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The Judicial Circle in the Free City of Cracow (1815–1846)*

The subject of the article is the judicial circle in the Free City of Cracow in the years 1815–1846. It reconstructs the political position of the judges of the Court of First Instance, Court of Appeal and Court of Third Instance, adjudicating both in civil and criminal cases, and discusses their rights (remuneration, pension, wearing a uniform) and their obligations, the violation of which resulted in disciplinary and criminal liability. Attention is drawn to the fundamental constitutional principles of judicial independence and independence of the judiciary. It also discusses methods of examining the qualifications of candidates, including examination issues, which covered most areas of civil, commercial, criminal and administrative law, as well as the history of law (including Roman law). Some of the most distinguished employees of the justice system are presented, as are the opinions of witnesses of events concerning its functioning.

Keywords: Court of First Instance – Court of Appeal – Free City of Cracow – judges – judiciary

The subject of the article are the judges adjudicating in the courts of the “Free, Independent and Strictly Neutral City of Cracow and Its District”, commonly known as the Republic of Cracow. This miniature state, with an area of 1,164 square kilometres, was created as a result of the findings of the Congress of Vienna. The Republic of Cracow remained under the patronage of the so-called “Protective Powers”, i.e. Russia, Austria and Prussia, on behalf of which the residents acted, first in the form of the Organizing Committee and then as the Residents’ Conference. The miniature republic did not have its own foreign policy, so it is difficult to consider it a sovereign entity.¹ However, it had classic

legal and political institutions, formed in accordance to the principle of triple power sharing: government (the Governing Senate), parliament (the Assembly of Representatives) and the judiciary. The organization of the system of power was based on the constitutions of 3 May 1815, 11 September 1818 and 29 July 1833.²

The structure of the judiciary consisted of the Court of First Instance (Tribunal) and the Court of Appeal, as well as the courts of peace (“conciliation offices”). The courts had a civil and criminal justice system. In 1833, the Court of First Instance obtained organizational independence. Until then, it functioned under the name of the Court of Last Instance, being in fact an extended Court of Appeal, as it was composed of judges of lower instances together with repre-

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KIENIEWICZ, *The Free State* 69–89; DAVIES, *God’s Playground* 334–339; ZAMOYSKI, *Poland* 221–231;

LUKOWSKI, ZAWADZKI, *A Concise History* 147–150, 154–157.

² Texts of all constitutions in: KALLAS, KRZYMKOWSKI, *Historia ustroju* 179–201.

sentatives of the parties. It considered appeals against different judgments delivered in the first and second instance, as well as appeals against identical judgments of the Court of First Instance and the Court of Appeal.³ In the second case, a positive opinion of professors and doctors of the Faculty of Law of the Jagiellonian University was required, who had to state that there was a violation of substantive or procedural law.⁴

The authors of the basic laws postulated – in quite a general way – the fundamental principles of the independence of the judiciary and the independence of judges. There were also rules: incompatibility (“incompatibilitas”) and the of judgements by related and associated people. Until the early 1830s, judges were elected by the Assembly of Representatives. The qualifications of the candidates were examined by a parliamentary committee. Life-long judges were elected, of whom there were three at the Tribunal and four at the Court of Appeal; and temporary judges, who were appointed for a two-year term of office, in numbers depending on current needs. In order to pass a judgment in the first instance, three judges had to be present, five in the second instance and seven in the third instance. Those who wanted to become a judge had to meet the conditions for eligibility: age, education and wealth. Therefore, it was necessary to be at least 30 years old; to have completed university studies in one of the cities of the former Republic of Poland (later also in one of the neighbouring countries) and to have obtained a doctorate in law; to practice with a court writer and an attorney; as well as to own a property worth PLN 8,000, acquired at least one year before taking up the position. In the case of

presidents of courts and judges of second instance, there was also a requirement of two years’ judicial practice and the exercise of the mandate of a member of the Assembly of Representatives for one term.⁵

A major reorganization of the judiciary took place between 1839 and 1842, with the aim of essentially limiting its independence. However, a number of positive solutions were introduced, including examinations for candidates for the positions of judges, lawyers, notaries, court writers, prosecutors, ushers, etc. Taking the examination was made conditional on having completed a three-year judicial application, confirmed by a certificate of its completion (“certificate showing sufficient disposition and moral conduit”), as well as submitting the required documentation, including a curriculum vitae (“description of life course”) and a certificate of the graduation.⁶

Under the statute of 1842, judges were classified as third class officials. As a result, the examination board set up for them was composed of the President of the Court of First Instance and four government commissioners. The first stage of the examination was oral; it was followed by a written stage. This part of the examination consisted of solving case studies (“making the paper effective”) from civil, criminal and administrative law. The following issues had to be studied for the examination of the judge: 1) constitutional law, including the statutes developing the Constitution of the Free City of Cracow; 2) the judicial system, as well as court law: from the Old Polish period (with procedure), from the Austrian period (1796–1809) and from the Duchy of Warsaw (1809–1815); 3) elements of administrative law; 4) French regulations: the Napoleonic Code (Code civil) of 1804 (together

³ GOCLON, *Konstytucje* 241, 258–261, 278–279, 284–285; BARTEL, *Ustrój* 815–820; WACHHOLZ, *Rzeczpospolita* 261–266.

⁴ DZIADZIO, *Udział Wydziału Prawa* (in print); DZIADZIO, *Opinie profesorów* 303–319.

⁵ Constitution of the Free City of Cracow, 11. 9. 1818 (§§ 15, 18–19).

⁶ Requirements for Galician judges: KOTLIŃSKI, *KOTLIŃSKI, Sądownictwo* 22–23, 31–33, 105–106, 117–129.

with the law of the Free City of Cracow which modified it); Code of judicial procedure (Code de procedure civile) of 1806; Commercial Code (Code de commerce) of 1807; 5) the Austrian Criminal Code of 1803 (“Franciscana”) with criminal proceedings; 6) Roman law; 7) Roman Catholic (Canon) law.⁷

After passing the examination, nominations for presidents of courts and judges, as well as for other court officials, were granted by the Governing Senate, in respect of presidents with the prior approval of the the rulers of neighbouring countries, in respect of other judges of the Higher Court and the life-long judges of the Tribunal, with the consent of the Residents’ Conference. The Governing Senate could also suspend presidents and judges from office and payment of remuneration (*ab officio et salario*); dismissal from service could only be based on a final conviction. However, with the consent of the Conference of Residents, the Government could remove a person from office who had an immoral lifestyle or had grossly neglected his duties.⁸ The preserved examination protocols convince us that the questions were very detailed and required a large amount of knowledge from various fields of law. As an example, in 1851, Maksymilian Grabowski, son of a well-known Cracow bookseller and amateur historian, had to face questions about such issues as: 1) What is the renewal (*novatio*), as it has been shaped by Roman, French and Austrian law; what may be the meaning of the *novatio* on mortgages; 2) What is the effect of the transfer (Art. 1247 CC); 3) Under what circumstances a judge may be held criminally liable; when he may be required to compensate a party for the damage caused

and benefits lost; 4) When the bill of exchange should be paid and whether it may be partial; 5) The cessation of the father’s parental authority under Austrian law; 6) The admissibility of independent asset management by a minor under former Polish law; 7) What is “creditor association” in commercial law; 8) The validity of a contract “forced by fear” in Roman law; 9) What are “disorderly inheritances”; 10) The principles of moving final judgements; 11) The types of evidence on the basis of the Code of Judicial Procedure and the ways of conducting them; 12) The crime of incest; 13) Types of courts in the Old Poland; 14) Principles of the rectification of civil status records; 15) Types of church beneficiaries; whether the clergy is obliged to pay taxes.⁹

Before taking office, the judges took an oath of allegiance to God and the State. “I, N.N., elected by the Assembly of Representatives to the office of the President of the Court, swear to the Lord Almighty God and to the government of the Free City of Cracow with the District that I will perform official duties as befits an honest and god-fearing man, and I will make sure that the officials under my authority will diligently fulfil their duties.”¹⁰

It should be noted that the Presidents of the Court of Appeal were Józef Nikorowicz, Franciszek Borgiasz Piekarski, Jakub Mąkowski and Piotr Bartynowski (President of the Higher Court); the Court of First Instance was headed by Bernard Dwernicki, J. Mąkowski, P. Bartynowski and Wojciech Majer. The Court of Third Instance was chaired by F. Piekarski and J. Mąkowski.¹¹

⁷ Statut Organiczny dla Władz Sądowych, 27. 1. 1842, §§ 145–148; Regulation of the Governing Senate, O aplikacji i egzaminach sądowych, 27. 4. 1842, §§ 17–18, 20–29, 34–35, 39, 41–42, 45.

⁸ Statut Organiczny dla Władz Sądowych, 27. 1. 1842, §§ 108–112, 114–116, 119.

⁹ ANK-ES, Archiwum Wolnego Miasta Krakowa, sign. WM 150, unpag. Protokół egzaminu przed Komisją Sądowo-Egzaminacyjną, 13. 5. 1851.

¹⁰ ANK, Archiwum Wolnego Miasta Krakowa, sign. WMK V-9A, pag. 17, Rota przysięgi dla Prezesów obydwóch Trybunałów Sądowych.

¹¹ Kalendarzyk 1819 26–30; ANK, Archiwum Wolnego Miasta Krakowa, sign. WM 618, unpag. Księga obejmująca Etat Sądownictwa Wolnego Kraju

In the final period of the Republic of Cracow, 15–20 judges worked at courts: ten to twelve of them at the Tribunal and four to five at the Higher Court. The judges' salaries were not significantly modified.¹²

In their work, judges received assistance from clerical staff (secretaries, clerks, journalists, archivists) and from delivery janitors (ushers). Prosecutors and court writers were also employed at the courts; and lawyers, notaries, bailiffs and the regent of mortgage files were also associated with the broadly understood justice system.¹³

When it comes to the evaluation of the judicial environment by the inhabitants of Cracow, we have divergent diarist relations. On the one hand, as it was noted by Ambroży Grabowski: "The course of justice was swift, and things were done in turn, as they came to the table. No one could accuse the judges of bribery, because the people called to the judicial offices belonged to the category of the most moral people, and morality in this respect was strongly observed".¹⁴

In support of Grabowski's words, we can point to examples of people who passed fair sentences in Cracow. Józef Nikorowicz (1753–1833) had a good preparation and rich experience. After graduating from the University of Lviv (where he came from), he presided over the courts of the nobility in Tarnów and Cracow, and even sat on the Viennese legislative commission (during his stay in the capital of the Habsburg Empire, he married the Viennese Baroness Maria

Bourginion de Baumberg). His successor in the chair of the President of the Court of Appeal was another graduate of Lviv's University, Franciszek Borgiasz Piekarski (1759–1834). During the period of the Duchy of Warsaw, he was President of the Criminal Tribunal for the departments of Cracow and Radom. In the Republic of Cracow, in addition to serving as a judge, he was also active in administrative institutions (the Peasant Commission, Mortgage Committee), tax and school institutions, as well as in social organizations (Charitable Society, Archbrotherhood of Mercy). He was the author of numerous works on agronomy. Jakub Mąkowski (1782–1861), son of a Cracow notary, also completed his studies at the University of Lviv. He worked as a prosecutor at the Criminal Court in Cracow, and then headed the Tribunal and the Court of Appeal (1834).¹⁵

Piotr Bartynowski (1795–1874) was also an important person: apart from law and philosophy in Cracow, he studied in Wrocław and Berlin, where he had the opportunity to listen to lectures of the famous Friedrich K. Savigny. In addition to being a prosecutor and judge, Bartynowski also held the rank of professor at the Jagiellonian University, teaching Roman law (1829–1833).¹⁶

Another well-educated judge was Mikołaj Hoszowski (1778–1828). He was also a member of the committee for the drafting of the codes and the speaker of the parliament of the Free City of Cracow. First of all, in 1817/1818 he became a professor of the Chair of Political Skills (continuation of the studies on the police, a prototype of administrative law), and held this dignity

Krakowa zaczęta od Roku 1823; ANK, Archiwum Wolnego Miasta Krakowa, sign. WM 618, unpag. Lista Urzędników Sądowych w całym Kraju Wolnego Miasta Krakowa i Jego Okręgu w roku 1833; Announcement of the Governing Senate, 27. 5. 1842, No 2566–2658, Dz. Rząd. WMK, 1. 6. 1842, No 49–50, 193–196. There also names of life and time judges.

¹² Statut Organiczny dla Władz Sądowych, 27. 1. 1842, §§ 1–2, 21–23, 26, 75–76.

¹³ See more: MATANIAK, Court Officials 95–155.

¹⁴ GRABOWSKI, Wspomnienia 129.

¹⁵ HOSZOWSKI, Biografie 15–20, 37–47; WAWEL-LOUIS, Sądownictwo 170–176.

¹⁶ ŻUKOWSKI, Profesorowie 16–17; MUCZKOWSKI, Piotr Bartynowski 335; PATKANIOWSKI, Dzieje Wydziału 201–202; MALEC, MALEC, Programma 285–293.

until his death.¹⁷ Wiktor Kopff (1805–1889), who had a wide range of interests, also deserves to be mentioned. Between 1834 and 1835 he travelled around Europe, and thereby became acquainted with the penitentiary systems of that time (the result of his journeys was the prison statute for Cracow). He also conducted (1843–1844) negotiations with a Prussian company on the delineation of the railway line from Cracow to Mysłowice, and also was the author of numerous legislative projects, concerning the house of forced labor, workshops for prisoners, child protection; laws adopted by the parliament (law on usury, supervisions of churches, Savings Bank, perpetual property); and was even the President of the Theatre Directorate (since 1842).¹⁸

On the other hand, the above quoted Grabowski expressed significant doubts as to the intellectual qualifications of judges. He also gave such characteristics of some of them: “The judge of the Tribunal was Dydyński, a very stupid nobleman, supported for this dignity by Marcin Badeni, minister of the Kingdom of Poland. He was simply a bankrupt landowner, a rural farmer, who never dreamt about the law, because he never listened to it and did not have a proper education. This one, being a judge by a few years, even did not go to the courts, pretending to be sick, and received his salary for free – until finally death took this inutile pondus terrae and freed the treasury of the Republic of Cracowa from paying for this dry beer”. We can also find such an opinion of Grabowski: “They were real fools, who could only write and read, let alone know the law. Such was Szymon Białecki, whom I remember in 1797 as a wig-maker, and he was often brought down to the head of Antoni Grobel, who could not wait for

him and sent me to him with an order: ‘Go and take this clown by the head and bring him to me...’ [...] This man, a bold conceited man, with the protection of Walenty Litwiński, professor of law, was elected judge at the Sejm, even though he had as much knowledge of the law as the rural Bartek of astronomy; after all, he was a judge, even though he was an extreme idiot”.¹⁹

The judges had two kinds of responsibility: disciplinary and criminal. Direct disciplinary supervision was exercised by the presidents of the courts, who sent opinions to the President of the Governing Senate on substantive preparation, approach to duties, attitude towards parties to proceedings, and moral behaviour of the judges in their private lives. The information was collected by means of so-called conduit lists. It may be added that the supervision of the judiciary in terms of “course of justice” (timely processing of cases, enforcement of judgements, etc.) was carried out by the government.²⁰

Criminal liability was provided for in case of misconduct, theft of public money or other misconduct which was connected with the exercise of office. In order to carry out this responsibility, the Supreme Sejm Court sat in the years 1815–1839. It consisted of five deputies, three senators, presidents of courts, four judges of the peace and three trustees of suspects, recruited from among the citizens of Cracow. The parliament decided about the indictment in court. In 1842, the role of the Supreme Parliamentary Court was taken over by the Supreme Criminal Court.²¹

During the period of the Free City of Cracow the procedure was initiated only against judge

¹⁷ PATKANIWSKI, *Dzieje Wydziału 174–177*; ŻUKOWSKI, *Profesorowie 189–190*; BĄK, *Mikołaj Hoszowski 33–34*; MALEC, MALEC, *Z dziejów 729–736*.

¹⁸ HOMOLA, Wiktor Kopff 18–19.

¹⁹ GRABOWSKI, *Wspomnienia 133, 135*; MIEROSZEWSKI, *Moje lata 94–95*; ŁĘTOWSKI, *Wspomnienia 141*.

²⁰ Statut Urządzący Sądownictwo, 27. 8. 1833, Dz. Praw WMK, 1833, § 80; Statut Organiczny dla Władz Sądowych, 27. 1. 1842, §§ 132–133, 137–138.

²¹ PEKSA, *Sąd Sejmowy 253–261*.

Wojciech Skarżyński (1838), suspected of bribery and “abuse of office”.²²

For their work, the judges received remunerations financed from the state budget. They were at a good level, and were similar to the salaries of senior officials (President of the Governing Senate; Director of the Construction Directorate) and middle-level officials (President of the Department of Internal Affairs; Director of the Main Archive). According to the budget for 1820/1821, the President of the Court of Appeal earned 10,000 Polish zlotys a year, his deputy 6,000, and the other judges 5,000 each. The President of the Court received 8,000 Polish zlotys, life judges 4,000–5,000 each, as did three temporary judges. It may be added that the salaries of judges of the Court of First Instance were similar to those of the Court of Appeal.²³

The judges were entitled to a vacation. They were also covered by the pension system, introduced in 1833 for civil servants. It was modified in subsequent years. Earlier, the receipt of pension provisions depended on the decision of the Sejm and the government. From 1833 onwards, pensions had to be covered by future pensioners as, on the occasion of the payment of remuneration, the Pension Committee made a deduction of 4 % as a contribution to the Pension Society, to which membership was compulsory. The pensions were co-financed from the public budget. The pension system was constructed according to the progressive method: the amount of the pension or widow’s and orphan’s

benefit depended on the length of service. Working for 15 years resulted in the right to a pension of 25 % of the highest salary, 35 years of work – up to 100 %. During the transition period, the pension increased annually by 3/20 of the amount calculated in relation to 1/4 of the basic salary. Wives and minor children were entitled to a retirement pension after marriage.²⁴

Judges, like other civil servants and professors of the Jagiellonian University and high schools, were entitled to wear a uniform. Its design, based on solutions from the times of the Duchy of Warsaw, was approved by the Organizing Committee in 1816. It was dominated by navy-blue and caramel blue colours. The uniform consisted of a “dress of the top of the German cut”, a white vest, black or white trousers, a hat with a safety pin and a bow and buttons with the state coat of arms.²⁵

Finally, it can be added that the working conditions of judges significantly improved in 1819. It was then that the seat of the courts was moved to buildings near St. Peter and Paul’s Church (currently Collegium Broscianum, 52 Grodzka St.). By a resolution of 20 September 1818, it was decided that the court premises would be located on the second floor; the first floor and the ground floor were reserved for the needs of the government.²⁶

²² ANK, Archiwum Wolnego Miasta Krakowa, sign. WMK II-42, pag. 673–674, the Chairman of the Assembly of Representatives to the President of the Governing Senate, 18. 1. 1838; KOPFF, Wspomnienia 16–17.

²³ ANK, Archiwum Wolnego Miasta Krakowa, sign. WM 16, pag. 299–300, 310, Budget Rozchodów na Rok 1820/21. Expenditure on the judiciary amounted to 138,200 Polish zlotys (12 % of the expenditure; the outgoings budget amounted to 1,329,351 Polish zlotys and 29 grossus).

²⁴ See more: MATANIAK, System I, 289–318; MATANIAK, System II, 493–519.

²⁵ ANK, Archiwum Wolnego Miasta Krakowa, sign. WMK V-7, pag. 39–46, regulation of the Governing Senate, 14. 9. 1816, No 3298; ANK, Archiwum Wolnego Miasta Krakowa, sign. WMK V-7, pag. 39, decision of the Organizing Committee, 2. 9. 1816, No 530.

²⁶ SZYMBORSKI, Collegium 98–100, 104–105.

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Abbreviations:

ANK	Archiwum Narodowe w Krakowie [National Archive in Cracow]
ES	ekspozytura w Spytkowicach [branch in Spytkowice]
Dz. Praw WMK	Dziennik Praw Wolnego Miasta Krakowa [Journal of Laws of the Free City of Cracow]
Dz. Rząd. WMK	Dziennik Rządowy Wolnego Miasta Krakowa [Government Journal of the Free City of Cracow]

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