

III. PRZEKŁADY

Piotr Zbigniew Pomianowski (Warsaw)

The number of divorces adjudicated on Polish soil under the Napoleonic Code¹

The purpose of the following outline² is to assess the number of divorces adjudicated on Polish soil under the Napoleonic Code while its regulations were in force in this area in the Duchy of Warsaw, the Kingdom of Poland (until 1825) and in the Free City of Cracow (until 1852³).

Archival research, which has been carried out recently, indicates, contrary to the opinion found in literature on the subject,⁴ a relatively large scale of the phenomenon. The query included various sources. The largest number of divorces was confirmed on the basis of vital records which were kept in the researched period both by superiors of parishes of different denominations as well as by secular officials.⁵ The records containing divorce certificates were sometimes kept separately and they were sometimes kept with marriage certificates or announcements. Besides the records themselves, annexes (the so-called *allegata* or *annexa*) to the

¹ P.Z. Pomianowski, *Liczba rozwodów orzeczonych na ziemiach polskich na podstawie Kodeksu Napoleona*, "Czasopismo Prawno-Historyczne" [Journal of Law and History] [CPH] 2016, vol. LXVIII, issue 1, pp. 51–68

² The article was created as a part of research financed by Narodowe Centrum Nauki [the National Science Centre] (project registration number: 2014/13/D/HS5/03408).

³ Divorce regulations of the Napoleonic Code were in force for several more years after Cracow was incorporated into Austria.

⁴ A review of the literature: P. Pomianowski, *Z problematyki rozwodów w Księstwie Warszawskim* [On the divorce issue in the Duchy of Warsaw], CPH 2013, vol. 65, issue 2, footnote 3, p. 103.

⁵ More on the issue: P. Pomianowski, *Funkcjonowanie francuskiego modelu rejestracji stanu cywilnego w Polsce* [The functioning of the French model of registering one's marital status in Poland], CPH 2015, vol. 67, issue 1, pp. 95–106.

vital records were also used. They were collections of documents which interested persons handed over to registrants in order to demonstrate the circumstances which were to be ascertained in the vital records.⁶ In case of marriage certificates, these were, among others, birth certificates or “akty znania” (voucher certificates)⁷ used as substitutes, and parents’ permissions as well as superiors’ permissions in case of servicemen. On the other hand, in case of divorces, the basic annex was a copy of the final decree dissolving a marriage. At the same time, pleadings were also submitted and, quite frequently, they were numerous. Consequently, some collections of *allegata* give a more complete picture of divorce cases than court records.⁸

Besides the vital records, the query also encompassed the legacies left by state and church courts as well as by notary offices. The most significant records turned out to be the ones of the civilian tribunals of first instance which were preserved in Kalisz, Cracow, and Bydgoszcz.⁹ Among the preserved records, three series may be highlighted which were originally called by different names. Two of them are significant for our research: the first one shall be called “sumariusze” (summary records) and the second one shall be called “sentencjonarze” (sentence records). The records of the former type were called “sumariusze” (summary records)¹⁰ or “wyroki redagowane” (formulated sentences)¹¹ in Kalisz, while in Cracow they were called “księgi wyroków w sprawach cywilnych” (sentence records of civilian cases). They contained data which are usually noted down in court case records today. They contained information pertaining to the presence of sides in a court case, motions presented by both sides, incidental reliefs and technical settlements,

⁶ They are mentioned, inter alia, in article 44 and 70 of the Napoleonic Code; compare with D. Dzierzżyński, *Instrukcja dokładna o urzędnikach i aktach stanu cywilnego* [Detailed instruction on vital records officials and documents], Warsaw 1813, pp. 43–45.

⁷ Article 70 of the Napoleonic Code: “The civil officer shall cause to be transmitted to him the act of birth of each party about to be married. Where either party shall be unable to produce it to him, its place may be supplied by showing an act of notoriety delivered by the magistrate at the parties’ place of birth, or at that of his domicile.” *The Code Napoleon or the French Civil Code Literally Translated from the Original and official Edition Published at Paris in 1804*, William Benning, London 1827.

⁸ The *allegata* in Warsaw are especially valuable as they provide a lot of information pertaining to the functioning of the capital’s civilian tribunal of first instance. The tribunal’s legacy proper was burned by Germans during the last World War.

⁹ Divorce cases in first instance were always adjudicated by civilian tribunals of first instance.

¹⁰ For instance, Archiwum Główne Akt Dawnych [the Central Archives of Historical Records] (AGAD), Trybunał cywilny kaliski [the Kalisz civilian tribunal], 50 (the title at the beginning of the list of matters contained within this volumes is: “Sumaryusz znajdujących się w tym Voluminie redagowanych wyroków z IV kwartału...” [A summary record of the formulated sentences from the 4th quarter which are within this Volume...]).

¹¹ For example, AGAD, Trybunał cywilny kaliski [the Kalisz civilian tribunal], 13 (the title is on the cover).

witness testimonies, as well as – usually in the form of inserted attachments – reports prepared by judge rapporteurs (the so-called “relacje” [accounts]), prosecutor’s positions, vital records and other documents tendered by the sides into case files. On the other hand, sentence records¹² contained, as the name suggests,¹³ only decisions made in a particular case, both incidental reliefs and technical settlements, without annexes and sides’ position. Records of this type were also called “protokoły audiencjonalne” (audience court case records)¹⁴ or “akta spraw cywilnych” [civil court case records].¹⁵ Moreover, records were also kept in Kalisz which were entitled by employing sentences’ wording. They were descriptions of legal issues used to make a decision in particular case. They lack the contents of the sentences.

In Kalisz, formulated sentences and sentence records were most probably prepared during court cases and, subsequently, summary records were prepared on their basis. Nevertheless, this series is not relevant for the research into divorces as the oldest preserved records of this kind come from a time when the Kalisz tribunal did not take cognizance of the category of cases which are of interest to this paper anymore.

The number of tribunals of first instance in the Duchy did not correspond to the number of departments, while it did correspond to the number of provinces in the Kingdom. Each tribunal was usually comprised, besides the president, of six judges and three assessors. Moreover, they were organized into two departments and they examined cases in sets of three persons¹⁶. A decree absolute was not enough in order for a divorce to become valid. It was also necessary for a proper official to announce the divorce by invoking the sentence. Moreover, the official had to draw up a proper record of this activity.

The query proved that divorce cases were dealt with by all (or almost all if one includes the Suwalki tribunal) civilian tribunals of first instance. All the towns enumerated below represent an alphabetical list of towns where divorce courts functioned under the Napoleonic Code. The list also includes information pertaining to pending cases concerning the dissolution of marriages there.

¹² AGAD, Trybunał cywilny kaliski [the Kalisz civilian tribunal], 751. Archiwum Państwowe w Bydgoszczy [The State Archive in Bydgoszcz], Trybunał Cywilny Departamentu Bydgoskiego w Bydgoszczy [the Civilian Tribunal of the Bydgoszcz Department in Bydgoszcz]: 12, 14 and 14a.

¹³ W. Maciejewska (ed.), *Polski słownik archiwalny* [Polish Archive Dictionary], Warsaw 1974, p. 76.

¹⁴ AGAD, Trybunał cywilny kaliski [the Kalisz civilian tribunal] 730.

¹⁵ Archiwum Narodowe w Krakowie: Archiwum Wolnego Miasta Krakowa [The National Archives in Cracow: The Archives of the Free City of Cracow], Akta cywilne trybunału I instancji Wolnego Miasta Krakowa [Civil records of the first instance tribunal of the Free City of Cracow], pp. 1–56.

¹⁶ W. Sobociński, *Historia ustroju i prawa Księstwa Warszawskiego* [The history of the Duchy of Warsaw system of government and law], Toruń 1964, p. 246.

Bydgoszcz (1808–1815). The Bydgoszcz tribunal employed the Napoleonic Code since its introduction in the Duchy (the 1st of May 1808) until *Landrecht* was reinstated in the Grand Duchy of Posen (on the 1st of March 1817¹⁷). Sentence records of this tribunal are preserved, however, they are incomplete.¹⁸ On their basis, it was possible to ascertain that at least 17 divorce cases had been pending there. Divorce was adjudicated in 10 cases; the final ruling of one case was adjourned pursuant to article 259 of the Napoleonic Code,¹⁹ and it was not possible to determine a ruling of the remaining 6 cases.²⁰

Kalisz (1808–1825). The Kalisz tribunal is the only court where the complete records of the sentences are available from the entire period when the Napoleonic Code was in force. However, some summary records are not available due to their condition.

Fortunately, using sentence records is permitted in such cases. In total, the Civilian Tribunals of First Instance of the Kalisz Department recognized 304 divorce cases. Divorce was adjudicated in 164 cases, while 18 cases were dismissed. Consequently, over 90% of technical settlements are adjudications of divorce decrees. It was not possible to determine the verdict in 99 cases. The majority of the cases were probably not concluded with a technical settlement due to a lack of interest of a plaintiff in continuing the proceedings. In two cases, the decisions were made pursuant to article 259 of the Napoleonic Code,²¹ while the claim was dismissed in 8 cases. Different rulings were made in 13 cases (for instance, because a settlement was reached by the spouses²²).

¹⁷ J. Bardach, M. Senkowska-Gluck (eds.), *Historia państwa i prawa Polski* [The history of the Polish state and law], vol. 3: *Od rozbiorów do uwłaszczenia* [From the partitioning until the enfranchisement], Warsaw 1981, p. 592.

¹⁸ P. Pomianowski, *Z problematyki...* [On the divorce issue...], footnote 30, p. 109.

¹⁹ Article 259 of the Napoleonic Code: “When the petition for divorce shall have been founded on causes of excess, cruelty, or grievous injury, although they shall be well established, the judges shall be at liberty not to allow the divorce immediately. In such case, before judgment is given, they shall authorize the woman to quit the society of her husband, without being bound to receive him, unless she judges it expedient; and they shall sentence the husband to pay her an alimentary pension proportioned to his means, if the wife has not herself sufficient funds to supply her wants.” *The Code Napoleon or the French Civil Code...*

²⁰ Archiwum Państwowe w Bydgoszczy [The State Archive in Bydgoszcz], Trybunał Cywilny Departamentu Bydgoskiego w Bydgoszczy [the Civilian Tribunal of the Bydgoszcz Department in Bydgoszcz], unit no. 3, pp. 29–30; 3, 33v.–35v.; 8, pp. 91–94; 8, pp. 168–171.

²¹ This number only includes cases in which, after the adjudication was issued pursuant to article 259 of the Napoleonic Code, the trial was not continued and a ruling was not made regarding the divorce or dismissing the complaint.

²² Archiwum Główne Akt Dawnych [The Central Archives of Historical Records], team: Trybunał Cywilny Kaliski [The Kalisz Civilian Tribunal], 54, p. 84.

Kielce (1818–1825). The tribunal in Kielce was created for this part of the old Cracow department which remained in the Kingdom of Poland after the separation of Cracow and its district, and for the Kielce county which was detached from the Radom department.²³ The tribunal's sentence records did not survive. However, divorce records were preserved. They were based on this court's judicial decisions and they were issued by the officials at the registry offices in Kielce and in Pilica. The president of Kielce proclaimed 16 divorces,²⁴ while the president of Pilica announced one.²⁵

Cracow (1810–1852). Civilian tribunals of first instance were introduced in New Galicia, pursuant to the royal decree of the 9th of June 1810,²⁶ in the middle of August of the same year. However, the sentences of the Cracow tribunal from the period of the Duchy of Warsaw were not preserved. On the other hand, all of the decrees from the period of the Free City of Cracow have survived until now. The vital records are also available (including the divorce records), which were conducted separately for Christians and Jews.

The preserved records contain divorces granted to Christians. The records include 283 documents dissolving marriages between 1810 and 1852. If this period is divided into four parts (the first one 10-year-long and the remaining three 11-year-long), then 142 divorces (50.2% of the total) occurred in the first period (between 1810 and 1819), 61 divorces (21.6% of the total) occurred in the second period (between 1820 and 1830), 53 divorces (18.7% of the total) occurred in the third period (between 1831 and 1841), and 27 divorces (9.5% of the total) occurred in the fourth period (between 1842 and 1852).

The relatively high initial number of divorces can be explained by the introduction of a new institution into the legal order. The institution, among others, made possible the dissolution of a certain number of marriages when the marital breakdown had actually occurred much earlier. Another reason behind the high number can be attributed to the fact that the decline of the Napoleonic era was a volatile

²³ "Postanowienie namiestnika z 6 sierpnia 1816 r. przenoszące stolicę województwa krakowskiego z miasta Miechowa, z powodu niedogodności do miasta Kielce do dóbr narodowych należącego" [The Viceroy's decision of 6 August 1816 to move the capital of the Cracow province from the town of Miechowo, due to inconveniences, to the town of Kielce, which belongs to the national goods], "Dziennik Praw" [Journal of Laws], vol. 1, pp. 429–430. In reality, the authorities of the province moved to Kielce in 1818; B. Markowski, *Z dziejów gospodarki miejskiej w Kielcach* [The history of urban economy in Kielce], Warsaw 1930, p. 20.

²⁴ Archiwum Państwowe w Kielcach [The State Archive in Kielce], "Akta Urzędnika Stanu Cywilnego Powiatu Kieleckiego" [The records of the Official of the Register Office of the Kielce district], vol. 1–6.

²⁵ Archiwum Państwowe w Katowicach [The State Archive in Katowice], vol. 72.

²⁶ "Dziennik Praw" [Journal of Laws], vol. 2, p. 221.

period on Polish soil. It contributed to the breakdown of interpersonal relationships, including marriages. On the other hand, the downward trend present in the third and fourth time period (between 1831 and 1852) turned out to be more difficult to explain. It could have even stemmed from a more restrictive attitude of the courts towards divorce cases. In order to verify this hypothesis, the query included the sentence records of the Cracow civilian tribunal of first instance from 1844 to 1845.²⁷ Among the reviewed judicial decisions, there were several pertaining to divorce cases – a total of three cases. One of these cases ended with a divorce, one with a separation (in accordance with the motion of the wife, while the husband filed for a divorce), and it was not possible to ascertain the result of the third case. Consequently, these results indicate that the decrease in the number of the delivered divorce decisions was the effect of a decrease in the number of divorce petitions rather than due to a more restrictive attitude of the court.²⁸

The Jewish records have not been organized yet which makes a query incredibly difficult. For this reason, the estimations for the purposes of this paper are made on the basis of the findings of Bronisław Fidelus, a priest. His findings indicate that Jews constituted about 8% of plaintiffs in marriage cases.²⁹ On this basis, one can calculate³⁰ that about 307 divorces were granted in Cracow. This number ought to be assumed for the entire Cracow county during the existence of the Duchy of Warsaw and for Cracow and its district after the Congress of Vienna.³¹

Lublin (1810–1825). The legacy of the Lublin tribunal survived only partially and it is not helpful in providing an answer for the fundamental question concerning

²⁷ Archiwum Narodowe w Krakowie [The National Archives in Cracow], Trybunał I Instancji Wolnego Miasta Krakowa [the Tribunal of First Instance of the Free City of Cracow] (henceforth: Tryb. Krak.), pp. 246–256, 361–372, 426–431, 433–434.

²⁸ It needs to be mentioned that 2 records were lost from among the 34 records pertaining to the period between 1844 and 1845.

²⁹ B. Fidelus, *Rozwód w orzecznictwie sądów Wolnego Miasta Krakowa w latach 1815–1833 na tle przepisów prawa małżeńskiego osobowego* [Judicial decisions pertaining to divorces in relation to personal marriage law in the courts of the Free City of Cracow between 1815 and 1833], Cracow 1982 (a typescript of a PhD thesis, Archiwum Uniwersytetu Jagiellońskiego [The Archives of the Jagiellonian University]), pp. 399, 420–439.

³⁰ Let us assume that “x” is the number of divorces adjudicated in Cracow. So: $x = 283 + 8\%$ of x ; 92% of $x = 283$; $x = 283/0.92$ $x = 307.6$.

³¹ One can deduce from the titles of divorce decree records from the Free City of Cracow period that the data pertains to the city itself. However, an official of the register office in Cracow proclaimed 122 divorces between 1816 and 1833, while the tribunal granted 120 divorces in that time period according to B. Fidelus’ calculations based on the tribunal records. Consequently, it should be concluded that there was only one official at the register office who proclaimed divorces in the whole territory of the Free City of Cracow and its district.

this article. However, information is available pertaining to 7 divorce sentences of this tribunal. It is provided by the records made by the officials of the register offices in Zamość (5 cases³²) and in Radzyń Podlaski (2 cases³³).

Łomża (1808–1825). The files of the Łomża tribunal also did not survive. Nevertheless, there is evidence of 7 divorce rulings which were made by this tribunal thanks to the parish records from Łomża (3 cases),³⁴ Grajewo (1 case)³⁵ as well as thanks to the records of the local consistory court (3 cases).³⁶

Płock (1808–1825). The scale of the activity of the Płock tribunal is attested to by 44 divorce certificates issued on the basis of this court's decisions by the officials at the Register office in Płock.³⁷

Poznań (1808–1815). In case of Poznań, a copy of a divorce decree is preserved in the *allegata* of the Warsaw Register office³⁸ as well as in at least 3 pleadings addressed to the local consistory court. The authors of the pleadings invoked the divorce decisions of the civilian tribunal.³⁹

³² Archiwum Państwowe w Lublinie [The State Archive in Lublin], Akta Stanu Cywilnego Parafii Rzymskokatolickiej w Zamościu [Vital Records of the Roman Catholic Parish in Zamość] (35/1954), vol. 40: Księga ogłoszenia rozwodów i dawania ślubów cywilnych [Divorce and civil marriage records].

³³ Archiwum Państwowe w Lublinie [The State Archive in Lublin], Akta Stanu Cywilnego Parafii Rzymskokatolickiej w Radzynie [Vital Records of the Roman Catholic Parish in Radzyń], vol. 40 and 42.

³⁴ Archiwum Państwowe w Białymstoku, Oddział w Łomży [The State Archive in Białystok, Łomża Division], Akta Stanu Cywilnego Parafii Rzymskokatolickiej w Łomży [Vital Records of the Roman Catholic Parish in Łomża], vol. 58, certificate number: 6 and 53; vol. 60, certificate number: 11.

³⁵ Archiwum Parafialne Parafii Rzymskokatolickiej pw. Trójcy Przenajświętszej w Grajewie [Parish Records of the Roman Catholic Parish dedicated to the Holy Trinity in Grajewo], Akta Zaślubienia Gminy Grajewskiej Powiatu Biebrzańskiego w Województwie Augustowskim na rok 1821 [Marriage certificates of the Grajewo Municipality of the Biebrzań district in the Augustów province in 1821], certificate number: 3.

³⁶ Archiwum Diecezjalne w Łomży [The Diocesan Archives in Łomża], Akta ogólne [General records], vol. 5, p. 147; vol. 400 and 407.

³⁷ Archiwum Państwowe w Płocku [The State Archive in Płock], Akta Stanu Cywilnego Gminy Płock 1808–1825 [Vital Records of the Płock Municipality between 1808 and 1825], vol. 40, 47, 80 and 82.

³⁸ Archiwum Miasta Stołecznego Warszawy [The Archives of the Capital City of Warsaw], Akta Stanu Cywilnego Gminy Warszawskiej VI Cyrkułu [Vital Records of the Warsaw Municipality VI Borough], vol. 100, p. 8 et seq.

³⁹ T. Walachowicz, *Kodeks Napoleona a kościelna dyscyplina małżeńska w dobie Księstwa Warszawskiego* [The Napoleonic Code and church marriage discipline in the Duchy of Warsaw period], "Roczniki Teologiczno-Kanoniczne" [Theological and Canon Yearbooks], 1977, vol. 24, issue 5, p. 140.

Radom (1810–1825). Only one certificate of divorce was found which had been based on the decision of the Radom tribunal.⁴⁰

Siedlce (1810–1825). Information pertaining to 4 divorce decrees issued by the Siedlce tribunal is available. They are mentioned 3 times in the preserved vital records in Radzyń Podlaski⁴¹ and there is one mention in the records of the consistory of the Podlasie diocese.⁴²

Suwałki (1824–1825). The civilian tribunal in Suwałki began its work on the 1st of February of 1824.⁴³ Unfortunately, it was not possible to find any traces of its activity in the area of interest (it may have accepted divorce cases for 2 years only).

Warszawa (1808–1825). The Warsaw tribunal records were burned by the Germans during the Warsaw Uprising. Fortunately, however, relatively numerous copies of the sentences as well as pleadings are preserved in the *allegata* of the vital records of the Warsaw districts.

For the purposes of statistical calculations however, the vital records themselves (divorce decrees) are of first-rate importance. Unfortunately, not all the records are preserved till now. Besides the deficiencies in the set, the query was made more difficult by the fact that the divorce certificates had been prepared differently in different time periods in particular districts of the capital. Sometimes the divorces were noted in separate records and sometimes together with marriage records. In all probability, the majority of the former type of records has not been preserved. The reasons behind this state of affairs is likely the fact that divorce records were usually thin, sometimes only several pages long. In consequence, it was far easier for them to be destroyed or lost, especially in comparison to large volumes containing records of remaining types which were several hundred pages long. If divorce records were placed together with marriage records, then the former type was

⁴⁰ Archiwum Państwowe w Radomiu [The State Archive in Radom], Urząd Stanu Cywilnego Parafii Rzymskokatolickiej Szydłowiec [The Register Office of the Roman Catholic Parish in Szydłowiec], vol. 10, p. 69.

⁴¹ Archiwum Państwowe w Lublinie [The State Archive in Lublin], Akta Stanu Cywilnego Parafii Rzymskokatolickiej w Radzynie [Vital Records of the Roman Catholic Parish in Radzyń], 40, pp. 1–2; 42, pp. 1–8.

⁴² Archiwum Diecezjalne w Siedlcach [The Diocesan Archives in Siedlce], “Akta Konsystorza Generalnego Diecezji Siedleckiej” [The Records of the Consistory General of the Siedlce Diocese], 7, p. 60–63. Even though a direct statement that it refers to the civilian tribunal of first instance with its seat in Siedlce is missing in the source, it is highly likely that it means the Siedlce court due to the local nature of this consistory and of this tribunal.

⁴³ J. Bardach, M. Senkowska-Gluck (eds.), *Historia państwa...* [The history of the Polish state...], vol. 3, p. 472; A. Heylman, *O sądownictwie w Królestwie Polskim* [The judiciary in the Kingdom of Poland], Warsaw 1934, p. 41.

highlighted in the table of contents at the end of volumes. However, sometimes they were not marked which makes searching for them a much more arduous task. The number of divorces proclaimed in particular districts is illustrated by the table on the next page.

In total, the condition of the preserved data from the I, II, III, IV, V and VII borough (Polish: *cyrkuły*) allows one to make an attempt to estimate the overall number of divorces granted in Warsaw. These estimations should not include the contents of the VI borough as the divorce records, which were kept there separately from the marriage certificates, have not been preserved.⁴⁴ The information pertaining to the dissolution of several marriages is provided by the *allegata* but it is difficult to assess what percentage of the total number of the granted divorces they constituted in this district. On other hand, leaving out the VIII borough needs to be justified by the fact that only one divorce decree was found there. Admittedly, there are no such explicit hints in this case confirming the existence of separate divorce records like in the VI borough. Nevertheless, if one assumed that only one divorce had been actually granted in this borough, then it would be extremely difficult to explain the enormous disparity between this number and the data from the remaining boroughs (even though one needs to remember that the VIII borough, the Praga district in Warsaw, was the least populated one⁴⁵).

In case of the 6 remaining boroughs, the data for the entire research period is usually not available. The process of estimation needs to omit the year 1808 as most probably not a single divorce was granted then (even though the Napoleonic Code was introduced in May, divorce cases were relatively long and it is likely that no divorce was final in the course of those 8 months). This supposition turns out to be even more likely as the data from the first years of the register office activity from the I, II, IV and VII district seem to be complete, while divorces are missing from the year 1808 (moreover, divorces were granted only in Borough VII in 1809).

The calculations presuppose a lack of divorces in a given year when the data seems to be complete and no divorce certificates were found in the marriage records (or in the marriage and divorce records). The cells of the table which are marked with “n.u.” (no units) and “–” were not included in the calculation of the mean number of divorces per year at all because they pertain to situations in which the data from a particular period is not preserved (or at least it is highly likely).⁴⁶

⁴⁴ They are mentioned, inter alia, in the copy of the divorce certificate which is in the *allegata*: Archiwum Miasta Stołecznego Warszawy [The Archives of the Capital City of Warsaw], Akta Stanu Cywilnego Gminy Warszawskiej VI Cyrkułu [The Vital Records of the VI Borough of the Warsaw Municipality], vol. 113, *allegat* number 42.

⁴⁵ A. Sołtan, *Praga w ciągu wieków* [The Praga district over the ages] [in:] *Warszawskiej Pragi dzieje dawne i nowe* [The new and old history of the Praga district in Warsaw], Warsaw 2006, p. 18.

⁴⁶ For instance, the numbering of the divorce records starts at number 2 in Borough III. On the other hand, the marriage records of 1824 are missing in Borough I (divorce certificates were written into the same records as marriage certificates in the 20s).

Table 1. The number of divorces granted in each borough (Polish: *cyrkuł*) in Warsaw

Year	Borough I	Borough II	Borough III	Borough IV	Borough V	Borough VI	Borough VII	Borough VIII	Total
1808	–	–	–	–	–				
1809	–	–	–	–	–	–	2		2
1810	2	1	n.u.	1	0		4		8
1811	1	3	n.u.	1	0		2		7
1812	8	1	n.u.	2	0		6		17
1813	n.u.	0	n.u.	n.u.	1		n.u.		1
1814	–	2	4	5	0		n.u.		11
1815	–	3	2	10	0		n.u.		15
1816	–	3	2	2	1		n.u.		8
1817	–	5	2	11	0	[1]	n.u.		19
1818	–	6	2	8	2		n.u.		18
1819	4	5	3	5	0		n.u.		17
1820	5	1	6	3	0	[2]	n.u.		17
1821	7	2	–	9	3		n.u.		21
1822	8	4	5	4	4	[1]	n.u.		26
1823	7	5	7	4	0		n.u.		23
1824	n.u.	5	2	8	3		n.u.		18
1825	14	6	1	n.u.	5	[1]	n.u.	1	28
Total	56	52	36	73	19	5	14	1	256
Number of years with preserved records	9	16	11	14	16	4	4	1	75

Explanation: “n.u.” – a unit containing information from a particular year was not preserved or it is unavailable (mentions of it in the source material prove that such a unit originally existed); “–” a unit containing information from a particular year was most probably not preserved (there is a high likelihood that such a unit existed, however, attempts to find any mention of it in the source material which would directly corroborate their existence were unsuccessful); “[.]” a proper unit which contains information from a particular year was most probably not preserved or it is unavailable; however, a certain (indicated in the brackets) number of divorces was found on the basis of data from other units. By their very nature, these numbers are rather incomplete.

And so, 250 divorce sentences were delivered in 6 boroughs in those years when the data seems to be complete (70 yearbooks). This means that on average 3.57 divorce sentences were delivered per year in each of these 6 boroughs. It was assumed that divorce sentences were delivered within 16 years (because, most probably, not a single divorce was granted in 1808 and there were probably very few in 1809). Consequently, multiplying 3.57 by 16 equals to more than 57 divorces granted in each borough. In order to calculate a complete hypothetical number of

divorce sentences delivered in Warsaw, it is necessary to multiply this result by the number of boroughs. However, the fact that the VI and VIII borough were the least populated needs to be taken into consideration. Due to a lack of more precise data, the only means that remains to be employed is the proportion of councillors chosen in particular districts (boroughs number VI and VIII elected 3 councillors each, while the remaining ones elected 4 each⁴⁷). After taking this disproportion into consideration, the estimation for the city of Warsaw is roughly equal to 429 delivered divorce sentences.⁴⁸

However, divorce decrees of the Warsaw tribunal were also delivered outside the capital (4 instances in Rawa Mazowiecka,⁴⁹ 2 in Mszczonowo,⁵⁰ and 1 each in Wilanów – a village near Warsaw at the time,⁵¹ Skuły⁵² and Jastrzębie⁵³).

* * *

⁴⁷ A. Szczypiorski, *Ćwierć wieku Warszawy (1806–1830)* [A quarter of a century of Warsaw (1806–1830)], Wrocław 1964, p. 21.

⁴⁸ $57.14 \times 7.5 = 428.55$. Multiplying 57.14 times 7.5 seems to be more proper than multiplying it by 8 because two boroughs from which the data is missing were the least populated ones. Consequently, assuming that the same number of divorces was granted there as in the remaining 6 borough (“1” was assumed for boroughs I, II, III, IV, V and VII, while “0.75” was assumed for boroughs VI and VIII). Unfortunately, it was not possible to establish the population of each borough in the period of interest. However, according to the published property tax list, the number of houses in each borough was similar. For instance, there were between 305 (the Praga district) and 537 houses in particular districts in 1808. The population was probably correlated with the number of houses. Consequently, there were no drastic discrepancies which could significantly distort the proposed findings. *Taryfa domów miasta Warszawy: dla wygody publiczney wydana w roku 1807 w miesiącu wrześniu a poprawiona stosownie do nowego podziału na Cyrkułów osiem w miesiącu lipcu 1808 roku* [The property tax list of houses in the city of Warsaw: published for the convenience of the public in September of 1807 and amended according to the new division into 8 Boroughs in July of 1808], (Warsaw) 1808, p. 1.

⁴⁹ Archiwum Państwowe w Łodzi [The State Archive in Łódź], Urząd Stanu Cywilnego Rawy Mazowieckiej [The Register Office in Rawa Mazowiecka], vol. 2, pp. 122–122v.; vol. 5, pp. 134–135v.; vol. 6, pp. 188–188v.

⁵⁰ Archiwum Miasta Stołecznego Warszawy, Oddział w Grodzisku Mazowieckim [The Archives of the Capital City of Warsaw, Grodzisk Mazowiecki Division], Akta Stanu Cywilnego Miasta Mszczonowa [Vital records of the town of Mszczonowo], vol. 4, pp. 31–32; vol. 7, pp. 58–58v.

⁵¹ Archiwum Miasta Stołecznego Warszawy, Oddział w Milanówku [The Archives of the Capital City of Warsaw, Milanówek Division], Akta Stanu Cywilnego Gminy Wilanów [Vital records of the municipality of Wilanów], vol. 21, pp. 24–24v.

⁵² Archiwum Miasta Stołecznego Warszawy [The Archives of the Capital City of Warsaw], Akta Stanu Cywilnego Gminy Skuły [Vital records of the municipality of Skuły], vol. 12, pp. 15–15v.

⁵³ Archiwum Państwowe w Radomiu [The State Archive in Radom], Urząd Stanu Cywilnego Parafii Rzymskokatolickiej Jastrzęb [The Register Office of the Roman Catholic Parish in Jastrzęb] (58/137), series 1, vol. 4: Akta cywilne parafii jastrzębiej z roku 1815 [Civil records of the parish in Jastrzęb of 1815], an unnumbered page between pp. 68 and 69.

The quoted data does not leave any room for doubt. Divorce proceedings took place all over the territories of the Duchy of Warsaw and later in the Kingdom of Poland and in the Free City of Cracow. Before moving on to an attempt at estimating the total number of divorces adjudicated under the Napoleonic Code on Polish soil, let us summarize the divorces which were confirmed in the sources. This is illustrated by the table on the next page.

Despite the significant number of divorces confirmed in the sources (nearly 800), an estimation of their total number is difficult due to the residual character of the preserved sources. Relatively complete data pertaining to a larger territory is only preserved in case of the Kalisz department, later Kalisz province. However, it needs to be noted that the civilian tribunal records allow for an estimation of the number of divorces which were adjudicated in first instance. A certain number of adjudications could have been changed by appeal courts. Theoretically, it was also possible that some legally binding divorces were not proclaimed by the officials of the register office.

Table 2. The number of divorces adjudicated by particular courts and confirmed in the sources

The tribunal's location	The number of adjudicated divorces
Bydgoszcz	10
Kalisz	164
Kielce	19
Cracow	283
Lublin	7
Lomza	7
Płock	44
Poznań	3
Radom	1
Siedlce	4
Suwalki	
Warsaw	256
Total	798

However, it should be supposed that the number of delivered divorce sentences in first instance was close to the number of divorces proclaimed by the officials of the register office. For example, among the 16 divorces proclaimed boroughs whose data has been preserved could lead to an overestimation. Due to a lack of precise data pertaining to the population of each borough, a proportion was employed which stemmed from a comparison of the number of councillors elected in each by the President of Kielce, 14 were the result of adjudications by the local civilian tribunal

and 2 of the appeal court.⁵⁴ In Płock, this proportion was 40 to 4.⁵⁵ These numbers suggest that appeals were not lodged too frequently. However, such proportions would also be possible if the appeal courts often dismissed divorce petitions. Due to the destruction of the legacy of the Warsaw court of appeal, an unambiguous conclusion of this issue is not possible. Nevertheless, the research into the legacy of the Cracow court of appeal unambiguously shows that this court did not willingly change the verdicts delivered by courts of first instance.⁵⁶ Due to the fact that the legacies of the Warsaw Court of Cassation and of the Warsaw Supreme Court were also destroyed, it needs to be added that the Cracow Supreme Court infrequently heard divorce decree appeals.⁵⁷ Finally, it needs to be noted that courts of appeal could have overturned adjudicated divorces and dissolved marriages of couples which were preserved by civilian tribunals.

Probably as a result of the appeals and cassation appeals the *per saldo* total number of divorces did not undergo significant changes. Another issue should also be considered, namely whether there were any divorce decrees which were not proclaimed by officials of the register offices. However, it seems highly unlikely that plaintiffs would not pursue this relatively simple formality after long and arduous trials. It seems especially unlikely considering the fact that they were informed of the need to complete this formality each time during divorce adjudications. Such situations could only have happened incidentally.

As a result, it can be assumed that the number of 164 divorce decrees of the Kalisz tribunal more or less corresponds to the actual number of divorces proclaimed in the Kalisz department and later in the Kalisz province. After making such an assumption, this result should be related to the number of people in the department (province) which was roughly equal to 513 000 in 1810,⁵⁸ while the number was roughly equal to 518 000 people in 1820 in the Kalisz province.⁵⁹

⁵⁴ Archiwum Państwowe w Kielcach [The State Archive in Kielce], Akta Urzędnika Stanu Cywilnego Powiatu Kieleckiego [The records of the Official of the Register Office of the Kielce district], vol. 1–6.

⁵⁵ Archiwum Państwowe w Płocku [The State Archive in Płock], Akta Stanu Cywilnego Gminy Płock 1808–1825 [Vital Records of the Płock Municipality between 1808 and 1825], vol. 40, 47, 80 and 82.

⁵⁶ B. Fidelus, *Rozwód w orzecznictwie sądów Wolnego Miasta Krakowa...*, p. 314.

⁵⁷ *Ibidem*, p. 375.

⁵⁸ H. Grossman, *Struktura społeczna i gospodarcza Księstwa Warszawskiego* [Social and economic structure of the Duchy of Warsaw], “Kwartalnik Statystyczny” [Statistics Quarterly] 1925, vol. 2, issue 1, p. 47.

⁵⁹ J. Janczak, *Statystyka ludności Królestwa Polskiego (1815–1830)* [The demographic statistics of the Kingdom of Poland (1815–1830)], “Przeszłość Demograficzna Polski. Materiały i Studia” [The demographic past of Poland. Materials and studies] 1983, vol. 14, p. 20; it should also be noted that the borders of a department (province) were changed several times. By the power of the decree of 17 April 1810, Lelów and Pila counties were transferred to the Cracow department (Dziennik Praw [Journal of Laws], volume 2, page 143). And due to the decisions made at the Congress

Table 3. The number of inhabitants per 1 divorce per year in the Kalisz province expressed in thousands

Time period	The number of people in the Kalisz province	Years	Divorces	The number of inhabitants per 1 divorce per year in thousands
1809–1816	513	8	70	58.63
1817–1825	518	9	94	49.60

The calculations pertaining to the number of divorces proclaimed in Warsaw and Cracow (together with its district) should be considered reliable. On the other hand, in relation to the remaining Polish lands where the Napoleonic Code was in force, sufficient data is not available to estimate the number of divorces. Indeed, it is probable that the divorce records kept by, for example, the officials of the register offices in Płock, Kielce, and Zamosc are complete or they are almost complete. However, the problem lies in determining territorial jurisdiction of these officials and, at the same time, establishing the size of the population for which they performed this function.

Therefore, in order to estimate the number of divorces granted on Polish lands under Napoleonic Code, the article only employs the data from Warsaw, Cracow and the Kalisz province. However, taking the mean data from these 3 areas could lead to an overestimation as it should be supposed that there were more divorces in the capital than in the provinces. It should be enough to point out that one divorce occurred in case of roughly 54 000 inhabitants in the Kalisz province, while a divorce happened for over 18 500 inhabitants in Cracow and its district, and there was one divorce for over 3500 inhabitants in Warsaw. Consequently, it is assumed that the Kalisz province was representative for all Polish provinces and the data from that area is extended to the remaining departments (provinces).

To make it simpler, in terms of each province's population, let us assume that the Duchy of Warsaw in its original borders had a permanent population of 2500 000 inhabitants⁶⁰; it rose to 4334 000 after New Galicia was attached to the Duchy⁶¹; and the Kingdom of Poland had a permanent population of 3520 000.⁶² Furthermore, let us assume that Warsaw had a population of 79 000 inhabitants in the Duchy of

of Vienna, the western frontier of the Kalisz department was ceded to the Province of West Prussia (Odolanów and Ostrzeszow were ceded from among the county towns).

⁶⁰ W. Sobociński, *Historia ustroju...* [The history of the Duchy of Warsaw system...], p. 18.

⁶¹ H. Grossman, *Struktura społeczna i gospodarcza...* [Social and economic structure...], pp. 9 and 46.

⁶² J. Janczak, *Statystyka ludności Królestwa Polskiego (1815–1830)* [Demographic statistics of the Kingdom of Poland (1815–1830)], "Przeszłość Demograficzna Polski. Materiały i Studia" [The demographic past of Poland. Materials and studies], 1983, vol. 14, p. 20; Data for 1820.

Warsaw period⁶³ and 100 000 inhabitants⁶⁴ in the Kingdom of Poland period. On the other hand, Cracow and its district had a population of 88 000 before 1816 and a population of 146 000 after 1816.⁶⁵ The years when the Napoleonic Code was being introduced in these territories are omitted here. The reason for this was already mentioned above, namely the number of adjudicated divorces at the time had to be small due to the length of court cases.

After appropriate calculations are carried out, one can come to the conclusion that in total less than 2000 divorces were granted under Napoleonic Code on Polish soil.⁶⁶ This means that one divorce occurred for 35 000–40 000 inhabitants (these calculations of course have the character of an estimation; however, due to the condition of the preserved sources, providing an exact number is not possible). The presented estimations lead to the conclusion that the number of divorces adjudicated in Poland was, more or less, smaller by more than a half in comparison to the number of divorces granted in Napoleonic France. The reason behind this is the fact that under *Code Civil*, for example, one divorce took place for about 15 000 inhabitants in the Rouen⁶⁷ and Lyon⁶⁸ regions, while one divorce occurred for over 20 000 inhabitants in the Metz region.⁶⁹

As it was mentioned in the introduction, the presented calculations are contradictory to the literature on the subject.⁷⁰ Nevertheless, they should not be considered astounding especially if one takes into consideration the relatively numerous declarations of nullity of Catholic marriages in the Polish-Lithuanian Commonwealth.⁷¹ The scope of the phenomenon in the Polish-Lithuanian state and just after Poland

⁶³ S. Dziewulski, *Warszawa* [Warsaw], vol. I, Warsaw 1913, p. 420.

⁶⁴ *Ibidem*, p. 421.

⁶⁵ J. Bardach, M. Senkowska-Gluck (eds.), *Historia państwa* [The history of the Polish state...], vol. 3, p. 793. Data for 1815 and 1843.

⁶⁶ This number also includes divorces granted under Landrecht (this pertains to cases which had begun during Prussian rule and which were continued later after the introduction of French law). Among the 164 Kalisz sentences, there are 4 pursuant to the General State Laws. There were probably similar cases in the remaining post-Prussia departments but the specificity of the preserved sources (mainly vital records and appendices to the records) made it difficult, and in most cases even made it impossible, to discern them. This circumstance does not influence the presented estimations.

⁶⁷ R. Phillips, *Untying the knot. A short history of divorce*, Cambridge – New York – Port Chester – Sydney 1991, pp. 74 and 80.

⁶⁸ D. Dessertine, *Divorcer à Lyon*, Lyon 1981, p. 107.

⁶⁹ J. Lhote, *Le Divorce à Metz et en Moselle sous la Révolution et l'Empire*, Metz 1981, p. 22.

⁷⁰ P. Pomianowski, *Z problematyki rozwodów...* [On the divorce issue...].

⁷¹ The significant scope of the phenomenon is even attested by the fact that divorce supporters made references to its functioning in catholic Poland during the debates in the French National Legislative Assembly (they of course meant the relatively frequent pronouncements of declarations of nullity by ecclesiastical courts). H. Le Goasguen, *Le divorce devant l'opinion, les chambres et les tribunaux*, Rennes 1913, pp. 12–13; R. Butterwick, *Polska rewolucja a Kościół katolicki. 1788–1792* [The Polish Revolution and the Catholic Church. 1788–1792], Cracow 2012, p. 631. Also compare with I. Kulesza-Woroniecka, *Rozwody w rodzinach magnackich w Polsce XVI–XVIII*

Table 4. The number of divorces granted in Warsaw, Cracow and in the provinces

	Population in thousands	Number of years under the divorce regulations of the Napoleonic Code	Number of inhabitants per 1 divorce per year expressed in thousands	Number of divorces
Cracow (1810–1816)	88	7		
Cracow (1817–1852)	146	35	18.65	307
Warsaw (1809–1816)	79	8		
Warsaw (1817–1825)	100	9	3.57	429
Province ¹ (1809–1810)	2333	2	58.63 ²	80
Province ³ (1811–1816)	4167	6	58.63 ²	426
Province ⁴ (1817–1825)	3420	9	49.60 ²	621
Total				1863

Explanation: The table employs the estimations for Cracow and Warsaw which are discussed above. In case of all the remaining Polish lands under Napoleonic Code, it was assumed that the number of inhabitants per 1 divorce was equal to the number in the Kalisz province. The highlighted time periods (1809–1810; 1811–1816; 1817–1825) correspond to the successive changes of political affiliation of the land in central Poland which were accompanied by the expansion or shrinking of the land under Napoleonic Code (it was introduced in the Duchy of Warsaw in its original borders in 1808; it was introduced in that part of Galicia which was incorporated into the Duchy after the Treaty of Schonrbunn in 1810; and *Landrecht* was reintroduced in March of 1817 in the part of the Duchy which was given to Prussia after the Congress of Vienna). The estimations only include the years when the Napoleonic Code was in force for the entire year.

¹ The Duchy of Warsaw province in its original borders (without Warsaw and Cracow); ² Data from the Kalisz province; ³ The Duchy of Warsaw province in its broadest borders, i.e. after the incorporation of a part of Galicia and before the separation of Greater Poland (without Warsaw and Cracow). The year of 1816 was included in this time period because *Landrecht* was reintroduced in Greater Poland only from the 1st of March 1817; ⁴ The Congress Poland province (without Warsaw).

was partitioned is not known. However, one cannot have any doubts that marriage was not indissoluble in the common consciousness of the majority of the Polish catholic landed gentry. And so the introduction of secular divorces did not constitute such a great change as one might expect, especially when one compares the laws of the Napoleonic Code with Canon law, irrespective of the practice of employing these two systems.

wieku [Divorces among magnate families in Poland between the 16th and the 18th century], Poznań–Wrocław 2002.