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**THE BEGINNING OF THE DEBATE
ON THE CODIFICATION OF POLISH LAW
AFTER THE WORLD WAR I: THE ISSUE
OF THE CODIFICATION COMMISSION AUTONOMY
IN THE LIGHT OF POLITICAL DECLARATIONS¹**

INTRODUCTION

In 1918 Poland regained independence following a period of annexations that lasted more than a century. The nascent state faced a number of formidable challenges in connection with having to build from scratch its legal and political foundations. Among these challenges was the necessity to fundamentally rebuild the legal systems inherited from the annexing powers since the 19th century. As vividly described by an outstanding contemporary lawyer, Waclaw Makowski: “If the legal physiognomy of a civilized state is the result of a natural development of its legislative life, started when the original customs were forming, and not ending today, but constantly enriched with the new, creative output of today’s generation and legislative institutions, then Poland has found itself in an exceptional situation in this regard. The proper, normal course of legislative creation [and the natural legal development] were interrupted for the entire territory of Poland upon the moment of first partition” in 1772, while “fragmentary, autonomous legislative works taken up from 1830 (...) only entail one part of the state and just a sliver of legal topics; beyond them are vast lands and numerous issues of which for over 100 years the Polish thought could say nothing, and Polish life was entangled in a sphere of foreign interests and foreign legal creation”².

¹ The article has been prepared under the project “Between modernisation and national character. Ideology and axiology of Polish private lawmakers in 20th century” financed by the National Science Centre (Narodowe Centrum Nauki) on the basis of the decision DEC-2016/21/B/HSS/03221.

² W. Makowski, *W sprawie ujednostajnienia ustawodawstwa* [On the Unification of Legislation], „Gazeta Sądowa Warszawska” 1919, issue 2-3, pp. 14-15.

The reattachment of provinces that had been part of different countries following the partitions, gave rise on the territory of Poland to a unique legal mosaic. Separate Polish provinces had functioned for an entire century under the rule of various laws, which left a deep mark on the entire shape of legal relations. Besides the social significance, this fragmentation of laws also had a specific legal meaning, which demanded the nascent state to undertake measures aiming to rectify this certainly malign state of affairs. The collision between the conglomerate of French-Polish-Russian laws in effect in the territory of the former Congress Kingdom, the Russian law in Eastern voivodeships, Austrian law in Galicia, Hungarian law in Spisz and Orawa, and German law in the Western province, all of this called for a quick invention of measures that would make it possible to reconcile these often contradictory norms. This state of matters engendered problems such as having to rule on the invalidation of a civil marriage in the Congress Kingdom if it was contracted by residents of this region in the Western district, governed by the German provisions of *Bürgerliches Gesetzbuch*³. Examples like this abound, and there are plenty of others, concerning a host of even more basic problems, such as the incoherent organization of courts and state offices.

THE CONCEPT OF WAĆLAW MAKOWSKI AS A PRELIMINARY PROGRAM OF GOVERNMENTAL CIRCLES

In January 1919, officials of the Ministry of Justice, who were at the same time renowned lawyers – both practitioners and scholars – initiated discussions on the need to begin works on the unification of civil and penal law, as well as on their future codification. This is at least what follows from one of the documents drafted a few months later by this ministry⁴. The course of debates held at the time at the Ministry of Justice is not known⁵, but it may be surmised that they echo in an article published around this time by the above mentioned Waćlaw Makowski. In 1919 he was the most senior, high-ranking official of the Ministry of Justice, and perhaps even the most important person responsible for the unification and codification policy⁶.

³ *Ibidem*, pp. 13-14.

⁴ Grounds for the so-called Counter-Draft of the Ministry of Justice. See „Kwartalnik Prawa Cywilnego i Karnego” 1919, Vol. 2, issue 1, p. 283.

⁵ This is because most record fonds of the Ministry of Justice have been destroyed.

⁶ Waćlaw Makowski, professor of the University of Warsaw, held the function of the Deputy Director of the Justice Department of the Provisional Council of State since January 1917, and in early 1918 he began to head the Ministry.

Makowski held the view that works had to be undertaken on two planes at a time. This required the division of tasks into two categories: one comprising the fundamental codification work which should become “the focus of activities of scientific societies, universities, and individual scholars” and the other entailing “unification in practical terms”, tailored to the needs of daily life, the “creation of uniform institutions, which, even if not yet perfectly cohesive, will enable a relatively proper functioning of the state and social apparatus”. Thus understood unification had to begin immediately, “without waiting for legal scholars to come up with the best way of solving the complex law issues”⁷. For this reason, this task had “to be put in the hands of the government, and put there without delay, with the relevant expenditure of skills and energy, so as to remove any and all frictions and contradictions”. Within this scope of practical works, “there were two courses of actions”, according to Makowski, as well as probably two alternative concepts discussed at the Ministry of Justice at the time. “One – wrote Makowski – is to leave the unification work in all areas of the state life to the relevant ministers, and the other is to establish a single institution that will take up unification works in all the fields”⁸. The concept that promoted the disintegration of unification works surely had fewer supporters⁹. Makowski was not one of them¹⁰.

This is why he advocated that the parliament establish “a special institute to prepare all the materials for the great legislative work”. “This work – continued Makowski – must be independent of all political currents, of the government’s political colouring; it must be independent of the ongoing politics of each ministry. It must account not only for what lies in the scope of each individual ministry, but also for the entirety of the body of laws in the state and for its coherent guid-

⁷ W. Makowski, *W sprawie ujednostajnienia...*, p. 14. Compare earlier similar programme assumptions of other high-rank official from Department of Justice: S. Car, *Pilne zadania prawnic-twa* [Urgent Legislative Tasks], Warszawa 1918, p. 11.

⁸ W. Makowski, *W sprawie ujednostajnienia...*, p. 14.

⁹ F. Bossowski, *O naszych najbliższych zadaniach ustawodawczych* [About Our Nearest Legislative Tasks], „Kwartalnik Prawa Cywilnego i Karnego” 1919, Vol. II, No. 1, pp. 119-124.

¹⁰ He argued: “If we consider the magnitude of the task ahead and its unique character, it is impossible to think that it could be completed properly by a group of people appointed for practical building of state administration in all its forms, if they were to tackle it as a side job broken up into individual detailed assignments. In such case it is certain that everyone would follow their own path, and this path is arduous enough without this new task at hand, having to account for all the incidental and individual features, coordinating it only to a certain degree with other similar paths. As a result, instead of unifying five individual legislations, we could end up with as many concepts as there are ministries, concepts incompatible with each other, approaching problems in a unilateral way and giving rise to new chaos instead of the unity that we seek to accomplish”. W. Makowski, *W sprawie ujednostajnienia...*, p. 15.

ing idea". This unification task was, according to Makowski, "unlike any other one-off legislative work"¹¹.

Makowski's concept planned for the newly appointed unification institution "to maintain a direct relationship with the President of the Council of Ministers, but it should not form part of any of the ordinary links of the state life, as it is to be appointed to a special purpose, and in such circumstances both its organization and scope of activities should be specifically tailored to its needs. The person heading this institution should remain in close contacts with the government without being its member (...); he should be apart from its political character and responsibility and only watch over the legal scope and continuity of its works, regardless of any changes in the government. Moreover, the unification institute or committee (...) should entrust the job to the most outstanding representatives of legal theory and practice from all of Poland. Its members should thus include the most renowned university professors, practicing lawyers, judges, officials, and administrators"¹².

The establishment of a unification institution under the aegis of the President of the Council of Ministers, as proposed by Makowski, was in line with the stance championed by the Ministry of Justice, according to which "the preparation of legislative drafts, bringing them to Sejm and supporting them there is first and foremost the government's job"¹³. Therefore, it could not be left entirely "up to the private initiative of scholars"¹⁴.

Neither Makowski nor the Ministry wanted the works, organized in line with these principles, to be placed in the hands of the government, whether at the institution subordinate directly to the prime minister or at the Ministry of Justice. During the debates held in January 1919, the ministerial officials considered this latter option, but arrived at the conclusion that the Ministry would "not be able to find among its staff as many first-rank professionals originating from all departments of the country as needed for the completion of these works". For this reason, ministerial officials were leaning toward the concept of establishing

¹¹ It had to be integrated in one place if it were to "heal the wounds inflicted on the Polish legislative life by one hundred years of enslavement, bridge the gaps between various parts of Poland; in short: build the very first foundation of legal life for the future". In Makowski's opinion: "This cannot be done but in a comprehensible manner; individual areas cannot be handled by different people. It must be approached as a harmonious whole, with collaboration of people appointed especially for this purpose. Therefore, at this time, it is necessary and urgent to establish a state institution to perform the aforementioned tasks". *Ibidem*.

¹² *Ibidem*, p. 14.

¹³ *Kontrprojekt Ministerstwa Sprawiedliwości* [Counter-Draft of the Ministry of Justice], „Kwartalnik Prawa Cywilnego i Karnego” 1919, Vol. 2, issue 1, p. 283.

¹⁴ W. Makowski, *W sprawie ujednostajnienia...*, p. 14.

“a separate organization, which (...), unburdened from day-to-day chores, would be able to devote itself solely to this work, planned for a number of years”¹⁵. It seems that also in this scope the Ministry of Justice accepted Makowski’s idea for the so-called “theoretical work”, consisting of “indicating common guidelines and staking out the long-term route for the general legislative reform in Poland (...) to be entrusted to scientific societies, universities, and individual scholars”. Regardless of the immediate unification intervention that the government had to go carry out, ultimately “certainly the best and easiest way of getting out of the five different legislations” would be to “create a new legislation, one growing above all the five separately and put together, based on the latest findings of legal knowledge, responding to the needs of the new Poland”. As Makowski observed: “This work [which can be left to the private initiative of scholars] must be planned for a long time; it will require much effort and skills and we can expect it to one day bear fruit in the form of a new legal life in Poland”¹⁶.

Already in February 1919, when Makowski’s article was made public, it was clear to its author that the Parliament should be responsible both for establishment of the unification institution and for the creation of a “private” scholarly platform for the codification works. He believed, however, that for the time being the Sejm would be too absorbed with other matters. He wrote: “If the Legislative Sejm was not facing this urgent and burning task of building from scratch the state administration, of learning the practical state life, which each unit of the government is trying with great effort to accomplish on its own, then probably our parliament could begin the unification works in ordinary course of its duties from appointing a special institute that could prepare the materials for the formidable legislative works”¹⁷. There seem to have been no obstacles to the Ministry of Justice bringing the draft bill to the Sejm, whose first session was held of 10 February 1919. Nevertheless, over the next six weeks the government did not undertake this initiative, even though the need to begin “intensive, coordinated preparatory works in connection with legislative unification”¹⁸ was obvious. The reason for this delay is unknown¹⁹.

¹⁵ *Kontrprojekt Ministerstwa Sprawiedliwości*, p. 283.

¹⁶ W. Makowski, *W sprawie ujednostajnienia...*, p. 13.

¹⁷ *Ibidem*, p. 14.

¹⁸ *Ibidem*.

¹⁹ See footnote 29.

PARLIAMENTARY CODIFICATION PROGRAMME

In this situation, in unclear circumstances (owing to lack of source materials), the actions of the Council of Ministers and of the Minister of Justice were preceded by a members' bill²⁰. On 1 April 1919 an urgent motion was submitted by a few tens of deputies, headed by the Galician advocate Zygmunt Marek (a deputy of the Polish Socialist Party and chairman of the Sejm's Legal Commission)²¹. The motion called for the establishment, by virtue of a relevant act, of a permanent "commission for the creation of uniform legislation in the Polish State". This proposal was presented as a result of a multi-party consensus. It was signed by the representatives of all the parliamentary factions, which led the Legal Commission, to which the motion was submitted by the Sejm and whose chairman was Marek himself, to the conclusion that it reflected the "like-minded opinion of all political forces in the country that the great codification work must be commenced as soon as possible in the interest of the legal uniformity of the entire State and that relevant statutory frameworks must be erected for this codification task"²².

Pursuant to the intent of Marek and the other signatories of the motion dated 1 April 1919, it was the Sejm, and not the government, that was to delegate its prerogatives to the Codification Commission and then refrain from intervening in its works, as a political and party body²³. In the grounds to the motion, its authors

²⁰ The source materials give no indication as to why the government waited to announce its plans to institutionalize and initiate the unification works, nor as to the reason why this problem was ultimately handled by the deputies and not by the government.

²¹ Perhaps the motion of Zygmunt Marek as the lawyer from Galicia remained in connection with the memorials of Lviv lawyers at the same time. They called for the creation of a „separate central legislative office” with „statutory independence from changes in political directions”. *Memoriał Wydziału Prawa i Umiejętności politycznych Uniwersytetu, Towarzystwa Prawniczego i Związku Adwokatów Polskich we Lwowie w sprawie techniki ustawodawczej* [Memorial of the Faculty of Law and Political Skills at the University, Law Society and Association of Polish Lawyers in Lviv on Legislative Techniques], 1919, p. 32.

²² *Sprawozdanie Komisji Prawniczej w sprawie wniosku nagłego posła Zygmunta Marka i tow. w przedmiocie powołania do życia komisji dla stworzenia jednolitego ustawodawstwa w Państwie Polskiem* [Report of the Legal Commission Concerning the Urgent Motion by Deputy Zygmunt Marek et al. for the Establishment of a Commission to Draft Uniform Legislation in the Polish State], „Kwartalnik Prawa Cywilnego i Karnego” 1919, Vol. 2, issue 1, p. 279. The multi-party consensus is evidenced also by the fact that the motion was promoted in the Sejm, on the one hand, by the socialist Marek, and on the other hand by Zygmunt Seyda, chairman of the Constitutional Commission and member of National Democratic Party.

²³ The idea of creating a codification committee as an autonomous expert non-governmental college, of course, was not new. Especially the German model caught the attention of the Polish legal elites. See more: M. John, *Politics and the Law in Late Nineteenth-Century Germany: the Origins of the Civil Code*, Oxford 1989; F. Wieacker: *Privatrechtsgeschichte der Neuzeit unter besonderer Berücksichtigung der deutschen Entwicklung*, Göttingen 1967; H.H. Seiler, *Geschichte*

clearly expressed that their intention was for the Sejm “busy with laying down the foundations of the Polish State, that is its constitution, fundamental civic rights and administration”, not to take up codification works directly, instead entrusting this job to the permanent Codification Commission, to ensure “that this great and important work for Poland does not cease”²⁴.

The draft bill attached to Marek’s motion proposed for the commission to obtain the status of a “Sejm organ”, and thus an organ acting “on its behalf”, with legislative competences delegated onto it. The powers granted to the Commission were not full. Its competences extended only onto the preparation of the code drafts and submitting them to the Sejm for “constitutional processing”, which entailed possible modifications or even rejection of presented proposals²⁵. Acting in this capacity, the Codification Commission was to begin works on the drafts of Civil Code, Penal Code, and codes of civil and penal procedures, as well as on any other drafts commissioned to it by the Sejm. The authors proposed for Commission members to be appointed by the Chief of State at the motion of the Minister of Justice, which was ultimately changed into an obligation of this minister to act in cooperation with the Speaker of the Sejm. Thus the government, represented by this minister, would have guaranteed influence on the composition of the Commission, while the Sejm would not lose control over the selection of its members. Moreover, the Minister of Justice, in submitting his motion, would be obliged to collaborate in this respect with all the law faculties of Polish universities, as well as with the Supreme Court and with Chambers of Advocates. Once appointed, members could not be dismissed which, combined with the fact that there were no legal possibilities of interfering with the Commission’s works, was one of the mainstays of its autonomy²⁶.

und Gegenwart im Zivilrecht, Köln 2005, pp. 315-332. Compare for instance: B.J. Young, *Politics of Codification: The Lower Canadian Civil Code of 1866*, Montreal – Kingston – London – Buffalo 1994, pp. 107-120.

²⁴ *Wniosek nagły posła Zygmunta Marka i tow. w sprawie powołania do życia komisji dla stworzenia jednolitego prawodawstwa w Państwie Polskim* [Urgent Motion Submitted by Deputy Zygmunt Marek et al. Concerning the Appointment of a Commission for Drafting Uniform Legislation in the Polish State], (in:) *Druki Sejmu Ustawodawczego Rzeczypospolitej Polskiej*, Sejm Paper No. 298.

²⁵ *Ibidem*. Cf. also similar proposals in the draft of Franciszek Nowodworski and of the Supreme Court, pursuant to which the Codification Commission was to constitute “a permanent central state office” functioning “by the Sejm” and as a “Sejm organ”, independent of the executive power. *Projekt Prezesa Izby II Sądu Najwyższego Franciszka Nowodworskiego (w porozumieniu z Sądem Najwyższym)* [Draft of the President of the Second Chamber of the Supreme Court Franciszek Nowodworski (in Agreement with the Supreme Court)], „Kwartalnik Prawa Cywilnego i Karnego” 1919, Vol. 2, issue 1, pp. 284-287.

²⁶ *Wniosek nagły posła Zygmunta Marka....*

In the grounds, Marek emphasized (without any mentions of the government) that one of the constitutional duties of the Sejm, as the legislative body, is to eliminate “legal fragmentation”. He stressed that the intention of his motion was to create a codification body that would accomplish this “regardless of political currents and with undisturbed autonomy”, and that it had to be the “fruit of work of the outstanding Polish professionals”. Only such a composition of the Codification Commission guaranteed that works would be conducted “without party squabbles, in peace engendered by the authority of science, yet with account for social development”²⁷. These “outstanding Polish professionals” were to be represented exclusively by legal elites: the “learned men” – the legal theoreticians and practitioners, but not by the representatives of other social sciences, such as economists or even first Polish sociologists²⁸. This is surprising, seeing as the Commission was not only to draft the provisions, but also to understand the “will of Polish citizens”, so that the law could reflect the spirit of the nation²⁹.

CONCEPT OF THE MINISTRY OF JUSTICE

The motion submitted by Marek and other members of the parliament was sent to the Sejm’s Legal Commission for further elaboration. In the meantime, other drafts were submitted to the Commission. Among them, there was also the “counter-draft of the Ministry of Justice, which became active only now, proposing its own bill to regulate this issue³⁰.”

²⁷ *Sprawozdanie Stenograficzne Sejmu Ustawodawczego* [Stenographic Report of the Legislative Sejm], 44th Session of 3 June 1919, p. XLIV-5.

²⁸ The participation of economists and sociologists seemed particularly justified in the context of the need to implement the basic goals of social and economic integration with the help of legal instruments. See W. Jacher, *Zagadnienia integracji systemu społecznego. Studium z zakresu teorii socjologii*, Warszawa 1976, p. 13; B. Winiarski, *Polityka gospodarcza*, Warszawa 2006, p. 115. The implications of legal integration related to the Bürgerliches Gesetzbuch in Germany, which could serve as a source of inspiration, were the subject of a broad public debate, which involved not only economists, but ideologues and members of various professions.

²⁹ *Wniosek nagły posła Zygmunta Marka...*

³⁰ Besides this counter-draft, „Kwartalnik Prawa Cywilnego i Karnego” published also the following drafts of Henryk Konic, elaborated in cooperation with the Civil Law Commission of the Ministry of Justice, of Jan Jakub Litauer as chairman of the Civil Procedure and Commercial Law Commission of the same ministry, and of Franciszek Nowodworski, drafted in agreement with the Supreme Court („Kwartalnik Prawa Cywilnego i Karnego” 1919, Vol. 2, No. 1, pp. 284-291). The drafts by Konic and Litauer, who chaired the ministerial commissions indicate how difficult it was for the Ministry of Justice to come up with a proposal that would satisfy all of its officials.

The Ministry of Justice generally leaned toward the concept of establishing “a separate organization, which” (...), unburdened from day-to-day chores, would be able to devote itself solely to this work, planned for a number of years”³¹. Neither the Ministry nor the authors of other drafts submitted at this time to the Legal Commission, objected to the Codification Commission being composed of outstanding lawyers representing both the communities of scholars and practitioners³². Nevertheless, the Ministry decided to prevent a situation in which it would lose all control over the activities of the Codification Commission. It concluded that the thus constructed relation of the Commission to the government, represented by the Ministry of Justice, would be “inappropriate from the point of view of the state law”. Ministry declared that it intended to maintain “autonomy and separation” of the Commission, clarifying that it was not “its objective to create a relationship of subordination, but rather to ensure that the principle according to which the legislative power lies solely with the government is observed”. Yet, it argued, “a Commission isolated from the government would constitute a body that would be difficult to fit into the construction frameworks of a modern constitutional state”³³. The need to harmonize the draft and legislative works conducted by the government, linked to those that would become the objective of Commission’s works, supported the concept of connecting the Codification Commission with the Ministry of Justice. For this reason, the Ministry was of the opinion that it should not operate in complete autonomy and without any affiliation to the government. One of the proposals to promote coordination was for representatives of the Ministry of Justice to participate in the sessions of the Codification Commission. Yet the Ministry’s counter-draft went even further. According to its plans, the Commission was to function “alongside the Ministry of Justice”. In all the exterior relations, it was to be represented by the Ministry, especially when putting drafts to the Sejm, and the Ministry would be held accountable for the Commission’s activities³⁴.

This could have been the reason why the government waited so long to announce its own draft and programme for the institutionalization of codification works.

³¹ *Kontrprojekt Ministerstwa Sprawiedliwości*, p. 283.

³² *Projekt Przewodniczącego komisji prawa cywilnego Min. Spraw. Henryka Konica (w porozumieniu z komisją)* [Draft by the Chairman of the Civil Law Commission, Minister of Justice Henryk Konic (In Agreement with the Commission)], „Kwartalnik Prawa Cywilnego i Karnego” 1919, Vol. 2, No. 1, pp. 287-288.

³³ *Kontrprojekt Ministerstwa Sprawiedliwości*, pp. 283-284.

³⁴ *Ibidem*.

THE FINAL CONCEPT ADOPTED BY THE LEGAL COMMISSION AND THE SEJM

In evaluating the contents of the urgent motion and other drafts, including the counter-draft of the Ministry of Justice, in its report dated 30 May 1919 the Legal Commission of the Sejm first of all declared that it fully supports the argumentation presented in the motion by Zygmunt Marek and other signatories³⁵. As a result, the draft that it finally put to the Sejm diverged only slightly from the original version submitted on 1 April. This comes as no surprise, since the motion by Marek, the chairman of the Legal Commission, had garnered support of other political parties from the very beginning. Therefore, the group of people who put in the motion was composed of many of the same people who later debated on it in the Commission. Yet the deputies still decided to express their opinions on the counter-draft and grounds submitted by the government via the Ministry of Justice, and it was not yet certain whether they would choose to account for other proposals as well.

This did not seem a particularly formidable task, since in many respects the drafts were similar. Above all, both the signatories of the Zygmunt Marek's motion and the government concurred that there was a real need, "felt by all", as the Legal Commission added in its report, to establish the Codification Commission capable of "shouldering the magnitude of tasks that Poland is facing in the area of judicial legislation and of creating, in the interest of the uniform legal life of the entire State, a uniform legislation"³⁶. According to the Legal Commission, the Ministry of Justice also agreed that the Codification Commission should complete this work acting on behalf of the Sejm, and not of the government. There was widespread consensus that the Sejm could not carry out this work with the direct participation of its deputies, as it was already excessively busy with the "state-forming issues" and thus unable to add the "great task of uniformization of legal life in Poland" to its workload³⁷.

On the other hand, the Sejm's Legal Commission fulfilled some of the Ministry's wishes to bring the Codification Commission closer to it, so that the Ministry of Justice could have at least some limited influence on its operations. For this reason, the Legal Commission recommended a draft pursuant to which the Codification Commission would be obliged to remain "in permanent contact" with the

³⁵ *Sprawozdanie Komisji Prawniczej...*, p. 279. The course of debates held by the Legal Commission is unknown. Its attitude towards this issue can only be reconstructed based on the submitted report and subsequent speeches given by deputies who participated in the Legal Commission's sessions (Marek and Seyda) during general sittings.

³⁶ *Ibidem*.

³⁷ *Ibidem*, p. 280.

Ministry of Justice. The justification of this decision was purely pragmatic: since the Ministry of Justice had a Legislative Department and since it “already worked on draft bills in the same area”, it should stay in touch with the Codification Commission³⁸. Owing to this, also the Minister of Justice was authorized to participate in Commission’s sessions, or to send his delegates whenever he could not show. Moreover, the Legal Commission made a modification in the final wording of the draft, to the effect that only the Minister of Justice was competent to submit to the Sejm the legislative drafts prepared by the Codification Commission³⁹. Yet, as emphasized by deputy Zygmunt Seyda after the submission of the Legal Commission’s report at a plenary sitting of the Sejm, even though it was not explicitly stated in the report or in the draft bill in its version modified by the Commission, “the Commission members unilaterally rejected the possibility of the Minister to introduce any changes in the Commission’s work when submitting them to the Sejm. The Commission was of the opinion that the Minister of Justice should be authorized to put draft bills to the Sejm owing to the fact that it is a political act and that the Codification Commission, as an entirely apolitical institution, should be liberated of this burden altogether. It is to be a highly respected body composed of the renowned scholars, and the results of their efforts should be unconditionally heeded by the Minister of Justice”⁴⁰. Moreover, Seyda, who referred the position of the Legal Commission, underscored that according to him, the principle of “complete self-sufficiency and autonomy of the Codification Commission” was of “paramount importance”. With this in mind, the members of the Legal Commission considered whether the “Commission should be affiliated with the Sejm, with the Ministry of Justice, or if it should remain fully independent of both these institutions”. Ultimately, they “reached a compromise”⁴¹ which meant, as reflected in the adopted act, that while respecting the relative sovereignty of the Commission, they also took into account the need for bringing it closer to both the Sejm and the Ministry of Justice. As follows from the Legal Commission’s report, this was to be evidenced by those provisions of the draft modified by it, in which the Codification Commission was guaranteed the right to determine its own internal organization, although the draft bill clearly stated that it could only do so “in agreement” with the Ministry of Justice. Yet the Legal Commission underscored that the role of the government, acting through the Ministry of Justice, was limited to providing assistance and technical resources to the Codification Commission⁴².

³⁸ *Ibidem*.

³⁹ *Ibidem*, p. 281.

⁴⁰ *Sprawozdanie Stenograficzne Sejmu Ustawodawczego*, 44th Session of 3 June 1919, p. XLIV-7.

⁴¹ *Ibidem*.

⁴² *Sprawozdanie Komisji Prawniczej...*, p. 280.

CONCLUSIONS

The following picture emerges from the analysis of the source texts: the programme of establishment of the Codification Commission as a professional institution (albeit composed of lawyers only) and an “entirely apolitical” body emerged in the first months of 1919. In order for these assumptions to materialize, it was to enjoy “full autonomy”. At least these were the declarations, if not the interpretation of the drafted provisions⁴³. The greatest controversies in the literature of the subject are raised by the issue of the actual intentions of the members of the Legal Commission in respect of ensuring broad autonomy to the Codification Commission. It is frequently observed that the Ministry of Justice strove to restrict this autonomy, which was reflected in the regulations contained in the Ministry’s counter-draft to the proposal by Zygmunt Marek. This is partially confirmed by the argumentation laid out in the grounds for the counter-draft, although its authors claimed that it was not their objective to overpower the Commission. The pressure exerted by the Ministry was effective. The normative comparative analysis of the proposed provisions indicated that the Legal Commission, in a bid to satisfy the wishes of the Ministry, modified the original draft so as to make the Codification Commission subordinate not only to the Sejm, but also to the government⁴⁴. Yet the results of the comparative research are not confirmed by the utterances formulated during the debate and presented in the Legal Commission’s report, in the grounds for the counter-draft of the Ministry of Justice, nor in the Sejm speeches given by Zygmunt Marek or Zygmunt Seyda. It follows from them that the shared declared intention of all those who expressed an opinion in this discussion was to ensure the broadest possible autonomy to the Codification Commission. It was emphasized especially strongly by the authors of the

⁴³ *Sprawozdanie Stenograficzne Sejmu Ustawodawczego*, 44th Session of 3 June 1919, p. XLIV-7.

⁴⁴ Of all the researchers who performed an exegesis of the Codification Commission’s drafts, Stanisław Grodziski and, even more so Adam Lityński, came to the conclusion that the modifications introduced in the original draft by the Legal Commission tied the Codification Commission to the Ministry of Justice rather than to the Sejm. S. Grodziski, *Komisja Kodyfikacyjna Rzeczypospolitej Polskiej* [Codification Commission of the Republic of Poland], „Czasopismo Prawno-Historyczne” 1991, Vol. XXXIII, No. 1, pp. 51-52; A. Lityński, *Wydział Karny Komisji Kodyfikacyjnej II Rzeczypospolitej. Dzieje prac nad częścią ogólną kodeksu karnego* [The Penal Division of the Codification Commission of the Second Republic of Poland. Works on the General Part of the Penal Code], Katowice 1991, pp. 30-32. The most extreme position in this regard was taken by Leonard Górnicki, who concluded that regardless of the employed phraseology, the Legal Commission “chose the most disadvantageous solution, clearly in line with the expectations of the Ministry of Justice”. L. Górnicki, *Prawo cywilne w pracach Komisji Kodyfikacyjnej Rzeczypospolitej Polskiej w latach 1919-1939* [Civil Law in the Works of the Codification Commission of the Republic of Poland in the Years 1919-1939], Wrocław 2000, pp.16-17.

motion, as well as by the members of the Legal Commission, but also by representatives of the Ministry of Justice. I have tried to show that ensuring a certain degree of influence over the Codification Commission and its works by way of accounting for some of the proposals put forward in the ministerial counter-draft was justified both from the “point of view of state law” and practical aspects, that is the need to harmonize works conducted by the Codification Commission with the works of the Ministry, as at times they could overlap⁴⁵. This gave rise to the need of ensuring certain forms of cooperation between the executive power and the non-governmental institution, noted and taken into consideration by the Legal Commission which – let us emphasize this – still unanimously asserted that the Ministry’s interference with codification drafts was inadmissible⁴⁶. This was stressed especially by Zygmunt Seyda, who represented National Democracy, the dominant faction in the Sejm and in the government, thus backing socialists and the chairman of the Legal Commission Zygmunt Marek, the main initiator of establishing the Codification Commission as a body independent of the government. The consensus within the Legal Commission was convincing to the parliamentary plenum. There is not evidence that the promises given by the Legal Commissions were empty and that it disguised its true intentions – to make the Codification Commission subordinate to the Minister of Justice. As a result, the official stance of the Legal Commission was based on the assumption, accepted by the entire Parliament, that only positioning the Commission halfway between the Sejm and the government would guarantee the autonomy of this professional and apolitical institution. Nevertheless, Seyda, who on behalf of the Legal Commission reserved that its purpose was to make sure that Codification Commission’s drafts could not be modified by the Ministry of Justice, did not mention depriving the Parliament of analogical competences to change or even reject the drafts of the Codification Commission. Its right to reject or amend the codification work was not subject to any discussion.

It must also be noted that even though the discussion was held by representatives of the government on the one hand, and by parliamentary members on the

⁴⁵ About the Civil Code as a political act see B.J. Young, *Politics of Codification...*, pp. XIII-XIV. The necessity to harmonize activities was already visible in the inaugural speech of the chairman of the Codification Committee Franciszek Ksawery Fierich. Regarding civil law he shed light on the interdependence of code regulations with social and economic policies conducted by the government. F.X. Fierich, *Rzut oka na najważniejsze zadania prac kodyfikacyjnych*, „Kwartalnik Prawa Cywilnego i Kryminalnego”, Vol. 2, No. 2, pp. 460-462; K. Grzybowski, *Rola prawa w likwidacji podziałów zaborczych oraz integracji państwa polskiego*, (in:) *Droga przez półwiecze. O Polsce lat 1918-1968*, Warszawa 1969, p. 76; M. Gałędek, A. Klimaszewska, *Involvement of Polish legal elites in preparing a new draft of Civil Code, seen as an intellectual feast - menu a la carte or fast food?*, (in:) C. Rautenbach (ed.), *Law and Food*, London – New York 2019 [forthcoming].

⁴⁶ *Sprawozdanie Stenograficzne Sejmu Ustawodawczego*, 44 th Session of 3 June 1919, p. XLIV-7.

other, in reality they were all part of the same legal elite to which, at least declaratively, they wished to guarantee autonomy and apolitical status within the Codification Commission. Especially the discussion participants from the Ministry of Justice: Waclaw Makowski, Henryk Konic, and Jan Jakub Litauer were simultaneously established authorities in the circle of Polish legal science, while on the other side there were also renowned legal scholars and advocates – Zygmunt Seyda and Zygmunt Marek. Thus, regardless of involvement of all these people in active politics (on different sides of the political scene), the idea of autonomous works of the Codification Commission could have been equally dear to them. We may, however, wonder if they did not underestimate the risk of the future influence of the governmental politics. In 1919 the political discourse on the establishment of the Codification Commission was clearly dominated by the legal elites, joining forces over all party differences. Only the representatives of the legal profession associated with the Ministry of Justice spoke on behalf of the government. There are no mentions of pressure from the side of the Council of Ministers. Similarly, the Sejm debate was overpowered by members of the Parliament who were lawyers, and who also bridged party gaps in a bid to secure “full autonomy” of the Codification Commission. This situation may have given the erroneous illusion that this state of affairs would last forever and that permanent and strong institutional guarantees for maintaining the Commission’s independence were not indispensable.

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Summary

The purpose of this article is to analyze the ideological basis of concepts that underpinned the establishment of the Codification Commission by virtue of the Act of 3 June 1919 and to assess its position within the system of authorities of the Second Republic of Poland. The author has found that the issues around shaping the relations of the Codification Commission with the Government and the Sejm have been covered in literature of the subject in a one-sided manner. Authors who have devoted their attention to the issue of autonomy of the Codification Commission formulated their evaluations based on the interpretation of the regulations in the drafts of the Act that established the Commission, as well as on their subsequent application that enabled the restriction of this autonomy. They did not, however, sufficiently account for the ideological declarations,

thus in fact rejecting the deputies' assertions of their striving to ensure "complete autonomy and self-sufficiency" of the Codification Commission, and the Government's affirmations that it did not aim to "subject" the Commission to its control. Meanwhile, the author's intention is to show that there was a widespread consensus at the time, especially at the Sejm, which sovereignly decided on the wording of the Act on the Codification Commission, that deputies had adopted a law that sufficiently protected the autonomous status of the Commission and its apolitical nature.

KEYWORDS

Codification Commission, Polish civil code, Polish penal code, interwar period

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Komisja Kodyfikacyjna, polski kodeks cywilny, polski kodeks karny, okres międzywojenny