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ARKADIUSZ BEREZA THE SUPREME COURT
1917-2017. PRESIDENTS, JUDGES, PROSECUTORS
OF THE SUPREME COURT. PUBLISHED BY:
THE SUPREME COURT IN WARSAW.
WARSAW 2017, PP. 671

Arkadiusz Bereza has long been known as a researcher of the court system, an author of several monographs on the subject¹. What proved to be an excellent preparation for the monograph was the author's participation in the great jubilee book of the Supreme Court edited by Artur Korobowicz. This magnificent popular science book will constitute both a scholarly monograph and a beautiful showcase of the Supreme Court for decades, available to persons other than lawyers, as well, which I once referred to in a printed review². After the aforementioned works there appeared another Arkadiusz Bereza's book, being *The Supreme Court in the Years 1945-1962. Organization and activities* (Warsaw 2012, pp. 393); not only is the scholarly monograph grand, but also versatile in substance. In this way Arkadiusz Bereza has undoubtedly become the most prominent Polish expert in the system of common courts in general, and the Supreme Court in particular.

He is the only person who could bear a burden as great as the monograph of the Polish Supreme Court for the entire period of a hundred years of its existence: 1917-2017. *The Supreme Court 1917-2017. Presidents, judges, prosecutors of the Supreme Court* (Warsaw 2017, pp. 672) is a work great not only in its size, but, above all, in the content, with the multiplicity of threads writhing in the meanders of the history of Poland and Poles in the last hundred years; the chronological scope of the monograph is vast, too.

"The history of the Supreme Court is a mirror of our history" – Arkadiusz Bereza began a lecture of his with these exceedingly apt words. The intention itself is unusual and indeed unprecedented, at least in the history of the Polish law. The reader is offered a book extremely atypical in its shape, and consequently – in a sense – atypical in the content, too. In the monograph, a professionally written history of the Supreme Court was interlaced with biographies of people associ-

¹ *Sądownictwo pokojowe w guberni lubelskiej na tle Królestwa Polskiego* (1876-1915). Lublin 2004; *Sądownictwo zamojskie od czasów Ordynacji po współczesność*. Zamość, two editions in the years 2005-2006; *Lublin jako ośrodek sądownictwa*. Lublin 2006; *Sądownictwo siedleckie. Tradycje i współczesność*. Co-author Witold Koniński. Warszawa 2010; *Historia Sądu Apelacyjnego w Lublinie 1917-1950 i 1990-2010*. And many other works.

² See: „Miscellanea Historico-Iuridica”, vol. 6, 2008, pp. 187-190.

ated with the Court. The author deserves congratulations on the skill of extraordinarily neat linking these two elements: institutions and people, the Court and judges and prosecutors. It is exceedingly difficult to combine both parts so that the Court and its case-law can be seen through the prism of its judges and prosecutors, so that both can be closely interlinked. What determines whether such an attempt will achieve success is the author's skills concerning his scribal workshop. The whole book is truly well-written, pleasant to read, and is also suitable for non-lawyers, anyone interested in the history of Poland for the last hundred years. Arkadiusz Bereza achieved his goal in a masterly way.

The further the reader goes, led by the author, through decades of the Supreme Court's history, presented largely by the biographies of the judges and prosecutors, the more they realize how turbulent and how *ravaged* (Robert Conquest) the century was, devastated by two atrocious wars and – in Europe – by two horrible totalitarian systems, which Poland and Poles had the misfortune of finding themselves in between, and which put a terrible mark on Poland ruling over the country for half a century. What should be emphasized is the fact that the author begins his research and his dissertation in the times when Poland was not yet present on the maps of the world, the Supreme Court was launched immediately, however, as soon as an opportune moment appeared, since – as it was accurately pointed out by the author – it was, among others, the Supreme Court that became “one of the symbols of the Polish nation's desire to rebuild its state” (p. 7). The historical context is constantly present in Arkadiusz Bereza's monograph, the background is drawn very gently, however, so as not to blur the history of institutions and people. Nevertheless, it is present incessantly, for the courts, with the Supreme Court at their head, were present at all the twists and turns of our history.

“Every turn of our contemporary history was associated with the temptation of the Executive to extend the control over the Judiciary, especially the Supreme Court, under the cloak of its reform, reconstruction or recovery. The objectives of the aforementioned actions were multifold, but usually they were guided by the implementation of the measures set by the political center of power” (p. 8). How up-to-date these words sound today, while having been aptly referred to the last century. Four chapters tackling the problems related to the Supreme Court, judges and prosecutors of the Second Republic of Poland show the meanderings of a difficult road in exceedingly difficult times of rebuilding the Polish statehood. The restoration of statehood was undertaken by a diverse, antagonized society with a significant percentage of the non-Polish population, in the times of nationalist hatred, in an extremely hostile and extremely dangerous international environment, in a poor country. The unification of Poland from the former three Partitions included actually integrating the country out of as many as five legal systems functioning there in 1918, each system coming from a different world of law. The Supreme Court consisted of Józef Piłsudski's peers, who obtained education and professional experience at various universities, in different

countries and partitions. Entering the service of the Supreme Court, they were already known among the legal practitioners, often highly respected by the local community and deserving as far as the complex process of the restoration of a united Polish state was concerned. Their comments on complicated precepts of district constituted an extremely important signposting for the lower courts' judicial activities. The work proves the author's high erudition embracing the social issues, as well as both national and international affairs, comprehensively sophisticated and sometimes as tangled as the mythical Gordian knot. It is commendable that the author put a strong emphasis on the significance of the *law on the common courts system* of 1928 (with effect from January 1, 1929). Thus far, the *law on the common courts system* had been perhaps overshadowed by the work and achievements of the Republic of Poland's Codification Committee concerning criminal and civil law, material and procedural law, yet it seemed to be a particularly large and significant area, on the highest constitutional level, as, after all, it constituted one third of the state power according to Montesquieu's division. Presenting the profiles of judges and prosecutors of the Supreme Court of the interwar period, and sometimes their extraordinary life stories, required considerable research effort. The author had to rely on rudimentary information from various archival sources (the personal files of the Supreme Court were lost in September 1939), memoirs and reports of descendants of the deceased lawyers, the knowledge obtained from official journals, judicial calendars and periodicals, as well as several regional jubilee compilations. The information on the professional path of the majority of judges and prosecutors of the Supreme Court at that time could be vainly sought in today's legal-history literature, unless they held (sooner or later) high positions in the structures of public authority.

Reading about the fates of judges and prosecutors of the Supreme Court during the Second World War fills the reader with sadness. These are the dramatic lots of good Poles: the following words keep appearing: "arrested by the Gestapo," "arrested by the NKVD," shot, lost, killed in the Warsaw Uprising. Some, however, managed to reach France and England, where they could fight like soldiers, some participated in the work of the Polish Republic Authorities in Exile. Some found employment in lower-level Polish courts admitted by the German occupier in the General Government; others did odd jobs. The picture of the resumption of the activities of the Supreme Court outlined by the author is colorful and rich, as it is depicted against the reactivation of the entire Polish judiciary and with in-depth political aspects, referring above all to the staff, but also, as a further consequence, to the structures resulting in special courts and quasi-courts. For the sake of keeping up appearances of legal continuity, pre-war courts were reactivated and the pre-war judges were allowed to take up the service, but, at the same time, the communist authorities did not have political trust in these pre-war common courts. Hence the phenomenon of the so-called fragmentation of the judiciary, i.e. dispersing it among many new courts, with the military courts enjoying the highest importance – by the will of political power – for 10 years.

A vivid picture of the state of affairs, outlined shortly, yet substantively deep at the same time, was what the author needed to indicate, among others, that at that time the Supreme Court did not exercise judicial control over all forms (organs) of the so-called justice. As the author emphasized, the following were not subject to the Supreme Court: the jurisprudence of military courts and special criminal courts, the Supreme National Tribunal, social security courts, and even more so such a creation of the revolutionary dimension of how revolutionary “justice” as the Special Committee for the Fight against Fraud and Economic Malpractice.

In his earlier monograph about the Supreme Court in the years 1945-1962, Arkadiusz Bereza ascertained (which he did not repeat in this book) that it was in 1945 when Aleksander Tarnowski had the idea of liquidating the Ministry of Justice and transferring the administrative supervision over the entire judiciary to the Supreme Court. Aleksander Tarnowski’s name does not appear in the reviewed work at all, and yet he was the First President of the Supreme Military Court, thus it is worth having a closer look at this figure, as he was characteristic of those times and political relations in Poland, and distinctive of the dependence on the Soviet Union. Simultaneously, the author noticed that the concept of transferring the administrative supervision over the courts to the Supreme Court was not entirely new, as Wojciech Witkowski had established long ago, such plans were present in Poland under Russian rule since the beginning of the 19th century. Interestingly, the projects of transferring the administrative supervision over all courts to the Supreme Court were supported by the First President of the Supreme Court – Waclaw Barcikowski³.

What I consider the most significant statutory changes in the judiciary of the whole period of 45 years of the People’s Republic of Poland is the judicial reforms of 1949-1950. It was then when cassation, which had constituted a predominant competence and responsibility of the Supreme Court since the Second Republic, was liquidated. At that time (1949-1950), after the fundamental political turnaround of 1948, when *the right-wing-nationalist deviation in the party was unmasked and liquidated*, that is, Bierut’s team replaced Gomułka and his people, as a consequence rapid Stalinization of social life began, along with aligning everything with the standards of the leading socialist country. It was also then when the system of common courts was changed, and the structures reformed at that time remained in their essential form until the end of the communist system, and even a bit longer. During the process of Stalinization in Poland the practice of the Supreme Court changed, too, and it was an inglorious change. Among others, the so-called secret court of second instance functioned within the Supreme Court at that time. The first half of the 1950s was a “rogue period” of the Court infested by the system and enslaved by the fear of the all-powerful security service (p. 294) – wrote Arkadiusz Bereza. His findings regarding the secret section in the Supreme Court constitute unique contribution to explaining the darkest black holes in the judiciary of the Polish communist period.

³ A. Bereza, *Sąd Najwyższy w latach 1945-1962. Organizacja i działalność*, Warszawa 2012, p. 24-25.

Complementing the author's work, it is worth recalling that those were the times when the military intelligence officer could cynically say to a person under arrest, later sentenced to death: "If we want, we will make a search today with all the members of the Supreme Court and tomorrow they will be sitting here on a stool and they will admit to everything we want"⁴. And another investigating officer to another prisoner, in the same spirit: "The courts in Poland are all fakery. It's all tailored. The courts are there so that our verdict is well-creased and announced"⁵. "On becoming the deputy minister of justice at the end of 1948, Kliszko brought H. Podlaski, from the army, so he was the head of the prosecution supervision. He called the judges, in their hearing he called Róžański and asked: Jacek? how much to give? And Jacek said: fifteen, and he ordered judges to sentence the suspect in question to fifteen years"⁶. Józef Róžański, the infamous head of the Investigation Department, said to Kazimierz Moczarski (January 1949): „You, Mr. Moczarski, will go to your grave anyway, because you know very well that the court is at our service and if we give you up for lost, so does the court—whether you are guilty or not"⁷. Such were the realities before 1956. The Supreme Court was not free of them.

The first half of the 50's was, as the author wrote, the darkest period in the history of the Supreme Court, whose members included a number of judges at the political authorities' disposal, and the disgraceful secret section will forever remain a symbol of the servile character of the Supreme Court. In 1957, the ministry of justice was verified, and the person to be dismissed was, among others, Teofil Karczmarz – both terrifying and repulsive, a cynical murderer in a military judge's gowns⁸. Therefore, it is highly regrettable that the author did not familiarize the readers with the character. As it might be expected, the story of the Supreme Court is particularly interesting at the next turn of history, i.e. in the years of the first „Solidarity,” as well as the following ones. The author's narration concerning the events of those years is, as usual, economical, but extremely interesting. The reader has the opportunity to be presented with another difficult period, when the judges had to choose „between solidarity with the nation and loyalty to the authorities” (p. 452). It is a great pity that the author had no chance to get acquainted with a valuable monograph by Kamil Niewiński, published simultaneously, tackling these particular problems of courts in the

⁴ M. Szerer: [Komisja do badania odpowiedzialności za łamanie praworządności w sądownictwie wojskowym]. „Zeszyty Historyczne” Paryż 1979, z. 49, p.77.

⁵ Quoted after: ibidem.

⁶ L. Chajni, w: T. Torañska, *Oni*. Warszawa 1990, p. 314; See: W. Barcikowski, *W kręgu prawa i polityki. Wspomnienia z lat 1919-1956*. Ed. Władysław Barcikowski. KAW. Katowice 1988, p. 180, 245; H. Piecuch, *Spotkania z Fejginem*. Warszawa 1990, p. 50.

⁷ Krzyżyk to kara śmierci. K. Moczarski, *Zapiski*. Wstęp, Ed. A.K.Kunert. Warszawa 1990, p.307.

⁸ Teofil Karczmarz, born in 1899, he worked as a court secretary in Lublin until 1944, then in the LWP (Polish People's Army) courts, a Supreme Military Court judge, he most frequently judged in the fake trials of pre-war officers by issuing death sentences on innocent people. In 1955, a remark, known to the Chief Military Prosecutor's Office, made by of Judge Karczmarz to one of the prosecutors just before the prosecutor's speech was released: **“Well, mister prosecutor, there is no evidence, but we, judges not from the God, even without evidence, we will make a >>kaes<< as it should.”** [>>kaes<<from a Polish abbreviation “k.s.” used informally by judges in those times, standing for “karaśmierci” Eng. (capital punishment)].

first half of the 80's. The year 1990 meant further transformations, especially the new legislation (December 20, 1989) appointing new judges of the Supreme Court, as well as the First President – Adam Strzembosz, an extraordinary figure. The author also exposes the role of the National Council of the Judiciary, which has its overtone at present. The last part of the work includes biographies of judges, while at the very end the reader is given a set of photographs of the judges of the Supreme Court as of 1 September 2017, possibly the latest ones. At the time of writing these remarks it was still up-to-date, but it might no longer be so at the time of printing, though.

The author's erudition proves to be as extraordinary as his meticulousness in searching for sources and the ability to acquire sources of different provenance, not only documents from a particular period, but also family and private materials that the author reached. What an enormous task to perform. The work constitutes a monument of history of the Republic of Poland's most important court of the last century.

It is known that the author has been awarded the highest prize of the Lublin Scientific Society for the book. It is also highly regrettable that the work is not available in the ordinary book circulation.

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