| Chapter 8 |

State and Criminal Law of the East Central European Dictatorships

Ewa KOZERSKA – Tomasz SCHEFFLER

ABSTRACT

The chapter is devoted to discussing constitutional and criminal law as it existed in selected countries of Central and Eastern Europe between 1944 and 1989 (Czechoslovakia, the German Democratic Republic, Romania, Hungary, and Poland). As a result of the great powers' decisions, these countries came under the direct supervision of the Soviet Union and adopted totalitarian political solutions from it. This meant rejecting the idea of the tripartite division of power and affirming the primacy of the community (propaganda-wise: the state pursuing the interests of the working class) over the individual. As a result, regardless of whether the state was formally unitary or federal, power was shaped hierarchically, with full power belonging to the legislative body and the body appointing other organs of the state. However, the text constantly draws attention to the radical discrepancy between the content of the normative acts and the systemic practice in the states mentioned. In reality, real power was in the hands of the communist party leaders controlling society through an extensive administrative apparatus linked to the communist party structure, an apparatus of violence (police, army, prosecution, courts, prisons, and concentration and labor camps), a media monopoly, and direct management of the centrally controlled economy. From a doctrinal point of view, the abovementioned states were totalitarian regardless of the degree of use of violence during the period in question.

Criminal law was an important tool for communist regimes' implementation of the power monopoly. In the Stalinist period, there was a tendency in criminal law to move away from the classical school's achievements. This was expressed, among other means, by emphasizing the importance of the concept of social danger and the marginalization of the idea of guilt for the construction of the concept of crime. After 1956, the classical achievements of the criminal law doctrine were gradually restored in individual countries, however – especially in special sections of the criminal codes – much emphasis was placed on penalizing acts that the communist regime a priori considered to be a threat to its existence. Thus, also in the field of criminal law, a difference was evident between the guarantees formally existing in the legislation and the criminal reality of the functioning of the state.

KEYWORDS

state law, criminal law, communist regime, East Central Europe.

1. Introduction

The decisions of the so-called Big Three, which were taken in Tehran (1943), as well as in Yalta and Potsdam (1945), led to the nearly half-century-long division of Europe into two zones, i.e., democratic and totalitarian. The states and societies of Central,

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Eastern, and South-Eastern Europe were – against the will of the majority of citizens – forced to submit to the new communist political solutions and resign from political independence. These countries were subordinated to Soviet Russia (with the consent of the United States, Great Britain, and France) and retained only illusory features of sovereignty. In these states, so-called people's democracy government departments were introduced, which were to reflect alleged support from the masses of society ('the working masses of towns and villages'). In fact, they were an example of the implementation of the Schmittian thesis about the advantage of force over law[1] that was expressed in the new political elite's successful seizure of power under the patronage of the Red Army.

At this point, we need to recall that it is quite obvious that the socialist or communist groups that took power in individual countries in the Soviet sphere of influence were completely subordinated to Moscow, and it was this factor, and not the issue of the political program, that determined their victory. Let us recall the history of Poland, in which the Polish Socialist Party, which had relatively many supporters, referring to democratic traditions, after 'purges' in its leadership bodies conducted by Moscow-dependent politicians and officials, and after separating its structures from the emigrant elites, remained absorbed by the Polish Workers' Party formed during the war on Stalin's order, i.e., a group whose strength was not so much social support but primarily control over the security apparatus and over the army (under the strict control of Soviet decision makers). The elites taking over actual power in the countries under Moscow's direct influence usually did not have the constitutional legitimacy to exercise public law functions. They substantiated their claims with a strong but questionable narrative that liberation from Nazi–German occupation was accompanied by a grassroot need for social liberation, which was additionally an implementation of historical necessity. This reference to one of the key categories of the Marxist worldview was to additionally justify actions (factual and legal) aimed at adopting the Soviet system and its legal solutions. As a result, the states of the so-called people's democracy (demoludes) acquired certain common features derived both from the USSR's 1936 constitution, which was their model, and from the real (though masked by words in the Orwellian spirit) functioning of the criminal state machine.

This ideological and institutional community includes the recognition of the so-called 'working people' as the source of state power (public), centralism (a uniform management system based on supreme and local state organs), the so-called 'proletarian internationalism' (understood in the context of the apparent internal equality of national minorities or subjects of a federation and external cooperation with socialist states), the leading role of the (generally monopolistic) communist party, an extensive system of apparatus of coercion and social surveillance, monopolization of the mass media, planned command-and-distribution national economy, Sovietization and standardization of culture, and finally, the introduction of the Russian language as the basic means of international communication (in the zone of Soviet domination).

1 Kozerska and Scheffler, 2017, pp. 53–79.

It is worth noting that the implementation of the aforementioned principles in some countries, and in certain periods, differed from the pattern carried out in the USSR. The 'evil empire' – as Ronald Reagan vividly called it – did not, as a rule, accept major deviations from the chosen path. As a result of disputes about the orthodox nature of the adopted solutions, some of the peripheral satellite states broke away from direct dependence on Moscow (Albania, Yugoslavia), and some (Hungary, Czechoslovakia) experienced the tragic consequences of armed intervention either by the Soviet Union itself or by Soviets supported by allies from the Warsaw Pact. It is worth emphasizing that, regardless of the fate of the individual countries' relations with Moscow, in each of them, criminal legislation, as well as security organs and the judiciary, became a reliable weapon for implementing and strengthening new political and economic communist regimes. The communists were convinced that the use of punitive measures and intimidation could suppress any manifestations of resistance and counteract the inefficiencies of a centrally planned economy. The implementation of ideology, and perhaps even the maintenance of power, was guided by instrumental and sometimes even disrespectful treatment of institutions and legal solutions developed in the era of the formation of the idea of a constitutional (legal) state. It should also come as no surprise that the staunch justification of far-reaching extra-normative repressiveness is that the fight against 'class' enemies (having all the qualities of the objective enemy Hannah Arendt described) became one of the foundations of the totalitarian system that prevailed in the part of Europe dominated by the USSR.

In order to present the community and the local differences acceptable from the point of view of the interests of the USSR in terms of constitutional (state law) and criminal solutions occurring in demoludes, the situation in five selected countries will be discussed: Czechoslovakia, the German Democratic Republic (East Germany), Romania, Hungary, and Poland.

2. Czechoslovakia

The pro-Soviet inclinations of the Czech state's political circles became apparent relatively early. Their roots can be mainly traced to the Communist Party of Czechoslovakia (KPCz), which was very active within the years 1921–1992. It was the only legally operating communist party in Central and Eastern Europe throughout the interwar period.[2] These connections should also be seen in foreign policy, specifically in the policies of Edvard Beneš (the minister of foreign affairs in 1918–1935, then the president of the First Czechoslovak Republic 1935–1938, subsequently the head of the government-in-exile 1940–1945, and again the leader of the country in the years 1945–1948), who before and during the war, formed alliances of cooperation and friendship with the USSR. It is hard to unequivocally evaluate to what extent

2 Bankowicz, 2003, p. 44.

the undertaken diplomatic endeavors were the result of a well-thought geopolitical strategy conducted by the Czech side and to what extent it was a genuine ideological commitment to Soviet solutions and good relations with Stalin. Nonetheless, soon before the Red Army entered Czechoslovakia, in March 1945, an agreement was concluded in Moscow between the London-based Provisional State Organization of the Czechoslovak Republic in Exile and the Communist Party of Czechoslovakia. This event bore fruit through the establishment (April 4, 1945) of the multi-party government of the National Front of the Czechs and Slovaks, based on the declaration known as the Košice Program.[3]

In spite of the fact that the signatories of this document pledged willingness to maintain state continuity with the pre-war republic, both the acceptance of the borders of Czechoslovakia, changed under the influence of the USSR's demands, and the clear attachment to the formally binding constitutional order (shaped by the Constitution of February 29, 1920) indicated the desire to create a new political entity of a socialist nature.[4] The persisting democratic rhetoric was accompanied by measures to change the system by reinforcing the local state administration (national committees), nationalizing heavy industry, banks, and joint-stock companies, and the gradual liquidation of private agricultural property (from restrictions on private land acreage to the compulsory 'socialization' of villages). Ultimately, after the so-called Czechoslovak coup d'état in Prague (February 20–25, 1948), the Communist Party of Czechoslovakia took over political domination in the National Front and actual power in the country (after purges and arrests of political opponents) with the USSR's support. In fact, its extra-parliamentary position in the system allowed for the adoption (on May 9, 1948) of the constitution, assuming – while maintaining insincere democracy in accordance with Orwellian new-speak – the 'people's' character of the state and political pluralism, as well as maintaining the names of some state institutions appearing in the old order.[5] It enabled the National Assembly nominally elected in four-point elections (a unicameral parliament managed by the Presidium of the Assembly) to become the highest state authority. The constitution, however, retained the institution of the president of the republic (elected by and accountable to parliament) and a government appointed by the president and accountable to parliament. Moreover, the National Assembly was given the authority to choose the composition of the Supreme Court, while the power to appoint and dismiss the public prosecutor general (who was accountable to parliament) was given to the president. At the level of local administration, there were national committees in counties, poviats, and communes, respectively.[6]

At the same time, in order to alleviate the Slovak population's separatist aspirations, autonomous solutions were introduced, the manifestation of which was

3 Bouček, Klimeš and Vartíková, 1975, p. 316.
4 Cholínský, 2018, p.159.
5 Bankowicz, 2003, pp. 67–68.
6 Szymczak, 1970, p. 56.

Slovakia's establishment of a regional legislative and control body called the Slovak National Council and a local government called the College of Plenipotentiaries. It has to be highlighted here that no analogous ruling entities were established in the Czech Republic, which, contrary to the proclamations on the equality of both nations, showed the actual advantage of the Czech part over the Slovak part. Both practice and subsequent constitutional regulations (with the exception of the constitutional act on Slovak national authorities of July 31, 1956) were unconducive to maintaining Slovak autonomy and systematically strengthened centralist tendencies.[7] Therefore, despite the formal existence of Czechoslovakia as a state guaranteeing Slovakia's autonomy, totalitarian thinking shaped regulations and their interpretation (or even disregard), which enabled the strictly unitary perception of the public law system.

In spite of maintaining the appearance of a democratic order, as mentioned above, Czechoslovakia's first post-war constitution introduced quite significant modifications to the political system leading to the centralization of public authority and the actual liquidation of civil liberties. The prevailing—typical of a totalitarian system—mixing of party and state structures was combined with increased repression of those whom the party and the extensive violence apparatus arbitrarily considered enemies. Over the years, transformations also took place in the socio-economic sphere, basically leading to the full nationalization of production plants, service plants, and farms. It should also be noted that from the very beginning, the post-war reorganization of the political system also influenced criminal law regulations. In Czechoslovakia, until the 1960s, Austrian and Hungarian penal regulations were in force, and these were amended and supplemented with special laws in the interwar period. Such a transformation of penal legislation continued in the post-war period.

The restrictiveness of the new governments in the Czech Republic (and partly also in Slovakia) was initially visible primarily in a series of decrees and executive acts issued by President Edvard Beneš from May to October 1945 putting a clear stamp on the anti-German and anti-Hungarian policy and a specific policy of settling accounts with people who were arbitrarily considered collaborators, traitors, or enemies of the Czech and Slovak nations.[8] It is worth emphasizing that although at the level of the normative text, these decrees (approved by the Constitutional Act 57 of March 28, 1946 by the Provisional National Assembly of the Czechoslovak Republic) did not contain any grounds for this, they still became an impulse to start the displacement of the German and Hungarian population. These actions, which were very often brutal (persecution, ethnic cleansing based on collective guilt decisions), mainly affected the economic, financial, administrative, and military spheres; however, in the context, they often referred to political struggles with circles that were not enthusiastic about the Soviet Union and communist ideology.[9]

7 Chmielewski, 2005, pp. 15–16.
8 Jonca, 2005, p. 162.
9 Cholínský, 2018, pp. 159–160.

Particularly noteworthy legal elements contained in the abovementioned decrees included the introduction of a new institution in the Czechoslovak judiciary, i.e., collective extraordinary people's courts (composed of a professional judge and four non-professional lay judges elected by local authorities), before which the proceedings lasted up to three days. The case, due to the complexity of the subject, could be referred to common courts, but the rules were so vague that it was highly discretionary. The sentences were delivered on camera, the accused could not appeal, and the death penalty (including public execution) was carried out within a few hours of the sentence. By Decree No. 138 ('on punishing certain offences against national honor'), the power to judge was granted to poviat national committees, which could reopen proceedings against persons acquitted by people's courts. Public stigma appeared among the penalties applied by poviat committees.

The first post-war years were characterized by the existence of factual and legal differences between Slovakia and the Czech Republic, and Moravia and Cieszyn Silesia. In non-Slovak territory, we could observe the zealous activity of people's courts, mass arrests, and the internment of the German and Hungarian population (as well as representatives of the Czech, Slovak, or Polish population – if they were considered hostile to the new order), acts of violence and murder committed against prisoners, and the brutal arbitrariness of the Red Army and the NKVD (the People's Commissariat for Internal Affairs). Within the period 1945–1948, the Czech part of Czechoslovakia also stood out from other European countries with a large number of sentenced and executed death penalties in connection with settlements from the time of the war. In contrast, in Slovakia, the situation was different, as the autonomous organs adopted separate legal provisions resulting from this area's specific fate during the war. They less restrictively defined the categories of persons and types of crimes falling within the forms of special justice. Even though the settlement proceedings were conducted in a similar manner before the people's courts (the composition and rules of procedure were analogous to the Czech solutions) and before the National Court (the best known example is the trial sentencing Monsignor Jozef Tiso, who was the leader of the Slovak state during the war, to the death penalty), the number of pronounced death sentences was significantly lower. Furthermore, the non-legal actions of the security authorities and the army were less brutal.

From 1948 (after the coup d'état), onward, the communist authorities, in order to strengthen and consolidate their rule, tightened the system of penal repression. The new normative acts (including Act 231 of 1948 on the protection of the Democratic People's Republic or Act 232 of 1948 on the courts) covered the entire territory of the state of Czechoslovakia. This was accompanied by purges in the justice system and the resumption of numerous additional proceedings, including political, before the National Court.[10] When shaping the provisions of criminal law and during adjudication, reference was made to the Marxist idea of the class nature of the state, in which crimes against the 'system' and the economic principles of the people's state, as well

10 Jasiński, 2014, pp. 253–282.

as alliance with the USSR, should be criminalized. The concept of the dissuasive role of severe penalties was also combined with the re-education process, which was reflected in the penal code adopted in 1950. As part of totalitarian regimes' specific hypocrisy, a special role was assigned to the 'fight for peace' (Act 165 of 1950 on the protection of peace, which, under the slogan of penalizing 'inciting and promoting war,' fictitious charges against real and imaginary political opponents were formed).[11] The powers of non-judicial bodies (committees of national councils) to impose penalties in minor cases (misdemeanors) under the administrative penal code (Act 87 of 1950 and Act 89 of 1950) were also maintained.

It should be emphasized here that the subsequent waves of repression continued until the so-called 'thaw' that occurred in 1955–1956,[12] as a result of which there were also statutory changes restoring some of the achievements of the philosophy of criminal law developed in the Enlightenment period and the era of liberalism. For instance, in the Criminal Procedure Act,[13] the basic principles of criminal procedure were referred to unequivocally, such as the presumption of innocence, the right to defense, the free assessment of evidence, recognition of the indictment as the basis for conducting proceedings before a court, legalism (the principle of binding by law), and finally, recognition that the mere admission of guilt cannot be sufficient proof of guilt and conviction. The statutory conditions for initiating and conducting criminal proceedings before investigators (the prosecutor) were also defined.

The tendencies, at least at the level of a legal text, to restore the significance of the achievements of classical penal litigation and simultaneously introduce socialist new-speak were visible in the subsequent Code of Criminal Procedure of 1961.[14] It reinforced the court's role by entrusting it, for example, with the right to make a preliminary examination of the indictment and by extending the powers of taking evidence (the principle of inquisitiveness). It emphasized that law enforcement agencies, the prosecutor's office, and the court should act in a way that guarantees constitutional rights and freedoms. Moreover, it stated that the principles of the presumption of innocence, complaints, objective truth, openness, directness, and free evaluation of evidence should be the basis for proper conduct. Nevertheless, the necessity of 'deepening' the process of 'socialist democracy' by expanding the role of 'working people' and their organizations was not neglected.

In this context, we need to signal that when analyzing normative acts created by totalitarian regimes, one should always remember the difference between what is written and the actual nature of practice. This, in particular, applies to the so-called 'people's democracy' in which the discrepancies between declarations and facts were qualitative rather than quantitative. This can be seen, for example, in the idea of including social organizations in criminal proceedings, which was to be realized not

11 Zákon na ochranu míru č. 165/1950.
12 Jasiński, 2014, p. 280.
13 Zákon o trestním řízení soudním (trestní řád) č. 64/1956.
14 Zákon o trestním řízení soudním (trestní řád).

only in the possibility of granting bail to the accused, but also in such a specific action as 'warning' law enforcement agencies about violating socialist legality, as well as in performing the function of a 'social prosecutor', i.e., an entity that expresses social indignation at the violation of the socialist rule of law. Therefore, when interpreting normative texts, one must not make the cardinal error of applying mental categories developed in the rule of law to totalitarian regimes that, in principle, are legal nihilism.

Another constitution was adopted on July 11, 1960, when Antonín Novotný (until 1968) held the office of the First Secretary of the Communist Party of the Czech Republic (KPCz) concurrently with that of the president of the state (1957). Based on its provisions, the state changed its name from the Czechoslovak Republic to the Czechoslovak Socialist Republic. Although it did not introduce any significant changes to the system of state organization, it led to the further depreciation of the Slovak authorities, while maintaining the formal appearance of autonomy. Novotny's rule was characterized by centralism, and it maintained numerous Stalinist remnants (e.g., the so-called 'cult of personality'); however, at the same time, the most drastic and brutal methods of the security services' operation were abandoned. A manifestation of the slight easing of repression was the adoption of a new penal code (1961) in that period.

The weakness of the Czech 'thaw' contributed to the strong social reaction expressed during the Prague Spring (5 January – 21 August 1968) due to the next first party secretary, Alexander Dubček. His rule resulted in the introduction of the so-called 'open door' program aimed at numerous political and socio-economic reforms (including the rehabilitation of victims and persecuted people during the Stalinist era). This systemic experiment, known as 'socialism with a human face,' was brutally ceased by the military intervention of five Warsaw Pact countries (August 20–21, 1968) and the arrest and deportation of the party elite – led by A. Dubček – to Moscow. As a consequence of a serious political impasse, a law was passed on October 27, 1968, i.e., the Constitutional Act on the Czechoslovak Federation (it entered into force on January 1, 1969). Under Soviet pressure, the initiated reforms were withdrawn (accompanied by social protests that were brutally suppressed), and changes were made in the party and the government's top representatives. In April 1969, Gustàv Husák became the new leader of the Communist Party of the Czech Republic (KPCz), and in 1975, he assumed the office of the president (which he held until 1989).[15] Within the framework of introduced systemic changes, the legislative function was entrusted to the Federal Assembly consisting of two equal chambers – the People's Chamber (200 members representing all citizens) and the House of Nations (the Czech Republic and Slovakia had 75 equal representatives delegated by national councils, i.e., the parliaments of both republics). The debates of each house were held separately, in a session system (spring and autumn), except for the election of the president of Czechoslovakia and common matters such as the election of the president of the Federal Assembly. In both chambers, majorization was prohibited (the rules of a blocking minority) in

15 Bankowicz, 2003, pp. 71–84.

certain decisions, which essentially concerned the preservation of autonomy. Legislative initiative was granted to members, parliamentary committees, the president, the government, and national parliaments. To pass a law, the consent of both chambers and the non-violation of the prohibition of majorization were required. In the period between sessions, some of the competences of the Federal Assembly (except for the election of the president, the passing of laws and the budget, a vote of no confidence in the government, and declaration of war) were taken over by the 40-person presidium elected and dismissed by both houses (each with 20 members). Additionally, the Presidium could pass statutory regulations (*zákonné opatřeni*), which had to be approved at the next session by the houses of the Federal Assembly.

The president of Czechoslovakia – as mentioned above – was elected by the Federal Assembly for a period of 5 years by at least three-fifths of all members. He was bound by the *incompatibilitas* rule. Due to the function that he performed, he also could not be judicially held accountable, and he was solely politically accountable to the Federal Assembly. His powers were mainly formal (e.g., convening and dissolving the Federal Assembly, signing bills with a countersignature), but his position in the political system was rather strong in that he was also the secretary general of the Communist Party of the Czechoslovakia.

The highest central executive organ was the government, whose chairman, vice-chairman, and ministers were appointed and dismissed by the president. After delivering an *exposé*, the government still had to garner the Federal Assembly's support. The government's main task was administering the state (conducting internal and foreign policy), which was supported by legislative initiative or the power to issue executive regulations. Finally, it is worth adding that in the Czech Republic and Slovakia, respectively, unicameral national councils, their presidencies, governments, supreme courts, prosecutors general, and local administrations were established, as well as national committees at the level of counties, poviats, and municipalities.

The judiciary and the prosecutor's office were regulated by the law of December 17, 1969, which stated that the constitutional duty of the courts and the prosecutor's office was to educate citizens in the spirit of fidelity to the Fatherland and the cause of socialism, observance of the law, and fulfilment of obligations to the state. The judiciary system was based on the existence of the Supreme Court of the Czechoslovak Socialist Republic (CSRS) – its judges were elected and dismissed by the Federal Assembly – the Supreme Court of the Czech RS, and the Supreme Court of the Slovak RS, as well as national and district courts (judges were appointed and dismissed by the relevant national councils for a period of 10 years). The military judiciary formed a separate structure. It is worth noting that apart from formally independent professional judges, the national and district people's lay judges (elected and dismissed by national committees for 4 years) took part in the hearings. The constitution also provided for the existence of the Constitutional Court, but due to the failure to issue the relevant act, this body was not established until 1991 (the Act of November 17, 1991). Until then, issues related to normative acts' conformity with the constitution were resolved by the Federal Assembly. The prosecution system was based on the

principle of centralism and hierarchy. Organizationally, the prosecutor's office was built in a similar way to the judiciary.[16] When considering the system of courts or prosecutorial offices in communist countries, it is absolutely necessary to remember that their staffing and functioning were fully subordinated to the community party's decisions.

Finally, we would like to emphasize that although the constitution of 1968 established the Czech–Slovak federation and sanctioned the equality of 'fraternal nations,' the amendments of 1971 and 1975 pointed to the insincerity of the idea of federalism and the return to centralist state management by the communist regime. It is also worth highlighting that the era of Husák's rule was distinguished by the maintenance of the Marxist and Leninist course in the post-Stalinist spirit. This period was marked by constant confrontation with small anti-communist opposition focused mainly on Charter 77 (closely cooperating with other movements of this type, such as the Workers' Defence Committee (KOR) or Solidarity in Poland) and growing social dissatisfaction. This process manifested itself on November 17, 1989, starting the 12-day festival of freedom known as the Velvet Revolution. Daily demonstrations involving several thousand people compelled the rulers to recognize that the society no longer agreed to further propositions of 'rebuilding socialism.' The scale of the protests also ultimately prompted the regime to withdraw from solutions through force.[17] It is possible that the resolutions of the decision makers within the Communist Party of the Czech Republic were influenced by the orders Moscow issued and the political changes taking place in Poland.

3. German Democratic Republic

Unconditional surrender made the areas of the former German state fully dependent on the anti-Nazi coalition's decisions. It was considered necessary to divide its territory into four occupation zones, and this took place on June 5, 1945. One part of Germany came under the direct administration of the USSR authorities through the Soviet Military Administration (RWA), which put in place a program of denazification, nationalization of natural resources, industry and services, and the parceling of land goods. The legal basis for these actions were the normative acts issued by the Allied Control Council (a body established by France, the United States, Great Britain, and the USSR), but also outside the normative orders and instructions of the Soviet Military Administration commander. After the exacerbation of the conflict between the USSR and the United States, and the western countries' commencement of the formation (in the remaining occupied zones) of the Federal Republic of Germany, Moscow decided to create a separate socialist-style state entity called the German Democratic Republic

16 Szymczak, 1988, pp. 428–450; Chmielewski, 2005, pp. 16–17.
17 Bankowicz, 2003, pp. 88–94.

(GDR).[18] It is worth indicating, however, that this was preceded by the appointment, in 1947, in the Soviet occupation zone, of an advisory body named the German Economic Commission, which, until 1949, was the central German administrative body with legislative and administrative powers. Its effective management and planning policy, mainly in the economic sphere, favored the centralization of the territories subordinated to the USSR even before the formal establishment of the GDR, i.e., a state which, in the propaganda and formal and legal narrative, was to be the only legitimate political entity representing the interests of the entire German 'people.' As a side note, it can be added that the exclusivity thesis, due to the progressive normalization of relations between Bonn and Moscow, did not begin to be withdrawn until the end of the 1960s, and wording about the existence of a socialist 'GDR nation' was introduced into the official nomenclature (amendment to the constitution of 1974).[19]

The GDR's first constitution (May 30, 1949) was modelled on the Weimar constitution of 1919 and proclaimed the new state as a federal republic. On its basis, a temporary bicameral parliament and a provisional government were established. In an unusual move for socialist countries, the bicameral parliament (the *Volkskammer* chamber coming from general election and the *Länderkammer* chamber being appointed by the federal states' parliaments; this model survived until 1958) on October 11, at a joint session, elected communist Wilhelm Pieck (1949–1960) for the office of president of the GDR. It should be noted, however, that although the Soviet occupation forces seemingly handed legislative and administrative power to the new constitutional organs, the state was still under Soviet control – this time through the newly created body of the Soviet Control Commission (SMAD – Soviet Control Commission in Germany).[20]

From the very beginning of its formation, the Socialist Unity Party of Germany (SED), established in 1946 (through the forced merger of the Communist Party of Germany and the German Social Democratic Party in the Soviet occupation zone), imposed political hegemony. Under the leadership of the SED's first secretary (1950–1971, and, at the same time, 1960–1973; the chairman of the State Council of the GDR), Walter Ulbrich, together with the other puppet parties, formed the so-called National Front.[21] The falsehood of the omnipotent democratic rhetoric and the illusory people's power in the GDR (allegedly expressed through support for the Socialist Unity Party of Germany and allied parties within the National Front) were exposed through such events as the bloody suppressed workers' revolt in 1953 and East Germans' attempts to enter West Germany and West Berlin. As a result, the communist authorities decided to build the infamous Berlin Wall and a system of barriers on the German–German border; they also issued a barbaric order to shoot unarmed refugees.

18 Turski, 1972, pp. 288–304.
19 Szymczak, 1988, p. 162.
20 Szymczak, 1988, p. 158.
21 Turski, 1972, pp. 275–286.

From the dawn of the new rule, legislation (especially criminal legislation) became the key instrument for the communists' seizure and consolidation of power. Its politicized and repressive nature was initially manifested not so much in its content as in the practical application of the Soviet occupation authorities and the German local structures subordinated to it. Not only was the Allied Commission's special legislation willingly used as a tool to counter potential political opponents (such as Act 10 of 1945 and Implementing Ordinances No. 24 and 38 on the punishment of war crimes, crimes against peace and against humanity, or the acts establishing the economic criminal proceedings of 1948 in cases of sabotage, diversion, and other economic crimes), but, most of all, the Penal Code of 1871 that was still in force,[22] was utilized. This began to be widely interpreted, especially in view of Article 6 of the constitution of 1949, which broadly covered the protection of the state and (democratic) power.[23]

The tendency to apply an instrumental treatment of criminal provisions was confirmed by the amendments to the penal procedure of 1952 and to the penal code of 1957. These acts were intended to facilitate the process of 'cleansing' social life from the Nazi past, but they were, in fact, frequently used to eliminate all manifestations of political and economic resistance (generally under the pretext of countering incitement to war or to expose and undermine the actions of the enemies of the workers and peasants) and consequently to intimidate the public. Various restrictions were applied, such as imprisonment in labor camps or prisons with a strict regime, expropriation or forfeiture of property, deprivation of certain civil rights (the right to vote, the right to work or to perform functions in public services), as well as new types of punishment such as conditional conviction and public condemnation, or educational punishments (for acts of the so-called 'low social harm offense').

Penal regulations were enforced by the police and by the Ministry of Public Security established in 1950 (MfS, known as Stasi) as a political, economic, and military investigative body closely cooperating with district prosecutors' offices, as well as by the reorganized (structural and personnel) judiciary that was wholly dependent on ruling party's political will in its judgements. Their repressive activity was often in blatant contradiction to the declared rule of law (classified investigations, unfounded arrests, use of illegal measures in the investigation, brutal interrogation methods, simplified procedure, forcing a suspect to plead guilty, denial of the right to defense).[24]

In order to adjust the normative content to suit the actual prevailing ideology, in the GDR, a new constitution was adopted on April 6, 1968, this time modelled on the Soviet solutions originating in 1936. Its content included a declaration that state power was exercised by the working people of towns and villages under the leadership of the Marxist–Leninist party (Art. 1–2), and it referred to unitarism and democratic centralism (Art. 47), as well as to the principles of proletarian socialist internationalism with

22 Arnold, 2006, pp. 423–425.
23 A. 6 Verfassung der Deutschen Demokratischen Republik vom 7. Oktober 1949.
24 Herz, 2008, pp. 15–19.

distinction. Fraternal ties with the Soviet Union (Art. 6) were also emphasized. It was also stated that the economy should be based on socialist ownership of the means of production and on central control through plant complexes, production cooperatives, and labor cooperatives bringing together small producers and craftsmen (Art. 9).

The limitation in relation to the regulations of 1949 was significant. The catalogue of civil rights (Art. 19–40) was notably closely related to the corresponding duties (in accordance with the principles 'co-operate, co-plan, co-ordinate').[25] The new constitution also rebuilt the system of supreme state organs, removing the appearances of federalism. The People's Chamber became the highest organ of public authority, equipped with a legislative and creative function in the form of authorizing the election and dismissing the president of the State Council and the election and dismissal of members of other state authorities: the Council of Ministers, the National Defense Council, the Supreme Court, and the General Prosecutor's Office. In addition, people's representative offices were established in the districts, poviats, district cities, and communes (Art. 48–65).[26]

As mentioned above, the structure of the supreme bodies followed a centralist model of management and subordination. Its peculiarity was the combination of the position of the first secretary of the party with the function of the chairman (having the powers of the head of state) of the council,[27] as it emphasized the identification of the state with the party and strengthened the political position of this state function.

Let us remember that such a combination of party and state functions was a typical feature of totalitarian states, including the Third Reich. The application of this scheme was accompanied by a tendency to limit (from 1960) the powers of the State Council as a collegial body (e.g., depriving it of the right to issue a binding interpretation of the constitution and other normative acts), to reduce it to a representative role and, at the same time, to strengthen the competences in the internal and external policy of the foreign Council of Ministers. A noteworthy systemic solution in the GDR was also the creation of a body under the name of the National Defense Council (chaired by the First Secretary of the Socialist Unity Party of Germany), which, in the event of martial law, had exclusive legislative and executive powers.

In the DDR, justice was administered by the Supreme Court and the district, poviat, and social courts (e.g., in workplaces or housing estates). The military courts formed a separate structure. All judges (except in the military), lay judges, and members of social courts were elected by people's representatives or directly by citizens (Art. 92–96). The public prosecutor general (appointed, as mentioned above, by the People's Chamber and responsible to this body) was subject to hierarchical subordination of the public prosecutors from districts and poviats and the military prosecutors (Art. 97–98), who were appointed, dismissed, and responsible to the

25 Szymczak, 1988, pp. 160–175.
26 Mizerski, 1992, pp. 29–93; Verfassung der Deutschen Demokratischen Republik von 6 April 1968 in der Fassung des Gesetzes zur Ergänzung und Änderung der Deutschen Demokratischen Republik von 7 Oktober 1974, 1975, p. 79.
27 Działocha, 1974, p. 104.

public prosecutor general (Art. 97–98). The constitution also guaranteed the right to a fair trial and a typical defense throughout the entire criminal procedure and sanctioned the basic criminal law guarantees, including the principles of *lex retro non agit*, *nullum crimen sine lege*, *nulla poena sine lege*, and *nullum crimen sine culpa*. It also stated that the rights of a citizen in criminal proceedings may be limited only to the extent specified by law and that the decision to apply pre-trial detention constitutes a judge's exclusive right.

It can be added here that many of the aforementioned constitutional guarantees were previously expressed in the penal code adopted on January 12, 1968. This code, despite the appearance of referring to the principles developed by the classical school of criminal law, was, in fact, mainly focused on protecting the socialist regime, which was perfectly illustrated by the accumulation of ideologically marked offenses in the following chapters: 1 – crimes against the sovereignty of the GDR, peace, humanity and human rights (sic!), 2 – crimes against the GDR, and 8 – crimes against the state order. It also manifested itself in describing crime in a typically totalitarian manner in terms of a culpable anti-social or socially dangerous activity, being an echo or relic of capitalism.

This conviction that crime is the result of the previous system's influence was also reflected in the categorization of criminals and punishments. Educational penalties (including freedom sentences) were provided for citizens who were class-devoted to socialism and who committed misdemeanors and offenses that did not affect the foundations of the functioning of the state and the system. For the enemies of the people and the system who committed crimes, penalties were foreseen primarily as a deterrent.[28] Acts of low social harm or fault could be treated as misdemeanors, administrative offenses, or disciplinary offenses, or could be prosecuted in accordance with the provisions on material liability. These issues were regulated by the Act on Combating Misdemeanors of 1968, which – let us mention it as a curiosity – introduced such specific penalties as an entry in employees' files containing an annotation about the violation of legal obligations or an order of work commonly useful during time off work.[29]

In relation to Erich Honecker's 1971 takeover of the position of secretary general of the Socialist Unity Party of Germany (which he held for the period 1971–1989; from 1976, he was also the chairman of the State Council), the 'consumer socialism' program began to be implemented, and international relations were normalized (also with the Federal Republic of Germany, accession to the United Nations in 1972). An expression of this new approach was the 1974 amendment to the constitution, which adopted the idea of building a separate identity for the GDR. At the same time, the hegemonic power exercised by the Socialist Unity Party of Germany and the friendship with the USSR were consolidated, and the preamble stressed the need to "*follow a developed socialist society along the path of socialism and communism*." Despite the

28 Arnold, 2006, pp. 430–433.
29 Łysko, 2017, pp. 194–195.

apparent success of the idea of 'consumer socialism' in the autumn of 1989, in the GDR, there were mass popular protests that resulted in the spectacular fall of the Berlin Wall. Subsequent significant changes in constitutional regulations aimed at deconstructing the state's communist character[30] did not prevent the country from being absorbed by the Federal Republic of Germany.

4. Romania

Romania was a constitutional monarchy in the years 1866–1947. During the Second World War, however, its vulnerability – first to the influence of the Third Reich (the pact with the Axis powers, the infamous dictatorship of Conducător Ion Antonescu), and then – to the Soviet Union led to significant changes in the state's political structure. In August 1944, there was a coup d'état controlled by King Michael I (with great public support), siding with the allies. The monarch also agreed to the USSR's liberation and actual control of the state (Soviet troops were stationed in Romania until 1958) and to make territorial concessions to the USSR and Bulgaria. The adopted course of action, with the consent of the rest of the Big Three, resulted in an increase in the communists' importance, the forced abdication of the king, and the overthrow of the monarchy.[31]

As a result, on December 30, 1947, a proclamation of the Romanian People's Republic was delivered, in which the then-prime minister Petru Groza (the head of the Ploughmen's Front, a satellite party towards the communists) continued to ingloriously play the role of creator of brutal systemic changes, along with the communist Georghe Georghiu-Dej (first secretary of the Romanian Workers' Party in the periods 1944–1954 and 1955–1965, prime minister in the period 1952–1955, and chairman of the State Council in the period 1961–1965). For the sake of clarity, it should be recalled that the communists' domination, legalized in a typical manner for the so-called 'demoludes' through the rigged elections in 1946, resulted not only from the exercise of control over the power-wielding departments and administration but also from the Soviet authorities' direct and constant interference. The construction of the totalitarian system, preceded by the liquidation (after trials that were conducted for show) of all formal political opposition, the forced merger of the communist and social democratic parties, and the creation of a cross-party bloc called the People's Democracy Front (from 1974, constitutionally legalized as the Socialist Unity Front), was sealed in March 1948 by means of fictitious elections to the Great National Assembly and the adoption of a new constitution on April 6, 1948.

In this case, we can note a clear departure from Montesquieu's idea of the division and inhibition of powers in favor of Marxist–Leninist 'democratic centralism.'[32]

30 Mizerski, 1992, pp. 25–28.
31 Hasenbichler, 2020, pp. 2–3; Tismaneanu, 1989, pp. 34–39.
32 Bielakow et al., 1964, p. 714.

The supreme organ of state power, representing the working people and having a monopoly on legislation, was the unicameral Great National Assembly (GNZ) headed by the Presidium. The executive body was a government headed by the prime minister (who was accountable to parliament). In the field, power rested in the hands of collective national councils subordinated to central administration bodies, which meant no dualism in public administration. Bills were prepared and control over the constitutionality of the laws was exercised by a body specific to Romania (a similar one was established in the GDR) called the 'constitutional and legal committee' (from 1975 – the 'constitutional committee'). The committee was elected for a given parliamentary term from among members and specialists from outside parliament. As part of the justice system, lay judges were appointed to resolve disputes, alongside professional judges, with an equal decision-making vote.

The systemic changes also affected the socio-economic structure. An often brutal, forceful process of nationalization of almost all branches of the economy was initiated, and a central model of its management was implemented (the first plan, however, was put into effect only in the years 1951–1955, i.e., slightly later than in other socialist countries). Due to the peasantry's mood, collectivization was extended in time and completed at the beginning of the 1960s.[33] It is also worth underlining that for all manifestations of contestation of the new Romanian rule, one could face particularly brutal restrictions, including imprisonment in labor camps and colonies without a sentence – that is, solely by the decision of the Ministry of the Interior. In these, the authorities applied an inhumane, 'experimental' method of re-education, which consisted of rewarding convicts who expressed communist views by shortening their stay in a cell or prison in exchange for torturing other prisoners.[34] As we can see, the 'experiment' carried out in the Piteşti prison was earlier and far more brutal than that in the famous Stanford prison[35] or Milgram's experiment.[36]

Due to continued pro-Russian subordination, the character of the constitution of March 27, 1952 was established through consultation with Joseph Stalin and the leading Soviet lawyer, Andrej Wyszyński. Thus, a system based on the state's class character and its friendship and alliance with the Soviet Union and socialist internationalism was consolidated in Romania. Moreover, it highlighted the superior role of the Supreme Court over other judicial authorities and the prosecutor's supervision of central and local administration bodies, as well as these bodies' terms of office at all levels. Another noteworthy fact is that by virtue of the constitution of 1952, as part of the reorganization of state administrative units, the Magyar Autonomous Region (Regiunea Autonomă Maghiară), which was inhabited by Hungarian-speaking Seklers, was established. This gesture was meant to communicate the regime's sensitivity to national minorities' affairs, but in reality, under the pretext of population and

33 Szymczak, 1988, pp. 199–206.
34 Wolsza, 2016, pp. 105–106.
35 Zimbardo et al., 1972, p. 26.
36 Milgram, 1963, pp. 371–378.

territorial changes, this only seemingly independent entity was liquidated in 1968. An important constitutional amendment in 1961 transformed the GNZ Presidium into the Council of State (which, among others, was composed of the chairman of parliament and the prime minister), expanding its scope of powers, increasing its independence from parliament, and giving it authority over the government.[37] Thus, it became the main authority in the state.

Nicolae Ceauşescu's (secretary general of the Romanian Communist Party in the period 1965–1989, chairman of the State Council, and later president in the period 1967–1989) dictatorship marked a vital and painful period in the history of the communist state regime. His rule evolved from the political 'thaw' (*dezghet*) period (continuation of de-Stalinization, G. Georghiu-Dej's rehabilitation of the victims of terror, refusal to agree to the invasion of Czechoslovakia, cooperation with the West) and cultural and economic liberalization to the 'freezing' (*înghet*) period. Staunch protest against foreign states' interference, especially the Soviets, in the country's internal affairs was accompanied by a shift toward the legitimacy of communist nationalism known as Ceausism (the Romanian version of Stalinism).[38] The legal basis for strengthening Ceauşescu's personal rule was the third constitution in the regime's history, which was passed on August 21, 1965 (symbolically referring to the anniversary of the 1944 coup d'état) and then amended ten times within the years 1968–1986.

From the viewpoint of the systemic regulations validated in this act, the following are noteworthy: the change of the state's name to the Socialist Republic of Romania and the replacement of the fraternal alliance with the Soviet Union on the principle of basing international relations on respect for national sovereignty and independence and not interfering in internal affairs. Moreover, its content was enriched with an ideological layer emphasizing the Romanian working class aspiration to achieve communism and recognizing the Romanian Communist Party (RCP) as the leading political force in society and the highest organizational form of the working class. The issue of founding the national economy on socialist ownership of the production means (state or cooperative) and a foreign trade monopoly was also accentuated.

From the time of the delivery of the so-called July Theses in 1971, there was a clear regression in Ceauşescu's policy; the personal dictatorship and cult of the individual expressed, through strong control and administrative and police restrictions on society, a high degree of state centralization (the highest, not considering Albania), economic statism, and justified nepotism. It is also worth mentioning the significant amendments to the constitution, which, among others, sanctioned the principle of combining the position of the chairman of the State Council (from 1975, equivalent to the president of the republic) with the function of the secretary general of the RCP (1967) and granted the right to nominate only candidates for parliament to the Socialist Unity Front (1974). In terms of constitutional and statutory regulations concerning local state authorities (national councils), the tendency indicated a formal extension

37 Sokolewicz et Zakrzewska, 1976, pp. 7–9, 15–16, 27–32.
38 Zavatti, 2016, pp. 194–197; Brzostek, 2009, pp. 47–69.

of the scope of their competences (e.g., militia bodies were subordinated to them at all levels; at the district level they selected judges, lay judges, and prosecutors at the request of the minister of justice, respectively, and the public prosecutor general), but with a strong position in these councils' executive committees.

Analogically to the constitutional regulations, the principle of combining positions in the party and in national councils had already been introduced by way of non-statutory (political) means.[39] It is worth noting that in Romania, as in the case of other so-called 'democracies,' the practice of combining party and state functions and the state's actual absorption by the communist party could be observed. In other words, on the factual and normative level, the party organization absorbed the state, and it took a secondary position in relation to the party. The issue that distinguished Romania in terms of the system, and in fact from other socialist countries, was the restoration of the cult of the individual and specific leadership in the state's organizational structure during Ceauşescu's rule. The most palpable symptom of this was the introduction into public circulation (infamous with respect to Antonescu's heritage) of the term *conducător* (chief).

As far as criminal law in Romania is concerned, quite similar to in Poland, the codes developed before the communist coup were used for a long time (the Romanian penal code and the code of criminal procedure, adopted in 1936 and entered into force in 1937).[40] It was assumed that the 'old' regulations could be filled with new, socialist content and adapted to the formation of a new society through systematic amendments (actually, they were amended annually). In the case of Romania, the technically modern nature of criminal codifications was aptly emphasized; nonetheless, this did not prevent them from being replaced by new regulations in 1968.

The new penal code adopted the assumption, which was typical for socialist countries, that a crime is a socially dangerous act (in the 1936 code, this idea was introduced by the 1949 amendment). In its content, the division into crimes, misdemeanors, and offenses (*crima*, *delict*, *contraventie*) that existed in the 1936 code was abolished. It was also established, as was the case in the criminal code of the German Democratic Republic, unprecedentedly so in the context of other USSR-dominated regions, that attempt and preparation were punishable only if they were expressly provided for in the criminal law.

Among the more interesting elements of Romanian criminal law, it is also worth indicating that, apart from typical justifications, such as necessary self-defense or a state of necessity, it introduced (similarly to the Hungarian regulations) the abolition of criminal liability for acts committed as a result of physical or mental coercion. The Romanian penal code also differed from other socialist regulations by assuming that unintentional offenses consisting of acting were only liable if provided for by law, and in the case of offenses of negligence, it assumed that they could be committed either

39 Sokolewicz and Zakrzewska, 1976, pp. 39–57; Constitution of the Socialist Republic of Romania of 21 August 1965, 1976, pp. 69–101.
40 Negru, 2014, p. 155.

intentionally or unintentionally – without a separate indication of this in the act.[41] Nevertheless, one should not fail to mention that regardless of the level of legislative technique expressed in the structure of particular provisions or, more broadly, the institution of substantive and procedural criminal law, in Romania, as in other countries of the so-called 'people's democracy,' the level of formal, normative means of security, such as the right to a fair trial, the principles of non-retroactivity, the right to choose a defense counsel, the presumption of innocence or *nullum crimen, nulla pena sine lege*, was only as high as the politicized ruling structures, especially the staff officials' mentality and ordinary decency, allowed.

5. Hungary

During the Second World War, the Kingdom of Hungary cooperated with the Nazi–German regime. Nevertheless, it is worth indicating here that (unlike in the Romanian case) no anti-Semitic policy was implemented in Hungary under Kormányzó Miklós Horthy. After the entry of Wehrmacht troops into the country in March 1944 and then Ferenc Szálasi's (the leader of Arrow Cross) takeover of full power, however, the Jewish population's situation became as tragic as in other areas under the Third Reich's rule. At the end of 1944, in response to the occupation and the Arrow Cross Party's rule, an independent multi-party Hungarian National Independence Front was formed in the country, the common target of which was to side with the Allies and democratize the country.

Following the war's conclusion, by the decision of the Big Three, this country fell into the USSR's sphere of influence. During the time of initial occupation, the invading Soviet troops took full advantage of the Hungarian defeat and the breakdown of law and order and committed numerous acts of rape and murder against the civilian population in addition to plundering private and public property. Additionally, significant large material burdens related to the implementation of the provisions of the Paris peace treaty (February 10, 1947) were heaped upon the defeated nation. These resulted in the reinstatement of Hungary's pre-1938 borders, compulsory war reparations to the USSR, Yugoslavia, and Czechoslovakia, and the obligation to the further stationing of Soviet troops. The last element in particular (as in the case of Romania and Poland) ensured the state's political fate.

Despite the fact that the first free elections in November 1945 gave the non-communist agrarian party a political advantage, the Soviets' constant, forceful support for the left-wing parties participating in the government led to their gradual takeover of control of the state.[42] The decisive importance of the stationing of Soviet troops in a given country needs to be highlighted in relation to the loss of that country's

41 Andrejew, 1975, pp. 44–103.
42 Kubas, 2012, pp. 200–201.

sovereignty. This is exemplified by the different fates of Albania, Yugoslavia, and Finland in relation to that of Hungary or Poland.

The first vital step in transforming the Hungarian state into a country with a so-called people's democracy was the adoption, on January 31, 1946, of the so-called Small Constitution, by virtue of which the monarchy was abolished and the Second Hungarian Republic was proclaimed (however, temporarily, as it turned out, since it only survived until 1949). In accordance with its provisions, a unicameral legislative body called the National Assembly was established, the composition of which was selected in universal, direct, equal, and secret elections. Moreover, executive power was entrusted to the president elected by the National Assembly, who was responsible to it (his acts required the relevant minister's countersignature), and the interim government (responsible to the parliament). The Small Constitution did not regulate other state organs' systemic position, although it referenced the idea of the tripartite division of powers.[43]

The communists' ongoing political offensive, marked by electoral fraud and political murders, made it possible, in 1947, for the Left Bloc to take full power in the state. In practice, this ensured the Hungarian Communist Party's (from 1948, after the forced merger with the Social Democratic Party – the Hungarian Workers' Party) political domination under the leadership of 'Stalin's best Hungarian disciple,' Mátyás Rákosi (appointed, based on the generalissimo military ranking, secretary general of the Party in 1946–1956).

His infamous reign, known for the use of 'salami tactics' (the tactic of eliminating political opponents and gaining control of the state apparatus piece by piece), was marked (especially from 1947) by widespread terror and mass repression by the security services (Államvédelmi Osztály), as well as fake trials that were essentially formalities[44] and deportations (often without sentences) to forced labor camps (modelled on the Soviet Gulags).[45] The regime's elites also attacked Hungary's Christian denominations. This practice is best symbolized by the 1948 imprisonment of the Lutheran bishop Lajos Ordass and the 1949 sentencing of József Mindszenty, the Catholic Primate of Hungary, to life imprisonment (both were subsequently exiled in 1956).[46] At the same time, the communist authorities began to undertake systemic transformations in the socioeconomic sphere, expressed, inter alia, in agrarian reform (e.g., expropriation of largescale agricultural estates, and, over time, the brutal collectivization of agriculture) and currency reform (*pengő* replaced with *forint*), as well as the nationalization of industries and banks. Following the Stalinist pattern, 5-year economic planning (from 1947) was put into practice. These were allegedly conducive to pro-quality changes, but in reality, in the following years, they deepened the material collapse of the state and the pauperization of the population.[47]

43 Kubas, 2012, pp. 200–201.
44 Horváth, 2003, pp. 238–244.
45 Rieber, 2013, pp. 29 et seq.; Wolsza, 2016, pp. 104–105.
46 For more on the cardinal's stance, see Grajewski, 2017, pp. 139–145.
47 Szymczak, 1988, pp. 242–246.

Another major change in the political system occurred with regard to the adoption, on August 18, 1949, of a new constitution after the Hungarian Workers' Party took full control of the country (A Magyar Népköztársaság Alkotmánya; this constitution, as amended, was in force until the end of 2011). The state, now renamed the Hungarian People's Republic, was to be a 'country of workers and working peasants.' The adopted direction of transformations was signaled in the preamble to the act, which focused on recognition of the Soviet armed forces' contribution to the liberation of the country, as well as on the 'generous' assistance the USSR provided in its post-war reconstruction. It should be emphasized here that the document's content was an exceptionally accurate (even compared to other countries in the so-called people's democracy) carbon copy of common Soviet constitutional practices.

Among the elementary system principles contained in the 1949 constitution, it is worth noting the following: the assumption that state power comes from working people; recognition of a socialized economy and central planning as the basis of the state's economic existence; the assumption that the implementation of economic targets should be carried out in accordance with the socialist principle 'from everyone according to ability, to everyone according to work'; recognition of the principle of the uniformity of state authority as the basic rule shaping the political system; guarantee of the rights and civic obligations of the 'working people' (and therefore not all) but without the legal tools to protect (enforce) these rights; and the introduction of 'separation' between the state and the church, which (in reality) entails the state's domination over religious organizations.

Pursuant to the 1949 constitution, the National Assembly exercised supreme authority on behalf of the 'working people.' Its basic competences included passing bills, appointing and dismissing the Council of Ministers (the supreme organ of state administration), deciding on matters related to war and peace, as well as wielding constitutional control and derogation from sub-statutory normative acts. The assembly held sessions biannually (in exceptional cases, extraordinary sessions could be convened). The function of the head of state (elected by the assembly) was performed by a collegiate body (20 people) called the Presidential Council. Its duties included ordering parliamentary elections, convening National Assembly sessions, initiating legislation, managing nationwide referenda, ratifying international agreements, establishing the right to grace, and electing professional judges – and from 1972, holding constitutional supervision over territorial representative bodies.[48]

In the Hungarian People's Republic, people 18 years of age and older were entitled to passive and active suffrage. Moreover, from 1966, a rule was introduced that the deputy represented the constituency from which he was elected and that he was formally accountable to voters. It was also made possible for the number of parliamentary candidates to exceed the number of seats. In the 1980s, the electoral system was modified in such a way that some deputies from the national list (1983)

48 Constitution of the People's Republic of Hungary of 20 August 1949, pp. 659–671.

were directly elected, and the obligation to nominate at least two candidates for one deputy's mandate (1985) was introduced.[49]

The Hungarian judiciary consisted of district and regional courts and the Supreme Court (special courts could also be established by law in the event of a state of emergency). The Supreme Court, which supervised the activities of all other courts, was headed by a president elected by the assembly for the duration of the parliamentary term. Courts adjudicated (also in administrative cases) in panels composed of professional and lay judges. Professional judges were formally independent and subject only to the law; they were appointed by the Presidential Council (which also had the power to remove judges). The prosecutor general of the Hungarian People's Republic was in charge of the prosecutor's office. This body was also appointed by the parliament for the term of the assembly. The public prosecutor's major duties included overseeing the legal order and prosecuting crimes with the assistance of hierarchically subordinate public prosecutors whom he appointed (in accordance with the current administrative structure).[50] It goes without saying that the prosecution service was politicized and that the task of protecting the legal order, as in all other demoludes, was primarily related to securing the existence of the communist regime.

In order to build and consolidate the power of elites dependent on the Soviet Union, the prosecutor's office and the Hungarian judiciary used criminal law (again, analogously to the situation in other satellite countries) to target opposing individuals. Immediately after Szálasi's overthrow, regulations concerning war crimes and enemies of the nation, as well as rules for establishing people's courts were introduced. In 1946, laws on the protection of the democratic order of the state and the democratic republic were brought into play. These acts, which the communists ruthlessly used to destroy political opposition, became the basis for the fragmentation of the penal law typical of demoludes into those that the communists considered important for gaining and maintaining power (hence, the particular severity) and those related to common crimes (the less severe criminal policy). This phenomenon was perpetuated by the amendments to the 1878 penal code: first in 1948, and then a significant amendment in 1950, which introduced a new general part of the code, based on Soviet solutions.

In the Hungarian People's Republic, countering political opposition was made easier due to the application of solutions incompatible with the principles of the rule of law, for example, introducing responsibility for belonging to an organization recognized as criminal or for work in state authority offices during Szálasi's rule (retroactive effect of criminal law, presumption of guilt). The amendment to the general part of the 1950 penal code also facilitated the manipulation of the notion of a crime by introducing the category of the social harmfulness of an act into its definition and by equating the responsibility of perpetration with attempt, incitement, and aiding.[51]

49 Kubas, 2012, pp. 202–203.
50 Szymczak, 1988, pp. 262–263.
51 Horváth, 2006, pp. 6–8.

It is worth noting here, however, that the very same equation does not pose a threat to the rule of law as long as judges are actually independent and the courts are independent of other state authorities. The aforementioned amendment also excluded the notion of offenses from crime (in the People's Republic, there was a division into felonies and misdemeanors), stating that "*criminal courts* [...] *must have laws that do not cause unnecessary legal complications and avoid unnecessary legal pettiness*."[52] It also has to be highlighted at this point that Hungarian criminal law, as in the case for the vast majority of the so-called people's democracies (with the exception of Poland), agreed to derogate from the principles of *nullum crimen sine lege* and *nulla poena sine lege* (even though Hungarian criminal law, like Polish, Czechoslovak, and East German law, did not legalize the Soviet rule of analogy).[53] It also inculcated different treatment of perpetrators due to the guild assigned to it: Persons recognized as class enemies were, by definition, found guilty of any alleged offense, and the evidence proceedings, if pending, could, at most prove, innocence. It also recognized, as mentioned above, the principle of collective responsibility.[54]

In 1961, a new penal code was passed which, while still significantly influenced by Soviet concepts of penal law, re-adopted some of the classical school's achievements. This was visible, for instance, in the modified approach to crime, which, on the one hand, included the concept of the social danger of an act,[55] and on the other hand, restored, as its condition, the proof of guilt or the recognition that negligence may be punished only if the law expressly provides for it. The tendency to return to the classical school's achievements was even more clearly marked in the 1978 penal code, which is in force to this day, though with amendments. As the literature emphasizes, its systematics and language are impeccable; nevertheless, it also retains the Soviet approach to social danger: 75 political crimes were penalized, and in many cases, the punishments were made more severe.[56]

Analogically, as in the case of other countries where so-called 'real socialism' was in effect and also in Hungary, regardless of formal normative regulations (on the level of the constitution or ordinary laws), the real monopoly of power in the state was enjoyed by the communist elite gathered in the Hungarian Workers' Party (in the years 1956–1989, this group was called the Hungarian Socialist Workers' Party – Magyar Szocialista Munkáspárt). However, after Stalin's death, the post of prime minister of Hungary was entrusted (with the USSR's support) to the communist politician Imre Nagy, whose reforms, known as the 'new stage,' clearly brought about changes in freedom in the political, social, and economic spheres. Nagy's government restored the multi-party system, abolished the political police, released political prisoners, and announced the introduction of free elections.

52 Horváth, 2006, p. 9.
53 Andrejew, 1975, p. 73.
54 Horváth, 2006, pp. 12–20.
55 Andrejew, 1975, p. 63.
56 Horváth, 2006, pp. 8–9.

In 1956, he was forced out of government and became the leader of the Hungarian revolution as well as a symbol of resistance to the intervention of the armed forces of the Warsaw Pact in Hungary (which was reflected in the declaration of Hungary's neutrality and its withdrawal from the Warsaw Pact).[57] After the Soviet army's intervention and the bloody suppression of the uprising, Nagy, following a secret trial, was hanged and buried in an anonymous tomb (attempting to obscure their memory and ensure complete disrespect for people considered enemies, even after their death, was another hallmark of the communist regimes). Moscow subsequently positioned János Kádár (in the years 1956–1988 secretary general of Magyar Szocialista Munkáspárt; prime minister in the years 1956–1958 and 1961–1965) as the head of the party and the government.

The new regime legalized the deployment of Soviet troops in the country's territory, restored (with the participation of the Soviet security services) the political police by establishing the so-called communist party 'order forces' (karhatalom), and established political investigation departments at police stations (subordinated to the 2nd Main Department of the Ministry of Internal Affairs). Purges were also carried out in the party and public institutions, as well as staff rotation in the judiciary and the prosecutor's office (the vast majority of new employees at these institutions had no education or professional qualifications, and professional judges or prosecutors, often with basic general education, acquired legal knowledge during short training courses at the Judges and Public Prosecutors' Academy).

Moreover, in December 1956, at the meeting of the Central Committee of the WSPP, a resolution was adopted on the ideological foundations and methods of conducting the official repressive policy, which constituted legally binding guidelines for the operation of public security and legal protection bodies. In the period 1956–1957, ordinances were issued introducing special laws and extraordinary courts (including the network of people's courts). Their justification was the introduced state of emergency, and the assumption was to intimidate and repress society, mainly the participants in the revolution and leading opposition intellectuals and artists. As part of the so-called ad hoc justice system, an expedited prosecution procedure was introduced, i.e., the accused had limited access to defense, the charges were often presented to them only at court sessions, and the catalogue of crimes ranged from murders through illegal possession of weapons and ammunition and recognition as a class enemy to strikes and refusal to work. The convictions were harsh (ranging from 10 years in prison to the death penalty) and carried out swiftly. In total, the extraordinary civil and military courts issued over 8 000 convictions.[58] Another form of repression was the internment for at least 6 months of anyone suspected of violating public order. The new government did not hesitate to use such inhumane methods of fighting civilians as shooting at assemblies with live ammunition or

57 Rainer, 1997, pp. 263–277; Tischler, 2006, allowance.
58 Kopyś, 2017, p. 184.

beating up random citizens. All of the above were treated as a form of retaliation for October 1956.[59]

Kádár's brutal and restrictive rule was alleviated by gradual amnesties from 1957 until the great amnesty in 1963. This trend, in the years 1963–1968, took the form of so-called goulash communism, otherwise known as Cadarism, and demonstrated a massive, by real socialist countries' standards, liberalization of the economy (as part of the '*új gazdasági mechanizmus*' program), culture, and later also the sphere of politics (the principle of the mono-party system, which was restored in 1957, however, was not violated). Nonetheless, it should be borne in mind that the thaw and the relative stabilization of public life were constantly accompanied by the shadow presence of a dictatorship[60] that had no qualms about the forcible destruction of people who were considered a priori as the enemies of the system. A symbolic reminder of the Kádár regime's nature was the adoption, on April 4, 1972, of the amendment to the constitution that recognized Hungary as a socialist state.[61] It was apparent, however, that within the years 1963–1989, the number of political trials (which involved, as indicated in the subject literature, actual opponents of the political system) decreased and that death sentences were abandoned. This was an expression of the regime's new political tactics, which were manifested in the change of the motto from "*those who are not for us, are against us*" to "*those who are not against us, are for us*."[62]

The opportunity to introduce systemic changes appeared in Hungary, as in other real socialist countries, only with the emergence of a new balance of power among Soviet decision makers (Mikhail Gorbachev) in the mid-1980s. This enabled an initiation of talks between the Hungarian communists and the Hungarian opposition. Consequently, Kádár was replaced by Miklós Németh, and the systemic reforms approved during the Hungarian Round Table Talks in the agreement between the government and the opposition commenced.[63]

6. Poland

The last of the states discussed in the chapter, which, after 1945, was under the direct control of the USSR, is Poland. Although after the invasion of the German and USSR troops, the continuity of the government-in-exile was maintained (first, in France, and from 1940, in London),[64] on behalf of which the structures of the Polish Underground State operated in the occupied territories, after the re-entry of

59 Kiss, 2016, pp. 373–394.
60 Szerencsés, 2012, pp. 29–52.
61 Kubas, 2012, p. 203.
62 Horváth, 2006, p. 6.
63 Szigeti, 2008, pp. 3–15.
64 The Polish government-in-exile ended its activities after the handover of the insignia of power in 1990 to a freely elected individual – President Lech Wałęsa. Cf. Kozerska and Scheffler, 2017, pp. 56–60.

the Red Army into Polish territory, all manifestations of the Polish legal authorities' operations were systematically eradicated. The Soviet administration was created in the lands to the east of the Bug line, while to the west, structures dependent on the State National Council (KRN) were established at the turn of 1943/1944 under the aegis of Stalin and controlled by the USSR. The KRN soon set up an executive body called the Polish Committee of National Liberation (PKWN), which, on July 22, 1944, announced an act called the manifesto. Pursuant to this act (despite the fact that it was not formally a normative act), the new usurping power unjustifiably banned the legal and systemic order of the Second Polish Republic and arbitrarily recognized the KRN as the only legal source of power in the country, in addition to announcing the introduction of socioeconomic reforms. With initially quiet and then open approval from Great Britain and the United States (in June 1945, the United States and Britain withdrew diplomatic recognition of the Polish government-in-exile) coupled with the Soviets' direct influence, the communists began to forcibly form an administrative party structure at all state levels, gradually started to nationalize industries, and, as part of land reform, introduce expropriations.[65] Numerous acts introducing penal provisions in the social, economic, and political spheres were to reinforce the volatile legality of the communist regime. Legislative activity in this area within the years 1944–1954 was expressed in the issuance of over 100 legal and criminal acts that not only undermined or repealed the existing legal order but also questioned the principles of European legal culture. Among these, the following are worth mentioning: the Sierpniówka (August Decree of 1944) and the decree on the so-called fascization of the country (1946), penalizing actions from before and during the war (also applied to the Polish underground) on the basis of *lex retro agit*, the Decree on the Protection of the State (1944), the decree on emergency proceedings (1945), the Small Penal Code (1946), the decree on the protection of freedom and conscience (1949), the March decrees (1953), and the acts of 1958 and 1959 concerning the protection of social property. The provisions they contained extended the objective and subjective scopes of being held accountable and allowed for the courts' freedom of interpretation. They also made the restrictiveness more stringent by frequently allowing the employment of the death penalty, life imprisonment, or forfeiture of property in relation to acts of a political and economic nature.[66] It should also be noted here that the communist regime's criminal activities (typical for people's democracies) often took place without specific normative foundations (murdering political opponents, torturing prisoners, labor camps,[67] deportation to camps in the USSR), as well as that where reference was made to the new regulations, their application was very often the responsibility of people without traditional legal education.[68]

65 Kersten, 1984, pp. 131–263; Kozerska and Dziewulska, 2021, pp. 122–123.
66 Lityński, 2010, pp. 110–122.
67 Kozerska and Stec, 2017, pp. 1115–1134.
68 Olszewski, 2017, pp. 37–51.

After taking power, the communists upheld the 1932 penal code. This was owing to both the high quality of its legislative technique and to the assumption that the 'bourgeois' form of the code could be filled with socialist content resulting from class-conscious judges' and prosecutors' interpretations. In spite of it, in 1969, a new code was enacted, which was to correspond to the socialist sense of justice, while retaining some of the solutions contained in the code of 1932. It adopted the Soviet concept of the so-called material approach to the crime by recognizing that the crime is a 'socially dangerous' act, and at the same time, it was also confirmed to be bound by the classical principle of *nullum crimen sine culpa*. It was also established that guilt may be intentional or unintentional or, due to the object and effects of the action, may combine intentional with unintentional elements. The validity of the *nullum crimen* / *nulla poena sine lege* principles was recognized, and the possibility of applying an analogy and extensive interpretation in criminal law was excluded. In terms of responsibility, the following were equalized: attempt, incitement, aiding, accomplicity, and the so-called directing the commission of a felony (when the perpetrator performs prohibited acts with the assistance of other subordinated persons). The punishability of preparation was limited to cases expressly specified in criminal law. Felonies, due to the severity of the potential punishment, were divided into crimes and offenses. Misdemeanors were included in a separate code and were not subject to court judgements but rather to those of special bodies called magistrate courts. The special part of the code contained relatively numerous cases of felonies against the state and public order, which were assumed to have a strong political load. The death penalty was kept among the penalties; however, the life sentence was abolished.

The kidnapping and then carrying out a show trial of 16 leaders of the Polish Underground State (the so-called Moscow trial) before the Supreme Court of the USSR was a clear demonstration of force and a brutal act of lawlessness.[69] The communists' brutal struggle against the Catholic Church should also be mentioned: Atheism and secularism were promoted, and clergymen were surveilled, murdered, and imprisoned. The communists, in the years 1953–1956, even had the courage to intern Stefan Wyszyński, the then primate of Poland.[70] The communist regime also falsified the results of the first post-war referendum (June 1946), which was to legalize the direction of political changes, as well as the first parliamentary elections (January 1947). These actions paved the way for the liquidation of the legal political opposition and the enactment, on February 19, 1947, of the so-called Small Constitution.[71] Its content was limited to regulating the highest organs' systemic position and scope of operation. Based on the provisions of this act, which was in force within 1947–1952, the state's official name was maintained as the Republic of Poland; however, the state management system that was actually introduced assumed the character of an apparent people's rule. Supreme legislative power was entrusted to the unicameral

69 Davies, 2004, pp. 611–618.
70 Żaryn, 2010, pp. 35–122.
71 Roszkowski, 2017, pp. 183–189.

Legislative Sejm, which was elected by universal suffrage. Executive power was assigned to the Council of State appointed by the Sejm (consisting of the president, the marshal, and three deputy speakers of the Sejm, the president of the Supreme Chamber of Control, and the supreme commander of the armed forces during the war), the president appointed by the Sejm (who was also the head of the armed forces, the chairman of the Council of Ministers, and the Council State), and the Government of the Republic appointed by the president. Judiciary power, on the other hand, was entrusted, according to the Small Constitution, to formally independent judges who were subject to the law.[72] Three 1949 acts supplemented the residual constitutional regulations in this respect, i.e., the Act on the System of Common Courts, the Act on Amending the Provisions of the Code of Criminal Procedure, and the Decree on Emergency Proceedings. On their basis, inter alia, the institution of investigative judges was abolished, lay judges in criminal cases were introduced, the Supreme Court was empowered to establish guidelines for the administration of justice, in criminal proceedings, two-instance (instead of three-instance) procedures were introduced, and following the Soviet (and military) approach, the institution of extraordinary appeal was introduced as a remedy. The changes legalized the direct influence of political factors on the judiciary.[73]

Another significant system modification took place in connection with the adoption, on the anniversary of the July manifesto (22 July 1952), of a new constitution, which referred to the Soviet models. Essentially, as in the case of other people's democracies' constitutions, it was primarily propaganda and a declaratory act. In accordance with its regulations, the Polish People's Republic (since it gave the state the name that was in force until 1989) was to be a state with a people's democracy in which sovereignty belonged to the 'working people of towns and villages.' On behalf of the working people, according to the sanctioned principle of the uniformity of state power, power was entrusted to the unicameral Sejm and the local people's councils. Executive power was exercised by the supreme organ of state authority called the Council of State and the supreme organ of state administration in the form of the Council of Ministers. Both of these entities were appointed by the Sejm. The judiciary was entrusted to the Supreme Court (which supervised all courts), poviat courts (later renamed district courts), voivodeship courts (as the first instance in certain cases and on appeal against poviat court judgements), and special courts (military, and, from 1980, administrative courts). People's judges and lay judges were appointed by the State Council. In the 1980s, two more specific judicial organs were established: the Tribunal of State in 1982 (a body established to hold the highest state officials accountable for violations of the law in connection with the performed function; it did not sit during the communist period), and, in 1986, the Constitutional Tribunal (a judicial body examining the constitutionality of legal provisions and determining the interpretation of acts with universally binding force). The prosecutor's office consisted of

72 Dz.U. 1947, No. 18, item 71, as amended.
73 Lityński, 2010, pp. 33–34.

the public prosecutor general appointed by the State Council and lower-level prosecutors who were appointed and subordinated to the office. The state's economic basis was the socialized national economy, central planning, and the state's monopoly on foreign trade.[74] It is worth adding that the ownership policy assumed a state monopoly on industries and strategic services (e.g., banks, transport) from the beginning of the regime's rule. The nationalization process (completed until 1950) survived only small service entities (e.g., hairdresser, shoemaker, tailor) under the state-controlled system of craft guilds. During the so-called battles for trade (1947–1949), the number of private shops replaced by state and cooperative entities was radically reduced. Until 1956, efforts were also made to impose the full collectivization of agriculture. However, this process ended in a partial fiasco, and until 1989, the agricultural economy in Poland (unlike in other demoludes) was based both on largescale state and cooperative farms as well as on individual peasant farms. When returning to the provisions of the 1952 constitution, it should also be mentioned that it established a fairly extensive catalogue of civic rights and obligations, the respect and protection of which were, in practice, associated with numerous abuses.[75] The 1952 constitution was amended 24 times. It is especially worth paying attention to the change made on 10 February 1976, which defined the People's Republic of Poland as a socialist state and decreed both the Polish United Workers' Party's leading role in the state and the state's 'friendship' with the USSR. It should also be highlighted that this change met with social dissatisfaction[76] and contributed to the emergence of organized forms of opposition activity, which, combined with the collapse of the centrally planned economy and the Catholic Church's increased influence after Karol Wojtyła was elected pope in 1978, led to the social revolt embodied by the solidarity movement (1980–1981). The amendment, which was supposed to consolidate the communists' omnipotence on the legal level, actually initiated the process that would result in their subsequent collapse.

When evaluating the Polish system in the communist era, one must constantly bear in mind that although there were no appropriate provisions in the constitution, the Polish United Workers' Party did wield regular domination over all state structures. The state organs could not make any vital decisions without the consent of the relevant party cell. The communists' power monopoly was not even slightly disturbed by the existence of two other political parties, which, however, like other licensed social organizations, did not have real independence. It is also worth emphasizing that in order to exercise power, individual party leaders had to obtain the approval of their superiors in Moscow on every significant occasion. The communists' manner of exercising power, the system's structural inefficiency, and the social attachment to the Catholic Church led to more frequent social rebellions than in other countries with people's democracies. They manifested themselves not only in national protests

74 Burda, 1969, pp. 169–352.
75 Kozerska, 2015, pp. 13–39;
76 Dz.U. 1976, No. 5, item 29.

(June and October 1956, 1968, 1970, 1976, 1980–1981) but also in relatively numerous local revolts organized mainly in defense of local churches or places of worship, which the communists tried to violate. All signs of resistance were always brutally suppressed. During the struggle to maintain power, the regime allowed actions that were inconsistent even with the normative order they had established, i.e., they did not hesitate to issue orders to shoot protesters with live ammunition, to use torture (e.g., the so-called health paths: a prisoner runs in front of a line of militiamen hitting him with batons), to commit assassinations organized by the security services (within the period 1981–1989, at least 88 opposition activists were killed in this way),[77] and even to lead a military coup d'etat (illegally introduced by General Wojciech Jaruzelski on December 13, 1981 to liquidate the solidarity movement).[78]

In spite of the 1988 repressions, another wave of strikes passed through Poland. As a result, the communists proposed talks related to political transformation with part of the opposition connected to Lech Wałęsa. The 'round table' sessions, officially launched on February 6, 1989, led to partially free parliamentary elections (June 4, 1989) and, in the following years, the gradual transformation of the state system toward liberal democracy; nonetheless, it was still influenced by the party nomenclature from the communist era.[79]

77 Lasota, 2003, p. 28.
78 Scheffler, 2003, pp. 383–403.
79 Roszkowski, 2017, pp. 225–460; Kozerska and Scheffler, 2017, pp. 78–79.

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