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The Constitution of the Duchy of Warsaw 1807. Some remarks on occasion of 200 years' anniversary of its adoption

The great political vivacity accompaning the Four Years Seym (1788–1792), The Kościuszko's Insurrection (1794) as well as the shock experienced by the nation with the loss of their statehood (1795) doubtless laid foundations for the moral rebirth of the Poles. In their consciousness there grew a belief in their inalienable right to have their own independent state. This feeling was deepened by the Partitioners', and particularly Prussia's, policy. In view of the fact that, following the partitions, the population of Poles living in the Prussian state was but slightly smaller than the population of Germans, the Prussian government took the decision on the liquidation of the Polish separatedness in legal and national sense. As a result, Polish law was replaced by Landrecht of 1794. The language of local people was ignored, German being introduced in its place in civil service, judiciary and schools. The new administrative system struck a blow at the traditional forms of nobiliary self-government. In addition, the rigid fiscal policy of the Prussian government, while pursued with a disregard for Polish element, generated among the Poles unfriendly attitudes toward what was alien. Polish society, to a large extent permeated with a nobiliary ethos, understood that the restoring of their own statehood was necessary not only in order to maintain their cultural and linguistic identity, but also to guarantee their status of citizens having a share in the government of the country. Such beliefs of the Poles accounted for their universal approval of political and parliamentary forms as introduced by the Constitution of the Duchy of Warsaw. The approval was nation-wide despite the fact that the Constitution was imposed by the foreign power and that the legal system that it implemented was alien to the Polish tradition. Also despite their disappointments with the Napoleonic policy toward Poland, the Poles tried to participate in the representative institutions of the Duchy even though the scope of these institutions was considerably limited. The participation provided them with the feeling of the Polish statehood being revived[1].

[1] B. Grochulska, *Małe państwo wielkich nadziei* (The tiny state of great expectations) [in:] *Dzieje narodu i państwa polskiego*, vol. III–43, KAW, Warszawa 1987.

The origins of the Duchy of Warsow

Only such changes in the system of European potences that could undermine the balance of power as arrived at – at the cost of Poland – between Russia, Prussia and Austria, might lead to the revival of Poland's independence. The only state that was capable of disturbing the European stability was the revolutionary and, subsequently, Napoleonic France. No wonder, therefore, that it was in France that the strong centres of post-partition Polish emigration came to being. Their objective was the creation of the Polish troops that might support the French army in its Italian campaign against Austria and Russia. The emigrants were successful in reaching this goal. In 1797 Polish Legions under the command of general J.H. Dąbrowski came to being. They were expected to fight alongside the French army of Napoleon Bonaparte. To honour the forming of the Legions, their initiator, J. Wybicki, composed the song: „Poland has not perished so long as we live" which is the present day national Polish anthem. At that time however Polish hopes, supported by their military effort, did not come true. In 1801 France concluded a peace treaty with Austria. The Legions ceased to be a trump card against the latter and were *de facto* dissolved. Napoleon was found to have treated Poland's cause instrumentally which gave rise to the Polish distrust of him. Also Kościuszko shared this distrust when, following 1806, upon Prussia's defeat at Jena and Auerstädt, he refused to support the Napoleon's scheme to restore Polish statehood.

With his vague promises made to the Poles, Napoleon was however determined to win their support. He understood that such support could force King of Prussia who still counted on the assistance of Russia, to final capitulation. Having such ends within his range of vision, Napoleon called upon both Dąbrowski and Wybicki, to issue an appeal to the Poles. And indeed, the appeal was issued on 3 September 1806 in Berlin. The Poles were called upon to rise against the Prussians and organize their army which, while fighting alongside the French army, might prove that the „Poles are worthy of being a nation". Following the appeal, the Poles energetically took to the removal of the Prussian officers and creation of their own national administrative agencies. On the turn of 1807 the organisation of the Polish provisional administrative, judicial, and military authorities was almost completed[2].

However, as the war dragged on, Russia intervened in favour of Prussia. At that moment the process of organizing the Polish territories began to be of both military and political significance. The attitude of the Poles forced Napoleon to keep the promises he made to them without further delay. On the 14th of January 1807 he decreed on the appointment of the so-called Ruling Commission, composed of 7 persons, and acting in the capacity of the provisional government of „Poland that was revived as a result of the victory over the King of Prussia". The Commission was supplied with a wide range of legislative, administrative and governmental competence. What authorized its activities were the general powers conferred on it by Napoleon. The Directors appointed by the Commission were the Heads of the Departments: of Justice, of Inte-

[2] M. Kallas, *Ustawa Konstytucyjna Księstwa Warszawskiego z 1807* (The Constitutional Act of the Duchy of Warsaw of 1807) [in:] *Konstytucje Polski. Studia monograficzne z dziejów polskiego konstytucjonalizmu*, vol. I, Warszawa 1990, p. 107.

rior, of Treasury, of War, and of Police. The fully Polish composition of the Commission, as presided by S. Małachowski (Speaker of the Four Years Seym), as well as its collegial nature, were expected to symbolize the continuity of national tradition. In fact the Commission made up a nucleus of Polish state apparatus.

At the same time however the centralized and unified administrative system served also the French purposes. It facilitated the recruitment to the Polish troops and secured the munition. The submissiveness of the Commission *vis-à-vis* the French authorities was particularly perceptible in its decision relating to the introduction of censorship of public print. In most of other cases, however, the Commission seemed to be guided by pragmatism and tried to reconcile its concern with national interests with the limitations arising from the *de facto* Napoleonic occupation of that part of the Polish land.

Further ups and downs of this territory depended on the course of war. The French victory over Russia at Friedland led to the treaty of Tilsit of July 1807 which, with regard to the Polish area, ended with the Russian-French compromise. Tsar of Russia, Alexander I, approved of the idea of forming a tiny state encompassing the area of the first and second Prussian partitions. The area was given the name: Duchy of Warsaw. King of Saxony, Frederick-August was assigned the Duchy's hereditary Crown. The Duchy was dependent on France in both political and economic sense. Its sovereignty was therefore limited. Its Duke (King of Saxony) pursued foreign policy that combined jointly the interests of the Duchy and Saxony, the policy being *de facto* controlled by Napoleon. In the title of the state the adjective „Polish" was deliberately omitted in order to prevent any reminiscence of the old-time Commonwealth and possible suggestions that the latter should be revived. Duchy of Warsaw was an artificial landlocked organism with inconvenient boundries squeezed between the three partitioning powers and, one might say, of temporary nature only[3].

The provisions of the Tilsit treaty of 1807 disappointed the Poles. Yet, in the course of time, it was Hugo Kołłątaj, one of the founders of the Constitution of May 3, 1791, who contributed to the consolidation of an idea that Duchy of Warsaw is only a stage on the path leading to the restoring of the Kingdom of Poland within its pre-partition boundries. This idea seemed to be confirmed by the fact that, following the Napoleonic victory over Austria at Wagram, the treaty of Schönbrunn enlarged the Duchy of Warsaw by the zone in which Polish army successfully advanced: West Galicia. Thanks to this, the Duchy arrived at its more ample shape. It amounted to 155 430 square kilometers and was divided into 6 (later 10) Departments: of Warsaw, of Cracow, of Poznań, of Kalisz, of Radom, of Bydgoszcz, of Lublin, of Płock, of Łomża, and of Siedlce.

It was commonly believed that the full restoration of the Polish Kingdom could follow the total defeat of Russia by France. But Polish dreams of independence did not come true because the so-called „second Polish War", begun in 1812, ended with Napoleon's catastrophy.

For the Poles, the only positive aspect of the Tilsit treaty was the promise contained therein that the newly-formed state would be provided with the constitutional form of government. In the middle of July 1807 the Ruling Commission repaired therefore for

[3] W. Sobociński, *Historia ustroju i prawa Księstwa Warszawskiego* (A constitutional and legal history of the Duchy of Warsaw), PWN, Łódź 1964, p. 18.

Dresden where Napoleon submitted to it the outline of the Constitution. Polish historians assume that the major points of the Constitution were dictated by Napoleon and subsequently further elaborated in the Chancery of the French secretary of State: H.B. Maret, the Poles having some share in the formulation of the final draft[4]. Napoleon signed the Constitution on 22 July 1807.

The constitutional system of the Duchy of Warsaw

The Constitution of the Duchy of Warsaw which was officially called the Constitutional Act and was in fact imposed by Napoleon on the Poles did not provide for any legal possibility of it being changed. The Constitutional Act's silence on this point only confirmed the factual protectorate of Napoleon over the Duchy. Without his will and knowledge, the Poles were not allowed to amplify the constitutional institutions according to their needs and tradition, Polish sovereignty being thus subject to a considerable limitation. It was only the Article 86 of the Constitution that allowed for it being „completed" (*sera complété*) by means of the „ŕeglements" that the King could issue following the debates conducted on them in the Council of State. The „ŕeglements" were expected to function as the acts of executive nature *vis-à-vis* the constitutional clauses. In fact in this way also the most fundamental constitutional changes could be smuggled. However if such changes were at stake the consent of Napoleon himself was required[5]. Timid attempts of the Council of State to depart from the spirit and the strict letter of the Constitution were defeated by King of Saxony who tried to be fully loyal to Napoleon. Also Napoleon's Resident additionally constrained the activities of the Council[6].

In many of its points, the discussed Constitution resembled the constitutional norms binding in France or in the France-dependent states of the time. This provided for the idea that the Constitution of the Duchy of Warsaw might be treated as the component of the French constitutional law. Hence, the latter was pointed to as the possible source to which one might resort in questions that were left unsettled in the Constitution of the Duchy[7]. Also, while issuing the norms that were of executive function *vis-à-vis* the Constitution, the experience of the French law was fully exploited, the tendency to entirely comply with Napoleon as the legislator being thus visible. This tendency referred particularly to the organization of administrative and judicial authorities.

As regards the law applied in the courts the tendency to fully incorporate the French system was observable. Pursuant to Art. 69 of the Constitution, the Napoleonic Code civil was made applicable in the civil law of the Duchy. Also the Commercial Code and the civil procedure were taken over.

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[4] M. Kallas, *Ustawa...*, p. 111.

[5] W. Sobociński, *Historia...*, p. 30.

[6] M. Handelsman, *Rezydenci napoleońscy w Warszawie 1807–1813* (The Napoleonic Residents in Warsaw 1807–1813), Kraków 1915, p. 21.

[7] W. Sobociński, *Historia...*, p. 38.

I. The systematics and the general assumptions of the Constitution

The Constitution of the Duchy of Warsaw fully fitted the Napoleonic constitutional concept and made only slight concessions to the old Commonwealth's tradition. Therefore, no reference to the Constitution of May 3, 1791 could be found in it. Its only link with the past seemed to be the maintenance of the old system of decorations and honours applied in Poland (Art. 85). However at the personal niveau, the link between the Constitution of the Duchy and that of May 3, 1791 was detectable: while controlling the Polish territories, Napoleon relied on the cooperation with the Four Years Seym activists. And although some of them remained unengaged like Hugo Kołłątaj, the strategy of Napoleon was of significant psychological nature: it legimitized the Napoleon-imposed legal and constitutional solutions. While relying on the Polish aristocrats and landowners, Napoleon had to, at least partly, come up to their constitutional expectations. This was reflected in the Napoleon's determination to continue such institutions of Polish parliamentarism like the Seym, traditionally composed of the House of Deputies and the Senate, as well as the Seymiks. Napoleon's concession consisted also in his departure from the French constitutional model in his preserving in the Duchy the representative system as based on the direct election of the deputies to the lower House (the French Consular Constitution of 1799 applied a different solution). Another concession to the Polish nobility was the securing of their preponderance in the Seym.

But the position of the Seym in the constitutional system of the Duchy totally departed from the Polish constitutional model. The Seym was entangled in a network of strong governmental and administrative structures that conducted the everyday governmental business and in which the share of social representation was but small. Like in France, thus also in Poland the system of representative government outwardly existed but it was only a smoke screen for the Napoleon's personal rule. In practice, despite the existence of the Seym, the King of Saxony could rule like an absolute monarch. It is even possible to say that bonapartism, as a certain system of wielding power, was more fully implemented in the Polish, then in the French, constitutionalism. This may partly account for the effects that the Constitution of the Duchy had on the Constitution of the Kingdom of Westphalia and the reception of the latter in the States of the Rhine Union[8].

It is worth noting that the Constitution of the Duchy, apart from mentioning religious freedom (Art. 2) and equality before law (Art. 4), practically passed in silence over the guarantees of civic liberties. The conciseness of the Constitution in this respect is striking when compared with other Napoleonic Constitutions. For instance the Constitution did not provide for any measures protecting an individual against illegal search or arrest. Omitted were also the guarantees relating to freedom of speech and print as well as freedom of organizing assemblies. Such approach was a blow at the traditional values of the Polish constitutional culture whose climax was reached in the

[8] J. Wąsicki, *Konstytucje państw Związku Reńskiego na tle ustroju Księstwa Warszawskiego* (The Constitutions of the states of the Rhine Union when compared with the Constitution of the Duchy of Warsaw) [in:] *Konstytucje Polski...*, p. 173.

Constitution of May 3, 1791. On the other hand, these omissions fully fitted the foundations of the Napoleonic system.

The Constitution of the Duchy of Warsaw was composed of 89 Articles divided into 12 titles. It was concisely formulated and was deprived of any preamble or other clauses of ideological nature. The first title which bore no name contained four Articles relating to denominational matters and social relations. This title was followed by that regulating the organization of central government (title II) while further titles (from IV–VII) were concerned with the organization of the Seym, Senate, House of the Deputies, Seymiks and Communal Assemblies. The very scheme of the Constitution gave distinct priority to the executive power. The concluding part of the Constitution contained the provisions on the division of the country and its administration (title VIII), on the organization of the judiciary (title IX) and of the military (title X). The two last-mentioned titles contained the provisions that were of general and temporal nature. It is also in that part of the Constitution that one can find the provisions securing the entirely Polish character of the Duchy of Warsaw (Art. 84).

II. Social system

In Art. 1 the Constitution retained Roman Catholicism as the religion of state which was partly exponential of the subjection of the Church to the state. That things were like that was expressly emphasized in Art. 3 which introduced an arbitrary administrative division of the Church province so that the Church units would fit the 6 (later 10) Departments into which the Duchy was divided. The policy of subjecting the Church to the interests of the state was further perceptible in the process of dragging the parish priests into the public service business. In view of the scarcity of the milieu of state officers, the parish priests were assigned the task of the clerks of Registry Office before whom – according to the Napoleonic Code civil – marriages were contracted. This in fact impeaded the implementation of the Code provisions and later, after the fall of the Duchy, the provisions of the Napoleonic matrimonial law were rejected. This does not mean however that the entire clergy opposed the new law. The episcopacy did not criticize the enactments themselves but declared themselves against their abuses as produced by the secular authorities. Because indeed, such abuses took place since the state outright tended to turn the vicars into the „village chief officers and Sergeants Major"[9].

Article 4 of the Constitution was particularly spectacular and of high social significance. It proclaimed that: *„serfdom is abolished. All citizens are equal before the law"*. This meant doing away with the serfdom conceived as personal dependence of the peasant on his lord. In brief, the peasants, as free people, enjoyed full right to dispose of their own persons[10]. The Constitution however ignored the second significant aspect of the peasant's situation: his right to the plot of land that the peasant worked. Only the Land Decree of 21 December 1807 tried to deal with the problem. The Decree acknowledged the right of the peasant only to freely leave his plot and settle anew within

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[9] B. Grochulska, *Małe państwo...*, p. 31.
[10] A. Ajnenkiel, *Polskie konstytucje* (Polish Constitutions), WP, Warszawa 1967, p. 141.

the boundries of the Duchy. On the other hand, the land worked by him was recognized as the landlord's ownership. Thus the peasant desirous of leaving his village, had to return what was the landlord's property amounting to *„equipment and crops"*. From that time on, the contracts concluded – under the supervision of special State Notaries – between the landlords and peasants were the basis of the landlord-peasant relationships. The Notaries were expected to examine whether both parties concluded the contracts out of their own free will, and whether no *„fear, pressure or cunning devices"* were involved. On one hand, therefore, legal status of the peasant improved: he could freely change the place of his settlement and enter temporary contracts with his lord as his equal partner. On the other hand, this contract which in terms of law could be treated as lease as well as hire, could be freely terminated by the landlord. The peasant did not dispose of any legal means to protect him against eviction. In this sense his legal status even deteriorated because the previous system, in principle, guaranteed his hereditary rights to his plot of land on the basis of emphyteusis.

Also the declaration on every citizen's equality before the law was found to be subject to certain factual and legal limitations. This was due to the fact that the nobility were retained as a privileged class. Although the free access of everybody to the official posts was firmly emphasized, one might hardly find a non-noble at the high-ranking positions[11]. The growing significance of the burghers and their share in the state apparatus badly affected the plight of the Jewish population. At that time there was a large flow of Jews to the towns in which they made up 28% of the total town population of the Duchy. This was responsible for depicting them as economic and political rivals of the Polish burghers. This, in its turn, was formative of the Decree of 17 October 1808 which, temporarily, for 10 years suspended political rights for the Jews pending greater assimilation. Thus the restoring of Jews to their political rights was dependent on their assent to fully assimilate. It is worthwhile to note that prior to the Decree, the administrative agencies, while pointing to the lack of clear instructions, used to arbitraril bar the Jews from enjoying their political rights. In larger towns, such as Cracow or Warsaw, the Jews were limited to residing only in certain streets, the limitation referring mostly to the poorer Jewish strata. Likewise, the Jews were limited in their right to purchase real estates[12]. This limitation was sometimes expanded also to their holding of offices in administrative agencies. Legal documents disclose the arguments that were exploited by those who denied the Jews their civic rights; namely, they pointed to the fact that the Jews could, in return for a certain fee, be exempted from military service.

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[11] *Ustawodawstwo Księstwa Warszawskiego. Akty normatywne władzy najwyższej* (The legislation of the Duchy of Warsaw. The laws produced by the supreme agency), edit. and comment. by W. Bartel, J. Kosim, W. Rostocki, vol. III, 1811–1812, PWN, Warszawa 1967, p. 141.

[12] *Ibidem*, vol. I, 1807–1808, p. 148, 159.

III. Political system

a) The monarch and the domestic government

The declaration of the Constitution that the *„government is in the person of the King"* meant that the monarch was assigned extensive competence in all state matters with the exception for matters reserved for the limited Seym legislation and those left within the competence of the judiciary. In view of the limited competence of the Seym, the entirety of rights arising from executive power belonged to the King. In addition, in problems that were made the subject-matter of the Seym dealings, the King enjoyed the exclusive initiative to initiate the law-creation process. Apart from the Seym and the courts of law, other state agencies had a character of the royal organs. The King was authorized to nominate Ministers, judges and Senators. Lower officers were appointed by virtue of the royal delegation. The King could also appoint Viceroy and determine his competence. This last-mentioned office was totally unknown to other Napoleonic Constitutions although it factually existed in Italian Kingdom. In case of the Duchy, its origin was due to the personal union linking the Duchy with Saxony. While resigning from the appointment of Viceroy, the King nominated the President of the Council of Ministers (Art. 8). Since King of Saxony did not appoint Viceroy, the role of domestic agencies tended to grow[13].

Two agencies made up the supreme governmental authorities: the Council of Ministers and the Council of State. The Council of Ministers, comprising five Ministers presided over by their President, was expected to submit to the King (in the situation when there was no Viceroy) the matters that exceeded the competence of an individual Minister (Articles 8 and 11). Such agency as the Council of Ministers was unknown to other Napoleonic Constitutions. The Constitution of the Duchy provided that the Ministers simultaneously functioned as the members of the Council of State. This made it difficult to differentiate between the functions of these two organs. The Council of State was taken over from the French system and performed its functions as a regular agency assisting the King. Pursuant to the Constitution and the Decree of 21 December, the Council of State, on the motion of the Ministers, was required to produce drafts of the Seym laws and Royal decrees. In addition, it had also judicial competence and functioned as the cassation court. Likewise, it performed the functions of administrative court and adjudicated competence disputes between the state administration and the courts of law. The role of the Council of State grew when the Decree on the Organization of Ministeries subjected the Ministers to it. The Council of State could impeach the Minister for activities contrary to law or „harmful to the country". The impeachment was submitted to the King who appointed a special court to try the Minister[14]. Thus the constitutional responsibility of the Ministers was fairly specific. The Minister was responsible to the King, and not to the Seym, and was impeached on the initiative of the very organ he was the member of! The regular penal responsibility of the Minister who committed an offence was of course also possible. In such case the accusation could be lodged with the court also by the King.

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[13] M. Kallas, *Ustawa...*, p. 121.
[14] *Ustawodawstwo...*, vol. I, 1807–1808, p. 88.

In the initial phase of its activities, the Council of State played an important political role. For a while, in the period of war of 1809, it functioned even as a domestic government, superior toward the Council of Ministers. In the course of time, however, its judicial functions became dominant while the position of the Council of Ministers, as the factual governmental Cabinet, grew. From 1810 on, during the periods of the King's absence, the Council of Ministers could by itself solve urgent questions by applying remedial measures. In 1812, when the conflict with Russia came into sight, the Council of Ministers arrived at the entire competence that the Constitution vested in the King[15]. The King's executive power was strong and allowed for his personal rule of the country. In many points of the Constitution, the regal absolutism was detectable. It was only the constant absence of the King in the Duchy of Warsaw that allowed the agencies of the executive power to preserve certain independence of their activities.

b) The Seym

The Seym of the Duchy was composed of the House of Deputies and the Senate. The latter housed the voivods, castellans and bishops, 18 members altogether, as appointed for life by the King. Upon the enlargement of the Duchy by the incorporation to it of West Galicia (1809) the number of Senators grew to 30 (10 in each group). The voivods and castellans were disabled for performing their functions if they were appointed to any other post. The House of Deputies comprised at first 60 (100 in 1809) deputies of nobiliary rank, elected at the local Seymiks. In addition, the lower House housed also 40 (later 66) representatives elected at the Communal Assemblies. Also the members of the Council of State attended the lower House.

As regards the requirements to be fulfilled by the members of the Seymiks and the Communal Assemblies, only the landed nobility could participate in the former. The members of Communal Assemblies, in their turn, had to meet certain requirements which referred either to property or profession as well as to military ranks and merits.

The electoral rights were conferred also on the peasants, provided that they were the rent-payers and house owners[16]. It was found that as many as 40 thousand peasants enjoyed the right to vote.

The composition of the Seym was of nobiliary tint because, as has been said, the nobles, although a smaller social group when compared with the non-nobles, dominated the lower House by one third. In addition, the Communal Assemblies could elect the nobleman as their representative, but it was not the other way round: the Seymik could never elect non-noble as their deputy. The competence of the Seym was limited and it comprised only three categories of matters: taxes, civil and penal law and pecuniary questions. What remained beyond this scope was within the competence of the King, the questions of budget including. The amendments to the law projects that were already filed with the Seym, could be tabled only by the Seym Commissions. In practice there was no discussion in the Seym on matters submitted to it since only the members of the Commission and the representatives of the Council of State could rise

[15] M. Kallas, *Ustawa...*, p. 128.

[16] J. Bardach, B. Leśnodorski, M. Pietrzak, *Historia ustroju i prawa polskiego* (A constitutional and legal history of Poland), PWN, Warszawa 1994, p. 351.

to speak. In addition, the representatives of the last-mentioned Council were allowed only to promote the project. The position of the Seym was rather that of an organ expected to accept (although formally it could also reject) the project. The project, when approved of by the House of Deputies, passed to the Senate which had the right to sanction it. Both the House of Deputies and the Senate were given one day to make their decision. The Senate could deny the sanction for formal reasons or in case it came to conclusion that the project contradicted the Constitution or threatened the safety of the country.

Despite the Senate's Veto, the King could proclaim the project as the law if it was approved of by the lower House. In addition, he could at any time appoint new Senators in order to secure the support for the project in the upper House. As regards the lower House, the King could dissolve it if the vetoed project, submitted to its review, encountered any impediments during the debate. The entire law-creation process limited to the minimum the House's share in it.

The executive power was equipped with effective instruments eliminating any symptoms of the opposition. In addition, the Seym did not dispose of any control functions with regard to Ministers and other governmental agencies. The relationship, therefore, between the governmental Cabinet and the Seym was reflective of the authoritarian system being implemented in the constitutional arrangement of the Duchy.

c) Administration and territorial self government

Like France, thus also the Duchy was divided into the Departments, while the latter were additionally divided into the Poviats. The head of the Department was the Prefect to whom the administration and regular as well as political police were made subject. The heads of the Poviats were the Subprefects. It was the King himself who appointed these officers. They were personally subjected to the Minister of Interior but were also obliged to perform tasks assigned to them by any of the Ministers. Like the Ministers who individually managed their governmental departments, thus also the Prefects and Subprefects acted in a monocratic manner. Such organization of an administrative structure departed from the old Polish tradition of collegial agencies subjected to the parliamentary control.

At the level of Departments and the Poviats, as well as in the towns, there functioned the agencies of self-governmental nature. They had the shape of the Councils. The Departmental and Poviat Councils were composed of councilors appointed by the King from amongst the candidates submitted in twofold proportion by the Seymiks. Only the representatives of the nobility were sitting in the Councils. This reflected the nobility's factual position in the Duchy. The matters subjected to the debates of the Departmental or Poviat Councils referred to everything what concerned „order, peace and safety". These Councils played a significant role in socio-political animation of the Duchy. They, one might say, took over the role of the Seymiks of the old-time Poland

since the Seymiks in the Duchy of Warsaw were limited in their functions to the electoral business only[17].

d) Judiciary

The judiciary in the Duchy of Warsaw was considerably transformed when compared with its structure in the old-time Poland. The constitutional equalizing of all social strata before the law and the courts of law resulted in the abolishing of the courts organized along the „estate division" lines, the manorial courts being also abolished.

As regards the state officers and judges, they had to fulfil professional requirements. The fact that the King appointed the judges for life became formative of the idea of their independence. As regards the justices of the peace who were not expected to fulfil any requirements needed for the legal profession, they were nominated by the King from the threefold list of candidates submitted by the Poviat Seymiks.

Separate courts were established to adjudicate civil and penal matters. The penal cases were tried by: 1) the Courts of Regular Police where the associate judge alone dealt with misdemeanours, 2) the Courts of Penitentiary Police (to the amount of 2 or 3 in each Department) that dealt with felonies, 3) the Tribunals of Criminal Justice (one in every two Departments) that dealt with the offences exceeding felonies and heard appeals from the judgments produced by the lower courts. The civil law matters were adjudicated by: 1) the courts of justices of the peace established in the Poviats and towns, 2) First Instance Tribunals for civil law matters established in each Department and 3) the Court of Appeal which was only one for the entire Duchy. The final penal and civil court decisions could be submitted to the Cassation Court. It was the Council of State that performed its functions.

Concluding remarks

The Constitution of the Duchy of Warsaw may be seen as the model-like implementation of the Napoleonic ideas in the niveau of law and government. The Constitution may be acknowledged as a quintessence of bonapartism since it provided for the personal rule of the monarch. In this rule he was supported by the professional, centralized bureaucracy accompanied by the parliament whose functions were more decorative than substantial. In fact the Constitution of the Duchy was essentially the French Constitution only slightly adapted to the Polish circumstances (the tradition of bicameralism or priority given to the nobles in the lower House). Despite the fact that its system was alien to the Polish parliamentary tradition, Polish society suprisingly easily put up with the new constitutional situation. Several factors accounted for that: the longing of the Poles for the lost statehood, their satisfaction that tough Prussian rule was done away with, and their hopes that full revival of sovereignty was possible. What was particularly important for them was the fully national structure of the state apparatus.

[17] A. Rosner, *Pierwsze sejmiki w Księstwie Warszawskim. Przygotowania do sejmu 1809 roku* (The first Seymiks as held in the Duchy of Warsaw. The activities preparatory of the Seym of 1809) [in:] *Parlamentaryzm i prawodawstwo przez wieki*, Kraków 1999, p. 104.

The Duchy of Warsaw was recognized as the factual continuation of the statehood of the old-time Poland.

The Napoleonic legislation, and particularly the civil law, was permeated with anti-feudal spirit, and sometimes did not fit the socio-economic circumstances as prevalent on the Polish soil. The abolishing of serfdom in the situation in which the serf labour-based economy was still dominant, proved to be the privilegium odiosum from the peasant's point of view. A lot of new norms that were introduced were not effectively put in force because they ignored the specificacy of Polish mentality, the laicized matrimonial law being a good example. In detailed search for solving certain questions, the Prussian law, or sometimes the old Polish customary norms, were resorted to as the right devices to apply. As a result, the Napoleonic legislation did not thoroughly transform social relations on the Polish territory although it doubtless affected the democratization processes penetrating the Poles. This was particularly perceptible in the electoral law and in the system of the judiciary.

The Constitution of the Duchy of Warsaw 1807. Some remarks on occasion of 200 years' anniversary of its adoption

Summary

The Constitution of the Duchy of Warsaw may be regarded as the model implementation of the Napoleonic constitutional ideas. The Constitution contained the quintessence of Bonapartism: personal rule of the monarch based upon the professional centralized bureaucracy, accompanied by parliament whose role was more decorative than real. Although such system was alien to Polish parliamentary tradition the Poles surprisingly easily adapted themselves to it. Many factors were at work to reach that goal: longing for independent state, the desire to do away with the harsh Prussian regime and the hopes of full restoring of independence. What was of utmost significance was the fact that state apparatus became the fully national structure. The Duchy of Warsaw was acknowledged as the constitutional continuation of old-time Poland.

The Napoleonic civil law legislation, as introduced in the Duchy of Warsaw, was anti-feudal in its content. Hence, it sometimes did not fit the socio-economic circumstances prevalent on the Polish soil. Yet, despite the fact that the *Code Civil* had no stronger links with the Polish legal tradition and contained the provisions which were excessively revolutionary from the point of view of conservative attitudes of landed gentry, it soon ceased to give rise to negative emotions. This was so because its liberal and egalitarian assumptions in fact corresponded the freedom-promoting ethos of Polish nobility. The ardent supporters of the *Code* were not only detectable among the governing elites but, one might say, the entire society promptly adapted themselves to its provisions. However these norms of the *Code Civil* which dramatically departed from Polish mentality, like e.g. lay matrimonial law, remained a dead letter. The Napoleonic legislation did not, therefore, thoroughly transformed the social relationships on the Polish soil but it undoubtedly had an impact on the democratization of Polish society and modernization of state structures, particularly the administration and the judiciary.