Summary

Dolmatova N. **Features of state-creative activity of political parties of Ukraine (1917–1920).**

The article is considered the problems of decisions the main tasks of Ukrainian revolution: state-creative, working, agrarian and other socio-economic and political questions and great impact of Ukrainian political parties to.

Key words: state-creative process, essers, mensheviks, Ukrainian revolution, political parties.

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CHARACTERISTIC FEATURES OF CIVIL PROCEEDINGS IN POLAND IN THE INTERWAR PERIOD*

Civil Procedure Codes inherited by Poland were based on corresponding historical traditions of other countries and contained significant differences in different territories of Poland. Consequently, it was urgent to create their own unified throughout the state Civil Procedure Code that would meet new social and political realities.

In 1929 the draft of the Code was published, it took into account opinions of judges, lawyers' chambers and law societies. By order of the President of the Republic of Poland the Code came into force in January 1933 after the amendments (1930) [6, p. 342]. In 1932 the Civil Procedure Code was amended by provisions of execution and insurance processes [1, p. 272].

A liberal-individualistic conception of the civil procedure formed the basis of the Polish Civil Procedure Code; its purpose was to ensure protection of private interests of people and guarantee the autonomy of their procedural rights.

In 1932, an integral text of the Code consisted of two parts: the first contained controversial provisions (adversarial litigation) and arbitration proceedings, the second – the provisions of execution and insurance processing.

A significant part of the case was an evidentiary process. Different types of evidence (documents, witnesses' testimony, experts' opinion, review, listening to parties) were used. The last (listening to the parties) had an additional formal nature, but in practice it was often used under oath. The judge himself decided the reliability of evidence, conducting an objective assessment [1, p. 278].

At the end of the proceedings the decision was announced, the essence of which affected only the solution of the subject of the dispute and the court could not change it itself. Only a default judgment on the defendant was allowed (Art. 349 §1).

The Polish Code of Civil Procedure, like many similar European codes, defined a three-instance system of the judiciary. The first instance was a castle court; it was formed to resolve minor cases. For appeal instance there were accordingly district and appellate courts. The Supreme Court was the third instance of cassation character (with certain deviations in the direction of the audit system). There were exceptions for one- or two-instance systems in view of the value of the dispute (the so-called "trivial" cases) meant to expedite the implementation of justice.

By implementation of such a system of appeal lawmakers tried to provide a detailed review of cases. However, due to understaffing of courts, this system led to a protracted litigation and increased its value. The Court of Appeal considered cases on their merits in a new way, taking into account the findings of the trial court and also conducting its own evidentiary process. After reviewing of the case the court made the decision that approved, changed or canceled the previous one. The Court of Cassation, which was only the Supreme Court, did not perform any evidentiary process and was limited to verifications concerning violation of the law. Typically, the Court of Cassation reviewed cases regardless of their importance. This practice delayed the process and increased its cost [4, p. 888].

Thus, the state court also oversaw the arbitration court. Since the process in the arbitration court was one-instance, the Code contained a list of procedural cases when the party could submit to the state court an appeal to cancel the decision of the arbitration court. It was the only means that performed the function of appeal.

In interwar Poland, arbitration proceedings were used particularly active in the periods of inflation when the process rate solved the real value of money claims. The important was the fact that the process guaranteed the protection of commercial and industrial secrets. Arbitration proceedings were often used in commercial matters; that is why permanent arbitration courts were formed at the Chamber of Commerce. Absence of necessity to draw up minutes of the meeting and the possibility of releasing arbitrators from the obligation to justify the decision made it possible to keep confidential the circumstances that the parties did not wish to disclose. Citing arguments in favor of these courts, M. Allyerhand claimed that they acted more often because of slowness of the process in state courts, as well of willingness of the parties to keep in secret their interests.

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The Code clearly outlined the procedure for executions, particularly in real estate. The phases of execution of real estate were the following its arrest, description, appraisal, advertising and selling, registration of the ownership of a new owner. Execution of the movable property covered the actions of a bailiff, sale by means of a public auction, division of this sum among the creditors [2, part 2, p. 234–242].

An insurance process ensured the lender the loan repayment in the future if his claims were legitimate. The court had a duty to prevent such actions of the debtor that would have made it impossible debt repayment (the arrest of movable property, ban of its sale, etc.) [5, p. 548–549].

Thus, the new Polish Civil Procedure Code was generally characterized by a high technical level, clearness, simplicity, clarity, and it was much better than a similar Russian code.

Although some provisions of the Code were developed in details, it remained controversial and caused doubt. Therefore, prominent lawyers criticized the new Polish Code of Civil Procedure. In particular, A. Chervinsky claimed that its provisions were too general, as they were "borrowed from the Austrian and German procedures and edited in summary form, they become less clear". Others lawyers also expressed their warnings about the possibility of effective application of certain provisions of the Code. They were especially worried about those provisions of the Code which could slow down the civil proceeding, including the lack of clear regulation to resolve minor cases [4; 7, p. 743].

In the interwar period they failed to develop a draft law on a non-controversial process that's why quite heterogeneous legislation of the former states-invaders remained applicable in this field.

Having analyzed the judicial practice, one can get an objective view of civil proceedings in interwar Poland.

The nature and number of civil cases were determined by the level of economic development and socio-legal relations, which during the interwar period remain different on different formerly occupied territories.

In the central and eastern provinces, the number of minor cases and their solutions tended to increase. In the western provinces, the number of minor civil cases significantly increased, owing to a higher level of economic life. Herewith, a relatively high efficiency of civil courts remained, as there was a stable tendency of increase of the resolved cases. In the southern provinces and in Cieszyn Silesia there was also a tendency to a significant increase in number of cases both minor and more important.

If to take, for example, a certain district the situation was as follows. In 1927 on the territory of the Lviv appellate district 27,284 controversial cases were resolved in the district courts, 253,134 – in the county courts; 158,438 of them were minor, 94,696 – others. The number of district judges in the same district was 339 people, county personnel (including heads of the courts, investigators-judges and substitutes) – 508 people. During the review there were 112,900 inheritance cases, 370,032 custody ones, 193,463 mortgage cases; 28,307 cases were resolved in the appeal [10, Art.5, 6].

The number of civil cases in district courts was tended to increase and in county courts – to decrease. The cases, in which the value of the dispute did not exceed 500 PLN, were under the jurisdiction of the county courts. However, they were not numerous. Older such cases had already been resolved, and due to financial difficulties and lack of credit new, ones were few; mainly people who were in a better financial situation signed agreements.

The number of hereditary cases increased because of resolving issues related to people who died in the war. There were fewer mortgage cases; that was because the so-called "land books" had been destroyed during the war and the circulation of real estate was a weak and difficult process.

Even after the introduction of the new Procedure Code, a number of specific deficiencies in courts caused the lack of efficiency and a slow resolution process of civil cases. Such shortcomings were identified during the inspections carried out by higher judicial authorities concerning the lower courts. The inspection of the city court in Bolekhiv showed, in particular, that 70 percent of all procedural cases under consideration belonged to minor ones. Exactly this generally defined an unsatisfactory rate of case solving, since from 3 500 cases in 1935 only eight remained unsolved next year.

However, many shortcomings were found in the work of judges. The most important of them were as follows: lack of proper completeness of evidence in making decisions; they were often based only on the content of the claim and amid accusations; judges often did not show substantial evidence before the hearing, which led to the delay of its consideration; sometimes substantiation of evidence of the parties was primitive, or after the confessions of the accused the court would conclude "s/he was the biggest thief"; some court decisions contradicted the current Code. There were lapses in the work of the secretariat in processing the documents [9, Art. 2].

All these shortcomings were found after the inspection of the Civil Division of the Drohobych City Court (1938), the Rozhnyatyn City Court (1939), the District Court in Stryi (1936), the Court of Appeal in Krakow and others [8, Art.2–4; 11, Art.1–6].

Thus, the analysis of the inspections of activities in courts found that in the judicial practice regarding the order of resolving civil cases there were serious drawbacks (violation of provisions of the Civil Procedure Code, deficiencies at the preparation stage of the case for consideration, understaffing of judicial personnel and judicial employees, inefficient work of the secretariat, etc.), all that made the judicial process protracted and led to the increase in the number of unresolved cases.

In interwar Poland there was a tendency, which made civil proceedings more expensive. In 1933 a separate law on judicial fees was issued, but it was of fiscal nature and did not contribute to the implementation of fair justice. Civil proceedings were complicated by high court fees, a high bail appeal and attorneys' fees. Poor population was at the plight because of such high payments.

However, high fees and material restrictions of the possibility to submit a cassation did not solve the problem of reducing the number of cases which were received by the Supreme Court, as a result the parties were waiting for consideration for years. Specifically, in the middle of 1938 at the Supreme Court there were about 10 thousand of unresolved cases [5, p. 528].

In 1938 the President of the Polish Republic issued a decree on improving litigation. According to the decree, the competence of city courts was extended to consideration of cases in which the subject of the dispute reached two thousand PLN. There was a limited possibility of filing appeals, a bail appeal increased to 300 PLN; and in the second instance courts civil litigation considered the cases where the value of the dispute did not exceed 1 500 PLN (previously it was 500 PLN). The concept of "complete poverty" was rejected, instead of which henceforth the party was released from legal costs if that was harmful for them and their family. Consequently, these provisions did not change substantially the basic principles of the civil process i.e. they limited the authority control and worsened the legal status of the poor.

In interwar Poland an execution process depended largely on the level of economic relations development, especially in agriculture. Under the condition of an economic crisis, a significant part of creditors could not expect repayment of loans by selling farms. Under these circumstances, the government amended the legislation by adopting the law on benefit in judicial executions relating farms, under which temporary suspension of real estate was allowed [2, Part 2, p. 251–253].

Hence, in general, an execution process was characterized by slowness and formalism. Attempts of its improvement did not yield adequate results, and the lack of appeal in this process led to particularism of its application by general courts.

The Supreme Court issued annuals on judicial practices which showed that a significant number of sentences by consistory courts were recognized by this court as contradicting the norms of the Civil Procedure Code (despite the fact that only a small number of cases were reviewed by the Supreme Court). Therefore, legal press often stressed on the need to control the prosecutorial decisions of consistory courts and check their compliance with the civil process. There was the opinion that consistory sentences, which were taken in violation of procedural law, should be considered invalid. However, the Supreme Court did not adhered to this position [5, p. 87] that's why consistory courts practice often continued to complicate the resolution of family cases.

Although in the interwar period such an important branch of social relations as family relations remained mainly outside the jurisdiction of state courts, using judiciary the Polish authorities managed to control and solve other social and legal problems, including those that occurred against the backdrop of labor relations. In this activity a special role was given to labor courts.

Due to the market revival after the economic crisis, the number of cases filed in labor courts increased already in 1935–1936. So in 1935 the number of civil cases that were considered in these courts, compared to 1934, increased by 14 percent.

It is important to note that, in general, the activity of labor courts was effective in relation to the review and resolution of labor disputes. If during the first year of these courts activity the number of unresolved cases was 21 percent, in 1935 their total number was 16 percent. This figure was very important because 95 percent of claimants of the cases in labor courts were employees and only 5 percent – employers. If you consider that 80 percent of claims were positively resolved, this situation unquestionably was in favor of workers [5, p. 692].

It is characteristic that the court decision itself was the main means of resolving the disputed labor issues. In 1930 the number of cases resolved in labor courts was 57 percent of the total number of cases, in 1934 – 61.1 percent, in 1936 – 58.5 percent.

Since the labor legislation was not clear enough, there were doubts about the interpretation of certain provisions even while resolving disputes in labor courts. Therefore, a significant percentage of labor court decisions were appealed, they were reviewed by district courts and even by the Supreme Court. In 24–25 percent of appeals, primary labor court decisions were changed or canceled.

Although the number of such cases increased from 30 in 1935 to 143 in 1936, the punishment process was not always used effectively in labor courts. If in 1935 in Lviv there were 20 such cases, in Krakow – seven, in Byelsk – two, in Bilostok – one, in 1936 in Lviv there were 52, in Warsaw – 27, and a few more cases – in other 12 labor courts.

However, the possibility of participating of non-Polish population in labor district courts was limited by the Polish legislation. One of the requirements of Article 8 on labor courts was that jurors had to be fluent in Polish, both in written and oral communication. Consequently, it was actually impossible to use Ukrainian in Polish legal proceedings; Ukrainians were deprived of proper protection of their rights, including legal resolutions of labor disputes.

Overall, due to labor courts, certain social achievements of the Polish people were preserved [3]. There was the hope that the problems arising in the sphere of labor relations could find objective solutions in the state judicial institutions, while labor courts could not certainly resolve all the conflicts. Active work of labor courts contributed to the development of legal culture in the Polish society.

Concluding, in interwar Poland, civil proceeding was difficult. Its character was primarily determined by legislation, namely, by the Civil Procedure Codes of the former states-invaders that had significant substantial differences and long-term effects on various territories of Poland. The new Polish Civil Procedure Code of 1930 was based on democratic principles and had to protect private interests and guarantee procedural rights. However, it contained contradictions and some provisions of the Code had an unclear and general nature, causing complex legal precedents in jurisprudence. The fact, that during the entire interwar period in organizing activities of courts and

administration of justice, the rules and provisions of the previous of Civil Procedure Codes continued to apply on various territories in Poland even after the introduction of the new Code negatively impacted civil proceeding. Civil proceeding was also complicated by the fact that civil law was partially uniformed and remained non-standardized relating to the disputed process.

With growing number of civil cases the civil process remained slow. As the analysis of the judicial practice showed, the main reasons of that were violations in the application of the norms of the Civil Procedure Code, understaffing of courts with judicial personnel, insufficient training of judges, overload of judges, significant errors of judges in the preparation of a case for consideration, inefficient work of secretaries, a low level of financial security. Civil proceedings held in the main units of the judicial system – city courts – were the least effective. Judges did not always use the Code norms in order to provide an opportunity to speed up the civil process. Even though the Procedure Code regulated the arbitration proceedings, which accelerated the process, it solved mainly commercial disputes. In addition, some contradictory of the provisions of the Procedure Code made it impossible to "cut" the process. Although a three-instance system of the appeal process benefitted a thorough review of cases, it did not contribute to its acceleration.

A characteristic feature of the civil process was its high cost and fiscal nature. High court fees, a bail appeal and a mandatory defense of lawyers made civil proceeding almost out of reach for the general public. The slowness of the process even greater increased court fees. This violated an important principle of equality of the parties in the process.

An attempt to improve civil proceeding in 1938 was certainly a positive phenomenon in the legal framework of the Republic of Poland, but the changes relating major principles of civil procedure were insufficient and non-fundamental. Eliminating some of the gaps, legislators, created others; primarily, they limited the opportunities of one part of the population (the poor) in their right to settle disputes in court.

Not all spheres of the social life were covered by the civil process. Family relations were in the jurisdiction of religious courts (in the former Russian territory), which led to numerous problems in their decision.

Resolving of disputes that emerged from the employment relationship of workers and employers in labor courts were characterized by positive effects.

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[1] *Borkowska-Bagiecska E., Lesicski B.* Historia prawa sadowego: zarys wykladu. – Poznac: Ars Boni et Aequi, 1995. – 304 s.

[2] Historia panstwa i prawa Polski 1918–1939 / Pod red. F.Ryszka. – Warszawa: Pacstwowe Wydawnictwo Naukowe, 1962. – Cz. 1. – 415 s.; 1968. – Cz. 2. – 310 s.

[3] *Kozirowski W.* Na marginesie prawa o sondach pracy // Gios Sadownictwa. – 1935. – Nr. 2. – S. 191–192.

[4] *Kubicz J.* O przyspieszenie postкpowania sadowego // Glos Sadownictwa, 1935. – Nr. 12. – S. 886–889.

[5] *Plaza S.* Historia prawa w Polsce na tle porównawczym. – Krakyw: Ksikgarnia Akademicka, 2001. – Cz. 3: Okres mikdzywojenny. – 762 s.

[6] Rozporzndzenie Prezydenta Rzeczypospolitej z dnia 29 listopada 1930 r. Kodeks Postępowania cywilnego // DzURP, 1930. – Nr. 83. – Poz. 651.

[7] *Thon A.* Kodeks postкpowania cywilnego w њwietle praktyk dwych lat // Palestra. – 1935. – Nr. 1. – S. 27–35; – Nr. 2. – S. 113–128; – Nr. 3. – S. 163–177; – Nr. 4. – S. 290–306; – Nr. 5. – S. 386–405; – Nr. 6. – S. 470–488; – Nr. 7–8. – S. 552–573; – Nr. 9. – S. 671–683; – Nr. 10. – S. 730–743.

[8] ДАЛО. – Ф. 11. – Оп. 26. – Спр. 269.

[9] ДАЛО. – Ф. 11. – Оп. 26. – Спр. 272.

[10] ДАЛО. – Ф. 536. – Оп. 1. – Спр. 61.

[11] ДАЛО. – Ф. 536. – Оп. 1. – Спр. 95.

Резюме

Лучаківська І. **Характерні риси розвитку цивільного судочинство в Республіці Польща у міжвоєнний період.**

У даній статті охарактеризовано розвиток цивільного судочинства в міжвоєнній Польщі. Розкрито характер та сферу законодавства, яка була довготривала та діяла на різних територіях Польщі в цивільних процесуальних кодексах колишніх держав-окупантів, які мали значні суттєві відмінності. Подано короткий аналіз судової практики, де головними причинами були порушення у застосуванні норм цивільного процесуального кодексу, неукомплектованість судів суддівськими кадрами, недостатня професійна підготовка суддів, перевантаження суддів, суттєві помилки суддів на стадії підготовки справи до розгляду, неефективна робота секретарів, низький рівень матеріального забезпечення.

Ключові слова: Республіка Польща, цивільний процесуальний кодекс, професійна підготовка суддів, цивільне судочинство, польське законодавство.

Резюме

Лучакивска И. **Характерные черты развития гражданского судопроизводство в Республике Польша в межвоенный период.**

В данной статье охарактеризовано развитие гражданского судопроизводства в межвоенной Польше. Раскрыт характер и сферу законодательства, которая была долговременная и действовала на разных территориях Польши в гражданских процессуальных кодексах бывших государств-оккупантов, которые имели значительные существенные различия. Дан краткий анализ судебной практики, где главными причинами были нарушения в применении норм гражданского процессуального кодекса, неукомплектованность судов судейскими кадрами, недостаточная профессиональная подготовка судей, перегрузки судей, существенные ошибки судей на стадии подготовки дела к рассмотрению, неэффективная работа секретарей, низкий уровень материального обеспечения.

Ключевые слова: Республика Польша, гражданский процессуальный кодекс, профессиональная подготовка судей, гражданское судопроизводство, польское законодательство.

Summary

Luchakivska I. **Characteristic features of civil proceedings in Poland in the interwar period.**

This article describes the development of civil proceedings in interwar Poland. The author reveals the nature and scope of legislation which was long-term and functioned on different territories of Poland in the Civil Procedure Codes of the former states-invaders that had significant substantial differences. She gives a brief analysis of judicial practice, where the main reasons were as follows violations in the application of the norms of the Civil Procedure Code, understaffing of courts with judicial personnel, insufficient training of judges, overload of judges, significant errors of judges in the preparation of a case for consideration, inefficient work of secretaries, a low level of financial security.

Key words: Republic of Poland, Civil Procedure Code, training of judges, civil justice, Polish legislation.

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С. М. КАПИШІН

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ПРОБЛЕМИ ПРАВОЗАКОННОСТІ: ВІД ВИТОКІВ ДО СЬОГОДЕННЯ

Актуальність теми дослідження зумовлена теоретичною і практичною значущістю питань, пов'язаних з формуванням в Україні дієвого механізму правового регулювання. Судова система України та суміжні правові інститути існують для захисту прав, свобод та законних інтересів людини і громадянина, прав та законних інтересів юридичних осіб, інтересів держави шляхом своєчасного, ефективного й справедливого вирішення правових спорів на засадах верховенства права[1].

У зв'язку з цим, є гостра необхідність у подальшій розробці питань правозаконності та об'єднання для цього зусиль представників як зарубіжної правової науки, так і вітчизняної юриспруденції.

Навряд чи сьогодні знайдеться вчений чи політик, який відкрито виступає проти необхідності режиму правозаконності в процесі управління соціально-політичною системою. Однак сам по собі цей факт не свідчить про одностайність у поглядах і думках з приводу шляхів та способів його втілення в реальному житті, визначення відповідних цілей і завдань.

Світова наукова думка в галузі права кульмінацію переосмислення уявлень про законність пов'язує із сучасним відродженням ідеї правозаконності (*rule of law*). Особливо актуальними для дослідження правозаконності є роботи зарубіжних правознавців ліберального напряму: А. В. Дайсі (A. V. Dicey), М. Оукшота (M. Oakeshott), Ф. А. Хайєка (F. Hayek), у яких правозаконність (*rule of law)* була концептуально розроблена.

Також значимість для аналізу концепції правозаконності мають твори Р. Феллона (R. H. Fallon), С. Ігла (S. Eagle), Р. А. Касса (R. A. Cass), Н. Крітца (Neil Kritz), Т. Зивіскі (T. Zywiski), Д. Томаса (J. Thomas), М. Хорвіца (M. Horwitz), А. Шайо (A. Sajo).

У дореволюційній Росії питання правозаконності висвітлювалися в працях таких великих російських мислителів, як М. О. Бердяєв, В. Н. Дурдулевский, Б. О. Кістяківський, І. А. Покровський, Б. М. Чичерін.

У розвиток вчення наприкінці XIX – на початку XX ст. зробили свій внесок українські філософи та юристи М. П. Драгоманов, С. А. Котляревський, М. І. Палієнко та ін.

У радянській юридичній науці, що спиралась на доктрину позитивізму, проблема правозаконності була піддана «невиправданому остракізму». У теорії держави і права радянського періоду розроблялася виключно категорія законності. Вагомий внесок у розвиток поняття законності зробили Н. Г. Александров, М. І. Байтін, С. Н. Братусь, В. В. Борисов, Н. В. Вопленко, Д. А. Керімов, Е. А. Лукашева, А. Є. Луньов, І. С. Самощенко, М. С. Строгович, П. М. Рабинович, В. М. Чхиквадзе, Л. С. Явич. Проте всі питання, пов'язані із законністю, в радянську епоху висвітлювалися дуже політизовано та ідеологізовано.

На початку 90-х років XX ст. з'являються нові підходи до розкриття поняття законності, акцентується увага на необхідності вираження в законодавстві «правових засад». У світлі нових ідей відроджується концепція правозаконності, яка знайшла яскраве відображення в роботах С. С. Алексєєва, Д. М. Бахраха, В. М. Вітрука, Х. С. Гуцерієва, В. С. Нерсесянца, В. К. Самігулліна, В. А. Четверніна.

Серед українських правознавців проблема законності в той чи інший спосіб вивчалася В. Д. Бабкіним, В. В. Головченком, М. І. Козюброю, В. В. Копєйчиковим, О. М. Мироненком, В. Ф. Сіренком, В. В. Цвєтковим, Ю. С. Шемшученком.

Так, у своїй праці «Верховенство права: українські реалії та перспективи» М. І. Козюбра зазначає, що все частіше верховенство права як принцип фіксується у національних конституціях і законах, ним активно оперують міжнародні та національні суди. Не залишилася осторонь цієї безпрецедентної підтримки ідеалу верховенства права й Україна.

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