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In Search of Political Justice, 1939-2000: From the Main Commission for the Investigation of German Crimes in Poland to the Institute of National Remembrance

As Poland fell in September 1939, the Polish Government-in-Exile (initially based in Paris, and when France fell in 1940, in London) wasted no time in considering measures that fit into the category of “retributive justice”. War crimes committed in Nazi- and Soviet-occupied Polish territory were systematically documented. Witness testimonies and information on war criminals were collected without respite, the clear intention being to make the criminals face justice after the war. Complementary efforts were made on an international scale by publishing collections of documents and witness accounts in the form of so-called *white books*. The legal basis for the future investigation and prosecution of war crimes was also provided by decree of the Polish President-in-Exile of 30 March 1943 “on criminal liability for war crimes”. This was one of the earliest documents issued by the authorities of a state whose citizens were being subjected by an invader to repression on an unimaginable scale. Further to the efforts that were made to fit these Polish measures into the general ethos of the United Nations, the Office for the Prosecution of War Crime, established by the Polish Government-in-Exile in November 1943, which was to become the Polish section of the United Nations War Crimes Commission (UNWCC), prepared documentation for about a thousand such cases. As Łukasz Jasiński observes in his contribution to this vol-

ume, one of the factors driving the concept of post-war retribution against Germany was the Polish-Czechoslovak cooperation that had started in exile.¹

At the same time, the inherent features of “retributive justice” as generally understood began to veer towards a consciously selective approach to the definition itself of politically motivated mass atrocities (including genocide) and the legal and political assessment of such crimes committed by various regimes and their duly appointed representatives. It was also clear for lawyers and politicians who represented Western democracies that it was impossible to try or even reveal Stalinist crimes committed during the war and in the course of subjugating East-Central Europe. Thus, the cynical rule of ‘victor’s justice’, the norm since Antiquity, remained intact (at least until the beginning of the Cold War). In practice, this meant that early post-war investigations and prosecutions were restricted to Nazi German crimes. This approach was given clearest expression at the Nuremberg Trials in regard to the Katyn Massacre. In Poland, by then a Soviet satellite due to the peace settlement, the violation of what was effectively an officially imposed conspiracy of silence was seen as a political crime liable to imprisonment. Thus, until the collapse of the Soviet bloc in 1989-1990, Lady Justice had at least one hand tied behind her back when doing her job.² This should be borne in mind when discussing the origin and activity of the Main Commission for the Examination of German Crimes in Poland, whose direct successor is the Commission for the Prosecution of Crimes against the Polish Nation of the present-day Institute of National Remembrance (IPN). The Main Commission was established by the Soviet-sponsored Polish Committee of National Liberation (PKWN) and the Home National Council (KRN), the Soviet Union’s puppet authorities in Poland. The PKWN issued the *August Decree* of 31 August 1944, a legislative act which is crucial to our reflections, and which is even partially binding today. Conceived as a device for prosecuting

- 1 See Elżbieta Kobińska-Motas, *Ekstradycja przestępców wojennych do Polski z czterech stref okupacyjnych Niemiec: 1946-1950*, vol. 1, (Warsaw, 1991), 13-4, 21-9, 37-52; Krzysztof Persak, *Coming to Terms with the Wartime Past: The Institute of National Remembrance and its Research on the Jedwabne Case* (paper delivered at the international conference “Confronting History: The Historical Commissions of Inquiry”, Yad Vashem, Jerusalem, 29 December–1 January 2002/2003), 1-2 (in collaboration with Tomasz Łabuszewski); see also the essays by Marek Kornat and Łukasz Jasiński in this volume.
- 2 Przemysław Gasztold-Seń, ‘Siła przeciw prawdzie: Represje aparatu bezpieczeństwa PRL wobec osób kwestionujących oficjalną wersję Zbrodni Katyńskiej’, in Sławomir Kalbarczyk (ed), *Zbrodnia katyńska w kręgu prawdy i kłamstwa* (Warsaw, 2010), 132-53; see also the essays by Andrzej Paczkowski and Marek Kornat in this volume.

German war criminals, it soon turned out to be a useful weapon in the struggle with the anti-communist resistance.³

The Main Commission and a dozen or so subordinate district commissions were formed in November 1945. This meant having to standardise various institutions that had sprung up spontaneously earlier and had already commenced documenting crimes (e.g. those perpetrated at Auschwitz-Birkenau). Miscellaneous evidence and witness testimonies to be used in show trials, the most famous one being that of the Majdanek camp staff in Lublin, were collected as from the summer of 1944. By decree of 10 November 1945, the Main Commission was to be part of the Ministry of Justice, and the minister himself was its chairman *ex officio*. Its task was to carry out formal investigations into the crimes committed by the Germans on Polish territory in 1939-1945 (regardless of the victims' nationality) and against Polish citizens, both in the country and abroad. Another primary task of the Main Commission and the district commissions was to comprehensively document German crimes, e.g. by securing any surviving archives and data enabling identification of perpetrators. Witness statements and accounts were collected, findings at execution site exhumations and mass graves were recorded. These activities were to abide by the Polish Code of Criminal Procedure to ensure that the collected evidence could be used in forthcoming trials (which was a different approach to what was evident in various grass root initiatives for documenting crimes).

The Main Commission was also responsible for disseminating information on what was discovered and established both in Poland and abroad, and for cooperating with foreign institutions of similar character and compatible goals. The latter could take the form of assistance in investigating analogous cases by foreign institutions, but the primary concern was to extradite to Poland perpetrators of crimes committed on Polish soil, to bring in witnesses from abroad, and to secure evidence such as Hans Frank's diaries, or reports by Nazi officers such as Stroop and Katzman who were responsible, respectively, for the destruction of the Warsaw Ghetto and the "solution of the Jewish question in Galicia". It might be added that much of this evidence is still kept in the IPN archives.⁴

- 3 Piotr Kłodoczny, *Prawo jako narzędzie represji w Polsce Ludowej (1944-1956): Prawna analiza przestępstw przeciwko państwu* (Warsaw, 2004), 176-86, 206; see also the essays by Andrzej Paczkowski and Adam Dziurok in this volume.
- 4 Dziennik Ustaw [Journal of Laws – JoL] 1945/51/293: Dekret [Prezydium PKWN] z dnia 10 listopada 1945 r. o Głównej Komisji i Okręgowych Komisjach Badania Zbrodni Niemieckich w Polsce; see also Pilichowski, *Badanie i Ściganie Zbrodni Hitlerowskich 1944-1974* (Warsaw, 1975), 3-6, 13; Łukasz Jasiński, 'Okręgowa Komisja Badania Zbrodni Hitlerowskich w Gdańsku w latach 1965-1989: Geneza i działalność', *Pamięć i sprawiedliwość*, 1 (2014), 245-74, 245-6; Bogdan Musiał, 'NS-Kriegsverbrecher vor

The then incumbent Minister of Justice, Henryk Świątkowski, became the *ex officio* Chairman of the Commission, and its presidium included the Minister of Foreign Affairs (Wincenty Rzymowski), the Minister of Education (Czesław Wycech), Zofia Nałkowska, a well-known writer, and the renowned historians and lawyers Stanisław Płoski, Zygmunt Wojciechowski, Stanisław Batawia, and Jan Sehn. To all intents and purposes, the work of the Commission was supervised by its Secretary General, Janusz Gumkowski. These people held views that were sometimes very far removed from communism, but they agreed that dealing with the experience of the German occupation, including the legal and judicial procedures for doing so, was a matter of national interest and priority. Paradoxically, the national desire to deal with the issue of German Nazis and their (actual or imaginary) collaborators was of paramount importance to the communists as well because they were well aware of being seen as mandated to assume the reins of power by the Soviet Union, and without any democratic mandate or broader standing in society. Though they had previously been rather unfavourably inclined towards the idea of the nation as opposed to such concepts as “class” and “the people”, responding to the universal cry for retribution was their chance to align themselves with the nation. This also contributed to the position of the new government on the international front. The two final aspects, related to legitimisation, are highlighted in the articles by Joanna Lubecka and Paulina Gulińska-Jurgiel published in this volume. Though it was the exception rather than the rule, there was a successful attempt to maintain some continuity of effort to bring the Germans to “retributive justice” between the Polish Government-in-Exile, which otherwise was definitely anti-communist, and the similar activities in Poland ruled by the communists. Relevant documentation was therefore handed to Mieczysław Szerer, the representative of the Warsaw government at the UNWCC. A portion of the specialist personnel, including Tadeusz Cyprian, was also “transferred” in the name of a higher priority.⁵

The Main Commission resorted to a number of measures in Germany once it was occupied by the victorious powers. For example, it gathered material evidence, primarily concerning Hans Frank (the former Gover-

polnischen Gerichten’, *Vierteljahrshefte für Zeitgeschichte*, 47/1 (1999), 25-56, 26-30; Persak, *Coming to Terms*, 3; see also the essays by Andrzej Paczkowski and Paulina Gulińska-Jurgiel in this volume.

5 See Czesław Pilichowski, *Badanie i Ściganie Zbrodni Hitlerowskich 1944-1974* (Warsaw, 1975), 6-7; Jasiński, ‘Okręgowa Komisja Badania Zbrodni Hitlerowskich w Gdańsku’, 246; Kładoczny, *Prawo jako narzędzie represji w Polsce Ludowej*, 206; see also the essays by Andrzej Paczkowski, Joanna Lubecka, and Paulina Gulińska-Jurgiel in this volume.

nor-General in Kraków) for his trial before the International Tribunal in Nuremberg. What is more, we should take note of the relatively effective measures aimed at finding the perpetrators employed by the foreign delegation of the Main Commission, as this was the de facto status of the Polish Military Mission for Investigation of War Crimes in Europe (active from 1946 to 1950). The search was made easier due to the files concerning war criminals as prepared by the Main Commission on the basis of a nationwide survey in Poland. That is probably why of the 4,000 or so applications for extradition received in the American Zone of Occupation, about thirty per cent concerned Poland. This was the largest group of extradited persons in terms of their number and percentage. Somewhat fewer than four hundred people were extradited from the British Zone. Relatively small groups, counted in no more than double figures, were brought over from the French and Soviet Zones. The group of defendants made to stand before Polish courts (primarily the Supreme National Tribunal, which was specially appointed for this purpose) included high-ranking members of the administration of the General Government (GG) such as Ludwig Fischer, Kurt von Burgsdorf and Joseph Bühler; the heads of SS and police of the individual GG districts: Jakob Sporrenberg, Otto Paul Geibel, Herbert Böttcher, and Willi von Haase; *Gauleiter* (in Polish lands incorporated into the Reich): Arthur Greiser and Albert Forster, and later Erich Koch; commandants of German concentration and death camps located on Polish soil: Amon Göth or Rudolf Hoess; and, finally, such persons as the infamous Jürgen Stroop, who was responsible for the destruction of the Warsaw ghetto.⁶

The political developments in Germany and its de facto division into two separate states, the Federal Republic of Germany (FRG, popularly known as West Germany) and the German Democratic Republic (GDR, popularly known as East Germany), and particularly the establishment of the latter state, resulted in the reorientation of the Soviet Union's policy towards the German issue, which had a knock-on effect on the approach of its satellite government in Warsaw. This also impacted on the way "retributive justice" was administered in Poland. The first result of the establishment of the "fraternal" GDR was that the Main Commission for the Examination

6 Kobierska-Motas, *Ekstradycja przestępców wojennych do Polski*, vol. 1, 52, 90, 154; vol. 2, 10-1, 17; Persak, *Coming to terms*, 3-4; Pilichowski, *Badanie i Ściganie Zbrodni Hitlerowskich*, 11; Leszek Gondek, *Polskie misje wojskowe 1945-1949: Polityczno-prawne, ekonomiczne i wojskowe problemy likwidacji skutków wojny na obszarze okupowanych Niemiec* (Warsaw, 1981), 25-48; Lisa Yavnai, 'U.S. Army War Crimes Trials in Germany: 1945-1947', in Patricia Heberer and Jürgen Matthäus (eds), *Atrocities on Trial: Historical Perspectives on the Politics of Prosecuting War Crimes* (Lincoln-London, 2008), 61; Musiał, 'NS-Kriegsverbrecher vor polnischen Gerichten', 30, 38-9; see also the essay by Andrzej Paczkowski in this volume.

of German Crimes in Poland was renamed the Main Commission for the Examination of Nazi Crimes in Poland (the emphasis now being on Nazis rather than Germans); this was accompanied by phasing out its district delegations (initially with Kraków being an exception). At the same time, the above-mentioned Polish Military Mission for Investigation of War Crimes in Europe also became defunct.⁷ In 1950-1963, the Main Commission was a small organisational unit at the Ministry of Justice. Its staff was actually reduced to Janusz Gumkowski, Szymon Datner, and Kazimierz Leszczyński (who was seen as their leading expert on the given documentation). What is more, this did not go unnoticed by the West German intelligence agency, the BND, which had its reasons for taking an interest in the matter. This concerns an agency that consisted of “professionals” who earned their experience in the corresponding bodies of the Third Reich, as is implied e.g. in the methodical calculations of Christoph Rass.⁸

The situation regarding the inactive Main Commission began to change in the early 1960s. There were numerous causes for that change, but all of them related to “retributive justice”. First, there were problems of a legal and political nature. The limitation period for crimes committed during World War II, initially set in Germany to May 1965, remorselessly drew nigh. Though, due to various pressures, not least international, and the change of mood in Germany itself, it was later postponed and eventually abolished, this could not have been predicted earlier. In that situation, priority was given to organized legal assistance for those representatives of the German justice system, such as Fritz Bauer, the Prosecutor General of Hesse, who strove to bring to justice war criminals as they came to light, despite the instinctive internal resistance and sometimes even conscious obstruction on the part of the judicial apparatus. The scale of the necessary help was quite significant, as it entailed seventy various prosecution offices and courts of law all over West Germany. The most famous example was the case of some Auschwitz staff members in 1963-1965 before the court in Frankfurt am Main which involved Polish witnesses and documents collected by the Main Commission. Comprehensive support was also provided to such West German institutions as the Central Office of the State Justice Administrations for the Investigation of National

7 Pilichowski, *Badanie i Ściganie Zbrodni Hitlerowskich*, 15; Gondek, *Polskie misje wojskowe*, 46-7.

8 “Hinweise zur Gliederung und Arbeitsweise der Hauptkommission für Naziverbrechen in Warschau”, Archiv für Christlich-Demokratische Politik [ACDP], St. Augustin, 01-70-103/2, Nachlass Hans Globke, [BND] Meldung aus Warschau, 18. December 1962; Christoph Rass, *Leben und Legende: Das Sozialprofil eines Geheimdienstes*, in Jost Düllfer, Klaus-Dietmar Henke, Wolfgang Krieger, and Rolf-Dieter Müller (eds), *Die Geschichte der Organisation Gehlen und des BND 1945-1968: Umrisse und Einblicke, Dokumentation der Tagung am 2. Dezember 2013*, Studien Nr. 2 (Berlin, 2013), 24-38.

Socialist Crimes in Ludwigsburg (*Zentrale Stelle der Landesjustizverwaltungen zur Aufklärung nationalsozialistischer Verbrechen*) whose representatives obtained over a hundred microfilms from the collection of the Central Commission in 1965-1966.⁹

This help given to West Germany by Poland, which was real and reasonable in every respect, had a hidden political agenda, both in regard of international and Polish politics. The issue of investigating and prosecuting German crimes perfectly fitted the pseudo-patriotic slogans bandied about by the so-called “Partisan” faction in the ruling regime, led by Gen. Mieczysław Moczar, a Deputy Minister, and then Minister of Internal Affairs in the Polish People’s Republic. It was no coincidence that the person appointed as the Director of the Main Commission was Czesław Pilichowski, a close collaborator of Gen. Moczar’s, who actually remained its director until his death in 1984. At that time, his institution became a highly politicized body at the government’s (and the secret service’s) disposal. This manifested itself in its involvement in the “anti-Zionist” campaign that peaked in 1967-1968.¹⁰ It suffices to note that the first Chairman of the Central Commission, Janusz Gumkowski, was erased from the official history of the investigation and prosecution of Nazi crimes in Poland. This can be deemed to have been a symbolic punishment. Gumkowski unfortunately wrote a note on Auschwitz victims for a Polish encyclopaedia, which stated that the victims were predominantly Jewish, which his successor, Pilichowski, decried as “anti-Polish”. This example shows how “retributive justice” was interlaced with the wrong-headed “politics of commemoration” or even “historical policy”, to which historical truth fell victim.¹¹

The reactivation of the Main Commission and the extension of its activity also had an international dimension to it, primarily due to the complicated relations between Moscow, Warsaw, Bonn, and East Berlin. The improving political, economic and military position of West Germany in Europe gave rise to concerns in the Soviet Union and its satellite states, primarily Poland under Gomułka and East Germany under Ulbricht. This, however, was justified to some extent due to the state doctrine adopted by West Ger-

9 Pilichowski, *Badanie i Ściganie Zbrodni Hitlerowskich*, 116-7.

10 See for example archival materials on “operational case” codenamed “Warta” relating to the cooperation of the Main Commission with the Polish, Soviet and East-German secret services, Archiwum Instytutu Pamięci Narodowej [Archive of the Institute of National Remembrance] (AIPN), Warsaw, 0236/183 (particularly vol. 6, 28, and 49).

11 See Jonathan Heuner, *Auschwitz, Poland, and the Politics of Commemoration, 1945-1979* (Athens [Ohio], 2003), 173; Pilichowski, *Badanie i Ściganie Zbrodni Hitlerowskich*, 83.

many at that time.¹² Back then, Moscow decided to take advantage of the fact that many former officers of the Third Reich were employed at various levels of the West German state apparatus. The mass propaganda campaign, whose targets included President Heinrich Lübke and close collaborators of Chancellor Adenauer – Theodor Oberländer and Hans Globke – as well as members of the Bundeswehr's high command and “expellee circles”, involved the entire state apparatuses of the Communist countries: their diplomatic services, mass media, justice systems, security apparatuses and intelligence agencies. This campaign was orchestrated by the KGB and the Soviet Ministry of Foreign Affairs. Particular tasks were distributed among the Soviet satellite states, primarily East Germany, Poland, and Czechoslovakia. The reactivation and reconstruction of the Main Commission for the Examination of Nazi Crimes in Poland and its regional structures was indubitably a part of this process.¹³ Similarly orchestrated were events such as the high-profile conference organized (officially by the Polish Ministry of Foreign Affairs, but practically by Gen. Moczar's people) in Jabłonna Palace near Warsaw in the autumn of 1966, to which former press correspondents who had reported on the Nuremberg Trials were invited. Among them were such outstanding journalists as Lord Russell of Liverpool, Sefton Delmer, Dominique Auclères, Didier Lazard and Frie Kneplé. The aim of this assembly was to warn the world about the rebirth of Nazism (in West Germany, of course).¹⁴

- 12 See for example Wanda Jarząbek, ‘Zwischen Eiszeit und Verständigungssuche: Der Standpunkt der polnischen Regierung in den Beziehungen mit der BRD in den Jahren 1956-1981’, in Mike Schmitzner and Katarzyna Stokłosa (eds), *Partner oder Kontrahenten? Deutsch-polische Nachbarschaft im Jahrhundert der Diktaturen* (Berlin, 2008), 137-55; see also *idem.*, ‘“Ulbricht-Doktrin” oder “Gomułka-Doktrin”? Das Bemühen der Volksrepublik Polen um eine geschlossene Politik des kommunistischen Blocks gegenüber der westdeutschen Ostpolitik 1966/67’, *Zeitschrift für Ostmitteleuropaforschung*, 55/1 (2006), 79-115.
- 13 ‘Wyciąg z notatki z przeprowadzonych rozmów w dniu 16 i 17 czerwca 1960 r. w sprawie koordynacji przedsięwzięć wywiadowczych KBP ZSRR i MSW PRL’, Warsaw, 27 December 1960, Warsaw, AIPN, 0296/III, vol. 2, 13pdf; ‘Notatka dotycząca podsumowania i dalszej współpracy między KBP przy Radzie Ministrów ZSRR i MSW PRL’, Warsaw, 3 July, 1963, AIPN, Warsaw, 0639/108, vol. 3, 382 pdf; ‘Wspólna Informacja KGB i MSZ ZSRR dotycząca akcji kompromitowania byłych nazistowskich generałów zajmujących kierownicze stanowiska w Bundeswehrze we współpracy z władzami Czechosłowacji’, *Moscow*, 2-4 June 1964, Russian State Archive of Contemporary History (RGANI), 3-16-484, k. 121-124; see also Annette Weinke, *Die Verfolgung von NS-Tätern im geteilten Deutschland: Vergangenheitsbewältigungen 1949-1969 oder: Eine deutsch-deutsche Beziehungsgeschichte im Kalten Krieg* (Paderborn, 2002), 209-24; Pilichowski, *Badanie i Ściganie Zbrodni Hitlerowskich*, 141.
- 14 ‘Notatka Biura Prasy KC PZPR w sprawie spotkania byłych korespondentów norwimberskich’, Warsaw, 21 November 1966, The Archives of Modern Records (AAN), 237/XIX-83, 129-35.

What we see here is a real confluence of paradoxes that constituted a kind of international theatre of “political justice”, which simultaneously illustrated the principle that the end justifies the means, even if various actors had different objectives which were more or less just. “National Communists” who struggled for power and whose tendencies can be described as nationalist institutionally supported the investigation and prosecution of Nazi crimes at Moscow’s orders and in cooperation with East Berlin and Prague, while in West Germany itself, this cause was principally supported by leftists, who were supported by ecclesiastical (primarily Protestant) and Jewish circles. Simultaneously, a significant proportion of the West German government circles, including their secret services with the BND at the forefront, labelled that activity a “defamation campaign” or “Polish propaganda against the Federal Republic”, and against people who distinguished themselves in dealing with the Nazi past, e.g. the Prosecutor-General of Hesse, Fritz Bauer, who were besmirched in documents said to be “falsified” by Eastern Bloc countries coordinated by Moscow.¹⁵ The BND itself provided information on the plan to publish a debunking book on the behind-the-scenes politics in West Germany under the telling title “The Fourth Reich” (which was to be done by a famous Italian leftist publisher, Giangiacomo Feltrinelli), whose intended author was Thomas Harlan, the son of the Nazi film director Veit Harlan, and a friend of the Hesse Prosecutor, Bauer; the book was to be based largely on documents provided by the Polish Main Commission.¹⁶

Despite all the political circumstances described above, the reinforcement of the role of the Main Commission under a “strong man”, i.e. Czesław Pilichowski, had its advantages. This was the period when its position in the Polish People’s Republic peaked. The network of District Commissions was reactivated, and their local delegations were established. In 1965-1989, i.e. during Pilichowski’s seemingly interminable period in office as its chairman, as well as that of his successor, Kazimierz Kąkol, 10,000 investigations were carried out, which involved the examination of thousands of witnesses, whose accounts were recorded for the benefit of posterity. In the mid-1960s, efforts were made to arrange the vast archive of the Main Commission. Putting in order the precious collection of card indexes containing information on

15 ‘Angebliche Äußerungen des hessischen Generalstaatsanwalts Bauer’, ACDP, St. Augustin, 01-70-091/3, Nachlass Hans Globke, [BND to Ludwig Friedmann], 6 July 1963; see also Stefanie Waske, *Mehr Liaison als Kontrolle: Die Kontrolle des BND durch Parlament und Regierung 1955-1978* (Wiesbaden, 2009), 75.

16 ‘Neuer Agitationsverstoß gegen die Bundesrepublik von Warschau in Vorbereitung’, ACDP, St. Augustin, 01-70-103/2, Nachlass Hans Globke, [BND] Meldung aus Warschau, 8 January 1963; Krzysztof Persak, *Sprawa Henryka Hollanda* (Warsaw, 2006), 318.

over a million people, including those of 31,000 perpetrators who were still at large and unpunished at that time, was of particular importance. Files of numerous court cases held pursuant to the *August Decree*, and a large collection of microfilms concerning German crimes committed on Polish soil that came from archives all over the world (primarily the USA, the USSR, and the former GDR), were added to the collection. The specialist library (which included a rich collection of German language literature) was extended. Thus, the Main Commission became one of the centres of research on Nazi crimes of global importance, and several hundred researchers and journalists both from Poland and abroad visited it each year. The Main Commission itself also conducted documentation and research work largely based on the project team method and took advantage of the regional network. This has been the method used by the research section of the IPN to date. For Polish historical research, which focuses more on individual achievements, this was, and still is, something of a novelty. Specific teams worked on a broad spectrum of topics ranging from methodology to collecting specific documentation on a given type of crime, quoting specific examples and raising legal issues. The results of that work were published in the Main Commission's books and journals. Main Commission employees also participated in organising a number of academic and educational conferences, both at the international and the national level.¹⁷

In the 1970s, the Gomułka-Brandt agreement helped improve Polish-West German relations, which was part of the broader détente process and West Germany's *Ostpolitik*. At that time, dealing with war criminals and the attendant court proceedings, at least partially, lost its political edge. Consequently, the issue dropped in the political pecking order of priorities for the Polish People's Republic's government. While it should be stressed that public interest in the issue was unabating because it needed no stimulation from the regime's propaganda machine, there is no doubt that the position of the Main Commission, which remained the primary enforcer of "retributive justice", gradually declined in the 1970s and 1980s. An attempt at reversing that trend was the new act on the Main Commission, which was passed in 1984 on the initiative of Pilichowski, with the name of the institution being changed. The further goal was to make the work of the commission a national issue and to shift the centre of gravity from issues related to "retributive justice" to the state's "politics of commemoration". From then on, the official name of the institution was the Main Commission for the Examination of Nazi Crimes in Poland – Institute of National Remembrance (GK-IPN) and, in

17 Pilichowski, *Badanie i Ściganie Zbrodni Hitlerowskich*, 37, 69-76; Persak, *Coming to Terms*, 5.

fact, the latter part of the name was used increasingly often. It was also no accident that Pilichowski, who died that year, was replaced by Kazimierz Kąkol, another politician associated with the “national communist” faction in the ruling camp of the Polish People’s Republic. In his youth, Kąkol served as an officer of the non-Communist Home Army and was an insurgent in the Warsaw Uprising, but later, he became a member of the Central Committee of the Polish United Workers’ Party involved in the “anti-Zionist” campaign of 1968, and held the important post of Minister-Director at the Office for Religious Affairs in a Catholic country ruled by the Communists. However, he was not exclusively a Communist politician; he was also a lawyer and a political scientist specialising in the issue of “retributive justice” and the author of several books on the trials of Nazi criminals in West Germany. Kąkol was the Director of GK-IPN from 1985 until the decay and collapse of the Communist system in Poland in 1989. In the early period of transition from communism to capitalism (1989-1990), GK-IPN was briefly run by Józef Musioł, who had once been Pilichowski’s deputy and was associated with the so-called Democratic Party, a pseudo-liberal satellite party in the previous regime’s system of government, which at that time (ineffectively) tried to find a place for itself in the new Poland.¹⁸

The collapse of the Soviet system also made it possible to extend the activity of the Main Commission, primarily in the field of research and documentation, and then prosecution, of communist crimes (initially, most often referred to as “Stalinist crimes”). In practice, this started in 1989-1990 with the participation of individual GK-IPN researchers seeking to fill the “blank spots” in contemporary history, which included not only the infamous Soviet Katyn Massacre, but also Poles serving in the Wehrmacht or the prickly issue of Polish-Ukrainian relations. Paradoxically, all similar actions by an institution that was part of the justice system (which also includes “retributive” and “historical justice”) were conducted virtually in a legal void for nearly two years. Finally, in April 1991, the Polish parliament (on the motion tabled by the Citizens’ Parliamentary Club, i. e. the former opposition and the Polish Peasant Party) officially extended the scope of the activity of the Main Commission and simultaneously renamed it the Commission for Examination of Crimes against the Polish Nation – Institute of National Remembrance (GK-IPN). Apart from prosecuting Nazi crimes as before, its tasks now extended to prosecuting Stalinist crimes, i. e. crimes committed by the Communist authorities up to the end of 1956. As can be observed, the

18 JoL 1984/21/98. Ustawa z dnia 6 kwietnia 1984 r. o Głównej Komisji Badania Zbrodni Hitlerowskich w Polsce – Instytucie Pamięci Narodowej; see also Izabella Borowicz and Maria Pilarska (eds), *Główna Komisja Badania Zbrodni przeciwko Narodowi Polskiemu* (Warsaw, 1997), 1-62.

competences of the primary Polish organ of “political justice” was extended gradually and with caution, just like the Polish democratic reforms as a whole, which tended to be gradual and cautious; it should be remembered that it was the “Contract Parliament” which passed the new law, a body only partly constituted by free election. The first free elections in post-war Poland were held in October 1991.¹⁹

Lady Justice began to recover her full remit of power as from the early 1990s, but, at least for a while longer, to the exclusion of the political and judicial crimes of 1956-1989. In 1991-1998, about 800 investigations into Stalinist crimes were initiated. They concerned Soviet crimes against Polish citizens in 1939-1945, such as the deportations from territories incorporated into the Soviet Union, the persecution of the resistance movement members in the Grodno area, or the fate of Poles in Soviet labour camps (e.g. in Vorkuta). At that time, the priority tasks of the Main Commission included drawing up lists of places where victims of the Communist terror of 1944-1956 were buried, as based on a resolution adopted by Parliament in 1996. However, the greatest controversies were aroused by the trials, or attempted trials of persons manning the apparatus of repression of the 1950s, including judicial repression, which also encompassed Stalinist crimes. The most famous trials at that time were those of Adam Humer (an officer at the Ministry of Public Security), Salomon Morel (former commandant of the camp for Germans in Świętochłowice, Silesia), and, *in absentia*, Helena Wolińska-Brus (a Stalinist prosecutor). There were also cases that were important for local communities, e.g. the case of a resident of the village of Balinka, murdered by officers of the Augustów District Security Office in January 1945. But the atrocities committed during the German occupation had not been forgotten, as illustrated by the case of Alfons Goetzfried, a former SS soldier, who had participated in the mass execution of Jews in Majdanek concentration camp and was arrested in 1998 in cooperation with GK-IPN.²⁰

Unfortunately, GK-IPN, which had been established in a totally different historical period, employed rather elderly people focused on judicial proce-

- 19 JoL 1991/45/195, Ustawa z dnia 4 kwietnia 1991 r. o zmianie ustawy o Głównej Komisji Badania Zbrodni Hitlerowskich w Polsce – Instytucie Pamięci Narodowej; Jasiński, ‘Okręgowa Komisja Badania Zbrodni Hitlerowskich w Gdańsku’, 271; Persak, *Coming to terms*, 5; Adam Bogumił Dec [Director of GK-IPN], ‘W sprawie zbrodni – komunikat’, *Gazeta Wyborcza*, 270, (November 19, 1993), 13.
- 20 Persak, *Coming to Terms*, 5-6; Waldemar Mońkiewicz, ‘Świadkowie zbrodni UB w Augustowie’, *Gazeta Wyborcza*, 299 (December 21, 1992), 11; ‘Ruch oporu na Grodzieńszczyźnie’, *Gazeta Wyborcza*, 228 (September 29, 1993), 12; ‘Kraj w skrócie’, *Gazeta Wyborcza*, 56 (March 7, 1998), 4; *Informacja o działalności Instytutu Pamięci Narodowej – Komisji Ścigania Zbrodni przeciwko Narodowi Polskiemu w okresie od lipca 2000 r. do 30 czerwca 2001* (Warsaw, 2001), 58.

dures. Polish politics had moved on and the Institute had a hard time finding its rightful place in the debate on contemporary history, which was heading towards one of its boiling points at that time. The academic and documentary publications of greatest importance to the public, particularly those concerning communist crimes, were written or edited by independent journalists or academics at the Polish Academy of Sciences (PAN) who were often associated informally with GK-IPN. The GK-IPN Directors, Adam Bogumił Dec followed by Ryszard Walczak, both of whom had come from local prosecution offices, failed to make much of an impact in terms of building up the Institute's renown. That changed with the arrival of Witold Kulesza, a man of vibrant and dynamic personality, who took office in 1998. Kulesza, a lawyer by profession, was a man with a mission; he was able to reach a broader audience and tell them about "retributive justice", of which he was a passionate proponent. He was particularly involved in the international dispute on the applicability of the legal category of genocide to Soviet atrocities and the promotion of the research findings of the German historian Dieter Schenk, on the Nazi crimes committed in Gdańsk and Pomerania.²¹

Kulesza, together with another famous lawyer, Andrzej Rzepliński, and the historian Andrzej Paczkowski, was one of the main authors and propagators of the new general act that was to cover the most important aspects of "retributive justice" with regard to 20th century Polish history. It was possible to pass that act after the centre-right coalition of parties stemming from the Solidarity movement took power in 1997. Its authors' idea was to combine the old GK-IPN (with its then current staff and archive) with a new institution inspired by the Gauck Institute in Germany (Gauck being the Federal Commissioner for the Records of the State Security Service of the former German Democratic Republic, the BStU). The task of the latter was to take over the archives of the Polish Communist secret services, impose systematic order on them, and make them available to the public at large, not least to the victims of the past system who were interested in learning the background details of the repression they suffered. It took the form of the Office for the Preservation and Dissemination of Archival Records (*Biuro Udostępniania i Archiwizacji Dokumentów*); in a word, that is the modern IPN Archive. What is more, the decision was taken to establish the Public Education Office (responsible for historical education and academic research), which is a purely Polish idea. This Office, headed by Paweł Machcewicz, soon became the flagship of the new structure, which originally consisted of the three above-

21 Witold Kulesza, 'Zbrodnia katyńska jako akt ludobójstwa: Geneza pojęcia', in Sławomir Kalbarczyk (ed), *Zbrodnia katyńska w kręgu prawdy i kłamstwa* (Warsaw, 2010), 52-67.

mentioned thematic divisions, whose full name was to be: the Institute of National Remembrance – Main Commission for the Prosecution of Crimes against the Polish Nation (IPN). The act defined the notion of “Communist crime” anew, and this term was supposed to cover deeds committed with malice aforethought by the officers of the Communist authorities from 17 September 1939 (when the Red Army entered eastern Poland) to 31 July 1990 (when the security apparatus of the Polish People’s Republic was disbanded).²² The relevant act was passed in December 1998. Pursuant to its provisions, the dispensation of “retributive justice” in the strict sense of the word would become the task (and it still is the task) of the Main Commission for the Prosecution of Crimes against the Polish Nation, which is a part of IPN and is a direct successor to the former GK (which functioned in various forms since 1945) in regard of investigation and prosecution. However, it should be emphasized that pursuant to the existing legislation, the GK’s director and its subordinate prosecutors report to the Prosecutor-General, an office held *ex officio* by the incumbent Minister of Justice. The primary task of the IPN was to furnish them with an appropriate budget and organisational environment.²³

The IPN Act came into force nearly two years after being passed. Its first President, Leon Kieres, a lawyer, was elected after prolonged political disputes. Very soon, the Institute he was to manage had to deal with a number of major cases directly related to “retributive justice” which, understandably, exercised public emotions. The most controversial of these was the resounding debate on the Jewish massacre in Jedwabne and other nearby settlements. IPN also took over the investigation of the Katyn Massacre, which is still a sticking point in Polish-Russian relations.²⁴ An attempt at describing the scope of responsibilities and the achievements of the Commission in the field of “retributive justice”, and the many years it took to organise its work, was made by the then GK Director, Dariusz Gabriel, and his co-workers in 2009-2010. There was a review of about 5,300 cases concerning Nazi crimes which had been initiated by the GK and its district delegates. Since its very inception, 1,500 investigations were resumed, the vast majority of which

22 Antoni Dudek, *Instytut: Osobista historia IPN*, (Warsaw, 2011), passim; see also (the not fully convincing account in) Dorota Koczwańska-Kalita, *(Nie)chciane dziecko III RP: Instytut Pamięci Narodowej 2000-2010* (Cracow, 2015), passim.

23 USTAWA z dnia 18 grudnia 1998 r. o Instytucie Pamięci Narodowej – Komisji Ścigania Zbrodni przeciwko Narodowi Polskiemu, tekst ujednolicony według stanu na dzień 16 czerwca 2016 r. [Act of 18 December 1998 on the Institute of National Remembrance – Commission for the Prosecution of Crimes Against the Polish Nation, consolidated text as of 16th June 2016], <http://www.ipn.gov.pl/pl/o-ipn/ustawa/24216,Ustawa.html> [2 November 2016].

24 Persak, *Coming to Terms*, 6-19.

were finally concluded. The extensive material which the authorized IPN representative presented in February 2010 at a conference in Prague was organized in celebration of the Czech Presidency of the European Union. They described the work by the GK prosecutors in all its aspects, legal, theoretical and practical, which involved the presentation of statistical data and examples of ongoing (or concluded) investigations in particular categories of crimes. At that time, there were seven hundred ongoing cases of communist crimes, three hundred cases of Nazi crimes, and forty cases of other crimes against humanity and war crimes (primarily concerning the perpetrators of the Volhynia Massacre of Poles by Ukrainian nationalists in 1943-1944). As far as pending and newly registered cases are concerned, similar proportions have been maintained. As of late 2015, GK prosecutors have been handling: five hundred sixty-one first category crimes that need to be concluded, three hundred thirteen second category cases, and twenty-three third category crimes, in which they have registered six hundred, three hundred seventy-two, and nineteen cases respectively.²⁵

Nowadays, it seems indisputable that the terms of the subsequent Presidents (Leon Kieres, Janusz Kurtyka, and Łukasz Kamiński, now succeeded by Jarosław Szarek) resulted in IPN becoming the principal Polish institution dealing with contemporary history. Its most striking areas of concern are the totalitarian crimes relating to 20th century Polish history, the collection of archival documents, maintaining vestiges of national remembrance, and promoting knowledge of the Polish experience in dealing with recent history on the international scene. Due to two amendments to the IPN Act (passed in 2006 and 2016), the scope of its tasks was extended to judicial vetting procedures, the exhumation and identification of victims of atrocities, and care for commemorative sites such as monuments and war cemeteries. All this can be seen as “retributive justice” in its various guises; its administration, both in judicial practice and its symbolic sphere, will remain the primary mission of IPN.

25 ‘Country Report: Poland’, delivered by Władysław Bułhak at the international conference: *Crimes of the Communist Regimes: An assessment by historians and legal experts*, Prague 24-26 February (Prague, 2011), 141-52; *Instytut Pamięci Narodowej – Komisja Ścigania Zbrodni przeciwko Narodowi Polskiemu: Informacja o działalności. 1 stycznia – 31 grudnia 2015* (Warsaw, 2016), 176-7.