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Religion in the Legal System of the Kingdom of Poland (1815-1830)

During centuries a relationship between a State and Churches was an object of special interest by state authority. This relation was one of the main factor that stabilizing a social situation. It was not the one reason that religion was regulated by law. A special situation in Poland was pertained to the Catholic Church which had a strong position in society. For this reason the government wanted to control religion in order to achieve stronger influent on citizens at the beginning of 19th century. The purpose of this article is a presentation of situation of religions that was created by the legal system during 1815-1830 in the Kingdom of Poland.

Key words: *The Kingdom of Poland, religion, history of law, Christianity.*

1. Introduction

The fall of *Napoleon* made European rulers embark on talks aiming at the establishment of new order in Europe. The changes caused by the French revolution and the period of *Napoleonic* wars had gone too far to restore the status quo from before those events. With a view to reaching the acceptable compromise there were diplomatic activities begun in which the main players were: Russia, Great Britain, Austria and Prussia. With time the group was also joined by France which declared to be willing to return to the situation from the period of Ancient regime. Besides the superpowers the attempts to gain profits from the new geopolitical situation were made by a serious of minor political players. The culminations of talks to place during the Congress of Vienna of 1814-1815.

One of the key issues which influenced the system of forces in Europe were the fates of the Polish Republic, the one-time superpower which in 1795 stopped existing as a result of the partitions executed by her neighbours: Russia, Prussia and Austria. The Poles, however, did not quit dreaming of independence. In the early 19th century it was Napoleon who raised the hopes by establishing in 1807 the Warsaw Duchy dependent on France. The emperor's plan to conquer Europe included the creation of new dependent state organisms. The solution, however, did not meet the Polish aspirations whose objective was to regain sovereignty. So "the Polish case", vital to the system of forces in Europe had to return following *Napoleon's* fall as on the main subjects of diplomatic talks during the Congress of Vienna¹.

On the strength of the treaties signed in Vienna in 1815 the majority of lands of the Polish Republic still remained within the borders of Russia, Prussia and Austria². At the same time the territory of the Duchy of Warsaw gave rise to the Kingdom of Poland, with the Great Duchy of Posen incorporated into Prussia. The latter was insignificant state numbering 128500 (square kilometres) km² and

* Doctor of Law, Paweł Włodkowic University College, Administrative Faculty, Płock, Poland.

¹ *Shilder N. K.*, Imperator Alexander I. His Life and Reign, S. Petersburg, Vol. 1, 1897, 271 (in Russian).

² *Zamoyski A.*, 1815, upadek Napoleona i kongres wiedeński (Rites od Peace. The Fall of Napoleon and the Congress of Vienna), Kraków, 2010, 304-313, 352-353.

inhabited by 3.2 million of people. It was a constitutional monarchy bound by personal union with Russia. Despite the nominal separateness, the Kingdom of Poland it was closely politically, militarily and economically linked with the Russian Empire. Those situations generated a serious of practical difficulties, taking into account their separate political system and the tradition of the execution of political power³. One of key problem was regulating the question of religious cult. It should be remembered that the impact of the Catholic Church suffered during the antireligious crusade of *Napoleon*, aimed in consequence to rebuilt its position. In Russia the prevailed religion was the Orthodox Church while in the Kingdom of Poland the dominating faith was the Roman-Catholicism. Considering a powerful influence of that faith on social life, a serious of issues needed the legal regulation in the new political situation.

2. The Position of Religion at the Moment of Establishing the Kingdom of Poland

At the moment of establishing the Kingdom of Poland the situation of religious faiths and the attitude of the State was complicated and unclear. It was caused by a number of factors. In the past the Polish Republic had been the multi-religious country with a far-reaching religious tolerance. It had been the result of the Polish territory being inhabited by plenty of different nationalities with a variety of cultures. Beside the Catholic of the Roman order, the Polish Republic was densely populated by the believers of Greco-Catholic, Orthodox, Protestant (Lutherans and Calvinists), Jews as well as Muslims. The religious mosaic was completed by the representatives of minor religious communities. Irrespective of the tolerance mentioned before, the dominating position was occupied by Roman Catholicism.

The outstanding position of the Catholic Church in the Polish Republic was confirmed by the content of the government Act of the 3rd May 1791, the first European constitution and the second in the world after that of the United States of America (1787). In accordance with art. I the Roman Catholic religion had the status of the state one. Then change of Catholic faith into another was considered to be the crime of apostasy. Simultaneously, referring to the Christian love of other people and the tolerance, it stipulated the freedom of other cults, being protected by the State⁴. In practise the legal solutions accepted were not realised since in 1795 the Polish Republic disappeared of map of Europe following the partitions executed by the neighbouring superpowers.

Establishing the Warsaw Duchy, *Napoleon* adjusted its social-political system to his vision of the modern state. To a marginal degree he accounted for the needs, aspirations and the traditions of the Polish people. In consequence there were a serious of solutions introduced being in evident contradiction with the Polish culture. One of those was the attempt to subordinate the religion to the state. Such solutions had to meet with the opposition of the Poles attached to tradition, particularly the Catholic Church

³ *Phalkovich S. M.* (ed.), *Poland and Russia in the First Third of XIX Century. From the History of the Autonomous Kingdom of Poland 1815-1830*, Mosow, 2010, 11, 109 (in Russian).

⁴ Art. I ustawy rządowej z dnia 3 maja 1791 r., in: *Konstytucje polskie 1791-1921*, *Handelsman M.* (ed.), Warszawa, 1926, 38.

losing its impact. While, according to *Napoleon's* Constitutional Act of the Warsaw Duchy⁵ passed on the 22nd July 1807 the status of the Catholic religion as the state one was formally maintained and the freedom of other cults was guaranteed, the conception of the relationship between the Church and the State stemming from *Napoleon's* politics and the legal acts of lower degree caused the practice in the field to be complicated. Much controversy was raised by the introduction of French Code Civil⁶ (*Kodex Napoleona*) in 1808, the modern codification inconsistent with the level of Polish legal culture. On its basis a series of issues reserved to the Catholic Church became secular. The highest opposition was aroused by extracting the matrimonial issues out of religious jurisdiction and introducing secular divorces, as well as imposing on priest the duty to do administrative proceedings connected with the civil state⁷. There appeared the problem of accommodating the widely acceptable religious dogmas with the new secular legislation. The most difficult situations concerned the Catholic clergymen employed in the administration of the Warsaw Duchy⁸. It should be added that those especially discriminated against were the believers of Judaism, who were deprived of full civil rights and became marginalised in the social life⁹.

The circumstances indicated influenced the shape of the public debate devoted to the position of particular religions in the Kingdom of Poland. There appeared the circumstances enabling the introduction of changes to the legal system in the Kingdom of Poland. During the Congress of Vienna, the Polish aristocrat and a close collaborator of tsar *Alexander I*, prince *Adam J. Czartoryski* prepared at the tsar's request "The Constitutional Principles of the Kingdom of Poland" on the 25th May 1815. The author of the project referred the home tradition and suggested to the tsar including a note on religion of the text similar to regulations in The Constitution of the 3rd May 1791. The difference consisted in making the believers of all Christian faiths equal in public life (art. 2). It was understandable considering the Orthodox Church as the state religion in the Russian Empire. It also specified the rules remunerating the Roman Catholic and Greco-Unitarian clergy (art. 31) as well as declared assigning by the State some financial resources to the clergy of the Reformed and Augsburg Churches (art. 32)¹⁰. "The Constitutionals Principles" referring to the Polish traditions were not however introduced in the shape suggested by prince *Czartoryski*.

3. Religion in the Light of the Constitution of 1815

⁵ Ustawa konstytucyjna Księstwa Warszawskiego z 22 lipca 1807 r., *Dziennik Praw Księstwa Warszawskiego*, Vol. I., I-XLVII.

⁶ Code civil des Français, 21/03/1804.

⁷ Sześćioletnia korespondencyja władz duchownych z rządem świeckim Xięstwa Warszawskiego. Służąca do Historii Kościoła Polskiego, Poznań, 1816, 7,79, 239, 241, 285, 467, 472.

⁸ *Szaniawski F. K.*, Jak przepisy Kodexu Napoleona o rozwodach roumianemi być mają, Warszawa, 1811.

⁹ *Bardach J., Senkowska-Gluck M.* (ed.), *Historia państwa i prawa Polski*, Tom III, od rozbiorów do uwłaszczenia, Warszawa, 1981, 279-287.

¹⁰ *Zasady konstytucyjne Królestwa Polskiego z dn. 25 maja 1815 r.*, in: *Konstytucje polskie 1791-1921*, *Handelsman M.* (ed.), Warszawa, 1926, 76, 80-81.

Tsar *Alexander I*, being also the king of Poland, while establishing a new state organism had primarily in mind the interest of the Russian Empire and the ruling family. On the 27th November 1815 he issued “The Constitutional Act of the Kingdom of Poland”¹¹. The Constitution contained a series of modern solutions which made it one of the most liberal constitutions in Europe. As it turned out it was too modern for the absolute monarch. In consequence, the following years saw its infringement and the gradual limitation of its freedoms. From the point of view of factual considerations, the most interesting was the issue of the constitutional regulation of status of religion vs. Churches.

In accordance with the constitution the Roman Catholic religion, in view of its highest number of believers, found itself under especial protection of the State. The privileged legal position of the Catholics did not mean limiting the freedom of other religious cults. *Alexander I* ensured the liberty of public celebration of all faiths. Moreover, he equalled the rights of all Christian faiths (art. 11). It meant that other religions for example Judaism and Islam were in this respect impaired.

The clergy of all faiths found themselves under the care of the State and within the law valid in the Kingdom of Poland (art. 12). The privileged position of some religious denominations was connected with their representatives becoming members of the Senate which was to be seated by a number of Roman Catholic bishops corresponding to the number of voivodships. That provided the clergy with eight senatorial seats. Accordingly, the Catholic church was able to influence the compatibility of legal acts with religious dogmas. The Senate also made place for one bishop of Greco-Uniate Church (art. 14).

The Constitution confirmed the hitherto wealth of the Roman Catholic and the Greco-Uniate Churches. It also declared successive bestowals increasing their financial remunerations. It yet stipulated that the extra financial ingredients were to constitute the possession of the whole Church, not that of particular parishes or clergymen (art. 13). The issues of the financial support of the Evangelic-Reformed and Evangelic-Augsburg Churches were treated differently. They were to utilize the yearly provision made and paid by the State out of public means.

4. The Criminal Law Protection of Religion in the Kingdom of Poland

One of the key issues requiring immediate organisation after the establishment of the Kingdom of Poland was the legal system. From the point of view of security and internal order it was the criminal regulations which gained importance. Therefore, during the first Parliament summoned by *Alexander I* in 1818, the State Council, fulfilling the role of the Government, came up with the project of the Criminal Code to be discussed during the Parliamentary sessions. Following a heated discussion, the Parliament lower chamber and then the Senate both approved of the codification which later gained the royal sanction. The regulation entitled “The Law of the Criminal Code for the Kingdom of Poland” came into being after its publication in the Legal Journal of the Kingdom of Poland dated 20th July 1818¹².

¹¹ Ustawa konstytucyjna Królestwa Polskiego z dn. 27 listopada 1815 r., Dziennik Praw Królestwa Polskiego, Vol. I., 1.

¹² Dziennik Praw Królestwa Polskiego, Vol. V, 1818, 1 (hereafter, K.k.K.P.).

In the criminal codification there was a series of regulations concerning the protection of religion. Misconduct against religion were divided into two groups: crimes and offenses. Chapter VIII of the Code included felonies against religion. A misconduct was termed the felony against religion if it caused common scandal or serious dangers (art. 77, KkKP). The legislator acknowledged two cases where such a situation took place. The former referred to public blasphemy against God. The latter was initiating intensive actions aiming at preventing or hindering the ceremonies of religious cults as well as profaning sacred artefacts and places connected with religious cult. The activity of the perpetrator could have been conducted in verbal, oral, written or active forms. The legislator extended the analogical legal protection from crimes of religious offences to all faiths. (art. 78, KkKP). The basic sanction assumed by the Code was the punishment of heavy jail sentence from 3 to 6 years. In case of an action regarded as particularly malicious or causing significant danger, the punishment could have been increased to 10 years (art. 79, KkKP).

Crimes against religion of lighter weight found themselves in Book II “On vices”. The first vice was leading a Christian to changing their faith. It is worth emphasizing that the cases penalized were only those connected with conversions to other beliefs, while conversions to Catholicism were approved of by the legislator. Another kind of vices was the establishment of new religious sects. What was penalized was not only their effective organisation but also attempts at their establishment. (art. 257, KkKP). For those vices the legislator foresaw the punishment of public custody from 1 year to 3 years. A gentler sanction was predicted for trying to establish a sect, as the punishment here ranged from 3 months to 1 year of detainment (art. 258, KkKP).

5. The Influence of Religion on the Civil Law of the Kingdom of Poland

As has already been signalled, the establishment of the Kingdom of Poland was followed by circumstances favourable to changing the “French Code Civil”, raising huge controversies on account of contradictions of its stipulations with the dogmas of Catholicism. The particularly opposed institutions were the regulations of Book I, Title V “On Marriage” (art. 144-228) and Title VI “On Divorce” (art. 229-311)¹³. The regulations permitted secular weddings and divorces. The laity of the institutions of family law crucial to the social order, so far reserved to religious jurisdiction instigated a violent opposition of the Catholic Church as well as the reactionary and conservative communities. The opponents demonstrated a far-reaching determination to change the legal regulation valid from the 1st May 1808. First occasion came during the Sejm (Polish Parliament) in 1818.

The Constitution of the Kingdom of Poland gave the monarch liberty as to the decision which Chamber should first be presented with the project of the legal act (art. 97). *Alexander I* decided to present it to the Senate, the plausible reason of which may have been the moods of the parliamentarians. The Senate as the upper chamber consisted mainly of conservative – aristocratic social elites of the Kingdom nominated by the tsar. Furthermore, its significant home tradition and social order dem-

¹³ Kodex Napoleona, *Szaniawski F. K.* (trans.), Warszawa, 1808.

onstrated essential disparities in the assessment of the project. There was then a danger of the project being rejected while still proceeded in the first chamber. The changes suggested may have transformed its original text. Presenting the project to the Senate first entailed the benefit of the fact that according to the Constitution (art. 103) the project accepted by the 1st Chamber could not be changed by the 2nd one, but rather wholly accepted or rejected. The solution increased then the chance to effectively pass the legal act on the controversial issue without concessions and the necessity to introduce important modifications.

The discussion on the amendment of the Code of *Napoleon* commenced on the 2nd April 1818. The axis of the Senate discussion centred around the assessment of the compatibility of the project and the dogmas of Roman Catholicism as well as the contradictions encountered between the Code of *Napoleon*, local traditions and social order. What was exposed the collision between the secular and canonical law with respect to matrimonial relationships. Judging the valid legal institutions from the perspective of the Church hierarches, the representatives of the government indicated the negative influence of *Code civile* on the customs in the country and loosening family ties. The authors hence stressed that there was a necessity to introduce the legal regulation compatible with Polish mentality, their customs and traditions. The changes would have allowed the compromise between the content of the secular and canonical law. In the end, the project was passed. Out of 33 senators, 24 voted for while 9 against it¹⁴. The project was then moved on to the lower Chamber.

The proceedings in the lower chamber began on the 6th April 1818. During debates there were three main viewpoints and argumentations distinguished. On one hand there were loyalists supporting the project, on the other, there were its opponents focusing around two opposite stands. The former, traditionally-reactionary focused on the Catholic interpretation of the marital institution and divorce, the latter, liberally-progressive, accentuated the restrictiveness of the project and called for the necessity to maintain the regulations of the French *Code civile* resulting in the marriage being encompassed by the secular law. Paradoxically, the representatives of the two extremely contradictory attitudes, criticising the moderate project from different perspectives became *ad hoc* supporters together opposing the governmental project.

The completion of the discussion was followed by voting. Only 36 voted for the project, 82 Parliamentarians and deputies were against it¹⁵. In that way, combining the votes of the representatives of two extremely opposite visions of social order, clerically-radical on one hand and liberally-progressive on the other, led to the rejection of the moderate governmental project. In consequence, the regulations contradictory to the Catholic religion and concerning marital relationships were still in force for another 7 years.

In the end the Parliament nullified the regulations on secular marriages and divorces following the introduction of “Civil Code of the Kingdom of Poland”¹⁶ in 1825. That was according to the orders

¹⁴ *Gluecksberg N.* (ed.), *Diariusz Sejmu Królestwa Polskiego 1818*, Warszawa, Vol. I., 108.

¹⁵ *Ibid.*, 156.

¹⁶ *Kodex cywilny Królestwa Polskiego, Dziennik Praw Królestwa Polskiego*, Vol. X, 1-290 (hereafter: KcKP).

of *Alexander I* issued in 1818 specifying that marital law should not contain regulations infringing on the dogmas of Roman Catholicism. As a result of the changes made, the religious character of matrimony was highlighted. It was to be conducted in accordance with the ritual of the newlyweds' faiths (art. 143, 164-165 KcKP). Despite the pressure of the Catholic Church aiming at transferring the matrimonial cases to religious courts the secular jurisdiction was kept. Still, the cases of marriage annulment, separation and divorce were considered according to the religious law of the couple. It was obligatory for the clergyman to appear in matrimonial cases as *defensor matrimonii* (art. 249 KcKP). There was introduced, analogically to the norms of canonical law, a ban on marriages between Christians and non-Christians (art. 163 KcKP).

6. Religion in the Light of Legal-Administrative Regulations

A significant part of cases regarding the church organisations functioning in the Kingdom of Poland was regulated on the grounds of administrative law. There were questions solved in the field connected with the material substance of the churches, in particular the places of worship and financial means. In the course, the students of religious seminars were exempted from military duty. In the issues resolved on the grounds of administrative law it was the interest of the Catholic Church that was taken care of. Other faiths were largely disregarded.

There was also a gradual progress of the Catholic Church domination in the activity of administration apparatus. The transformation of *Alexander I*'s world view causing his abandoning the principles of liberalism towards mysticism, as well as clearly articulated conservatives outlooks of his successor *Nikolas I*¹⁷, gave rise to conditions convenient for the reconstruction of the meaning of Catholic clergy in the life of the Kingdom of Poland. The Catholic Church controlled the Commission of Religions and Public Enlightenment, and through it influenced education and upbringing connected with Warsaw University. It also decided about the range of censorship conducted in the interest of the tsardom and its own. Thus, the clergy determined the content of the public debate and the way of thinking of the society majority. Limiting access to information constituted an effective toll of exerting pressure on those presenting views divergent from Catholic ones and fixed the privileged position facilitating the realisations of one's own interests.

7. Conclusion

Considerations regarding the legal position of religion in the Kingdom of Poland in the years 1815-1830 constitute just an outline of very complex subject matter. On the basis of the facts quoted a few conclusions can be drawn. They allow reconstructing the position of religion in the social life. Above all, despite declared freedom of worship, the distinctly dominating position of Roman Catholic religion becomes more evident. It referred to both material law and that of political system. In the

¹⁷ *Askenazy Sz.*, *Rosya-Polska 1815-1830*, Lwów, 1907, 90, 107.

former case it is worth indicating the criminal law protection of religion and the influence of Catholic dogmas on the content of civil law regulations. In the latter it is enough to point the number of bishops in the Senate. One should add numerous material privileges and financial benefits made by the State for the Catholic Church. What is also worth mentioning is the fact that practice went farther in realising the interest of Catholic clergy than it would from the legislation in force.

Other Christian denominations found themselves in less favourable situation. Non-Roman Catholic Christian beliefs were tolerated, while a much worse position was experienced by the congregations of Non-Christians. The believers of Judaism were those most discriminated against. Besides plentiful limitations sanctioning their legal handicap, they were the object of a lot of intolerant behaviours. In sum, it should be stated that the Catholic Church, thanks to collaboration with the tsar, managed to, not only reconstruct, but also strengthened its own position in the period of the Kingdom of Poland.

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