ABSTRACTS & BIOS

Institutionalisation of Historical Revisionism in Russia?

Since 2014, Russia's leadership has significantly intensified its historical policy aimed at undermining the European consensus on shared responsibility for the crimes of totalitarian regimes, that constitutes either denial or excuse the crimes of the Soviet totalitarian regime. Using primarily the pretext of the memory of the victory in World War II, Russia's government is trying to aggressively impose its view of the history of the twentieth century on society, using 'memory legislation' and other institutional means. The presentation addresses aforementioned attempts of Russian government, including recent constitutional and legislative changes, in light of international law and relevant state practice.

Gleb Bogush
Associate Professor (National Research University Higher School of Economics (HSE), Moscow), expert in international criminal law, the law of the use of force, international humanitarian law, human rights law, and Russian law, author of numerous publications on Russian and international law. His recent publications and talks deal with the issues of criminal responsibility for core international crimes, including the crime of aggression, national implementation of international law in Russian legal order, and the history of international criminal justice. https://www.hse.ru/en/staff/bogush

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International Criminal Responsibility of the Communist Party of the Soviet Union: An Unattainable Dream?

According to traditional tenets of international law, criminal responsibility is only attendant to individual perpetrators. However, the latest draft of the crimes against humanity treaty and a relatively recent pronouncement by the Special Tribunal of Lebanon (STL), along with developments in national laws and jurisprudence targeting entities other than States,

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might be changing this paradigm. Building on the analysis of these recent developments, this paper argues that in addition to trying individual perpetrators, international criminal jurisdiction should also extend to non-state armed groups, political parties and other collectives that have orchestrated, directed or executed atrocities through their agents. This is particularly pertinent to crimes of the Communist Party of the Soviet Union (CPSU) that remain unaddressed by most post-Soviet states. Operationalizing international criminal responsibility of non-State actors like the political parties might serve several important transitional justice objectives, particularly in the post-Soviet contexts. First, through the expressivist function of criminal prosecutions, trials of entities like the communist party could communicate an important symbolic message to the society that mass crimes committed in the name of particular ideological or political goals will not be tolerated. Secondly, the attachment of opprobrium through judgments, even declaratory pronouncements of guilt akin to the Nuremberg judgment over the Nazi party, might help to address moral and political guilt of individuals who joined collectives exhibiting violent tendencies, preventing their resurgence. Thirdly, following the Nuremberg model, the imposition of individual administrative sanction in the form of lustration might ensure a greater reach of criminal justice and help disarticulate nefarious networks. As a consequence, extending prosecutions beyond individuals might offer more justice and recognition to victims of atrocities in post-conflict contexts. However, the practical impediments to such a prosecution, including the principle of non-retroactivity, lack of political will and the unavailability of representatives of the CPSU, might not be surmountable. The paper applies the theoretical model to the particular case of crimes of the communist regime, and evaluates the prospects of holding the Communist Party of the Soviet Union accountable for crimes committed prior to 1991.

Ilya Nuzov
Currently Head of Eastern Europe and Central Asia Desk at the International Federation for Human Rights (FIDH). Previously, he was Legal Adviser at the International Center for Transitional Justice and Researcher/Teaching Fellow at the Geneva Academy of International Humanitarian Law and Human Rights. He has published in the fields of transitional justice, international human rights law and international humanitarian law. He is a lawyer admitted to the New York bar.

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Between Promise and Peril: Pashukanis, Stalin, Commodity exchange theory of Law and The Great Purge

The years 1935-1938 were marred by state sanction ruthlessness across the Soviet Union, with an estimated one million to three million government and communist party officials being executed in what became known as the Great Purge. One of the tragic victims of the carnage was Evgeny Bronislavovich Pashukanis (1891-1937)—a Bolshevik Marxist legal theorist who was indicted by the Soviet Pravda on 20 January 1937, amongst other things with the following treasonous charges: "a Trotsky-Bukarin fascist agent", "a band of wreckers" and "a Trotskyite saboteur". Having failed to define international law to the satisfaction of Stalin's bureaucracy, Pashukanis who since 1931 served as the Director of Law at the Soviet Academy of Sciences in Moscow, was summarily executed by the Soviet state in September 1937. Before his purge, he was the leading and most visible Soviet legal theorist both within and withal the Soviet Union, only rivaled by his Protégé, Piotr I. Stuchka who earlier in 1932 passed away at the age of 67. Released at a time when the Soviet Union had just entered the constitutive phase of a socialist empire and thus in dire need of a defining Marxist ideology, The General Theory was very timely in every respect. This is the more so considering that the Soviet regime during this age implicitly required all jurists to tailor their jurisprudence to reflect state practice and the dogmas of the communist party. Despite his groundbreaking findings, the same masterpiece that propelled him to prominence was thirteen years later however sadly going to become the object of his demise. As Stalin increasing became erratic and politically insecure in the 1930s, so too was the fate of scholars whose writings did not explicitly endorse official state policy and practice.

George Forji Amin
Doctor of Laws (Faculty of Law, University of Helsinki, Finland), Adjunct Lecturer in Public International Law and Political Economy. Also serve as a Research Fellow at the Helsinki Institute of Sustainability Science (HELSUS), and Helsinki Inequality Initiative (INEQ). Expert in Legal History, Marxism, Third World Approaches to International Law, Transatlantic Slave

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Trade, Human Rights, and Economic Development. Author of numerous publications including: "All that Glitters is Not Always Gold or Silver: Typical Bilateral Investments Treaties (BITs) Clauses as Peril to Third World Economic Sovereignty" 6 Athens Journal of Law (2020); "A Marxist and TWAIL Reading of the Oxford Handbook of the Sources of International Law" Chinese Journal of International Law, Volume 19, Issue 1, March 2020; "The Oxford Handbook of the History of International Law" Journal of the History of International Law Vol 16, No. 1 (2014); "International Law, the Civilizing Mission and the Ambivalence of Development in Africa: Conceptual Underpinnings „ Journal and African and International Law, Vol 6. No. 1 (2013). See more at: https://researchportal.helsinki.fi/en/persons/george-forji-amin

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How A Communist Revolution Was Tried in Court? The Challenges Posed by the Trial of Former Khmer Rouge Leaders at the Extraordinary Chambers in the Courts of Cambodia

This paper presents the structural connection between crimes committed by the Democratic Kampuchea and the current international criminal law based on the judicial practice conducted at the ECCC. The structural connection is established based on three aspects: 1) the scope of individual criminal responsibility as recognized via the joint criminal enterprise doctrine; 2) mental elements of crimes, especially the mental element of crimes against humanity as applied at the ECCC; 3) potential complete or non-complete defences for atrocity crimes. All these aspects help to further clarify the standard of attribution of responsibility for communist crimes. The author would also point out some potential challenges that might arise in the process of prosecuting and punishing other communist crimes. The first challenge would be to identify the criminal common purpose, especially when the implementation of central policies varies from region to region within one country, or when the communist ideology does not specifically refer to any criminal offences. The second challenge is to assess the overall situation and find out the causal link between other contributing factors and the actual offences. Last but not

least, future prosecutions of communist crimes would also have to deal with defences for various communist ideologies.

Jia Wang
Assistant Professor (Macau University of Science and Technology), specialised in international criminal law. She recently completed her doctoral dissertation on the trials at the Extraordinary Chambers in the Courts of Cambodia (the ECCC).

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Dilemmas in using international law for pursuing communist crimes - the Albanian case

In June 2019 the Institute for the Study of the Communist Crimes in Albania, presented a petition for crimes against humanity for a high ranking official of the communist regime. Being the first request of sort, after 29 years from the end of the communist regime, it revived the attention towards the communist crimes in the country. The first and only attempt of Albania to prosecute the communist crimes has been in 1995. The criminal procedures against several former high ranking officials failed to pass the minimum professional, moral and legal standards. The absence of the victims of communist regime affected also the disruption of these processes. Considering the increased public interest in communist crimes, the paper tries to assess how international law can aid Albania in these procedures. Two are the main ways explored: international criminal law and European Court of Human Rights. The hypothesis is built by taking into account the position that international law has towards domestic law and the relevant international acts. The research will be based on the legal analysis, literature review and other former communist countries experiences. 100,000 persons were victims of human rights violations during the communist regime in the country, a substantial part of the population, which is still waiting its perpetrators put to justice. The paper attempts to contribute to this process through the prospective of international law.

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Dorina Ndreka
Doctor of Law, expert of International Law, EU Law and Clinical Legal Education. Full time law lecturer at "Aleksandër Moisiu"University of Durrës. Author of several contributions in the field of International Law, e.g. "Albanian Constitutional law Approach towards International Law"; "The implementation in the Albanian national legal system of the International Law Standards on Labour Law"; "The Influence of International Law in the Property Right in Albania". Since her graduation from the Law Faculty she has worked as a legal professional, giving legal advice and legal representation in court, public or private institutions. See more at: https://www.researchgate.net/profile/Dorina_Ndreka

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The Difficulties of Prosecuting Communist Crimes - The Biszku Case

Unlike most post-communist countries, Hungary has not conducted many criminal proceedings concerning political crimes committed during the communism. Even though there have been repeated attempts, these have repeatedly failed due to legal difficulties and political resistance. The Fidesz-government taking helm in 2010 with a two-third, constitutional majority publicly vowed to change this state of affairs and introduced new legislation targeting one specific person, Béla Biszku, the sole surviving high-ranking communist official from the 1950's, one of the architects of the political trials and repression following the quashing of the 1956 Hungarian revolution. Yet, the Biszku trial became an emblematic example of the inability of the Hungarian court system to prosecute communist crimes in an adequate manner. In my presentation, I will first introduce the Hungarian attempts to prosecute communist crimes between 1990 and 2010, then I will critically analyse the legislative efforts of the Fidesz-era and demonstrate the shortcomings of the Biszku trial.

Tamás Hoffmann
Senior Research Fellow, Centre for Social Sciences Institute for Legal Studies; Associate Professor, Corvinus University of Budapest and Guest Lecturer at the NATO Defense

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College, Rome. Expert in Public International Law, especially in International Criminal Law and International Humanitarian Law. Author of numerous publications in English and Hungarian. His latest publication is: 'The Crime of Genocide in Its (Nearly) Infinite Domestic Variety' in Marco Odello, Piotr Łubiński (eds.) The Concept of Genocide in International Criminal Law - Developments after Lemkin (Routledge, 2020) 67-97. https://www.taylorfrancis.com/books/e/9781003015222/chapters/10.4324/9781003015222-4 See more at https://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=871130, https://mta.academia.edu/Tam%C3%A1sHoffmann or https://www.researchgate.net/profile/Tamas_Hoffmann.

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Between Western tradition and Soviet doctrine: Some remarks on international law's application by the Hungarian People Courts

This contribution purposes of analyzing the role of the international law played in the criminal proceedings against some major Hungarian criminals tried by the so-called People's Courts. I argue that despite some judgments in which its role was more eminent (notably in the case of former Prime Minister - Laszlo Bardossy), overall, the Hungarian. People's judges were rather not inclined to apply the international rules. Some causes of this reluctance have been discussed in the literature. Still, it should not be overlooked that by restricting the international rules' applications, Hungarian authorities sought some political goals in the external politics to be achieved, namely to avoid Hungary from being held responsible for the breaches of the international norms committed during WWII. Finally, None of the cases discussed in this contribution can be labeled as a „Stalinist show trial," But the famous „legion of errors." made by the People's Courts during some of the proceedings

Aleksander Gubrynowicz
Associate Professor (Faculty of Law, University of Warsaw), expert in the modern history

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of Eastern and Central Europe, (A. Burakowski, A. Gubrynowicz, P. Ukielski, „1989 The Autumn of Nations" Natolin, 2020), history of international law (cf. Od Grocjusza do Laurenta, Kształtowanie się doktryny nieograniczonego immunitetu państwa w nauce prawa i orzecznictwie sądowym Wolters, Poland, 2016 English version: From Grotius to Laurent: the emergence and the development of the absolute immunity doctrine in the legal thaught and the jurisprudence -under proceedings) and Investment Law cf. M. Wierzbowski A. Gubrynowicz „Conflict of norms stemming from Intra-EU BITs, and the EU Legal obligations"May 2009DOI: 10.1093/acprof:oso/9780199571345.003.0029 In book: International Investment Law for the 21st Century (pp.544-560).

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Reactivation of communist party responsible for establishment of totalitarian regime not so manifestly unfounded? Remarks based on ECtHR judgment on Ignatencu and Romanian Communist Party (PCR) v. Romania

On May 5, 2020, the European Court of Human Rights notified a judgment in the case Ignatencu and the Romanian Communist Party v. Romania regarding the refusal by the Romanian courts to register (or: to reactivate) the Romanian Communist Party (which governed the country until 1989). The applicants argued that, according to the new statute, the party was to respect the constitutional order of the state, and referred only to the "positive aspects" of the RCP's activities. Thus, refusal to reactivate the party allegedly violated their rights under Article 11 of the European Convention on Human Rights. The Strasbourg Court admittedly did not find violation, but declared the complaint admissible - thus finding that the invocation of Article 11 in an attempt to reactivate the totalitarian party is not "manifestly ill-founded".
The aim of the paper is to analyze this judgment from several perspectives: (i) previous ECtHR's attitude towards refusal to register communist parties by the states which are parties to the European Convention on Human Rights, (ii) previous verdicts issued in so-called „historical situations" cases and (iii) a comparison of the verdicts in the cases regarding

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Communism and Nazism/Fascism history, in which the analyzed judgment serves as an example of a visible differentiation in the Court's approach to this subject.

Michał Górski
M.A. in History, M.A. in Law (University of Warsaw), Ph.D. in Law (Jagiellonian University, Cracow). Author of publications in the area of migration law, the jurisprudence of the European Court Human Rights and Economic History (https://independent.academia.edu/MichalGorski). Atorney-at-law, co-author of legal blogs http://zasiedzenie.net & http://odszkodowanieodpanstwa.net/ . For several years involved in the activities of the NGO Association for Legal Intervention, providing legal help for foreigners. A fan of travelling across Eastern Poland and Central & Eastern Europe.

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The communist crime – general remarks in light of the case K.-H. W v. Germany

When determining the responsibility of persons for communist crimes, at least the following aspects of this responsibility should be considered: 1. liability under national law; 2. liability under international law. Article 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms makes it possible to assess the criminal liability of persons not only from the point of view of national law understood as a criminal code or international law understood as an international agreement, but allows to assess this responsibility from the point of view of general principles recognized by civilized nations. In the course of discussing the above issues, references will be made to cases examined by the European Court of Human Rights in Strasbourg, and in particular to the case of K.-H. W. v. Germany, in which the applicant was convicted by domestic courts for a communist crime and the Strasbourg court found no violation of Article 7 of the Convention making reference, among other things, to the principle of subsidiarity.

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Kamil A. Strzępek
holds PhD, legal advisor and academic scholar positions. He is currently Assistant Professor at the Department of Diplomatic Law and Public Diplomacy in the Faculty of Law and Administration of Cardinal Wyszyński University in Warsaw and Assistant Lawyer at the Polish Constitutional Tribunal. He previously held posts at the Supreme Administrative Court in Poland and the European Court of Human Rights in Strasbourg. He holds Master of Laws degree from the Faculty of Law and Administration of Nicolaus Copernicus University in Toruń and PhD degree from the Faculty of Law and Administration of University of Warsaw. Author of publications on constitutional law, administrative law, European Union law and human rights law.

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Polish project to establish an international tribunal for trial of communist crimes

The crimes committed by officers of totalitarian regimes, whose memory is particularly vivid in Central and Eastern Europe, have not been fully explained to this day. This gap is also noticed by the international community, for example, the bold Estonian initiative aimed at establishing the Council for investigation of crimes of communist regimes. Recognizing the important nature of this proposal, it is necessary to consider whether to go a step further towards the creation of an international tribunal, which would conduct proceedings concerning these crimes.

In the first place, its organizational model should be developed and the tribunal should be integrated into national criminal procedure. Investigations conducted by the tribunal should be limited to crimes of international law (genocide, crimes against humanity and war crimes). It does not seem that there is a need to create new types of crimes, such as communist crimes.

Importantly, the persons who played the most serious role in committing these crimes would be prosecuted in the first place. At the same time, however, the tribunal should adjudicate on the compliance of legal acts issued by totalitarian regimes with universal norms of human rights and freedoms.

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Some countries in the region already have specialized national agencies (equipped with differentiated competences) that deal with the crimes of totalitarian regimes. The developed concept must therefore take into account the issue of a possible confluence of the competences of the new mechanism with national institutions.

Krzysztof Masło
PhD in law, assistant professor at the Faculty of Law and Administration at the Cardinal Stefan Wyszyński University in Warsaw, prosecutor, Director of the Department of International Cooperation and Human Rights at the Ministry of Justice, lecturer at the National School of Judiciary and Public Prosecution, author of numerous publications in the field of criminal and international law, expert in treaty law and international criminal law

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Criminal responsibility of the Polish Communist Party (PZPR) for so-called „communist crimes"

The main goal of this paper is to analyse four of the legal provisions constituting possible foundations for prosecution of the Polish Communist Party (PZPR) for the so-called "communist crimes". First, the scope of the problem will be introduced: both subjectively and temporally. The criminal responsibility will be referred only to a legal entity – and not a single individual – and only to the period corresponding to the existence of the PZPR and only for the acts committed that were forbidden at the time of the criminal behaviour. Second, the rules of corporate criminal liability as regulated in the October 28, 2002 Act on the Liability of Collective Entities for Acts Prohibited Under Penalty will be analysed, as well as the specific responsibility for communist crimes based on the Act of 18 December 1998 on the Institute of National Remembrance (IPN) – Commission for the Prosecution of Crimes against the Polish Nation; then strictly criminal responsibility for participation in a "criminal group" based on the jurisprudence of Polish courts that treat such crimes as if they were committed in affiliation with organized crime (Article 258(1) of the Polish Criminal Code), as well as responsibility for participation in a Joint Criminal Enterprise (and possible application of international law). Lastly, it will be analysed whether it is possible

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to establish a criminal law provision establishing a special type of offences committed by political parties.

Hanna Kuczyńska

Associate Professor in the Institute of Law Studies, Department of Criminal Law, Polish Academy of Sciences, expert in International Criminal Law, European Union Criminal Law, Criminal Procedure and Comparative Criminal Procedure. Author of numerous publications, including monographs (e.g. The Accusation Model before the International Criminal Court, Springer, Switzerland 2015; Handbook on International Criminal Law, Wolter Kluwer 2019; Common Area of Criminal Procedure in the EU Law, Scholar 2008) and articles/chapters (e.g. in 2018-2020: The possibility of initiating proceedings in the case of the Wola Massacre before national institutions; Head of State immunity in triangular relations? The case of Al-Bashir before the ICC; Rendering justice or victory at all prize: the attitude of a public prosecutor towards the principle of material truth; The Model of Exclusionary Rules in the Anglo-Saxon states).

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International crimes before the national courts in the light of Polish experience

In scientific research, emphasis was placed on Polish experiences when it comes to punishing crimes against humanity. Taking into account international definitions, definitions from the Penal Code, and the Act on the Institute of National Remembrance - Commission for the Prosecution of Crimes against the Polish Nation the author critically analysed jurisprudence of Polish courts on internment lasting several days and the classification of this internment as crime against humanity. The conducted analysis leads to the conclusion that Polish courts apply the definitions of international law unskillfully and selectively, violating the principle of legalism.

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Karolina Wierczyńska
Associate Professor (Institute of Law Studies, Polish Academy of Sciences), Deputy Editor-in-chief of Polish Yearbook of International Law, Vice-president of the Committee on Legal Sciences of PAS in term 2020-23, her latest publication include: The Al Mahdi Case: from Punishing Perpetrators to Repairing Cultural Heritage Harm in: Intersections in International Cultural Heritage Law, Anne-Marie Carstens, Elisabeth Varner (eds.), Oxford University Press, 2020, together with z A. Jakubowski; Stefan Glaser: Polish Lawyer, Diplomat and Scholar in: The Dawn Of A Discipline International Criminal Justice and Its Early Exponents, Immi Talgren Frederic Megret (eds.), Cambridge University Press, 2020, together with G. Wierczyński

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Legislative changes on statutory limitations in reference to communist crimes and transformation of model of settlement with communist past in Poland after 2015

Paper is devoted to the issue of the recent legislative changes on statutory limitations in reference to communist crimes in the Polish law on the Institute of National Remembrance. According to the amendments of July 2020 the statutory limitations related to communist crimes has been lifted that, at least on the ground of the Polish criminal law, has leveled communist crimes with the notion of international crimes. Main aim of the paper is to analyze the abovementioned changes in the light of a concept of transitional justice and the model of settlement with communist past in Poland, distinctly redefined in the aftermath of the victory of Law and Justice (PiS) party in the parliamentary elections of 2015, through the prism of their compliance with human rights standards and the value of a democratic state governed by the rule of law principle.

Tomasz Lachowski
PhD, Assistant Professor (University of Łódź), expert in International Law, Human Rights and Transitional Justice. Author and editor of numerous academic publications related

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to the dilemmas of post-conflict or post-authoritarian societies, likewise transitional justice in Central and Eastern Europe, notably concerning Poland and post-Maidan Ukraine (including monographs, e.g., Perspective of the Victims' Rights in International Law. Transitional Justice, Łódź 2018; Ukraine in the Aftermath of the Revolution of Dignity: Human Rights and National Identity, Łódź-Olsztyn 2017; and chapters/ articles: The Reintegration of Donbas Through Reconstruction and Accountability. An International Law Perspective, Palgrave Macmillan 2020). See more at: https://www.researchgate.net/profile/Tomasz_Lachowski3.

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Victims of the „New Order" – Polish Underground in 1944-1963 in light of International law

The issue of the post-war independence underground after World War II is a subject often raised in the public debate. Disputes of a journalistic and political nature arouse a lot of emotions. However, they focus on issues of historical importance, often giving them a moral and axiological assessment. In the sphere of public debate and scientific discourse there are no comprehensive analyzes and considerations of a strictly legal nature. By analyzing the postwar state of affairs, the authors reconstruct the legal status of the independence underground in according to public international law order. These considerations allow for the development of conclusions regarding the subjectivity of international law and legal consequences.

Maciej Perkowski (Prof. dr hab.)
Head of the Department of Public International Law at the Faculty of Law of the University of Białystok. In the years 1996 - 1998 he completed a court training. Participant of many national and international scientific conferences. The author, co-author or editor of nearly 200 publications, in Poland and abroad. Research interests focus on progress in international law, internationalization of domestic legal transactions and issues on the border of both spheres, especially problematic in practice. Associate with central and local

government institutions, participating in various groups, preparing expert opinions, project evaluations and other studies.
More on the website:
https://prawo.uwb.edu.pl/prof-zw-dr-hab-maciej-perkowski

Arkadiusz Waszkiewicz
Attorney trainee and PhD student at the Department of Public International Law, Faculty of Law, University of Białystok. In his scientific work he focuses on issues of public diplomacy, consular and diplomatic law and international activity of local government units. the author of several publications in Poland and abroad. He is active in non-governmental organizations and doctoral self- government as its chairman at the University of Białystok. Professionally he works in the Chancellery of the Senate of the Republic of Poland.

Criminal proceeding in case of Adam Karol Tyczyński as an example of not judged judicial crime

Adam Tyczyński was a pre-war political police officer in Brest-on-the-Bug. By the District Court for the Capital City of Warsaw of 17.08.1951 he was sentenced to 15 years' imprisonment and forfeiture of all property. The trial of Adam Tyczynski was described in 1957 in the report of the Commision appointed to investigate the activities of the so called secret section of the District Court in Warsaw. The aim was to cursory investigate this phenomenon and identify those guilty of violating the rule of law without actually calling them to account. Tyczyński's trial was indicated in the mentioned report as an example of a trial that took place in violation of the rule of law. The decree of 22 January 1946, from which Tyczyński was convicted, was aimed at equating the pre-war Polish state with the Third Reich, and thus seeking revenge on those who chased and judged the representatives of communist movement before the World War II. The revenge took place both in the courtroom and by morally discrediting the accused with the charges of fascism. The decree was an effective instrument of repression although completely illegal, in which the standards of criminal trials were not respected.

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Dawid Zdrójkowski
PhD student (University of Białystok), trainee attorney at law (Białystok Bar Association), Author of publications on the history of law (e.g. The genesis of the decree on responsibility for the September defeat and the fascism; Rudolf B. Schlesinger (1909–1996). Life and idea).

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Running away from Themis – powerlessness of Polish authorities concerning extradition of Stefan Michnik

A special type of communist crimes are court crimes, i.e. those committed by judges and prosecutors during the reign of the socialist regime. The article introduces the concept of these crimes, as well as their definitive relation to crimes against humanity. Many of the proceedings against perpetrators of court crimes do not find their final result in the courtroom due to the death of accused persons or their poor psychophysical state. The exception is still alive Stefan Michnik accused of committing a total of 93 crimes classified as communist crimes and crimes against humanity. The accused who has been living in Sweden for over a decade successfully avoids contacts with representatives of Polish authorities and diplomatic missions. The article presents the course of proceedings in the case of Stefan Michnik and unsuccessful attempts to bring him before the Polish judiciary.

Sylwia A. Karowicz-Bienias
Lawyer, employee of the Historical Research Office of the Institute of National Remembrance in Warsaw, doctoral student in the field of legal sciences at the Faculty of Law of the University of Białystok. Specializes in international criminal law. In her research, she focuses on proceedings in cases of crimes against humanity committed during the Second World War and communist crimes committed in the early stages of the functioning of the Polish People's Republic.

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Crime and NO punishment. The responsibility of military judges for communist judicial crimes as illustrated by the example of the case of Anna Krużołek.

In the beginnings of the Polish People's Republic probably the greatest judicial crime took place in the Military District Court in Katowice. Anna Krużołek, accused of helping anti-communist organisation, was sentenced to be executed even though no evidences proving her guilt were revealed during the trial. Upon a revision, the Supreme Military Court set aside the judgement. However, the death penalty was executed two weeks later by an order issued by Head of the Court of First Instance pursuant to the overruled judgement. The presentation is an attempt to answer the following questions: how did it happen that the death penalty was executed basing on the overruled judgement? Who bears the responsibility? Why was no one held responsible for that fact in 1940s? Why did the judges escape their criminal liability after 1956 when the political situation changed even though the crime was recognised as a crime of Stalinism? Why was the case not re-examined directly after the fall of communism? Why was it only in 2000 when an investigation on the abuse of authority by the adjudicating panel was commenced? And why was the investigation then discontinued after the accused judge

Marta Paszek
Assistant Professor (University of Rzeszów, Faculty of Law), expert in history of law. Author of numerous publications, including monograph (The Military District Court in Katowice (1946-1955). Organisation and activity) and articles (eg. The Officer Law School. Research questions, „Z Dziejów Prawa" 2019/ 12(20), Responsibility of judges of the Military District Court in Katowice for judicial crimes (1946-1955), „Czasopismo Prawno-Historyczne" 2015/ 2)

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CHAIRS OF SESSIONS:

Łukasz Adamski

PhD, Historian and political scientist, specialist in Central and Eastern European history as well as in current political situation of Ukraine and Russia. Deputy Director of the Centre for Polish-Russian Dialogue and Understanding since 2016. In 2006-2011 he worked at the Polish Institute of International Affairs as an analyst and then as Programme Coordinator for Bilateral Relations in Europe. In 2014 he was Reporting Officer in OSCE Special Monitoring Mission to Ukraine. His works were published in academic journals and press. More at:
http://cprdip.pl/en,the_centre,staff,biogram_lukasz_adamski.html

M**ichał Balcerzak**

Associate Professor at the Human Rights Department, Faculty of Law and Administration at Nicolaus Copernicus University in Toruń, Poland. Enrolled in the list of ad hoc judges of the European Court of Human Rights (2018-2022). Member (since 2014) and Chair (2018-2019) of the United Nations Working Group of Experts on People of African Descent (special procedure of the Human Rights Council). Advocate, member of Warsaw Bar Association. He specializes in European and International human rights law, international judiciary and the law of international organizations.

Veronika Bílková

Associate Professor in international law at the Law Faculty of the Charles University and the head of the Centre for International Law at the Institute of International Relations in Prague. She represents the Czech Republic in the Venice Commission of the Council of Europe and the Managerial Board of the EU Fundamental Rights Agency. She is the Secretary-General of the European Society of International Law. Her research focuses on international law (the use of force, international humanitarian law, international criminal law, and human rights) and international relations (security topics and the UN).

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Patrycja Grzebyk

Associate Professor (University of Warsaw) and Visiting Professor (University of Bologna), expert in International Humanitarian Law, International Criminal law, Human Rights Law and Use of Force Law. Author of numerous publications, including monographs (e.g. Criminal Responsibility for the Crime of Aggression, Routledge 2013), articles/chapters (e.g. Emil Stanisław Rappaport. His Road from Abolition to Prosecution of Nations, CUP 2020; Authorising Attacks in Response to Terrorist Attacks, OUP 2019; Impact of Western military interventions on the evolution of law on use of force, Routledge 2019). She is a director of the Network on Humanitarian Action at the University of Warsaw. More at: https://uw.academia.edu/PatrycjaGrzebyk or https://www.researchgate.net/profile/Patrycja_Grzebyk.

Aleksandra Mężykowska

Associate Professor (Institute of Legal Sciences, Polish Academy of Sciences) and expert in the Legal and Treaty Department of the MFA. From 2004-2018 Co-Agent the Polish Government before the European Court of Human Rights. Managing editor of the Polish Yearbook of International Law and co-editor of the blog on international law Przeglądpm.blogspot.com. Expert in international mechanisms of human rights protection, with particular emphasis on the system created on the basis of the ECHR. Author of numerous publications, including monographs (e.g. Reprivatisation procedures in the countries of Central and Eastern Europe and protection of property in the system of the European Convention for Human Rights, Gdańsk 2019). See more at: https://www.researchgate.net/profile/Aleksandra_Mezykowska

Przemysław Saganek

Associate Professor (Institute of Law Studies, Polish Academy of Sciences), expert in Public International Law, the EU law. Author of numerous publications, including monographs (e.g. Unilateral Acts of States in Public International Law, Brill 2016), articles/chapters on sources of international law, subjects of international law, law of responsibility, the division of powers between the EU and its Member States. He is a head of the Chair of International Law of the Insttute of Law Studies.
See more at: https://inp.pan.pl/pracownicy/przemyslaw-saganek/

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WELCOME SPEAKERS

Bartłomiej Oręziak
The Faculty of Law and Administration CSWU in Warsaw.
Master of Law, doctoral student at the Chair of Human Rights and International Humanitarian Law of the Faculty of Law and Administration of the Cardinal Stefan Wyszyński University in Warsaw, holder of scholarship of the Minister of Science and Higher Education for outstanding achievements for academic year 2017/2018

Marcin Wielec
Director of the Institute of Justice/ The Faculty of Law and Administration CSWU in Warsaw. Head of the Institute of Justice.Marcin Wielec graduated from the Faculty of Law and Administration of the Cardinal Stefan Wyszyński University in Warsaw. Since 2003, he has been a research and teaching assistant and since 2008 an assistant professor at the Department of Criminal Procedure of the Faculty of Law and Administration within the Cardinal Stefan Wyszyński University in Warsaw. He is the author and a co-author of several books and a number of academic papers on issues related to criminal procedure. He is a member of the Content and Editorial Board of the quarterly Probacja and the author of expert reports and legal opinions for public authorities. The general areas of Dr Wielec's research interests include criminal law and procedure, disciplinary law and procedure, criminal executive law, and within these in particular – the areas of correlation between criminal procedure and other areas of law such as canon law, administrative law, disciplinary law and issues related to the axiology of criminal procedure.

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