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Matrimonial property regimes in the Congress Kingdom of Poland on the basis of premarital contracts drawn up by the first notaries in Łódź

1

One of the biggest changes to the matrimonial property law in force in Poland were implemented during the times of the Duchy of Warsaw. They resulted from the introduction, pursuant to Art. 69 of the constitution of July 22, 1807, of the Napoleonic Code (Pol. Kodeks Napoleona, hereinafter: KN). The provisions of this legal act came into force on May 1, 1808.

The reform primarily meant limiting the diversity of property systems related to the status of the spouses. Joint property was preferable as the statutory system to which the property relations between the spouses were to be subject in the event of failure to find a common preferable regime or its invalidity.[1]

Nevertheless, future spouses were entitled to regulate their mutual property relations on their own. Such an agreement could only be drawn up before the marriage was entered into and was not subject to changes during its term. It was meant to be written down in the form of a notarial agreement.[2]

In accordance with the principle of freedom of premarital contract, the content of the prenuptial agreement could be shaped freely, as long as it did not contradict moral standards and did not infringe the rights of the husband as the head of the family.[3]

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[1] W. Dutkiewicz, *Prawo hipoteczne w Królestwie Polskiem*, Warszawa 1850, p. 295; W. Holewiński, *O stosunkach majątkowych między małżonkami, w razie niezawarcia umowy przedślubnej podług Kodeksu Cywilnego Polskiego*, Petersburg 1861, p. 51.

[2] Art. 1394–1395 of KN.

[3] Art. 1387–1388 of KN; J.J. Delsol, *Zasady Kodeksu Napoleona w związku z nauką i jurysprudencyą*, transl. by M. Godlewski, vol. III, Redakcja Biblioteki Umiejętności Prawnych,

KN regulated four contractual regimes: joint property (Pol. *wspólność majątkowa*), property separation (*rozdzielność majątkowa*), property regime without commonality (*rząd bez wspólności*) and dowry property regime (*rząd posagowy*).[4] The future spouses could adopt one of them or make modifications, including combining diverse property regimes.[5]

After the fall of the Duchy of Warsaw, the above regulations were still in force in the Kingdom of Poland. However, on April 26, 1818, another amendment to the matrimonial property law took place, with the introduction of *Prawo o ustaleniu własności dóbr nieruchomych, o przywileiach i Hypotekach w mieysce tytułu XVIII. księgi III. kodexu cywilnego*.

It involved modifying the statutory property regime, which henceforth was to be the dowry property regime.[6] However, this solution was criticized as it impeded real estate trading.[7] Therefore, work was undertaken on another reform of the marital property law, culminating in the enactment of the Civil Code of the Kingdom of Poland on June 1, 1825 (Pol. Kodeks Cywilny Królestwa Polskiego, hereinafter: KCKP), which entered into force on January 1, 1826 (according to the Gregorian calendar).[8]

KCKP also guaranteed the fiancées the right to choose the property regime. They could introduce a contractual regime or stay with the statutory regime. If they wanted to take advantage of the first option, they had to conclude a premarital contract, which, as before, had to be drawn up in the form of a notarial agreement.[9]

Warszawa 1874, p. 2; K. Sójka-Zielińska, *Kodeks Napoleona. Historia i współczesność*, Lexis Nexis, Warszawa 2007, p. 96.

[4] J.J. Delsol, *op. cit.*, p. 2–4.

[5] *Ibidem*, p. 91–93; H. Konic, *Prawo majątkowe małżeńskie. Wykład ustaw obowiązujących w b. Królestwie Kongresowem, z uwzględnieniem przepisów innych dzielnic oraz kodeksu szwajcarskiego*, Wydawnictwo "Bibljoteka Prawnicza", Warszawa 1933, p. 16; *Historia państwa i prawa Polski*, vol. III: *Od rozbiorów do uwłaszczenia*, eds. J. Bardach, M. Senkowska-Gluck, PWN, Warszawa 1981, p. 140; S. Płaza, *Historia prawa w Polsce na tle porównawczym*, part II: *Polska pod zaborami*, Księgarnia Akademicka, Kraków 2002, p. 64; K. Sójka-Zielińska, *op. cit.*, p. 96.

[6] *Wywód zasad stosunków maiątkowych między małżonkami podług prawa Seymowego z dnia 26 kwietnia 1818 r. w związku z kontraktem małżeńskim Kodexu cyw. Francuzkiego*, "Themis Polska" 1828, vol. II, p. 120; W. Dutkiewicz, *op. cit.*, p. 299; S. Płaza, *op. cit.*, p. 52, 64.

[7] *Dyaryusz Senatu Seymu Krolestwa Polskiego 1825*, vol. II, Warszawa 1828, p. 86 i 87; *Powody urzędowe do księgi pierwszej kodeksu cywilnego Królestwa Polskiego z roku 1825. Z Dyaryusza Senatu Sejmu Królestwa Polskiego z roku 1825 zebrał i ułożył Mścisław Godlewski*, Redakcja Biblioteki Umiejętności Prawnych, Warszawa 1875, p. 242–243.

[8] Prawo przechodnie, art. 1, *Dziennik Praw Królestwa Polskiego*, 1825, vol. 10, no. 41, s. 291–292.

[9] Art. 207 of KCKP.

These acts are an invaluable source of research. They allow, first of all, to verify the implementation of statutory provisions in practice. Premarital contracts drawn up by the first notaries operating in Łódź,[10] so during 1841–1875, seem to be particularly interesting. They provide a full picture of the implementation of marital property law in the emerging society of a rapidly developing industrial city.

2

Pursuant to the provisions of the KCKP, property relations in marriage could develop within the statutory property regime, which was the exclusive property regime (*wyłączność majątkowa*),[11] or the contractual regime adopted by the spouses. As in the KN, the spouses were granted a great deal of freedom in arranging property relations. The future spouses could accept the terms of the contract at their discretion, as long as they were not inconsistent with the law or morality.

KCKP regulated the principles of operation of the three main property regimes that could be introduced by agreement. And the spouses could simply bound their property relations to one of these regimes, or make any modifications to them. In addition, they were allowed to adopt a completely different, completely arbitrary system, as long as the rules of its functioning did not violate the law and were specified in detail in the contract.[12]

The contractual systems regulated in KCKP were: property separation (*rozdzielność majątkowa*), dowry property regime (*rząd posagowy*) and joint property (*wspólność majątkowa*). The essence of the first one was only a slight interference in the property relations existing before the marriage. Each of the spouses remained the owner of the property constituting his/her property at the time of entering into the marriage, as well as the assets acquired during the marriage, regardless of the way in which they were acquired, e.g. by inheritance or donation, by work or by chance. Moreover, each of the spouses managed their

[10] They acted upon the regulations of the Napoleonic act entitled *Organizacja notariatu*, which was in law in the Kingdom of Poland until 1876, D. Malec, *Dzieje notariatu polskiego*, Wydawnictwo Uniwersytetu Jagiellońskiego, Kraków 2007, p. 53.

[11] Art. 191–206 of KCKP. See also: D. Wiśniewska-Jóźwiak, *Postanawiają, iż co do majątku, jaki obecnie posiadają i w przyszłości mieć mogą… Intercyzy w małżeńskim prawie majątkowym Królestwa Polskiego na przykładzie Łodzi (1841–1875)*, Wydawnictwo Uniwersytetu Łódzkiego, Łódź 2012, p. 47–76, 284.

[12] *Dyaryusz Senatu…*, *op. cit.*, p. 95; W. Dutkiewicz, *op. cit.*, p. 337; *Prawo cywilne. Stosunki majątkowe pomiędzy małżonkami, opracowane według wykładów Prof. Karola Lutostańskiego*, n.p., n.d., p. 46, 66.

property on their own. Therefore, it should be emphasized that in such a case the wife did not lose the management or use of the property constituting her property. This affected the husband's position, depriving him of some of the powers granted by the legislator under the provisions on the statutory system.[13]

Another contractual property regime indicated by the legislator was the dowry property regime. It was based on the reservation that all or part of the property that was owned by the wife and transferred to her husband was inalienable. This property was to protect the future existence of the wife and children.[14]

The wife's property was divided into two categories: non-transferable property and property not affected by such a restriction. The first of them were real estate and receivables secured by a mortgage. The composition of this property was determined by the parties, and they could include all or some real estates or receivables. These could be assets listed in the contract, as well as acquired during the marriage, in the manner specified in the prenuptial agreement.[15]

It should be emphasized that the reservation of the inalienability of the real estate meant that, in principle, they could not be sold at all, even with the husband's consent.[16] Moreover, the ban on the sale of real estate also entailed a ban on encumbrance, unless the parties to the contract agreed otherwise.[17]

The wife, however, was entitled in certain cases to derogate from the principle of non-transferability. First of all, it concerned the possibility of drawing up a will and disposing of non-transferable property therein. This was due to the assumption that the principle of non-transferability applied only to the duration of the marriage.[18] In addition, the wife could perform alienation activities on the children.

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[13] Art. 213–217 of KCKP; *Prawo cywilne* […], *opracowane według wykładów Prof. Karola Lutostańskiego*, *op. cit.*, p. 66; *Prawo cywilne obowiązujące w b. Królestwie Polskiem. Repetitorjum egzaminacyjne opracowane na podstawie wykładów uniwersyteckich Prof. K. Lutostańskiego i Prof. H. Konica. Uzupełnione i poprawione z uwzględnieniem zmian wprowadzonych do prawa cywilnego, przez ustawy i rozporządzenia oraz nowy kodeks zobowiązań. Zawiera: Rys historyczny, prawo osobowe, prawo familijne, prawo małżeńskie osobowe, stosunki majątkowe pomiędzy małżonkami, prawo rzeczowe i hipoteczne, spadki, testamenty*, Warszawa 1935, p. 73.

[14] Art. 218–225 of KCKP; A. Okolski, *Zasady prawa cywilnego obowiązującego w Królestwie Polskiem*, Warszawa 1885, p. 104; *Prawo cywilne* […], *opracowane według wykładów Prof. Karola Lutostańskiego*, *op. cit.*, p. 72.

[15] *Prawo cywilne* […], *opracowane według wykładów Prof. Karola Lutostańskiego*, *op. cit.*, p. 83.

[16] Art. 218 of KCKP.

[17] Art. 221 of KCKP.

[18] *Prawo cywilne* […], *opracowane według wykładów Prof. Karola Lutostańskiego*, *op. cit.*, p. 84; *Prawo cywilne obowiązujące w b. Królestwie Polskiem* […] *opracowane na podstawie wykładów uniwersyteckich Prof. K. Lutostańskiego i Prof. H. Konica…*, *op. cit.*, p. 76.

On the other hand, the free property included all components not covered by the reservation of non-transferable property, owned by the wife, including non-mortgage movables and capital, i.e. receivables not secured by a mortgage.[19]

The last system regulated in KCKP was joint property, having the character of a general community, that is, covering the entire property of the spouses.[20] It covered both the spouses' property at the time of their marriage and those acquired later, regardless of the method of purchase.[21] However, the spouses had a lot of freedom in defining the catalog of property components covered by the commonality. They could submit to it, for example, only the joint property or only part of the present or future property. They could also unequally define shares in joint property.[22]

This system, however, was of a specific nature, because pursuant to Art. 227 of KCKP, community existed in the event of death, unless the spouses agreed otherwise. Thus, during the spouses' lifetime, there was no factual community, but two separate estates were functioning: the property owned by the wife and the husband's property. Only with the death of one of the spouses, i.e. with the termination of the community, the property they were entitled to was merged into one, and the surviving spouse became the owner of half of the property.[23]

An exception to this rule was introduced by Art. 230 of KCKP, granting the wife a special right, that is the possibility of renouncing the community. However, she could only exercise this right after her husband's death.[24]

If the wife accepted the joint ownership, the spouses' estates were united at the time of the husband's death. Then, the property that remained after the performance of all obligations was divided into two equal parts. One half was owned by the wife, and the other half was divided among the husband's heirs.[25] If the wife renounced the joint property, the estates would not be joined and the debts of one spouse were

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[19] W. Dutkiewicz, *op. cit.*, p. 341; A. Okolski, *op. cit.*, p. 104.

[20] Art. 226–230 of KCKP.

[21] A. Okolski, *op. cit.*, p. 106; J. Lange, *O prawach kobiety jako żony i matki (według przepisów obowiązujących w Królestwie Polskim)*, M. Arct, Warszawa 1907, p. 70; *Prawo cywilne*, ed. I. Brym, Warszawa 1932, p. 27; H. Konic, *op. cit.*, p. 112; *Prawo cywilne* […], *opracowane według wykładów Prof. Karola Lutostańskiego*, *op. cit.*, p. 122–123.

[22] H. Konic, *op. cit.*, p. 140.

[23] W. Dutkiewicz, *op. cit.*, p. 347–348; A. Okolski, *op. cit.*, p. 107.

[24] Art. 230 of KCKP.

[25] W. Dutkiewicz, *op. cit.*, p. 351; J. Łada, *Wspólność majątkowa między małżonkami i ostatni wyrok senatu o niej*, "Gazeta Sądowa Warszawska" 1912, no. 50–51, p. 760, 775; J.J. Litauer, *Wspólność ogólna między małżonkami na przypadek śmierci a spadkobranie małżonka*, Warszawa 1925, p. 3.

not deducted from the property of the other. The situation then occurred as if the spouses had not established commonality at all.[26]

3

3.1. The acts drafted as part of the thirty years of activity of the first notaries in Łódź show that the contractual arrangements indicated by the legislator in the Central Committee of the Civil Code did not enjoy any particular interest. First of all, it concerned the separation of property, which was adopted only in one document. In the contract concluded on January 24 (February 5), 1872, the fiancées decided that "they will live in the division of their property and the future spouse will be strong without the husband's assistance and without his authorization, manage his property, collect interest and credit, loan to other people, without any limitation".[27] Thus, according to this clause, the future wife was entitled to the administration of the whole property. She was also entitled to perform legal actions in the scope indicated in the agreement independently. These were: collecting revenues, realizing receivables and concluding a loan agreement. On the other hand, the provisions of the code were in force in the remaining scope.[28]

Another system regulated by the KCKP, i.e. the dowry regime, was also rarely established in practice. It was adopted in only 28 contracts for 795 contracts drawn up in the years 1841–1875.[29] Usually, the adoption of this property regime was followed by introducing into the contract only a certain general clause, such as, for example: "in the future they arrange property relations under the dowry regime",[30] "decide that they want to live and will be under a dowry regime".[31]

In the event of the adoption of the dowry property regime, it was possible to stipulate in the contract the non-transferability and non-encumbrance of certain assets constituting the wife's property, i.e. real estate and receivables secured by a mortgage. However, in practice, such a clause was not included in any of the documents introducing this system. Most likely, this was due to the fact that none of the women owned the property, nor was she entitled to a claim secured

[26] *Prawo cywilne* […], *opracowane według wykładów Prof. Karola Lutostańskiego*, *op. cit.*, p. 128.

[27] Archiwum Państwowe w Łodzi [The State Archive in Łódź, hereinafter: APL], coll. *Ferdynand Szlimm*, ref. no. 20, act no. 7507/105 of January 24 (February 5), 1872, p. 2.

[28] D. Wiśniewska-Jóźwiak, *op. cit.*, p. 152.

[29] *Ibidem*, p. 159–161.

[30] I.e.: APL, coll. *Kajetan Szczawiński*, ref. no. 27, act no. 84 of February 23 (March 6), 1860, p. 1.

[31] APL, coll. *Roman Danielewicz*, ref. no. 5, act no. 1349/53 of January 8 (20), 1875 r., p. 1.

by a mortgage. Usually their property consisted of movable property and cash.[32] And in the premarital agreement written by Marcelli Jaworski, it was even clearly indicated that the fiancée "apart from clothes, underwear, bedding, women's valuables and ornaments, as well as small household belongings, had no real property or capital".[33]

Therefore, it can be concluded that, in practice, all assets owned by the wife were moveable property, and the contracts did not establish non-transferable assets.

Common property was of the greatest interest among the three contractual systems regulated in the code. It was established in 66 premarital agreements, which always explicitly stipulated that all property of the spouses, both owned and acquired during the marriage, was to be jointly owned.[34]

It was introduced, among others, by the agreement of April 3 (15), 1874, according to which the community was to include "all the property of the engaged couples they currently have and what they will acquire through inheritance or by donation, nevertheless, they will receive the output from the work of industry or fate arose […]".[35]

According to Art. 227 of KCKP, joint property only existed in the event of death, unless the spouses agreed otherwise. However, in practice, it was not usually stated directly whether it was just such a commonality, or a commonality that was to function already during the marriage. It is not deductible from the applied contractual clauses, such as, for example: "Companions intending to be married will live with each other with regard to property relations under the law of commonality".[36]

3.2. While in the light of the KN regulations it was permissible to combine various property regimes[37], the Central Committee of KCKP did not refer to this issue at all. Therefore since such a practice had existed in the earlier period, and

[32] E.g.: "§ 2. Rachela Bichner Wdowa wnosi w dom przyszłego małżonka swego Goldhelfa Eisert, tak w sprzętach, jako i gotowiźnie, prócz garderoby, bielizny i pościeli, jak sama szacuie, Summę Rubli srebrem Siedmset pięćdziesiąt /Złotych polskich pięć Tysięcy/ […]". [§ 2. The widow, Rachela Bichner, gives to the house of her future spouse, Goldhelf Eisert, as she estimates herself, a sum of seventy hundred fifty rouble /five thousand Polish zloty/ both in the equipment, as well as in cash, except for clothes, underwear and bedding…], APL, coll. *Leopold Fryderyk de Brixen*, ref. no. 2, act no. 519 of April 26 (May 8), 1843, p. 1–2.

[33] APL, coll. *Marcelli Jaworski*, ref. no. 16, act no. 490 of October 10 (22), 1867, p. 1–2.

[34] D. Wiśniewska-Jóźwiak, *op. cit.*, p. 174–175.

[35] APL, coll. *Ferdynand Szlimm*, ref. no. 35, act no. 11571/406 of April 3 (15), 1874, p. 1.

[36] APL, coll. *Leopold Fryderyk de Brixen*, ref. no. 1, act no. 16 of November 13 (25), 1841, p. 2.

[37] J.J. Delsol, *op. cit.*, p. 9.

at the same time did not contradict the new regulation, it was continued. This can also be observed in the premarital agreements written down by Łódź notaries in the years 1841–1875. The systems introduced in them were combined property exclusivity and joint property, or a dowry row and joint property. Each of them was subject to a different group of assets, and the bride and groom made various combinations in this respect.

The system of property exclusivity and commonality was most often introduced, which was adopted in as many as 361 premarital agreements, i.e. in 45.4% of all contracts.[38] This undoubtedly proves the interest in this form of regulating relations between the spouses. It was established with the use of such clauses as, for instance: "and in the future, they constitute an acquis Communautaire".[39]

Within the system of exclusive property and joint property in premarital agreements, the system of property exclusivity and joint property rights was most often adopted. The use of the concept of collective commonality could raise interpretational doubts resulting from the lack of legal regulation of such a system. The provisions of the KCKP did not regulate the rules of the *acquis communautaire* and did not use such a term, unlike the KN, which introduced it in Art. 1498–1499.[40]

On the other hand, the legal systems of other countries, which provided for the possibility of establishing marital commonality, usually subjected it to the

[38] D. Wiśniewska-Jóźwiak, *op. cit.*, p. 177; e.g. APL, coll. *Konstanty Płachecki*, ref. no. 3, act no. 714/206 of May 10 (22), 1872.

[39] APL, coll. *Ferdynand Szlimm*, ref. no. 2, act no. 467/400 of July 2 (14), 1864, p. 1.

[40] Art. 1498 of KN: „Gdy małżonkowie zastrzegają, że pomiędzy niemi istnieć będzie wspólność samego tylko dorobku, poczytuje się, iż wyłączają ze wspólności, tak długi każdego z nich obecne i przyszłe, jako też ruchomości każdego z nich teraźniejsze i przyszłe.

W tym przypadku, i po odebraniu naprzód przez każdego z małżonków swego wniosku należycie usprawiedliwionego, podział ogranicza się do dorobku, jaki małżonkom wspólnie, lub któremu z nich oddzielnie w czasie małżeństwa przybył, i jaki powstał tak z przemysłu wspólnego jako też z oszczędności na wszelkiego rodzaju dochodach z majątku obojga małżonków".

[When the spouses stipulate that there shall be a joint property of acquisitions only, they are deemed to exclude both the debts of each of them, existing at the moment of preparing the document and in the future, and their moveables present and future.

In this case, and after that each of the married persons has deducted the contributions, duly proved, the partition is limited to acquisitions made by the married persons together or separately during the marriage, and arising as well from their common industry as from the savings from diverse revenues of the property of both spouses].

Art. 1499 of KN: „Ruchomości w czasie małżeństwa istniejące, lub później przypadłe, a inwentarzem lub spisem formalnym nie wykazane, poczytują się za dorobek". [If the moveables existing at the time of the marriage, or acquired later, have not been proved by inventory or statement in correct form, they are considered to be as acquired].

income from the professional activity of both spouses and the income from property constituting separate property of each of them. Meanwhile, the spouse's separate property included movable and immovable property constituting his or her property at the time of the marriage or acquired during the marriage, both for free and as remuneration.[41]

Another matrimonial property regime introduced in premarital agreements was the regime of dowry and community of property. Future spouses established it quite often, because it can be traced in as many as 30.9% of all premarital agreements,[42] in which they also usually used the notion of joint property rights (e.g. "property relations are arranged for the future under the dowry property regime and for joint property rights"[43]).

However, the use of general wording to regulate marital property relations was an exception, as in most contracts the clients defined the composition of the property that was owned separately by each of the spouses and the joint property. For this purpose, they used the calculation of assets mainly from the point of view of the criterion of time and the method of their acquisition. An example of such a regulation is the clause used in the agreement of 1870: "each of the future spouses who, at the time of concluding this premarital agreement, may acquire it [element of property], either through fate, inheritance or donation during the marriage, will be the sole owner; and the marital property acquired through work will belong in equal parts to each of the future spouses, that is, they establish the exclusive personal property, and the joint property".[44]

Its content suggests that the properties belonging to the spouses at the time of the signing of the premarital agreement or acquired later as a result of inheritance, donation or due to random events were to be treated as exclusive personal properties. On the other hand, joint property was to include salary.

In addition to this type of regulations, in the premarital agreements written in the years 1841–1875, one can also find those in which the clients adopted property regimes of a special nature, characterized by unique solutions in the field of regulating property relations.

In several cases, contractual provisions granted extensive rights to the wife, thus shaping her financial position in a more favorable manner. In one of them, the fiancées assumed that "Marya aka Maryanna Benklewska [future wife – DW]

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41 *Prawo cywilne* […], *opracowane według wykładów Prof. Karola Lutostańskiego*, *op. cit.*, p. 112.

42 D. Wiśniewska-Jóźwiak, *op. cit.*, p. 177.

43 E.g.: APL, coll. *Kajetan Szczawiński*, ref. no. 19, act no. 1915 of March 23 (April 4), 1856, p. 1.

44 APL, coll. *Konstanty Płachecki*, ref. no. 1, act no. 100/97 of May 22 (June 3), 1870, p. 1.

will be entitled to manage her own property without the husband's assistance and personal authorization, she will be allowed to manage their income from work or other sources, and will not be liable for any debts of her future husband, Woyciech Wierzchleyski".[45]

It seems that the wife was to be entitled to the property of remuneration for work received by either spouse, savings and all income. Moreover, her property was to include assets acquired by the spouses in other ways during the marriage. The wife was also authorized to freely manage her property. This means that she did not need her husband's presence or his consent to perform legal acts. She was also released from liability for his debts.

Some premarital agreements introducing atypical property regimes limited the wife's rights, shaping the husband's position more favorably. They did so by granting the husband's ownership of the assets acquired by the spouses during the marriage. An example of such a contract is the premarital agreement written by Kajetan Szczawiński. In accordance with the will of the parties, the ownership of the entire marital property was granted to the husband, although at the same time the spouses made a reservation that they were adopting the regime of dowry ("in the future, they arrange property relations under the dowry property regime […] so all the property will belong to the husband").[46]

4

The authors of the Civil Code of the Kingdom of Poland, by granting exclusive property the status of a statutory system, made property relations of most marriages subject to this system. As part of the property exclusivity, each spouse remained the owner of their property. However, the wife was at a disadvantage for having been deprived of some of her rights, such as the use and administration of her property. These powers were conferred on the husband by the legislator. Some representatives of the doctrine of marriage law indicated that it was held to the detriment of women's property interests.

However, the spouses were not obliged to submit their property relations to the statutory regime, but could introduce a contractual regime. For this purpose, before entering into marriage, they had to draw up relations by which they could regulate their property relations quite freely. First of all, they were entitled to choose one of the three property regimes indicated in the code, i.e. property separation,

[45] APL, coll. *Kajetan Szczawiński*, ref. no. 23, act no. 71 of January 27 (February 8), 1858, p. 2.

[46] APL, coll. *Kajetan Szczawiński*, ref. no. 27, act no. 20 of January 5 (17), 1860, p. 1.

a dowry property regime or joint property regimes. They could also adopt a different system, and its rules were laid down in the contract.

The property separation regime aroused some controversy. Some representatives of the doctrine criticized it, pointing out that it was contradictory to the essence of marriage, due to the introduction of an artificial separation between spouses who were not linked by property ties, but by personal ones. Other authors saw the advantages of granting the wife some freedom to use and manage her property interests herself.[47] However, the practice of Łódź notaries shows that the separation of property did not attract much attention. It was introduced in just one contract.

The next regime – the dowry regime – was primarily aimed at protecting the property interests of the wife and children. Its essence was to limit the possibility of selling and encumbering the wife's assets. Such restrictions made capital turnover difficult, and therefore could have negative consequences for enterprising spouses wishing to increase their family's wealth.[48] The dowry regime was also not very popular among the clients of Łódź notaries.

The last of the regimes regulated by the KCKP, i.e. joint property, had a specific character as it existed in the event of the death of one of the spouses. This concept was difficult to understand, which was noticed by the doctrine when postulating an amendment to the provisions of the code in this respect.[49]

In practice, joint property was not that popular either. When drafting contracts, the focus was primarily on emphasizing the fact that all property owned by the spouses at the time of marriage and acquired during the marriage was subjected to this system. Doubts are raised by the problem of the existence of commonality during the life of the spouses or only in the event of death, which appears in the majority of cases. It is difficult, however, to settle this issue unequivocally. Due to the lack of clauses extending the joint existence for the duration of the marriage, it should be assumed that it was established in the event of the death of one of the spouses. However, the question arises whether the contractors were aware of this.

In practice, the most commonly adopted property regimes were those that combined the features of two regimes, i.e. property exclusivity and joint property, or a dowry regime and joint property. Such a tendency can be traced in the files prepared by Łódź notaries in the years 1841–1875. This proves that the above

[47] *Prawo cywilne* […], *opracowane według wykładów Prof. Karola Lutostańskiego*, *op. cit.*, p. 67; *Prawo cywilne obowiązujące w b. Królestwie Polskiem* […] *opracowane na podstawie wykładów uniwersyteckich Prof. K. Lutostańskiego i Prof. H. Konica…*, *op. cit.*, p. 73.

[48] *Dyaryusz Senatu…*, *op. cit.*, p. 86–87.

[49] W. Dutkiewicz, *op. cit.*, p. 349; C. Zaborowski, *O stosunkach majątkowych między małżonkami*, "Biblioteka Warszawska. Pismo poświęcone naukom, sztukom i przemysłowi" 1862, vol. III, p. 312.

systems largely corresponded to the social conditions and property interests of the spouses.

However, the principles of the functioning of these systems adopted in premarital agreements were not uniform. The bride and groom decided on various combinations in terms of subjecting individual property components to property exclusivity, possibly to a dowry property regime, or joint ownership.

The regimes of exclusive property and joint property as well as the dowry regime and joint property regimes were appealing to the spouses due to their flexibility and the possibility of adjusting the arrangements to the financial situation of future spouses.

Occasionally, in premarital agreements, unusual solutions were adopted, resulting in granting one of the spouses a special financial position. They usually consisted of granting to one of the spouses ownership of property acquired by the spouses during their marriage. Such more favorable shaping of the rights of one spouse at the expense of the other could apply to both the position of the wife and the husband. However, in the case of the husband, it was justified by the necessity to bear the costs of maintaining the family.

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Matrimonial property regimes in the Congress Kingdom of Poland on the basis of premarital contracts drawn up by the first notaries in Łódź

The Civil Code of the Kingdom of Poland (KCKP), enacted on June 1, 1825, stated that property relations in marriage could develop within the statutory property regime, which was the exclusive property regime or the contractual regime adopted by the spouses. KCKP regulated the principles of operation of the three main property regimes that could be introduced by agreement. The future spouses could simply bind their property relations to one of these regimes, or make any modifications to them. In addition, they were allowed to adopt a completely different, arbitrary system, as long as the rules of its functioning did not violate the law or good morals, and were specified in detail in the contract.

The contractual systems regulated in the code were: property separation, dowry property regime and joint property. In practice of first notaries in the years 1841–1875 in Łódź, most commonly adopted property regimes were those that combined the features of two regimes, i.e. property exclusivity and joint property, or a dowry regime and joint property.

However, the principles of the functioning of these systems adopted in premarital agreements were not uniform. The bride and groom decided on various combinations in terms of subjecting individual property components to property exclusivity, possibly to a dowry government, or joint ownership. The regimes of exclusive property and joint property as well as the dowry regime and joint property regimes were attractive for spouses, due to their flexibility, the possibility of adjusting the arrangements to the financial situation of future spouses.

Key words: The Kingdom of Poland, notary, Łodź (Lodz), marriage, matrimonial property law, joint property, property separation

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Małżeńskie ustroje majątkowe w Królestwie Kongresowym – na podstawie intercyz sporządzanych przez pierwszych łódzkich notariuszy

Uchwalony 1 (13) czerwca 1825 r. Kodeks Cywilny Królestwa Polskiego stanowił, że stosunki majątkowe między małżonkami mogły kształtować się w ramach ustawowego ustroju majątkowego, jaki stanowiła wyłączność majątkowa, lub ustroju umownego przyjętego przez małżonków w intercyzie. Kodeks regulował zasady funkcjonowania trzech głównych ustrojów majątkowych, które mogły zostać wprowadzone w drodze umowy.

Jednocześnie przyznawał przyszłym małżonkom dużą swobodę w kwestii urządzania stosunków majątkowych: mogli wprost poddać swoje stosunki majątkowe któremuś z tych ustrojów, albo dokonywać ich dowolnej modyfikacji. Poza tym wolno im było przyjąć inny, zupełnie dowolny ustrój – byle zasady jego funkcjonowania zostały szczegółowo określone w umowie, nie naruszały prawa i nie były sprzeczne z dobrymi obyczajami.

Uregulowanymi w kodeksie układami umownymi były: rozdzielność majątkowa, rząd posagowy oraz wspólność majątkowa. W praktyce działalności pierwszych łódzkich notariuszy, czyli w latach 1841–1875, najczęściej przyjmowanymi ustrojami majątkowymi były te, które łączyły w sobie cechy dwóch ustrojów, czyli wyłączności majątkowej i wspólności majątkowej albo rządu posagowego i wspólności majątkowej.

Przyjmowane w intercyzach zasady funkcjonowania tych ustrojów nie były jednak jednolite. Narzeczeni decydowali się na rozmaite kombinacje w zakresie poddawania poszczególnych składników majątkowych wyłączności majątkowej, ewentualnie rządowi posagowemu albo wspólności.

Słowa kluczowe: Królestwo Polskie, notariat, Łódź, małżeństwo, prawo małżeńskie majątkowe, wspólność majątkowa, rozdzielność majątkowa