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**‘CRIPPLED EQUALITY’:
THE ACT OF 1 JULY 1921 ON CIVIL RIGHTS
FOR WOMEN IN POLAND**

Abstract

While analysing the legislative output of the interwar Republic of Poland, most Polish researchers highlight the significant achievements of the so-called Codification Commission established in 1919, whose twenty years of efforts resulted in the drafting of a host of important codes and other acts of high legislative value. This output, however, could only be put to a very short-lived use in the 1930s. Its full potential was not unleashed until after the Second World War, in a completely changed political reality. On a day-to-day basis, the Polish state of the interwar period faced a number of issues that it either desired to overcome or was forced to do so. One of them was the crippled legal status of women, particularly jarring in the reality of the interwar times. Although the reborn Polish statehood, true to lofty democratic ideals, immediately took it upon itself to change the clearly underprivileged legal status of women, the final effect, that is the legislation in force as at the outbreak of the Second World War, looks meagre. The modern codification had not been adopted, the legal particularism in the scope of civil law had been maintained, the anachronistic codification of the preceding century upheld – the ideals of equal rights for women were made a very much imperfect reality. In this article, we attempt to trace the history of how this came to be by examining difficulties in introducing the principle of equality of women’s rights. The example we have chosen serves to shed light on the mundane efforts to overcome the mounting problems with realizing ideas of modernization upon the underlying legal foundations of a country which, at first sight, seems utterly ill-prepared to tackle this task properly.

Key words: equality of rights, sexes, gender, civil rights, act of 1 July 1921

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I INTRODUCTION

In 1795, the Commonwealth of Poland disappeared of the map of Europe for ever. The United Kingdom of Poland and Lithuania was partitioned among the neighbouring empires – Prussia, Austria and Russia. The *status quo*, however, was tipped out of balance by Napoleon. In 1807, as a result of subsequent conquests, he created the Duchy of Warsaw (*Księstwo Warszawskie*), a small French protectorate encompassing the central ethnically Polish territories, with its capital in Warsaw. In the legal and political aspect, this intervention turned out to be long-lasting, and its significance fundamental for the history of private law on Polish soil. The fall of the Duchy, along with Napoleon's, did not strike the final chord of the Napoleonic epic, at least not in its universalistic institutional and world-view aspect. The short eight years of existence of the Duchy of Warsaw reverberated through the later legal and political history of the region it once occupied and, at the same time, since it concerned the very heart of contemporary Poland, also impacted its modern history, with particular emphasis on the current shape of legal order. The political perturbations of the late eighteenth and early nineteenth century are, then, inherently bound with and determinative for the legal status of women on Polish territories, as well as for virtually all other political, social or economic problems, the resolution of which rests on a given political and legal configuration on the territory in question here.

Under each of the annexations – Prussian, Austrian, or Russian – the legal status of women on the planes of both public and private law, was similar. They were deprived of political rights, and their options to participate in public life were severely limited. This status was determined by various factors. Besides the deeply rooted tradition, according to which a woman's place is in her home, and her basic duty is to tend to children and family life, also the limited education opportunities, and the related inability to exercise professions requiring active participation in public and economic life, played a significant role. Therefore the meagre percentage of women who worked as freelancers, at public institutions or who ran their own businesses. Despite this, in the second half of the nineteenth century, on Polish territories – as in all of Europe, but to a lesser extent and scope in comparison to the West of the continent, a breakthrough

was in the making. The budding feminist movement was voicing its demands for equal rights for women.¹

This publication aims to prove the thesis that, despite the widely promulgated public statements on the necessity to level the legal position of men and women, understood as the mechanic elimination of provisions which differentiated their status and which had been inherited from the previously binding legal systems, when it came to the actual works on concrete legislative solutions of private law, the majority of said legal restrictions was ignored and, on the other hand, the conservative arguments on the traditional social role of women prevailed. Importantly, at least a part of the political elites exhibited either considerable hypocrisy in this respect, or at least a very much ambivalent attitude. Paradoxically, however, the problem of granting equal legal position to men and women was not only connected to the views of the conservative circles, but also to a host of political conditions.

The fact that the full formal and legal equality of sexes² before the law did not occur until the end of the Second World War was, in fact, an aftermath of the turmoil relating to the geopolitical situation of Polish territories on the international arena and of the complex internal circumstances in the interwar period. In the first half of the

¹ Lynn Abrams, *The Making of Modern Woman* (London, 2002), 269. See also Danuta Rzepniewska, 'Women of the Landowning Class in the Polish Kingdom During the 19th Century', *Acta Poloniae Historica*, xxiv (1996), 100–1; Małgorzata Fidelis, "Participation in the Creative Work of the Nation": Polish Women Intellectuals in the Cultural Construction of Female Gender Roles, 1864–1890', *Women's History Review*, xiii (2000), 115–18.

² Concurring with the argumentation advanced in an anonymous review of the article (and expressing our appreciation for the remarks), we consistently employ the term 'sex' rather than 'gender'. Accounting for the central tenet of gender studies, that is that 'gender' means the socially constructed ascriptions of masculinity and femininity, one should rather speak about the sexes when referring to equality of men and women. 'Gender' (and also 'sex' – at least in the opinion of gender scholars who subscribe to the theories of Judith Butler) does not exist primordially, but is produced by discourses and practices of respective historical contexts. Therefore, we should not assume men and women are representatives of two inherently separated entities, but rather recognize that notions of masculinity and femininity are constructed on a relational basis: the idea about what was feminine and what kind of rights should be given to women depended on the image of what was masculine and *vice versa*. Thus, we talk about the 'equality of the sexes' while taking into consideration that those consisted of gender images which were not stable, but negotiated in a relational process.

nineteenth century, Poles under annexations inexorably lost all possibilities of shaping their own legal reality and thus, in the period of a fundamental transformation in the outlook on the role of women in the society, which was occurring in the second half of that century, it was not up to the local political elites (with a slight exception of the territory of the so-called Galician autonomy) to decide if the equality of rights for women should be introduced on Polish territories. This situation changed when Poland regained independence in 1918. The interwar period, however, was spent on ineffective attempts to replace post-annexation codifications with a national civil code (with the exception of the law of obligations, enacted in 1933). As a result, foreign codifications prevailed on Polish territories – *Allgemeines bürgerliches Gesetzbuch* in Galicia; *Bürgerliches Gesetzbuch* on the territories previously annexed by Prussia; *Svod zakonov Rossiiskoi Imperii* on the Eastern Borderlands. Also the conglomerate of provisions described below, which comprised the Napoleonic Code along with its subsequent amendments, introduced on the territory of the former Kingdom of Poland, was maintained.

In point of fact, the late introduction of the principle of equality of women's rights in Polish private law was mainly caused by the excessively lengthy wait for the introduction of Polish own civil codification, and especially of its part regulating women's status within family. This did not take place until after the Second World War, in particular through the enacting of the following decrees: *Prawo małżeńskie* [Marital Law] of 25 September 1945 (Dz.U. [Journal of Laws] of 1945, no. 48, item 270), *Prawo rodzinne* [Family Law] of 14 May 1946 (Dz.U. of 1946, no. 6, item 52), *Prawo opiekuńcze* [Guardianship Law] of 14 May 1946 (Dz.U. of 1946, no. 20, item 135). It seems that the opposition of the conservative circles in Polish society, despite its undeniable impact on the public debate in this scope, did not directly cause the delay in introducing equal rights for women and men. On the other hand, the course of the debate that we analyse is to show that the exaggerated emphasis on legal problems underlying the process of granting equal rights to women, had a broader context and a more profound background, as evidenced by the recurring argumentation revolving around the conservative ideas about the social and cultural role of women in Poland. This, even if it did not justify maintaining the status quo, at least lent silent consent to sustaining the legal discrimination, a relic of the nineteenth century.

II
WOMEN'S STATUS IN THE PRIVATE LAW
OF CONGRESS POLAND (1807–1915)
AND OTHER POLISH TERRITORIES

Along with the establishment of the Duchy of Warsaw by Napoleon in 1807, the whole Napoleonic Code was introduced in the area. A fundamental change in the legal order that was introduced was generally distant from the Polish legal traditions and therefore frowned upon by the conservative elites from the very beginning. In general, a woman had no control over property and could not act freely or independently.

The Napoleonic Code – Bonnie C. Smith writes – influenced many legal systems in Europe and the New World and set the terms for the treatment of women on a widespread basis. Establishing male power by transferring autonomy and economic goods from women to men, the Code organized sexes roles for more than a century ... The codifiers – she adds – were looking at nature in two ways. In theorizing about men alone, nature was redolent of abstract rights. As far as women were concerned, however, nature became empirical in that women had less physical stature than men. Although short men were equal to tall men, women were simply smaller than men and thus were unequal ... By the time the Napoleonic Code went into effect, little remained of liberal revolutionary programs for women except the provisions for equal inheritance by sisters and brothers. The Code cleared the way for the rule of property and for individual triumph. It ushered in an age of mobility, marked by the rise of the energetic and heroic. The Code gave women little room for that kind of acquisitiveness or for heroism. Instead, women's realm was to encompass virtue, reproduction, and family.³

The patriarchal model of a family established woman's social role, and her autonomy in almost every single sphere was very limited due to "her perpetual minority" in the legal context.⁴

³ Bonnie C. Smith, *Changing Lives: Women in European History Since 1700* (Lexington, 1989), 121–2. See Michèle Riot-Sarcey, *Histoire du féminisme* (Paris, 2002), 24–6.

⁴ Stefania Kowalska-Glikman, 'Kobiety w procesie przemian społecznych w Królestwie Polskim w XIX wieku', in Anna Żarnowska and Andrzej Szwarz (eds.), *Kobieta i społeczeństwo na ziemiach polskich w XIX wieku* (Kobieta i ..., 1, Warszawa, 1990), 10–15. Cf. Reinhard Sieder, 'Ehe, Fortpflanzung und Sexualität', in Michael Mitterauer and Reinhard Sieder (eds.), *Vom Patriarchat zur Partnerschaft. Zum Strukturwandel der Familie* (München, 1991), 162–8.

The implementation of the French code in Poland had such great effect that the vision of women's status was present in legislative work and legal arrangements proclaimed in the following century, even after the fall of Napoleon and Duchy's transformation into the Kingdom of Poland connected with the Russian Empire. In 1820, Tsar Alexander I decided to appoint a deputation to create national codes.⁵ Civil code of the Kingdom of Poland entered into force in 1825 as the Civil Code of the Kingdom of Poland.⁶ In reality it proved to be a mere amendment of the Napoleonic Code's provisions on the personal and marital law. The proposals only slightly improved the legal situation of a woman, which mainly resulted from the modification of other legal matters. The legal justification for these modifications was not a different vision of the role of women by itself, but rather, for instance, the generally understood property interests of the family, or the modification of rules regarding trade.⁷

As a result married women's options in the Kingdom of Poland were still very limited. These limitations were even stricter than under the rule of Austrian, Prussian, or Russian law in the other Partitions. The major principle of wife's submission in the scope of asset management, parental custody and authority remained.⁸ As a rule, however, an adult woman had full civil rights before and after marriage. In the first half of the nineteenth century, when different modern private law codifications discriminating women were introduced in different districts, the subject of the legal situation of a woman was completely absent from public discourse. The great majority of men, who formed the core of Polish intellectual elites, were convinced that the unequal status of both sexes is wholly justified, in compliance with the tradition and desirable, owing to the varied social roles of men and women. This situation did not change until

⁵ Hipolit Grynwaser, 'Kodeks Napoleona w Polsce', in *idem*, *Pisma*, i (Wrocław, 1951), 128.

⁶ Henryk Konic, *Prawo małżeńskie obowiązujące w b. Królestwie Kongresowym* (Warszawa, 1924), 27–8.

⁷ In the case of the Kingdom of Poland, we can confirm that "the statutes of most European countries followed the *Code Napoleon*, which decreed that married women's nationality followed from that of her husband". See Mrinalini Sinha, 'Gender and Nation', in Bonnie G. Smith (ed.), *Women's History in Global Perspective*, i (Urbana and Chicago, 2004), 260.

⁸ Konic, *Prawo małżeńskie*, 30, 33.

the second half of the nineteenth century. "The land reform of 1864 and the ensuing economic crisis amongst the nobility forced women of this social class to address their changed circumstances, and to begin to consider education and means to an independent existence".⁹ Starting from the 1870s, a number of studies analysing the social and legal standing of women were published. Influenced by the transformations underway in Western Europe, these publications called for equal rights.¹⁰ Under the influence of these voices heard toward the end of nineteenth century, the attitudes toward women's cause, first among the elites, and then increasingly in broad social circles, began to change. This process was part of the simultaneously occurring dynamic transformations of the second half of the nineteenth century, characteristic of the period which marked the Polish passage from traditional to modern society.¹¹ In this context, the issues of equality of rights and emancipation of women as a gauge of the process of modernization irrevocably entered the public discourse, even though they had been completely ignored just a few short decades before.

In each of the annexing states, under the influence of the global emancipation movement striving for the equality of women's rights, there was a mounting pressure to go through with the reform of the discriminatory legislation. This was somewhat successful even in the Kingdom of Poland, as a partial reform of the civil law was enacted

⁹ Lynn Abrams, *The Making of Modern Woman*, 269. Cf. Rzepiewska, 'Women of the Landowning Class', 100–1, 112–16; Anna Żarnowska, 'Education of Working Class Women in the Polish Kingdom (the 19th Century – Beginning of 20th Century)', *Acta Poloniae Historica*, lxxiv (1996), 139 ff.; Andrzej Szwarc, 'Women Among the Creators of Intellectual and Artistic Culture in Poland', *Acta Poloniae Historica*, lxxiv (1996), 245–6.

¹⁰ Some stir was caused in the Kingdom of Poland by the works of Edward Prądzyński published in Warsaw (*O prawach kobiety* [On Woman's Rights], 1875), Moisei Yakovlevich Ostrogorski (*La femme, au point de vue du droit public*, 1898; translated by Zygmunt Poznański from French), Louis Bridel (*Le droit des femmes et le mariage*, translated by Maria Chojecka from French, 1895) or the *The Women Question in Europe*, edited by Theodor Stanton (translated from English by Kazimierz Sosnowski, 1885). See also Bonnie G. Smith, *The Gender of History. Men, Women and Historical Practice* (Cambridge MA 1998), 179–80.

¹¹ Tomasz Kizwalter, 'Modernization Process and Emancipation of Women in Polish Territories in the 19th C.', *Acta Poloniae Historica*, lxxiv (1996), 91–2; Barbara Greven-Aschoff, 'Sozialer Wandel und Frauenbewegungen', *Geschichte und Gesellschaft*, vii, 3–4 (1981): *Frauen in der Geschichte des 19. und 20. Jahrhunderts*, 328.

under the act of 12/25 March 1914. The act aimed at the unification of provisions applicable in the Russian Empire and Kingdom of Poland. The legal status of women in Russia, governed by the very anachronistic Collection of Laws, was far better than under the more modern legislation in effect in the Kingdom of Poland.¹² This transformation was, contrary to other fields, a step toward progress.

In the first decades of the twentieth century, an even more radical improvement of the legal situation of women took place on the other annexed territories. First, *Bürgerliches Gesetzbuch* was enacted in the Prussian Partition, as in the rest of Germany. Even though it still discriminated women,¹³ it was certainly a step forward in comparison to the legal status of women in Congress Poland and in Galicia. Next, the Austrian amendment of *Allgemeines Bürgerliches Gesetzbuch* took place in 1915. It was a significant change in light of the previous one hundred years of complete apathy in this respect.

III EQUALITY OF WOMEN'S RIGHTS IN THE SECOND POLISH REPUBLIC

Despite the improvement of the legal status of women in each of the Partitions in early twentieth century, their status was still far from the realization of the idea of equality of rights in the civil law. The authorities of the so-called Second Polish Republic, constituted in 1918, were facing a dilemma as to what path to take in order to change this situation. The state under construction was, in theory,

¹² See for instance: Barbara Engel, 'Russia and the Soviet Union', in Bonnie G. Smith (ed.), *Women's History in Global Perspective*, iii (Urbana and Chicago, 2005), 152–60; Joan W. Scott and Louise A. Tilly, 'Women's Work and the Family in Nineteenth-Century Europe', *Comparative Studies in Society and History*, xvii (1975), 43–4.

¹³ Claudia Kraft, 'Równości i nierówności w II Rzeczypospolitej. Prawo małżeńskie w dyskursie publicznym na przełomie lat dwudziestych i trzydziestych', in Anna Żarnowska and Andrzej Szwarc (eds.), *Kobieta i małżeństwo. Społeczno-kulturowe aspekty seksualności. Wiek XIX i XX* (Kobieta i ..., 8, Warszawa, 2000), 316. See also Dirk Blasius, *Ehescheidung in Deutschland 1794–1945: Scheidung und Scheidungsrecht in historischer Perspektive* (Göttingen, 1987), 164–87; Ute Gerhard, 'Grenzbeziehungen und Überschreitungen. Die Rechte der Frauen auf dem Weg in die politische Öffentlichkeit', in *eadem* (ed.), *Frauen in der Geschichte des Rechts: Von der Frühen Neuzeit bis zur Gegenwart* (München, 1997), 511–15.

to match the – very modern at the time – democratic standards and to realize the principle of equality of sexes. Pursuant to the binding interpretation, this principle gained the status of a constitutional right, following from Article 96 of the Constitution dated 17 March 1921, which stipulated that “all citizens are equal before the law”. As a result, shortly after the chief of state, Józef Piłsudski, signed a decree of 28 November 1918, which granted election rights to women, the Legislative Sejm chosen in democratic elections held on 26 January 1919, already in the first months of its term decided to draft a proposal which was to temporarily solve the most jarring examples of legal discrimination against women. It was, however, decided to limit the changes to an amendment of the law in force in the central district of the Republic of Poland, that is in Congress Poland.

This was done despite the fact that in each of the districts there were still provisions in force which discriminated women in the sphere of private law. This was particularly evident in the case of the legal situation of married women, which was ruled by the provisions of marital law. In short, the legal status of women was similar in each of the districts, as all the post-partition legislations subjected the wife to the authority of the husband, who managed her assets and who exercised parental custody. All these legislations, however, did so in different ways and to varying extents.¹⁴ The situation in Galicia and in Eastern Borderlands improved so much that a deputy to the Legislative Sejm, and a professor at the University of Warsaw and advocate, Adolf Suligowski, did not shy away from stating that “provisions limiting the rights of married women are [now] only binding in the territories of former Congress Poland; they have been abolished both in Małopolska [i.e. Galicia] and even in Eastern Borderlands, ruled according to the Russian law, which knows no such limitations, and to a lesser extent also in Wielkopolska.”¹⁵

¹⁴ For details, see Michał Pietrzak, ‘Sytuacja prawna kobiet w Drugiej Rzeczypospolitej’, in Anna Żarnowska and Andrzej Szwarc (eds.), *Kobieta i świat polityki w niepodległej Polsce 1918–1939* (Kobieta i ..., 3, Warszawa, 1996), 38–42.

¹⁵ *Sprawozdanie Stenograficzne z 23 posiedzenia Sejmu Ustawodawczego z dnia 1 lipca 1921 r.* [hereinafter: SSSU], XXLLLIX/23. It is impossible to ignore the fact that this opinion is in opposition to the findings of Michał Pietrzak, based on which we formed our remarks regarding the extent of discrimination in the law. It was also negated by other deputies of the Polish National Union. Deputy Adam F. Mieczkowski pointed out that the limitations have not at all been abolished

The legal status of married women in Congress Poland was deemed particularly underprivileged. Hence the decision to attempt a tentative amendment of the binding provisions in the central territories and to make the other districts wait for the general, all-Polish codification. This task was entrusted to the Codification Commission, appointed in February of 1919. However, neither the draft of the matrimonial personal law adopted by the Commission in 1929, nor the draft of matrimonial property law of 1937 became binding. Both were based on the idea of realization of the principle of equality of sexes.¹⁶ What tipped the balance against their enacting was, primarily, the conflict of beliefs with catholic circles which opposed secularization of the institution of marriage.¹⁷

As a result, what had been planned as a temporary measure (consisting in maintaining the discriminatory post-partition provisions, different in each district, but similar in spirit, with an *ad hoc* modification of the legal order only in former Congress Poland), persisted until the end of the interwar period, and the problem of the equality of women's rights did not find a normative solution until after the Second World War, in a completely changed reality.

IV PREPARATIONS AND DEBATES LEADING UP TO THE ACT OF 1 JULY 1921

Authorities of the Second Polish Republic were well aware of the fact that the civil law binding in these territories contained a series of provisions that were not only outdated, but also – as succinctly put by a lawyer and deputy of the Popular National Union from Wielkopolska, Zygmunt Seyda –

often ridiculous and in breach of the equality of women's rights. Allow me to quote, for instance, Art. 78 of the Civil Code of the former Kingdom of Poland – he continued – which states that only men may act as witnesses for

in the Eastern Borderlands. As an example, he brought up a discriminatory provision from the law of inheritance, which stipulated that a daughter could only inherit 1/7 of what a son inherited – *ibidem*, 29. Deputy Zygmunt Seyda, on the other hand, remarked that the other districts lacked equality in property law – *ibidem*, 30–1.

¹⁶ For details, see Kraft, 'Równości', 313–14, 316–20; Pietrzak, 'Sytuacja prawna kobiet', 42–4.

¹⁷ See Kraft, 'Równości', 312, 319–20, 324–6.

the purposes of registry records. Art. 182 of the same code stipulates that a woman may not appear before a court of law without the consent of her husband ... Art. 1124 treats women as equal to minors and incapacitated persons, not capable of entering into contracts.¹⁸

He was seconded by Maksymilian A. Hartglas, a Warsaw-based advocate, member of the Zionist Organization and deputy of the National Minorities Bloc, and therefore representing the antipodes of the political views of right-wing Seyda. "Indeed – he stated – limitations to the rights of women now, when a woman may be a deputy, but at the same time may not decide in family matters, property matters, personal matters, are outdated and ridiculous."¹⁹

Adolf Suligowski added:

These provisions were transplanted word from the Napoleonic Code to the code of the former Kingdom of Poland [of 1825]. Already when Napoleonic Code was drafted, there were doubts as to whether these provisions are right ... It seems there were some reasons for this, resulting from relationships at the time. Women in the early nineteenth century did not have the education that they have now ... Over the course of the nineteenth century, we have striven for the education of women. It got to the point where they were allowed to study at institutions of higher learning, now they are admitted to official positions, and it is a matter of necessary justice, in this march of social progress, to abolish and do away with those provisions binding in the territories of former Congress Poland, which are against the significant state of facts and the significant needs.²⁰

What is interesting, also a catholic priest and a deputy from the Christian Democratic Party, Zygmunt Kaczyński, spoke for the equality of women in the Sejm Ustawodawczy. His justification, however, came from a patriarchal position. Kaczyński observed that "a Polish woman, both during the long times of captivity and in the short period of independence, passed the civic exam. We can see that both in the social and political sphere, even if she does not surpass men, she certainly matches them in all respects."²¹ Kaczyński, then, presented the grounds for granting equality of rights

¹⁸ SSSU, 8.

¹⁹ *Ibidem*, 14–15.

²⁰ *Ibidem*, 23–4.

²¹ *Ibidem*, 27. See also statement by another deputy of the Polish National Union, Adam F. Mieczkowski – *ibidem*, 28.

to women in terms of an award for accomplishments, and not in terms of a natural, inherent equality of all humankind regardless of their sex. The intention of his words was unambiguous. Women have proved, through their patriotic attitude, to be worthy of the same treatment as men. *A contrario* – is the implied notion – before, prior to the Partitions, or in the first half of the nineteenth century, the underprivileged status of women in the field of private law was justified by their absence in the nation’s public life, regardless of the reasons behind this situation. This statement indicates a broader context for the problem of sex-related discrimination. In the specific atmosphere of the interwar period, equality of women’s rights, just as many other momentous issues, was viewed in the national context. As in other European countries, women in Poland “participated in the national movement as patriots, contributing to the cultural creation of national identity.”²² At the same time, however – as Claudia Kraft observes – “the process of arriving at the state of sovereign and democratic statehood was occurring under circumstances which fundamentally differed in Poland and other (Western-) European countries.”²³ As a result, in numerous social circles, the brave Polish women may have been perceived as a factor strengthening the nation and the Polish state, and for this reason mostly, their demands had to be considered and approved.

The process of levelling the legal position of men and women was initiated in March of 1919, that is four months following the regaining of independence, by a group of female deputies who lodged a proposal demanding that the government abolish limitations to the equality of rights of men and women. They were led by Gabriela Balicka, a Polish National Union (*Związek Ludowo-Narodowy*) deputy from Cracow²⁴

²² Bianka Pietrow-Ennker, ‘Frau und Nation im geteilten Polen’, in Sophia Kemlein (ed.), *Geschlecht und Nationalismus in Mittel- und Osteuropa, 1848–1914* (Einzelveröffentlichungen des DHI Warschau, 4, Osnabrück, 2000), 127–41. Cf. Lynn Abrams, *The Making of Modern Woman*, 231. Abrams writes also: “At the same time, the ways in which nations were conceived of and imagined contributed to the definition of the feminine and to the ways in which feminists constructed their arguments for equal inclusion in the nation state” – *ibidem*.

²³ Kraft, ‘Równości’, 314–15.

²⁴ Mariola Kondracka, ‘Parlamentarzystki w Sejmie Ustawodawczym – między porozumieniem a niezgodą’, in Maria Nietyksza *et al.* (eds.), *Spółczesność w dobie przemian. Wiek XIX i XX* (Warszawa, 2003), 162.

and by the already mentioned Zygmunt Seyda, member of the same right-wing party.²⁵

In July 1919, a relevant government draft was put to the deliberations of the Legislative Sejm, and signed on 18 July of the same year. It focused, much alike later projects regarding the improvement of women's status in the sphere of civil law, on marital property law, which was the main determinant of the crippled legal position of women. Still, this draft was far below the expectations of legal equality adherents. The translation of the idea of granting formal legal equality of status to men and women, which had declarative support of almost everyone, to the language of normative guarantees of its realization, turned out to be much more difficult than any of the members of the emancipation movement could have expected. As Balicka explained on behalf of the female deputies to the Sejm and representatives of women's organizations and associations, who lobbied for the immediate equalization of the rights of women in the sphere of civil law:

The issue had seemed to us very easy to resolve; seeing as women already have political rights, any limitations on them as members of society and free citizens in what regards the entirety of the rights they are entitled to, seemed to us an anachronism and we expected that we will easily find a way to abolish all these limitations, which seemed to us burdensome and unfair, both from the social point of view and from the point of view of the civil position which we, as Poles, want to occupy. The whole thing turned out very differently. The draft we received two years ago, prepared by the Government, not only failed to abolish the burdensome limitations, but even made these rights in a way that, to an extent, offended our dignity as women citizens.²⁶

In the opinion of Balicka, the basic issues of equality of women's rights boiled down to the abolition of limitations, pursuant to which a wife could not act without the consent of her husband, and in particular, to grant each of the spouses full freedom to dispose of their own property.²⁷ "We put this issue before our egoistic interest

²⁵ SSSU, 8. The attitude of Polish nationalists to the issue of women's rights is discussed in: Joanna Kurczewska, 'Der frühe polnische Nationalismus und die Frauenthematik', in *Geschlecht und Nationalismus*, 60–76.

²⁶ SSSU, 11.

²⁷ *Ibidem*, 12.

– Balicka explained the emancipatory basics of how she understood equality of rights – because we did not oppose women’s contribution to the maintenance of family, in the case of women who did have jobs. We did not want any prerogatives for us; we just wanted for ourselves the same rights that humankind in general is entitled to”.²⁸

So it was the legal circles, searching for excuses, piling up formal and legal difficulties obstructing the realization of this progressive principle, which resisted the emancipation movement the most. “For two years – complained Balicka from the Sejm’s rostrum – despite our efforts, despite our pledges to have this issue dealt with, we have been running into an endless string of difficulties, we heard all the time that this is too hard, as the codification and unification of those rights which women have in the territories of the three former Partitions requires a lot of time.”²⁹ The crux of the problem was elsewhere, however. It was in the mentality of the legal circles. This was clear to Balicka, a doctor of botany. In the Law Commission, which worked on the draft in autumn of 1919 and in January of 1920,

the difficulties were great – she related – the difficulties resulting from the fact that virtually everyone agrees that limitations of women’s rights are a relic of the past, but this is said only in theory and when it comes to practice, the issue faces obstacles also in the minds of people who tend to be well-disposed toward women’s cause. It seems to me – she approached the heart of the matter – that the whole difficulty stems from the fact that we are dealing here with legal minds, to whom a principle is a thing of importance, of importance so great that it sometimes runs against the interest of a living human being, a living group of human beings who feel deprived of their rights. After all – ploughed on Balicka in a futile effort to change the positivist legal attitudes – a principle is like a boundary post, a guide for the road down which life is to progress, but it must be changed if the currents of life flow in a different direction, if this boundary post dams this current and if it harms anyone.³⁰

She fine-tuned her argument later on, when clarifying the social aspect of this problem, just as significant – if not more significant – than the alleged legal complications. On the one hand, the solution of this issue was hindered by the low social interest. “Women’s issues

²⁸ *Ibidem.*

²⁹ *Ibidem.*

³⁰ *Ibidem.*

– complained Balicka – are not important to the Polish society; with some exceptions, which are few and far between, it is left in the hands of women themselves, who must make claims for their rights and who cannot be satisfied with what is being done for them so far.”³¹ On the other hand, modernity and social justice associated with emancipation and equality of sexes, favourable to the declarative support for these ideas, in practice met with unwavering resistance resulting from an attachment to the traditional patriarchal model.³² The realization of the principle of equality of women’s rights meant voluntary renouncement of not only the well-rooted habits, but also of the real power that men had over women. The stakes of this game were high, and the questions related to justice and modernization were pushed to the background not only in the conservative circles, but also in the more progressive urban ones. Balicka was fully aware of this.

Most often, when it comes to women’s rights, they are viewed, on the one hand, from the perspective of maintaining the power that men have now, and on the other hand – from the perspective of maintaining the property possession. There is nothing harder than introducing changes in this regard. The abolition of the power of the husband, depriving him of the right to dispose of his wife’s assets as he pleases, meets with resistance even in the mind of those who are well-disposed toward the issue of women’s rights ... When it comes to the interests of a woman, what comes to the fore are the interests of a wife, which are presented as contrary to the husband’s interests, and it is forgotten that this wife is also a mother, sister, daughter, that she, as a human being, must make claims for those rights, which should be understood by men. This is about keeping the power. Let us consider the paragraph on parental custody, which says that in the event of a conflict between spouses, the opinion of the father prevails. This is about a sphere of life which even those ill-disposed toward the women’s rights see as particularly fit for women, it is a field indicated as the one to which a woman has special talents. If we make claims for the abolition of this limitation, then we make this claim in the name of acknowledgement of women’s dignity, the dignity of mother and her position in the society.³³

Balicka did not even have to point to specific evidence. The very course of the Sejm’s debate over this law confirmed her words. Only

³¹ *Ibidem.*

³² Kowalska-Glikman, ‘Kobiety’, 10–15. Cf. Kraft, ‘Równość’, 326–7; Sieder, ‘Ehe’, 162–8.

³³ SSSU, 12–13.

a few deputies took the floor to speak about this issue, fundamental as it may seem. Moreover, one of them, Maksymilian A. Hartglas clearly saw it fitting to take the issue of women's rights as a pretext to discuss the problem of the equality of rights of Jews. This topic immediately sparked the interest of deputies, thus far passively listening to Balicka's speech, as she had tried to no avail to convince them of the importance of women's issues. What is more, one of the few participants of the debate and a deputy 'well-disposed toward women's issues', Adolf Suligowski, first pointed out that it is "stark injustice" to uphold the existing provisions pursuant to which a woman may not be a member of a family council or a witness to a notary's deed concerning registry records. Then, however, he added that "as far as ... the choice of [a child's] profession goes, it would be recommendable for the father to have this right, as he lives more in the external world, while the woman, by the nature of things, is and will be more invested in the household duties."³⁴ It would be hard to find a better quote to exemplify the nature of this problem, all the more so since it was not just anyone speaking, but a professor at the University of Warsaw.

Suligowski was also seconded by the Minister of Justice, Bronisław Sobolewski, who spoke on behalf of the government, and who opposed Balicka's motion to repeal the provision which granted the decisive role to the father in cases of discrepancies between spouses in matters related to parental custody.

It is without a doubt – he said – that the role of the woman in the family has become a dominant one, and this high position that a Polish woman occupies in the family ... is indisputable, but it came to be and it coexists with the 'innocent' article 337; I say it is innocent, as it does not cause any disputes in life. It does seem to me, however, that repealing this provision now would be, perhaps, against the opinions of broad groups of people, especially those in the rural areas, against the position that a father has in the family as the one who provides a livelihood.³⁵

This statement should be viewed from two perspectives. On the one hand, this utterance by the minister is of course marked by a certain dose of self-contradiction. He supports the idea of the equality of rights of men and women on a declarative level, but in essence he

³⁴ *Ibidem*, 24–5.

³⁵ *Ibidem*, 26.

aims to quash its basic motivations and justifications. On the other hand, however, adopting a pro-modernization strategy and its full realization by the legislator would most likely meet serious obstacles in terms of the implementation of modern rules in the inherently conservative Polish society.

Besides introducing editing and stylistic changes, the role of the Law Commission was to 'expand the provisions of the governmental draft in certain points'. According to Balicka, this was about repealing the manifestations of "unjust treatment of women" which still, "in many instances", were expressed in the governmental draft.³⁶

Primarily, the Law Commission rejected the government's solution to create a family council which, in the event of discrepancies between husband and wife, would decide on matters related to a child. Balicka wanted the final decision to be vested with the mother, arguing that: "the mother is the closest person to a child", "is better suited to defend" a child's interests than the father, who, for example when it comes to "choosing the child's profession, looks to what suits him best, and not what best suits the child".³⁷ The *Sejm Ustawodawczy*, however, did not accept her motion, which in this case discriminated men, and ruled to uphold the institution of the family council.

Moreover, the provision which obligated the wife to secure her husband's consent for her to exercise custody over somebody else's children was repealed. At the stage of drafting the law, it caused concern that in such cases, she might neglect her own family. In this case also this solution had little to do with the principle of equality of rights, as in a reverse situation, the government did not find it necessary to oblige the husband to obtain his wife's consent for him to acquire the status of a legal custodian of somebody else's children.³⁸ We may assume that this dissonance was motivated by the opinion that the traditional role of a woman is to care for the home, and

³⁶ *Ibidem*, 13.

³⁷ *Ibidem*. In the course of discussions, also the issue of Article 414 of the Civil Code of the Kingdom of Poland caused some serious disputes, as it discriminated not only sexes, but also denominations. For example, it prohibited non-Christians exercising custody of a Christian. Based on this regulation, the Commission took the stance that the only "tendency and objective" of the act be to limit itself solely to the provisions which were in breach of the equality of rights of women – *ibidem*, 10, statement by Seyda. See also statement by Hartglas – *ibidem*, 15 ff.

³⁸ *Ibidem*, 13–14.

that of a man – to provide for the economic needs of his family.³⁹ In other words, the attempt to uphold discriminating provisions in the government draft was likely connected to the attachment of the members of the government to the patriarchal family model.⁴⁰

The Law Commission had the intention to correct these excessively conservative tendencies of the government only to a small extent. The fact that the members of the Commission arrived at a consensus did not mean that the group of women who had initiated the whole reform of civil law in the spirit of equality of rights was satisfied with the final effect of the Commission's work. Most of the deputies who sat on this Commission made a conscious decision not to strive toward the full materialization of the principle of equality of women's rights in former Congress Poland, and they were eager to point to real or made-up formal obstacles, which allegedly impeded this. "The act ... does not exhaust and take care of everything – explained father Zygmunt Kaczyński – that women should be granted today, but only due to technical and codification-related reasons."⁴¹ He was seconded by the Minister of Justice, Bronisław Sobolewski: "As far as the basic issue goes, [this] may be done only in the form of a complete reform of the code. [Only the] removal of most stark fragments of the code will be dealt with by this half-measure act."⁴² "However – persuaded Kaczyński – even what the [Law] Commission brings is a very important first step toward women acquiring civic freedoms."⁴³

Officially, the main reason for this kind of attitude of the Law Commission were the works on drafting the national code, underway at the same time. First, the Law Commission, upon consultation with the Civil Department of Codification Commission responsible for this task, decided to postpone the moment of submitting its draft to the plenary.

The Law Commission expects that, by the end of the year 1920, the Codification Commission shall submit the draft of an act which will regulate the matter in a uniform and thorough manner, so that the entire territory of the Republic of Poland can adopt provisions which guarantee the equality

³⁹ Kowalska-Glikman, 'Kobiety', 10–15. See also Kraft, 'Równości', 326–7; Sieder, 'Ehe', 162–8.

⁴⁰ Cf. Kraft, 'Równości', 314.

⁴¹ SSSU, 27.

⁴² *Ibidem*, 26.

⁴³ *Ibidem*, 27.

of women's rights both in the scope of marital personal and marital property law; such provisions which can match our goals, which are in compliance with the principle of complete political equality of women's rights, as stipulated already in our Constitution.⁴⁴

This stems from the fact that the Law Commission also had serious doubts as to whether the government draft, "removing only the most jarring and ridiculous provisions that harm women is suitable [at all] for any deliberations of the Sejm"⁴⁵ in such a form, in which it introduces legislative changes only mechanically, without a more thorough, systemic vision.

Therefore, in the erroneous conviction that a suitable draft would be completed soon, the works of the Law Commission were halted. In May 1921, however, when it became clear that "various difficulties and obstacles impeded the Codification Commission from submitting a draft so far", the Law Commission decided, out of necessity and due to no alternative, as put by Zygmunt Seyda who promoted the draft on behalf of the Commission, to return to the abandoned works and to examine the 1919 government draft, in order to "expedite at least this partial solution of this pressing matter."⁴⁶ At the same time, however, it was clearly stated that "drafting of the act, which would change the entire system of property law between spouses, presents difficulties that the Commission itself would need a lot of time to resolve, as it would require a revision of the entire body of civil law binding in the Kingdom of Poland and it would cause the necessity to reshape all these various divisions of the code which are in any way connected to this problem."⁴⁷ Moreover – as Seyda admitted openly – "the Law Commission was not at all [stressed by the authors] dealing with the regulation of the equality of women's rights in the scope of property law, also because such equality is absent from the codes. We believed that legislative changes should be introduced in a uniform manner, for the entire Polish State, so as to avoid a situation whereas an amendment enacted on the territory of former Congress Poland will collide with legal rules in other districts."⁴⁸ Therefore, it turned

⁴⁴ *Ibidem*, 8 – statement by Seyda.

⁴⁵ *Ibidem*, 9 – statement by Seyda.

⁴⁶ *Ibidem*.

⁴⁷ *Ibidem* – statement by Seyda.

⁴⁸ *Ibidem*, 30–1.

out to be more important to unify the legal situation of women in the entire country than to introduce full equality of rights. The Law Commission decided to limit the private law discrimination of women in former Congress Poland, but only to such an extent so as to level their status with that of women in other districts, in which the status quo, based on less discriminating post-partition regulations was still in force. Members of the Commission did not want to privilege the central territories in comparison to other districts, but rather to lessen the gap between this region, which crippled women's rights more than any other, and the remaining districts.

In this form, the draft of the *Ustawa w przedmiocie zmiany niektórych przepisów obowiązującego w b. Królestwie Polskiem prawa cywilnego, dotyczących praw kobiet* [Act on the Change of Certain Provisions of the Civil Law Pertaining to Women's Rights in Force in Congress Poland] (Dz.U. [Journal of Laws] of 1921, no. 64, item 397) was adopted by the *Sejm Ustawodawczy* on 1 July 1921. Its central point was the removal of certain limitations which restricted married women, expressed in the fact that they were not allowed to act without the consent of their husbands. The most important changes included, among others: repealing of the provision which ordered the wife to obey the husband as head of family; granting the wife the right to have a different place of residence than that of her husband's, if his place of residence was unknown or if she had special entitlements to this (for example, owing to a business activity she ran); granting the wife the right to act as a witness to the drafting of a last will and to participate in family councils; the abolishment of limitations which made her reliant on the husband's will for any legal actions; granting the wife a right to dispose of her own property, as long as said property was not placed under the husband's management pursuant to an act of law or contract; acknowledgement as the wife's exclusive ownership of her earnings, profits from trade or industry and personal equipment and objects, even if purchased by the husband; and granting the wife the right to act as custodian to an incapacitated husband and minor children.⁴⁹

The main demand of the emancipation movement to guarantee women's freedom to dispose of their own assets was accounted for only partially. Even father Kaczyński noticed that

⁴⁹ Konic, *Prawo małżeńskie*, 203.

Art. 193 of the Civil Code [of the Kingdom] of Poland ... limits in particular the property rights of women, thus often depriving them of the possibility to secure the livelihood of their families I believe – he added, emphasizing that this issue is of paramount importance – that securing women’s property rights is very significant and is almost the first step toward independence, toward equality of the position of wife and husband within family and, and at the same time, allows women to provide for the family’s livelihood and future.⁵⁰

The *Sejm Ustawodawczy*, however, decided not to oppose the motion of the Law Commission and to uphold the husband’s right to manage and use the wife’s property, although this was limited only to dowry (the assets that the wife contributed at the time of entering into the marriage union) and to cases where no other instructions had been stipulated in the prenuptial agreement. Property acquired by the wife in the course of the marriage, however, from then on became her own property and she was free to dispose of it. This half-measure was justified with the need to avoid breach of the principle of the husband’s management of joint property formed on the date of marriage, as this would call for “the necessity to reformulate the entire civil code, which is in the competence of the Codification Commission.”⁵¹ Upholding the old principle within this scope meant, according to Maksymilian A. Hartglas, that even though the Commission has decided, “for swifter expedition of the matter and for the avoidance of discords within the Commission itself”, to leave this provision, in this limited extent, it in fact “stripped it of nearly all significance” by removing only “those limitations which were the most onerous, the most blatant to women and the most harmful to our system.”⁵²

The act of 1 July 1921 was criticized not only for its limited scope of the anti-discriminatory amendment, but also for its disastrous quality. Advocate Adam Słomiński mercilessly pointed out all the deficiencies of the legislative technique employed in this work of the *Sejm Ustawodawczy* in a special publication. In light of the remarks made by him, the act of 1 July 1921 did not achieve the goals set out by the legislator, even if the idea was not to fully materialize the principle

⁵⁰ SSSU, 27.

⁵¹ *Ibidem*, 9 – statement by Seyda; see also statement by Balicka – *ibidem*, 14.

⁵² *Ibidem*, 15.

of equality of women's rights, but rather the mere removal of the most jarring manifestations of its breach. The numerous provisions, identified even in the very report of the *Sejm's* Law Commission as "completely outdated" – not only openly discriminatory, but simply unfit for the twentieth century's reality – were not repealed, however. This concerned primarily several provisions of the Civil Code of the Kingdom of Poland (Arts. 350, 351, 360–2, 369–81) and Art. 113 of the French Commercial Code. As Słomiński observed, there was no justification for upholding these provisions.⁵³ These retained provisions reflected the anachronistic, in this regard, provisions of the German Civil Code, which also indicates that the legislators, in keeping them, were guided more by the idea of harmonization of discriminatory legislations than by the idea of equality of rights. Moreover, Słomiński claimed that the act not only "did not repeal [the existing] limitless source of disputes", as he regarded the issue of "legal privilege and mortgage of the wife in bankruptcy", but in fact created doubts as to the resolution of other matters, by failing to state precisely to what kind of marriages the changes in the statutory system would apply, and even by failing to clarify a basic issue of whether spouses would be able to enter into articles of association, purchase and sale or exchange contracts. At the same time, the act's "editing was exceptionally sloppy". Despite the pressing need to do so, a number of provisions were not adjusted to the introduced changes.⁵⁴ As a result – in the opinion of Słomiński – even against the background of the codification from one hundred years prior, the method of completing this partial reform of civil law, both in terms of content and formal editing of the provisions, paled in comparison.⁵⁵ On the other hand, the act transgressed the limits of the originally planned reform. Even though the *Sejm's* Law Commission expressly stated that the draft it prepared was merely a "temporary legislative order" and should be treated as such, in the final text of the act, an amendment was introduced (Art. 210 of the 1836 *Prawo o małżeństwie*

⁵³ Adam Słomiński, *Ustawa w przedmiocie zmiany niektórych przepisów obowiązującego w b. Królestwie Polskiem prawa cywilnego, dotyczących praw kobiet* (Łódź, 1921), 54.

⁵⁴ This concerned, among others, Articles 881, 1990 and 2287 of the Napoleonic Code and Articles 196, 206, 225 and 229 of the Civil Code of the Kingdom of Poland.

⁵⁵ Słomiński, *Ustawa*, 55–6.

[Marital Law]) aiming not so much at the materialization of the principle of equality of women's rights, as at changing the nature of the entire institution of marriage.⁵⁶

V CONCLUSIONS

The principal determinant for the manner of understanding of equality before the law in the interbellum period (up until 1935) were the provisions of the Constitution adopted on 17 March 1921. Article 96 stipulated that "all citizens are equal before the law". This principle entailed, first and foremost, that family and estate privileges would no longer be recognized. The representatives of the doctrine and of science, however, had no doubt that the introduction of this rule should be equivalent also to the abrogation of the legally privileged position of men in relation to women, both in the sphere of public and private law. As a result, the Constitution was accepted by most women deputies, even by those – like the socialist Zofia Moraczewska and activists of the popular wing – who voted for its adoption against the position of their own parties.⁵⁷ This understanding of equality of rights within the categories of granting full legal capacity and the capacity to perform acts in law translated into the assumption, widely held by the elites of those times, that bringing to life the principle of equality before the law of men and women should, in principle, entail the simple and mechanic granting of the same rights to men and women, by way of a simple derogation of the existing norms. However, the course of the debate around the act of 1 July 1921 is to prove that, despite these popular empty phrases, the contemporary elites were aware of the oversimplification of reality furthered by such an approach. The masculinized, far-right *Sejm Ustawodawczy* strove to uphold the legal restrictions of women in particular legal solutions, by raising arguments of cultural, social and economic conditions, which assigned different social roles to both sexes. The main factor, however,

⁵⁶ *Ibidem*, 54–5. Słomiński also presented the charge that the act of 1 July 1921 forced an unlawful change in the property relations between spouses in a direction which he deemed 'highly unlikely' to be accepted by the legislator, who would finally decide on this matter.

⁵⁷ Kondracka, 'Parlamentarzystki', 166–7.

was the fact that the adoption of a uniform civil code, which was to regulate, among others, family and marital law, was being held off. This, to a large extent, posed a formal and emotional obstacle to the legislative activities as regarded even the equality of rights of women.

The result of the enactment of such an imperfect act, which did not aim at equality of rights, but rather at the removal of the most stark manifestations of discrimination against women in former Congress Poland, was that the scope of rights of women, especially married ones, was still far from what men enjoyed. This was not the crux of the problem, however. This course of action by the authorities may be deemed justified at the beginning of the 1920s, in the very difficult conditions of forming the foundations of the state. What was much worse was that the situation did not improve significantly over the two subsequent decades. Both in the case of former Congress Poland and other districts, no further steps were taken toward improving the situation of women in the scope of private law, except for the ones which followed from the enactment of the *Kodeks postępowania cywilnego* [Code of Civil Procedure] of 1933 (Dz.U. [Journal of Laws] of 1930, no. 83, item 651), and of the *Kodeks Zobowiązań* [Code of Obligations] (Dz.U. of 1933, no. 82, item 598) and *Kodeks handlowy* [Commercial Code] (Dz.U. of 1934, no. 57, item 502) in 1934. The plans to introduce the body of national civil codification failed in the interwar period, however. In particular, the post-partition systems of marital law, which largely contributed to the crippled position of the married women, were not replaced.

To sum up, the enactment of the act of 1 July 1921 certainly brought a significant improvement of the legal status of women in the scope of private law on the territories of former Congress Poland. However, the provisions in effect until 1914, introduced as early as in the first decades of the nineteenth century, were a sheer mockery when regarded through the prism of the interwar social reality. Therefore, the deputies were unanimously supportive of amendments aiming to grant equal status to men and women from the formal legal point of view. On the other hand, however, they did not feel obliged to materialize the full equality of rights for women, despite the express directive to do so, stipulated in the Constitution of 17 March 1921. Their attitude was mainly fuelled by the erroneous expectation that, within the next few years at the latest, a complete codification of private law would be successfully enacted, which,

embracing the principle of full equality of rights, would solve the problem once and for all in the entire country. The act of 1 July 1921 was, then, a substandard, makeshift law, the aim of which was only to remove the most jarring instances of discrimination. Moreover, first the government, then the parliamentary Law Commission, and finally the entire *Sejm Ustawodawczy*, were guided by the objective of not so much attaining full equality of rights for both sexes, but rather of levelling the legal status of women in former Congress Poland – since that is where their position was most underprivileged – with the status of women in other districts.

Over the course of debate on the act of 1 July 1921, the deputies referred to the legal output inherited from the annexing powers, the provisions of which differentiated the legal position of men and women which, in private law, resulted in women's restricted legal capacity and a limited capacity to perform acts in law. This situation was to be changed, but the change was propelled by slogans alone. Also the drafted project stipulated that the amendment manoeuvre would most often consist in covering women with the hypotheses of legal norms setting out the sphere of rights and obligations of men, along with the repealment of provisions which differentiated the legal positions depending on the sex, restricting the legal capacity and the capacity to perform acts in law by women. As a result, it seemed as though the realization on the constitutional principle of equality of men and women before the law was to be limited to the formal legal granting of legal capacity and capacity to perform acts in law to women, on the same rules as were granted to men. This was also confirmed by the initial stages of the debate on the act on 1 July 1921.

A broader context started to come into view later on in the discussion, however. It was mostly noticeable in the argumentation employed by the participants to this discussion. Whenever justifying their position as regarded the formal legal levelling of differences between men and women, they started to refer to the differences between the sexes within the specifically Polish context, related to cultural, social or economic aspects. The advocate for the improvement of women's legal status, Gabriela Balicka, clearly argued for equality referring to women's "dignity of mother" and thus using women's specific social position as an argument. Also the utterances of her opponents made references to differences between men and

women. At the same time, the majority of those who participated in the discussion did not directly question the need to grant formal legal equality of status to both sexes. Perhaps the problem was not approached in this manner because of the fear that it would sound like incitement to violation of the Constitution. Despite this, however, certain statements by deputies echoed subdued yet clear resistance against the adoption of measures which, in principle, applied the exact same criteria to both women and men. The counterarguments broached the need to maintain certain differences owing to the traditionally different social roles of men and women, with the latter primarily responsible for the family, which in effect limited their right to self-realization.

Despite this, a serious and exhaustive debate on this topic never ensued. Reading the minutes of the *Sejm Ustawodawczy*'s sessions, it is difficult to shake the impression that the women's issue barely stirred any interest on the part of the deputies. It was nearly exclusively lawyers who participated in the discussion, and from this perspective they seemed to be the professional group unwilling to materialize the vision of full equality of rights, concerned about the formal and legal complications this would entail. In most cases, they had also been on the Law Commission before, responsible for the final draft, which made them interested in this issue *ex officio*, in a way. Nearly all of the members of Law Commission were also members of right-wing parties – either National Democrats or Christian Democrats, which already at the onset suggested they may be restrained in their support for the full embodiment of the principle of equality of rights, due to their more traditionalist world-views. At the *Sejm*, however, they presented themselves as – cautious, indeed – supporters of equality of rights, or better yet: of limited equality of rights. What is even more surprising is the complete absence of representatives of leftist circles in this discussion. Not a single deputy from any of the parties that habitually fought against discrimination took the floor to speak about the women's cause. Also the leader of the movement for full emancipation of women, Gabriela Balicka, originated from the Polish National Union. She was the only female, out of the total of 8 women deputies in the *Sejm Ustawodawczy*, who spoke from the rostrum. She was also the only one whose intentions clearly indicated that her main goal, regardless of the hardships, was to attain formal legal equality of rights for women.

It is worth pointing out that ‘equality’ was defined in many different ways, which was tightly connected to party affiliation and world-view orientation of individual deputies. As pointed out by Dobrochna Kałwa, to right-wing organizations, and especially to Catholic women’s organizations affiliated with the National Democracy, “[e]quality of rights did not entail ... an identical position in the life of the nation, but it granted women the possibility to participate in public life based on different values and models than the ones underpinning men’s participation, as they first and foremost focused on issues of morality and customs.”⁵⁸ This corresponded with the striving to support social life on the pillars of traditional rules. In exploring this issue, Kałwa argues that “[i]n the opinion of the Catholic activists, exercise of equality of rights was strictly associated with maintaining the existing role of women [mostly as child-bearers and housewives], set out by tradition, teachings of the Catholic Church and customary norms.”⁵⁹ The ideologues of the national movement took an ambivalent position in this regard. On the one hand, they leaned toward the treatment of women as equal members of the national community, yet the idea of the national state, as propagated by them, placed women in a subordinate position in the sphere of life outside of the family. As Joanna Kurczewska points out,

[e]ntgegen den Annahmen der polnischen Pädagogik und Politik, welche die Bedeutung der Leitbilder hervorhoben, in denen die Frau als gesellschaftliches Subjekt behandelt wurde, bewirkte die Biologisierung der nationalen Bindung, dass die biologischen und biologisch-psychologischen Eigenschaften der Frau wichtiger wurden als ihre kulturellen, gesellschaftlichen und politischen Charakteristika. Das Leitbild der Polin entfernte sich in der historischen Entwicklung dieses [nationalistischen] Diskurses zusehends weg vom Leitbild des Soldaten-Bürgers bzw. der Soldatin-Bürgerin und wandelte sich zum Muster der Frau als Gebälerin, die sich im Einklang mit dem Prinzip ethnischer Reinheit um die nationale Erziehung bemühte. Allgemein gesagt, wurde die Frauenthematik von den späteren Vertretern des Diskurses zunehmend ‘biologisiert’ und die Frauen ins Haus und in die traditionelle katholische Familie zurückgedrängt. All dies stellte die frühere Kritik der konservativen Frauenmuster in Frage, und – was ebenso wichtig ist – es ließ die eigenen früheren positiven Entwürfe fragwürdig

⁵⁸ Dobrochna Kałwa, *Kobieta aktywna w Polsce międzywojennej. Dylematy środowisk kobiecych* (Kraków, 2001), 150.

⁵⁹ *Ibidem*.

erscheinen. In der Frauenthematik spielten, anders gesagt, gesellschaftlicher und politischer Aktivismus bald keine Rolle mehr. An seine Stelle trat die Biologie: der mütterliche Instinkt und der nationale Instinkt.⁶⁰

The above findings correspond with statements expressed by Balicka, who was a member of Polish National Union (*Związek Ludowo-Narodowy*), and who referred to the national duties and achievements of women as mothers, while the leftist parties were in general absent from the discussion. This state of affairs raises some questions. Formal legal granting of equality of rights did not, after all, exclude attempts to create conditions for material equality, while the debate on the act of 1 July 1921 presented the ideal opportunity to lay claims to a relevant programme which would enable it. This claim was never voiced, however. The inaction of the left is then hard to explain as an element of some carefully planned strategy; it was more likely the result of inertia and concentration of the leftist deputies on entirely different aspects of putting forward the leftist programmes.⁶¹

In general, the voice of the emancipation movement in the Polish Sejm was feeble and hardly caused any ripples among the deputies. The basic problem was that this fruitless and dispassionate debate over the act of 1 July 1921 was the only debate on the issue of equality of women's rights that ever took place on the arena of the interwar Polish parliament. The sole, tangible fruit of the attempts to abolish discrimination against women in private law was the "crippled equality of rights" brought by this act, imperfect in all respects.

On the one hand, this resulted from the fact that Poland never achieved the full, national codification which was to have regulated this momentous matter, prior to the outbreak of the Second World War. Therefore, the cause of the fact that certain discriminatory regulations remained in effect in each of the districts until the end of the interwar period, was the failure to enact relevant parts of the unified national civil law, and in particular of the marital law. Throughout this whole time it seemed as though the partial discrimination was a transient state of affairs which, however, dragged on infinitely. The reason why it was impossible to put through the relevant projects,

⁶⁰ Kurczewska, 'Der frühe polnische Nationalismus', 76.

⁶¹ To read more about the attitude of the socialists towards the women's cause, which is difficult to evaluate as they were focused on social issues, see Kałwa, *Kobieta aktywna*, 149–50.

despite the fact that they were ready already in the 1920s, were not the concerns related to the full materialization of the principle of equality of rights for both sexes in civil law – which was, by the way, guaranteed in these projects. It was, instead, the battle for the nature of the institution of marriage, infused with a strong influence of the Catholic Church on the political life in the country.

On the other hand, we should not concentrate too much on the mere technical process of law-making by proving exclusively that the lack of unification of civil law impeded the granting of equal civil rights to women and ignoring the socio-political and cultural contexts in which equality had been discussed. The problem of “legal minds” who were not much concerned about the rights of women, but only about “principles”, as indicated by Balicka, might have indeed existed. Yet a closer look at the discussions clearly shows that they did not revolve merely around abstract musings of lawyers about principles and technical unification; they involved the political and moral arguments of large sections of the society. In this way, starting from the nineteenth century, women’s cause in the sphere of private law was something of a hostage to the political circumstances of the country, rather than the social problem of discrimination. However, these circumstances were not limited to the fact that the Second Polish Republic was lacking a unified civil code and lawyers gave the unification priority over the legal emancipation of women. More important could be the fact that discussions around civil law strongly overlapped the national identity discussions, in which the beliefs about the specific social and cultural role of women constituted a significant trope, but also had to be subordinated to them. Therefore, the introduction of equality of women’s rights was not convenient to contemporary ruling elites, yet this was not something they could admit officially in the twentieth century. Delaying the entire process and piling up new legislative obstacles favoured the petrification of the traditional role of women in the society.

trans. Maja Jaros

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