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Wartime Usury in the first years of the Second Polish Republic (1918-1920). Introductory Remarks²

Abstract:

Wartime usury was among the most vital problems the Polish reborn state had to cope with between 1918 and 1920. Combating wartime usury between 1918 and 1920 remains a research topic which is still analysed insufficiently despite the fact that the fight against wartime usury at this time had a great impact on the further legislation. Poland not only had to mitigate the shortages of numerous goods of first necessity, but also with the issue of discrepancies of provisional legislation. The struggle against wartime usury was a test of particular importance for the reborn Polish state.

Key words: usury, wartime usury, Poland, Second Polish Republic, interwar period

I. Introduction

The investigation of the state's reaction to the phenomenon of wartime usury, which was widespread in Europe after the end of World War I, needs to take into account the social and economic context of legal regulations. This presumption is designed to provide a scrutinizing look at the interwar society in order to achieve a comprehensive view of wartime usury in fact was and what was its impact on the society. An especially suitable research field is the legal system of the Second Polish Republic which put great effort in struggle against war usury. But what was war usury?

The subject of this paper is the problem of wartime usury in Poland between 1918-1920 and the main aim of this paper is to discuss the primary issues related to wartime usury, including terminological and methodological questions. In order to achieve this goal, the legal regulations concerning usury in Poland on the brink of independence need to be discussed, specifically in the light of results of archival research on combating wartime usury. Furthermore, in order to describe the phenomenon of wartime usury in the first years of interwar Poland the main regulation in this field needs to be discussed: decree on Defence of the Nation against Wartime Usury as well as the regulations inherited from the occupational powers after the Partitions Period, the characteristics of the act, and what is to follow after its enacting.

Despite the fact that wartime usury was one of the most vital problems the reborn Polish republic was facing in the 1920's, the phenomenon was not widely discussed in legal literature since that time³. However, recently some papers on wartime usury were published⁴.

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³ The main works on this topic were: Reinhold, Józef: Ustawa o zwalczaniu lichwy wojennej wraz z odnośnemi rozporządzeniami Ministra Aprowizacji. Warsaw-Krakow, 1921.; Fajgenberg, Dawid: Lichwa. Rozprawa doktorska przyjęta przez Radę Wydziału Prawa Uniwersytetu Warszawskiego. Warsaw, 1932. and Pomeranz, M.: Lichwa. Dysertacja, przyjęta jako praca doktorska na Wydziale Prawa i Administracji Uniwersytetu Jagiellońskiego w Krakowie w czerwcu 1933 r. Krakow, 1938.

⁴ Pokoj, Jakub: Przeciwdziałanie lichwie wojennej w pierwszych latach II Rzeczypospolitej. In Krakowskie Studia z Historii Państwa i Prawa, v. VII, i. 4, 2015. Pokoj, Jakub: Wpływ wojny na prawodawstwo

Regarding wartime usury, it is crucial to note that the norms of substantive criminal law constituted an essential part of the solutions adopted by the Polish legislator in order to counteract the phenomenon of wartime usury. Notably, however, criminal liability was based largely on the civilist premise of the non-equivalence of mutual benefits of the parties to particular legal relationships. Usury offenses were described, as well as specific issues such as retail usury, wartime usury *sensu stricto* and special types of wartime usury. In addition, housing usury, crimes accompanying usury, as well as penalties and punitive measures are discussed.

Furthermore, criminal repression was complemented by administrative and legal solutions, including in particular administrative authorities specialized in combating usury. However, the 1920 Wartime Usury Suppression Act was the main act in the field of counteracting wartime usury, the activities of the Polish anti-usury administration began as soon as in November, 1918. The states' reaction to wartime usury was also characterized by a large variety of criminal and administrative special norms, both in substantial and procedural law. The general rules of criminal and administrative procedure as well as principal rules of criminal substantive law have been modified in such a way as to accelerate and simplify proceedings as much as possible.

In order to describe the specificity of anti-usurious regulation it is inevitable to investigate several research topics which were distinguished below. In order to investigate the state's reaction to the phenomenon of wartime usury which was widespread in Europe after the end of World War I it was inevitable to consider some research questions. Each of these research questions was focused on particular issues connected with wartime usury in Poland between 1920 and 1932. These questions were as follows:

- 1) What was the basis of "wartime usury" in interwar Poland?
- 2) What was the characteristics of the phenomenon of "wartime usury"?
- 3) What did the state's reaction to wartime usury consist of?

II. The "inherited" regulations and the first attempt to combat wartime usury

The reborn Polish state inherited a mosaic of various legal regulations, including German, Austrian, Russian, French and Hungarian legislation⁵. At the threshold of Polish independence, the process of the unification of legal systems was one of the major issues the reborn Polish state had to cope with⁶. The state of uncertainty and disorder caused by discrepancies between legal systems inherited from the occupational powers forced the Polish elites to make efforts in order to uniform the legal system, and secondly, to prepare Polish national codifications in various branches of law⁷.

The general deficiencies of the legal system of the reborn Polish state were also related to the regulations in the field of counteracting wartime usury. Depending on the part of Poland

antylichwiarskie w pierwszych latach II Rzeczypospolitej (1918–1921). In Studia z Dziejów Państwa i Prawa Polskiego, v. XXI, 2018. Pokoj, Jakub: Between Law on the Books and Law in Action: Counteracting Speculation and Usury in Poland (1818-1920). In Studia Iuridica, v. LXXX, 2019. And Pokoj, Jakub: Wywiadowcy i donosiciele urzędów walki z lichwą w międzywojennej Polsce. In Baran, Beata – Ożóg, Michał (ed.): Ochrona sygnalistów. Regulacje dotyczące osób zgłaszających nieprawidłowości. Warsaw, 2021.

⁵ Bardach, Juliusz – Leśnodorski, Bogusław – Pietrzak, Michał: Historia ustroju i prawa polskiego. Warsaw, 2005, p. 552.

⁶ Płaza, Stanisław: Historia prawa w Polsce na tle porównawczym, vol. 3. Okres międzywojenny. Krakow, 2001, p. 35

⁷ Grodziski, Stanisław: Komisja Kodyfikacyjna Rzeczypospolitej Polskiej. In Czasopismo Prawno-Historyczne, vol. 33, no. 1, 1981, p. 47.

there could be at least three different regulations in the field of counteracting wartime usury⁸. This state of uncertainty intensified the necessity of adapting a complex of regulations⁹, including those aimed to mitigate the consequences of shortages of numerous commodities caused by the war, including also a scarcity of goods of first necessity. As in the formerly Austrian and German parts of Poland the previously introduced regulations were in force, the need to adopt new regulations was particularly distinct in these parts of Poland which had belonged to Russia.

Regarding the territorial aspect of regulations on wartime usury, the Polish territory between 1918 and 1920 could be divided into four parts: former Austrian area, where decree from the 28th March, 1917 was in force¹⁰, former German zone with the bill on maximum prices from the 28th October, 1914 still in force¹¹ modified by the bill from 22nd March, 1917¹², the territory of the so-called "Congress Kingdom" of Poland with 16th May, 1917 regulation of usurious prices issued by the General-Governor of Warsaw¹³ and the Eastern Borderland, where regulations issued by German military commanders constituted the legal boundaries of permissible prices for commodities.

When Józef Piłsudski took over power in November 1918 one of his first legislative initiative was supposed to mitigate the aforementioned disorder of anti-usurious regulations. As soon as on 5th December, 1918 Piłsudski issued a decree on Defence of the Nation against Wartime Usury¹⁴. According to Dawid Fajgenberg, a prominent legal scholar who devoted his studies to wartime usury, the decree was "one of the first steps towards the creation of domestic criminal law" in reborn Poland¹⁵. The decree included harsh measures aimed at eradicating wartime usury, including death penalty for several types of usurious crimes. However, soon it occurred that the ties within the newly reborn Polish state were not strong enough to introduce such a regulation on the whole territory. For example in the former Austrian area the decree from the 28th March, 1917 was still in force until 1920¹⁶.

The importance of anti-usurious regulations in the first years of Polish independence were clearly explained in the preamble of the decree on Defence of the Nation against Wartime Usury. It stated that: "For more efficient defence of the people from wartime usury, which hinders it to gather the necessary amounts of food and heat, and housing, I [Józef Piłsudski as the temporary head of the state – J.P.] decided to strengthen and broaden imposing of punishments for any crimes that can be defined as usury". It is clear that wartime usury was perceived as an exceptionally dangerous phenomenon which may cause a serious threat not only to the economy, but to the state as a whole ¹⁷.

⁸ The legal systems were: Austrian, Prussian (German) and Russian, as the heritage of the partitions' period. What is more, in some parts of the formerly occupied by the Russians, the legal system consisted of elements of French law (the former Duchy of Warsaw which were later incorporated in the Congress Kingdom of Poland) and in Polish Spisz (Szepes) and Orawa (Árva) Hungarian law was still in force. Bardach, Juliusz – Leśnodorski, Bogusław – Pietrzak, Michał: Historia ustroju i prawa polskiego. Warsaw, 2005, p. 552.

⁹ Grodziski, Stanisław: Komisja Kodyfikacyjna Rzeczypospolitej Polskiej. In Czasopismo Prawno-Historyczne, vol. 33, no. 1, 1981, p. 47.

¹⁰ Kaiserliche Verordnung über den Wucher – Reichsgesetzblatt (Österreich)1914, number 275, position 14343.

¹¹ Bekanntmachung über Höchstpreise – Reichgesetzblatt 1914, number 94, position 4531.

¹² Bekanntmachung über die Änderung des Gesetzes, betreffend Höchstpreise – Reichgesetzblatt 1917, number 55, position 5769.

¹³ Journal of Decrees of the General-Governor of Warsaw 1917, numbr 75, position 318.

¹⁴ Journal of Laws of the Polish State 1918, number 19, position 50.

¹⁵ Fajgenberg, Dawid: Lichwa. Rozprawa doktorska przyjęta przez Radę Wydziału Prawa Uniwersytetu Warszawskiego. Warsaw, 1932, p. 116.

¹⁶ Pokoj, Jakub: Zwalczanie lichwy wojennej na obszarze właściwości krakowskich organów sądowych i administracyjnych w latach 1920-1932. [ENG: Combating of wartime usury in the jurisdiction of the Cracow judicial and administrative authorities in years 1920-1932], doctoral dissertation defended at Jagiellonian University in Krakow, Poland on 21st February, 2022. p. 70-71.

¹⁷ Pokoj, Jakub: Between Law on the Books and Law in Action: Counteracting Speculation and Usury in Poland

The preamble declared three main outcomes of wartime usury: lack of food, insufficiency of fuel (heat) and housing shortages. This declaration indicates that wartime usury was affecting the most elementary human needs. The aforementioned shortages could easily lead to major turmoil within the newly reborn state, especially in the perspective of future conflict with the Bolsheviks. Such a possibility was widely described in reports prepared by the American Relief Administration in Poland in the first half of 1919¹⁸.

One of the most important regulations of the decree on Defence of the Nation against Wartime Usury was the definition of first necessity goods included in article 1. This regulation stated a general rule of criminal responsibility for usurious acts aimed at restricting the availability of goods of first necessity. However, the term of "goods of first necessity" was not explained in the further articles, which stated the main defect of the Decree. The legislator provided only a sample enumeration which depicted the exemplary of the goods of first necessity. The examples were as follows: food, fuel, materials which could be used in heating, lighting or clothing purposes and tobacco products. This vague enumeration was summarized with phrase "or other materials which can be used to fulfill the urgent needs of the population". This clearly indicated that the legislator was willing to remain the catalogue of goods of first necessity uncertain and therefore to "strengthen and broaden imposing of punishments" for usurious crimes – as it was already declared in the preamble.

In this context it is vital to say that not all of the items declared as goods of first necessity were objectively of such a character. The catalogue contained both goods which were inevitable to fulfill the elemental needs of any human being living in 1920's Central-Eastern Europe (e.g. food, clothing and housing) as well as goods commonly described as luxurious products (like tobacco). What is even more, in further articles of the decree on Defence of the Nation against Wartime Usury the inventory of goods of first necessity was expanded in such a manner that it included also any goods that could be used by Polish military-industrial complex in order to strengthen the military efforts of the state.

Taking into account the inconsequence of the legislator, the only possible way to decode the term of "goods of first necessity" *a casu ad casum*. As a result the judiciary was bearing the burden of interpreting whether a particular commodity could fill the criteria of "goods of first necessity" in a precise set of circumstances and therefore if the contract was to be declared as usurious? The inconsistency of the aforementioned basic regulation of the decree on Defence of the Nation against Wartime Usury resulted in a tremendously negative opinion of legal scholars about the act. Dawid Fajgenberg claimed that: "The exemplary enumeration is completely superfluous because of its glowing incompleteness" ¹⁹.

Both the failure to meet the basic standards of principles of correct legislation and the urgent need to introduce a uniform regulation on wartime usury in the whole territory of Poland caused the Sejm to prepare a new act on usury.

III. Economic basis of wartime usury

The long four years of World War One caused a long-lasting state of scarcity of commodities, including basic goods²⁰. Due to military actions, contributions, requisitions and

^{(1818-1920).} In Studia Iuridica, v. LXXX, 2019. p. 315-316.

¹⁸ A letter from American Relief Administration to Polish Prime Minister. In Archiwum Akt Nowych [Archive of New Files] in Warsaw 2/19/0/9.4/1346.

¹⁹ Fajgenberg, Dawid: Lichwa. Rozprawa doktorska przyjęta przez Radę Wydziału Prawa Uniwersytetu Warszawskiego. Warsaw, 1932, p. 116.

²⁰ Jastrzębski, Robert: Opinia w sprawie możliwości dochodzenia przez Polskę od Niemiec odszkodowania za szkody spowodowane przez drugą wojnę światową w związku z umowami międzynarodowymi. In Przegląd Sejmowy, vol. 143, no. 6, 2017, p. 210-215.

plunders which took place in large parts of Poland, the resources could not be restored in a short period of time. Therefore, the reborn Polish state from the very beginning of its existence had to cope with numerous economic difficulties whose common denominator was scarcity of commodities²¹.

As it is indicated in the newer research, the phenomenon of wartime usury was a fusion of usury and speculation joined in specific set of conditions including especially longterm lack of essential items arising from war²². Since wartime usury was linked to shortages of goods of first necessity, its influence on the whole society could not be underestimated. Hence, the analysis of the phenomenon of wartime usury requires legal, economic, sociological and historical methods combined in an inquiry to prepare a comprehensive study on wartime usury.

To briefly depict the economic situation of the newly reborn statehood it is enough to say that despite the fact that vast majority of Polish citizens at this time were farmers and other agricultural workers²³ Poland was commodity credits since 1919 to 1921, which were predominantly allocated on food items²⁴. It is symptomatic that at this time the state's budget was overwhelmed by military expenses which covered about 60% of expenditures²⁵. The necessity of food purchase by a predominantly agricultural economy such as Poland at this time clearly indicates that the condition of the economy was disastrous.

The balance of commodities between 1918 and 1920 was generally low. However, it can be indicated that particular parts of Poland were better supplied than the others, e.g. Western Lesser Poland or Greater Poland, which were not affected by direct military actions during World War I. On the other hand, the worst situation was in the Eastern Borderlands which were affected by direct military actions both during World War I and Polish-Bolshevik war. The insufficiency of basic goods in these parts of Poland was described by American Relief Administration in Poland²⁶. These observations are worth noting as made by external and impartial observers who had no interest in exaggerating. This statement shows not only the catastrophic state of supplies, but also indicates the probable causes of the shortages of commodities, which were not often presented in Polish public debate.

The Americans explained that: "The Polish Government realizes that in the Eastern Borderlands, which were taken within the last months, the supply situation is harsh. However, American Mission states that the progress in bringing relief to people inhabiting these lands is insufficient. (...) It is doubtful that among territories destroyed during the last war there is any with so much pain as the great space between the Congress Poland and the Bolshevik lines. The American Mission took a great effort to investigate the state of affairs and to improve the harsh conditions, but we could not by any means give the people help to proper extent, because of serious problems with railway transport and difficulties caused by movements of military forces. Only in the last time the results are a little bit better because of engaging automobiles which bring food to the hungry people. (...) It is getting more and more inevitable to concentrate efforts of Polish help organizations in this very area. It is necessary

²¹ Landau, Zbigniew – Tomaszewski, Jerzy: Gospodarka Drugiej Rzeczypospolitej. In Dzieje Narodu i Państwa Polskiego, no. 63, p. 8.

²² Pokoj, Jakub: Przeciwdziałanie lichwie wojennej w pierwszych latach II Rzeczypospolitej. In Krakowskie Studia z Historii Państwa i Prawa, v. VII, i. 4, 2015, p. 629-632.

²³ According to the 1921 census, nearly ³/₄ of Polish citizens lived in rural areas and 61% of the populations only occupation was farming. Majewski J.: Rozwój gospodarki chłopskiej w okresie międzywojennym. In Inglot, Stefan (ed.): Historia chłopów polskich. v. III, Warsaw, 1980. p. 36.

²⁴ Landau, Zbigniew – Tomaszewski, Jerzy: Zarys historii gospodarczej Polski 1918-1939. Warsaw, 1986, p. 65.

²⁵ Winiarski, Bolesław: Polityka gospodarcza. v. III, Warsaw, 2006, p. 115.

²⁶ A letter from American Relief Administration to Polish Prime Minister. In Archiwum Akt Nowych [Archive of New Files] in Warsaw 2/19/0/9.4/1346.

not only because of the humanitarian point of view, but also from the political one, so that Poles facing the needs of the local people would take such a stand that the regional residents could see their own interest in sustaining Polish administration. Please acknowledge this fact that it can be achieved only through the most dynamic effort to bring relief to the people".

Therefore, it is clear that insufficiency of goods of first necessity was also a major political problem which could impact the attitude of inhabitants of reborn Polish state attitude to the Republic. The disastrous economic situation of Poland was expressed as soon as in 1919 by John Maynard Keynes who called the Second Polish Republic Poland "an economic impossibility with no industry"²⁷. Particularly severe conditions were present in central and Eastern Poland: Eastern Lesser Poland, the former Congress Kingdom of Poland and in the Eastern Borderlands. An excellent description of commodities of first necessity was prepared by Harold Henry Fisher, the chief of History Department of American Relief Administration, Stanford University Professor and an eye witness of supplies shortages in Poland at the time. He indicated that some parts of Poland changed into deserts and those people who remained despite the expulsions, was hiding in forests and fields like wild animals²⁸.

Shortages affected also stocks of cattle, horses, hogs and fowl and thus the prices of food products were rising sharply. As a result of collapse of industrial production caused by lack of manpower due to numerous mobilisations and war losses²⁹, lack of raw materials and the so-called "evacuation" executed by Russians in 1915³⁰, Poland was affected by a permanent state of insufficiency of basic goods which were necessary to fulfil fundamental needs of population³¹. These conditions resulted in worsening of work conditions and a great reduction of purchasing power of vast majority of the population which worked in agricultural and industrial sectors³². Therefore, the reborn Polish state from the very beginning of its existence had to cope with numerous economic difficulties whose common denominator was scarcity of commodities³³. What is more, Poland was also struggling against some other economic obstacles defined as "structural"³⁴.

In the abovementioned set of circumstances, the phenomenon of wartime usury was widespread. It is worth noting that the scarcity of numerous goods was caused mainly – but not only – by war. Therefore the state of permanent shortage of commodities of first necessity resulting in exploitation, usury and other economic anomalies was described as "wartime usury".

IV. Summary

An important step towards combating wartime usury in the Second Polish Republic was made on 2nd July, 1920 when the Sejm passed the Bill on Combating Wartime Usury³⁵.

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²⁷ Keynes, John Maynard: The Economic Consequences of the Peace. [Acces on: 15. 04. 2023]. http://www.gutenberg.org/files/15776/h5776-h/15776-h.htm

²⁸ Fisher, Henry Harold: The Famine in Soviet Russia 1919-1923. The Operations of the American Relief Administration. New York, 1927, p. 28.

²⁹ Molenda, Jan: Chłopi polscy w 1914 roku. In Dzieje Najnowsze, v. XXXVI, 2004, i. 3, p. 117.

³⁰ Which caused a horrible devastation of infrastructure – Cf. W. Borodziej, M. Górny, *Nasza wojna*, v. I, Warsaw 2014, p. 358.

³¹ Landau, Zbigniew – Tomaszewski, Jerzy: Gospodarka Drugiej Rzeczypospolitej. In Dzieje Narodu i Państwa Polskiego, no. 63, p. 8.

³² Landau, Zbigniew – Tomaszewski, Jerzy: Zarys historii gospodarczej Polski 1918-1939. Warsaw, 1986, p. 14.

³³ Jastrzębski, Robert: Opinia w sprawie możliwości dochodzenia przez Polskę od Niemiec odszkodowania za szkody spowodowane przez drugą wojnę światową w związku z umowami międzynarodowymi. In Przegląd Sejmowy, vol. 143, no. 6, 2017, p. 210-215.

³⁴ Brzoza, Czesław – Sowa, Andrzej Leon: Historia Polski 1918-1945. Krakow, 2006, p. 170.

³⁵ Journal of Laws 1920, number 67, position 449.

Regarding the legal norms in the field of wartime usury, it was the most important act in the interwar period in Poland³⁶.

As for the period of validity of the Bill on Combating Wartime Usury from 2nd July 1920, it came into force in the first days of August 1920 – in the exact moment when the Bolsheviks were approaching Warsaw – and it lasted until repealing of the penal norms of the Bill of 2nd July, 1920, what happened in 1932, after the Makarewicz's Penal Code was issued³⁷. The Wartime Usury Suppression Act was one of the first nationwide criminal laws passed in the reborn Republic of Poland³⁸.

As the penal rules, both substantive and procedural ones, stated the core of the Bill, the date of abrogation of the penal regulations constitutes the natural closing point of the project's temporal scope. The aforementioned bill was the most significant legal act in the field of war usury as the last of its regulations remained in force as long as until 1938. The draft of the bill was a result of an elaboration made by the Ministry of Justice. Despite the fact that the draft was not remained nearly unaltered after the legislative process, the parliamentary debate was long and even tempestuous in some parts. Therefore, the Bill of 2nd July, 1920 can be described as the most important act in the field of war usury in the interwar period and thus the analysis of the phenomenon of war usury and the legal instruments aimed at combating it shall relate to the Bill of 2nd July 1920 in the first place.

The draft of the bill was issued as an initiative of Ministry of Justice on 19th March, 1920 together with the legislative motives³⁹. Analysis of the legislative motives is justified since the final version of the bill was nearly unaltered⁴⁰. Ministry of Justice indicated that the regulation in force at that time was both insufficient and inconsistent. The fundamental regulation of the Bill on Combating Wartime Usury was included in article 1 which stated the definition of first necessity goods. This time the Ministry managed to propose a much clearer definition which fulfilled the rules of correct legislation.

However, the regulations inherited by Second Polish Republic from the occupying powers and those enacted by the Republic were not sufficient means of state's reaction to the phenomenon of wartime usury, these definitely contributed to limit the consequences of wartime usury. Wartime usury definitely had a great impact on the society.

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³⁷ The Decree of the President of the Republic of Poland from 11th July 1932 on Regulations Introducing the Penal Code and Law on Offences, Journal of Laws 1932, number 60, position 573.

³⁸ Reinhold, Józef: Ustawa o zwalczaniu lichwy wojennej wraz z odnośnemi rozporządzeniami Ministra Aprowizacji. Warsaw-Krakow, 1921, p. 116.

³⁹ Parliamentary print number 1629 of the Legislative Sejm, Sejm Archive RPII/0/1629.

⁴⁰ Pokoj, Jakub: Wpływ wojny na prawodawstwo antylichwiarskie w pierwszych latach II Rzeczypospolitej (1918–1921). In Studia z Dziejów Państwa i Prawa Polskiego, v. XXI, 2018, p. 186.

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