

Closing remarks

By *Kamila Staudigl-Ciechowicz*

Especially after the First World War, the reorganisation of Europe created many legal interspaces. At least in the interim, they represented small islands of foreign law within an otherwise (more or less) uniform legal system. While in some states, such as Austria, these areas were responsible for the legal particularism typical of the interwar period, in other states, such as the reborn Poland in particular, they formed only a small piece in the mosaic of the fragmented legal order. The Silesian Voivodeship, which was formed from former Prussian and former Austrian territories and thus united two “foreign” legal systems on its territory after 1918, formed such a legal interspace.

This book is intended to be a first step towards in-depth research into Upper Silesia as a legal interspace. The focus is on Upper Silesia as an autonomous region and the jurisdiction in the Silesian Voivodeship.

In the first article, Ryszard Kaczmarek analyses Silesian autonomy against the background of other autonomy projects in interwar Poland. He contrasts territorial autonomy solutions, such as the Ministry for the Former Prussian Territories, which existed until April 1922, with cultural autonomy projects, such as the demands of the Jewish population for recognition as a national minority and the concession of self-administration. Kaczmarek places the Silesian autonomy within these different solutions – a special position that was intended to accelerate the unification of the Polish state as a transitional solution.

In his contribution, Adam Krychowski provides an overview of the positions of Polish lawyers in the interwar period with regard to the concepts of autonomy and self-government. Here, too, a wide variety of different positions can be seen – depending, among other things, on political affiliation and personal relationship to Silesia. Although some jurists recognized the political necessity of autonomy, they wanted it to be understood as the shortest possible intermediate step towards complete state unification. Others argued in favour of a decision regarding autonomy based on the needs of the population and saw Silesian autonomy as a laboratory for self-government.

Krzysztof Nowak also deals with the perception of Silesian autonomy but from a different perspective. He zooms into the Silesian Voivodeship and looks at autonomy from the perspective of the population of Cieszyn Silesia, a part of the former Austrian Silesia that was not included in the 1922 German-Polish agreement on Upper Silesia (“Geneva Convention”) and shows the political landscape of this region. It is noteworthy that there were already demands in Cieszyn Silesia at the end of November 1918 to establish a separate voivodeship with autonomous rights. After the division of the for-

mer Austrian Silesia between Poland and the Czechoslovak Republic in the summer of 1920, Cieszyn Silesia, the only part that was now Polish, sought to join the former Prussian parts of Silesia for economic and financial reasons in order to form a single province of Poland. Nowak classifies the politicians of this Cieszyn Silesia as “realists”, who adapted to the new political situation after the upheaval of 1926 and were open to the restriction of autonomy in order to speed up the unification of the Polish state by the Sanacja as the governing party.

Anna Muś outlines the Sanacja’s rejection of Silesian autonomy as a kind of historical legacy from the interwar period in current political debates in her contribution, which focuses on the continued impact of the interwar autonomy debates on Polish politics after the fall of communism. In it, she provides a cross-section of the meaning of the term autonomy for Silesians from the interwar period to the autonomy marches of recent years and at the same time shows the different motivations for the establishment of an autonomous voivodeship in 1920.

Donata Zehner provides an overview of jurisdiction in Silesia, covering the Upper Silesian Arbitral Tribunal as well as the national court organisation against the backdrop of legal fragmentation. The international tribunal was based on the German-Polish agreement on Upper Silesia from 1922. It is noteworthy that the decisions of the tribunal were binding for the national courts; if a national court wanted to deviate from them, it needed a decision from the tribunal.

The article by Anna Stawarska-Rippel provides insights into the difficulties arising from the legal particularism within this one region. Against the background of developments in Poland as a whole, Stawarska-Rippel illustrates the complex legal situation in Upper Silesia. The joining of former Prussian and former Austrian territories into one voivodeship led to legal fragmentation, as the existing laws were initially retained. As a result, Austrian and Prussian or Imperial German laws applied side by side, both in substantive and procedural law. This created particular difficulties for the Court of Appeal in Katowice, which had to master both legal systems. In addition, there was a shortage of judges, particularly in the former Prussian part, which led to the strange result that lawyers from the former Austrian partition territory, where there was no such shortage of personnel, were appointed as judges and consequently had to apply German law.

The last article, written by Konrad Graczyk, deals with the aforementioned German-Polish agreement on Upper Silesia from 1922 and presents a comprehensive overview of the current state of research. The aim of the agreement was to temporarily minimise the changes resulting from the division of Upper Silesia between Germany and Poland. The location was to be preserved as an industrial area and the rights of the respective minorities were to be safeguarded. Consequently, the agreement stipulated that the existing legal norms, particularly in the areas of industry, mining, trade and labour law, could not be changed during a 15-year period, unless the changes related to the entire Polish territory. It is worth noting that it was precisely the protection of minorities provided for in this agreement that protected the Jewish population during the first years of National Socialist rule in the German Reich. The racist National Socialist laws only came into force in the German part of Upper Silesia after the agreement expired in 1937. In conclusion, Graczyk points to open questions and gaps in research;

there is still much to be done, particularly in the area of research into legal practice. And this finding applies equally to the research field of Upper Silesia as a legal interspace.

This volume deals with the legal framework both from an international perspective and with regard to the special position of the Silesian Autonomy. However, the question of how the legal reality functioned at this intersection of German, Austrian and newly enacted Polish law remains a research desideratum. Which principles guided legal practice? To what extent did the socialisation with Austrian law influence the judges appointed in the former Prussian territories due to the shortage of personnel? Which particularities resulted from the decisions of the Upper-Silesian Arbitral Tribunal and what was the legal practice in comparable cases in Cieszyn Silesia, where the agreement was not in force? These and similar questions must now be explored further, building on this volume.

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