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The Organization of the Judicial System in Post-War Poland

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Abstract

Independence of the judiciary is a fundamental value. It determines the quality of organization and work, as well as the role that judicature plays in a democratic country. Justice, based on the rule of law and constituting the highest value for the society, can be implemented only in the spirit of this independence. Any changes and modifications ought to strive for one goal – a strong, independent judicature. The paper introduces the reconstruction process of the Polish judiciary after World War II, outlining the problems and challenges that it had to face in that period.

Streszczenie

Organizacja wymiaru sprawiedliwości w Polsce w okresie powojennym

Niezależność i niezawisłość wymiaru sprawiedliwości to wartości fundamentalne. To one decydują o jakości organizacji, pracy i roli, jaką w demokratycznym państwie pełni sądownictwo. Sprawiedliwość, opierająca się na rządach prawa i stanowiąca najwyższą wartość dla społeczeństwa, może być realizowana wyłącznie w duchu tych dwóch

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wartości. Wszelkie przemiany i przekształcenia winny zmierzać do jednego celu, którego azymutem jest właśnie silna, niezależna władza sądownicza. Niniejszy artykuł jest wprowadzeniem do zrozumienia procesu odbudowy polskiego wymiaru sprawiedliwości po II wojnie światowej, poprzez zarysowanie problemów i wyzwań, z jakimi w tym okresie musiał się zmierzyć.

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I.

An independent judicial system is a guarantee of a proper, based on the separation of powers rule of law in a democratic country, implementing every citizen's right to a fair trial². Regaining independence by Poland after World War II was linked to the need for reorganization and modifications of the judiciary, which, decimated, understaffed and facing a shortage of premises, was completely ineffective. Providing the citizens with legal security and implementing the mechanisms of the judiciary was the priority for the state of law, which was being rebuilt. The reconstruction of democratic structures forced a quick reaction of the judiciary, even though shortages of infrastructure, as well as financial and staffing problems, did not allow it to function correctly and effectively. Modifications of legal education, the changing scope of investigating cases by courts, the constant appointments and dismissals of judicial structures had an influence on the deepening chaos. Reforming the judiciary without it having a systemic character, without conducting a thorough analysis, with no set criteria and, above all, with no long-term vision, could not, by definition, result in the expected outcome or, most importantly, in legal certainty and the continuity of changes.

² *Wolności i prawa człowieka w Konstytucji Rzeczypospolitej Polskiej*, ed. M. Chmaj, Warsaw 2008, pp. 105–106; J. Człowiekowska, *Prawo do sądu jako publiczne prawo podmiotowe*, [in:] *Prace poświęcone pamięci Adama Uruszczaaka*, eds. J. Halberda, M. Hosowicz, A. Karabowicz, Kraków 2006, p. 180; M. Jaworska, *Prawo do sądu*, [in:] *Realizacja i ochrona konstytucyjnych wolności i praw jednostki w polskim porządku prawnym*, ed. M. Jabłoński, Wrocław 2014, p. 139; Z. Czeszejko-Sochacki, *Prawo do sądu w świetle Konstytucji Rzeczypospolitej Polskiej (ogólna charakterystyka)*, "Państwo i Prawo" 1997, No. 11–12, p. 97.

II.

The period 1944–1950 was a time of great changes in Poland and its judicial system. The liberation from the German occupation, which allowed for the slow rebirth of the Polish statehood, determined the rhythm of changes³. The newly established Polish borders required a new approach to building state structures⁴, including the judiciary, at the beginning based on the structures and the rules of law from the interwar period, such as the Criminal Code of 1932⁵ and the Code of Criminal Procedure of 1928.

Pursuant to the Act of 21 July 1944, the Polish Committee of National Liberation (PKWN)⁶ was appointed, established by the State National Council (KRN) in Moscow. The PKWN Act emphasizes that the Committee constitutes a temporary executive authority, appointed to direct⁷ “the nation’s fight for liberation, gaining independence and the reconstruction of the Polish statehood”⁸. The Act of 15 August 1944 on the temporary issuing of decreelaws states: “Because of the ongoing war in the Polish territories and the difficulties in the activity of legislative bodies which it causes, the Polish Committee of National Liberation establishes the following mode of issuing decree-laws in all matters for the regulation of which the Constitution of 1921 provides the form of an act, except for the ratification of international agreements, the establishment of a Temporary Government and the dissolution of the Polish Committee of National Liberation”⁹. The act stipulates that decrees issued by the Polish Committee of National Liberation ought to be submitted to the State National Council Presidium to be approved, then signed by the chair-

³ J. Bardach, B. Leśnodorski, M. Pietrzak, *Historia ustroju i prawa polskiego*, Warsaw 2009.

⁴ W. Wrzesiński, *Kształtowanie nowych granic państwa polskiego po II wojnie światowej a przyszłość polityczna, gospodarcza i kulturowa*, “Annales Universitatis Paedagogicae Cracoviensis. Studia Politologica” 2011, No. 5, pp. 3–16.

⁵ Commonly referred to as “the Makarewicz code”.

⁶ Act of 21 July 1944 on the appointment of the Polish Committee of National Liberation (Dz.U. No. 1, item 1).

⁷ A. Lityński, M. Ćwikowska, *Początki resortu sprawiedliwości PKWN. W 70. Rocznicy*, “Roczniki Administracji i Prawa” 2014, No. XIV, pp. 85–99.

⁸ Act of 21 July 1944...

⁹ Act of 15 August 1944 on the temporary mode of issuing decree-laws (Dz.U. No. 1, item 3).

man of the State National Council and the chairman of the Polish Committee of National Liberation¹⁰.

Along with the rebirth of the administration, the process of the reconstruction of the Polish judiciary also began. Territories were gradually liberated, the administration was slowly established and rebuilt; with the people's invaluable help, the foundations of the judicial system were laid. In many places in the country, the recreation of the local judiciary was spontaneous, often on the initiative of pre-war judges. The publication *Wymiar sprawiedliwości w odrodzonej Polsce 22.VII.1944–22.VII.1945* states: "Without waiting for their superior authorities' directions and recommendations, court staff eagerly, on their own initiative, started to remove rubble, tidy the building and the records"¹¹. The first post-war trials took place in Lublin as early as on 12 September 1944.

The current political situation and the new administrative division of the country forced the thus formed judiciary to change. During the speech given on 30 November 1946 at the meeting of the most active Warsaw members of the Polish Worker's Party (PPR) and the Polish Socialist Party (PPS), Władysław Gomułka said, clearly referring to the establishment of the new system, that "[there is no] necessity for violent, revolutionary upheavals"¹². Therefore, the judiciary gradually rebuilt its structures, forming the so-called transitional period. A significant role during this time was played by former judges, and, on their own initiative, the people, who in some regions of Poland rebuilt the first structures of the judiciary. The work of former judicial employees, who during the years of occupation preserved judicial documents, records, journals of laws and often guarded court property, was incredibly important¹³. The basic problem after the war was first of all

¹⁰ Ibidem.

¹¹ *Wymiar sprawiedliwości w odrodzonej Polsce 22.VII.1944–22.VII.1945*, Warsaw 1945.

¹² W. Gomułka, J. Cyrankiewicz, *Jednością silni – zwyciężymy. Speech given at the meeting of the most active Warsaw members of PPR and PPS on 30 November 1946*, Warsaw 1946, pp. 13–14.

¹³ "Stefan Zapala, a judge of a petty offense court in Bochnia, hides the records in a mine. In Żnin, Stanisław Grzechulski, a court usher, after the Germans are driven out, together with court employees secures court property and keeps the court in perfect order; in Trzemieszno, registrar Grześkowiak throughout the entirety of the occupation risks his life to preserve court stamps and the court board. In Puck, registrar Franciszek Mania, who has worked in this court for 25 years, has also contributed greatly". A. Wendel, *Odrodzone sądownictwo w Polsce*, [in:]

the shortage of staff¹⁴, but, as M. Rybicki writes: “The judges who survived the war, scattered in postuprising exile, returning from camps in Germany and from the emigration in the West, volunteered gradually, sometimes with internal reservations, called in by the new authorities, to work and serve their reborn country, which was operating according to new principles”¹⁵. The authorities organized refresher courses for pre-war judges¹⁶, but post-war judges, who were still being decimated by the soviet regime, were reluctant to exercise judicial power in the new system.

The judiciary operated under the common courts system law, passed in 1928, in the interwar period, and current activity, until 1950, was regulated *ad hoc* by issued decrees and regulations on reorganization. In order to improve the efficiency of functioning in the Recovered Territories, three operational groups (Kielce-Radom, Warsaw and Cracow-Silesia) were formed; their task was to establish courts, or judicial teams, in the Recovered Territories. Their objective was finding local representatives of the judiciary in order to form judicial teams and organizing the means and the people necessary for the developing structures. On 15 August 1944, the Decree of the Polish Committee of National Liberation on the introduction of courts with a jury came into effect. Article 2 states: “the institution of Courts with a Jury will function in

Wymiar sprawiedliwości w odrodzonej..., pp. 85–86. “The president of the Provincial Court in Poznań: without waiting for their superior authorities’ directions and recommendations, the court staff eagerly, on their own initiative, started to remove rubble, tidy the building and the records. (...) Teofil Krych, a judge of the Appellate Court in Poznań, and Telesfor Dziurkiewicz, a Prosecutor’s Office secretary, were the first ones to get through to the burning building of the Petty Offense Court under a hail of bullets and together with Paweł Seifert, a court usher, located the fire and salvaged the rest of the court property from looting”. E. Mędrzecka, “*Sądownik ma głos*” (*snapshots from the field*), [in:] *Wymiar sprawiedliwości w odrodzonej...*, p. 98.

¹⁴ “The new authorities were faced with the necessity of basing the judicature on pre-war judges. This was mostly a result of the lack of an adequate number of judges educated in the spirit of political and systemic rules, the introduction of which in Poland in reality was only beginning. Pre-war judges who offered their availability to take on their professional duties were delegated to work in common courts, which were the most understaffed”. A. Watoła, *Rozważania nad ewolucją pojęcia niezawisłości sędziowskiej w Polsce w latach 1944–1956*, “Z dziejów prawa. Prace naukowe Uniwersytetu Śląskiego” 2015, vol. 8(16), pp. 110–111.

¹⁵ M. Rybicki, *Pozycja ustrojowa Sądu Najwyższego w PRL (geneza, ewolucja, perspektywy)*, “Państwo i Prawo” 1980, No. 5, p. 20.

¹⁶ A. Watoła, *Rozważania nad ewolucją pojęcia niezawisłości sędziowskiej w Polsce w latach 1944–1956*, “Z dziejów prawa. Prace naukowe Uniwersytetu Śląskiego” 2015, No. 8(16).

the entirety of the Republic of Poland according with the relevant regulations which were in effect until the day of the act's entry into force¹⁷. Pursuant to this decree, courts with a jury could investigate criminal cases which were not closed in the first instance. The person responsible for the execution and the introduction of the institution was the Head of the Department of Justice¹⁸. The decree stipulated that both a man and a woman with a Polish citizenship, enjoying full civic rights, 21 or older and able to read and write in Polish, could become a juror. Some exceptions from the aforementioned rules were also allowed, as the position of a juror could not be occupied by: judges, prosecutors, court and prosecutor's office clerks, court enforcement officers, active Citizens' Militia (MO) officers, as well as soldiers in active service and members of the clergy¹⁹. The decree was never implemented.

Pre-war judges' aversion toward ideological issues forced the authorities to introduce mechanisms leading to the instrumentalization of judicial structures²⁰. According to Leon Chajn, "in the new Poland, the law can be applied by those who understand and feel that the conducted revolution was necessary. They [those who do not understand it and feel it – note by P.K.] will be replaced by those who graduate from the reformed universities or the special law schools which provide an accelerated education for the new blood in the judiciary"²¹. Those fully available to the authorities were in the near future supposed to take the basic positions in the newly constructed judicial system. In 1945, the Department of Law Training and Law Proletarianization (Departament Szkolenia Zawodów Prawniczych i Pauperyzacji Prawa) was established – it was meant to lead to the formation of secondary law education, thus laying the foundations for the "democratization" of the judiciary²². Since 1946, the future judg-

¹⁷ Decree of 15 August 1944 of the Polish Committee of National Liberation on the introduction of courts with a jury (Dz.U. No. 2, item 7).

¹⁸ Art. 4, Decree of 15 August 1944.

¹⁹ Art. 2, Decree of 23 October 1944 on the appointment and establishment of the jury (Dz.U. No. 9, item 47).

²⁰ M. Zaborski, *Szkolenie sędziów nowego typu w Polsce Ludowej*, "Palestra" 1998, No. 12.

²¹ L. Chajn, *Sądy a społeczeństwo*, "Demokratyczny Przegląd Prawniczy" 1946, No. 7, p. 7.

²² P. Kładoczny, *Kształcenie prawników w Polsce w latach 1944–1989*, "Studia Iuridica" 1998, vol. XXXV; Z. Ziemia, *Przygotowanie i rozwój kadr sądownictwa Polski Ludowej*, [in:] *XXV lat wymiaru sprawiedliwości PRL*, ed. S. Jabłoński, Warsaw 1969.

es obtained education in law high schools, which adhered to the party's ideology. The Disposition of the Minister of Justice of 14 May 1948 established the Teodor Duracz Central Law School (Centralna Szkoła Prawnicza im. Teodora Duracza)²³, which first director was Igor Andrejew²⁴. This solution was supposed to remedy the shortage of staff. According to the rules, candidates ought to have passed their school-leaving (matura) exams, although there were some deviations from this, and the school was supposed to prepare its alumni for positions in the judiciary in two years. Such an education system, thanks to its fast mode of instruction, was intended to provide a constant increase in legal personnel. Moreover, the Decree of 22 January 1946 on the exceptional acceptance for the positions of judges, prosecutors and notaries made it possible to be appointed as an assistant judge, a judge or a prosecutor and be exempted from the duty of finishing law studies²⁵. The first vocational law school was established in Łódź, the following ones in Wrocław and Gdańsk, and in 1950, in Szczecin and Zabrze. The schools in Łódź, Wrocław and Toruń boasted the highest number of alumni. The staffing problems, which meant that most judge positions were occupied by pre-war judges, apolitical and independent, was not beneficial for the new authorities, who considered adhering to political directives important. L. Chajm mentions that there were some voices calling for the judiciary to be cleansed of judges who did not be-

²³ Disposition of the Minister of Justice of 14 May 1948 on the establishment of the Teodor Duracz Central Law School in Warsaw (Dz.Urz. Min. Spraw. No. 7).

²⁴ M. Zaborski in his publication *Szkolenie sędziów nowego typu w Polsce Ludowej* writes that the school “was the first law college in Poland, in which all subjects are conducted according with Marxist and Leninist principles”. Ł. Bojko writes about the schools: “The communist authorities were in urgent need of new legal staff, of devoted people with an appropriate ideological and political attitude. For this purpose, special legal crash courses were created on the high school and the university level (the so-called *duraczówka*)”. Ł. Bojko, *Kilka uwag o sądach tajnych stalinowskiej Polski*, “Acta Universitatis Wratislaviensis, Studia nad Totalitaryzmem i Autorytaryzmem” 2015, No. 1, p. 39.

²⁵ “People who, because of their personal qualifications and scientific, professional, social or political activity, as well as their sufficient knowledge of law acquired by professional work or in law schools approved by the Ministry of Justice, guarantee the proper performance of their duties of a judge or a prosecutor, can be appointed assistant judges, judges or prosecutors”. Decree of 22 January 1946 on the exceptional acceptance for the positions of judges, prosecutors and notaries (Dz.U. No. 4, item 33).

lieve in the ideology²⁶ and for them to be replaced by the legal staff ideologically prepared by the forming schools. Moreover, in order to have control over what was happening in courtrooms, the authorities introduced the position of a lay judge, which was filled by those whose ideological and political views were considered correct.

Another one of the numerous difficulties in returning to the proper and effective functioning of the judiciary was the shortage of administrative staff. There were not enough secretaries and accountants, which significantly obstructed work²⁷. Moreover, the problems related to the premises were still not resolved²⁸. Apart from this shortage, the reconstructed judiciary also struggled with issues with equipment and office machines. Some of the buildings of the former judiciary were for a long period of time still occupied by the military or by hospitals. These circumstances did not allow the judiciary to function and work correctly and effectively.

III.

The struggles of the post-war reconstruction, related to understaffing, problems with premises or finances, left its mark on the period. The establishment of the judiciary, especially in the Recovered Territories, involved multiple issues related to the strategy of court locations, as well as with their functioning and organization. The new authorities, even though they did not take direct action, slowly began the process of introducing ideologically biased

²⁶ L. Chajń, *Kiedy Lublin był Warszawą*, Warsaw 1964; J. Szarycz, *Sędziowie i sądy w Polsce w latach 1918–1988*, Warsaw 1988, pp. 101–106.

²⁷ “According to the pre-war standards, for each judge working in a petty offense court there were five clerks. Meanwhile, in the first months after the liberation, it was possible to hire only two clerks per judge”. L. Krzyżanowski, *Baza materialna i stan kadrowy sądownictwa na Górnym Śląsku w pierwszych miesiącach po wyzwoleniu*, “Annales Universitatis Paedagogicae Cracoviensis. Studia Politologica” 2011, No. 5, pp. 200–212.

²⁸ “In the capital, there was no trace left of the buildings of the Ministry of Justice, the Supreme Court, the Appellate Court, the Provincial Court, the Bar Council or the Supreme Administrative Tribunal. The occupiers horribly damaged the buildings of petty offense courts, the Supreme Court-Martial and the Land Registry Office. Almost all archives were lost”. L. Chajń, *Trzeci rok*, “Demokratyczny Trybunał Prawniczy” 1946, No. 7, p. 6.

people into the reconstructed judiciary. By appointing the Special Commission for the Fight Against Malpractice and Economic Sabotage (Komisja Specjalna do Walki z Nadużyciami i Szkodnictwem Gospodarczym), the authorities could bypass common courts, which were still not ideologically biased, and begin the fight against the democratic opposition, hostile to the introduction of communist ideals. In order to make the judiciary more effective, pursuant to the Decree of 22 March 1946, citizens' courts, comprised of one citizen judge, a deputy judge and six lay judges, modelled on USSR's peasant and workers' courts, were established²⁹. What is important, the basic criterion for being accepted for people's courts was party membership. Quickly established law schools, meant to help remedy understaffing, introduced party ideology into courts.

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²⁹ Decree of 22 February 1946 Citizens' Courts Act (Dz.U. No. 8, item 64).

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