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HIDDEN VICTIMS

Women in Post-Communist Poland

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INTRODUCTION

Helsinki Watch and the Women's Rights Project of Human Rights Watch have observed with great interest developments in post-1989 Central Europe. Several countries in the region are undergoing dramatic political and social changes, bringing about, among other things, extraordinary improvements in areas of human rights subject to the most severe violations in the past. Rights to political representation, due process, freedom of association, free expression, decent prison conditions and others are being significantly enhanced.

Though all people in Eastern Europe stand to benefit from their governments' increased respect for human rights, women in Poland and elsewhere find themselves at increasing risk of discrimination in the exercise of those rights. In this transition period, past abuses and present political, social and economic pressures are combining with serious consequences for the equal rights of women. It is this that draws the concern of the Women's Rights Project and Helsinki Watch.

Under communism, equality between the sexes was part of the official ideology and women were ostensibly granted the same basic rights as men. As in every area of life under communism, however, there was a wide gap between the letter of the law and the reality. Women's issues suffered from tight government control, and women's organizations were controlled and sponsored by the communist party.

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Because the issue of women's rights was monopolized by the state, and because women in Poland did not have to struggle for equal rights under law, no tradition of an independent women's movement developed. As a result, the newly emerging women's movement in the post-communist era have had to start almost from scratch.

The treatment of women's issues by the communists also had a certain perverse effect on how many persons - men and women - think about women's rights: women's rights are often perceived as politically suspect and are frequently rejected along with the rest of the communist past.

Thus, even the limited gains for women under communist rule are threatened. New political, economic and social pressures are emerging which, allowed to develop unchecked, may mean that while democracy takes one step forward in Poland, women take two steps back.

The main reason we chose Poland as the subject of our first study of women's rights in the region is because many social and political processes are further along in Poland than in the neighboring countries, in part due to the fact that they started earlier. This report by Helsinki Watch and the Women's Rights Project reaches several disturbing conclusions with regard to the circumstances of women in post-communist Poland, in areas such as the legal situation, health care, the right to association, violence -- and in a field that is especially vital during a time of economic hardship -- employment.

LEGAL SITUATION

Following the political transformation of 1989, many laws have been changed and many new laws have been adopted. In today's Poland, a significant degree of legal uncertainty prevails not only because of the frequently changing laws, but also due to the lack of laws to regulate some aspects of life that were simply unknown under the previous regime (this is especially visible in the economy). The Constitution is perceived by most Poles as something temporary, because the old communist charter remains in effect, with amendments hastily drawn in the aftermath of the 1989 election. The process of drafting a new constitution has not yet been completed. Many laws are often ignored on the grounds that they are a legacy of the communists, so it is considered almost patriotic to violate them. Even the current Prime Minister, a prominent lawyer, Jan Olszewski, has been quoted recently as saying that Polish law does not deserve to be respected because of its internal contradictions and, above all, its communist roots.¹

In this context, it is of particular concern that the Polish Constitution is the only legal document guaranteeing equality of sexes.² Most laws say nothing at all on this issue, though in theory, it is understood that under the Constitution, all laws apply equally to both sexes.³ However, despite the Constitutional provision, there are some laws that explicitly distinguish between men and women, particularly in employment-related matters.

A 1979 decree provides in Article 1, Part 1: "It is prohibited to employ women in jobs particularly arduous and detrimental to their health, listed in the register of professions from which women are banned, appended to this law."⁴ Several pages follow, listing

¹Wanda Falkowska, "Czy płacić komunistyczne alimenty," *Gazeta Wyborcza*, January 8, 1992.

²Article 67 part 2, of the version published in *Rzeczpospolita* May 23, 1991.

³Interestingly, however, Polish legal language always uses the pronoun "he," as does the language generally. This looks particularly awkward in the law on the Government Plenipotentiary for Women and Family Affairs (Resolution No. 53/91 of the Council of Ministers of April 2, 1991). Throughout the document, the Plenipotentiary is referred to as "he."

⁴Rozporządzenie Rady Ministrów z dn. 19 stycznia 1971, Dz. U. 4/1979, poz. 18.

about 90 occupations in 18 fields of employment, such as various branches of industry, health care, forestry service, agriculture and transportation. The law, amended in 1984, remains in effect.⁵

o A 1974 law stipulates that long-term leave benefits to care for a sick child are available only to the mother and not to the father, unless the father is a single parent or in some other exceptional situation.⁶ In addition to establishing different legal treatment for men and women, this law makes employers more eager to employ men than women, because women are always the ones to take a leave to care for an ill child. Poland's Ombudsman filed a suit challenging this law in the Constitutional Tribunal, but there has been no decision as of this writing.

o Another law worth noting here makes the retirement age for women 5 years lower than for men (60 and 65, respectively). Until recently, this law was perceived as a women's privilege, but under the current situation, with massive layoffs and unemployment, women are forced out of the work force earlier than men. The Ombudsman successfully challenged the application of this law to university teachers.⁷ It continues to apply, however, in all other areas.

It is important to bear in mind that as the economic situation in Poland changes dramatically with the transformation from communism toward a market economy, some laws that might have been genuinely intended to protect women acquire an entirely different effect. For example, when unemployment suddenly appears, far from protecting women, gender-specific laws discriminate against them. Moreover, such "protective" measures often reflect paternalistic attitudes toward women which only help to perpetuate sex discrimination.

Another serious problem for women in the overall legal situation is what Polish law fails to say. For example, the law has no provisions against sex discrimination in hiring practices. Thus, employers who choose a man over an equally or better qualified woman for a particular position suffer no legal sanction. Helsinki Watch and the Women's Rights Project found that qualified women are often blatantly denied employment simply on the grounds of their sex. The reasons are often given openly: women get pregnant; have children; use maternity leaves and sick leaves to care for children; and thus that it is economically advantageous for an employer to hire men rather than women.

o The government's failure to ensure women's constitutional right to non-discrimination is further exemplified by its failure to index child support payments commensurate with inflation. In the past few years, Poland has experienced a tremendous inflation. Wages and pensions were indexed to keep up with rapidly escalating prices; child support payments were not. The result is that there are now women who still receive monthly payments of 5,000 zlotys (less than 50 cents) while the average salary is currently about 1,500,000 a month. The only way to gain the rightful increase, is for each woman individually to bring her case to court, a procedure that is extremely burdensome, especially for women of limited means who live far away from courts. The situation could be changed overnight by a directive from the Minister of Justice. The leader of the women's caucus in parliament, Barbara Labuda, publicly called on the Minister last summer to do this, but there has been no response as of this writing.

Having undergone a dramatic political transformation, Poland is currently re-working its entire legal system to fit the new political reality and to bring it into line with international standards. It is of foremost importance that the existing non-discrimination standards should be upheld and that non-discrimination should be a priority in the forthcoming drafting of the new

⁵Amendments in Rozporządzenie Rady Ministrów z dn. 5 września 1984, Dz. U. 44/1984, poz. 235.

⁶Law of December 17, 1974.

⁷RP0/73412/91/I. Previously, the Ombudsman was also successful in abolishing another discriminatory practice sanctioned by law: the quota system in medical schools, according to which 50 percent of places were reserved for men (with more women applicants and average higher scores among women). See decision of Constitutional Tribunal of March 3, 1987.

constitution.

In a time of legislative activity such as the one currently being experienced by Poland as well as by many of its neighbors, it is essential to realize that gender-specific laws have no place in a modern society and that even when meant as a protection, in effect they provide an opportunity for discrimination.

Departures from existing law, coupled with the absence of new regulations guaranteeing equality for women, have led to a situation in which the law is used opportunistically. In some instances, such a use has affected the status of women. This is particularly true in the areas of freedom of association, employment and health care, discussed below.

FREEDOM OF ASSOCIATION

For decades, as discussed in the Introduction, Poland had no independent women's movement. Women's groups independent of official sponsorship first appeared in the early 1980s, but, like other independent organizations, they could become legal only after the 1989 law on associations went into effect.⁸ That year, a few small feminist organizations in various parts of Poland were registered and gained legal status. The movement remains small but is growing. However, though women's organizations were registered without difficulty in the initial period after the promulgation of the law on associations, a recent case raises serious concern about the future of women's organizing in Poland.

A small women's organization in a provincial capital, Bydgoszcz, applied for registration as a legal entity in 1991.⁹ On November 26, 1991,¹⁰ a hearing was held at the Provincial Court, Civil Department no. 1; the chief judge was Marianna Skrzyszewska. Under the law, the local government may present its opinion about the by-laws of any organization to be registered in its territory. In practice, the exercise of this option is extremely rare and a registration hearing is usually a formality. In this case, a representative from the local body (Urząd Wojewódzki) showed up in court. She gave a document to the judge but not the association members, even though the association was one of the two addressees. The document, which the association received after the hearing, pointed out that its by-laws contradict the law on associations because, among other things, they demand unconditional obedience from members. In fact, the passage in question, point 9, part 4 of the by-laws, states that one of the ways the association proposes to act is by "taking a stand against the limits on women's rights to make decisions in the field of motherhood."

At the outset of the hearing, the judge stated that the by-laws were invalid and that the petition was denied. The law in Poland, she said, protects everybody, including the weakest, and that means the unborn; accordingly the passages about organizing and women's self-determination were illegal. In fact, current Polish law does not protect the unborn. The 1956 law legalizing abortion is still on the books. Moreover, even if abortion were made illegal, that would hardly justify a refusal to register an organization taking a stand in favor of the right of women to make a choice any more than it would be justifiable to prohibit an anti-abortion group from registering at a time when abortion is legal.

In addition, the judge also stated that women in Poland have too many rights, are very tired as a result and do not need any new rights. The women's group is appealing the verdict. A local newspaper later reported: "Those present ... also say that in the course of the debate the Court did not try to hide her own beliefs — contrary to the ideals of the association — and her lack of

⁸Prawo o stowarzyszeniach, Dz. U. Nr 20 z 10.4.1989.

⁹Women's Self-Defense Movement in Bydgoszcz - telephone interviews with one of the founders, Halina Lewandowska.

¹⁰This is a symbolic date: the day Poland became a member of the Council of Europe, and thus subscribed to the European Convention on Human Rights, with its article 14, regarding equality between men and women.

willingness to register."¹¹

A refusal to register an organization is extremely rare and the judge's oral opinion denying registration misstated the law. Even the presence of the local government representative at such a hearing is extremely unusual, as is governmental opposition to registering an association.

Solidarity Union's Women's Section¹²

In 1989, the Brussels-based International Confederation of Free Trade Unions (ICFTU), which had been funding Solidarity for several years, expressed its concern over the union's limited activities with regard to the situation of women. As a result, the deputy chairman of Solidarity, Lech Kaczyński decided to establish a "women's section" in September of that year, and hired Malgorzata Tarasiewicz (a Freedom and Peace¹³ activist from Gdańsk) to staff it. Tarasiewicz undertook contacts with women in regional offices and organized meetings that eventually resulted in the creation of a women's network within the union. The women organized some activities, such as media workshops, to teach union activists how to behave in front of a camera, how to talk to reporters, to help them answer important questions (such as, for example, why there are so few female union leaders). This network of women soon came up with its own union agenda.

In May 1990, a national congress of Solidarity was held (ten percent of the delegates, but half of the rank and file members of the union, were women) and passed a resolution about the need for legal protection for the unborn. The women's section protested on the grounds that delegates had no mandate to adopt such a resolution as women members had not been consulted on this matter. In two regions of Poland, members of the women's section conducted referenda in factories that demonstrated that members opposed the resolution and favored the right to abortion.

The union leadership expressed its unhappiness about these actions, both publicly and through conversations with Tarasiewicz. In the process, it was suggested to her that she should try to find a job with some feminist organization. At the same time, members of the women's section in regional offices were harassed. For example, according to Tarasiewicz, they were banned from representing the union abroad because "they lack the proper moral spine."

Tarasiewicz eventually resigned on March 15, 1991. Two weeks later, her assistant was dismissed. After she quit, Tarasiewicz received phone calls from Solidarity's Gdańsk office prohibiting her from maintaining contact with members of the "so-called women's section." She was threatened that if she disobeyed the ban, she would be publicly disgraced.

Tarasiewicz is currently the national Chair of the Polish section of Amnesty International.¹⁴

¹¹Marceli Bacciarelli, "Sąd nierychliwy, ale..." *Ilustrowany Kurier Polski*, January 7, 1992.

¹²It is important to stress that Solidarity played a paramount role in the Polish developments leading to the demise of communism and that it thus cannot be considered as strictly a trade union. The two first post-communist cabinets (the Mazowiecki and Bielecki governments) from 1989 through 1991, described themselves as "Solidarity" governments, although the union was legally separate from the government. In the 1989 parliamentary election, virtually all non-communist candidates (with a few exceptions) ran on a Solidarity ticket. The chairman of the union until late 1990 is the current President of the country, Lech Walesa.

¹³For information about Freedom and Peace, see Helsinki Watch reports: *Reinventing Civil Society, Poland's Quiet Revolution 1981-1986*, December 1986, and *From Below*, October 1987.

¹⁴Interview with Malgorzata Tarasiewicz.

EMPLOYMENT/UNEMPLOYMENT

Women have long been discriminated against in the job market. This has become more pronounced in recent years. While women's participation in the job market has been very high, as has been their professional training, relatively few managerial positions have been held by women and salaries have been significantly lower than those of men holding comparable positions. Although men constitute a slight majority of those with college education (89 female for every 100 male graduates as of 1988), women are in a significant majority among those with high school diplomas (150 for every 100 men).¹⁵ In general, therefore, Polish women are better educated than men.

According to Polish official data, as of 1988, more than 50 percent of Polish women had jobs and they accounted for about 45 percent of all employed Poles. Women's participation in managerial positions, however, has been low and their earnings have been significantly lower than those of men employed in similar jobs: women average between 70 and 80 percent of the pay received by men holding the same jobs.¹⁶ It is also important to stress that some areas of the job market (such as teaching, nursing, janitorial cleaning, clerical) have become overwhelmingly female. As these are among the lowest paying jobs, and as the majority of women perform such work, Polish women's income on the whole is significantly lower than that of men.

Though Polish women endured discrimination, until the departure of communism they suffered virtually no unemployment (which was true for the entire country). Since then, unemployment has become a steadily growing feature of the Polish economy, currently averaging about 15 percent; some parts of the country approach 20 percent.¹⁷

At the outset of the economic changes, women accounted for less than half of the working population (45.4 percent¹⁸); currently they constitute more than half of the unemployed (52.4 percent as of September 1991¹⁹).

There are a number of reasons for this development. According to interviews we conducted in Poland, women are more likely to be fired than men because, in massive layoffs, there is a tendency to protect the "main supporter" of a family. Since men generally earn more money than women, in any given family a man is more likely than a woman to be the "main supporter."

In addition, women find it much more difficult than men to get new jobs because of the dramatic differences in the numbers of job opportunities for men and women. Announcements of job openings are frequently gender-specific. In fact, the state-run employment agency, which everybody seeking to collect unemployment benefits must use, handles women and men separately. In a Warsaw office of that agency, the male and female employment offices are located on separate floors.

According to the most recent statistics available to us, during the first ten months of 1990 (1990 was the first year when unemployment became a part of the Polish economic reality), the percentage of unemployed women among all unemployed Poles grew from 40.7 to 51.1. During that period, there were several times more job offers for men than for women. In January of that year, there were three unemployed women for each job offer while the number of unemployed men equaled the number of offers. In

¹⁵ *Kobieta w Polsce*, Główny Urząd Statystyczny (The Woman in Poland, Main Statistical Office), Warsaw, November 1990, at 18.

¹⁶ *Ibid.*, at 13 and 14.

¹⁷ *Informacja o Stanie i Strukturze Bezrobocia w Polsce*, Labor Ministry, September 1991.

¹⁸ *Kobieta w Polsce*, at 21.

¹⁹ Labor Ministry, September 1991.

October, for each job offer for a woman there were 37 unemployed, while for men that proportion was one to 10.²⁰

Other factors related to the transition from communism contribute to women's decreased participation in the job market. In public discussions of unemployment, numerous voices have pointed out that one way to decrease its impact would be to encourage mothers to stay home and take care of their children rather than look for outside jobs. Government action in the area of child care, whether intentionally or not, has supported that trend. For example, in the first stage of this transition, many parts of the infrastructure of the central "socialist state" have come under the control of various local bodies. This was the fate of most day care centers. Under communism, day care was affordable and generally (although not universally) available. Since the end of communism, more than half of all day care centers have closed down. Of those that stayed open, most became extremely expensive and for women with more than one child it often no longer makes economic sense to work.²¹

In addition, Solidarity has proposed a "family wage," designed in effect to make women stay home. A man would collect substantial supplements to his salary for each child if his wife did not work, making it economically inadvisable for some women to work. The proposal has not been implemented as of this writing, because of, among other reasons, budgetary constraints.

HEALTH CARE

In the past few years, a political campaign to ban abortion has been underway in Poland. Though Helsinki Watch and the Women's Rights Project have not taken a stand on the right to an abortion,²² we note that some proposed or actual changes of the law in Poland are particularly punitive against women. For example, a provision of a proposed 1990 Senate bill included prison terms for the women who undergo abortions;²³ the current version of that bill penalizes women who self-inflict abortions.

The executive branch of the first post-communist government acted quickly to make abortion more difficult. Under a directive issued in the spring of 1990 by the Mazowiecki government, a woman seeking an abortion in a state facility must obtain approval from a psychologist and two doctors.²⁴ Previously, women seeking an abortion in a state hospital only needed to present a note from a doctor attesting to her adverse social or medical circumstances. Obtaining such a note was a formality, and abortion was generally available on demand in the first trimester of pregnancy.

Under the new directive, a woman needs three documents from three different clinicians. Moreover, a doctor may refuse to issue the necessary document even if the facts support the woman's claim to need an abortion. The Ombudsman sued in the Constitutional Tribunal challenging a doctor's arbitrary power to refuse to issue such a document, but the Tribunal held that the regulation was constitutional. The Tribunal's decision contains this curious statement, which comes from an affidavit by the Minister of Health, the original source of the directive: "...the document we are talking about [that is the doctor's note assessing the

²⁰ *Kobieta w Polsce*, at 25.

²¹ Malgorzata Pomianowska, "Wraca Ola z przedszkola," *Polityka*, June 8, 1991.

²² In general, as groups promoting human rights internationally, we promote compliance with international agreements on human rights, such as the 1975 Helsinki Accords. The question of abortion is not mentioned in those agreements.

²³ The bill was passed by the Senate in a modified version which eliminated the prison term for the patient. That draft law, however, later died in the lower house, the Sejm. The new parliament, elected in October 1991, will take up the abortion issue again in near future.

²⁴ Rozporządzenie Ministra Zdrowia i Opieki Społecznej z dn. 30 kwietnia 1989 (Dz. U. Nr 29 poz. 178).

objective facts in favor of the abortion, such as health reasons, difficult material situation of the woman, social reasons, etc.] cannot be considered the same as any other document about the existing facts."²⁵

Furthermore, there is now a fee (about one-fourth of an average monthly salary) for all abortions in state facilities. This is the only medical procedure (other than cosmetic surgery without medical indications) for which there is a fee for everybody. (With some exceptions, health care is free for all Poles.)

The newly promulgated medical ethics code reflects the current political climate with respect to abortion. The code was approved by the Polish Medical College during a national convention held in mid-December 1991. The Medical College, created in 1989, is a body to which all Polish doctors must belong and which was given by law the right to revoke a license to practice medicine. A doctor may not perform an abortion under the new code unless the mother's life or health is in danger or unless the pregnancy resulted from a felony. It also provides that pre-natal tests that may endanger the life of the fetus or the mother may not be undertaken; and that the knowledge that the mother is carrying a damaged or malformed fetus due to a hereditary disease or other factors, does not justify abortion. Doctors who disobey may be disciplined with a number of sanctions, up to the revocation of their medical licenses. Abortion is the only medical procedure (except euthanasia) which the ethical code specifically prohibits.

The medical code went beyond existing law with respect to abortion. Moreover, it deprives women of a type of previously available medical care: pre-natal tests. It places the decision regarding such tests with the doctor, not with the woman. (Some pre-natal diagnostic tests, such as amniocentesis, which are performed routinely in many countries if the mother so desires, pose risks to the fetus in a small percentage of cases.) It is also worth noting that the ethical code states that a doctor should provide the same quality of medical care to any patient, regardless of "age, race, nationality, religion, social background, financial status, or political beliefs." It omits any reference to sex.²⁶ In a telephone interview with the organization's lawyer, we were told that this issue was raised by the delegates during the convention, but they decided not to include a reference to sex because "it was too obvious."

The new medical code caused a heated debate in the press, but the government remained silent about it, even though some provisions violate existing law, under which abortion is legal in Poland. Only the Government Plenipotentiary for Women's and Family Affairs, after reading a draft, objected to some provisions in a letter she sent to the convention. Her comments were largely ignored.²⁷ Following the convention, a small group of members of parliament signed a petition to the Ombudsman asking her to challenge the law. The Ombudsman filed suit in the Constitutional Tribunal on January 7, 1992, and the case is pending at this writing.

The existing laws, as long as they remain on the books, must be observed and the executive branch of the government has a responsibility to safeguard them. It must not tolerate violations of the law in anticipation of the legislative changes.

VIOLENCE

²⁵Decision of the Constitutional Tribunal of January 15, 1991.

²⁶Article 3 of the Medical Ethical Code.

²⁷On February 28 the Plenipotentiary was dismissed by the government. According to press reports, the dismissal resulted from pressures by the Christian National Party, unhappy with the Plenipotentiary's opposition to the ethical code and a proposed anti-abortion bill. The Women's Caucus in the Parliament in a statement released following the dismissal, said: "Government officials (...) have a duty to act within the limits of the existing law. The dismissal of Minister Anna Popowicz proves that the current government does not take this duty into account." See: "Dymisia Anny Popowicz," *Gazeta Wyborcza*, 2/29-3/1, 1992; "Protest Kobiet w sprawie Rzecznika ds. Kobiet," *Gazeta Wyborcza*, 3/4, 1992.

Anecdotal evidence, such as letters to women's magazines and informal conversations, suggests that there is a high level of domestic violence against women perpetrated by their partners, often involving alcoholism, one of Poland's most serious social problems. However, reliable national statistics regarding violence against women are impossible to obtain. All available data from the police and from the courts focuses on the perpetrators, not their victims.

Cases of domestic violence against women are tried under Article 184 of the Polish Criminal Code which provides: "Whoever mistreats physically or morally a member of their own family or the perpetrator's permanent or temporary dependent, or a minor or a helpless person, can be sentenced to between 5 months' and 10 years' imprisonment."²⁸ The 9,025 convictions in 1990 under this article (of which 8,999 defendants were male) include child abuse, elderly parent abuse and other crimes, in addition to violence aimed at the sexual partner. Even "The Woman in Poland," the detailed and on the whole excellent publication of the official statistical agency published in November 1990 and cited here in several places, provides no information on this subject.

Whether intended or not, the lack of data about violence against women has the effect of covering up this form of abuse. Helsinki Watch and the Women's Rights Project of Human Rights Watch note that a positive step is a recent study of violence by the Plenipotentiary for Women's and Family Affairs. We await the results of that study and call on the government of Poland to engage in an ongoing and comprehensive effort to collect and publish information about violence against women so that it is possible to mobilize the necessary effort to deal with what we suspect is a hidden problem of considerable magnitude and great significance.

Helsinki Watch is an independent organization created in 1978 to monitor domestic and international compliance with the human rights provisions of the 1975 Helsinki Accords. The chair of Helsinki Watch is Robert L. Bernstein and the vice chairs are Jonathan Fanton and Alice Henkin. Jeri Laber is the executive director; Lois Whitman is deputy director; Catherine Cosman is Washington representative; Holly Cartner is staff counsel; Rachel Denber and Ivana Nizich are research associates; and Sarai Brachman, Pamela Cox and Elisabeth Socolow are associates.

Helsinki Watch is a component of Human Rights Watch, which includes Americas Watch, Asia Watch, Africa Watch, and Middle East Watch. The chair is Robert L. Bernstein and the vice chair is Adrian W. DeWind. Aryeh Neier is executive director; Kenneth Roth is deputy director; Holly J. Burkhalter is Washington Director; Susan Osnos is Press Director; Joanna Weschler is Director of the Prison Project.

Helsinki Watch is affiliated with the International Helsinki Federation in Vienna, Austria.

The Women's Rights Project was founded in 1990 to monitor in conjunction with Human Rights Watch's five regional divisions violence against women and sex discrimination internationally. The Director is Dorothy Q. Thomas.

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²⁸Kodeks Karny, Warsaw 1989.