Mariusz Mohyluk

- Uniwersytet w Białymstoku
  (University of Bialystok, Poland)
- e-mail: mmohyluk@uwb.edu.pl
- ORCID: 0000-0002-8851-1379

DOI: 10.15290/mhi.2025.24.01.15

ON JUSTICES OF THE PEACE IN THE SECOND AND THIRD POLISH REPUBLIC – REMARKS FROM A LEGAL HISTORIAN

Abstract

The article is an elaboration on the institution of justices of the peace in Poland in the years 1918–2021. In the Second Polish Republic (1918–1939), it was conducted in three tracks. The initiator of the first steps consisting in unifying district regulations, reorganising and taking over the judiciary was the government and the Ministry of Justice. The article uses the comparative law, dogmatic and auxiliary-reporting methods. From February 1919, these activities were supported and approved by the Legislative Sejm (later the Sejm). From November 1919, the burden of work was taken over by the Codification Commission of the Republic of Poland. From this point of view, it will allow to resolve the research problem of the article: to what extent the Codification Commission of the Republic of Poland contributed to the formation of the institution of justices of the peace contained in the regulation of the President of the Republic of Poland *Law on the System of Courts* of February 6, 1928, in the Third Polish Republic (since 1989). The March Constitution clearly defined two forms of participation of the social factor in common courts: justices of the peace and jury courts. On November 4, 2021, the President of the Republic of Poland Andrzej Duda submitted to the Sejm a draft act on courts of the peace and a draft act – *Provisions Introducing the Act on Courts of the Peace.* Due to this, after more than 100 years, work on the institution of justices of the peace was resumed. The aim of the article

is to demonstrate the basic differences and similarities in legal regulations and the functioning of this institution in the Second and Third Polish Republics. The article uses archival materials, minutes of the proceedings of the Codification Commission of the Second Republic, legal literature of the Second Republic and current literature on the subject.

Key words: Codification Commission of the Republic of Poland, law on the organisation of common courts, justices of the peace, justice system in the Second and Third Polish Republic

1. Introductory remarks

In the Second Polish Republic, societal participation in the administration of justice, as implemented within the framework of the three distinct judicial systems that remained operative **until the conclusion of 1928**, was expressed through the following mechanisms:

1. In the former Kingdom of Poland – courts of peace (a justice of the peace and two lay assessors; from 1927, the justice of the peace adjudicated independently);[1] in the so-called "eastern lands", from 1920, courts of peace operated as single-judge courts,

[1] S. Gołąb, I. Rosenblüth, *Ustrój sądów powszechnych*, Warszawa 1929, p. 39, 65; M. Rybicki, Ławnicy ludowi w sądach PRL, Warszawa 1968, pp. 39–82. On the functioning of the justice of the peace courts in the former Russian partitioned territories, see also: S. Kuzior, *Art. 18 Przepisów tymczasowych o urządzeniu sądownictwa w Królestwie Polskim a sędziowie pokoju-nieprawnicy*, "Gazeta Sądowa Warszawska" 1925, no. 27, pp. 423–426; S. Kuzior, *Instytucja ławników w sądach pokoju Królestwa Polskiego*, "Gazeta Sądowa Warszawska" 1925, no. 51, pp. 807–810; J. Jamontt, *Pierwsza generalna lustracja Sądów polskich w b. zaborze rosyjskim*, "Gazeta Sądowa Warszawska" 1927, no. 24, pp. 325–326. The following assessment from 1926 highlights the activity of these courts: "Turning to justices of the peace, the report notes that they are overworked (handling an average of 320 cases per month per judge), that they are honest (instances of corruption are rare exceptions), yet the responsibilities placed on them overwhelmingly exceed their capacities in most cases. Today's justices of the peace are required to thoroughly understand hundreds of constantly changing and amended laws, decrees, and countless executive regulations, which cannot be judged by pre-war standards. Currently, the work of a justice of the peace must be entrusted to highly experienced legal professionals; otherwise, the population will continue to complain about the judiciary, and even the best initiatives by the executive authority will be undermined by the improper application of administrative and fiscal laws

2. In the former Prussian partition – courts of peace (a justice of the peace and two lay assessors), lay courts (a district judge and two lay assessors), and jury courts (jury courts were suspended in 1919). In the Silesian Voivodeship: jury courts were suspended in the Upper Silesian region in 1922, while in the Cieszyn region, only jury courts operated, based on retained Austrian regulations.
3. In the former Austrian partition – jury courts (operating in a significantly limited capacity from 1920).[2]

The adoption by the Legislative Sejm of the principles of judicial organisation, subsequently incorporated into Articles 74–86 and Article 98 of the March Constitution of 1921, decisively shaped the ultimate structure of the law governing the judiciary in the Second Polish Republic. However, prior to their adoption, animated debates among lawyers and politicians emerged regarding Poland's systemic model, fueled by the publication of successive constitutional drafts. These included government proposals, political party projects, or private initiatives.[3]

The March Constitution unambiguously outlined two forms of societal participation in the judiciary. According to art. 76, "justices of the peace are generally elected by the populace", which was interpreted as obligating the legislature to establish courts of peace. Art. 83 further stipulated that "jury courts shall be established to adjudicate crimes punishable by severe penalties and political offenses. The acts subject to jury

[…] A plague on the judiciary is represented by lay assessors. They are inaccurate, arriving late to hearings, and poorly understand the cases. Often, contrary to logic and fairness, they outvote the judge. This results in rumors of corruption among justices of the peace." J. Jamontt, *Pierwsza generalna*..., p. 326.

2 P. Stachańczyk, *Sąd przysięgłych w ustawodawstwie karnym i doktrynie w Polsce w latach 1918–1929*, "Czasopismo Prawno-Historyczne" 1989, no. 1, pp. 109–133. Compare: J.J. Bossowski, *Czynnik ludowy w sądzie karnym*, "Ruch Prawniczy i Ekonomiczny" 1921, no. 1, pp. 1–43; T. Kraushar, *Sądy przysięgłych w Austrii*, "Palestra" 1929, no. II, pp. 84–88; E.S. Rappaport, *Czy zalecić należy udział czynnika społecznego w ustroju sądownictwa karnego państw słowiańskich*, Warszawa 1933.

3 S. Krukowski, *Konstytucja Rzeczypospolitej Polskiej z 1921 r.*, [in:] *Konstytucje Polski*, ed. M. Kallas, Warszawa 1990, p. 19. See also: *Projekty konstytucji Rzeczypospolitej Polskiej*, Warszawa 1920; S. Krukowski, *Geneza konstytucji z 17 marca 1921 r.*, Warszawa 1977, p. 15 and S. Krukowski, *Nieznany projekt konstytucji polskiej z roku 1919*, "Czasopismo Prawno-Historyczne" 1975, pp. 259–269; J. Buzek, *Projekt Konstytucji Rzeczypospolitej Polskiej oraz uzasadnienie i porównanie tegoż projektu z konstytucją szwajcarską, amerykańską i francuską*, Warszawa 1919.

courts, their organisation, and procedural rules shall be determined by detailed laws." These constitutional provisions dispelled any doubts among Polish lawyers regarding the necessity of involving laypersons in common court adjudications, ensuring their inclusion in legislative drafts.

At the dawn of the Second Polish Republic, in November 1918, the issue of legal unification became a paramount concern during the establishment of the nascent Polish state, evolving into an urgent political and social challenge. District-specific legislation remained in force across the Second Polish Republic's territory, leading to three divergent concepts for the future development of the Polish legal system. Ultimately, the concept advocating the creation of original legal frameworks to gradually replace district-specific laws prevailed.[4]

Resolving this issue fell to the then-contemporary generation of Polish lawyers. In the Second Polish Republic, this task was entrusted to specially established institutions, namely the Codification Commission of the Republic of Poland (CCRP) and the Legal Council.

Following the establishment of the Legislative Sejm in February 1919, efforts to achieve legal unification gained momentum. In March 1919, a *Memorial of the Faculty of Law and Political Skills at the University, Law Society and Association of Polish Lawyers in Lviv*

[4] Z. Radwański, *Kształtowanie się polskiego systemu prawnego w pierwszych latach II Rzeczypospolitej*, "Czasopismo Prawno-Historyczne" 1969, no. 1, p. 33; K. Sójka-Zielińska, *Organizacja prac nad kodyfikacją prawa cywilnego w Polsce międzywojenne*, "Czasopismo Prawno-Historyczne" 1975, no. 2, p. 271.; S. Grodziski, *Komisja Kodyfikacyjna Rzeczypospolitej Polskiej*, "Czasopismo Prawno-Historyczne" 1981, no. 1, p. 49; *Wniosek nagły posła d-ra Zgmunta Marka i tow*., "Gazeta Sądowa Warszawska" 1919, no. 16, p. 152; W. Najdus, *Zygmunt Marek prawnik i polityk 1872–1931*, Warszawa 1992; A. Lityński, *Wydział Karny Komisji Kodyfikacyjnej II Rzeczypospolitej*, Katowice 1991, p. 18; E.S. Rappaport, *Zagadnienie kodyfikacji prawa karnego w Polsce*, "Kwartalnik Prawa cywilnego i Karnego" 1920, vol. III, pp. 101–103. M. Mohyluk, *Porządkowanie prawa w II Rzeczypospolitej: Komisja Kodyfikacyjna i Rada prawnicza,* "Czasopismo Prawno-Historyczne" 1999, no. 1–2, pp. 285–300; M. Mohyluk, *Prawo o ustroju sądów powszechnych w pracach Komisji Kodyfikacyjnej II Rzeczypospolitej*, Białystok 2004, p. 28. Alternative concepts, such as maintaining legal particularism or legal reception, did not find significant support, as evidenced by the Sejm's decision (21 July 1919) rejecting the decree of 8 February 1919. This decree proposed authorising the Ministry of Justice to amend the 1903 Russian Criminal Code and issue an official Polish version (Dz. Pr. P.P., no. 17, poz. 220).

on Legislative Techniques[5] was published in "The Quarterly of Civil and Criminal Law"[6] and subsequently formally adopted. Shortly thereafter, on 1 April 1919, an urgent motion was submitted by deputy Dr Zygmunt Marek to the Marshal of the Sejm, proposing the establishment of a commission for "the creation of uniform legislation in the Polish State."

The Codification Commission of the Republic of Poland (CCRP) was established on 3 June 1919 by unanimous resolution of the Legislative Sejm, garnering support from all political factions of the time.[7]

During the CCRP's General Assembly from 11 to 13 November 1919, most participants agreed that drafting a judicial organisation law was among the Commission's most pressing tasks.[8]

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5 S. Milewski, A. Redzik, *Themis i Pheme. Czasopiśmiennictwo prawnicze w Polsce do 1939 roku*,

6 Further references: A. Redzik, *Prawo prywatne na Uniwersytecie Jana Kazimierza we Lwowie*, Warszawa 2009, pp. 107–108; also *Roman Longchamps de Berier* (1883–1941), "Kwartalnik Prawa Prywatnego" 2006, no. 1, p. 38.

7 Dz.Pr.P.P. 1919, no.44, poz. 315.

8 *Komisja Kodyfikacyjna. Podkomisja ustroju sądownictwa* (further: KKRP, P.u.s.), vol. I, Lwów 1925, p. 3. The unification of the Polish judiciary systems, considering the legal acts in force during the Second Polish Republic, lasted from 1 September 1917 to 31 December 1928. See: Dz.Urz. Departamentu Sprawiedliwości Tymczasowej Rady Stanu Królestwa Polskiego, no. 1, Dział I, poz. 1, *Przepisy tymczasowe z dnia 18 lipca 1917 r. o urządzeniu sądownictwa w Królestwie Polskim*; Dz.U. 1917 no.12, poz. 93: Rozporządzenie Prezydenta RP z 6 lutego 1928 r. Prawo o ustroju sądów powszechnych. The provisions of this law came into force on 1 January 1929. For the subsequent developments regarding these regulations, see, inter alia: D. Malec, *Pierwsza nowelizacja rozporządzenia Prezydenta RP z dnia 6 lutego 1928 r. – prawo o ustroju sądów powszechnych w debacie sejmowej w 1928 r.*, "Studia Iuridica Lublinensia" 2016, vol. XXV, 3, pp. 599–616. See also: W. Suleja, *Tymczasowa Rada Stanu*, Warszawa 1998, p. 185; W. Szwarc, *Działania TRS i RR na rzecz przejęcia cywilnego zarządu w Królestwie Polskim (1917–1918)*, [in:] *Studia z historii państwa, prawa i idei*, ed. A. Korobowicz, H. Olszewski, pp. 395–412; *Prace departamentów i Biur Tymczasowej Rady Stanu Królestwa Polskiego wykonane lub przygotowane przez czas jej istnienia tj. od dnia 15 stycznia do 1 września 1917 r.*, Warszawa 1918, pp. 37–39. For a broader analysis of the judiciary's transition to Polish control between 1917 and 1923, see: M. Materniak-Pawłowska, *Ustrój sądownictwa powszechnego w II Rzeczypospolitej*, Poznań 2003, pp. 92–102 and further references therein: *Przejmowanie wymiaru sprawiedliwości przez organa polskie*

The CCRP of the Second Polish Republic developed eight drafts of laws regarding the structure of common courts. The first two drafts were reviewed in sessions from 7 to 14 December 1920. After receiving feedback from courts and legal associations, Commission members concluded that the March Constitution's provisions necessitated elected justices of the peace, requiring the draft to align with the new constitutional framework. Completed in June 1921, the third draft by Kamil Stefko contained distinct proposals concerning civic participation. Consequently, the draft initially addressed general provisions defining the organisation of courts of peace, followed by sections on justices of the peace, and concluded with regulations on their jurisdiction. **Stefko's third draft** provoked animated discussions within the Commission. The culmination of these efforts was the 1928 Ordinance issued by the Republic's President *The Statute on the Structure of Common Courts of Law*, which institutionalised non-professional judges, including justices of the peace, commercial judges, and jurors, alongside professional judges. An analysis of the decree's provisions unequivocally indicates that, in their fundamental assumptions, they were analogous to the CCRP's final draft. The motion also pertains to regulations concerning justices of the peace.

2. Regarding justices of the peace in Kamil Stefko's third draft

Discussions within the Codification Commission (CC) regarding the participation of non-professional judges in the common judiciary underwent several pivotal moments.[9] The first one concerned the period before the establishment of the Judicial Structure Subcommittee within the CC. During this phase, preliminary concepts and principles for the structure of common courts emerged within the civil procedure section and the criminal division of the CC. The second critical moment occurred on 21 May 1920, when the General Assembly of the Codification Commission adopted the *Principles of Judicial Structure* (a "ten-commandment" of principles) and established the Judicial Structure Subcommittee of the CC. During debates on these principles, a clear division

po I wojnie światowej, [in:] *Dzieje wymiaru sprawiedliwości*, ed. T. Maciejewski, Koszalin 1999, pp. 317–325.

[9] Regarding the approach of the Codification Commission to the participation of justices of the peace, jurors, and lay assessors in the adjudicating panels of common courts, see: B. Cybulski: *Stosunek Komisji...*, pp. 85–118.

of opinions emerged regarding the role of non-professional judges, with differing views expressed by civil law and criminal law experts.

The third turning point was the adoption of the March Constitution by the Legislative Sejm. By this time, the Judicial Structure Subcommittee of the CC had prepared two drafts (the first authored by Kamil Stefko and Józef Nowotny, and the second a subcommittee project) that strictly adhered to the fundamental principles established in May. During subcommittee meetings held from 2 to 4 April 1921, Stefko was instructed to prepare **a third draft**, tailored to the constitutional provisions. Completed in June 1921, this draft introduced distinct proposals regarding civic participation. Broadly interpreting the constitutional reference to elected justices of the peace, Stefko included courts of peace within the system of common courts, alongside district, regional, appellate courts, and the Supreme Court.[10] This approach resulted in the inclusion of general provisions governing the organsation of courts of peace, followed by specific regulations concerning justices of the peace and the scope of their jurisdiction.

[10] On February 10 and 17, 1921, meetings of the justice section of the Polish Legal Society in Lviv were held, focusing on K. Stefko's report: *On the Structure of the Judiciary in Poland.* A lengthy discussion during the first meeting centered on the issue of courts of peace in connection with the proposed Constitution's principle of electing justices of the peace. The attendees unanimously adopted a resolution to submit the following petition to the Legislative Sejm: "Considering that judicial independence is the most cardinal requirement for the proper administration of justice, and that such independence requires judges to remain distant from active politics; further considering that this independence would be seriously jeopardized if the principle of electing judges by the populace were maintained, as an elected judge would be dependent on their electorate and involuntarily drawn into the vortex of political and national conflicts, where decisions on judicial appointments would often be influenced not by personal qualities but by political views and party affiliations; finally considering that in our circumstances – especially in regions with ethnically diverse populations, socially subject to various influences, and with limited educational development – the principle of electing judges by the populace would be quite detrimental; the Polish Legal Society in Lviv expresses its opinion that the principle of electing judges by the populace should be abandoned and calls for the restoration of Article 78, paragraph 1, of the draft Constitution in the wording of the original proposal of the Constitutional Commission: 'Judges are appointed by the President of the Republic, unless otherwise stipulated by law.'" *Kronika. Z Polskiego Towarzystwa Prawniczego we Lwowie*, "Przegląd Prawa i Administracji" 1921, no. 1–6, p. 135.

According to this draft, the Minister of Justice, after consulting the president of the regional court and municipal councils (city councils) from the districts constituting the jurisdiction of a court of peace, would establish the districts and seats of courts of peace (Article 6). In principle, all clerical tasks in courts of peace would be handled by the justice of the peace, although the establishment of secretariats within these courts was permissible with the approval of the president of the regional court (Article 11).[11]

Articles 14 to 31 governed justices of the peace.[12] The election of justices (and their deputies) was to be conducted by residents of the relevant district of the court of peace. If elections failed or if voter turnout did not exceed 20% of the electorate, the Minister of Justice would appoint the justice of the peace (Article 14). The elections were to be administered by the president of the regional court, who would appoint the chairperson of the electoral commission, request municipal councils to elect commission assessors, direct municipal leaders to prepare voter lists, and announce essential technical details (such as the election date, time, and venue).[13]

Under Article 17, active voting rights were granted to every citizen of the state, irrespective of gender, who, on the day of the election announcement, resided in the district of the court of peace, was at least 21 years old, and was neither incapacitated nor deprived of the civil rights. Passive voting rights were granted to individuals eligible to vote in the district, who were at least 30 years old and literate. However, certain individuals were disqualified from serving as justices of the peace, including members of parliament, judges, state officials, or employees in active service, lawyers, notaries, individuals under criminal investigation or indictment, and those stripped of their positions as judges, officials, or state employees by disciplinary decisions (Article 18).

11 Article 90, "The division of tasks among justices of the peace in those courts of peace where multiple justices of the peace serve is established by the president of the regional court." KK P.u.s., vol. I, p. 102.

12 Ibidem, pp. 103–105.

13 The chairperson of the electoral commission could be a judge appointed to this position by the president of the regional court from among the judges of the regional or district courts (Article 21). Voting would take place by submitting a ballot prepared by the electoral commission, on which the names of the candidates would be printed. A vote would be cast by underlining the chosen candidate (Article 26). Neither the draft nor the Constitution clarified whether the voting was to be secret or open.

Justices of the peace were to serve for five-year terms (Article 15). Notably, Stefko's draft allowed women to hold these positions. However, the draft did not distinguish between the roles of the President and senators, potentially excluding senior state officials from this function entirely.[14] Chapter II, "The Scope of Court Jurisdiction: Courts of Peace" (Articles 46–53), contained provisions on the material jurisdiction of courts of peace.[15]

This draft proposed a fully "non-professional" (societal) component within the structure of the common judiciary, granting relatively broad competencies in civil and private-complaint criminal matters, albeit without the authority to issue verdicts. It is evident that Stefko, the principal author of the principles and a staunch opponent of including lay participation, particularly in civil matters, was profoundly influenced by the constitutional provisions,[16] prompting a dramatic shift in his stance within just a few months. This highlights the significant impact of political decisions made within the Legislative Sejm on the work of the Codification Commission.

3. On justices of the peace in the 1928 presidential ordinance

Under the 1928 Presidential Ordinance on the Law on the Structure of Common Courts[17] (hereinafter referred to as "SCC"), non-professional judges, namely justices of the peace, commercial judges, and jurors, were established alongside professional judges.

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14 Regarding the solutions adopted for justices of the peace in K. Stefko's draft, S. Gołąb wrote: "Two observations come to mind concerning justices of the peace:
a) An excessive – too far-reaching – liberalism is evident in the provision [...] of the draft, according to which 'no one is obligated to accept the office of justice of the peace.' So, if 'the election does not succeed' and the Minister of Justice appoints a justice of the peace, but the appointee does not accept the position – what happens then?
b) The draft rightly assigns to justices of the peace the functions of conciliation magistrates." St. Gołąb: *Uwagi krytyczne nad projektem ustawy o ustroju sądownictwa*, "Ruch Prawniczy i Ekonomiczny" 1922, no. 3, pp. 452–453.

15 KK P.u.s., t. I, pp. 107–108.

16 Courts of peace – which likely also influenced K. Stefko's reasoning – were already functioning in the appellate districts of Warsaw and Lublin under the *Temporary Regulations on the Organization of the Judiciary in the Kingdom of Poland* of 1917, as well as in the former Prussian district under the decree of the Ministry for the former Prussian district concerning courts of peace from 1919.

17 Dz.U. 1928 no. 78, poz. 443.

Article 15 of the SCC provided that justices of the peace were to adjudicate cases assigned to them by procedural laws or special statutes. In transitional provisions (Articles 290–292 of the SCC), justices of the peace were granted jurisdiction exclusively in civil cases, without the authority to adjudicate criminal matters.[18] These provisions

[18] Article 290. § 1. Among the cases falling under the jurisdiction of municipal courts, the justice of the peace adjudicates disputes between residents of their district concerning property claims if the value of the claim does not exceed two hundred złoty, with the exception of:

a) disputes where the value of the subject matter does not affect the court's jurisdiction;

b) disputes involving bills of exchange, checks, shares, bonds, mortgage bonds, warehouse receipts, and similar securities;

c) disputes over rights to real estate and property rights on real estate;

d) disputes where the defendant is the State Treasury or another public legal entity.

§ 2. Plaintiffs who are not residents of the district may also bring the disputes described in this article before the justice of the peace against defendants residing in the district.

§ 3. Cases filed with the municipal court that fall under the jurisdiction of the justice of the peace according to § 1 shall be transferred by the municipal court to the justice of the peace ex officio before the hearing or upon the party›s request submitted no later than the first hearing. A ruling by the municipal court within the justice of the peace's jurisdiction is not invalid on these grounds.

Article 291. The law, and until its issuance the Minister of Justice by regulation, shall specify the instances in which the justice of the peace performs individual tasks in non-contentious matters and carries out assignments from the municipal court to which they belong.

Article 292. § 1. Before the justice of the peace, the parties may conclude, with the effects of a judicial settlement, an agreement in all property matters if the value of the subject matter does not exceed one thousand złoty.

§ 2. The subject of the settlement cannot include rights to real estate, property rights on real estate, or such rights and legal relationships whose establishment requires a notarial or judicial act under the law.

Adolf Czerwiński, the President of the Court of Appeals in Lviv, during a lecture held on March 2 and 9, 1928, at the Polish Legal Society in Lviv, stated, among other things: "The institution of elected justices of the peace does not align with our circumstances. Introducing this institution into the structure of the Polish state judiciary will neither simplify judicial proceedings nor relieve municipal courts, nor will it bring benefits to the population. The population, after all, still has the greatest trust in state courts, while it will have no trust whatsoever in elected justices. Consequently, every decision made by a justice of the peace will be contested because, due to the prominence of party politics in our country, the diversity of political factions, and, in border areas, also national conflicts, parties dissatisfied with a decision by a justice of the peace

were reiterated, with minor modifications, in the Civil Procedure Code of 1930 in the section on subject-matter jurisdiction (Articles 11–12). Additionally, Article 291 of the SCC allowed for delegating certain non-contentious matters and tasks assigned by the municipal court to justices of the peace.

The procedural framework for cases before justices of the peace was not explicitly regulated.

According to Article 293 of the SCC, the procedures prescribed for municipal courts were to be applied accordingly, pending the issuance of a general procedural law for civil cases or specific legislation governing proceedings before justices of the peace. The 1930 Civil Procedure Code's implementing provisions (Article XIV) stipulated that the procedural rules for cases before justices of the peace would be determined by a regulation issued by the Minister of Justice, who was also tasked with regulating court costs (Article 125 of the 1934 Court Costs Regulation).

The procedure for appointing justices of the peace was comprehensively regulated in Articles 189–206 of the SCC. Justices of the peace and their deputies were to be elected for five-year terms by residents of the respective districts who were eligible to vote in parliamentary elections. Exceptions to this rule allowed for appointment by the Minister of Justice in the following circumstances: 1) if elections failed or voter turnout was less than one-third of the electorate (Article 189 of the SCC); 2) if the elected candidate declined the position or resigned before completing their term (Article 190 of the SCC); 3) if elections were invalidated and subsequent elections also failed (Article 204 of the SCC).

The elections were to be conducted by a commission comprising a chairperson (a judge delegated by the president of the regional court) and members appointed by municipal

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will suspect partiality and frequently file complaints, even when unjustified. However, since our Constitution introduces the institution of justices of the peace, this institution must be implemented. Under these circumstances, the administration of justice, when designating districts where justices of the peace are to be appointed, must proceed with the utmost caution and prudence. It must take into account that in many districts, suitable candidates for the position of justice of the peace are lacking, and in some districts, due to social or national conflicts, particularly in border areas, a candidate for justice of the peace might be elected who will not enjoy the full trust of the population."

councils (Articles 194–195 of the SCC). The regional court supervised the elections at the request of its president or in response to objections raised by voters (Article 203 of the SCC).

Passive voting rights were granted to individuals who had resided in the district for at least one year, held Polish citizenship, were not restricted in their civil or political rights, possessed impeccable character, were at least 30 years old, fluent in Polish (spoken and written), and had completed at least six years of secondary education. Certain groups were excluded, including members of parliament, state and municipal officials, active military personnel, clergy, monks, lawyers, and notaries, as well as individuals under criminal investigation for profit-driven offenses or felonies (Article 192 of the SCC).

The rights, responsibilities, and disciplinary accountability of justices of the peace were to be defined by regulations issued by the Minister of Justice. A separate statute was to establish fixed remuneration for their duties (Article 208 of the SCC). Article 2, paragraph 3 of the SCC authorised the Minister of Justice to designate the municipalities where justices of the peace would operate and to abolish their positions if necessary.

According to a 1937 opinion by Wacław Miszewski (a Supreme Court judge),[19] several provisions still needed to be enacted, including: 1) procedural rules and potentially competence regulations for non-contentious matters; 2) guidelines on the responsibilities and remuneration of justices of the peace; 3) regulations on costs associated with elections and the functioning of justices of the peace (Article 208, second sentence of the SCC); and 4) designation of districts where justices of the peace would operate.[20]

Miszewski reminded that even during the drafting phase of this law, there were opinions expressed that were unfavorable toward a judiciary based on elected officials. The result of this skepticism was the creation of the institution of justices of the peace, which was incomplete and incapable of functioning effectively. It was assumed that an elected justice would not be able to meet the demands of the position due to a lack

19 A. Redzik [in:] *Słownik biograficzny adwokatów polskich*, vol. III, Warszawa 2018, pp. 325–326.
20 W. Miszewski, *Sędzia pokoju*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1937, Yearbook XVII, pp. 203–204.

of adequate preparation and that entrusting judicial functions to individuals chosen through elections would not yield positive outcomes.[21]

The argument regarding insufficient preparation was deemed unconvincing by Miszewski, as legislators had often disregarded this issue in numerous instances. Evidence of this could be found in a series of legislative acts in which individuals were appointed to resolve civil disputes without requiring qualifications beyond belonging to a particular profession and possessing basic literacy skills. He referred to regulations concerning the appointment of lay assessors to conciliation offices for property disputes among rural landowners, lay assessors in labor courts, commercial judges (Article 210 of the Law on the Structure of Common Courts), members of conciliation commissions for agricultural laborers, and arbitration courts for stock exchanges.

"If the same standard", Miszewski wrote, "were applied to justices of the peace, all objections in this regard would lose their validity, especially when one considers that the scope of authority granted to justices of the peace by our law is limited and that appellate remedies are available for their decisions (Article 293, § of the Law on the Structure of Common Courts).[22]"

Referring to the effectiveness of the principle of electing justices of the peace (drawing from the Swiss and American solutions), Miszewski stated, "It does not depend on the essence of this system itself but rather on the manner of its implementation, the environment tasked with the elections, and the proper oversight of those elections. One might, therefore, conclude that the dangers associated with an elective system can be mitigated, which, incidentally, has been sufficiently considered in our legislation.[23]"

Miszewski did not see any fundamental obstacles to implementing the institution of justices of the peace in at least some districts and even identified undeniable benefits resulting from this initiative: reducing the workload of municipal courts, which were overburdened with cases; and bringing the judiciary closer to the population in minor yet relatively frequent disputes.

21 Ibidem, p. 204.
22 Ibidem, p. 205.
23 Ibidem.

He proposed introducing two amendments to the legislation. The first would involve electing justices of the peace not for a five-year term but for an indefinite period. A justice of the peace could only be removed from office against their will in cases where this was permissible for appointed judges (Articles 109 and 110 of the Law on the Structure of Common Courts). This measure would ensure the independence of justices of the peace from their electorate. The second amendment aimed to enhance the authority of rulings made by justices of the peace. It proposed that such rulings, in terms of appellate jurisdiction, be equated with decisions made by municipal courts. As a result, appeals against rulings of justices of the peace would be heard by regional courts deliberating collectively (given the inadmissibility of cassation), rather than by municipal courts, as stipulated in Article 293, § 1 of the Law on the Structure of Common Courts.[24]

[24] Ibidem, pp. 205–206. Adolf Czerwiński, the President of the Court of Appeals in Lviv, during a lecture held on March 2 and 9, 1928, at the Polish Legal Society in Lviv, stated, among other things: "The institution of the elected justices of the peace does not align with our circumstances. Introducing this institution into the structure of the Polish state judiciary will neither simplify judicial proceedings nor relieve municipal courts, nor will it bring benefits to the population. The population, after all, still has the greatest trust in state courts, while it will have no trust whatsoever in elected justices. Consequently, every decision made by a justice of the peace will be contested because, due to the prominence of party politics in our country, the diversity of political factions, and, in border areas, also national conflicts, parties dissatisfied with a decision by a justice of the peace will suspect partiality and frequently file complaints, even when unjustified. However, since our Constitution introduces the institution of justices of the peace, this institution must be implemented. Under these circumstances, the administration of justice, when designating districts where justices of the peace are to be appointed, must proceed with the utmost caution and prudence. It must take into account that in many districts, suitable candidates for the position of justice of the peace are lacking, and in some districts, due to social or national conflicts, particularly in border areas, a candidate for justice of the peace might be elected who will not enjoy the full trust of the population." *Ustrój sądów powszechnych*, Lwów 1928, p. 20 And further: "The introduction of the institution of justices of the peace will be accompanied in many districts by significant difficulties because, under our circumstances, it will be challenging to find suitable candidates for justices of the peace who enjoy general trust, have completed at least six years of secondary education, and are willing to perform their duties without remuneration or for low pay, which will often take them away from their primary occupations for entire days", op. cit., p. 23. For more on the functioning of nonprofessional judges in the Second Republic after 1928, see: P. Stachańczyk, *Spór o sądy przysięgłych w Polsce (1930–1938)*, "Zeszyty Naukowe Uniwersytetu Jagiellońskiego. Prace Prawnicze" 1992, no. 141, pp. 151–172; T. Aschenbrenner, *W sprawie reformy Sądów przysięgłych w Polsce*, "Głos Adwokatów"

An examination of the legislative provisions reveals that the Polish legislator designed, in broad strokes, the entire organisation and scope of authority for the judiciary of the peace. However, the Law on the Structure of Common Courts, which came into effect on January 1, 1929, did not see the issuance of implementing regulations or supplementary statutes. Without these, it was impossible to operationalise the provisions concerning justices of the peace. Consequently, in no locality was a justice of the peace ever elected.

4. On justices of the peace in the presidential draft

On 4 November 2021, the President of the Republic of Poland, Andrzej Duda, submitted to the Sejm a draft law on courts of peace and an accompanying draft law introducing the provisions of the court of peace statute.[25]

The preliminary goal of these regulations was to relieve the judiciary of minor cases, expedite judicial procedures, and bring the judiciary closer to local communities. The proposed solutions envisioned the establishment of courts of peace as the lowest tier within the common judiciary system (positioned below municipal courts). "Justices of the peace will adjudicate the simplest cases that today often burden municipal courts", emphasised Andrzej Duda during the presentation of the drafts, which were developed by a team appointed by the President in March 2021, under the leadership of Professor Piotr Kruszyński.

1934, no. V, pp. 122–126; J. Bross, S*prawa Sądów przysięgłych*, "Głos Adwokatów" 1933, no. 8–9, pp. 271–275; A. Butterteig, *Sędziowie pokoju*, "Głos Adwokatów" 1928, no. III, pp. 76–80; S. Gołąb, *Zarys polskiego procesu cywilnego. Zeszyt pierwszy. Jurysdykcja sądów powszechnych*, Kraków 1932, pp. 133–148; K. Grzybowski, *Uwagi o projekcie ustawy o sądach powszechnych*, „Gazeta Sądowa Warszawska" 1927, no. 38, pp. 516–523; J. Hroboni, *Instytucja sądów przysięgłych w nowym kodeksie postępowania karnego*, „Przegląd Prawa i Administracji" 1930, Yearbook LV, pp. 1–13; E. Merz, "*Elita" w Sądach Przysięgłych*, "Głos Adwokatów" 1935, no. II, pp. 26–29; W. Nestorowicz, *Sądy przysięgłych w Anglii i na kontynencie Europy*, "Głos Sądownictwa" 1937, no. 9, pp. 722–723; S. Różycki, *Sądy przysięgłych*: *przeszłość a teraźniejszość*, "Głos Sądownictwa" 1937, no. 5, pp. 398–402; T.W. Woner, *W obronie sądów przysięgłych*, "Gazeta Sądowa Warszawska" 1928, no. 51, pp. 805–807.

25 Projekt Ustawy z 2021 r. o sądach pokoju oraz o zmianie niektórych innych ustaw, https://orka.sejm.gov.pl/Druki9ka.nsf/Projekty/9-020-577-2021/$file/9-020-577-2021.pdf; https://www.prezydent.pl/prawo/wniesione-do-sejmu/prezydencki-projekt-skierowal-do-sejmu-projekt-ustawy-o-sadach-pokoju-,41632 (accessed: 17.02.2025).

Andrzej Duda recalled that discussions about justices of the peace had begun long ago with MP Paweł Kukiz. “Initially, it was simply an idea to involve a factor closer to Polish society in the simplest matters, thereby bringing the judiciary closer to citizens”, stated the President.

He highlighted that introducing the institution of justices of the peace also offers hope for increasing respect for the judiciary in Polish society and fostering confidence in its fairness and effective functioning.

In courts of peace, justices will be elected by the local community in universal, direct, and secret elections. Candidates must hold a legal degree and have at least three years of experience performing tasks requiring legal knowledge directly related to providing legal assistance, applying the law, or drafting laws.

A justice of the peace must be at least 29 years old on the day of the election and no older than 70 on the day of assuming office. Justices of the peace will serve for six-year terms. They will be appointed to their positions by the President of the Republic of Poland upon the recommendation of the National Council of the Judiciary. According to the draft, justices of the peace could adjudicate minor criminal cases and misdemeanors, including offenses punishable by fines of up to 10,000 PLN, property-related offenses, provided the case does not require expert testimony and is evidentially straightforward. The draft laws have been submitted to the Sejm.

According to Dariusz Dudek, an advisor to the President, introducing the institution of courts (justices) of peace does not require prior amendments to the existing Constitution, provided they are incorporated into the structure of the common judiciary as outlined in Article 175, paragraph 1 of the Constitution.[26] Regulating courts and justices of peace through ordinary legislation could fulfill the general constitutional directive in Article 182: “The participation of citizens in the administration of justice shall be defined by law”.[27]

[26] D. Dudek, *Ławnik, sędzia pokoju, ława przysięgłych – społeczeństwo w wymiarze sprawiedliwości*. Referat wygłoszony podczas Konferencji Krajowej Rady Sądownictwa, Warszawa, 24 listopada 2022 r., “Consilium Iuridicum” 2023, Special Edition, p. 126.

[27] “These issues were previously discussed in an interview with Prawo.pl by Professor Ryszard Piotrowski, a constitutional scholar from the University of Warsaw. He has no doubt that constitutional amendments are necessary, and he points out that the matter

Referring to the justification for the presidential draft, Dudek identified several problematic issues.[28] At first, he considered it unfounded to assume that establishing courts and justices of peace would increase public trust in the entire Polish judiciary. "It is not only difficult to find strong empirical evidence supporting this assumption", he stated, "but it is also impossible to identify the moment and reasons for the undoubtedly negative phenomenon of 'loss of trust' in the professional judiciary in Poland".

Secondly, the project's adoption of a single term for justices of the peace does not necessarily eliminate the phenomenon of judicial routine. Allowing local communities to effectively evaluate the work of justices of the peace through their election process could occur rather during the phase when a specific justice seeks reelection for another term.

Thirdly, the idea of simplifying or informalising the existing judicial procedure while maintaining all procedural guarantees may prove challenging, especially when decisions of justices of the peace are subject to appellate review by municipal courts. Furthermore, the intended simplification of procedures and the possibility of appealing the decisions of justices of the peace to municipal courts could result in the unintended consequence of an uncontrolled increase in the number of initiated judicial proceedings (additional case burdens, judicial litigiousness).

is incomparable to that of lay judges. – The Constitution states that the participation of citizens in the administration of justice is defined by law. Therefore, it specifies that citizens participate in the administration of justice, but it does not say that citizens administer justice. This is a significant distinction. Participation in adjudication is different from making judicial decisions. If a justice of the peace issues a ruling in a case important to a citizen, even if objectively not particularly significant, they are administering justice. And if the role of the justice of the peace is not explicitly defined in the Constitution, citizens will challenge decisions – at first in the courts, claiming that they were penalised contrary to the Constitution, and then likely escalating the matter to the Constitutional Tribunal, and possibly even to the European Court of Human Rights (ECHR), he points out." This project was also reviewed by attorney Katarzyna Gajowniczek-Pruszyńska, PhD, who stated that the presidential proposals are unconstitutional, which is of fundamental importance, https://www.prawo.pl/prawnicy-sady/sedzia-pokoju-a-konstytucja,512274.html (accessed: 17.02.2025).

28 D. Dudek: *Ławnik*…, pp. 146–148.

Fourthly, linking courts and justices of the peace to municipal courts both in terms of jurisdictional and organisational dependency, with municipal courts serving as appellate instances and enforcement apparatuses, could, in practice, lead to unintended conflicts between "amateur" justices of the peace and professional judges.[29]

5. Summary and reflections

Summarising the above considerations regarding the Polish institution of justices of the peace (courts of peace) over more than a century, it can be concluded that in the practice of Poland's common judiciary in the 20th and 21st centuries – despite

[29] Justice of the Peace Włodzimierz Rojek (Ontario, Canada), while addressing the presidential draft, proposed the following principles for organising future courts of peace in Poland:
"– they should be part of the common courts, forming separate organisational units or divisions of municipal courts.
– justices of the peace should be appointed in the same way as judges of municipal courts, with the selection process allowing some role for local governments, such as providing opinions on candidates.
– a requirement for candidacy to the position of justice of the peace should be legal education and completion of an appropriately modified training program. Consideration could also be given to creating a training program specifically for future justices of the peace, with the possibility of additional training for those seeking to qualify for higher judicial positions.
– justices of the peace should have the same guarantees of judicial independence and impartiality as other judges within the common judiciary.
– justices of the peace should adhere to the same standards of conduct during their judicial tenure as other judges in the common courts and should be subject to the same disciplinary accountability.
– the procedures followed in courts of peace should be based on the proceedings for misdemeanor cases.
– appeals against decisions made by courts of peace should be heard by municipal courts or, if courts of peace are established as divisions of municipal courts, by regional courts". See: W. Rojek, *Sędzia pokoju w Polsce: jeżeli tak, to jaki?*, "Problemy Współczesnej Kryminalistyki" 2022, Vol. 26, pp. 287–303.
For further developments on the presidential draft and additional opinions, see: https://monitorkonstytucyjny.eu/archiwa/20413 (accessed: 17.02.2025); https://www.prawo.pl/prawnicy-sady/sedziowie-i-sady-pokoju-kiedy-sejmowa-podkomisja-zakonczy-prace,520489.html (accessed: 17.02.2025); https://www.prawo.pl/prawnicy-sady/sedziowie-pokoju-nie-moga-wymierzac-sprawiedliwosci,512814.html (accessed: 17.02.2025); https://www.prawo.pl/prawnicy-sady/sady-pokoju-sejmowa-komisja-wstrzymuje-prace,517264.html (accessed: 17.02.2025).

the developed proposals (from the Codification Commission of the Second Republic, government, and presidential initiatives), constitutional provisions (the March Constitution), regulations, parliamentary debates, and publications – this institution has never been established. In my opinion, from a legal historian's perspective, it is unlikely to be implemented in the future.

In September 1923, during discussions within the Judicial Structure Subcommittee of the Codification Commission of the Second Republic regarding the aforementioned third draft by Kamil Stefko, a polemic arose about the placement of justices of the peace within the judiciary structure. Witold Prądzyński noted that the draft avoided resolving the question of whether courts of peace were common courts.[30]

Another issue that sparked significant controversy within the Judicial Structure Subcommittee was the regulations specifying the qualifications required for candidates for the position of justice of the peace. Additionally, during debates on the jurisdiction of justices of the peace, an essential issue was raised about their hierarchical placement. Kamil Stefko highlighted this, explaining to the members of the Judicial Structure Subcommittee that the question of whether these judges constituted a separate instance or were part of the district court should be considered from both organisational and procedural perspectives. In his view, the draft included them organisationally as part of the district court but treated them procedurally as a separate instance. For obvious reasons, the constitutionality of the institution of justices of the peace was not contested.

It can be unequivocally stated that the Codification Commission of the Second Republic, despite the reluctance of its members, contributed effectively to the potential introduction of justices of the peace as an essential element of the law governing common courts in the Second Republic. The fundamental concepts developed in its forum, resulting from valuable substantive and exploratory debates, were fully reflected in the subsequent government work. In the area of provisions regarding justices of the peace, the Codification Commission of the Second Republic significantly influenced the final content of the 1928 law on the structure of common courts. However, these provisions eventually became a dead letter.[31]

30 M. Mohyluk, *O sędziach pokoju w pracach Komisji Kodyfikacyjnej II Rzeczypospolitej Polskiej*, "Miscellanea Historico-Iuridica" 2021, vol. XX, no. 1, pp. 265–271.

31 In the April Constitution of 1935, the regulations concerning the participation of non-professional elements in the common judiciary were entirely omitted. However, Wacław

Table 1. Basic Similarities and Differences

	Justices of the Peace in the Second Polish Republic	Justices of the Peace in the Third Polish Republic
Status	Non-professional, selected from among citizens, No requirement for legal education.	Elected in general elections, Requirement for higher legal education, professional.
Scope of Cases	Minor civil cases.	Minor civil cases, criminal cases, and misdemeanors.
Subordination	Judicial reforms and constitutional changes practically abolished them in the 1930s. They were to be subordinated to municipal courts.	They are to be subordinated to district courts.
Purpose of Existence	Resolving local disputes, mediation, and court settlements.	Relieving district courts, streamlining procedures.
Legal Basis	Constitutional basis (Article 76 of the March Constitution), Presidential decree of 1928 on the Law on the Structure of Common Courts, lack of implementing regulations.	No constitutional basis (issue with the application of Article 182 of the 1997 Constitution of the Republic of Poland), President's project of 2021, not enacted (ongoing legislative work).

Source: author's own work.

The debate on this topic in the Third Polish Republic continues,[32] with the fundamental obstacle to its resolution being the current provisions of the 1997 Constitution of the

Komarnicki aptly observed: "The current structure of the common judiciary, as defined under the provisions of the Presidential Decree of February 6, 1928, based on the March Constitution, does not contain provisions conflicting with the April Constitution, given the minor differences in the judiciary sections of both Constitutions." W. Komarnicki, *Ustrój państwowy Polski współczesnej. Geneza i system* (reprint of the work published in Vilnius in 1937), Kraków 2006, pp. 347–348. Less than 10 years after the *Law on the Structure of Common Courts* came into force, the institutions of jury courts and justices of the peace were abolished by the Act of April 9, 1938 (not by decree).

[32] See also P. Kruszyński, J. Kil, *Sądownictwo sędziów pokoju w drobnych sprawach karnych – perspektywa legislacyjna*, "Roczniki Administracji i Prawa" 2019, no. XIX (1), pp. 143–158; *Instytucja sędziego pokoju w wybranych państwach europejskich*, ed. A. Pogłódek, Warszawa 2020; *Udział obywateli w sprawowaniu wymiaru sprawiedliwości*, ed. R. Piotrowski, Warszawa 2021; Kmiecik R., Kmiecik Z.R., *Sądy pokoju – anachronizm czy krok ku demokratyzacji wymiaru sprawiedliwości?*, "Prokuratura i Prawo" 2021, no. 7–8, pp. 105–130; R.A. Olesiejuk, *Udział czynnika społecznego w wykonywaniu wymiaru sprawiedliwości*

Republic of Poland. Another hurdle is the criticism, primarily from populist politicians, of contemporary Polish democracy, including calls to replace the existing Constitution entirely. At this point, a risky question arises: Would a modification introducing the institution of justices of the peace (courts of peace) into the current Constitution's provisions become a pretext for far more sweeping changes?

In my opinion, a productive direction for reforms that could improve the functioning of Poland's common judiciary would involve greater incorporation of the interests (even economic ones) of mediators and legal representatives into judicial proceedings, as well as restructuring regulations to more effectively encourage dispute resolution through agreements (whether mediatory or judicial settlements).

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SUMMARY

On Justices of the Peace in the Second and Third Polish Republic – Remarks From a Legal Historian

At the beginning of the Second Polish Republic, in November 1918, the problem of organising the law came to the forefront in the creation of the foundations of the reborn Polish state and became a burning political and social issue. In the territory of the Second Polish Republic, district legislation was still in force. This situation led to the emergence of three different concepts for the further development of the Polish legal system, of which the one calling for the creation of original complexes of legal norms, gradually replacing district laws, won by far. In the Second Polish Republic, this work was entrusted to an institution specially established for this purpose, i.e. the Codification Commission of the Republic of Poland (3 June 1919).

The adoption by the Legislative Sejm of the March Constitution (1921) was a breakthrough moment in the work of the Codification Commission of the Second Polish Republic on the

law on the structure of common courts. At the meetings of the Subcommittee on the structure of the judiciary of the Commission, from 2 to 4 April 1921, Kamil Stefko was instructed to develop a project adapted to the provisions of the March Constitution. Stefko, broadly interpreting the constitutional reference to elected justices of the peace, included courts of the peace among common courts – alongside district, regional, appellate and the Supreme Court. The above project proposed a completely "non-professional" (social) link in the structure of the judiciary. Universal, with relatively broad competences in the field of civil cases and private criminal cases (here, however, without the possibility of passing judgment).

According to the regulation of the President of the Republic of Poland of 1928 – the *Law on the Organization of Common Courts,* alongside professional judges, lay judges were established, i.e. justices of the peace, commercial judges and jurors.

The review of statutory provisions shows that the Polish legislator constructed the entire organisation and competence of the peace courts in the main outlines. However, the Polish law on the organisation of common courts, in force since 1 January 1929, did not have any implementing regulations or additional acts, without which the implementation of the provisions on justices of the peace was impossible. In the Second Polish Republic, no justice of the peace was elected in any locality.

On November 4, 2021, the President of the Republic of Poland, Andrzej Duda, submitted a draft bill to the Sejm on the courts of the peace and the bill – *Provisions Introducing the Act on the Courts of the Peace.* In the initial assumption, these regulations are aimed at relieving the justice system of cases of lesser importance, accelerating court procedures and bringing the justice system closer to local communities. Thus, after more than 100 years, work on the institution of justices of the peace has been resumed. Basic differences and similarities are visible in the legal regulations and in the functioning of this institution, both in the Second and Third Republic. Discussions on the bill by President A. Duda are still ongoing in the Sejm.