

**Jacek Zalesny<sup>1</sup>**

## **Amnesty acts in Poland in the 20<sup>th</sup> century**

**Keywords:** Poland, 20<sup>th</sup> century, parliament, amnesty

**Słowa kluczowe:** Polska, XX wiek, parlament, amnestia

### **Summary**

The subject of the analysis refers to amnesty acts in Poland in the 20<sup>th</sup> century. A thesis is posed in the paper that in principle they take place at the moments which are politically important for the Republic of Poland, the aim of which is to establish them in the social consciousness. Typically, they are the acts of the parliament. The Polish doctrine of law clearly presents a separate character of amnesty acts in reference to the court verdicts. They are an expression of the will of the parliament, independent of the court's judgment, according to which amnesty should be carried out.

### **Streszczenie**

### **Akty amnestyjne w Polsce w XX w.**

Przedmiotem analizy uczyniono problematykę aktów amnestyjnych podejmowanych w XX w. w Polsce. W pracy stawia się tezę, że co do zasady zapadają one w momentach istotnych politycznie dla Rzeczypospolitej Polskiej, w celu ich utrwalenia w świadomości społecznej i typowo są aktami parlamentu. W polskiej doktrynie prawa wyraźnie zaznacza się odrębność aktów amnestyjnych wobec wyroków sądów. W żadnym zakresie nie mogą one podważać wyroków sądów,

---

<sup>1</sup> The author is a Habilitated Doctor in Department of Political Systems of the Institute of Political Sciences Faculty of Political Science and International Studies of the University of Warsaw. E-mail: zalesnyjacek@gmail.com.

ingerować w niezależność władzy sądenia. Są wyrazem woli parlamentu, niezależnej od wyroku sądu, że w danych okolicznościach politycznych amnestia powinna być przeprowadzona.



Although, in principle, a law is an act regulating social relations which are to appear in the future, there are categories of laws which are known to have retrospective effects determining the legal consequences of events to occur in the future. This type of features are characteristic of amnesty laws. In reference to the etymology of the notion “amnesty” (in Greek, ἀμνηστία *amnēstía* means not remembering, oblivion), they are to be the basis to forget and forgive criminal acts which happened in the past.

After Poland regained independence in 1918, the power of amnesty belonged to the Provisional Chief of State until the law was passed by the Legislative Sejm on 20 February 1919 on entrusting Józef Piłsudski with the office of the Chief of State<sup>2</sup>. He held it by virtue of a decree of the Regency Council from 14 November 1918 on dissolving the Regency Council and passing the Highest State Power to the commander-in-chief of the Polish army, Józef Piłsudski<sup>3</sup>.

When the constitutional provisorium came into life in 1919, the power of amnesty was passed to the Legislative Sejm. Although in the resolution from 20 February 1919 the law maker did not use the concept of “amnesty”, the latter could be undertaken by the parliament due to its general and abstract character<sup>4</sup>. The requirement that amnesty could be undertaken exclusively via a parliamentary act, as not causing any political controversy, was kept in the Constitution from 17 March 1921<sup>5</sup>.

---

<sup>2</sup> Journal of Laws of the Polish State. No. 19, item 226.

<sup>3</sup> Journal of Laws of the Polish State. No. 17, item 39.

<sup>4</sup> K. Kaczmarczyk-Kłak, *Prawo łaski w okresie prowizorium konstytucyjnego w latach 1918–1922*, [In:] *Ustroje. Historia i współczesność. Polska – Europa – Ameryka Łacińska. Księga jubileuszowa dedykowana profesorowi Jackowi Czajowskiemu*, eds. M. Grzybowski, G. Kuca, P. Mikuli, Kraków 2013, p. 227.

<sup>5</sup> W. Komarnicki, *Polskie prawo polityczne (geneza i system)*, Warszawa 2008, p. 497.

In accordance with its art. 47, amnesty could be granted only by way of a law. By virtue of the constitutional law from 2 August 1926, the right to undertake amnesty acts was also given to the President. When the Sejm and the Senate were dissolved, in case of an urgent state need, the latter could issue them by way of ordinances with the force of the law. The Sejm could also authorize the President (by way of a law) to issue an ordinance with the force of a law, at the time and with the scope indicated in the law, except the change of the Constitution, and this also included the competence to undertake amnesty acts. It was just on the basis of that regulation that on 17 March 1932 the Sejm authorized the President to issue ordinances with the force of a law until the nearest session of the Sejm was called<sup>6</sup>, and the President issued an ordinance on amnesty on 1 October 1932<sup>7</sup>.

In accordance with art. 69 item 2 of the constitutional act from 23 April 1935, amnesty required a legislative act. It could be undertaken by the parliament by way of a law or by the President by way of a decree. The President used this competence on 2 September 1939 undertaking a decree on amnesty<sup>8</sup>.

In the inter-war period amnesty was carried out nineteen times<sup>9</sup>. Its territorial scope varied and so did the motives to undertake it and the scope of effect. Besides amnesty including the whole territory of the state, territorially limited amnesties were undertaken<sup>10</sup>. Amnesties realized directly after Poland regained independence were significant in their political consequences. Their principal aim was to change the legal consequences of the decisions made in the legal systems of the partitioning powers and, therefore, to limit the effect of those systems on the social relations taking place in revived Poland and to cut off from the effect of the partitioning past. This also served to restore the rights to those Poles who had stood against the partitioning powers and had been for that reason prosecuted<sup>11</sup>.

---

<sup>6</sup> Journal of Laws, No. 22, item 165.

<sup>7</sup> The ordinance of the President of the Republic of Poland from 1 October 1932 on amnesty following the introduction of the Polish uniform penal code and the misdemeanor law from 1 September 1932, Journal of Laws No. 91, item 782.

<sup>8</sup> Journal of Laws No. 87, item 553.

<sup>9</sup> J. Bednarzak, *Amnestia*, Warszawa 1965, p. 44.

<sup>10</sup> For example, the law from 14 May 1920 on amnesty in the former Prussian district, Journal of Laws No. 42 item 252.

<sup>11</sup> J. Bednarzak, *op.cit.*, p. 63.

Amnesty was proclaimed, for example, for the following reasons: tax abolition<sup>12</sup>; commemorating the convocation of the Legislative Sejm of united and independent Poland<sup>13</sup>; regaining the areas of the Republic of Poland which had been included in the Prussian state<sup>14</sup>; commemorating the affiliation of Upper Silesia in Poland<sup>15</sup>; passing the March Constitution<sup>16</sup>; recognition of Poland's eastern areas<sup>17</sup>; the 10<sup>th</sup> anniversary of Poland regaining independence<sup>18</sup>; implementation of the criminal code and the law on misdemeanor<sup>19</sup>; implementation of the constitutional acts from 24 April 1935<sup>20</sup>.

Against the background of amnesty acts between the world wars, of far-reaching political importance was the presidential decree on amnesty from 2 September 1939. In the face of the threat to the state's existence, the President forgot and forgave numerous offences and crimes committed before 31 August 1939.

In People's Poland amnesty was not directly based in constitutional regulations. The first amnesty was proclaimed on 2 August 1945 – by way of a decree – by the Council of Ministers and approved of by the Presiding Board of the National Council<sup>21</sup>. The government acted on the grounds of the law

---

<sup>12</sup> Decree of the Chief of State from 7 February 1919 on amnesty for violating the regulations on direct taxes, administrative fees and the tax on inheritance and donations in the areas of the former Russian partitioning zone, *Journal of Laws of the Polish State*. No. 14, item 191.

<sup>13</sup> Decree of the Chief of State from 8 February 1919 on amnesty, *Journal of Laws of the Polish State*. No. 16, item 219.

<sup>14</sup> The law from 14 May 1920 on granting amnesty in the former Prussian district, *Journal of Laws* No. 42, item 252.

<sup>15</sup> The law from 10 March 1921 on amnesty, *Journal of Laws* No. 29, item 163.

<sup>16</sup> The law from 24 May 1921 on amnesty following the passing of the Constitutional Law of the Republic of Poland from 17 March 1921, *Journal of Laws* No. 42, item 261.

<sup>17</sup> The law from 6 July 1923 on amnesty following the recognitions of the borders of the Republic of Poland, *Journal of Laws* No. 70, item 555.

<sup>18</sup> The law from 22 June 1928 on amnesty following the 10<sup>th</sup> anniversary of the Polish State regaining independence, *Journal of Laws* No. 70, item 641.

<sup>19</sup> The ordinance of the President of the Republic of Poland from 1 October 1932 on amnesty following the introduction of the Polish uniform penal code and the misdemeanor law from 1 September 1932, *Journal of Laws* No. 91, item 782.

<sup>20</sup> The law from 2 January 1936 on amnesty *Journal of Laws* No. 1, item 1); the outbreak of the war (a decree of the President of the Republic of Poland from 2 September 1939 on amnesty, *Journal of Laws* No. 87, item 553).

<sup>21</sup> *Journal of Laws* No. 28, item 172.

from 3 January 1945 on the procedure of issuing decrees with the force of law<sup>22</sup>. The purpose of the amnesty was to commemorate the day of the re-birth of Poland on the anniversary of the establishment of the Polish Committee of National Liberation and the fact of the creation of the Government of National Unity. It mostly comprised people sentenced for political reasons. For example, the following crimes were forgotten and forgiven: crimes referred to in art. 1 and 8 on the protection of the state if the offender left the association and returned to normal life or they did it within a month after the decree on amnesty came into force; crimes laid down in art.4 letter a) of the decree on the protection of the State if the perpetrator voluntarily gave up to the authorities responsible for public safety the weapons, ammunition, explosives or other objects they were in possession of which could bring universal danger, or they did this within a month after this decree came into life; crimes laid down in art. 115–120 of the criminal code of the Polish Army if the perpetrator came to the disposal of the competent authority. Additionally, in matters within the competences of military courts and in cases concerning the crimes committed for political reasons – even if they did not belong to the competences of those courts, punishments of freedom limitation up to 5 years; punishments decreed for the crimes laid down in art. 113–120 of the criminal code of the Polish Army, regardless of the degree of penalty and referral to the criminal division decreed as the principal punishment, were forgiven and so were the punishments deferred in accordance with art. 65 or mitigated in accordance with art. 55 of the criminal code of the Polish Army, regardless of their degree. Death penalty or life sentence were changed for the punishment of 5 years of freedom deprivation.

At the same time the decree contained a developed catalogue of exclusions from amnesty. The latter did not include, for example, people who did not give up their weapons after Poland's liberation; who committed crimes under the competences of special criminal courts; who committed offences laid down in the law from 6 May 1945 on excluding the Polish hostile elements from the society<sup>23</sup>; who falsified or circulated money and securities (art. 175 to 177 of the criminal code); who – after Poland was liberated from the German occu-

---

<sup>22</sup> Journal of Laws No. 1, item 1.

<sup>23</sup> Journal of Laws No. 17, item 96.

pation – committed the offence laid down in art. 287 to 290 of the criminal code and offences against the State's treasury, local governments and institutions of public law, state-owned and self-governing enterprises or any organizations acting with the share of the finances of the State's Treasury or making use of its guarantees or financial aid if the offence was committed by an officer of the state's office or a person in service of one of the aforementioned institutions; who perpetrated the seizure of somebody else's movable property (art. 257 of the criminal code); who perpetrated the appropriation of entrusted movable assets (art. 262 § 2 of the criminal code); if entrusting this property was a consequence of events connected with the war; who committed crimes laid down in the decree of the Polish Committee of National Liberation from 12 December 1944 on combating secret alcohol production<sup>24</sup>; who committed crimes laid down in art. 11, 12 and 14 of the decree of the Polish Committee of National Liberation from 25 October 1944 on combating speculations and war usury<sup>25</sup>; who were professional criminals or habitual criminals or who the regulations on return to crime were applicable to.

The goal similar to that of the decree from 2 August 1945 accompanied the Legislative Sejm undertaking of the law on amnesty on 22 February 1947<sup>26</sup>. It symbolized transfer from the state of the temporary nature of the political state to the state of political stability. Its purpose was to commemorate the opening of the Legislative Sejm and the election of the President of the Republic of Poland as well as enable all citizens to take part in the rebuilding of democratic People's Poland (the original wording). Amnesty was an attempt to relieve the social tension connected with anti-communist guerrilla movement and stabilize the legal situation, the return to the everyday functioning of its former and present members as well as those who supported the anti-communist guerrilla movement. The dynamics of political changes did not leave any illusions as to no effectiveness of the actions undertaken and it promoted resignation, which was supposed to be supported by amnesty. For this reason, the law on amnesty forgot and forgave, for example, the following offences: 1) participation in a criminal association or agreement; crimes committed within such an association or agreement by their members, partici-

---

<sup>24</sup> Journal of Laws No. 15, item 85.

<sup>25</sup> Journal of Laws No. 9, item 49 with amendments.

<sup>26</sup> Journal of Laws No. 20, item 78.

pants or people providing help to them; 2) crimes laid down in art. 4, 10 and 23 of the decree from 13 June 1946 on crimes which were particularly dangerous in the period of rebuilding the State<sup>27</sup>.

On 20 July 1950 the Sejm passed a law on lifting the sanctions and restrictions towards the citizens who had proclaimed their affiliation with the German nationality<sup>28</sup>. In view of the contribution of work made to the rebuilding of the state by the majority of citizens who – under the pressure of the German occupant – had proclaimed their affiliation with the German nationality, and considering the strengthening of people's authority enabled – on the sixth anniversary of the rebuilding of Poland – to lift the sanctions and restrictions existing towards those citizens in their use of full civil rights. For this reason, no proceedings were initiated against the Polish citizens who, between 1 September 1939 and 9 May 1945, declared their affiliation with the German nationality or any nationality privileged by the occupant or those who declared the German origin. If the proceedings had been initiated, they were discontinued. Penalties adjudged in his area were forgiven, including those that had not been executed or executed only in part as well as the proclaimed loss of public rights and civil honorable rights. The regulations of the law on lifting the sanctions were not applicable towards the people who had committed a crime laid down in a decree from 31 August 1944 on punishments for the fascist-Nazi criminals, those who were guilty of cruelty to the civil population and prisoners and those who were traitors of the Polish Nation<sup>29</sup>.

The constitution from 22 July 1952 did not undertake the subject of amnesty. Therefore, in the period when the former was in force, it was justifiably accepted that amnesty could be determined by the Sejm by way of a law while in the period between the sessions – the Council of State issuing a decree with the force of law.

In the Polish People's Republic amnesty acts were undertaken above all on the occasion of important political events: the passing of the Constitution of the Polish People's Republic on 22 July 1952<sup>30</sup>; the twentieth anniver-

---

<sup>27</sup> Journal of Laws No. 30, item 192.

<sup>28</sup> Journal of Laws No. 29, item 270.

<sup>29</sup> Journal of Laws from 1946 No. 69, item 377 with amendments.

<sup>30</sup> The law from 22 November 1952 on amnesty, Journal of Laws No. 46, item 309.

sary of People's Poland<sup>31</sup>; the twenty fifth anniversary of People's Poland<sup>32</sup>; the thirtieth anniversary of People's Poland – considering the successful realization of the program of the society's socialist changes and the social and economic development of the country, a permanent increase of social discipline and an improved state of public security and order, with a simultaneous increase of the legal consciousness and culture of the citizens (the original wording)<sup>33</sup>; lifting the martial law, considering the progressing normalization of social life, with the aim to create the conditions for the citizens who – for political reasons or unintentionally – violated the public order to get actively involved in the life of the country and to create the basis for earlier release due to the age and personal conditions of the perpetrators of certain crimes (the original wording)<sup>34</sup>; the fortieth anniversary of People's Poland<sup>35</sup>.

In People's Poland amnesty most frequently comprised perpetrators of common crimes. However, the political inspirations of amnesty were sometimes important. For example, one of the goals of the law from 27 April 1956 on amnesty<sup>36</sup> was to enable the political emigrants whose political or social activity was treated in the law of People's Poland as criminal to return to homeland and get involved in the work of the Polish Nation. The following crimes committed before 15 April 1956 were forgotten and forgiven: crimes carrying the penalty of freedom deprivation up to 5 years laid down in chapters I and II of the decree from 13 June 1946 on crimes that were particularly dangerous in the period of rebuilding the State<sup>37</sup>, in the decree from 5 August 1949 on the protection of the freedom of conscience and religion<sup>38</sup>, in art. 100 § 2 of the penal code from 1932, in the decree from 26 October 1949 on the protection of state and office secrets<sup>39</sup>, in art. 90 and 91 item 1 of the law from 4

<sup>31</sup> Decree from 20 July 196, Journal of Laws No. 27, item 174.

<sup>32</sup> Decree from 21 July 1969 on amnesty, Journal of Laws No. 21, item 151.

<sup>33</sup> The law from 18 July 1974, Journal of Laws No. 27, item 159; Similar presumptions guided the law from 19 July 1977 on amnesty, Journal of Laws No. 24, item 102.

<sup>34</sup> The law from 21 July 1983 on amnesty, Journal of Laws No. 39, item 177.

<sup>35</sup> The law from 21 July 1984 on amnesty, Journal of Laws No. 36, item 192.

<sup>36</sup> Journal of Laws No. 11, item 57.

<sup>37</sup> Journal of Laws No. 30, item 192 with amendments.

<sup>38</sup> Journal of Laws No. 45, item 334.

<sup>39</sup> Journal of Laws No. 55, item 437.



February 1950 on general military service<sup>40</sup>, in art. 30 of the decree from 23 March 1956 on the protection of state borders<sup>41</sup>, in chapter XVII and art. 152 of the Criminal Code of the Polish Army. Amnesty was also applied towards, for example, acts penalized by the former Special Commission for Combating Economic Abuse and Sabotage.

Regulations concerning amnesty were not included in the provisional constitutional acts from 1989 and the 1990's. They were not laid down in the Constitution of the Republic of Poland from 2 April 1997. There is no doubt that – due to its normative character – amnesty can be undertaken by the parliament. The word “amnesty” is used by the legislator in such acts as the Code of criminal proceedings from 6 June 1997<sup>42</sup> or the law from 24 May 2004 on the National Criminal Registry Act<sup>43</sup>.

As different from the period between the world wars and the period of People's Republic, it was only in 1989 that the Sejm of the 3<sup>rd</sup> Republic of Poland passed (twice) the laws on the consequences of amnesty. Undertaking the act on forgiving and forgetting certain crimes and offences on 28 May 1989<sup>44</sup>, the Sejm took into consideration the progressing process of normalization of social life, which was expressed by the national agreement and the will to create conditions for the citizens who – for political reasons – had violated the legal order enabling active participation in the political life of the country (the original wording). The other law passed in 1989 was the law from 7 December 1989 on amnesty<sup>45</sup>. A specific act, with the anti-amnesty consequences, was the law from 31 May 1996 on excluding certain laws on amnesty and abolition towards the perpetrators of some crimes which had not been prosecuted in the years 1944–1989 for political reasons<sup>46</sup>. On its basis, the regulations of laws and decrees providing for amnesty or abolition and issued before 7 December 1989 were not applied towards the perpetrators of acts spoken about in art. 108 § 2 of the criminal code.

---

<sup>40</sup> Journal of Laws No. 5, item 46.

<sup>41</sup> Journal of Laws No. 9, item 51.

<sup>42</sup> Journal of Laws No. 89, item 555 with amendments.

<sup>43</sup> Journal of Laws from 2012, item 654 with amendments.

<sup>44</sup> Journal of Laws No. 34, item 179.

<sup>45</sup> Journal of Laws No. 64, item 390.

<sup>46</sup> Journal of Laws No. 89, item 400.

In the Polish tradition, amnesty is a form of grace. It occurs in special political circumstances when the political aim requires that crimes be not prosecuted. Its point of reference includes actions against the state's existing political system and political relations, a deep political disturbance, the need to seek national reconciliation and social peace or pardoning the guilt and forgetting the acts perpetrated by people convicted in political cases<sup>47</sup>. Amnesty is also sometimes conditioned by pragmatic reasons, for example a need to relieve the overcrowding of penal institutions following excessive repressiveness of law. This reason played a significant role in People's Poland.

In the legal situation binding at present, amnesty is undertaken exclusively in the form of a law. The Sejm and the Senate pass it according to the procedure of a so-called ordinary law. The amnesty law is an act establishing law not only for formal reasons, due to the form of the law, but also due to its content. As a normative act, it contains general and abstract norms. It is not directed to a concrete person (a concrete convict) but to a definite category of (convicted) people who are not individually marked and who possess the feature spoken about by the legislator<sup>48</sup>. The law is applicable to each such person, independently of specific conditions.

It should be emphasized that amnesty is a sovereign act – an expression of the political will of the parliament. Considering the normative character of the amnesty law, the Sejm can freely establish the categories of forbidden acts included within it, depending on what specific goal is to be reached by undertaking a concrete amnesty act. Establishing the subject of amnesty, i.e. the circle of convicts comprised within it, the legislator most frequently indicated the types of crimes, the kinds or degree of the punishments adjudged which are either abolished or shortened. Amnesty acts also sometimes include the regulations excluding definite categories of forbidden acts<sup>49</sup>.

The Polish practice is also familiar with granting the organs using the regulations of law a decision to include a given person within the benefits of amnesty. In accordance with the regulations of the decree from 19 July 1977 on

---

<sup>47</sup> Cf. K. Holy, *Prawo międzynarodowe publiczne wobec amnestii*, Warszawa 2015, p. 23.

<sup>48</sup> P. Daniluk, *Amnestia i jej konstytucyjne uwarunkowania*, "Przeгляд Sejmowy" 2014, No. 3, pp. 44–45.

<sup>49</sup> P. Rogoziński, *Instytucja ulaskawienia w prawie polskim*, Warszawa 2009, p. 91.

amnesty<sup>50</sup>, if special circumstances occurred, the Public Prosecutor General – in agreement with the Minister of Justice – could discontinue the proceedings connected with the offence carrying a more severe penalty than that in the amnesty act, not higher, however, than 10 years of freedom deprivation. On the other hand, in accordance with art. 5 of the law from 21 July 1983 on amnesty<sup>51</sup>, in particularly justified cases the Supreme Court – on the motion of the Public Prosecutor General, could discontinue the proceedings referring to a crime included with the law on amnesty even if the circumstances of the cases indicated that the penalty of more than 3 years' freedom deprivation should be adjudged, a crime laid down in chapter XIX of the criminal code (except the crime referred to in art. 134 and 135) and another crime committed before the day when martial law was lifted, or the valid punishment for such a crime should be forgiven. A similar regulation was included in the law from 17 July 1986 on special proceedings towards the perpetrators of certain offences<sup>52</sup>.

The purpose of the amnesty law should be determined in the reasons to a draft of the amnesty law and it should be rational since in accordance with the settled jurisdiction of the Constitutional Tribunal, an irrational legal norm does not satisfy the standard of proper legislation and, as such, it loses the binding capability.

A typical amnesty act in the Polish practice of the 20<sup>th</sup> century includes amnesty and abolition regulations. Like amnesty, abolition is a general act aimed at a definite category of people who are not individually marked. While amnesty comprises annulment or mitigation of the consequences of conviction, abolition consists in forgetting and forgiving the perpetrator's act, prohibiting the initiation of criminal proceedings or ordering abandonment of criminal proceedings. The stage of the proceedings has no significance for its application. It can be undertaken at any stage, i.e. both during the preparatory proceedings and within the frameworks of jurisdiction proceedings until the validation of the sentence. Amnesty can be applied since the moment the sentence is validated. For example, abolition accompanied the introduction of martial law in 1981 and it was aimed at enabling the citizens who – for

---

<sup>50</sup> Journal of Laws No. 241, item 102.

<sup>51</sup> Journal of Laws No. 39, item 177 with amendments.

<sup>52</sup> Journal of Laws No. 26, item 126.

political reasons, in the context of social conflicts or unintentionally – broke the legal order to get involved in active participation in developing the country's economic life and in strengthening the social order as well as with the aim to secure the conditions promoting the national agreement and continuation of socialist changes of the social life (the original wording)<sup>53</sup>.

Amnesty has an objective character. It indicates forbidden acts included within its scope. These are, in principle, crimes but also misdemeanors, tax crimes, tax offences or disciplinary tort. From the point of view of the essence of amnesty, it is of no importance whether the legislator enumerates (in articles) forbidden acts (*delicta enumerate*) or defines the types of forbidden acts where amnesty is applicable (*delicta denominate*). The objective character of amnesty is not undermined by the exclusion of certain categories of people or the exclusion of certain categories of crimes. The objective, and not subjective, character of amnesty follows from the goal it is supposed to achieve. Due to the achievement of the effect of amnesty it can also exclude definite categories of people. The objective character of amnesty, characteristic of the legal norm, is connected with its another feature, namely universality. Amnesty criteria are always of general nature. They do not refer to individual features of convicts included within amnesty. Everybody who will satisfy the feature spoken about in the amnesty act is included within it. On the other hand, abolition regulations are directed at people fulfilling amnesty criteria who have not been yet convicted in a valid way.

What follows from its social and legal essence, amnesty is not subject to cancellation. This means that the Sejm is not competent to derogate the regulations of the amnesty law and restore the legal and factual state from before it came into life. It is not competent to “reverse” the individual consequences of amnesty. At the same time, the amnesty law itself can contain the so-called conditional regulations when social protection or special prevention require it<sup>54</sup>.

The Sejm is competent to provide for the annulment of the applied consequences of amnesty towards the category of people who commit an undesirable act, e.g. having taken advantage of amnesty, they commit a crime of

---

<sup>53</sup> Decree from 12 December 1981 on forgiving and forgetting certain crimes and offences, Journal of Laws No. 29, item 158.

<sup>54</sup> P. Rogoziński, *op.cit.*, p. 93.

the same kind. Such an exception from the rule of irrevocability of amnesty follows from the aim for which amnesty is carried out and as such is rational. Amnesty, on the other hand, cannot promote recurrence of crimes.

Conditional regulations were, for example, included in the amnesty act from 27 April 1956. It stipulated that if within two years after the law came into life the perpetrator of the crime subject to amnesty committed a new crime for the same reasons or a crime belonging to the same kind for which they had been sentenced to freedom deprivation, then amnesty was not applied in relation to the previously committed crime and the decision on the application of amnesty was annulled. By virtue of the decree on amnesty from 19 July 1977, if the perpetrator of a crime (including a tax offence) who took, within two years after the amnesty decree came into life, advantage of amnesty committed a new intentional crime for which the sentence of freedom deprivation had been passed, then the previous decision on the application of amnesty was annulled and the forgiven or reduced penalties were subject to execution in the degree they had been adjudged while the discontinued proceedings were undertaken anew. Another legal construction protecting from recidivism was applied in the regulations of the amnesty law from 22 February 1947. In accordance with it, in case a person who benefited from amnesty committed a new crime of the same kind within two years since the amnesty law came into life, the court administering the punishment for the crime could not adjudge a punishment lower than the double lowest statutory degree of the punishment fixed for a given crime, without, however, exceeding the statutory limit of a given kind of crime.

Irrevocability of amnesty should be distinguished from its conditional character. The legislator can make the application of amnesty dependent on the perpetrator fulfilling the act of a definite condition, e.g. ceasing to hide themselves. For example, in accordance with art. 7 of the decree from 19 July 1977 on amnesty, the organ applying amnesty could place an obligation on the person towards whom it had remitted the penalty or discontinued the proceedings to undertake – within no longer than 2 months since the date amnesty was applied – a permanent paid job, to realize the duty weighing on the perpetrator to provide for a living of another person, to repair the damage done by the crime wholly or in part, to refrain from staying in definite environments or places or to any other suitable behaviour. In this way the legislator

had the organ using amnesty execute it in the way which contributed to the consciousness of its beneficial effect and the need to achieve the educational goals of legal regulations<sup>55</sup>. At the same time, amnesty conditions must be clearly settled in the law so that their realization will not depend on the opinion of the organ applying the law. As mentioned above, within this scope, the regulations of the decree from 19 July 1977 on amnesty or the law from 21 July 1983 on amnesty, which allowed the organ applying the law to include the subjects that were not enumerated in the amnesty act within amnesty are problematic. At the same time, in consideration of the fact that the objective regulations allowed for the development, and not limitation, of the set of entities included within amnesty, although they are optimal from the point of view of the principle of the exclusivity of the law, they are not subject to constitutional disqualification.

In the Polish law, the principle of irrevocability of amnesty is connected with the principle of the person included within amnesty being unable to give it up. The declaration of the perpetrator of an act subject to amnesty on resigning from amnesty does not bring any legal consequences.

In the light of the studied amnesty acts as well as in the light of the Polish doctrine and practice, amnesty does not refer to the fact of the crime. It does not introduce a change in the aspect of the judicial assessment of the perpetrator's act. It was carried out by the court and – within the frameworks of the division of powers – it is not subject to correction by other authorities. Amnesty does not annihilate the very fact of the crime and neither does it interfere into its legal assessment made by the court. A valid sentence of the court does undergo any change. Undertaking amnesty, the parliament does not make an assessment of the court's decision and it does not control the latter's activity. Thus, it does not violate the rule of the judicial administration of justice<sup>56</sup>. *Pro futuro*, on the other hand, it does change its consequence within the scope of the punishment by annulling or limiting the latter. It does not bring retrospective consequences, i.e. it does not change the past legal assessment of a forbidden act and it does not comprise the penalties executed before it came into force. That is the reason why the legislator

---

<sup>55</sup> J. Bednarzak, J. Lewiński, J. Mikos, W. Tomczyk, *Dekret o amnestii z dnia 19 lipca 1977 r. Komentarz*, Warszawa 1977, p. 8.

<sup>56</sup> P. Daniluk, *op.cit.*, p. 63.

gave up the execution of the punishment for the committed crime or limited the punishment because – independently of the court's negative assessment of the committed crime – this is its political decision.

Non-interference of the amnesty act into the courts' decisions is also applicable to the abolition norms of the amnesty act. They do not annul the legal assessment of the criminal act, either. However, they annul its consequences concerning the punishment. If the preparatory or court proceedings took place and the perpetrator has not been convicted yet, the criminal proceedings can be discontinued on the basis of abolition norms. This is not discontinuation of the proceedings due to the fact that a forbidden act was not stated but due to the will of the legislator to be so. At the same time, however, typically, the person included within abolition has at their disposal a legal measure to claim their innocence. The accused person or the suspect can submit an application to the organ which gave the decision to have the case examined by the court. In case an application is submitted for the court to examine the matter, the proceedings follows on general basis. If the guilt of the crime is ascertained, the court does not discontinue the proceedings but – depending on the circumstances – frees the perpetrator from the punishment or applies amnesty for the administered punishment. If the abolition regulations are applied, the fact of committing the crime is also confirmed in the regulations of amnesty laws by virtue of which an obligatory or facultative decision is made on the foreclosure of the tools of the crime, objects coming from the crime or the property the possession of which is forbidden<sup>57</sup>.

Summing up, amnesty acts in Poland in the 20<sup>th</sup> century played a significant role, both politically and in the sphere of the adopted penal policy. They were frequently applied and they comprised big groups of people. They had a special importance in People's Poland. In the situation of a lack of places in penal institutions, they were a key measure to solve the problem. For this reason they were cyclical and included big groups of people.

The Polish legal doctrine clearly emphasizes the normative character of amnesty acts. That is the reason why they are carried out by way of a law and they are clearly distinguished from pardon, which is an individual act and as such is not undertaken by the parliament.

---

<sup>57</sup> J. Bednarzak, *op.cit.*, s. 98.

**Literature**

Bednarzak J., *Amnestia*, Warszawa 1965.

Bednarzak J., Lewiński J., Mikos J., Tomczyk W., *Dekret o amnestii z dnia 19 lipca 1977 r. Komentarz*, Warszawa 1977.

Daniluk P., *Amnestia i jej konstytucyjne uwarunkowania*, "Przeгляд Sejmowy" 2014, No. 3.

Holy K., *Prawo międzynarodowe publiczne wobec amnestii*, Warszawa 2015.

Kaczmarczyk-Kłak K., *Prawo łaski w okresie prowizorium konstytucyjnego w latach 1918–1922*, [In:] *Ustroje. Historia i współczesność. Polska – Europa – Ameryka Łacińska. Księga jubileuszowa dedykowana profesorowi Jackowi Czajowskiemu*, eds. M. Grzybowski, G. Kuca, P. Mikuli, Kraków 2013.

Rogoziński P., *Instytucja ulaskawienia w prawie polskim*, Warszawa 2009.