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SOCIO-LEGAL ASPECTS OF JUSTICE STATUS IN INTERWAR POLAND (1918-1939)

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Summary

The problems of judge's corps formation in interwar Poland are defined in the article, legal and social status of judges in the context of socio-political development has been analyzed. The Polish legislation is analyzed; the principals which define the legal status of the judges are highlighted. It is proved that the growth of the authorized character of the state power in the Polish Republic led to the numerous amendments of the rules in the legislation which restricted the principle of the judges' independence. It is stated that the restriction of both legislative and material guarantees of the independence of judges and the not perfect system of the judges trainings negatively influenced on the objectivity and equity during trials. The archaic documents and not well studied documents are used.

Key words: interwar Poland, judges, legal status, social status.

Аннотация

В статье обозначаются проблемы формирования судейского корпуса в межвоенной Польше, исследуется правовой и социальный статус судей в контексте общественно-политического развития. Анализируется польское законодательство, раскрываются принципы, которые определяли юридический статус судей. Обосновывается, что усиление авторитарного характера государственной власти в Польской Республике привело к многочисленным поправкам норм законодательства, которые значительно ограничивали принцип судейской независимости. Утверждается, что ограничение как законодательных, так и материальных гарантий независимости судей, а также несовершенная система подготовки судейских кадров отрицательно повлияли на объективность и справедливость рассмотрения дел в судах. Используются архивные материалы и малоизученные социологические исследования.

Ключевые слова: межвоенная Польша, судьи, правовой статус, социальное положение.

Problem decision. One of the most important priorities of the state policy of Ukraine on the modern stage is the strategy of reforms in such areas as judicial system and legal procedure, which have to bring closer the judicial system to European standards. The success and the effectiveness of it are defined, first of all, from the quality of the judges' corps. The degree of the protection of rights and the freedom of the person, the guarantee of the law order and legality depend on professionalism, independence, responsibility and morality of the judges. Turning to the polish experience is very important in this respect for Ukrainian lawyers. Such necessity is actualized in the way that on the modern stage Ukraine and Poland are seeking to the harmony of the legal systems with the norms of the international law. This contributes to the joint search of problems' solution in the legal science and generalization of the practice of justice realization.

Actuality of the research is proved by the realization of radical changes in the choice of judges, their career growth, legal responsibility, administration in the courts, judges' self-government in studying the experience of the judges' corpus formation in foreign countries, particular in Poland, obtains practical meaning.

State of research. Mentioned above problem was reflected in the works of polish and Ukrainian researches. Among them we should mentioned S. Golomba, A. Chervinskij, E. Rapoport, A. Bobkovskiy, Ya. Prohazka, I. Krbek, F. Pyzka, Yu. Bardaha, B. Lesnodarskiy, M. Pietrchak, V. Kulchytskiy, E. Borkovskiy-Bachenskiy, B. Lesynskiy, T. Matsyevskiy. T. Opas, K. Sujko-Zelinskiy, V. Zvyk, P. Yurek, S. Plasa etc. At the same time the content and realization of the practice of the judges' corpus formation in the interwar Poland needs detailed studies on the basis of using

new sources, that is indispensable ground for scientific analyses and obtaining new results.

The aim of this article is the research of the legal and social status of the judges in the interwar Poland in the context of the socio-political development. The novelty of the work lays in the attempt to display political and social factors, which influenced the role of judges in the polish justice and their place in the society.

Statement of the basic material of the study. On the 1st of September 1917 the solemn opening of polish courts on the territory of Polish Kingdom under the name of king-polish (królewsko-polskich) took place which sentenced on the behalf of Polish Crown [33, p. 28–29]. Polish community with great hope percepted the renewal of polish courts [10, p. 667]. Former procurator K. Rudnytskij remembered: "For us, lawyers of the Kingdom that was the day of the greatest holiday, because for us the realization of the hope in the independence of Poland started to realize. The polish courts were seen, as the first attribute of the state power, justice" [27, p. 45].

March constitution of 1921 became the important stage in formation and functioning of the judicial system, which defined the legal status of courts in the first years of renewed Polish Republic [29, p. 326–342]. Particularly, it was asserted in the art. 77, that "judges are independent in their duties discharge and are governed only by the laws". The guarantee of the judge's independence was the base according to which a judge couldn't be dismissed, removed from the fulfillment of his duties, shifted to another place of work or retired against his own will. It could happen only on the grounds of the court decision in conformity to the law (art. 78). The Constitution confirmed the issue on appointment of judges by the president, except the election of magistrates by the population (art. 76).

Under the conditions of stabilization of general courts structure on the territory of Polish Republic new tasks appeared before judicial power. The Secretary of Justice of that time V. Makovskij underlined, that only the judge's independence in combination with clear organization of the bodies of judiciary can create in the society the atmosphere of confidence, that "the administration of justice is performed by responsible, independent, with the feeling of duty people, and from the other hand – judges will be protected by necessary guarantees, which existed in the modern legal states" [33, p. 70]. However the organizers of polish public justice ran into big difficulties when deciding on tasks in view, besides one of the sharpest was – the problem with the staff [36, p. 32–40, 47–51]. Situation was getting worse by the complicated financial situation in Poland and inflation 1922–1923 and that was "the danger, which threaten the fall of respect to polish legal procedure", "the judges of minor and highest courts, having avoid even the Highest Court, have already gone or have intention to leave the legal procedure", and one of the reasons of such situation were low wages [24, p. 615–616, 629].

Polish lawyers and judges worried about the unsatisfactory condition of university training of judges and judge's practice, excessively judges' overwork of big number of cases, unsatisfactory conditions of work and courts activity. All this influenced on the effectiveness of legal procedure and caused lingering and superficial proceeding of cases [23, p. 615]. Along with the objective difficulties, which were to be overcome in the process of organization of legal procedure, the democratic principles of the March Constitution began to be violated. Polish power followed first of all the political and ideological principles in choosing judges [12, p. 56]. Applicants on the post of judge were thoroughly inspected by police and state power bodies that put a judge depending on administrative and executive power.

After upheaval in 1926 the authoritarian regime was established in Poland. The court reform was held in 1928, which defined the mechanism of the control on the judges [25]. The law about "The mechanism of the general courts" 1928 though announced formal regulations about independence of the courts (art. 79), but contained regulations, which the Law gave the president and Minister of Justice during three months from the day of it publishing transfer (without consent of interested party) to another place of work or pensioned off the judges of the High Court, during the year – the judges of the courts of appeal and during two years – the judges of district and city courts (p. 284 § 1). Judiciary turned out to be depending on the highest executive power. These articles of the law gave power to Minister of Justice to pension off the first head of the High Court and the head of the criminal chamber A. Mogilnitskogo, who came forward against limitation of courts and judges' independence [18, p. 14; 22, p. 13–14].

Such policy called criticism and resistance in the judges' environment, who hardly could accept with such condition, which undermined the value of judge's independence as necessary factor of democracy [28, p. 154; 7; 20]. After the law had been adopted, the outstanding lawyer, the head of Appeal Court in Lviv Adolf Chervinskij on the base of only legal analysis came to conclusion, that the distortion of principals of legal proceeding would promote constantly growing abuses of power regarding courts. Particularly, he expressed doubt as to the observance of principle of judge's independence in the law, bringing p. 102 § 2, due to which the judge could be transferred "for the good of justice or for respect of the judicial provisions" on the base of decision of general meeting of the High Court by representation of Ministry of Justice. To his mind, that was the breach of art. 78 of March Constitution [8, p. 33–34]. Because the general meeting of the court wasn't the court with the competence of sentencing, but only the administrative judicial institution, which had to fulfill certain administrative activities. The general meeting of the court could pass the case to the administrative collegiums (which consisted of five persons), which also was only administrative one, but not the judicial body. Undoubtedly, in judicial proceedings "could be found persons, which had to be eliminated, but for this, – as the newspaper "Głos Sądownictwa" wrote, – the statements are existed about Summary court, but not the methods of constant judge's elimination" [8, p. 370].

The positive result was that, according to the Law of 1928 in the district, appeal courts and in the High Court the institution of the judge's self-government started to organize

(unknown institution on the former Austrian and Prussian territories). All the judges of the court together with the head of the court were the members of the meeting and fulfilled the function of the administrative self-government of the courts: the distribution of work, election of the members of the Summary court, presentation of the candidates on the vacancy posts of judges etc. The presence of the half of judges of the High Court, two thirds of all judges of appeal and district courts was necessary for passing important decisions by the general meeting. The decision was adopted by majority, and in the case of tie vote, the decisive vote was the vote of the head. But gradually the competence of general meeting was restricted for the benefit of other bodies, namely, administrative collegiums (consists of five members of the court), which also executed differentiation of labor, defined annual term for jury courts, represented the candidates on the judges' posts, made a decision on judges' retirement [14, p. 73–74; 17, p. 142–145]. If the general meeting didn't pass this or that decision, the case was considered by the administrative collegiums. It was easier for Polish power to influence on such rather narrow judicial body, especially, when it concerned personal affairs.

In the next years the Law "About the structure of the courts" 1928 came under the changes to the power's needs, which was of authoritative style. To outstanding polish lawyers mind, the base for this was that, in the Law, from one side, there were many week and fuzzy statements as to the guarantees of the judge's independence, and from the other side – the power seek the strengthening of its influence both on the personal staff of the bodies of judge's power and on their general guidance. Till the end of interwar period only 145 art. from 299 of the Law remained unchangeable [23, p. 627]. These changes concerned first of all principles of judge's independence, namely the questions, concerning with their appointments and transfer to another work, courts' competence [13, p. 332].

For conducting such policy the power regarded necessary to strengthen its control on personal composition of the judges and courts' activities. According to the President's order from the 23rd of August 1932, the power, who appointed judges, acquired the right to transfer judges of all the courts without their agreement to another equivalent court or pensioned off in two months term [26]. This act limited the judge's independence. The Ministry of Justice received the certain initiative and he wasn't restricted, in the question of the appointment of the judges of The High Court and making the decision about the dismissing of the judges of The High Court on retirement [18, p. 14]. The thorough inspection of the original text of the law about judiciary in the direction of strengthening powers of judicial administration and minimization of competence of general meeting of courts was made [9, c. 369].

According to the April constitution of 1935 the courts stopped to be "the bodies of people" and became the state bodies (the definition "independent" was omitted), which are under the President. Though under that Constitution (art. 65), the president appointed the judges, but art. 66, 67 gave the right to administrative power to stop the principle of non-eliminating and the wide possibilities of transferring and eliminating judges at all in the period of judiciary reorganization, which was hold on the base of "executive act", even according the decree of the President of Poland [30, p. 364–378]. That is the constitution itself set up conditions for larger dependence of the judges from the executive power.

The most important guarantees of the judge's independence underwent changes and restrictions, which were secured by the law 1928. First of all, that concerned the procedure of appointment of the judges. The freedom of government actions in these questions became larger: privileges of the general meeting as to the presentation of candidates on position of the judge were transferred to administrative collegium; if earlier the head of the court hadn't right to express his opinion as to the presented by the general meeting candidates, or to offer his own candidates, then later he acquired such right; possibilities of Minister of Justice to present candidates on the judge's post out of list, which were presented by the court, were significantly enlarged [14, p. 86]. Secondly, the principle of collective nature in judge's decisions was essentially restricted. Under the Law 1928, to award sentence could only the municipal courts, the others – in the multipersonal composition. Contrary to these statements the pronouncement of sentence personally became the rule for district courts of the first instance, and was much extended in the district and appeal courts of the second instance [15; 19]. Thirdly, the April revolution, narrowed judge's immunity, because the court couldn't have demanded the discharge of the judge from arrest, who was held on the scene of the crime (but, if his misdeed was a criminal one – was decided by the police).

In conditions of restriction of judge's independence and its guarantees the polish power tried to strengthen the judge's staff, especially on the leader's positions in the high degree of jurisdiction by the specialists, who completely supported its policy. In May1936 V. Grabovskij was appointed the Minister of Justice, who was on the positions of administration of justice that rested on the police-state enforcement. Before getting the post of the Minister of Justice, he and his associates keep to the principles of strong measures that were included in the formula "better to punish 100 innocent, then not to punish one guilty" and notion "somebody must be imprisoned" [27, p. 70, 73].

In the same direction it was said about the saving of the activity of the art. 110 of the Law 1928, which was renewed in 1932, according to which collegium of three judges at the closed meeting could dismissed or transfer to another place any judge (even during 24 hours) "in the interests of justice" and without right of appeal on these decisions. Such moments punctured the belief in the independence of judges in the eyes of community and justice on the whole [9, p. 371; 6]. That's why the problem called the sharp discussion in sejm. The ambassador Bartus declared: "Public opinion, first of all, the outstanding judges and their organizations are worried that the justice has been going downhill recently…" The judges under the threat of such statements could suffer from different oppressions from the side of judicial and state administration and had to take into consideration the persons,

the cases of whom they have to consider [16, p. 198].

Such nervousness was reasonable. In the second half of 1930th the attempts of the government and the Ministry of Justice to influence the judges with the aim of receiving desired "ordered" sentences, especially in the political trials intensified. Here operated the whole system of influence. The judges were appointed to the bodies of justice who agreed with such condition of matters or in the hope of career development, or in the power of belief as to the effectiveness of repression of legal proceedings that contributed to achieving desired verdicts for the power. Truly, there were not so many such judges in Poland. Most of them resisted to such attempts of pressure. Namely, the group of judges of the High Court, acted contrary to the demands of the Head of that court, against the organization of special collegiums of judges, which had to be appointed to trial "state cases" [27, p. 56]. The composition of court was under the greatest pressure of the government. The court was very often guided by "the statements above" during the trial of cases of political character, giving on the demand of the authorities "necessary" interpretation of the facts, in every way delayed the examining of the protests, which entered during elections [18, p. 14]. The situation got worse, because except legislative restriction of guarantees of the judge's independence considerable part of judges was put in the difficult financial position. Especially that concerned the most numerous group – municipality judges. Their wages was much lower than the salary of the district head of the police or the head of financial department, barrister, official executor, mortgage secretary. But the district judges weren't in the better condition [31]. Because of the not numerous numbers of the judges (due to the list of the members of staff) in the appeal courts and in the High court, the considerable part of judges finished their career on the post of district judge with salary in 500 zloty. All this could lead to the fall of legal proceedings into the pot-hole, as "Głos Sądownictwa" wrote [11, p. 106]. The Secretary of Justice admitted that the "financial position of the judges, attorneys, executive officials is unsatisfactory and the salary, especially in the lowest levels doesn't reach living wage" [23, c. 371]. So, in the second half of 1930th both the legislative and material guarantees of judge's independence were restricted, and that couldn't be reflected negatively on the justice on the whole. At the same time it could be fixed, that the polish authority was interested in the support of the judicial corps reputation. Because in the conditions, when it fell into more and more dependence from the executive power, it was necessary to safe the effectiveness of the work of courts. The documents testified that in 1930th the disciplinary courts considered very regularly the cases of judges, who were accused of breaking duties, laws, bribery, corruption, immoral conduct [4, p. 23–24].

The problems in the system of judge's staff training influenced on the quality of judge's composition. The training of lawyers in the university fell behind the needs of life. The state of legal practice, which passed the applicants (probationers), didn't respond to the needs of training the high-qualified judges. Besides, the non-paid practice negatively influenced on the legal practice. Many drawbacks were in the organization of the practice itself and methods of training the applicants to the judge's work [24; 21, p. 672–675]. The programs, which were formed for holding the courses and seminars for the applicants testified, that 30–35 theoretical questions were brought out for the oral discussion. But they didn't foresee the practical classes, courses in problems of the general educational development of the future judges [5]. The polish power failed to implement the essential changes in the organization of the university training and probation with the aim of professional development of judges.

The restriction of the independence of courts, difficult financial position, insufficient level of professional vocational training led to diminution to judge's respect, which under those conditions couldn't guarantee the objectivity in legal investigation. Vivid confirmation of this is the characteristic of the activity of the courts given by the judges themselves. In 1938 the department of criminal law in the university in Vilno held the survey among municipality judges, which gave their opinion as to the activity of the polish judges. Here some reflections: "The thought is heard very often, that non-malicious criminals are punished, and harder criminals – not, so I share this point of view; on the whole, when it comes to the high employees and officials, they are not sued to the criminal responsibility, because the court doesn't start the investigation, and the Office of Public Prosecutor for various reasons doesn't want to"; "the judges apply punishment out of accordance to the crime, and very often take into consideration the social status of the accused, his achievements, relationships, that results in the unfair punishment <…> for example, a worker, an average official, having made the petty crime get the severest punishment, when the state official, influential industrialist, entrepreneur get funny punishments"; "The peasants very often submit mourning to the court of elders, because they are unsatisfied with the court's sentences. The respect to the justice is falling among the lower classes"; "If the peasant has stolen the tree – six months of imprisonment, and if the lord has stolen cash money – he has made negligence, he will be made crazy and nothing will be made"; "Considering the cases of the large public damage it can't be remembered the satirical statement, which is found in the old university lectures: the law is the rippled net, in which only the small mouse could be caught, and the big one will always run away" etc. [32, p. 478–479].

Conclusions. The growing authoritarian character of the state in the Republic of Poland in the interwar period was accompanied by the growing dependence of the judge corpus from the executive power that reflected the objectivity of the courts while considering cases. That was defined by the restrictions both of legislative and material guarantees of the independence of judges and not effective system in the trainings of the judges' staff.

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