

## Historicizing constitutional illiberalism in Poland: The Ehrlich-Kaczyński link -Research report-

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### Research project: A brief summary

In his short introduction to the essay "Marxist Legal Thought in Poland" published in the *Slavic Review* in 1967, Robert S. Sharlet outlines Grzegorz Leopold Seidler's emic tripartite periodization of the dominant legal reasoning in post-war Poland; the author of the essay, Seidler, was a prominent Polish legal and political theorist and an intellectual historian himself, an erstwhile rector of the University of Lublin and an MP in the late 1980s. The late 1940s hence delineate the first, "critical" phase, marked by the "Marxist critique of the bourgeois legal philosophy" of the Polish jurists. This period was followed by the "theoretical" phase of the late 1950s, characterized by the "search for a new model for [the] Polish legal development". Seidler position here, for instance, is one of a facilitator of the transition from legal positivism to sociology of law as a conversion of the "legal consciousness" (or the respect for the laws) to "Marxist consciousness" (or the internalization of the social norms). Seidler's final phase starts with the 1960s, a period which he depicts as "empirical", when the various approaches developed after the rejection of the "bourgeois" model were being tested in practice: such as the "flourishing" research on local government in Poland and his take on the social facts and political behavior in decision-making on a local level.<sup>1</sup>

My research project – which is part of the VWS-sponsored project "Towards Illiberal Constitutionalism in East Central Europe" – deals with two authoritative epitomes of the three aforementioned phases: Stanisław Ehrlich and *Państwo i Prawo* [PiP, State and Law]. Ehrlich, a graduate of law from a Polonized Jewish family from today's Eastern Poland, joined the Polish Partisan units in Soviet Russia during the WWII after his short legal practice and career in the Second Polish Republic's administration.<sup>2</sup> His wartime activities allowed for an

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<sup>1</sup> See Seidler, Grzegorz Leopold, "Marxist Legal Thought in Poland," *Slavic Review* 26, no. 3 (1967): 382-394.

<sup>2</sup> See, for instance: Turska, Anna and Piotr Winczorek, "Stanisław Ehrlich (1907-1997)," *Studia Iuridica* 36 (1997): 217-220; Bosiacki, Adam, "Stanisław Ehrlich," in *Profesorowie Wydziału Prawa i Administracji Uniwersytetu Warszawskiego 1808-2008*, ed. G. Bałtruszajtys, 223-224 (Warszawa: UW, 2008); Bosiacki, Adam, "Stanisław Ehrlich (1907-1997)," in *Monumenta Universitatis Varsoviensis 1816-2016*, ed. W. Baraniewski et al., 302-311 (Warszawa: UW, 2016). See, as well, Ehrlich's

quick launch in the post-war Polish academia: he soon became affiliated – first with the Łódź and later – with the Warsaw University, led the Soviet Political System and afterwards the Theory of State and Law Institute and got the post of the main editor of, now one of the two oldest Polish journals dealing with law and legal theory, PiP. Ehrlich held this post from 1946 to 1967, when he moved to the editorial board of the first Polish political science journal published in English, *The Polish Round Table*, and shifted his day-to-day focus on establishing the Polish branch of the IPSA. I discuss his late 1960s project of “sociology of politics”<sup>3</sup> – which he kept developing till the end of his academic career – separately, in a paper which will be published in early 2024. Here, it is important to be mentioned that after 2015 and the electoral victory of *Prawo i Sprawiedliwość* [PiS, Law and Justice], Ehrlich’s persona and work got renewed public interest. In brief, as the academic mentor of Jarosław Kaczyński, Ehrlich became the usual suspect when historicizing the Polish constitutional illiberalism.

## Research at the OSA

During my stay in Budapest, I predominantly focused on the early period of Ehrlich’s career, that’s the late 1940s up to the mid-1960s. I started my research by looking at the **PiP issues from 1946 to 1967**, or the period in which he served as a main editor. The journal was molded upon Vyshinsky’s *Gosudarstvo i Pravo* and had a goal, in its early post-war years, of “transplanting” – as per Rafał Mańko – the Stalinist anti-positivism in the newly established national contexts of the Soviet satellite states in Europe.<sup>4</sup> I managed to map all the mentions of Ehrlich in PiP in the given period: editorials, reviews, articles and discussions. During the late 1940s and the early 1950s, Ehrlich assumed the role of a “supervisor” in post-war Poland; this is a category of Marta Bucholc that depicts the scholar whose sole mission was to “ensure that Marxist ideology would be successfully imposed” in Poland, “envisaged as a Soviet satellite devoid of external independence and strictly controlled internally”.<sup>5</sup> A 1946 PiP paper by Ehrlich, for instance, titled “Zagadnienie praworzadności” [The issue of legality], is as a blueprint of these early post-war activities of

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autobiographical take on his family, published in the year he died: “Żydowie polscy,” *Tygodnik Powszechny* 4, no. 2481 (1997).

<sup>3</sup> Turska and Winczorek, “Stanisław Ehrlich,” 218-219.

<sup>4</sup> Mańko, Rafał, “Weeds in the Gardens of Justice? The Survival of Hyperpositivism in Polish Legal Culture as a Symptom/*Sinthome*,” *Polemos* 7, no. 2 (2013): 207-233.

<sup>5</sup> Bucholc, Marta, *Sociology in Poland: To Be Continued?* (London: Palgrave Macmillan, 2016): 15. See, as well, Sulikowski, Adam, “The Return of Forgotten Critique: Some Remarks on the Intellectual Sources of the Polish Populist Revolution,” *Review of Central and East European Law* 45 (2020): 376-401.

his. Ehrlich's rationale behind the article was to re-expertise the debate over the "worn-out" [*spospolitowany* and *wytarty*] notion of legality. Although in this, and in his text with a corresponding title published as a booklet in 1947, Ehrlich's discourse is seemingly polemic and he opts to distinguish a middle-way between a capitalist and a revolutionary legality – a "People's Democracy legality" – already in 1948 he is very clear in his claim that only a Soviet-like *prokuratura* can guarantee legality in a peoples' democracy.<sup>6</sup>

Stalin's death and the Polish thaw allowed for an "exceptionally abundant" set of writings on legality in the mid-1950s, as per Jerzy Wróblewski.<sup>7</sup> I looked at the state-sponsored popular journals **Nowa Kultura (1954-62)**, **Przegląd Kulturalny (1954-63)** and **Po Prostu (1956-57)** to trace some of the main arguments and criticism of the Stalinist cult of personality in Poland. All three journals helped me contextualize the writings of Ehrlich published as of the mid-1950s and his repositioning towards Marxist revisionist stances. His most illustrative text from this period is certainly the booklet titled *Praworządność: Sejm* [Legality: Parliament] from 1956, published in Po Prostu's *Biblioteczka* series. Here, Ehrlich articulates a realist critique of the so-called formal-dogmatic method and argued that only an "intelligent usage of law" in the social reconstruction can be of help; or the law which is in accordance with the objective norms that rule a given society.<sup>8</sup>

I complemented the above materials with a set of dossiers which I roughly categorize as documents about **i) science**, **ii) institutions** and **iii) people** in Poland and beyond. Hence, the dossiers about science – a selected list is provided below – helped me grasp the media discourse about the Sovietization of science in post-war Poland, but also the dominant expert evaluations of ideology and the work of the scientific institutions.

### **i) Science:**

[HU OSA 300-50-1 Box 1075 – Sovietization of science \(in Poland\) 1951-57](#)

[HU OSA 300-50-1 Box 25 – Philosophy and ideology 1952-60](#)

[HU OSA 300-50-1 Box 26 – Philosophy and ideology 1961-67](#)

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<sup>6</sup> Ehrlich, Stanisław Dr, "Rola prokuratury w ustroju radzieckim," *Wojskowy Przegląd Prawniczy* 3-4, no. 15-16 (1948): 191. See, as well, Ehrlich, Stanisław, *Zagadnienie praworządności* (Warszawa – Łódź: Książka, 1947).

<sup>7</sup> Wróblewski, Jerzy, "Problems of Legality in Marxist Theory," *Archives for Philosophy of Law and Social Philosophy* 62, no. 4 (1976): 502.

<sup>8</sup> Ehrlich, Stanisław, *Praworządność: Sejm* (Warszawa: Książka i Wiedza, 1956).

Ehrlich reviewed Nietzsche and the impact of his thoughts on the Nazi regime in *Kuźnica*: "Książka o Nietzchem," *Kuźnica* 22, no. 143 (1948).

HU OSA 300-50-1 Box 26 – Philosophy and ideology 1969-69

I also reviewed a set of dossiers related to the formation and functioning of the state institutions in post-war Poland. A very interesting dossier was the one on the protests related to the closing down of Po Prostu in 1957.

**ii) Institutions**

HU OSA 300-50-1 Box 47 – Ministries (in Poland) 1951-67

HU OSA 300-50-1 Box 47 – Sejm (in Poland) 1956

HU OSA 300-50-1 Box 223 – Po Prostu 1957

Finally, I checked the dossiers about some of the most relevant colleagues and collaborators of Ehrlich, such as Jerzy Wiatr, but I also tried to trace Ehrlich's influence abroad: so I checked the work of Zdeněk Mlynář and his team at the Czechoslovak Academy of Sciences.

**iii) People**

HU OSA 300-50-15 Box 43 – Jerzy Wiatr 1968-88

HU OSA 300-80-8 Box 28 – Zdenek Mlynar 1967-86

I also used the time in Budapest to read some materials at the **CEU Library** and further trace the regional articulations of initial political sociology discourses. For instance, I spent some time reading the works of Kálmán Kulcsár, such as "The past and present of Hungarian sociology" (in *The Sociological Review*, University of Keele, 1972).