Dreams of 'moving from the Napoleonic code to the new era of the judiciary' on the eve of establishment of the Kingdom of Poland (1814-1815)[1]

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I. The Polish state and its judiciary system in the eighteenth century.

In the mid eighteenth century, Poland was a dysfunctional, even collapsed state in terms of the structure and principles which governed the sphere of public life. It stood out in Western Europe for its undeveloped state structure, particularly the judiciary and administrative apparatus.[2] This situation was further aggravated by inept estate and feudal justice system, and an anachronistic legal system, devoid of codification and largely predicated on customary law.[3] However, in the latter half of the eighteenth century, during the wave of pan-European Enlightenment, the situation gradually began to change. The reforming camp that was consolidating at the time was continuously gaining strength in its efforts to modernize the country, leading to fundamental transformations in the political system. The first period of political changes began in 1764, with the ascension to the throne of Stanisław August Poniatowski, an enlightened ruler and reformer. Stanisław August was the last in the line of kings of what had once been an European power, namely the Polish-Lithuanian Commonwealth, a state with a number of particular institutions that resulted in the country evolving a fairly specific and unique republican tradition. Working alongside the reformist camp, Stanisław August strove to pull the country out of the stagnation and political collapse which it had been suffering for over 100 years. Taking Western Europe as their main point of reference, a large part of the erstwhile political elite had grown convinced of the backwardness of the Polish territories and pointed to the weak statehood resulting from numerous defects in the political system. However, an attempt to conduct complex reforms ended in failure in 1795, with the collapse of the state due to partitions carried out by the neighbouring powers. Nonetheless, on the eve of the collapse, a number of comprehensive governance reforms were successfully implemented, especially regarding the functioning of the Four-Year Sejm (1788-1792).

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2 Lukowski, Disorderly Liberty, pp. 1-53; Ludwikowski and Fox, The Beginning of The Constitutional Era, pp. 60-61.

3 Bogucka, The Lost World of the 'Sarmatians', p. 162.

The greatest success of this period was the adoption of a republican Constitution on 3 May 1791, which consisted of adapting Polish traditions to the requirements of a modern state, of course according to the standards of the Age of Enlightenment.[4]

The constitution, by necessity, had to be a compromise between groups we can refer to as progressives and traditionalists. The reformers not only tried to copy some modern Western European institutional solutions, but moreover to modify these creatively, combining the Polish republican tradition, a system with roots stretching back to the Renaissance organization of state which indirectly referred to Ancient traditions of the Roman republic and classical republicanism.[5] At the time, the process of modernization of Poland drew from the contemporary European canons of Enlightenment philosophy, and political thought. What made Poland different from surrounding countries, however, was its own political tradition, heritage and a strong ideology of following one's own path. The latter philosophy, according to the traditionalists, as the only one that could bring back the old times of glory.[6]

This debate was reflected, among others, in how the judiciary was reorganized at the end of eighteenth century. During the reforms of the Four-Year Sejm the authorities decided to abolish the earlier mosaic of courts[7] and, for the first time ever, introduced the principle that land courts, municipal courts and supreme courts (two crown tribunals) would be 'always ready', instead of dealing with cases only at periodically summoned sessions. In addition, there was a 'still shy, but noticeable tendency to increase the professional and moral qualifications of judges', but only in practical aspects. This was because 'the candidates were required to have held public offices before, and thus to have some level of experience'. However, the reformers still did not fathom the idea that judicial offices should only be given to professional judges with a legal education. To the contrary, they believed that the only way to guarantee that the judiciary would be free of abuse was to appoint judges for four-year terms in office, and the only professional qualification required was for them to know 'the law and national procedure' in general. However, no method of verifying this knowledge was established. It was left to the discretion of the electors whether or not a candidate was fitting. Electors consisted of the nobility that gathered at dietines, or the townsmen who also elected both judges and administrative officials at separate communal gatherings.[8] However, there was still a prevailing view that holding a judicial or administrative post was an honour and privilege, rather than work that deserved remuneration. In line with the republican tradition, offices were to remain unpaid, as exercising them was considered a civic duty that every patriot was obliged to

4 Gałędek, 'Legal Transfers and National Traditions'.

5 Grześkowiak-Krwawicz, 'Noble Republicanism'; Müssig, 'Reconsidering Constitutional Formation', p. 85-90; Müssig, 'Juridification by Constitution', pp. 29-34; Tarnowska, 'The Sovereignty Issue in the Public Discussion', pp. 233-235, 247-249.

6 Jedlicki, A Suburb of Europe, pp. 3-12, 51-63; Janowski, Polish Liberal, pp. 9-19.

7 Vilimas, 'The Formation of the Land Court System'.

8 Filipczak, 'Elekcje ziemskich urzędników sądowych'.

discharge, pursuant to the idea of civic virtues and moral obligation to serve the country, including the holding of public offices.[9]

II. Reforms of the judiciary system in the Duchy of Warsaw.

Shortly after these reforms Poland collapse and in 1795 the central Polish territories came under Prussian rule. From this perspective, the Polish political elites may have felt somewhat shocked to experience first-hand the modern Prussian way of organizing the judiciary. Under Prussian annexation, judges were consistently required to have legal qualifications, and this principle was subsequently upheld once Polish statehood was restored by Napoleon in 1807 as the Duchy of Warsaw under French protectorate. The Duchy's judiciary was organized according to the French model. The latter model was in line with the constitution octroyed by Napoleon to the Duchy in 1807 and with the new organization of the judiciary system, implemented in 1808.[10] The lowest instance were courts of peace, established in each poviat. Unlike in France, the court of peace was divided into two divisions: of arbitration and of litigation. The task of the arbitration division was to seek settlements in cases under the jurisdiction of the Departmental Tribunal. It was headed by a justice of the peace, who did not have any jurisdictional competences, but apart from arbitration also held a number of guardianship functions. The justice of peace was chosen by the dietines composed of noblemen, and his selection was confirmed with a royal appointment. This office was honorary (justices of the peace did not receive any remuneration from the State Treasury), and they discharged their function for three years, in terms of a few consecutive months. The other division, that is the litigation one, was headed by an official unknown neither in the French judiciary system, (however was somehow an imitation of the French office of suppleant) nor in the Napoleonic constitution of the Duchy of Warsaw assistant justice of the peace (Pol.: podsędek, from Latin subiudex, literally sub-judge). He had full jurisdiction in civil and criminal cases, and candidates for this function had to meet certain professional criteria: having completed a course in law, they took a theoretical examination and a court apprenticeship. They stepped into office upon the receipt of a ministerial appointment.[11] In each civil department there were tribunals of first instance for graver cases and appellate tribunals which examined appeals in less important cases, alongside an Appellate Court which served as an all-national appellate instance and the Council of State acting in the capacity of a cassation court.[12]

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9 Michalski, Studia nad reformą sądownictwa, vol. 1, pp. 3-43; Michalski, 'Zagadnienie reformy sądownictwa'.

10 Klimaszewska, '*Le droit pénal français sur les territoires polonais*'; Klimaszewska, '*The Reception of the French Commercial Law*'.

11 Mencel, Feliks Łubieński, pp. 61-63; Rosner, 'Sędziowie i urzędnicy sądów'; Rosner, 'Stare i nowe w organizacji'.

12 Sobociński, 'Sądownictwo Księstwa Warszawskiego'; Krzymkowski, Rada Stanu Księstwa Warszawskiego, pp. 178-196.

Feliks Łubieński, the erstwhile Minister of Justice and the chief supporter of modernization by way of transplanting French institutions, was heavily criticized from the very beginning. His aim was to establish the office of – mentioned above – professional assistant justice of peace. In his defence, Łubieński argued that there was a need to alleviate the workload of elected and unpaid justices of the peace and that the present justices did not have the qualifications needed to resolve any disputes that required a thorough knowledge of the law. The criticism of Łubieński was further inflamed by the unavoidable problems brought by the implementation of the new organization of the judiciary system.[13]

These problems were exacerbated not only by to the lack of traditions regarding the justice system, but above all because the courts, just like in pre-partition Poland, did not operate according to ordered procedures, since the criminal and civil procedures were not codified. During the reign of Stanislaw August legal reforms were to follow suit of the political reforms. However in the sphere of civil and criminal law these reforms were not successful, in particular owing to the Sejm's rejection of the first codification proposal, the so-called Collection of Court Laws of 1776 penned by Andrzej Zamoyski. The second proposal, the so-called Code of Stanisław August which commenced to be prepared in 1791 also was not completed due to the collapse of the Polish Lithuanian-Commonwealth.[14] In the Duchy, alongside the new organization of the judiciary system, the French civil procedure and the Napoleonic Code were also being implemented. As a consequence, the old Polish judges, poorly educated and not accustomed to following procedural regulations, faced a completely new reality. With varying success they tried to deal with these foreign, often mysterious and inflexible procedures.

The situation was not improved by the fact that there was not a single modern law school operating in the country. The first such school of law was opened in Warsaw only in 1808, and from then on it educated young disciples of the legal profession according to the new standards. However, the new representatives of the legal professions educated in new schools and in accordance with new principles and programmes, only knew the mechanisms of codified laws and procedures, and could not possibly know the Polish laws extensively. 'In the understanding of the old order of things they were, thus, foreigners in their own land, uneducated in the rules of application of the old system of Polish law and unable to do it.'[15]

It was also the case that courts and their organization were affected by a great hostility toward the Napoleonic Code and the French civil procedure, both from the nobility and the clergy, who saw the introduction of Napoleonic codification as a real threat to their own interests. The negative public opinion of the Napoleonic Code and French

13 Mencel, Feliks Łubieński, pp. 64-70; Sobociński, Historia ustroju, p. 203; Mencel, 'L'introduction du Code Napoléon', p. 181-182.

14 Borkowska-Bagieńska, Zbiór praw sądowych Andrzeja Zamoyskiego, pp. 58-152; Szafrański, Kodeks Stanisława Augusta, pp. 93-211.

15 Antoni Wyczechowski, Myśli względem prawodawstwa narodowego, 1815, manuscript in Biblioteka Książąt Czartoryskich, no. 5259 IV, pp. 72, 73, 75.

model of judiciary also stemmed from an emotional rejection of foreign law, which was seen as contrary to native customs and traditions. The erstwhile Vice-Mayor of Warsaw, Stanisław Węgrzecki, noted this 'sonorous scream against the code', observing that 'hardly anyone supports it; even those who do not know it at all, who have not read it, clamour that it is not attuned to our climate [...]. A nobleman is frightened of the code, so as to not lose his power over the peasants, he is pained by being put in the same tribunal with a townsman and a peasant, by having the same succession laws apply to him and to the townspeople [...]. Clergymen suffer over having to relinquish religious rites to freedom of conscience and worship.'[16] The criticism was fuelled by code provisions that guaranteed equality before the law, regardless of birth, nationality and religion. The correct implementation of the code thus required a rearrangement of social relations, especially since the code was clearly anchored in the principle of the primacy of positive law, according to which it would be possible to abolish the existing laws and customs at any time. The landed gentry therefore felt this posed a constant threat to their privileged position.[17] This was accompanied by the hostile attitude of the Catholic church which fiercely opposed the provisions for registrar's offices and lay marriages, as marriage which had thus far been a holy union, could now be dissolved contrary to the canon law.[18] This fear of upturning social relations and of downgrading the position of the nobility and of the clergy translated into a landslide of criticism against the transplanted law.

III. 1814-1815: An attempt to transition into 'the new era of judiciary'.

The criticism of the new judiciary system during the Duchy of Warsaw focused on the issue of its alleged excessive costs. Many critics deemed the expenses spent on the judiciary system as unnecessary and called for the honorary judges to be brought back, as well as for jury courts to be established.[19] The Napoleonic constitution did not prohibit the introduction of these institutions, but the powerful minister of justice Feliks Łubieński opposed such a solution. It was not until the fall of Napoleon that the vision of a complex reform finally became realistic. At this time the French protectorate was replaced with a provisional government appointed by the liberal tsar Alexander I, who strove to establish a Kingdom of Poland under his influence. Alexander I gave the Polish political elites considerable freedom, promising that he would take advantage of their proposals in the implementation of the new political system. By virtue of the ukase dated 19 May 1814, the tsar established the Civil Reform Committee. The guidelines issued by the tsar, in which he set the desired direction of reforms, included also a directive laying down the bases

16 Stanisław Węgrzecki, Przestrogi do utworzenia Królestwa Polskiego, 1813, manuscript in Biblioteka Książąt Czartoryskich, no. 5242 IV, pp. 126-127; Kieniewicz, Mencel and Rostocki, Wybór tekstów źródłowych, p. 188.

17 Mencel, 'L'introduction du Code Napoléon', pp. 146-148, 152-155, 167, 180-185.

18 Pomianowski, 'Z problematyki rozwodów', pp. 108-110; Gałędek and Klimaszewska, 'The Work of the Civil Reform Committee', pp. 184-186.

19 Koźmian, 'Postrzeżenia ogólne o sądownictwie'; Wężyk, 'O Wydziale Sprawiedliwości'; Mycielski, "Miasto ma mieszkańców, wieś obywateli", pp. 60-63; Cichoń, Rozwój myśli administracyjnej, pp. 155-166.

of the codification strategy: 'The Napoleonic Civil Code and Judicial Procedure should be abolished as soon as possible. The Polish laws, the Lithuanian Statute and the judicial forms used before the introduction of the French procedure could be substituted for it. The Committee will discuss whether the codes should be eliminated in whole or in part, and at what time this abolition could take place. It will also propose a plan and the composition of a separate Commission to be created which will be responsible for the drafting of a new Civil Code, Criminal Code and procedures, as well as the final organization of the judicial order.'[20] The fate of the French law and judiciary system seemed to be etched in stone, and its abrogation was to be a mere matter of time.

However, the true spirtus movens of these reforms was not Alexander. In reality, he had merely accepted the proposals formerly presented to him by Prince Jerzy Adam Czartoryski, primarily in a memorandum dated 7 February 1814.[21] The erstwhile most influential representative of the Polish political elite stepped into the role of 'a natural intermediary between the Russian tsar and the Polish society', affecting numerous key political and legal decisions regarding the future status of the Kingdom of Poland, and especially the contents of the constitution adopted in 1815.[22] During the Duchy of Warsaw, Czartoryski was among the ranks of adamant opponents of the French modelled reform into Polish territories, both for social and political reasons. The Prince 'was oblivious to the institutions of the Duchy […] he was by principle inimical to all things Napoleonic'.[23] Yet this did not stop him from appreciating their positive traits. He believed these institutions would be a work of 'insight and reason' and counted it as one of the more 'orderly' group of works, from which it would be worthwhile to draw 'what is useful and well-seen'. Yet of decisive significance was Czartoryski's ideological conviction that the introduction of 'foreign laws [...] and with them - of foreign customs and sentiments' would lead the Polish nation to 'lose its originality' and, along with that, 'its good qualities'. He believed that every nation that decides on a legal transplant 'acquires [...] in large part foreign failings'. For this reason, he proclaimed, perhaps with slight exaggeration, that 'It is the saddest fate of a country, when it must adopt a legislation imposed upon it,

20 The full original text reads as follows: 'Le Code Napoléon civil et de procédure judiciaire devrait être aboli le plus tôt possible. On pourrait intérimalement y substituer les lois polonaises, le Statut de Lituanie, ainsi que les formes judiciaires usitées avant l'introduction de la procédure française. Le Comité discutera si les codes doivent être abolis entièrement ou en partie, et à quelle époque cette abolition pourrait avoir lieu. Il proposera aussi un plan et la composition d'une Commission séparée à créer qui sera chargée de la rédaction d'un nouveau Code civil, criminel et de procédure, de même que l'organisation définitive de l'ordre judicaire.' (Askenazy, 'Zagrożenie Kodeksu Napoleona', p. 375).

21 In his memorandum dated 7 February 1814, Czartoryski wrote: 'Le Code de Napoléon civil et de procédure judiciaire doit et peut s'abolir immédiatement, en y substituant intérimalement les lois polonaises et le Statut, ainsi que les formes usitées avant l'introduction de la procédure française [...] La législation civile et l'administration du Duché ayant une fois acquis l'esprit et la forme qu'elles doivent conserver, la volonté de S. M. I. est de joindre successivement au Duché les huit gouvernements polonais, en commençant par les plus voisins.' Askenazy, 'Zagrożenie Kodeksu Napoleona', pp. 374-375.

22 Grynwaser, Pisma, p. 68.

23 Askenazy, 'Zagrożenie Kodeksu Napoleona', p. 374.

no matter how perfect it may be. It is better to then [i.e. successively] improve, supplement its own institutions that to hastily adopt foreign ones and at foreign behest.'[24]

The postulate to adjust the law and judiciary system to fit with the Polish specificity was in line with the universal expectations of the elites and of the entire landed gentry. Following the fall of Napoleon, the opposition of traditionalist circles began to dovetail with the general European atmosphere of negating the value of works regarded to be revolutionary.[25] The Civil Reform Committee, headed by the Prince himself,30 was dominated by the opponents of all the political and legal changes that had been implemented in the Duchy of Warsaw.31 Historical literature considers the works of the Committee to be the prime moment of Polish conservative activity. This is also seen as the moment when they had the best opportunity to come forward with a positive program,[26] which was not possible in the Napoleonic Duchy of Warsaw.

A more detailed analysis of debates held within the Reform Committee, not only as regards the organization of the judicial system, but also the administration system, indicates that the Committee members had grouped in two camps, in addition to a relatively large wavering group. The fault lines between the two sides were determined by their attitude toward the past and contemporaneity. The traditionalists composed the most influential group. They were headed by a Lublin advocate Franciszek Grabowski, who presided over the Committee's Court Section (called also the Legislative Section) responsible for judiciary system and private law reform. Grabowski enjoyed the support of other members who represented various factions of opponents to the Napoleonic Code, such as the priesthood (in the person of father Józef Koźmian), the clericals (represented by Józef Kalasanty Szaniawski), and members of the most conservative nobility from Galicia (Stanisław Zamoyski), and from Lithuania (Tomasz Wawrzecki). Some members of the so-called Jacobins, like Józef Kalasanty Szaniawski and Andrzej Horodyski, who supported the Napoleonic reforms earlier experienced a complete about-face in their worldviews following the downfall of Napoleon. They no longer claimed that Napoleonic institutions were a universal tool of progress, and instead began to champion traditionalist and conservative views, which they previously rejected.

The advocates for the traditionalist group attempted to prove that the organisation and legal system of the Duchy of Warsaw did not account for the specificity of Polish customs and did not meet the needs of an 'agrarian country'. These were, thus, the classic reasons for opposition against legal transfers.[27] They believed it would only be possible to build national codification and judiciary system based mostly - if not exclusively - on references to old Polish laws. Traditionalists were of the opinion that only this path, combi-

[24] Aleksander Kraushar, 'W setną rocznicę Kodeksu Napoleona', Gazeta Sądowa Warszawska, 22 (1908), p. 332; Gałędek and Klimaszewska, 'A Controversial Transplant?', p. *269-298.*

[25] Wyczechowski, Myśli względem prawodawstwa narodowego, 1815, manuscript in Biblioteka Książąt Czartoryskich, no. 5259 IV, pp. 77-78.

[26] Mycielski, "Miasto ma mieszkańców, wieś obywateli", p. 133.

[27] H. Patrick Glenn, 'The Nationalist Heritage', in Comparative Legal Studies: Traditions and Transitions, ed. by Pierre Legrand and Roderick Munday (Cambridge: Cambridge University Press 2003), p. 87.

ned with the complete and possibly immediate rejection of the French law and judiciary system introduced in the Duchy of Warsaw, would allow the new legal system to gain the features of a national law and organisation. At the same time, they believed it was admissible to implement certain tweaks to the old Polish law to bring it in line with nineteenth century standards, and believed it would be possible to do this in a very short time.

The first months of the Committee's efforts to rebuild the judiciary system seemed to confirm that it would be possible to achieve these aims. The Committee members criticism was aimed not at the Civil Code (with the exception of the marital law), but rather at the Code of Civil Procedure, especially its executive provisions. Józef Kalasanty Szaniawski was the first one to voice his opinion in this regard at the session held on 17 July. He moved for the Committee to 'deal with drafting a new court procedure right away, as the cumbersomeness of the current one is most suffered by the country', at the same time observing that 'it will also be necessary to change the hierarchy of courts, as it is closely related to procedure'.[28] Szaniawski's motion was seconded only by some of the Committee's members. The unnamed opponents of the proposition doubted whether 'an entire new procedure [could be] written with such haste to ensure due precision', and feared that this would lead to 'a commotion'. For this reason, they believed the French Code of Civil Procedure as well as the judiciary system should be sustained 'for the time sufficient to draft another [procedure] capable of adequately replacing the current one'[29]. In response, backers of Szaniawski's idea noted it was not possible to tell in advance whether or not writing a new procedure 'capable of adequately replacing' the old one would be impossible, even in such a short time,[30] as, 'at the current time it is not principally about attaching ourselves to the method of laying down a systematic procedure, but rather about rewriting the main laws in a national spirit, while leaving the rest to practice'. Szaniawski's supporters also argued that: 'Even though Poland did not have a systematic procedure before, upholding it through tradition and practice, no one complained about the procedure, but rather about the violence of tribunals and the abuse of courts; now, on the other hand, with a methodical procedure, the citizens are falling prey to the despotism of patrons, who enrich themselves by pillaging their property'.[31] Thus, they were of the opinion that certain principles and institutions of the French procedure with their convoluted formulae, and detailed and confusing methods of regulation, were harmful and should be replaced immediately even with a make-shift procedure laid down according to Polish tradition and national spirit. The argumentation was further elaborated on the next session of the Civil Reform Committee on 21 July, when Franciszek Grabowski 'reported on the actions taken up by the Court Section': 'Leaving until further notice the matters of the Civil Code', Grabowski agreed that the Section's works should be commenced with the 'procedure, as the most incommodious to the people'.

28 Minutes of Reform Committee sessions, manuscript in Biblioteka Książąt Czartoryskich, no. 5233 IV, pp. 20-21.

29 Ibid., p. 21.

30 Ibid., p. 22.

31 Ibid., pp. 21-22.

He proclaimed that 'in the opinion of the majority of the Court Section', the French procedure was 'utterly maladjusted to the country, and difficult - if not impossible - to alter and adapt', and should be completely abrogated in the course of current organization of judiciary system, and replaced with another procedure 'drawn from the volumes of Polish laws', as well as with an 'organization of courts specific to this country and well-known to some who still remember it.'[32]

As a result, merely one month after the commencement of works, during one of the August sessions of the Committee Franciszek Grabowski notified all those present that the Section had developed a draft 'entailing the first principles of new judiciary organization'. Their author, appellate judge Tadeusz Skarżyński, who was also the member of the Court Section, 'took them from the volumes of old-fashioned Polish laws and introduced some modifications and additions fitting to the current times and circumstances.'[33] As further clarified by Grabowski, 'the spirit of this draft [was, firstly], to abolish small courts, composed of people whose livelihood is the office and the profits that come with it'. Here Grabowski was most certainly referring to the office of podsędek in particular. These were judges of the lowest level whose position was a thorn in the side of the critics of the existing system. Secondly, the draft author intended to 'create a judiciary system composed of people who are – as he emphasized – truly worthy of the office', which was to be furthered by restoring the old Polish rule that 'judges cannot be appointed for life, but instead elected every five years for the first and second instance'. Thirdly, the draft stipulated the 'removal [...] from the court staff of the numerous clerks, who do not provide any real help to the judiciary system, but are paid by the poor treasury and maintaining only those staff who actually do real court work.' Fourthly, the reorganization of court hierarchy was to restore judiciary arrangements from the pre-partition era, that is including land courts (sądy ziemskie) and castle courts (sądy grodzkie) for the nobility and separate municipal courts, as well as an appellate court of second instance and the supreme court in the third instance, which had revision, but not cassation, competences.[34]

The Section's proposals were well-received, as the Committee members agreed that court officials, just like administrative officials, should be elected, unpaid and only appointed to office for a certain term. In other words, they agreed to entrust judiciary functions to the hands of 'citizens' and for the courts to be dominated by rotating representatives of the wealthy landed gentry, with the exception of cities, where analogous functions were to be held by urban property holders. The idea that judges should work without remuneration was also particularly popular in this period owing to the catastrophic state of public finances related in part to the fact that the Duchy of Warsaw became one of the major battlefields of the Napoleonic times. This led the authorities to frantically seek ways to save money, striving to reduce salaries and employment in the public sector. This is testified to by the draft of Prince Franciszek Ksawery Drucki-Lubecki, in which he scrupulously calculated the scale of savings that could be achieved if his solu-

[32] Ibid., p. 24.

[33] Ibid., pp. 56-57.

[34] Ibid., pp. 56-58.

tion were adopted. According to his calculations, the expenses of the judiciary system could be cut by three-fourths, from PLN 2 453 900 down to 640 000. In comparison, the reduction of expenses through changes in the administration of internal affairs would amount to only 30% (from PLN 2 866 900 to PLN 2 093 000), even though this was a leading topic in the Committee's discussions and an explicitly expressed wish of the tsar.[35]

Pursuant to one of the concepts proposed by Andrzej Horodyski, the best solution would be for departmental councils, as representative organs 'composed of people elected at gatherings' to be given the competence to 'propose administrative and judicial candidates for offices [...] in departments to the government'. The final say in this matter was to be of the highest court magistracy in the country, be it in the form of senate or supreme court, but not of the minister of justice, who was a representative of the executive branch. Moreover, Horodyski proposed that the nominating institution should continuously monitor the course of service by 'keeping track of the string of information about all public servants'.[36]

After the presentation of these drafts discussions began in the Civil Reform Committee on the selection of the most optimal solutions for the future judiciary. Paradoxically, it was the president of the Court Section Franciszek Grabowski who expressed a dissenting opinion on the Skarżyński's draft that he himself had presented. He explained that he disagreed with the concept of appointing judges for five-year terms of office. He argued that judges of first instance should be appointed 'for life, firstly in order to tie them to the office more effectively, seeing as they are not paid, and secondly, so that when a vacancy opens up in higher instances, we can choose from among them, knowing that they have the necessary experience'. Nevertheless, the Committee did not agree to the life term of judges. Even a former minister of treasury of the Duchy of Warsaw Tadeusz Matuszewicz shared such a view which seemed to contrast with his beliefs about administration. He was the main opponent of the traditionalist concepts within the Civil Reform Committee and the staunchest supporter of keeping the foundations of the Napoleonic model in the Duchy of Warsaw. Regarding the judges, Matuszewicz argued for offices with fixed terms, stating that 'it is impossible to do, or even to wish for, for courts to be composed of only lawyers. It will be sufficient for the law to be watched by two or three people whose office will not be for a term, namely: the president, the clerk and perhaps the vice-president, while the rest of the bench should not be for life, but instead: a great number of citizens should be chosen, and from among them persons to hold the office of judges for each term should be selected randomly, to impede early intrigues and meddling. The pool of citizens to choose from could include priests, the townsmen, artists, which would satisfy the cities and save us the trouble of establishing separate court magistracies for them, as in this manner, courts would be composed of both landed gentry and city folk'. Then, Matuszewicz noticed, 'Magistracies [...] would only handle the administration of cities and, partly, the corrective police'. Moreover, he observed that 'a similar selec-

35 Ibid., p. 95.

36 Andrzej Horodyski, Myśli względem obieralności urzędników, manuscript in Biblioteka Książąt Czartoryskich, no. 5236 IV, pp. 59-64; Gałędek, Projekty i koncepcje nowego, pp. 410-411.

tion of judges for the criminal courts would render something akin to the institution of a jury, which, although cannot be introduced in our country for the time being owing to local impediments, we must strive to at least come a bit closer to this favourable solution.' Matuszewicz's ideas intrigued other Committee members, who 'ordered the Court Section to elaborate the thoughts concerning selection of judges in its draft'.[37]

Therefore, Committee members did not have any doubts. All the judges were to be elected at dietines, and the issue of professional legal qualifications and of permanent employment in the judiciary had to give way to the republican idea that the justice system is best served by involving broad circles of the social elites, rotating in the discharge of their duties. The traditional Polish popular justice played an important role in this case, but some foreign solutions, such as the institution of the English jury as suggested by Matuszewicz, the French justices of the peace or the Dutch conciliation courts were also deemed worthy of imitation by the Committee. The Committee was particularly interested in the idea of 'introducing a new institution of lay judges to our country, known in the English and French legislation as jury'. However, it also noted right away the 'difficulties that arise here due to the local conditions, where the population numbers are not proportional to the size of the country which would mean that in order to find a sufficient number of fit jury members, it would be necessary to bring them from far away.'[38]

Even though the potential institution of the jury sparked great interest, a key issue for the reform was the issue of entrusting all judiciary of the lowest instances to elected and unpaid judges. Nonetheless, on this matter, the Committee members – except a few traditionalists – had no intention of bringing back the pre-partition institution. To the contrary, they wanted to preserve one of the institutions transplanted from France, namely courts of peace, despite their general hostility toward legal institutions imported into the Duchy of Warsaw. The original draft of the Court Section did not mention the need to keep courts of peace, however following a discussion of the Committee in this regard, its members decided to modify this draft. Courts of peace were to be maintained 'in order to bring parties to amicable resolutions and thus prevent their cases from going any further'. This meant that, in contrast to the times of the Duchy of Warsaw, the prerogatives of justices of the peace would be expanded and now rule in all the less important disputed cases in place of the much-hated professional minor judges, who were nominated for life and received remuneration.[39] There were to be 'three courts of peace in each voivodeship, one court for three, and sometimes four poviats, depending on their size'. Regulations concerning exercise of the office stipulated that 'each poviat [would] elect two justices at dietines, who together would act as an established court of peace. They in turn will convene to fix the order of seating at court, and should they not arrive at an agreement, they will draw lots.' The intended rotational system was to work in such a way that 'according to the established turns, two justices should always remain in the places indicated to them'. In practice, however, the institution of the court of peace boiled down

[37] Minutes of Reform Committee sessions, pp. 154-155.

[38] Ibid., p. 136.

[39] Ibid., pp. 135-136.

to entrusting two fundamentally different functions into the hands of two persons. One of the justices was to 'resolve cases', and the other was to act as a 'custodian'.[40]

The most 'exotic' idea was put forward by Andrzej Horodyski, who proposed 'for the avoidance of confusion [...] to use the solution functioning in Denmark, by establishing conciliation courts which, throughout the years in which the new legal order will form, would resolve all pending cases, allowing the cleansed nation to step into the new order of things'.[41] The President of the Senate, Tomasz Ostrowski, responded to this project by proposing that it be supplemented with an element of Polish tradition, indicating that 'since conciliatory courts cannot issue final judgements in cases where the parties do not accept their resolutions, it would be advisable to introduce courts fashioned following the old Polish courts of arbitration (sądy kompromisarskie), which could deliver final rulings in cases between the parties'. Horodyski answered by observing that this idea did not in any way conflict with the Danish model, which besides conciliatory courts also had 'another court that issued final [judgements] in those cases that could not be resolved by conciliatory courts'.[42] Horodyski's proposition stemmed from a separate problem, that is 'a great number of pending bankruptcy estate cases' which 'took up the courts' time that could be otherwise dedicated to ongoing matters, impeding their resolution'. Grabowski believed this meant that, 'it would be necessary to establish a separate commission that would rule in bankruptcy estate cases only.'[43] The motion of the Court Section's President was received favourably by the Committee, which 'approved it all the more readily since the cases mentioned go on at a great expense and exhaust the funds of bankruptcy estates due to creditors'. The Committee ordered the Section to consider whether 'a single such commission will suffice for the entire country'.[44]

These were the early sessions of the Civil Reform Committee. Its members had not yet had the time to fully engage in their work. Most of them supported the opinion of the Court Section. They observed that the overarching idea of Alexander's order was to strive to 'restore the national spirit'. They underscored the fact that their views stemmed from the ideological conviction that it is always better for a law to be clad in the clothes of a national code. They argued that it is 'always more pleasant for a nation to have its own procedure rather than a foreign one', even if the latter one is thoroughly and appropriately adapted to the local relations[45]. Therefore, the crux of the matter was the propagandist announcement of the beginning of work on the national codification and of the annihilation of foreign, imposed laws.

40 Ibid., pp. 175-176.

41 Ibid., p. 14.

42 Ibid.

43 Ibid., p. 153.

44 Ibid., p. 154.

45 Ibid., pp. 25-26.

IV. Conclusion

It should finally be noted that regardless of the universal consensus as to the general direction of the reform, neither the draft of the Civil Reform Committee nor later drafts presented by subsequent commissions appointed to prepare the reorganization of the judiciary were ever adopted in the Kingdom of Poland. Each time it was on the table, the development was impeded by some political obstacle (such as lack of consent of the Sejm or of the monarch) which made it impossible to put the reform into effect. Simultaneously, the Polish elites were becoming more and more familiar with the professional judiciary, modelled after the French solution and ultimately implemented in the times of the Duchy of Warsaw. As everything stabilized, criticism of the system was gradually waning. In the end, the attempts to abolish the professional judiciary were stifled by the outbreak and collapse of the November Uprising in 1831, which marked the beginning of a new era of increasing dependence on Russia for the Polish territories.

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