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## **Election of the Local Court Members in the 19<sup>th</sup> Century City of Osijek**

### **ABSTRACT**

During the reign of Croatian Ban (Viceroy) Ivan Mažuranić (1873–1880), numerous reforms were implemented in the administration, the school system and the judiciary, since the political programme of his rule was based on building a modern legal infrastructure of Croatian autonomy. Already during the first year of his rule, Ban Ivan Mažuranić proposed to the Parliament the Act on Judicial Authority (*Zakon o vlasti sudačkoj*), which was adopted already next year, in 1874, to be considered one of the fundamental acts of the Croatian autonomous legal system. Aiming to disburden the judiciary in the first instance, in 1876, Ban Mažuranić followed the Act on Local Courts and Procedures (*Zakon o mjesnim sudovima i postupku pred njima*) to establish a court in each municipality authorised to deal with disputes over small sums of money. Although these were lay courts with features of administrative authority, this did not in any way threaten their position as a judicial authority. In practice, local courts acted as an effective and almost free system of the laity that disburdened greatly the judiciary and opened the way to modernisation of the Triune Kingdom of Croatia, Slavonia and Dalmatia according to European standards of a modern civil state.

**Key words:** local court, judiciary, judges, jurors, Osijek, 19<sup>th</sup> century

## Introduction

While ruling as a Croatian Ban from 1873–1880, Ivan Mažuranić<sup>1</sup> divided the judiciary and administration in Croatia in 1874. The reform was one of his fundamental undertakings aimed at building a modern legal system of Croatian autonomy and reintegration of the Military Frontier into the motherland.<sup>2</sup> In his inaugural speech delivered in the Croatian Parliament on 30<sup>th</sup> September 1873, Mažuranić talked about his previous achievements and presented the planned work programme, which he followed later on persistently. As an experienced politician, he was skilled in predicting the most important Croatian interests, yet he never promised more than he could deliver in realistic circumstances. In this sense, he was acting as a responsible politician and statesman. While addressing representatives of the Croatian Parliament on the occasion of his inauguration, he said: “...Gentlemen, as far as the steps, which should be undertaken in our country, are concerned, they are well outlined by Mr. President. We need reform in the judiciary, we need reform in education, we need reform in administration, legislation, in every profession. Gentlemen, my greatest concern will be to do what can be done in all these professions, and what my strength may not be able to do, gentlemen, I believe you will support me with your advice and voice; I believe that you will, in every place, both among the people and in the Parliament, support what you think would be beneficial for our country. You, gentlemen, will always find me on the path of the law...”<sup>3</sup> These words supported the fact that reforms in the judiciary were necessary in the first place, since they were understood as the most important step in the modernisation of the country, as well as in the implementation of the planned work programme. As promised, right after rising to power, Ban Mažuranić adopted appropriate judiciary and administration acts. The key reform was the division of judiciary and administration, so Mažuranić and other Parliament members addressed this reform with the first proposals of legal acts. The Act on Judicial Authority (original Croatian title *Zakon o vlasti sudačkoj*) was personally proposed by Mažuranić to the Parliament on 23<sup>rd</sup> December 1873.<sup>4</sup>

<sup>1</sup> In their chronicle, the Osijek monks entered a record about the visit of Ban Mažuranić to Osijek on 20th March 1876: „Mažuranić, the Ban of three kingdoms, came for a visit. On the next day, citizens and the clergy paid respects to him.“ S. Sršan, *Osječki ljetopisi*, Osijek 1993, p. 206.

<sup>2</sup> D. Čepulo, *Dioba sudstva i uprave u Hrvatskoj 1874. Godin*, „Hrvatska javna uprava“ 1999, No. 2, p. 227.

<sup>3</sup> A. Milušić, *Mažuranićeve reforme u hrvatskom sudstvu i modernizacija sudskog procesnog prava*, „Pravni vjesnik“ 1994, 10 (1-4), pp. 44-45.

<sup>4</sup> D. Čepulo, *Dioba...*, op. cit., p. 241.

The importance of the Act on Judicial Authority was comparable to the Austrian Constitutional Act on Judicial Authority from 1873 and it was used as a role model for Mažuranić's Act.<sup>5</sup> Considering its purpose and fundamental provisions, the Act on Judicial Authority was in the spotlight of autonomous government in Croatia. As Croatia retained the constitutional relics *sui generis* even after the Settlement, the mentioned Act on Judicial Authority was treated as a constitutional law by the Croatian legal system.<sup>6</sup>

## Reforms of the First Instance Judiciary

Further reforms undertaken by Mažuranić disburdened the first instance judiciary and established local courts that were authorised to deal with disputes over small sums of money.

Local courts were established on the basis of the Act on Local Courts and Procedures (original Croatian title *Zakon o mjesnim sudovima i postupku pred njima*)<sup>7</sup> adopted on 3<sup>rd</sup> October 1876.<sup>8</sup> Although there were several minor amendments to the Act in 1881, 1882 and 1907, they did not affect the concept of the judicial apparatus. Those amendments regulated the distribution of courts and the scope of their judicial powers. Such organisation of the first instance civil judiciary survived the Austrian-Hungarian Empire and was in force until 1929.<sup>9</sup>

The Act on Local Courts and Procedures comprised elements of both judiciary and administrative authority. Specific provisions of that Act referring to judges and trials were in conflict with provisions of the Act on Judicial Authority, by which courts were separated from the administration as of the

5 Čepulo D., *Mjesni sud na hrvatsko-slavonskom području između sudske i upravne vlasti*, "Liber Amicorum Mihajlo Dika - Zbornik radova u čast 70. Rodendana prof. dr. sc. Mihajla Dike" Zagreb 2013, p. 78.

6 Ibidem, pp. 253-254.

7 *Zakon o mjesnim sudovima i postupku pred njima* (translated in English: *Act on Local Courts and Procedures*), "Sbornik zakonah i naredabah valjanih za kraljevinu Hrvatsku i Slavoniju" 1976, No. 87, vol. 32.

8 According to the articles 1, 2, 21 and 82 of the Act on Local Courts and Procedures adopted on 3rd October 1876, the order No. 564 dated 6th February 1877 issued by the Royal Croatian-Slavonian-Dalmatian Provincial Government, the Department of Internal Affairs and Justice, requested the establishment of 168 local courts for the old provincial area of the Kingdom of Croatia and Slavonia, and the order No. 11.351 dated 27th August 1883, issued by the Ban of the Kingdom of Croatia, Slavonia and Dalmatia, being a royal commissioner for the embodiment of the Military Frontier, requested the establishment of 157 local courts for the area of former Croatian-Slavonian Frontier. M. Smrekar, *Priručnik za političku upravnu službu*, Zagreb 1899, p. 621.

9 Until enforcement of the Act on the organisation of regular courts for the Kingdom of Serbs, Croats and Slovenes (original Croatian title *Zakon o uređenju redovnih sudova za Kraljevinu Srba, Hrvata i Slovenaca*, dated 18<sup>th</sup> January 1929. Official Journal of the Kingdom of Serbs, Croats, and Slovenes dated 25th January 1929, No. 20-X.

articles stating that judiciary was independent, that judicial bodies, internal organisation and rules of procedure could be established and abolished only by legal regulations, that judges were appointed by the king for life and entitled to compensation. The Act on Local Courts and Procedures did not guarantee any of that nor did it protect judges from being moved against their will. Therefore, as of the provisions of the Act on Judicial Authority, local court judges and jurors could not be treated as judges, and local courts were not treated as courts.<sup>10</sup>

There was no direct influence of the administrative bodies on local courts, yet the trial at the local court had the functional elements of a judicial system, which made the procedure similar to civil lawsuits.<sup>11</sup>

Although the local court had some characteristics of administrative authority, this did not jeopardise its position as a judicial authority. The local court had the judicial authority, but due to its unclear position in practice, administrative authorities treated it as a part of the administration, which was cleared only after the interventions of the Croatian Government.<sup>12</sup>

Considering such dual position of the local court, it is best described as a special laity court included in the judicial system and such standpoint is also taken by the Croatian doctrine.

However, if considering its pronounced administrative elements, especially the elements of organic bonding with the administration, it must be concluded that there was a certain level of mixing between the administration and the judiciary, and even self-government, because the local court was derived from municipal bodies.<sup>13</sup>

As a rule, local courts were established in each municipality (city, commercial, political).<sup>14</sup> These courts were in charge of resolving civil legal disputes over sums of money that did not exceed a certain amount (in the case of Osijek, it was 100 forints<sup>15</sup>), and in disputes about other cases (movable property and personal deeds) if the requestor was willing to accept a certain sum of money instead of movable property or deeds. Other local courts were also authorised to deal with same disputes, but of less financial value (from 30 forints to 60 forints, depending on the population of a town). In later amendments, local

<sup>10</sup> D. Čepulo, *Dioba...*, op. cit., p. 256.

<sup>11</sup> Ibidem.

<sup>12</sup> Ibidem, p. 257.

<sup>13</sup> Ibidem.

<sup>14</sup> Exceptionally, a joint local court could be established for two or more municipalities, but this was relatively rare. Compared with *Zakon o mjesnim sudovima i postupku pred njima* – Act on Local Courts and Procedures, §. 1.

<sup>15</sup> Beside the Local Court of Osijek, local courts were established in Zagreb, Varaždin, Karlovac, Koprivnica, Požega, Križevci, Senj, Bjelovar, Sisak and Bakar. Those courts were authorised to deal with disputes related to amounts of up to 100 forints, Compared with *Zakon o mjesnim sudovima i postupku pred njima* – Act on Local Courts and Procedures, §. 21.

courts could deal with cases with value up to 500 forints, if the parties agreed accordingly.<sup>16</sup>

There were 15 local courts in the area of the royal district court in Osijek, as follows: 1. Aljmaš, for the administrative municipality of Aljmaš, jurisdiction for cases of up to 30 forints, eight jurors; 2. Bijelo Brdo, for the administrative municipality of Bijelo Brdo, jurisdiction for cases of up to 30 forints, twelve jurors; 3. Bizovac, for the administrative municipality of Bizovac, jurisdiction for cases of up to 30 forints, twelve jurors; 4. Čepin, for the administrative municipality of Čepin, jurisdiction for cases of up to 30 forints, eighteen jurors; 5. Dalj, for the administrative municipality of Dalj, jurisdiction for cases of up to 60 forints, eighteen jurors; 6. Erdut, for the administrative municipality of Erdut, jurisdiction for cases of up to 30 forints, twelve jurors; 7. Ernestinovo, for the administrative municipality of Ernestinovo, jurisdiction for cases of up to 30 forints, eight jurors; 8. Hrastin, for the administrative municipality of Hrastin, jurisdiction for cases of up to 30 forints, twelve jurors; 9. Osijek, jurisdiction for cases of up to 100 forints, two hundred jurors; 10. Petrijevci, for the administrative municipality of Petrijevci, jurisdiction for cases of up to 30 forints, twelve jurors; 11. Retfala, for the administrative municipality of Retfala, jurisdiction for cases of up to 30 forints, eight jurors; 12. Sarvaš, for the administrative municipality of Sarvaš, jurisdiction for cases of up to 30 forints, eighteen jurors; 13. Tenja, for the administrative municipality of Tenja, jurisdiction for cases of up to 30 forints, eight jurors; 14. Valpovo, for the administrative municipality of the market town of Valpovo, jurisdiction for cases of up to 60 forints, eight jurors; 15. Valpovo, for the administrative municipality of the Valpovo outskirts, jurisdiction for cases of up to 30 forints, eight jurors.<sup>17</sup>

In the city of Osijek, there were two divisions of the local court, one for the Upper Town and the other for the Lower Town.<sup>18</sup> Each division disposed of

<sup>16</sup> I. Beuc, *Povijest institucija državne vlasti Kraljevine Hrvatske, Slavonije i Dalmacije*, Zagreb 1985, p. 309.

<sup>17</sup> M. Smrekar, op. cit., p. 633.

<sup>18</sup> In larger cities, the local court could have several divisions assigned to specific parts of the city, as determined by the city administration. Divisions of the local court were marked with Roman numerals I, II, III, etc. depending on the number of divisions. Each division of the local court disposed of necessary clerks and support staff, as well as of appropriate office premises in the part of the city for which the local court division was in charge. Each local court division had to keep a separate book of records and statements, and had its seal designated with a specific division numeral. Out of the total number of jurors, each local court division was assigned a specific number of jurors according to their residence and the population size. They were obliged to participate in court sessions. In order to facilitate proper functioning of each division, the city administration had to appoint an appropriate number of local judge deputies. The local judge supervised the local court divisions and authorised his deputies to preside over sessions and to manage specific divisions. The conclusions of the city administration, i.e. of the Osijek City Council referring to the functioning of the local court had to be submitted to the provincial government for further approval. M. Smrekar, op. cit., p. 606.

one hundred jurors, meaning that there were two hundred jurors for the Local Court of Osijek.<sup>19</sup>

The selection of judges, deputies and jurors was regulated by the Act on Local Courts and Procedures.

## Local Court

Local courts consisted of a judge, a deputy, several jurors and the necessary number of clerks and other support staff. The number of jurors for the local court was determined by the Ban, who decided on it by taking into account the size and intelligence of population, as well as other circumstances.<sup>20</sup> The smallest number of jurors was eight, which was determined for small municipalities, i.e. villages, while the largest number of jurors could be two hundred, like it was determined for the local court of the city of Osijek.

Local court judges, their deputies and jurors were elected by municipal representatives<sup>21</sup> for a term of one year (from 1881 on, the term lasted for three years) by a majority of votes of at least two thirds of the representatives present at the elective session.<sup>22</sup>

When two or more municipalities had a joint local court, judge, deputy and jurors were elected at a joint session of delegates of respective municipalities. At those session, the delegates decided on the contribution of each municipality for the maintenance of the local court.<sup>23</sup>

Only a local municipal representative could be elected judge, deputy or juror of the local court. There were three main conditions – the candidate had to have a permanent residence in respective municipality, he had to be at least 30 years old and had to be literate.<sup>24</sup>

The duty of a local court judge, his deputy or jurors could not be performed by convicts or persons who were being sued for any crime, offense or delicts arising from expedience or violation of public order or morals, or by bankrupt or insolvent persons.<sup>25</sup>

Locals that served in state and church institutions were also not suitable to be elected to the positions of judges and jurors. The Ban, heads of royal governmental departments, serving royal judges and court clerks, priests,

<sup>19</sup> M. Smrekar, loc. cit., p. 633.

<sup>20</sup> *Act on Local Courts and Procedures*, §. 2.

<sup>21</sup> For the city of Osijek – City Council.

<sup>22</sup> Amendment of the Act of 6<sup>th</sup> April 1881 modified the article 6 of the *Act on Local Courts and Procedures* from 1876, which extended the terms of local judges, deputies and jurors to three years.

<sup>23</sup> *Act on Local Courts and Procedures*, §. 6.

<sup>24</sup> *Act on Local Courts and Procedures*, §. 8.

<sup>25</sup> *Act on Local Courts and Procedures*, §. 9.

serving public teachers, as well as royal soldiers could not be elected as local court officials.<sup>26</sup>

Residents who met the conditions for election to the local court could be eliminated if for some reason they were unable to perform one of the required functions. Persons older than 65, representatives in the national assembly, lawyers, doctors, pharmacists who did not have an assistant, persons who performed the duty of a judge, deputy or juror during a run-out term, persons who worked in the communications institute and persons who proved not to be able to cover the costs of the service.<sup>27</sup>

Every year, one month before the elections, the municipality authorities compiled a list of municipal officials who could be elected as local judges, deputies or jurors. The list was publicly announced and displayed for 8 days. Objections could be submitted to the municipal authorities within the same deadline. Political districts, in cities these were city councils, decided on each objection irrevocably. If the objection was justified, the list was corrected.<sup>28</sup>

Local court jurors, as well as judges and their deputies performed their duty for free<sup>29</sup>, while clerks and other services were paid from municipal income.<sup>30</sup>

The local court had also its seal with the coat of arms of the Kingdom of Croatia, Slavonia and Dalmatia and the sign "*Local court for the municipality of* (name of the municipality)".<sup>31</sup>

Members of the local court were not allowed to participate in discussions that concerned them, their spouses, or spouses' relatives in horizontal or vertical line, including uncles, nephews, aunts and nieces.<sup>32</sup>

The local court was obliged to hold at least one session every week. Session days were determined in advance at the beginning of each year. In urgent cases, the judge (or his deputy) could convene a session immediately, or the next day at the latest.<sup>33</sup>

Clerks and other court employees were appointed by the mayor (in cities), while in other municipalities, they were hired by municipal notaries, free of charge in his capacity as a clerk of the local court. Other municipality staff were at the disposal of local courts for administrative tasks.<sup>34</sup>

<sup>26</sup> *Act on Local Courts and Procedures*, §. 10.

<sup>27</sup> *Act on Local Courts and Procedures*, §. 11.

<sup>28</sup> *Act on Local Courts and Procedures*, §. 13.

<sup>29</sup> Exceptionally, larger municipalities could grant a local judge some kind of reward, compared with the Act, §. 3. Likewise, judges, deputies and jurors could get travel costs reimbursed. M. Smrekar, op. cit., p. 598.

<sup>30</sup> *Act on Local Courts and Procedures*, §. 5.

<sup>31</sup> Although Osijek had a status of a city (Staat), the seal stated the name of the local court of particular municipality, which also referred to the city of Osijek. *Act on Local Courts and Procedures*, §. 4.

<sup>32</sup> *Act on Local Courts and Procedures*, §. 16.

<sup>33</sup> *Act on Local Courts and Procedures*, §. 17.

<sup>34</sup> *Act on Local Courts and Procedures*, §. 18.



Each local court hired a local judge (or his deputy) as a president and two jurors. The local court would issue verdicts on behalf of His Imperial and Royal Apostolic Majesty.<sup>35</sup> The local court judge summoned the jurors to the sessions in alphabetical order.<sup>36</sup>

When a local court judge was prevented from performing his duty, he should have informed his deputy about it, in which case the deputy was then authorised to preside over the court. Local court judges who could not justify their absence from the sessions and failed to inform their deputies about their absence were punished by the district court with a fine of 10 forints.

When prevented from attending sessions they were invited to, jurors also had to inform the local judge or his deputy about their absence at least one day before the session. In case the invited juror did not justify his absence well in advance, the local court judge fined him 5 forints. The juror had the right to appeal against the judge's decision to the royal district court within 8 days, which would then make an irrevocable decision about the juror's fine.

In case of the unjustified absence of judges, deputies or jurors from the local court sessions, due to which the session could not be held, the royal district court could compensate the costs caused by the cancelling of sessions upon the parties' request. An appeal against the decision of the royal district court could be made to the royal ban table, which made irrevocable decisions on such appeals.

Jurors failing to attend sessions to which they were invited could be invited again out of the alphabetical order to participate in next sessions.<sup>37</sup>

Local courts held their sessions regularly in their premises or in the municipal office, if they did not dispose of their own premises.<sup>38</sup>

## Local Court in Osijek

The local court was comprised of a judge, a deputy judge, and a certain number of jurors and clerks. The Local Court of Osijek disposed of two hundred jurors, who were appointed by the Ban upon proposal of the local authorities.<sup>39</sup> The number of jurors varied depending on the municipality and the number of inhabitants. The smallest number of jurors was eight, followed by twelve, up to the maximum two hundred.

<sup>35</sup> For Croatia-Slavonia, the Apostolic King Franz Joseph I.

<sup>36</sup> *Act on Local Courts and Procedures*, §. 19.

<sup>37</sup> *Act on Local Courts and Procedures*, §. 20.

<sup>38</sup> M. Smrekar, loc. cit., p. 606.

<sup>39</sup> *Act on Local Courts and Procedures*, §. 2.



Members of the Local Court of Osijek were elected by the Osijek City Council.<sup>40</sup> Candidates were elected if winning a majority of votes of at least two-thirds of all city councillors<sup>41</sup> who were present at the elective session. Members of the Local Court of Osijek were first elected for a one-year term, and since 1881 for a three-year term. A three-year term was established for all local court officials in Croatia and Slavonia, at the end of which a new list of local court candidates was drafted. The first day of July was taken as a starting date of regular three-year terms (for example, 1890, and every third following year, i.e. 1893, 1896, etc.).<sup>42</sup>

The local court sat as a panel composed of a judge or his deputy as a president and two jurors. The local court judge (or deputy) invited two jurors to attend each court session. Jurors were invited following the alphabetical order entered in the directory. The order of inviting jurors to court sessions could be changed only if invited juror could not attend the session for justified reasons or for reasons established by the Act.<sup>43</sup>

The first election of members for the Local Court of Osijek took place on 28<sup>th</sup> March 1877, at the general assembly of the Osijek City Council, under number 2778.

“This City Authority proposes, according to §. 8 to 12 of the Act on Local Courts and Procedures of 3<sup>rd</sup> October 1876 and concluded list of municipal officials, who can be elected as local court judge, his deputy and jurors for the year 1877 in the city of Osijek, to perform the election of the local court judge and his deputy based on the writing of the Department of Internal Affairs and Justice of the High Government of the Kingdom of Dalmatia, Croatia and Slavonia, issued in Zagreb on 6<sup>th</sup> February 1877 under the item No. 719, and to elect 200 jurors according to the order of the Governmental Department of Justice issued on 6<sup>th</sup> February 1877 under the item No. 564.”

“According to the writing of the Governmental Department of Justice in Zagreb of the Kingdom of Dalmatia, Croatia and Slavonia issued on 22<sup>nd</sup> this month under the item No. 1632, larger cities are allowed to establish local courts according to their needs and to designate them with numerals I, II, III corresponding to the divisions that will be authorised for specific city territory as approved by the High Government; therefore, the general assembly, bearing

<sup>40</sup> Municipal representation, but in the case of Osijek – the City Council.

<sup>41</sup> Amendment of the Act of 6<sup>th</sup> April 1881 (§. 1) modified the article 6 of the Act on Local Courts and Procedures from 1876, which extended the terms of local judges, deputies and jurors to three years.

<sup>42</sup> M. Smrekar, *op. cit.*, pp. 600-601.

<sup>43</sup> *Ibidem*, p. 607.

in mind the local circumstances of the city of Osijek, decided to establish two divisions for the local court of Osijek, as follows: I. for the upper and inner town with the seat in the upper town, and II. for the lower and new town with the seat in the lower town, and to exercise its right to unanimously elect candidates for the local courts from the proposed lists for the current year”.<sup>44</sup>

The above citations describe the procedure of local court members election and the authorised bodies to perform such election. The Local Court of Osijek had two divisions – I. for the Upper Town and for Inner Town, i.e. for the Fortress (Tvrđa) with one hundred jurors, and II. for the Lower Town and the New Town, with one hundred jurors as well (thus making a maximum of two hundred jurors for the whole city).

The same situation was repeated the following year, on 1<sup>st</sup> June 1878, as of the general assembly record No. 4732.<sup>45</sup> In the next two years, local court members were elected every year. At the assembly held on 30<sup>th</sup> May 1879, under the record No. 5838, the Osijek City Council confirmed a new list of jurors, along with the new/old judge and deputies<sup>46</sup>, and one year later, on 21<sup>st</sup> May 1880, under the record No. 5253, it issued again a new list of jurors, confirming again the new/old judge and deputies.<sup>47</sup>

In 1881, the Act on Local Courts and Procedures was amended after the authorities realised that it was not necessary to re-elect more or less the same people every year. The amendment to the Act was adopted on 6<sup>th</sup> April 1881, by altering the paragraph six to extend the mandate of local court judges, deputies and jurors to three years. The session held on 7<sup>th</sup> June 1881 was the last one at which the members of the local court were elected for a one-year term, as it was recorded under No. 5932.<sup>48</sup>

Osijek City Council held the next session that discussed local courts on 13<sup>th</sup> August 1881, upon having received the news about the amendment to the Act and its applicability to the already elected members of the local court to extend their mandate from one to three years. The record was labelled with the No. 7294:

„Referring to the writing of the Governmental Department of Justice in Zagreb of the Kingdom of Dalmatia, Croatia and Slavonia issued on 15<sup>th</sup> June 1881 under the No. 4483, this municipal authority concluded on 7<sup>th</sup> June 1881 under the item No. 5932 that the election of the judge and his deputy for the local court of Osijek for the term starting on 1<sup>st</sup> July 1881 and ending in June 1884, which was performed by the city councillors at the session held on 7<sup>th</sup>

<sup>44</sup> S. Sršan, *Zapisnici grada Osijeka 1876–1886*, Osijek 2006, pp. 63–66.

<sup>45</sup> Ibidem, pp. 121–124.

<sup>46</sup> Ibidem, pp. 151–154.

<sup>47</sup> Ibidem, pp. 187–190.

<sup>48</sup> Ibidem, pp. 247–249.

June 1881, cannot be confirmed because article 6 of the Act on Local Courts and Procedures adopted on 3<sup>rd</sup> October 1876 determines that elective sessions shall be attended by at least two-thirds of the councillors, and the mentioned session held on 7<sup>th</sup> June was attended by only 21 councillors, i.e. only one more than a half, so there is a need to perform a new selection of staff for the local court of Osijek as soon as possible, exactly according article 6 of the mentioned Act.

As the General Assembly met today with a sufficient number of its members, it considers the High writing and unanimously adopts the Assembly's conclusion dated June 1881, No. 5932, by which elected judge for the local court of the city of Osijek for the period from 1<sup>st</sup> July 1881 to the end of June 1884 is again the city senator Mr. Vaso Atanasijević, his deputies are again the city captain Mr. Petar Modesti and the city grand notary, Mr. Ante Ioannović, and the jurors are persons as listed there and announced.

The city authority is instructed to submit this conclusion in a certified copy to the Governmental Department of Justice of the Kingdom of Dalmatia, Croatia and Slavonia for the purpose of obtaining a confirmation of the re-elected local judge and his deputy from His Highness Mr. Ban, according to article 6 of the Act on Local Courts and Procedures of 3<sup>rd</sup> October 1876.”<sup>49</sup>

Three years later, the General Assembly of the city of Osijek adopted again a new list of members for the local court of Osijek. The issue was discussed at the session held on 11<sup>th</sup> June 1884, under the agenda item No. 7282.<sup>50</sup> The next election was held in 1887, the records of which are found in the minutes of the session held on 12<sup>th</sup> July 1887, under the agenda item No. 54 – number 6770-1887.<sup>51</sup>

The following election of the local court members encountered a problem due to the insufficient number of city councillors. Since the Act required the presence of 2/3 of the representatives<sup>52</sup> at the elective session, new election of the local court members was postponed during the whole year. The first lack of quorum occurred on 20<sup>th</sup> January 1891, as the issue was presented on the agenda item No. 1 – number: 10439 ex 1890:

“Election of the local court judge, his deputy and jurors for the new three-year period.

The Chairman removes that issue from the agenda due to the lack of presence of the necessary 2/3 of the city councillors.

As proposed by the city councillor Mr. Vašo Gjurgjević, the city council unanimously concludes that they will not elect any of the city officials for the

<sup>49</sup> Ibidem, pp. 261-262.

<sup>50</sup> Ibidem, pp. 420-423.

<sup>51</sup> S. Sršan, *Zapisnici grada Osijeka 1887–1895*, Osijek 2007, pp. 46-49.

<sup>52</sup> *Act on Local Courts and Procedures*, §. 6.

local court judge, because they are already burdened with city affairs. For the purpose of making a specific proposal, it forms a committee consisting of councillors Vaso Gjurgjević, Dragutin Bartolović and Mato Gršković, who shall submit their proposal to the city council.”<sup>53</sup>

The next lack of quorum occurred again on 23<sup>rd</sup> May 1891, as the issue was again on the agenda item No. 53 – number: 10439 ex 1890 and 806:

“Election of the local court judge, his deputy and jurors.

The Honourable Mr. Chairman removes this issue from the agenda because there is no necessary presence of 2/3 of the councillors.”<sup>54</sup>

The lack of quorum happened again on 10<sup>th</sup> August the same year, when the issue was to be discussed under the agenda item No. 83 – number: 10439:

“Election of the local court judge, his deputy and jurors.

The Chairman removes this item from the agenda because there is no necessary presence of 2/3 of the councillors.”<sup>55</sup>

The following record referring to the election of the local court members was the shortest one among the minutes of the sessions held by the Osijek City Council, which indicated that the election could not be performed again due to the lack of quorum. On 5<sup>th</sup> December 1891, record with the ordinal number 119 – number: 10439 and 806 stated just one sentence:

“Election of the local court judge, his deputy and jurors.”<sup>56</sup>

Another record available in the archives dates back to 27<sup>th</sup> January 1892 when the session of the Osijek City Council was finally held after more than a year of failing to elect new members of the Osijek local court. On that occasion, the new list of local court members was confirmed, as of the record No. 1 – number: 10439 and 806.<sup>57</sup>

The penultimate record concerning the election of local court members dates to 13<sup>th</sup> October 1896, when the Osijek City Council held a session chaired by Count Teodor Pejačević, Grand Prefect of the Virovitica County. That session was held after more than four years since the last election of the Osijek local court members. The record was archived with No. 265, number 14.356.<sup>58</sup>

The last record concerning the election of the Osijek local court members available in the archives refers to a session of the Osijek City Council chaired again by the Count Teodor Pejačević, Grand Prefect of the Virovitica County.

<sup>53</sup> S. Sršan, *Zapisnici grada Osijeka 1887–1895*, op. cit., pp. 323.

<sup>54</sup> Ibidem, pp. 353.

<sup>55</sup> Ibidem, p. 366.

<sup>56</sup> Ibidem, p. 389.

<sup>57</sup> Ibidem, pp. 399–402.

<sup>58</sup> S. Sršan, *Zapisnici grada Osijeka 1896–1901*, Osijek, 2008, pp. 114–116.

The session was held on 13<sup>th</sup> September 1899, almost three years after the previous appointment of the judge. The record was archived with No. 163, number 16.403.<sup>59</sup>

At the session held on 27<sup>th</sup> October 1899, city councillor Mr. Novak reported that the provincial government confirmed the election of Ante Joanović as a local court judge, and Nikola Virovac and Otokar Novak as his deputies. The Osijek City Council acknowledged the confirmation unanimously.<sup>60</sup>

As stated in the conclusion referring to the election of local court members, the election had to be confirmed by the Ban.<sup>61</sup> However, prior to the Ban's approval, royal grand prefect of the respective county had to issue a confirmation for the election list. If he had no objections, then the list could be forwarded to the Ban for his approval.<sup>62</sup>

After the Ban approved the proposal and bestowed the honours on local judges, deputies or jurors, they were obliged to accept the appointment. If they refused, they were penalised with fines from 25 to 50 forints. The penalty was determined by political authorities, or by city governments.<sup>63</sup>

Once the Ban confirmed the election of local judges, deputies and jurors, political authorities were obliged to communicate the appointment to the district courts, as the local courts were under their jurisdiction. Upon receiving the confirmed list of newly elected local court members, the presiding judge of the authorised district court had to organise oathtaking according to article 15 of the Act on Local Courts and Procedures of 3<sup>rd</sup> October 1876. Newly elected local court members took oath at the premises of the respective district court. President of the district court gathered newly elected local court members, as well as members of the current representation.<sup>64</sup>

The oath was read aloud by the district court president:

"You will swear to the almighty and all-knowing God that you will be faithful and loyal to His Majesty the Emperor of Austria, the Apostolic King of Hungary, Dalmatia, Croatia and Slavonia, as well as to the state and province constitution, and that you will perform the duties of local judge, deputy, jurors and vote on court's behalf to the best of your knowledge and conscience."

Each elected member of the local court would swear by saying:

"I swear, so help me God!"<sup>65</sup>

<sup>59</sup> Ibidem, pp. 450-452.

<sup>60</sup> Ibidem, p. 462.

<sup>61</sup> *Act on Local Courts and Procedures*, §. 7.

<sup>62</sup> M. Smrekar, op. cit., p. 602.

<sup>63</sup> *Act on Local Courts and Procedures*, §. 14.

<sup>64</sup> M. Smrekar, op. cit., p. 605.

<sup>65</sup> *Act on Local Courts and Procedures*, §. 15.

## Conclusion

Most of legal acts adopted during the reign of Ban Ivan Mažuranić referred to the reforms of the judicial system. While considering these reforms, the quantitative aspect is usually stressed as there were many new laws enforced to regulate the new judicial system and the organisation of judicial authority in the Kingdom of Croatia, Slavonia and Dalmatia. However, the quantity of these laws emphasises the scope of legislative work in the mentioned area, which was completed in a relatively short time.

The Act on Judicial Authority was among the fundamental laws of the Croatian autonomous legal system adopted by the Croatian Parliament as part of Mažuranić's reforms. The Act itself was created mainly based on the Austrian Constitutional Act on Judicial Authority from 1873, although the Austrian Act did not recognize the legal jurisdiction of the local courts, but considered them as reconciliation courts. Considering its purpose and fundamental provisions, the Act on Judicial Authority was in the spotlight of autonomous government in Croatia. Furthermore, the Act on Local Courts and Procedures contributed to significant disburdening of the first instance courts, as the matter of financial disputes was taken over by local courts. As local courts were established in almost every town and municipality, and staffed by local laity who served for free, such a reform saved a lot of time and money for the Triune Kingdom of Croatia, Slavonia and Dalmatia.

As a modern state requires a modern judiciary, successful reforms and enforcement of new laws created a path for the modernisation of the Croatian state according to the European standards of a modern civil state.

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### SUMMARY

#### Election of the Local Court Members in the 19<sup>th</sup> Century City of Osijek

With the election of Ivan Mažuranić as Ban of Triune Kingdom of Croatia, Slavonia and Dalmatia in 1873, numerous reforms were implemented in the administration and the judiciary. In the beginning of his term, he proposed to the Parliament the Act on Judicial Authority (*Zakon o vlasti sudačkoj*), which was adopted already next year, in 1874, to be considered one of the fundamental acts of the Croatian autonomous legal system. In order to disburden the judiciary in the first instance, in 1876, Ban Mažuranić followed the Act on Local Courts and Procedures (*Zakon o mjesnim sudovima i postupku pred njima*) to establish a court in each municipality authorised to deal with disputes over small sums of money. Local courts consisted of a judge, a deputy, several jurors and the necessary number of clerks and other support staff. The number of jurors for the local court was determined by the Ban, who decided on it by taking into account the size and intelligence of the population, as well as other circumstances. The smallest number of jurors was eight, for small municipalities, i.e. villages, while the largest number of jurors could be two hundred, like in the case of the local court of the city of Osijek. Local court judges, their deputies and jurors were elected by municipal representatives for a term of one year (from 1881 on, the term lasted for three years) by a majority of votes of at least two thirds of the representatives present at the election session. In the city of Osijek, there were two divisions of the local court, one for the Upper Town and the other for the Lower Town. Each division disposed of one hundred jurors, meaning that there were two hundred jurors for the Local Court of Osijek.