

# Courts and Officials Involved in Divorce Proceedings

## 2.1 Divorce Court

The constitutional principles<sup>1</sup> in the Duchy of Warsaw were: equality of all citizens before the law (Art. 4), public court proceedings (Art. 70), and independence of the judges (Art. 74). Moreover, legal acts of lower levels stipulated that judges must be professional, as all those who embarked on a career path in the judiciary (with the exception of justices of the peace) were required to hold a degree in law and to pass the relevant exam.<sup>2</sup> It must be noted, however, that these requirements did not apply to people appointed to functions in the judiciary during its original organization in 1808 (1809 in Galicia).<sup>3</sup>

<sup>1</sup> *Dziennik Praw*, vol. 1, p. 11 et seq.

<sup>2</sup> The royal decrees regulated several types of exams that were required for particular positions. In order to take up the position of a secretary at a civil tribunal of first instance, at a criminal or appeal court, as well as of a clerk (*pisarz*) or underclerk (*podpisarz*) at a court of peace, it was necessary to complete a law course at the Warsaw School of Law and pass a public examination (Art. 1 of the decree dated 11 July 1809 *Względem egzaminów urzędników sądowych* [*On Examinations of Court Officials*], *Dziennik Praw*, vol. 1, p. 298 et seq.). The course of examinations at the School of Law, in turn, was determined by the royal decree of 24 May 1808 *o organizacji i przebiegu studiów w Szkole Prawa w Warszawie* [*On the Organization and Course of Studies at the School of Law in Warsaw*] (*Ustawodawstwo Księstwa Warszawskiego. Akty normatywne władzy najwyższej*, vol. 1: 1807–1808, eds. W. Bartel, J. Kosim, W. Rostocki, Warszawa 1964, p. 106 et seq.). Pursuant to this decree, at the end of each year of study (which lasted three years), students sat examinations before committees composed of three teachers. Moreover, after the second and third year of studies, they could take public exams before the School's Board of Trustees appointed by the minister of justice. Part of the Roman law exam was held in Latin, and the rest in Polish. In order to take higher positions in the judiciary, candidates had to pass the examination for assessors or judges (both before commissions appointed by the minister). The exam for assessors covered Roman law, land law, Napoleonic Code, Commercial Code, criminal law, procedure, Constitution, organization of courts and of the notarial profession (Art. 13 of the decree of 11 July 1809). The scope of the material covered by the judicial examination was somewhat broader and included: the law of nature, history of law, Roman law, canon law, land law, Prussian law, Constitution, organization of the judiciary, Napoleonic Code, procedure, Commercial Code and criminal law. It also covered practical cases (Art. 14 decree of July 11 1809).

<sup>3</sup> W. Sobociński, *Historia ustroju i prawa Księstwa Warszawskiego*, Toruń 1964, p. 242.

At the same time, a judiciary structure similar to that implemented by Napoleon in France was introduced by the reform of 27 *ventôse* of the Year VIII (18 March 1800)<sup>4</sup>: There was to be one peace court in each *powiat*<sup>5</sup>; one civil tribunal of first instance in each department; one criminal justice court for every two departments; and one court of appeal for the entire Duchy of Warsaw (Art. 71). The Council of State was to act as a court of cassation (Art. 72).

Peace courts, of which in practice there were a few more than the constitution stipulated, examined both civil and criminal cases. Unlike in France, where the entire jurisdiction of the peace court was exercised by a justice of the peace,<sup>6</sup> in Poland each peace court included two divisions. At the so-called conciliation division, the justice of the peace adjudicated personally. There were three of them in each court, and they alternated in the performance of duties every four months. In order to successfully file a case with the civil court of first instance, first a mediation attempt had to be made before the conciliation division. One other competence of the justice of the peace was presiding over family assemblies. Moreover, each peace court had a *podsedek*, who was an official with his own jurisdictional competence. He ruled in criminal cases (the maximum punishment he could impose was up to six months of imprisonment or a flogging of up to 100 lashes) and in disputed civil cases that fell under the jurisdiction of the peace court (cases involving claims of minor value, possessory claims, cases related to letting to hire and other categories of cases stipulated by the relevant regulations).<sup>7</sup>

Courts that ranked higher in the hierarchy were divided into two categories: civil and criminal. The civil courts were divided into civil tribunals of first instance, (which unlike the French *tribunaux de première instance*<sup>8</sup> did not handle correctional cases, and their jurisdiction covered not communal districts [*arrondissements communaux*], but departments), and an appellate

4 Ibid, p. 240.

5 *powiat* is the second-level unit of local government and administration in Poland, equivalent to a county, district or prefecture.

6 *Prawo cywilne obowiązujące w Królestwie Polskiem*, ed. S. Zawadzki, Warszawa 1861, vol. 2, p. 164, footnote 1.

7 W. Sobociński, *Historia ustroju i prawa ...*, pp. 243–245 and 282; for more on the number of peace courts: pp. 18 and 245; A. Rosner, *Sądy pokoju w Księstwie Warszawskim. Kształt prawny, funkcjonowanie, sędziowie i urzędnicy* (Ph.D. thesis: Library of the Faculty of Law and Administration of the University of Warsaw), Warszawa 1985, pp. 45–47.

8 *Loi sur l'organisation des tribunaux* (27 ventôse an VIII – 18 March 1800), Title II, Art. 7, [in:] J. B. Duvergier, *Collection complete des lois, décrets, ordonnances, règlements, avis du Conseil d'État*, Paris 1827, vol. 12, p. 167.

court,<sup>9</sup> of which there was only one for the entire Duchy of Warsaw (in France there had originally been 29,<sup>10</sup> so the judicial districts in the Duchy covered much higher population numbers than their French equivalents).

The structure of the civil tribunals of first instance of each department was essentially the same: each of them was to be composed of a president, six judges and three assessors<sup>11</sup> who judged cases in panels of three, organized into two departments.<sup>12</sup> For more complex cases, which necessarily included divorce proceedings (Art. 245 and 256 of the CC), a judge-rapporteur was appointed from the panel to draft a report (*relacja*) (Art. 95 of the CPC). Judgements were rendered by a majority of votes (Art. 116 of the CPC).

Civil tribunals of first instance had jurisdiction over all cases that had not been transferred to other courts, including divorce cases.<sup>13</sup> Judgements in cases with claims not exceeding 1,600 zlotys were final. Others could be appealed with the Court of Appeal. In addition, civil tribunals of first instance heard appeals against judgements delivered by *podstępki* (provided that the value of the object in dispute exceeded 80 zlotys).

Since, as already mentioned, examination of divorce cases in the first instance was within the jurisdiction of civil tribunals, it is appropriate to list all courts of this level that functioned in the Polish territories in the period when the Napoleonic divorce regulations were in force.

9 *Organizacja sądownictwa cywilnego z dnia 13 maja 1808 r.*, Art. 28, [in:] *Zbiór Przepisów Administracyjnych Królestwa Polskiego, Wydział Sprawiedliwości*, Warszawa 1867, p. 2, vol. 6.

10 *Loi sur l'organisation des tribunaux ...*, Title III, Art. 21, p. 169.

11 *Organizacja sądownictwa cywilnego z dnia 13 maja 1808 r.*, Art. 23. In reality, on 22 and 28 April 1808, Frederick Augustus appointed the presidents of all six tribunals, as well as: five judges and four assessors in Warsaw, six judges and four assessors in Poznań, six judges and four assessors in Kalisz, five judges and three assessors in Płock, five judges and two assessors in Łomża, five judges and three assessors in Bydgoszcz (*Dziennik Praw tyczący się nominacji urzędników*, vol. 1, pp. 16–20 and 22–24). Some of these positions were already filled by 28 May 1808 (*Dziennik Praw tyczący się ...*, vol. 1, pp. 36–37). The subsequent nominations took place, among others, on 14 July 1808 (*Dziennik Praw tyczący się ...*, vol. 1, pp. 59–60).

12 *Organizacja sądownictwa cywilnego z dnia 13 maja 1808 r.*, Art. 24. With time, however, second divisions were established in Warsaw and in Kraków [Cyrkuł VIII, vol. 54, p. 130 (no. 40)]. In other tribunals, the second divisions were abolished. (*Zbiór przepisów administracyjnych Królestwa Polskiego, Wydział Sprawiedliwości*, p. 2, vol. 6, p. 105, footnote 1 and p. 107, footnote 1). In practice, cases were sometimes considered by larger panels, for example: TCKal, vol. 1, fol. 95, vol. 6, fol. 101, vol. 291, fol. 46; *Akta rozwodowe z terenu gmin, powiatu i miasta Krakowa*, vol. 6, fol. 69 and 259, vol. 9, fol. 21; TCKrak, vol. 250, case no. 2 [s.l.].

13 This also resulted from Art. 234 of the CC.

The first six tribunals were established at the time of the introduction of the Napoleonic Code in the Duchy of Warsaw, i.e. formally on 1 May 1808.<sup>14</sup> Their seats were located in Bydgoszcz, Kalisz, Łomża, Płock, Poznań and Warsaw. Based on the decisions made at the Congress of Vienna, the tribunals in Bydgoszcz and in Poznań, along with their districts, were included within the territory of Prussia, and as of 1 March 1817<sup>15</sup> they proceeded pursuant to the *Landrecht*. The tribunals in Kalisz, Łomża, Płock and Warsaw heard the cases of interest to us until Book I of the Napoleonic Code was repealed in the Kingdom of Poland, that is until the end of 1825. The Suwałki tribunal was separated from the Łomża tribunal on 1 January 1824.<sup>16</sup> Four subsequent tribunals were established in New Galicia upon its incorporation into the Duchy in mid-August 1810 following the Treaty of Schönbrunn.<sup>17</sup> Their seats were located in: Kraków, Lublin, Radom and Siedlce. As a result of the decision of the Congress of Vienna, the department of Kraków was divided: the Free City of Kraków and its district were excluded from it, but most of the former department under the name of Kraków Voivodeship remained within the Kingdom of Poland. This meant that two separate tribunals had to be established. The tribunal competent for the Republic of Kraków remained, of course, in Kraków, and was headed by the former president of the departmental tribunal.<sup>18</sup> Miechów was the first proposed location for the Krakow Voivodeship tribunal, but ultimately Kielce was chosen which, along with its *powiat*, was detached from the Radom department.<sup>19</sup> The tribunals in Kielce, Lublin, Radom and Siedlce applied the regulations discussed until the end of 1825, when Book I of the Napoleonic Code was repealed in Congress Poland. The Krakow tribunal,

14 In practice, courts commenced their operations somewhat later. The earliest entries in the records of cases of the Kalisz tribunal are from June 1808, and of the Bydgoszcz tribunal—from July 1808.

15 *Historia państwa i prawa Polski*, vol. 3: *Od rozbiorów do uwłaszczenia*, ed. J. Bardach, M. Senkowska-Gluck, Warszawa 1981, p. 592.

16 *Zbiór przepisów administracyjnych Królestwa Polskiego, Wydział Sprawiedliwości*, p. 2, vol. 7, pp. 151–155; *Historia państwa i prawa Polski*, vol. 3: *Od rozbiorów ...*, p. 472; A. Heylman, *O sądownictwie w Królestwie Polskim*, Warszawa 1934, p. 41.

17 *Dziennik Praw*, vol. 2, p. 221.

18 H. Maciszewski, *Historia Rzeczypospolitej Krakowskiej*, Kraków 1851, vol. 1, p. 330.

19 *Postanowienie namiestnika z 6 sierpnia 1816 r. przenoszące stolicę województwa krakowskiego z miasta Miechowa, z powodu niedogodności, do miasta Kielce do dóbr narodowych należącego*, *Dziennik Praw*, vol. 1, pp. 429–430; *Zbiór przepisów administracyjnych ...*, p. 2, vol. 7, pp. 147–149. Voivodeship authorities actually moved to Kielce in 1818 (B. Markowski, *Z dziejów gospodarki miejskiej w Kielcach*, Warszawa 1930, p. 20).

in turn, adjudicated in divorce cases until the Austrian divorce laws entered into effect in the Grand Duchy of Kraków (1852).<sup>20</sup>

Moreover, in the Duchy of Warsaw commercial tribunals and the Court of Cassation were established. The judiciary thus organized also functioned in Congress Poland throughout the period in question, although the Constitution, while confirming the existing principles of organization of the judiciary, announced significant changes in the structure of courts. Important changes, however, took place primarily at the highest level: the Court of Cassation was replaced by the High National Court, and the cassation model was replaced by the appeal model.<sup>21</sup> The fundamental core of the judiciary organization in the Duchy of Warsaw also survived in Kraków. Owing to the size of the Republic of Kraków, only one civil tribunal of first instance functioned there. Moreover, a Court of Appeal was organized in Kraków, which, in an expanded composition, also served as the Court of Third Instance. The most important changes occurred primarily at the highest level here. The procedure before the Court of Third Instance combined appeal and cassation elements. One original component was the involvement of the Faculty of Law of the Jagiellonian University in adjudicating cases.<sup>22</sup>

## 2.2 Prosecutor

Also, the prosecutor's office was fashioned after the French model in the Duchy of Warsaw.<sup>23</sup> The prosecutors were organized in a hierarchical way and they were subordinate to the minister of justice.<sup>24</sup> Two prosecutors general were appointed (at the Court of Cassation and at the Court of Appeal). In addition, the prosecutor general at the Court of Appeal was assisted by

20 Z. Zarzycki, *Rozwód w świetle akt Sądu Okręgowego w Krakowie w l. 1918–39*, Kraków 2010, p. 41.

21 P. Pomianowski, *Początki polskiego czasopiśmiennictwa prawniczego. Seria pierwsza* Themis Polskiej, Warszawa 2015, p. 151 et seq. The commercial judiciary also underwent changes.

22 B. Fidelus, *Rozwód w orzecznictwie sądów Wolnego Miasta Krakowa w latach 1815–1833 na tle przepisów prawa małżeńskiego osobowego* (Ph.D. thesis: Jagiellonian University Archives), Kraków 1982, p. 45 et seq.; *Historia państwa i prawa Polski*, vol. 3: *Od rozbiorów ...*, pp. 817–818. An example of a case in which the opinion of the Faculty of Professors and Doctors of Law of the Jagiellonian University survived to our times: *Krakowskie sądy wyższe*, vol. 194, pp. 915–918.

23 For more on how this model was shaped: R. Hube, "O prokuratorach we Francji", *Themis Polska* 1828, vol. 2, pp. 1–32.

24 W. Sobociński, *Prokuratura Sądu kasacyjnego w Księstwie Warszawskim*, Toruń 1993, p. 27.

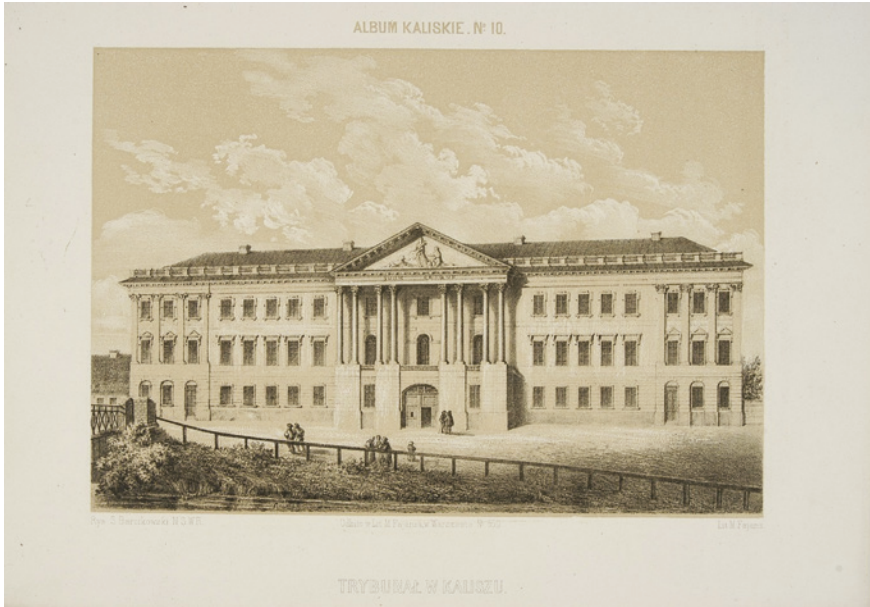


FIGURE 10 Court building of the First Instance Civil Tribunal in Kalisz  
 SOURCE: E. STAWECKI, *ALBUM KALISKIE. SERIA PIERWSZA ZAWIERAJĄCA WIDOKI SAMEGO MIASTA KALISZA*, WARSZAWA 1858, ILLUSTRATION NO 10

two deputy prosecutors. Each of the criminal courts had one prosecutor. As for the civil tribunals of the first instance, a prosecutor was appointed for the first division and a subprosecutor for the second division.<sup>25</sup> The role of the prosecutor in the civil trial of that time was similar to the contemporary one, i.e. he was primarily an advocate of the rule of law. In the decree of 16 May 1808, the Minister of Justice Feliks Łubieński described his position as follows:

The prosecutor is an official established by the King, on whom depends the most in respect of enforcement of laws and of court judgements. He is an official who cares for all minors and absent persons on behalf of the government; he is the one who supervises the civil status officials; he is a guardian of laws and all governmental integrity; he is the eyes of the minister. Through them, the minister learns of all the

25 W. Sobociński, *Historia ustroju i prawa ...*, p. 252; *Organizacja sądownictwa cywilnego z dnia 13 maja 1808 r.*, Art. 36.

activities of the administration of justice, through them, he sees how urgently judges consider cases, how often they convene, when these meetings start and finish, whether the members are present, whether their names are recorded on attendance lists next to all the minutes of decrees issued.<sup>26</sup>

Article 83 of the CPC stipulated that a prosecutor be informed of all cases of specified categories (among others related to government assets, civil status of persons, the lack of jurisdiction of courts, holding judges accountable, missing persons and married women without their husbands' authorization). Nevertheless, the prosecutor's duties concerning the course of divorce cases resulted, above all, from the Napoleonic Code.<sup>27</sup> It should be emphasized that merely to notify the prosecutor about cases of this kind was not enough. His active participation in the proceedings was required (only in cases at joint petition was the prosecutor's participation quite limited).

The prosecutor was notified about divorce petitions already at the stage of conciliation proceedings (Art. 239 of the CC). Next, he was obligatorily presented with the case files prior to the public hearing (Art. 245 of the CC) and upon the completion of evidentiary proceedings (Art. 256 of the CC). The prosecutor also received the files in cases instigated at joint petition of spouses (Art. 288 of the CC). In proceedings initiated for a determined cause, the participation of the prosecutor, or his taking of a position, was obligatory at many stages. He had to award or suspend the permission to cite the other spouse (Art. 240 of the CC), give his view on the exceptions of law (if raised, Art. 246 of the CC), on the exceptions against witnesses (Art. 250 of the CC) and on the merits of the case before the proceedings in the first instance finished (Art. 247 of the CC when evidentiary proceedings were not necessary and Art. 257 of the CC when evidentiary proceedings were conducted). The prosecutor's presence was required both at public hearings and at sittings with closed doors (Art. 253 of the CC).<sup>28</sup>

<sup>26</sup> *Zbiór Przepisów Administracyjnych ...*, p. 2, vol. 7, p. 331.

<sup>27</sup> Although in some rare cases the court cited *Code de procédure* rather than the Napoleonic Code, for example: Cyrkuł III, vol. 99, fol. 45.

<sup>28</sup> As well as during judges' deliberations (*Zbiór Przepisów Administracyjnych ...*, p. 2, vol. 8, p. 335; H. Chwalibóg, *Wykład kodexu postępowania cywilnego*, Warszawa 1874, p. 185). In principle, the prosecutor presented his statements in public (*Zbiór Przepisów Administracyjnych ...*, p. 2, vol. 8, p. 337).

The source material covered by the query shows that the regulations discussed were observed in practice. The minutes contain annotations about communicating the files to the prosecutor and about hearing his position when required by law.<sup>29</sup> Sometimes the information about the prosecutor's position is limited to the fact that it has been heard, but often the minutes or the judgement expound his conclusions<sup>30</sup> (or even provide an extended elaboration signed by the prosecutor).<sup>31</sup> A few documents of the office of the commissioner of government placed in decree protocols (*sentencjonarze*) have survived to our times.<sup>32</sup> It must be emphasized that in the great majority of cases judges concurred with the prosecutor's stance.<sup>33</sup> Sometimes, however, when the prosecutor and subprosecutor were absent, the office of the commissioner of government was represented by one of the judges,<sup>34</sup> assessors<sup>35</sup> or even a clerk.<sup>36</sup> While, pursuant to Art. 84 of the CPC, the commissioner of the government could be represented by assessors and judges (and an ordinance of minister Łubieński clarified that the substitute should be the youngest of the judges),<sup>37</sup> entrusting this function to a clerk was likely without a legal basis.

29 For example: *Akta rozwodowe z terenu gmin, powiatu i miasta Krakowa*, vol. 24, p. 28, vol. 24, p. 45 (prosecutor referred to as *commissioner of the government*; Pol. 'urząd cywilny', literally 'public office'); TCKal, vol. 731, p. 201 (here a *civil prosecutor*, Pol. 'prokurator cywilny' is mentioned).

30 For example: TCKal, vol. 317, fol. 308, vol. 319, fol. 241v, vol. 330, fol. 145; TCKrak, vol. 193: *Księga II wyroków cywilnych ... Władział I. 1828*, p. 115. It should be noted that *copies of judgements or decisions should contain the conclusions of the Prosecutor in full, if made in writing* (*Rozporządzenie Komisji Rządowej Sprawiedliwości d. 15 marca 1820 r. nr. 2740*, [in:] *Prawo cywilne obowiązujące w Królestwie Polskiem*, publ. S. Zawadzki, Warszawa 1861, vol. 2, p. 234).

31 For example: TCKal, vol. 55, fol. 35–35v, vol. 59, fol. 145–146.

32 For example: TCKal, vol. 9, fol. 248–248. In turn, grounds of judgements delivered in Warsaw often quoted the final position of the prosecutor, made in writing and read at the hearing, *in extenso*. For example: Cyrkuł III, vol. 110, fol. 21v–22v.

33 For example: Cyrkuł III, vol. 108, fol. 16 et seq. There were some exceptions, namely judgements of 12 February 1812, of 28 August 1815, of 1 February 1819, of 26 April 1819 and of 22 April 1822, in which the Kalisz tribunal granted divorce despite the prosecutor's conclusions to the contrary (TCKal, vol. 9, fol. 246 et seq., vol. 21, fol. 393 et seq., vol. 313, fol. 108 et seq. and fol. 538 et seq., vol. 323, fol. 829 et seq.); similarly: *Akta rozwodowe z terenu gmin, powiatu i miasta Krakowa*, vol. 6, p. 19 et seq., vol. 30, p. 169; Cyrkuł III, vol. 120, fol. 67v; TCBYd, vol. 8, pp. 94–95.

34 For example: *Akta rozwodowe z terenu gmin, powiatu i miasta Krakowa*, vol. 24, p. 7 and 43; TCKal, vol. 9, p. 121.

35 For example: TCKal, vol. 9, p. 260.

36 For example: *Akta rozwodowe z terenu gmin, powiatu i miasta Krakowa*, vol. 24, p. 35.

37 *Zbiór Przepisów Administracyjnych ...*, p. 2, vol. 8, p. 333.

### 2.3 *Huissier*

Officials called *huissiers* played a very significant role in the organization of the French judiciary.<sup>38</sup> Their most important tasks included the service of court correspondence and the enforcement of judgements. By the decree of 29 August 1809, Frederick Augustus ordered them to be titled burgraves.<sup>39</sup> Nevertheless, soon after, by the decree of 14 October 1811, the monarch decided to distribute the powers of the *huissiers* among the new categories of officials, that is, *woźni* and *komornicy*.<sup>40</sup>

Article 2 of the cited act stipulated that the service of court correspondence would be the responsibility of *woźni*. Moreover, a separate category of *woźni* was to maintain order during hearings (Art. 5). The enforcement of judgements, in turn, was entrusted to *komornicy* (Art. 8).

I have not come across any mentions of *woźni* who maintained order during hearings in the source material covered by my query.<sup>41</sup> *Komornicy* and *woźni* responsible for correspondence appear in court records mainly in relation to annotations concerning the service of letters.<sup>42</sup>

38 Mentioned in the following articles of *Code de procédure*: 1, 16, 20, 45, 52, 61, 62, 66–68, 132, 143, 144, 153, 156, 199, 200, 293, 329, 350, 435, 438, 507, 556, 562, 585, 587, 590, 591, 596, 597, 609, 611, 625, 673, 675, 685, 780, 783–785, 787–790, 795, 802, 808, 832, 901. Cf: *Prawo cywilne obowiązujące w Królestwie Polskiem ...*, p. 613 et seq. Discussion of this institution: T. Królasik, *Francuski model postępowania egzekucyjnego w Księstwie Warszawskim i w Królestwie Polskim w latach 1808–1823* (Ph.D. thesis: Library of the Faculty of Law and Administration of the University of Warsaw), Warszawa 2018, p. 39 et seq.

39 *Dziennik Praw*, vol. 2, p. 45. The name of this office appeared earlier at the Kalisz tribunal (TCKal, vol. 1, fol. 96v, vol. 291, fol. 463).

40 *Dziennik Praw*, vol. 3, p. 407.

41 Unless we consider annotations on closing doors as such, for example: TCKal, vol. 298, fol. 135.

42 For example: *Akta rozwodowe z terenu gmin, powiatu i miasta Krakowa*, vol. 46, p. 72 (in this case one of the judgement copies was served to the prosecutor and not to the defendant); similarly: vol. 33, p. 318. An annotation of service to a party's representative: *Akta rozwodowe z terenu gmin, powiatu i miasta Krakowa*, vol. 24, p. 32; similarly: vol. 33, pp. 161–162. Annotation on service to a party: *Akta rozwodowe z terenu gmin, powiatu i miasta Krakowa*, vol. 24, p. 343, vol. 33, p. 445 (here also annotations that both parties refused to sign for the judgement served). Annotation on the service of a judgement to a defendant serving time at a maximum security prison: *Akta rozwodowe z terenu gmin, powiatu i miasta Krakowa*, vol. 39, p. 125.

## 2.4 Clerk and Underclerk

As per Art. 23 of *Organizacja sądownictwa cywilnego z dnia 13 maja 1808 r.* each civil tribunal of first instance was to have a clerk and an underclerk. Moreover, pursuant to Art. 25 of the said act, when the panel of a given division was chaired by the president of the tribunal, the hearings were recorded by the clerk, and when they were chaired by another judge, the person taking minutes was the underclerk.

Besides taking minutes at hearings,<sup>43</sup> the competences of the clerk included issuing all kinds of documents to the parties, for example attesting that the judgement had not been contested,<sup>44</sup> or to the contrary, that an appeal measure had been lodged.<sup>45</sup>

## 2.5 Legal Position of the Parties

The parties to divorce proceedings were, necessarily, the spouses (although it was not rare for the defendant not to show up). Since the proceedings were dispositive, both could enter means of evidence (Art. 242–243 of the CC),<sup>46</sup> present questions for the witnesses (Art. 254 of the CC), raise exceptions (Art. 168 and 173 of the CPC, Art. 235 of the CC),<sup>47</sup> appeal against judgements (Art. 443 of the CPC),<sup>48</sup> and so on. While such a position of men was the standard, in respect of women it was not at all obvious. Pursuant to the *Code civil*, a married woman was subordinate to her husband. In the reality of that time, this was nothing unusual. Suffice it to say that both civil codes contemporary to the Napoleonic Code, which occupy a similar position in the history of the European codification movement, that is the Prussian *Landrecht* of 1794 and

43 The headings of minutes and judgements always contained the name of the clerk, besides the names of the adjudicating panel members. For example: *Akta rozwodowe z terenu gmin, powiatu i miasta Krakowa*, vol. 24, p. 149; *Krakowskie sądy wyższe*, vol. 240: *Wyroki cywilne sądu apelacyjnego 1818*, p. 943.

44 For example: *Akta rozwodowe z terenu gmin, powiatu i miasta Krakowa*, vol. 22, p. 55, vol. 46, pp. 81 and 91.

45 For example: *Akta rozwodowe z terenu gmin, powiatu i miasta Krakowa*, vol. 46, p. 161.

46 These provisions apply to witnesses and other evidence, and in relation to the defendant, only his or her right to enter witnesses is mentioned. It may be assumed, however, that defendants would also be able to enter other means of evidence pursuant to *Code de procédure*.

47 Art. 235 of the CC applied only to the defendant.

48 Appeals against judgements declaring that there was no ground for divorce could only be lodged by both spouses in two separate acts (Art. 291 of the CC).

the Austrian *Allgemeines Bürgerliches Gesetzbuch* of 1811, also gave the wife an inferior position.<sup>49</sup>

Pursuant to the Napoleonic Code, a married woman of course had legal capacity, but her capacity to sue and to perform acts in law was in many instances restricted by the requirement to have her husband's consent. In principle, a married woman could not sue nor perform any other procedural acts without her husband's authorization (Art. 215 of the CC). Her capacity to perform acts in law was somewhat broader, although still very much limited. To wit, a married woman, even if "separate in property", could not give, alienate, pledge or acquire by free or chargeable title without her husband's consent. Thus, she practically was unable to contract any liabilities.<sup>50</sup> It also merits a mention that she needed her husband's permission to conduct a trading business (Art. 4 of *Code de commerce* of 1807).<sup>51</sup>

Therefore, in principle, a married woman's capacity to sue was virtually non-existent, and her capacity to perform acts in law was severely limited. Many detailed provisions of the Napoleonic Code, however, made serious dents in these principles. First of all, practically always whenever the husband refused his consent, the wife could turn to court to obtain it (Art. 219 of the CC). Moreover, the husband's consent was not required to appear before court in criminal cases (Art. 216 of the CC), nor—which is of particular interest here—to petition for divorce (Art. 241 of the CC) and for separation<sup>52</sup> (Art. 875 and 878 of the CPC).<sup>53</sup> The same applied to entering a lawsuit for the dissolution of community property (Art. 865 of the CPC).<sup>54</sup>

In the event of dissolution of community property (for example as a result of separation or judicial separation of property), a woman could dispose of movables without any restrictions (Art. 1449 of the CC). The same occurred when the spouses agreed in their prenuptial contract that they would keep their property separate (Art. 1536 and 1538 of the CC). Furthermore, a married woman could make a last will (Art. 226 of the CC), revoke a donation made in favour of her husband during the course of marriage (Art. 1096 of

49 *Landrecht*, p. 11, Title 1, § 184; ABGB § 91; K. Sójka-Zielińska, *Wielkie kodyfikacje ...*, p. 110.

50 P. Burzyński, *Wykład prawa cywilnego francuzkiego*, Kraków 1852, vol. 1, p. 268.

51 *La femme ne peut être marchande public sans le consentement de son mari* (*Code de commerce*, Paris 1807).

52 *Le Droit civil français, par K. S. Zachariae, traduit de l'allemand sur la 5e édition, annoté et rétabli suivant l'ordre du Code Napoléon*, ed. G. Massé, Ch. Vergé, Paris 1854, vol. 1, p. 233.

53 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, p. 1040.

54 *Ibid.*, p. 852.

the CC), accept a donation made in favour of her minor child (Art. 935 § 3 of the CC) and perform certain acts with a view of securing her rights (Art. 940, 2139 and 2194 of the CC).<sup>55</sup> She was also responsible for rewarding the person who conducted her affairs without a mandate to her benefit<sup>56</sup> and for compensating damages caused by her.<sup>57</sup> In respect of activities related to running the household, the wife was deemed to be her husband's representative.<sup>58</sup>

It must be stressed that unmarried adult women (never married, widows and divorcees) were not subject to the same restrictions as married ones. Piotr Burzyński, a 19th-century Polish commentator on the Napoleonic Code, argued that the reason for such a regulation of the legal position of married women is *respect for the authority of their husbands, and not the personal incapacity* of women.<sup>59</sup> The French commentator Jean Joseph Delsol in turn clarified that:

The civil incapacity of a married woman is based upon a number of reasons. The first, and at the same time the most important one, is that husbands generally have more of a natural aptitude for administering business affairs. It is true that widows and adult unmarried women are no longer subject to care, as in Rome, and that the law now recognizes them as capable of running their own affairs. But when it is easy, as in marriage, to give women advice and guidance, the incapacity imposed on them by law is fully justified.<sup>60</sup>

55 Also some other provisions of property marriage law made certain concessions in favour of married women: for example Art. 1534 of the CC.

56 *Le Droit civil français, par K. S. Zachariae, traduit de l'allemand sur la 5e édition, annoté et rétabli suivant l'ordre du Code Napoléon*, ed. G. Massé, Ch. Vergé, Paris 1854, t. 1, p. 234.

57 Delsol, J. J., *Explication élémentaire du Code Napoléon, mise en rapport avec la doctrine et la jurisprudence*, Paris, 1867, v. 1, p. 234.

58 P. Burzyński, *Wykład prawa cywilnego francuzkiego ...*, p. 270.

59 *Ibid.*, p. 265.

60 J. J. Delsol, *Explication élémentaire du Code Napoléon ...*, v. 1, pp. 224–225: Incapacité de la femme mariée. – L'incapacité de la femme mariée est fondée sur plusieurs raisons. La première et la plus grave est que le mari a généralement, pour l'administration des affaires, une aptitude naturelle supérieure à celle de la femme. Il est vrai que les veuves ou les filles ayant atteint leur majorité ne sont plus, comme à Rome, soumises à la tutelle, et que la loi les répute suffisamment capables pour la direction de leurs intérêts. Mais lorsqu'il est facile, comme dans le mariage, de donner aux femmes un conseil et un guide, l'incapacité que la loi leur impose se trouve pleinement justifiée.

## 2.6 Legal Representatives

French models were only partially applied in the organization of advocates in the Duchy of Warsaw.<sup>61</sup> Legal representatives were divided into categories depending on the type of court at which they worked. A legal representative established at a hierarchically lower court could not appear before a hierarchically higher one. There was no professional self-government.<sup>62</sup>

In cases before civil tribunals of first instance, mandatory representation was a general rule: each of the parties had to establish a legal representative (Art. 61 par. 1 and Art. 75 of the CPC).<sup>63</sup> The same was true at the stage of court hearings in divorce cases (although mediation proceedings were regulated most specifically). The petitioner established his or her representative in the petition (*ajournement*; Art. 61 point 1 of the CPC read in conjunction with Art. 241 of the CC),<sup>64</sup> and the defendant was to do it upon receiving the petition (Art. 75 of the CPC).<sup>65</sup>

I have also come across a few documents containing powers of attorney granted by defendants. These were usually defendants who could not participate in person in the trial or part thereof, and they granted very broad powers to their representatives (which can be explained as resulting precisely from the principal's absence).<sup>66</sup>

61 W. Sobociński, *Mecenas przy Sądzie kasacyjnym Księstwa Warszawskiego*, [in:] *Szkice z dziejów adwokatury*, series 3, ed. R. Łuczywek, Warszawa 1983, pp. 20–21.

62 A. Redzik, T. J. Kotliński, *Historia adwokatury*, Warszawa 2014, p. 92 et seq.

63 W. Sobociński, *Historia ustroju i prawa ...*, pp. 253–254; *Historia państwa i prawa Polski*, vol. 3: *Od rozbiorów ...*, p. 155; J. A. Rogron, J. A., *Code de procédure civile expliqué par ses motifs ...*, p. 204, H. Krzyżanowski, *Zasady postępowania sądowego cywilnego*, Warszawa 1864, p. 204; A. Łabęcki, *Krótki rys procesu stosownego do Kodexu Napoleona, przedstawiony z zlecenia JW. ministra sprawiedliwości z przyłączeniem nót i stosownych artykułów*, Warszawa 1808, pp. 5–6.

64 J. A. Rogron, *Code de procédure civile expliqué par ses motifs*, p. 175. Documents of this type were not, however, necessary: *The court believed “public defenders” who were subordinate to it as a special type of officials. This was, in a way, an acknowledgement of the unilateral nature of the act of granting power of attorney, whose commission and acceptance left no trace in the files* (W. Sobociński, *Mecenas przy Sądzie kasacyjnym ...*, p. 37).

65 An example of establishment of a representative by a defendant at a hearing: TCByd, vol. 14, p. 172.

66 The divorce trial of Karolina and Aleksander Chodkiewicz is an example of such a case. In this case, the defendant gave detailed instructions to his or her representatives, albeit from a distance (Archiwum Młynowskie Chodkiewiczów, pp. 89–95). Commentary: M. Chachaj, *Poufne instrukcje dla adwokatów Aleksandra Chodkiewicza w sprawie rozwodowej z Karoliną z Walewskich*, [in:] *Zbrodnie, sensacje i katastrofy w prasie polskiej do 1914 roku*, eds. K. Stępnik, M. Gabryś, Lublin 2010, pp. 67–78.

For example: on 12 June 1816 the defendant Karol Damart gave a notarized power of attorney to Franciszek Dornfeld to conduct his divorce case, which included the right to appear on behalf of the principal in any court, to raise exceptions and lodge motions, to receive court correspondence, to accept exceptions raised by the wife, to revoke the right of appeal and to substitute the principal at the pronouncement of divorce by the civil status official.<sup>67</sup>

Once the petition for divorce was lodged, both parties were bound by mandatory representation, and moreover, despite having authorized a representative, the petitioner had to appear before the court personally (with the representative – Art. 248 of the CC).<sup>68</sup> Sometimes, although rarely, one of the parties had more than one representative.<sup>69</sup> In the case of a divorce trial at joint petition, both spouses were required to appear, while representatives were not obligatory (Art. 281 and 286 of the CC).<sup>70</sup> Based on the source material covered by the query it is usually difficult to assess just how involved the representatives were in the cases entrusted to them. It follows from the minutes that they almost always showed at hearings (this of course does not apply to representatives of defendants sued in cases of divorce in absentia, who likely were usually not established) and presented the position of their principals whenever required to do so (most frequently orally, but sometimes also in writing).<sup>71</sup> It was rare for them to get into elaborate legal arguments, however. This, of course, does not have to mean that they were not sufficiently dedicated. It could result from the fact that legal issues requiring complex analyses rarely came up in divorce cases. Nonetheless, such problems did occur in practice, for example with the understanding and application of the terms concubine<sup>72</sup> or outrageous conduct, ill-usage, or grievous injuries (*excès, sévices ou injures graves*).<sup>73</sup>

67 Cyrkuł 111, vol. 99, fol. 88–90. Another principal, by the name of Wojnicki, authorized his representative to reach a settlement. 99, fol. 3–4v). Some powers of attorney covered only specific acts, such as appearance before a civil status official at the pronouncement of divorce (*Akta rozwodowe z terenu gmin, powiatu i miasta Krakowa*, vol. 9, pp. 211 and 227). In one of the cases, it was necessary to present a power of attorney explicitly allowing the representative to give judicial acknowledgement as per Art. 1356 of the CC (Cyrkuł 111, vol. 97, fol. 11–14).

68 Although the literal interpretation of Art. 242 of the CC may suggest that the defendant could act without a representative in the trial, I have not come across such an occurrence. The Kalisz tribunal has also pointed out the indispensability of personal appearance (TCKal, vol. 299, fol. 81).

69 TCKal, vol. 299, fol. 81, vol. 323, fol. 811.

70 Cf. TCKal, vol. 25, fol. 118.

71 For example: *Krakowskie sądy wyższe*, vol. 236: *Wyroki cywilne sądu apelacyjnego (1816 r.)*, pp. 135–137.

72 TCKal, vol. 300, fol. 365–365v.

73 *Akta rozwodowe z terenu gmin, powiatu i miasta Krakowa*, vol. 24, p. 235.



FIGURE 11 Jean Ignace Isidore Gerard, aka Grandville, image with caption: *Et dans cette demande en séparation, Messieurs, observez bien deux choses!...* [Gentlemen, taking this separation petition into consideration, please look at these two things!]  
SOURCE: C. VETH, *DER ADVOKAT IN DER KARIKATUR*, BERLIN 1927, P. 53

## 2.7 Civil Status Officials

France was the first large European country to decide to have its civil status records kept by civil servants, without the participation of the clergy. This goal was ultimately achieved, but not without numerous obstacles.<sup>74</sup> Introduction of the secular model of registering civil status records in the Polish territories ruled by Napoleon turned out to be more difficult than in the Empire. The main reason for this was that the reception of the Napoleonic administrative model proved possible only to a limited degree. As far as the French model went, only departments and *powiaty*, which were the equivalent of districts, were

74 G. Noiriel, "L'identification des citoyens. Naissance de l'état civil républicain", *Geneses. Sciences sociales et histoire* 1993, no. 13, pp. 8–25. In the Illyrian Provinces, where the keeping of civil status records was usually in the hands of parish priests, it proved even more difficult to introduce their new type than in France proper (M. Senkowska-Gluck, "Rządy francuskie w Ilirii. Przykład nieudanej recepcji obcych instytucji", *Czasopismo Prawno-Historyczne* 1975, vol. 27, fasc. 2, p. 246).

organized in the Duchy. Communal administration in the provinces, which in France was centralized and relatively professional,<sup>75</sup> could not be implemented here. While in the cities the mayors and presidents functioned more or less as equivalents of French *maires*, the rural administration fashioned after the Napoleonic model never materialized. Certain functions of the *maire* were fulfilled by the *wójt*,<sup>76</sup> who was usually the local landholder (or man indicated by him), as well as by the parish priest.

The principles of nominating civil status officials was governed by the *Regulation* drafted at a session of the Council of Ministers held on 21 April 1808.<sup>77</sup> Pursuant to this regulation, specialized civil status officials, who would not combine the keeping of civil status records with any other public function, were to be appointed in Warsaw only (point 6).<sup>78</sup> In other cities, civil status records were entrusted to presidents and mayors (point 1), and in *villages with parishes but without significant numbers of Jewish residents*, to parish priests (point 2). In villages with a considerable population of religious dissenters, someone else than the parish priest had to be appointed, for example the organist (point 3).

The provisions of the *Regulation* were in principle confirmed in the decree of 9 May 1808 *On Nominations* (Art. 24 and 28).<sup>79</sup> Interestingly, the listed registrars included some rabbis. On the other hand, *Organization of the Civil Judiciary of 13 May 1808* stipulated in its Art. 13 that each commune would have a civil status official responsible for the registration of civil status records. Civil status officials were nominated by the minister of justice.<sup>80</sup>

75 T. Mencil, "Gmina wiejska w Księstwie Warszawskim", *Czasopismo Prawno-Historyczne* 1984, vol. 36, fasc. 1, pp. 66–67.

76 In the period of the Duchy of Warsaw, given the reluctance of clergymen to keep civil status records, an idea emerged to entrust this function to *wójtowie*. Yet, due to the general weakness of commune level administration, this idea was rejected (T. Mencil, *Gmina wiejska ...*, pp. 51 and 62).

77 AGAD, Rada Stanu i Rada Ministrów Księstwa Warszawskiego, series 2, vol. 76, pp. 1–2; Diocesan Archives in Łomża: Fond 11 – Akta ogólne, ref. no. 448, fols. 11v–12. The text of the *Regulation* has been published in an appendix to the article: P. Pomianowski, "Funkcjonowanie francuskiego modelu rejestracji stanu cywilnego w Polsce", *Czasopismo Prawno-Historyczne* 2015, vol. 67, fasc. 1, p. 104.

78 List of nominations: *Gazeta Warszawska* 1808, no. 37, p. 593.

79 *Dziennik Praw*, vol. 1, pp. 54–55.

80 Minutes of the Council of State session held on 15 March 1808 indicate that the minister of justice already at this time was sending to parish priests *forms pursuant to which civil status records are to be kept* (*Protokoły Rady Stanu Księstwa Warszawskiego 1807–1813*, eds. B. Pawłowski, T. Mencil, M. Kallas, Toruń 1964, vol. 1, part 1, p. 199). The text of one of the nominations that accompanied them is presented by Witold Jemielity in: "Akta stanu cywilnego w Księstwie Warszawskim i Królestwie Polskim", *Prawo Kanoniczne* 1995, no. 1–2 (38), pp. 165–166.

The normative environment was significantly changed upon the entry into effect of the decree of 23 February 1809 *On Fees for Lay and Clerical Civil Status Officials in the Duchy of Warsaw*.<sup>81</sup> Article 1 of the decree entrusted the keeping of civil status records to clergymen performing parish duties (both Catholic and those of other Christian denominations: see below). The decree only allowed lay persons to keep civil status records with regard to acts contrary to canon law (divorces, solely civil weddings and their announcements). These functions were to be fulfilled by city mayors and presidents (Art. 4). The activities of civil status officials in Warsaw and other localities were passed over in silence. Thus, the literal interpretation of the decree would suggest that they had been removed.<sup>82</sup> The surviving documents, however, prove that lay civil status officials kept on working until 1825.<sup>83</sup>

The literature of the subject propagates the erroneous opinion that outside of Warsaw (and perhaps some other places where the population was not religiously homogeneous) the civil status records were maintained exclusively by Roman Catholic parish priests.<sup>84</sup> Archive queries, however, prove that even though parish priests formed the majority of civil status officials in the

81 *Dziennik Praw*, vol. 1, p. 195 et seq. Moreover: *Dekret z 18 marca 1809 roku dotyczący zastosowania przepisów Kodeksu Napoleona w sprawie aktów stanu cywilnego do systemu prawnego obowiązującego w Księstwie Warszawskim* [the act of 18 March 1809 transferred the duties related to overseeing civil status records from civil tribunals to peace courts] (*Dziennik Praw*, vol. 1, p. 231 et seq.).

82 Perhaps this is why literature of the subject sometimes purports that parish priests did not take to keeping the records right away (A. J. Nowowiejski, *Pasterologia*, Płock 1930, p. 107; A. Molisiak, *Akta stanu cywilnego*, [in:] *Nauka pasterzowania*, ed. Z. Pilch, Kielce 1939, vol. 1, p. 154; W. Jemielity, *Akta stanu cywilnego ...*, p. 164).

83 For example: Cyrkuł 1; State Archives in Płock: Akta stanu cywilnego gminy Płock, powiat płocki [fond: 50/357], vol. 83; State Archives in Lublin: Akta stanu cywilnego Parafii Rzymskokatolickiej w Zamościu [fond: 35/1964/0], vol. 40.

84 W. Dworzaczek, *Genealogia*, Warszawa 1959, p. 60; I. Dybus-Grosicka, Początki i rozwój rejestracji stanu cywilnego na ziemiach polskich, *Prawo – Administracja – Kościół* 2006, no. 3 (27), p. 76; M. Dyjakowska, Rejestracja stanu cywilnego w Księstwie Warszawskim i w Królestwie Polskim, *Metryka* 2013, no. 1, p. 19; W. Jemielity, *Akta stanu cywilnego ...*, p. 164; A. Molisiak, *Akta stanu ...*, p. 154; A. J. Nowowiejski, *Pasterologia ...*, p. 107; W. Sobociński, *Historia ustroju i prawa ...*, p. 181; *Historia państwa i prawa Polski*, vol. 3: *Od rozbiorów ...*, p. 138; T. Walachowicz, “Kodeks Napoleona a kościelna dyscyplina małżeńska w dobie Księstwa Warszawskiego”, *Roczniki Teologiczno-Kanoniczne* 1977, vol. XXIV, fasc. 5, p. 142; E. Ziółek, *Między tronem ...*, p. 114; J. Skalski, *Rzym a sprawy polskie w okresie porządkowym*, Warszawa 1968, p. 12; G. Rychlik, *Data urodzenia Fryderyka Chopina: ewaluacja źródeł, analiza informacji, konkluzja*, Warszawa 2017, p. 138; F. Skarbek, *Dzieje Księstwa Warszawskiego*, Warszawa [1897], vol. 2, p. 80.

provinces, frequently these duties were performed by other people too. Thus, four major categories of civil status officials can be indicated:

- 1) Roman Catholic parish priests,
- 2) parish leaders of other congregations,
- 3) lay persons responsible for the comprehensive maintenance of civil status records,
- 4) lay persons responsible for keeping special civil status records that existed alongside those maintained by the local parish priest, used for recording acts contrary to canon law (divorces, solely civil weddings and their announcements).<sup>85</sup>

### 2.7.1 Roman Catholic Parish Priests

Roman Catholic parish priests formed the most numerous group of civil status officials in the Duchy of Warsaw and in Congress Poland. They also performed their functions in relation to non-Catholic population, especially Jews.<sup>86</sup> This kind of subordination of non-Catholics to the Roman Church clergy was often criticized.<sup>87</sup> Moreover, according to Włodzimierz Dworzaczek, even before the partitions of Poland, the non-Catholic inhabitants (especially Protestants) often used Catholic parish records.<sup>88</sup> In the period under study, such practices can be found in the Polish Muslim community.<sup>89</sup> It should be stressed, however,

85 State Archives in Lublin: Akta stanu cywilnego Parafii Rzymskokatolickiej w Zamościu [fond: 35/1964/0], vol. 40; State Archives in Kielce: Akta Urzędnika Stanu Cywilnego Powiatu Kieleckiego [fond: 21/1143/0], vol. 1–6.

86 P. Sygowski, *Żydzi Janowca w latach 1811–1864 w świetle Ksiąg Urzędu Stanu Cywilnego z Archiwum Państwowego w Lublinie i Dokumentów Centralnych Władz Wyznaniowych z Archiwum Głównego Akt Dawnych w Warszawie*, [in:] *Historia i kultura Żydów Janowca nad Wisłą, Kazimierza Dolnego i Puław. Fenomen kulturowy miasteczka – sztettl. Materiały z sesji naukowej „V Janowieckie Spotkania Historyczne”. Janowiec nad Wisłą, 28 June 2003*, ed. F. Jaroszyński, Janowiec 2003, p. 51; State Archives in Białystok (Łomża Branch): Akta stanu cywilnego Parafii Rzymskokatolickiej w Łomży [fond: 5/514/0], vol. 60, entries no. 20 and 31; Archiwum Państwowe w Suwałkach: Akta stanu cywilnego Parafii Rzymskokatolickiej w Augustowie [fond: 63/148/0], vol. 1, entry no. 1. Sometimes separate books were set up for Jews, for example: State Archives in Piotrków Trybunalski: Akta stanu cywilnego gminy Brzeziny [fond: 49/443/0], vol. 2.

87 *Mowa jaśnie wielmożnego Franciszka Węgłęńskiego posła hrubieszowskiego miana na posiedzeniu seymowym dnia 15 grudnia 1811 roku* [Warszawa 1811], p. 2.

88 W. Dworzaczek, *Genealogia ...*, p. 59. For more about such practices among Muslims in late 18th and early 19th century: A. Kołodziejczyk, “Przyczynek do historii Tatarów białskich. Księga Małżeństw, Urodzin i Zgonów gminy mahometańskiej w Studziance ze zbiorów AP w Lublinie”, *Archeion* 1986, vol. 80, p. 229.

89 For example: State Archives in Lublin: Akta stanu cywilnego Gminy Mahometańskiej w Studziance [fond: 35/1800/0], series 1, vol. 1, fol. [22].

that Catholic pastors were often not the only civil status officials within their parishes. The view to the contrary dates back to the Duchy, resulting from an erroneous interpretation of Article 1 of the decree of 13 February 1809.<sup>90</sup> As noted by the minister of justice in March 1810:

In the enforcement of the decree of 23 February 1809, the wording “clergymen responsible for parish duties” is translated literally. Some Catholic priests apply it to the geographic area, forcing the followers of other religions residing in their parishes to record civil status events with them.<sup>91</sup>

The minister had a clearly negative opinion of such practices.<sup>92</sup> Yet this problem could not be solved by increasing the number of lay civil status officials. To the contrary, in some places the parish priests took over keeping registers from lay officials even before the reform introduced by Book I of the Civil Code of the Kingdom of Poland.<sup>93</sup>

My query shows that Catholic priests generally observed the forms provided for by the state law, which required the recording of slightly different data than canon law. The issue was with observing the time limits for performing these duties.<sup>94</sup> The fact that the activities of ecclesiastical civil status officials required constant supervision is attested to by the report of the Government Justice Commission of 15 February 1818,<sup>95</sup> in which the Commission notifies the *namiestnik* of unusually bustling activity, or even overzealousness, of civil tribunal prosecutors and justices of the peace in this respect.<sup>96</sup>

90 *Dziennik Praw*, vol. 1, p. 195.

91 AGAD, Rada Stanu i Rada Ministrów Księstwa Warszawskiego, series 2, vol. 76, p. 51.

92 *Ibid.* The division into parishes was not in line with the general administrative division of the country. Some parishes overlapped two *powiats*, which meant that the parish priests who acted as the civil status official fell under the jurisdiction of two peace courts (G. Trafalski, “Funkcjonowanie łowickich urzędników stanu cywilnego w latach 1808–1815”, *Roczniki Łowickie* 2015, vol. 13, pp. 53–54).

93 State Archives in Płock: Akta stanu cywilnego gminy Wyszogród, powiat płocki [fond: 50/370/0].

94 Judgement of the Łomża Voivodeship Tribunal of First Instance of 18 May 1816, Diocesan Archives in Łomża: Fond II – Akta ogólne, ref. no. 6: *Akta generalne konsystorza łomżyńskiego dotyczące się korespondencji z Komisją Województwa Augustowskiego i innymi władzami cywilnymi 1816–1818* [s.l.].

95 AGAD, I Rada Stanu Królestwa Polskiego (1810–1832), series 1, vol. 104, pp. 121–122.

96 Commentary: W. Witkowski, *Komisja Rządowa Sprawiedliwości w Królestwie Polskim 1815–1876*, Lublin 1986, pp. 178–179.

Sometimes Catholic parish priests even recorded divorce entries, which they were exempt from doing pursuant to Art. 4 of the decree of 23 February 1809.<sup>97</sup> Naturally, such a liberal approach was not the norm. Even before the February decree was issued, Józef Kielczewski, president of the Civil Tribunal of First Instance in Kalisz, intervened with the parish priest of Uniejów in the case of Ewa Jabłońska née Dursz, who had obtained a divorce under the Prussian rule and wanted to re-marry following the introduction of the Napoleonic Code. The parish priest, however, refused to assist. Kielczewski took the side of the divorced woman and called upon the parish priest to *remove all obstacles placed by the ecclesiastical authorities on the way to obtaining a religious wedding, and to facilitate the celebration of this act, so that both the civil and religious wedding can be concluded*.<sup>98</sup> This position was met with a fierce reaction by Primate Ignacy Raczyński, who reminded the president of the tribunal of what the February decree stipulated.<sup>99</sup>

### 2.7.2 Parish Leaders of Other Congregations

It must be stressed that not only Catholic priests, but also clergy of other denominations served as civil status officials. I mean here the leaders of Protestant,<sup>100</sup>

97 Pursuant to it: *In order to appease the concerns of Catholic Clergy, our Minister of Justice shall issue Instructions for these Clergymen who perform the duties of Civil Status Officials, notifying them that they are not obliged to pronounce civil divorces, nor to announce the nuptials of those who have only civil divorces, nor to officiate the civil weddings of such persons, and that these shall be the competences of Presidents and Mayors, pursuant to provisions applicable in all these cases that shall be issued by the Minister of Justice (Dziennik Praw, vol. 1, p. 196)*. State Archives in Białystok (Łomża Branch) Akta stanu cywilnego Parafii Rzymskokatolickiej w Łomży [fond: 5/514/0], vol. 58, entry no. 6; Parish Archives of the Holy Trinity Roman Catholic Church Parish in Grajewo: Akta Zaślubienia Gminy Grajewskiej Powiatu Biebrzańskiego w Województwie Augustowskiem na rok 1821, entry no. 3; State Archives in Radom: Akta stanu cywilnego Parafii Rzymskokatolickiej Szydłowiec [fond: 58/166/0], vol. 10, p. 69. An example of officiating the wedding of a person with a civil divorce: G. Trafalski, "Alegata – źródło do badań genealogicznych. Aneksy z łowickich urzędów stanu cywilnego z lat 1808–1815", *Rocznik Lubelskiego Towarzystwa Genealogicznego* 2014 (2015), vol. 6, p. 116. Sometimes, a priest assisted as a witness in the drafting of a divorce entry by a lay civil status registrar: Cyrkuł IV, vol. 17, fol. 98; similarly: State Archives in Płock: Akta stanu cywilnego gminy Płock, powiat płocki [fond: 50/357], vol. 82, p. 15.

98 *Sześćdziesiątletnia korespondencja władz duchownych z rządem świeckim Księstwa Warszawskiego*, Warszawa 1816, p. 385.

99 *Ibid.*, pp. 386–389. In one of the later cases, faced with the resistance of another parish priest, the Kalisz tribunal authorized the mayor to pronounce a divorce, with the reservation that the entry must be passed on to the parish priest in order to be recorded in the relevant books (TCKal, vol. 48, fol. 429).

100 Damazy Dzierożyński also addressed the activity of pastors as civil status officials in: *Instrukcja dokładna o urzędnikach i aktach stanu cywilnego*, Warszawa 1813, p. 169; State

Uniates,<sup>101</sup> Orthodox<sup>102</sup> and Muslim parishes.<sup>103</sup> Of all the large religious groups, only Jews did not keep their own registers, as their *citizens' rights* had been suspended.<sup>104</sup> In mixed-confession localities, sometimes there were two (perhaps even more) civil status officials, which resulted in certain complications noted by the minister of justice in his letter of 15 March 1810:

Each parish has its area, which is not the same as the political unit. Parishes of different religions are located in a single district of the country, and these religions have their own and inconstant boundaries, places of worship and residences of priests.<sup>105</sup>

This heterogeneity resulted in problems, both for regular citizens and for peace courts which, pursuant to the act of 18 March 1809<sup>106</sup> supervised civil status officials. This raised some practical difficulties as the division into parishes

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Archives in Poznań: Akta stanu cywilnego Parafii Ewangelickiej Bnin [fond: 53/3767/0]; Akta stanu cywilnego Parafii Ewangelickiej Margonin [fond: 53/3813]; Akta stanu cywilnego Parafii Ewangelickiej Zaborowo [fond: 53/ 3875]. In Płock, for some time the local pastor also kept the civil status records for Catholics (State Archives in Płock: Akta stanu cywilnego gminy Płock, powiat płocki [fond: 50/357], vol. 13). In Toruń, I came across an annotation on the possibility of a civil wedding concluded by a Catholic woman before a pastor (State Archives in Toruń: Gmina ewangelicka Nowe Miasto Toruń [fond: 69/277/0], vol. 99, p. 99).

101 State Archives in Lublin: Akta stanu cywilnego Parafii Greckokatolickiej w Babicach (35/1617), Akta stanu cywilnego Parafii Greckokatolickiej w Berdyszczach (35/1618), Akta stanu cywilnego Parafii Greckokatolickiej w Bezwoli (35/1621), Akta stanu cywilnego Parafii Greckokatolickiej w Buśnie (35/1629), Akta stanu cywilnego Parafii Greckokatolickiej w Lubieniu (35/2051), Akta stanu cywilnego Parafii Greckokatolickiej w Łaziskach (35/2054), Akta stanu cywilnego Parafii Greckokatolickiej w Łosicach (35/2058), Akta stanu cywilnego Parafii Greckokatolickiej w Milejowie (35/2072), Akta stanu cywilnego Parafii Greckokatolickiej w Pawłowie (35/2092), Akta stanu cywilnego Parafii Greckokatolickiej w Świerżach (35/2148), Akta stanu cywilnego Parafii Greckokatolickiej w Tarnawie (35/2150), Akta stanu cywilnego Parafii Greckokatolickiej w Terebelli (35/2155).

102 State Archives in Kielce: Akta stanu cywilnego greko-orientalnej cerkwi w Opatowie [fond: 24/658/0].

103 State Archives in Lublin: Akta stanu cywilnego Gminy Mahometańskiej w Studziance [fond: 35/1800/0], series 1, vol. 1 et seq.

104 AGAD, Rada Stanu i Rada Ministrów Księstwa Warszawskiego, series 2, vol. 76, p. 51. Cf: *Dekret o zawieszeniu na okres lat dziesięciu wykonywania praw politycznych przez ludność żydowską zamieszkałą w Księstwie Warszawskim*, [in:] *Ustawodawstwo Księstwa Warszawskiego. Akty normatywne władzy najwyższej*, vol. 1: 1807–1808, eds. W. Bartel, J. Kosim, W. Rostocki, Warszawa 1964, p. 148.

105 AGAD, Rada Stanu i Rada Ministrów Księstwa Warszawskiego, series 2, vol. 76, p. 49.

106 *Dziennik Praw*, vol. 1, p. 231 et seq.

had nothing to do with the division into *powiaty*.<sup>107</sup> Such was the situation in Leszno, where the monarch decided to put an end to the confusion caused by this incongruence. On 6 February 1813, at the petition of the minister of justice, he issued a decree allowing for the appointment of a single lay civil status registrar who was to take over the functions of priests that acted in this role up until then.<sup>108</sup>

### 2.7.3 *Lay Persons Responsible for the Comprehensive Maintenance of Civil Status Records*

The third category comprised laymen who comprehensively kept civil status records in a given area. It was rare for this to be their primary occupation; this probably happened only in Warsaw and possibly also in Kalisz.<sup>109</sup> Usually to laymen, just like to clergymen, keeping civil status records was something they did alongside their main professional activity. They were often city presidents and mayors<sup>110</sup> or magistrates.<sup>111</sup> At least three were employed as teachers.<sup>112</sup>

107 AGAD, Rada Stanu i Rada Ministrów Księstwa Warszawskiego, series 2, vol. 76, pp. 49–51.

108 *Dziennik Praw*, vol. 5, p. 1.

109 Here, civil status registrars call themselves simply this, and not mayors or other officials acting in the capacity of civil status registrars. Besides the registrars from Warsaw, also Feliks Walderowicz from Kalisz referred to himself like this (for example: in a copy of a birth certificate attached to a court file–TCKal, vol. 323, fol. 431). Records kept by Walderowicz have survived to this day in the State Archives in Poznań, where they were erroneously listed as *Księgi metrykalne parafii ewangelickiej w Kaliszu* [*Parish Books of the Lutheran Parish in Kalisz*] (fond: 53/3882/0). Also Stanisław Załęski refers to Walderowicz as a civil status official in: *O masonii w Polsce od roku 1742 do 1822 na źródłach wyłącznie masonskich*, Kraków 1908, p. 147. This was also the title of Adam Heybowicz of Augustów (Diocesan Archives in Łomża: Fond 11 – Akta ogólne, ref. no. 410: *Akta rozwodowe Heybowiczów*), of Ignacy Piotrowski of Płock (State Archives in Płock: Akta stanu cywilnego gminy Płock, powiat płocki [fond: 50/357], vol. 32, fol. 13) and of Mikołaj Morawski of Chocz (State Archives in Poznań: Akta stanu cywilnego Parafii Rzymskokatolickiej Chocz (pow. pleszewski) [fond: 53/3613/0], vol. 1 et seq.).

110 Bełchatów (State Archives in Łódź: Akta stanu cywilnego gminy Bełchatów [fond: 39/1397/0]), Pyzdry (TCKal, vol. 313, fol. 187–187v), Błaszki (TCKal, vol. 305, fol. 223v), Mszczonów (State Archives in Warsaw; Akta stanu cywilnego gminy Mszczonów, powiat Grodzisk Mazowiecki [fond: 73/189/0], vol. 4, fol. 31), Łowicz (G. Trafalski, *Allegata ...*, p. 116; Idem, *Funkcjonowanie łowickich urzędników ...*, p. 50).

111 In Kraków it was Walenty Bartsch, *first lay justice* (*Akta rozwodowe z terenu gmin, powiatu i miasta Krakowa*, vol. 1, entry no. 2); M. Friedberg, L. Strojek, *Walenty Bartsch*, [in:] *Polski Słownik Biograficzny*, ed. W. Konopczyński, Kraków 1935, vol. 1, p. 332. In Płock, it was a *cashier* by the name of Szymon Dobrowolski (State Archives in Płock: Akta stanu cywilnego gminy Płock, powiat płocki [fond: 50/357] – for example: vol. 82).

112 State Archives in Płock: Akta stanu cywilnego gminy Wyszogród, powiat płocki [fond: 50/370], vol. 2; State Archives in Bydgoszcz: Akta metrykalne parafii rzymskokatolickiej w Bydgoszczy [fond: 6/240/0] – for example: vol. 12 and 15; Cyrkuł VI, vol. 110, annex no. 33.

Unfortunately, it is not easy to figure out the proportions between lay and ecclesiastical registrars. Certainly as time passed from 1808 to 1825, they changed in favour of the latter. Nevertheless, contrary to the views habitually propagated in the literature of the subject, lay civil status officials were also present in the province. Besides the examples provided earlier, this is also confirmed by a judgement of the Łomża tribunal from 18 May 1816, punishing 13 civil status registrars from the Łomża *powiat* for failure to submit reports on the number of deceased residents on time. Nine of these officials were Catholic priests and four were laymen.<sup>113</sup>

#### 2.7.4 *Lay Persons Recording Events Contrary to Canon Law*

The last group of civil status registrars consisted of laymen recording events contrary to canon law, simultaneously with parish priests in a given area. They only kept track of events that were not admissible in light of canon law, that is, divorces, solely civil weddings and their announcement. Such was the situation in Zamość, where the mayor acted in this capacity<sup>114</sup>; in Kielce, where the function was exercised by the municipality president<sup>115</sup>; and in Jastrzęb (Radom Department), where two people filled this role at the same time: the mayor and probably one of the magistracy clerks.<sup>116</sup> While in Zamość and in Kielce separate books were set up for recording these events, in Jastrzęb lay officials in 1815 made an entry on divorce in the same records that were otherwise kept by the local vicar.

This was also the direction in which the practice in Łomża evolved with time, where records maintained by the local parish priests contain three entries on divorce, made in three different ways. In June 1814, a dissolution

113 Diocesan Archives in Łomża: Fond 11 – Akta ogólne, ref. no. 6: *Akta generalne konsystorza łomżyńskiego tyżące się korespondencji z Komisją Województwa Augustowskiego i innymi władzami cywilnymi 1816–1818* [n.p.]. The punished lay officials were: 1. J. P. Paweł Misztalewski (Zambrów), 2. well born Kazimierz Gosiewski (Zawady), 3. well born Krajewski (Szumowo), 4. well born Wiśniewski (Stary Lubotyń). Ecclesiastical officials: 1. Father Szadkowski (Łomża), 2. Father Pieńkowski (Piątnica), 3. Father Krajewski (Drozdowo), 4. Father Bóbr (Dobrzyjałowo), 5. Father Milewski (Kolno), 6. Father Borowski (Nowogród), 7. Father Mieczkowski (Kołaki), 8. Father Sokołowski (Rutkowo), 9. Father Przeździecki (Puchały).

114 State Archives in Lublin: Akta stanu cywilnego Parafii Rzymskokatolickiej w Zamościu [fond: 35/1964/0], vol. 40; similarly: State Archives in Lublin: Akta stanu cywilnego Parafii Rzymskokatolickiej w Radzynie [fond: 35/1908/0], vol. 40, pp. 1–3, vol. 42, p. 6.

115 State Archives in Kielce: Akta Urzędnika Stanu Cywilnego Powiatu Kieleckiego [fond: 21/1143/0], vol. 1–6.

116 State Archives in Radom: Akta stanu cywilnego Parafii Rzymskokatolickiej Jastrzęb [fond: 58/137/0], series 1, vol. 4, unnumbered extra fol. between fols. 68 and 69.

of marriage was recorded by the local parish priest there.<sup>117</sup> In December of the same year, a divorce was recorded by a mayor's deputy, and subsequently entered in the parish books by the parish priest.<sup>118</sup> Entries in the same parish books from 1816 show evidence of an attempt to solve a conflict between canon and state law. The parish priest lent the civil status books maintained by him to the mayor, who first made an entry on a marriage announcement,<sup>119</sup> and next on the solely civil wedding of a previously unmarried man with a divorcee.<sup>120</sup> This last case, then, is reminiscent of the model applied in Jastrząb.

Sometimes mayors acted in the capacity of civil status registrars by pure accident. For example, in 1822 the local parish priest from Cieszęcin refused to record the divorce of Ludwika and Wincenty Podlecki, which had been pronounced by the civil tribunal in Kalisz. Ludwika Podlecka turned to the tribunal, asking it to authorize the mayor of the nearby town of Wieruszów to record it. The tribunal granted her petition.<sup>121</sup>

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117 State Archives in Białystok (Łomża Branch) Akta stanu cywilnego Parafii Rzymskokatolickiej w Łomży [fond: 5/514/0], vol. 58, certificate no. 6.

118 Ibid, vol. 58, certificate no. 53.

119 Ibid, vol. 60, certificate no. 11, fols. 29–29v.

120 Ibid, vol. 60, certificate no. 11, fol. 6–7.

121 TCKal, vol. 48, fol. 428–429.