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**SEARCHING FOR NATIONAL COMPONENTS
IN BUILDING OUR OWN LEGAL CULTURE:
THE DEBATE ON THE LEGAL SITUATION
OF WOMEN IN INTERWAR POLAND¹**

The issue of national tradition, of creating a native, Polish system of law, searching for our own legal identity, was discussed particularly heatedly during the period of extensive codification works conducted in the constitutional Kingdom of Poland, and then after regaining independence in the interwar period. The discussion was all the more heated since these concepts, somewhat blurry, were to be implemented at the same time as modernization of the existing system of law – modernization postulates, obviously, being understood differently in each of the above mentioned periods.

Without repeating Piotr Pomianowski's analysis of the hazy concepts of "nation" and "national laws", well-illustrated with numerous examples and definitions, his general conclusion merits a mention. He established that the adjective "national", applied in relation to law during the 19th-century legislative process in the area of civil law, meant law appropriate for our nation, compliant with world-views widely held by Poles, and written down in the Polish language². He was able to discover that the attempts made at the time of works conducted in the constitutional Kingdom of Poland, aiming to adjust legislation to the mentality of Poles, did not consist in restoring pre-partition norms, but rather in scanning foreign legislations in effect in the Polish territories (not only in the Kingdom of Poland) for regulations similar to the old Polish law or matching the beliefs held

¹ This publication was prepared as part of the project "Between modernisation and national character. Ideology and axiology of Polish private law makers in 20th century" financed by National Science Centre (Narodowe Centrum Nauki, NCN), fund No. 2016/21/B/HS5/03221.

² P. Pomianowski, *Postulat narodowego charakteru prawa w pracach kodyfikacyjnych doby Królestwa Kongresowego* [Postulate of National Character of Law in Codification Works of Congress Poland], "Czasopismo Prawno-Historyczne" 2019, forthcoming. See also the bibliography in this publication.

widely in the Polish society. Thus, creation of national law in the Kingdom of Poland consisted rather in reaching for foreign models that were in line with the local expectations and relatively coherent with our tradition, rather than bringing old norms back to life³.

The question remains whether a similar phenomenon occurred during the legislative works conducted in the interwar period in relation to the legal situation of women.

Women were discriminated against in each of the inherited legal orders, but their situation, the framework of which was set by the French Civil Code of 1804, was the worst in the territories of the former Kingdom of Poland⁴. As emphasized by Zygmunt Seyda, a lawyer and deputy of the Popular National Union (*Związek Ludowo-Narodowy*), during the debate on the Act to amend the civil law effective in the former Congress Poland and concerning women's rights:

Honorable Members! The civil law in effect in the former Congress Poland contains a number of outdated, frequently simply ridiculous provisions that violate the equality of women's rights. Allow me to cite Art. 78 of the Civil Code of the former Kingdom of Poland, which stipulates that only men may act as witnesses to deeds

³ Cf. M. Gałędek, A. Klimaszewska, *A Controversial Transplant? The Debate on the Adaptation of the Napoleonic Code on Polish Territories in the Early Nineteenth Century*, "Journal of Civil Law Studies" 2018, Vol. 11, issue 2, pp. 269-298.

⁴ The critical opinion on the provisions of the Napoleonic Code in this regard is widespread and firmly established. As B. C. Smith wrote, for example: "The Napoleonic Code influenced many legal systems in Europe and the New World and set the terms for the treatment of women on a widespread basis. Establishing male power by transferring autonomy and economic goods from women to men, the Code organized sexes roles for more than a century (...). The codifiers were looking at nature in two ways. In theorizing about men alone, nature was redolent of abstract rights. As far as women were concerned, however, nature became empirical in that women had less physical stature than men. Although short men were equal to tall men, women were simply smaller than men and thus were unequal (...). By the time the Napoleonic Code went into effect, little remained of liberal revolutionary programs for women except the provisions for equal inheritance by sisters and brothers. The Code cleared the way for the rule of property and for individual triumph. It ushered in an age of mobility, marked by the rise of the energetic and heroic. The Code gave women little room for that kind of acquisitiveness or for heroism. Instead, women's realm was to encompass virtue, reproduction, and family", B.C. Smith, *Changing Lives: Women in European History Since 1700*, Lexington 1989, pp. 121-122. See also M. Riot-Sarcey, *Histoire du féminisme*, Paris 2002, pp. 24-26. Women's "perpetual minority" in the legal context limited them in almost every sphere. Cf. S. Kowalska-Glikman, *Kobiety w procesie przemian społecznych w Królestwie Polskim w XIX wieku* [Women in the Process of Social Transformation in the 19th-century Kingdom of Poland], (in:) A. Zarnowska, A. Szwarc (eds.), *Kobieta i społeczeństwo na ziemiach polskich w XIX wieku* [Women and Society in the Polish Territories in the 19th Century], Warszawa 1990, pp. 10-15; R. Sieder, *Ehe, Fortpflanzung und Sexualität*, (in:) M. Mitterauer, R. Sieder (eds.), *Vom Patriarchat zur Partnerschaft. Zum Strukturwandel der Familie*, München 1991, pp. 162-168; M. Gałędek, A. Klimaszewska, 'Crippled Equality': the Act of 1 July 1921 on Civil Rights for Women in Poland, "Acta Poloniae Historica" 2016, Vol. 113, pp. 235-238.

concerning civil status. Art. 182 of the same code stipulates that a wife cannot appear before a court without the authorization of her husband, even if she is a public merchant and even if the case concerns property under her own administration. Art. 1124 puts women in the same position as underage and incapacitated persons, as incapable of entering into contracts⁵.

The following epithets recurred: “funny, ridiculous provisions, contrary to the spirit of the time, restricting women’s right”⁶, “outdated and ridiculous”⁷.

As Gabriela Balicka, a member of the already mentioned right-wing party from Cracow⁸ noted, the fundamental problems faced by advocates of the equality of women’s rights: 1) the fact that “even as concerns people who are sympathetic with women’s rights were: (...) we are (...) dealing with lawyers, for whom principles are important, so important in fact that they often prevail over the interests of real people, real groups who feel deprived of their rights”, 2) lack of interest in this topic in Polish society⁹, 3) viewing the issues of legal discrimination of women from the perspective of maintaining the existing power status of the males and their property-related entitlements¹⁰.

On the one hand, the existing situation and the normative picture was blamed on the nature of the borrowed from or imposed by other legal orders, as they stipulated the legal restrictions concerning women. As Adolf Suligowski, advocate and University of Warsaw professor, emphasized:

⁵ „Wysoka Izbo! Prawo cywilne, obowiązujące w b. Królestwie Kongresowem, zawiera szereg przepisów przestarzałych, często wprost śmiesznie działających, a naruszających równouprawienie kobiet. Przytoczę np. artykuł 78 Kodeksu Cywilnego b. Królestwa Polskiego, który opiewa, że przy aktach stanu cywilnego mogą być świadkami tylko mężczyźni. Art. 182 tego kodeksu opiewa, że żona nie może stawać przed sądem bez upoważnienia męża, chociażby się trudniła kupiectwem publicznie i chociażby sprawa tyczyła się majątku, pozostającego pod jej własną administracją. Art. 1124 traktuje kobiety na równi z małoletnimi i bezwłasnowolnymi jako niezdolną do zawierania umów”. *Dyskusja nad Ustawą o zmianie przepisów obowiązującego w b. Królestwie Kongresowym prawa cywilnego, dotyczącego praw kobiet* [Discussion on the Act to amend the civil law effective in the former Congress Kingdom and concerning women’s rights], (in:) *Sprawozdanie stenograficzne z 239 posiedzenia Sejmu Ustawodawczego z dnia 1 lipca 1921 r.* [Stenography report from the 239th session of the Legislative Sejm dated 1 July 1921], p. 8.

⁶ *Ibidem*, p. 9.

⁷ *Ibidem*, p. 15.

⁸ M. Kondracka, *Parlamentarzystki w Sejmie Ustawodawczym – między porozumieniem a niezgodą* [Female Deputies in the Legislative Sejm: Between Agreement and Dissent], (in:) M. Nietyksza et al. (eds.), *Spoleczeństwo w dobie przemian. Wiek XIX i XX* [Society in Times of Transformation. The 19th and 20th centuries], Warszawa 2003, p. 162. The attitude of Polish nationalists towards the issue of women’s rights is discussed in: J. Kurczewska, *Der frühe polnische Nationalismus und die Frauenthematik*, (in:) S. Kemlein (ed.), *Geschlecht und Nationalismus in Mittel- und Osteuropa 1848-1918*, Osnabrück 2000, pp. 60–76.

⁹ The discussion on women’s issues was frequently interrupted by debates on other matters. Cf. *Sprawozdanie stenograficzne...*, pp. 8-34.

¹⁰ *Ibidem*, pp. 12-13.

These provisions were transferred in an unchanged form from the Napoleonic Code to the code of the former Kingdom of Poland. Already at the time of drafting the Napoleonic Code these provisions ignited doubts. One of the members of the erstwhile legislative body asked, during deliberation on them in Paris, about the purpose of these provisions. The First Consul, present at the session, responded: *L'ange l'a dit à Adam et Eve* – an Angel said so to Adam and Eve. And these words finally settled the matter¹¹.

Thus, Suligowski directly pointed to the French tradition in this respect.

The Constitution of 17 March 1921 confirmed the equality of rights of all citizens before the law in Art. 96. Adjustments to the “demands of contemporary civilization”¹² were the declared objective of the Codification Commission, and the postulate to modernize the legal situation of women was emphasized and repeated constantly:

It seems that there were some reasons [behind the restriction of women's rights] stemming from the relations of those times – Suligowski added. – In the early 19th century, women did not have the education that they have today; their schooling did not go beyond the elementary stages. This has fundamentally changed. Over the course of the 19th century, we have been striving to educate women. They were first admitted to study at universities, now they are also allowed to hold offices, and it is a matter of necessary justice for us, in this march of social progress, that has taken place with great force and to a great extent, to do away in the territories of the former Congress Poland with those provisions that run contrary to the actual state of things and the actual needs¹³.

¹¹ „Te przepisy żywcem przeszły z Kodeksu Napoleona do kodeksu b. Królestwa Polskiego. Gdy kodeks Napoleona był układany, już wtedy budziły się wątpliwości, czy przepisy te są słuszne. Podczas deliberacji nad temi przepisami jeden z członków ówczesnego ciała prawodawczego w Paryżu zapytał, czem się dają usprawiedliwić te przepisy. Obecny wtedy na posiedzeniu pierwszy Konsul powiedział: „L'ange l'a dit à Adam et Eve” – Anioł to powiedział Adamowi i Ewie. I te słowa ostatecznie w sprawie zadecydowały”. *Ibidem*, p. 24.

¹² C. Kraft, *Równość i nierówność w II Rzeczypospolitej. Prawo małżeńskie w dyskursie publicznym na przełomie lat dwudziestych i trzydziestych* [Equality and Inequalities in the Second Republic of Poland: Marital Law in Public Discourse in the Late 1920s and Early 1930s], (in:) A. Żarnowska, A. Szwarz (eds.), *Kobieta i małżeństwo. Społeczno-kulturowe aspekty seksualności. Wiek XIX i XX* [Women and Marriage. Sociocultural Aspects of Sexuality. The 19th and 20th centuries], Warszawa 2004, p. 312.

¹³ „Zdaje się, że były pewne powody, wynikające z ówczesnych stosunków. Kobiety na początku XIX wieku nie posiadały tego wykształcenia, które posiadają dziś, ówczesne wykształcenie kobiet mało przekraczało zakres wykształcenia elementarnego. Te stosunki z gruntu się zmieniły. W ciągu XIX wieku dążyliśmy do kształcenia kobiet i doszło do tego, że były one dopuszczane do wyższych uczelni, a teraz są dopuszczane i do urzędów i rzeczą koniecznej sprawiedliwości, aby w tym pochodzie rozwoju społecznego, który się dokonał w tej mierze z wielką siłą, znieść i usunąć na terenie b. Kongresówki te przepisy, które znajdują się w niezgodzie z istotnym stanem rzeczy i z istotnymi potrzebami”. *Sprawozdanie stenograficzne...*, p. 24.

Despite all this, the discussion about women's rights was still held at the level of biological differences. Suligowski stated that: "The father (...) lives more in the external world, while the woman, by the very nature of things, is, and will still have to be, more devoted to home duties"¹⁴. The discussion concerning works on marital law also stayed within the confines of biological arguments.

How, then, was national tradition or national identity understood within this area? Some cited the lack of any Polish tradition, as "there are different provisions related to this issue in the various districts of Poland"¹⁵. Others, like Balicka, invoked the mythical, vague Polish tradition: "We do not intend to break up the family; we rather want to imbue the family with dignity and nobility that it should have and that it has always had in Poland"¹⁶.

Generally, the use of the notion of "tradition" was very blurry, and even though it was the leitmotif of the discussion, the lack of a precise definition was exploited as a way to make it a blanket term for justifying any opinion. For example, in his address, the Minister of Justice Bronisław Sobolewski even pointed out different, mutually contradictory, versions of it – one, manifested by the dominant role of women within the family, and another, based on the dominant role of the father:

I also have to take a negative stance as regards the motion by Ms. Balicka concerning who is to have the deciding voice when a conflict arises between parents in relation to the exercise of parental authority. Without a doubt, the role of women within families is dominant in our country, and this high position that Polish women occupy in families, as mentioned by Ms. Balicka, is undisputed. Yet, this position emerged and exists besides the innocent Art. 337¹⁷, and I call it "innocent" because it does not arise any disputes in life. It seems to me, however, that getting rid of this provision now would probably be against the will of broad masses, especially rural ones,

¹⁴ „(...)ojciec (...) żyje więcej w świecie zewnętrznym, podczas, gdy kobieta z natury rzeczy jest oddana i będzie nadal musiała być oddana obowiązkom domowym”. *Ibidem*, p. 25.

¹⁵ „(...) w różnych dzielnicach Polski obowiązują w tej mierze różne przepisy”. *Ibidem*, p. 24.

¹⁶ „Nie idzie nam bynajmniej o rozbijanie rodziny, lecz o to, ażeby rodzinie dać cechę tej godności i tej szlachetności, jaką ona mieć powinna i jaką miała zawsze w Polsce”. *Ibidem*, p. 13.

¹⁷ Art. 337 of the Civil Code of the Kingdom of Poland: "During marriage, both parents exercise parental custody, but in the event of difference of opinions, the father's will shall prevail". J. Walewski, *Kodeks cywilny Królestwa Polskiego (prawo z r. 1825). Objaśniony motywami do prawa i jurysprudencey*. Ks. 1 [Civil Code of the Kingdom of Poland (From 1825). With Explanation of the Motives and Jurisprudence, Book 1], Warszawa 1872, p. 134. This article was a reference to Art. 373 of the French Civil Code, pursuant to which "The father alone exercises this control [over children] during marriage". Transl. after: G. Spence, *The Code Napoleon; or the French Civil Code, literally translated from the original and official edition, published at Paris in 1804*, London 1827, p. 103. Balicka at first proposed that the differences in parents' opinions be settled by a family council, but when this idea was rejected by the Legal Commission, she called for a modification of Art. 337 of the Civil Code so as to give the mother the deciding power. In her opinion this would be justified by the role society ascribed to women within family. Cf. *Sprawozdanie stenograficzne...*, pp. 13-14.

against the position occupied within the family by the father, as the one who provides for the family's livelihood¹⁸.

The issue of "tradition" was also mentioned as an obstacle to the modernization of social relations:

The Legal Commission has come to the conclusion that this issue, which has been a sensitive one for centuries and which has modelled certain social relations, cannot be tackled with a single blow, without the proper preparation¹⁹.

Here we reach the clou of the problem, noted also by Claudia Kraft: the Polish legislator (i.e. both members of the Codification Commission and deputies) did not think it their task to affect social transformation by way of laying down laws. The law, in their opinion, could not make people better or worse; it only offered the frameworks for a successful human coexistence²⁰.

As emphasized in the Principles for the Draft of Marital Law (*Zasady projektu prawa małżeńskiego*), adopted by the Codification Commission on 28 May 1929:

This is why the law, while staying within its proper boundaries of organizing marriage as a social institution, must build it in line with the findings of modern science of law and with an understanding of the internal social content that is to be fit into the frameworks of this institution, expressing the collective awareness of this society that the law is to govern. This internal social content that the law is to put into institutional frameworks of marriage lies in the main principles that underpin the legal construction of any given community (...) ²¹.

¹⁸ „Również negatywne stanowisko muszę zająć co do wniosku p. Balickiej, co do tego, kto ma mieć głos decydujący w tym wypadku, gdy między rodzicami wynika spór na gruncie wykonywania władzy rodzicielskiej. Bez kwestii rola kobiety w rodzinie stała się u nas dominująca i to wysokie stanowisko, które kobieta Polka w rodzinie zajęła, o którym mówiła p. Balicka, jest bezsprzeczne, ale ono powstało i istnieje obok istnienia tego rzeczywiście niewinnego art. 337, powiadam "niewinnego" dlatego, że jednakże on żadnych sporów w życiu nie wywołuje. Natomiast zdaje mi się, że skreślenie w obecnej chwili tego przepisu byłoby może niezgodne z opinią szerokich warstw, zwłaszcza gdy chodzi o wieś, sprzeczne ze stanowiskiem, które jednakże ojciec zajmuje w rodzinie, jako ten, który dostarcza środków do życia". *Ibidem*, p. 26.

¹⁹ „Komisja Prawnicza doszła do wniosku, że tej kwestii, która od stuleci jest drażliwą i ułożyła pewne stosunki społeczne, przeciąć za jednym zamachem bez należytego przygotowania nie można". *Ibidem*, p. 28.

²⁰ Cf. *Zasady projektu prawa małżeńskiego uchwalonego przez Komisję Kodyfikacyjną w dniu 28 maja 1929 r.* Opracował główny referent projektu Prof. Karol Lutostański [Principles for the Draft of Marital Law Adopted by the Codification Commission on 28 May 1929. Elaborated by the Main Rapporteur of the Draft, Professor Karol Lutostański]. Komisja Kodyfikacyjna. Podeskcja 1 Prawa Cywilnego, t. 1, z. 3 [Codification Commission of the Republic of Poland: Subsection 1 of Civil Law, Vol. 1, fasc. 3], Warszawa 1931, p. 35 *et seqq.*; C. Kraft, *Równość i nierówności...*, pp. 318-319.

²¹ „Dlatego też prawo, pozostając we właściwych mu granicach organizowania małżeństwa, jako ustroju społecznego, musi go budować zgodnie z wynikami współczesnej nauki prawa, oraz z wycuciem wewnętrznej treści społecznej, która ma być w ten ustrój ujęta, a stanowiącej wy-

Thus, the development of legal science could not invalidate the model that had consolidated in the society.

The problem with understanding the role of law was visible during the course of Sejm sessions: “Can this issue be resolved with a single stroke of the pen?” – Adam Franciszek Mieczkowski asked²². Zygmunt Seyda, in turn, spoke against the amendments proposed by his party colleague:

[I am] against the motion of Ms Balicka, simply because she wants to implement a fundamental amendment, whose purpose will be to replace the father’s will with the will of the family council, i.e. to introduce an institution that, pursuant to the existing laws, does not exist²³.

Even though the Codification Commission had some members who viewed the law as an instrument of shaping reality (which, in this case, was tantamount to breaking stereotypes and traditional approaches – e.g. Ludwik Domański in the course of works on marital law), the Commission was far from questioning the social order based on the assumed dichotomy of the sexes²⁴. Not to mention the

raz zbiorowej świadomości w tym społeczeństwie, dla którego prawo ma obowiązywać. Ta wewnętrzna treść społeczna, którą prawo ma ująć w formy ustrojowe małżeństwa, tkwi w naczelnych zasadach, na których wspiera się prawna budowa danej społeczności (...). *Zasady...*, pp. 24-25.

²² “Czy tak za jednym pociągnięciem pióra można tę sprawę rozstrzygnąć?”. *Sprawozdanie stenograficzne...*, p. 30.

²³ „[Jestem] przeciw wnioskowi p. Balickiej dlatego po prostu, że chce wnieść poprawkę zasadniczą, która dąży do tego, ażeby zamiast woli ojca wprowadzić decyzję rady familijnej, t.j. wprowadzić instytucję, która wedle obowiązujących przepisów dotąd nie istnieje.”; *Ibidem*, p. 31.

²⁴ On the one hand, it was asserted that “this draft fully materializes the principle of equality of spouses before the law in respect of their duties toward the marriage and responsibility for the marriage toward third parties. The draft does not, in principle, give any advantage to either of the spouses; in the event of differences of opinions between them, it does not elevate either one of the spouses to the status of an arbiter or a deciding director just because he is a husband or she is a wife. Thus, the draft does not address the duties and rights of husband or wife, but rather the duties and rights of spouses”. (“(...) niniejszy projekt przeprowadza zasadę równości małżonków wobec prawa w całej pełni zarówno w zakresie ich obowiązków wobec wspólnoty, jak i odpowiedzialności za wspólnotę wobec osób trzecich. Projekt nie nadaje zasadniczo żadnemu z małżonków przewagi, w razie różnicy zdań między małżonkami nie podnosi żadnego z nich do godności superarbitra lub decydującego kierownika z samego tytułu, że jest mężem lub żoną. W wyniku tego projekt nie mówi o obowiązkach lub prawach męża albo żony, lecz tylko małżonka”). On the other hand, “the few exceptions to the foregoing do not quash the principle of equality, as they are the expression of a certain historically consolidated state of affairs concerning the division of roles in marriages (...). And so, as regards the place of residence, the draft adopts as the norm that spouses should reside at the place of residence of the husband, but allows the spouses to agree otherwise, and in the event of a dispute, leaves the decision to the spouse, who is the main breadwinner in the family (Art. 33), as the interest of the family demands first and foremost that each of its members adapts to the conditions on which the material existence of the family hinges (...). Similarly, as concerns running the home – pursuant to the draft, it is up to the wife, but the spouses can agree otherwise. Entrusting the task of running the home to the wife is both a right

fact that such attitudes were absolutely not presented in the Sejm, not even by the member of the National Women's Organization (*Narodowa Organizacja Kobiet*), deputy Gabriela Balicka²⁵.

Very telling as regards this issue were the opinions of women and women's organizations close to the ruling circles²⁶. The Women's Civic Work Association (*Związek Pracy Obywatelskiej Kobiet*), whose activities "are most intimately connected to the (...) time of struggle for independence"²⁷, concentrated on the popularization of Polish women's "high level of understanding of civil duties"²⁸, its most fundamental task being "spreading and deepening of the idea of Polish statehood"²⁹. Sylwia Bujak-Boguska³⁰, lawyer and activist of the Political Club of Progressive Women (*Klub Polityczny Kobiet Postępowych*)³¹, evaluated the mari-

and a duty. The wife can pursue her rights if the husband impedes her proper fulfillment of these duties, especially if he unjustifiably withholds the share of money for expenses attributable to him. On the other hand, the wife's duties entitle the husband to demand that she fulfills her obligations toward their union". ("(...) nieliczne co do tego wyjątki nie niewczą zasady równości, są bowiem wyrazem pewnego historycznie wyrobionego stanu faktycznego podziału ról w małżeństwie między małżonkami. (...) I tak, w przedmiocie zamieszkania małżonków projekt, przyjmując za normę, że jest ono w miejscu zamieszkania męża, pozwala małżonkom umówić się inaczej, a w razie sporu decyzję oddaje w ręce małżonka, który ponosi główny koszt utrzymania rodziny (art. 33), bowiem interes rodziny wymaga przystosowania się każdego z jej członków do warunków, od których przedewszystkiem zależy jej materialny byt. (...) Podobnież co do zarządu gospodarstwem domowym – należy on, według projektu, do żony, jednak małżonkowie mogą się co do tego umówić inaczej. Przyznanie żonie zarządu jest prawem i obowiązkiem zarazem. Może ich żona dochodzić, gdyby jej w ich wykonaniu stawał mąż przeszkody, w szczególności, gdyby wbrew swej możliwości, nie dawał jej potrzebnych na gospodarstwo zasobów pieniężnych, na jego udział w wydatkach przypadających. Z drugiej strony, obowiązek żony rodzi prawo męża do żądania od żony, aby obowiązek swój wobec wspólnoty wykonywała"). *Projekt...*, pp. 38-39.

²⁵ For more about women in the parliament of the Second Republic of Poland, see M. Śliwa, *Kobiety w parlamencie Drugiej Rzeczypospolitej*, (in:) A. Żarnowska, A. Szwarc (eds.), *Kobieta i świat polityki w niepodległej Polsce 1918-1939* [Women and the World of Politics in Independent Poland 1918-1939], Warszawa 1996, pp. 53-69.

²⁶ These issues have also been addressed by C. Kraft, *Równość i nierówność...*, pp. 322-324.

²⁷ Z. Moraczewska, *Związek Pracy Obywatelskiej Kobiet* [The Women's Civic Work Association], (in:) *Almanach Spraw Kobięcych. Informacje, Postulaty, Zagadnienia. Związek Pracy Obywatelskiej Kobiet* [The Almanach of Women's Issues. Information, Postulates, Issues. The Women's Civic Work Association], Warszawa 1933, p. 9.

²⁸ *Ibidem*, p. 11.

²⁹ *Informacje. Organizacje kobiece w Polsce* [Information. Women's Organizations in Poland], (in:) *Almanach...*, p. 228.

³⁰ See also S. Bujak-Boguska, *Projekt prawa małżeńskiego uchwalony przez Komisję Kodyfikacyjną Rzeczypospolitej Polskiej dn. 29 maja 1929 r.* [Draft of the Marital Law Adopted by the Codification Commission on 29 May 1929], Warszawa 1932, p. 3.

³¹ For more about PCPW, see D. Kałwa, *Model kobiety aktywnej na tle sporów światopoglądowych. Ruch feministyczny w dwudziestoleciu międzywojennym* [The Model of an Active Woman Against the Background of World-View Disputes. The Feminist Movement in the

tal draft law of 1929 positively, as an expression of the “[legislators’] concern for the welfare of the Polish State and family”.

Women close to the ruling circles stood apart for their obsession with the national wellbeing; they demanded equality of rights within the context of the general good, and not individual good of women, which, according to them, should always be subject to the state interests. Such an understanding of women’s role in the Polish society may, however, be deemed as a result of the process of turning women into citizens, shaped by the experience of partitions and resulting from women’s struggle against the annexing powers, their participation in the defence of national tradition (commonly understood as the tradition of free Poland) and the need for them to take over many functions in economic and social life, caused by the political situation. The role of the “social woman” was forged in the Polish tradition. It should be emphasized that in the early 20th century, only small groups of women pressed for equal rights of the sexes, and even those few who did, did so in connection with hopes for restoration of the Polish state³². The foregoing explains why the granting of voting rights to women in 1918 did not stir up too many problems³³.

The interwar-period legislative work also occurred in the shadow of the Catholic Church, which viewed the idea of law as a lever for social transformation, especially concerning women’s legal position or marital law, as an attack on the Polish national identity, which it identified as an anthropological constant³⁴.

To sum up, this review of the most salient attitudes, which definitely does not exhaust the topic owing to its magnitude, highlights a few fundamental issues. Primarily, the debate on the equality of women’s rights held in the interwar period was marked by a strong preponderance of (political) use of the mythical and vague concepts of “national tradition” or “national identity”. They were applied as blan-

Interwar Period], (in:) A. Żarnowska, A. Szwarc (eds.), *Równe prawa i nierówne szanse. Kobiety w Polsce międzywojennej* [Equal Rights, Unequal Opportunities. Women in Interwar Poland], Warszawa 2000, pp. 135-154.

³² A. Żarnowska, *Prywatna sfera życia rodzinnego i zewnętrzny świat życia publicznego – bariery i przenikanie (przełom XIX i XX wieku)*, (in:) A. Żarnowska, A. Szwarc (eds.), *Kobieta i świat polityki. Polska na tle porównawczym w XIX i w początkach XX wieku* [Women and the World of Politics. Poland in Comparative Perspective, 19th and Early 20th Century], Warszawa 1994, pp. 28.

³³ C. Kraft, *Równość i nierówności...*, p. 315.

³⁴ Cf. *Ibidem*, pp. 324-327; Z.B., *Skutki prawa rozwodowego* [Effects of the Divorce Law], „Kurier Warszawski” 1 XII 1931, issue 329, p. 7; P. Resfortowa, *Zamach na sakrament małżeństwa* [Attempt Against the Sacrament of Matrimony], „Gazetka dla Kobiet” 1926, Vol. V, issue 4; M. Sopoćko, *Rodzina w prawodawstwie na ziemiach polskich. Studium etyczno-prawne* [Family in the Legislation on Polish Territories. An Ethical and Legal Study], Wilno 1926; W. Komarnicki, *Sekularyzacja małżeństwa a konstytucja polska* [Secularization of Marriage and the Polish Constitution], „Kurier Warszawski” 1 XI 1931, issue 299, pp. 7-8.

ket terms for the justification of various opinions and world-views, mainly aiming to prevent the law from being turned into a tool for the transformation of legal reality. Similarly, as during the legislative works conducted in the 19th century, it should be assumed that the term “national” was understood as appropriate for our nation, and compliant with world-views widely held by Poles. And so, the visions of the women’s role within family were both “foreign” and “ours” – imposed upon us, but more or less concurrent with our beliefs. The national liberation struggles, on the other hand, affected the shaping of a Polish variety of women’s activity in public life, different from the one that emerged in many Western European countries in the second half of the 19th century. It entailed a clear division of the two areas of individuals’ activities³⁵. In England, Germany or France, women were excluded from the public sphere. Thus, the perception of women’s situation in Polish circumstances was marked by a bipolar attitude: females could be citizens as long as they worked for the benefit of the state, and remain only women in the other domains of life.

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³⁵ Lutostański made a reference to this: “The role of women in the national life has always been outstanding in Poland, and in the post-annexation times, when owing to the limits of public life the family became the mainstay of national sentiments, women were a factor that co-shaped the development of civic awareness to a greater extent than in other countries”. *Zasady...*, p. 37. Cf. also A. Żarnowska, *Prywatna sfera...*, pp. 5-6.

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Summary

Broad legislative works conducted in interwar Poland and concerning various branches of law focused, on the one hand, on the uniformization and reform of particular district systems inherited from the annexing powers, and on the other hand on the idea

of building a national codification. In that context the programme for modernisation of socio-economic relationships and the elements derived from foreign legal systems, rooted in the previous century, were balanced with the values, customs, and specific features, regarded as native and constituting components of national identity of the Poles. Against this backdrop, a debate on the legal situation of women was taking place, of key importance from the perspective of legislative changes of the late 19th and early 20th centuries in other legal systems around the world. Therefore, the objective of this paper is to analyze its course from the angle of components of Polish national identity, tradition, and legal culture, defined in broadly understood public debate.

KEYWORDS

legal situation of women, modernization, uniformization, national legal identity, interwar Poland, national tradition, French Civil code

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status prawny kobiety, modernizacja, uniformizacja, prawna tożsamość narodowa, Polska międzywojenna, tradycja narodowa, Kodeks Napoleona