

*Jury Courts in Interwar Poland**

Abstract

Jury courts existed in all the partitioning countries, and after 1918 they were to operate in all parts of the reborn Polish state. Their activities were suspended indefinitely in the former Prussian and Russian partitions. Only the former Austrian partition operated until 1938, when the Sanacja authorities liquidated them. Jury courts adjudicated only criminal cases – concerning the most severe crimes and political crimes. Recently, more attention has been devoted to jury courts and the participation of the social factor in the judiciary in Polish science, but so far, no publications in English have appeared on this subject. In the article, the author presents a short description of the jury’s activity in Poland and discusses three hypotheses about the activity of the jury in Polish science.

Keywords: courts, jury court, jury box, social factor, judicial system

1. Introduction

The jury court is one of the three basic forms of public participation in the administration of justice, along with justices of the peace¹ and lay judges. Although strongly associated with the Anglo-Saxon system,² it was also an essential component of the justice system in continental Europe.³ Outside the common law area, it has survived to this day, e.g. in

¹ Maziarz, “Zagadnienie sądów pokoju”, 453–4.

² Baran, “Powstanie i ewolucja”, 39–58; Halberda, “Ława przysięgłych”, 313–20.

³ Maziarz, *Sądy przysięgłych*.

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Austria and some cantons of Switzerland, but in some countries – such as Russia – it has even been restored relatively recently.⁴

The issue of jury courts was one of the most popular topics in the legal discourse of the second half of the 19th and first half of the 20th century. However, a shift from initial enthusiasm and support to criticism can be noticed during this period.⁵ This criticism finally led to their elimination in many European countries. The activities of jury courts have been devoted to their work by many European experts in criminal procedure: Julius Glaser,⁶ Wilhelm Emil Wahlberg, Carl-Ludwig von Bar,⁷ Rudolf von Gneist,⁸ Carl Joseph Anton Mittermaier.⁹ Non-law thinkers, e.g. Alexis de Tocqueville¹⁰ and Gustav le Bon¹¹ were also ardent supporters of the jury.

Jury courts existed in all three partitioning countries. In Russia, they were not introduced in the territory of the former Congress Poland. It was feared that their activities might hinder the implementation of the tsarist policy toward Poles.¹² In 1919, the Polish authorities suspended jury courts in the former Prussian partition and the so-called ‘Taken Lands’¹³. It happened in connection with the reorganisation of the judiciary and the ongoing war in the east. The courts in those territories never resumed their activities, although the Law on the system of common courts of 1928 provided for their existence throughout the country. Their activities were to begin, however, only upon the issuance of a decree by the Minister of Justice, and this was never implemented. The activity of the courts of law was not suspended on the territory of the former Austrian partition and only there did they operate until 1938.¹⁴

The existence of jury courts was guaranteed by Article 83 of the Constitution of 1921, which provided the following:

Courts with juries will be called upon to determine cases of felonies entailing more severe punishment and cases of political offences. Statutes will define in detail the jurisdiction of the court with juries, the organisation of such courts, and their procedure.¹⁵

However, such a provision was no longer included in the Constitution of 1935.

Jury courts were the most spectacular, though not the only, form of social participation in the judiciary. According to the provisions of the Act of 1928,¹⁶ the society was

⁴ Sołodow, “Sąd przysięgłych w Rosji”, 1049.

⁵ Salmonowicz, “Ława przysięgłych”, 441–50.

⁶ Glaser, *Zur Juryfrage*.

⁷ Bar, *Zur Frage*.

⁸ Gneist, *Die Bildung*.

⁹ Mittermaier, *Die Mündlichkeit*.

¹⁰ Tocqueville, *De la démocratie*, 139–79.

¹¹ Le Bon, *Psychologie des foules*, 153–60.

¹² Kijeński, “W obronie sądów przysięgłych”, 5–6.

¹³ Ustawa postępowania sądowego karnego z dnia 20 listopada 1864 r.; Spasowicz, “O najnowszych zmianach”, 166–7.

¹⁴ Ustawa z dnia 9 kwietnia 1938 r. o zniesieniu instytucji sądów przysięgłych i sędziów pokoju (Dz.U. 1938 nr 24 poz. 213).

¹⁵ Constitution of Poland 1921, Section IV: Judiciary, art. 83. <http://libr.sejm.gov.pl/tek01/txt/kpol/e1921.html> (accessed: 7.05.2022).

¹⁶ Rozporządzenie Prezydenta Rzeczypospolitej z dnia 6 lutego 1928 r. Prawo o ustroju sądów powszechnych (Dz.U. 1928 nr 12 poz. 93).

to participate in it through commercial judges, honorary district judges, justices of the peace, lay judges in labour courts and assessors in the military judiciary. Similar to juries in post-German and post-Russian territories, some have not been implemented in practice.

In Poland, one of the most exciting cases concerning jury activity took place before regaining independence. In 1906, the Combat Organisation of the Polish Socialist Party (Pol. *Organizacja Bojowa Polskiej Partii Socjalistycznej*) organised a bomb attack on the Governor-General of Warsaw and the commander-in-chief of the Warsaw Military District, Georgi Skalon. The attack was preceded by a relatively sophisticated method of luring Skalon from his palace, which he tried not to leave for safety reasons. One of the attackers disguised as a Russian officer, slapped the German Vice-Consul on the street.¹⁷ The investigation, in this case, did not reveal the perpetrator, and due to the diplomatic scandal, the highest-ranking Russian official had to go to the German Consulate to apologise for the incident. The assassins used this very moment to act, including Wanda Krahelska, who threw a bomb at the carriage. The attack was unsuccessful,¹⁸ and its executors had to flee the territory of the Russian Empire. Krahelska ended up in the territory of Galicia, where the Russian *Okhrana* tracked her down, and the Russian authorities demanded her surrender. In order to avoid extradition, Krahelska married an Austrian citizen Dobrodzicki and thus acquired Austrian citizenship herself (thus losing Russian). As a result of court proceedings, which reached the Supreme Court in Vienna, the Austrian authorities refused to extradite Krahelska, but at the same time, brought her to their court for this act – in line with the principle of *aut dedere aut judicare* (Lat. either extradite or judge). The accused was brought before a jury court in Wadowice – because her husband's residence was there. She was accused of trying to murder Skalon and bringing danger to the health and life of other people. The fact of her perpetration did not raise any doubts. Moreover, she confessed to it. Apparently, during the trial, there was such a dialogue between the judge and the accused:

The judge asked her: “Did you know that the bomb injured several people?” The accused: “I knew”. Judge: “But the Christian religion teaches: Do not kill!”. Accused: „But Christ said that it would be necessary to sell a coat to buy a sword [...]. I had no qualms about them. Skalon was a clear and declared enemy of our nationality. He terrorised all symptoms of Polish life and therefore he had to die.”¹⁹

Although this story is not particularly well known today, for many years, the activity of jury courts in Poland has been discussed (similarly to the Trial of Penn and Mead and Bushel's Case in England).²⁰ Both the English and Polish cases were meant to be proof that jury trials are courts where the idea of judicial independence is most fully realised. Juries could rule, sometimes against the letter of the law, in such a way that justice was done.

¹⁷ Archiwum Główne Akt Dawnych w Warszawie (hereinafter referred to as AGAD), Ob oskorblienii giemanskago konsula i pokuszenii na zyzn Gienierał-adiutanta [Georgija] Skalona 5 sierpnia 1906.

¹⁸ AGAD, 1/248/0/-/109. Po diełu o pokuszenii na zyzn Warszawskago Gienierał-Gubernatora.

¹⁹ Drobner, *Moje cztery procesy*, 241–3.

²⁰ Crosby, “Bushell's Case and the Juror's Soul”, 251–2.

After 1938, the issue of the judiciary of jury practically died out in Polish academia. Not only were there no proposals to return to this institution, but there were also no studies devoted to its research. Most of the studies were limited to the – absolutely correct – indication that the authorities²¹ and – completely wrong did not trust this institution – that it was abolished in connection with the ruling by a jury court in Kraków acquitting the nationalist political activist Adam Doboszyński.²² Sometimes there were slightly broader studies, but in principle, limited to quoting the content of the provisions related to the organisation of proceedings before a jury court.²³ Unambiguous assessments were rare. A moderately favourable opinion was presented by Piotr Stachańczyk²⁴ and definitely less favourable by Stanisław Płaza.²⁵ Only in recent years have there been analyses that deal more thoroughly with the issues of jury courts in Poland in the 19th and 20th centuries.²⁶ In my view, the assessment of the activity of jury courts in the Second Polish Republic cannot be unequivocally negative. I am far from formulating enthusiastic opinions presented in the science of law in the second half of the 19th century²⁷ or from the social enthusiasm of the first half of the 20th century.²⁸ However, it is impossible not to notice that the reasons for the criticism of the jury courts, formulated by their opponents, are not covered in judicial practice. It seems to be otherwise – the juries were not too harsh but too lenient.²⁹ The issue of a disproportionate number of acquittals must somehow influence the assessment of this institution. Putting criminal justice into the hands of the representatives of the society paralysed the so-called social sense of justice and made criminals easier to avoid punishment. It is certainly not easy to administer justice, which may sometimes be lengthy imprisonment and, at times, even the death penalty.

2. Characteristics of Polish Jury Court

Discourse about jury courts in interwar Poland, in principle, must be about the activity of these courts in the post-Austrian territories. Jury courts operated only within nineteen (out of fifty-one in total)³⁰ district courts located from Cieszyn in the west to Tarnopol in the east. Although various circles appealed for their establishment in the remaining

²¹ Bardach, Leśnodorski, Pietrzak, *Historia państwa i prawa polskiego*, 559.

²² *Ibid.*, 559.

²³ Ryszka *et al.*, *Historia państwa i prawa polski 1918–1939*, 21–2.

²⁴ Stachańczyk, “Sąd przysięgłych”; Stachańczyk, “Spór o sądy przysięgłych”.

²⁵ Płaza, *Historia prawa w Polsce*, 666.

²⁶ Materniak-Pawłowska, “Zawód sędziego w Polsce”; Materniak-Pawłowska, “Sądy przysięgłych”; Materniak-Pawłowska, “Z dziejów sądów przysięgłych”; Kulesza, “Udział czynnika społecznego”; Maziarz, *Sądy przysięgłych*; Jastrzębski, “Czynnik obywatelski”.

²⁷ Miklaszewski, *O znaczeniu sądu przysięgłych*; Bojarski, *O sądach przysięgłych*; Spasowicz, *O najnowszych zmianach*; Rosenblatt, *Gwarancje sprawiedliwego wyroku*; Stebelski, *Czy i o ile*; Mogilnicki, *Sąd przysięgłych*.

²⁸ “O wprowadzenie sądów przysięgłych”.

²⁹ Mogilnicki, *Sąd przysięgłych*, 29.

³⁰ Oxińska-Szcześniakowa, Czajkowski, “Okręgi sądowe”.

Polish territories,³¹ this did not happen. Their activity is, however, marked by a clear caesura: until 31 December 1928, their system and manner of proceeding were regulated by Austrian provisions, and after that date – by Polish ones. The new laws did not fundamentally change the operation of these courts, but they did introduce a few changes that are worth mentioning while referring to the best-known Anglo-Saxon model:

- (1) In the Austrian system, a jury resolution required a two-thirds majority; in the Polish system – only a simple majority (as is known in some common law systems, e.g. in the US, unanimity is required).³²
- (2) In the Austrian system, a verdict of the jury could be appealed to the court of appeals with respect to the penalty (as the penalty was imposed by professional judges), whereas in the Polish and Anglo-Saxon systems, it could not.³³
- (3) In the Anglo-Saxon system, a jury answers the indictment; in continental systems, including Austrian and Polish – to the questions formulated by professional judges.³⁴
- (4) In continental systems, there were no rules of evidence binding the hands of jurors (no corpse, no murder, exclusion of witnesses from hearing, confession rule, past conviction evidence).³⁵
- (5) In the Polish and Austrian systems, the trial was conducted, and the penalty was imposed by a tribunal (panel of three professional judges); as is known in the Anglo-Saxon system, this role belongs to one judge.³⁶
- (6) Both in Poland and Austria, a jury court adjudicated only in the most severe criminal cases.

However, the most important rule governing the activity of jury courts remains unchanged – citizens without a legal background, but having an impeccable reputation, decide whether the accused is guilty or not guilty.

Jury courts were a particular type of panel of judges in a district court. The jury was made up of a jury box (12 citizens) and a tribunal (3 professional judges). The only requirement for jurors was thirty years of age, literacy (in any language), citizenship and domicile of one or two years, and after 1928 – knowledge of the Polish language (with sufficient knowledge of speech). Until 1928, the functions of jurors could not be performed by wasters or debtors, and after 1928 – by those dependent on prostitution or public charity.³⁷

The ability to exclude jurors from either party to a trial is one of the constitutive elements that characterise the jury trial. The interwar author Bronisław Wisznicki claimed that it was rarely used in practice.³⁸ My research led to different conclusions – the parties actively took advantage of this right. Both sides of the trial influenced the composition of the jury. The jury's choice took place immediately before the beginning of the hear-

³¹ “O wprowadzenie sądów przysięgłych”; “Czy Senat uratuje ławę przysięgłych?”; “Senat i sądy przysięgłych”; Studnicki, “Wobec walki o sądy przysięgłych”.

³² Maziarz, *Sądy przysięgłych*, 222.

³³ Arnold, “O apelację od wyroków”; Maziarz, *Sądy przysięgłych*, 231.

³⁴ Glaser, *Kompetencje sądów przysięgłych*, 19.

³⁵ Baran, “Powstanie i ewolucja”, 55.

³⁶ Maziarz, *Sądy przysięgłych*, 187–8.

³⁷ *Ibid.*, 106.

³⁸ Wisznicki, “Sądy przysięgłych”, 250.

ing. It was possible to join it as long as there were at least 30 candidates for jurors, and after excluding those who could not participate in the case by operation of law – at least 24 remained.

The names of the candidates for jurors were thrown into the urn, and later the clerk took out one sheet of paper. Each party could then declare that they were exercising the right to exclude a juror. Both the accused and the prosecutor had the right to exclude the same number of jurors. If the number of candidates for jurors was odd, the defendant had the right to exclude one more.

3. Jurisdiction of Jury Courts

The Polish authorities officially took over the judicial administration in the post-Austrian territories on 1 January 1919. At that time, the jury had jurisdiction over all felonies (twenty-two criminal and nine political), all crimes committed in print (books, magazines, leaflets) and two political misdemeanours; in total – all offences punishable by a prison sentence of at least five years. This range of properties was very quickly – and more than once – limited. The Polish authorities have consistently reduced the scope of jurisdiction of juries, especially when introducing further amendments to the criminal law and procedure. As early as 1920, the minimum threat of a penalty was raised, which led to the determination of the jurisdiction of jury courts for ten years. In 1927, the jurisdiction of juries in cases of crimes committed in print was abandoned. The opponent of the institution of juries was the Codification Commission, which was entrusted with the task of preparing a draft of law unification in Poland after World War. However, they could not be omitted due to the content of the constitutional provisions. Therefore, the provisions of the act have been formulated in such a way as to limit the scope of jurisdiction of juries as far as possible.³⁹ As long as juries existed, their jurisdiction always covered the most severe criminal felonies (murder, robbery, much less often – arson and counterfeiting money) and political crimes (high treason and inciting to it). As a rule, all political crimes were to be subject to the jurisdiction of jury courts, but this concept was interpreted narrowly so that acts such as insulting the head of state or public insulting the Polish State⁴⁰ fell within the competence of ordinary district courts.

Among the criminal cases heard in regional courts, the percentage of those heard by jury courts ranged from 1% to 6%.⁴¹ Due to the changes in cognition presented above, it was a decreasing factor. Research carried out so far in Polish science has shown that approximately 3/4 of all cases examined by jury courts were criminal, while 1/4 – political. However, this proportion was different in terms of the number of accused brought to the court by jury – about 60% of them were responsible for criminal offences, and 40% – for

³⁹ Stachańczyk, “Spór o sądy przysięgłych”, 152.

⁴⁰ Maziarz, *Sądy przysięgłych*, 49.

⁴¹ *Ibid.*, 22.

political ones (which leads to the conclusion that political crimes were committed much more often in multi-person configurations).⁴²

4. Social Support for Jury Courts

A surprising observation is that jury courts enjoyed great social popularity in interwar Poland. While they were criticised by representatives of science and – at least by some – intellectuals, in which the famous Polish writer and translator Tadeusz Boy-Żeleński⁴³ excelled, they managed to develop such authority that their abolition met with the hysterical reaction of the society of the former Austrian partition. The surviving memoirs of the defendants indicate that the juries also enjoyed authority among them.

At the turn of 1923 and 1924, in Lviv, the trial of communists was held before the jury, known as the Trial of Saint Jur (because their meetings were held in the basement of Saint George's [Ukr. *Jur*] Cathedral). Defendants argued – truthfully – that the jury's composition did not reflect the composition of the society because there were no workers, peasants or Ukrainians in it, but representatives of the intelligentsia and the bourgeoisie dominated⁴⁴. This was partly a consequence of the fact that people from the upper-middle class and upper class were preferred in the lengthy procedure that led to the selection of jurors and later jurors. Perhaps one accused was also right, who argued that the jury draw was only a facade⁴⁵ (but there is no evidence of it). However, the same author speaks of the jurors in a flattering way, describing them as 'law-abiding jurors'.⁴⁶ A similar position was taken by another Polish communist – Bolesław Drobner, who tried several times before a jury court in Kraków, who in his memoirs even claimed that defence in political trials was most fully possible before the jury.⁴⁷

The authority of the jury courts is also evidenced by the circumstances in which the authorities in 1937 and 1938 led to the abolition of jury courts. From 1935, their existence was not guaranteed by the provisions of the constitution, and therefore it was only a matter of time before they would be removed from the Polish legal system. During this operation, however, the authorities encountered resistance, which was interesting because, at that time, there was no opposition in the Polish Parliament. As a result of adopting the new constitution and changes to the 1935 electoral law, both houses of parliament consisted exclusively of representatives of the Non-Party Block for Cooperation with the Government and national minorities. Despite this, MPs and senators from areas where jury courts were active – strongly opposed their abolition. All major newspapers published in the former Austrian partitions spoke out in defence of the jury: the con-

⁴² *Ibid.*, 25–6.

⁴³ Boy-Żeleński, "Tygrysy czy matolki?"; Boy-Żeleński, "Nekrolog sądów przysięgłych"; Boy-Żeleński, "Po lwowskim wyroku".

⁴⁴ Kowalczyk, *Zwołał kongres święty Jury...*, 48.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*, 66–7.

⁴⁷ Drobner, *Moje cztery procesy*, 8.

servative *Czas*,⁴⁸ and the popular *Ilustrowany Kuryer Codzienny*.⁴⁹ In addition, newspapers published in other regions of Poland: the national-democratic *Warszawski Dziennik Narodowy*,⁵⁰ the conservative *Słowo*,⁵¹ *Kurjer Warszawski*.⁵² As a result of this battle, which was lost for the defenders of jury trials, the decision to abolish jury trials was made by representatives of the regions in which jury trials did not operate. The public emotions that accompanied these events are best captured in an excerpt from the parliamentary debate:

The solidarity of the deputies from Lesser Poland was simply impressive. People of conservative and radical beliefs, representatives of villages and cities, Poles and Ukrainians, Christians and Jews – spoke in unison and voted to uphold the jury.⁵³

5. Some Aspects of Jury Court's Operating

The activity of jury courts in interwar Poland is too broad an issue to be described in a single article. My research has led me to formulate 28 conclusions about the activity of juries during this period.⁵⁴ They also concern court practice, the influence of government administration on jury selection, the implementation of the principle of independence, the social, ethnic and religious background of jurors, differences in the treatment of members of both sexes, as well as members of different nationalities and religions living in the area, the intellectual competence of jurors, and the severity of punishments handed down by juries. I would like to present three of them, concerning various aspects of the activity of jury courts, within the framework of the present work.

5.1. Extreme Severity of Jury Courts

Today (according to data for 2020), in Polish courts, the percentage of criminal cases with acquittals in the district courts is 5.5% and 1.9% in regional courts.⁵⁵ The percentage of jury acquittals in 1930–1937 ranged between 15% (in 1936) and 36% (in 1930). Compared to contemporary standards – the number of court cases ending in acquittals was very significant. On average, every fourth case ended this way, so almost four times more often than in contemporary circuit courts.

An outstanding Polish lawyer from the turn of the 19th and 20th centuries, Włodzimierz Spasowicz, quite openly saw the great advantage of jury courts in the fact that he was not

⁴⁸ “Czy Senat uratuje ławę przysięgłych?”, 1.

⁴⁹ “Czarny dzień Małopolski w Sejmie”, 1–2.

⁵⁰ “Senat i sądy przysięgłych”, 3.

⁵¹ Studnicki, “Wobec walki o sądy przysięgłych”, 1.

⁵² Szurlej, “Sądy przysięgłych”, 1.

⁵³ “Czarny dzień Małopolski w Sejmie”, 1.

⁵⁴ Maziarz, *Sądy przysięgłych*, 412.

⁵⁵ Ministerstwo Sprawiedliwości, “Osoby dorosłe osądzone w pierwszej instancji”.

constrained by the rules governing the evaluation of evidence that professional judges are guided by. A jury trial may therefore convict the accused in a situation where there is insufficient evidence against him, although it is known that he is nevertheless guilty.⁵⁶

However, an analysis of jury activity in interwar Poland leads to quite different conclusions. It would be more accurate to say that juries acquitted defendants even when there was no doubt that the perpetrator had committed the alleged act.⁵⁷ In some way, therefore, they usurped the right of pardon. It was not a problem for the jury to confess the accused or the existence of an unbroken chain of circumstantial evidence. In the practice of the Kraków court, the guilty parties were acquitted at least several times when complete and sufficient evidence was collected. The jury attached great importance to implementing the *in dubio pro reo* principle, perhaps even too far understood.⁵⁸ The interwar authors repeated the view that the jury, even having no doubts about the accused's guilt, issued an acquittal verdict if they noticed only extenuating circumstances and were afraid of imposing an excessively severe penalty (especially the death penalty).⁵⁹ It became especially relevant in cases of infanticide – mothers of illegitimate children.

The above-mentioned Boy-Żeleński in the interwar period, was one of the most ardent advocates of the abolition of the institution of juries. However, he was not a lawyer but a specialist in French literature. His views are pretty extensive due to his popularity and social role. He has established an opinion about the activity of jury courts, at least among the best-educated parts of society, for many years. In his 1931 article, “Tygrysy czy matolki?” (Tigers or idiots?) he called the jurors “twelve dumb drummers who understand nothing, know nothing and cannot handle the delicate instrument of the law”.⁶⁰ Boy-Żeleński did not argue that these criminals should be acquitted but that they did not deserve such harsh punishments. He based his categorical judgements on the rulings of juries, known only to himself, in which the juries were supposed to impose exceptionally severe punishments, including the death penalty, for minor political offences (storage of communist leaflets) or for a murder committed by the mother during childbirth and under its influence (infanticide). However, the author probably did not realise that it was up to the professional judges, not the jury, to impose the punishment.

In fact, the problem with the severity of the penalties imposed by the jury was, to some extent, that the Austrian Criminal Law of 1852,⁶¹ in force until 1932, often used an absolute sanction against which the sentencing judges had their hands tied (for murder – § 134 – providing only for the death penalty). In practice, however, this happened far less frequently than might be expected. This is evidenced by statistics from the activities of the Kraków jury court. In the years 1930–1938, it imposed the death penalty 11 times. In nine cases, however, this happened between 1930 and 1 September 1932. They accounted for 2.5% of the penalties imposed by the jury during this period, and it must be remembered that, especially at that time, after their jurisdiction had been severely

⁵⁶ Spasowicz, “O najnowszych zmianach”, 166–7.

⁵⁷ Bossowski, *Czynnik ludowy*, 34–5.

⁵⁸ Maziarz, *Sądy przysięgłych*, 236–8.

⁵⁹ Aschenbrenner, “W sprawie reformy”, 123–4.

⁶⁰ Boy-Żeleński, “Tygrysy czy matolki?”, 3.

⁶¹ Ustawa karna na zbrodnie, wykroczenia i przestępstwa z dnia 27 maja 1852 r. [Austrian Penal Code of 1852] (RGBl. 1852, no. 117).

restricted, the juries ruled only on the most serious crimes. They ruled only on men and only on the perpetrators of murder and not on female infanticide or the perpetrators of petty political crimes, about which Boy-Żeleński wrote.

In June 1930, Boy-Żeleński wrote in one of his articles about the drama of a man sentenced to death by a jury for a love-related murder – a woman who refused to marry him. Boy wrote:

New idiocy [...] cannot be treated on the same level as a bandit, a murderer – a recidivist, a man acting under the influence of a momentary rage, a man who, after expiation, could safely return to the bosom of society.⁶²

In the first half of 1930, the District Court in Kraków pronounced the death penalty only twice, and the files of both cases have survived, so it is possible to verify the version presented by Żeleński. He had in mind the case of 26-year-old Michał Piskorz from the village of Wadów near Kraków.⁶³ However, it turns out that – just like today – the version presented in the press does not necessarily have much to do with reality. It turned out to be far too optimistic. The perpetrator shot his 19-year-old neighbour. However, he was not an unhappy young man in love whose heart was broken by the unfortunate victim. He was responsible for three crimes: murder, threats against the victim's parents (after her death), and illegal possession of weapons. The eyewitness testimony showed that the perpetrator shot the victim in the head despite her pleas for mercy. After the murder, he walked around the village with a gun, openly talking about his deed and even boasting about it. Earlier, he had already been convicted of crimes for seriously injuring another person's body.

As for other punishments, in 1930–1938, jury courts sentenced to life imprisonment only twice (in both cases for the murderers), and in the remaining cases, they were sentenced to term imprisonment.

The jury courts were incredibly lenient towards women. The percentage of acquittals in their case was on average 40%, and in the case of men, it was twice as low – 21%. In 1930–1938, a jury court in Kraków heard cases of 12 women accused of murder (§ 140 of the Criminal Code of 1852 or Article 225 § 1 of the Criminal Code of 1932) or homicide (§ 134 of the Criminal Code of 1852). 44% of the accused were found guilty. However, in none of these cases, the perpetrator imposed the death penalty or life sentence.⁶⁴ In the same period, 86% of men accused of these crimes were found guilty. There can only be two reasons for such a dichotomy: either the prosecution was more readily accusing women without sufficient evidence against them, or the jury was more kind to women. The analysis carried out in Polish academia shows that the latter version is authentic.⁶⁵

⁶² Boy-Żeleński, "Tygrysy czy matolki?", 3.

⁶³ Archiwum Narodowe w Krakowie (hereinafter referred to as ANK), 29/442/13375. The case of the accused Michał Piskorz in the District Court in Kraków, IV K 126/30.

⁶⁴ Maziarz, *Sądy przysięgłych*, 292–3.

⁶⁵ *Ibid.*, 294–312.

5.2. Social Background of Jurors

According to the post-Austrian legislation and the Law on the system of common courts of 1928 (Article 214), only men could be sworn judges. The Polish legal system had already granted women full electoral rights in parliamentary and presidential elections. There were women not only among deputies and senators but also among lawyers and judges. Both the Polish Constitutions of 1921 and 1935 prohibited discrimination based on sex. It is incomprehensible why women were not granted the right to participate in a jury, especially as it was not an oversight resulting from the duplication of patterns functioning in Austria but quite an intentional act. However, women were not the only social group excluded from the function of jurors. This duty was performed only by a relatively narrow part of society.

We have detailed data on jurors' social and national origin only when it comes to jurors of the Kraków court. However, these data are not complete because the files of the organs that were to select candidates for jurors in the interwar period have not been preserved. There are rarely complete lists of candidates in court files. Based on press publications, it was possible to establish the names of about 1/5 of the jurors adjudicating in Kraków in 1920–1937. About 80% of them also have data about the profession and, less frequently – the place of residence. The generalisation made based on these data shows that the social composition of jurors was as follows: 25% – civilian pensioners, 17% – military pensioners, 16% – property owners, 11% – merchants, 8% – officials, 6% – engineers, 5% – artisans, 4.5% – managers, 3% – industrialists, 1.5% – other intelligentsia, 1.5% – great estates owners, 1.5% – artists, less than 0.44% – farmers.

It is striking that about 42% of the jurors were retired. It took place in a relatively young society, where – according to statistical data in 1929 – only 7.4% of the population was over 60, and 14.7% – were over 50. One certain solution to this puzzle is the finding that the condition for election as a juror was to be at least 30 years of age. In 1929, only 35.3% of the population met this condition. Of these, those over the age of 60 accounted for 21%.

The objections raised in interwar literature about the social composition of the jury were at least partially justified. There were virtually no farmers or workers among the jurors – at least in Kraków. There were few craftsmen. On the other hand, a clear over-representation of retired military personnel and groups constituted only a part of the society – owners of large industries (2.88%) and large landed estates (1.55%). Yet, if we take a closer look at the activity of the jury in individual trials, we cannot see any correlation between the social background of the jurors and the verdicts they hand down. There is no rule according to which representatives of the upper classes could count on lenient treatment while the lower classes on harsher ones. Communist activists were not punished more often than other criminals. In 1922, in the trial of Bolesław Drobner, he was tried by jurors about whom the accused himself said: “Gentlemen, you are judging workers, while workers have no right to judge you”.⁶⁶ Drobner was acquitted in this trial, as were all other co-defendants. Drobner was also acquitted two years later in a trial for

⁶⁶ Drobner, *Moje cztery procesy*, 42. The case files have not survived.

the so-called “Kraków incidents of 1923”,⁶⁷ in which he was judged by a jury consisting of four landowners, a factory owner, a merchant, a bank manager, three officials, and two craftsmen.⁶⁸

Without going into deliberations on the jury system itself, it should be noted that the jurors were classified into two categories: primary and reserve. The reserve jurors took part in the jury if the primary jurors did not appear. The conducted research on the differences in the social origins of the representatives of these two groups leads to exciting results. It can be said that the jurors were divided into two groups – the one that had precedence in adjudication and consisted of representatives of the higher classes and the one that was admitted to adjudication only when a sufficient number of representatives of the first group did not appear. The second group consisted mainly of representatives of the middle class. An excellent example of this division may be craftsmen, who, according to research, happened only in the group of reserve jurors. Retirees – both civil and military, and the real estate owners – also dominated among reserve jurors, but this dominance was not so clear. The representatives of the remaining, smaller social groups were rare among the reserve jurors.

It is undoubtedly challenging to disagree with the interwar position that jurors came from different spheres of society and represented different experiences.⁶⁹ They can be socially characterised as representatives of the upper class, upper-middle-class, and, occasionally, middle-middle class.

5.3. The Jury as a Court of Facts and a Court of Law

Wherever juries occur, they are essentially courts of fact. The role of the jury is not to perform complex legal operations but to determine what, for any reputable citizen, should be possible: guilty or not guilty. In principle, this was also the case in Poland, although there were some cases where the jury’s role went quite deep into the process of interpreting the law.

In one of the cases in 1935, a man was accused of setting fire to his neighbour’s house located in the vicinity of other residential buildings, i.e. committing the crime under Article 215 of the Criminal Code of 1932 (“Whoever brings the danger of fire [...] is subject to the penalty [to 15 years] of imprisonment”).⁷⁰ This man’s perpetration was beyond doubt. On the other hand, the legal interpretation of its operation has become a problem.

The jury box was asked whether the accused had committed the act alleged against him in the indictment. However, the counsellor managed to convince the panel of professional judges of the necessity to ask a question about the crime under Article 263 § 3 of the Polish Criminal Code of 1932, according to which, “Whoever [by the use of fire] damages or renders useless someone else’s item, is subject to the penalty [to 5 years] of

⁶⁷ Archiwum Akt Nowych w Warszawie [hereinafter referred to as AAN], 2/2258/35-37. The case of the accused Bolesław Drobner in the District Court in Kraków, Vr III 8211/23.

⁶⁸ Maziarz, *Sądy przysięgłych*, 275–6.

⁶⁹ Bross, “Zagadnienie sądów przysięgłych”, 273.

⁷⁰ ANK, 29/442/16747. The case of the accused Kazimierz Mazur in the District Court in Kraków, III K 1066/35.

imprisonment". The difference in the threat of punishment was, therefore, significant. In the first case, the accused faced fifteen, and in the second – a maximum of only five years in prison.

The issue of how to interpret the perpetrator's actions was the subject of controversy in the activities of the Supreme Court. According to one position, the fear of fire spreading is not necessary to establish the common danger, and it is enough to cover a single building with fire without the risk of fire spreading. According to the second position, one of the hallmarks of a crime is the possibility of fire displacement. There were two different rulings of the Polish Supreme Court supporting both of these positions, both dating from 1933.⁷¹

Although they did not have a legal background, the jurors decided which view presented in the Supreme Court's judgements was correct. They were asked if the accused had "brought about a common danger" by his actions. The jury replied negatively to this question by 1 to 11. To the second question – whether the accused is guilty of damaging someone else's property by setting fire – the affirmative answer was given by a vote of 11 to 1.

The test of time survived the second view, which was supported by the prosecutor, but which was not shared by the jury. To this day, the judgement of the Supreme Court of 1933 is referred to by modern commentators explaining what a fire is as provided in Article 163 of the Criminal Code of 1997.⁷²

6. Summary

When writing about jury courts, one cannot ignore the authority they enjoyed among the public and the accused themselves. It follows that the existence of jury courts influences the identification of society with the justice system. It was probably believed that they were genuinely independent bodies – jurors, unlike professional judges, did not have any relationship with representatives of the authorities, and the only consequence that could affect them was that they were not on the following list of jurors. The jury court was, to some extent, a reflection of the society for which it was established. Their composition was elitist, but this elitism was due to not ties with power but social status and the related to them level of education.

Despite all my reservations about the activities of the interwar jurors, I believe that they performed their activities well, and the balance of these courts during the Second Polish Republic was not negative.

Many aspects of the activity of juries remain unknown in Polish academia. There was still no work on the activity of jury courts until 1914, also in places where they were no longer active in the times of the Second Polish Republic (the areas of Prussia and the so-called Taken Lands). Polish science focuses on the history of jury courts in

⁷¹ Supreme Court verdict of 9 January 1933, II K 1177/32; Supreme Court verdict of 27 February 1933, III K 28/33.

⁷² Bogdan, "Komentarz do art. 163 Kodeksu karnego".

the territory of the former Austrian partition, and yet – except for the lands of the former Congress Kingdom – they also operated in other Polish territories.⁷³ They also enjoyed considerable authority there, and – as in the Second Polish Republic – the then authorities viewed them with at least caution. An expression of this is that among the numerous governorates of the Russian Empire, it was in the lands of the former Kingdom that it was not decided to institute juries.

Another issue is that the studies on the activity of jury courts in the Second Polish Republic – with one exception⁷⁴ – were not based on a solid analysis of archival sources. This one exception concerned the district court's activity in Kraków, yet the jury's courts operated within 18 courts, located in entirely different geographical, political, social, national-ethnic and religious conditions. On the one hand, it was the Polish-Czech-German borderland (Cieszyn), and on the opposite end – those areas where the Ruthenian element was dominant (Stanisławów and Kołomyja). These dichotomies were also overlapped with differences resulting from the level of civilisation development and political conflicts related to the activities of communists and Ukrainian nationalists. Jury courts, relying on the non-professional factor, had to be very sensitive to these differences, and therefore the conclusions that were made based on the analysis of the activity of the Kraków court do not have to be the same when we look at other courts.

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⁷³ Materniak-Pawłowska, "Sądy przysięgłych"; Materniak-Pawłowska, "Z dziejów sądów przysięgłych".

⁷⁴ Maziarz, *Sądy przysięgłych*.

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