

Public Discussion on the Draft of the Polish Criminal Code of 1963 as Reported by *The New York Times* Correspondent, Paul Staats Underwood

Abstract

The article concerns the report by *The New York Times* correspondent, Paul Staats Underwood, concerning the Polish draft Criminal Code of 1963. It discusses the main issues, which Underwood concludes lead to a negative overall view of the draft code. One of the issues addressed is the public opinion about increasing penalization of social and economic life in the Polish People's Republic. The study also discusses the reaction of ministerial authorities to the publication of the text by Underwood in *The New York Times*. In addition, the analysis covers the reasons for such a one-sided negative assessment of the draft and the question of whether the journalist was motivated by a desire to cause the rejection of another draft of the Criminal Code of the Polish People's Republic.

Keywords:

Introduction

After the end of World War Two, Poland found itself in the sphere of influence of the USSR. The new political authorities began to build a new legal system, corresponding to the political, economic, and social principles of the socialist state. The Criminal Code of 1932, which remained in force until December 31, 1969, did not correspond to these needs.¹ That is the reason the new communist government decided to prepare a new penal code that would replace the pre-war legislation and numerous post-war legal acts. Work formally began in 1950. The work on codification lasted until 1969. During this period, three drafts of Criminal Code were developed.

The draft of Criminal Code published in 1963 was the second, after the 1956 draft proposal, attempt to codify substantive criminal law in the People's Republic of Poland.² And although in the end also this draft was not put in force as applicable law, bearing in mind the surrounding circumstances, it is worth drawing more attention to the legislative proposal.

¹ Dz.U. 1932 nr 60 poz. 571; Bafia, "Penal Law", 277; Grzybowski, "Reform and Codification", 393–5.

² Draft of Criminal Code of 1963.

One of such circumstances was the thus far unprecedented, wide public discussion of the proposed solutions.³ It was discussed everywhere. In the daily press, in law journals, and on the radio. Most of the expressed opinions were negative. The main objections were the increase in the penalization of life and the casuistic nature of the regulations.⁴ The authors of the project were accused of overestimating the role of penal repression in the fight against crime, following the example of the Stalinist period, and underestimating other means of social influence.⁵ Critical voices outweighed approving ones. There were also opinions that the negative ones could be a result of a lack of good knowledge of the project.⁶

Some researchers suggest that the debate might have been inspired by the leadership of the Polish United Workers' Party (PZPR) as an element of growing antisemitism in the period.⁷ Moreover, in the context of the draft's future, alleged disapproval of Soviet officials came into sight. On top of that, it is believed that the final rejection of the Criminal Code of 1963 was correlated to the peculiar tactics of the Head of the Codification Commission, Jan Wasilkowski, who allegedly "sacrificed" the draft proposal to save the civil law drafts of the early 1960s.⁸ As a result, it is legitimate to present the public discussion on the draft's provisions, as it were, from the point of view of an outsider. An opportunity to do so is provided by the report by *The New York Times* correspondent for Eastern Europe and the Balkans, Paul Staats Underwood of January 30, 1963, titled "Polish Press Attacks Proposal For New, Harsher Criminal Code."⁹

It can be assumed in advance that his outlook on what was going on in the discussed area was free from any inspirations by Polish political factors, which unfortunately cannot be said about contemporary statements published in Polish legal journals and in the popular press. In view of the above, his outlook seems valuable from the perspective of historical law assessment of the formation of the system of Polish substantive criminal law in the second half of the 20th century and its reception abroad.

Consequently, the purpose of this study is an attempt to establish if the report by Underwood repeated the arguments advanced in national media or, possibly, if its author made an independent assessment, also taking into account their allegedly inspired nature. Is it possible to trace, in the correspondent's report, elements of the contemporary public debate on the draft

³ "Dyskusje nad projektem k.k.", 5; Radlińska, "Adresat", 3; Zawadzki, "Na marginesie", 2; "Kodeks karny w ogniu", 4.

⁴ Szczygieł, "Mecenas Jan Olszewski", 142–3.

⁵ *Ibid.*, 137–8; Zakrzewski, "Dyskusja nad projektem k.k.", 1.

⁶ Mazur, "ZPP a dyskusja nad projektem k.k.", 2.

⁷ Fiedorczyk, Ostapa, "Projekt kodeksu", 170–2.

⁸ *Ibid.*, 182–3.

⁹ Underwood, "Polish Press Attacks", 2.

of Polish Criminal Code of the, and, if so, what elements are these? Another essential issue will be the possible reception of the publication in *The New York Times* by persons involved in the process of codifying criminal law in Poland, including persons from governmental circles. Was the publication known to them at all? Finally, is it possible to formulate, on this basis, any conclusions regarding the possible “programming” of the debate by party officials? It is also worth considering whether the title itself was not, in fact, the author’s suggestion about the character of the ongoing debate concerning codification in People’s Poland in the early 1960s.

The source basis of these investigations is the text of the article by Underwood, archival materials of the Ministry of Justice kept in the Central Archives of Modern Records in Warsaw, the draft Criminal Code of 1963, press articles, and selected secondary literature.

In the first place, it should be explained who Underwood was and, to the extent necessary, characterize the draft of the Criminal Code, the discussion on which was related by the correspondent.

Paul Staats Underwood was born in Rocky Ridge, Ohio. He studied at Ohio Northern University and University of Cincinnati. In 1937, he left his university studies and started working for *The Cincinnati Enquirer*. In 1944, his cooperation began with the Associated Press. For the next twelve years, he worked as reporter and editor in Cleveland, New York, and London. In 1956, he started working for *The Times*. In the years 1958–1964, he was a correspondent of *The Times* for Eastern Europe. In 1965, he returned to *The Enquirer*, where he dealt with the subject area of foreign affairs. He was also a member of the editorial board of that periodical. For his international reporting activities, he received an award from the Overseas Press Club. In addition, Ohio Northern awarded him with an honorary doctorate in literature. He was a *professor emeritus* of journalism at Ohio State University. In 1966, he published a book titled *Getting to Know Eastern Europe*, in which he committed to paper his observations from his journey around Eastern Europe countries concerning, for instance, their

geographical location, culture, social habits, political regime and history.¹⁰ He died during a fire on December 30, 1985. He was 70 at that time.¹¹

The draft proposal of the Criminal Code of the People's Republic of Poland, known as "Sawicki Draft" after Jerzy Sawicki, its main reporter, was released in print in 1963. The draft was a result of works of the Panel for Substantive Criminal Law presided over by Mieczysław Szerer, operating as a part of the Criminal Division of the Codification Committee established towards the end of 1956.¹² The main reporters of the draft were: Stanisław Śliwiński (until his death in 1959), Włodzimierz Winawer, and Sawicki.¹³ It was the second complete draft proposal of the Criminal Code, following the release in 1956 of a full – including the special part – version of the so called "Lernell Draft," which became associated with the Stalinist period in Poland and was rejected.¹⁴

Sawicki Draft contained 433 Articles, out of which 124 belonged to the general part and 309 to the special part.¹⁵ As compared to less than 295 Articles of the then still-applicable Criminal Code of 1932, the draft was clearly a more voluminous proposal and, in the same way, more casuistic one. This impression was also intensified by the fact that it did not cover the

¹⁰ "[...] Poland has long, cold winters with lots of snow. The rivers freeze into ribbons of solid ice. Even during the summertime it is often too cold to enjoy swimming in the Baltic Sea, which washes Poland's northern shores. [...] Białowieża Forest, which is partly in Poland and partly in the Soviet Union, is said to be the only primeval forest left in Europe. [...] At the same time that the Hungarians were fighting and dying in the streets of Budapest, the Polish Communist leaders persuaded the Russians to let them make changes in their system. Poland, too, was on the verge of outright revolt. The Polish leaders hoped that the changes would make Communist rule less unpopular in the country. The Poles remained within the Soviet bloc, but their example helped spread the idea of national Communism. [...] An Eastern European farmer, whatever his nationality, thinks it is an honor to have guests in his home. There is a Polish saying that "God enters the house when a guest comes in". The best the family can offer is put before the stranger. [...] History is part of everyday life in many Eastern European cities. In the old Polish royal capital of Krakow, every day at noon, a trumpeter sounds a fanfare from the high tower of St. Mary's Church on the old town square. Partway through, the fanfare stops suddenly. The pause is in memory of a thirteenth-century watchman, who roused the city against a sudden attack. He blew his trumpet until an enemy arrow pierced his throat and killed him. [...] To understand the money problem (in Eastern European countries – T.S.), let's assume you are now in Poland. You have to pay for your meals, hotel room, and the other things you buy in zlotys. So you go to the bank with dollars and trade them for zlotys. You get nearly twenty-five zlotys for one dollar. You can go out and buy what you want. There's no difficulty until you decide you would like to leave for Czechoslovakia. You won't be allowed to take any zlotys with you. If you smuggled them out, you would find they were useless anyhow. No one in Czechoslovakia would give you Czechoslovakian crowns for Polish zlotys, and no one would sell you anything for zlotys. The same is true of all money in all Eastern European countries. No one money is any good outside the country where it was issued." Underwood, *Getting to Know*, 8, 10, 22, 32, 47, 54.

¹¹ Boorstin, "Reporter, and wife", 10.

¹² Śliwiński, "Powołanie Komisji", 2; AAN, MS, no. 285/1792: Wstęp do projektu kodeksu karnego, 1; Grzybowski, "Reform and Codification", 396. More on the establishment of the Codification Committee in 1956, see Fiedorczyk, "O powstaniu, strukturze organizacyjnej", 473–83.

¹³ Igor Andrejew, Tadeusz Cyprian, Arnold Gubiński, Henryk Holder, Leszek Lernell, Julian Potępa, Jerzy Sawicki, Mieczysław Szerer, Włodzimierz Winawer, Władysław Wolter. AAN, MS, no. 285/1792, Wstęp do projektu kodeksu karnego, 1.

¹⁴ Maksimiuk, "Dyskusja nad projektem", 140–1.

¹⁵ Tyszkiewicz, "Projekt kodeksu karnego z 1963", 727.

terms of minors' liability. This exposed its authors to the reproach of increasing the penalization of life in the People's Poland, which was criticized after the 1956 thaw.¹⁶ However, the authors explained that due to higher specificity of legal provisions, the burden of their "adaptation to life" was shifted from judges to the legislator. They also stressed that such solution was conducive to "[...] formation of awareness of the total of citizens," which meant that it was educational.¹⁷ The considerable extension of the special part was also explained by the ongoing technical revolution, especially in the area of motorization, sea transport, aviation, atomic energy, and the international situation.¹⁸ The goal was, above all, to "[...] remove possible gaps and maintain full consequence in the implementation of the criminalization policy."¹⁹

The draft of the Criminal Code of 1963 introduced several innovative solutions, both in the general and special part. As regards the former, this referred, among others, to the division into crimes and misdemeanors according to the amount of imposed punishment and not the sanction provided by law (Article 12); the expanded catalogue of circumstances, excluding criminal liability (Articles 18–25); the category of juvenile offender (Articles 107–123); the penalty of reprimand (Article 39[4]) or, finally, the construction of co called *Rauschdelikt* (Article 25[2] in conjunction with Article 411). As regards the special part, this referred, among others, to offenses against safety in communication (Articles 246–257); the ullage offense (Article 218), the offense of the so-called transfer of commodities with the intention to hide a shortage (Article 221); the offense of squandering means supposed to support the family (Article 289), and an expanded catalogue of white-collar offenses (Articles 374–397).

The US correspondent noticed the main problem in the discussion on the draft proposal, namely the fear of an increased level of penalization of life. In his report, he pointed out that the principal thread in the Polish press was the reproach of paralyzing social and economic life in consequence of strict application of the draft's provisions. The journalist even depicted a catastrophic reception of Sawicki Draft in this regard. He cited comments according to which

¹⁶ Significant expansion of the special part was also explained by an ongoing technical revolution, especially in the area of motorization, sea transport, aviation, atomic energy, and the international situation. See, e.g., Chapter XVII (Offenses against Peace and Humanity – Articles 150–165) in Draft of Criminal Code of 1963, 32–4; Tyszkiewicz, "Projekt kodeksu karnego z 1963", 733.

¹⁷ Draft of Criminal Code of 1963, 32–4. "It is difficult to establish what kind of educational and deterrent impact is actually exerted on the society by a penal law norm itself. We do not have sufficiently exact methods and means to verify that. If such impact is actually the case, the awareness of the total of citizens could be better formed and their attention drawn to dangerous and reprehensible acts by means of specific descriptions corresponding to what one can see around and easily comprehend than by general and synthetic legal provisions". Sawicki, "Projekt kodeksu", 218.

¹⁸ See, in particular, Chapter XVII (Offenses against Peace and Humanity – Articles 150–165) in Draft of Criminal Code of 1963, 32–4.

¹⁹ Tyszkiewicz, "Projekt kodeksu karnego z 1963", 733.

each citizen of the People's Republic of Poland was threatened by the provisions of the draft. He also noted that the public opinion regarded the new legislative proposal as an alleged panacea for all weak points of the contemporary social, economic, and political system, which was evaluated very critically in Poland after 1956.²⁰

However, it should be noted, that this was not unreflective reporting. In his article, Underwood made it plain that he clearly realized not only the fact of the formal validity of the criminal law system still applicable in Poland at that time, including above all the Criminal Code of 1932, but also the practice of instrumental application of criminal law, in general, by the communist regime. In this sense, it seems that the reception of the casuist draft was of no surprise to the author, even though after 1956 the communist authorities undertook to restore the rule of law.²¹ Moreover, his report suggests that the author approached Sawicki Draft as yet another legal instrument in the hands of the communist rule.²²

Sawicki Draft, as panacea for all problems of the People's Poland in early 1960s, assumed in the narration of *The New York Times* correspondent, a real and actually catastrophic shape. Underwood pointed out that few countries would decide to criminalize behaviors defined by the commented draft proposal as offenses.²³ As an example, he pointed to a provision requiring under a threat of imprisonment that each husband should bring home his entire salary. Moreover, the author cited the concerns of the Polish press about the possibility to go out for a drink on payday without a threat of meeting a public prosecutor.²⁴

The above examples of alleged possible applications of the solutions under the draft proposal related to Article 289, which read as follows:

Whoever drinks away, spends on gambling games or otherwise squanders or gets rid of or destroys property that should serve to satisfy the needs of his children, spouse or other close persons cohabitating with the perpetrator and, thereby, even unintentionally, exposes such persons to an impossibility to satisfy their basic needs of life, shall be subject to a penalty of imprisonment up to 3 years.²⁵

²⁰ "There is a paragraph waiting for everyone, the weekly newspaper *Zyzie* (*Życie* – T.S.) *Gospodarczy* (*Gospodarcze* – T.S.) commented. The list of crimes is so enlarged that no citizen will put away the book with a feeling it does not concern him. It [the code] seeks to cover every field of life, to be a universal panacea for all the faults of family life, factory life, social life and moral life". Underwood, "Polish Press Attacks", 2.

²¹ "It was not until the 1956 liberalization of Polish life and the Communist pledge to maintain a role of law that a commission was named to draw up the new code." *Ibid.*

²² "The new criminal code was designed to replace one put into effect in 1932. Following the war and the Communist takeover in Poland, the new regime let the pre-war laws stand, amending them when it appeared useful or essential to the Government's purposes" – *Ibid.*

²³ "The draft lists as criminal offences some actions few other countries would consider crime." *Ibid.*

²⁴ "One newspaper commented that this would mean that a worker could not even stop in a bar for a drink on his way home from the factory on payday without fear of the public prosecutor waiting outside for him." *Ibid.*

²⁵ Draft of Criminal Code of 1963, 59.

The authors of the draft meant to secure the livelihood of families in the face of the spreading plague of alcoholism, gambling, and wastefulness. The press turned that provision into an instrument attacking the freedom to dispose of a working man's earnings, which was reported to the readers by *The New York Times* reporter.

Underwood not only drew attention to controversies relating to the alleged interference of the draft proposal into the management of family budgets but also pointed to fears relating to the functioning of national economy in the People's Poland. He considered this problem to be "the most vociferous" in the entire press discussion, all the more that – as he justly noted – economic crime was a serious problem in People's Poland at that time. He emphasized that the Polish authorities, already before 1957, adopted a number of repressive legislative acts in that area, and characterized the reproaches against and concerns about Sawicki Draft as he observed in the press at that time.

The first concern involved the too-extensive approach to the liability of managers in production facilities in the event of economic crimes committed by their employees whom they did not directly supervise. The second one referred to the too-general approach to the liability of officials, being a modification to Article 286 of the Criminal Code of 1932.²⁶ As noted by the correspondent, the objections raised in the press followed from the fact that the proposed provisions (Chapter XXXII) covered just any person working for the state, regardless of the actually performed official capacity. The author also highlighted that, bearing in mind the nature of the communist system, where most citizens can be treated as persons working for the state, such an approach might be a specific skeleton key and bottomless pit when it comes to the range of persons possibly involved and the situations giving rise to criminal liability.²⁷ In the same way, Underwood shared the fears of the debaters that the new solutions under the draft proposal may lead to continuation of the thus-far criticized practice of subsuming an ordinary worker, shop attendant or cleaning person under the concept of "official" within the meaning of Article 286 of the Criminal Code of 1932. However, this opinion was clearly contrary to the intentions of the draft's authors, who wished to reduce potential liability under the general

²⁶ In the provisions of Chapter XXXII (Offenses against Operation of State and Social Institutions), the legislator used the term "employee of a state or social institution," and not "official" as in the previous Article 286 of the Criminal Code of 1932.

²⁷ "This article revises a clause in the pre-war code stating that any Government official not fulfilling his duties in accordance with law was liable to punishment. The new code rephrases this to include all persons working for the state, whatever their capacity. Since under the Communist regime the majority of citizens can be described as working for the state, this article could be used as a catchall by the authorities. A sack without a bottom, was one newspaper's characterization of it." Underwood, "Polish Press Attacks", 2.

provision on so called criminal liability of officials.²⁸ This, however, was left unnoticed by the correspondent.

The presentation of the course of discussion on Sawicki Draft in *The New York Times* did not escape the attention of the Polish Ministry of Justice. At a meeting of the PZPR Parliamentary Club on March 28, 1963, the Minister of Justice Marian Rybicki, commenting on the appearance of the arguments against the draft proposal, noted that they have a comically exaggerated nature. At the same time, the Minister stressed that the frequently joked-about alleged extreme penalization and severity of the draft are then “[...] seriously cited in *The New York Times*.”²⁹ He did not make clear what article he actually meant, however, this undoubtedly referred to the text by Underwood.

Minister Stanisław Walczak was clearly concerned about that fact. As one of the reasons for such situation, he pointed to excessive moderation of the draft’s authors during the discussion.³⁰ Beyond any doubt, he perfectly understood the status of *The New York Times* as an opinion-maker on a global scale. A brief article of the correspondent of that paper for Eastern Europe, presenting only exaggerated arguments against the draft proposal, posed to the Minister, as head of the Polish system of justice, a PR problem for the People’s Poland. It is hard to say whether he knew that at some point Wasilkowski had ordered Sawicki and other authors of the draft to be quiet, so that the draft’s opponents, in their critical opinions, were actually close to absurd.³¹ If he knew, he was not particularly happy about that fact because of the very reception of the discussion by the foreign press. If he did not, the fact that he cited the article by Underwood as consequence of one-sidedly adverse discussion pointed to his astonishment and concern about the draft’s future. Unfortunately, we do not know which of the two possibilities was the case. However, the Minister’s embarrassment about the review of the draft proposal in the foreign press was clear. He reckoned with the reception of Polish legislative proposals in the international arena.

Ultimately, the draft of Criminal Code of 1963 was not adopted. Not only because public opinion assessed it negatively, but primarily because of the position of the PZPR. The project’s assumptions did not match the positive vision of the development of a socialist state expected by the authorities.³²

²⁸ Draft of Criminal Code of 1963, XI.

²⁹ AAN, MS, no. 285/564: Rybicki, *Informacja na posiedzenie Klubu Poselskiego PZPR w dniu 28 marca 1963 roku o stanie prac kodyfikacyjnych i o przebiegu dyskusji nad projektem kodeksu karnego*, 13–4.

³⁰ *Ibid.*

³¹ Fiedorczyk, Ostapa, “Projekt kodeksu karnego”, 184.

³² AAN, MS, no. 285/564: *Wstępna ocena projektu k.k.*, 18–20.

Conclusions

The picture of the discussion as shown by Underwood was adequate to its course. The discussion was one-sided and, in its mainstream, negative towards the draft. The author aptly identified its character, emphasizing that it was an attack on the codification proposal by the team presided over by Mieczysław Szerer. The reporter did not state expressly whether the attack was legitimate on the merits. It is hard to say if, by referring to the discussion in this way, he meant a smear campaign devoid of any arguments or, on the other hand, press reaction intended to protect fundamental rights and freedoms. The fact is, he cited only critical arguments deployed against the draft proposal without any reference to the intentions of the authors of particular solutions, including to the publication by Winawer.³³ This might suggest unreliability or even that the report fitted into the attack on the draft. In fact, he negatively evaluated the authorities and the political system in Poland, using the expression “communist regime,” which means that he might have a negative attitude to everything that related to communist rule.³⁴ However, this would be too far-fetched a statement.

The picture of the discussion on the draft of Criminal Code of 1963 as presented by the US reporter was, in the first place, a consequence of moderation of the draft’s authors in the debate in general, and did not follow from the attitude of the author of the text to the subject matter. It can be assumed that Underwood simply did not have an opportunity to read the arguments of the other party to the dispute as, simply put, those arguments were not in the public domain.

The text by Underwood also demonstrates the author’s very good knowledge of the realities of People’s Poland. It shows the understanding of the specificity of the communist system. The author understood the differences in the understanding of criminal law before and after 1956. And although one may have an impression that he was familiar with the draft, such knowledge did not translate into a critical analysis of the opinions printed in the press. And this is hardly surprising, as the analysis would necessitate legal comparison of the still applicable Criminal Code of 1932 with the draft of 1963. Most probably, Underwood did not have such possibility and, as a consequence, he limited himself only to reporting the main threads of the press discussion.

As a result of the reporting article by Underwood, an evidently false message was released to the world, based on selected solutions without a wider context, without the authors’ actual intentions and, most importantly, without explaining the social and economic

³³ Winawer, “Niektóre zagadnienia”, 3–44.

³⁴ Underwood, “Polish Press Attacks”, 2.

background of the proposed solutions. The reporter did not point to even the main merits of the proposal. In this context, it is hardly surprising that Minister Walczak was anxious about the situation. However, this one-sidedly negative picture of the draft Criminal Code cannot be attributed to the reporter from *The New York Times*, but to persons responsible for the course of the discussion, including Walczak, who consented to its distortion.

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