

THE IMPACT OF THE RUSSIAN CIVIL JUDICIAL PROCEEDINGS ACT OF 1864 ON THE POLISH CIVIL PROCEEDINGS

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This paper describes the influence, which had already been exerted, and which is still exerted by the Russian Civil Judicial Proceedings Act of November 20, 1864 (CJPA) on the Polish civil proceedings. First, the authors present the history of CJPA's presence in the Polish territories. Next, they discuss the general significance of this act and its solutions for the process of shaping the Polish civil procedure in the interwar period. Finally, they present selected examples of the regulations and solutions that demonstrate the CJPA's impact on the Polish civil proceedings. The authors conclude that CJPA exerted a minor impact on the pre-war and present Polish procedural regulations in comparison to the other codes, i.e. the Austrian and German codes. Even today, however, one can find in the Polish Code of Civil Procedure some provisions patterned after the CJPA.

Key words: Russian civil judicial proceedings act of November 20, 1864; Polish Code of Civil Procedure of 1964; Polish Code of Civil Procedure of 1930; Polish civil procedure law.

1. Introduction

In the 19th century, when modern civil procedure law was gradually taking shape and when national procedural codifications were enacted in different parts of Europe, the Polish state did not exist.¹ Since 1795 the Polish territory was divided

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¹ On this issue *cf. inter alia* Witold Broniewicz, *Kształtowanie się nowożytnego europejskiego kontynentalnego prawa postępowania cywilnego a prawo polskie*, in *Związki prawa polskiego z prawem niemieckim* 55 ff. (Agnieszka Liszewska & Krzysztof Skotnicki, eds.) (Uniwersytet Łódzki 2006); Karol Weitz, *Die Bedeutung*

among the partitioning powers (Prussia, Austria and Russia). As a consequence, the old Polish judicial law had to give way to the civil procedural law that was in force in the territories belonging to the partitioning powers. This state of affairs, which can be described as a 'compulsory' reception of foreign law on the Polish lands,² brought about some other consequences, namely, when Poland regained independence in 1918, and when action was undertaken to enact uniform civil procedure regulations, the old Polish judicial law could not serve as a reliable point of reference because it lacked the character of a modern civil procedure code. It seemed quite obvious that the law enacted in parts of the reborn Polish state, *i.e.* the procedural law of Germany,³ Austria-Hungary⁴ and Russia, would serve as a point of reference in this respect. Likewise, the French law,⁵ the Hungarian code⁶ and the procedural codifications of certain Swiss cantons also provided sources of reference.⁷ Therefore, one may claim that the contemporary Polish civil proceedings has complex roots and, although it partly remains an autonomous and original creation, it stems mainly from the reception of different foreign solutions.⁸

The aim of this paper is to present the influence, which had already been exerted, and which is still exerted by the Russian Civil Judicial Proceedings Act of November 20, 1864 [hereinafter CJP] on the Polish civil proceedings. First, the history of CJP's presence in the Polish territories will be depicted. Next, we will proceed to characterize the general significance of this act and its solutions for the process of shaping the Polish civil procedure in the interwar period. Lastly, we will present the selected examples of the regulations and solutions that demonstrate the CJP's impact on the Polish civil proceedings. We will concentrate only on the selected institutions, which were transferred to the Polish law and which remain in force to the present

der Rezeption für die Entwicklung des polnischen Zivilprozessrechts, 2010(27) *Ritsumeikan Law Review* 141–42 [hereinafter Weitz, *Die Bedeutung*].

² See Weitz, *Die Bedeutung*, *supra* n. 1, at 142.

³ *Zivilprozessordnung* of 1877, which was in force in the so-called Prussian partition (territories of *Wielkopolska* (Greater Poland), *Pomorze Gdańskie* (Gdańsk Pomerania) and *Górny Śląsk* (Upper Silesia)).

⁴ *Zivilprozessordnung* of 1895, the *Jurisdiktionsnorm* of 1895 and *Exekutionsordnung* of 1896. They were in force in the territory of *Małopolska* (Lesser Poland) and *Śląsk Cieszyński* (Cieszyn Silesia).

⁵ *Cf.*, e.g., Tadeusz Ereciński, *Znaczenie francuskiego Code de procédure z 1806 r. dla rozwoju procesu cywilnego w Polsce*, 57(2) *Czasopismo Prawno-Historyczne* 133 ff. (2005).

⁶ Code of civil proceedings of 1911. It was in force in the Polish Spiš and Orava until 1922.

⁷ The Zurich procedure of 1913 and Bern procedure of 1918 were of significance. *Cf. in this regard*, e.g., Weitz, *Die Bedeutung*, *supra* n. 1, at 142–43.

⁸ With respect to the interwar period *cf.* Adam Polkowski, *Die polnische Zivilprozessordnung von 1930/33. Unter Berücksichtigung des deutschen, österreichischen, russischen und französischen Rechts* (= 396 Rechtshistorische Reihe) (Peter Lang 2009). Unfortunately there is no such work in the Polish literature.

day, or which were adopted at first but were removed during the communist rule and reintroduced after the democratic transformation of 1989. We will also take into account the regulations and solutions which were present in the CJPAs and which are currently being reconsidered as the preparatory works aiming at the creation of the new Polish civil proceedings codification currently in progress. We will discuss only such CJPAs' regulations and solutions which were unknown to the Austrian, German and Hungarian law; in other words, we will highlight the institutions which exerted a truly autonomous impact on the Polish civil proceedings.

2. CJPAs in the Polish Territories

At the time of the partitions, the Polish lands seized by Russia were composed of two parts. The first one was the Kingdom of Poland created in 1815 by the Congress of Vienna. It essentially comprised the territories of the former Duchy of Warsaw, which existed during the Napoleonic era. The second part comprised the so-called Western Krai situated east of the Kingdom of Poland and stretching as far as the eastern border of the First Rzeczpospolita before 1772. The distinction between these two parts is relevant due to the differences in the CJPAs' scope of application in these territories.⁹

In the Western Krai, which was directly incorporated into the Russian Empire, the CJPAs were in force since their adoption in 1864 without any exceptions, just as in the other Russian territories. The situation was different in the Kingdom of Poland. Initially, the French Code of Civil Procedure (*Code de procédure civile*) of 1806,¹⁰ introduced in 1808 along with the Napoleonic Code, was in effect. The French Code was sustained despite the appearance of CJPAs in 1864. A change in this respect did not take place until 1876. Under the decree issued by a Russian emperor on February 19, 1875 regarding the introduction of judicial laws of November 20, 1864 in the Warsaw judicial district, the existing French civil procedure was replaced by the CJPAs' provisions, notwithstanding certain departures from the original text.¹¹ The introduction of CJPAs in the Kingdom of Poland aroused vivid interest of the representatives of the Polish literature, who, on the one hand, remarked upon its differences in relation to the French procedure and, on the other hand, indicated the divergent solutions that were adopted in the Kingdom of Poland.¹²

⁹ Stanisław Płaza, 2 Historia prawa w Polsce na tle porównawczym 34–36 (Księgarnia Akademicka 1998).

¹⁰ Ereciński, *supra* n. 5, at 139.

¹¹ These divergences resulted from the resolutions of Articles 1482–798 CJPAs, regarding the judicial proceedings in the district of the Warsaw judicial area.

¹² Cf., e.g., Adam Umieniecki, *Trudności, przewidywane przy stosowaniu nowej procedury cywilnej*, 1875(50) *Gazeta Sądowa Warszawska* 394 ff., (51) 403 ff., (52) 411 ff.; Antoni Okolski, *Krótki rys postępowania sądowego cywilnego podług Ustawy z d. 20 listopada 1864 r. i Postanowienia o wprowadzeniu reformy*

The amendments which were subsequently introduced to the CJP by the Russian legislation were simultaneously introduced in the Kingdom of Poland and in the Western Krai as well through the changes introduced in 1891¹³ and in 1914.¹⁴ The outbreak of the First World War and the seizure of the Kingdom of Poland's territories, which was followed by the seizure of the Western Krai by the German and Austrian armies in 1915, led to a temporary revocation of the CJP and resulted in its replacement by either German or Austrian legislation.¹⁵ In 1917 the Polish Temporary Council of State, appointed by the German and Austrian authorities, decided to reintroduce CJP in the majority of the Kingdom of Poland's territories.¹⁶ As Poland regained independence in 1918 and as the Polish rule was gradually reinstated, the CJP's provisions were reintroduced in the eastern territories in the same form that existed before the German and Austrian occupation.¹⁷ In 1921, when the borders of the Polish state were already set, the CJP's regulations were brought into effect in the Warsaw, Lublin and Vilnius appellate area.¹⁸ In certain judicial districts the CJP was applied exactly as in the former Kingdom of Poland, whereas elsewhere it was adopted in the same form as in the former Western Krai.

In the independent Poland the CJP's content was subject to some further amendments. The most important changes were introduced in 1925;¹⁹ among other matters the changes related to arbitration proceedings.²⁰ The majority of the CJP's regulations were revoked as a result of the entry into force of the Polish code of civil proceedings of 1930, which effectively took place on January 1, 1933. Nonetheless, some CJP's provisions were still maintained. The most important of those provisions that were maintained concerned selected articles regarding the proceedings in

sądowej w królestwie Polskiem z d. 19 lutego 1875 r., 1875(52) Gazeta Sądowa Warszawska 409–12, 1876(1) 1 ff., (2) 9 ff.

¹³ On these changes in the Polish literature *cf.*, e.g., Henryk Konic, *Uproszczone postępowanie sądowe oraz nowe zmiany proceduralne*, 1891(32) Gazeta Sądowa Warszawska 501, (33) 518 ff.

¹⁴ These changes were described in the Polish literature also by Henryk Konic, *Najnowsze zmiany proceduralne*, 1914(29) Gazeta Sądowa Warszawska 425 ff., (30) 439 ff., (31) 453 ff., (32) 469 ff., (33) 477 ff., (34) 486 ff., (35) 494 ff., (36) 502 ff., (37) 511 ff., (38) 522 ff.

¹⁵ *See on this issue*, e.g., *Sądowe postępowanie cywilne*. Opracowano na podstawie wykładów pp. Profesorów Uniwersytetu Warszawskiego oraz ustawy postępowania cywilnego 30–31 (Uniwersytet Warszawski 1926).

¹⁶ *Cf.* Art. 1 of the Transitional Provisions to the Act of Civil Proceedings which was issued on July 18, 1917.

¹⁷ Wacław Miszewski, in *Ustawa postępowania sądowego cywilnego III* (Wacław Miszewski et al., eds.) (F. Hoesick 1926).

¹⁸ Miszewski, *supra* n. 17, at III.

¹⁹ Under the Act of July 16, 1925 on changes in the organization of the judiciary, provisions of the civil proceedings and provisions regarding the costs of the proceedings (1925(91) Dziennik Ustaw, poz. 637).

²⁰ *See* E.D., *Nowelizacja przepisów o sądach polubownych*, 1926(2) Przegląd Prawa Handlowego.

marital affairs and the legitimacy of birth, as well as some other proceedings having to do with specific matters. Most of these provisions were not repealed until after the Second World War, especially in 1945–47 when the uniform Polish provisions regarding the non-litigious proceedings were introduced.

3. The General Outline of the CJPAs Impact on the Polish Civil Proceedings

As it was already mentioned, the first Polish code of civil proceedings was adopted in 1930 and entered into force on January 1, 1933. Initially it remained in effect after the Second World War, but in 1950 some profound changes were initiated, leading to the introduction of the socialist model of civil proceedings in Poland, patterned upon the one which was operating in the Soviet Union.²¹ The Code of Civil Procedure of 1964, which is currently in force, initially preserved this model. After the democratic transformation of 1989 the reforms of civil procedure were carried out, and they restored the shape of the Polish Code of Civil Proceedings so that it resembles the one existing in the democratic states.²² At present, it is anticipated that a new Code of Civil Procedure will be prepared, but achieving this goal could take many years.²³

When referring to the direct impact of CJPAs on the Polish Civil Procedure Law, one should bear in mind the interwar period and the Code of Civil Procedure of 1930. The work on this Code was initiated in 1917. The representatives of the Polish theory and practice of the civil procedure law, coming from the Russian partition territories, such as Jan J. Litauer, Eugeniusz Waśkowski, Włodzimierz Dbałowski and Wacław Miszewski²⁴ counted among those who actively participated in the creation of the Code. They mostly grew up at the time when CJPAs were in force in the Polish territories and they were very well-versed in the solutions, regulations and institutions that were comprised in this act. The CJPAs provisions were regularly taken into consideration by the debaters as well as the speakers – including those coming from other than Russian partition districts – who were in charge of presenting drafts of the different

²¹ Cf., e.g., Jerzy Jodłowski, *Nowe drogi polskiego procesu cywilnego. Założenia ideologiczne reformy postępowania cywilnego* 11 ff. (Wydawnictwo Ministerstwa Sprawiedliwości 1961).

²² See Karol Weitz, *Die Entwicklung des polnischen Zivilprozessrechts nach der politischen Wende im Jahre 1989*, 11 *Zeitschrift für Zivilprozess International: Jahrbuch des Internationalen Zivilverfahrensrechts* 89 ff. (2006) [hereinafter Weitz, *Die Entwicklung*]; idem, *Die Bedeutung*, *supra* n. 1, at 146 ff.; idem, *Reformen des Zivilprozessrechts in der dritten polnischen Republik*, in *Die Entwicklung des Zivilprozessrechts in Mitteleuropa um die Jahrtausendwende* 189 ff. (Thomas Sutter-Somm & Viktoria Harsági, eds.) (Schulthess 2012).

²³ Cf. in recent literature a collection of essays: *Postępowanie rozpoznawcze w przyszłym kodeksie postępowania cywilnego* (Krystian Markiewicz & Andrzej Torbus, eds.) (C.H. Beck 2014) [hereinafter *Postępowanie rozpoznawcze*].

²⁴ See on this issue Stanisław Grodziski, *Prace nad kodyfikacją i unifikacją polskiego prawa prywatnego*, 1992(1–4) *Kwartalnik Prawa Prywatnego* 14–15, fns. 18, 22.

parts of the first Polish Code of Civil Procedure.²⁵ Having said that, it is nonetheless true that the CIPA exerted a minor impact on the final version of the Code of 1930 in comparison to the other partitioning powers' acts, *i.e.* Austrian and German.²⁶ The CIPA's influence was noticeable, but relatively limited.

In the postwar period one can only refer to an indirect CIPA's influence on the development of the Polish civil proceedings law. It manifested itself only to an extent where the solutions patterned upon the CIPA were adopted in the Code of 1930, and further preserved in the original text of the Code of 1964. Likewise, during the reforms which were carried out after 1989, the CIPA's influence was merely indirect (is this what was intended?) and could be linked only with the fact that the Polish legislature was restoring the legislative solutions that dated back to the Code of 1930, but were abandoned in the original version of the Code of 1964. Consequently, one cannot claim that the references to the CIPA were conscious and direct because there are no clear references to it, neither in the discussion of the Code of 1964, nor in the deliberations over the reforms implemented after 1989.

4. Examples of the CIPA's Influence on the Polish Civil Proceedings

The CIPA, just as the other procedural acts – German, Austrian and Hungarian – that remained in effect after the restoration of Poland's independence, was based on the classic principles of the parties' autonomy, adversarial proceedings, parties' equality, transparency and concentration of procedural material.²⁷ Although there were certain differences in this regard, they were of little importance. The fact that the Polish Code of 1930 was based on these principles suggests acceptance of the universal canon that was relevant at the time as opposed to influence merely by a given jurisdiction. If somebody would insist on detecting a predominant significance of only one partition country's act, one would have to point out at the Austrian codification of 1895. However, this noticeable influence concerned the regulation which was basically absent from the CIPA and which specifically touched upon the instruments strengthening the judge and his role in the process of gathering the procedural material.²⁸

²⁵ Cf. *Główne zasady polskiej procedury cywilnej*, pt. I, 2(4) *Kwartalnik Prawa Cywilnego i Handlowego* 1 ff. (1917); pt. II, 3(1) *Kwartalnik Prawa Cywilnego i Handlowego* 3 ff. (1918); Franciszek X. Fierich et al., *Polska procedura cywilna, 1917–19* *Czasopismo Prawnicze i Ekonomiczne* 108 ff.; 1 & 2 *Polska procedura cywilna. Projekty referentów z uzasadnieniem passim* (Komisja Kodyfikacyjna Rzeczypospolitej Polskiej 1928) (reprint) [hereinafter 1 & 2 *Polska procedura cywilna*].

²⁶ Cf. Stanisław Goldstein, *Uwagi do projektu kodeksu postępowania cywilnego*, 6(10–11) *Palestra* 433–34 (1929); Richard Kann, *Die polnische Zivilprozessordnung. Erster Hauptteil: Streitverfahren nebst Einführungsverordnung V* (Heymann 1933); Weitz, *Die Entwicklung*, *supra* n. 22, at 90.

²⁷ Cf. Wacław Miszewski, *Polski kodeks postępowania cywilnego a procedura cywilna rosyjska*, 1931(2) *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 112 [hereinafter Miszewski, *Polski kodeks*].

²⁸ Goldstein, *supra* n. 26, at 434; Miszewski, *Polski kodeks*, *supra* n. 27, at 113–14.

As regards the CJPAs and the Polish codes' structure (the first of which was the Code of 1930) and – bearing in mind significant divergences in this respect – one issue that penetrated the Polish civil proceedings as a result of the CJPA should be pointed out. This issue involves the introduction of 'general regulations' at the very beginning of a Code (*cf.* Arts. 1–28 CJPA).²⁹ Ever since the Code of 1930 was enacted, the Polish civil proceedings acts were traditionally preceded with 'general provisions' (Arts. 1–8 of the Code of 1930 and Arts. 1–14 of the Code of 1964). These provisions are meant to convey the Code's basic principles in a general manner so that they can be applied to all kinds of proceedings regulated by it. For instance, there is a provision according to which the disputes (cases) of a private (civil) nature are examined by courts of general jurisdiction (Art. 2 of the Code of 1930 and Art. 2(1) of the Code of 1964), which resembles a CJPA's provision which constituted a rule that every dispute ensuing from the civil law will be settled by the courts (Art. 1 of the CJPA). It is also interesting to note that a provision allowing pursuit of claims resulting from a crime either before a civil court or in the course of penal proceedings (Art. 6 of the Code of 1930 and Art. 12 of the Code of 1964) had a counterpart in the Russian Act (Art. 5 of the CJPA). It should be added that the entirety of the new Polish codification's content is also supposed to be preceded with a set of general provisions.

The CJPA exerted a major influence on the Polish civil proceedings as far as the annulment of the suspended proceedings is concerned.³⁰ Article 689 of the CJPA stated that the suspended proceedings will be deemed annulled on condition that no motion was put forward to 'reopen' the proceedings within a three year period.³¹ According to Art. 690 of the CJPA, the annulment of the proceedings did not deprive the plaintiff of the possibility to bring the same action again, unless the period of limitation expired. The annulment of the suspended proceedings in the Code of 1930 took place either when the parties put forward a unanimous motion to suspend the proceedings or when the plaintiff was absent from the main hearing and did not ask to reopen the suspended proceedings within three years from the date when the proceedings were suspended; this fact did not prevent a plaintiff from bringing the same action in the future but filing the first lawsuit did not result in interrupting the period of limitation. Having said that, if the suspended proceedings got annulled during the appeal proceedings, the judgment of the court of the first instance

²⁹ Critical remarks on the content of these CJPA provisions were formulated by Goldstein, *supra* n. 26, at 438–39, as he claimed – not without basis – that they predominantly concerned the subject-matter which should be dealt with in later provisions. Moreover, the author declared himself against situating the general provisions at the very beginning of the Code.

³⁰ On the Russian sources of the annulment of the suspended proceedings as adopted by the Code of Civil Proceedings of 1930. *Cf.* Maurycy Allerhand, *Umorzenie zawieszzonego procesu*, 1934(10–11) *Głos Prawa* 608–10.

³¹ The agreement of 'all the parties' was one of the grounds for suspending the proceedings, *cf.* Art. 681(1) CJPA.

became final (Art. 204(1) and (2) of the Code of 1930). This regulation was basically maintained in the Code of 1964, although its scope of application gradually became wider, and the time period in which the proceedings can be reopened has recently been shortened to one year (Art. 182(1)–(3) of the Code of 1964 as of now).

Another example demonstrating a significant influence exerted by the CJPAs on the Polish law is that each party was granted a possibility to ask the court to examine the case despite the party's absence at the main hearing. According to Arts. 145 and 145¹ CJPAs as well as Arts. 719 and 719¹ CJPAs, a defendant, as well as a plaintiff was allowed to put forward an abovementioned motion to the court and, consequently, protect itself from the adverse procedural effects ensuing from a default at trial. This clear-cut exception from the principle of oral proceedings was deliberately transferred to Art. 224 of the Code of 1930, and it was subsequently maintained in Art. 209 of the Code of 1964. According to these provisions each party may demand in writing (currently by presenting a procedural submission) that the main hearing will take place despite that party's absence. It was explicitly stated in the purposes underlying the Code of 1930 that this regulation was linked with fact that the parties who had lived under the CJPAs' rule 'got used to having [its] case examined on their motion without their presence'.³²

The introduction of the procedure by default in the Code of 1930 was patterned upon the elements of German, Austrian as well as Russian procedural laws.³³ Despite some subsequent shifts that were introduced in this regard in the postwar period as well as in the Code of 1964, the rule according to which a judgment by default can be issued exclusively against a defendant (Art. 359(1) of the Code of 1930 and Art. 339(1) of the Code of 1964) is maintained to the present day.³⁴ The Russian solutions also served as a source of inspiration while adopting a rule (*cf.* Arts. 721 and 721¹(1) of the CJPAs) according to which a judgment issued during the defendant's absence from the main hearing is not deemed a judgment by default if the defendant demanded that the hearing be conducted in his absence or if he already took part in at least one session or submitted a written pleading (*cf.* Art. 360(1) of the Code of 1930 and Art. 340 of the Code of 1964).³⁵

With respect to evidentiary proceedings, the CJPAs' impact is noticeable in the context of instituting a rule that the significance of an oral evidence is limited in

³² Cf. Jan J. Litauer, *Polska procedura cywilna. Projekty uchwalone przez Komisję Kodyfikacyjną. Uzasadnienie ogólne i tekst projektów 6–7* (Biblioteka Prawnicza 1930) [hereinafter Litauer, *Polska procedura cywilna*].

³³ For criticism of the eclectic regulation of the proceedings by default as adopted in the Code of Civil Procedure, *cf.* Eugeniusz Waśkowski, *O kodeksie postępowania cywilnego (c.d.)*, 9(1–2) *Palestra* 1 ff. (1932).

³⁴ Cf. Jan J. Litauer, *Z prac przygotowawczych do polskiego kodeksu procedury cywilnej. Wyrok zaoczny*, 4(3) *Palestra* 97 (1927) [hereinafter Litauer, *Z prac przygotowawczych*].

³⁵ See Litauer, *Z prac przygotowawczych*, *supra* n. 34, at 99.

comparison to a written piece of evidence. According to Art. 409 CJP a oral evidence was inadmissible whenever the law demanded that certain events be proven in writing, except if the written document was lost, destroyed or taken away, or when its content could be confirmed by means of other documents. According to Art. 410 of the CJP a the content of written documents that were drawn up or certified in accordance with the law cannot be denied by the testimony of witnesses, except in the forgery cases. The counterparts of these provisions may be found in Arts. 246 and 247 of the Code of 1964, in Arts. 265 and 283 of the Code of 1930, as well as in certain substantive law provisions. The literature leaves no doubt that these regulations are patterned upon the solutions adopted in the CJP a. Their roots can be traced back to the French Code of Civil Procedure of 1806 and the principle *lettres passent témoins* that was expressed therein.³⁶

The system of appeal which was adopted in the Code of 1930 constituted a compromise between Germanic (Austrian and German) and Romanic (Russian and French) concepts. However, it is claimed that in its essence it was predominantly based on the Germanic model, even though the terminology of certain appellate measures such as appeal or cassation derived from the Romanic system.³⁷ In the Code of 1930 the appeal was regulated – following the German Code and the CJP a – in the form of appeal *cum beneficio novorum*, widely allowing to submit new procedural material. However, in contrast to the Russian regulations, which extensively allowed for new procedural material to be included in the appellate proceedings,³⁸ the Polish legislation made it possible for the judge to omit the material that could be adduced by a party during the proceedings in the first instance (Art. 404 of the Code of 1930). Such a model of appeal *cum beneficio novorum* was reintroduced in the present code by an amendment enacted in 1996.³⁹ The cassation introduced in the Code of 1930, despite the opposite view expressed occasionally,⁴⁰ was patterned upon the CJP a only as far as the term ‘cassation’ is concerned. In reality it constituted a specific mix of different models, although it was predominantly based on the revision as known in the Germanic systems.⁴¹ Cassation could be brought against the non-final decisions of the court of the second instance, and the Supreme Court

³⁶ Jan J. Litauer, *Tytuł o dowodach*, in Litauer, *Polska procedura cywilna*, *supra* n. 32, at p. 291–92; Władysław Mikuszewski, *Ograniczenia dopuszczalności dowodu ze świadków w prawie polskim* 6–7 (Towarzystwo Naukowe 1938).

³⁷ Marjan Waligórski, *Środki odwoławcze kodeksu postępowania cywilnego w oświeceniu materiałów Komisji Kodyfikacyjnej*, 1933(10) *Nowy Proces Cywilny* 306.

³⁸ Atanazy Bardzki, *Nowe dowody w sprawach cywilnych w II-iej instancji według rosyjskiej ustawy postępowania cywilnego*, 4(3) *Palestra* 103 (1927).

³⁹ In 1950–96 there was a revision model, and not appeal model in Poland.

⁴⁰ Witold Bendetson, *O kasacji według kodeksu postępowania cywilnego*, 10(1–2) *Palestra* 26–28 (1933).

⁴¹ Marjan Waligórski, *Środki odwoławcze kodeksu postępowania cywilnego w oświeceniu materiałów Komisji Kodyfikacyjnej*, 1933(12) *Nowy Proces Cywilny* 371.

had a possibility of passing a substantive decision, if some specific conditions were met. The clear-cut impact of the Russian legal solutions can be observed in the way in which the cassation grounds were formulated (Art. 793 CJP and Art. 426 of the Code of 1930); in introducing a clear rule that the court of general jurisdiction will be bound by the manner in which the law was construed by the Supreme Court during the examination of the cassation, and above all in introducing a ban to submit a new cassation based on the interpretation of law that was inconsistent with the one applied by the Supreme Court (Art. 813 CJP and Art. 438 of the Code of 1930).⁴² It is also worth mentioning that since 2005 the cassation in Poland became an extraordinary appellate measure because it can be brought only against final judgments (Art. 398¹ of the Code of 1964). Having said that, the Polish legislation attributed this change to the French, rather than Russian, influence.

Putting the abovementioned regulations aside, it should be stressed that the CJP's impact on the codification of 1930, and, consequently, on the present Polish Code of Civil Procedure, was also noticeable in the realm of terminology of certain institutions, even if their procedural shape differed from the original counterparts comprised in the CJP. Firstly, this remark applies to the already mentioned appellate measures such as appeal and cassation. Undoubtedly, the Russian act served as a source of such terms as 'third party notice' (Arts. 653–61 of the CJP) for the institution of *litis denuntiatio* (Art. 80 of the Code of 1930 and Arts. 84–85 of the Code of 1964) or 'reinstating a missed deadline' (Art. 835 of the CJP) instead of *restitutio in integrum* known in Germanic procedures.

One should also mention the CJP's institutions that were not adopted in the codes of 1930 and 1964, but which are presently discussed during the works on the new Polish code of civil proceedings. A strong example involves the instruments designed to protect the rights of a third party. The CJP paid much attention to this issue, and it was subject to a thorough debate at the time.⁴³ It is also worth mentioning that a CJP-inspired idea according to which the principle intervention might be taken advantage of not only against both parties to the proceedings – as is currently the case in Art. 75 of the Code of 1964 – but also against only one of the parties (Art. 665 CJP). There was also consideration of whether to introduce – just as in CJP⁴⁴ – an obligatory link between the principal intervention and the original proceedings instead of a present solution which treats the principal intervention as a separate lawsuit initiating new proceedings.⁴⁵ There is also discussion of enabling

⁴² Marjan Waligórski, *Środki odwoławcze kodeksu postępowania cywilnego w oświeceniu materiałów Komisji Kodyfikacyjnej*, 1933(16) Nowy Proces Cywilny 492.

⁴³ Bolesław Rotwand, *Udział osób trzecich w procesie cywilnym*, 1888(15) Gazeta Sądowa Warszawska 257 ff.

⁴⁴ Miszewski, *Polski kodeks*, *supra* n. 27, at 121.

⁴⁵ Piotr Rylski, *Udział osób trzecich w procesie cywilnym – perspektywa kodyfikacyjna* [hereinafter Rylski, *Udział*], in *Postępowanie rozpoznawcze*, *supra* n. 23, at 127–31.

a defendant to sue a third party in the course of the proceedings that are already in progress. Such a solution was clearly predicted in Arts. 653–61 of the CPJA, whereas the presently binding Polish law deemed it sufficient to introduce just a third party notice (*litis denuntiatio*). The creators of the Code of 1930 explicitly agreed that this institution was not sufficiently useful.⁴⁶ However, nowadays it is occasionally noted that introducing such a solution in the Polish law is worth considering. There are also serious arguments in favor of adopting – just as in CJA – the opposition of a third party as an extraordinary appellate measure filed by those interested parties who did not take part in the proceedings.⁴⁷ This institution, widely used under the CJA, as well as in the French law from which it originates, was not adopted in the codes of 1930 and 1964. However, this institution may be introduced as a complementary instrument within the system of extraordinary appellate measures.

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⁴⁶ Franciszek X. Fierich, *Strony i ich zastępcy*, in 1 & 2 Polska procedura cywilna, *supra* n. 25, at 67.

⁴⁷ Ryłski, *Udział*, *supra* n. 45, at 149–53.

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