

## JUDICIAL REFORM IN THE KINGDOM OF POLAND IN 1876

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*Work on judicial reform in the Kingdom of Poland began at the end of 1864 amid the aftermath of the defeated January 1863 uprising and the resulting gradual abolition of the country's legal and political separation from Russia. It was decided that the Russian Judicial Laws of 1864 were to be implemented in the Kingdom, yet all of their solutions providing for the society's participation in administering justice were removed during the twelve years long legislative process. Jury trial was abandoned, the election of justices of the peace replaced with their appointment, and the irremovability of judges was severely restricted. Also, the bar did not receive any autonomy. The goal behind the judicial reform in the Kingdom was not only unifying its judiciary with that of Russia but also its Russification. Russian became the official language of the courts and the newly appointed judges were to be Russian lawyers. On the other hand, an undeniable improvement was brought about by the introduction of Russian civil and criminal procedure in the Kingdom. The former remained in force in the central and eastern parts of the independent Polish state until 1933 and the latter – until 1929.*

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Judicial reform in the Kingdom of Poland, prepared since the end of 1864 and implemented in mid-1876, followed the defeat of the January 1863 uprising. The aftermath of this event was the final implementation of centralist trends in the Tsarist policy towards the Kingdom, which eventually meant a complete abolition of this country's legal and political separation from Russia.

The judiciary of the Kingdom, originating in the Duchy of Warsaw and based on French models, was the last part of public life to undergo the processes of unification and Russification. Its long-standing resistance to Russian influences resulted largely from complete separateness of most branches of the Kingdom's law. The Kingdom's private law was regulated by the French Napoleonic Code, partially amended by

the Civil Code of the Kingdom of Poland (*Kodeks Cywilny Królestwa Polskiego*) and the mortgage laws passed by the Kingdom's legislative – Sejm in 1818 and 1825. The French Code of Civil Procedure of 1806 and the criminal procedure provisions remaining after Prussian and Austrian rule were also in force. Only the criminal law had been governed since 1847 by the Code of Principal and Correctional Punishments (*Kodeks Kar Głównych i Poprawczych*) resembling its Russian counterpart.

No less important for the lasting autonomy of the Kingdom's judiciary was the fact that until the introduction of the Judicial Laws of 1864 Russia itself lacked a modern judiciary. Progressive legal principles such as the separation of the judiciary from the executive, judicial independence, public trial and equality of parties were absent from its feudal judicial system, which could not serve as a model for the Kingdom's judiciary where those principles had been observed since the times of the Duchy of Warsaw. Alexander II's Judicial Laws of 1864 removed this obstacle, introducing modern justice administration to Russia.

Therefore the works on judicial reform in the Kingdom of Poland<sup>1</sup> launched in 1864 were soon directed at the application of the Russian Judicial Laws in this country, *i.e.* the new structure of the judiciary, the new civil and criminal procedure as well as the new organization of notaries of 1866. However, the introduction of the Empire's Judicial Laws to the Kingdom did not encompass most of their progressive democratic principles related to criminal procedure and organization the judiciary. This was a deliberate decision based on social, and most of all political grounds, and only to some extent on the local legal circumstances.

One of the basic rules of the Kingdom's new judicial system was the separation of jurisdiction over petty offences and small claims from general justice administration, a solution adopted from Russia. Minor cases were to be heard by justices of the peace [hereinafter JPs], who acted independently of general courts and were not subject to their control. In Russia the JPs' system was composed of individual justices and their meetings. JPs were elected by the people, and high property and educational qualifications for eligibility were imposed. Nonetheless, allowing the election of JPs in the Kingdom could be seen as a sign of the Tsarist government's trust in the Polish society, whereas retaining high electoral qualifications would result in JPs being wealthy and educated representatives of the landed gentry and intelligentsia, which the government believed to be the least loyal social classes, prone to use the power vested in them to act against the Russian authorities. Moreover, the existence of rural courts in the Kingdom had to be taken into consideration. These were introduced along with the Emancipation Reform in 1864 and thus, for political reasons, their position had to be maintained and even strengthened. The rural courts were considered from the very beginning as a means of turning peasants

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<sup>1</sup> A detailed account of the legislative and preparatory works on the judicial reform in the Kingdom of Poland in 1876–1915 was given by Artur Korobowicz, *Sądownictwo Królestwa Polskiego 1876–1915 passim* (Uniwersytet Marii Curie-Skłodowskiej 1996).

into conservative supporters of Russian rule, so their abolition could raise doubts as to the stability of the reforms undertaken in the Kingdom as well as durability of values propagated by the Tsarist government.

For the above political reasons rural courts remained as a part of the JPs' system, having jurisdiction over rural areas (regardless of the estate to which the parties belonged), whereas JPs' jurisdiction was limited to the urban population. The appeals from these courts' decisions were heard by the meetings of JPs and of the rural judges ('assizes of the peace'). Only rural judges and rural court jurors were elected by the society, whereas JPs and chairmen of the meetings were appointed by the Minister of Justice.

The participation of the Kingdom's society in administering justice was also limited by abandoning juries, which functioned in Russia within district courts. This decision, just as in case of JPs' election, was based on the authorities' distrust of local society, particularly its upper classes. The absence of jurors altered the competences of district courts and the Judicial Chamber in Warsaw as compared to the Russian model. District courts in the Kingdom of Poland heard all the criminal cases at first instance only, which resulted in the Judicial Chamber trying far more appeals.<sup>2</sup>

Even though the Kingdom's bar was far larger and was of longer standing than in Russia, it failed to receive the autonomy granted to its counterpart. The rights and duties of the nonexistent bar councils were vested in the district courts.

Judicial independence was severely restricted as the judge's irremovability from office and prohibition of moving a judge to another court without his consent was limited to those chief justices, their deputies and judges who had had at least three years' tenure under the new regulations. The Minister of Justice was also able to dismiss or relocate JPs and to dismiss and suspend rural judges and jurors 'for particularly important reasons.'

The last political element of the judicial reform in the Kingdom was the introduction of Russian to the judiciary, a language hardly known to the Polish society. Even the Tsar's governor Fyodor Berg argued in 1871 that certain exceptions to this rule should be temporarily allowed. Berg proposed for investigations to be conducted in Polish during the initial period of the reform as well as for the rural courts' judgments to be pronounced in Polish. He also believed that parties and attorneys should be allowed to plead in Polish upon the presiding judge's consent. He also insisted on the use of Polish in the mortgage register as he deemed it impossible to translate about 15,000 existing mortgage books into Russian. However, the governor's proposals were not followed at that stage of the legislative process.<sup>3</sup>

<sup>2</sup> In Russia jurors decided upon the guilt of the defendant in all the grave criminal cases where the crime was punishable by a penalty involving privation or restriction of the rights of the estate. Judgments of district courts rendered with the participation of jurors were final and could not be appealed against.

<sup>3</sup> Государственный архив Российской Федерации [*Gosudarstvennyi arkhiv Rossiiskoi Federatsii*] [State Archive of the Russian Federation]] [hereinafter GARF], f. 547, op. 1, d. 122, ll. 1–2.

The judicial reform bills were drafted by the specially appointed Warsaw-based *Legal Commission*, which reported directly to the *Governing Committee of the Kingdom of Poland*. The Commission was composed of Russian lawyers only. Most of them were young inexperienced officials of central Russian authorities assigned to Warsaw. Having no ties with the Kingdom, unaware of the local judicial traditions and even prejudiced against any aspect of Polish autonomy, they assured a proper preparation of the reform, at least from the tsarist authorities' point of view. It was Nikolai A. Milyutin who selected them and who made the decision not to include (of) local Polish lawyers in the Commission. He actually managed all the reforms which followed the defeat of the January uprising in the Kingdom and aimed at its legal and structural unification with the Empire. Appointment of the Legal Commission and its subordination to the Governing Committee resulted in the local Polish authorities, especially the State Council, being deprived of any role in the legislative and preparatory work on judicial reform.

After the abolition of the Governing Committee and the Legal Commission in 1871 the final work on the regulations of the reform was carried out in St. Petersburg by His Imperial Majesty's Own Chancery, Chancery for the Kingdom of Poland, Committee for the Kingdom of Poland and the State Council.

By the Ukase to the Governing Senate of February 19 / March 2, 1875 Alexander II approved the following regulations on the judicial reform in the Kingdom of Poland:

- a ruling on the application of Judicial Laws of November 20, 1864 in the Warsaw judicial district;
- a law on special proceedings;
- provisions on the application of the Notaries Act of April 14, 1866 in the Warsaw judicial district;
- staffing plans for the judicial institutions of the Warsaw judicial district.

The above regulations came into force on July 1 / 13, 1876.

Under the ruling on the application of Judicial Laws in the Kingdom of Poland the country was considered as the Warsaw judicial district, one of fourteen such districts into which the whole Empire had been divided. The jurisdiction in the Warsaw judicial district had been vested in rural courts, JPs, JPs' meetings, district courts, Judicial Chamber in Warsaw and the Governing Senate in St. Petersburg acting as the supreme court of cassation.

As already indicated, the new structure of the judiciary was based on the separation of jurisdiction over minor cases from that over more serious issues. Petty offences and small claims were tried by rural courts and justices of the peace, the latter having jurisdiction over urban areas only. Meetings of JPs and rural judges heard the appeals from these courts' first instance decisions and acted as a cassation instance for their final decisions.

Rural courts' jurisdiction encompassed from one to three administrative communes and were delimited so as not to split the communes and to ensure that

the distance between the court and the farthest location in the jurisdiction did not exceed twenty versts (*ca.* 21 kilometers). A rural court was composed of a rural judge and no less than three jurors. Cases were heard by panels of at least three members including the presiding judge. Cases were determined by majority vote with the presiding judge's vote deciding in the event of a tie.

The candidates for rural judges and jurors were elected for a three year term by communal gatherings. If a rural court's jurisdiction was limited to one commune, two candidates were elected for each post, whereas in case of bigger jurisdictions each gathering elected one candidate for a judge and two candidates for each post of juror assigned to the commune. A rural judge was required to have completed at least elementary school or to pass a qualifying exam, or else – to hold at least three years' experience as a clerk with the practical ability of running court cases. Jurors were appointed by the local governor upon the approval of the district court's prosecutor and rural judges were nominated by the Minister of Justice, who could also choose a person who had not been put forward by the gathering. Out of a total number of 366 rural courts launched in 1876, in as many as 345 judges were appointed from among the gatherings' candidates and only in 21 from outside this group. In 1890, as the number of rural courts increased to 374, the number of judges who had not been elected as candidates grew to 125.<sup>4</sup> However, they still came from the local communities and there were virtually no Russian rural judges. Many rural judges as well as clerks ('scribes') in rural courts were the judges and clerks of the Kingdom's former courts who failed to obtain posts in the new judiciary after the reform of 1876.

Rural courts escaped Russification as the use of Polish was allowed in the proceedings whenever parties or participants claimed that they had no command of Russian. In such cases Polish could be used during the oral phase of the proceedings (in sessions), whereas written judgments, orders and rulings were drawn up in Russian. The above regulation was supposed to be a temporary solution as it was expected that Russian would gradually spread in the society. This has not happened, though, and twenty years after the judicial reform between 70 and 100% of cases in rural courts were still tried in Polish, the reason behind it being not just the parties' actual ignorance of the Russian language but also their reluctance to use it.<sup>5</sup>

One more probable explanation of why the rural courts had not been dominated by Russians was the fact that a rural judge's post in the Kingdom was hardly attractive for clerks from distant parts of Russia. The post in itself was hardly prestigious and the working conditions were far from decent. Most of the rural courts were located in villages where peasant cottages were the only buildings. As a result, rural courts functioned in poor conditions, the courtrooms were often crowded, dirty, humid and cold.

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<sup>4</sup> Российский государственный исторический архив [*Rossiiskii gosudarstvennyi istoricheskii arkhiv* [Russian State Historical Archive]] [hereinafter RGIA], f. 1405, op. 515, d. 30, ll. 5v–6.

<sup>5</sup> RGIA, f. 1405, op. 515, d. 170, ll. 16–40.

Justices of the peace exercised their jurisdiction individually over urban areas. In 1876 eighty-five JPs were appointed in the Kingdom of Poland, one for each county (*powiat*), as well as fifteen quarter justices for the five bigger cities divided into quarters (Warsaw, Lublin, Płock and Suwałki) and ten additional justices who served as a replacement for the JPs in the event of their absence, sickness, death or dismissal.

Several counties along with courts of the peace and rural courts constituted a 'district of the peace.' The Kingdom had been divided into twenty such districts, each of the ten provinces comprising two 'districts of the peace' and each district having one meeting of JPs and rural judges as the appeal instance for the JPs' and rural courts' judgments. A meeting was composed of its chairman as well as JPs and rural judges of the district. A separate urban district of the peace had been established for Warsaw. A meeting held its sessions periodically, only its chairman and clerk being permanently on duty.

JPs and chairmen of the meetings were nominated by the Minister of Justice, who also had the power to dismiss and relocate them upon the approval of the Governor-General of Warsaw. Unlike rural judges, JPs and chairmen of the meetings were exclusively Russians. Many of the JPs' posts were entrusted to persons with no legal qualifications or insufficient judicial or clerical experience. Selection of judges based mostly on their nationality and failure to consistently observe formal eligibility requirements resulted in many inappropriate persons holding these offices. They found themselves in a foreign country with no command of its language and no awareness of the local social and economic conditions, but very often also lacking sufficient knowledge of its private law. Many JPs' poor professional level obviously affected the functioning of the judiciary and contributed largely to the negative public opinion on the new court system. Indeed, many Russian JPs, convinced of their cultural 'mission' in the Kingdom, displayed not only ignorance of law and procedures but also lack of legal culture and disrespect for the parties and participants to the proceedings. Some of them committed unethical acts and even explicit crimes.

Higher judicial authorities were aware of the shortcomings in the functioning of justices of the peace. This awareness, however, failed to result in any action necessary for the improvement of the public opinion of JPs nor anything to enhance their functioning. The reasons for their poor performance were to be found in a personnel policy which completely submitted to the ultimate and unquestionable goal of Russification. As a result, even though numerous controls of the justice of the peace system<sup>6</sup> revealed many instances of malpractice by individual justices, procedure violations, disorganization in court offices or even graver abuses and actual crimes, these were generally covered up and seldom ended in a JPs' dismissal. A usual consequence for the perpetrator was being moved to another court of the peace in

<sup>6</sup> For the materials on the control of the JPs system see RGIA, f. 1405, op. 545, d. 18595, ll. 17v–19, 21; f. 1405, op. 515, d. 66, l. 72; f. 1405, op. 515, d. 220, l. 19v; f. 1405, op. 545, d. 18598, l. 1v; d. 18596, l. 12v; d. 18599, l. 4; d. 15864, l. 1.

the Kingdom, and in case of repeated negative assessments – a ban on promotions. Cases of gross misconduct resulted in JPs being moved back to the internal provinces of the Empire, and they could face trial only for most obvious crimes.

Such a personnel policy was consistently followed during the existence of these courts. Courts of the peace were staffed by Russian lawyers from the outset of their existence until the end of the Russian rule in the Kingdom of Poland. It is thus hardly surprising that the very same shortcomings in their functioning and the same deficiencies and infractions committed by JPs occurred throughout all this time. Worse still, justices of the peace were considered by the Ministry of Justice as natural (for the sheer reason of being Russian) candidates for the posts in the general judiciary. Many JPs and chairmen of the meetings got promoted to the posts of judges or even directly deputy chief justices of the district courts. This promotion policy involved as many as fifty-one persons and intensified during the last twenty years of the Russian presence in the Kingdom, resulting in decreasing quality and prestige of the entire judiciary. While the initial staff of district courts and the Judicial Chamber introduced in 1876 included both Poles and numerous Russians with decent legal knowledge, education and good ethics, the milieu of JPs was quite to the contrary, although certain respectable individuals could be found even there.

Civil and criminal cases not entrusted to JPs and rural courts (generally more serious ones) were tried at first instance by district courts. Ten such courts were established in the Warsaw judicial district, each located in a provincial capital and having territorial jurisdiction over one province. Cases in district courts were heard by panels of at least three judges. The composition of all district courts was generally identical and involved the creation of three divisions: civil, criminal and mortgage register. Thus all of the district courts were composed of a chief justice, two deputy chief justices (officially – ‘chief justice’s associates’) and six judges (officially – ‘members of the court’). The exception to the above were the district court in Warsaw with five deputy chief justices and fourteen judges as well as the district court in Siedlce with five judges. Examining magistrates, who carried out investigations in criminal cases, also ranked as members of district courts. There were 103 in the Warsaw judicial district.

The instance of appeal from the district courts’ decisions was the Judicial Chamber in Warsaw, further divided into departments. The Chamber’s verdicts were passed by panels of at least three judges and its personnel, according to the staffing plan, included the Senior Chief Justice, two chief justices (managing the departments) and twelve judges. However, before the establishment of the new courts on July 13, 1876 their initially planned structure and composition had been changed. Pursuant to the transitional provisions for the introduction of the new judicial system, any civil cases registered before July 13, 1876 were to be tried by the new courts based on the French Code of Civil Procedure of 1806 hitherto in force in the Kingdom of Poland. The Judicial Chamber was thus to take over the civil cases already pending in the second

instance and those where an appeal had been or would be filed within the deadline set by the previous regulations. This task was entrusted to the 2<sup>nd</sup> civil department of the Chamber, specially created by the Tsar's order of June 8, 1876 and composed of the chief justice and four judges. While at first temporary, on December 1, 1897 it was transformed into a permanent civil department.<sup>7</sup> Thus the Chamber commenced its activity with one chief justice of the department and four judges more than provided for in the initial staffing plan.

The internal structure of the courts in the Warsaw judicial district did not differ significantly from the Russian model. All the courts had offices headed by clerks ('scribes') in rural courts and courts of the peace and by secretaries and their assistants in other types of courts. There were bailiffs and ushers employed at the Judicial Chamber, district courts and meetings of JPs and rural judges. The ushers' role was to serve summons, pleadings and other court documents as well as to keep order during sessions. This junior court rank had a centuries-old tradition in Poland, yet was unknown in the Russian judiciary, where the ushers' duties were carried out by bailiffs. Their preservation in the new system was thus a kind of acknowledgement of the Polish judicial tradition.<sup>8</sup>

A more significant difference between the Warsaw judicial district and other provinces of the Empire was the creation of mortgage register divisions in district courts and courts of the peace, whose role was to deal with mortgage issues related to county and district mortgage registers. These divisions had separate offices and archives. The composition, competences and functioning of mortgage register divisions were still subject to the regulations of 1818 and 1825 as mortgages were unknown in Russia and the Judicial Laws of 1864 contained no provisions on this matter.

The basic organizational task prior to the launch of the new courts was completing their future staff. As it has been indicated before, the main political goal of the judicial reform in the Kingdom was its Russification, *i.e.* unification of its laws and judiciary with that of the Empire and, more importantly, staffing its courts with Russian lawyers from the internal imperial provinces. However, keeping in force the Polish and French civil legislation, generally unknown to Russian lawyers, forced the authorities to employ also Polish judges of the former Kingdom's courts, especially for trying cases involving a high amount in controversy. Only the posts of the Senior Chief Justice of the Judicial Chamber, chief justices and prosecutors of the district courts were inaccessible for the local judges. On the other hand, nine of the twenty-two deputy chief justices appointed in 1876 were Poles. Local lawyers were even more numerous among 'ordinary' judges. As many as forty of them were among the seventy-two

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<sup>7</sup> RGIA, f. 1405, op. 545, d. 15869, ll. 216–17.

<sup>8</sup> Article 59 of the ruling only provided for the appointment of ushers in district courts and in the Judicial Chamber. However, the staffing plan includes two ushers for each meeting of JPs and rural judges.

strong initial judicial staff of the new district courts. Similarly, in the Warsaw Judicial Chamber, Poles were appointed as the first chief justices in both civil departments and as seven out of sixteen judges.

In July 1886, ten years after the introduction of the new system, there was only a slight decrease in the number of Poles on judicial positions. They still occupied nine posts of deputy chief justices and thirty-four posts of judges in district courts as well as eleven posts of judges in the Judicial Chamber (out of the total of twenty-seven, including the Senior Chief Justice).<sup>9</sup> This was possible thanks to the rule observed during the first ten years after the reform, according to which a judicial vacancy (created by death, departure or promotion) was filled by a candidate of the same nationality as the predecessor. This rule was never made official, though it was often mentioned in the correspondence between the Senior Chief Justice of the Judicial Chamber and the Ministry of Justice.<sup>10</sup> Its observance guaranteed not only keeping the initial nationality ratio in each court unchanged but also ensured that Polish judges were promoted, *e.g.*, to the post of a deputy chief justice or from district courts to the Judicial Chamber.

Beginning around 1888, the ethnic policy of the Tsarist government towards the Kingdom's judiciary underwent a radical change. This might have resulted from a visit that Minister of Justice Nikolai Manasein paid to Warsaw in the autumn of 1886, during which he ordered a reduction in the number of motions for the appointment of Polish candidates for judicial vacancies.<sup>11</sup> As a consequence, the number of Polish judges in the Kingdom's judiciary was gradually decreased. When the Kingdom's judicial institutions were evacuated to Russia in 1915 during the WWI, there were a total of 160 persons employed in district courts (ten chief justices, twenty-six deputy chief justices and 124 'ordinary' judges). Only eight of them, including one deputy chief justice, were Polish. There were no Poles among the forty-eight members of the Judicial Chamber (Senior Chief Justice, eight chief justices of the departments and thirty-nine judges).

Apart from those few judges, there were 200 Poles employed in ten district courts as examining magistrates, secretaries, undersecretaries as well as junior and senior candidates for judicial posts.<sup>12</sup> Most of them held a degree in law and since 1888 had no possibility of promotion. Nineteen of them were examining magistrates, twenty-

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<sup>9</sup> RGIA, f. 1405, op. 545, d. 15869, ll. 95–96, 98–102. In 1886 the total number of judges in all the district courts (including chief justices and their deputies) amounted to 105 persons.

<sup>10</sup> *See, e.g.*, RGIA, f. 1405, op. 545, d. 16066, ll. 8–9; d. 15869, ll. 30–31, 82, 91, 97, 138–39.

<sup>11</sup> Such a view was presented in Stanisław Krzemiński, *Dwadzieścia pięć lat Rosji w Polsce (1863–88): Zarys historyczny* 167 (Red. 'Ekonomisty Polskiego' 1892).

<sup>12</sup> The post of a junior candidate, where one spent usually two years directly after graduation, could be compared to a judge trainee. A senior candidate was a full-time clerk awaiting the appointment for a strictly judicial post after having completed the training. His duties included assistance for judges and office work. He could also work temporarily as an acting examining magistrate.

eight – court secretaries, fifty-two – undersecretaries, forty-two – senior candidates and fifty-nine – junior candidates. Only some of the secretaries and undersecretaries were not university-educated lawyers. Many of them – over 120 persons – went on to be employed after 1918 in the judiciary of the independent Polish state.

The basic problem of the Kingdom's new judiciary introduced in 1876, which persisted during the forty years of its existence, was the overload of cases. Throughout the functioning of the new courts their staff – both judges and clerks – were too few and the central authorities' policy in this matter was ungenerous. The number of courts and posts attributed to each of them in 1875 was fixed based on the statistical caseload of all of the Kingdom's courts (except the rural courts) in 1869 and 1870 as compared to the caseload of the imperial courts. Hence the new courts' personnel at the time of their inauguration were sufficient for the conditions 6–7 years previously but not for the current workload.

The initial difficulties deepened as the Kingdom's industry and population – especially in urban areas – grew rapidly.<sup>13</sup> This resulted naturally in an increased number of civil disputes. Moreover, rapid industrialization and migration of rural population to towns and cities led to the rise of criminality and even to the appearance of new types of crimes, *e.g.*, related to railway transport. Thus the caseload of criminal divisions also increased. The situation obviously varied in different courts, as the economic development of different parts of the Kingdom was uneven. The correspondence between the pace of industrial growth and the caseload in particular courts was clearly evident.

The total personnel of the district courts grew between 1876 and 1915 from 104 to 160 persons, *i.e.* by over 50%. The biggest increase in the staff took place in the court in Piotrków, which started its activity with the chief justice, his two deputies and six judges working in three divisions: civil, criminal and mortgage register. Just before the evacuation to Warsaw in 1914 there were two more civil and two more criminal divisions, and, apart from the chief justice and four deputies – a total of twenty-five judges.<sup>14</sup> The district court in Warsaw developed almost as rapidly, having in 1915 four criminal, five civil and two mortgage register divisions (the municipal

<sup>13</sup> The Kingdom's population grew from 6,100,000 inhabitants in 1871 to 13,000,000 in 1910 and the value of its industrial and craft production in rubles increased seven times between 1870 and 1900. This growth included a 15-times increase in coal output between 1870 and 1907, 6-times increase in pig iron production between 1885 and 1900 and 30-times increase in textile production between 1864 and 1910. The Kingdom's railway network also expanded. For more details see Benedykt Zientara et al., *Dzieje gospodarcze Polski do 1939 r.* 406–46 (Wiedza Powszechna 1965).

<sup>14</sup> RGIA, f. 1405, op. 545, d. 15873, l. 12 (личный состав отделений до 21 июля 1914 г., т.е. до закрытия действий окружного суда [*lichnyi sostav otdelenii do 21 iyulya 1914 g., t.e. do zakrytiya deistvii okruzhnogo suda* [official personnel list until July 21, 1914, *i.e.* until the end of the district court's functioning])). The county town of Lodz, a quickly growing industrial and trade center in the Piotrków province, was located within this court's jurisdiction. In 1886 Lodz had almost 160,000 inhabitants, which made it the sixth biggest city of the Empire after both capitals, Warsaw, Odessa and Riga.

and the landed one) with the chief justice, eight deputies and thirty-three judges.<sup>15</sup> The third most rapidly growing district court was located in Lublin. Although it grew less rapidly, it outnumbered the other courts in terms of personnel number and expanding internal structure. At the termination of its functioning in Poland in 1915 it was composed of the chief justice, his two deputies, fourteen judges and divided into a civil division, two criminal divisions and a mortgage register division.<sup>16</sup>

The increase in the remaining seven district courts' personnel was very modest. Three of them (in Kalisz, Łomża and Suwałki) gained just one additional judicial post, each reaching a total staff of seven judges. Four district courts (in Kielce, Płock, Radom and Siedlce) were eventually staffed by eight judges each. All of them maintained a three division structure, except the court in Suwałki, where an additional criminal division was established in 1889. There was usually a single permanent judicial post in mortgage register divisions, and judges from civil divisions were invited for sessions.

The Judicial Chamber in Warsaw also grew considerably. In 1915 it was divided into eight departments (four civil and four criminal ones) with the Senior Chief Justice, seven chief justices and forty judges.<sup>17</sup> It was thus the biggest of the Empire's fourteen judicial chambers. It outnumbered even both capital chambers – the one in St. Petersburg with eight Chief Justices of departments and thirty-seven judges in 1915 as well the one in Moscow with five chief justices and thirty-two judges.<sup>18</sup>

The evaluation of the judicial reforms introduced in the Kingdom of Poland in 1876 is a complex task.

Until 1876 the Kingdom's judiciary had been based on French models and originated from the Duchy of Warsaw. An important aspect of its structure was the separation of civil and criminal courts. During the seventy years of functioning this judicial system had been subject to numerous fragmented and mostly superficial reforms, which actually hindered rather than enhanced its efficiency. The most important change concerned the number of instances in which a case could be heard. Originally, any case could be tried in no more than two instances before the final decision was handed down and the court of cassation's role was limited to ensuring the uniform application of law. This system was gradually modified by increasing the number of instances and replacing cassation with a retrial. Finally, when the 9<sup>th</sup> and the 10<sup>th</sup> departments of the Russian Governing Senate were set up in Warsaw in 1841, hearing a case in three instances became the rule in the Kingdom's

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<sup>15</sup> RGIA, f. 1405, op. 545, d. 15873, ll. 2–6. The number of judges in the Warsaw district court grew 2.5 times as compared to the initial personnel, and the number of deputy chief justices almost doubled.

<sup>16</sup> *Id.* at l. 11.

<sup>17</sup> RGIA, f. 1405, op. 545, d. 15873, l. 2 (personnel of the Warsaw Judicial Chamber on January 7, 1915).

<sup>18</sup> For the personnel of all the Judicial Chambers in Russia see *Острогорский М. Юридический календарь на 1914 г. Часть вторая* [Ostrogorsky M. *Yuridicheskiy kalendar' na 1914 g. Chast' vtoraya* [Moisey Ostrogorsky, Legal Calendar for 1914. Part Two]] 17–89 (Trenke i Fyusio 1914).

judicial system. As a result, the Kingdom's judiciary at the end of 1860<sup>5</sup> was hardly capable of fulfilling its tasks. Moreover, the Emancipation Reform of 1864 caused a major change in social and economic relations as a large group of new landowners – former serfs emerged. In this situation the reform of 1876 could have constituted a remedy and an important progress in the organization of judiciary, if only its shape had not been determined by purely political goals and considerations, completely unrelated to the actual needs of the justice administration.

On the other hand, an undeniable improvement was brought to the Kingdom's judiciary by the introduction of Russian civil and criminal procedure. As a matter of fact, the Russian civil proceedings were largely based on the French Code of Civil Procedure of 1806, which had been in force in the Kingdom since the Duchy of Warsaw. Even so, the new law reduced formalities and abolished compulsory representation by a barrister. Its most significant advantage was the reinstatement of cassation as an extraordinary means of appeal in the court review system. Hence the new provisions did not cause any dramatic change in civil proceedings and were well received. They had remained in force in central and eastern parts of Poland until January 1, 1933 when they were replaced by the Polish Code of Civil Procedure of 1931, which unified the civil proceedings in the whole country.

When the Kingdom was established in 1815, the regulations concerning criminal procedure were adopted from the Duchy of Warsaw. Thus the Prussian Criminal Ordinance of 1805 remained in force in the regions which had been under Prussian control before the creation of the Duchy in 1807, whereas procedural provisions of the Austrian Criminal Code of 1803 applied in the lands annexed by the Duchy in 1809. Both of these regulations, based on the inquisitorial approach, were amended in the Duchy by introducing certain elements of adversarial proceedings, such as a public and oral hearing with the participation of a defense counsel and a public prosecutor. However, these changes did not alter the general nature of the criminal procedure, as the inquisitorial elements still prevailed and a hearing was of little importance in an inquisitorial trial.

Inquisitorial criminal procedure in the 19<sup>th</sup> century Kingdom was an anachronism, just as was the legal dualism resulting from two concurrent regulations being in force within one country. Bearing this in mind, the introduction of the Russian criminal procedure to the Kingdom should be assessed as an indisputable improvement. It provided for a modern combination of inquisitorial and adversarial elements, a model first formulated in the French Code of Criminal Procedure of 1808, which then spread across Europe. No less important was the reinstatement of cassation and the unification of criminal proceedings in the whole Kingdom. The above regulations applied in Poland until 1929 when the criminal trial in the whole country was unified under the new Polish Code of Criminal Procedure of 1928.

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