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*Attempts to Codify Personal Matrimony Law in the Second Polish Republic. A Fiasco or Perhaps a Success?**

Abstract

After regaining independence in 1918, Poland inherited five different post-partition legal orders from the 19th century, regulating personal matrimony law on its territory, i.e. Prussian, Austrian, Hungarian, Russian and Polish from the times of the Kingdom of Poland. This situation required urgent reform and taking codification steps. The codification task was entrusted to the Codification Commission, established in 1919. Its result was the governmental matrimony law Project adopted in 1929, known as Lutostański's Project. Unfortunately, it was not passed by the Sejm. It happened because of the opposition of the Catholic Church and other conservative forces. The reasons for this state of affairs were too modern, for those times, legal solutions contained therein, and above all, the possibility of obtaining a divorce. Many legal solutions included in this project can be found in modern matrimony law, i.e. almost a hundred years later. Nevertheless, the very idea of codification and the adopted main principles of matrimony law should be considered a success of Polish legal thought. The more so because many of these solutions were used in post-war Poland in the Decree on matrimony law in 1945 and are known in contemporary matrimony law.

Keywords: personal matrimony law, project of matrimony law, codification, the Codification Commission, Lutostański's Project, marriage, divorce

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1. Introduction

When Poland regained independence in 1918, the reform of the non-property (personal) matrimony law became an urgent codification need. The scale of the problem is best illustrated by the words of priest Stanisław Biskupski, who understood this term: “the ordering of the matrimonial legislation which presented and to this day has presented such a great variety that is not found anywhere in the world”.¹

It should be noted that in the territory of the Second Polish Republic, five different legal regimes regulating personal matrimony law were in force i.e. Prussian, Austrian, Hungarian, Russian and Polish, from the period of the Kingdom of Poland.² All these codifications had a post-partition, 19th-century origin. Within these three codifications, there were as many as three different models of matrimonial law in force, such as secular, religious and mixed (secular and religious).³ It was a specific case in contemporary Europe. Such a legal state was until the end of 1945 and caused numerous legal problems for the state, courts and citizens as well as the church authorities.

2. Course of the Codification Work in 1918–1939

2.1. First Stage

The task of developing a project of matrimonial law was entrusted to the state Codification Commission, which was established by the Legislative Sejm of the Republic of Poland by the resolution of 3 June 1919.⁴ Professor of the Jagiellonian University Dr Franciszek Ksawery Fierich was appointed the first President of the Commission (on 22 September 1919), and in 1928, Bolesław Pohorecki replaced him.⁵ Initially, the codification work was carried out by the Civil Law Section [hereinafter referred to as “section”], and in March 1920, Professor Władysław Leopold Jaworski from the Jagiellonian University became its referent (chairman).⁶ As part of the Civil Law Section, from the very beginning, the principle was adopted that the basis for the codification work would not be any of the codes in force in Poland, i.e. ABGB (Austrian Civil Code) of 1811, KCKP (Civil Code of the Kingdom of Poland) of 1825 and BGB (German Civil Code) of 1896 or Russian legislation. Therefore, it was intended to work on an entirely new code, and this work was preceded by extensive research on the practice of the judiciary and its postulates *de lege ferenda* (as, e.g., demanded by Ignacy Koschembahr-Łyskowski).

¹ Biskupski, *O nowe prawo małżeńskie*, 9.

² Fiedorczyk, “Prawo rodzinne ziem wschodnich”; also, see Zarzycki, *Rozwód w świetle akt*.

³ Grzybowski, *Podzielność małżeństwa*, 17.

⁴ Ustawa z dnia 3 czerwca 1919 r. o komisji kodyfikacyjnej (Dz.Pr.P.P. 1919 nr 44 poz. 315).

⁵ Grodziski, “Prace nad kodyfikacją”, 10.

⁶ *Ibid.*, 13.

From the very beginning, the members of the Civil Law Section were motivated by the idea of developing a comprehensive codification, thus resigning from the idea of fragmentary and transitional regulations.⁷ The starting point for these works and codification discussions were the general theses presented by Professor Jaworski on 29 March 1920.⁸ They were called “The Rules of Matrimony Law” and were presented in 15 points.⁹ The most essential and modern one referred to the fact that marriage could be concluded in two optional ways, i.e. before a civil registrar or a clergyman of a church or a religious association legally recognised by the State.¹⁰ Both forms of marriage were to cause a civil effect in the state order. The rule was accepted that spouses would have equal rights in marriage. The possibility of obtaining a divorce apart from a marriage separation, which could only be obtained due to enumerated positive divorce reasons (and separation), was favourably supported.¹¹ And the statutory matrimonial property regime, regulated in a separate legal act, was to be property separation (separation of goods).

The future Polish matrimony codification was to be based on experiences copied from modern foreign models.¹² These were quite liberal ideas, which not all members of the Codification Committee liked. Even then, conflicts emerged with the conservative part of the lawyers sitting in the Section. Among the conservative reformers, there were canon law Professors Władysław Abraham from the University of Lviv and Józef Brzeziński from the Jagiellonian University in Kraków. One should also take into account the conservative views of the influential hierarchs of the Catholic Church and the representatives of secular groups of landowners. The result of these conflicts was slow progress of the codification work and keeping its progress secret from the public and ultimately a deposition of Professor Jaworski himself as a chairman of the work on this project (at the end of 1923).¹³

Still, the idea itself to codify the entire matrimony law and not its individual parts should be considered a success for Polish lawyers. Anyway, separate codification work was carried out in parallel on the marital property law and the law on marital status records.

2.2. Second Stage

The second stage of the codification work on personal matrimony law was discussed in the special preparatory Subcommittee, chaired by Professor Karol Lutostański (from

⁷ For example, Górnicki presents such a view. See Górnicki, *Prawo cywilne*, 194–268; Górnicki, “Koncepcja i konstrukcja prawna”, 171–201.

⁸ Biskupski, *O nowe prawo małżeńskie*, 15, who refers to Dr Jaglarz, *Uwagi do kodyfikacji*, 11, and Biskupski, *Reforma prawa małżeńskiego*, 9ff.

⁹ Cf. Jaworski, “Zasady prawa małżeńskiego”, 595–7; Gołąb, *Polskie prawo małżeńskie*, 22–3; see also Grzybowski, *Podzielność małżeństwa*, 18; Górnicki, *Prawo cywilne*, 194.

¹⁰ Gołąb, “Zasady prawa małżeńskiego”, 599–600.

¹¹ Dbałowski, “Recenzja pracy”, 877.

¹² Gołąb, “Zasady prawa małżeńskiego”, 595–7.

¹³ Karłowski, *Uwagi o projekcie*, 9, note 2, refers to the MP’s statement Janusz Radziwiłł of 6 February 1932 and the information from the journals *Ateneum Kapłańskie* 1 (1931), 59; *Prąd* 22 (1932), 180.

2 June 1924 to 28 May 1929).¹⁴ There were three readings on the project, and basically, in the fall of 1927, it was already ready for editorial review before further proceedings. The first reading of the project was carried out by the Subcommittee at 23 meetings from 5 December 1924 to 21 July 1925.¹⁵ The second reading on the matrimony law project was held at 17 meetings of the Subcommittee from 16–21 February to 17–22 April 1926.¹⁶ The third reading of the project was held in seven sessions from 23 to 29 October 1926.¹⁷

However, due to political resistance, the course of the work on this project was suspended at the Subcommittee level for almost the next two years, i.e. from 1927 to 1928. The situation changed positively only on 20 December 1928, when the Work Organising Committee passed a resolution to accelerate the codification work on matrimony law. The acceleration of this work was the political consent granted a few days earlier (on 11 December 1928) at the meeting of parliamentary committees.

The editorial work on the project of personal matrimony law was finally completed with the voting in a group of several members of the Work Organising Committee of the Codification Committee on 28 May 1929.¹⁸ Unfortunately, it was a procedural and regulatory error, later repeatedly raised by the opponents of reforms. The project was to be voted on by the full Codification Committee, consisting of 43 people.¹⁹ Unfortunately, the results of the vote were never officially announced, although it was established that Juliusz Makarewicz abstained and Stanisław Bukowiecki, Włodzimierz Dbałowski, Aleksander Doliński, Henryk Konic, Jan Jakub Litauer, Karol Lutostański, Ignacy Koschenbahr-Łyskowski, and Emil Stanisław Rappaport voted for the Project. As for Waław Makowski and Zygmunt Marek, it is not known whether they were present at the meeting.²⁰

Adopted in this way, the project of the personal matrimonial law, also known as Lutostański's Project, was sent to the Ministry of Justice on 4 December 1929 for editorial corrections.²¹ The publication of this project in print was delayed by two years. The delay was justified by the necessity to complete work on the project of the act on civil status records, which was related to the first one and connected by the referent (Professor

¹⁴ Professor Lutostański, noting the need for a quick amendment of personal matrimony law, emphasised that “the state of affairs in the scope of matrimony law in force in the Republic of Poland is in clear contradiction with the unity of the Polish State and its sovereignty and the seriousness of the law; it is a factor of confusion in the relations of family life, a factor of decay, undermining the legal order of social coexistence of citizens in the spirit of the requirements of modern civilisation”. Cf. Lutostański, *Zasady projektu prawa małżeńskiego*, 17; also, see Grodziski, “Prace nad kodyfikacją”, 16–7.

¹⁵ According to Górnicki, *Prawo cywilne*, 197, the meetings lasted 3 hours each. Cf. “Przemówienie prof. X. Fiericha”, 136.

¹⁶ Professor Władysław Abraham from Lviv, Prof. Stanisław Gołąb from Kraków, and Judge Makowski from Poznań took part in the second reading in the subcommittee. In the final stage of the work, Prof. Abraham did not participate anymore.

¹⁷ Górnicki, *Prawo cywilne*, 200; Górnicki, “Koncepcja i konstrukcja prawna”, 171ff.

¹⁸ Górnicki, *Prawo cywilne*, 200; Górnicki, “Koncepcja i konstrukcja prawna”, 171ff.

¹⁹ Cf. the arguments of a member of the Codification Committee, Advocate Prof. Ludwik Domański. See Domański, *O małżeństwie*, 120.

²⁰ Górnicki, *Prawo cywilne*, 200; Górnicki, “Koncepcja i konstrukcja prawna”, 171ff.

²¹ Biskupski, *O nowe prawo małżeńskie*, 16.

Lutostański).²² The print of the justification of the project of personal matrimony law was not completed until 9 December 1931.²³

Unfortunately, this project was not submitted to further legislative work, i.e. to the Council of Ministers and then to the Sejm of the Republic of Poland for adoption. Thus, this codification work ended in a complete failure. On 12 December 1931, the Council of Ministers issued a statement that the government had not yet considered the project of matrimony law at its meeting and that such a meeting had not yet been scheduled. According to the voices from the governmental circles, the government did not intend to take the Project of the Codification Commission (hereinafter referred to as Lutostański's Project) as the basis for the codification of matrimony law in Poland.²⁴

Until the outbreak of Second World War, various problems related to the lack of unification of matrimony law in Poland lasted. The Codification Commission believed that it had finished its role and developed a legitimate project that expressed its final view on this matter.²⁵ The Council of Ministers and the Sejm and other organs of the state authority did not show any initiative in this respect, everything was waiting, including the Episcopate. In fact, it was not until April 1939, at a session in Warsaw, that the Episcopate of the Catholic Church decided to send Professor Lisowski's Project for legislative work in the Sejm in an unknown future.²⁶ It can be concluded that the church authorities in Poland had failed to develop their own or to carry out any other project and bring it up for deliberations of the Sejm. The outbreak of Second World War interrupted further discussions in this respect.

3. Church Reaction to Lutostański's Project

Lutostański's Project was criticised by most of the churches and religious associations legally recognised in Poland that mattered. It was especially fiercely criticised by the clergymen of the Catholic Church as well as the higher clergymen of the Russian Orthodox Church (for instance, in the newspaper *Woskresnoje Cztenije* of 1932, no. 4)²⁷ and the Greek Catholic Church. It was also criticised by the Jewish community at the Convention of Polish Rabbis on 4 January 1932²⁸ affiliated in the Jewish Religious Association.²⁹

²² Górnicki, *Prawo cywilne*, 201; Górnicki, "Koncepcja i konstrukcja prawna", 171ff.

²³ Górnicki, *Prawo cywilne*, 201, f.n. 23.

²⁴ *Ibid.*, 202 and the literature therein.

²⁵ Krasowski, "Próby unifikacji", 501; and Godlewski, "Problem laicyzacji", 750ff.

²⁶ Krasowski, "Próby unifikacji", 501, refers to the Archiwum Archidiecezjalne w Gnieźnie [AAG], Metropolitan Curia, 202, the minutes of the plenary session of 26 April 1939 and of the legislative Subcommittee of the Legal Committee of the Bishops' Conference of 27 April 1939.

²⁷ Karłowski, *Uwagi o projekcie*, 17, f.n. 2.

²⁸ "Zjazd ludzi z epoki kamiennej", 46; Karłowski, *Uwagi o projekcie*, 17, reports that the Jewish press spoke quite favourably of the project, calling it progressive.

²⁹ Prof. Dr Stanisław Trzeciak published: *Talmud, bolszewizm; Żyd jako obrońca*. In response, the work of Armad Akerberg was written, entitled *Talmud, bolszewizm*.

The only Church that refrained from criticising the project was the Evangelical-Augsburg Church which adopted a neutral position.³⁰

3.1. Reaction of the Catholic Church to Lutostański's Project

The position of the Catholic Church on the project was overwhelmingly critical, but the methods and forms of this criticism were varied. They were direct and indirect reactions:³¹

Firstly, since 1926 the critical standpoint of the Church was presented in various Church and secular magazines. The results of various social and scientific questionnaires were quoted – especially in the magazine entitled *Nowy Kurier Polski* and others.

Secondly, since 1931 different priestly letters and critical speeches of Abp. August Hlond, the Primate of Poland, were systematically read. The proclamation of the Episcopacy of Poland to the Nation was published on 10 November 1931. The project was named “Bolshevik” in a lot of speeches as wishing to introduce “the seed of Bolshevism.”

Thirdly, the prayer services for maintaining the previous matrimony church law were organised (8 December 1931).

Fourthly, all the worshippers were mobilised to write protest resolutions while forbidding to support the project.

Fifthly, the authority of the opinions of eminent scholars to fight with the project was used. The Catholic University of Lublin took the lead in it. Also, the professors at the University of Lviv participated in it (Oswald Balzer, Leon Piniński, Edward Dubanowicz, Stanisław Głębiński, Juliusz Makarewicz), and the professors at the University of Warsaw (Oskar Halecki, Tadeusz Brzeski).

Sixthly, the mass media and the Catholic press fought against the project. One of the initiators of this idea was Reverend Stanisław Trzeciak and his brochures.

Seventhly, the other private counter-projects of personal matrimony law were elaborated.

Eighthly, the exclusion of Professor Makarewicz by the authorities of the Polish Christian Democratic Party from its ranks, for the reason that during the vote on the project of matrimony law in the work Organising Committee, he abstained, instead of voting against the project or even leaving the Codification Committee.³²

³⁰ Baudouin de Courtenay, *Wyznaniowe i pozawyznaniowe*, 20; “Głos Kościoła Ewangelickiego”; “Głos Gminy Ewangelickiej”; “Głos Prasy Ewangelickiej”.

³¹ I provide the following division after Górnicki, *Prawo cywilne*, 204–5.

³² Following Górnicki, *Prawo cywilne*, 206, note 37, refers to the fact that Wojciech Korfanty led to the removal of the Professor, and the conflict itself arose in the fall of 1931. Cf. Wąsowicz, “Juliusz Makarewicz”; Krzywobłocka, *Chadecja 1918–1937*, 251–2 and 255.

4. Private Projects of Matrimony Law

As it were an answer to Professor Lutostański's governmental project, the conservative and Catholic circles undertook to develop various private projects of matrimony law. We know of at least five wholly finished Projects. The project by Reverend Dr Jerzy Jaglarz³³ and Professor Zygmunt Lisowski from the University of Poznań³⁴ became the best known. Both were presented and printed in 1934.³⁵ The legislative level of the latter one was noticed in the country among the Catholic circles and other conservative environments as well as in the international arena. First, it secured the support of the Polish Episcopate in case the Council of Ministers submitted Lutostański's Project to the Sejm for further legislative work (April 1939).³⁶ According to the special papal Commission in the Vatican, it was one of the best projects of matrimony law in Europe.

It should be noted that various Catholic-conservative circles portrayed new designs or codification proposals now and then. Three more known Projects include the project developed in May 1939 by the Cracovian lawyer Dr Juliusz Sas-Wisłocki (1909–1973), representing the Association of Catholic Advocates. The next project was presented by Bishop Adolf Piotr Szelażek (1865–1950), the Bishop of Lutsk. The separate project was also presented by Jesuit Jan Roth (1870–1944) and a professor of canon law from the Catholic University of Lublin.³⁷ However, these projects were not recognised by the Primate of Poland, Cardinal August Hlond and are not widely known in scientific circles.

It is perhaps worth noting that in 1939 Dr Juliusz Sas-Wisłocki³⁸ published a scientific article in *Współczesna myśl prawnicza*, in which he presented his views on further codification work on matrimony law and his private project of this law.³⁹ The author did not hide his dissatisfaction with the abandonment of further codification work and the scientific silence around this subject. He noted, however, that

[...] in the system of the future Polish national law, also matrimony law must correspond to the spirit of the law of the Polish Nation, and since the Polish Nation is a Catholic nation, its state and its law must not be inconsistent with the provisions of the Roman Catholic religion and canon law.⁴⁰

Common to all of these private projects of matrimony law it was that they provided for primarily religious forms of marriage and did not allow for divorce. The civil form of marriage was too unique, just like divorce – only for non-Catholics.

³³ Zarzycki, "Obrońca węzła małżeńskiego", 529–45.

³⁴ Grodziski, "Prace nad kodyfikacją", 17.

³⁵ Jaglarz, "Projekt prawa małżeńskiego"; Lisowski, *Prawo małżeńskie*.

³⁶ Krasowski made such arrangements. *Episkopat katolicki II Rzeczypospolitej*, 197–8; Krasowski, "Próby unifikacji", 500–1.

³⁷ Krasowski, "Próby unifikacji", 501, f.n. 92, who refers to the source: Acta Hlondiana, IV/16, k. 73 in: AAG, Archiwum Prymasa Polski, I, 22. I am analysing these files.

³⁸ Juliusz Sas-Wisłocki was a doctor of law and an attorney (in Kraków and Warszawa), a senior assistant at the Jagiellonian University and the University of Warsaw. He was the president of the Union of the Catholic Academic Associations, the president of the Marian Sodality, the editor-in-chief of the monthly magazine *Współczesna Myśl Prawnicza*, he was active in the National Democratic Party. Cf. Pociąg, "Juliusz Sas-Wisłocki", 87–8; and Wisłocka-Sieprawska, "Adwokat dr Juliusz Sas-Wisłocki", 315–8.

³⁹ Sas-Wisłocki, "Wytoczne przyszłego polskiego prawa małżeńskiego", 8–13.

⁴⁰ *Ibid.*, 8.

5. Legal Rules of the Modern Matrimony Law⁴¹

The modern legal rules gave rise to the codification of personal matrimony law in Lutostański's Project. There are nine principles on which this project was based.

Firstly, the rule was adopted that marriage and personal matrimony law was the subject matter of the regulation of the state legislation. Thereby, the centuries-old concept was rejected according to which marriage was in the exclusive range of interests of Church legislation. Until then, it had been a kind of monopoly of the Church, which they had attempted to overthrow. The concept was accepted according to which marriage cases could be regulated independently in two legal orders i.e. in the secular (State) order or the Church one. This is the present situation in Poland and other countries in the world.

Secondly, the rule was accepted that the state courts should adjudicate in the personal marriage cases in the state forum, whereas the church courts should rule in the religious forum. Such a solution was the consequence of adopting the secular country concept i.e. the rule of the separation of the State and the Church. Marital cases are civil cases. Therefore, they had to be settled by the state courts, which passed judgement on behalf of the Republic of Poland. The judges in these state courts were nominated by the President of the Republic of Poland. They were independent and subject only to State and not Church acts.

Thirdly, the rule was adopted that matrimony law should be regulated uniformly for the whole society and state. Matrimony law should be an element strengthening the unity of the reborn Polish state. The admission of the Church to these competencies, between the sovereign state and a citizen would be an expression of distortion of these relationships.

Fourthly, the foundation was the principle of equality of citizens before the law. Matrimony law should be equal for all the citizens of the state regardless of ethnic, religious, social or economic differences.

Fifthly, the foundation was the principle of protection of a citizen's freedom in matrimony law. Each citizen could get married and enjoy the legal protection of their marriage regardless of any differences such as ethnic, religious, social and others.

Sixthly, the foundation was the principle of freedom of conscience and religion while choosing a form of entering into matrimony. Both forms of marriage i.e. religious and civil, when it comes to secular effects, were to be equivalent and its choice was left to the interested persons.

Seventhly, the foundation created the universality of the institution of marriage available for everybody.

Eighthly, the foundation was the principle of freedom of getting married as a basic factor of the legal system in the State. The State reserved itself regulations regarding the form of entering into matrimony so as to eliminate cases of establishing informal relationships [cohabitation], purely religious or ritualistic marriages, as socially harmful relationships.

⁴¹ Professor Karol Lutostański (for the first time) on 25 October 1931 (Sunday) gave an over 2-hour lecture (paper) on the subject of the Project of Matrimony Act developed by the Codification Committee in the Meeting Room of the Criminal Chamber of the Supreme Court at the second Information Conference (organised by the General Secretariat of the Permanent Delegation of Legal Associations and Institutions). I provide the content of the rules following Lutostański, "Odczyt o projekcie", 226.

Ninthly, the foundation was the principle of the durability of marriage. The durability of marriage is a necessary condition to fulfil its functions in different areas i.e. considering spouses themselves, their descendants and the State. The ultimate expression of its durability is its lifelong indissolubility. If the marital community breaks down permanently, separation (Articles 54–76) or divorce (Articles 77–80) should be an exceptional preventive measure.

6. Personal Matrimony Law in Post-war Poland

The Decree on matrimony law of 25 September 1945 introduced, with effect from 1 January 1946 throughout Poland, the uniform matrimony law for all Polish citizens, regardless of religion.⁴² In the literature on the subject to date, the prevailing view was that the solutions to this Decree were based on the Project of matrimony law of 1929.⁴³ However, we should remember that the solutions contained therein were in line with the requirements of the mentors of the new socio-political (socialist) system in post-war Poland and the doctrine of matrimony law as adopted from the Soviet Union. Thus, this Decree had to differ in many details from Lutostański's Project of 1929. One of the most important was the idea of breaking with the denominational form of getting married. A marriage contracted only before a civil registrar was to produce legal effects under the Polish (civil) law. It was possible to contract a religious marriage, but only for those spouses who had already entered into a civil marriage. The reverse was unacceptable and punishable.

As a novelty, the principle of complete equality of spouses and equality of all children i.e. legitimate and extramarital was adopted.⁴⁴ The centuries-old institution of legal separation of spouses was abolished as too outdated and having a church [Catholic] origin. In its place, the institution of divorce was introduced, admissible for all spouses, regardless of their religion and form of matrimony.

Divorce, however, was to be one of the extraordinary ways of dissolving a marriage that had already broken down and “no longer fulfills its functions which result from the essence of marriage as a social institution, when their marriage can no longer achieve the goal that every marriage should pursue”.⁴⁵ It is noteworthy that the 11 positive reasons for divorce mentioned in Article 24 of Decree were similar to the positive reasons for separation from the Project of 1929.⁴⁶

⁴² In the Journal of Laws of 7 November 1945, 4 decrees of 25 September 1945, functionally related to each other, were published, i.e. matrimony law (*Journal of Laws* 48, item 270), Provisions introducing matrimony law (*Journal of Laws* 48, item 271), Law on civil status records (*Journal of Laws* 48, item 272) and the provisions introducing the law on marital status records (*Journal of Laws* 48, item 273). Cf. Kasprzyk, *Separacja prawna małżonków*, 133; also, Grzybowski, Różański, *Prawo małżeńskie*, 9.

⁴³ Kasprzyk, *Separacja prawna małżonków*, 133; Fiedorczyk, “Wykorzystanie dorobku”; Fiedorczyk, “Z prac nad unifikacją”; Fiedorczyk, *Unifikacja i kodyfikacja*, 39ff.

⁴⁴ Kasprzyk, *Separacja prawna małżonków*, 133.

⁴⁵ Witecki, *Prawo małżeńskie*, 39.

⁴⁶ Kasprzyk, *Separacja prawna małżonków*, 134; Zarzycki, *Rozwód w świetle akt*, 38ff.

All matrimonial matters were brought under the jurisdiction of state courts (Article 36). In this way, the religious authorities were deprived of any influence on the fate of a marriage.⁴⁷ Thus, the divorce [or annulment] of the marriage by an ecclesiastical court after that date could not have civil effects, but only church effects.⁴⁸

Summary

(1) Among the reasons for the failure of the idea of codifying matrimony law in Poland one could find the following:

- The anti-codification position of the Catholic Church and its hierarchs, led by the Primate of Poland, Cardinal August Hlond.
- Great social action – anti-codification – organised by the Catholic Church with the help of a special organisation of the Catholic Action, which brutalised the social, political, religious and legal discourse on the direction of legal and codification changes.
- Matrimony law in force in Poland, and the legal chaos within it, contributed to the development of legal cunning in matrimonial matters, even the so-called “divorce tourism” of Polish citizens.
- Controversial and often divergent jurisprudence by consistory Courts: Orthodox (in Warsaw), Protestant (Jednota Wileńska), or the practice of concluding purely religious (ritual) marriages among Jews.

(2) Nonetheless, the successes in the work on matrimony law should include:

- The very idea of codifying matrimony law appeared among the political and legal factors that determined the establishment of the Codification Commission of the Republic of Poland in 1919.
- The emergence of a discussion on the direction of changes in the existing, post-partition marital law; and the need to develop a uniform matrimony law for the whole of Poland.
- Finalisation of the work on the project of personal matrimony law in 1929 by the Commission chaired by Professor Karol Lutostański.
- Successful attempts to develop the private matrimony law bills and recognition of the high legislative level of these bills in the international arena – and the discussion of them.
- A partial success was the codification of private inter-district law and private international law in 1926.
- The use of the inter-war codification achievements in the work on the Decree of matrimony law of 1945.

⁴⁷ Kasprzyk, *Separacja prawna małżonków*, 134, at the same time, the fact that these provisions are not fully developed is emphasised; also Górski, *Prawo familijne*, 6.

⁴⁸ Witecki, *Prawo małżeńskie*, 54.

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