INDEX COPERNICUS
INTERNATIONAL

ORIGINAL ARTICLE

System of common courts in the Free City of Danzig (1920-1939) (part II)

Ustrój sądów szczególnych w Wersalskim Wolnym Mieście Gdańsku (1920-1939) (część II)

Article history: **Received:** 26.01.2017 **Accepted:** 20.02.2017 **Published:** 10.11.2017

Tadeusz Maciejewski

Professor Tadeusz Maciejewski (born Aug 28th, 1952) is the author of around 200 publicatons, incuding several monographs and textbooks. He is an expert on the history of law and the state system, head of the Chair of Legal History at the University of Gdańsk, and recipient of numerous awards and distinctions.

Abstract:

In the previous article, the system of common courts was described, while in this particular structure of the judiciary. Its legal basis was legislation: Prussian, German from the time of Second Reich and Danzig, created after 1920. Some of the special courts have been included into the system of common courts. These were courts: merchant, lay judges, jurors and juveniles. Others have kept their organizational separateness. These were courts: merchants, craftmanship, usury and administrative.

Keywords:

Court, The Free City of Danzig, Judicial System

Streszczenie:

W niniejszym artykule zaprezentowane zostały częściowe wyniki szerszych badań prowadzonych nad historią sądownictwa powszechnego w Wolnym Mieście Gdańsku. Przyczyniły się one do pogłębienia wiedzy w zakresie badanego zagadnienia. Określono podstawy prawne funkcjonowania sądownictwa w WM Gdańsku, a dokonując ich analizy poszerzono wiedzę na temat struktury sądownictwa, pozycji sędziów oraz kompetencji różnego rodzaju sądów: Sądu Najwyższego, Sądu Krajowego z jego wydziałami, sądów urzędniczych, ławniczych, przysięgłych oraz sądów dla nieletnich.

Słowa kluczowe:

sąd, Wolne Miasto Gdańsk, system sądownictwa

The Courts of Lay Judges *(Schöffengerichte) [1]*

In criminal cases that are within the competence of clerical courts, arbitration courts have been set up to deal with them [2]. They consisted of a magistrate judge, as chairman, and two lay judges. It was possible to enlarge their composition by a second magistrate judge. It had to be done at the request of the prosecutor's office and the judge who was already sitting, if the size and importance of the case were in favor of it. In case of any doubts, the matter was resolved by the Criminal Division [3].

The lay judges' office was honorable. Only a citizen of the Free City could do it [4]. However, the function of a lay judge could not be fulfilled by persons: convicted by a valid court judgment, person against whom legal proceedings were initiated that could result in deprivation of civil rights or the ability to hold a lay judge position and judicially limited in the rights to dispose of their own property [5]. In addition, those posts could not be held by persons who: are under 25 years of age, had not lived for at least a year in the Free City area (domicile) and were mentally ill or physically defective in a way that prevents the exercise of this position[6]. In addition, it was impossible to appoint for a position of a lay judge: members of the Senate, state officials, judges, prosecutors, bailiffs, clerics and members of the higher administrative court [7]. However, the appointments could not be accepted by; members of the People's Council, people who held this position for the last five years, doctors, nurses, midwives, pharmacists, people over 65 and women who are involved in maintaining the family [8].

The list of people who could be appointed as a lay judge was determined annually by the head of the commune. This had to be presented at the office for a week, a term which had been previously promulgated [9]. Within the next week it was possible to raise objections against those placed on it [10]. Then, the heads of the communes sent the list together with the remarks submitted to it to the magistrate court [11].

There the case was passed to the annual meeting of the commission (Ausschuss). It consisted of: a municipal judge, an official appointed by the Senate and 15 trustees (lay judges), of whom 1/5 had to be women. The lay judges were elected from the residents of the town court district by councilors of a given city. For the validity of the resolutions adopted by the Commission, the quorum required was 10 people, i.e. a chairman official and 8 trustees, the

[1] Maciejewski, T. Sądy ławnicze miasta Gdańska na przestrzeni dziejów (XIV–1939), „Gdańskie Studia Prawnicze", v. XXIV, 2010, Danziger Gerichtsverfassung von Dr. Georg Voigt, Danzig und Berlin 1927, § 28–58; p. 269–280 in: Gesetzblatt für die Freie Stadt Danzig (DGBl), 1927.

[2] Gerichtsverfassungsgesetz…, § 28.

[3] Ibidem, § 29.

[4] Ibidem, § 31.

[5] Ibidem, § 32.

[6] Ibidem, § 33.

[7] Ibidem, § 34.

[8] Ibidem, § 35.

[9] Ibidem, § 30.

[10] Ibidem, § 37.

[11] Ibidem, § 38, 39.

DOI: 10.5604/01.3001.0010.7106

first two having no voting rights. All decisions were made by the absolute majority of votes [12]. First, the Commission dealt with the objections to the list presented [13]. Then, from the verified version, the required annual list of the main jurors was selected, followed by the list of auxiliary bench members who could replace the main ones [14]. The required number of the latter was to be so determined that in the forecasted number of cases adjudicated during the year, each of them did not participate in court meetings more than five times [15]. The order of the participation of the lay judges in individual hearings was determined by lot at an open session of the municipal court for the City of Danzig, with the proviso that only one female person can sit in the bench court [16]. The municipal judge judge informed the jury about the result of the draw, simultaneously instructing about the consequences of their absence [17]. At the joint request of interested parties, he could change the previously set order [18]. However, in the event of the necessity of convening an extraordinary sitting of the Court of Lay Judges, in connection with the justified absence of one of the lay judge, in his place the judge drew an auxiliary lay judge [19], similarly when, due to the circumstances of the case, there was a need to increase the number of lay judges[20]. In the event of a lay judge's permanent inability to perform his function during the operational year, his name was removed from the list. The decision in this case was made by the municipal judge and it was not subject to appeal [21]. A similar procedure took place in a specific case, if the juror filed a motivated request to exclude him, for various reasons, from sitting in the court [22].

The newly appointed lay judges filed an oath after public approval of the list, with the possibility of ending it with a religious form using the words "So help me God" [23]. It was also agreed that each of them will receive travel expenses and a daily allowance, the amount of which was set by the Senate [24].Finally, in case of not informing a lay judge within one week of placing him on the list, at the motivated request, the municipal judge could dismiss him from this function [25].

The reliability of the performance of their duties by lay judges required, above all, their permanent presence at court-appointed hearings. Therefore, for disciplining them, the municipal judge, after hearing the prosecutor's opinion, could impose a fine of 300 guilders on them and partially charge the costs resulting from the unsuccessful hearing. His decision, however, could be appealed by a juror [26]. Finally,

[12] Ibidem, § 40.

[13] Ibidem, § 41.

[14] Ibidem, § 42.

[15] Ibidem, § 43.

[16] Ibidem, § 44, 45.

[17] Ibidem, § 46.

[18] Ibidem, § 47.

[19] Ibidem, § 48.

[20] Ibidem, § 49.

[21] Ibidem, § 53.

[22] Ibidem, § 53.

[23] Ibidem, § 51.

[24] Ibidem, § 55.

[25] Ibidem, § 53.

[26] Ibidem, § 56.

it is worth emphasizing the high position of a lay judge in the court, because their voice was equal to the judge, as well as they could perform all procedural steps during the proceedings.

Jury courts *(Schwurgerichte)[27]*

Jury courts functioned only for the purpose of trialing and adjudicating in the most serious criminal cases that took place in the Free City of Danzig before the clerical courts and the National Court [28]. These included, among others: rape, murder, abortion, qualified robbery, arson, causing flooding, speculation in trade, usury, etc.

The jury's office was honorary. However, it could only be a citizen of the Free City of Danzig. In his choice, analogous provisions were in force, as in the determination of persons to perform functions in the Court of Lay Judges, previously discussed.

The courts consisted of three professional judges and six jurors (§ 81 - there were twelve of them in the Second Reich) [29]. They gathered periodically. In the Free City of Danzig, all members of the jury adjudged on guilt and punishment jointly, which was a deviation from the rules adopted in other legal systems, where the jury decides about guilt and professional judges about the punishment [30]. In the main proceedings before the clerical courts, the provisions relating to lay judges were in force [31]. This also included adjudicating at court meetings directed individually by professional judges, as well as the decisions of the National Court's criminal division held in the chamber [32]. Its president also determined a specific number of jurors for individual cases, out of the names of persons on a special list presented to him by the chairman of the criminal department. This also applied to individual professional judges and their deputies [33]. At the same time, the principle was assumed that at least half of the jurors had to be men [34].

The jury was divided into grand and auxiliary ones. It also became a rule that the grand jury within the judicial operational year took part only in the recognition of one case to which they were assigned by lot [35]. The President of the National Court also established the dates of the jury's meetings. After all, from the day of delivering them a copy of the statement of claim, it took two weeks to set the date of the meeting [36]. In the event of a prolonged settlement in the case beyond the current operational court year, the jury was obliged to consider it in subsequent meetings, until its conclusion [37]. In view of the fact that the meetings of the Criminal Division of the National Court could sometimes have taken place outside the courthouse, in

[27] Maciejewski, T. (2010) Sądy przysięgłych w II Rzeszy, Republice Weimarskiej i Wersalskim Wolnym Mieście Gdańsku in: Acta Universitatis Wratislaviensis, No 3270, Prawo CCCXI, Wrocław Gerichtsverfassungsgesetz..., § 79–92, p. 271–280;

[28] Gerichtsverfassungsgesetz..., § 79, 80.

[29] Ibidem, § 81.

[30] Ibidem, § 82.

[31] Ibidem, § 84.

[32] Ibidem, § 82.

[33] Ibidem, § 83.

[34] Ibidem, § 84.

[35] Ibidem, § 86.

[36] Ibidem, § 87.

[37] Ibidem, § 89.

such cases, it was possible to appoint a substitute for the grand jurors and their deputies [38] (auxiliary jury - § 91). Their names were determined by the criminal department. Finally, the regulation bans the simultaneous performance of the lay and jury function. If both were chosen, a solution was adopted that the choice falls on the first peeled [39].

Juvenile courts *(Jugendgerichte)*

The organization of juvenile courts (*Jugendgerichte*) was normalized in FC of Danzig by a regulation of January 18, 1927 [40.] They were based entirely on the German law of February 16, 1923. The juvenile law recognized the person who committed the crime before the age of 18. Both legal acts differed from the Act on the System of Courts of the Second Reich of 1877/1898, which in Art. 73-75 envisaged two minors, namely 18 years for committing the offense and 20 years for completing the proceedings in the case [41].

Courts for minors were active in the FC of Danzig at clerical courts. They were composed of one professional judge as a chairman and two lay judges. It should be noted that there were 4 clerical courts in the FC of Danzig. With all of them have been established Courts of Lay judges. In three of them, only the main lay judges were chosen (Sopot, Nowy Staw, Nowy Dwór), while in Danzig there were also auxiliary lay judges. As a result, all of them were allowed to participate in the juvenile court [42].

However, the lack of completed 18 years was not the sole prerequisite for a juvenile court to decide the case, as in the case of the most serious offenses (no strict age), it could be directed to an adult court before coming of age. Similarly for complicity, when the offense was committed by both minors and adults. Then, in general, the case had to be separated, transferring it to two courts, except, however, if it was unfavorable for a juvenile offender. Appeals against judgments issued by juvenile courts were examined by the Grand Penal Chamber of the National Court in Danzig [43].

In court proceedings, each minor had to obligatorily represent a lawyer, namely in two cases, the first, when he was subject to the general provisions of the penal code, which allowed him to be judged as an adult, and the second, especially when substantive reasons required it [44]. In addition, if the minors were co-accused with adults, it was necessary to attend the guardianship counsel [45].

The usury court *(Wuchergericht)*

Similarly as other institutions, there was also a special court for usury (illegal trade and speculation) existing in FC of Danzig. In the Weimar Republic, it was created by virtue of the regula-

[38] Ibidem, § 91.

[39] Ibidem, § 90.

[40] Verordnung betreffend Jugendgerichte (Januar 1927), Vom 18, DGBl., 1927, p. 26 and n.

[41] G. Voigt, op. cit., p. 118.

[42] Ibidem, p. 118; Verordnung..., § 3.

[43] Verordnung..., § 1.

[44] Ibidem, § 2.

[45] Ibidem, § 3.

tion of November 29, 1926 [46], and abolished by the regulation of 20 March 1927 [47]. The same thing happened in FC of Danzig. Namely, it was established by the regulation of November 8, 1922 [48], and abolished by the regulation of January 18, 1927 [49].

In their place, usury (criminal) cases were put to the competence of the clerical courts, and in the case of recidivism to the jurisdiction of her criminal chamber, even if the earlier judgment issued usury court [50].

Industrial courts *(Gewerbegerichte)*

Industrial courts were normalized in the FC of Danzig by the Act of November 23, 1922. The total number was 88 paragraphs, divided into three parts. Essentially, it corresponded to the German Law of July 29, 1890, as amended on June 30, 1901 [51]. Although the German law was divided into six parts, only that in the Danzig Act, the third part contained only the information that, without any changes, paragraphs 62-88 of the Danzig Registers were in force [52].

[46] RGBl., 1919, p. 1909.

[47] Ibidem, 1924, p. 371.

[48] DGBl., 1922, p. 559.

[49] Ibidem, 1927, p. 25, § 1.

[50] Ibidem, § 2.

[51] Gewerbegerichtsgesetz, (1922), DGBl., p. 519 and n., in: Voigt, G. op. cit., p. 155–163.

[52] The text of the act in: RGBl., 1890, p. 141 and n., also in: Goetze, W., Zeitschel, H., (1912) Deutsches Recht, hrsg., VOL. 2, Berlin, Leipzig, Stuttgart, p. 363 – 392; Ibidem, komentarz Wulffa, p. 374–398.

The most important in the Act were its first two parts concerning the creation, the characteristics and structures of industrial courts [53] and the procedure in which the pending cases were dealt with [54], the rest referred to: the activities of these courts as an arbitration office, judgments, motions and proceedings before the commune head, while the whole was closed by final provisions. In FC of Danzig, the only exceptions from the German text concerned only the first part, which resulted from the huge territorial difference between the two states [55].

In the genesis of the act it was stated that the main reason for its adoption was the need to settle disputes between employers and employees, as well as between the same employees of the same employer, and the model for it were French legal acts issued at the beginning of the 19th century by Napoleon Bonaparte. Due to the small area, only one industrial court was to be established in Danzig, the number could have been increased by the Senate, if necessary, by issuing an appropriate regulation in this matter. In general, court sessions were to take place at courthouse in Danzig, although Courts of Assizes were allowed [56].

Employees in factories and guilds were considered to be: workers, journeymen, apprentices, foremen, technical workers, etc., generally all employed there. To the same extent, they also concerned rural areas: cottagers, landowners, owners of individual farms, etc. Its binding force did not apply only to domestic servants

[53] RGBl., 1890, §§ 1–25.

[54] Ibidem, §§ 26–61.

[55] Ibidem, §§ 62–88.

[56] Gewerbegerichtsgesetz, 1922, § 1.

or to municipal and state officials. In turn, as the employers were considered persons who employ at least one permanent employee in their company during the year [57].

Generally, industrial courts recognized several categories of cases [58]. These included, first of all, disputes arising from the employment relationship: admission to work, performance and dismissal of employee duties which refer in detail to issues related to filling in work books, issuing certificates, keeping a payroll, or all documentation, up to clothing and work equipment, the implementation of all due employee benefits, including the payment of remuneration, refunds of previously paid bail, claims for compensation for leaving the job, due to the deterioration or loss of goods, materials or equipment, settlements related to health and sickness insurance, claims regarding non-acceptance by employers of activities performed by employees and all other claims, especially those resulting from employment contracts, if any restrictions on their work occurred during its performance.

In addition to the aforementioned, industrial courts also dealt with cases concerning claims of persons performing work outside the permanent employment seat, e.g. cottagers, which the employer did not provide with sufficient quantities of raw materials or semi-finished products that were to be provided to them [59].

The substantive jurisdiction of industrial courts precluded the adjudication of the abovementioned cases through ordinary courts. Therefore, it was generally forbidden for interested parties to conclude amicable mutual agreements, infringing their rights. The exception was their acceptance by the presidents of the abovementioned courts [60]. Otherwise, ordinary courts should have handed the complaint to industrial courts. However, there were some exceptions to this obligation, especially when they were claims of employees of state-owned enterprises, for example in the area of metallurgy or mining industries [61]. These issues were to be resolved by the future statute for industrial courts [62]. Restrictions on substantive jurisdiction of industrial courts could also have resulted from national decisions and central state offices, if special circumstances required this. It could also be the opposite situation that their competences could be extended. Local offices then had to adapt to them [63].

All industrial courts were included in the structures of the state justice system. At their head were the chairman and at least one deputy chairman. There could have been more if they were internally divided into chambers. The composition of the court was supplemented by lay judges, in no less than four [64]. They all had to be over 30 years old, and the lay judges had to live in the court district for two years [65]. In addition, the chairman and his deputy could not be employers or employees. They were elected either by Magistrat or a municipal as-

[57] Ibidem, § 3, § 16.

[58] They were calculated exhaustively in § 4.

[59] Ibidem, § 5.

[60] Ibidem, § 6.

[61] Deutsches Recht, p. 378.

[62] Gewerbegerichtsgesetz, § 8.

[63] Ibidem, § 7.

[64] Ibidem, § 10.

[65] Ibidem, § 11.

sembly, possibly a representative of municipal associations for term of one year [66]. In turn, the lay judges had to be in half of the employers or employees. Their term lasted from one to six years. The re-election was acceptable [67]. More detailed rules regarding the elections and proceedings to be carried out were to be specified in the future statute [68]. The jury's office was honorary. He received only the reimbursement of travel expenses to the courthouse and the allowance for participation in the meetings [69]. The chairman of the court and his deputy were ordered by higher administrative offices before their positions were taken. In turn, the lay judges had to swear an oath of conscientious performance of their duties before the first court session [70]. For their negligence, and especially not participating without justification in court sessions, they could be fined by the chairman up to 600 guilders. However, they could appeal against this fine to the national court [71]. In general, industrial courts ruled in a three-person composition, i.e. a judge and two lay judges, while in significant cases the number of the latter could be increased [72]. A writer's office was also established at each court [73].

The other paragraphs of the discussed Act have little relevance for this article, which deals with the system of courts, hence they will not be presented.

Merchant courts *(Kaufmannsgerichte)*

Merchant courts were normalized in the FC of Danzig by the Act of November 23, 1922 [74]. It was based entirely on an act issued in the Second Reich. The scenes of its adoption were non-standard, which proved the seriousness of the problem. Namely, this text was established in Świnoujście aboard the MS "Hohenzollern", on July 6, 1904 in the presence of the Emperor Wilhelm II himself, hence, words which were included in the protocol of its opening were *Wir Wilhelm, von Gottes Gnaden Deutscher Kaiser, Kőnig von Preussen...* which was for the legislative procedure in Germany extremely rare. The Act came into force on January 1, 1905 [75]. It consisted of 22 paragraphs included in five titles, that is: organization and staffing (§ 1-15), proceedings (§ 16-17), ruling and conclusions (§ 18), proceedings before the commune head (§ 19) and final proceedings (§ 20-22). For our considerations, it is necessary to discuss only the first, but the most comprehensive title. Merchant courts were state courts, generally appointed for the settlement of legal disputes in the field of business and terminator relations between buyers and their assistants and students. They were created in the district of one commune, possibly jointly for several municipalities or municipal associations, but

[66] Ibidem, § 12.

[67] Ibidem, § 13.

[68] Ibidem, § 15.

[69] Ibidem, § 20.

[70] Ibidem, § 22.

[71] Ibidem, § 23.

[72] Ibidem, § 24.

[73] Ibidem, § 25.

[74] Gesetzbetreffend Kaufmannsgerichte (November 1922), Vom 23, DGBl., p. 530 and n.

[75] RGBl., 1904, p. 266 and n.

obligatory in communes with over 20,000 inhabitants. Their functioning and number was based on statutes issued by the Senate of FC of Danzig. After hearing the interested parties, under the regulation, only one court established in Danzig itself was established for its territory [76]. Its territorial jurisdiction was decided by the higher administrative authorities, which could extend it on the basis of an ordinance, but after hearing the opinions of local authorities [77].

Merchant courts were competent to resolve identical disputes as in the Industrial Laws Act discussed earlier. Only the names of entities in court proceedings have changed. Therefore, to avoid repetition, we refer readers to the previous part. Such a situation resulted directly from the publication of both acts on the same day, November 22, 1922, and their inclusion in the same Official Journal [78]. The substantive jurisdiction of merchant courts, as well as industrial courts, excluded the competence of ordinary courts [79]. For the merchant, according to a subjective criterion adopted by the German Commercial Code of 1897. (HGB) were considered professionals engaged in the trade activities [80]. Merchant assistants were those who provided their services to merchants for remuneration, in Germany in the amount of 5,000. DEM annually [81]. In turn, merchant students were people who, through their education and knowledge, helped merchants achieve their intended commercial purpose [82].

The merchant courts consisted of: the chairman, his deputy and jurors, at least four. They could be divided into chambers [83]. Their members could not be; foreigners, women, bankrupts, etc. [84] The office of the chairman and his deputies could only be held by persons with the qualifications of judges and higher officials [85]. They held office for at least one year. Their choice had to be approved by the higher administrative authorities of the district. The lay judges consisted of half of the merchants, and half of the merchants' helpers. Their choice took place for one to six years [86]. In addition, they had to reside permanently in the judicial district for a two-year period [87]. Other provisions were identical to the paragraphs of the Industrial Courts Act. In Germany, the mentioned similarities have been unified by liquidating industrial and merchant courts, creating in their place labor courts, however, this did not happen in FC of Danzig.

Administrative judicature

As mentioned in Part I of this monograph, in the autumn of 1919 a temporary constitutional commission (53 people) was appointed, which

[76] Gesetz..., 1922, § 1; Deutsches Recht, p. 406 and n.

[77] *Ibidem*, § 3.

[78] Gewerbegerichtsgesetz (1922), DGBl., § 2, p. 519 and n.; Gesetz betreffend Kaufmannsgerichte (1922), DGBl., § 2, p.530 and n.

[79] *Gesetz betreffend Kaufmannsgerichte, § 6.*

[80] Maciejewski, T. (2011) Historia powszechna ustroju I prawa, Warszawa, p. 678.

[81] *Deutsches Recht*, p. 407.

[82] *Ibidem*, p. 408.

[83] *Gesetz betreffend Kaufmannsgerichte*, § 9.

[84] *Ibidem*, § 10.

[85] *Ibidem*, § 11.

[86] *Ibidem*, § 12.

[87] *Ibidem*, § 10.

on October 6 established its subcommittee (15 people). At the end of 1919, during the discussion on the judicial system, the matter of the organization of administrative judicature was also raised. However, as a result of the intervention of its president, the mayor H. Sahm in the constitutional draft, the matter has been completely omitted. His opponents emphasized, however, that in the Prussian constitution of 1850 the situation was similar, but later acts from 1872 to 1876, and above all from 1883, the system, competences and the course of the proceedings were more or less normalized, which made the Prussian administrative court has become an unsurpassed European model [88].

The same thing happened in Danzig. Namely, during the transitional period, created on March 5, 1920, the State Council (Staatsrat) issued an ordinance on 9 April setting up the Provisional Supreme Administrative Court for the area of the future FC of Danzig (*vorläufige Oberverwattungsgerichts im Gebiet der künstigen Freien Stadt Danzig*) [89]. Its seat became the city of Danzig. It has jurisdiction over all matters previously owned by the Prussian Supreme Administrative Court, the Provincial Council, the Union Office for Local Government Affairs, the National Water Authority, as well as the Reich Tribunal for Financial Matters [90]. In addition, he was to deal with appeals and complaints against decisions of district commissions and other offices issuing administrative decisions, so as to provide citizens with judicial protection against the content contained in them [91].

The President and the members of the Court were elected by the Council of State. Half of them had to be judges and half-appointed officials with qualifications enabling them to take over the highest administrative offices. It was also noted that for matters relating to the competence of the National Water Authority, they should be judges and officials with high technical qualifications in this area [92].

Proceedings before the Court were pending in accordance with the procedure before the Prussian Tribunal. In cases of complaints and taxation, three members were appointed. In other cases, in the five-person composition, including the chairman, while in dealing with matters related to water law, two of them had to have adequate expertise [93]. The court in plenary decided about the specific composition of the court [94]. A special role was played by the President of the Court, whose competences corresponded to the powers of the President of the Prussian Tribunal, especially in the matter of general supervision [95]. The aforementioned provisional nature of the Court also put at the discretion of the Council of State deciding, inter alia, on the term of office of the Court, the number of settlements, etc.

[88] Podlaszewski, M. (1966), Ustrój polityczny Wolnego Miasta Gdańska 1920-1939, Gdynia, p. 172; and recently also about the Prussian administrative judiciary Tarnowska, A. (2015) Pruskie sądy administracyjne gwarantem praw podmiotowych. Organizacja sądów i praktyka orzeczenia Najwyższego Sądu Administracyjnego (OVG) a prawa polskiej mniejszości narodowej (1875–1914) Czasopismo Prawno-Historyczne, T. LXVII, v. 2, p. 61–85.

[89] *Sonder-Ausgabe zum Staatsanzeiger für Danzig, Danzig den 13 April*

[90] *Verordnung betreffend die Errichtung eines vorläufigen* , § 1.

[91] *Ibidem*, § 2.

[92] *Ibidem*, § 3.

[93] *Ibidem*, § 4.

[94] *Ibidem*, § 5.

[95] *Ibidem*, § 6.

[96]. Nevertheless, it is not known whether, to the issue of the constitution of June 14, 1922, it exercised this power, because with the moment of its adoption that organ disappeared.

The organization in which the Provisional Supreme Administrative Court was the only institution of administrative court in the FC of Danzig survived until January 7, 1927.

On November 29, 1926, the Senate of the FC of Danzig issued a statutory authorization, which is the legal basis for future reforms aimed at simplifying the administration of the state [97]. For the administrative judicature, he implemented them in the form of two legal acts. The first was the regulation with the force of law passed on January 7, 1927 on the creation of a new structure [98],and the second, an executive decree issued on January 14, 1927 [99], on granting previous binding force and on supplementing the formal solutions announced in it.

The regulation of January 7 consisted of three articles. The first had as many as 19 paragraphs, in which the structure of the Administrative Court was regulated first (§§ 1-10), and then the organization of the Supreme Administrative Court (§§ 11-19) [100]. Article 2 contained four paragraphs (§§ 1-4), which amended the wording of several articles of the Prussian Act on the Administrative Judiciary of 1883 (Articles 114, 117, 119), adapting them to the Danzig realities [101]. Finally, the third article corrected the Prussian Act of August 1, 1879, pertaining to the settlement of competence disputes by the Danzig Supreme Administrative Court [102].

The regulation created a two-instance structure of administrative judiciary. The lower court was the Administrative Court (*Verwaltungsgericht*), hitherto non-existent. It replaced the existing bodies: tax court (*Steuergericht*), municipal commissions (*Stadtausschüsse*) and regional commissions (*Bezirksausschusses*) and other colleges. It was a lower court, first instance court adjudicating on matters hitherto falling within the competence of the abovementioned authorities [103]. The Administrative Court was finally divided into three chambers, which, however, resulted from the executive regulation. The first chamber settled all matters previously owned by all district commissions and city commissions from Danzig and Sopot, the second chamber dealt with all tax matters, except for industrial and working tax, which was the competence of the third chamber [104]. The court consisted of permanent and honorary members [105]. They all had to hold the position of a judge or the function of senior

[96] *Ibidem*, § 7.

[97] *DGBl.*, vom 7.1.1926, § 1, p. 317.

[98] *Rechtsverordnung zur Vereinfachung der Verwaltung (Verwaltungsgerichtsbarkeit) vom 7.1.1927*, *DGBl.*, 1927, No. 12, p. 42–46.

[99] *Ausführungsverordnung zur Rechtsordnung vom 7 Januar 1927 zur Vereinfachung der Verwaltung Vom 14.1.1927*, *DGBl.*, 1927, No. 13, p. 46/47.

[100] *Rechtsverordnung...*, p. 42–44.

[101] *Ibidem*, p. 44–45.

[102] *Ibidem*, p. 46.

[103] *Ibidem*, art. 1, § 1.

[104] *Ausführungsverordnung* , § 2; while in *Rechtsverordnung...*, art. 1, § 3 it was said that it was divided into chambers, but without specifying their number.

[105] *Rechtsverordnung...*, art. 1, § 2.

state officials [106]. The chairman supervised them. He was appointed by the Senate of the FC of Danzig, as well as the chairman of each chamber, as well as other permanent members of the Court and their deputies [107]. The President of the Court headed the first chamber at the same time. In turn, the head of the second chamber had to be a senior tax office official [108]. All members standing in the exercise of their office were completely independent [109].They were subject only to the provisions of two Prussian acts of official responsibility of 1851 and 1856 and of Danzig from July 6, 1923. With the consent of the head of the Court, they could also lead side activities [110].

Honorary members were elected for a 4-year term from among local government officials [111]. Their passive electoral rights were limited by: age census, namely the age of 25, domicile, that is, residence in the territory of the FC of Danzig for at least one year and property rights, amounting to the annual payment of a direct tax. On the other hand, it was not entitled to perpetrators of tax crimes validated by law and acts violating the obligation to observe professional secrecy. Those elected for their function could, without any consequences for them, give up this position. On the contrary, they could lose their office, in the event of the disappearance of one of the censors defining their passive right to vote or as a result of committing a crime [112]. Eight of them were selected to the first and 16 to the second chamber. The selection was made by the City Council of Danzig (*Bürgerschaft*, Municipal Assembly of Citizens of the City of Danzig) in the number of four to the first chamber and eight to the second and Sopot City Council and three district commissions, ie for Wyżyny, Niziny and Wielkie Żuławy, one by each of these institutions to the first chamber and two to the second [113]. The term of office of the Court lasted until December 31, 1930 [114] (4 years). The elections were to be held by February 20, 1927, and the results should be announced by the chairman until March 1 [115]. In the event of emptying the post, a supplementary election was held [116]. After making the selection, honorary members raised their hands and stood aside an oath before the chairman of the Court, in which they undertook, irrespective of the person, settle matters in accordance with their best knowledge and conscience, keeping secrecy, especially in tax matters [117]. Matters recognized in a five-person composition, with at least three people having to be honorary members [118]. The proceedings before the Administrative Court were to specify specific provisions in the future, and until the time of

[106] *Ibidem*, art. 1, § 2, point. 3.

[107] *Ibidem*, art. 1, § 4.

[108] *Ibidem*, art. 1, § 4.

[109] *Ibidem*, art. 1, § 2, point. 1.

[110] *Ibidem*, art. 1, § 2, point. 4.

[111] *Ibidem*, art. 1, § 5, point. 1.

[112] *Ibidem*, art. 1, § 5, point. 2.

[113] *Ausführungsverordnung* , § 3.

[114] *Ibidem*, § 6.

[115] *Ibidem*, § 5.

[116] *Ibidem*, § 6.

[117] *Rechtsverordnung...*, art. 1, § 7.

[118] *Ibidem*, art. 1, § 3.

their issuance, the relevant Prussian legislation was in force [119]. Admittedly, the position of a member of the Court was honorable, but it was necessary to reimburse him for the costs and, depending on his effort, award the remuneration under the terms of the jury and lay judges [120].

According to the regulation of January 7, 1927, the Provisional Supreme Administrative Court ceased to exist, renamed the Supreme Administrative Court (Tribunal) of the Administrative Court (*Oberverwaltungsgericht*) [121]. His competences and structure have fundamentally remained the same. It's just that he was currently deciding not only in the first, but also in the second instance, examining appeals from Administrative Court judgments issued in the first instance [122]. In addition, it obtained a new competence, namely at the request of the Senate, it could interpret tax and administrative provisions [123]. In addition, its chairman and at least one of its members had to hold one of the main state posts. He was appointed by Senate (according to the ordinance of April 9, 1920, it was the Council of State). At the same time, it should be added that if the Senate had nominated a person who did not hold the highest office until the removal of this obstacle, he had to hand over the chairmanship to the member of the Court with the longest seniority, and if there were several of them, to the one of the oldest age [124]. However, he still could not decide on the granting, acquisition and loss of Danzig citizenship what was entitled to a complaint to the Supreme Court [125].

A separate administrative court was finally abolished by the Nazis in 1935. Since then, the former Court has only become a senate for administrative matters existing within the Supreme Court [126].

[119] *Ibidem*, art. 1, § 9.

[120] *Ausführungsverordnung…*, § 7.

[121] *Rechtsverordnung…*, art. 1, § 11; this phenomenon in the constitutional practice of FC of Gdańsk was nothing new, because the first Senate elected by the Volkstag on December 6, 1920 was also called the Senate, which was changed after the constitution was issued, see: Podlaszewski,, M., op. *cit*., p. 114.

[122] *Rechtsverordnung…*, art. 1, § 12.

[123] *Ibidem*, art. 1, § 15.

[124] *Ibidem*, art. 1, § 13.

[125] *Gesetz über Erwerb und den Verlust Danziger Staatsgehörigkeit*, *DGBl.*, 1922, No. 28, poz. 60.

[126] Rumpe, *Die Entwicklung der Verwaltungsgerichtsbarkeit in Danzig*, "*Danziger Juristische Zeitung"*, 1936, no. 10, p. 97 and n.; Podlaszewski,, M., op. cit., p. 203.

References

[1] Maciejewski, T. (2011), Historia powszechna ustroju i prawa, Warszawa.

[2] Maciejewski, T. (2010), Sądy przysięgłych w II Rzeszy, Republice Weimarskiej i Wersalskim Wolnym Mieście Gdańsku [in:] Acta Universitatis Wratislaviensis, No 3270, Prawo CCCXI, Wrocław.

[3] Maciejewski, T. (2012), Urząd sędziego w Wersalskim Wolnym Mieście Gdańsku w latach 1920-1933, Księga Jubileuszowa Profesora Andrzeja Sylwestrzaka, „Gdańskie Studia Prawnicze", v. XXVII.

[4] Maciejewski, T. (2010), Sądy ławnicze miasta Gdańska na przestrzeni dziejów (XIV-1939), „Gdańskie Studia Prawnicze", v. XXIV.

[5] Maciejewski, T. (2009), Sądy handlowe Wersalskiego

Wolnego Miasta Gdańska. Geneza i ustrój, [in:] „Gdańskie Studia Prawnicze", v. XXI.

[6] Makowski, J. (1925), Nowe konstytucje

[7] Podlaszewski, M. [ed.] (1966), by Warszawa Ustrój polityczny Wolnego Miasta Gdańska w latach 1920-1933, Gdynia.

[8] Rumpe, G. (1936), Die Entwicklung der Verwaltungsgerichtsbarkeit in Danzig, "Danziger Juristische Zeitung", nr 10.

[9] Tarnowska, A. (2015), Pruskie sądy administracyjne Gwarantem praw podmiotowych. Organizacja sądów i praktyka orzeczenia Najwyższego Sądu Administracyjnego (OVG) a prawa polskiej mniejszości narodowej (1877-1914), „Czasopismo Prawno-Historyczne", T. LXVII, v. 2.

[10] Wąsicki, J. (1989), Związek Niemiecki i Druga Rzesza Niemiecka 1848-1914, Poznań.

[11] Voigt G. (1927), Danziger Gerichtsverfassung, Danzig-Berlin.

Word count: 6100 Tables: – Figures: –

Competing interests: Authors have declared that no competing interest exits.

Funding: Tekst zrealizowano w ramach projektu badawczego Narodowego Centrum Nauki nr UMO-2014/15/B/HS5/03321

Corresponding author: prof. dr hab. Tadeusz Maciejewski; e-mail: t.maciejewski@ug.edu.pl

Table of contents 2017: https://polishlawreview.pl/issue/10602

Cite this article as: Maciejewski T.: Ustrój sądów szczególnych w Wersalskim Wolnym Mieście Gdańsku (1920-1939) (część II); Pol Law Rev, 2017 Vol. 3 (2); 1-14