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The modernisation of the system of justice in the Polish lands in the nineteenth century

Modernizacja wymiaru sprawiedliwości na ziemiach polskich w dziewiętnastym wieku

INTRODUCTION

The turn of the nineteenth century in Europe triggered off modernisation processes within all spheres of public life, including the organisation and the principles of the functioning of the system of justice. The liquidation of feudal relations, the abolition of the class division of the society and the departure from the absolute rule created in most European countries conditions for basing the system of justice on the principles of independence, formal equality and commonness. The above ideas were realised the earliest and the most fully in the countries adopting the constitutional regime. A constitutional state – in accordance with the theory of the division of public powers – carried out a consistent separation of the justice from the legislative and the executive, thus guaranteeing the observance of the principle of the independence of the judiciary from other State structures, particularly from the administrative authority. What reinforced the principle of the independence of the justice from the remaining State authorities was the introduction of the principle of the judicial independence within the scope of the jurisdictional functions performed by judges. The above aim was achieved by providing judges with the guarantee of irremovability from office and formal and material immunity, introducing at the same time the requirement of the professionalism of the judges. A significant change within the organisation of the system of justice was the larger and larger participation of the unprofessional social factor in the composition of benches in the form of a jury or the institution of jurors. The consequence of introducing the guarantee of the

independence of the justice and making the idea of the State of law more common was the emergence of the administrative judiciary as the instrument of protecting citizens against the decisions of public administration organs that were against the law. A great achievement of the constitutional state was the liquidation of the particular judiciary and the introduction of a few (usually two or three) instances of the structure of the common judiciary that was uniform in the entire country and available to all citizens, with one supreme court which decided in the last instance legal cases in the system of cassation or appeal. The unification of court structures was accompanied by the unification of the procedural law and the new organisation of the public prosecutor's office and the bar that was adapted to the new model of the justice.[1]

The modernization processes of the justice presented above first appeared in Europe at the turn of the nineteenth century in the revolutionary and then Napoleonic France. Over the nineteenth century they spread over virtually all other European states, setting the standards of the organisation and the functioning of the system of justice that have been binding and unquestionable till this day.[2]

THE FRENCH MODEL

The constitution of the Duchy of Warsaw of 22 July 1807 introduced, for the first time in the Polish lands, modern bourgeois principles of the organisation and the functioning of the system of justice. The above principles, despite the later political transformations, for almost seventy years set standards binding within this sphere. In title IX of the constitution, entirely devoted to the organisation of the judiciary, the system of justice was based – following the example of Napoleonic France – on the principle of the openness and publicity of judicial proceedings, both in civil and criminal cases, the separateness of the criminal and the civil judiciaries and the principle of the independence and separateness of courts of law from other public authorities. The constitutional guarantee of the irremovability of judges, appointed (except for justices of the peace) by the king for life and independent in their decisions, was to serve the realisation of the above principles. Besides the right to appoint judges, the king's participation in

[1] J. Baszkiewicz, *Powszechna historia ustrojów państwowych*, Gdańsk 1998, s. 207–236; S. Grodziski, *Porównawcza historia ustrojów państwowych*, Kraków 1998, s. 197–330; K. Koranyi, *Powszechna historia państwa i prawa. Od Rewolucji Francuskiej do Rewolucji Październikowej*, Warszawa 1962, s. 9–91; T. Maciejewski, *Powszechna historia ustroju i prawa*, C. H. Beck, Warszawa 2000, s. 557–566, 634–637, 661–666; M. Szczaniecki, *Powszechna historia państwa i prawa*, Warszawa 1994, s. 303–492; M. Wąsowicz, *Historia ustroju państw Zachodu*, Warszawa 1998, s. 131–238.

[2] S. Grzybowski, *Dzieje prawa*, Wrocław 1981, s. 132–330; K. Kamińska, A. Gaca, *Historia ustrojów państwowych*, Toruń 2002, s. 553–558, 594–597, 606–613, 678–679, 738–729.

the justice was limited to the exercise of the power of pardon and signing court verdicts with his name. The removal of a judge from office was possible only in the case of a valid sentence for a crime committed in connection with holding office. The candidates for judicial posts, except for justices of the peace, were required to have professional qualifications. They had to complete legal studies in the School of Law that was established in Warsaw in 1808, do minimum one-year apprenticeship in the legal profession and take a theoretical and practical apprenticeship exam for the post of assessor or judge, depending on the post the candidate was applying for. In the Polish realities the above requirements were a novelty breaking with the former tradition of the prepartitioning judiciary.[3]

The Constitution of the Duchy of Warsaw would break with the system of class courts and introduce common judiciary, based on the principle of formal equality of citizens before the law. Following the French example, though with certain inconsistencies, it based the organisational structure on the principle of the separateness of the civil and the criminal judiciaries.[4]

Within the domain of the civil judiciary there were established peace courts, a judicial instance of conciliatory character, and two-instance civil tribunals and a court of appeal. The structure of penal courts was based on the triple division of crimes, with respect to the expected punishment, into petty offence, misdemeanour and felony, which was adopted from the French criminal law (Code penal of 1808). It provided for separate police, correction and criminal jurisdictions for each of the above categories of criminal acts. A significant novelty in the above system of the organisation of the system of justice was the adoption on the Polish ground of the institution of the cassation of sentences and assigning the function to the State Council.[5] The detailed organisational structure and the competences of particular judicial instances were as follows:

As mentioned above, within the system of the civil judiciary the lowest instance was peace courts. The Constitution provided for establishing a court of

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[3] M. Kallas, *Ustawa Konstytucyjna Księstwa Warszawskiego z 1807 r.*, [w:] *Konstytucje Polski*, t. I, Warszawa 1990, s. 144–148; A. Korobowicz, *Księstwo Warszawskie. Sądownictwo*, [w:] *Historia państwa i prawa Polski*, t. III, *Od rozbiorów do uwłaszczenia*, Warszawa 1981, s. 122–123; J. Mazurkiewicz, A. Korobowicz, *Historia państwa i prawa polskiego 1795-1864*, Lublin 1970, s. 9–35; W. Sobociński, *Historia ustroju i prawa Księstwa Warszawskiego*, Toruń 1864, s. 239.

[4] *Zbiór Przepisów Administracyjnych. Wydział Sprawiedliwości*, Vol. VII, Warszawa 1866, s. 9–23; S. Zawadzki, *Prawo cywilne obowiązujące w Królestwie Polskim*, Vol. III, Warszawa 1863, s. 345–354; W. Sobociński, *Prokuratura sądu kasacyjnego w Księstwie Warszawskim*, Toruń 1993, s. 15; W. Witkowski, *Uwagi o modernizacji sądów i prawa na ziemiach polskich w czasie zaborów*, [w:] *Państwo. Prawo. Myśl prawnicza. Prace dedykowane Profesorowi Grzegorzowi Leopoldowi Seidlerowi w dziewięćdziesiątą rocznicę urodzin*, Lublin 2003, s. 305–306.

[5] M. Kallas, *op. cit.*, s. 144; T. Maciejewski, *Historia ustroju i prawa Polski*, Wyd. C. H. Beck, Warszawa 2003, s. 217–219; A. Korobowicz, W. Witkowski, *Historia ustroju i prawa polskiego (1772–1918)*, Kraków 1998, s. 75–85.

this type in each *poviat* (district) and each larger city of the Duchy. In practice, over 100 such courts were established. Peace courts were composed of the conciliatory and litigious departments. The former was composed of three lay, unprofessional and unpaid (honorary) justices of the peace that were appointed by the king from among the triple number of candidates selected by the local government called the poviat self-government, for six years with one third being exchanged every two years. In the latter, cases were judged by a professional official, known as *podsędek* (deputy justice of the peace), who was appointed by the king for life. The conciliatory (non-litigious) department functioned in a bench of one with justices of the peace alternating every four months. The justices of the peace ran a conciliatory meeting of the parties involved, which was obligatory before bringing an action to the civil courts of justice in the first instance. Moreover, within the competence of the justices of the peace was presiding over family councils and handling welfare cases. In the litigious department the jurisdiction was exercised single-handedly by the deputy justice of the peace (*podsędek).* He adjudicated civil cases of value up to 160 zlotys, and if the value of the object of issue did not exceed 80 zlotys, his decisions were final.[6]

In each of the ten departments of the Duchy of Warsaw one civil court of justice was established, which was composed of the president and six professional judges. Each court of justice was divided into two departments that adjudged collectively in benches composed of three judges. In the first instance the above courts adjudicated all civil cases that were not reserved for peace courts. In cases of lower significance, with the value of the object of issue not exceeding 1600 zlotys, their decisions were final, whereas in the remaining cases their decisions could be appealed against to the court of appeal. Moreover, civil courts of justice were the second instance, the instance of appeal against the decisions of peace courts.[7]

The appeals against the decisions of civil courts of justice issued in the first instance were adjudicated by the Court of Appeal in Warsaw, one for the entire Duchy of Warsaw. It was composed of the chief president, the presidents of departments and a dozen or so professional judges appointed by the king for life. Within its internal structure it was originally divided into three, and after 1810 into four, departments. It adjudicated in the second instance exclusively, in benches composed of five judges, and its decisions were final.[8]

Following the introduction of the French commercial code in the Duchy of Warsaw, in larger cities of the Duchy there were established, following the French

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[6] S. Płaza, *Historia prawa w Polsce na tle porównawczym*, Part 2, Kraków 1998, s. 189–190; W. Sobociński, *Historia ustroju i prawa...*, s. 244–246.

[7] A. Korobowicz, *op. cit.*, s. 124.

[8] *Ibidem.*

model, commercial courts. These were courts competent to adjudicate in the first instance disputes involving commercial proceedings. They were composed of the president, the deputy president and judges elected by the merchant assembly. Only the president and his deputy were professional judges, whereas the functions of the remaining members of commercial courts were of honorary character. Within the hierarchy of civil courts they were of equal rank with civil tribunals, thus their decisions could be appealed against to the court of appeal in Warsaw.[9]

As mentioned above, the organisation of criminal judiciary in the Duchy of Warsaw was based on the adjustment of jurisdictional agencies to the division of crimes into petty offences, misdemeanors and felonies.

The trial of cases prosecuted as petty offence, i.e. crimes subject to the so-called police penalties – up to five days of arrest or a fine of 30 zlotys – was placed within the competence of the courts of ordinary police. The jurisdiction in these cases was exercised single-handedly by deputy justices of the peace (*podsędek)* or judicial clerks at peace courts, which resulted – unlike in the French model – the integration of the civil and criminal judiciaries in the lowest instance. The courts of ordinary police in the Duchy of Warsaw – unlike in France – were simply the police departments of peace courts. Misdemeanors which were subject to the so-called corrective penalties, i.e. a penalty of imprisonment for up to five years or a fine of over 30 zlotys, were in the first instance within the competence of the courts of corrective police. In each department of the Duchy there were established two such courts, with their total number reaching twenty. The jurisdiction in the courts of corrective police was exercised by a jury composed of a criminal deputy justice of the peace (*podsędek*), a judicial clerk and a junior judicial clerk. Apart from handling misdemeanor cases, the courts of corrective police were also competent to examine in the second and last instance the appeals against the decisions of the courts of ordinary police in cases prosecuted as petty offence, as well as to investigate cases within the competence of criminal courts. Felony cases, i.e. crimes subject to a penalty of imprisonment for more than five yêars or a capital punishment, fell within the competence of criminal courts. In the Duchy of Warsaw there were established five such courts, one per every two departments. Criminal courts adjudicated felony cases in the first and last instance. Moreover, they were the instance of appeal against the decisions of the courts of corrective police issued in the first instance in misdemeanour cases. These were entirely professional courts, adjudicating in benches composed of three professional judges. Unlike in France, the participation of a jury in their jurisdiction was not provided for.[10]

[9] S. Płaza, *op. cit.*, s. 190.

[10] *Zbiór Przepisów Administracyjnych. Wydział Sprawiedliwości*, Vol. X, Part II, Warszawa 1866,

The function of the court of cassation for both civil and criminal judiciaries was exercised in the Duchy of Warsaw by the State Council. It was a major departure from the French solutions, where the cassation jurisdiction fell within the competence of the Tribunal of Cassation that was independent of the administration. The State Council of the Duchy of Warsaw was the central agency of the state, exercising powers within the scope of legislation, administration and justice. It was composed of ministers, state advisers and referendaries appointed and removed by the king. Within the scope of justice it was the cassation, the administrative and the competence court. As the court of cassation it adjudicated in benches composed of five or nine.[11]

Pursuant to the royal decree of 3 April 1810, the cassation procedure was applicable only to final verdicts, i.e. such that could not be appealed against, but were not valid yet. The ground for a cassation complaint was exclusively a breach of the substantive or adjective law. As a consequence, the court of cassation could not adjudicate the case on its merits or change the appealed judgment, but it confined itself to overrule (reverse) the appealed decision and to hand the case over to another court of the same instance for rehearing. The cassation judgment indicated the legal regulation being violated by the appealed verdict, yet the interpretation of the law was not binding for the adjudicating court. As a consequence, one and the same case could return to the court of cassation thrice for the same cassation reasons. The court of cassation adjudicated in benches composed of five, and its judgments were passed by a majority of votes. The re-examination of the same case by the court of cassation was performed with the composition of the bench being increased to nine. It was only after the judgment had been appealed against for the same reason for the third time that the court of cassation would hand the case over to the king to provide a binding interpretation of the appealed legal regulation. Such definition of the function of the court of cassation was the foundation of the judicial organisation, where each case, civil or criminal, would pass two merits instances at the most before it was finally adjudicated, and the institution of cassation was to ensure uniform application of the law across the entire country.[12]

Following the introduction of the French model of judicial organisation, there were established modern administrative, supervisory and auxiliary organs of the justice – the public prosecutor's office and the bar, strictly connected with the new structure of judicial instances. The bar was an unknown institution in the pre-partitioning Poland, thus its introduction in the Duchy of Warsaw was

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s. 93–107; W. Sobociński, *Historia ustroju i prawa...*, s.282–289; S. Kutrzeba, *Historia ustroju Polski w zarysie*, Vol. III, Lwów 1920, s. 69–75.

[11] W. Sobociński, *Historia ustroju i prawa...*, s.247–250.

[12] A. Korobowicz, *Księstwo Warszawskie...*, s. 126–127.

the relatively closest duplication of the French example. Public prosecutors' offices were established only within the highest judicial instances. Barristers were obliged by the principle of hierarchical subordination.[13]

The main function of prosecutors was the constant control and supervision of courts and judicial officers on behalf of the minister of justice. Within this domain they acted as representatives of government authorities. Furthermore, they could exert a direct influence upon the jurisdiction. As regards criminal proceedings, prosecutors did not participate in investigative proceedings, which were carried out by courts themselves, yet they acted as public prosecutors, and as such they were responsible for drawing up indictments and supporting them in the course of proceedings. As regards civil law proceedings between private individuals, they could file petitions, irrespective of the will of the parties, and examine the dossier. Unlike in France, in the Duchy of Warsaw prosecutors were always present during the deliberation of judges and participated in executive proceedings. They did not, however, have the right to appeal in any case and in every instance. Whereas the public prosecutor general at the court of cassation had not only the right but the duty to file a cassation complaint in every case where the cassation grounds were present.[14]

While organising the bar, new French solutions were combined with the former pre-partitioning Polish tradition. Advocates, called public counsels, were divided into three categories, depending on the type of court at which they operated[15]: *"patron"* – at civil courts, *"adwokat"* – at the court of appeal, and *"mecenas"* – at the court of cassation. Simultaneously, an obligatory assistance of an advocate was introduced into legal proceedings. *"Patron"*s were appointed by the minister of justice, while *"adwokat"*s and *"mecenas"*s – by the monarch. Unlike in France, legal counsels did not constitute their own professional corporation, but just like in former Poland they were officials of judicial offices. Officially and disciplinarily, they were subordinate to the courts at which they were appointed. Due to the rule of the obligatory assistance of an advocate that was binding in the civil process, their participation in the proceedings before the civil courts at which they were appointed, was obligatory. Nonetheless, they could also participate in criminal cases before criminal courts, but in one instance only.[16]

An important complementing element of the modernisation transformations of the system of justice in central Polish lands in the first half of the nineteenth century was the introduction of administrative judiciary. As in the case of common judiciary, its organisation and functioning – with certain modifications –

[13] S. Płaza, *op. cit.*, s. 191.
[14] *Ibidem*, s. 192.
[15] *There were used the original Polish names.*
[16] W. Witkowski, *op. cit.*, s. 304.

was based on French solutions. As in France, the administrative judiciary in the Duchy of Warsaw was of two-instance structure, and its performance was assigned to the organs of state administration. The first instance of this type of the justice was prefectural councils, and the second instance was the State Council, which were auxiliary bodies of the prefects heading territorial administration in the departments. As an administrative court, prefectural councils judged collectively in benches composed of 3–5 officers. They adjudicated administrative, yet only these relating to property, disputes between public administration bodies and private individuals. In cases of the value exceeding 1000 zlotys their decisions could be appealed against to the State Council. The second and the highest instance of administrative jurisdiction was, as mentioned above, the State Council. It adjudicated the appeals against the decisions of prefectural councils and departmental councils (local government bodies). Furthermore, it adjudicated, in the first and last instance, disputes stemming from the contents of agreements within the domain of public orders contracted by the chief bodies of the departmental administration of the state, i.e. ministers.[17]

The above model of the organisation of the justice, despite the subsequent political changes taking place in central Polish lands (the liquidation of the Duchy of Warsaw and the establishment, in 1815 on most of its former territory, of the Duchy of Poland that was politically connected with Russia, as well as the political repressions following the November Uprising 1830–1831), continued in its basic assumptions for next six decades i.e. until 1876. Within this period, apart from the establishment of land registry departments at peace courts and civil tribunals in 1818 and 1825, it was only in the highest instance that some major changes within the organisation of the justice took place.[18]

Already in 1813, after the central authorities, including the State Council, had left the territory of the Duchy of Warsaw, the court of cassation ceased to function, which disorganized the activity of both types of courts of common law in a major way. In order to handle his unwelcome situation, by virtue of the 22 March 1814 act of the Provisional Supreme Council (i.e. the Russian body provisionally administering the occupied territory of the Duchy of Warsaw on behalf of Tsar Alexander I), the cassation procedure, yet only in criminal cases, was handed over to the court of appeal in Warsaw, i.e. a civil court. At the same time, the above court was granted the appeal powers. After the reversal of a judgment

[17] K. B. Hoffman, *O stanie sądownictwa administracyjnego w naszym kraju*, „Themis Polska" 1830, Vol. 7, s. 285; W. Witkowski, *Sądownictwo administracyjne w Księstwie Warszawskim i Królestwie Polskim 1807–1867*, Warszawa 1984, *passim*; D. Malec, J. Malec, *Historia administracji i myśli administracyjnej*, Kraków 2000, s. 230–232.

[18] S. Zawadzki, *Prawo cywilne obowiązujące w Królestwie Polskim*, Vol. II, Warszawa 1861, s. 19 and 128; A. Heylman, *Historia organizacji sądownictwa w Królestwie Polskim*, Warszawa 1861, *passim*; S. Kutrzeba, *op. cit.*, s.102–105 and 147; S. Płaza, *op. cit.*, s. 194–198.

for cassation reasons, the above court judged a case on its merits, without handing it over to a court of lower instance. The issue of the lack of the cassation instance for civil cases was solved by the resolution of the Provisional Government of the Duchy of Warsaw of 21 September 1815. By virtue of the above resolution, a separate Court of Highest Instance was established in Warsaw. It adjudicated collectively in benches of seven, composed of senators and professional judges appointed by the emperor. The above court was supposed to handle civil cases in the cassation proceedings with the right to the final judgment on their merits, without handing the case over to a court of lower instance for reexamination. As a result, like in criminal cases, in civil proceedings the institution of the cassation of a judgment was also replaced with its revision.[19]

Despite their provisional character, the changes within the highest instance, introduced between 1814 and 1815, continued to be present until as late as 1831. Alongside with the liquidation of the institution of the senate of the Duchy of Warsaw following the November Uprising (1830–1831), the Court of Highest Instance ceased to exist. Under such circumstances, the Administration Council of the Duchy of Poland, by virtue of the regulation of 8 January 1833, provisionally entitled the so-far, i.e. the pre-uprising, seven-person bench of the former, formally inexistent, Court of Highest Instance to continue its activity. There were not any senators in this bench any more, and it was composed of professional judges exclusively. The temporariness of this solution turned out to be highly durable, as it continued for almost a decade. The last change within the organisation of the system of justice in its highest instance took place in 1841. By virtue of the Tsar's decree of 18 September 1841, there were established in Warsaw two Warsaw Departments of the Governing Senate, i.e. departments IX and X. Department IX took over the competence of the liquidated Court of Highest Instance in civil cases, while department X handled the appeals, in criminal cases, against the judgments of the Court of Appeal passed in the second instance. Thereby, the Warsaw departments of the Governing Senate became the third, revisory, instance, and their decisions were final. The introduction of the rule of three court instances in civil and criminal cases brought about changes in the hitherto competences of lower courts, which were deprived of the right to pass final judgments in the first instance. Henceforth, each civil or criminal case could be adjudicated by two or three court instances.[20]

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[19] A. Korobowicz, *Zmiany w ustroju sądownictwa najwyższego w Królestwie Polskim w latach 1815–1876*, „Czasopismo Prawno-Historyczne" 1972, Vol. XXIV (2), s. 123–127; A. Heylman, *O sądownictwie w Królestwie Polskim*, Warszawa 1834, s. 12–19; A. Suligowski, *O reformie sądowej w Królestwie Polskim*, Warszawa 1875, s. 3–5; W. Sobociński, *Historia ustroju i prawa...*, s.257–258.

[20] J. J. Litauer, *Z dziejów sądownictwa kasacyjnego w Polsce*, „Kwartalnik Prawa Cywilnego i Handlowego" (Rok II), Warszawa 1917; A. Korobowicz, *Zmiany w ustroju sądownictwa najwyższego...*, s. 128–140; A. Heylman, *O sądownictwie Królestwie Polskim...*, s. 56; A. Suligowski, *op. cit.*, s. 3–5;

The above changes in the highest instance resulted in the liquidation of the institution of cassation and its replacement with the revisory proceedings, and the violation of the fundamental principle of the French model of the justice, which was based on the system of two merits instances and a cassation instance.

THE RUSSIAN MODEL

The outbreak and the failure of the January Uprising were the deciding factor in the victory of the centralising tendencies in the tsar's policy towards the Duchy of Poland. The liquidation of the political distinctiveness of the Duchy of Poland was started, resulting in the subordination of other spheres of public life to the central authorities of the Russian Empire in Petersburg. The sphere which longest retained the elements of its political and legal distinctiveness was the judiciary of the Duchy of Poland, though the actions aiming at their liquidation were taken as early as the end of 1864. The principal aim, which was the unification of the judiciary systems of the Duchy of Poland and the Russian Empire, determined the fact that the Russian judiciary acts of 20 November/2 December 1864 became the foundation of the actions.

The principal problem brought up by the organs appointed to prepare the judiciary reform was the scope of the changes of the Russian judiciary acts of 1864 before their implementation in the Duchy of Poland. The departures from the Russian organisation of the judiciary stemmed mainly from social and political reasons and – furtherly – diverse legal conditions of the Duchy of Poland. In the process of the discussion on the shape of the reform and the political struggle at high levels of Russian administration, the works got prolonged until 1875.[21]

The final result of the preparatory legislative works was the construction of legal acts thoroughly reforming the judiciary system in the Duchy of Poland. They were approved of by Emperor Alexander II on 19 February/ 3 March 1875 and announced by the Governing Senate's decree of 6/18 March 1875.[22] The structure introduced on 1/3 July 1876, as well as the organisation of courts of law considerably varied from the regulations of the Russian act on the organisation of judiciary authorities of 1864 due to the solutions implemented in the Duchy of

W. Sobociński, *Zapomniane prawo o organizacji sądownictwa w Królestwie Polskim*, „Czasopismo Prawno-Historyczne" 1970, Vol. XXII (1), s. 123–125.

[21] A. Korobowicz, *Sądownictwo Królestwa Polskiego 1876–1915*, Lublin 1995, s.15–79.

[22] *Zbiór praw. Postanowienia i rozporządzenia rządu w guberniach Królestwa Polskiego obowiązujące, wydane po zniesieniu w 1871 r. urzędowego wydania Dziennika Praw Królestwa Polskiego*, gathered and translated by Stefan Godlewski, Vol. VI, Warszawa 1881, s.73–243. The original text in Russian language in: *Sobranije Uzakonienij i Rasporiażenij Prawitielstwa izdawajemoje pri Prawitielstwujuszczem Senatie*, S. Petersburg 1875, nr 20, s. 254.

Poland differing from those in the Russian Empire. Following the introduction of the Russian model of the judiciary in the Duchy of Poland, the last central organ of departmental administration functioning in Warsaw, i.e. the Governmental Committee of Justice, was abolished.[23]

I

1. Following the new regulations, the judiciary power was assigned to communal courts, justices of the peace, assemblies of the justices of the peace, regional courts, the Warsaw Judicial Chamber and the Governing Senate as the supreme cassation court guarding the uniformity of the jurisdiction of lower courts.

The new organisation provided for the division into the general and the peace judiciaries that were not related as far as the instance was concerned. The division was based on the assumption of the separation of the jurisdiction for petty cases, belonging to the peace judiciary, from the jurisdiction for more serious cases handled by general courts of law.

Within the system of general courts of law in the Warsaw Judicial Circuit there were 10 regional courts and the Warsaw Judicial Chamber. Juries functioning at that time in the Russian Empire were not introduced in the courts of law of the general type "until further regulation". For investigating criminal cases the posts of examining justices were created within the constitution of the regional courts. The instance of appeal for regional courts was the Warsaw Judicial Chamber presided over by the senior president. Both regional courts and the Warsaw Judicial Chamber adjudged collectively in the presence of at least three members. The function of the public prosecutor in criminal cases before courts and the supervision of law observance and the activity of courts were assigned to prosecutors and their assistants appointed at regional courts and the Warsaw Judicial Chamber.[24]

The drawback of the new organisation of the judiciary in the Duchy of Poland was the undermining of the rule of judicial independence. The Russian act on the organisation of judicial authorities of 1864 introduced the above rule in article 243 stating that judges "cannot be released without request [...], or transferred to another location without their consent. Temporary suspension in their duties may take place only in case of their being brought before court, and they may be subject to complete dismissal or removal from office exclusively following

[23] *Zbiór praw...*, Vol. VI, s. 315–317, 387–389; W. Witkowski, *Komisja Rządowa Sprawiedliwości w Królestwie Polskim 1815–1876*, Lublin 1986, s. 272.

[24] W. Miklaszewski, *Rys organizacyi władz sądowych podług ustaw z 20 listopada 1864 r. i postanowienia o wprowadzeniu reformy sądowej w Królestwie Polskiem z dnia 19 lutego 1875 r.*, Warszawa 1876, s. 53, 55–58; A. Korobowicz, W. Witkowski, *Historia ustroju i prawa polskiego (1772–1918)*, Kraków 1998, s.146–147.

the verdicts of the criminal court". In the Duchy of Poland the judicial independence had been a common rule since the very beginning of the operation of the French legislation. However the tsar's decree of 19 February/3 March 1875 introducing in the Duchy of Poland the Russian model of the judiciary, suspended the above regulation "until further act". Article 243 retained the binding power of the regulation exclusively with respect to presidents, deputy presidents and judges of general courts, and the public prosecutor, the public prosecutor's assistant and examining justices who had held this office for at least three years in the newly-organised courts of law. The state of temporariness within this sphere lasted until 1898, i.e. until judges' posts in general courts were filled mainly with Russians as a result of the policy of russification.[25]

2. The organs of peace jurisdiction were communal courts for rural people, justices of the peace in towns and the instance of appeal and cassation in the form of an assembly of justices of the peace (and communal judges).[26] What draws attention is the unusual variety of the organisational forms of the court. There existed the communal court that adjudged collectively and was presided over by an elected – in accordance with the rule – communal judge, alongside with a justice of the peace, an appointed civil servant, that adjudged individually. What also draws attention is the lack of independence of the peace jurisdiction from administrative authorities. The Russian regulations guaranteeing the independence of justices of the peace and presidents of the peace conventions were not suspended, as it was the case with the general judiciary, but altered, guaranteeing the Minister of Justice the possibility of personal changes using discretionary decisions.

A. New communal courts were introduced in a form that was so far unknown both in the Duchy of Poland and the Russian Empire. The so-far communal courts in the Duchy of Poland introduced following the enfranchisement reform of 1864 were strictly connected with the organs of communal administration and functioned independently of the general system of courts. It is difficult to compare them to the *volostnye* courts in Russia which were class courts serving exclusively the peasant class, thus as special courts they stood beyond the system of common judiciary. More similarities can, however, be spotted between communal courts in the Duchy of Poland and peace courts in Russia. The essence of

[25] K. Grzybowski, *Historia państwa i prawa Polski*, Vol. IV, *Od uwłaszczenia do odrodzenia państwa*, Warszawa 1982, s. 218; Najwyższej zatwierdzone zdanie Rady Państwa z 16/28 II 1898 r. – N. Rejnke, *Oczerk zakonodatielstwa Carstwa Polskago (1807-1881)*, S. Peterburg 1902, s. 170; N. Szrejber, *Uczrieżdienije sudiebnych ustanowlienij*, S. Peterburg 1910, s. 441–442.

[26] The official Russian name being used in the act and archival acts was 'an assembly of justices of the peace', yet due to the composition which was characteristic of the Duchy of Poland it was called 'an assembly of justices of peace and communal judges'.

these institutions was the principle of election, differing only in details. The communal court in the Duchy of Poland performed its jurisdiction in the newly-established circuits of communal courts. In each circuit a communal judge and at least three assessors and their deputies were elected by a communal assembly for the period of three years. The election of a communal judge was subject to approval by the Minister of Justice, who also had the right to appoint, in the administrative mode, other persons than the elected candidates. The persons elected to the posts of assessors were approved of by the governor general in consultation with the public prosecutor of a competent regional court.[27]

B. Justices of the peace held office in towns, performing their jurisdiction in circuits. The area of a circuit included an entire town within its administrative borders, or two, if there were two towns within a single district. Only in some capitals of *guberniyas* a circuit included a part of a town. They were appointed by the Minister of Justice in consultation with the Warsaw governor general.

A justice of the peace in Russia was elected by local population out of highly trustworthy and prestigious persons for the period of three years. The guarantee of the proper filling of the post of a justice of the peace was, in the first place, relatively high requirements in respect of income ensuring the independence of a justice of the peace and insuring against his potential abuses. Such elected justices of the peace enjoyed the support and trust of the electorate and were more familiar with local relations, which obviously made the fulfilment of their duties much easier. Another solution adopted in the Duchy of Poland was criticised in the Polish legal literature, though it was known in some regions of the Empire, for instance in the Baltic guberniyas and the Northern Caucasus.[28] The first objection was against the dismissal of the principle of eligibility – all the more incomprehensible that justices of the peace had exactly the same powers as elected communal judges. Secondly, it was thought that in the case of the dismissal of the principle of the eligibility of a justice of the peace and the fixed requirements in respect of income, the indispensable condition should be the graduation from a higher school of law. The above argument was fully justifiable if we look at the scope of the jurisdiction of justices of the peace and the necessity of a broad knowledge of binding law. The third objection concerned the too broad scope of powers of the justice department authorities, as each justice of the peace in the

[27] A. Bereza, *Sądownictwo pokojowe w guberni lubelskiej na tle Królestwa Polskiego (1876–1915)*, Lublin 2004, s.23–27; idem, *Sędzia gminny w Królestwie Polskim w latach 1876–1915 jako urzędnik służby obywatelskiej*, [in:] *Administracja, zarządzanie i handel zagraniczny w warunkach integracji, Materiały Konferencyjne - Administracja*, Krakowska Szkoła Wyższa im. Andrzeja Frycza Modrzewskiego, Kraków 2002, s.11–48.

[28] I. G. Szarkowa, *Mirowoj sudja w doriewolucjonnoj Rossii*, „Gosudarstwo i prawo", Moskwa 1998, nr 9, s. 80–82; N. N. Jefremowa, *Ministerstwo Justicji Rossijskoj Imperii 1802–1917 gg.*, Moskwa 1983, s. 70, 74, 92–99.

Duchy of Poland could be removed from office or transferred to another position at the discretion of the Minister of Justice in consultation with the Warsaw governor general. The above regulation was at total variance with the solutions adopted in the Empire, where justices of the peace enjoyed the independence of the administrative authorities and, constituting a self-governing corporation, jointly passed acts concerning matters which in the Duchy of Poland were reserved for the Minister of Justice.[29]

Alongside with the circuit justices of the peace in the Duchy of Poland there were the so-called additional justices of the peace functioning at the assembly of justices of the peace. They were modelled upon the institution of an honorary justice of the peace in the Russian Empire, with the difference that the additional justices of the peace earned a salary. Despite the obvious lack of the institution of honorary justices of the peace and numerous postulates in the legal press concerning their appointment, they never appeared in the Duchy of Poland.[30]

C. The higher instance in the peace circuit was the assembly of justices of the peace presided over by the president of the assembly. He was appointed, removed from office and transferred to another office on the strength of a decision issued by the Minister of Justice in consultation with the Warsaw governor general. The rule of the eligibility of the president of the assembly out of justices of the peace that operated in Russia, was also dismissed. The assembly was a court adjudging collectively in benches composed of the president of the assembly and equal number of communal judges and justices of the peace. The appointment of communal judges to the bench of the assembly of justices of the peace in the Duchy of Poland was the consequence of the introduction of communal courts in the common judiciary system.

II

The newly-established courts handled both civil and criminal cases. Thereby, the fundamental principle of the organisation of the so-far French system of the judiciary that provided for the division into the civil and the criminal judiciaries, was dismissed.

The above change was considered by the legal literature to be just and consistent with the postulates of the contemporary science of law. The reduction of the course of legal proceedings to two instances, both in general and peace courts,

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[29] A. Suligowski, *O reformie sądowej w Królestwie Polskiem*, odbitka z Niwy, Warszawa 1875, s. 8, 10, 19–21; J. Benzef, *Recenzja pracy A. Suligowskiego. Nowe sądy w Królestwie Polskim*, „Gazeta Sądowa Warszawska" 1886, nr 45, Literatura i krytyka, s. 717–718; W. Miklaszewski, *op. cit.*, s. 23, 44–45, 140–141; *Jakim powinien być sędzia pokoju*, „Gazeta Sądowa Warszawska" 1878, nr 3, s. 18, 20.

[30] A. Bereza, *Das Modell der Friedensgerichtsbarkeit im Königreich Polen im Hintergrund des Russischen Reiches in den Jahren 1876–1915*, [in:] *Sachsen im Spiegel des Rechts, Ius Commune Propriumque*, Böhlau Verlag Köln, Weimar, Wien 2001, s. 360–362, 369.

aiming at shortening legal proceedings, was considered a major progress. The so-far functioning system of three judicial instances in more serious civil and criminal cases resulted in protracted duration and thus considerable costs of courts proceedings.

The main postulate of the reform was to speed up proceedings. It mainly concerned the peace court proceedings, which in accordance with the spirit of the introduced changes, were much simpler and largely deprived of court formalism. The re-introduction of the institution of cassation in civil and criminal processes in a form similar to the French model, was also considered a major accomplishment. The cassation complaint was applicable only with respect to final sentences which could not be appealed against.[31]

III

For conducting land registry activities in the guberniya and district land registries, offices of land registry were established at regional courts and justices of the peace. They were separate offices with separate archives. The principles of the functioning of land registry offices were still regulated by the provisions of the Polish land registry acts of 1818 and 1825, as this type of land registry was unknown in the Empire. The organisation of the notariate was also affected by slight changes. Notaries, appointed by the senior president of the Warsaw Judicial Chamber at the motion of the president of the regional court, functioned at land registry offices of regional courts and justices of the peace.[32]

IV

The organisation of the Bar, in turn, was affected by some major changes. The defence boards, which were a form of professional self-government of barristers introduced in Russia, were liquidated. The rights and duties of the boards were performed by regional courts. Despite the existence of some stopgap self-government of the Bar, i.e. the Defence Committee at the Warsaw Regional Court in the years 1876–1882, the defence boards of the Russian type were never introduced.[33]

Alongside with sworn barristers and their assistants there was a separate category of private counsels. The above institution was adopted from the Russian

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[31] A. Suligowski, *op. cit.*, s. 6; A. Korobowicz, *Rys dziejów kasacji w polskim systemie sądowoodwoławczym*, [in:] *Polska lat dziewięćdziesiątych. Przemiany państwa i prawa*, Lublin 1998, s. 404–406.

[32] W. H., *Wydziały hipoteczne powiatowe*, „Gazeta Sądowa Warszawska" 1895, nr 41, s. 642–644.

[33] A. Korobowicz, *Reforma sądowa w Królestwie Polskim 1875/76 roku a kwestia organizacji adwokatury*, [in:] *Parlament. Prawo. Ludzie. Studia ofiarowane Profesorowi Juliuszowi Bardachowi w 60-lecie pracy twórczej*, Warszawa 1996, s. 120, 122–125; S. Car, *Stan adwokatury w Królestwie Polskim*, Warszawa 1915, s. 17–18; S. Janczewski, *Dzieje adwokatury w dawnej Polsce*, wkładka do miesięcznika „Palestra" 1970, nr 12, s. 87–89.

legislation and was subject to fierce criticism on the part of the entire bar. Low requirements resulted in a large group of people with no qualifications applying for certificates of private counsels, which was within competence of the assemblies of justices of the peace. The certificates entitled only to appearance before courts of the peace circuit competent for the assembly of justices of the peace that issued such a certificate.[34]

The self-government of bailiffs cast in its lot with the self-government of barristers, as the provisions regulating its functioning in the Empire were suspended in the Duchy of Poland until further regulation. Instead, the Russian principles of the functioning of bailiffs were introduced, which greatly differed from the suspended, yet much better, Polish solutions. Till then bailiffs were remunerated as they carried out their duties, which due the existing competition and the personal involvement of a bailiff would speed up enforcement proceedings. After 1876 bailiffs would hold regular posts at the Warsaw Judicial Chamber, regional courts and the assemblies of justices of the peace, where they would get a regular pay and a bonus being a share of the money coming from enforcement activities split among all bailiffs of the Warsaw Judicial Circuit. The above changes raised justifiable concerns about the speed of enforcement proceedings, all the more so that the number of bailiffs' posts was considerably reduced.[35]

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The presented model of the justice in the Duchy of Poland is indicative of the right direction of the changes within the organisation of the judiciary and the judicial procedure. Unfortunately, political and social concerns as well as the necessity of ensuring extensive powers of the executive in a country as unsubduable and rebellious as the Duchy of Poland was, made the tsarist system introduce changes limiting the independence of the judiciary. The principle of the separateness of the judiciary from the administration that was announced at the time of the judicial reform in Russia in 1864, could not apparently be applicable in the realities of the Duchy of Poland. This unfortunately had to distort the idea

[34] Przepisy o osobach mających prawo być pełnomocnikami w sprawach sądowych zatwierdzone 25 V / 6 VI 1874 r. wraz z wzorem świadectwa – Ustawy sądowe obowiązujące w guberniach Królestwa Polskiego na mocy najwyżej zatwierdzonego 19 II / 3 III 1875 r., Postanowienia o zastosowaniu ustaw sądowych z 20 XI 1864 r. do Warszawskiego Okręgu Sądowego, Vol. I, S. Petersburg 1875 (M. B.Wolf), s. 221–231; „Kraj" 1887, nr 29, s. 10; W. Spasowicz, *Organizacja adwokatury*, „Kraj" 1896, nr 31, s. 3–6 and nr 32, s. 3; *Kilka słów o obrońcach prywatnych przy instytucjach pokojowych*, „Gazeta Sądowa Warszawska" 1877, nr 12, s. 91.

[35] A. Suligowski, *op. cit.*, s.11 – 12, 22; W. Miklaszewski, *op. cit.*, s. 91; J. Benzef, *op. cit.*, s. 716–717; H. K., *Komornicy sądowi. Kilka uwag w przedmiocie dzisiejszej organizacyi*, „Gazeta Sądowa Warszawska" 1895, nr 16, s. 243.

of the authors of the great Russian judicial reform. Emperor Alexander II himself expressed it during his visit to Warsaw following the establishment of new courts of law in the Duchy of Poland, by expressing his desire for "courts of law and administration in the country to go hand in hand representing Russia's interest".[36] And not much changed within this scope until the evacuation of Russians from the Duchy of Poland in 1915 at the time of the I World War military actions.

THE PRUSSIAN MODEL

The modernisation of the system of justice in the Polish lands under the Prussian and Austrian dominance did not differ from the process of changes taking place within this sphere in other parts of Prussia and Austria. The reforms of the justice introduced in these lands pertained to the entire country, regardless of the ethnic or geographical factor. As a result, the Polish lands under the dominance of Prussian and Austrian monarchies freely (except the actually restricted access to the posts of judges and public prosecutors for Poles in Prussia) took advantage of the modernisation processes taking place there.

The reforms of the justice in the Prussian country began as early as the first half of the nineteenth century. They were, however, of quite restricted character. In the years 1807–1813 the separation of administrative and judicial authorities was carried out in Prussia. With the ongoing process of the enfranchisement of the peasantry, the patrimonial judiciary was gradually being liquidated and the existing organisation of the judiciary was being adapted to the new administrative division of the country into *poviats* (districts), regencies and provinces. The conditions for the establishment of uniform and independent common judiciary appeared in the Prussian country as late as the mid-nineteenth century, i.e. at the time of the transformation of the Prussian country into a constitutional state, which took place in the years 1848–1849. The constitutional era brought about new principles of the organisation and functioning of the system of justice in the Prussian country. These principles would liquidate the monarch's judicial authority, subject all citizens to uniform common judiciary and, pursuant to the principle of the equality of citizens before the law, liquidate the class system of the patrimonial judiciary. Judges were independent in adjudicating cases and were only subject to acts. This constitutional principle of judicial independence was realised by introducing in 1851 the guarantee of the life appointment of judges and the irremovability from office except in the case of disciplinary proceedings or persistent disablement for work.[37]

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[36] Alkar (A. Kraushar), *Czasy sądownictwa rosyjskiego w Warszawie (1876–1915). Kartka z pamiętnika starego mecenasa*, Warszawa 1916, s. 2.

[37] W. Witkowski, *op. cit.*, s. 302–303; J. Wąsicki, *Zabór pruski. Sądownictwo*, [in:] *Historia państwa*

Pursuant to the royal decree of 1849, a new three-level structure of common courts was introduced. They were uniform for criminal and civil cases, with public (with some exceptions) proceedings and with the admittance of the social factor to participate in adjudicating more serious criminal cases in the form of sworn or jury courts. Simultaneously, the role of the minister of justice was brought into prominence by assigning to him not only the administrative and supervisory functions over courts, but also by subjecting to him the public prosecutor's office and the bar.[38] The new structure of common courts, which was also introduced in the Polish lands, was as follows:

- **District courts (Kreisgerichte).** These were established in every *poviat* (district) and in towns with the population of over 50.000, where they were called city courts (**Stadtgerichte**). They were composed of the criminal and civil departments. They adjudicated in the first instance all criminal and civil cases (litigious and non-litigious). In criminal cases involving crimes subject to the death penalty or an imprisonment of more than five years, decisions were passed collectively, i.e. a jury of twelve decided about guilt, and a bench composed of five professional judges decided about a penalty. At each district court there was established the office of the prosecutor, who was officially subordinate to the minister of justice. The barristers at district courts were also made subordinate to the above minister. At this stage of the reform of the Prussian system of justice they were treated as civil servants. Like prosecutors, they were appointed by the minister of justice, yet as attorneys of parties they were remunerated by them only. In the Polish lands belonging to the province of Poznań and the province of Western Prussia there were 83 courts of this type.[39]

- **Courts of appeal (Apellationsgerichte).** There was one court of that type established in every province of the Prussian country. These were courts of appeal against judgments passed by district courts and courts of the first instance for some civil cases, such as e.g. foundations or *fidei-commissum*. Similarly as at district courts, at courts of appeal there functioned the office of the prosecutor and the bar. In the Polish lands belonging to the Prussian country such courts were established in Poznań, for the province of Poznań, and in Kwidzyń, for the province of Western Prussia.[40]

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i prawa polski, Vol. III, *Od rozbiorów do uwłaszczenia*, Warszawa 1981, s. 619–621; S. Płaza, *op. cit.*, s. 181–185; M. Szczaniecki, *op. cit.*, s. 421–426.

[38] S. Grzybowski, *Historia państwa i prawa Polski*, Vol. IV, *Od uwłaszczenia do odrodzenia państwa*, Warszawa 1982, s. 602–603; S. Kutrzeba, *Historia ustroju Polski w zarysie*, Lwów 1920, Vol. IV, Part II, s. 84–85; S. Płaza, *op. cit.*, s. 184–185.

[39] S. Kutrzeba, *op. cit.*, s. 84; S. Płaza, *op. cit.*, s. 186.

[40] S. Grzybowski, *op. cit.*, s. 603; S. Kutrzeba, *op. cit.*, s. 85.

The supreme court for the entire Prussian Country was **the Supreme Judicial Court (Oberster Gerichtshof),** with its headquarters in Berlin.[41]

Following the unification of Germany, pursuant to the act of 27 January 1877, a new structure of the organisation of the judiciary was introduced that was uniform for the entire country and individual countries of the Reich. The above act resulted in the unification of the organisation of the justice in the entire territory of the German Empire. Pursuant to its provisions, the administration of the justice and the judicial organisation remained within the competence of domestic authorities and not the authorities of the Reich. Following the example of earlier Prussian solutions, judges remained independent and irremovable, and public prosecutors were the representatives of the country authorities. Pursuant to the act of 1 June 1878, the bar was reorganised. The profession of barrister came to be recognised as a free legal profession, the practice of which was conditioned on the compulsory membership in self-governing bar chambers. The above self-government was made subject to the supervision by domestic ministers of justice.[42]

Following 1879, the following structure of common courts began to function in each country of the Reich, including the Polish provinces:

- **Official courts (Amtgerichte).** These were courts of lowest instance. They functioned in every *poviat* (district). In civil cases they adjudicated in benches composed of one judge, whereas in criminal cases subject to the penalty of imprisonment for up to three months or a fine of six hundred marks they adjudicated cases collectively, with the participation of two jurors, who decided both about guilt and penalty. In the province of Poznań there were 26, and in the province of Western Prussia – 57, courts of that type.[43]

- **Regional courts (Landesgerichte).** These were established in every regency. They consisted of the civil and the criminal chambers. They adjudicated collectively. As courts of the second instance they handled the appeals against the decisions passed by official courts, and their judgments were final. In the first instance, these courts were competent for all civil and criminal cases that were not reserved for the competence of other courts. In civil cases, they adjudicated in benches composed of three professional judges, whereas in criminal cases subject to the penalty of imprisonment for up to five years, they functioned with the participation of a jury composed of twelve jurors deciding about guilt only. In the Polish provinces of the Prussian country such courts were established in Poznań and Bydgoszcz, for the Poznań and the Bydgoszcz regencies, and in Gdańsk and Kwidzyń, for the Gdańsk and the Kwidzyń regencies.[44]

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[41] S. Grzybowski, *op. cit.*, s. 603; S. Kutrzeba, *op. cit.*, s. 84.
[42] S. Grzybowski, *op. cit.*, s. 603; S. Płaza, *op. cit.*, s. 185.
[43] S. Kutrzeba, *op. cit.*, s. 85; S. Płaza, *op. cit.*, s. 185.
[44] S. Kutrzeba, *op. cit.*, s. 85; S. Płaza, *op. cit.*, s. 185.

– **Regional high courts (Oberlandesgerichte).** These were courts of appeal against the decisions passed by regional courts and the instance of cassation with reference to the decisions passed by official courts. They functioned at the level of the province. In the Polish lands they functioned in Poznań and Kwidzyn. They adjudicated collectively in benches composed of five professional judges.[45]

The only court of law that was common for the entire Reich was **the Supreme Court of the Reich (Reichsgericht)**, with its headquarters in Leipzig. It adjudicated in benches exclusively composed of seven professional judges. It was competent to handle the appeals in civil cases with the value of the object of litigation exceeding 4 000 marks and in criminal cases where the judgments of regional courts were unappealable or passed with the participation of a jury. Furthermore, the Supreme Court of the Reich adjudicated in the first and the last instance cases of political crimes, high treason and treachery.[46]

One of the most lasting modernisation reforms within the sphere of the justice which in the second half of the nineteenth century encompassed the Polish lands under the Prussian dominance, was the introduction of administrative judiciary. It was introduced following the unification of Germany and the establishment of the Second German Reich. In pursuance with the legislation of the Reich, the organisation of the justice within the domain of administrative jurisdiction remained the competence of particular state authorities, while the Reich authorities were competent only in cases of administrative disputes stemming from the implementation of the Reich laws, which in practice was limited to cases within the scope of national insurance and nationality.

The Prussian administrative judiciary was established as one of the elements of realising the idea of the state of law, protecting its citizens against the abuses of the state's public authorities. The initiator and the originator of the Prussian model of the administrative judiciary was the outstanding Prussian lawyer and politician Rudolf Gneist. According to his concept, which was largely based on British models, the essence of the administrative jurisdiction was to be not the protection of the subjective rights of individuals but the control of the public administration organs in respect of their legal, i.e. is law-abiding, activity. According to Gneist, it was the territorial self-government organs, and not the organs consisting exclusively of professional judges, that were the most suitable for performing the above role. The realisation of the above model of the administrative judiciary took place in Prussia in the years 1872–1883. It resulted in the establishment of a three-instance model of the administrative judiciary that was organisationally connected with the organs of territorial self-government and provided for the professional factor in the jurisdiction. The competence of ad-

[45] S. Kutrzeba, *op. cit.*, s. 85; S. Płaza, *op. cit.*, s. 185.
[46] S. Grzybowski, *op. cit.*, s. 603–604.

ministrative courts was defined in accordance with the enumeration clause in an extremely casuistic manner. It included approximately 1,000 cases subject to the jurisdiction property of this sphere of the justice.[47] Their structure was as follows:

- **District departments (Kreisausschusse).** They were composed of the district's chief administrative officer (the *Landrat*) as their president and six members elected by the district's local government for six years, yet with one-third of them being replaced every two years. The district department was the executive department of the district's local department, which also performed the function of the administrative court of the first instance. Thereby, a body of local government was granted the right to control the legality of the activity of the government administration.[48]

- **Regional departments.** These functioned at the level of the regency, where there were no local government bodies operating. They were composed of two judges appointed by the monarch for life, one of whom was qualified to a hold the post of judge, while the other was qualified to hold a higher administrative post, as well as three members elected for three years by the provincial department, i.e. the executive body of the provincial local government. Regional departments were administrative courts of the second instance for the judgments passed by district departments and administrative courts of the first instance in more serious administrative cases.[49]

- **Administrative High Court (Oberverwaltungsgericht)** in Berlin. It was composed of judges appointed by the king for life, half of whom were qualified judges, and the other half were professionally qualified to hold high posts within the state administration. It was, therefore, a fully professional body. It was the court of highest instance within the system of the administrative judiciary bodies. It adjudicated in the second and the third instance. Its judgments were of both cassative and reformatory character, as it could judge a case on its merits.[50]

The Prussian model of the administrative judiciary functioned in a highly efficient manner and was considered one of the most perfect in this domain of the justice in Europe. A very high level of jurisdiction and the legalism of judges guaranteed their independence from political pressures in adjudicating cases. In the Polish provinces of the Prussian country it was often the only tool suppressing the anti-Polish activity of administrative authorities, which were forced in such cases to adhere to the letter of law in force, regardless of the nationalistic

[47] G. Anschutz, *Justiz und Verwaltung*, [in:] *Systematische Rechtwissenschaft*, Leipzig-Berlin 1913, s. 384–396; H. Izdebski, *Historia administracji*, Warszawa 1997, s. 106–116; D. Janicka, *Ustrój administracji w nowożytnej Europie*, Toruń 2002, s. 158–163; T. Maciejewski, *Historia administracji*, C. H. Beck, Warszawa 2002, s. 177–178; D. Malec, J. Malec, *op. cit.*, s. 225–235.

[48] S. Płaza, *op. cit.* s. 185.

[49] *Ibidem*, s. 186.

[50] *Ibidem.*

policy of the country. The above advantages were appreciated at the time of the second People's Republic of Poland, where the Prussian model of administrative judiciary was retained in the post-Prussian part of the Polish country throughout the entire twenty-year interwar period.

THE AUSTRIAN MODEL

Similarly as in the Polish lands under the Prussian dominance, in Austria-controlled Polish Galicia the modernisation reforms were initiated as late as the second half of the nineteenth century, yet lasted much longer than in the Prussian country, as they were completed only at the close of the century.

The first changes, only partially allowing for the modern principles of the justice, began to be introduced in Austria in the years 1850–1854. Over the above period the domanial judiciary was finally abolished, the justice (except for the lowest instance) was separated from the administration and the regulations on the bar and the notariate were modernized. Partially based on French solutions, a new three-instance judicial organisation was introduced that provided for the participation of the social factor in the form of a jury. Due to the suspension, in 1850, of the binding force of the March constitution of 1849 its provisions guaranteeing the principle of judicial independence as well as the provisions concerning the participation of the jury deciding about guilt in criminal cases, did not come into force. This transitional stage, full of hesitation and inconsistency, lasted for almost two decades. It was only the constitutional act of 21 December 1867 that based the justice in Austria and its crown countries on new lasting principles, finally separating the judiciary from the administration, introducing common judiciary, uniform for civil and criminal cases, and the judiciary of public law. Courts of law were guaranteed independence, and judges were irremovable and appointed by the emperor for life. They were also given the right to examine the conformity of the government regulations with the law. The institution of sworn judges was also restored. They were to decide about guilt in serious criminal and political cases. In Galicia the construction of this new apparatus of the justice lasted as long as until the 90s of the nineteenth century.[51]

Pursuant to the Emperor's patent of 28 June 1850 Galicia was divided into 218 judicial districts. In each of them one District Court (**Bezirkgericht**) was established. The above courts judged in benches composed of one person and were competent in the first instance in petty defence cases and civil cases of lesser importance. For handling misdemeanour and felony cases, collegiate district

[51] S. Grodziski, *op. cit.*, s. 272–280; W. Witkowski, *Uwagi o modernizacji...*, s. 305; K. Grzybowski, *op. cit.*, s. 429–450.

courts (**Bezirkskollegialgerichte**) were established in some districts that judged in benches composed of three persons. In 1853 collegiate district courts were liquidated, and district courts became part of district offices (**Bezirksamter**). District offices were administrative organs that functioned as courts within the scope of the justice entrusted to them. They had separate official staff for judicial cases. They judged in benches composed of one person, and the judges were often former trustees and justiciars who prior to the judicial reform performed judicial functions in former manorial areas.[52]

The final separation of the justice from the administration took place in the lowest instance as late as 1868 when district courts with their former competence were restored. District courts were one-person organs. They adjudicated in the first instance petty offence cases, civil cases with the value of the subject matter of litigation not exceeding 1,000 krones and trespass cases. The circuits of district courts did not tally with the division of Galicia into administrative districts. In each administrative district there were two or three district courts, which for over twenty years following the reform caused numerous controversies between them as to their competence.[53]

More important civil and criminal cases were transferred to the competence of Regional Courts (**Landesgerichte**). Pursuant to the patent of 1850, nine courts of that type were initially established in Galicia, yet following 1868 their number increased to seventeen. These were courts functioning in a collegiate manner. They were presided over by presidents and consisted of senate presidents and councillors. They judged civil cases in benches (senates) composed of three, and criminal cases in benches composed of four, professional judges. Their material jurisdiction encompassed all civil and criminal cases which were not reserved for the competence of other courts. A jury of 12 decided guilt in criminal cases punishable with imprisonment of over five years, and in cases of political and press law crimes. Regional Courts were also the second instance, the instance of appeal, for the verdicts of district courts.[54]

Pursuant to the reform of 1850, Regional High Courts (**Oberlandesgerichte**) were established in the Austrian monarchy as the instance of appeal for the verdicts of regional and district courts. Originally, one such court, with its headquarters in Lvov, was established for the entire territory of Galicia, yet as early as 1853 another one was established in Cracow. Each Regional High Court consisted of a president, senate presidents and councillors. These courts judged in benches composed of five professional judges. Regional High Courts were courts of the second instance for the verdicts issued by regional courts and the third and

[52] S. Kutrzeba, *op. cit.*, s. 244 – 245; S. Grzybowski, *op. cit.*, s. 430.
[53] S. Kutrzeba, *op. cit.*, s. 245.
[54] *Ibidem.*

last instance for civil cases handled by district courts. Moreover, these courts handled in the first instance the so-called syndicate cases, i.e. citizens' claims against the Treasury for the compensation of the damage caused by the court verdict.[55]

The highest instance, also competent for the Galician courts, was the Supreme and Cassation Court **(Oberster Gerichts und Kassationshof),** renamed in 1868 as **the Supreme Tribunal of Justice** in Vienna. It was a court of the third instance – a court of appeal – for civil cases adjudicated in the first instance by regional courts, and a court of cassation for all criminal cases adjudicated in lower judicial instances. It judged in benches composed of seven professional judges appointed by the Emperor. For adjudicating Galician cases a separate bench was established within its composition.[56]

Apart from the above-mentioned common courts, three particular courts were established in Galicia pursuant to the reform of 1869. These were industrial courts, operating in Cracow, Bielsk and Lvov. They adjudicated in disputes between employers and employees, stemming from the labour relations. They were composed of a professional judge as its president and jurors elected in equal number by both parties. The instance of appeal for these courts was regional courts judging in benches composed of three professional judges and two jurors.[57]

In accordance with the provisions of the administrative judiciary introduced in Austria in 1875, organs realising this domain of the justice were not established in Galicia or other provinces. The only administrative court that was common for the entire country was the Administrative Court operating in Vienna. This court was exclusively composed of professional judges, at least half of which had to possess judicial qualifications. Judges were independent in their decisions and appointed by the emperor for life. The Court judged collectively in benches composed of 4–7 people. Its material jurisdiction was based on the general clause, according to which each case where a citizen charged the state administrative organ with the infringement of his rights by issuing an illegal administrative decision, could be filed with the above court. The judicial channel was, however, excluded in the case of administrative decisions issued by the organ within the scope of the so-called free discretion. A complaint could be filed with the Court only after exhausting the course of instances at local administrative organs. The verdicts of the Court were of cassation character – having stated the unlawfulness of the appealed administrative decision, the Court would reverse it and hand it over to an indicated organ for readjudication.[58]

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[55] *Ibidem*, s. 246.

[56] S. Płaza, *op. cit.*, s. 180.

[57] S. Kutrzeba, *op. cit.*, s. 246.

[58] D. Malec, J. Malec, *op. cit.*, s.237–238; S. Płaza, *op. cit.*, s. 180.

CONCLUSION

The modernisation of the system of justice in the Polish lands continued to be carried out in an unsteady manner throughout the whole nineteenth century. First it encompassed the central Polish lands, where a new organisation of the system of justice, based on French models, was introduced following the establishment of the Duchy of Warsaw in 1807. The modified French model of the justice which was introduced then, continued to function with certain alterations as long as until 1876. In the Polish lands which were under the Russian and Austrian control the modernisation processes within this sphere started to take place as late as the second half of the nineteenth century. Following the transformation of the Prussian and Hapsburg monarchies into constitutional states, the modern solutions within the sphere of the justice aiming at the realisation of the idea of the state of law also encompassed the Polish lands which belonged to them. Less intensive modernisation processes took place in the second half of the nineteenth century in the Polish lands under the Russian dominance, where the modern organisation of the system of justice reformed in Russia in the 60s of the nineteenth century was subject to quite substantial restrictions for political reasons. As a result, in the nineteenth century as many as 4 models of the system of justice, French, Russian, Prussian and Austrian, differing from one another and introduced at different times, functioned in the Polish lands. Only the former two of them were adapted to the local conditions, while the latter two were introduced in an unchanged form.[59]

STRESZCZENIE

Modernizacja wymiaru sprawiedliwości na ziemiach polskich przebiegała w sposób nierównomierny przez niemal cały wiek XIX. Najwcześniej objęła ona centralne ziemie polskie, gdzie wraz z utworzeniem w 1807 r. Księstwa Warszawskiego wprowadzono nową organizację wymiaru sprawiedliwości, opartą na wzorcach francuskich. Wprowadzony wówczas zmodyfikowany francuski model wymiaru sprawiedliwości przetrwał z pewnymi zmianami aż do 1876 r. Na ziemiach polskich znajdujących się pod panowaniem pruskim i austriackim procesy modernizacyjne w tej dziedzinie nastąpiły dopiero w II połowie XIX w. Wraz z przekształcaniem monarchii pruskiej i habsburskiej w państwa konstytucyjne, zmierzające do realizacji idei państwa prawa, nowoczesne rozwiązania w dziedzinie wymiaru sprawiedliwości obejmowały swym zasięgiem także należące do nich zie-

[59] T. Maciejewski, *Historia ustroju i prawa sądowego Polski*, C. H. Beck, Warszawa 2003, s. 199–256; A. Korobowicz, W. Witkowski, *op. cit.*, Kraków 1998, s. 26–33, 40–46, 51–53, 74–85, 140–166, 198–209, 222–226, 253–262; W. Witkowski, *Uwagi o modernizacji sądów i prawa na ziemiach polskich w czasach zaborów*, [w:] *Państwo, prawo, myśl prawnicza – Prace dedykowane Profesorowi Grzegorzowi Leopoldowi Seidlerowi*, Lublin 2003, s. 3001–310.

mie polskie. Mniej intensywnie procesy modernizacyjne wystąpiły w II połowie XIX w. na ziemiach polskich pod dominacją rosyjską, gdzie z powodów politycznych nowoczesną organizację wymiaru sprawiedliwości, zreformowaną w Rosji w latach 60. XIX w., poddano dość znacznym ograniczeniom. W konsekwencji, w XIX w. na ziemiach polskich funkcjonowały aż cztery, różniące się od siebie i wprowadzane w różnym czasie, modele wymiaru sprawiedliwości – francuski, rosyjski, pruski i austriacki. Spośród nich tylko dwa pierwsze zostały dostosowane do warunków lokalnych, pozostałe zaś wprowadzone zostały w sposób w niczym nieodbiegający od swego pierwowzoru.