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Polish justices of the peace in the 20s of the 20th century

Conclusions drawn from the practical historical experience of selected judicial circuits of the former Prussian partition vis-à-vis present controversies as to the restoration of the institution¹

Justices of the peace in the European legal tradition were mostly a group of non-professional judges, often lacking academic legal education, enjoying the trust of the local community and deciding cases 'of low gravity' in an informal procedure. Some form of justices of the peace existed in every piece of territory of interwar Poland reclaimed from the former partitioning powers. The research presented in the article focuses on former Prussian Territories – the Appeal District of Poznań [Posen], and analyses the practical experiences of 'judices of the peace' functioning in the light of administrative and supervisory court files deposited in the archive in Poznań.

The author reflects on three main issues. Firstly, the procedure of justices of peace appointments is presented in detail. Secondly, challenges and problems with the quality of their work – pointed out by their supervisors – is discussed. Thirdly, their impartiality and relations with professional judges, court staff, trial participants, and especially local communities is assessed. In the end, the author attempts to explain why the functioning of 'justices of the peace' in former Prussian territories in interwar Poland was seen as a failure.

Keywords: *former Prussian Partition – history of criminal law – history of criminal procedure – justices of the peace – prosopography – Second Republic of Poland*

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1. Introduction

The Polish state formed after World War I was composed of territories reclaimed from the former partitioning powers – Germany, Austria and Russia. Each of the three territories had a different system of civil and criminal law, both substantive and procedural, as well as its own court hierarchy.² After 1918, this was, of course, maintained. Although the legal system underwent systematic Polishization and unification, the process was not complete before the outbreak of World War II.³

This article deals with the functioning of justices of the peace in the realities of interwar Poland. The institution has been regulated differently in different legal orders and systems. In general, the name applies to a group of non-professional judges, often lacking academic legal education, enjoying the trust of the local community and deciding cases ‘of low gravity’ in an informal procedure. Some form of justices of the peace existed in each and every piece of territory of interwar Poland reclaimed from the former partitioning powers. They were also envisaged by the Polish constitution of 1921.⁴ At the present day, the very fact of the institution’s existence is frequently invoked – as a specifically understood historical legal argument – by those in favour of the restoration of justices of the peace in modern Poland.⁵

Until this day, Polish legal historians have dealt with the problem of justices of the peace in interwar Poland mostly from the perspective of legal doctrine and codification works; valuable studies from this angle were written especially by Robert Jastrzębski and Mariusz Mohyluk.⁶ However, we lack studies enabling the evaluation of the realistic practical historical experience of the functioning of this type of courts. Only Arkadiusz Bereza researched the archival material on justices of the peace in Zamość between 1917 and 1929.⁷ However, one should remember that the former Russian partition had completely separate legal provisions, and the role of justices of the peace there was different. The brilliant work by Jakob Maziarz is also interesting from the practical perspective because he presented complaints against justices of the peace in parliamentary interpellations filled by deputies.⁸ The present paper attempts to supplement the current research on the practical functioning of the institution for the former German-Prussian partition in the light of documents produced by the justice system itself.

Due to the complexity of the subject matter and the limited size of this paper, my studies dealt only with two north-western territories of interwar Poland (the Wielkopolska and Pomorze [Pommern] regions) in the 20s of the 20th century. My studies covered archival materials concerning justices of the peace appointed at 20 lowest-tier courts⁹ in Bojanowo, Gniezno, Jarocin, Kępno, Kościan, Koźmin,

² This article focuses primarily on the criminal law of the territories of the former German (Prussian) partition. I relied on such official Polish translations of German codes – of criminal law (1871) and criminal procedure (1877) – as had been created for the purposes of the interwar Polish justice system: KAŁUŻNIACKI, LEŻAŃSKI (eds.), *Postępowanie karne* [hereinafter the ‘GCP’]; *Kodeks karny Rzeszy* [hereinafter the ‘GCC’].

³ In 1929, a reform and harmonization of the organization of the courts took place and several codifications were enacted: criminal procedure (1928), criminal (1932), civil procedure (1932), obligations (1933) and commerce (1934). Numerous detailed statutes were adopted for multiple branches and areas of the law.

⁴ MALEC, *Sądy w Konstytucji* 19.

⁵ The topic has gained much currency in recent years; historical arguments are cited by e.g. KIELIN-MAZIARZ, *Problem niezawisłości* 30–59; KRUSZYŃSKI, *Sądownictwo sędziów pokoju* 143–158.

⁶ See JASTRZĘBSKI, *Czynnik obywatelski* 283–324; MOHYLUK, *O sędziach pokoju* 253–280.

⁷ BEREZA, *Magistrates of Zamość* 173–192.

⁸ MAZIARZ, *Zagadnienie sędziów pokoju* 453–472.

⁹ The courts in those territories had a three-tier hierarchy at the time. Until 1929, the lowest tier had been district courts (*sąd powiatowy*) composed of one or more professional judges. Those were the courts for which justices of the peace were appointed. The higher tier were regional courts (appeals from district courts, and first-instance jurisdiction in more serious cases), and the highest were courts of appeals (hearing appeals from the judgments of regional courts); more extensively see: MATERNIAK-PAWŁOWSKA, *Ustrój sądownictwa*.

Krotoszyn, Leszno, Mogilno, Odolanów, Ostrów, Ostrzeszów, Pleszewo, Rawicz, Śmigiel, Trzemeszno, Wągrowiec, Witkowo, Wolsztyn and Września.¹⁰ The study combines the historical legal approach involving the analysis of the content and meaning of legal provisions with the tools of modern social history dealing with social elites, as well as prosopography.

2. Appointment of justices of the peace

The Constitution of 1921 stipulated that justices of the peace would be 'elected, as a rule'. In the former German (Prussian) partition, however, they were appointed on the basis of the German statute governing the organization of the court system and a Polish regulation of 1919, neither of which provided for elections.¹¹ The justice minister appointed them to three-year terms out of a pool of candidates presented by the presidents of the regional courts.¹² The appointment was effected by dispatching a special letter to the court in which the justice of the peace was to serve.¹³ The justices themselves also received an attestation of their appointment in the form of a solemn diploma (decree).¹⁴ The efficacy of

the taking of office also required the appointee to take an oath in the courthouse, worded similarly to the oaths of office taken by professional judges.¹⁵ The fact of the taking of the oath was attested by a separate certified transcript.¹⁶

From the technical perspective, individual nominations were the result of consultations held with the presidents of the district courts where the prospective justices of the peace would serve. Being familiar with the local circles and the needs of their own courts, they were often unofficially the ones having initiated the whole procedure. However, finding suitable candidates usually was a task exceeding their capabilities. The courts were not in a position to 'screen' a candidate properly and ascertain that the candidate's situation in life and moral standing were suitable for the office. The assistance of the local government administration was needed, and especially that of district heads (*starosta powiatowy*). As the president of the regional court in Leszno candidly admitted: "for the [...] post of justice of the peace [...], I will nominate a candidate when I have consulted on the matter with the district head".¹⁷ When presenting two candidates for positions of justices of the peace in Ostrzeszów, the president of the district court notified his superiors that: "both of

¹⁰ These are all district courts within the three judicial regions ('circuits') of Gniezno, Leszno and Ostrów. The materials include the documentation of the staffing of the peace courts, as well as evaluations of the quality and speed of case handling at the district-court level. For the territory of the former Court of Appeals in Poznań, they are deposited with the State Archive in Poznań, in a unit named after the court (*Sąd Apelacyjny w Poznaniu*) [hereinafter the 'APP, SAP']. Specific case numbers are provided in footnotes.

¹¹ More: PACIORKOWSKI, *Pierwsze miesiące* 9–22.

¹² Usually through the official channel, i.e. presidents of courts of appeals, e.g. APP, SAP, 390: 31.

¹³ APP, SAP, 341: 24; APP, SAP, 364: 28, 55; APP, SAP, 367: 27, 30; APP, SAP, 370: 65; APP, SAP, 375: 56; APP, SAP, 380: 79, 92; APP, SAP, 390: 43, 68, 75; APP, SAP, 411: 51; APP, SAP, 425: 26, 41, 43, 66, 70, 73, 85; APP, SAP, 446: 16, 30; APP, SAP, 460: 32; APP, SAP, 467: 24, 36; APP, SAP, 470: 12, 24, 51, 56, 62; APP, SAP, 482: 14, 51, 55, 60, 65; APP, SAP, 509: 11, 20, 42; APP, SAP, 521: 50, 57.

¹⁴ The diploma had to be returned following completion of the term of office, as a result of which a considerable number has survived in court files: APP, SAP, 341; APP, SAP, 355: 49; APP, SAP, 364: 23; APP, SAP, 375: 47, 49, 53; APP, SAP, 378: 19; APP, SAP, 407: 16; APP, SAP, 411: 43; APP, SAP, 421: 46; APP, SAP, 446: 28, 39; APP, SAP, 460: 47; APP, SAP, 470: 17; APP, SAP, 482: 58; APP, SAP, 521: 55, 56.

¹⁵ Far-reaching consequences were, of course, derived from the oath of office. As the ministry would remind them: 'The justices of the peace ought to remember that they are, in their scope of operation, judges of the Republic of Poland and have taken the judicial oath. Having once accepted the office, they should discharge it as conscientiously as possible [...].'

¹⁶ For example: APP, SAP, 367: 48; APP, SAP, 370: 8, 10, 59, 75–76, 86, 93; APP, SAP, 375: 18; APP, SAP, 380: 9, 83; APP, SAP, 390: 36, 45, 52, 78; APP, SAP, 411: 54; APP, SAP, 421: 20, 65; APP, SAP, 421: 76, 80; APP, SAP, 425: 9, 57, 69, 75, 88; APP, SAP, 446: 19, 33; APP, SAP, 460: 6, 34; APP, SAP, 467: 26, 28; APP, SAP, 482: 64.

¹⁷ APP, SAP, 390: 44.

the gentlemen were proposed by the district office" (*starostwo powiatowe*).¹⁸ In another letter, the same court president desired to present a suitable candidate, so he wrote to his superiors: "I asked the district head [...] to recommend to me a different person qualified to serve as justice of the peace."¹⁹ One of the applications for the appointment of a justice of the peace in Pleszewo was returned with directions to amend for failure to source "the district head's opinion" on the candidates' "personal qualifications".²⁰ We could cite more such examples. Consulting on candidacies or outright requesting the district authorities to find suitable persons to serve as justices of the peace was common practice.²¹ Court files contain numerous letters of recommendation from district heads or notes confirming the receipt of such recommendations.²² Only in one case (Ignacy Janusz of Jarocin) did I manage to ascertain that during the recruitment procedure "he did not submit the district head's opinion". That was, however, due to the district head refusing to give his opinion because, having been appointed only recently, "he did not know the people".²³

Candidates for the position of justice of the peace had to meet certain conditions. In the

files, we can find opinions concerning candidates' personal qualifications, mentioning the advantages sought by the ministry. Of one candidate it was said that "he enjoys, throughout the vicinity, the best possible reputation and esteem. He is affluent, independent, staid, highly intelligent – and as such would be suitable for this office."²⁴ Another was said to be "an intelligent and experienced man enjoying general, universal confidence".²⁵ Accordingly, a justice of the peace had to be independent, both in personal terms and especially in terms of wealth; he needed suitable life experience and specific intellectual predispositions. The result was that the justices were recruited exclusively from the local elites: landowners and independent farmers; tenants and administrators of landed estates; factory owners; merchants (owners of stores or trading companies), pharmacists and white-collar workers from the private sector (employees of banks, insurance companies or credit institutions). Justices of the peace were also recruited from teachers and mid-level civil servants.²⁶ Those candidacies, however, were not met with unequivocal enthusiasm, also because they often required the approval of the superior authority. Such was especially the case with teachers and headmasters,²⁷ as

¹⁸ APP, SAP, 411: 58.

¹⁹ APP, SAP, 390: 63.

²⁰ APP, SAP, 425: 36.

²¹ APP, SAP, 370: 30; APP, SAP, 390: 21; APP, SAP, 446: 14; APP, SAP, 460: 28; APP, SAP, 470: 22; APP, SAP, 482: 13, 41, 44; APP, SAP, 521: 18.

²² APP, SAP, 341: 17; APP, SAP, 356: 42; APP, SAP, 364: 31^v, 51; APP, SAP, 367: 25; APP, SAP, 378: 25, 28; APP, SAP, 380: 58; APP, SAP, 425: 48, 59; APP, SAP, 446: 15; APP, SAP, 467: 13, 17; APP, SAP, 482: 43. Sometimes, albeit rarely, the district heads' opinions were in the negative; a candidate suggested by the president of the court was regarded as an 'unsuitable person' by the civil servants at the municipal office. The alleged cause was his 'implication in the matter of illicit manipulation in horse trade' – APP, SAP, 482: 35.

²³ APP, SAP, 364: 45.

²⁴ APP, SAP, 460: 36.

²⁵ APP, SAP, 470: 63.

²⁶ In a separate study, I will be publishing some research incorporating a statistical overview of the professions and occupations exercised by justices of the peace throughout the territory of the Court of Appeals in Poznań in the interwar period.

²⁷ We can find examples of requests for such approval on file. For example: APP, SAP, 470: 32, as well as confirmations that it had been granted: APP, SAP, 370: 20; APP, SAP, 470: 49; APP, SAP, 482: 48; or refusals, e.g.: APP, SAP, 390: 27; APP, SAP, 521: 23.

well as the employees of certain departments of government administration, e.g. communal treasurers and postmasters.²⁸

3. Reconciling occupational work and judicial responsibilities

The position of justice of the peace was by design reserved for the elites. This was due to social and cultural factors (strong reminiscence of class hierarchy and economic disparities), as well as practical reasons. The ability to serve as a justice of the peace required certain intellectual qualifications, enough free time to engage in judicial duties after work,²⁹ and permanent gainful employment providing a livelihood in the absence of remuneration for public service. By design, justice of the peace was a position of honour without emoluments. Only "compensation" for costs incurred, such as transportation, was envisaged, though the value of such reimbursements was symbolic. They often failed to compensate the expenses incurred by the justices in the exercise of their functions.³⁰

Accordingly, finding a suitable candidate for justice of the peace was not easy, especially considering that the candidate's own consent was required.³¹ When the wave of patriotic sentiment relating to the reacquisition of independence began to subside, the entreaties made by court presidents and district heads increasingly fell on deaf ears. Potential candidates were discouraged by the perspective of additional difficult, thankless and time-con-

suming work fraught with much inconvenience. The files reveal numerous examples of candidates' reluctance to assume the burden. For example, in Ostrów, the protracted search in 1924 eventually led to the candidacy of Seweryn Nerski, who consented to take the position "only after long negotiations".³² In mid-1925, the official in charge of the peace court in Krotoszyn reported that the district head had conferred with several persons concerning the prospect of taking the position but "nobody wanted to take the office".³³ In 1922 in Odolanów, the president of the Regional Court conferred with persons from a pool selected with the assistance of the district head, but also to no avail. He remarked: "They do not want to accept the office".³⁴ The reasons for which potential candidates declined to assume the position were self-evident. One of them explained that "he could not accept the office of justice of the peace, for his commercial interests would suffer greatly thereby".³⁵

There was an alarming trend of resignations before the end of the term, as evidenced by a sizeable body of documents. Sometimes the reasons were health problems or permanent change of residence.³⁶ The most frequently cited were conflicts between the responsibilities of a justice of the peace and gainful employment. Justice Ludwik Łazarski from Bojanowo "ask[ed], in so far as possible, to be the most expeditiously released from his duties [...] because he [wa]s loaded with work in his primary office".³⁷ Jan Lipski of Ostrów wanted to quit "because of ever intensifying professional and social occupations",³⁸ and Hipolit Brzeziński of Kościan desired to do so "in consideration of his other

²⁸ APP, SAP, 390: 65; APP, SAP, 482: 49.

²⁹ There are mentions of this in the files. For example, concerning justice Bombicki of Leszno, it was written that 'as a capitalist, he ha[d] sufficient time,' for the performance of additional duties – APP, SAP, 390: 41.

³⁰ Concerning the meagre reimbursements, e.g. APP, SAP, 375: 27; APP, SAP, 380: 100; APP, SAP, 421: 49.

³¹ For example: APP, SAP, 411: 50; APP, SAP, 446: non-pag.

³² APP, SAP, 421: 74.

³³ APP, SAP, 380: 89.

³⁴ APP, SAP, 370: 15.

³⁵ APP, SAP, 370: 28.

³⁶ Health problems: APP, SAP, 378: 23; APP, SAP, 380: 27; APP, SAP, 446: 25; APP, SAP, 467: 8. Changes of residence: APP, SAP, 407: 15; APP, SAP, 482: 59.

³⁷ APP, SAP, 341: 16.

³⁸ APP, SAP, 421: 51.

responsibilities".³⁹ Ignacy Kaczmarek of Krotoszyn "declared" to his superiors that "he w[ould] soon surrender his office because the conduct of the same [wa]s an obstacle to him in his professional work".⁴⁰ Justice Płocieniak of Leszno, who was a landed-estate administrator, in turn, complained: "My duties at the tenancy are so great that I have no time to [...] discharge the office".⁴¹ Merchant Aleksander Prądyński, serving in Ostrzeszów, explained: "My six years' work as a justice of the peace has by nature of things caused a very painful loss of income from my commercial enterprise".⁴² His colleague, Wacław Dirski, asked to be released on the following grounds: "As a merchant, for having discharged the office of justice of the peace [...] disinterestedly, I have fallen into decline materially so much that it is not possible [for me] to continue to discharge that office."⁴³ Similar grounds – "harm to interests" – were invoked by Ignacy Mrówczyński of Rawicz.⁴⁴ Edward Janiak of Pleszewo went with by far the most interesting and probably the most sincere confession. In his words, besides conflict with his professional responsibilities, the reason for his quitting the office was also the "lack [...] of sufficient legal education necessarily needed to pass sometimes important judgments".⁴⁵ We could find more examples of similar complaints and requests to be allowed to resign.⁴⁶ They reveal that dismay and loss of enthusiasm among the justices were rather widespread.

Faced with a resignation, the superiors had the power to compel the justice to stay. The explanation was that departure from office was not up to the justice alone: "[Once] appointed

[...], [the justice] can only ask for discharge, rather than content himself with the declaration of resigning from the office". In consequence, "[...] for as long as discharge [by the minister] has not taken place, he remains justice of the peace with all the consequences thereof".⁴⁷ Such compulsive measures, however, had a negative impact on the quality and conscientiousness of the justices' work. In the mid-twenties, the alarm was sounded more and more often that "justices of the peace [we]re demanding release, deeming the exercise of the judiciary too onerous", in which connection their judgments were becoming, "increasingly cursory and worse".⁴⁸

Refusals to accept resignation could only keep the justice in office until the end of the term. When the time came, the justice had the perfect right to refuse reappointment. On file, we can find somewhat of a large number of consents.⁴⁹ However, a large group of experienced and seasoned justices of the peace did not want to continue in their mission for another three years. Somewhat desperate, the ministry asked court presidents to implore serving justices to continue in service by appealing to their patriotic feelings and sense of public good. In a letter containing instructions for the president of the regional court in Gniezno, the ministry counselled him on how to manage the conversations with the justices nearing the end of their terms. The suggestion, made with disarmingly candid openness, was to point out the "loftiness of the profession of the justice of the peace" and in that way to induce them "to discharge as before such activities for the good of the population, even at a certain detriment to their private

³⁹ APP, SAP, 375: 55.

⁴⁰ APP, SAP, 380: 90.

⁴¹ APP, SAP, 390: 53.

⁴² APP, SAP, 411: 45.

⁴³ APP, SAP, 411: 45.

⁴⁴ APP, SAP, 482: 25.

⁴⁵ APP, SAP, 425: 71^v.

⁴⁶ For example: APP, SAP, 370: 30; APP, SAP, 425: 18; APP, SAP, 521: 6.

⁴⁷ APP, SAP, 482: 24.

⁴⁸ APP, SAP, 459: 48^v.

⁴⁹ APP, SAP, 341: 20; APP, SAP, 370: 83; APP, SAP, 375: 45; APP, SAP, 378: 16, 20; APP, SAP, 380: 73; APP, SAP, 390: non-pag.; APP, SAP, 407: 29; APP, SAP, 411: 39–40, APP, SAP, 421: 78, APP, SAP, 425: 56; APP, SAP, 446: 24, APP, SAP, 460: 44; APP, SAP, 509: 36.

interests".⁵⁰ Such appeals, nonetheless, did not always succeed. One of the reasons for the fiasco of the concept of justices of the peace during the interwar period within the territories of the former Prussian partition was the growing reluctance of wealthy landowners, merchants and civil servants to assume the unremunerated, difficult and thankless office.

4. Legal knowledge and compliance with the law

Apart from staffing problems, one of the great conundra facing the organization of a lay judiciary was and still is the scope of its powers, as well as requirements concerning the knowledge of the law and the skill of its application. Usually, the consensus is that those should be courts for the simplest cases of minor legal importance. The justices of the peace themselves are accordingly expected to use a simplified procedure and rely on common sense and human fairness rather than the rules of professional interpretation of codified law. In practice, however, the implementation of such proposals appears to be very difficult if not impossible. We have no clear and lucid criteria for differentiating between "simple" and "complicated" or "more important" and "minor" cases. We do not know how to "deformalize" the legal system for the purposes of peace courts. It is hardly imaginable that the justices should give up entirely on following the law and start judging solely on the basis of a "popular" sense of equity. This would be at odds with the constitutional foundations of the state, with the principle of rule of law at the apex.

In the former Prussian partition, this problem was not the subject of broader reflection. The appointment of justices of the peace was the product of necessity, resulting from enormous staffing problems faced by the courts of the reborn state. The lack of a sufficient number of professional judges translated into

expecting the justices of the peace to fill staffing gaps. Thus, the – altogether unrealistic – expectation was that after short preparatory training⁵¹ and under the influence of good role models and sufficiently long practice, they would eventually simply learn the application of the law (both substantive and procedural). It should not come as a surprise that the results of the experiment proved abortive. The lay judges – usually without the benefit of legal education, working full-time day jobs outside of the judiciary and only serving "after hours" – were, of course, unable to conduct hearings, hold court and pass judgments on a level close to a professional judge. To consider why their performance was not viewed favourably, it will be expedient to take a closer look at the expectations set before them and the censure they incurred in practice.

Justices of the peace could be appointed both for civil and for criminal cases. Being more sophisticated, civil law was, of course, more demanding. The appointment of justices of the peace for civil cases was thus rare; even such justices as were appointed to such a position were somewhat quickly dismissed or moved to criminal courts. As a court president explained to his superiors: "In civil cases [...] the holding of court and [passing] of judgments by lay people is not conducive to raising the court's esteem on the outside; I implore that the initiative of appointing a justice of the peace for civil cases be withdrawn."⁵² Although the resentment towards the idea of justices of the peace for civil cases was universally felt, the files contain some examples of commendations individual justices received for performing their duties adequately.⁵³ Below, I will be focusing on justices of the peace for criminal cases, who were decisively more numerous and on whose activities there is more information.

Enumerating all errors in the understanding and application of the provisions of the GCC and criminal procedure would exceed the scope of this paper. I will thus only cite a cer-

⁵⁰ APP, SAP, 521: 20.

⁵¹ There is mention of such preparatory training on file: APP, SAP, 482: 8v; APP, SAP, 521: 14.

⁵² APP, SAP, 425: 96.

⁵³ For example: APP, SAP, 521: non-pag.

tain group of the most symptomatic, serious and repeating examples. In the files, we will find cases in which the justices of the peace exceeded their jurisdiction. One of them, serving in Jarocin, passed numerous judgments based on Article 303 of GCC while ruling on civil cases for damages.⁵⁴ Justices of the peace often misapplied the GCC sentencing guidelines, especially Article 29 (imprisonment in lieu of a fine due to difficulties enforcing a financial liability against the convict),⁵⁵ Article 77 (concurrence of penal arrest and imprisonment)⁵⁶ and Article 78 (cumulative fine when passing one sentence for several crimes).⁵⁷ Sometimes, the justices did not know or follow the statutes of limitations (Article 66 GCC).⁵⁸

Additionally, justices of the peace were reproached for not knowing and not applying the provisions located outside of the code, as well as Polish amendments to the German codification. This shows that, unlike professional lawyers, justices of the peace did not have the ingrained habit of staying on top of legislative amendments. As was observed following inspection in the court in Kępno, “the recent amendments to criminal procedure and the criminal statute must be brought to the attention of the justices of the peace”.⁵⁹ As for criminal law outside of the code, justices of the peace encountered problems applying

the German statute on forest theft⁶⁰ and the one on juvenile defendants of 1917.⁶¹

There were numerous cases of justices of the peace becoming confused in the application of German procedural provisions dealing with the conduct of trials. In certain cases, one can notice failure to comprehend the meaning of the principle of direct adduction of evidence. This was manifested by rather frequent references to materials and writings from pre-trial investigation in the judgments, omitting formal admission of such evidence in court.⁶² Nor did the justices of the peace properly apply the provisions governing the interrogation of witnesses: Articles 53, 56 and 59–62 (administration of the witness oath),⁶³ Article 68 (interrogation of witnesses at trial)⁶⁴ and Article 54 (instruction of a victim on the right to refuse self-incriminatory testimony).⁶⁵ Errors also appeared in the application of Articles 215–216 (compelling the defendant’s attendance without arrest on failure to appear),⁶⁶ or Articles 453–458 (rules of procedure for “police orders”, i.e. fines imposed by police officers).⁶⁷ Repeat censure was incurred by the justices’ failure to prepare themselves for the trials, i.e. failing to read case files before proceeding.⁶⁸ The widespread practice of taking the files home,⁶⁹ which could even lead to misplacing them, also attracted a negative

⁵⁴ APP, SAP, 362: 14.

⁵⁵ APP, SAP, 381: 7; APP, SAP, 362: 14.

⁵⁶ For example: APP, SAP, 381: 8.

⁵⁷ APP, SAP, 419: 89^v; APP, SAP, 423: 6.

⁵⁸ APP, SAP, 371: 67; APP, SAP, 381: 7; APP, SAP, 419: 89^v.

⁵⁹ APP, SAP, 371: 24^v, 67; cf. Polish statute amending the German code: Dz.U.1923.92.721.

⁶⁰ APP, SAP, 381: 8–9; APP, SAP, 419: 12.

⁶¹ APP, SAP, 377: 7^v; APP, SAP, 409: 8, 15^v, 44^v; APP, SAP, 419: 190.

⁶² APP, SAP, 377: 7^v.

⁶³ APP, SAP, 362: 14; APP, SAP, 377: 7^v; APP, SAP, 405: 91^v; APP, SAP, 419: 89, 179; APP, SAP, 423: 6; APP, SAP, 482: 21.

⁶⁴ For example: APP, SAP, 423: 6.

⁶⁵ APP, SAP, 449: 2.

⁶⁶ For example: APP, SAP, 405: 91^v.

⁶⁷ APP, SAP, 419: 89^v.

⁶⁸ For example: APP, SAP, 374: 7; APP, SAP, 482: 21; APP, SAP, 481: 5–6.

⁶⁹ APP, SAP, 423: 77.

reception.⁷⁰ A separate problem was an evidently irregular pattern of court dates and unwarranted cancellations.⁷¹

The justices also struggled to formulate the holdings of their judgments. In Ostrów, the inspecting official sounded the alarm that the holdings of certain judgements “lack[ed] the formula: ‘In the name of the Republic of Poland’”.⁷² Some errors were more consequential, for example when the justices acquitted their defendants instead of ordering a procedural discontinuance.⁷³ The redaction of a holding so as to reflect correctly the substance of the case also presented a challenge. The justices serving in Bojanowo were cautioned that their judgments should “specify more precisely the act imputed to the defendant and thereafter specify more precisely such [...] outcome of the evidence as persuaded the court of the defendant’s guilt or innocence. The justice discharging the judgment should remember that the judgment must give the reader a precise view of the case irrespective of familiarity with the rest of the case record.”⁷⁴ The performance review of the justices from Witkowo revealed that “specification of the punishable act [wa]s missing” from the holdings of the judgments.⁷⁵ Numerous judgments were noticed to lack a decision on part of the charges making up the indictment (Article 263 of the GCP).⁷⁶ Similar reproaches concerning errors in the specification of the act and in the redaction of holdings keep re-

surfacing rather often.⁷⁷ The opposite problem was sometimes the case – long-winded holdings, e.g. providing the detailed description of all elements of the crime and the perpetrator’s *modus operandi*.⁷⁸ According to a particularly interesting remark, justices of the peace ought to write their holdings “on separate sheets and not on the margins of transcripts, which looks disorderly and result[s] in a lack of transparency”.⁷⁹

Numerous complaints mentioned imperfect compliance with § 266 of the GCP, governing the requirements to be met by court opinions.⁸⁰ Very often, the latter were found to be excessively laconic, “cursory” and imprecise. Concerning one of the justices of Krotoszyn, it was remarked that his opinions revealed “a lack of depth and a certain superficiality proper to laypeople”.⁸¹ In Odolanów, another justice apparently gave his ‘motives’ (rationale of the judgment) in literally a single sentence: “Having considered and examined the matter, the court entered judgment as above-stated”.⁸² In the mid-20s, the justices in Ostrzeszów and Wągrowiec were reproached for “the judgments redacted by them [being] too vague”.⁸³ Bolesław Iłski of Leszno was implored to: “give a little more precise motives for his judgments”.⁸⁴ Similar complaints concerning excessively brief and insufficiently motivated court opinions were also voiced with regard to the judgments of other justices within the studied judicial circuits.⁸⁵ More-

⁷⁰ APP, SAP, 355: 30.

⁷¹ APP, SAP, 350: 28, 47; APP, SAP, 409: 87v.

⁷² APP, SAP, 421: 12.

⁷³ APP, SAP, 419: 179v.

⁷⁴ APP, SAP, 340: 5.

⁷⁵ APP, SAP, 466: 3.

⁷⁶ APP, SAP, 349: 52v; APP, SAP, 371: 5, APP, SAP, 419: 180; APP, SAP, 459: 48v.

⁷⁷ For example: APP, SAP, 388: 43.

⁷⁸ APP, SAP, 482: 21–21v.

⁷⁹ APP, SAP, 355: 5.

⁸⁰ APP, SAP, 409: 45v; APP, SAP, 419: 190; APP, SAP, 423: 77.

⁸¹ APP, SAP, 381: 47.

⁸² APP, SAP, 407, non-pag.

⁸³ APP, SAP, 409: 45v; APP, SAP, 459: 48v.

⁸⁴ APP, SAP, 389: 5v, 19

⁸⁵ For example: APP, SAP, 374: 7v; APP, SAP, 407: 33; APP, SAP, 419: 177v, 190, APP, SAP, 421: 85, 87.

over, it was noted that the judgments “d[id] not contain the necessary fact findings”,⁸⁶ and demands were made for them to become “more precise”, i.e. specify at least the “time and place of the punishable act and [...] the person of the victim”.⁸⁷

A separate problem was failure to sign judgments and trial transcripts,⁸⁸ as well as failure to return signed judgments (and trial transcripts) to the clerks’ office within the statutory time limit.⁸⁹ Ignorance of legal terminology, as well as linguistic errors and spelling mistakes were also mentioned.⁹⁰

At times, the justices’ legal knowledge and redacting skills were judged to be satisfactory. Such was usually the case with those having some prior experience of the law and the judiciary.⁹¹ Otherwise, they could sometimes reach a decent level thanks to a conscientious ethic, hard work and experience. Of some, therefore, it was written that “on the formal side, the judgments are somewhat good and contain the essential and necessary statutory prerequisites”,⁹² or that “justices of the peace usually function efficiently and judge correctly”.⁹³ General praise concerning the quality of their work can be found more often on the file,⁹⁴ although usually with the caveat that even a good justice of the peace is not capable of working with the efficiency and professionalism of a professional judge. Thus, the remarks were phrased with a great deal

of leniency, e.g. “the shortcomings are, however, understandable in the light that justices of the peace are not legal professionals”.⁹⁵

In numerous cases, however, the evaluation turned out so badly for the justices that it was cast in doubt whether they had any positive role to play in the process of the administration of justice. According to the ministry’s general assessment, in Gniezno “cases in courts of the peace proceed too sluggishly and too slowly”.⁹⁶ Collectively, all of the justices from Kościan were referred to as “weak material”.⁹⁷ Similarly, of both of the justices of the peace serving in Ostrów it was said that they “work[ed] poorly”.⁹⁸ The review of the judgments passed by one of the justices of Koronowo revealed that he “d[id] not possess basic knowledge of procedural and substantive criminal law”. According to the ministry, his errors were so spectacular that a review was ordered of the files of all his cases, “so as to find out [...] about his qualifications to be a judge at all”. The direct suggestion was made to consider “whether in the court [...] the position of justice of the peace ought not to be wound up altogether”,⁹⁹

In the face of numerous complaints concerning the officiation of the justices of the peace, the ministry and the presidents of courts of appeals and regional courts demanded that the presidents of district courts and the professional judges serving in those courts monitor, mentor and support the justices of the

⁸⁶ APP, SAP, 381:47.

⁸⁷ APP, SAP, 355: 5.

⁸⁸ APP, SAP, 374: 7^v–8, 18.

⁸⁹ APP, SAP, 355: 21; APP, SAP, 371: 5, 24, 67; APP, SAP, 405: 88; APP, SAP, 409: 76; APP, SAP, 466: 3.

⁹⁰ APP, SAP, 380: 55, APP, SAP, 388: 22^v.

⁹¹ APP, SAP, 349: 21; APP, SAP, 356: 9; APP, SAP, 364: non-pag.; APP, SAP, 367: 4; APP, SAP, 421: 14. Potential knowledge of the law was sometimes seen an asset in the evaluation of a candidate, such as merchant Stefan Soborski’s having engaged in his youth in ‘secretarial work at a law firm’, giving him the benefit of ‘practical [familiarity] with the forms of proceeding’ in criminal cases – APP, SAP, 375: 55.

⁹² APP, SAP, 349: 20^v.

⁹³ APP, SAP, 355: 5.

⁹⁴ For example: APP, SAP, 340: 5^v.

⁹⁵ APP, SAP, 389:5^v, 19.

⁹⁶ APP, SAP, 349: 52^v.

⁹⁷ APP, SAP, 374: 9–9^v.

⁹⁸ APP, SAP, 419: 91.

⁹⁹ APP, SAP, 381: 41.

peace on a regular basis. Such demands are a recurrent theme throughout the court files. For example, the president of a district court was told: "It will not suffice [...] that the justices of the peace are notified of the existing statutory and regulatory provisions. They have to be dealt with personally and personally instructed, for only in such a way can the administration of justice by the justices of the peace be prevented from reaching the opposite effect to the intended". In consequence "it [wa]s recommended that conferences be held with the justices of the peace to discuss completed cases and instruct them about the existing provisions".¹⁰⁰ The president of the district court in Kościan was ordered to check constantly that the justices of the peace "have acquainted themselves more closely with the criminal statutes [...], so as for them not to commit [...] cardinal errors [...] in the future". The suggestion was, accordingly, to "provide them with suitable instruction if needed".¹⁰¹ One could find more examples of similar suggestions and orders. A paradoxical situation thus ensued. By design, the institution of the justices of the peace was intended to ease the workload of professional judges; its functioning, however, imposed on professional judges a new set of burdensome responsibilities – mentoring the justices of the peace and constantly monitoring their work. Sometimes, the justices of the peace responded arrogantly to such mentoring and refused to fall in line.¹⁰² In some situations, compliance would have been very difficult, for example when told to read expert legal writings in German.¹⁰³

Support for the justices of the peace was supposed to come from judicial trainees – "applicants" in the process of training to be a professional judge. It was somewhat commonly believed that "the participation of the applicants in the sessions of criminal courts can have a positive impact on the quality of the judgments of the courts of the peace".¹⁰⁴ The justices of the peace were also to be advised and assisted in the performance of their duties by the employees of the court administration – especially secretaries – acting as reporters during the trials. Sometimes, however, this led to entirely pathological developments such as the reporting clerks independently interrogating the witnesses in open court¹⁰⁵ or outright dictating the justices' judgments.¹⁰⁶

5. Impartiality and relations with the parties

The problem of the impartiality of the justices of the peace was a significant hurdle for the interwar justice system in the former Prussian partition. Such observations should not come as a surprise. The appointment of the justices from among local social and business elites was bound to give rise to numerous conflicts of interest. Concerns of this kind were voiced with regard to justice Górecki of Leszno, for he was the owner of a distillery, hence, allegedly "he [wa]s not sufficiently independent".¹⁰⁷ In the end, he did become a justice of the peace, as the distillery was found to be operated by his brother, where

¹⁰⁰ APP, SAP, 374: 7.

¹⁰¹ APP, SAP, 381: 9.

¹⁰² Justice Jachowski of Jarocin 'would not accept any instruction towards the due application of the statutes' – APP, SAP, 364: 31. Similar remarks were made on justice Stróżewski of Krotoszyn: 'He is conceited and imagines himself to have great juridical knowledge, and in reality he lacks it much, and despite having his attention called to the errors committed, he still commits them.' – APP, SAP, 381: 11–12 – 'He imagines himself to have great juridical knowledge and to be capable of exercising even the functions of a professional judge. That is only [his] imagination.' – APP, SAP, 380: 55.

¹⁰³ APP, SAP, 419: 89.

¹⁰⁴ APP, SAP, 419: 157.

¹⁰⁵ APP, SAP, 419: 179.

¹⁰⁶ APP, SAP, 481: 5.

¹⁰⁷ APP, SAP, 390: 41.

as the justice occupied himself with the manufacture of vinegar.¹⁰⁸ About justice Ilski serving in the same court, the following was written: "He fulfils his tasks very well but – as the prosecutor has informed me – he is not entirely impartial".¹⁰⁹ Justice Strózewski of Krotoszyn, by contrast, was alleged to be engaged in dispensing legal advice for a fee, which was especially suspicious in the light of the fact that he "ha[d] not notified the authorities of that enterprise".¹¹⁰

Numerous cases of disputing the justices' impartiality were triggered by their inappropriate behaviour in court. Improper and ill-considered comments or engaging in animated disputes with the parties and counsel provoked complaints against the activities of justices of the peace. Several symptomatic examples are worth mentioning here. One of the justices from Pleszewo allegedly was to have announced already before the opening of the trial what penalty he would impose on the defendant.¹¹¹ During a case against the former proprietors of a tenement house, Justice Jachowski of Jarocin, interrogating a former tenant, took the liberty to remark that if she had been "decent", then she would have "left that house (the defendants'), and if she [wa]s not doing that, she [wa]s base".¹¹²

During one of the criminal cases in Rawicz, in the victim's opinion, justice Boberski "exuded distinct animosity, irony and prejudice". The complaint lodged against him described his whole proceedings as a "parody of the court". He allegedly offered personal attacks on the victim, e.g. by repeating the rumours concerning his "former betrothed" or by commenting on his, "political beliefs". The justice also was to have dealt improperly with the witnesses, by responding ironically to their answers during the questioning.¹¹³

In several cases, complaints against the justices were brought by the prosecuting authorities – prosecutors and the police. For example, they demanded the dismissal of justice Józef Kotlarek of Wolsztyn, reported to have told the defendants during their interrogation that it was not necessary to tell the police the truth, which was allegedly conducive to the "demoralization of the people" and "subverted the authority" commanded by the law enforcement. Similar criticism was incurred by justice Paryzek of Koźmin. Numerous complaints eventually triggered the intervention of the district head with the president of the regional court, observing that Paryzek "[wa]s not fit [...] to be a justice of the peace because [...] he lack[ed] sufficient understanding for the cases brought by the police with a view to the maintenance of the public peace". The example was given of a case in which two people had been accused of unlawfully selling alcohol (above 2.5 % volume, which required a separate concession permit). The justice of the peace allegedly questioned the policemen as to the basis on which they found the alcohol content in the beverages to be greater than permitted. He also reproached them for having failed to confiscate a bottle, for which reason it was impossible to engage the services of an expert witness. Subsequently, while returning an acquittal – which, in the opinion of the policemen, was incorrect and unwarranted, the justice was alleged to have delivered a lengthy speech justifying violations of the public peace. In the motives of his judgement, he noted, among other things, that the coffee house in which the alcohol was being sold "[wa]s a decent one and there ha[d] never been complaints about it, of anyone engaging in drunkenness in it or drunkenness and demoralization being harboured therein". He went on to add that, having lived in Koźmin for 18 years "he ha[d] not observed

¹⁰⁸ APP, SAP, 390: non-pag.

¹⁰⁹ APP, SAP, 390: 71.

¹¹⁰ APP, SAP, 380: 66.

¹¹¹ APP, SAP, 425: 76.

¹¹² APP, SAP, 362: 14.

¹¹³ APP, SAP, 482: non-pag.

any drunkenness". The police believed that the justice's speech was essentially not the motives of the judgment but "had the nature of a defence of the accused". In the officers' opinion, the justice showed excessive "leniency" that could possibly have led infractors to greater impudence in the future.¹¹⁴ The regional court president took it upon himself to defend Paryzek, noting that many of the latter's remarks concerning the police work were sensible.¹¹⁵ This did not change the fact that the justice's way of phrasing himself was confrontational and fell short of the standards of professional judges when it came to holding court and conducting trials.

Here, it will be expedient to discuss one more matter. It is baffling to some extent that the very same thing which had been touted as the advantage of the justices of the peace – knowledge of the local community and its affairs – was identified as a defect when it led to the breach of legal precepts. For example, of one of the justices in Jarocin the following was reported: "In the motives of the judgment, he often cites his familiarity with local affairs, pronounces an opinion of a person that they are decent or the contrary [...] and passes judgment according thereto. A judgment ought only to be based on what the trial has revealed".¹¹⁶

6. Reasons for the failure of the experiment with justices of the peace

In the evaluation of the institution of justices of the peace, the most important matter is the concept underlying its establishment. When designing the relevant statutory frameworks, one has to be conscious of whether the goal is to ease the caseloads of professional judges or to provide a different – lay and essentially extra-legal – method of dispute resolution. The

realities of the erstwhile Prussian partition in interwar Poland demonstrated the futility of the former concept. Analysing the situation in official correspondence with a higher court, a judge remarked with astonishing frankness: "[...] this whole democratic institution is off the mark [...]. The effect will be that the professional judge does not find respite from his work, and the government fritters away millions among people who have no need of them and who will need to be compensated for their loss of time and expenses, as well as detriment to their professional occupations."¹¹⁷

In the twenties, when the staffing situation in the courts began to see some improvement, proposals of replacing several justices of the peace serving in a former court with a single professional judge were offered with increasing frequency.¹¹⁸ Sometimes, the courts asked, instead of the nomination of a justice of the peace, to be assigned a judicial trainee. For example, the summarizing notes following inspection of the court in Witkowo stated: "The peace court for criminal cases works, as usual also with other courts, badly, and it would be expedient for the place of the justices of the peace to be filled by an applicant. The president of the court [...] has declared that if he were to be given for half a year an applicant for assistance, he would take it upon himself to manage the whole court on his own, together with the criminal division, which would be expedient and desirable and would contribute greatly to the normal course [of proceedings] also in criminal matters".¹¹⁹ Increasingly, the justices of the peace were portrayed not as being of assistance to the professional judges but rather a hindrance to the effective administration of justice. The president of a district court in Gniezno wrote: "The justices of the peace themselves ask to be dismissed; moreover, also the people themselves more and more frequently and insistently ask to be judged by professional

¹¹⁴ APP, SAP, 378: 26–26^v.

¹¹⁵ APP, SAP, 378: 30^v.

¹¹⁶ APP, SAP, 362: 14.

¹¹⁷ APP, SAP, 367: 19.

¹¹⁸ APP, SAP, 366: 4; APP, SAP, 408: non-pag.

¹¹⁹ APP, SAP, 466:14^v.

judges [...]. The institution of justices of the peace currently no longer meets the requirements, and it is expedient to dismiss them [...]. There can be no question of the proper organization of the criminal division and adequate functioning thereof before the justices of the peace are removed."¹²⁰

The consequence of such moods was the "winding up", i.e. formal liquidation of positions of justices of the peace in the various courts on local initiative. In 1925–1927, the minister of justice, at the express request of the district courts themselves, liquidated by regulation the positions of justices of the peace in the three circuits I studied.¹²¹ This was not a manifestation of a state policy ill-disposed to democratic institutions – Józef Piłsudski's coup d'état took place only as late as May 1926 and had no influence on such decisions. Also, the critique of justices of the peace by the left side of the political spectrum (proven by Maziarz)¹²² and lawyers' elites centered around the codification commission (showed by Mohyluk)¹²³ did not play a crucial role in this process. The liquidation of the position of justice of the peace in former Prussian territories was mostly inspired by the bottom-up disappointment with the institution, harbored by professional judges and society, but also by the holders of the office themselves. The position was not attractive as it conferred little in the way of prestige, the duties were time-consuming, required sacrifices to be made and were not compensated. However, the defeat of the institution – especially in the territories and time I studied – was brought about primarily by the profile of the position and the lack of distinctive criteria to be met by the justices. They were appointed to substitute for professional judges and

administer justice by applying legislation in the same manner as professional jurists. This of course, was impossible to achieve.

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Abbreviations

APP Archiwum Państwowe w Poznaniu
Dz.U. Dziennik Ustaw
SAP Sąd Apelacyjny w Poznaniu

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¹²⁰ APP, SAP, 349: 52^v–53.

¹²¹ In the courts in Witkowo (Dz.U.1925.26.185), Bojanowo and Września (Dz.U.1926.28.175), Jutrosin, Kępno, Kościan, Koźmin, Krotoszyn, Ostrów and Pleszewo (Dz.U.1926.90.518), Śmigiel (Dz.U.1926.31.191), Ostrzeszów (Dz.U.1926.58.339), Wągrowiec (Dz.U.1926.82.459), Leszno and Wolsztyn (Dz.U.1926.124.722), Mogilno (Dz.U. 1926 nr 85 poz. 480), Trzemeszno (Dz.U.1926.82.460), Jarocin (Dz.U.1927.38.342), Rawicz (Dz.U.1927.16.128).

¹²² MAZIARZ, Zagadnienie sędziów pokoju 467.

¹²³ MOHYLUK, O sędziach pokoju 275.

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