

Lech Marek Krzyżanowski

(University of Silesia in Katowice, Poland)

<https://orcid.org/0000-0003-2042-046X>









e-mail: [lech.krzyzanowski@us.edu.pl](mailto:lech.krzyzanowski@us.edu.pl)

## Status and Prospects for Research on the Polish Judicial System since mid-October 1938 till December 1939

*Stan i perspektywy badań nad funkcjonowaniem wymiaru sprawiedliwości Rzeczypospolitej Polskiej od połowy października 1938 r. do grudnia 1939 r.*

### ABSTRACT

The dates from the title describe very important and key period at the end of the interwar period and the initial time of Soviet and German occupation of Poland. The period in question can be divided into two parts, first is the time of peaceful existence of the Second Polish Republic with the end of the peace already on the horizon, second is the time of subordination of all state activities to meet requirements related to conducting the war. The status of the national judicial systems has not been so far properly, comprehensively, fully described, and evaluated in the subject literature. However, there is

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| THE AUTHOR'S ADDRESS: Lech Marek Krzyżanowski, the Institute of History of the University of Silesia, 11 Bankowa Street, Katowice 40-007, Poland   |   |  |  |  |
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a number of memoirs and diaries available to historians. Archival materials are dispersed and could be found in many different locations, unfortunately mostly out of the Country (London, German archives). The archival research in all these places allows thorough and detailed exploration and building a solid and verified database of documents. Unfortunately, papers from the prewar Ministry of Justice had been destroyed but files of Bar Councils and some courts survived the disaster. It could be complemented by personal documents and this would extend research perspectives.

**Key words:** judicial system, advocacy, war, occupation, archives, memoirs

#### STRESZCZENIE

Ze względu na daty zawarte w tytule, rozważania autora obejmują newralgiczny okres końca lat międzywojennych oraz początkowego fragmentu okupacji niemieckiej i radzieckiej. Analizowany etap dziejów Polski rozpada się więc wyraźnie na dwa odrębne podokresy. W pierwszym z nich zawiera się koniec pokojowej egzystencji II Rzeczypospolitej i ogólnie kres pokoju w Europie, a w drugim całokształt życia publicznego podporządkowany wymogom rozpoczynającej się wojny. Funkcjonowanie wymiaru sprawiedliwości w tym czasie nie znalazło dotąd szerokiego odzwierciedlenia w fachowej literaturze. Zdecydowanie lepiej prezentuje się materiał wspomnieniowy, dość obszerna jest również spuścizna archiwalna. Archiwalia mają, co prawda, charakter mocno rozproszony i w znacznej części znajdują się w placówkach niepolskich (Londyn, archiwa niemieckie) tym niemniej kwerenda tych zasobów gwarantuje oparcie wniosków o solidną i łatwo weryfikowalną bazę dokumentów. Wprawdzie uległa zniszczeniu dokumentacja przedwojennego ministerstwa sprawiedliwości, ale w dobrym stanie zachowały się akta poszczególnych apelacji sądowych i rad adwokackich. Gdy dodać do tego stale powiększający się wykaz literatury dokumentu osobistego, to perspektywy badawcze uznac należy za obiecujące.

**Słowa kluczowe:** sądownictwo, adwokatura, wojna, okupacja, archiwum, wspomnienia

Caesuras presented in the title refer to the critical time of the interwar period and initial weeks and months of Soviet and German occupation. The latter interval can be additionally divided into two smaller sections: period of the open hostilities, which had been very intensive, especially in the beginning of the Polish-German conflict and the era of establishment of occupation administrative structures and their first decisions that had a great impact on the civil population. It also included the judicial system.

It is very difficult to propose a cut-off date to separate times of hostilities and 'post-war' arrangements directed at total submission of new territories to new rulers. However, even if established, it would have less importance than the caesura defined by events from the 1 September 1939 and 17 September 1939. The latter date leads us to the conclusion that the period under research can be further subdivided.

The first section is the time till the end of the peaceful existence of the Second Polish Republic and generally the time of peace in Europe, the

second – in which the public life was totally subordinated to upcoming war requirements. However, both intervals should not be totally separated as both should be evaluated comprehensively and in an integrated manner. The nominal peacetime (as in the title, period from October 1939 till 1/17 September 1939) was peaceful only formally. There had been no hostilities, civilians had not to run to find a shelter, but the wartime rhetoric was already present in the press and radio.

The second section of time, from September to December 1939, can be characterized as the period, in which, in spite of everything, the war still has not totally dominated the public life. Most of the public opinion was convinced that the war would not last long and hostilities were just a temporary problem. People were still referring to memories about pre-war situation and life conditions and considered the initial period of the armed conflict as the time only partially different from the last weeks of peace. It seems that the period under research, end of 1938 and 1939, could be considered as homogenous. This will facilitate and also speed up all analytical efforts<sup>1</sup>.

Both sub-periods (at the end of peace and at the beginning of war) are similar if we want to start exploring, describe, and evaluate the judicial system. Initial conclusions would sound similar as such elements had not been comprehensively approached and researched in an integrated manner. For decades, many authors presented just general statements that occupiers wanted to destroy and replace the Polish judicial system. We should remember that hundreds of members of the judiciary were arrested, sent to concentration camps, or lost their lives in public executions. The fate of the lawyers of the Jewish ethnicity was particularly tragic due to German plans of total extermination of this nation and annihilation of Polish elites. Such statement was of course true but due to its pathetic and martyrological character, it excluded any thorough scientific analysis that was generally replaced by a reverie over cruelties of totalitarianism.

In addition, the vagueness of conclusions on total destruction of the Polish judiciary branch of the Second Polish Republic raises considerable doubts. Of course, no official institution was operating under the brand of the Polish judiciary. However, it should be noted that in the General Government there had been operational elements of Polish judiciary and associated advocacy. So far, no comprehensive and detailed analysis was prepared to examine conditions, under which Polish judges and attorneys had to exercise their profession.

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<sup>1</sup> A. Barciak, *Kilka uwag na temat periodyzacji, zwłaszcza periodyzacji dziejów Śląska*, in: *K periodyzacji dějin Slezska (Sbornik z pracovniho zasedáni v Opavě 11.–12. prosince 2007)*, Opava 2008, pp. 257–259.

Many researchers accepted the scientifically satisfying and relatively safe conclusion that all elements of the Polish judiciary and most of the Polish intelligentsia had been annihilated by occupiers. In addition, such statements did not force scientists to reflect more on different forms of collaboration. However, this is a significant simplification, which would become clear and visible after launching systemic research in the area.

Such efforts will not be limited just to statistical calculations how many Polish lawyers still carried on with their profession. What is more important is knowing and realizing the fact that some prospects for further work in the profession was a foundation for many life choices of some representatives of this group during first days of occupation. This should be taken into account as without such aspects it would be difficult to explain and understand the fate and choices of some members of the judiciary<sup>2</sup>.

This scientific deficit, which refers mainly to the functioning of the judiciary system during the last months of peace and in the beginning of WWII, emerged due to an under-estimate of significance of such research projects. The next reason is a relatively modest volume of available archival and source materials. Paradoxically, such assessment is truer with regard to the period before WWII, than to the time of the beginning of the occupation of Polish territories.

The Polish legal community, as well as a big part of the civil population believed in arguments presented by most of the daily newspapers. They were presenting Polish Armed Forces as a European military power and claimed that in such a situation any attack on Poland would be totally irrational, illogical, and preposterous. Such powerful and bravado texts, information, postures, and diplomatic demands formulated as ultimatums had been a bluff with no continuation and consequences. Such attitude of Polish media, present mainly in journals and newspapers, was partially justified by a desire to calm down the public mood, stop any signs of panic, shape the public opinion, also the Polish legal community.

It is very difficult to find in memoirs and testimonies on that time (letters, recollections) any information on actual preparations of judges, prosecutors, and lawyers to the upcoming war. Until the breakout of armed

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<sup>2</sup> A. Wrzyszczyk, *Okupacyjne sądownictwo niemieckie w Generalnym Gubernatorstwie 1939–1945. Organizacja i funkcjonowanie*, Lublin 2008; *Wrzesień 1939 roku. Geneza II wojny światowej w polskiej perspektywie*, vol. 1, *W kręgu dziejów, myśli politycznej i dziedzictwa kulturowego II Rzeczypospolitej*, eds. J. Faryś, T. Sikorski, P. Słowiński, Gorzów Wielkopolski 2010; Z. Krzemiński, *Adwokatura polska w okresie okupacji hitlerowskiej (1939–1945)*, "Palestra" 1976, 20, 2, pp. 9–13; W. Bayer, *Samorząd adwokacki w dobie walki z okupacją hitlerowską (Przyznaczenia do dziejów adwokatury polskiej w okresie 1939–1945)*, "Palestra" 1968, 12, 11, pp. 35–57.

clashes, the belief that it would be possible to avoid armed conflict prevailed. In sources mentioned in this paragraph, it is not possible to find any information on increasing threat level. It was just business as usual and if somebody mentioned war, he would have been considered a defeatist and his/her warning had been passed off as a joke<sup>3</sup>.

From the numerous classes of sources that could be considered and treated as personal documents, one group is especially interesting – works, which came from the pen of Polish lawyers. Some examples could be presented here, as for example memoirs of Ludwik Rompolt<sup>4</sup>, Aleksander Mogilnicki<sup>5</sup> and Ruth Altbeker-Cyprys (before WWII, in official documents, she was presented as Szajna Rajzla (Altbekierówna) Cyprysowa)<sup>6</sup>. Of course, such a list could be much longer, but elements prepared by above-mentioned authors are very much representative for many social groups, not only lawyers, who assessed the political, security, military and social environments in a similar way. First of the authors, L. Rompolt, before WWII, was the Vice President of the Regional Court in Katowice and the President of its Branch in Tarnowskie Gory, the town in the direct vicinity of the Polish-German border (Mr. Rompolt also lived in this town). Early warning and signals about the upcoming conflict should have reached such people very early and in numbers. Guidelines for evacuation that have been announced should have shaped their minds and will and also determined their behavior in August 1939. They did not take this into account, they did not evacuate their families or at least gathered the family in one place just not to be separated in case of the armed conflict. The guidelines on evacuation should have shaped their minds and behavior and determined their actions in August 1939. They should have planned, for example, evacuation of families, or at least ask the family for an early return from summer holidays to be together in case of an armed conflict. Such approach should have been expected from the people like L. Rompolt.

The next mentioned author had been one of the most known and distinguished Polish lawyers before WWII. Till 1929, he presided the

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<sup>3</sup> In the local and quite popular newspaper "Echo Beskidzkie" 1938, no. 71, p. 3; rumors about the upcoming military conflict were commented by the journalist named J. Karp with the rhyme: 'The whole world asks the question, when a war starts? Certainly, it would be a war when wives return from summer holidays!'. Such epigrams shaped attitudes of civilian population (and lawyers) to much bigger extent than multipage scientific and professional analyses.

<sup>4</sup> L. Rompolt, *Tych lat nie można zapomnieć...*, ed. M. Gorczyńska, Wojnicz 2004.

<sup>5</sup> A. Mogilnicki, *Wspomnienia. Spisane w Łodzi w latach 1949–1955*, Warszawa 2008.

<sup>6</sup> R. Altbeker-Cyprys, *Skok dla życia. Pamiętnik z czasów okupacji Polski*, Warszawa 2000.

Criminal Chamber of the Supreme Court. The decade later, he was still able to critically assess the status in the Polish judicial system and the security and military situation. In his work, he did that from the perspective of Warsaw and his position as a respected lawyer. He was still at full intellectual strength, although he was already retired. Such approach was a result of a fierce A. Mogilnicki conflict with 'Sanacja' authorities. He had very good position to do that as he knew everyone in the ruling establishment during the second half of the 1930s. This allowed him to have an opportunity for in-depth study of the key decision-making processes controlled the leadership of the Ministry of Justice.

As for the third author, her memoirs provided very interesting woman's perspective on the events of the time of transition from peace to war. She was very young attorney, who had just started a professional career. She was also Jewish, which created another dimension for the research. Her views and opinions would allow, hopefully, to answer the question how lawyers from this ethnic group, under very serious threat from the armed conflict and Nazi regime reacted to information about the inevitability of a new world war and what signals and how such signals reached such professional and ethnic communities. The next step would be evaluation of attitudes of such groups towards first discriminatory and heavy decisions of the German occupier.

The most important conclusion from the analyses of these three memoirs is that the problem of wartime preparation did not surface at all. Authors also did not hide that their decisions were mostly influenced by rumors and unverified forecasts as there had not been any good and confirmed information related to the threat of upcoming armed conflict. It may be argued that such attitude and related actions were not only typical for authors mentioned, but also for above-mentioned professional and ethnic groups as a whole. We should also remember that all cited authors put their recollections, memories, and testimonies down on paper already after WWII. It means that they were able to assess the importance and value of events before 1 September 1939.

L. Rompolt and R. Altbeker-Cyprys prepared their papers in emigration. A. Mogilnicki stayed in Poland and wrote everything down, but he really did not intend to plan an official publication. It meant that they were able to be totally honest as they did not have to consider a potential censorship.

We do not have the similar database with testimonies and recollections prepared by lawyers working in the Eastern borderlands. They had bumped into the wartime reality a little bit later and it was the Soviet version. Also, memoirs of lawyers working for the Polish judicial system, evacuated from the Western parts of Poland to the East, are available

to further research. In the East, and this was quite understandable, nobody was ready and willing to fill diaries and write their stories. It was neither useful nor safe under the Soviet rule<sup>7</sup>. Only in the 1990s, people felt safe and ready to share their memories and experiences. For many, it was already too late. Therefore, we now have to deal with nothing but scraps and tidbits that exist in the margins of other stories.

Popular press and official journals (for example, the Official Journal of the Ministry of Justice) reported only sparingly about the threat of the upcoming war. During the months and weeks before WWII the professional legal press has not reflected on such issues. Most likely, the decisive factor had been to keep up the social mood and avoiding unnecessary upheaval. The next reason that conditioned the legal environment back then had been events important for this part of the society.

It could sound somewhat paradoxically, but most of the Polish judges, prosecutors, advocates, and notaries were, since the beginning of 1939, more interested in the IV Congress of Polish Lawyers planned for 3–5 September 1939 in Gdynia. The choice of the place was not accidental. The Congress was intended to be a place to boast of Polish economic achievements and remind everybody about political and military aspirations of the Second Polish Republic, including defense of Polish national interests in the Baltic. Many Polish legal system luminaries were to give lectures on arguments on Polish rights and Polish national interests. To make things to go as planned, it was necessary to secure mass participation of Polish lawyers in the Gdynia meeting. Therefore, already since the autumn of 1939, invitations and articles on the Congress had been published in the professional press like “Głos Sądownictwa” (issued in Warsaw), “Przegląd Sądowy” (published in Krakow) or “Czasopismo Sędziowskie” (from Lviv)<sup>8</sup>. Despite complicated political, security and military situation on the international arena, with the Polish-German armed conflict already

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<sup>7</sup> The typical story for this professional group is the one of the Judge Bronisław Podolecki. He extensively and willingly described his problems with Germans in the town of Nowa Ruda in the Upper Silesia in 1920s of the 20th Century. However, he was not so eager to present his WWII journeys. He was arrested in Lviv by Soviets and sent to the Labor Camp in Rybinsk, then to other places in Caucasus. He was released only in 1945. After repatriation to Poland, he worked in courts in Silesia. See: Archiwum Sądu Okręgowego w Katowicach, ref. no. P/505, [no pagination], Bronisław Podolecki Personal Files, CV dated 17 October 1959.

<sup>8</sup> In the journals mentioned above some articles on the situation were published, but they referred mainly to the German legal system itself. See: T. Pietrykowski, *Ustawodawstwo Adolfa Hitlera*, “Głos Sądownictwa” 1939, 6, pp. 490–492. Only in the last issue before WWII, some information was presented on the participation of the representatives of judges, advocates and notaries in defense preparations, i.e. digging air-raid shelters

on the horizon, in almost all above-mentioned journals the most important topic had been preparation for the Congress. That resulted in the situation that readers got the impression that the war is not inevitable and Polish lawyers were still occupied with other plans and activities. Only on 28 August 1939, the Permanent Delegation of Lawyers Associations (Pol. Stała Delegacja Zrzeszeń i Instytucji Prawniczych), the main organizer of the Congress, informed that due to difficult international situation the IV Congress would have to be postponed. Of course, no word of a new Congress date was presented<sup>9</sup>.

The Gdynia Congress had not been the only event that interested Polish lawyers. Another important problem was the reform of rules and regulations for that profession. It was considered urgent and necessary due too many people with attorney licenses. This postulate was accompanied by a popular demand to Polonize the Bar Associations, due to high percentage of lawyers of the Jewish ethnicity. It resulted in a lively debate on ways and procedures to remove from the profession non-Polish lawyers.

Just before the outbreak of WWII, the list of advocate's trainees was officially closed and the Ministry of Justice had become the only institution authorized to make new entries to the list, and only to the predetermined limit. This specific element was the main topic for discussion in newspapers and professional journals, including the one with the top position among most read journals, the monthly "Palestra".

Going through all the texts in these papers, it is not possible to notice any warnings about the upcoming war and guidelines how to cope with new wartime situations. Most of the publications were dedicated to reports from meetings of different Bar Associations, debates, and discussions. The articles focused mainly on domestic issue with just minor references to the situation on the international political arena. Considerations on the threat of war and related to security and military situation have been reported only sporadically<sup>10</sup>.

Also, news and articles of the journals dedicated to other legal system professional groups (prosecutors, notaries), also trainees and applicants,

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and distribution of gas masks. See: *Kronika. Z ostatniej chwili*, "Głos Sądownictwa" 1939, 9, p. 746. Similar brief information was printed in other journals by and for Polish judges.

<sup>9</sup> L. Krzyżanowski, *Zjazdy prawnicze i ich rola w procesie integrowania systemu prawnego II Rzeczypospolitej*, "Czasopismo Prawno-Historyczne" 2008, 60, 1, pp. 114–116.

<sup>10</sup> See: J. Sarapata, *Obronność państwa w ustawodawstwie ostatniej doby*, "Palestra" 1939, 5, pp. 593–600.



dealt mainly with purely professional problems, not devoting much space to other issues<sup>11</sup>.

Therefore, the research thesis statement that due to absence of topics related to the threat of armed conflict in professional newspapers and journals such problem was neglected and did not find the right place in the collective consciousness of these professional groups. It was also not possible to find such elements in personal documents. As a result, this led to not taking up such topics in historical projects and publications on the end of the prewar period and during first weeks and months of war.

What should be noted here is the fact that most of professional groups that built the Second Polish Republic legal system have their scientific monographs and a number of other publications. However, the topic covered in this article is not present to necessary and required extent. As for advocates, such a conclusion could be drawn after reading the most important publications on this specific group of lawyers, prepared by Małgorzata Materniak-Pawłowska<sup>12</sup>, Adam Redzik and Tomasz J. Kotliński<sup>13</sup>. As for notaries, similar conclusion emerges from the analysis of the work of Dorota Malec<sup>14</sup>. Indicating such problems, also the author of this article has to confess that during his project to prepare a monograph on judges from the Katowice region, he also evaded the whole issue about impact of upcoming war on this specific professional group<sup>15</sup>.

The reasons for such a deficit had been identical in each and every case. Till the outbreak of WWII, all above-mentioned professional groups had not changed their way of functioning in the society and approach to main national problems. Certainly, it did not dominate debates and discussions within these groups.

One more aspect should be taken into account as it was signaled and mentioned in the article. Later, it would be analyzed to a greater extent and in more detailed way. In archival resources available to research, there are no papers documenting the impact of the direct military threat on the legal community, including legal practitioners in 1938 and 1939.

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<sup>11</sup> Such a conclusion was formulated on the basis of analysis of 1939 issues of fortnightly journal "Przegląd Notarialny", monthly "Współczesna Myśl Prawnicza" and "Apel". Only in the last, June, issue of the latter journal a brief article was presented with the meaningful title, by H. Małkowska, *Twierdzą nam będzie każdy próg*, "Apel" 1939, 6, pp. 81–82.

<sup>12</sup> M. Materniak-Pawłowska, *Adwokatura II Rzeczypospolitej. Zagadnienia prawno-ustrojowe*, Poznań 2009.

<sup>13</sup> A. Redzik, T.J. Kotliński, *Historia adwokatury*, Warszawa 2014.

<sup>14</sup> D. Malec, *Notariat Drugiej Rzeczypospolitej*, Kraków 2002.

<sup>15</sup> L. Krzyżanowski, *Sędziowie w II Rzeczypospolitej: okręgi apelacyjne krakowski i katowicki*, Katowice 2011.

Much more historical and historical-legal literature was published on the military legal systems. Works of Robert Ostafiński-Bodler<sup>16</sup>, Tomasz Szczygieł<sup>17</sup>, and Leszek Kania<sup>18</sup> constructed a good entry point for further analyses, including the main topic of this article, with regard to military courts. Of course, also in this case, it is difficult to consider the topic as fully described and evaluated. As for civilian side of the house, the number of source materials is limited, or it is better to say – relatively modest.

Problems with archival materials does not necessarily mean that they had not been produced and distributed. This would have been inexplicable. Lessons learned from military conflicts clearly prove that in wartime both civilian and military administration change their mode of operation, correct processes, and procedures. It always required preparatory steps and actions. This was the case of Russian administration on the eve of the Great War, and it can be exemplified by Russian evacuation guidelines, directives and regulations. They were prepared in 1915. All regulations were put into action a little bit later due to the military situations. It clearly shows that such way of doing things, including detailed action plans had always been indispensable.

There is no doubt that before 1939 such plans had been prepared, but so far it was not possible to find any trace of such papers related to the legal system. It could be however easily explained. Most of the archival materials generated by the elements of the Ministry of Justice was lost during WWII. The remaining part is of many different provenances and their factographic value varies. Due to such a situation, it would be difficult to find necessary information on decision making processes and organizational changes within the Polish legal system. It is absolutely clear that the war devastation of Polish archives constitutes the biggest obstacle in research on wartime preparations of civilian institutions.

It is no better when assessing availability of source materials and subject literature on the second area that is under evaluation here, i.e. on the situation and status of the Polish legal system and personnel during first weeks and months of foreign occupation. Due to obvious reasons, there are no Polish professional press from that period. Only some newspapers remained but they had been either under the total control

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<sup>16</sup> R. Ostafiński-Bodler, *Sądy wojskowe w polskich siłach zbrojnych i ich kompetencje w sprawach karnych w latach 1914–2002*, Toruń 2002.

<sup>17</sup> T. Szczygieł, *Wojskowe postępowanie karne w II Rzeczypospolitej (1918–1939)*, Katowice 2017.

<sup>18</sup> L. Kania, *Służba sprawiedliwości w Wojsku Polskim 1795–1945: organizacja – prawo – ludzie*, Siedlce 2015.

of the occupier or new titles started to be issued. As such, they are not of use for an objective, credible and detailed research.

There is, however, one element that could be exploited and support research activities. Those are lists of Polish lawyers entitled to practice law in the General Government. Two issues of such records were published during WWII, and they can be used as a kind of *vademecum* to trace fates of some Polish lawyers under the German occupation<sup>19</sup>. Unfortunately, there are few memories, recollections, and testimonies of such people or about such solicitors<sup>20</sup>. Generally speaking, it should be noted that stories of lawyers professionally active during the occupation were of not too much interest for historians, who focused their attention on martyrology of this group, participation in the resistance movement and first of all in their activities within the underground Polish legal institutions.

The differentiation in areas of research could be easily noticeable. We have to remember that the final caesura in the title of this text refers to December 1939. It was the time of first decisions to establish a German legal system within the General Government. Despite such a situation, such issues should not be left out or omitted in research. In 1939, the option to look a job within the official legal system was seriously considered by a number of Polish lawyers, also in the areas annexed directly to the Third Reich. Such professional perspectives determined many life-changing decision taken by people in the first months of the new great war.

Such remarks on problems with the source base necessary for in-depth analysis of the legal community in first weeks and months of WWII does not mean that it is not possible to launch such efforts at all. There are still some elements that can be potentially scientifically exploited and verified. It could minimize research deficits, especially if additional efforts are taken to look for other, new archival materials, which are potentially valuable and can support already started research initiatives.

In the Polish Archive of Modern Records, there are still parts of the *Fond 2/11/0 Ministerstwo Sprawiedliwości w Warszawie 1919–1937* that survived WWII disaster. Unfortunately, we don't have any surviving

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<sup>19</sup> *Urzędowa lista dopuszczonych w okręgu warszawskim niemieckich adwokatów, adwokatów przynależnych do narodu niemieckiego i polskich adwokatów*. Warszawa 1941; *Urzędowa lista adwokatów według stanu z dn. 1 czerwca 1943 r.*, Warszawa 1943.

<sup>20</sup> Many of those were prepared by the known attorney Karol Pędowski. See: H. Mielnik, *Obraz sądownictwa i adwokatury w Generalnym Gubernatorstwie w okresie II wojny światowej w twórczości Karola Pędowskiego*, "Miscellanea Historico-Juridica" 2020, 19, 2, pp. 119–140.

correspondence between Presidents of the Courts of Appeal. In 1938 and 1939, they received a number of regulations and guidelines on defense and wartime preparations of their subordinated elements. A significant part of this correspondence could be restored with copies of documents stored and available in archives of Courts of Appeal.

At the moment of the German and Soviet invasion of Poland, the territory of the Second Polish Republic was divided into seven Appeal Districts, with court locations in Warsaw, Lublin, Vilnius, Lviv, Krakow, Katowice, Poznan, and Torun. Each official Polish Ministry of Justice document was distributed in eight copies to subordinated elements. Documents were further delivered to District Courts. This increases the probability that at least some papers survived.

Volumes and value of available archival material in Courts of Appeal varies. The best situation is in the West of the Country (Poznan, Torun, Katowice). It is a positive development and a promising prospect for research. All three above-mentioned courts were considered by the Ministry as frontline elements, the most exposed to the German attack. So, we should not be surprised that they had received the biggest number of different and detailed regulations, directives, and guidelines.

Some documents are available in Polish National Archives in Poznan<sup>21</sup>, Katowice<sup>22</sup> and Bydgoszcz<sup>23</sup>. Other locations are National Archive in Krakow<sup>24</sup>, archives in Warsaw<sup>25</sup> and Lublin<sup>26</sup>. There are also documents, which had not been so far thoroughly examined, described, and evaluated,

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<sup>21</sup> Archiwum Państwowe w Poznaniu [State Archive in Poznań], Sąd Apelacyjny w Poznaniu 1919–1939.

<sup>22</sup> Archiwum Państwowe w Katowicach [State Archive in Katowice], Sąd Apelacyjny w Katowicach 1922–1939; Rada Adwokacka w Katowicach 1937–1938; Prokuratura Sądu Apelacyjnego w Katowicach 1923–1939.

<sup>23</sup> Archiwum Państwowe w Bydgoszczy [State Archive in Bydgoszcz], Sąd Apelacyjny w Toruniu 1923–1939; Sąd Okręgowy w Bydgoszczy; Prokuratura Sądu Apelacyjnego w Toruniu 1908–1938; Okręgowa Rada Adwokacka w Toruniu 1921–1939.

<sup>24</sup> Archiwum Narodowe w Krakowie [National Archive in Cracow], Sąd Apelacyjny w Krakowie 1919–1950. Akta prezydialne; Sąd Okręgowy w Krakowie 1939–1945. Akta prezydialne; Prokuratura Sądu Okręgowego w Krakowie 1923–1939. Akta prezydialne.

<sup>25</sup> Archiwum Państwowe w Warszawie [State Archive in Warszawa], Sąd Okręgowy w Warszawie. Wydziały Cywilne 1917–1944. Akta prezydialne, available in Milanówek.

<sup>26</sup> Archiwum Państwowe w Lublinie [State Archive in Lublin], Sąd Apelacyjny w Lublinie 1939/40–1944/45. Wydział Prezydialny; Sąd Apelacyjny w Lublinie 1918–1939. Kancelaria Prezesa 1918–1939; Prokurator Sądu Apelacyjnego w Lublinie.

in archives in Vilnius<sup>27</sup> and Lviv<sup>28</sup>. Due to current security and military situation any research effort, especially in the second of locations, could be complicated to organize and difficult to carry out. Hopefully, in the nearest future, it would be possible to have full access to archival materials stored beyond our borders.

It should be mentioned here that in archives listed above (also those in the East of our Country), some documents on defense and wartime preparations as well as on decisions taken during the conflict with Germany could be made available. We should however not expect too many elements on directives and guidelines issued for a case of Soviet aggression.

The interesting direction of research on the Polish legal system during this critical time in the Polish history and history of the Polish society is the analysis of legal specific issues through the prism of individual stories. The most interesting elements are personal testimonies and memories (recollections, letters, diaries, memoirs), but they are limited in numbers and volume.

To an extent, they could be complemented by personal files. In case of judges, prosecutors, and notaries one set of documents that reflected their professional carrier was archived by the Ministry of Justice, the second was following the lawyer to subsequent posts. Files mostly survived WWII, but they included elements related to professional careers.

Only in case of disciplinary proceedings, officials in question could be evaluated not only as professional lawyer but also as human beings, with political views, opinions, and temper. After all, even if the researcher had access to documents reflecting to course of the professional carrier of an individual lawyer, sometimes it would be also possible to draw some conclusions on a wider scale. That could be used to assess and understand the evolution of the legal system as a whole. This builds up the value of such files. One thing should however be mentioned that such files were kept and updated till the pension or full retirement.

There are some sewn file units less valuable from the current research perspective as they had not been filed up till 1939. There are also some other elements on the prewar period, wartime and time after WWII. These elements are of great scientific value for the project. Personal files collected and stored by the Ministry of Justice are currently available for

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<sup>27</sup> Lietuvos Centrinis Valstybes Archyvas Vilnius [Lithuanian Central State Archives], fond: Starostwo grodzkie wileńskie, with file: Zrzeszenie Sędziów i Prokuratorów 1926–1938, Sąd Dyscyplinarny Izby Adwokackiej Okręgu Sądu Apelacyjnego w Wilnie.

<sup>28</sup> Центральний державний історичний архів України, м. Львів, фонд 151, Сąd Апелacyjny we Lwowie 1919–1939; фонд 205 – Prokuratura przy Sądzie Apelacyjnym we Lwowie 1919–1939.

researchers in the Archive of Modern Records<sup>29</sup>. Documents in individual files have dates till 1939. Then, they can be very useful for describing and evaluating events and actions from October 1938 till September 1939.

More information can be gathered from personal files of judges, prosecutors and notaries who survived the war and returned to their duties. Such files are stored in the Archive of Modern Records in Warsaw, in a separate fond, deposited in Milanówek<sup>30</sup>. This of course makes the access to documents a little bit harder, but it is really worth to wait for them due to their historical value.

The only serious downside is that files had been compiled, categorized, and prepared for release only to the "O" letter category. The rest is still being processed. It would be only matter of time to finish necessary archival jobs.

The second set of personal files was distributed to many different places and now can be accessible via different institutions. For some Courts of Appeal, files could be found in regional National Archives, in Krakow, Poznan, and Bydgoszcz. In some locations, they constitute a part of abovementioned fonds, in others they are located in local archives of particular institutions. That is the case of the Regional Court in Katowice and District Court in Cieszyn (before Regional Court in Cieszyn).

The second type of localization still makes the access and exploration of files hard and relatively difficult. In most of the cases, documents and files and not properly catalogued, pages properly numbered and ordered. In principle, files are not made available to non-employees, including researchers. Any access requires individual actions and individual agreements of the head of an institution. Sometimes it works and scientists got the access and possibility to work with such documents. It always pays off as original documents many times bring many interesting and useful elements.

Above-mentioned archival resources could be found in state institutions, but there is also another possibility – to use files stored in corporate firms and in private entities. This is the case of advocates. Their personal files constitute another important source that can be used to carry out research on functioning of Polish judicial system, both during the interwar period and during the first months of war.

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<sup>29</sup> Archiwum Akt Nowych [Archive of Modern Records], Ministerstwo Sprawiedliwości w Warszawie [1887, 1897–1940] 1945–2001, Akta osobowe, sędziów, notariuszy, prokuratorów i komorników, [1887, 1897–1946] 1972–1982, sygn. 13/1–4240.

<sup>30</sup> Archiwum Akt Nowych [Archive of Modern Records], Ministerstwo Sprawiedliwości w Warszawie [1887, 1897–1940] 1945–2001, Akta osobowe pracowników Ministerstwa Sprawiedliwości i jednostek podległych, [1917–1944] 1945–2001.

Files from law firms, which are normally of not too much use for research related to this project, are also a part of archive materials stored in national archives. Much more valuable are personal files. In some cases, they are at the disposal of particular Bar Associations, like in Katowice and Warsaw. It could result in problems to get proper access to such documents.

Those problems can be driven by the situation of the character of such entities, which are not public institutions but a private element, which is not obliged to ask positively for a request to access specific files, especially personal documents. However, it should be noted that many Chairs of Bar Associations understand the need for historical research, and they are not making problems with release of files and documents. This allows an optimistic conclusion that also Bar Associations records could be used for this and other scientific projects. In our case, the most important issue is to get access to documents from 1938–1939. In each case, it would be necessary to ask a particular Bar Association for an approval to open a possibility for exploration.

Another important source that can be used in the project are collections of official correspondence from the wartime and from 1945–1947. First elements mainly refer to financial issues, such as pensions. They were prepared on German templates and in German, but this is not so important as data and information included in documents. We should not take care about the form and language of documents as all citizens, also lawyers, were lost and confused in the encounter with the German totalitarian state. For example, in official letters it is possible to find many interesting details on professional life of their authors and everyday life under occupation. This refers mainly to employees of Polish courts, who had been fired already in first days of invasion.

Such collections, grouped according to names and professions, could be found both in Polish<sup>31</sup> and German archives. For foreign archives, particular attention should be paid to personal files stored in Berlin<sup>32</sup>. There are several dozens of files of Polish judges, attorneys, prosecutors and notaries that before the war had been professionally active in areas annexed by Germany after the invasion. Of course, it was not possible for them to continue prewar careers, but German authorities were very much interested in the situation within the Polish legal community.

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<sup>31</sup> See: Archiwum Państwowe w Katowicach, *Zbiór akt personalnych pracowników niemieckiego wymiaru sprawiedliwości 1856–1945*.

<sup>32</sup> Geheimes Staatsarchiv Preussischer Kulturbesitz, Fond XVII. HA, Rep. 222a – Oberlandesgerichtsbezirk Breslau 01.01 Personalakten.

Sometimes such interest resulted in arrest and sending to concentration camps (like in the case of attorney Franciszek Ziółkiewicz) and preparing wartime dossiers. Now, they constitute an invaluable source that could be used to depict, analyze and assess the reality of German occupation and attitudes and actions of German officials. Another important source, although with a very different provenance, are files from postwar rehabilitation proceedings.

The latter category mainly includes documents referring to status and requests of attorneys. If they wanted to continue the professional career or they were presented with some allegations, for example related to the signing the Volksliste, they should have undergone a special verification procedure. Testimonies of witnesses and attached documents often shed light on new, sometimes completely unknown wartime episodes.

Therefore, this part of the documentary heritage (normally linked with personal files) could be very useful to carry out research in areas indicated in the title of this article. It should be noted here that rehabilitation procedures were mainly launched for attorneys. As for other categories, the State was extremely harsh and decisive and treated such lawyers with more severity. A good illustration of such stories is Gustaw Lauter, who had been the Vice-President of the District Court in Warsaw. He had German origins and German occupation authorities assigned him to chair the Court. During the years of the Second World War, he continued to occupy this post. In 1945, he wanted to stay at this or any other court, but his requests were turned down as new authorities stated that they were not interested in his further employment within the judicial system. Due to such a situation, G. Lauter started the procedure to receive an entry on a list of advocates<sup>33</sup>. Proceedings included the verification of his wartime past. The final and positive verdict shows that Bar Associations displayed a greater tolerance to such solicitors and also demonstrated difficulties in separation of patriotic and honest lawyers from patriotically indifferent.

As for formulating conclusions on research perspectives, we should also take into consideration archive materials generated by Polish authorities in-exile. We have to remember that on the very next day after forming the new Government a new process started to critically evaluate defense preparations and the September military campaign. On that occasion, new plans for the future were prepared, also regarding the postwar judicial system.

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<sup>33</sup> Archiwum Okręgowej Rady Adwokackiej w Warszawie, ref. no. 716, Gustaw Lauter Personal File.



Both parts were connected with each other. All the logic said that the more the previous political model was criticized in its most important dimensions, the more in-depth reform in the state administration model of a future, independent state would be needed.

The 'Sanacja' judicial system was very roundly criticized as should have been expected. The critics used arguments on actual elimination of the independence of judiciary, politically oriented court sentences and Bereza Kartuska. The last argument was presented as a special case of violation of basic norm and standards that define a state, which complies with the rule of law.

However, it would be difficult to show a direct relationship between problems with the Polish judiciary and military weakness of the Polish State in September 1939. Despite such a situation it is still necessary to include to the research documents generated by the Government-in-exile and its agendas – to build a detailed and comprehensive picture of the Polish legal community in 1938 and 1939.

The main collection is available in London, in the Polish Institute and Sikorski Museum<sup>34</sup> and in the Józef Piłsudski Institute, also in London<sup>35</sup>. Part of fonds and files can already be accessed on-line, but some elements still require conventional research procedures.

It should be noted that in Polish archives, mainly in the Archive of Modern Records, fond and files produced by Polish Government-in-exile are available. They also could be very interesting and useful. One of the best examples is the fond 2/133/0 *Ministerstwo Sprawiedliwości Rządu RP [emigracyjnego] w Londynie 1938 [1939]–1990* with the file *Sądownictwo, palestra i notariat w Polsce w czasie wojny*.

This is very special and very interesting document, which was updated continuously, with reports from the occupied country. It is, in principle, the most detailed description of the Polish judiciary, also in first months of WWII. Numerous facts were quoted, also with regard to fates of many Polish lawyers. At some points, authors had to admit that their knowledge was limited, for example on locations of some important law community figures, but still, it is difficult to overestimate the importance of that document. This is mainly due to the fact that many events and

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<sup>34</sup> Archiwum Instytutu Polskiego i Muzeum im. gen. Sikorskiego w Londynie, Fond A. – *Dokumenty cywilnych urzędów rządowych 1919–1991* (A.5 Rada Narodowa RP, A.9 Ministerstwo Spraw Wewnętrznych. Dział społeczny, A.20 Ministerstwo Sprawiedliwości. Dział Ogólny 1939–1973, A.21 Ministerstwo Prac Kongresowych 1939–1945), Fond B. – *Maszynopisy, rękopisy i relacje* (B1 Relacje z kampanii wrześniowej).

<sup>35</sup> Archiwum Instytutu Józefa Piłsudskiego w Londynie, Teki Stefana Mayera,

repressions from the Soviet side, on the Soviet-controlled Polish territories were presented, described, and evaluated.

The limited scope of this article does not allow better presentation of sources and subject literature on the participation of the Polish judiciary in defense preparations and its status and activities in first weeks and months of WWII in more detail. Already with examples mentioned here, it is possible to deliver comprehensive description of the topic mentioned in the title.

Archival materials are dispersed in many different places. A significant part of them is stored abroad, also in foreign archives. If explored, it would allow analysis and preparation of conclusions on the basis of a verified source base. Such actions should be complemented by personal documents of different types. This will make research prospects more promising, as a big part of them had not been yet explored and assessed. This does not necessarily mean that before they had been considered unimportant and not useful. We have also to remember about martyrology and tragic stories of Polish lawyers during WWII. This should additionally prompt us to take up topics indicated in the title of this article.

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#### ABOUT THE AUTHOR

Lech Marek Krzyżanowski – PhD with habilitation, professor at the Institute of History, University of Silesia in Katowice, His interests focus on the history of law and the judiciary, as well as the history of the Polish intelligentsia in the inter-war period. He is the author of, inter alia, the publication *Sędziowie w II Rzeczypospolitej. Okręgi apelacyjne: krakowski i katowicki* (Katowice 2011).

#### NOTA O AUTORZE

Lech Marek Krzyżanowski – dr hab. nauk humanistycznych, profesor Instytutu Historii Uniwersytetu Śląskiego w Katowicach, Jego zainteresowania koncentrują się wokół dziejów prawa i wymiaru sprawiedliwości oraz historii inteligencji polskiej w okresie międzywojennym. Autor m.in. publikacji *Sędziowie w II Rzeczypospolitej. Okręgi apelacyjne: krakowski i katowicki* (Katowice 2011).