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JUDICIAL SYSTEM IN THE INTERWAR POLAND (1918-1939): THE SOURCES OF THE RESEARCH

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Summary

The most important sources of research of the judicial system and judicial proceedings of interwar Poland in the context of socio-political development are analyzed in the article. It is proved that the source of the research base is self-sufficient and allows comprehensively reveal the complex process of formation and development of the judicial system in the interwar Poland. Basic legislative, archival, statistical, little-studied sociological sources, memoir literature, and the press have been identified. It is alleged that the source of the research of the judicial system of interwar Poland has the scientific potential for further research on problems that have not been studied sufficiently, which will allow us to obtain new results and deepen the historical and legal knowledge with a view to understanding and using the Polish experience.

Key words: interwar Poland, judicial system, sources of research.

СУДЕБНАЯ СИСТЕМА В МЕЖВОЕННОЙ ПОЛЬШЕ (1918–1939): ИСТОЧНИКИ ИССЛЕДОВАНИЯ

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Аннотация

В статье анализируются важнейшие источники исследования судебной системы и судопроизводства межвоенной Польши в контексте общественно-политического развития. Обосновывается, что источниковедческая база самодостаточна и позволяет всесторонне раскрыть сложный процесс становления и развития судебной системы в межвоенной Польше. Выявлены базовые законодательные, архивные, статистические, малоизученные социологические источники, мемуарная литература, пресса. Утверждается, что источниковедческая база изучения судебной системы межвоенной Польши имеет научный потенциал для дальнейшего исследования малоизученных проблем, что позволит получить новые результаты и углубить историко-правовые знания с целью осмысления и использования польского опыта.

Ключевые слова: межвоенная Польша, судебная система, источники исследования.

Problem decision. For Ukraine, which is implementing justice reform and seeks to bring the judicial system closer to European standards, Poland's experience is especially important. After all, Poland was able in the 90's of the twentieth century - the beginning of the XXI century to make a transformation in many areas of life, including justice, which allowed her to become a member of the European Union. However, the latest events in July 2017 in connection with the adoption of some changes to the law in the judicial system by the Polish Sejm, which should strengthen the influence of the executive branch on the judicial branch of power, caused a perturbation in Polish society. The opposition blamed the authorities for trying to subordinate themselves to an independent judiciary, and according to

experts from the European Commission, these changes constitute risks for the judiciary in Poland. The authorities believe that this is an offensive against «judicial corporations» and the democratization of the judiciary. These events indicate a significant role of the socio-political factor that influences the content and nature of the reform of the judiciary. In this regard, it is important to apply to the traditions of Polish legal proceedings in the historical-legal context, first of all, the interwar period, when Poland began to create a single legal system within the national state, successfully combining the legal norms of the occupying powers with the European legal culture. At the same time, the evolution of the state-political structure of Poland in the interwar period from parliamentarism to the establishment of an authoritarian regime influenced

the role and place of the judiciary in the hierarchy of the structure of power. In this legal field of the law of interwar Poland there were also Ukrainian lands (East Galicia, Volyn) which were in its structure. The study of this experience will make it possible to define better today the main areas and the nature of the reform of justice in Ukraine, to take into account both positive and negative trends.

Relevance of topic research. The study of the experience of interwar Poland in the formation of justice requires, first of all, to apply to its source base, which reproduces the whole range of historical, legal, socio-political, economic factors that have influenced the formation and development of the judicial system. The improvement of historical and legal knowledge about the source of the study of the judicial system of the interwar



Poland allows us to give a real assessment of many aspects of the organization and functioning of the judicial system, to identify poorly investigated issues, to substantiate the prospect of scientific research.

State of research. In the science of state and law of Poland during the interwar period, issues related to the study of the source of justice have become to some extent the subject of study in studies carried out by Polish well-known scholars of this period. These are the works of Y. Makarevich, V. Makovsky, S. Glazer, Ya. Ya., Y. Rappaport, A. Lyanevsky, K. Sobolevsky, M. Allergand, S. Golomb, S. Visatovsky, I. Korzhonek, A. Chervinsky, Z. Nagursky, A. Mohylnitsky, L. Piper. The following researchers managed to systematize Polish legislation some aspects. First of all, this is a collective work on the history of the state and the law of Poland, edited by F. Rigzhe, as well as edited by Y. Bardach, V. Lesnodorsky, M. Piotrchak. The most notable contribution to the Polish legal science, in particular in the study of the source base, was made by Art. Plaza. In recent years, many textbooks on the history of the state and law of Poland, written by E. Borkovsky-Bagenska, B. Lisinsky, T. Matsievsky, T. Opas, K. Suik-Zelinskaya, V. Tsvik, P. Yurek have been published. However, most of these editions do not contain new material, and therefore they do not replace previous editions of textbooks. Actuality is confirmed by the lack of scientific works devoted to the analysis of the source base of the functioning of the judicial system and legal proceedings in interwar Poland.

The purpose of the article is to improve historical and legal knowledge about the source base for the formation, organization and functioning of the judicial system in the interwar Poland, and to determine on this basis the prospects for further study of the problem and obtaining new results.

Presenting main material. The peculiarity of the development of the judicial system and the legal process in the interwar Poland was that the various judicial systems and legal rules of the occupying powers continued to operate on the territory restored in 1918 [1]. Therefore, the main task of the Polish authorities in this period was the unification of law and the judicial system,

codification and creation of national legislation and legal proceedings. The main interest in this problem is due to the fact that the Ukrainian lands, being a part of the Polish state, acquired historical and legal experience that is valuable in the current conditions of reforming the justice system in Ukraine [2, c.189].

Objective analysis of the formation and development of the judicial system, the creation of national legislation in the interwar Poland is possible only on the basis of the study of the source base of that period.

The normative legal basis for the activities of the Polish authorities in this area is the Constitution of the Republic of Poland, laws, decrees and decrees of the President of the Republic of Poland (the Head of State from 1918 to 1922), the Council of Ministers, the Minister of Justice, the Minister of Military Affairs, the Minister of the Interior, approved by the Polish Sejm codes of criminal and civil law and process. These legal acts have been published in the most important official Gazette of the laws of the Commonwealth. The edition was initiated by a decree of the Regency Council of the Kingdom of Poland (formed in September 1917 in the Kingdom by the Polish German and Austrian authorities, which was to perform the functions of the government before the election of the monarch) on January 3, 1918, and the first issue came out on February 1, 1918 and was called the Bulletin of the laws of the Kingdom of Poland [3]. From number 16 (November 8, 1918) to number 65 (August 14, 1919) was published under the name of the Bulletin of the laws of the Polish state, and from the number 66 (August 16, 1919) came out under the title of the Bulletin of the laws of the Commonwealth [4].

In addition, during this period, the Ministry of Justice published its own Bulletin, which published its own instructions. On August 19, 1917, the first issue appeared in Polish, entitled «The Bulletin of the Department of Justice», in 1918 (number 7-11) came out under the name of the Bulletin of the Royal Polish-Polish Ministry of Justice, and from November 26, 1918 (No. 12) was issued as the Journal of the Ministry of Justice [5]. The Herald has published rescissions, orders, circulars of the Minister of Justice, statistical material related to many issues

of the organization of the judiciary and legal proceedings. Important is the information on office transfers, which provided information on the appointment of judges of district appellate courts, investigators, prosecutors, lists of notaries and applicants.

It should be noted that the development of the judicial system in the interwar Poland is not only the history of legislative acts. In fact, laws were only one of the factors that determined the formation and functioning of the judiciary. Equally important is the reflection of the socio-political struggle in the country.

The main legislative acts of the Polish judicial system of the interwar period are March 1921 [6] and April 1935 [7] of the Constitution. They define the constitutional foundations of the organization of judicial power in the interwar Poland, which make it possible to find out the place of judicial bodies among other state bodies, the principles and principles of legal proceedings. A comparative analysis of these constitutions reveals changes in the concept of the place and function of the judiciary in the Polish state of the interwar period. The March 1921 Constitution, which proclaimed the principle of separation of powers, created the legal framework for the development of the judiciary as an independent branch. The May Revolution of 1926, which passed under the slogans of the sanation («recovery») of the state, became the decisive stage in the further development of the state-political system and led to the establishment of an authoritarian regime. The next is the growth of deformations and violations of the principles of the March constitution in the attempts to adapt the activities of judicial bodies to the needs of the authoritarian regime. The next is the growth of deformations and violations of the principles of the March constitution in the attempts to adapt the activities of judicial bodies to the needs of the authoritarian regime. The April constitution of 1935 formally abandoned the concept of separation of powers, subordinating the judiciary to the presidential power. The growing dependence of the courts from the executive branch undermined their role as the most important law-enforcement advocate, which clearly hampered the process of creating a law-governed state.



In this context, the Law «On the System of General Courts» of 1928 [8], which determined the judicial reform and the creation of a unified system of general courts, is decisive one. The analysis of the provisions of this law reveals the principles of judicial reform, the organizational structure of general courts, their competence and composition. The Sejm's laws, regulations and laws of the President of the Republic of Poland [9] adopted during 1929-1939 concerning the upgrading of the Law «On the System of General Courts» of 1928 make it possible to find out the nature, direction of these changes and to confirm the aspirations of the Polish authorities to reinforce its influence on the composition of the judiciary and the general management of the judges. In subsequent years, this law was subject to changes in accordance with the needs of the authorities, which became authoritarian. By the end of the inter-war period of only 299 articles of the original text of the Law, only 145 remained unchanged [10, c. 627]. These changes related, first of all, to the principles of judicial independence, in particular issues related to the appointment and transfer of judges to another job, the competence of the courts.

A number of laws and decrees, resolutions and decrees of the President of the Republic of Poland concern the formation of the highest judicial bodies of general competence - the Supreme Court [11] and the supreme organs of special justice – the Supreme Administrative Tribunal, the State Tribunal, the Competing Tribunal [12]. These legislative acts provide an opportunity to reveal the organizational structure, competence, composition, order, functioning and changes that have taken place throughout the interwar period in the activities of the highest judicial bodies in Poland. The creation of special high public courts has had a positive impact on the protection of both public interests and personal rights of citizens. However, subsequently, their competence, in accordance with the Constitution of 1935, was limited.

Other laws that were issued on the basis of the Seimas, the orders of the President of the Republic of Poland were formed by special courts, namely, the courts of labor [13]. These legal and regulatory sources determine the structure, competence, composition, and

peculiarities of the activity of these courts. The creation of labor courts designed to resolve labor conflicts between employers and workers showed that the legislature had made a significant step in the synthesis of legal relations in the branch of job.

The most important source for the study of Polish criminal law and process is the 1932 Criminal Code, the 1932 Law on Offenses, and the Code of Criminal Procedure of 1928 [14] issued under the instructions of the President of the Polish Republic. They define the basic legal principles, principles and content of Polish during the occupation, and the level of application of the contemporary achievements of legal scientific thought.

Numerous laws, orders, decree reveal important changes and additions to many provisions of both the criminal code and the criminal procedural code [15]. Their analysis gives grounds for asserting that they took place in the direction of replacing the protective functions of criminal justice with punishment, especially with regard to political opponents, which led to significant violations of the rights of the participants in the criminal process. According to the decree of the President of November 21, 1938, the amendments to the 50 articles of the Code of Criminal Procedure were amended to improve the judicial process. These changes were provided for the extension of the jurisdiction of the Grodesk courts regarding crimes against the authorities, the limitation of the principle of immediacy, the complication of appeals of court sentences, the expansion of individual proceedings of judges, the strengthening of the role of the prosecutor, the limitation of the powers of the auxiliary prosecutor and limitation of open court hearings. This led to deterioration in the position of the accused and the victim and increased the tendency for the judiciary to become a means of coercion and punishment of citizens. A vivid source confirming such a situation in criminal proceedings is a sociological study conducted by the Department of Criminal Law of the University in Vilnius, questioning among Grodian judges who expressed their opinion on the activities of Polish judges [16].

The interference of the political factor is clearly followed by changes in the law on jury trials as a public factor in the administration of justice. If according to

the law «On the order of general courts» of 1928 it was envisaged to establish at the district courts a jury for consideration of serious criminal and political affairs, then in the late 1930's these courts were eliminated in the absence of constitutional guarantees [17]

In the field of civil law, the main sources are the Civil Procedure Code of 1930 (came into force on January 1, 1933), the Code of Obligations of 1933 (came into force on July 1, 1934) [18]. They characterize the main principles of Polish civil justice, the positive and negative sides in its implementation. The new Polish Civil Procedural Code was characterized by a high technical level, quality, simplicity and clarity, although some provisions were controversial and questionable. However, attempts made in the late 1930s to address shortcomings in the civil process were mainly limited to the use of the appeal process, which made civil justice less accessible to poorer groups of the population, and therefore their interests remained without reliable legal protection [15].

Unbiased archival materials, published documents and materials, memoirs, and the press provide more objective representation of the activities of judicial bodies, criminal and civil proceedings in interwar Poland.

The most original sources of study of the judicial system and the proceedings of interwar Poland are unpublished documents of the archives of Ukraine and the Polish Republic.

The materials of the Central State Archives of Ukraine in Lviv are a significant source base. The Prosecutor's Office of the Court of Appeal in Lviv funds include, in particular, the following documents: the correspondence of the Ministry of Justice with the chambers and prosecutors of the courts of appeal, as well as the leadership of these courts with lower courts, reports on the activities of the courts, which contain a large amount of information about the organization and structure. courts, execution of judicial proceedings in criminal and civil cases, the formation of a judiciary, and the procedure for conducting court proceedings in courts. Among the documents of the fund, the materials of the Chief Statistical Office of Poland, concerning the number of general courts and judges, judicial districts, data on the implementation by



the Polish courts of criminal and civil justice after the unification of the judicial system in Poland [19] were revealed. The materials of the judicial statistics allow to characterize the time system of the judiciary, the personnel potential of judges to reveal the effectiveness of criminal and civil proceedings. The materials of congresses, conferences of prosecutors and judges allow to investigate the contemporary problems of Polish legal proceedings and methods of their solution. The fund contains materials on the work of extraordinary courts and jury trials. The materials of the Halytsky Province government describe the policy of the Polish authorities regarding the formation of a judiciary and the organization of legal proceedings in Poland [20]. The District Court in Lublin [21] and the «Curatorium of the School District in Lviv» [22] contain materials on the proceedings of the Polish courts and data on the personnel of the Polish courts.

“The Lviv Regional Court’s State Archive Fund” of the State Archives of Lviv District has a lot of materials for verifying courts, as well as correspondence between the Ministry of Justice and the leadership of the appellate courts, the chairman of the appellate court with the leadership of the district and city courts, which makes it possible to study in detail the organization of work in Polish courts, and civil justice, professional training of judges, their financial position. A separate group of documents of this fund consists of the materials removed from the Ukrainian press by the Polish censorship, which became one of the main sources of coverage of the peculiarities of the activity of Polish courts in the Western Ukrainian lands [23]. On these lands courts were used by the state as an instrument of the assertion of Polish domination. In the «Drohobych City Court» fund, in addition to documentary evidence on the activities of the courts and the staff of judges, the work of the judge of the Lviv Court of Appeal, J. Franke, «Judiciary in the District of Lviv Appeal in 1917-1928» was found out [24]. The documents of the Lviv Voivodstvo Directorate cover the activities of associations, associations, groups of Polish judges and prosecutors. The funds of «Lvivske povitove starostvo» and «Lviv Provincial Police Headquarters» contain documents on various aspects

of criminal justice [25]. In general, the Lviv archives are well-organized. Each case contains documents that are united by one problem. Most documents are printed, others are handwritten, usually in Polish. Sometimes there are documents in Ukrainian. However, far from all the materials have been processed in the Lviv archives, especially in court cases. So there is a need to continue research in these archives.

From the Polish unpublished sources, the documents of the state archive in Krakow deserve attention. The «Court of Appeal in Krakow» fund consists mainly of the materials of the court reviews, the problems of personnel policy. Separate documents of this fund reproduce the work of the courts of labor [26]. More information on political litigation and national minority issues in Polish courts contains materials from the Krakow District Court. It should be noted that the archive materials need to be streamlined, namely, in the development of subject-matter catalogs and case-formation. In one case, different documents in the content can be combined, which somewhat complicates their research.

The «Ministry of Justice» fund of the Archives of New Acts in Warsaw is of particular interest. It covers materials that characterize the size of crime in interwar Poland, the number of convicts in Polish courts, as well as the problems of training judges, judiciary [27]. Documents of the Warsaw Court of Appeal Foundation, Warsaw State Archives, cover the activities of the Court of Appeal [28]. Documents kept in the «District Court in Rzeszów» fund of the State Archives in Rzeszow reveal the activities of mortgage departments of courts and the decision of civil courts [29]. Polish archives are still poorly researched. There is a need to continue working on them over documents. Particular attention should be paid to the activities of the Supreme Court of the Republic of Poland and the analysis of the Collection of Sentences of the Supreme Court, which contained solutions to basic legal issues.

Among the published sources of particular interest are statistics [30], lists of judges [31], as well as materials of high-profile court proceedings [32].

The source base is substantially complemented by memoirs. In particular, the memoirs of the prosecutor K. Rudnitsky

highlighted the peculiarities of the formation of the Polish judicial system in the interwar period and the problems at various stages of its development, the mechanisms of the influence of Polish power on the judiciary and the influence of the activity of the courts on Polish society [33]. The memoirs of the famous politician, V. Vitas, help to trace how political changes, in particular, the rise of authoritarianism of political power in Poland, influenced the judiciary [34].

An important source in the process of scientific research of the judicial system in Poland was the Polish and Ukrainian press of the interwar period. The analysis of the press provides a wealth of factual information on judicial practice. Especially activities of Polish courts in Western Ukrainian lands. Ukrainian periodicals include the magazines «Dilo», «Our voice», «New star», among the Polish - «Gazeta Polska», «Gazeta Sądowa Warszawska», «Warszawski Dziennik Narodowy» and others.

Certain sources can be legal professional magazines, which contain statistical materials, court sentences, analytical articles and conclusions of well-known Polish and Ukrainian lawyers and public figures. This makes it possible to find out the assessments of the judicial authorities by the Polish and Ukrainian communities and determine the level of legal consciousness in the multinational Polish society of the interwar period. Such materials were published in the Ukrainian magazine *Life and Law* and in the Polish legal publications *Czasopismo Prawno-Historyczne*, *Czasopismo Sędziowskie*, *Głos Prawa*, *Nowe Prawo*, *Palestra*, *Państwo i Prawo*, *Przegląd*, *Ruch Prawniczy*, *Economical and Sociologic*, *Gossos Sądownictwa*.

Conclusions. The results of the study suggest that the study of the judicial system in interwar Poland has a solid source base that allows for an objective analysis of the place of the judiciary among other branches of public administration, as well as its effectiveness in the administration of justice. Despite this, much of the sources remain, which has not yet been put into scientific circulation, and therefore some problems remain not sufficiently researched. First of all, it concerns the further processing of archival materials, especially the consideration of judicial criminal and civil cases in the courts,



which reveal the functioning of the judicial system. It is necessary to continue work on the ordering of archival materials in the direction of creating subject-themed catalogs. Given the importance of the decisions of the Supreme Court for the entire system of inter-war justice, it is worthwhile to continue the study of materials related to the activities of this highest court system, in particular, the issues of judicial practice and sentences. Many problems of the Polish interwar period of judicial proceedings, raised by the press, and especially on the pages of specialized legal publications, remain outside the attention of researchers (legal culture, ethics, mentality, etc.). In our opinion, we should use the interesting experience of Polish scientists who conducted questionnaires of judges on their consideration of criminal cases, including political ones. Based on the questionnaire, the book is a valuable source for the history of law, which is still not used enough in both Poland and Ukraine. The experience of Polish scholars provides an example of an effective combination of sociological methods of research with the practice of legal proceedings, which, of course, can contribute to the optimal process of reforming the judicial system.

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МОДЕРНИЗАЦИЯ СИСТЕМЫ СУБЪЕКТОВ ПРАВА ЗАКОНОДАТЕЛЬНОЙ ИНИЦИАТИВЫ В УКРАИНЕ В КОНТЕКСТЕ СТАНОВЛЕНИЯ ТРАДИЦИЙ НАЦИОНАЛЬНОГО ПАРЛАМЕНТАРИЗМА

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Аннотация

Рассмотрены вопросы совершенствования системы субъектов права законодательной инициативы в Украине в контексте становления национального парламентаризма. Обоснована необходимость осуществления модернизации системы субъектов права законодательной инициативы с учетом классического понимания принципа разделения властей. Проанализирован реальный социальный эффект от предоставления права законодательной инициативы в Украине фракциям политических партий в парламенте и парламентским комитетам.

Ключевые слова: законодательная инициатива, парламент, фракция, комитет, разделение властей.

MODERNIZATION OF THE SYSTEM OF SUBJECTS OF THE LAW OF LEGISLATIVE INITIATIVE IN UKRAINE IN THE CONTEXT OF THE FORMATION OF THE TRADITIONS OF NATIONAL PARLIAMENTARISM

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Summary

The problem was reviewed how to improve legal entities system of Ukrainian legislative initiative as part of national parliamentarism establishment. It is confirmed that there is necessity of legal entities system modernization of legislative initiative in Ukraine considering the classical concept of partition of power. There was made the analysis of real social impact of authorizing legislative initiative in Ukraine to factions of political parties in the parliament and parliamentary committees.

Key words: legislative initiative, parliament, faction, committee, partition of power.

Постановка проблемы. Основополагающей функцией парламентаризма генетически является законодательная. Становление национальных традиций парламентаризма, развитие демократических трансформационных процессов, европейские тенденции развития политического процесса актуализируют вопрос институционального реформирования законодательного процесса в Украине, учитывая наработки доктрины конституционного права, постмодернистских особенностей трансформации политической системы и концепции разделения власти в ее классическом понима-

нии. Ключевой, в свете этой парадигмы, выступает проблематика субъектного состава законодательного процесса. Следует отметить, не вдаваясь в дискуссию, что ключевое место в системе субъектов законодательного процесса отводится субъектам, наделенным правом законодательной инициативы. Соответственно, особое значение имеет модернизация системы субъектов права законодательной инициативы в Украине, с учетом опыта стран устоявшейся демократии и принципа разделения властей. Сегодня в науке конституционного права и в политикуме имеется методологический хаос по вопросу модерни-