

DIVORCE PROCEEDINGS PURSUANT TO THE *CODE CIVIL* AND THE *CODE DE PROCÉDURE CIVILE* OF 1806 IN THE PRACTICE OF POLISH COURTS¹

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Abstract: The aim of this paper is to present French provisions from the Napoleonic times which regulated divorce proceedings. It concerns not only legal rules but also the practice of their application in Poland in early 19th century. The Napoleonic Code regulated divorce proceedings separately from the ordinary procedure that was applied to a limited extent. The main goal of the lawmakers was to reduce the number of divorces, very popular in the revolutionary period. This goal was achieved by introducing a number of formalities that were required during the proceedings. There were two separate models of proceedings. The first option was a divorce for cause determinate, the second – a divorce by mutual consent. The first way consisted of an obligatory attempt at conciliation, of a possibility of suspending a permission of citation and it required at least four hearings. Yet the major limitation, in comparison to the revolutionary period, was a reduction of grounds for divorce. Only adultery, outrageous conduct and conviction to infamous punishment entitled a spouse to seek divorce. The second model of proceedings was initiated by a petition for divorce with mutual consent. In this case, spouses were required to appear four times (with three-month intervals in between) before the president of the court in the assistance of two notaries. Each time they had to declare their will to dissolve the marriage and submit new divorce authorizations from their parents.

Keywords: divorce; Napoleonic Code; Duchy of Warsaw; Congress Kingdom of Poland.

Resumen: Los procedimientos de divorcio ante los tribunales polacos según el *Code civil* y *Code de procédure civile* del año 1806. El objetivo del presente trabajo es dar a conocer las normas Napoleónicas del divorcio y cómo se aplicaron en la práctica en Polonia a principios del siglo XIX. En el Código de Napoleón el procedimiento de divorcio se regulaba de forma particular e indistintamente del procedimiento ordinario. Los preceptos de *Code de procédure civile* se aplicaban en los pleitos de

¹ This publication is part of the project The Napoleonic divorce regulation in the practice of Polish courts financed by Narodowe Centrum Nauki – National Science Center (UMO-2014/13/D/HS5/03408).

divorcio de manera limitada. Uno de los supuestos fundamentales de los creadores del código fue reducir el número de divorcios, ya que fueron muy populares en la década de los noventa del siglo XVIII. Este objetivo se logró mediante, entre otras, la introducción de numerosas formalidades que ralentizaron y obstaculizaron el procedimiento. Coexistieron entonces dos modelos de dicho procedimiento: primero, el divorcio por causa determinada, y segundo, el divorcio de mutuo acuerdo. El primer modelo preveía un intento obligatorio de conciliación, una posibilidad de aplazamiento de citación de un cónyuge por parte del tribunal y una necesidad de celebración de al menos cuatro vistas orales. Sin embargo, la limitación fundamental de posibilidad de obtener un divorcio, en comparación con el período de la Revolución, fue la eliminación de una parte de las causas de divorcio. Sólo el adulterio, los malos tratos y la condena a pena infamatoria concedían el derecho a solicitar un divorcio. El segundo modelo de procedimiento se iniciaba mediante la solicitud conjunta de ambos cónyuges. Los que elegían este camino fueron obligados a comparecer cuatro veces (a intervalos de tres meses) ante el presidente de la corte en presencia de dos notarios. En cada ocasión debían declarar la voluntad de disolución de su matrimonio y presentar un nuevo certificado de autorización de divorcio firmado por sus padres.

Palabras clave: divorcio; el Código de Napoleón; el Ducado de Varsovia; Congreso del Reino de Polonia.

The Napoleonic Code regulated divorce proceedings² separately from the ordinary procedure³ that was applied to a limited extent. The main goal of the lawmakers was to reduce the number of divorces which had been very popular in the revolutionary period. This goal was achieved by introducing a number of formalities that were required during the proceedings.

The Napoleonic Code was introduced in the Duchy of Warsaw in 1808. During the Congress of Vienna, the Duchy was divided into three main parts. (1) The Western territories were annexed by Prussia, whereas the rest of the territories were transformed into two Polish quasi-states. (2) The new Kingdom of Poland was created in the central lands. It remained under the Russian domination and the Tsar was simultaneously the King of Poland. (3) Moreover, Krakow and its district were

² *Code civil des Français: édition originale et seule officielle*, Paris 1804, Arts. 234 – 294.

³ *Code de procédure civile: édition originale et seule officielle*, Paris 1806.

changed into a free city under the custody of Prussia, Austria and Russia (the countries which annexed Polish lands). In the middle of the 19th century Krakow was incorporated into Austria and the Austrian Civil Code of 1811 replaced the Napoleonic Code there. In the central Polish lands it remained in force until World War II, but in 1825 the first book of the Napoleonic Code (concerning personal law: divorce among others) was replaced by the National Polish Civil Code (*Kodeks Cywilny Królestwa Polskiego*).

I have examined all the available archive sources to survey the practice of French law application in Poland. There were more than ten civil courts in our country which used the Napoleonic Code in their jurisdiction. Unfortunately, the Germans burned down the Central Archives after the Warsaw Uprising and now the only existing documentation of tribunals can be found in Kalisz and Krakow, with only some remains of documentation in Warsaw and Bydgoszcz.

There were two separate models of proceedings. The first option was a divorce for determined cause (*divorce pour cause déterminée*), the second – a divorce by mutual consent (*divorce par consentement mutuel*). At the beginning I will describe the first model, which was much more popular than the second.

The first way consisted of an obligatory attempt at conciliation, of a possibility of suspending a permission of citation and it required at least four hearings. Yet the major limitation, in comparison to the revolutionary period, was a reduction of grounds for a divorce. Only adultery, outrageous conduct and conviction to infamous punishment entitled a spouse to seek divorce.

The second model of proceedings was initiated by a petition for divorce with mutual consent. In this case, spouses were required to appear four times (with three-month intervals in between) before the president of the court in the assistance of two notaries. Each time they had to declare their will to dissolve the marriage and submit new divorce authorizations from their parents.

The model of divorce proceedings for cause determinate, which was much more popular than divorce by mutual consent, will be described first. The lawsuit had a number of steps and usually took about a year. The first stage was an attempt at conciliation. It should be emphasized that in the French civil procedure, before bringing each statement of claim to the court, there was a specific duty to try to arrive at an agreement⁴. Usually when the plaintiff intended to start the trial at the Tribunal of First Instance (*tribunal de première instance*) it was obligatory to call the defendant to a Justice of the peace (*juges de paix*) with an attempt at reconciliation⁵. Divorce proceedings were an exception, because it was not the Justice of the peace, but the president of the tribunal himself (*président du tribunal*) who attempted to reconcile the conflicted parties⁶. At this stage, both the plaintiff and the defendant appeared before the court without agents for litigation. The aim of this solution was to make the agreement easier by way of direct contact between the judge and spouses.

The first step in the entire procedure was to lodge a claim (*demande*) with the president of the tribunal, which had to be done by the plaintiff in person (Art. 236 CC). The president attempted to convince the plaintiff to withdraw the claim. If the plaintiff refused to do so, the judge ordered the parties to appear in person before him (Art. 238 CC). At that meeting the head of the tribunal would present an argumentation to convince both married parties (if they both appeared), or the petitioner (if appearing alone), to reconcile (Art. 239 CC).

The court records offer only very brief remarks on the reconciliation attempts, and so it is difficult to say anything about the determination of presidents to reunite the spouses. Maybe it was just a formality, but it is also possible that sometimes the

⁴ ROGRON, J. A., *Code de procédure civile expliqué par ses motifs, par des exemples, et par la jurisprudence : avec la solution, sous chaque article, des difficultés, ainsi que des principales questions que présente le texte, et la définition de tous les termes de droit*, Paris 1841, v. 1, pp. 131 – 152.

⁵ Art. 48 *Code de procédure civile*: *Aucune demande principale introductive d'instance entre parties capables de transiger, et sur des objets qui peuvent être la matière d'une transaction, ne sera reçue dans les tribunaux de première instance, que le défendeur n'ait été préalablement appelé en conciliation devant le juge de paix, ou que les parties n'y aient volontairement comparu.*

⁶ Also one of the tribunal judges could replace the president.

procedure was effective. Unfortunately, the available sources do not provide any information about the withdrawn claims. It was rather a rare situation.

If the attempt at reconciliation was unsuccessful, the court could award or suspend the permission of citation. The suspension could not exceed twenty days (Art. 240 CC). I have not found any remarks concerning suspension of citation. I think that the reason was the weakness of this “tribunals’ veto” – after the lapse of twenty days the permission became obligatory.

Subsequent to receiving the permission, the petitioner could sue the defendant. Next there was a closed session of the court during which the plaintiff presented the grounds of his petition, indicated the documents which supported it and the witnesses proposed to be heard (Art. 242 CC). The other party had the same rights (Art. 243 CC). After the parties and the public prosecutor being heard, the tribunal decreed upon the exceptions of law, if any had been handed before (art. 246 CC). There were two most important categories of exceptions. Firstly, the court could find the charges insufficient. For example, insults were too light to be recognized as the grievous injuries mentioned in Article 231⁷. The second reason to reject a claim was reconciliation of spouses (Art. 272 CC). But both situations were very rare (in the Kalisz court, only 6 times out of 270 trials).

If the claim was not rejected, usually the hearing of evidence took place (witness testimony was most popular). But there were some exceptions. Firstly, when a divorce was demanded based on conviction to an infamous punishment, the only formality was to bring a copy of the final judgment of conviction to the civil court (Art. 261 CC)⁸.

⁷ Archiwum Główne Akt Dawnych w Warszawie (Central Archive of Historical Records in Warsaw), Trybunał Cywilny Kaliski, henceforward: TCKal, v. 744, f. 132v.

⁸ DELVINCOURT, C. É., *Cours de Code Napoléon*, Paris 1813, v. 1, pp. 82 and 421, footnotes 1 – 2; Archiwum Państwowe w Warszawie (the State Archive in Warsaw), Akta Stanu Cywilnego Gmin Warszawskich, Cyrkuł II, henceforward: Cyrkuł II, v. 99, f. 328 i n.; Archiwum Narodowe w Krakowie (the National Archives in Kraków), *Akta rozwodowe z terenu gmin, powiatu i miasta Krakowa* henceforward: KAR, v. 33, pp. 315 – 316; TCKal, v. 54, ff. 511 – 512.

Secondly, hearing of witnesses was often omitted when the defendant made a judicial acknowledgment (*aveu judiciaire*) (Art. 1356 CC). It was recognized as complete proof against the party who made it, if it was explicit⁹. According to the principle of disposition the court was bound by that statement. In the divorce proceedings judicial acknowledgments were popular. I suppose that the reason for this were the disadvantages presented by the procedure of obtaining divorce by mutual consent. So even if both spouses peacefully wanted to end their marriage, it was more practical when one of them indicated determined cause (even exaggerated) and the other one confirmed it¹⁰.

Now let us return to those lawsuits in which hearing of evidence in the narrow sense was needed. In the practice of Polish tribunals witness testimony (*preuve testimoniale*) was most popular, but sometimes literal proof (*preuves littérale*) and oaths (*serments*) were also used.

The witnesses were proposed by the parties and during their examination there was a clear distinction between the witnesses of plaintiff and the witnesses of defendant (Art. 242 – 243 CC). The depositions of witnesses were received by the court sitting behind closed doors, in the presence of the public prosecutor (*commissaire du Gouvernement*), the parties and their agents for litigation (Art. 253 CC). It was an exception because in regular civil proceedings, the witnesses were heard by one delegated judge, and not by the entire adjudicating panel (Art. 255 point 2 *Code de procédure civile*). The examination focused on disputable facts between the parties, which were noted in points. Joseph Adrien Rogron, the commentator of the code, explained that the facts should be *articulated concisely. That is, article by article, briefly, without reasoning, and without questions or means of law*¹¹.

⁹ DELSOL, J. J., *Explication élémentaire du Code Napoléon, mise en rapport avec la doctrine et la jurisprudence*, v. 2, pp. 612 - 614. Opposite statement: Cyrkuł III, v. 120, f. 69.

¹⁰ Cyrkuł II, v. 99, ff. 83v – 84v.

¹¹ *articulés succinctement. C'est-à-dire article par article, brièvement, sans raisonnements, et sans questions ni moyens de droit.* J. A. Rogron, *Code de procédure civile expliqué par ses motifs, par des exemples, et par la jurisprudence: avec la solution, sous chaque article, des difficultés, ainsi que des principales questions que présente le texte, et la définition de tous les termes de droit*, Paris 1841, v. 1, p. 400.

How were the points formulated in practice? For example, the tribunal in Kalisz on 13th of May 1820, noted the following questions:

1. Is it true that the defendant was calling his wife a whore and one day as he came back home late at night, he was pinching her and spitting in her face so badly that she had to call for help?
2. Did the defendant try to drive the plaintiff out of the house when she was pregnant and what is more, did he hire Antoni Majewski and Paweł Farnowicz, to have it done?
3. As the plaintiff could no longer stay in the defendant's house because of being called names, is it true that the defendant took her shoes away and was beating her so severely (in the presence of his brother), that as a result she was recovering for a long time?
4. Was the plaintiff beaten regularly? Is it true that the defendant beat her with his broadsword?¹²

The witnesses were examined separately to prevent their depositions being influenced by each other¹³. At the beginning, the witness gave basic information about himself. Then he took an oath (Art. 262 *Code de procédure civile*). During the hearing the parties could ask additional questions (Art. 254 CC). Usually the witnesses were examined to prove that the defendant committed adultery or mistreated the other spouse.

As mentioned, also literal proof (*preuves littérale*) and oaths (*serments*) sometimes played a relevant role in divorce proceedings. Of course documents were not the evidence of prime importance – domestic violence or adultery rarely leave

¹² TCKal, v. 50, f. 8: 1mo Czy pozwany nazywał żonę szelmą, kurwą itp. a pewnego razu przyszedłszy późno w noc do domu tak ją złośliwie szczypał w twarz pluł iż o pomoc krzyżeć musiała. 2do Czyli pozwany gdy powódka była w nadziei chciał ją z domu wypędzić i w tym celu najmował niejakiego Antoniego Majewskiego i Pawła Farnowicza. 3tio Czyli gdy powódka nie mogąc dłużej pozostać w domu pozwanego gdy dla doznawanych obelg tenże trzewiki z niej zerwał, tak ją mocno w przytomności brata pobił i poszturczał iż z tego długi czas chorować musiała. 4to Czyli pozwany ustawicznie powódkę bijał a nawet pewnego razu dobył pałasza i tymże bił powódkę.

¹³ ROGRON, J. A., *Code de procédure civile...*, v. 1, p. 423.

traces on paper. But some circumstances, crucial in divorce trials, were sometimes documented.

Firstly, vital records might be crucial in proving adultery. For example a birth certificate of a bastard child of the other spouse¹⁴ or a certificate of legitimation of a natural child by an unfaithful husband¹⁵. Secondly, medical certificates were used to excuse the absence at the court session¹⁶, or to describe personal injuries caused by the defendant¹⁷. Thirdly, mayors' certificates proved some specific circumstances like absence of the wife or husband¹⁸ or the other spouse being arrested¹⁹. The fourth and the last category were letters. They usually contained some insults like simple invectives²⁰ or accusations of infidelity²¹. One wife confessed to adultery in her letter²².

The last category of evidence which played relevant role was an oath (*serment*). The Napoleonic Code regulated two types of oaths. First one called "decisory" (*décisoire*) was tendered by one party to another. It was enough to end the proceedings, provided that the oath was made properly. The second type of oath was administered officially by the judge to either of the parties (*serments déféré d'office*) (Art. 1357 CC). In divorce proceedings in Poland both types of oath were used rarely, but the second type (*serments déféré d'office*) was more important. That kind of oath couldn't be the only evidence but it was used when there was some other insufficient evidence. For example, the form of one oath was as follows: "*I swear that my wife Filipina Adler (née Wessin) left me in 1805 and since that time she has*

¹⁴ TCKal, v. 7, f. 159, TCKal, v. 2, p. 121, v. 311, f. 378v, v. 313, f. 194, v. 323, f. 813.

¹⁵ TCKal, v. 323, f. 814.

¹⁶ TCKal, v. 299, f. 81, v. 305, ff. 223 – 223v.

¹⁷ KAR, v. 30, p. 79; TCKal, v. 8, f. 182v; Cyrkuł II, v. 99, f. 230v; Cyrkuł II, v. 99, f. 116v; Cyrkuł III, v. 120, f. 77v.

¹⁸ TCKal, v. 312, f. 182.

¹⁹ TCKal, v. 23, f. 212v; Cyrkuł II, v. 99, f. 63v.

²⁰ Cyrkuł III, v. 97, f. 6 – 7.

²¹ Archiwum Narodowe w Krakowie (the National Archives in Kraków), Archiwum Młynowskie Chodkiewiczów, v. 515, p.149.

²² KAR, v. 55, p. 132 – 134; TCKal, v. 6, f. 447v.

never contacted me or informed me about the place of her residence. I do not know where she may be these days"²³.

Hearing of evidence was not necessary to obtain a divorce by mutual consent (*divorce par consentement mutuel*), but there were many strict formalities, so not many couples could dissolve their marriage by way of this procedure. Firstly, it must be mentioned that the mutual consent of married persons was not accepted if the husband was younger than twenty-five years, or if the wife was under twenty-one or above forty-five years old (Arts. 275 and 277 CC). Secondly, a divorce could not be obtained until two years from the wedding have passed, nor after the couple had been married for twenty years (Arts. 276 and 277 CC). The aim of that regulation was to prevent rash divorces and parting of spouses whose long common life proved compatibility of their characters²⁴. Thirdly, authorization by fathers and mothers of the spouses (or by their other living ancestors) was required (Art. 278 CC). Moreover, it was obligatory to transfer half of the property in the possession of each of the two married parties to the children born of their marriage, which also discouraged couples from seeking divorce by mutual consent (art. 305 KN)²⁵.

The procedure was strictly formal and both spouses had to be very determined to obtain a divorce. Wife and husband were obliged to appear in person with two public notaries brought by themselves before the president of the tribunal four times in three-month intervals. They declared their will to the president (every time there was a two-week period for appearing). Each time the parties were required to bring a declaration from their ancestors, confirming that they still supported the divorce²⁶.

²³ TCKal, v. 62, f. 552: *Przysięgam jako żona moja Filipina z Wessinów zamężna Adler opuściwszy w roku 1805 zamieszkanie moje przez cały przeciąg tego czasu żadnej o sobie nie dała wiadomości i wcale nie jest mi wiadomo gdzie teraz przebywać może.*

²⁴ TREILHARD, J. B., *Exposé des motifs de la loi sur le divorce, par le conseiller d'état Treilhard*, [w:] *Code civil des Français : suivi de l'exposé des motifs, sur chaque loi, présenté par les orateurs du gouvernement...*, Paris 1804, v. 2, p. 331.

²⁵ TREILHARD, J. B., *Exposé des motifs...*, v. 3, p. 331 – 332.

²⁶ For example: Archiwum Państwowe w Warszawie (the State Archive in Warsaw), Kancelaria Jana Wincentego Bandtkie pisarza aktowego Królestwa Polskiego, v. 15 (6 b), case file no. 559 and 560.

Failure to observe the time limit or to meet any formality ended the procedure without any effect (Art. 281 – 285 CC).

Within a fortnight from the day on which a year expired, counting from the first declaration, the married parties, each attended by two friends, persons of public trust, should present themselves together, and in person, before the president of the court. The spouses had to hand copies of the four statements of their mutual consent to the court. All other documents mentioned above were also required. The spouses demanded the sentence of divorce from the judge, each separately but in the presence of the other one (Art. 286 CC). If the parties had satisfied the conditions and complied with the formalities specified by the law, the tribunal was obliged to admit the divorce (Art. 290 CC). It means that the court judgment was declaratory – contrary to the judgements in cases of divorce for determined cause. If the spouses wanted to appeal against the judgement, they had to bring separate applications to the tribunal between ten to twenty days from the announcement (Art. 291 CC). The number of formalities and expenses made this procedure very rare, as it was viable only for the wealthy ones²⁷. Divorce by mutual consent represented less than 3% of over 500 cases in which the grounds for divorce are known.

After the closing of hearing of evidence, the court appointed a judge–reporter (256 CC). His report was prepared in writing²⁸ and presented at the court session. Afterwards, the parties presented their argumentations. Next the public prosecutor gave his arguments (Art. 257 CC)²⁹.

²⁷ LE GOASGUEN, H., *Le divorce devant l'opinion, les chambres et les tribunaux*, Rennes 1913, p. 19; TREILHARD, J. B., *Exposé des motifs...*, p. 332.

²⁸ For example: Archiwum Narodowe w Krakowie (the National Archives in Kraków) Archiwum Wolnego Miasta Krakowa, akta sądowe, v. 205, *Księga II wyroków cywilnych... Wydział I. Nr 126 – 249*, case of the Bucholtzs.

²⁹ Parties and prosecutor often presented their statements (*konkluzje*) in writing. For example: Archiwum Narodowe w Krakowie (the National Archives in Kraków) Archiwum Wolnego Miasta Krakowa, akta sądowe, v. 194, *Księga III wyroków cywilnych... Wydział I.*, p. 473; TCKal, v. 55, ff. 35 – 35v.; TCKal, v. 330, f. 490; Cyrkuł III, v. 110, f. 67v. Ignacy Stawiarski states that these documents were delivered after announcement of judgement: *Postrzeżenia nad procedurą sądową różnych krajów i czasów*, [w:] *Ogólna Ordynacja Sądowa dla Państw Pruskich*, Warszawa 1809, vol. 2, pp. XLII – XLIII.

Before delivering the judgment, judges expounded the questions (*points de droit*), which they had to resolve. This facilitated deliberation and prevented the omission of any problem in the judgement. Below I quote examples of those kinds of questions:

1. Are the charges contained in the claim proven?
2. Are there grounds for divorce?
3. Is plaintiff allowed to keep the assets received from her husband when divorce is adjudicated?
4. Is the agreement between Mr & Mrs Rzewuski concerning child custody going to be approved by the court?
5. Which party is supposed to cover the judicial costs?³⁰

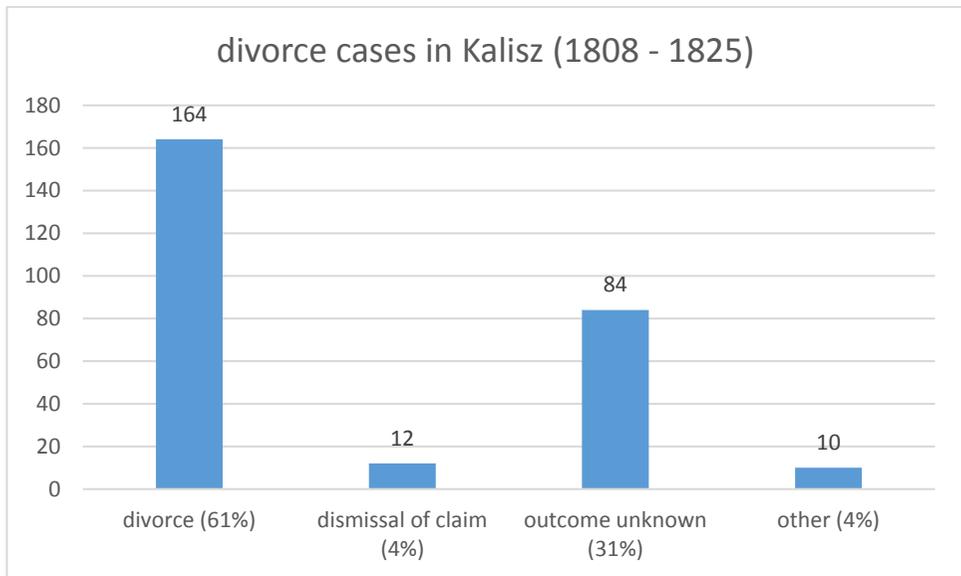
After deliberation, the judgment was announced. There were two main types of resolution of a dispute: divorce or dismissal of claim. Due to war losses it is only possible to make a full calculation of divorce proceedings only in Kalisz town situated in today's central Poland. Between 1808 and 1825 there were 270 divorce disputes (if there were more than one trial between the same spouses, I take it into account only once). 164 cases ended with divorce (61%) and only 12 times the claim was dismissed (4%). It shows the liberal attitude of Polish judges to divorce claims. In many cases they bended the law to dissolve a marriage³¹.

In 84 cases (31%) there was no final decision. Probably the majority of these trials ended by expiry (*péremption*). The proceedings expired when either of the parties failed to fulfil court formalities within three years (Art. 397 *Code de*

³⁰ TCKal, v. 15, f. 11 – 11v: 1. Czyli zarzuty skargi są udowodnione? 2. Czyli zatem rozwód ma być wyrzeczony? 3. Czyli na przypadek wyrzeczenia rozwodu korzyści dla powódki z małżeństwa tego wypływać mogące onej zastrzeżone być mają? 4. Czyli układ względnie dzieci pomiędzy małżonkami Rzewuskimi na przypadek wyrzeczenia rozwodu zawarty ma być zachowany? 5. Kto koszta ponieść [będzie] zobowiązany? Similarly: KAR, v. 24, p. 75; Cyrkuł III, v. 111, p. 41.

³¹ POMIANOWSKI, P., *The beginning of secular divorce in Poland. The Napoleonic Code in the practice of Polish courts*, in: Sebastiaan Vandenbogaerde, at alii (ed.), “(Wo)Men in Legal History”, pp. 179 – 818.

procédure civile). We don't know the reasons why parties, especially plaintiffs, lost determination to obtain a divorce. Among other reasons, these were probably reconciliation, death or withdrawal.



In conclusion, it may be stated that the application of Napoleonic substantive and procedural law in divorce matters in Poland was successful, although there was no official translation of any of French Codes introduced in the Polish lands. The majority of Polish lawyers didn't speak French³², but judges and agents of litigation were using non-official translations into Polish. Also the Latin translation was in use³³. The Codes were interpreted usually in accordance with the French lawmaker's will, but there were some exceptions. For example the courts in Krakow recognized the validity of the Latin maxim *testis unus testis nullus*³⁴ (one witness is no

³² HUBE, R., *Uwagi nad systematem Kodeksu cywilnego francuskiego*, „Themis Polska”, v. 5, 308 – 310; F. Węgleński, *Mowa jaśnie wielmożnego Franciszka Węgleńskiego posła hrubieszowskiego miana na posiedzeniu seymowym dnia 15 grudnia 1811 roku*, Warszawa 1811, p. 2.

³³ *Codex Gallorum Civilis*, Pictavium 1806, *Codex Napoleonis: libri 3*, Varsaviae: Typ. Scholarum Piarum, 1809.

³⁴ WOŁODKIEWICZ, W., ZABŁOCKA, M., *Prawo rzymskie. Instytucje*, Warszawa 2001, p. 309; DAJZAK, W., GIARO, T., LONGCHAMPS DE BERIER, F., *Prawo Rzymskie. U podstaw prawa prywatnego*, Warszawa 2009, p. 174.

witness³⁵), whereas pursuant to the *Code de procédure civile*, the court should assess the credibility and probative value of evidence at its own discretion³⁶.

Many formalities which caused a decrease in the popularity of divorce in France³⁷, did not discourage the Polish society from seeking divorce for cause determinate. There were about 2000 divorces in our country, which was a relatively a high number in comparison to other European states³⁸.

³⁵ KAR, v. 52, p. 18. One of the agents for litigation questioned this statement: KAR, v. 30, p. 27.

³⁶ WAŚKOWSKI, E., *Zasady procesu cywilnego*, „Rocznik Prawniczy Wileński” 1930, v. 4, p. 193; ERECIŃSKI, T., *Znaczenie francuskiego Code de procédure z 1806 roku dla rozwoju procesu cywilnego w Polsce*, „Czasopismo Prawno-Historyczne” 2005, v. 57, no 2, p. 135; *Historia państwa i prawa Polski*, Warszawa 1981, v. 3, p. 153; – (J. J. Delsol, *Explication élémentaire du Code Napoléon...*, v. 2, pp. 611.)

³⁷ THIBAUT-LAURENT, G., *La Première introduction du divorce en France sous la Révolution et l'Empire (1792–1816)*, Clermont-Ferrand 1938, pp. 156 – 157 and 189 - 190.

³⁸ POMIANOWSKI, P., *Liczba rozwodów ogłoszonych na ziemiach polskich na podstawie Kodeksu Napoleona*, „Czasopismo Prawno-Historyczne” 2016, v. 68, no 1, p. 63.

Annex

The stages of divorce proceedings for determined cause (*divorce pour cause déterminée*) pursuant to the *Code civil* and the *Code de procédure civile* of 1806 in the practice of Polish courts:

1. Attempt at reconciliation
 - a. Lodging the claim (*demande*) (Arts. 234 – 237 CC)
 - b. Conciliatory hearing (Art. 239 CC)
2. Preparation of the decision to allow or deny hearing the case
 - a. Permission of citation (Arts. 240 CC)
 - b. Closed session (Arts. 241 – 244 CC)
 - i. Presentation of argumentation of the defendant (Art. 243 CC)
 - ii. Submission of the case file to the public prosecutor (Art. 245 CC)
 - iii. Appointment of the judge-reporter (Art. 245 CC)
 - c. Decision to allow or deny hearing the case at the first public session [part 1] (Art. 246 CC)
3. Proceeding after allowing the case to be heard (Arts. 247 – 252 CC)
 - a. The first public session [part 2]
 - i. Report of the judge-reporter (Art. 247 CC)
 - ii. Statements of the parties and of the public prosecutor (Arts. 247 – 248 CC)
 - iii. Decision concerning the hearing of evidence (Arts. 247, 249 – 252 CC)
 1. Witnesses (*témoins*)
 2. Judicial acknowledgment (*aveu judiciaire*)
 3. Literal proof (*preuves littérale*)
 4. Oaths (*serments*)
 - b. Closed session (Arts. 253 – 256 CC)
 - i. Hearing of witnesses (Arts. 253 – 255 CC)

- ii. Submission of the case file to the public prosecutor (Art. 256 CC)
- iii. Appointment of the judge-reporter (Art. 256 CC)
- c. Second public session
 - i. Report of the judge-reporter (Art. 257 CC)
 - ii. Statements of parties and of the public prosecutor (Art. 257 CC)

Announcement of judgement (Art. 258 CC)

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