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## **State and Law in the Thinking of Sylwester Zawadzki (1921–1999). A Few Reflections in Connection with the Establishment of the Supreme Administrative Court in 1980**

### **Abstract**

This paper presents a discussion of selected issues related to the state and law in the thinking of Sylwester Zawadzki (1921–1999) a lawyer and state activist of the People’s Republic of Poland. The text includes reflections on the sources of his worldview and the course of his academic and professional career, and, most importantly, on the content of selected research and observations, of which this co-founder of the Supreme Administrative Court was the main contributor. The purposes of this paper include showing the sources of S. Zawadzki’s intellectual, scientific, and political inspirations that may have influenced and determined his commitment to the establishment of the administrative court system in the People’s Republic of Poland at the end of 1979 and beginning of 1980. There is no doubt that S. Zawadzki then played one of the key roles in the process of establishing this judicial institution in the political system of the People’s Republic of Poland. By virtue of his position and connections in the Polish United Workers’ Party (PUWP), he played perhaps the decisive role that helped break the resistance of some groups in the government, led by Prime Minister Piotr Jaroszewicz. In this regard, the paper also aims to recall the achievements of this lawyer and provide materials for further research on the biography of S. Zawadzki, as well as his teachers and colleagues. The paper is based on

S. Zawadzki's memoirs, his scholarly and journalistic publications, the publications of his teachers and colleagues, as well as selected archival materials (including those from the Archives of New Records and the Archives of the University of Warsaw).

**Key words:** Sylwester Zawadzki, Supreme Administrative Court, Polish People's Republic, PPR

## Sylwester Zawadzki – the founder of the Supreme Administrative Court

Sylwester Zawadzki is one of the better-known lawyers of the period of the Polish People's Republic (PPR). In his long career, he held many positions in various scientific, state, and party institutions.<sup>1</sup> However, as he himself recalled,

<sup>1</sup> See: H. Izdebski, *Sylwester Zawadzki 1921–1999*, [in:] *Profesorowie Wydziału Prawa i Administracji Uniwersytetu Warszawskiego 1808–2008*, Warszawa 2008, pp. 339–1999; Z. Jarosz, *Sylwester Zawadzki*, "Państwo i Prawo" 1999, no. 12, pp. 88–91; Z. Jarosz, *Sylwester Zawadzki 1921–1999*, "Studia Iuridica" 2000, vol. 37, pp. 233–236; M. Rybicki, *Sylwetka naukowa profesora Sylwestra Zawadzkiego*, "Studia Prawnicze" 1981, no. 1–2, p. 6; S. Zawadzki, *Retrospekcja mojego życia*, Warszawa 2008; AAN, Polish United Workers' Party, Central Committee in Warsaw, file no. VII/ 51, sheet 258. In an excerpt from Sylwester Zawadzki's personal file (collection of the Central Committee of the Polish United Workers' Party), one can read: S. Zawadzki was born on October 19, 1921 in Warsaw. Career background: 1945–1946 – a technician at Powszechny Zakład Ubezpieczeń [National Insurance Company] in Warsaw; 1946–1948 – secretary of the board at the Warsaw Housing Cooperative; 1948–1950 – vice-chairman of the main board of the Academic Union of Polish Youth in Warsaw; 1950 – chairman of the Supreme Council of the Polish Students' Union in Warsaw; 1950–1954 – a doctoral student at the Institute of Social Sciences of the Central Committee of the PUWP in Warsaw; 1954–1957 – head of Chair of Theory of State and Law at the Institute of Social Sciences of the Central Committee of the PUWP, 1957–1967 – head of the Chair of Theory of State and Law of the Higher School of Social Sciences at the Central Committee of the PUWP, and then simultaneously in 1963–1968 – deputy scientific secretary of Department I of the Polish Academy of Sciences (PAS) in Warsaw; 1957–1963 – assistant professor at the Institute of Legal Sciences of the PAS in Warsaw; 1968 to 1969 head of a Department at the Institute of Political Science of the University of Warsaw (UW), and from 1969 – director of the Institute of the State and Legal Sciences at the UW. Party and social functions: member of the Sejm of the PPR, member of the presidium of the legal section of the Science Committee of the Central Committee of the PUWP, member of the main board of the Polish Lawyers' Association. Awards: Knight's Cross of the Order of Polonia Restituta in 1954, Officer's Cross of the Order of Polonia Restituta in 1959. The extract specifies that the social background of S. Zawadzki is work-ing intelligentsia and his learned profession is lawyer. In the party affiliation category, the PUWP (PSP) was indicated from 1946; On October 29, 1945, S. Zawadzki submitted an application to the Dean of the Faculty of Law and Administration at the University of Warsaw, asking to be admitted as a student "after a break of more than six years in his studies," which was related, among other things, to his return to Poland on October 22, 1945 from "West Germany (the American zone)." *Pismo do Dziekana Wydziału Prawa Uniwersytetu Warszawskiego*, Archives of the University of Warsaw, Sylwester Zawadzki's file, ref. no. WP AB 2.917, sheet 1. With his application, S. Zawadzki enclosed: A certificate of his matriculation exam taken in May 1939 at the Duke Józef Poniatowski State High School in Warsaw's Żoliborz district

his greatest success in life was the establishment of the Supreme Administrative Court (SAC) in the late 1979 and early 1980.<sup>2</sup> This was also the opinion of other witnesses and participants in these landmark events for Polish administrative law. Janusz Łętowski wrote the following about S. Zawadzki's role in the process of establishment of the SAC:

“Realist philosophers tell us not to overestimate the role of individuals in history. The history of administration is also subject to this rule. Nevertheless, one cannot help but conclude that in the future the establishment of the administrative court system in Poland will most likely be associated with Prof. Sylwester Zawadzki. It is not just his official role, as it were, as a promoter of the cause and the reporter of the project in the parliamentary forum. Who knows if this – so to speak – behind-the-scenes activity of Prof. Zawadzki as an organizer and animator of the work on the project, an activity in which he engaged his time and energy, as well as his scientific, and political authority for months, was not more important”<sup>3</sup>

The same opinion was held by Adam Zieliński, who stated that the establishment of an administrative court system in the Polish People's Republic was S. Zawadzki's *idée fixe*.<sup>4</sup> In an excerpt from the personal file, located in the complex of the Central Committee of the PUWP in the Archives of New Records in Warsaw, in connection with the proposal for appointment as the president of the SAC, S. Zawadzki was characterized as follows:

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(he received his matriculation certificate on May 25, 1939), his birth certificate, a certificate of loyalty, a resume, and 4 photographs. On October 25, 1945, as a certificate of loyalty, he received a certificate from the House Committee at 17 Św. Wincentego Street in Warsaw stating that he “did not tarnish himself by cooperating with the occupying forces.” Archives of the University of Warsaw, Sylwester Zawadzki's file, ref. no. WP AB 2.917, sheets 2-5. He made his student pledge on December 14, 1945, and completed his studies in 1950. The 1968 personal questionnaire states that S. Zawadzki was a member of the Polish Socialist Party (PSP) from January 1, 1946 until December 1948, and a member of the PUWP from December 1948. In addition, he mentioned that he was a member of the “Spartacus” School Youth Organization at the J. Poniatowski Gymnasium in Warsaw in 1936–1939. Personal questionnaire, Archives of the University of Warsaw, Sylwester Zawadzki's personnel file, ref. no. K. 18.548, sheet 9. S. Zawadzki's personnel file at the Archives of the UW also contains lists of his publications.

<sup>2</sup> He titled chapter X of his memoirs “The establishment of the Supreme Administrative Court – my success in life.” See: S. Zawadzki, *Retrospekcja mojego życia*, Warszawa 2008, pp. 187ff. On the other hand, according to the “Note on achievements in scientific, teaching, and social activities” that S. Zawadzki wrote on June 8, 1982, in the category of “Achievements in social activities,” he entered “Participation as Chairman of the Subcommittee of the Sejm in the adoption by the Sejm of the Act on amendments to the code of administrative Procedure and the Supreme Administrative Court of January 30, 1980, and in the implementation of the idea of an administrative court system in practice as the President of the SAC (in the period of September 1, 1980 – June 12, 1981.” See: Archives of the University of Warsaw, Sylwester Zawadzki, ref. no. K. 18.548.

<sup>3</sup> J. Łętowski, *O kierunkach rozwoju kontroli administracji*, “Studia Prawnicze” 1981, no. 1-2, pp. 139-140. J. Łętowski also specifically mentioned Prof. J. Starościk as one of the scholars striving to establish an administrative court system.

<sup>4</sup> Information from the personal conversation of the author of the dissertation with A. Zieliński held on July 10, 2019.

Prof. S. Zawadzki, in the course of his many years of scholarly work, has focused in particular on the problems of administrative law. Among other things, he led the work on the draft amendments to the CAP.<sup>5</sup>

At the end, it is explicitly indicated that:

Prof. S. Zawadzki's exceptional qualifications in the field of state and administrative law, his personal contribution to the formation of socialist legislation in this field, and his close ties to the practice of law, support his appointment to the position of the President of the Supreme Administrative Court.<sup>6</sup>

An analysis of S. Zawadzki's memoirs, the materials collected in the Archives of New Records in Warsaw, the Library of the Sejm<sup>7</sup>, and the archives of the Supreme Administrative Court shows that these statements should be considered true.<sup>8</sup> After the failures to reactivate the administrative court system in 1944–1948, 1956–1959, and the early 1970s, S. Zawadzki personally undertook to make another attempt to establish such courts in the system of the Polish People's Republic. This time, however, this proposition was skillfully presented as an activity that was integrated (and even complementary) with another reform activity that was prominently displayed, namely the comprehensive reform of the Code of Administrative Procedure (CAP), which was to be carried out as part of the work of the seventh term of the Sejm.<sup>9</sup> This meant that the main purpose of the reform activity initiated by the Sejm was to “refresh” and improve the regulations governing the administrative procedure, and the very proposition to establish an administrative court system was the result of research work aimed at ensuring the effectiveness of the reform and the amendments to the CAP.

<sup>5</sup> AAN, Polish United Workers' Party, Central Committee in Warsaw, file no. VII/ 51, sheet 258.

<sup>6</sup> Ibidem.

<sup>7</sup> See for example: *Biuletyn z dnia 19 marca 1977 r. (Nr 161/ VII kad.). Komisja Administracji, Gospodarki Terenowej i Ochrony Środowiska /8/. Komisja Prac Ustawodawczych /9/*, [in:] *Sejm PRL. Kadencja VII. 1976-1980. Vol. 1*, pp. 2-8; *Biuletyn z dnia 4 lipca 1977 r. (Nr 235/ VII kad.). Komisja Administracji, Gospodarki Terenowej i Ochrony Środowiska /12/. Komisja Prac Ustawodawczych /13/*, [in:] *Sejm PRL. Kadencja VII. 1976-1980. Vol. 1*, pp. 1-2. Collections of the Library of the Polish Parliament.

<sup>8</sup> This thesis has been substantiated in detail in the monograph being prepared by the author of this paper, titled *Geneza, ustrój i orzecznictwo Naczelnego Sądu Administracyjnego do 1989 r.*, which was to be published in the 2nd half of 2023. It is also partially justified in the doctoral thesis titled *Geneza, ustrój i orzecznictwo Naczelnego Sądu Administracyjnego do 1989 r.*, defended by the author of this paper at the Faculty of Law and Administration of the University of Warsaw in July 2020; M.P. Sadłowski, *Idea Najwyższego Trybunału Administracyjnego w Polsce Ludowej*, „Zeszyty Naukowe Sądownictwa Administracyjnego” 2022, nr 5-6 (104-105), pp. 162-163

<sup>9</sup> S. Zawadzki, *Przyczynek do genezy Naczelnego Sądu Administracyjnego*, [in:] *Dziesięciolecie Naczelnego Sądu Administracyjnego – doświadczenia i perspektywy. Materiały na konferencję sędziów NSA*, Warszawa 1990, pp. 28-30.

Thus, the proposition to introduce judicial review of administrative decisions appeared, so to speak, “by the way” during conceptual studies, but it turned out, as the reformers began to present it, to be necessary to effectively carry out changes in the CAP. Such tactics made it possible to convince a significant part of the leadership of the PUWP and to overcome the resistance of some members of the government, including Prime Minister Piotr Jaroszewicz,<sup>10</sup> and the sheer authority and position of S. Zawadzki in the political and party environment of that time allowed the act on the reform of the CAP and the establishment of the SAC to be passed in January 1980.<sup>11</sup> Subsequently, as a Minister of Justice,<sup>12</sup> a member of the Sejm<sup>13</sup> (6th, 7th, 8th, and 9th terms), and a member of the Council of State (1985–1989), he firmly stood on the position that the establishment of the administrative court system was appropriate and necessary.

The purpose of this paper is not to provide an exhaustive overview of S. Zawadzki’s academic and professional career, especially his efforts to establish an administrative court system in the Polish People’s Republic, but to highlight selected aspects of his views on the state and law. Therefore, the main works from S. Zawadzki’s output will be discussed quite generally, also in the context of the intellectual and scientific environment in which this important figure of the Polish legal and scientific community after 1945 functioned. This approach can help understand the reason for S. Zawadzki’s commitment to the establishment of an administrative court system in the PPR, and can be the basis for further research on this important person.

## Sources and origins

The discussion of the state and the law in the thinking of S. Zawadzki should begin with his doctoral thesis titled *Rozwój więzi rad narodowych z masami pracującymi* [The development of the ties between national councils and the working masses], which he defended at the Institute of Social Sciences at the Central Committee of the PUWP and which was published in 1955.<sup>14</sup> Its supervisor was Stefan Rozmaryn, who, according to S. Zawadzki, because of his professional duties at the University of Warsaw and the Office of the

<sup>10</sup> Z. Zawadzki, *Retrospekcja...*, pp. 197-199.

<sup>11</sup> Act of January 31, 1980 on the Supreme Administrative Court and on amendments to the Act – Code of Administrative Procedure, Journal of Laws of 1980, no. 4, item 8.

<sup>12</sup> See: SAC, *Akta Prezydialne. Zgromadzenia Ogólne Sędziów NSA*, Warsaw, March 20, 1982 – reports, papers, presentations, lists of participants, file no. 536/1, sheet 14.

<sup>13</sup> See: S. Zawadzki, *Sejm VIII Kadencji – Parlament socjalistycznej odnowy. Redakcja Publikacji Wydziału Ideologicznego KC PZPR*, Warszawa 1985, no. 16, pp. 23-25.

<sup>14</sup> S. Zawadzki, *Rozwój więzi rad narodowych z masami pracującymi w Polsce Ludowej*, Warszawa 1955.

Council of Ministers, “had a relatively limited ability to provide more effective assistance”.<sup>15</sup> Consequently, the “real inspirer” of this work and the person who provided assistance during its drafting was supposedly Jerzy Starościak.<sup>16</sup> What is important in the context of this kind of relationship and the research intentions of this paper is that after 1944 J. Starościak very clearly represented the position that judicial review of administration is not incompatible with a people’s democracy or socialist state. In his publication from the end of 1949 / beginning of 1950, when the Polish government had already decided not to reactivate administrative courts,<sup>17</sup> he wrote:

(...) there is hardly any contradiction of a certain organizational system with the social content of a certain type of state. Only the content, essence, and ideology of a specifically existing institution can contradict the essence of that.<sup>18</sup>

In this regard, J. Starościak pointed out that:

An administrative court system is only a way of ensuring a review of administration, a way that does not yet determine the social content of that apparatus. With the social role and content of this justice system, aligned with the social content of the people’s state, a judicial and administrative form of the review of the legality of administrative actions can exist in a people’s democracy state.<sup>19</sup>

He refuted claims by opponents of an administrative court system, who criticized it as an institution allegedly derived from the “liberal capitalist state,” arguing that such claims are merely a made-up “ideological mask”.<sup>20</sup> Understanding the geopolitical and political conditions of that time, he

<sup>15</sup> S. Zawadzki, *Retrospekcja mojego życia*, Warszawa 2008, p. 80.

<sup>16</sup> Ibidem. See: H. Izdebski, *Jerzy Starościak 1914–1974*, [in:] *Portrety uczonych: Profesorowie Uniwersytetu Warszawskiego po 1945: S-Ż*, W. Baraniewski, W. Tygielski, A.K. Wróblewski, sc. eds., Warszawa 2016, pp. 170–179. J. Starościak was an important figure in the later stages of S. Zawadzki’s career. For example, J. Starościak was on the three-member Faculty Committee at the UW’s Faculty of Law and Administration dealing with the proceedings for the conferment of the title of full professor of legal sciences to S. Zawadzki in 1972, and was one of the reviewers of his works (along with Andrzej Burda and Jerzy Wróblewski). See: *Dokumentacja wniosku o nadanie tytułu naukowego profesora zwyczajnego nauk prawnych dr Sylwestrowi Zawadzkiemu profesorowi nadzwyczajnemu w Uniwersytecie Warszawskim*, Archives of the University of Warsaw, Sylwester Zawadzki’s personal file, file no. K. 18.548.

<sup>17</sup> See:

<sup>18</sup> J. Starościak, *Sądownictwo administracyjne*, [in:], *Nauka administracji i prawo administracyjne. Wybrane zagadnienia ogólne w wypisach i opracowaniach. Uzupełnienia do wykładów. Zeszyt I*, J. Starościak, W. Dawidowicz, Warszawa 1949/1950, p. 110.

<sup>19</sup> Ibidem, p. 111.

<sup>20</sup> Ibidem, p. 110.

skillfully argued that an administrative court system could play the same role in the Polish system of administration in terms of review of administration as the prosecutor's office did in the USSR<sup>21</sup>. He presented such arguments during the political transformation taking place in Poland in October 1956. In 1956, he wrote again that an administrative court system should be reconciled with the socialist system, and substantiated this statement by saying that:

Under these conditions, to say that it is incompatible with the legal system of a socialist state probably means, at the very least, to disregard the facts and the experience of other socialist countries.<sup>22</sup>

He expressed his thoughts and concepts a year later, in the pages of *Państwo i Prawo*<sup>23</sup>, and also participated in the work of the Administrative Law Committee of the General Board of the Polish Lawyers' Association, which drafted, among other things, a bill entitled "Act on the establishment of courts to adjudicate on the legality of administrative decisions".<sup>24</sup> Last but not least, J. Starościak pointed out that the administration of a socialist state is subject to constant expansion, which also implies the organization of effective review of its activities.<sup>25</sup> In J. Starościak's opinion, in capitalist countries, the activities of administration were mainly limited to the creation of conditions for activity. In such conditions, administration based its activities on administrative prohibitions and orders.<sup>26</sup> In contrast, in his opinion, the situation was different in socialist states, because "in these states, administration not only creates the conditions for the citizens' activity, but undertakes the direct organization of production processes".<sup>27</sup>

Based on the above, it can be concluded that at the very beginning of his academic career, S. Zawadzki began to cooperate with scholars who actively sought to form and solidify the theory regarding the need for an administrative court system under the conditions prevailing in the Polish People's Republic. It should be assumed that his support for such a concept of the rule of law was

<sup>21</sup> Ibidem, p. 108.

<sup>22</sup> J. Starościak, *Spór z nieujawnionym oponentem*, "Prawo i Życie" 1956, no. 13, p. 2.

<sup>23</sup> J. Starościak, *Kontrola sądowa zabezpieczenia praworządności działania administracji*, "Państwo i Prawo" 1957, no. 6, p. 1070.

<sup>24</sup> The full text of the bill can be found in: "Prawo i Życie" 1957, no. 2, p. 3.

<sup>25</sup> J. Starościak, *Prawo administracyjne*, Warszawa 1969, p. 355.

<sup>26</sup> J. Starościak, *Zagadnienia przemian administracji państwa socjalistycznego*, [in:] *Studia z dziedziny prawa administracyjnego*, pod red. L. Bara. *Prace ofiarowane z okazji 80 rocznicy urodzin Profesora Maurycego Jaroszyńskiego członka rzeczywistego Polskiej Akademii Nauk, Przewodniczącego Rady Naukowej Instytutu Nauk Prawnych Polskiej Akademii Nauk*, Wrocław – Warszawa – Kraków – Gdańsk 1971, p. 69.

<sup>27</sup> J. Starościak, *Prawo...*, p. 355.

solidified when he began his activity in the Polish Lawyers' Association, where, after all, Prof. J. Starośćiak played an important role.<sup>28</sup> Another member of that organization was prosecutor Jerzy Świątkiewicz, who, especially in late 1979 and early 1980, became, so to speak, S. Zawadzki's right hand in the process of convincing the decision-makers of the need to establish administrative courts using substantive arguments<sup>29</sup> and later at the SAC. S. Zawadzki used and developed their arguments in support of the establishment of such courts in his academic, journalistic, and political endeavors. Therefore, it became clear to him that judicial review of administrative decisions is not incompatible with a socialist state, and that, when establishing such a systemic mechanism in the PPR, one could even benefit from the achievements of the so-called bourgeois states, including the experience of the Supreme Administrative Tribunal during the Second Polish Republic.<sup>30</sup>

On the other hand, the "inspiration" that S. Zawadzki wrote about was due to the fact that J. Starośćiak was one of the most important lawyers who had the greatest influence on the formation of the Polish model of national councils.<sup>31</sup> Significantly, S. Zawadzki appreciated and used his work as model, especially with regard to decentralization in the process of implementing so-called democratic centralism.<sup>32</sup> J. Starośćiak, himself, in his introduction to a 1953 paper on sessions of national councils, wrote:

The view that the very establishment of national councils fully secures the participation of the working masses in the activities of the state apparatus is wrong. The matter of actually drawing the working masses into participation in governing the affairs of the state on the ground is therefore an important issue related to the implementation of the guiding thought of the Act on national councils.<sup>33</sup>

This thesis is the basis for S. Zawadzki's doctoral dissertation, as well as his further inquiries into national councils and territorial or local government in general. In a biographical article on J. Starośćiak, S. Zawadzki also emphasized the "progressive current in the science of administrative law" that the former represented, which concerned the so-called right to good administration "for the benefit of working people" and citizens.<sup>34</sup> In addition, he appreciated

<sup>28</sup> Z. Zawadzki, *Retrospekcja...*, pp. 99-112.

<sup>29</sup> *Ibidem*, p. 219.

<sup>30</sup> *Ibidem*, p. 214.

<sup>31</sup> S. Zawadzki, *Jerzy Starośćiak 1914-1974*, "Państwo i Prawo" 1974, no. 12, p. 111.

<sup>32</sup> *Ibidem*.

<sup>33</sup> J. Starośćiak, *Regulamin sesji rady narodowej*, [in:] *Organizacja i praca rad narodowych*, eds. Z. Rybicki, J. Starośćiak, J. Stembrowicz, Warszawa 1953, p. 10.

<sup>34</sup> *Ibidem*, p. 114.



the importance of dealing with the comparative problems of administrative law.<sup>35</sup> This proposition was developed by S. Zawadzki in his further activity, for example, his work on the issue of justifying the existence of social control committees as an important institution of social control in the political system of the PPR.<sup>36</sup> In general, in some of his research, he focused on the various control mechanisms applicable to the state apparatus.<sup>37</sup> It can therefore be concluded that despite the fact that he began his academic career at the Institute for the Training of Academic Staff at the Central Committee of the PUWP, S. Zawadzki began to work with certain researchers there, which made him impervious to the Marxist dogma.

### Marxist and socialist

On the other hand, the studies at the Institute for the Training of Academic Staff at the Central Committee of the PUWP solidified the very core of S. Zawadzki's Marxist worldview.<sup>38</sup> While this was not a dogmatic approach, as mentioned above, it became a permanent, even lifelong, choice of a particular intellectual, academic, and party path. As S. Zawadzki's memoirs clearly prove, he became a sincere and faithful patriot of the Polish People's Republic, assuming numerous positions and making difficult decisions, such as during the martial law period. At the same time, while adhering to the general discipline and hierarchy within the PUWP and accepting the general practice of the political system of the PPR, he was open to all sorts of concepts, modifications, and changes to the latter, which could make it more effective through a certain de-bureaucratization or democratization. The latter concept was understood, of course, in the socialist sense, although it did not rule out the implementation of certain regulations even from "bourgeois" systems.

S. Zawadzki's first serious work was also based strictly on the Marxist methodology of research on the state and law, which was adopted by the scientific and legal doctrine of the Polish People's Republic. Numerous quotations from Lenin, Stalin, Marx, and Bierut are in line with the Marxist concept of the state and law, which was implemented in the PPR at that time by S. Zawadzki's

<sup>35</sup> Ibidem, p. 112.

<sup>36</sup> See: S. Zawadzki, T. Fuks, *Komitety kontroli społecznej*, Warszawa 1978, pp. 3-5.

<sup>37</sup> See: S. Zawadzki, *Funkcja kontrolna Sejmu PRL*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1980, year XLII, book 1, pp. 15-38; L. Garlicki, H. Walkus.-Gierałt, S. Zawadzki, *Współpraca NIK z komisjami Sejmu (na tle praktyki V i VI kadencji)*, "Studia Iuridica" 1976, vol. 4, pp. 77-98.

<sup>38</sup> In his memoirs, S. Zawadzki points to the sources of his worldview, mentioning, among other things, his father's socialist-communist activities, his activities in a socialist organization at the high school in Warsaw before 1939, and his difficult experiences during the German occupation of Poland (in that period, S. Zawadzki was sent to perform forced labor in the Third Reich twice). He also lost his brother Zygmunt during the war. See: Z. Zawadzki, *Retrospekcja...*, pp. 1-71.

teachers and colleagues, namely Stefan Rozmaryn<sup>39</sup> and Stanisław Ehrlich.<sup>40</sup> An important place was also held by Adam Schaff,<sup>41</sup> thanks to whom S. Zawadzki began his academic career at the Institute for the Training of Academic Staff at the Central Committee of the PUWP,<sup>42</sup> and with whom S. Zawadzki went on an official trip to Moscow in 1956, mainly to the Institute of Marxism-Leninism, which, as S. Zawadzki recalled, was “in many respects regarded as a model for our Institute”.<sup>43</sup>

It was his doctorate at the Institute for the Training of Scientific Staff (from 1954 the Institute of Social Sciences) at the Central Academic of the PUWP<sup>44</sup> that

39 H. Izdebski, *Stefan Rozmaryn 1908–1969*, [in:] *Profesorowie Wydziału Prawa i Administracji Uniwersytetu Warszawskiego 1808–2008*, Warszawa 2008, pp. 216–218. See: *Spis ważniejszych prac naukowych. Dr. Stefan Rozmaryn*, Archive of the University of Warsaw, Personal file of Stefan Rozmaryn, file no. K 55 88, sheet 12–15.

40 See: S. Ehrlich, *Teoria typów i form państwa*, “Państwo i Prawo” 1950, no. 50 (4), p. S. Ehrlich, *Podstawowe wiadomości o państwie*, Warszawa 1950, pp. 28–32; A. Turska, P. Winczorek, *Stanisław Ehrlich (1907–1997)*, “Studia Iuridica” 1998, vol. 36, pp. 217–220; A. Bosiacki, *Stanisław Ehrlich 1907–1997*, [in:] *Profesorowie Wydziału Prawa i Administracji Uniwersytetu Warszawskiego 1808–2008*, Warszawa 2008, pp. 221–224; A. Bosiacki wrote that: “During the Stalinist period, Ehrlich was one of the most important lawyers who introduced the Marxist doctrine of practicing the science of law in Poland.” A. Bosiacki, *Stanisław Ehrlich*, [in:] *Portrety uczonych: Profesorowie Uniwersytetu Warszawskiego po 1945: A-K*, eds. W. Baraniewski, W. Tygielski, A.K. Wróblewski, Warszawa 2016, pp. 302–311. S. Ehrlich was also one of the main pioneers of the study of the law and system of the USSR in the early days of the Polish People’s Republic. See: S. Ehrlich, *Państwo radzieckie*, Warszawa 1950; S. Ehrlich, *Ustrój i prawo ZSRR*, Warsaw 1953; S. Ehrlich, *Ustrój Związku Radzieckiego*, Warszawa 1954. The application for the Commander’s Cross of the Order of Polonia Restituta for S. Ehrlich reads: “Prof. Dr. S. Ehrlich’s merit is the organization of the first Chair of the System of Government of the USSR in the Polish People’s Republic”; “Prof. Dr. S. Ehrlich is the author of the first works in the Polish People’s Republic that illuminated the problems of the theory of the state and law from the point of view of Marxism. In particular, he is the author of the following books: ‘The Basic Knowledge of the State’ and the monograph ‘The System of Government of the Soviet Union’ recognised by the Ministry of Higher Education and very positively evaluated by Soviet scholars.” See: *Wniosek o nadanie odznaczenia*, Archives of the University of Warsaw, Stanisław Ehrlich’s personal file, file no. K. 10. 130. “Note on the scientific activities of Prof. S. Ehrlich,” which was drawn up on November 16, 1950 by Stefan Rozmaryn, reads: “(...) In view of the fact that Prof. Ehrlich has consistently shown his compliance with Marxist-Leninist science and that, consequently, his works have serious scientific value, I believe that the multiplication of his academic achievements in the last two years fully justifies the application to nominate him as a professor in the field of the Soviet system of government. See: Archives of the University of Warsaw, Stanisław Ehrlich’s personal file, file no. K. 10. 130, sheet 5. On June 16, 1951, S. Ehrlich was nominated as an associate professor of the Soviet System of Government and Law at the Faculty of Law of the University of Warsaw. See: Archives of the University of Warsaw, Stanisław Ehrlich’s personal file, file no. K. 10. 130, sheet 25. Prof. S. Ehrlich at the Faculty of Law of the UW and his surveillance by the secret police (SB) were also described in publications by Sławomir Cenckiewicz. See: S. Cenckiewicz, *Warszawiak (1949–1971)*, [in:] S. Cenckiewicz, A. Chmielecki, J. Kowalski, A.K. Piekarska, *Lech Kaczyński. Biografia polityczna*, Poznań 2013, p. 56–60.

41 J. Szacki, *Adam Schaff 1913–2006*, [in:] *Portrety uczonych: Profesorowie Uniwersytetu Warszawskiego po 1945: S-Ż*, eds. W. Baraniewski, W. Tygielski, A.K. Wróblewski, Warszawa 2016, pp. 56–65.

42 Z. Zawadzki, *Retrospekcja...*, p. 71.

43 Ibidem, p. 88.

44 Within the Institute, S. Zawadzki was assigned to the Chair of State and Law.

solidified S. Zawadzki's Marxist and socialist approach to the understanding of issues of the state, law, and politics. Even though he expressed a certain critical opinion about Stalinist ideology in his doctoral dissertation,<sup>45</sup> he defended its essence. In fact, he indicated that in the dissertation he formed demands "for the party to abandon the methods of 'commandeering' of national councils, to develop decentralization aimed at expanding the powers of the councils and providing them with a broader basis for their substantive activities, to open the field for the development of their greater initiative and independence".<sup>46</sup> This, in his opinion, was the greatest value of the dissertation. In this context, he added:

Namely, I presented in it the fundamental thesis that the development of democracy, expressed, among other things, in the increasing participation of citizens in the governance of the state, is an objective necessity, constitutes an objective regularity of political development, which meant stating that the form of a socialist state cannot be shaped arbitrarily.<sup>47</sup>

S. Zawadzki also tried to put such an approach into practice, as a member of national councils, as well as their researcher, as manifested in his numerous academic works in this area, including at the Polish Academy of Sciences in the periodical "Problemy Rad Narodowych: studia i materiały".<sup>48</sup> He actively advocated for the development of so-called local democracy within the socialist state.<sup>49</sup> As a conclusion to the topic of S. Zawadzki's doctoral dissertation, it is worth adding that in his memoirs he regretted that some of the above-mentioned recommendations were not implemented by the authorities of the Polish People's Republic along with the transformation that took place in 1956–1957.

### **1956. Towards the knowledge of the West and the reform of socialism in the Polish People's Republic**

Nevertheless, the changes that took place in Poland in October 1956 are reflected in S. Zawadzki's research. In a chapter titled "Traditional differences in the dispute over the essence of the state",<sup>50</sup> published in 1961 as part of

<sup>45</sup> Z. Zawadzki, *Retrospekcja...*, pp. 80–81.

<sup>46</sup> *Ibidem*, p. 81.

<sup>47</sup> *Ibidem*, pp. 81–82.

<sup>48</sup> *Ibidem*, p. 142. *Problemy Rad Narodowych: studia i materiały*, Warszawa 1964–1989 (Institute of Legal Sciences of the Polish Academy of Sciences).

<sup>49</sup> See: S. Zawadzki, *Koncepcja demokracji lokalnej w państwie socjalistycznym*, [in:] *Z teorii i praktyki demokracji socjalistycznej. Wybór artykułów*, Warszawa 1980, pp. 162–174.

<sup>50</sup> S. Zawadzki, *Tradycyjne rozbieżności w sporze o istotę państwa*, [in:] *Spór o istotę państwa*, Warszawa 1961, pp. 9–51.

a monograph with the telling title “Spór o istotę państwa” [A dispute over the essence of the state,” he criticized “the tendencies that existed in the past period both to detach Marxism from the scientific achievements of the previous eras and to deny all the achievements of the modern directions of bourgeois science.” This represented an extremely cautious, albeit clear, step away from exclusively dogmatic commentary on the classics of Leninism and Marxism in the area of the theory of the state and law, towards a freer discussion and commentary on the achievements of “bourgeois” science. In this regard, S. Zawadzki concluded that “the opposition of the sciences – Marxist and bourgeois – cannot, however, mean the negation of the objectively existing continuity of legal scientific thought and a rejection of the entire pre-Marxist achievements of science”.<sup>51</sup> This work by the Polish scholar contains an interesting Marxist analysis of the selected output of such scholars as J. Jellinek, W. Makowski, E. Jarra, Z. Cybichowski, L. Duguit, L. Petrażycki, and H. Kelsen. This approach formed the basis for recognizing institutions derived from the so-called bourgeois system as mechanisms that can also be used in the socialist state and legal system. The superiority of the latter, by the way, was indisputable, and the chapter written by S. Zawadzki ended with such a conclusion.<sup>52</sup>

In this work, he attempted to “find a correct general definition of the state”, from the point of view of the theory of Marxism-Leninism, that would include the common features of a “socialist state” and an “exploitative-type state”.<sup>53</sup> Recalling Stanisław Ehrlich’s 1957 general definition of the state,<sup>54</sup> S. Zawadzki wrote:

Without by any means aspiring to exhaustively define the essence of a state, it seems that a general definition of a state could be formulated as follows: The state is a political organization of the ruling class, equipped with a coercive apparatus to protect its class interests.<sup>55</sup>

Such a definition of a state was aimed at “bringing out those features that are common to states of all types and make it possible to distinguish a state from other components of the superstructure”.<sup>56</sup> Such a definition was an extension of Lenin’s definition which provided that “a state is a machine for maintaining

<sup>51</sup> Ibidem, p. 9.

<sup>52</sup> Ibidem, pp. 67-68.

<sup>53</sup> S. Zawadzki, *Tradycyjne rozbieżności w sporze o istotę państwa*, [in:] *Spór o istotę państwa*, Warszawa 1961, p. 51.

<sup>54</sup> Ibidem, p. 52. S. Ehrlich’s definition: “A state is a hierarchically and territorially organized coercive apparatus, subordinated to the will of the class owning the means of production for the defense of that ownership and its other interests against class enemies.”

<sup>55</sup> Ibidem.

<sup>56</sup> Ibidem.

the rule of one class over another,” as well as a criticism of J. Stalin’s definition presented at the time of the 18th Congress of the CPSU, which provided that “a state is a machine in the hands of the ruling class, serving to stifle the resistance of its class opponents”.<sup>57</sup>

A shift was noticeable in this case in the focus from the coercive apparatus to the indication that the state is primarily a political organization of the ruling class, which wields such an apparatus, on a monopoly basis, to protect its economic and political interests. Nevertheless, the apparatus in such an arrangement was aimed, though not exclusively, at the right to “stifle the resistance of class opponents”.<sup>58</sup> S. Zawadzki modified this definition in 1964 when he wrote:

(...) a state constitutes a political organization, equipped with a coercive apparatus to protect the interests of the class owning the means of production.<sup>59</sup>

In a commentary on this definition, he added that a state as a political organization ensures the dominant “position of the economically ruling class.”<sup>60</sup> In the rest of the work, we can find, among other things, general discussions on the types of states, as well as a methodology for analyzing the form of a state.<sup>61</sup>

The continuation and development of S. Zawadzki’s above-mentioned thoughts on the state and law can be found in chapter 3 of the textbook (*Chapter III. Political system*) titled *Wstęp do nauki prawa konstytucyjnego z 1974* [Introduction to the science of constitutional law of 1974], which he wrote together with Zdzisław Jarosz.<sup>62</sup> In that chapter, S. Zawadzki defined the concept of “a political system” as follows:

Starting from the general concept of a system, one should consider a political system as ‘a structure of political power’, ‘a structure of the political organization of society’. Thus, the concept of a political system is very closely related to the concept of ‘the form of a state’ and ‘the form of the political organization of society’ that are used in the theory of state. A political system is the legal and institutional expression of the political organization of society.<sup>63</sup>

Noteworthy in the chapter is the enumeration and discussion of the basic principles of the political system of the PPR<sup>64</sup>. In this regard, S. Zawadzki also

<sup>57</sup> Ibidem, p. 51.

<sup>58</sup> Ibidem, p. 52.

<sup>59</sup> S. Zawadzki, *Marksistowska teoria państwa. Wybrane zagadnienia*, Warszawa 1964, p. 29.

<sup>60</sup> Ibidem.

<sup>61</sup> Ibidem, pp. 29–30.

<sup>62</sup> Z. Jarosz, S. Zawadzki, *Wstęp do nauki prawa konstytucyjnego*, Warszawa 1974.

<sup>63</sup> Ibidem, p. 111.

<sup>64</sup> Ibidem, p. 115.

drew on the achievements of political and legal doctrines, pointing out that certain ideas originating in bourgeois states, such as Rousseau's concept of the social contract, became "a general human achievement, to which Marxist theory and socialist constitutionalism also referred, giving it a new class content".<sup>65</sup> This was due to the fact that this idea, by creating "the primacy of the society over the state," served as a powerful tool against the feudal system and absolute monarchy.<sup>66</sup> Last but not least, the textbook discussed the problem of socialist rule of law, accepting and referring to the theses of Prof. S. Ehrlich, which the latter described in the pages of his important 1971 textbook titled *Wstęp do nauki o państwie i prawie* [Introduction to the science of state and law].<sup>67</sup> In that textbook, S. Ehrlich defined rule of law as follows:

Rule of law involves the strict application of law by all state bodies, for which it should be the basis of activity, and the observance of law by both social organizations and citizens. However, the law is to be equal for all and guarantee basic human and civil rights.<sup>68</sup>

In this sense, this researcher emphasized that rule of law is "a certain factual state, that it is a practice, the practice of implementing law," which can only be confirmed by conducting empirical research in a specific country.<sup>69</sup> In this sense, he pointed out the differences between the concepts of "observance of legal order" and "rule of law",<sup>70</sup> by writing:

Observance of a legal order without looking at the content of the law or how large the group of addressees to whom a given normative system applies is called legal order. This legal order delineates in every type of state the limits of the activities of state bodies.

On the other hand, we cannot equate rule of law with legal order, because it is a specific social practice inherent in the content of the law, and it does not imply adherence to any set of legal norms.<sup>71</sup>

In the chapter, S. Ehrlich also pointed out that in both a bourgeois state and a socialist state, review of the legality of administrative acts, exercised, among others, by courts, is a basic guarantee of the rule of law<sup>72</sup>. The theses from S. Ehrlich's textbook can also be found in S. Zawadzki's presentations

<sup>65</sup> Ibidem, p. 121.

<sup>66</sup> Ibidem, pp. 120-121.

<sup>67</sup> S. Ehrlich, *Wstęp do nauki o państwie i prawie*, Warszawa 1971.

<sup>68</sup> Ibidem, p. 267.

<sup>69</sup> Ibidem.

<sup>70</sup> Ibidem, p. 270.

<sup>71</sup> Ibidem.

<sup>72</sup> Ibidem, p. 276.

on the issue of rule of law and the necessity of establishing an administrative court system.<sup>73</sup> In an article he wrote in 1974, S. Zawadzki also attempted to develop and supplement the definition of rule of law proposed by S. Ehrlich, by pointing out that “the provision of basic civil rights” as a condition or prerequisite for the existence of rule of law in a socialist state is also encased in additional principles, different from those prevailing in the so-called bourgeois states.<sup>74</sup> He also pointed out that the socialist rule of law itself includes one category of civil rights.<sup>75</sup> Nevertheless, compliance with law by state authorities was to be indispensable, and one of the guarantees of this compliance could be the introduction of judicial review of administrative decisions<sup>76</sup>. In this context, S. Zawadzki wrote that such a form of review existed in “some socialist countries”.<sup>77</sup>

This scholarly discourse confirms the strong links between S. Ehrlich and S. Zawadzki. Specific information about their contacts and cooperation during the period when the former scholar’s above-mentioned textbook was written can also be found in the archives of the Institute of National Remembrance (INR).<sup>78</sup>

## Research on the welfare state

Subsequently, S. Zawadzki became interested in and undertook detailed research on the concept of the welfare state.<sup>79</sup> However, in his first publications on the subject, despite a thorough presentation of and discussion of the Western literature on the subject, as well as the specific and effective social measures of a state of this type taken for the benefit of the working masses, S. Zawadzki rigidly stuck to a systemic critique of the bourgeois state, including the distinctiveness of a “welfare state” from a socialist state. Therefore, in the conclusion of the article on the welfare state, he wrote:

73 S. Zawadzki, *Praworządność w stosunkach między obywatelem a administracją państwa socjalistycznego*, [w:] *Problemy praworządności w działaniu administracji państwowej. Materiały konferencji naukowej Komitetu Nauk Prawnych PAN*, Warsaw May 21–22, 1979, ed. L. Bar, Wrocław – Warszawa – Kraków – Gdańsk 1980, pp. 9-21.

74 S. Zawadzki, *Praworządność jako element demokracji socjalistycznej*, [in:] *Z teorii i praktyki demokracji socjalistycznej. Wybór artykułów*, Warszawa 1980, p. 179.

75 Ibidem.

76 Ibidem, p. 183.

77 Ibidem.

78 Archives of the Institute of National Remembrance, IPN BU 0224 /702/2, sheet 144. For example, in his conversation with S. Ehrlich, which was recorded (wiretapped) and transcribed by the secret police (SB) on March 22, 1969, S. Zawadzki allegedly said that: “he shares the views of Prof. Ehrlich on the development of political science.” In this context, one should bear in mind that during that period S. Ehrlich was brutally surveilled by the PPR’s security agencies.

79 See: S. Zawadzki, *Przyczynek do genezy koncepcji „welfare state”*, “Państwo i Prawo” 1960, no. 8-9, pp. 251-271.

Therefore, one cannot limit oneself to saying that the concept of ‘welfare state’ is an alternative to both the socialist state and the bourgeois state of the pre-monopoly period. The concept of ‘welfare state’ is a bourgeois-reformist alternative to a socialist state, an alternative that, while differing from the concept of the state from the free-competition capitalism period, fits within the framework of the capitalist system and the bourgeois type of state.<sup>80</sup>

The theses of the article cited above were developed by S. Zawadzki in the chapter titled “*The welfare state*” – *theory vs. reality* from 1961,<sup>81</sup> and most notably in the monograph titled “*Państwo dobrobytu*”: *doktryna i praktyka* [“The Welfare state”: doctrine and practice] of 1964.<sup>82</sup> Interestingly, the first footnote in the doctoral dissertation of Polish politician Jarosław Kaczyński is a reference to this work by S. Zawadzki<sup>83</sup>. At the same time, one should bear in mind that S. Ehrlich also wrote about the welfare state in the context of the so-called monopoly state.<sup>84</sup>

The great advantage of S. Zawadzki’s 1964 monograph is the rather detailed discussion (written by a scientist from the PPR) on the main Western concepts of the functioning of the liberal political system model in the context of the economy and social matters, as well as their relation to socialism. It is natural in this context that the author of that work strongly upholds the Marxist theory of state and law and criticizes the essence and difference of the systems of government of capitalist states. On the other hand, however, he managed to demonstrate a certain efficiency of the welfare state in selected spheres of the population’s social security, which may have been an attempt to smuggle certain solutions into the Polish debate of that time. Therefore, S. Zawadzki wrote that “in assessing the social function” of a “welfare state,” “one should distinguish between the bourgeois-reformist alternative to the socialist state and its individual aspects, which contain a program of action that coincides in

<sup>80</sup> Ibidem, pp. 270-271.

<sup>81</sup> S. Zawadzki, “*Państwo dobrobytu*” – *teoria a rzeczywistość*, [in:] *Spór o istotę państwa*, Warszawa 1961, pp. 114-161.

<sup>82</sup> S. Zawadzki, “*Państwo dobrobytu*”: *doktryna i praktyka*, Warszawa 1964.

<sup>83</sup> See: J. Kaczyński, *Rola ciał kolegialnych w kierowaniu szkołą wyższą. Praca doktorska przygotowana w Instytucie Nauki o Państwie i Prawie pod kierownictwem prof. dr Stanisława Ehrlicha*, Warszawa 1976, p. 1. Collection of the library of the Faculty of Law and Administration of the University of Warsaw. Dissertation number: Prace 902. J. Kaczyński began his dissertation by stating that the problems prevalent in higher education (which pertained to the subject of his dissertation) had gained importance due to, among other things, “the crisis of the liberal state and, consequently, the increasingly broad implementation of the concept of a state that intervenes broadly in the life of the society.” However, the reference to S. Zawadzki’s 1964 work titled “*Państwo dobrobytu* – doktryna i praktyka” [The Welfare State – Doctrine and Practice] was made in general terms, without indicating a specific page.

<sup>84</sup> S. Ehrlich, *Państwo monopoli*, [in:] *Spór o istotę państwa*, Warszawa 1961, pp. 81-85.



part with the demands of the working masses”.<sup>85</sup> Indeed, one of the main axes of S. Zawadzki’s deliberations is based on the assumption that the welfare state is a systemic idea that targets socialist states and socialism itself, but the selected reforms and changes in a welfare state also benefit the working people of cities and villages, thus bringing them closer to a systemic change.

In this sense, S. Zawadzki’s monograph is also an extremely useful work for the elite, especially for the repression and foreign policy apparatus of the Polish People’s Republic, as it provided partially objective research material that could be used to understand the essence and various political, social, and economic phenomena in capitalist states. This could also fit within the concept of peaceful coexistence between the different civilization and military blocs during the Cold War. Against this background, there is a noticeable departure from the clumsy Stalinist propaganda in the description of the systems of government of Western states, which is manifested, for example, in the demonstration of the differences between a welfare state and a fascist state.<sup>86</sup>

S. Zawadzki’s book was also part of the current of research on the state and law using the legal-empirical method, which was particularly promoted by S. Ehrlich and S. Zawadzki in the pages of the “State and Law” journal they directed.<sup>87</sup> In his memoirs, S. Zawadzki wrote about it as follows:

“Its meaning was to remove from the journal the monopoly of the legal-dogmatic method, without denying by any means its importance for the legal sciences, but by developing them also on the basis of a study that confronts in an empirical way the functioning of legal norms in the reality under study”.<sup>88</sup>

## Foreign contacts

The change in the attitude towards the so-called bourgeois states after 1956 resulted in a certain openness to the academic achievements of those states, as well as to foreign contacts. Consequently, S. Zawadzki made numerous contacts with scholars from the so-called bourgeois states, for example, by organizing various conferences which they attended. One example and manifestation of this was the concluding discussion at the conference on trends in the development of local government in the modern world, held in Radziejowice (September 24–28, 1974), which brought together representatives of 18 countries (Western and socialist). During that conference, S. Zawadzki allegedly said that the conference not only served as a beneficial exchange of information for

<sup>85</sup> Ibidem, pp. 429–430.

<sup>86</sup> Ibidem, pp. 165–166.

<sup>87</sup> Z. Zawadzki, *Retrospekcja...*, p. 233.

<sup>88</sup> Ibidem.

countries with different socio-economic systems, but also created a platform for joint research on local government.<sup>89</sup> The subject of such joint comparative studies could be, for example, the problem of territorial division of states.<sup>90</sup> The issue of the centralization process and the interest and involvement of citizens in the process of local governance were also important aspects on which the discussion focused.<sup>91</sup> Finally, selected works by S. Zawadzki were translated into some Western languages, and he gained certain recognition.

### Political transformation of 1989

The fundamental political change that took place in Poland in 1989 became the subject of S. Zawadzki's deliberations. In an article published in 1990, he stated that the amendment to the Constitution adopted on December 29, 1989, which concerning Article 1 of the Constitution, was the result of two processes.<sup>92</sup> First, it was supposed to be "the result of the democratic transition and the adoption of the principle of pluralism," which "led in the late 1980s to the elimination of the restrictions characteristic of the state of the dictatorship of the proletariat. Second, it constituted a reference to the national tradition (by emphasizing "the nationwide character of the supreme state power"), that is, "a reference to the long-standing tradition of Polish constitutionalism, which found expression in both the May 3 Constitution and the March Constitution of 1921."<sup>93</sup> The recognition of the principle of the supremacy of the nation was also intended to express the Polish society's commitment to sovereignty in external relations. On the other hand, as far as the former process is concerned, S. Zawadzki's remarks regarding the dictatorship of the proletariat are interesting,

<sup>89</sup> S. Zawadzki, *Dyskusja. Uwagi wprowadzające*, [in:] *Tendencje rozwoju władzy lokalnej we współczesnym świecie. Materiały z konferencji w Radziejowicach 24-28 września 1974*, Wrocław – Warszawa – Kraków – Gdańsk 1976, p. 357.

<sup>90</sup> Ibidem.

<sup>91</sup> S. Zawadzki, *Słowo końcowe*, [in:] *Tendencje rozwoju władzy lokalnej we współczesnym świecie. Materiały z konferencji w Radziejowicach 24-28 września 1974*, Wrocław – Warszawa – Kraków – Gdańsk 1976, pp. 424-426. During the conference, S. Zawadzki delivered a paper on the reform of local authorities in 1972–1973. See: S. Zawadzki, *Reforma władz terenowych w Polskiej Rzeczypospolitej Ludowej w latach 1972–1973*, [in:] *Tendencje rozwoju władzy lokalnej we współczesnym świecie. Materiały z konferencji w Radziejowicach 24–28 września 1974*, Wrocław – Warszawa – Kraków – Gdańsk 1976, pp. 11-37.

<sup>92</sup> S. Zawadzki, *Nowa konstytucyjna definicja polskiej państwowości*, [in:] *Studia konstytucyjne. Tom 7. Teoretyczne problemy państwa pod red. prof. dr hab. Sylwestra Zawadzkiego*, Warszawa 1990, pp. 51-53. That article was written in the form of a "supplement and polemic" to the article titled "Republic of Poland – a democratic law-abiding state," written by Wojciech Sokolewicz from the "Państwo i Prawo" Journal in 1990 (no. 4, pp. 12-20).

<sup>93</sup> Ibidem, p. 52. However, at the same time, S. Zawadzki pointed out that in the 1952 Constitution, in Article 20, where it referred to Sejm as the expression of the will of the working people of cities and villages, the emphasis was placed on "the realization of the sovereign right of the nation."

also as a kind of reckoning with the past. Indeed, he wrote the following about the commented amendment to the Constitution:

The main aspect of this phrase, however, concerns the sphere of intra-state relations. It signifies a break from the model of dictatorship of the proletariat recognized as the power of the working class exercised in alliance with peasants and intelligentsia, and therefore the power of the overwhelming majority of society, combined with restrictions on the ‘negligible’ minority understood initially as a remnant of the classes living from exploitation, and later as a minority that brings together opponents of the socialist system.<sup>94</sup>

Restrictions, on the other hand, including restrictions on voting rights, censorship, prohibition against the formation of political parties and association, were to involve serious abuse, and even lawlessness during Stalinism.<sup>95</sup> And even the changes that took place in October 1956, which were “a mass protest against the Stalinist model of dictatorship of the proletariat and a call for a Polish path to socialism, characterized by bypassing the dictatorship of the proletariat,” did not lead to the elimination of the “limitations on democracy.” On the other hand, the changes passed at the 10th Plenary Session of the Central Committee of the PUPW (January 1989), i.e. the adoption of the principle of pluralism, could not reverse the damage already done since 1944.

According to S. Zawadzki, the definition of the sovereign did not mean that “the problem of discrepancies between the constitutional and real bearers of power arising, among other things, from bureaucratic-authoritarian relics of the past ceases to exist. A new danger of authoritarian threats in the present is also emerging”.<sup>96</sup> Therefore, “based on the historical experience of both the capitalist system and so-called real socialism,” S. Zawadzki pointed out that the new definition of the subject of state power could involve certain dangers.

The first was the danger of the power of the nation turning into the power of a minority (i.e. a social class, “with a strong economic base”), which could result from the privatization of property, leading to social stratification and inequality<sup>97</sup>. It could also be the power of “a bureaucracy or ‘assetocracy’ that would emerge ‘as a result of the deformation resulting from the persistence of ossified forms of state ownership’”.<sup>98</sup> There was also talk of “the dictatorship of an individual, and even of a family clan, as demonstrated emphatically – already after the ‘cult of the individual’ was exposed in the Soviet Union – by the example of Romania.”<sup>99</sup> Consequently, S. Zawadzki drew attention to the need to

<sup>94</sup> Ibidem, p. 52.

<sup>95</sup> Ibidem, pp. 52-53.

<sup>96</sup> Ibidem, p. 53.

<sup>97</sup> Ibidem.

<sup>98</sup> Ibidem.

<sup>99</sup> Ibidem.

understand and ensure the implementation of a certain social policy, including in the form of specific state interventionism (e.g., following the example of the constitutions of West Germany, Italy, and France), which was also to follow from Article 1 of the Constitution.<sup>100</sup>

Secondly, S. Zawadzki wrote that “the power of the nation is not given once and forever, for other reasons as well; the sovereignty of the nation in the political sphere can be shaken if it is not based on sovereignty in the economic sphere, if it is not based on a healthy and efficient economy”.<sup>101</sup> Third, power should be exercised by the people, not “only in the interest of the people/for the people”.<sup>102</sup> Such arguments expressed concerns about whether the new democratic system in Poland would be able to start operating normally, if the degree of economic development and the wealth of the Polish society, compared to the societies of Western countries, are limited. Although there is no doubt that one can sense the distinction between the Marxist “base” and “superstructure” in these considerations, when it comes to describing the structure of the system of a state.

Another problem raised by S. Zawadzki was the “democratic law-abiding state” existing in practice.<sup>103</sup> In this context, he invoked the Marxist critique of a “law-abiding state” pointing at the dispute over the so-called formal and substantive rule of law. In this context, he called for studying the rule of law. Against this backdrop, he also presented his own definition of a “democratic and law-abiding state,” which he described as:

(...) one in which the people as the sovereign participate and decide on the law, which becomes binding to all citizens. If the new constitution brings the Polish society closer to the realization of this hard-to-reach ideal, it will be to its historic credit.<sup>104</sup>

In connection with the above, S. Zawadzki wrote about the need for institutional and legal guarantees of the rule of law, pointing out that in the 1980s Poland made progress by establishing the Supreme Administrative Court, the Constitutional Tribunal, the State Tribunal, and the Commissioner for Human Rights.<sup>105</sup>

On the other hand, as for the form of the political system that is based on the principle of separation of powers, S. Zawadzki pointed out that the

<sup>100</sup> *Ibidem*, pp. 64-65.

<sup>101</sup> *Ibidem*, p. 54.

<sup>102</sup> *Ibidem*.

<sup>103</sup> *Ibidem*, p. 55.

<sup>104</sup> *Ibidem*, p. 55.

<sup>105</sup> *Ibidem*, p. 56.

model of the president-arbitrator should be considered, with the provision of “anti-bureaucratic orientation,” which would mean the supremacy of the parliament over the executive branch of government”.<sup>106</sup>

## Conclusion

As a conclusion of these few reflections on S. Zawadzki and his perception of the state and the law, it is necessary to repeat the thought, mentioned at the beginning of this paper, that he is a figure who should become the subject of further, more comprehensive research. What is also needed in this regard is a specific scientific conference focused on S. Zawadzki’s time and the people who surrounded him. Nevertheless, already on the basis of the above observations and findings, one may be tempted to make a few statements. First, by virtue of his background and life experiences, primarily related to his origins and the course of World War II, S. Zawadzki intentionally chose to be involved in the construction of the Polish People’s Republic, which, after all, involved clearly supporting the Marxist system in its Stalinist version. Regardless of the abuses and crimes committed during that period, he continued his academic, professional, and party career after 1956. He then became one of the main researchers of the theory of the state and law, who had clear links to and served the government. This was certainly a burden for him as a researcher, although, on the other hand, practical knowledge of the mechanisms of politics, power, and the application of law, brought some advantages that affected the quality of S. Zawadzki’s selected works. Perhaps the administrative court system benefited the most from this as a result of the establishment of the Supreme Administrative Court, whose creation in the late 1970s and early 1980s is associated with S. Zawadzki’s involvement and determination, as well as his vision of a more liberal version of the Marxist system of the Polish People’s Republic.

A good illustration of this worldview and intellectual stance is his brief commentary to Adam Schaff’s essay on his reckoning with the so-called “real socialism” before 1989.<sup>107</sup> S. Zawadzki began his reflections as follows:

I fully agree with the thesis that the collapse of real socialism did not shake my conviction in the validity of the idea of socialism and the need to continue the struggle for its victory. I also believe, as does the Author, that this calls for an overhaul of the theory and practice of the socialist movement.

<sup>106</sup> Ibidem, p. 58.

<sup>107</sup> Essay by Adam Schaff: A. Schaff, *Czego nauczył mnie krach realnego socjalizmu?*, “Zeszyty Naukowe Instytutu Badań Społecznych i Międzynarodowych Fundacji im. Kazimierza Kelles-Krauza” 1998, z. 1, pp. 7-39.

I also have no doubts about recognizing the October Revolution – despite all its mistakes – as the most important social event of the 20th century, which therefore requires a thorough analysis.<sup>108</sup>

In this context, S. Zawadzki argued with A. Schaff whether the seizure of power by the Bolsheviks in October 1917 was a mistake, and that the new post-communist era may result in selected groups of the “ruling classes in developed countries” allocating resources not to meet the needs of the population, but to armaments and their own needs, which will not eliminate social conflicts.<sup>109</sup> Countries on a low and medium level of development may have problems in this regard.

On the other hand, in the introduction to his memoirs, he wrote explicitly that “the humanistic goal of socialism was the highest goal” in his activities.<sup>110</sup> And it is through this lens that S. Zawadzki’s research into the theory of the state and law, as well as his state and party career choices and paths should be seen.

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<sup>108</sup> S. Zawadzki, *W kwestii wniosków z krachu realnego socjalizmu – na marginesie artykułu prof. A. Schaffa*, “Zeszyty Naukowe Instytutu Badań Społecznych i Międzynarodowych Fundacji im. Kazimierza Kelles-Krauza” 1998, z. 1, p. 51.

<sup>109</sup> Ibidem, p. 52.

<sup>110</sup> Z. Zawadzki, *Retrospekcja...*, p. II.

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#### SUMMARY

#### **State and Law in the Thinking of Sylwester Zawadzki (1921–1999). A Few Reflections in Connection with the Establishment of the Supreme Administrative Court in 1980**

Sylwester Zawadzki (1921–1999) was one of the most famous, as well as the most influential lawyers of the Polish People's Republic. In his long career, he held many party, state, and academic positions. In the latter aspect, he was for many years associated with the University of Warsaw and the Polish Academy of Sciences, where he headed, among other things, the journal "Państwo i Prawo." The source of his views, attitudes, and life choices were his communist-socialist family traditions, his experience of World War II, his student-party activity after 1945, and his doctoral studies at the Institute for the Training of Scientific Staff at the Central Committee of the PUWP. The latter institution in particular solidified his Marxist worldview that later became, to use the language of Marx and Engels, the basis in relation to his considerations of the state, law, power, and society. On the other hand, however, in the early days of his scientific career, S. Zawadzki worked with lawyers and scientists who were far from the Marxist and Stalinist orthodoxy, such as Jerzy Starościec, or who became disillusioned with the Stalinist version of Marxism prevalent before 1956, such as Stanisław Ehrlich. It is especially from the former that S. Zawadzki took the assumption that in a socialist state the existence of an administrative court system does not contradict the tenets of Marxism and socialism. On the other hand, the development of a socialist state, especially in terms of the growth of the administrative apparatus, required the consistent implementation of the principle of socialist rule of law. Important in this context is the fact that in some socialist countries there was an

administrative court system, which was also used by S. Zawadzki as an argument for the introduction of this institution in the Polish People's Republic. On this ideological and conceptual premise, S. Zawadzki based his state, party and scientific activities, which contributed to the establishing of the Supreme Administrative Court at the end of 1979 and the beginning of 1980.