

# VARIA

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## Influence of the Napoleonic Code on judicial system of the Duchy of Warsaw

### Abstract

*The creation of the Duchy of Warsaw as a result of the Napoleonic wars in Europe created the need to reorganize the state administration to conform to modern models and meet the new challenges of a new era in European history. Alongside this, there was a need to reform the institution of the judiciary and remove from its practices outdated institutions imposed by the partitioners, namely Prussian models. This ambitious goal was set and carried out by Justice Minister Feliks Lubiński, to whom the Polish judiciary owes its introduction to the new era. Thanks to his work, it was possible to base the legal system of Poland at that time on the regulations of the Napoleonic Code. The present study outlines the institutions of the judiciary (courts and prosecutor's offices) that were created on the basis of modern legal and political solutions of the Napoleonic regulation, based on the tradition of Roman law, based on the foundations of Christian civilization and elements of Greek philosophy. This was an important impetus for the modernization of the judiciary in Poland and initiated the social and economic changes necessary for the smooth functioning of the modern Polish State.*

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## Key words

*Napoleonic Code, Duchy of Warsaw, courts, prosecution, instruction, Poland, judiciary, instruction, Constitution.*

### 1. The Napoleonic Code

A consequence of the Napoleonic Wars at the beginning of the 19th century was the reestablishment of the Polish state under a name “the Duchy of Warsaw” as an element of France's imperial project in Europe. On 21 March 1804, legislative work on the text of the Code civil des Français, also called the Napoleonic Code (later referred to as NC) and, after its fall, the Code civil, was completed in France<sup>2</sup>. The legal model developed in France was adopted in various countries in Europe subordinated to the French Empire<sup>3</sup>. The idea behind the introduction of the code in countries within the political influence of imperial France was the relative unification of social systems and the introduction of modern legal institutions that would take into account the needs of modern legal practices<sup>4</sup>. The Code came into formal force in Poland on 1 May 1808, when the article 69 was introduced into the Constitution of the Duchy<sup>5</sup>.

The reception of the Napoleonic Code in Poland was important for the functioning of the courts, because it directed them towards the path of positive, written law and for this to be achieved required appropriate substantive preparation. The requirement to subsume existing facts into specific provisions, often of abstract and general meaning, required professional legal education. The need to become familiar with the regulations was accompanied by the need to prepare a commentary on the regulations and, above all, translate them into Polish. The fact that this was not an easy and obvious process is evidenced by the struggles of the Minister of Justice Feliks Łubieński, member of the Council of the State under the leadership of Ludwik Gutakowski. Some Council members slowed down work on the organization of the judiciary system and implementation of the code despite

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<sup>2</sup> W. Wołodkiewicz, 200 lat Kodeksu napoleona w Polsce – od nienawiści do miłości, *Palestra* 2008, no. 1–2.

<sup>3</sup> P. Cichoń, Wpływy francuskie w administracji Księstw Warszawskiego, *Zeszyty Naukowe Uniwersytetu Jagiellońskiego*, vol. 1, p. 1.

<sup>4</sup> D. Makiłła, *Historia prawa w Polsce*, Wydawnictwo Naukowe PWN, Warszawa 2008, p. 356.

<sup>5</sup> *Dziennik Praw Księstwa Warszawskiego (DPKW)*, year 1808, no. 2, pp. 53–54.

the order of King Frederick Augustus to complete these works by May 1808. One of the grounds for the obstruction of the Council of State was the lack of an official translation of the code, which was prepared by the minister's secretary Father Franciszek Szaniawski. His working text was to be the starting point for the work of the Society of Friends of Sciences on translation conducted by a special committee. As a result of its work, only minor changes were introduced to Szaniawski's text, which resulted in Polish courts using the French text and Szaniawski's translation as an auxiliary tool until the end of the Duchy's existence<sup>6</sup>. The number of legal publications, translations and publications devoted to the new law gradually increased. French original codes were translated, as well as commentaries to them, which were a source of guidelines for the interpretation of legal norms and provisions. Already in 1808, a manual named "Models for various court activities" was published, and in 1813, Antoni Podolski's another work entitled "Guide for ushers and bailiffs". An obligation to subscribe to "the Principality's Journal of Laws and Departmental Journals" was introduced among state officials and court lawyers<sup>7</sup>.

Having already translated the text of the code into Polish, although without official value, was of paramount importance for Polish courts, thus allowing judges and other court employees to learn its official text applied in daily work. The first attempt to remedy this problem and introduce senior justice officials to the new regulations were private courses initiated in 1807, where new legal institutions were presented. Distinguished lawyers from Polish nobility namely Franciszek Szaniawski, Antoni Łabęcki and Antoni Wyczechowski<sup>8</sup> took part in them as lecturers. Minister Feliks Łubieński placed particular emphasis on education of the judicial staff<sup>9</sup>.

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<sup>6</sup> S. Grodziski, Wpływ Code Civil oraz innych kodyfikacji napoleońskich na ziemiach polskich, *Czasopismo Prawno-Historyczne* 2005, Volume LVII, no. 2, page 64, także: H. Grynwaser, *Kodeks Napoleona w Polsce*, Pisma, Wrocław 1951, vol. I, page 27–28.

<sup>7</sup> „Gazeta Krakowska” z 1811, no. 7 (supplement), za: A. Rosner, *Sędziowie i urzędnicy sądów pokoju w Księstwie Warszawskim*, *Przegląd Historyczny*, vol. 4, 1988, p. 671.

<sup>8</sup> B. Leśnodorski, *Szkoła Prawa i Nauk Administracyjnych w Księstwie Warszawskim*, w: *Studia z dziejów Wydziału Prawa Uniwersytetu Warszawskiego*, Warszawa 1963, p. 9.

<sup>9</sup> R. Kucharski, *Szkolenie sędziów w czasach Księstwa Warszawskiego*, *Collegium Iuridicum* 2023, no. 7, p. 120.

The Napoleonic Code was an extensive legal act consisting of 2,281 articles systematized in three books: Book I. "On persons", Book II. "On Estates and Various Kinds of Property", Book III. "About different ways of acquiring property". The above division opened the way for modern judicial practice, but its greatest and most significant advantage was the clarity of legal solutions, the use of precise and understandable legal language, and above all, the substantive content<sup>10</sup>. The codification mainly introduced provisions of material civil law, but the then Minister of Justice, Feliks Łubieński, rightly concluded that procedural provisions shall be an integral part of the legal system<sup>11</sup>. Full French legislation was not in force on Polish soil, especially since it was not published in the "Journal of Laws", but it was in fact in force in court practice and was applied in daily adjudication. French criminal law was applied but the provisions introducing the NC into practice made it possible to apply also old Polish law in certain cases<sup>12</sup>. It allows to assume that Napoleon's regulations contributed not so much to the full reception of his provisions, but rather as it is described in literature, to their adaptation in Poland<sup>13</sup>. Taking under consideration the conditions of that time, it was significant step forward in the strengthening of the Polish state and the judiciary. As rightly emphasized in writings<sup>14</sup>, code principles have shaped court practice for nearly seventy years and beyond.

## **2. The courts**

During the times of the Duchy of Warsaw, the idea of establishing separate criminal and civil divisions in common courts was implemented. Thus, the modern organization of courts was established in the justice system, not only guaranteeing the constitutional independence of judges, but also practically securing it with lifetime appointment ordered by the King of Poland. Justices of the peace were appointed from among candi-

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<sup>10</sup> T. Maciejewski, *Historia powszechna ustroju i prawa*, Wydawnictwo C.H. Beck, Warszawa 2015, p. 618.

<sup>11</sup> L. Krzyżanowski, *Historia ustroju i prawa w Polsce*, Wydawnictwo OdNowa, Toruń 2013, p. 111.

<sup>12</sup> A. Korobowicz, W. Witkowski, *Historia ustroju i prawa polskiego (1772–1918)*, Wolters Kluwer, Warszawa 2017, p. 55.

<sup>13</sup> A. Rzeczkowski, *Recepcja prawa francuskiego w Księstwie Warszawskim*, *Kortowski Przegląd Prawniczy* 2018, no. 2, p. 56.

<sup>14</sup> G. Smyk, *Francuskie prawo i instytucje ustrojowe w Księstwie Warszawskim*, *Annales Universitas Mriae Curie-Skłodowska* 2007, no. LXII, p. 41.

dates submitted by the local assemblies, so in practice representatives of the nobility continued to be elected to these positions. Nevertheless, even considering the limited jurisdiction of peace courts and the fact that representatives nominated by local councils were granted the offices, there has been a tendency towards the professionalization of people running for this dignity. This was related not only to the changed social situation, but above all to the legal environment in which they functioned. The introduction of new legal provisions required thorough familiarization with the regulations of substantive law on the basis of which justices of the peace made judgments.

The newly created judiciary of the criminal division consisted of Simple police courts; Correctional Police Courts; Courts of criminal justice; and Council of State (Court of Cassation)

Simple police courts were established to try offenses. The hearing was conducted by a sub-judge or the mayor (nominated for the position by the Minister of the Interior) or the commune head (appointed to the administrative structure by the prefect and approved by the Minister of the Interior). Their territorial jurisdiction included the district, although sometimes they also included larger cities creating separate jurisdictional circuits.

The law entrusted correctional police courts with cases involving offenses punishable by law with a penalty of up to 2 years' imprisonment. Their territorial jurisdiction covered part of the department, so 2–3 correctional courts were established in each of them.

Criminal justice courts were placed higher in the hierarchy, and their jurisdiction included criminal crimes cases and appeals filed against judgments of simple and correctional police courts respectively.

Cassation appeals against "final judgments" passed in correctional justice courts were submitted to the Council of State, acting as a court of cassation.

The structure of civil courts introduced by the Napoleonic Code consisted of: Magistrates' courts; Civil tribunals of the first instance; Court of appeal (called the "appellate court"); and Council of State (court of cassation)<sup>15</sup>.

Magistrates' courts were established in the counties and cities of the Principality. Their task was to consider cases in non-contentious and conciliatory proceedings, presided by justices of the peace, appointed by

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<sup>15</sup> J. Bardach, B. Leśnodorski, M. Pietrzak, *Historia ustroju i prawa polskiego*, Wydawnictwo Naukowe PWN, Warszawa 1994, p. 357.

the King of Poland from among candidates proposed by local assemblies. Sub-judges adjudicated cases considered in property dispute proceedings, where the value of the subject of the dispute was small.

Civil tribunals of the first instance were the higher courts, whose task was to resolve cases of greater importance. They were presided by judges who were required to have professional legal education covering provisions of newly adopted Napoleonic Civil Code, the Notarial Act and the Commercial Code. The subject matter under jurisdiction of these courts covered non-property matters (family, marital status) and more serious property matters (obligations, contracts, commercial disputes). These courts were established in number of one for each department.

An appellate court, ("odzewny"), was established for the entire Duchy, with its seat in Warsaw. Its role was to consider appeals filed against judgments of first-instance civil tribunals.

The Napoleonic Code, based on the French model, introduced the institution of cassation in Poland, to be eventually filed against a judgement in certain situations provided by the law to the Council of State, serving as a court of cassation in civil and criminal cases. Due to the fact that a distinction was made between civil and criminal proceedings, a cassation-appeal against a civil court judgment could be filed no later than three months from the date of delivery of the contested judgment. It was submitted to the court office and then signed by the attorney. Its filing did not suspend the execution of the contested judgment, except for divorce cases. In turn, an appeal against a final judgment of a criminal court could be lodged by the convict (within the deadline of 10 days) or the prosecutor (within 15 days). The cassation appeal could be signed by the convict in person, by a defense lawyer or a prosecutor himself. Its filing suspended the execution of the criminal judgment. It was filed through the court that issued the contested judgment. Then the complaint was sent to the cassation prosecutor and, together with his case review and conclusions formulated after analyzing the case files, the court clerk presented it to the president of the court. The President appointed a case clerk (rapporteur), who read the files, the content of the complaint and then submitted the case summary to the Applications and Instructions Committee.<sup>16</sup> The proceedings were written and public. At the first hearing, the clerk-rapporteur again presented his report on the case. The court decided on the verdict by a majority of votes in the presence of the

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<sup>16</sup> R. Kucharski, Sądownictwo Księstwa Warszawskiego – zręby nowożytnego wymiaru sprawiedliwości, *Consilium Iuridicum* 2023, no. 6, p.120.



parties but without the participation of the audience. If the case was not difficult, the verdict was announced immediately after the first hearing and sent to the Minister of Justice for publication.

### 3. Prosecutors Office

The Napoleonic Code implemented the institution of the Prosecutor's Office into the Polish justiciar system. It should be mentioned that Napoleon's victorious military march during the war of 1806/1807 and his victory over the Prussian occupation of Polish territory was associated with the elimination or, at best, cessation of the functioning of German courts. By order of Józef Wybicki issued in 1806, their functioning and structures were resumed as functioning under Polish authority and named as Polish courts. The political elites of the Duchy of Warsaw saw the reactivation of the justice system and the introduction of modern institutions as an important state-building element. On 1 December 1806, a new judicial institution was established in the form of "the Supreme Chamber of Justice" based in Warsaw, which on 26 December 1806, Józef Wybicki with his decree equipped with procedural regulations<sup>17</sup> that created the office of public investigator to prosecute crimes *ex officio*, conduct investigations and bring charges to criminal courts. In turn, civil proceedings were suspended until the full structure of common courts was established<sup>18</sup>. This happened a month later, by resolution of 26 January 1807, when the Governing Commission established a new court system. The prosecutor's office called "public investigator" was established and to function only in the structures of the Final Tribunal and its task, in accordance with paragraph 61 of the resolution, was to prosecute state crimes and cases which "violated public security". Landlord courts, as first-instance courts, were to conduct investigations involving the nobility through a lower local instigator, and after full preparatory proceedings in the form of a judicial investigation was completed, the materials were transferred to the "departmental court of appeal", where the case was represented by an instigator appointed by this court<sup>19</sup>. There were no instigators for the bourgeoisie and peasants in

<sup>17</sup> Text of the regulation published in: K. Małkowski, *Przepisy postępowania sądowego w sprawach karnych*, Warszawa 1865, p. 94–98,

<sup>18</sup> *Archiwum Wybickiego (1802–1822)*, Edited by: A. Skałkowski, Gdańsk 1950, v. II, pp. 43, 56, 76–79.

<sup>19</sup> *Materiały do dziejów komisji rządzącej z roku 1807*, wyd. M. Roztworowski, Kraków 1918, pp. 544–553, 660–675, 700–703, 715–718.

the courts. As can be seen in this example, the beginnings of the institution of the prosecutor in the Duchy of Warsaw referred rather to the pre-partition institutions of the Polish-Lithuanian Commonwealth<sup>20</sup>, for the Parliament Act of 1793 retained in powers and functions national instigators (in structures of the Parliament Court). The reception of a truly modern prosecutor's office was to take place along with changes in the state's political system<sup>21</sup>.

A truly important step towards introducing the institution of the prosecutor into the Polish legal system were the provisions of the Constitution of the Duchy of Warsaw, where in the chapter entitled "On judicial order" in Art. 76 legislators created the "royal prosecutor", whose competences were related to the competence of the Court of Appeal to submit a request to the king to remove from office a judge of a civil tribunal of first instance or a judge of a criminal court in the event of proof of a crime committed in connection with his office. Shortly after the entry into force of the constitutional provisions, it turned out that the practice of justice required further development and consolidation of the prosecutor's competences in connection with judicial practice based on the foundations of modern solutions of the Napoleonic Code.

In November 1807, the Minister of Justice of the Duchy of Warsaw, Feliks Łubieński, presented a project of judicial organization that transferred French solutions shaped by the Napoleonic Code into Polish judicial system<sup>22</sup>. These provisions proposed only one paragraph, namely number 61, relating to prosecutors. The legislator intended them to be "government officials" using the title of "Royal Prosecutor General" affiliated with the Court of Cassation, the Court of Appeal and criminal courts. These prosecutors were to have their deputies operating at the appropriate levels of courts – deputy Royal prosecutors. Their task was to investigate "the execution of everything that may concern public order." The draft decree on the organization of the judiciary was discussed at the Council of State of the Principality in January 1808. The amendments to the draft regulations were introduced on 21 April 1808, were sent to the King of Poland for final approval. The changes included regulations relating to prosecutors (Articles 36–41). The prosecutors were to be appointed by the King

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<sup>20</sup> W. Zarzycki, Oskarżyciel publiczny w okresie reform z drugiej połowy XVIII w., *Problemy praworządności* 1972, no. 2.

<sup>21</sup> Z. Szcząska, Instygatorzy w Trybunale Koronnym i innych sądach danej Rzeczypospolitej, *Problemy Praworządności* 1978, no. 6, p. 54–63.

<sup>22</sup> ADAG, Akta Rady Stanu Księstwa warszawskiego, v. II 71, p. 4–30.



decree at the request of the Minister of Justice. The following levels of the Prosecution were tabled: the Royal Prosecutor General at the Court of Cassation, the Prosecutor General and two deputy prosecutors general at the Court of Appeal, the Royal Prosecutor and a deputy prosecutor at the tribunal of first instance<sup>23</sup>. The draft regulation provided for prosecutors to remain "under the supervision" of the Minister of Justice. Interestingly enough, certain new requirements and practices were provided, namely prohibition for a prosecutor to leave his place of office without the minister's consent and the principle of replacing an absent prosecutor by the judge or assessor. The suspension or deprivation of office of a prosecutor was carried out in the same way as judges of the Court of Appeal.

The draft law submitted by the Council of State on 21 April 1808 awaited royal approval, which, however, was delayed because the King did not reside in Warsaw but in Dresden, Saxony so the possibility of signing the act was reduced. Meanwhile, on 1 May 1808, the Napoleonic Code came into force in the Duchy of Warsaw, which was ordered by the royal decree of 27 January 1808 in implementation of provisions of Art. 69 of the Constitution<sup>24</sup>. In this situation the Minister of Justice, Feliks Łubieński, could not continue to delay the introduction of new justice institutions that would implement and exercised regulations of the Code. Certain offices like prosecutors, were entrusted by the Napoleonic Code with tasks of performing many legal acts in ongoing proceedings. Therefore, minister Łubieński submitted to the King requests to appoint prosecutors. The Cassation Prosecutor was nominated on 19 March 1808, the appellate prosecutor, 3 criminal prosecutors and 6 department prosecutors on 12 April 1808. In the ministerial instruction of 13 May 1808, Minister Feliks Łubieński sent instructions to the courts in which he established new organization schemes of courts and prosecutor's offices<sup>25</sup>. The document was to be in force temporarily until formally approved by the King. This instruction was to be modified, but it remained in force as a document on which the functioning of the Prosecutor's Office in the new justice system rested for the next years. Thus, the first organizational level, i.e. criminal prosecutors, stated to perform their duties at criminal courts. The criminal prosecutor was entrusted with the power to ensure com-

<sup>23</sup> ADAG, Akta Rady Stanu Księstwa warszawskiego, v. II 71, p. 38–45, p. 214.

<sup>24</sup> Dziennik Praw księstwa Warszawskiego (DPKW), v. I, no. 2, p. 53.

<sup>25</sup> A. Heylman, Historia organizacji sądownictwa w Królestwie Polskim, vol. I, Warszawa 1861, p. 23–30.

pliance of the judicial staff with ministerial instructions. Pursuant to § 21 of the instruction of 13 May 1808, a general report on the implementation of the instructions was to be submitted by the cassation prosecutor in order to ensure the efficient field operation of criminal prosecutors and the functioning of the new justice system. This created momentum so much needed for the effective adjudication of the criminal cases and smooth functioning of the judiciary in the Duchy of Warsaw. The events that followed proved that these ambitious efforts were highly needed but faced some obstacles connected to the typical inertia of bureaucracy and organizational problems connected to the scarce resources allocated to the new judicial system. Nevertheless, the influence of the Napoleonic Code on the Polish judicial system was visible and resulted with positive outcome in the long run.

#### **4. Summary**

The introduction of the Napoleonic Code in Poland on 1 May 1808 gave a modernization impulse for the justice system and based it on modern institutional solutions. This was not without resistance, doubts and obstacles that appeared in judicial and administrative practice when implementing new solutions unknown to old practice. Although the institution of the public prosecutor in the Kingdom of Poland<sup>26</sup> had several centuries of tradition of functioning under the guise of the royal instigator<sup>27</sup>, the new competences granted to prosecutors in the legal system of the Duchy of Warsaw constituted a breakthrough. The creation of a new court structure based on modern legal solutions along with the organization of the modern structure of field administration gave a important modernization impulse to the entire state<sup>28</sup>. The judicial institutions established at that time, with consecutive changes, survived the existence of the Duchy of Warsaw and have been used with some changes in practice of Polish judiciary for over 200 years.

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<sup>26</sup> R. Kucharski, *Zarys historii Prokuratury w Polsce*, *Prokuratura i Prawo* 2021, no. 11, p. 121–161.

<sup>27</sup> R. Kucharski, *Sądownictwo szlacheckie od XV do XVIII wieku*, *Consilium Iuridicum* 2022, no. 3–4, p. 242.

<sup>28</sup> R. Kucharski, *Geneza sądów polskich*, *Consilium Iuridicum* 2022, no. 1–2, p. 237–252.

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## **Wpływ Kodeksu Napoleona na system sądowniczy Księstwa Warszawskiego**

### **Streszczenie**

*Utworzenie Księstwa Warszawskiego w wyniku wojen napoleońskich w Europie stworzyło potrzebę zorganizowania na nowo administracji państwowej odpowiadającej nowoczesnym wzorcom i odpowiadającej*

nowym wyzwaniom nowej ery w dziejach Europy. Obok tego zaszła potrzeba zreformowania instytucji wymiaru sprawiedliwości i usunięcie z jej praktyk przestarzałych i narzuconych przez zaborców instytucji, szczególnie wzorców pruskich. Ten ambitny cel postawił i przeprowadził minister sprawiedliwości Feliks Łubieński, któremu polskie sądownictwo zawdzięcza wprowadzenie do nowej epoki. Dzięki jego pracy udało się oprzeć system prawny ówczesnej Polski na regulacjach Kodeksu Napoleona. Niniejsze opracowanie przedstawia zarys instytucji wymiaru sprawiedliwości (sądów i prokuratury) jakie zostały utworzone w oparciu o nowoczesne rozwiązania prawno-ustrojowe regulacji napoleońskiej, bazujące na tradycji prawa rzymskiego, opierającej się na fundamentach cywilizacji chrześcijańskiej oraz elementach filozofii greckiej. Było to ważnym impulsem do modernizacji wymiaru sprawiedliwości w Polsce oraz zapoczątkowało zmiany społeczne i gospodarcze niezbędne dla sprawnego funkcjonowania nowoczesnego Państwa Polskiego.

## **Słowa kluczowe**

*Kodeks Napoleona, Księstwo Warszawskie, sądy, prokuratura, instrukcja, Polska, sądownictwo, instrukcja, konstytucja.*