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THE TEACHING OF PRE-EXISTING NATIONAL POLISH LAW IN THE NEW KINGDOM OF POLAND

Abstract. The changes in the social and economic system taking place in the Kingdom of Poland prompted the need for legal education at the university level. The functioning of universities dealing with teaching in this area, however, met various obstacles, mainly due to the reluctance of the central authorities of the Russian Empire.

At the universities established in the following years, the aim was not only to prepare future lawyers in practice, but also to implement a broader model of education. Therefore, among other fields, the old Polish law was tutored, which gradually ceased to be binding, and finally became a historical law.

Keywords: The Kingdom of Poland, the old Polish law, Polish law teaching, law studies, higher schools.

NAUCZANIE DAWNEGO PRAWA POLSKIEGO W KRÓLESTWIE POLSKIM

Streszczenie. Zachodzące w Królestwie Polskim zmiany w systemie społecznym i gospodarczym rodziły potrzebę kształcenia prawniczego na poziomie uniwersyteckim. Funkcjonowanie uczelni wyższych, które zajmowałyby się nauczaniem w tym obszarze, napotykało jednak liczne trudności, przede wszystkim wynikające z niechęci centralnych władz Cesarstwa Rosyjskiego.

Na uczelniach tworzonych pomimo tego w kolejnych latach, dążono nie tylko do przygotowania praktycznego przyszłych prawników, ale starano się realizować szerszy model kształcenia. W związku z tym wykładano między innymi dawne prawo polskie, które z biegiem czasu przestawało być prawem obowiązującym, a stawało się prawem historycznym.

Słowa kluczowe: Królestwo Polskie, dawne prawo polskie, nauczanie, studia prawnicze, szkoły wyższe.

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1. INTRODUCTION

The old national Polish law did not lose its binding force with the fall of the First Polish Republic. It was still valid and was widely used in judicial decisions. During the times of the Duchy of Warsaw, part of the legal institutions resulting from its provisions continued to function, mainly in the field of the social system. Basically it was customary, but sometimes it was regulated in the legislation of the Duchy (Sobociński 1964, 41).

On the other hand, the issue of the relation of the former Polish law to new regulations in the field of judicial law was regulated in subsequent legal acts. These include the temporary instruction of the Minister of Justice of 23 May 1808, the decree of 10 October 1809 and the decree of 16 January 1811 (Sobociński 1964, 42).

On the basis of the second of these acts, the old Polish law was to apply to the extent that the Napoleonic Code referred to “local customs and devices,” as well as with regard to activities and events arising under the rule of this law – therefore in cases not subject to regulation introduced by the Prussian legislator (Zawadzki 1860, 3–12).

Similar rules were adopted in the decree of 16 January 1811, issued in connection with the annexation of the lands of the third Austrian partition to the Duchy of Warsaw. This act extended the scope of application of the former law to, *inter alia*, the Statute of Lithuania, Magdeburg and Chełmno laws (Zawadzki 1860, 13–16).

What is more, in the area of substantive criminal law the application of the old Polish law was adopted, as well as the codes of the partitioning states, as an auxiliary. However, due to the fact that Polish law was uncoded, partition codes were generally applied (Sobociński 1964, 43).

The proclamation of the Kingdom of Poland did not bring about any radical changes in this respect. Article 165 of the constitution of 27 November 1815, stipulated only that “all laws and predecessor laws, contrary to this constitutional act, are abolished” – Constitutional Act of the Kingdom of Poland of 27 November 1815 (Dziennik Praw Królestwa Polskiego, t. I, no 1: 2–103). This meant that all legal acts issued before the partitions (with the exception of the acts adopted by the Four-Year Sejm) would remain in force, as long as they were not inconsistent with the constitution. As a consequence, for example, royal privileges and grants, inspections, inventories and others were respected. The previous customary law continued to apply, including the obligations of peasants and townspeople, the dimension of serfdom and the inheritance of settlements (Bartel et al. 1981, 230).

This tendency began to change in the second half of the nineteenth century, but the old Polish law continued to apply, in particular, to property rights (Grzybowski 1982, 227). Gradually, however, it lost the value of the binding law and became historical.

The proclamation of the Duchy of Warsaw and the construction of its structures created a demand for professional clerical staff and qualified lawyers. They could have been educated by universities where the applicable law would be taught. Old Polish law was also to be among the subjects to be taught. This idea was realized and continued in the times of the Kingdom of Poland; nevertheless, a number of obstacles was met. First of all, the authorities of the Russian Empire were reluctant to study law in the territory of the Kingdom. Moreover, it should be emphasized that basically the old Polish law was not taught at pre-partition universities, so there was no experience in teaching it (see: Matuszewski 2015, 215–228).

2. YEARS 1816–1831

The teaching of the former national Polish law began in the Law School in Warsaw, established on the basis of Frederick August's decree of 18 March 1808 (*Dziennik Praw Księstwa Warszawskiego*, I, no 11, 296–297). The newly established School of Administrative Sciences was incorporated into this university by the decree of 22 May 1811 (*Dziennik Praw Księstwa Warszawskiego*, III, no 32, 323–327), and it was referred to as the School of Law and Administration. Finally, a three-year study program and a practical profile were adopted (Grochulska et al. 1981, 14, 18–19; Witkowski 2015, 42; Bałtruszajtys et al. 2016, 21).

The former national Polish law was taught by Jan Wincenty Bandtkie-Stężyński, who undertook research on its history and was one of the precursors of this field of science (Grochulska et al. 1981, 25; Bałtruszajtys et al. 2016, 19). While giving lectures on the history of law, he used to begin them with world history and ancient Roman law, and then presented the history of Polish public and private law (Bałtruszajtys et al. 2016, 22).

In the times of the Kingdom of Poland, the School of Law and Administration was transformed into the Faculty of Law and Administration, established on 19 November 1816, at the Warsaw School (the Main School). The university was renamed the Royal University of Warsaw two years later (Grochulska et al. 1981, 66; Witkowski 2015, 42. Bałtruszajtys et al. 2016, 27; Mycielski 2016, 61), and on 30 March 1830, its name was changed again – this time to the Imperial University of Alexander (Bartel et al. 1981, 398).

In the general understanding of the authorities of the Kingdom of Poland, the university was to be of a practical profile. However, the professors took a different position. In their opinion, it was necessary not only to educate lawyers and deal with the doctrinal aspects of law, but also to conduct research in the field of the history and theory of law. Therefore, as part of wider education, old Polish law and its history was one of the subjects taught (Bartel et al. 1981, 217–218). These classes were conducted for both second-year law students and second-year students of administration (Grochulska et al. 1981, 94; Bałtruszajtys et al. 2016, 36; Mycielski

2016, 153). They were led by Jan Wincenty Bandtkie-Stężyński, already experienced in this field, who also lectured on ancient Roman law and held the position of the dean of the Faculty. His lectures on old Polish law were assessed as thoroughly prepared (“Sprawa o stanie Królewskiego – Warszawskiego Uniwersytetu z roku 1824/5 zdana przez Rektora X. W. Szweykowskiego za posiedzeniu pamiętce założenia tegoż Uniwersytetu poświęconem” 1825. *Posiedzenie publiczne Królewsko-Warszawskiego Uniwersytetu na pamiętnienia jego przy rozpoczęciu nowego kursu nauk odbyte dnia 15 września 1825*, 2; Bałtruszajtys et al. 2016, 31–32; Mycielski 2016, 154), although the textbooks prepared by him and published after his death were widely criticized. The 1850’s work entitled: *Historia prawa polskiego napisana i wykładana przed r. 1830 w b. warszawskim Aleksandryjskim uniwersytecie przez J. W. Bandtkie-Stężyńskiego, dzieło pogrobowe* was accused of dealing not only with the history of law, but history in general. Moreover, it was indicated that it described certain legal institutions without giving a complete picture, nor did it present their historical development. Similarly, it presented systemic issues, without a deeper consideration. However, another textbook, published in 1851, entitled *Prawo prywatne polskie napisane i wykładane przed r. 1830 w byłym warszawskim Aleksandryjskim uniwersytecie przez J. W. Bandtkie-Stężyńskiego, dzieło pogrobowe* discussed private law in more detail. This time, the book was criticized as containing factual errors and relying solely on *Volumina legum* and the Lithuanian Statutes, without mentioning the sources of common law (Bobrzyński 1874, 44).

J. W. Bandtkie-Stężyński conducted classes until 1830, when he was replaced by Józef Hube (Romuald’s brother), appointed to the position of professor of the history of law (Mycielski 2016, 157).

3. THE KINGDOM WITHOUT A UNIVERSITY

The Royal University of Alexander was closed after the fall of the November Uprising, pursuant to the decision of Nicholas I of 22 October 1831 (Grochulska et al. 1981, 206; Bardach 2001a, 237; Szwarc 2016b, 363). At that time, the basics of law were taught in junior high schools, but there were no classes on old Polish law and its history (Grochulska et al. 1981, 221). The exception were the Legal Courses at the Warsaw governorate’s gymnasium. They were launched on the basis of the Act of 10th (22nd) April 1840 on the teaching of law for young people in the Kingdom of Poland, in relation to the growing demand for legal knowledge. Generally, they were intended to educate middle-level court officials. They covered, *inter alia*, the history of Polish legislation (including the former Polish law). The classes were conducted by Waław Aleksander Maciejowski (Grochulska et al. 1981, 222; Bardach 2001a, 238; Bałtruszajtys et al. 2016, 60; Szwarc 2016b, 388–390), who already during the time of the existence of the university had lectured

ancient Roman law. On the other hand, from 1829 he was also involved in scientific research in the field of historical and comparative research in the field of Slavic rights. In the years 1832–1835 he published *The History of Slavic Legislation* (Bartel et al. 1981, 219), but this work was subject to extensive criticism in particular by Walenty Dutkiewicz (Bardach 1971). Legal Courses lasted only six years, until 19 June 1846, when they were finally closed (Szwarc 2016b, 390).

Due to the lack of a university in the Kingdom of Poland, the Imperial authorities allowed young people to study at Russian universities. By virtue of the decree of 23 April (5 May) 1840, chairs of law in the Kingdom of Poland, including the history of Polish law, were established at universities in Moscow and in St. Petersburg (Bartel et al. 1981, 222).

Initially, in the years 1841–1845, Romuald Hube gave lectures on the history of Polish law (including old Polish law) at the University of St. Petersburg. Then Antoni Czajkowski took his place. The problem that both he and the students faced, was the lack of a textbook. This lecturer had started preparing an appropriate textbook, but was unable to finish it. The classes conducted by A. Czajkowski enjoyed great interest among students, although they were criticized by other academics. Adam Niemirowski pointed to their disorder and focus by the lecturer on historical topics, and the postponement of legal issues to the background. Then, lectures on this subject were given by Włodzimierz Spasowicz, but there is no information about them (Bardach 2001a, 241–242, 246, 258).

On the other hand, at the University of Moscow, from the academic year 1840/1841, lectures on the history of Polish law (and thus the old Polish law) were conducted by Aleksander Korowicki. Then, after completing his teaching in the academic year 1855/1856, classes on this subject were conducted by Jan Pawłowski. In the presentation of the lecture on the history of Polish law, which, according to Juliusz Bardach, had been prepared by J. Pawłowski himself, it was indicated that the lecture was written on the basis of the works of Tadeusz Czacki, W.A. Maciejowski, Joachim Lelewel and Antoni Zygmunt Helcel. The reason for this was the lack of studies on the history of Polish law. As an exception, the work of J.W. Bandtki was indicated (*History of Polish law written and lectured before 1830 at the former Aleksandryj University of Warsaw by JW Bandtkie-Stężyński, post-grave work*), which was neither exhaustive nor a systematic study (Bardach 2001a, 248–249).

4. THE MAIN SCHOOL

Many years of efforts to establish a university dealing with the training of lawyers resulted in the issue of the Act on Public Education in the Kingdom of Poland on 20 May (1 June) 1862. On its basis, the Main School was established two days later, with the Faculty of Law and Administration as one of its branches. The official

opening of the university took place on November 25th of the same year (Grochulska et al. 1981, 255; Bardach 2001b, 260; Witkowski 2015, 42; Bąbiak 2019, 252ff; Szwarc 2016a, 425).

Law studies at the Main School lasted for 4 years, but did not include the division into two fields – law and administration. Such a choice could be made upon passing the master exams (Borowski 1937, 3, 29–30; Bałtruszajtys et al. 2016, 63, 81; Szwarc 2016a, 425).

The study program focused mostly on the dogma of the applicable law. There were also lectures on the history of Polish law (including old Polish law), but in 1864 they were shortened to one semester. Then these issues were presented within the history of the laws of the Slavic nations (Bartel et al. 1981, 223; Grochulska et al. 1981, 290).

Initially, classes in the former Polish law were conducted by a very skilled lawyer – Walenty Dutkiewicz. However, he did not specialise in the history of law, but civil law, which could be easily deduced from the content of his lectures (Borowski 1937, 65; Bardach 2001b, 254; Bałtruszajtys et al. 2016, 72; Szwarc 2016a, 484). He even prepared a textbook, originally published under the title: *Program do egzaminu z historii praw, które w Polsce przed wprowadzeniem Kodeksu Napoleona obowiązywały*, and then changed into: *Prawa cywilne jakie w Polsce od roku 1374 do wprowadzenia Kodeksu Napoleona obowiązywały*. Nonetheless, this text contained specific formulations. It mentioned particular issues in the form of questions and answers. As a consequence, individual legal institutions were discussed separately, without their historical context and in the legislation. Additionally, what should be highlighted and what has become the subject of criticism in the scientific community, W. Dutkiewicz maintained that after the statutes of Casimir the Great were issued, customary law was no longer in force in Poland (Bardach 2001b, 254–257). This concept was also reflected in the textbook. This lecturer conducted classes until the end of 1867, i.e. until his retirement (Borowski 1937, 68).

In the following academic year (1867/1868), this subject was not taught. In the next, its area included in a lecture on the History of Polish, Ruthenian and other Slavic nations, which was conducted by Henryk Hoffman. However, there is no information on the content of this lecture (Borowski 1937, 68, 70–72; Bąbiak 2019, 252). What is more, The Main School operated only until 1869.

5. IMPERIAL UNIVERSITY OF WARSAW

The notice of 8 June 8 (20) 1869, transformed the Main School into the Imperial University of Warsaw. One of the faculties established there was the Faculty of Law (Grochulska et al. 1981, 373, 391; Witkowski et al. 2015, 46; Schiller-Walicka 2016, 65).

According to the program, law studies lasted for 4 years. In addition to the classes in applicable law, they also covered the history of Russian law – taught in the second year – and the history of Slavic legislation – in the third year (Grzybowski 198, 194). Despite the postulates to introduce the history and dogmatics of Polish law into the curriculum of the former Polish law, this subject was not included (Askenazy 1905, 39; Schiller-Walicka 2016, 593).

Moreover, a visible russification of the university staff could be noted. Initially, the Polish scientists constituted the majority at the Imperial University of Warsaw. However, the tendency changed at the end of the 1880s, when the Russians began to take their place. Therefore, Polish lawyers conducted scientific activities outside the University (Witkowski 2015, 46).

6. CONCLUSIONS

Teaching the old Polish law in the Kingdom of Poland encountered a number of obstacles. First of all, the circumstances did not favor the functioning of higher education in general, and legal studies in particular. These included, among others, the reluctance and opposition from the central authorities of the Russian Empire, and, consequently, the efforts to suppress resistance and build pro-Russian attitudes among the inhabitants of the Kingdom.

Additional difficulties, specific to the teaching of old Polish law, resulted from the fact that research within this scientific discipline was just beginning to develop. The first scientific works on it were written, and the lack of foundations was reflected in their substantive level. Moreover, it should be emphasized that, as a rule, the former Polish law was not taught at universities of the First Republic. Consequently, there was a lack of didactic experience and appropriate textbooks.

The lecturers who conducted classes in this matter in the times of the Kingdom of Poland tried to prepare their own didactic materials. The textbooks by J.W. Bandtke, W. Dutkiewicz and W.A. Maciejowski, however, were characterized by numerous factual errors. This was mainly the result of a small number of monographs on the former Polish private law. Therefore, their authors, wanting to describe certain issues, had to conduct research on their own. Consequently, they described the issues that they studied in more detail. Moreover, they ignored problems not described in the available literature, which they were unable to analyze (Balzer 1887, 8–12).

Nonetheless, while the former Polish law was taught as a separate subject within the framework of legal studies conducted until the 1870s, there was no place for it in university education of the later period.

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