

**Anna Stawarska-Rippel**

- ▶ Uniwersytet Śląski w Katowicach  
(University of Silesia in Katowice, Poland)
- ▶ e-mail: anna.stawarska-rippel@us.edu.pl
- ▶ ORCID: 0000-0003-3252-9171

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**IS SOVIET LAW STILL RELEVANT TO LEGAL ACADEMIC RESEARCH?  
POLISH CONTRIBUTIONS TO SOVIET LEGAL STUDIES:  
REVISITING A FORGOTTEN JURISPRUDENCE****Abstract**

Although the Soviet Union has collapsed and Soviet law no longer functions as a living legal system, its significance as an object of legal scholarship remains an open and pressing question. The legacy of Soviet law is not merely of historical interest; it also provides an important lens for understanding the ways in which law can be instrumentalised for political ends and how legal systems may be shaped or distorted by authoritarian power. This article argues that the continued study of Soviet law offers valuable insights into contemporary challenges to the rule of law, particularly in post-socialist contexts where legal institutions often retain traces of their Soviet heritage.

In pursuing this argument, the article pays particular attention to the often-overlooked contributions of Polish legal scholars. Already in the interwar period, Polish academics provided some of the earliest and most incisive analyses of Soviet legal theory and practice. Later, the postwar Polish émigré community produced a significant body of scholarship that critically examined Soviet law from a comparative and international perspective. Their work not only enriched the broader understanding of the Soviet legal system but also highlighted its global implications for legal theory and practice.

Finally, the article underscores the importance of internationalising this intellectual legacy. By bringing Polish scholarship into closer dialogue with global Soviet legal studies, we can better appreciate the complexity of Soviet law and its enduring relevance, while simultaneously broadening the scope of comparative legal history.

**Keywords:** Soviet law, Polish jurisprudence, legal history, comparative law, rule of law, legal instrumentalism, Mariusz Mohyluk, interwar Polish legal thought, Soviet legal studies

## 1. Introduction

The collapse of the USSR put into question the sense of further distinguishing of socialist law as a separate legal family. Already before the collapse, this issue raised controversies among comparative lawyers, who would often question the autonomy of socialist law from the civil law tradition. Already before the dissolution of the USSR, there was even a disagreement among western comparative lawyers as to whether socialist law had formed as a family separate from civil law<sup>1</sup> or as an element or subgenre, or subtype of the civil law family,<sup>2</sup> and whether it should be distinguished at all.<sup>3</sup> After the disintegration of the USSR and the socialist block, postulates were put forward to reclassify the post-socialist system.

However, problems were identified with regard to such reclassification on account of varying importance of particular elements of the socialist model, their continuation or modification in the contemporary law of the countries of Central and Eastern Europe. As a consequence, attempts at a clear reclassification were faced with a hybrid reality of the legal system, that is co-existence of legal institutions entrenched both in the Western European legal tradition and in the socialist tradition. Essentially, before Sovietisation, Central Europe and Eastern Europe were under profound influence of the Romano-Germanic system. The countries of Central Europe were characterised

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<sup>1</sup> The distinction of socialist law as the third family of law was postulated by: R. David, J. Hazard, J.H. Merryman, M. Ancel, Ch. Osakwe, M. Bogden and L.J. Constantinesco. See P. De Cruz, *Comparative Law in a Changing World*, London–Sydney 1999, p. 186.

<sup>2</sup> The supporters of socialist law as a member of the civil law family include: L. Friedman, F.H. Lawson, M.G. Losano, A.A. Ehrenzweig. See P. De Cruz, op. cit., p. 186.

<sup>3</sup> Quoted after W.E. Butler, *Soviet Law*, London 1983, p. 1.

by a highly developed legal culture and, for centuries, have developed as a part of the mainstream western tradition. Despite the formal discontinuation of Soviet law, its influence, however, has not been entirely eliminated. In many countries of the Eastern Block its reminiscences can be identified (as, e.g., the scope of the prosecutor's powers in the civil process).

Soviet law, understood as the law of the former USSR that, as such, was a model system for socialist legislations, assumed a historical status, which led to marginalisation of reflection on Soviet law. In the light of the above, a question arises if Soviet law can still be subject to academic investigation. Contrary to the claims that since Soviet law no longer exists and, therefore, can be of interest only to legal historians, it seems that nowadays we have to do with a “renaissance” of certain institutions and mechanisms belonging to that system, which can justify the need to continue research on those problems so as to achieve a better understanding of the mechanism of instrumental use of the law and better identification of contemporary threats to the rule of law.<sup>4</sup>

## 2. The contribution of Polish jurisprudence to Soviet legal studies

It is puzzling that the interests of contemporary researchers in the achievements of Polish jurisprudence have been limited when it comes to the subject of law applied by Soviet courts (both private and criminal). It seems that this is caused by the academics' urge to concentrate mainly on what is considered foreground, that is the Soviet system as political, ideological and constitutional phenomenon. However, these questions are an area of interest of chiefly general historians, and not lawyers or legal historians. In this context, the achievements of the Polish legal science should find its place within the international academic output on the legal system of the USSR, that is Soviet law.

The first interpretations of Soviet law are mainly studies originating from Europe, and especially Poland, directly neighbouring the Soviet regime – among these, one can list works by such lawyers as Władysław Leopold Jaworski, Stanisław Kutrzeba, Konstanty Grzybowski, Wiktor Sukiennicki, Ignacy Czuma, Kazimierz Przybyłowski, Wacław Makowski, Rafał Lemkin or Juliusz Makarewicz.

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<sup>4</sup> Recently on the same subject, A. Lukina, E. Mishina, *Teaching Soviet Law in the 21st Century*, “The Soviet and Post-Soviet Review” 2024, vol. 51, pp. 334–338.

However, only few academic studies are available on that subject. It is justly highlighted in literature that contemporary science has not shown much interest in the achievements of the interwar jurisprudence on the system of Soviet law applied by courts (civil, criminal and court procedures), and the output of the Polish legal science from that period with regard to the Soviet judicial law has not been duly identified, analysed and verified. This essential gap has been recently filled by a book by a Polish legal historian, Mariusz Mohyluk. This publication is a first comprehensive study on the Polish interwar legal literature on the subject of Soviet law.<sup>5</sup>

For the purposes of this study, judicial law can be defined as **both civil and criminal substantive law** and both civil and penal court procedures. Contemporary scientific reflection on judicial law usually concentrates first on private law and only then on criminal law, which is a consequence of more widespread application of private law. In the context of totalitarian systems, this order can be reversed because of the special role played by criminal law in the formation of an area of freedom and threats to the latter. As a consequence, criminal law becomes a sensible indicator of the state regime – an especially sensitive “barometer.”<sup>6</sup>

Such an approach is reflected in Mohyluk’s study, as the author discusses first his considerations on criminal law and only then on private law, preceding both with a general chapter discussing analyses regarding the interpretation, genesis, specificity and development of Soviet legislation. The entire study, including also an introduction, ending and a list of abbreviations, is supplemented by bibliography subdivided into sources and literature originating from the prewar and postwar periods.

The thing that should be considered most important is the conclusion drawn by Mohyluk that the achievements of Polish lawyers from the interwar period in the research on Soviet judicial law fit into the output of worldwide Sovietology. It is highly regrettable that this interwar output is still scanty known, and even neglected, chiefly – as it seems – on grounds of the language of publication.

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<sup>5</sup> M. Mohyluk, *Sowieckie prawo sądowe w piśmiennictwie prawniczym II Rzeczypospolitej*, [Soviet Judicial Law in the Legal Literature of the Second Republic of Poland], Białystok 2023.

<sup>6</sup> A. Lityński, [in:] P. Fiedorczyk, A. Lityński, A. Stawarska-Rippel, *Wojny XX wieku i ich skutki dla ustrojów państwowych i prawa* [20th Century Wars and Their Consequences for Different Forms of Government and for Law], “Czasopismo Prawno-Historyczne” 2019, vol. 71, no. 1, p. 75.

In the bibliographic compilation, familiar to researchers of Soviet law, by William Elliott Butler, an authority in the area of comparative law and the Russian legal system (*Writings on Soviet Law and Soviet International Law: A Bibliography of Books and Articles Published since 1917 in Languages Other than East European*, Cambridge 1966), only two interwar publications on Soviet judicial law in the Polish language were included – as painstakingly pointed out in Mariusz Mohyluk’s book: Juliusz Makarewicz, *Kodeks karny republik sowieckich* [*The Criminal Code of the Soviet Republics*], Warszawa 1927; Stanisław Tylbor, *Kodeks cywilny R.F.S.R.R.* [*The Civil Code of the RSFSR*], Warszawa 1930. Therefore, Mohyluk’s constation is right that the lack of publications in congress languages contributed to the quite limited interest in the Polish interwar legal literature in the area of Sovietology. It is all the more regrettable that in this body of literature (Polish interwar), one can find the first interpretations of all on the subject of Soviet law.

In the West, and especially in the United States, research on Soviet law was developed already after the end of the Second World War. It is generally accepted that John Newbold Hazard’s interests in that area of study were pioneering, especially in the USA. It is a well-known fact that in the interwar period, in the years 1935–1937, he completed a three-year course on Soviet law at the Moscow Juridical Institute. This period coincided with the implementation of the first Stalinist five-year plan. At that time, Hazard reported to his superior in the US Institute of Current World Affairs that private law was discussed only during the last hours of lectures, that it was approached as an undesirable necessity following from the fact that capitalist relations and bourgeois awareness had not been yet entirely eliminated.<sup>7</sup> The Russian Institute at the Columbia University, founded on the initiative of John N. Hazard, but already after the end of the Second World War (in 1946), contributed to the development of Sovietological research, conducted by such academics as William E. Butler, Donald Barry, Harold Joseph Berman, George Ginsburgs, Peter Maggs, John Quigley and Robert Sharlet.<sup>8</sup>

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<sup>7</sup> According to J.N. Hazard, in correspondence from Moscow to Walter Stewell Rogers, published in *Correcting Misinterpretations of Soviet Law*, Moscow 1937 and then cited by H.J. Berman. H.J. Berman, *Justice in the U.S.S.R.*, 5th edition, Cambridge (MA) 1978, p. 45.

<sup>8</sup> See also: A. Lukina, E. Mishina, *Teaching Soviet Law in the 21st Century*, “The Soviet and Post-Soviet Review” 2024, vol. 51, p. 329–330.

Due to extensive research autonomy outside Poland after the Second World War, Sovietological research, including on Soviet law, was continued by Polish émigré scholars. It has already been noted in academic literature that the formation of Polish Sovietological thought in exile was an important phenomenon that, so far, has not been subject to comprehensive studies.<sup>9</sup> An important contribution was made to the worldwide Sovietology by scholars who came from interwar Poland and pursued their academic career already in the United States: Adam B. Ulam, Richard Pipes and Zbigniew Brzeziński. However, their conceptions form a part of American science in the first place.<sup>10</sup>

Other important works are those by Polish lawyers in exile devoted to the Sovietisation process in Poland after the Second World War, especially by Zygmunt Nagórski, Kazimierz Grzybowski, Aleksander Witold Rudziński (Rudzinski). However, as justly highlighted by Piotr Fiedorczyk, Polish lawyers who decided to stay abroad after the war performed a special role because theirs was the only truly unfettered voice in the Polish legal science of that time.<sup>11</sup> Achievements of Polish émigré lawyers has not only survived in the conditions of academic freedom but also gained recognition in the international academic community. Their findings made abroad, as a consequence of the elimination of the freedom of academic research in Poland after the Second World War, especially on the subject of private law transformations following the Soviet pattern, were conformed in legal historical studies already after the transitions initiated in 1989. Publication of those works mainly in English gave them a universal nature, which allowed the international community to become familiar with the Sovietisation of law in postwar Poland and enriched worldwide Sovietology by analyses concerning the transformations of law under the influence of a totalitarian ideology.<sup>12</sup>

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<sup>9</sup> See P. Fiedorczyk, *Polscy prawnicy na emigracji o sowietyzacji prawa polskiego* [Polish Lawyers in Exile on the Sovietisation of Polish Law], "Studia nad Faszyzmem i Zbrodniami Hitlerowskimi" 2011, vol. 33, p. 482; M. Kornat, *Sowietologia polska na uchodźstwie (1945–1989). Główne idee* [Polish Sovietology in Exile (1945–1989). Main Ideas], [in:] *Polskie wizje i oceny komunizmu po 1939 roku* [Polish Visions and Assessments of Communism after 1939], ed. R. Łatka, B. Szlachta, Ośrodek Myśli Politycznej, Kraków 2015, <https://www.omp.org.pl/arttykul.php?artykul=403> (accessed: 19.06.2025).

<sup>10</sup> M. Kornat, op. cit.

<sup>11</sup> P. Fiedorczyk, op. cit., p. 481.

<sup>12</sup> P. Fiedorczyk, op. cit., pp. 491–492.

The need for wider availability (publication in congress languages) of Polish academic studies to the international community relates also to works by contemporary Polish researchers. One of such works, the book by Adam Lityński, *Prawo Rosji i ZSRR 1917–1991 czyli historia wszechzwiązkowego komunistycznego prawa (bolszewików). Krótki kurs* [The Law of Russia and the USSR 1917–1991, or the History of the All-Union Communist (Bolshevik) Law. The Short Course], Warszawa 2010 (the current 3rd edition, C.H. Beck, Warszawa 2017), was referred to by a recognised researcher of Russian history – Richard Pipes.

This took place during an international conference devoted to Polish interpretations of authoritarianism and totalitarianism organised in 2010 in Karpacz, Poland, by the University of Wrocław (professors Marek Maciejewski and Maciej Marszał).<sup>13</sup> At that time, Pipes expressed a clear postulate of publishing Lityński's book<sup>14</sup> in English. Implementation of that postulate remains an open question. The above facts clearly underscore the need to publish Polish academic studies in the area of legal history, including studies on Soviet law, in foreign (congress) languages, which would be conducive to disseminating the output of the Polish legal science in the international academic community.

In the context of the achievements of interwar jurisprudence in the area of Soviet law studies, an interesting conclusion was drawn by Mohyluk, who claimed that the object of Sovietological investigation in the Second Republic of Poland, in the legal context, was predominantly substantive private and criminal law and, only to a minor degree, formal, procedural law. The source of such situation was traced to the academic interests of interwar lawyers and the fact that court procedure was of secondary importance to those lawyers.

<sup>13</sup> *Polskie interpretacje totalitaryzmu i autorytaryzmu* [Polish Interpretations of the Totalitarian and Authoritarian Regime], ed. M. Maciejewski, M. Marszał, "Studia nad Faszyzmem i Zbrodniami Hitlerowskimi" 2011, vol. XXXIII, p. 535.

<sup>14</sup> A. Lityński, *Prawo Rosji i ZSRR 1917–1991 czyli historia wszechzwiązkowego komunistycznego prawa (bolszewików). Krótki kurs* [Law of Russia and the USSR 1917–1991, or the History of the All-Union Communist (Bolshevik) Law. The Short Course], 3rd ed., Warszawa 2017. A. Lityński published also the following books: A. Lityński, *Między „białym” a „czerwonym” imperium. Rzecz o narodach w Rosji 1917–1922* [Between the "White" and the "Red" Empire. About Nations in Russia 1917–1922], Sosnowiec 2018; A. Lityński, *Rosja i ZSRR. Krótka historia imperium bezprawia* [Russia and the USSR. A Short History of the Empire of Illegality], Sosnowiec 2023; A. Lityński, *Od Dzierżyńskiego do Berii. Studia o sowieckim prawie terroru (1917–1953)* [From Dzerzhinsky to Beria. Studies on the Soviet Law of Terror (1917–1953)], Sosnowiec 2025.



However, such constataion can raise certain doubts, for instance, because modern judicial procedure formed as an independent scientific discipline, with civil and criminal procedures as subject, in the 19th century. In 1801, Nikolaus Thaddäus Gönner defined for the first time the procedural principles, and a little later, Oskar R.A. Bülow came up with the concept of judicial process as a legal relationship with the intention to submit procedural institutions to strict dogmatic analysis and to develop a uniform system of procedural law. Civil court procedure was an area of expertise in which the founding father of Polish civil court procedure, Franciszek Ksawery Fierich, earned his habilitation at the end of the 19th century at the Jagiellonian University in Cracow.

It must be assumed that at that time the dominant opinion was still that about a servient role of procedural law with respect to substantive private and criminal law. Later on, this view was strongly supported by Marxist science and Soviet jurisprudence in Poland after the Second World War. Jerzy Jodłowski, professor at the University of Warsaw, was a staunch supporter and promoter of the opinion about a servient role of judicial procedural law. Jodłowski was at the same time an avid opponent of a general judicial process theory, generally disapproved in Poland after the Second World War, and developed on the basis of Italian jurisprudence by a prominent Polish lawyer and expert in procedural law, Marian Waligórski, and then mainly by Zbigniew Resich, Kazimierz Marszał and Mieczysław Sawczuk.<sup>15</sup>

Jodłowski directly voiced his views during the First Congress of Polish Science (held from 29 April to 2 July 1951). In the lectures about the condition of science of civil procedural law given at that time by Jodłowski and Waligórski, two opposite visions clashed of the development of Polish civil procedural science. Jodłowski, by referring to Karl Marx, pointed to a limited relation between substantive law and procedural law. On the other hand, in the opinion of Waligórski, the science of civil procedural law should focus on comparative research conducted with a view to developing one general procedural science.<sup>16</sup> Unfortunately, also today an aftermath can still

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<sup>15</sup> M. Sawczuk, *Teoria ogólna procesu* [General Theory of the Court Procedure], [in:] *Polska lat dziewięćdziesiątych. Przemiany państwa i prawa* [Poland in the 1990s. Transformations of the State and Law], Lublin 1998, pp. 191–192, 198.

<sup>16</sup> A. Stawarska-Rippel, *Elementy prywatne i publiczne w procesie cywilnym w świetle prac kodyfikacyjnych w Polsce (1918–1964): studium historycznoprawne* [Private and Public Aspects



be observed in Poland of the views expressed at that time about a servient role of the science of judicial process.

It is also true that in Soviet Russia, and then in the USSR, application of procedural criminal law was marginalised (revolutionary tribunals, security authorities),<sup>17</sup> which was also the case with civil law (state commercial arbitration having nothing in common with private arbitration, amicable settlement).<sup>18</sup> The face of Soviet law was manifestly administrative, marginalising private law and civil procedural law. Due to the above, analysing and interpreting the Soviet judicial procedure could be less interesting from the point of view of interwar lawyers.

However, in Mohyluk's book an information can be found about an extensive article by Feliks Szenwic (Polish lawyer, advocate and interwar Roman law lecturer at the University of Warsaw) on the Soviet civil procedure published in three consecutive issues of the interwar Polish journal – "Palestra."<sup>19</sup> The study by Szenwic, as such, was definitely of reporting rather than scientific nature. However, the situation was different with the article by Kazimierz Petruszewicz Senior (Polish lawyer, advocate and professor of the Vilnius University, and a judge of the Supreme Court already after the Second World War, in the years 1946–1947 – father of Kazimierz Petruszewicz Junior, biologist, professor of the University of Warsaw),<sup>20</sup> in which important comments can be found on the Soviet civil procedure against a wide European comparative background.

In his article, Kazimierz Petruszewicz pointed to an interesting question, namely to the lack of any essential novelty of the first Soviet Code of Civil Procedure (1923): "The Code is neither an independent work nor a product of the unique social conditions that came

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*in the Civil Procedure in the Light of Codification Works in Poland (1918–1964): A Legal Historical Study*], Katowice 2015, p. 337.

<sup>17</sup> A. Lityński, *Prawo Rosji i ZSRR 1917–1991...*, pp. 204–228.

<sup>18</sup> A. Stawarska-Rippel, *Państwowy arbitraż w ZSRR [The State's Economic Arbitration in the USSR]*, "Miscellanea Historico-Iuridica" 2009, Vol. 8, pp. 143–159.

<sup>19</sup> F. Szenwic, *Kodeks procesowy cywilny R.S.F.S.R. [Civil Procedure Code of the RSFSR]*, "Palestra" 1925, Vol. 1–3.

<sup>20</sup> A. Bereza, *Sąd Najwyższy 1917–2017. Prezesi, sędziowie, prokuratorzy Sądu Najwyższego [The Supreme Court 1917–2017. Presidents, Judges, Prosecutors of the Supreme Court]*, Warszawa 2017, pp. 249–250.

to the fore in Russia after the Soviet revolution. The Code is modelled on Swiss civil procedural statutes, including necessary modifications to apply bourgeois legislation to the living conditions in the »socialist« Republic.”<sup>21</sup> In addition, Petruszewicz pointed out that the views about an original and, at the same time, unique nature of Soviet, as well as pre-revolutionary Russian law in the context of civil judicial procedure were expressed only in Russian academic literature. Despite the efforts of the Russian academics intended to demonstrate the distinctness of Soviet law, the Soviet Code of Civil Procedure of 1923 was not drafted in complete isolation from the tradition and the achievements of legal culture, irrespective of the revolutionary phraseology accompanying the legislative works.<sup>22</sup> The conclusion drawn by Petruszewicz seems particularly important in the context of the monograph by Mariusz Mohyluk, especially the points in which Mohyluk highlights the characteristic features of Soviet law, identified and discussed by Polish interwar scholars, and among such features “pseudo-novelty” in the first place.

An opinion similar to Petruszewicz’s one was expressed by Kazimierz Grzybowski, a Sovietologist and specialist in international law, mentioned above in this paper, who in the interwar period was a lecturer at the Jan Kazimierz University of Lvov and the first person to use the term “Homo Sovieticus” and offer its meticulous and extensive characterisation.<sup>23</sup> Especially in the context of judicial procedure, Grzybowski reached a conclusion that socialist court procedure was only a certain form among similar solutions found in the judicial process of an open society. Moreover, the provisions of court procedural law, and especially civil procedure, can be used instrumentally, to a lesser or greater degree, in order to achieve political goals, whereby beside norms with an express political inclination one can always find such norms that are neutral, “universally human,” present both in the system of socialist law and in the system of capitalist law.<sup>24</sup>

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<sup>21</sup> K. Petruszewicz, *Zwrot ku pierwiastkowi publicznemu w procesie cywilnym* [The Return to the Public Element in Civil Procedure], “Rocznik Prawniczy Wileński” 1928, vol. 2, p. 164.

<sup>22</sup> D. Maleshin, *The Russian Style of Civil Procedure*, [in:] *The Reception and Transmission of Civil Procedural Law in Global Society*, ed. M. Deguchi, M. Storme, Antwerpen–Apeldoorn 2008, pp. 311–320. Cf. R. David, J.E.C. Brierley, *Major Legal System in the World Today*, First American Edition, New York 1978, pp. 68–69.

<sup>23</sup> K. Grzybowski, *Soviet Legal Institutions. Doctrine and Social Functions*, Ann Arbor 1962, pp. 110–171. About this: P. Fiedorczyk, op. cit., p. 483.

<sup>24</sup> K. Grzybowski, op. cit., p. 105.

Interesting considerations, among others with regard to Soviet court procedure, were offered also by another above-mentioned Polish émigré lawyer, Aleksander Witold Rudziński (Rudzinski), who cooperated with John N. Hazard as a part of Sovietological research.<sup>25</sup> What is particularly important are comparative deliberations presented by Rudziński on the subject of Soviet legal provisions and legal constructions found in western legal systems, such as French cassation and Soviet prosecutor's supervision.

Rudziński noted certain similarities regarding the circumstances in which the French cassation in the interest of the law (*cassation dans l'intérêt de la loi*) and the French cassation on account of abuse of power (*cassation pour excès de pouvoir*) were formed and those concerning the Soviet procurator's supervision over the court. Both institutions related to the activities of a prosecutor and were instruments of reviewing legally valid court rulings, both appeared in the context of distrust of courts and judges. However, the essential difference was that in France, the purpose of cassation was, in particular, to contain the judicial power within the boundaries strictly defined by the law while respecting the revolutionary ideals, rights of the individual, as well as the autonomy of courts and independence of judges, whereas the Soviet procurator's supervision over the court, apart from correcting mistakes made by courts, served to ensure that the court implemented the Party's policy, even at odds with the letter of law.<sup>26</sup>

The most important difference, however between the Soviet procurator's supervision over the court and the French institutions, or even Swiss ones (*kassation von Amtes wegen* under the Swiss procedure of the canton of Bern, 1918) was the fact that the Soviet supervisory court was not bound by claims asserted by the parties. The principle *ne eat iudex ultra petita partium* was superseded in the Soviet civil procedure with the principle *ex officio ultra petita*. This was a novelty characteristic of civil procedure in totalitarian regimes.

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<sup>25</sup> P. Fiedorczyk, op. cit., p. 484.

<sup>26</sup> A.W. Rudzinski, *Soviet-Type Audit Proceedings and Their Western Counterparts*, [in:] L. Boim, G.G. Morgan, A.W. Rudzinski, *Legal Controls in the Soviet Union. Law in Eastern Europe. A Series of Publications Issued by the Documentation Office for East European Law University of Leyden*, No. 13, ed. Z. Szirmai, Netherlands 1966, pp. 287–335. For more on Soviet civil procedure in this context, see A. Stawarska-Rippel, *Radziecka procedura cywilna: totalitarna czy nowoczesna?* [*Soviet Civil Procedure: Totalitarian or Modern?*], "Studia nad Faszyzmem i Zbrodniami Hitlerowskimi" 2011, vol. XXXIII, pp. 474–475.

Polish interwar authors, lawyers dealing with Soviet judicial law, as noted by Mohyluk, can be divided into two groups. The first group were academics, and the other one were practitioners. However, regardless of the division and focus on either more scientific or more practical problems, authors from both groups offered their considerations in a broader comparative context.

This seems characteristic both for the “place” and for the “time” – that is legal problems faced by interwar Poland, and especially the territorially complex mosaic of five legal systems (Russian, German, Austrian and Hungarian in a small area of Spisz and Orawa, and Polish-French law) and the need for the unification and codification of law. Until the end of the 20th century, there was no better opportunity for comparative research in Europe, both in the practical and scientific dimension, than during the interwar period, and this was particularly the case in Poland. A characteristic feature of codification works undertaken at that time in many European countries, dictated by the need to unify different legal systems applicable in those areas, was that codifiers drew not only from homegrown models but also from foreign jurisdictions. It is also known that the codification works undertaken in Poland at the time, unprecedented on European or even global scale, corresponded to the times of lush development of legal comparative studies. This fact was emphasised by a prominent French civil lawyer, adherent of *École des libres recherches scientifiques* – François Géný, during his stay in Warsaw. The Polish Codification Commission, because of the specificity of its works, was labelled a “forge of national legislative work” and “laboratory of comparative law and legislation.”<sup>27</sup>

According to Mohyluk’s very interesting observation, scientific reflection on Soviet judicial law was deployed in Polish interwar legal literature precisely through the prism of works of the Codification Commission of the Second Republic of Poland. In fact, supersession of the divided legislative framework with new uniform Polish law was a priority from the political point of view. This new uniform Polish law was supposed to become the strongest link cementing the state, and, most importantly, the society into one whole. Additionally, Mohyluk demonstrated that what was a factor not without significance for the scientific value of a publication about Soviet judicial law was affiliation of Polish interwar authors with academic centres in Warsaw, Vilnius, Cracow, Lvov and Poznań. Lawyers from the former Austrian partition had a strong theoretical

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<sup>27</sup> A. Stawarska-Rippel, *Elementy prywatne i publiczne...*, p. 85.

background, and lawyers from the other two partitions were mostly practitioners (in the former Prussian partition, mainly advocates).

It is a known fact that only in Galicia, that is the former Austrian partition, there were conditions encouraging development of the Polish legal science. Starting from 5 June 1869, in that territory, Polish gained the status of an official language. Moreover, in the area of the Austrian partition, two Polish universities operated: the Jagiellonian University and the University of Lvov (currently, Ivan Franko University in Ukraine), as well as the Polish Academy of Learning in Cracow. As a result, lawyers from the area of the former Austrian partition had broad legal academic background in the theoretical and comparative law context. Also, a majority of the judicial personnel came from that region, who managed to staff most courts in the Polish state reborn after the First World War.

On the other hand, lawyers from the other former partitions were mainly practitioners, and – as we know – in the Prussian partition, they were most often advocates, because from 1878, Polish advocates were permitted to organise themselves in professional bodies, in the form of bar associations (*Rechtsanwaltsordnung* vom 1. Juli 1878, *Deutsches Reichsgesetzblatt* Band 1878, Nr. 23, Seite 177–198). However, the access to the bar was not easy, and depended on the attitude of German authorities.

In Mariusz Mohyluk's monograph, we can also read how creative, and objective at the same time, the works of Polish interwar lawyers were. They carried out an expended and critical analysis of Soviet judicial law – both private and criminal. Their reflection had both a scientific and practical significance. Its high substantive level, and especially the comparative context, was a result of an exceptional cultural and legal diversity of interwar Poland and the activities of the Codification Commission appointed to draft new Polish uniform civil and criminal legislation. Thorough analyses of Polish interwar lawyers unveiled not only the pseudo-novelty of Soviet legislation but also the ideological motives behind drafting the law and its actual subordination to the goals of the Soviet State. Polish interwar lawyers also had no doubt that the provisions of Soviet judicial law, based on specific theoretical (ideological) assumptions, were implemented by force, with no regard for the social reality, and used instrumentally.

The monograph by Mohyluk depicts how accurately the intentions of the drafters of the Soviet private and criminal law were evaluated already in the interwar period, and the actual purpose of the Soviet provisions. Mohyluk reached an important conclusion that the observations of Polish authors of publications on Soviet law tally with the current judgments (interpretations) on the subject of Soviet law, not only in Poland but on a global scale. Therefore, the output of Polish lawyers in the interwar period can be viewed as an essential achievement in the area of worldwide Sovietology. Summing up and taking a slightly wider perspective, the output of Polish interwar jurisprudence cannot be overestimated. It fits into excellent comparative studies covering different families of law, including the socialist one and the Soviet civil and private law.

### 3. Conclusions

Soviet law – although currently no longer applicable in the normative sense – remains valuable as an object of scientific investigation. It allows to understand the mechanisms of the instrumentalisation of law and the law's instrumental use characteristic of totalitarian regimes, and to diagnose the influences of such phenomena in the contemporary legal systems. Reflection on this legacy is important not only from the point of view of legal history but also as an instrument useful for the analysis of modern threats to the rule of law. The achievements of Polish legal science, especially from the interwar period and the emigration period following the Second World War, make an essential contribution to the international reflection on Soviet civil and criminal law. In this context, it seems necessary to ensure wider availability of Polish academic works in translation into congress languages.

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## ► SUMMARY

### **Is Soviet Law Still Relevant to Legal Academic Research? Polish Contributions to Soviet Legal Studies: Revisiting a Forgotten Jurisprudence**

The collapse of the Soviet Union and the formal disappearance of socialist law as a distinct legal system have led some to question the scholarly value of continued research in this field. This article challenges that view by highlighting how certain mechanisms of Soviet legal thought – particularly the instrumental use of law – remain relevant to understanding contemporary threats to the rule of law. It also revisits the overlooked contributions of Polish jurisprudence to Soviet legal studies, especially those of interwar and postwar émigré scholars. Drawing on the recent groundbreaking research by Mariusz Mohyluk, this article advocates for increased international recognition and integration of this scholarly legacy into global Soviet legal studies.