1990 r. – polemicznie, Państwo i Prawo, № 4, 1991, 84 (in Polish).

47 Article 1 § 2 of the Polish Penal Code of 1997 states that: "A prohibited act whose social harmfulness is insignificant shall not constitute an offence."

48 The reasons for this state of affairs include the programmatic moderation of Karl Marx and Friedrich Engels, who propagated exclusively "utopian socialism" that was incompatible with the scientific nature of their own theory – *Nowak L.*, Marksizm versus liberalizm: pewien paradoks, Marksizm, liberalizm, próby wyjścia, Poznańskie studia z filozofii humanistyki, Vol. 4, Poznań, 1997, 14-15 (in Polish).

49 Interesting comments by Tomasz Kaczmarek – *Kaczmarek T.*, Stan polskiej dogmatyki prawa karnego w okresie zmian ustrojowych, Państwo i Prawo, № 1, 2018, 17-18 (in Polish).

in the political system and the verification of its representatives. In this case, modeling via the concept of "social danger" takes a different form than that which could result from the otherwise desirable reorientation of the penal policy of the Polish state. In fact, in one of the judgments issued after the political reform, the Supreme Court stated that: "the social danger of an act cannot be assessed from the point of view of the political interests of the group in power and thus considered 'dangerous' in such an aspect." When the danger relates to the political interests of a group and not society, it is not a social danger as referred to in Article 1 Penal Code [from 1969 – B.N.][50] It seems impossible to find any pejorative connotations in these words. In light of this position, social danger turns out to be a concept with still unclear boundaries, but one that unequivocally distances itself from the politicization of court decisions. It is easy to see the separation of Polish criminal law of 1969 from the Soviet criminal law thought.

On the one hand, it is not surprising that the presented position distances itself from the postulates of Marxism, thus abandoning Soviet ideas of criminal law in favor of an ideology adequate to the current system. A line of interpretation that favors this reasoning seems quite desirable, and may even appear natural. However, although this view was presented after the political change, it was within the framework of the same provisions and regulations that were in force during the years prior to 1989. The assumptions underlying the introduction of the 1969 Polish Penal Code have therefore not changed. In such a case, it should be considered whether this position expresses an interpretative result in the form of a departure from the result of teleological interpretations[51]. If so, the question should be asked: whether in this case, the Supreme Court has not gone too far, meaning that it has not fallen into the trap of politicization in favor of a new system. Certainly, the justification for this state of affairs, if it actually occurred, is the lack of regulations allowing for other principles of criminal liability to be used as foundations[52].

Following the aforementioned argumentation, it can therefore be assumed that the consistency of the Supreme Court's rulings in the example presented is rooted in a certain inconsistency. This inconsistency is treated here as a failure to be bound by the letter of the law as it was supposed to apply according to the goals of the creators of the act. The stability of regulations is a certain basis for promoting a variety of views. Since the Supreme Court is moving away from the positions presented earlier in favor of a fresh approach, it is completely obvious that it is modifying its views. Therefore, at this point, we are unable to recognize the stability of case law. The progressiveness manifesting itself in this, however, allows us to formulate the thesis, which is important for the title issue: that the Supreme Court, when it comes to its activity in the field of expressing views, is invariably characterized by autonomy in resolving interpretative problems.

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50 Judgment of January 10, 1994, II KRN 377/93 of the Supreme Court of the Republic of Poland. The court repeated this position in Judgment of November 26, 2001, III KKN 421/99.

51 In the context of the interpretation adopted here, referring solely to the purposes for which the Act was enacted in 1969.

52 This concerns both the lack of a new Penal Code, which entered into force on 1 September 1998, and the lack of a Constitution of the Republic of Poland adequate to the time, which in its current version has been in force since 17 October 1997.

Looking more broadly at the status quo, seeing it as a certain state in which no changes occur, we can talk about a certain stability in the specific sense that the Supreme Court, regardless of the analysed period of activity, has the opportunity to express its views in a peculiarly liberated way. One may even risk stating that from the perspective adopted here, autonomy is not limited by the legal text, given that the same provision is interpreted differently at various times. The legal text is definitely not restrictive in an excessive manner. It is, in fact, difficult to imagine a situation in which the Supreme Court strictly adheres to the provisions of law, giving particular predominance to the legislator's assumptions and intentions that guided the introduction of the interpreted regulation. Especially in situations when it is related to the acceptance of the view of "social danger" by the judiciary presented before the political reform in Poland. This attitude constitutes a blatant and unacceptable affirmation of the socialist view of criminal law from the perspective of the system adopted after the year 1989.

5. Current positions developed under the Polish Penal Code of 1969 – other selected examples

The analysis of the judgments of the Supreme Court during its activity within the realm of views expressed under the Polish Penal Code of 1969 and contemporarily allows us to conclude that the stability of the positions expressed therein can be observed in a more direct expression. There are at least several reasons for this state of affairs.

The reason why the views of the Supreme Court expressed under the previous system remain seemingly exact is the constant approach to certain institutions of criminal law. This shouldn't be too surprising. Since the views on theoretical issues of criminal law remain the same as today, it is naturally reflected in the case law from both periods. A clear example illustrating this dynamic emerges when looking into the issue of the relativity of a criminal statute from the perspective of the conflict of criminal statutes over time. In the judgment of the Supreme Court of January 14, 1970, issued in the case with reference number III KR 185/69, it was indicated that a more relative law should be understood as the one which, when applied in a specific case, provides for the most favorable legal consequences for the perpetrator. This choice, it says, should take into account all the consequences resulting from contradicting acts. Direct references to this particular ruling can be currently observed both in the jurisprudence of the Supreme Court itself[53] and in common courts[54].

When it comes to factors favorable for maintaining the validity of this particular position, it is certainly worth noting that over time the basic regulation on the conflict of criminal laws remained literally the same in the Polish Penal Code of 1969 as well as in the currently applicable Polish Penal Code of 1997[55] Yet, an expression of the same view is not entirely obvious. A broader perspective

[53] Judgment of November 16, 2000, II KKN 381/00 of the Supreme Court of the Republic of Poland.

[54] Decision of December 9, 2019, № II Akz 875/19 of the Court of Appeal in Wrocław; Decision of December 23, 1998, № II AKa 228/98 of the Court of Appeal in Katowice.

[55] Both Article 2 § 1 of the Penal Code of 1969 and Article 4 § 1 of the Penal Code of 1997 read as follows: "If at the time of sentencing a different law is in force than at the time of the commission of the offence, the new law shall apply; however, the previously in force law shall be applied if it is more lenient for the perpetrator."

certainly appears to be more humane, as it allows for the consideration of a greater number of criteria for examining the relativity of a criminal statute. As a result, it expands the scope of searching for solutions favorable to the perpetrator. However, on the other hand, the narrow perspective expressed via limiting itself to the procedure of comparing the dimensions of penalties in the old and new criminal acts constitutes an interpretation of the law that allows for the imposition of more severe penalties. Most notably when it comes to perpetrators of crimes that in the past were particularly socially dangerous. Such an interpretation would certainly correspond with the trend of tightening the criminal policy that took place in the 1960s and 1970s.

Another example of duplicating views on dogmatic issues is the position contained in the judgment of the Supreme Court of September 22, 1971, issued in the case with reference number II KR 171/71. It presents the difference between preparing to commit a prohibited act and attempting it, while also emphasizing the reality of the threat to interests protected by law in the case of an attempt. It also recognizes that such cases "concern the perpetrator taking the final action aimed directly at the implementation of the crime. Preparatory activities are only intended to create the conditions for undertaking this final activity." The position mentioned is currently quoted directly[56] while exceptions to this view can still be noted[57].

However, the Supreme Court expressed a less controversial position when discussing the essence of an unsuccessful attempt under the Polish Penal Code of 1969[58], as indicated by its frequent referencing and its durability[59]

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[56] E.g. Judgment of August 8, 2018, № VIII KK 2/18 of the Supreme Court of the Republic of Poland; Judgment of April 18, 1999, № II AKa 55/99 of the Court of Appeal in Łódź.

[57] Judgment of April 15, 2013, № II AKa 36/13 of the Court of Appeal in Szczecin.

[58] The Supreme Court pointed out that: "One cannot speak of an unsuccessful attempt when at the time the perpetrator initiated the action, committing the crime was objectively possible (even if the chances of realizing the perpetrator's intention were small), and only later – as a result of the intervention of unfavourable circumstances – the realization of the perpetrator's intention turned out to be impossible due to the lack of an object suitable for committing the crime or because it turned out that the perpetrator used a means not suitable for causing the intended effect" – Judgment of November 29, 1976, I KR 196/76 of the Supreme Court in Poland.

[59] This can be observed in the activities of the Supreme Court (e.g. Resolution of January 19, 2017, № I KZP 16/16 of the Supreme Court of the Republic of Poland; Decision of July 13, 2022, № III KK 293/22 of the Supreme Court of the Republic of Poland) and common pleas (e.g. Judgment of May 23, 2014, № II K 169/14 of the Regional Court in Legionowo; Judgment of April 26, 2016, № XIV K 1188/13 of the District Court for Warsaw-Mokotow in Warsaw; Judgment of June 9, 2014, № III K 8/14 of the Regional Court in Białystok; Judgment of August 13, 2014, № II Ka 93/14 of the Regional Court in Sieradz; Judgment of September 9, 2014, № III K 90/14 of the Regional Court in Poznań; Judgment of April 14, 2016, № VI Ka 136/16 of the Regional Court in Słupsk; Judgment of August 2, 2018, № III K 44/18 of the Regional Court in Bydgoszcz; Judgment of September 15, 2020, № II IX Ka 457/20 of the Regional Court in Warsaw; Judgment of December 20, 2012, № II Aka 215/12 of the Court of Appeal in Szczecin; Judgment of May 22, 2013, № II AKa 133/13 of the Court of Appeal in Wrocław; Judgment of September 11, 2013, № II AKa 249/13 of the Court of Appeal in Wrocław; Judgment of May 23, 2014, № II AKa 116/14 of the Court of Appeal in Katowice; Judgment of July 8, 2014, № II AKa 108/14 of the Court of Appeal in Łódź; Judgment of November 27, 2014, № II AKa 217/14 of the Court of Appeal in Szczecin; Judgment of September 30, 2015, № II AKa 256/15 of the Court of Appeal in Warsaw; Judgment of October 26, 2017, № II AKa 419/15 of the Court of Appeal in Warsaw; Judgment of June 18, 2020, № II AKa 44/20 of the

The reason behind the clarification of stable judgments lies in the semantics of individual phrases. The view has long been expressed in the Polish literature on legal theory that in determining the meaning of phrases in a legal text, the interpretation made by the Supreme Court is often taken into account[60]. This applies to cases where the meaning of the word contained in the interpreted provision has not changed significantly. It is thus obvious that its recognition in the Supreme Court's jurisprudence should not undergo any major changes in meaning. The word "burglary" could be provided as an example. The Supreme Court, following the guidelines of the administration of justice and judicial practice on criminal liability for crimes specified in Article 208 Polish Penal Code, expressed the view that: "The scope of the concept of burglary, which is referred to in Article 208 Penal Code [from 1969 – B.N] includes not only the destruction or damage of a material obstacle that is part of the structure or a special closure of a room, making access to the interior of this room difficult but also any removal of such an obstacle by physically affecting it in any way"[61]. This position has been invoked many times in the context of the currently applicable Article 279 § 1 of the Polish Penal Code both by the Supreme Court[62], as well as the common courts[63].

It is necessary to consider whether the stable positions mentioned in the title did not also occur in a somewhat reverse manner. This concerns the jurisprudential positions of the Supreme Court that have been sustained despite significant semantic changes that have occurred; regardless of the processes of creating and applying law. In other words, these are situations where the common meaning of a given phrase has changed, but not its criminal law meaning. An example, and at the same time the basis for these considerations, are cases of reference in judicial decisions[64] made by the Supreme Court that were taken while determining the meaning of the phrase "rape on a person" in the context of the current definition of the crime of robbery[65]. This is concerning the position according to which "a rape of a person is only a means to an end, which is the seizure of property."[66]

Unquestionably, currently the word "rape" is commonly seen as connoting a crime of a sexual nature. At the same time, in comparison to the Polish Penal Code of 1969, the current legislator has abandoned the word "rape" in the definition of robbery and replaced it with the word "violence", which in the common understanding refers to a broader matter. This, in turn, allows us to assume that

Court of Appeal in Szczecin; Judgment of February 2, 2022, № II AKa 523/21 of the Court of Appeal in Katowice).

60 *Opałek K., Wróblewski J.*, Zagadnienia teorii prawa, Warsaw, 1969, 41 (in Polish).

61 Resolution of June 25, 1980, № VII KZP 48/78 of the Polish Supreme Court.

62 E.g. Judgment of September 9, 2004, № V KK 144/04 of the Supreme Court of the Republic of Poland; Decision of December 6, 2006, № III KK 358/06 of the Supreme Court of the Republic of Poland; Decision of October 29, 2012, № I KZP 11/12 of the Supreme Court of the Republic of Poland; Judgment of March 22, 2017, № V KK III KK 349/16 of the Supreme Court of the Republic of Poland.

63 E.g. Judgment of October 11, 2013, № II AKa 152/13 of the Court of Appeal in Białystok; Judgment of June 4, 2014, № II AKa 80/14 of the Court of Appeal in Lublin.

64 E.g. Judgment of October 27, 2021, № II AKa 89/21 of the Court of Appeal in Poznań; Judgment od March 31, 2022, № IV K 306/21 of the District Court in Bydgoszcz.

65 According to Article 280 § 1 of the Polish Penal Code of 1997, the features of robbery are fulfilled by someone who steals by using violence against a person or threatening to use it immediately or by causing a person to become unconscious or defenceless.

66 Judgment of June 14, 1989, № V KRN 99/89 of the Supreme Court in Poland.

the legislator noticed the connotations indicated above. However, what is confusing is the perspective of the Supreme Court, according to which, in the comparison of the current Polish Penal Code of 1997 with the now outdated Polish Penal Code of 1969, the difference in a robbery is based, among others, on the fact that the term "violence" replaced "rape", which is why they should be considered synonymous[67]. In criminal law literature, it is noted that associating meanings of various linguistic expressions is an expression of an interpretation of law that is unacceptable in generally accepted theories – the homonymous interpretation[68], which states that the same legal phrases should not be given different meanings within a given field of law[69]. In light of this, accepting the notion that "violence" and "rape" constitute identical meanings is unacceptable.

It is worth noting, however, that, contrary to the Supreme Court's claims, "violence" and "rape" were not the same terms under the previously applicable Penal Code, although their meanings overlapped to some extent. One should be reminded that the Polish Penal Code of 1969 also differentiated between "violence" and "rape on a person"[70]. This would also translate into differences in the jurisprudence of the Supreme Court regarding the interpretation of the meanings of the phrases "rape" and "violence". This has been mentioned by the Supreme Court itself in more recent jurisprudence[71]. At the same time, over 25 years ago the Supreme Court stated that "rape" is a particular form of "violence", and some cases of violence may involve rape of a person[72].

A rational approach is to assume that when currently referring to the Supreme Court's comments based on the word "rape" in the context of the crime of robbery, it is a reference to the highest level of consideration. Namely, it is not about the verbal structure, but about capturing the essence of this crime. From this point of view, we can talk about the stability of the Supreme Court's positions regardless of the semantic changes taking place outside the process of creating and applying law[73]. However, this requires prior identification of these changes in order to maintain clarity of considerations conducted in this area.

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67 Judgment of June 30, 2004, № II KK 354/03 of the Supreme Court of the Republic of Poland.

68 This is what Sławomir Żółtek rightly claims, arguing that if the phrases "violence against a person" from Article 280 § 1 of the Polish Penal Code of 1997 and "rape against a person" contained in Article 130 § 3 of the Penal Code constitute protection of the same good, then a different meaning should be assumed for each of them. Sławomir Żółtek also cites specific Supreme Court rulings in which the Supreme Court established such identity – *Żółtek S.*, Znaczenie normatywne ustawowych znamion typu czynu zabronionego Z zagadnień semantycznej strony zakazu karnego, Warsaw, 2017, 402 note 1293 (in Polish); also *Bielski M.*, Wyładnia art. 280 § 1 k.k. oraz art. 130 § 3 k.w. Glosa do uchwały SN z dnia 17 grudnia 2008 r., I KZP 27/08, Państwo i Prawo, № 3, 2010, 136-141 (in Polish).

69 *Morawski L.*, Zasady wykładni prawa, Toruń, 2006, 103-104 (in Polish).

70 Such a distinction also appears in the Polish Penal Code of 1997, which refers to both "rape against a person" (Article 163 § 1 of the Polish Penal Code) and "violence" (Article 280 § 1 of the Polish Penal Code).

71 Decision of January 7, 2008, № II KK 252/07 of the Supreme Court of the Republic of Poland.

72 Decision of March 16, 1991, № I KZP 32/98 of the Supreme Court of the Republic of Poland.

73 On the side-lines, it is worth noting the need to conduct separate research into the evolution of the Polish language regarding whether the word "rape" is currently commonly understood to have clear connotations of a sexual crime or not.

6. Conclusions

The stability of Poland's Supreme Court positions expressed in criminal law can be recognized from many different perspectives. They are not always clearly obvious. Examples of duplicating positions developed on the basis of the regulations of the Polish Penal Code of 1969 lead to the conclusion that invoking them in the context of current judicial activity has its basis. Therefore, it is not the case that the severance of the connections between Polish criminal law and elements from Soviet law automatically made the then Supreme Court's positions obsolete. Taking into consideration the particular importance of the content of these positions, we should not completely turn our backs on them. Likewise, it is still advisable to approach them with great precaution. While these judgments may contain enlightened views that are also useful in practice today, we should remember about the flaws of that period's legal system during which the previous code was in effect. The existence of these defects affected the quality of the views presented by the Supreme Court. Loss of vigilance may, in turn, lead to the smuggling of content that is undesirable from the point of view of current legal standards in Poland, undoubtedly disturbing the authority of the Supreme Court.

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