ASEJ
Scientific Journal
Bielsko-Biala School of Finance and Law

Volume 26 | Number 4 | December 2022

ISSN2543-9103
eISSN2543-411X
www.asej.eu

Bielsko-Biała

Bielsko-Biala School of Finance and Law
Wyższa Szkoła Finansów i Prawa w Bielsku-Białej

Scientific Journal

Zeszyty Naukowe

Academic Quarterly Publication
Vol 26, No 4 (2022)

Bielsko-Biala 2022

Scientific Journal of Bielsko-Biala School of Finance and Law
The Journal is published by Bielsko-Biala School of Finance and Law; ISSN 2543-9103, eISSN 2543-411X.

The Journal is a quarterly publication with the scoring of 70 assigned by the Polish Ministry of Education and Science, prompting quality scientific work with local and global impacts, conducting a peer-review evaluation process and providing immediate open access to its content. The publication features original research papers as well as review articles in all areas of science, with particular emphasis on social sciences (including Finance, Economics, Business, Law, Internal Security) and technical sciences (especially IT).

The Scientific Journal Office
Bielsko-Biala School of Finance and Law University Press
ul. Tańskiego 5, 43-382 Bielsko-Biała;
tel. +48 33 829 72 42, fax. +48 33 829 72 21; http://www.wsfip.edu.pl; http://asej.eu

ISSN 2543 – 9103 eISSN 2543-411X

December – 2022

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Editorial Words

Dear esteemed readers,

It is my great pleasure to welcome you to the latest edition of ASEJ, the academic journal that brings you the latest research in the fields of law, economics, logistics, finance, psychology, criminology, computer science, and security. This issue features a diverse range of articles from leading experts in these fields, showcasing their latest research and insights into current trends and challenges.

As we continue to face unprecedented challenges and rapidly evolving technological advancements, it is more important than ever to stay up-to-date with the latest research and trends in these fields. This issue of ASEJ offers valuable insights and perspectives that are essential for anyone seeking to stay at the forefront of their respective disciplines.

We would like to take this opportunity to express our sincere gratitude to the authors for their hard work and contributions to the advancement of knowledge. We would also like to acknowledge the invaluable support of the Bielsko-Biala School of Finance and Law for their continued commitment to publishing this journal, which serves as a platform for the exchange of the latest knowledge and insights.

Virtual reality (VR) technology has been advancing at a rapid pace, and with its growth come a range of challenges in various fields, including economics, law, security, and computer science. In the realm of economics, one challenge is determining how to integrate VR technology into existing business models. VR has the potential to revolutionize the way companies conduct business, but it also requires significant investment and infrastructure to do so. Additionally, there are concerns about how VR will impact the job market, as it could potentially eliminate the need for certain types of jobs while creating new ones in the VR industry.

In this issue, we also explore the growing significance of virtual reality in law, economics, finance, and security. As VR technology continues to evolve, it presents both opportunities and challenges in these fields. For example, in economics, VR has the potential to revolutionize the way businesses operate, but it also requires significant investment and infrastructure. In law, the use of VR raises important questions around data protection, privacy, and intellectual property rights. In finance, VR can be used to enhance customer experiences and provide new insights into investment opportunities. In security, VR presents new risks and challenges, such as ensuring the safety of users and protecting sensitive data from cyber threats.

We hope that this issue of ASEJ will prove insightful and informative for our readers, and we look forward to your feedback and contributions in future editions.

Sincerely,

Dr Muhammad Jammal
Editor of the ASEJ, Issue 4, Volume 26, 2022

Courts of the peace within the legal system of the Republic of Poland

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Abstract— **The purpose of this study is not a detailed analysis of the proposed legal solutions concerning Courts of the peace, especially since at the time of writing this article the legislative process is at an early stage. On November 4, 2021, the Sejm received the draft Act on Magistrates' Courts presented by the President of the Republic of Poland, the first reading of which took place on December 2, 2021, as well as the draft provisions introducing the Act on Magistrates' Courts. The presidential project is not the only one being processed. Despite this, it is worth making a preliminary analysis of the proposed assumptions, as well as possible future objections that may be raised after the adoption of the regulations, because the basic issues are unlikely to change radically. Regardless of this, the study is an attempt to initially determine the possible consequences of introducing the described legal solutions to the legal system for the judiciary.**

Keywords— courts of the peace, judiciary, legal system, Polish law.

I. CONSTITUTIONAL ISSUES

The justification for project I includes a broad reference to historical experience going back several centuries, including the Second Polish Republic and the Constitution of March 17, 1921. Foreign experience of countries with long democratic traditions was also referred to, pointing out that although it is an institution characteristic of Anglo-Saxon countries, it can also be found in the legal systems of Belgium and Switzerland. Other project promoters also referred to the traditions of European countries. It is difficult to negate the tradition of such solutions or the intention of introducing them into legal systems, which is primarily entrusting the courts of the peace with the recognition of the so-called minor matters. Undermining the reasons accompanying such considerations is not the purpose of this study. Also in the doctrine, it is pointed out, for example, that through the participation of representatives of society in the administration of justice, i.e., by a factor lacking professional preparation, it is easier to take into account social views on the application of law and the social hierarchy of values in adjudication, which in turn prevents excessive emancipation of the judiciary (Banaszek 2012). However, the issue of the possibility of introducing such solutions requires consideration, taking into account the content of the current Constitution of the Republic of Poland of 2 April 1997.

Undoubtedly, a comparative analysis of solutions functioning in democratic countries, which precedes the project, is necessary. However, one should not lose sight of the holistic nature of the legal systems functioning in these countries, which must be taken into account when trying to implement solutions to another system. At the same time, the Constitution of the Republic of Poland, like other legal acts of a fundamental nature, is created in specific historical, social and geographical circumstances. In the case of the Polish legal system, the content of the Constitution, also relating to the judiciary, was significantly influenced by the negative experiences of the communist period.

Pursuant to Art. 74 of the Act of March 17, 1921, the Constitution of the Republic of Poland, the Courts administer justice on behalf of the Republic of Poland. Judges are appointed by the President of the Republic, unless the law provides otherwise, however, Courts of the peace are generally elected by the people (Article 76). Jury courts will be appointed to adjudicate on crimes punishable by more severe penalties, and on political crimes. Deeds subject to assize courts, the organization of these courts and the course of proceedings will be determined by detailed laws (Article 83). The Supreme Court for judicial, civil and criminal cases is established (Article 84). The organization of military courts, their jurisdiction, the course of proceedings, and the rights and obligations of members of these courts will be determined by separate acts (Article 85). A separate Competence Tribunal will

ASEJ - Scientific Journal of Bielsko-Biala School of Finance and Law
Volume 26, No 4 (2022), pages 5
https://doi.org/10.19192/wsfip.sj4.2022.7
Received: January 2022 Accepted: October 2022
Published: December 2022

be established by law to resolve disputes over jurisdiction between administrative authorities and courts (Article 86). The above provisions therefore provide for the appointment of Courts of the peace directly, contrary to the current Constitution. Of course, such an argument is not decisive. However, it is worth taking a broader look at the cited provisions of the March Constitution. The legislator did not limit himself to a reference to the Act on the organization, scope and operation of all courts (Article 75), but directly distinguished the Supreme Court, the Constitutional Tribunal, military courts and jury's courts in the structure of the judiciary, and also introduced a norm providing for the functioning within the Courts of the peace. The justification for such a legislative procedure is the significant organizational and functional differences of the listed courts and the Tribunal in relation to the "typical" courts constituting the rule. With regard to Courts of the peace, the element of their electability is of particular importance in this regard. Courts of the peace, on the other hand, were not specified in the Constitutional Act of 23 April 1935, which was also mentioned in the explanatory memorandum to the draft and emphasizing that, in the light of these provisions, the administration of justice was entrusted only to professional judges.

The current Constitution does not mention in Art. 175 courts of the peace, providing that the administration of justice in the Republic of Poland is exercised by the Supreme Court, common courts, administrative courts and military courts. Whereas Art. 182 indicates the participation of citizens in the administration of justice in the manner specified by law. In its judgment of 29 November 2005 (P 16/04), the Constitutional Tribunal stated that it is neither possible to completely exclude citizens from the exercise of this function (of the judiciary), nor to narrow it down to a purely symbolic extent. At the same time, the participation of citizens in the administration of justice means the participation of the social factor in resolving disputes by applying legal norms to specific cases (situations). However, the possibility of such a regulation that in cases of a given category the administration of justice belongs exclusively to the social factor is excluded. The law on the system of common courts maintains the traditional institution of lay judges in Poland, although there are no legal obstacles to replacing it in the future, by the will of the legislator, with, for example, the institution of jurors. In the manner described, the content of the cited Art. 182 of the Constitution, which provides for the administration of justice not to be administered by citizens, e.g., in certain categories of cases, but for the participation of citizens in the administration of justice. Therefore, the Constitution does not prejudge the form of citizens' participation in the administration of justice, which may take the current form of examining certain categories of cases with the participation of lay judges and jurors. The doctrine points to two basic models in this regard: lay judges (educated on the European continent, within which cases were usually adjudicated by teams consisting of an official factor and a civic factor, i.e. lay judges; all together constituted a court, which meant that lay judges had the same adjudicating powers as professional judges), as well as jury courts (Włodyka 1959).

From the point of view of the norm of Art. 182 of the Constitution, the establishment of Courts of the peace raises objections. The judiciary is an activity of the state consisting in adjudication, i.e., binding settlement of disputes over the law, in which at least one of the parties is an individual or another similar entity (Garlicki 2011). From the objective side, the scope of the administration of justice is related to the content of Art. 45 sec. 1 of the Constitution, according to which everyone has the right to a fair and public hearing of their case, without undue delay, by a competent, impartial and independent court. The concept of "case" is therefore parallel to the concept of "dispute over law", which is the core of the justice system, and the justice system covers all cases (disputes) concerning an individual (similar entities). Judicial administration of justice does not mean that all matters relating to the legal situation of an individual must be resolved exclusively by the courts. An entity exercising the constitutional right to a court should, however, have a guaranteed procedural possibility to refer the case to a competent, independent court. The courts must have a superior position, consisting in the possibility of examining the correctness or legality of the decision of the extrajudicial body (Garlicki 2011). For these reasons, it is also possible issuance of a payment order by a court referendary (Article 480 4 § 2 of the Code of Civil Procedure). It does not conduct a hearing and does not issue a judgment, which falls within the exclusive competence of the Courts and Tribunals (Article 174 of the Constitution). Although, as a consequence, not all decisions issued by the courts take such a solemn form of adjudication on behalf of the Republic of Poland, but the most important aspect of the activity of the courts, which is the administration of justice, and the most important decisions of the tribunals use this solemn and dignified formula (Safjan 2016). In the case of the so-called of lay judges, as well as courts of the peace, in which the equivalents of lay judges functioning in Poland (judges of the peace) adjudicate individually, would in fact extend the power to administer justice and partially transfer it to the hands of citizens (Safjan 2016). Such a solution would be more than indicated in Art. 182 of the Constitution "participation" in the administration of justice; would transform from a supporting role into an independent one. Adoption of such a concept could be possible if the participation of citizens in the administration of justice was accepted not as a supporting role of a participant in adjudicating bodies, but as an authorization to delegate part of the powers in the area of administering justice to him, probably in the smallest and uncomplicated cases. However, such a concept does not seem to correlate with the wording of Art. 182 of the Constitution. Its content does not indicate the transfer of certain categories of cases to citizens, excluding professional judges, but their participation in the administration of justice. Also Art. 45 sec. 1 of the Constitution does not differentiate between minor or uncomplicated matters and others.

At this point, it is necessary to refer to the institution of the assessor functioning in the Polish system. In district courts, tasks related to the administration of justice are also performed, to a limited extent, by assistant judges. The systemic position of the assessor was also examined by the Constitutional

Tribunal. In its judgment of 24 October 2007 (SK 7/06), the Tribunal stated that the Constitution provides for the principle that the judiciary is administered by judges. An independent and independent court is by definition a court composed of judges. As an expressly provided exception, only the participation of citizens on the terms set out in the act is indicated. The Constitution does not entirely preclude the introduction of further exceptions to the aforementioned principle, consisting in entrusting the administration of justice to persons whose legal status refers only to the constitutional position of a judge. However, such derogations are allowed if two cumulative conditions are met. Firstly, exceptions must be justified by a constitutionally legitimate goal and must be within the limits of achieving that goal. The institution of entrusting the performance of judicial functions to persons who are not judges should primarily serve the better implementation of the subjective right specified in Art. 45 of the Constitution. Secondly, all materially significant conditions on which the impartiality, independence and impartiality of the court depend must be met. In other words, regardless of the name of the official position, the status of the person entrusted with the performance of judicial duties must correspond to the model of independence resulting from the constitutional provisions concerning the status of a judge. It should be noted that the main issue resolved by the Tribunal was the answer to the question whether an independent court, when exercising its powers to administer justice or other powers reserved for the court by the Constitution, must consist only of judges and citizens participating in the exercise of of justice or whether the court may also include other persons who are not judges or citizens participating in the administration of justice. Therefore, the Tribunal not only ruled out the existence of the constitutional principle of administering justice by judges, but also, by introducing exceptions to it, clearly separated the issues of citizens' participation in the administration of justice, on the principles set out in the act, from entrusting the administration of justice to persons whose legal status only to the constitutional position of a judge, i.e. outside the content of Art. 182 of the Constitution. As it resulted from the above considerations, the participation of citizens, pursuant to Art. 182 of the Constitution, does not mean the possibility of partial transfer of the judiciary to them. This provision, however, as an exception to the rule, is not subject to a broad interpretation. The presented argumentation is confirmed by the very specificity of the judiciary. The separateness and independence of courts and tribunals from other authorities means that the powers and competences granted to them cannot be exercised by other entities (K 28/04, OTK-A 2005) . The independence of the courts and judges is safeguarded by the National Council of the Judiciary (Article 186(1) of the Constitution). The composition of the Council consists mostly of judges (Article 187(1) of the Constitution), and one of the basic competences is to submit an application to the President of the Republic of Poland for the appointment of a judge (Article 179 of the Constitution). As it has also been indicated, the scope of citizens' involvement in the functioning of the judiciary is limited by Art. 182 of the Code of Civil Procedure There is no doubt that the election act is one of the most important constitutional forms of citizens' involvement in public life. The Constitution provides for elections to the Sejm and the Senate (Article 96(2) and 97(2) of the Constitution), as well as to local self-government constitutive bodies (Article 169(2) of the Constitution), specifying at the same time the most important requirements in this regard. The Constitution does not provide for such solutions in the case of Courts and Tribunals. It should also be emphasized that although the National Council of the Judiciary, according to the drafts, is to consider the candidatures of Courts of the peace (Draft Act, Article 20), it does so only from among the candidates selected for the office of Courts of the peace. In this way, the constitutional powers of the National Council of the Judiciary are limited.

The drafts postulate the establishment of Courts of the peace as the element of the lowest level of common courts, provided for in the constitution (Article 4 of the draft act). However, this solution does not seem to be sufficient. As it resulted from the above considerations, although the legislator was entrusted with the possibility of statutory regulation of the system and jurisdiction of courts (Article 176(2) of the Constitution), constitutional norms established the Supreme Court, common courts, administrative courts and military courts as organs administering justice (Article 175(2) of the Constitution) . 1 of the Constitution). The separation of such bodies is justified by significant organizational and functional differences. From this point of view, the creation of separate structures within common courts, within which justice is administered by elected Courts of the peace, thus functioning on completely different principles than other judges, does not seem justified.

II. EXPECTED EFFECTS OF THE INTRODUCTION TO THE LEGAL SYSTEM OF COURTS OF THE PEACE

One of the basic reasons for undertaking initiatives aimed at introducing Courts of the peace into the legal order is the data on the excessive length of court cases, which was pointed out in the justifications of the drafts. Statistical data show that the number of cases in courts is systematically growing. For example, in 2002, 8,696,913 cases were filed with common courts, and in 2017 - 15,782,479 (Siemaszko et. all 2019). This increase of over 81% was not accompanied by an adequate upward trend in the employment of judges (Jońskie 2016). Pursuant to § 3 sec. 1 of draft I, there is one justice of the peace for not more than 10,000 inhabitants of the jurisdiction of the court of the peace. The other drafts provide for a smaller number of Courts of the peace. Although these would be additional case handlers, the number of Courts of the peace does not correspond to the growth rates described above. Other aspects related to such a solution should also be taken into account. The essence of the election of Courts of the peace is their term of office, therefore, in its initial phase, this effectiveness will be lower, since they are assumed to be persons without jurisprudence experience. At the same time, it should be noted that the above-mentioned draft provisions introducing the Act on Magistrates' Courts in the field of civil procedure (Article 2) do not introduce significant differences

affecting a more effective course of proceedings in relation to the provisions in force. Referring to the financial aspects in the justification for project I, it was stated: Additional costs will be associated with granting a subsidy to finance the task of providing buildings or premises where Courts of the peace hear cases or perform other activities, together with technical equipment that constitutes a task commissioned in the field of government administration carried out by a commune and financed from the state budget by granting a special-purpose subsidy referred to in Art. 14 § 5 of the draft. At present, it is not possible to indicate the exact costs of implementing the above tasks. The introduction of Courts of the peace, as it results from the draft regulations, is not only a matter of employing more adjudicators, but also incurring expenses consisting in providing buildings or premises, as well as technical equipment. Therefore, if new predicates were introduced to the already existing structures, it would probably be possible to significantly reduce the described costs. Considering these circumstances, it should be expected that the introduction of Courts of the peace will improve the functioning of the courts to some extent, taking into account the smaller number of cases per adjudicator, however, taking into account the increase in the number of cases in courts over the course of several years, a radical improvement in the functioning of the judiciary should probably not be expected.

However, the assessment of the proposed solutions is not limited to the issue of indicators and the number of cases dealt with. The doctrine indicates the tendency of legal systems in which Courts of the peace function to transfer cases to professionals, due to the increasingly complex cases, negative assessment of the work of non-professional judges, but also pragmatic considerations in the form of the need to ensure the efficiency of proceedings or problems with recruitment suitable candidates (Girdwoyń 2021). One of the possible solutions is the gradual introduction of the requirement to use out-of-court dispute resolution methods at the stage preceding submitting the case to the court, together with financial motivations for such a conflict resolution, which would also be advisable in the social dimension. Attention should also be paid not only to the reasons for the poor assessment of the functioning of the judiciary declared by the respondents, but also to the sources of these judgments. According to the CEBOS communiqué, half of the respondents (51%) negatively assess the functioning of the justice system in Poland, with the most important problem of the justice system, in their opinion, being the excessive length of court proceedings (48% of responses) (CBOS 31/2017). Taking into account the already quoted data on the significant increase in the number of cases examined in recent years, and in particular the number of cases per judge, it is not surprising that the assessment of the functioning of the courts is deteriorating. Undoubtedly, the introduction of additional predicates to the systems should slightly improve these indicators. Ultimately, however, it is difficult to predict the impact of these solutions on the social perception of the judiciary. According to the CEBOS communiqué, less than one fifth of Poles (18%) indicate personal experience as the primary source of information on the functioning of the justice system. In turn, 54% of respondents indicate media reports as the main source of knowledge about the judiciary. Therefore, it is this aspect, which will be significantly affected by the solutions finally adopted, influencing, for example, the selection of candidates, which will determine the impact of the possible introduction of justice courts to the legal system on the assessment of the judiciary, taking into account the already mentioned progressing professionalization of legal transactions and the growing complexity of cases

III. Conclusion

The initiative to introduce Courts of the peace into the Polish legal system is an attempt to improve the functioning of the judiciary, which has been struggling with the growing number of cases heard in recent years. However, their introduction into the legal system should be preceded by an amendment to the constitution, based on which it would be possible to delegate the examination of "minor" cases (only in such a situation is it possible to maintain the constitutional principle of administering justice by judges) to elected Courts of the peace. Assessing the effects of the possible introduction of provisions into the legal order, the introduction of Courts of the peace will improve the functioning of the courts to some extent, taking into account the smaller number of cases statistically per a particular adjudicator, however, a radical improvement in the functioning of the justice system is probably not to be expected. In turn, the impact of the possible introduction of justice courts to the legal system on the social assessment of the judiciary will depend primarily on the media reception of the cases heard by them. This, in turn, will depend to a large extent on the final shape of the provisions affecting the selection of candidates taking into account their qualifications, especially in the situation of progressive professionalization of legal transactions and increasing complexity of cases.

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