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ACTIVE REPENTANCE AS AN INSTRUMENT MEANT TO OVERTURN THE RULE OF LAW IN POLAND?

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Abstract. According to the Polish Language Dictionary, active repentance is the result of an internal change which occurs in the perpetrator's consciousness, who has committed an act prohibited by law or perceived negatively by society, due to the arising feeling of guilt and remorse. This definition is not normative in nature, although it contains important components of the act that is active repentance. The direct impulse for writing this text, however, is the proposal by the Minister of Justice – Adam Bodnar to restore the rule of law in Poland by applying the discredited institution of active repentance, which originated in the communist era. This proposal was publicly announced and repeated many times by the media at the end of 2024. According to the Minister, active repentance should be submitted by judges promoted to higher positions after the year 2017. This solution caused quite a lot of surprise and sparked a discussion in Poland about this proposal. The institution of active repentance undoubtedly originates from the theological concept of remorse for sins, not only on a psychological or sociological level but also on a normative one, as it is regulated in the Code of Canon Law. It was later incorporated into secular legal systems, including criminal law. It was also a tool of political struggle, among other things, in the communist system in Poland. The aim of this study is to analyze the application of the institution of active repentance from a normative, doctrinal, and political perspective. Therefore, the study will discuss the institution of active repentance in Christian theology, in criminal law, and in the practice of implementing communist ideology in the People's Republic of Poland. Such an analytical approach to the institution of active repentance will allow for a proper assessment of the Minister of Justice's proposal to apply it in the process of restoring the rule of law in Poland. Such a holistic approach to the application of the institution of active repentance is undoubtedly a novelty in the existing discussions on the justification for its use. Therefore, in the structure of the paper, I will first discuss active repentance in Christian theology, then in criminal law, and during the communist era in Poland. Only in the final section will I assess the proposal of the Minister of Justice.

Keywords: Minister of Justice; active repentance; rule of law; Poland.

INTRODUCTION

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by society, due to the arising feeling of guilt and remorse [Szymczak 1983, 1084]. This definition is not normative in nature, although it contains important components of the act that is active repentance.

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The aim of this study is to analyze the application of the institution of active repentance from a normative, doctrinal, and political perspective. Therefore, the study will discuss the institution of active repentance in Christian theology, in criminal law, and in the practice of implementing communist ideology in the People's Republic of Poland. Such an analytical approach to the institution of active repentance will allow for a proper assessment of the Minister of Justice's proposal to apply it in the process of restoring the rule of law in Poland.[2]

Such a holistic approach to the application of the institution of active repentance is undoubtedly a novelty in the existing discussions on the justification for its use. Therefore, in the structure of the paper, I will first discuss active repentance in Christian theology, then in criminal law, and during the communist era in Poland. Only in the final section will I assess the proposal of the Minister of Justice.

The main research hypothesis of the paper is the statement that an attempt to apply the institution of active repentance within the framework of implementing a specific ideology or state policy is a mistake and becomes an instrument of political struggle. Historically, such solutions, even if they are only in the form of a position, are always negatively assessed.

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[1] Hereinafter: CCL.

[2] It should also be added that the institution of active repentance is present in fiscal criminal law as well, but due to the limitations of the scope of this work, this research thread will not be explored. More on active repentance in fiscal criminal law see: Legutko-Kasica 2021; Kurzyński 2016.

The reference to active repentance as an instrument for restoring the rule of law in a democratic state governed by the rule of law primarily undermines the constitutional principle of citizen trust in the state and its organs.

1. REPENTANCE FOR SINS IN CHRISTIAN THEOLOGY

Functionally and structurally, active repentance is an emanation of the ancient institution which still exists today, namely, the remorse for sins. According to Christian theology, remorse for sins is a conscious act of a person's conscience related to the evaluation of their past, current, and former actions which harm themselves, others, nature (which is a gift from God), or God Himself. By performing the act of remorse, a person acknowledges that their behaviour, actions, thoughts, or intentions are incompatible with the system of evangelical values – it means Christian values. Such behaviour in theology is referred to by the collective term 'sin.' Remorse for sins is therefore an act of self-accusation in front of God. This behaviour is the result of a person's reflection on their life and an expression of their will to return to the path of Christian life. The goal of this internal transformation is reconciliation with oneself, with others, and most importantly, with God [Pierzchała 2024, 149-60; Śmiałek 2023, 309-320].

According to Canon 959 CCL, remorse for sins, along with the resolution to amend is one of the fundamental elements required to obtain forgiveness, which involves the remission of the wrong committed and the forgiveness of temporal and eternal punishments, including eternal damnation. The Catechism of the Catholic Church states that remorse arises from love for God, who is loved above all (no. 1452). It is simultaneously the pain of the soul and the resolution not to sin in the future (no. 1451). The last condition for a good confession is the confession of sins before an authorized minister, meaning the sinner must perform self-accusation (no. 1456) [Pastuszko 1996, 23].

In exchange for performing remorse for sins, making a firm resolution to amend, and confessing sins, the sinner not only obtains forgiveness from God but also from the people they have harmed or injured. As a result, they are once again accepted into the community of believers and into the group of the saved [Przybyłowski 2022, 282].

Some thinkers assess Christian forgiveness negatively, as from the perspective of such an action, it is contrary to the concept of social justice, or at least the kind we encounter in criminal law theory [Fiala 2010, 494-506; Zalewski 2016, 565-76]. Moreover, Christian forgiveness is difficult to explain from a psychological or psychotherapeutic point of view [Drożdż 2007, 69].

Konrad Glombik, citing the concept of L. Boros, identifies three stages of remorse for sins. The first is sorrow, which is a psychological experience

of one's near or distant past in the context of good and evil. In this context, a person is both the accused and the judge, applying moral norms as measures of good and evil to him or herself [Glombik 2015, 25-36]. The second stage of remorse is the realization that we exist together with other people. In fact, one of the principles of Roman law, passed down by the lawyer Ulpian, was the assertion that one should not harm anyone – *neminem laedere*.[3] Shame is the path to the third stage, which is love, through which a person, despite committing wrongful acts, can still function within the community. This is possible thanks to forgiving love – not only from other people and God but also from the person forgiving him or herself.

Remorse for sins, and consequently forgiveness, is an essential condition for the functioning of an individual in relation to another person, but forgiveness is also important for the functioning of social groups, states, and all of humanity. Therefore, it should be stated that forgiveness is not only a religious value but also a necessity for every human being. Hence, in my publications and speeches at conferences, I have often advocated for the inclusion of the right to forgiveness in the canon of human rights.

To summarize the issue of remorse for sins in Christian theology, it should be stated that it contains certain structural elements similar to active repentance in positive law, especially in criminal and fiscal criminal law. However, this will be discussed further in the concluding remarks after the discussion of active repentance in positive law.

2. ACTIVE REPENTANCE AS AN INSTRUMENT IN THE FIGHT AGAINST THE OPPOSITION DURING THE PRL (PEOPLE'S REPUBLIC OF POLAND) ERA

Active repentance was one of the instruments of ideological struggle used by the communist system in the People's Republic of Poland (PRL) against both external and internal opposition. It was not so much a legal instrument but primarily a tool of political repression and social control. The post-war communist authorities used this tool to intimidate opponents, obtain information about the opposition's activities, and above all, to legitimize the communist system. This tool was used not only against political opponents but also against members of the communist party who exhibited revisionist views which disrupted unity within the party. These individuals were most often forced to make public self-criticism.[4]

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[3] D. 1,1,10,1 (Ulp.,1 *reg.*). See: Borysiak 2023, 13-45; Idem 2022, 66.

[4] Active repentance and self-criticism in the times of the People's Republic of Poland (PRL) were two separate institutions, very similar to each other, but also having their own specific characteristics. Active remorse had a legal and repressive nature, while self-criticism was

The use of active repentance gave the accused of alleged crimes hope of avoiding the penalties prescribed in laws created for the needs of the party and forced political opponents to make public self-criticism and admit their mistakes. This attitude, essentially a form of public self-humiliation, did give the individual a chance, but it did not guarantee the avoidance of severe punishments, including the death penalty, imprisonment, loss of employment, expulsion from the country, or public defamation in the media of the time, which were tools in the hands of party leaders. These individuals were often coerced into denouncing other members of the opposition and enemies of the then political system.[5]

Active repentance, often combined with self-criticism in the late 1940s and 1950s, was an instrument of manipulation and blackmail. Representatives of law enforcement, especially prosecutors, often suggested to those interrogated that they cooperate and make public self-criticism in exchange for ceasing further hardships. However, in practice, these promises were often illusory and were not kept.

Another function of both active repentance and self-criticism was the re-education of citizens, especially those who had cooperated with such organizations as: the Home Army (AK), the Freedom and Independence (WiN), or the National Armed Forces (NSZ), as well as clergy, lawyers, and representatives of science and art. After the March events of 1968, students, writers, and scientists were forced, among other things, to publicly condemn Zionist or anti-socialist views. Such appearances were meant to guarantee further careers, but these promises made by the authorities were not always kept [Szurczak 2009, 94-95].

3. ACTIVE REPENTANCE IN CRIMINAL LAW

The concept of active repentance does not have a normative character. It has not been defined in any positive legal act. It is therefore a product of doctrine and case law, applied in practice, but based on criminal law provisions [Kielak 2020, 24-25]. According to J. Kośla [Kośla 2023, 8],[6] the issue of active repentance was first developed in Polish criminal law doctrine

more of an ideological and propaganda tool. Often, both of these institutions were applied together. The most despised repressive body was the Ministry of Public Security, which existed from 1944 to 1954. See: Kamiński 2010, 241-62.

[5] More about the methods and tools used by the communists in the People's Republic of Poland, especially in the 1940s and 1950s see: Trembicka 2015, 165-78; Majer 2000, 477.

[6] This is a doctoral dissertation defended at Łazarski University. On pages 11 to 31, the author of the thesis also describes the evolution of criminal law regulations in Poland, focusing on the implementation of provisions that serve as the foundation for legal doctrine and the practice of applying *czynny żal* (active repentance).

by E. Krzymuski in 1902. However, he was not the creator of this concept, as it was used in the text of the criminal law for crimes, misdemeanours, and offenses of 27th May 1852,[7] also known as the Austrian Penal Code. The term "active repentance" did not appear in later legal acts valid in the territory of Poland, neither during the interwar period of the 20th century[8] nor in post-World War II criminal laws.[9]

Currently, Articles 15, 17(1), and 23(1) of the Penal Code of 6th June 1997[10] are the normative basis for applying the concept of active repentance in judicial practice. Based on these provisions of criminal law, a perpetrator of a crime, by performing active repentance, may avoid criminal liability or hope for a mitigation of the main penalty. Therefore, the doctrine rightly states that active repentance can lead to the cancellation or reduction of the penalty. As stated in the Article 15(1), the legislator decided that "there is no penalty for an attempt if the person voluntarily refrained from committing the crime or prevented the result constituting the elements of the criminal offense". In the case of an attempt, which can take the form of voluntarily refraining from committing a crime or preventing the consequences constituting the elements of the offense, the legislator allows law enforcement authorities or courts to refrain from penalizing the perpetrator. Meanwhile, in the Article 15(2), the legislator provides a second option, which is the application of extraordinary mitigation of the penalty if the perpetrator voluntarily tried to prevent the result of their act. In the first case, we are dealing with the passive behaviour of the perpetrator, who does not take any action which would lead to the realization of an intention contrary to the law. In contrast, active repentance occurs when the criminal act has already been committed, and the perpetrator takes steps to eliminate the negative effects or neutralize them. Non-punishability, therefore, serves as a reward for the perpetrator who, at a certain moment, reflects on their actions and corrects them in accordance with the moral norms embedded in the Penal Code and the ethical norms respected within the community, which translates into their conduct [Stefański 2025, commentary on Article 15].

An extension of Article 15 PC is the Article 17(1), where the legislator decided that an important condition for refraining from punishing the perpetrator may also be that the perpetrator has destroyed the prepared means

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[7] Journal of Laws No. 117. See: Kośla 2023, 15.

[8] In the interwar period of the 20th century, the criminal law provisions initially in force were those previously applied in the former partitioned territories. Polish legal regulation in this area of law was introduced only on the basis of the decree of the President of the Republic of Poland of 11th July 1932 – the Penal Code, which came into force on 1st September 1932. See: Klepner 2001, 538.

[9] During the times of the People's Republic of Poland (PRL), a code from 19th April 1969 was in force, Journal of Laws No. 13, item 94 as amended. See: Stefańska 2017, 158.

[10] Journal of Laws of 2023, item 17 [hereinafter: PC].

intended for committing the crime or prevented their use in the future. Furthermore, in cases where a potential perpetrator intended to commit a criminal act together with another person, they will not be punished if they also prevented the commission of the act by the potential accomplice [Gadecki 2023, commentary on Article 15].

Consequently, an accomplice, based on the Article 23(1) PC, will not be subject to punishment if they prevent the commission of the prohibited act. The legislator, in the Article 23(2), has adopted a solution analogous to the Article 15(2) PC, stating that an accomplice will not be punished if they do not carry out the intended criminal act, or if they prevent the negative consequences of that act or eliminate them. An accomplice may also expect an extraordinary reduction of the penalty if they destroy tools intended for committing the crime, or if they prevent their future use [Stefański 2025, commentary on Article 23].[11]

It is also worth mentioning the issue of the effectiveness of active remorse in criminal law, which conditions the decision to refrain from punishment or creates the possibility of applying an extraordinary reduction of the penalty. The effectiveness of active remorse in criminal law can be discussed when it is voluntary in nature, meaning it is not the result of any coercion [Grześkowiaka and Wiak 2024, commentary on Article 23]. Therefore, active remorse must be genuine, not merely apparent. According to the ruling of the Supreme Court from 24th November 2005 (III Ko 52/04), active remorse does not have to result in the actual mitigation of the negative consequences of the action, but it must reflect a positive attitude, meaning a sincere will of the perpetrator to abandon their actions or reverse the negative effects. Whether active remorse has occurred is determined by the court in the appropriate panel.[12] Other circumstances also matter for the effectiveness of active remorse, such as calling an ambulance for a person injured by the perpetrator. In this context, the reason for the injury does not matter, such as a perpetrator stabbing the victim with a knife.[13]

To summarize the issue of active remorse in criminal law, it should be stated that it is a decision by the court to refrain from punishing the perpetrator of a criminal act or to apply an extraordinary reduction of the penalty if the perpetrator takes actions aimed at abandoning the realization of the intent or mitigating the consequences of the already committed act. The action taken does not need to be effective; it is sufficient for the perpetrator or co-perpetrator to have a positive and sincere attitude.

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[11] The discussion of the provisions regarding active repentance in criminal law is not exhaustive. There are other cases, especially in the Criminal Law Act of 1969, see: Radecki 1976, 17-40.

[12] Judgment of the Court of Appeal in Rzeszów of 16 October 2023, ref. no. II AKa 91/23.

[13] Judgement of the Court of Appeal in Gdańsk of 8 December 2022, ref. no. II AKa 303/22.

Active remorse, therefore, is a specific action taken by the perpetrator of a crime, offense, or delict, aimed at preventing or mitigating the consequences of their actions. Moreover, the perpetrator wishing to express active remorse must cooperate with law enforcement authorities, such as the police or prosecutor's office before these authorities take such actions themselves.

4. ACTIVE REPENTANCE ACCORDING TO THE MINISTER OF JUSTICE

As mentioned earlier, in 2024, the Minister of Justice proposed the restoration of the rule of law in Poland by addressing the issue of judges appointed after the year 2017.[14] This group of judges, referred to in the media and public discourse as "neo-judges", represents a significant issue of politically motivated accusations related to violations of the rule of law in Poland. The origins of this situation lie in the amendment to the Act of 20th August 1997,[15] which was made based on the Act of 29th April 2016.[16] This law revoked the Article 11, which regulated the selection of 15 members of the National Judicial Council (KRS) by legal corporations, which were: the Supreme Court, administrative courts, appellate courts, military courts, and district courts. Therefore, the selection of 15 members of the National Judicial Council (KRS) was a prerogative of the judicial environment. In place of the Article 11, the Article 9a was introduced, which granted the right to elect judges to the KRS to the Seym (Polish parliament). The judicial environment only had the right to propose candidates for the KRS. This solution was perceived by the then-opposition as a politicization of the process. However, it is worth noting the significantly higher degree of politicization of judicial appointments in countries like France, Germany, Italy, and Spain, which does not constitute, and which is not recognized a violation of the rule of law.[17]

Accusations began to be directed at the then government for violating the rule of law, with these claims also being spread outside of Poland. In lawsuits filed by Polish judges and opposition politicians to the European Court of Human Rights (ECHR) and the Court of Justice of the European Union (CJEU), these institutions issued several rulings in which they stated that the

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[14] The dispute between Poland and the European Commission began earlier. It started with the issue from 2015 concerning the method of appointing judges to the Constitutional Tribunal. At that time, the Commission (EU) issued Recommendation 2016/1374 of 27 July 2016 regarding the rule of law in Poland (Official Journal of the EU L 217/53). See: Grzeszczak 2024, 31-47.

[15] Journal of Laws No. 121, item 769.

[16] Journal of Laws item 687.

[17] More on the methods of judicial appointments in other European countries see: Sitek and Michalski 2020.

panels adjudicating in Polish courts, including the Supreme Court, which includes so-called neo-judges, do not meet the conditions of impartiality and independence.[18] The Venice Commission expressed a similar view.[19]

After the change of government in Poland on 13th December 2023, and its takeover by the previous opposition, steps were taken to restore the rule of law, primarily through the reform of the judiciary. It is assumed that judges appointed after 2017 are not legitimate judges, or that their appointments to higher courts are invalid. Therefore, the Minister of Justice proposes to divide these judges into three groups. The first group consists of judges who, during this period, completed the School of Judiciary and Prosecution in Kraków. These individuals had no other option but to undergo verification by the politicized National Judicial Council (KRS). For this reason, they are to remain judges, and their positions are inviolable. The third group consists of those who were appointed as judges after previously practicing other legal professions. According to the Minister of Justice's proposal, they are not considered judges and, therefore, should lose their judicial status and return to their previous professions. They may participate in new competitions organized by the new, depoliticized KRS.

At the center of our interest is the second group, consisting of judges, including Supreme Court judges, who were appointed before 2018 and were subsequently promoted to higher positions, particularly those who advanced

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[18] There have been several judgments issued by the CJEU and the ECtHR, and for the purpose of illustrating the issue, I will refer to one judgment from each Court. In the judgment of the ECtHR from November 23, 2023, in the case 50849/21 Wałęsa v. Poland, it was stated that Poland has a flawed procedure for appointing judges with the participation of the National Judicial Council (KRS), which leads to a lack of independence of the Supreme Court's IKNiSP and excludes the competence to adjudicate such matters by the IKNiSP of the Supreme Court. However, it was not stated that the individuals deciding the case of Mr. L. Wałęsa in Poland failed to guarantee the independence of this Chamber. On the other hand, in the ruling of the CJEU of July 14, 2021, in the case C-204/21, it was ordered to suspend the application of provisions related to the adjudication by the Disciplinary Chamber of the Supreme Court, including those concerning the authorization to prosecute judges and judicial assessors for criminal responsibility or their temporary detention, in cases concerning the status of Supreme Court judges and their positions, and rights allowing for disciplinary accountability of judges for examining the fulfilment of the requirements of independence and impartiality. See: Stanek 2023

[19] The Venice Commission, during its 140th plenary session (11-12 October 2024), adopted a position on the status of judges in Poland. This was in response to a query from Minister of Justice Adam Bodnar. An important issue was the statement that it is not possible to consider all resolutions of the National Judicial Council (KRS) after 2018 as non-existent based on a single law. Therefore, it is not possible to reinstate all judges to their previous positions. This is not within the competence of Parliament and would violate the principle of the separation of powers. See more: *'Przywracanie praworządności musi pozostawać w zgodzie z zasadą praworządności' – Komisja Wenecka wydała opinię w sprawie statusu neo-sędziów*, https://hfhr.pl/aktualnosci/opinia-komisji-weneckiej-status-sedziow [accessed: 15.02.2025].

to higher courts during the discussed period. This group of judges is to return to their original positions, but under the condition of expressing active remorse and submitting a statement in which they will acknowledge that their promotion was a life mistake and, thus, that they contributed to the creation of an undemocratic order. Such a statement must be made regardless of whether the judge was aware that the National Judicial Council (KRS) was politicized and whether they were aware that they were contributing to the establishment of an undemocratic order. Undoubtedly, such a statement must be regarded as a form of public self-criticism [Kuchta 2024].

Taking into consideration the main goal of this work, it is now time to assess the proposal of the Minister of Justice from the perspective of legal principles and historical circumstances.

The fundamental accusation which can be made against the concept of restoring the rule of law in Poland is that it is based on the principle of presumption of guilt. This proposal assumes, a priori, that judges appointed after 2017 are guilty. It does not even offer the possibility of judicial proof that they are innocent. Candidates for judges, as well as judges seeking promotion, could not, and still are not authorized, to assess the legal provisions created by the legitimate authority. There is no political motive in this case, unlike the one which guided the legislator at the time. If every citizen, including a judge, had to assess the motivation behind the legislator's actions when enacting a given law, they would never have certainty about the legality of their actions. Shifting the burden of assessing the legality of the legal provisions applied to the citizens, including judges, leads to the violation of another principle: legal certainty [Patora 2020, 75-93].

Another principle proposed by the Minister of Justice is the presumption of innocence. A judge, by expressing active remorse and making self-criticism, which is, self-accusation for contributing to the establishment of an undemocratic order, is admitting to committing a criminal act which, at the time it was committed, was not and still is not punishable. Furthermore, according to the principle of the presumption of innocence, it is the duty of the state authorities to prove that the person committed the criminal act in question. The perpetrator is not obliged to accuse themselves or confess [Jezusek 2016, 175-87; Waltoś 2009, 7-22]. It should also be emphasized that, as of now, no legal provision has defined the criminal act that judges promoted after 2017 could possibly be accused of.

Finally, the proposal by the Minister of Justice to repair the rule of law in Poland contradicts the constitutional principle of trust between citizens and the state. This is a fundamental principle of a democratic rule of law, as stated in the article 2 of the Constitution of the Republic of Poland. The state should act in a predictable, consistent, and reasonable manner. Citizens, including judges, must make their life decisions consciously,

without fear of sudden, unjustified changes in the law [Chybalski 2023, 65-81]. According to the Article 7 of the Constitution of the Republic of Poland, state organs should act on the basis of and within the limits of the law. This means that the law must be predictable and protect acquired rights. The so-called neo-judges sought entry into the judiciary or professional promotion in the belief that they were acting in accordance with the applicable law. After all, trust in the state by its citizens is a key element of the rule of law.

Finally, the proposal by the Minister of Justice regarding the necessity for a specific group of judges to express active remorse and self-criticism should also be viewed from a historical perspective. This is especially important given that this proposal clearly has a political aspect, being a result of the ongoing political struggle of the current ruling coalition with the Law and Justice party (PiS). From this perspective, it is necessary to evaluate this proposal through the lens of the application of active remorse and self-criticism during the communist era in Poland, particularly in the 1940s and 1950s, as mentioned above. The use of both of these institutions to combat the political opposition has historically been negatively assessed. Poland, and the current ruling coalition which claims to belong to democratic states, should not demand that citizens, including judges, confess to actions they did not commit, especially actions which contributed to the establishment of an undemocratic order. Moreover, in my opinion, such an accusation is equivalent to a charge of a coup against the democratic order, which, of course, in the context discussed, is an absurd accusation.

COCLUSIONS

The proposal given by Adam Bodnar – the Minister of Justice, which involves legally compelling judges promoted after 2017 to submit active repentance and self-criticism by admitting their participation in building an undemocratic order, cannot be considered a solution consistent with a democratic state governed by the rule of law. This proposal is inconsistent with the fundamental principles of a democratic state governed by the rule of law, such as: citizen trust in the state, the prohibition of retroactive laws, and the presumption of innocence.

Without denying the value of actions aimed at restoring the rule of law, we must seek an answer to the question of whether there has truly been a violation of the rule of law in Poland due to the change in the method of selecting 15 judges to the National Judicial Council (KRS)? This question is justified by the already mentioned issue, namely, in other EU countries, the selection of judges is mainly political in nature, and this fact is not denied within the European Union. Is the different treatment of similar solutions by the ECtHR and the CJEU justified? Of course, in my opinion,

reversing the solution for selecting judges to the KRS from before 2016 guarantees greater independence of the judiciary from the other branches of power. In striving to change the current legal state, the KRS should not resort to radical accusations such as breaking the rule of law or judges participating in building an undemocratic order. It is enough to build a consensus on changing the current legal state between the parliamentary majority, the opposition, and the President. The rule of law cannot be restored by violating the rule of law and resorting to historically discredited institutions of active repentance and self-criticism.

REFERENCES

Borysiak, Witold. 2022. "Bezprawność jako sprzeczność z zasadami współżycia społecznego w orzecznictwie sądów powszechnych." In *Ius redigere in artem. Księga XXXlecia Instytutu Wymiaru Sprawiedliwości*, edited by Marcin Romanowski, Paweł Sobczyk, and Marcin Wielec, 31-77. Warszawa: Wydawnictwo Instytutu Wymiaru Sprawiedliwości.

Borysiak, Witold. 2023. "Zasada neminem laedere a ochrona dóbr osobistych osoby fizycznej." *Forum Prawnicze* 78, no. 4:13-45.

Chybalski, Piotr. 2023. "Konstytucyjna zasada ochrony zaufania obywateli do państwa." *Zeszyty Prawnicze BAS* 80, no. 4:65-81.

Drożdż, Alojzy. 2007. "Współczesne negacje etyki chrześcijańskiej." *Śląskie Studia Historyczno-Teologiczne* 40, no. 1:65-80.

Fiala, Andrew. 2010. "Radical forgiveness and human justice." *The Heythrop Journal* 53, no. 3:494-506.

Gadecki, Bartłomiej. 2023. *Kodeks karny. Art. 1-316. Komentarz*. Warszawa: Legalis.

Glombik, Konrad. 2015. "Żal za grzechy we współczesnej refleksji teologicznej." *Teologia i Moralność* 10:25-36.

Grześkowiak, Alicja, and Krzysztof Wiak. 2024. *Kodeks karny. Komentarz*. Warszawa: Legalis.

Grzeszczak, Robert. 2024. "Polska w podręcznikach o Unii Europejskiej – rozważania o testowaniu unijnych ram traktatowych." *Studia Prawnicze* 229, no. 1:31-47.

Jezusek, Andrzej. 2016. "'Domniemanie winy' w prawie karnym materialnym a procesowe domniemanie niewinności." *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 78, no. 2:175-87.

Kamiński, Łukasz. 2010. "Aparat bezpieczeństwa i zbrodnie komunizmu." In *Polski wiek XX*, vol. 3, Bellona i Muzeum Historii Polski, 241-62. Warszawa.

Kielak, Łukasz. 2020. *Klauzule czynnego żalu w polskim prawie karnym*. Warszawa: Wolters Kluwer.

Klepner, M. 2001. "Klauzule bezkarności w polskim prawie karnym." *Palestra* 9-10:538.

Kośla, Jacek. 2023. *Instytucja czynnego żalu w prawie karnym skarbowym*. Warszawa: Uczelnia Łazarskiego.

Kuchta, Adam. 2024. "Czynny żal, czyli rozgrzeszenie dla sędziów. Nowa instytucja ma pomóc uzdrowić sądownictwo, poprzez cofnięcie części awansów." https://www.infor.pl/

prawo/nowosci-prawne/6692159,czynny-zal-czyli-rozgrzeszenie-dla-sedziow-nowa-instytucja-ma-pomoc.html [accessed: 15.02.2025].

Kurzyński, Michał. 2016. *Karalność w prawie karnym skarbowym. Wybrane zagadnienia degresji karania*. Olsztyn: Wydawnictwo UWM.

Legutko-Kasica, Agnieszka. 2021. *Czynny żal jako instrument polityki kryminalnej wobec sprawców przestępstw i wykroczeń skarbowych*. Brzezia Łąka: Poligraf.

Majer, Piotr. 2000. "Aparat bezpieczeństwa publicznego a organa wymiaru sprawiedliwości – elementy współpracy." In *Przestępstwa sędziów i prokuratorów w Polsce lat 1944-1956*, edited by Witold Kulesza, and Andrzej Rzepiński, 477. Warszawa: IPN, IPSiR UW.

Pastuszko, Marian. 1996. "*Obowiązki szafarza sakramentu pokuty i pojednania:(kanon 983-986)*." *Prawo Kanoniczne* 39, no. 1-2:17-67.

Patora, Krystyna. 2020. "Medialne i społeczne domniemanie winy a prawne domniemanie niewinności (spojrzenie prawne a nowa perspektywa)." *Acta Universitatis Lodziensis. Folia Iuridica* 92:75-93.

Pierzchała, Michał. 2024. "Wyzwania moralne w kierownictwie duchowym oraz sprawowaniu sakramentu pokuty i pojednania osób wysoko wrażliwych (WWO)." *Teologia i Moralność* 19, no. 1(35):149-60.

Przybyłowski, Jan. 2022. "Przebaczenie chrześcijańskie a sprawiedliwość." *Studia Włocławskie* 24:279-94.

Radecki, Wojciech. 1976. "Prawne i moralne oceny czynnego żalu." *Palestra* 20(12):17-40.

Sitek, Bronisław, and Damian Michalski. 2020. *Wybrane systemy wymiaru sprawiedliwości na świecie*. Olsztyn–Warszawa: Wydawnictwo AEH.

Śmiałek, Sebastian. 2023. "Poczucie winy a żal za grzechy – perspektywa psychologiczna i duszpasterska." *Studia Teologiczne* 41:309-20.

Stanek, Małgorzata. 2023. "Praworządność w Polsce przed Trybunałem Sprawiedliwości UE w latach 2021-2022." https://www.kwartalnikiustitia.pl/praworzadnosc-w-polsce-przed-trybunalem-sprawiedliwosci-ue-w-latach-2021-2022,12235/2 [accessed: 15.02.2025].

Stefańska, Blanka J. 2017. "Czynny żal w prawie karnym. Zagadnienia podstawowe." *Prokuratura i Prawo* 9:158-74.

Stefański, Ryszard A. (ed.). 2025. *Kodeks karny. Komentarz*. Warszawa: Legalis.

Szurczak, Anna. 2009. "Kwestia żydowska po roku 1989 w odbiorze społecznym." *Pedagogika. Studia i Rozprawy* 18:73-123.

Szymczak, Mieczysław. (ed.). 1983. *Słownik języka polskiego.* Vol. 3. Warszawa: Państwowe Wydawnictwo Wiedza Powszechna.

Trembicka, Katarzyna. 2015. "Walczyć z wrogiem – o przemocy fizycznej jako sposobie realizacji komunistycznej myśli politycznej w Polsce Ludowej." *Annales Universitatis Mariae Curie-Skłodowska, sectio K-Politologia* 22, no. 2:165-78.

Waltoś, Stanisław. 2009. "Konstytucyjna zasada domniemania niewinności a środki masowego przekazu." *Nauka* 1:7-22.

Zalewski, Wojciech. 2016. "*Sprawiedliwość 'sprawiedliwości naprawczej'*." *Gdańskie Studia Prawnicze* XXXV:565-76.