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Comparative Law and Procedural Law in Poland in 1918–1933 with a Particular Emphasis on the Silesian Voivodeship

Komparatystyka prawa a prawo procesowe w Polsce w latach 1918–1933 (ze szczególnym uwzględnieniem województwa śląskiego)

ABSTRACT

In 2023, 500 years have passed since the entry into force of the ordinary court procedure in Poland (*formula processus iudiciarii*, 1523), as well as 90 years since the unification of court procedures in Poland in general and 90 years since the entry into force of the first Polish Code of Civil Procedure (1933). Therefore, this is a special opportunity to refer, in this context, to the first transformation of procedural law in Poland in the 20th century, which took place after World War I, especially in the context of comparative procedural law issues. Applicability of foreign laws in the Polish territories after World War I: Russian, German, Austrian, and Hungarian (in a small area of Spisz and Orawa), as well as Polish-French legislation, gave rise to a complicated and territorial legal mosaic. The codification works undertaken at that time in Poland, unprecedented in Europe or even in the entire world, fell within a period of great development of comparative jurisprudence. They were profound comparative studies, which are proven by the published drafts, together with explanatory memorandums, offering an original synthesis of the legal thought. The considerations made in this article relate to procedural law, which was significantly diversified in the territory of Poland reborn in 1918, especially as regards the model of legal remedies, which gave rise to considerable difficulties in the practice of the system of justice prior to the unification of court procedures. Special attention was paid to the legal situation in the Silesian Voivodeship, being a peculiar microcosm of the legal situation in the entire country.

Keywords: comparative law; comparative legal history; comparative procedural law; system of justice; interwar Poland; Silesian Voivodeship

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INTRODUCTION

In 2023, 500 years have passed since the entry into force of the ordinary court procedure in Poland (*formula processus iudiciarii*, 1523), as well as 90 years since the unification of court procedures in Poland in general and 90 years since the entry into force of the first Polish Code of Civil Procedure (1933). Therefore, this is a special opportunity to refer, in this respect, to the first transformation of procedural law in Poland in 20th century, which took place after World War I, in the interwar period, especially in the context of comparative procedural law problems, or general comparative history of law.[1]

It is common knowledge that, in the history of Polish law, the entire 20th century abounded in transformations essential to Polish law, which had an influence on the provisions of the legal system currently applicable in Poland. The second essential transformation of the legal system took place when Poland came within the sphere of influence of the communist regime (1944–1989), which gave rise to the necessity to receive the socialist principles of law. The purpose of the third transformation of law taking place in 20th century Poland was a return to the traditional principles characteristic of the European legal culture and a replacement of the former socialist legality with the principle of democratic state ruled by law. It is also known that the very idea of rule of law (lawfulness) has been developed for long in the European legal culture (English rule of law concept or French *l'état de droit*), however, the greatest contribution to the development of the modern idea of the rule of law was made by German legal science – particularly Robert von Mohl (*Rechtsstaat*).[2]

The interwar period in Poland was especially interesting not only from the point of view of legal historians but also comparative and dogmatic lawyers. Applicability of foreign laws in the Polish territories after World War I: Russian, German, Austrian

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[1] M. Löhnig, *Comparative Law and Legal History: A Few Words about Comparative Legal History*, [in:] *The Method and Culture of Comparative Law: Essays in Honor of Mark van Hoecke*, eds. M. Adam, D. Herbaut, Oxford–Portland 2014, p. 113. See also A. Masferrer, K.Å. Modéer, O. Moréteau, *The Emergence of Comparative Legal History*, [in:] *Comparative Legal History: A Research Handbook in Comparative Law*, eds. O. Moréteau, A. Masferrer, K.Å. Modéer, London 2020, p. 7; M. Graziadei, *Comparative Law, Legal History, and the Holistic Approach to Legal Cultures*, "Zeitschrift für Europäisches Privatrecht" 1999, vol. 7, pp. 532–533. Cf. T. Giaro, *Moment historyczny w prawoznawstwie porównawczym*, [in:] *Polska komparatystyka prawa. Prawo obce w doktrynie prawa polskiego*, ed. A. Wudarski, Warszawa 2016, pp. 41–42.

[2] M. Zmierczak, *Kształtowanie się koncepcji państwa prawnego*, [in:] *Polskie dyskusje o państwie prawa*, ed. S. Wronkowska, Warszawa 1995, p. 11; I. Wróblewska, *Zasada państwa prawnego w orzecznictwie Trybunału Konstytucyjnego RP*, Toruń 2010, pp. 20–21; A. Tarnawska, *Prusko-niemieckie państwo prawa a mniejszość polska mniejszość w Prusach (1815–1914). Stan badań i postulaty badawcze*, "Studia Iuridica Toruniensia" 2012, vol. 10, p. 309 ff.; A. Stawarska-Rippel, *„Encyklopedia umiejętności politycznych", t. 1–2, Robert von Mohl, Warszawa 2003. Recenzja*, "Czasopismo Prawno-Historyczne" 2005, vol. 57, pp. 416–418.

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and Hungarian (in a small area of Spisz and Orawa), as well as Polish-French legislation, gave rise to a complicated and territorial legal mosaic. Replacement of the sectional legislative framework with new uniform Polish law was a priority task from the political point of view. This new uniform Polish law was to become the strongest link consolidating the state and, above all, the society into one whole.[3] At that time, unification and codification of Polish law was regarded as the most difficult of all legislative objectives faced by countries, especially those which only appeared on the map of Europe after World War I as a consequence of the collapse of three empires.[4] This fact was emphasized by a prominent French civil lawyer, representative of École des libres recherches scientifiques – François Gény, during his stay in Warsaw.[5] The Polish Codification Commission, formed on 3 June 1919, whose task was to draft new Polish law, bearing in mind the specificity of its works, was referred to as the "forge of national legislative works" or "laboratory of comparative law and legislation".[6]

Notably, the law in middle European countries in the interwar period offers particularly abundant research material for comparative law and comparative history of law. The direct cause of emergence of this abundant research material from the interwar period was decomposition of empires and a new political order in Europe, which, as it turned out later, was not particularly felicitous. Obtainment of political independence by nations previously operating as a part of the decomposed empires (Russian, Austro-Hungarian and Ottoman) gave rise to similar problems in the context of applicable law: legal mosaic in the Kingdom of Serbs, Croats and Slovenes and in Poland, legal duality in Czechoslovakia, or the need to reform the law in Hungary, where old customary law was reinstated inasmuch as it had not been previously codified by Hungarians. The legal situation in the above-mentioned countries after World War I naturally set them on the road to transformations, unification and modern codification.[7]

In conclusion, until the end of the 20th century, there was no better opportunity for comparative law research in Europe than in the interwar period. Codification works carried out at that time in many European countries, dictated by the need to unify the different legal systems in force in those countries, were characterized by drawing not only from domestic but also foreign sources, which, generally speaking,

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[3] A. Lityński, *Pół wieku kodyfikacji prawa w Polsce (1919–1969)*, Tychy 2001, p. 31.

[4] P. Fiedorczyk, A. Lityński, A. Stawarska-Rippel, *Wojny XX wieku i ich skutki dla ustrojów państwowych i prawa*, "Czasopismo Prawno-Historyczne" 2019, vol. 71(1), pp. 57–100.

[5] K. Sójka-Zielińska, *Organizacja prac nad kodyfikacją prawa cywilnego w Polsce międzywojennej*, "Czasopismo Prawno-Historyczne" 1975, vol. 2, p. 276.

[6] Sprawozdanie Sekretarza Generalnego prof. E.S. Rappaporta z dziesięciolecia działalności Komisji Kodyfikacyjnej (1919–1929), [in:] *Komisja Kodyfikacyjna Rzeczypospolitej Polskiej. Dział Ogólny*, vol. 1, no. 12, Warszawa 1929, p. 373.

[7] A. Stawarska-Rippel, *Problem kodyfikacji prawa prywatnego w państwach Europy Środkowo-Wschodniej z perspektywy stulecia*, "Miscellanea Historico-Iuridica" 2019, vol. 18(1), pp. 44–48.

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also translated into approximation (assimilation) of legal systems. The codification works undertaken at that time in Poland, unprecedented in Europe or even in the entire world, fell within a period of great development of comparative jurisprudence. Moreover, even earlier, in the areas of the former Duchy of Warsaw and, then, the Congress Kingdom of Poland, and in Galicia, the Polish legal science had developed, basing on foreign law.[8] Concepts formulated by Polish lawyers in the interwar period, especially as a part of the Codification Commission, are also presently reconsidered in the context of reforming procedural law.

As the science of procedural law and comparative jurisprudence developed, the pursuit intensified of a model of court proceedings implementing the postulates of fair trial, justice (nowadays also referred to as procedural justice) and procedural economy. At the same time, concepts were also formulated of establishing a general theory of legal process and rejecting the former views about ancillary role of procedural provisions in relation to substantive law.[9]

An interesting phenomenon in the history of attempts to work out a court procedure satisfying the postulates of fair trial, justice and procedural economy is approximation of two major legal traditions – French and German on one hand and common law on the other. It is characteristic that, in Continental Europe, the English model was received as remedy to the shortcomings of the system of justice. Indeed, in the English tradition, one can find the *spiritus movens* of the idea of modern administration of justice: universality, equality, autonomy of courts and independence of judges, implemented at the earliest, as far as Continental Europe is concerned, in the legal system of revolutionary France. However, broad reception in France of the Anglo-American solutions was out of question: "Neither in America nor even in England was there *ancien régime* in the 'Continental European' sense".[10] An example of that phenomenon is the institution of court with a jury. Borrowed from the English tradition, introduced in France under the legislation of 1790–1791, and reformed in 1808, it made a continental model of that institution.

[8] W. Witkowski, *Aleksander This i Jan Kanty Wołowski – wybitni prawnicy Królestwa Polskiego*, Lublin 2001; K. Sójka-Zielińska, *Wielkie kodyfikacje cywilne. Historia i współczesność*, Warszawa 2009, pp. 160–173, 258–270 and included bibliography.

[9] The need to create a general conception of legal process was stressed especially in the 1990s (Mieczysław Sawczuk, Kazimierz Marszał), although it was referred to in the interwar period, among others, by Jan Jakub Litauer: "And thus, subject to certain institutions distinct for each procedure (dissimilar significance of the public office) [in civil and criminal procedure], both procedures could be combined into one science: judicial law. Proponents of such method of approaching procedural law regard it as a way to dignify legal process, to bring to the fore its ethical and social aspects, to highlight the idea of court as guardian of law, and, perhaps, the idea of supremacy of the law over the state. However, this is only the music of the future. So far, our science has not reached that level and, at the time being, we cannot reach beyond its limits" (J.J. Litaurer, *Pogląd ogólny na istotę i rozwój procesu cywilnego*, "Kwartalnik Prawa Cywilnego i Karnego" 1919, vol. 2, pp. 41–42).

[10] J. Baszkiewicz, *Francja w Europie*, Wrocław–Warszawa–Kraków 2006, p. 94.

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Currently, a trend can be observed of increased transplantation into the continental tradition of procedural institutions originating from the common law culture, which is conducive to the adoption of hybrid solutions.

In literature, an opinion was expressed, which should definitely be shared, that – in the first place – comparative procedural law is a type of comparative law.[11] Lately, the best review of comparative procedural law and merits of conducting comparative research, especially with regard to civil procedural law, was formulated by Peter Gottwald: "Comparative jurisprudence and civil procedure in particular is working like a wonderful mirror: It opens your mind. The comparison increases your knowledge and wisdom. And if you are lucky, it may help not just to improve your own national law but to find solutions for practical legal problems of trans-national relations in our world of globalisation".[12] Besides, bearing in mind the need for periodisation of Polish comparative procedural law, three periods can be distinguished: 1918–1939, 1944–1989, and after 1989. They correspond to the three transformations of law in 20th-century Poland and to the principles and models of amending the Polish legal system taking turn one after another.

The considerations made in this article relate to procedural law which, in the territory of Poland reborn in 1918, was profoundly diversified, especially when it came to the model of legal remedies, which gave rise to material difficulties in the practice of the system of justice prior to the unification of court procedures. Special attention is paid to the legislative framework in the Silesian Voivodeship, which was a peculiar microcosm of the legal situation in the entire country.

RESEARCH AND RESULTS

The decision to maintain in force the partitioning powers' laws in Poland after 1918 – no longer as foreign law but regional Polish law – for a temporary period until unification and, then, codification of law, was found to be less anti-national than hasty unification through extending the applicability of one of the legal systems of partitioner states to the entire territory of the reborn Polish state. Besides, maintaining in force the laws applicable so far did not imply a repeated, as though, imposition of foreign legislation on the population of other regions of the Polish state. However, this decision required introducing necessary amendments to the officially maintained legislation so as to adapt the legislation to the needs of the

[11] K. Lubiński, *Komparatystyka prawa a unifikacja i kodyfikacja polskiego prawa procesowego cywilnego w okresie międzywojennym*, [in:] *Polska komparatystyka prawa…*, p. 351.

[12] P. Gottwald, *Comparative Civil Procedure*, "Ritsumeikan Law Review" 2005, no. 22, p. 35. See also A.G. de Castro Mendes, *Comparative Procedural Law in the Contemporary World*, "Athens Journal of Law" 2020, vol. 6(2), p. 149.

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reborn state, as well as amendments repealing anti-Polish provisions and regulations contrary to the March Constitution adopted at a later date. However, during the works of the Codification Commission appointed on 3 June 1919, the decision-makers reconsidered the previous conception of unification by extending the applicability of the legislation of one of the regions to the territory of the entire country. Such ideas were successfully opposed by the President of the Codification Commission – Franciszek Ksawery Fierich, at the meeting held by the Speaker of the Sejm on 19 February 1925. Fierich pointed to serious difficulties in the implementation of such undertaking and, once again, anti-national nature of such solution. The difficulties would, in particular, consist in the need for an essential reorganization of the court system in other regions of the country.[13]

Preparation of new Polish and, most importantly, uniform for the entire country solutions was particularly desired at that time, especially in the area of court organization and procedures (civil procedure and criminal procedure). However, comprehensive unification in this regard took place rather late, only upon entry into force of the Polish Code of Civil Procedure – on 1 January 1933. The legal regime of the uniform Polish system of ordinary courts entered into force on 1 January 1929, and the uniform Code of Civil Procedure – on 1 July 1929.[14]

A particularly complicated matter, in the context of applying inconsistent court procedures prior to the unification, was the applicability of different systems of legal remedies. In practice, this gave rise to a rather complex structure and impeded operation of the Polish Supreme Court. The Supreme Court examined legal remedies in separate Chambers designated for specific areas of the Polish state, which petrified the differences existing in that state.[15] Inconsistency of the applicable legislation was accompanied by dissimilar legal terminology, or even two competing legal idioms: language of lawyers from the former (Congress) Kingdom of Poland and language of lawyers from Lesser Poland (Pol. Małopolska). Inconsistent terminology was repeatedly a source of fierce polemics during the interwar codification works. An example of essential differences was: the concept derived from French law – appellate remedies and their division into ordinary appeal (*recours ordinaires*), where the only ordinary remedy was appeal, absorbing the institution of complaint, and extraordinary appeal (*recours extraordinaires*), and, on the other hand, the concept of legal remedies (*Rechtsmittel*), as derived from Roman law (*remedium iuris*) and developed historically in the German tradition and German jurisprudence.

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[13] *Komisja Kodyfikacyjna Rzeczypospolitej Polskiej. Dział Ogólny*, vol. 1, no. 7, Warszawa 1926, p. 182.

[14] In this context, see M. Materniak-Pawłowska, *Prokuratura II Rzeczypospolitej w świetle obowiązującego ustawodawstwa*, "Studia Iuridica Lublinensia" 2016, vol. 25(3), pp. 659–674.

[15] D. Malec, *Sąd Najwyższy w latach 1917–1939*, [in:] *Sąd Najwyższy Rzeczypospolitej Polskiej. Historia i współczesność. Księga jubileuszowa 90-lecia Sądu Najwyższego 1917–2007*, Warszawa 2007, p. 144, 146.

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Before the unification of court procedures in interwar Poland, in the I and II Chamber of the Supreme Court designated for central and eastern voivodeships (post-Russian region), the Supreme Court examined cassation appeals in civil and criminal matters in accordance with Russian civil procedure and Russian criminal procedure of 1864.

The division into ordinary legal remedies and extraordinary legal remedies was adopted in the Russian procedural laws (1864), drawn up on the initiative of Tzar Alexander II, according to the French, though modified, model. Cassation appeal, in a form close to the French one, was introduced in the Polish territories together with Russian legislation as a part of the reform of the judiciary in the Kingdom of Poland (1875/1876) intended to unify the judiciary system of the Kingdom of Poland and Russia, and to Russify the Polish population. This was accompanied by pro-Russian staff policy in the judiciary, especially in courts of peace. The Empire's centralization policy led to the liquidation of the distinct highest court instance in the (Congress) Kingdom of Poland. Concentration of the highest judiciary powers in the Russian departments of the Governing Senate in Petersburg, where the cassation proceedings involved participation of the Attorney General, being at the same time the Minister of Justice of the Empire, had a clearly political overtone for the (Congress) Kingdom of Poland.[16] Later, already during the works of the interwar Polish Codification Commission, positive views of Polish lawyers, mainly from central areas, on Russian court procedures were a consequence of their strong inspiration from the French model (French civil procedure of 1806 and French criminal procedure of 1808).[17]

It is worth adding that the Russian laws on civil procedure and criminal procedure of 1864 applied for the longest period on Polish territories out of all foreign court procedures, and their provisions were generally in line with the Western legal culture. Elements incorporated into the reformed Russian judiciary system were institutions originating from the English system, and characteristic of the post-revolution system of French judiciary in the continental version – courts with a jury and justices of peace – as well as the institution of cassation appeal originating from France. The most controversial element of the Russian reform was adjudication in

[16] A. Korobowicz, *Sądownictwo Królestwa Polskiego 1876–1915*, Lublin 1995, pp. 11–12, 79–109, 117; idem, *Pozostałości francuskiej procedury cywilnej w sądownictwie Królestwa Polskiego po reformie z 1876 r.*, [in:] *Vetera Novis Augere. Studia i prace dedykowane Profesorowi Wacławowi Uruszczakowi*, eds. S. Grodziski, D. Malec, A. Karabowicz, M. Stus, vol. 2, Kraków 2010, pp. 435–436; idem, *Rys dziejów kasacji w polskim systemie sądowoodwoławczym*, [in:] *Polska lat dziewięćdziesiątych. Przemiany państwa i prawa*, eds. L. Antonowicz, H. Groszyk, M. Sawczuk, W. Skrzydło, T. Bojarski, vol. 2, Lublin 1998, p. 404.

[17] A. Stawarska-Rippel, *Elementy prywatne i publiczne w procesie cywilnym w świetle prac kodyfikacyjnych w Polsce (1918–1964). Studium historycznoprawne*, Katowice 2015, pp. 64–65, 269–273.

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more serious matters with the involvement of a jury. In Russia, this institution was met with strong criticism by intellectual circles. The main argument against the introduction of courts with a jury was low legal awareness in Russian society and lack of adequate morality. The Russian criminal procedure introduced (in 1876) in the territory of the former Kingdom of Poland in a modified form did not provide, as is known, for courts with a jury. It should also be added that the only legal procedures applicable in the Polish territories after 1918 which formally provided for full appeal were precisely the Russian procedures of 1864 – both civil and criminal. The reform introduced in Russia on the initiative of Alexander II, being a milestone in the evolution of the Russian system of judiciary, was not, however, at the same time progressive in Europe.

On the other hand, the III Chamber of the Supreme Court, designated for southern voivodeships (post-Austrian region), examined revisions in accordance with the Austrian civil procedure (1895) and Austrian criminal procedure (1873). The V Chamber of the Supreme Court, designated for western voivodeships (former Prussian partition), examined revisions under the German civil and criminal procedures (1877).

As generally known, German jurisprudence defined legal remedies (*Rechtsmittel*) as methods, established by law, of setting aside unfavorable court resolutions before their legal validation, by means of repeated examination of the case by a higher court, that is appeal (*Berfung*), revision (*Revision*) and complaint (*Beschwerde*). Legal remedies looked similar in the Austrian system, with a certain variation as regards the legal measure examined by the Supreme Court, which in criminal matters was referred to as nullity complaint (*Nichtigkeitsbeschwerde*). Just as the German revision, the Austrian nullity complaint was a suspensive and devolutive legal remedy, although it allowed, to a wider extent than under the German Act, for a possibility to resolve the matter substantively. After the reorganization of the criminal judiciary of 15 December 1919, implemented under the Regulation of the Minister for the former Prussian partition, suspending the activities of courts with a jury, it was possible to file a revision only against judgments of circuit courts acting as courts of first instance.[18]

A specific legal mosaic, as far as legal procedures are concerned, could be found in the smallest, at that time, voivodeship in Poland after World War I – Silesian Voivodeship – which was a peculiar "microcosm" of the legal situation in the entire country. The Silesian Voivodeship, with the smallest area (1.1% of the country)

[18] E. Krzymuski, *Wykład procesu karnego ze stanowiska nauki i prawa obowiązującego w b. dzielnicy austriackiej oraz z uwzględnieniem ważniejszych różnic na innych ziemiach Polski*, Kraków 1922, pp. 197, 209–211. See also J. Rosenblatt, J. Makarewicz, *Ustawa o postępowaniu karnym z dnia 23 maja 1873 r. razem z odnoszącymi się do niej ustawami i rozporządzeniami*, Kraków 1911, pp. 36, 368–404.

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in interwar Poland covered – under the Organic Statute of that Voivodeship of 15 July 1920 r. – the territories awarded to Poland (by the decision of the Council of Ambassadors in Paris of 28 July 1920) in Cieszyn Silesia and Upper Silesia in accordance with Article 88 of the Versailles Treaty with Germany of 28 June 1919. As generally known, it was resolved under the Organic Statute that any legislative acts and regulations applicable within the limits of the Voivodeship, as on the date of entry into force of the Organic Statute, would remain in force unless amended according to the provisions of that Statute.

It must be added that the specific form of self-government in the Silesian Voivodeship in the interwar period has been diversely judged in the context of a breach in the integration and unification of Polish territories after World War I. Regardless of the above, attention should be drawn to the fact that the term "autonomy", widely used at that time to describe the status of the Silesian Voivodeship, did not appear in the Constitutional Act of 15 July 1920 r. (Journal of Laws 1920, no. 75, item 497).[19] It may be assumed that the legislator omitted that term in the text of the Constitutional Act on political grounds. In fact, under this Act, the Silesian Voivodeship was to form an integral part of the Republic of Poland.

As far as courts and court procedures are concerned, the legislator maintained in force in the Silesian Voivodeship: a) in the areas of the former Austrian partition – the Austrian Act of 27 November 1896 on the organization of courts (*Gerichtsorganisationsgesetz*), as amended, in particular, by the Act of 1 June 1914, the Act of 1 August 1895 on the exercise of the judiciary and jurisdiction of ordinary courts in civil matters (*Zivilprozessordnung*), and the Act of 23 May 1873 on criminal procedure (*Strafprozess*-ordnung); b) in the areas of the former Prussian partition – the Act of 27 January 1877 on the organization of the judiciary (*Gerichtsverfassungsgesetz*), the Act of 30 January 1877 on civil procedure (*Die Civilprozeß-Ordnung für das Deutsche Reich*), and the Act of 1 February 1877 on criminal procedure (*Strafprozeßordnung für das Deutsche Reich*).

The areas of both partitions that became a part of the later Silesian Voivodeship differed significantly not only in terms of the locally applicable legislation. Only in Galicia, in the area of the Austrian partition, to which also Cieszyn Silesia belonged starting from the turn of the 1860s and 1870s, there were appropriate conditions for the development of the Polish science of law and Polish legal language. As from 5 June 1869, Polish language attained the status of official language. Moreover, in the Austrian partition there were two Polish universities: the Jagiellonian University and the University of Lwów (presently Ivan Franko National University in Ukraine), and the Polish Academy of Arts and Sciences in Cracow. This was the area of the

[19] A. Drogoń, *Ustrój samorządny (autonomiczny) województwa śląskiego w praktyce interpelacji poselskich w Sejmie Śląskim*, "Z Dziejów Prawa" 2020, vol. 13, pp. 253–257; See also J. Ciągwa, *Autonomia Śląska 1922–1939*, Katowice 1988, pp. 3–5.

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former Austrian partition that most of the judicial personnel came from, who later staffed most courts in the reborn Polish state, including in the Upper Silesian part of the Silesian Voivodeship.

In the Prussian partition, the situation of lawyers looked different. Polish advocates could act only before district courts and, starting from 1878 (Lawyer's Regulations [*Rechtsanwaltsordnung*] of 1 July 1878, Journal of Laws of the German Reich, vol. 1878, no. 23, pp. 177–198), could form a professional association in the form of bar chambers. However, access to the bar was not easy for Poles as, before admitting a candidate to apprenticeship, the authorities would examine if the candidate had appropriate, from the authorities' perspective, political views. Absence of guarantees in this regard meant that a candidate was not admitted to the apprenticeship. The requirements of court apprenticeship and control of the Ministry of Justice over the entries in the list of advocates meant that the number of Polish advocates in the Prussian partition was insignificant, even in the areas with almost homogeneous Polish population.[20]

Formation of the Polish judiciary structures in Upper Silesia stretched out until 1922, when the course of the border between Poland and Germany was established for that area. Eventually, within the structure of courts in the Silesian Voivodeship, there was one Court of Appeal in Katowice (the smallest court of appeal in Poland at that time) and two circuit (regional) courts subordinate to the former: in Katowice – one of the largest judicial districts in interwar Poland,[21] and in Cieszyn – one of the smallest court districts in the entire state.[22] It is worth adding that the Circuit Court in Katowice resolved matters according to German law and the Circuit Court in Cieszyn according to Austrian law, as a result of which the status of the Court of Appeal in Katowice was special as juxtaposed against other courts of appeal in the reborn Poland. In relation to the Upper Silesian part of the Silesian Voivodeship (former Prussian partition), it had the competences of the previous Court of Appeal in Breslau, and in relation to the Cieszyn Silesia (former Austrian partition) part of the Voivodeship, it had the previous competences of the Court of Appeal in Cracow and in Brno.

[20] K. Kopciuch, *Adwokatura polska w okresie rozbiorów (uwagi historycznoprawne)*, "Zeszyty Naukowe Uniwersytetu Rzeszowskiego. Prawo" 2016, vol. 18(91), p. 108.

[21] The jurisdiction of the Circuit Court in Katowice covered approximately one million residents. Within its area, 11 poviat courts operated: in Katowice, Chorzów, Lubliniec, Mokołów, Mysłowice, Pszczyna, Rybnik, Ruda, Tarnowskie Góry, Wodzisław, and Żory. See J. Handzel, *Pięciolecie sądownictwa polskiego na Śląsku 1922–1927*, Katowice 1927, p. 4; T. Pietrykowski, *Sądownictwo polskie na Śląsku 1922–1937*, Katowice 1939, p. 11.

[22] The area of jurisdiction of the Circuit Court in Cieszyn covered about 150,000 residents. Within this area, there were four poviat courts: in Cieszyn, Bielsko, Skoczów, and Strumień. See J. Handzel, *op. cit.*, p. 4.

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The legal basis for the operation of the Supreme Court in the entire reborn Republic of Poland was the Decree of 8 February 1919 on its organization (Journal of Laws 1919, no. 15, item 109). In relation to the Silesian Voivodeship, the binding force of the Decree on the organization of the Supreme Court (1919) followed from Article 36 of the Organic Statute of 15 July 1920 and from Article 2L (58) and (59) of the Regulation of the Minister of Justice of 16 June 1922 introducing changes to the organization of the judiciary in the Upper Silesian part of the Silesian Voivodeship (Journal of Laws 1922, no. 46, item 390).[23]

In consequence of maintaining the sectional legal *status quo* concerning the legal systems inherited from the partitioners, the Supreme Court took over the competences of the Supreme Courts in the former partitioner states. With regard to the judiciary in the area of Cieszyn Silesia, the Supreme Court assumed the competences of the Highest Tribunal of Justice and the Administrative Tribunal in Vienna, and with regard to the judiciary in the Upper Silesian part of the Silesian Voivodeship, the competences of the Court of the Reich in Leipzig.[24]

The problems associated with the launch of the Polish courts in the area of the Silesian Voivodeship mirrored the situation in the entire reborn Poland. Namely, such problems were twofold: lack of uniformity in the structure of the system of justice and court procedure and the need to staff the courts with Polish judicial personnel, which generally came only from Galicia. The efforts to transfer Galician judges, who finally staffed most of courts in the country, are admirable, especially bearing in mind the need of changing the applicable legal system, obviously, set aside the general difficulties relating to the change of residence.[25]

The differences between the takeover and organization of the judiciary in Cieszyn Silesia and in Upper Silesia consisted in the fact that in Cieszyn Silesia there was no need to organize new courts or staff the courts with new employees. A vast majority of the judges and administrative personnel stayed at the same place. In Upper Silesian the circuit courts, the Court of Appeal and prosecutor's offices attached to those courts, as well as one poviat court (in Ruda) only had to be created. Moreover, upon the takeover of the judiciary in Upper Silesia, all Prussian employees, judges and clerks, left Upper Silesia. The start of the Polish judiciary in Cieszyn Silesia dates back to 14 November 1918. However, the proper Silesian judiciary became operational upon the establishment of the Silesian appellate in-

[23] B. Stelmachowski, *Uchylanie wyroków prawomocnych przez Sąd Najwyższy*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1925, no. 5, p. 1002.

[24] For the organization of German courts, see T. Maciejewski, *Ustrój sądowy Prus, II Rzeszy i Republiki Weimarskiej (1815–1871 i 1918–1933)*, "Studia Iuridica Lublinensia" 2016, vol. 25(3), p. 589.

[25] For more, see L. Krzyżanowski, *Sądownictwo powszechne w II Rzeczypospolitej (1917–1939). Założenia organizacyjne, budowa struktur, funkcjonowanie*, "Prace Historyczne" 2020, vol. 147(4), pp. 750–751.

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stance on 16 June 1922.[26] There was an attempt to solve the problems associated with staff shortages in the Upper Silesian judiciary through temporary introduction of justices of peace in criminal matters. The specific economic and demographical conditions were reasons why the institution of justices of peace did not work out in the Silesian voivodeship and, in 1926, they were replaced by judges (professional lawyers), whereby the staff shortages were still felt.[27]

Unification in the structure of courts in Cieszyn Silesia was brought about under the Decree of the Head of the State of 8 February 1919 (Journal of Laws 1919, no. 15, item 200). After the changes introduced in the Upper Silesian part of Silesia in 1922 (Journal of Laws 1922, no. 46, items 388, 390–397, and 401), the structure of the judiciary in the Silesian Voivodship was unified. Accordingly, in the entire Voivodeship, there were poviat courts, circuit courts and the Court of Appeal, with the proviso that in poviat courts, in criminal matters, in the Upper Silesian part of the Voivodeship one could find justices of peace.[28] Despite the above, as noted by the contemporary judge of the Court of Appeal in Katowice – Jan Handzel, the situation in the Silesian judiciary was more complicated than in any other jurisdiction area of a court of appeal in the entire state. The main reason for such complications was sectional law, including court procedures, but also the question of official language, which was not consistently regulated before the Polish nationwide unification,[29] however, the possibility to use German language in the courts of the Upper Silesian part of the Silesian Voivodeship was ensured under Article 140 of the Geneva Convention for Upper Silesia.

In the context of sectional law, it must be pointed out that the court procedures in force in the Silesian Voivodeship provided for a different model of court proceedings in Cieszyn Silesia and in Upper Silesia. The biggest differences related indeed to appellate proceedings. Apart from the procedure before the Supreme Court, as indicated above, essential differences involved also the second instance.

In criminal procedure, Austrian appeal was defined in wider terms than under the French procedure. According to the Austrian criminal procedure, also judgments of courts with a jury could be appealed. German criminal procedure permitted appeals only in matters of lesser importance against judgments delivered by lay justice courts or justices of peace, whereby the appeal was full. The German criminal procedure excluded the possibility to appeal in the proceedings for more severe offences, providing only for revision in such cases.[30]

[26] J. Handzel, *op. cit.*, pp. 1–6.
[27] *Ibidem*, pp. 4–5.
[28] S. Gołąb, *Organizacja sądów powszechnych*, Kraków 1938, pp. 51–61.
[29] J. Handzel, *op. cit.*, p. 6.
[30] E. Krzymuski, *op. cit.*, pp. 209–210.

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The differences in civil procedure involved the possibility to allow new evidence in the second instance. The German Act envisaged appeals *cum beneficium novorum*, that is full appeal. Already after the War, by an amendment to the German Code of Civil Procedure of 13 February 1924, in the public interest, with a view to accelerate the proceedings, a possibility was provided to omit new facts or evidence if their allowance could protract the trial or if their omission in the first instance could be attributed to a party's negligence, or where the new facts or evidence had not been cited in the justification of the appeal. The Austrian civil procedure did not permit raising new issues in the appeal, which made the appeal limited, however, there were certain exceptions to the above rule. In the opinion of the creator of the Austrian civil procedure of 1895 – Franz Klein, limitation of the appeal was indeed necessary on account of public interest. In his opinion, rights of the individual had to be limited in civil process and the scope of judicial powers had to be expanded. Once initiated, the process was to proceed in a timely fashion, without interruptions or artificial impediments, bearing in mind the costs of the procedure and the decreasing chances to justly resolve the case, as well as "petrification" of a significant share of the national wealth covered by disputes pending in courts. The first instance was to be the essential part, and the legal remedy was to be a review measure, without considering new facts that had not been adduced in the first instance.[31]

In the light of the differences concerning the legal situation in the Silesian Voivodeship, the following question can be asked: why, in such a small area of particular legal status within the Polish state, the legislator did not decide to temporarily (until the unification and codification in the entire country) unify the law? In fact, such partial unification was introduced in the areas of Spisz and Orawa.

As generally known, under the general rules of the Act of 26 October 1921 on legal provisions applicable in the area of Spisz and Orawa belonging to the Republic of Poland, in the area incorporated into Poland as a result of the division of Spisz, Orawa and Cieszyn Silesia between Poland and Czechoslovakia under the decision of the Council of Ambassadors of 1920 (covering 13 Spisz villages and 12 Orawa villages, former Zalitawia belonging to the Kingdom of Hungary until the end of World War I) Hungarian law was maintained in force, as on the date of incorporating that area into Poland. Such *status quo* was maintained until 25 November 1922, that is the entry into force of the Act of 14 September 1922 extending to the said territory the application of Austrian law so as to partially abolish legal particularism in the reborn Republic of Poland.[32] It is worth mentioning that the law adopted in

[31] A. Stawarska-Rippel, *Elementy…*, pp. 263–265.

[32] However, an interesting exception was made for the Hungarian Act no. XXXI of 1894 on personal matrimonial law (*Törvénycikk a házassági jogról*) which remained in force, and for the strictly related Hungarian system (secular system) of civil status registry of 1894. From the entry into force

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Hungary after the constitutional transformations of 1867 was very modern against the background of the laws of European countries at that time, such as the Code of Civil Procedure (1911) commonly known as Sándor Plósz Code – in memory of its main architect, prominent jurist and Minister of Justice.

Conceptions of unification for the duration of works on the new Polish law appeared from time to time also on the central state level. Essential differences in court procedures, primarily with regard to legal remedies, led to reconsideration of the concept of extending the application of the legislation of one of the regions to the territory of the entire Polish state. However, this idea was evaluated negatively by Franciszek Ksawery Fierich – President of the Codification Commission.[33] In the end, the idea was abandoned.

There were, however, the following arguments for the liquidation of legal particularism in the Silesian Voivodeship, until unification in the entire country, through extending the applicability of Austrian court procedures to the Upper Silesian part: the lack of Polish courts in the Upper Silesian part of the Voivodeship and the need to create such courts from scratch, and inflow of judicial personnel from Galicia, that is from the area of Austrian law. Moreover, such unification was not precluded by the Geneva Convention for Upper Silesia, which specified, in para. 1, the legislation that should remain in force in the Upper Silesian part of the Voivodeship for a period of 15 years, that is, in particular, provisions in the area of mining, industry, commerce and labour regulations, including the labour inspection system. Under para. 2 (2) of the Convention, Poland could replace, among others, the regulations on the jurisdiction, organization of courts and court procedure. It must be concluded that the decision-makers waited for the new Polish provisions unifying court procedures and the system of justice in the entire country.

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of the Act of 14 September 1922, the particularism observable in southern areas was, in fact, locally reinforced. Extension of the applicable Austrian regime of matrimonial personal law allowing to enter into marriage in religious form led to a situation in which both models: secular Hungarian and mixed Austrian, applied at the same time, wherein secular marriage certificates were drawn up both for persons entering into civil and religious marriages. The decision to maintain in force the Hungarian matrimonial law was dictated by particular significance of that law to the society accustomed to a specific form of entering into marriage and to the possibility of its dissolution. At that time, in interwar Poland, there were three models of matrimonial law: secular one in Spisz and Orawa and in the areas (territory) of the former Prussian partition, mixed one in the areas of the former Austrian partition, and religious in central areas and areas of the former Russian partition. Accordingly, in the Silesian Voivodeship, there were two operational systems: secular in the Upper Silesian part of the Voivodeship and mixed in Cieszyn Silesia.

[33] *Komisja Kodyfikacyjna Rzeczypospolitej Polskiej. Dział Ogólny*, vol. 1, no. 7, p. 182.

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CONCLUSIONS

The Codification Commission established on 3 June 1919, in its works on the new Polish legislation, took into account not only the systems of law applicable in Poland at the time or legal systems of the neighbouring countries but also the most modern legal systems of contemporary Europe (incidentally from outside Europe), as well as the achievements of Polish and foreign legal science. The works of the Commission were deep comparative studies, which is proven by the drafts published by the Commission, including explanatory memorandums, offering original synthesis of the legal thought.[34] It was emphasized in literature that comparative studies conducted in the interwar Codification Commission were sovereign, multi-faceted and evaluative, and their purpose was to search for good, fair and efficient procedural law.[35] The comparative background of the codification works did not imply a compilatory nature of the future Polish law, which was highlighted on multiple occasions even prior to the establishment of the Codification Commission and, then, in the course of its works. There was general agreement that the new Polish law was not to be mere "registration" of the jurisprudence and practice prevalent at that time but should include creative solutions, most suitable for the Polish society, so that the drafted codes would not become an anachronism already from the date of their entry into force.[36]

In the comparative material considered by the procedural criminal law section,[37] predominance can be noted of criminal procedures based on the French Code of Criminal Procedure (1808). The section analysed the provisions of the following codes, apart from the ones applicable in the Polish territories: Belgian (1878),[38] Swiss of the Geneva Canton (1884/1918), Italian (1913), Spanish (1882), Bulgarian, modelled on the Russian Act (1897), Serbian (1865) essentially amended in 1880, and Hungarian (1896/1897),[39] as well as Japanese – where the first Code of Criminal Procedure (1880) followed the French model but, within a short period, was replaced by a new Code (1890) modelled on German law, just as the next Japanese Code of 1922.[40] The interests of the members of the procedural criminal

[34] K. Lubiński, *op. cit.*, p. 363.

[35] *Ibidem*.

[36] L. Jaworski, *Najważniejsze zadanie*, "Czasopismo Prawnicze i Ekonomiczne" 1920, no. 1–4, p. 1.

[37] For more on Polish criminal procedure in the interwar period, see J. Koredczuk, *Wpływ nurtu socjologicznego na kształt polskiego prawa karnego procesowego w okresie międzywojennym (les classiques modernes)*, Wrocław 2007.

[38] W.E. Mikell (ed.), *A History of Continental Criminal Procedure*, Boston 1913, pp. 582–597.

[39] T. Antal, *Lessons and Criticism of the Criminal Jury in the History of Hungary*, "Canadian Social Science" 2015, vol. 11(6), p. 216.

[40] J. Izydorczyk, *Kulturowe uwarunkowania stosowania prawa karnego w Japonii*, "Archiwum Filozofii Prawa i Filozofii Społecznej" 2012, no. 2, p. 81.

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law section covered also the Turkish criminal procedure (1879), replaced in 1929 by the new Turkish Code of Criminal Procedure.[41]

On the other hand, in the works on drafting civil procedural law, especially the following were taken into account: civil procedures of the Swiss Zurich Canton of 1913 and of the Swiss Bern Canton of 1918, as well as Hungarian civil procedure of 1911.[42] The interests of the members of the Commission covered also the Italian civil procedure (1865),[43] Greek (1834),[44] as well as English (1873–1875).[45] Here, the French patterns gave way, among others, to the new procedural model initiated by Franz Klein and the need for publicization (socialisation) of private law.

Transformations of the liberal state in the social direction, as a result of which the previous contraposition of individual interests and the public interest lost much of its sharpness, called for a revision of the existing legal constructions, especially in the area of private law. Moreover, adequately defined powers of the court and the presiding judge in the evidentiary procedure – both in civil and criminal proceedings, despite the differences following from the purposes of those procedures – are conducive to proper organization of the evidentiary process and concentration of evidence, which leads to shortening of the proceedings and decrease of its costs, which is both in the public interest and in the interest of the individual. Presently, it is already a truism to say that, in the context of court procedures, both types of interests coincide on many occasions. Codifiers in the interwar period emphasized, and still emphasize the following question: the need for flexibility of procedural provisions in the context of procedural efficiency and harmfulness of excessive procedural regulation.[46]

The effects of works of the interwar Codification Commission, unprecedented in Europe or even in the entire world, implemented the latest achievements of the

[41] F. Yenisey, *The Organization of Criminal Justice in Turkey*, [in:] *Introduction to Turkish Law*, eds. T. Ansay, D. Wallace Jr., The Netherlands 2011, p. 237.

[42] A. Stawarska-Rippel, *Elementy…*, p. 385. See also P. Fiedorczyk, *O niektórych zasadach polskiego procesu cywilnego w XX w. Uwagi w związku z pracą Anny Stawarskiej-Rippel, „Elementy prywatne i publiczne w procesie cywilnym w świetle prac kodyfikacyjnych w Polsce (1918–1964). Studium historycznoprawne", Wyd. UŚ, Katowice 2015, 429 stron*, "Miscellanea Historico-Iuridica" 2016, vol. 15(1), p. 401.

[43] M. Waligórski, *Polskie prawo procesowe cywilne. Funkcja i struktura procesu*, Warszawa 1947, pp. 26–27; M. Cappelletti, J.H. Merryman, J.M. Perillo, *The Italian Legal System*, Redwood City 1967, pp. 50–51. See also C. Calisse, *History of Italian Law*, vol. 2, Washington 2001, pp. 791–792.

[44] K.D. Kerameus, *Judicial System and Civil Procedure in Greece*, [in:] *Structures of Civil and Procedural Law in South Eastern European Countries*, eds. T. Ansay, J. Basedov, Berlin 2008, p. 122.

[45] C.H. van Rhee, *English Civil Procedure until the Civil Procedure Rules (1998)*, [in:] *European Traditions in Civil Procedure*, ed. C.H. van Rhee, Antwerp–Oxford 2005, pp. 146–160.

[46] A. Stawarska-Rippel, *Elementy…*, p. 88.

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legal science and paved the way for the future.[47] Unfortunately, the evolution of Polish law was disrupted by the events which led to the second transformation of law in 20th-century Poland.

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[47] L. Górnicki, *Założenia i koncepcja kodyfikacji prawa w II RP*, "Prawo i Więź" 2022, no. 4, p. 634.

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ABSTRAKT

W 2023 r. mija 500 lat od wejścia w życie ziemskiej procedury sądowej w Polsce (*formula processus iudiciarii*, 1523), a także 90 lat od zunifikowania procedur sądowych w Polsce w ogóle oraz jednocześnie 90 lat od wejścia w życie pierwszego polskiego Kodeksu procedury cywilnej (1933). Jest to zatem szczególna okazja, by w tym właśnie kontekście nawiązać do pierwszej transformacji prawa sądowego w Polsce w XX w., która miała miejsce po I wojnie światowej, zwłaszcza w kontekście zagadnień komparatystyki prawa procesowego. Obowiązywanie obcych praw na ziemiach polskich po I wojnie światowej: rosyjskiego, niemieckiego, austriackiego oraz węgierskiego na niewielkim skrawku Spiszu i Orawy, a także prawa polsko-francuskiego, tworzyło skomplikowaną, terytorialną mozaikę prawną. Podjęte wówczas prace kodyfikacyjne w Polsce, niemające precedensu w Europie, a nawet na świecie, przypadały na czasy bujnego rozwoju prawoznawstwa porównawczego. Były one głębokim komparatystycznym studium, a opracowane i opublikowane projekty wraz z ich uzasadnieniem stanowiły oryginalną syntezę myśli prawniczej. Rozważania będące przedmiotem niniejszego artykułu dotyczą prawa procesowego, które na terenach odrodzonej w 1918 r. Polski było w zasadniczy sposób zróżnicowane, szczególnie w odniesieniu do modelu środków zaskarżenia, co powodowało istotne trudności w praktyce wymiaru sprawiedliwości przed unifikacją procedur sądowych. Szczególną uwagę zwrócono na stan prawny w województwie śląskim, będący swoistym mikrokosmosem sytuacji prawnej w całym państwie.

Słowa kluczowe: komparatystyka prawa; porównawcza historia prawa; komparatystyka prawa procesowego; ustrój sądów; międzywojenna Polska; województwo śląskie