

French model of enforcement proceedings in the Duchy of Warsaw and Kingdom of Poland from 1808 to 1823

(summary in English)

A dissertation presents French model of enforcement proceedings in the Duchy of Warsaw and in the Kingdom of Poland from 1808 to 1823 including practice of Polish justice system as well as legislative work of State Council and other legislative bodies and committees. The main goal of this dissertation is to check the hypothesis whether the ubiquitous opposition against French enforcement proceedings solutions led to restoration in 1823 model from “old Poland”, *i.e.* from times before the last partition of Poland (1795), or whether that restoration of national solutions was indeed Polish modern reform based on French patterns and formalism taken from Napoleonic codes rather than based on ancient Polish customary law. The subject of the theory and practice of enforcement proceedings, as well as civil proceedings in general, from the French code of civil procedure of 1806 in Poland was beyond the interest of researchers (legal historians) who focused more on Napoleonic Code and civil law. This dissertation firmly states that Polish judicial practice in the first place filled French procedure with contents, deriving from Polish legal tradition and Prussian experience, that did not have any ground on legal text (codes) and then accepted it as “own” and even “national” in the defence process against the attempts to introduce Russian legislation in Poland.

A dissertation consists of an introduction, five chapters, and conclusions. Introduction includes large and thorough catalogue of historical sources (printed and manuscripts) which were essential for the title subject. Chapter one introduces methodology and main issues regarding French civil procedure, its reception in XIX Century Europe, short description of this procedure as well as judicial organisation in the Duchy of Warsaw and in the Kingdom of Poland, model of enforcement proceedings from Polish-Lithuanian Commonwealth era and later in Prussia. Second chapter focuses on courts' enforcement officials – bailiff (*burgrabia* or *komornik*) in Poland and a *huissier de justice* in France. It includes a professional tradition, powers, place within justice system and comparative differences which resulted from other-than-codes normative acts (lower in hierarchy of legal texts as for example national regulations). That part includes evolution and changes that occurred to enforcement officers in both Countries from 1808 to 1823 and later as a symbol of strong national tradition that could not have been changed despite having the same French code of civil procedure. Third chapter is devoted to the system of enforcement proceedings mean and institutions in the code of civil procedure order: execution's announcement (*zapowiedzenie*), seizure of movable property, foreclosure of immovable property, court's bidding sale of seized goods with proper description of theory and practice of legal remedy and appellation for both parties – debtor and creditor – during every stage of civil and enforcement proceedings. I try to describe problems of moratorium for creditors in the Duchy of Warsaw regarding enforcement proceedings as it was applied only to the fraction of all cases and bidding sale of seized goods. A large part was devoted to the issue of sums of Bayonne (*sumy bajońskie*), however they were rather of political matter than judicium. The general view of the chapter is that real estate issue was essential for the Polish state because of the fact that it was the biggest asset of the nobility estate which was in very bad condition as the property was usually highly indebted. However, Polish debtors did not need much time to learn details of French enforcement proceedings means to use it to protect

their property as they exploited a formalism of code of civil procedure of 1806 in many ways with great support of attorneys. Fourth chapter carries out description and conceptualisation of two particular and practical institutions. First, I introduce “civil arrest” .i.e. special kind of prison for debtors which was a mean to recover a debt by putting a debtor into the prison (run for non-criminals convicts only). Second, I describe the institution of military help within enforcement proceedings which was granted for bailiffs in case if they met any resistance during their professional duties. I reconstruct both institutions using a very rare historical sources from judicial and extrajudicial archives as it was a field of cooperation of prosecutors and bailiffs from the one side and the army and municipal administration from the other side. I show that especially local administration faced many problems with implementation of the provisions of the code of civil procedure. These wrongdoings were traced and corrected by the national government but their big number and recurrence shows deep problems of state institutions. Chapter five focuses on partial reform of the enforcement proceedings law from 1823 which was believed to switch from French model into Polish (national) one. It includes a very detailed description and meaning of provisions of two legal acts – regulations of the Viceroy (Namiestnik) of the Kingdom of Poland. In the conclusions I highlight the most important thesis and findings of the dissertation. So-called “national” regulations from 1823 were indeed heavily based on French model and logic and were in force for almost 53 years despite the fact that their creators’ intentions were rather temporarily. I firmly stand on the thesis that Polish researchers did not recognize that the most essential French institution – bidding sale of immovable property – was not forbidden, but there was another institution added to the system – bidding lease of the immovable property – that was far more popular than the French one.