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Articles Studia Iuridica Lublinensia vol. XXX, 1, 2021
DOI: 10.17951/sil.2021.30.1.237-250

María Ruiz Estévez
Autonomous University of Madrid, Spain
ORCID: 0000-0001-9885-1257
maruest28@gmail.com

Comparison between the Polish-Lithuanian Constitution of 3 May 1791 and the Spanish Constitution of 19 March 1812

Porównanie polsko-litewskiej Konstytucji z 3 maja 1791 r. z hiszpańską Konstytucją z 19 marca 1812 r.

ABSTRACT

The purpose of this article was to make a brief comparative analysis between the Spanish Constitution of 1812 and the Polish-Lithuanian Constitution of 1791. With this intention, the most characteristic features of each constitutional text were set out, and both the historical and social context prior to its promulgation and the circumstances that led to the drafting of both legal acts were analyzed. The similarities and contrasts of the political models established with both constitutions were observed, as well as the rights and freedoms recognized. Reference was also made to the founding fathers of the Constitutions and the ideological context that influenced them. Finally, the author mentioned the fate of both Constitutions that were only in force for a short period of time. The article aimed to present these two legal acts that were a milestone in the constitutional and political history of each nation.

Keywords: Spanish Constitution of 19 March 1812; Polish-Lithuanian Constitution of 3 May 1791; legal act; rights and freedoms; ideological context

INTRODUCTION

The Polish-Lithuanian Constitution of 3 May 1791 is considered the first constitution in Europe, enacted three months before the French Constitution of 3 September 1791, and the second in the world, after the Constitution of the United States.

CORRESPONDENCE ADDRESS: María Ruiz Estévez, PhD Student, Autonomous University of Madrid, Faculty of Law, Calle Kelsen 1, 28049 Madrid, Spain.

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At the same time, the Spanish Constitution of 1812 is considered the first constitution of the country, since the Statute of Bayonne of 1808, a way by which Napoleon tried to legitimize an authoritarian regime in favour of his brother Joseph I in Spain, had the character of a *charte octroyée*, granted by the king as a sort of privilege rather than a foundational constitution understood in a modern sense.[1]

HISTORICAL AND SOCIAL CONTEXT

In order to understand the similarities and differences between the two constitutions, it is necessary to carry out a prior analysis of the historical and social context of both countries, which served as a precedent for the elaboration of their constitutions.

With regard to Poland, the Republic of the Two Nations or Commonwealth of Poland-Lithuania created by the Lublin Union of 1569 by the Kingdom of Poland and the Grand Duchy of Lithuania was experiencing an internal crisis situation. Its political system, characterized by the weak power of the elective monarch, kept at bay by laws and a Sejm controlled by the nobility (*szlachta*),[2] was undermined in an oligarchic government dominated by the interests of the magnates.[3] The elective monarchy gave rise to internal struggles in the Diets around royal elections, since the magnates were looking for a monarch to dominate according to their interests, and sometimes even gave rise to military interventions from neighboring countries during the interregnum.[4] The parliamentary mechanism of the *liberum veto*, by which a single vote against it automatically dissolved the Diet, caused the rupture of the majority of the Sejm, which paralysed the government and left no place for reforms. Poland did not have an adequate army either. Faced with this situation of "anarchy", the neighbouring foreign powers took advantage of the situation to dethrone and impose kings according to their interests.[5]

In September 1764, Stanisław August Poniatowski was elected king through the influence of the Czartoryski, who were part of an influential group of magnates ("Family"), and Russian troops. Poniatowski shared ideas of enlightenment, and in this sense, he proposed some reforms such as strengthening the power of the king by limiting the power of the magnates or the abolition of the *liberum veto*. In

[1] I.F. Sarasola, *La primera Constitución española: el Estatuto de Bayona*, "Revista de derecho" 2006, no. 26, p. 90.

[2] *Polish-Lithuanian Commonwealth*, www.newworldencyclopedia.org/entry/Polish-Lithuanian_Commonwealth [access: 4.09.2020].

[3] M. Hillar, *The Polish Constitution of 3 May 1791: Myth And Reality*, "The Polish Review" 1992, vol. 37(2), p. 188.

[4] D. Stone, *The first (and only) year of the May 3 Constitution*, "Canadian Slavonic Papers" 1993, vol. 35(1), p. 73.

[5] M. Hillar, *op. cit.*, pp. 188–189.

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response, in 1768 the Confederation of the Bar appeared to defend the privileges of the nobility,[6] revealing itself against the king and Russia. Also, at this time the Ukrainian peasants in the eastern provinces took advantage to rebel against their Polish lords.[7] In 1771 the Confederates of Bar deposed the king.[8] This situation of internal crisis and the Russian convenience of ending the Confederation, which put at risk its influence on Poland, provoked the first partition of Poland in 1772 between Russia, Prussia and Austria that affected around a quarter of the Polish territory, and the Bar Confederation was defeated.[9]

After the first distribution, Poniatowski returned to power, but under the control of the Russian ambassador.[10] It was clear that it was necessary to put an end to the situation of anarchy in the country. In the following years, attempts were made to carry out some reforms, including the creation of the National Education Commission in 1773, considered one of the first Ministries of Education in the world and which was highly important in the implementation of the Enlightenment in Poland,[11] since the education that was previously in the hands of the Jesuits was secularized.[12]

During the Sejm of 1788, first without the presence of foreign troops,[13] a reformist movement appeared among some nobles, led by Ignacy Potocki,[14] who was joined by important magnates such as Adam Czartoryski and part of the bourgeoisie. The reform process gained speed thanks to the influence of the French events.[15] Also, the growing political movement of the bourgeoisie who demanded the recognition of civil rights and access to official positions had repercussions on the work of the Diet and would lead to the approval of the Free Royal Cities Act of 18 April 1791, later included in the Constitution.[16]

All this procedure of political and social reforms carried out by the so-called Four-Year Sejm (1788–1791) or Grand Sejm, led to the drafting and promulgation of the Constitution of 3 May 1791 which would last only one year but would have a great significance.

With regard to Spain, like Poland, during the years prior to the enactment of the Constitution of 1812, there was also an internal crisis in the country which led to the Spaniards having up to three monarchs in one year, and which Napoleon

[6] *Ibidem*, pp. 193–195.
[7] P. Anderson, *El estado absolutista*, Madrid 1979, p. 301.
[8] M. Péronnet, *Del Siglo de las Luces a la Santa Alianza: 1740–1820*, Madrid 1991, p. 88.
[9] O. Hufton, *Europa: privilegio y protesta. 1730–1789*, Madrid 2017, pp. 134–136.
[10] M. Péronnet, *op. cit.*, p. 88.
[11] M. Hillar, *op. cit.*, p. 195.
[12] E.H. Lewinski-Corwin, *The Political History of Poland*, New York 1917, p. 315.
[13] M. Hillar, *op. cit.*, p. 196.
[14] D. Stone, *op. cit.*, p. 73.
[15] M. Péronnet, *op. cit.*, p. 89.
[16] M. Hillar, *op. cit.*, p. 199.

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Bonaparte took advantage of to fulfil his expansionist desires, and which was the precedent for its creation.

The Spanish political system was an absolutist hereditary monarchy ruled by the Bourbons. Since 1788 the monarch on the throne was Charles IV, who had Manuel Godoy as a trusted minister and in charge of the army and navy.

Napoleon Bonaparte's imperialist project led him to sign several pacts with Spain[17] to unite his forces against Great Britain, which was at war with Spain since 1804.[18] However, Spain, far from being favored by its pacts with France, only saw its crown crumble and dominated by the French.

Napoleon's ambition to dominate the English Channel led to the Battle of Trafalgar (1805), in which the French and Spanish fleets fought together against the British fleet. However, not only was the Napoleonic ambition frustrated by the defeat of the combined Franco-Spanish fleet, but it also meant the end of Spanish naval defence in colonial trade.[19] Spain was seriously damaged by the defeat in Trafalgar, since it lost important ships and military, the best ships of the Spanish Navy disappeared.[20] The persistence of Minister Manuel Godoy to continue the war against Great Britain, despite the damage suffered in the defeat, to comply with the demands of the agreements with France, and the continuous deterioration that this caused in the coffers of the State, led to general discontent in Spanish society and in the political elite regarding the alliance with France and Godoy's form of government that became increasingly unpopular.[21]

Godoy's unpopularity reached such a level that a campaign was developed to turn public opinion against him by broadcasting denigrating propaganda about him. This plot included the heir to the Spanish throne, the Prince of Asturias, later Ferdinand VII, along with nobles close to him and Canon Juan Escoiquiz, even reaching a conspiracy to dethrone Charles IV, who was blamed for keeping Godoy in power. The conspiracy failed and was exposed; Prince Ferdinand gained acquittal through repentance.[22]

However, Ferdinand and his supporters, as well as Charles IV and Godoy, needed to maintain good relations with France if they wanted to preserve the Bour-

[17] E. La Parra López, *La guerra de la independencia*, Madrid 2012, p. 46.

[18] L. Marquez Carmona, *Trafalgar: investigación de las Fuentes documentales*, "Boletín del Instituto Andaluz de Patrimonio Histórico" 2000, vol. 32, pp. 163–174.

[19] A. Lario, F. del Barrio, *Españoles, Ya Tenéis Patria: De La Independencia a La Constitución*, Madrid 2012, p.13.

[20] A. Guimerá, V. Peralta, *El equilibrio de los imperios: de Utrecht a Trafalgar*, Madrid 2005, pp. 841–843.

[21] *Ibidem*.

[22] E. La Parra López, *En vísperas de la guerra: el triunfo de Fernando VII en El Escorial y Aranjuez*, www.cervantesvirtual.com/descargaPdf/en-visperas-de-la-guerra-el-triunfo-de-fernando-vii-en-el-escorial-y-aranjuez [access: 10.01.2021], pp. 203–206.

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bon monarchy in Spain, and not suffer the same fate as the rest of the European monarchs whose countries Napoleon had conquered. For this reason, both made an effort to seek the support and protection of France, Ferdinand attempting to enter the Napoleon family through a marriage bond, and Charles IV and his minister accepting their demands, including allowing French troops in Spain access to advance to Portugal, against which Napoleon had declared war for not complying with the continental blockade that France imposed on Great Britain.[23] This permission was carried out through the signing of the Treaty of Fontainebleau (1807) by which the Franco-Spanish military invasion of Portugal and its distribution between the two countries was agreed.[24]

As a consequence, French troops enter Spain, occupy important cities and dominate communications with Portugal, Madrid and France.[25] Faced with the French threat, Godoy began to realize Napoleon's true intentions and decided to move the royal family from their residence in El Escorial to Aranjuez with the aim of continuing southwards and embarking on to America if they were in danger.[26]

Popular discontent at the escape of the royal family led to a popular mutiny, led by the noble supporters of Ferdinand, in front of the Palacio Aranjuez, which resulted in the dismissal and arrest of Godoy and the abdication of Charles IV in his son as king Ferdinand VII.[27]

Napoleon took advantage of the weakness of the Spanish monarchy and the dynastic struggle between father and son to convince the royal family to go to Bayonne, including the newly appointed Ferdinand, who eventually ceded the Spanish crown to Joseph Bonaparte, Napoleon's brother.[28]

The people of Madrid, seeing how their kings left the country, and as more and more French occupied the capital, rose up against the French troops of Murat, leading the popular uprising of 2 May (1808),[29] which was severely repressed and would mark the beginning of the struggle of the Spanish people, through a guerrilla war, against the French invader during the War of Independence that would last almost six years.

Napoleon convened a National Assembly in Bayonne with 150 Spanish deputies to whom he presented a draft Constitution which they had to accept (Bayonne Statute), and which was later sworn in by José Bonaparte. But the Spaniards refused to accept Bonaparte as sovereign and were looking for a way to create a new political order.

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[23] *Ibidem*.
[24] E. La Parra López, *La guerra…*, p. 48.
[25] A. Lario, F. del Barrio, *op. cit.*, pp. 18–19.
[26] *Ibidem*.
[27] *Ibidem*.
[28] E. La Parra López, *La guerra…*, p. 48.
[29] A. Lario, F. del Barrio, *op. cit.*, pp. 31–35.

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In the framework of the War of Independence, local and provincial councils were created, composed of politicians and intellectuals, who proclaimed themselves sovereign. Finally, in order to facilitate the coordination of the war, a Supreme Central Council was created in Aranjuez, which provisionally assumed national sovereignty. Escaping the French army, the Council was transferred to Seville and then to Cadiz, which resisted the invasion.[30] The Central Council was in charge of convening the Cortes that drew up the Constitution of 19 March 1812, also known as *La Pepa*, as it coincided with the festivity of Saint Joseph's Day. Its duration was ephemeral, but its legacy would last forever.

The deputies in the Cortes de Cádiz were grouped into tendencies that cannot be called political parties, but they had different conceptions concerning aspects such as the idea of the State and the Constitution, how to articulate the government and the concept of sovereignty. Three tendencies can be seen in the Cortes de Cádiz: liberals from the metropolis, royalist and Americans.

The liberal-leaning deputies supported the same principles that the French once defended in the Assembly of 1789, supporting national sovereignty and Montesquieu's separation of powers. They considered it necessary to draft a Constitution *ex novo* that would give the Spanish state a form of government, and that would not be limited by historical precedent. Among the deputies with a liberal tendency, Agustín Argüelles stood out above all, though there were others such as Juan Nicasio Gallego, Toreno or Diego Muñoz Torrero. This liberal tendency was influenced by Locke, and in the case of Argüelles, influences from Bentham's positivism have also been detected.[31]

On the other hand, the approaches of the royalist deputies were far removed from the liberals. They were in favour of shared sovereignty between the king and the nation and denied the nation's freedom to modify the old fundamental laws that materialized historical elements such as the monarchy and religion. They were sympathetic to Montesquieu's version of the English constitutional model, attracted by the organization of their Parliament. In this sense, they defended a special representation for the nobility and the clergy, to which a good part of the royalists belonged. Among the most prominent members of this group, we find Inguanzo, an ecclesiastic who declared himself against the abolition of the Inquisition, Blas de Ostolanza pointed out as one of the greatest defenders of the full restoration of Fernando VII,[32] Alonso Cañedo or Borrull.

[30] A. Torres del Moral, *1812, La apuesta constitucional de Cádiz*, Cádiz 2014, p. 50.

[31] J. Varela Suanzes-Carpegna, *La Constitución de Cádiz y el Liberalismo español del Siglo XIX*, www.cervantesvirtual.com/obra-visor/la-constitucin-de-cdiz-y-el-liberalismo-espaol-del-siglo-xix-0/html/0062d5a2-82b2-11df-acc7-002185ce6064_2.html [access: 15.01.2021].

[32] *Blas de Ostolanza y Ríos*, http://dbe.rah.es/biografias/13780/blas-de-ostolaza-y-rios [access: 4.09.2020].

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The third group was represented by the American deputies who went to the "Cortes".[33] They shared ideals with the Liberals, but also expressed their own ideals especially with regard to matters affecting the Spanish overseas territories. Following Rousseau's doctrine, they defended the innate right to vote and consequently universal suffrage that would enable the overseas territories to be represented in proportion to their population. However, they did not manage to fulfil their aspiration, as the liberals considered it dangerous that they could obtain a greater representation than the peninsulas. Their constitutional premises, besides being influenced by Rousseau's revolutionary principles, were also influenced by Dutch and German ius naturalists, mainly Grotius and Pufendorf. Among the most outstanding American deputies, we find José Mejía, considered the most distinguished speaker in the American sector, Antonio Larrazábal and Joaquín Fernández de Leyva.

Finally, the constitutional text reflected a mostly liberal trend, a group that managed to impose its positions almost throughout the Constitution.[34]

After having analysed the historical, political and social context of both countries, we can appreciate the first similarity between the constitutions. Both countries were experiencing an internal crisis that led to the invasion of neighbouring countries. In the case of Poland, its detonator was the situation of anarchy to which an oligarchic government dominated by magnates had led, and in the case of Spain, Godoy's unfortunate foreign policy through the alliance with France, which led to a deep financial crisis, and the internal struggles in the Spanish monarchy. Therefore, both constitutions appear as a result of the need to create a new regime, a new political order, which would allow them to combat external violence and defend their identity.

POLITICAL MODELS, RIGHTS AND FREEDOMS IN BOTH CONSTITUTIONS AND THEIR IDEOLOGICAL CONTEXTS

Once we have understood the events that preceded both constitutions, we move on to analyse their content in order to compare the main similarities and differences between them.

First similarity is found in the short duration of both constitutions. The Constitution of 3 May was in force for just over a year, from 1791 to 1792, when Polish magnates, enemies of the Constitution, which had ended their dominant position

[33] Spanish name for Parliament.

[34] *La opción patriótica: las Cortes de Cádiz y la Constitución de 1812*, www.cervantesvirtual.com/portales/constitucion_1812/contexto_historico7/#parte1 [access: 4.09.2020]; J. Varela Suanzes-Carpegna, *Las Cortes de Cádiz y la Constitución de 1812 (una visión de conjunto)*, https://dialnet.unirioja.es/descarga/articulo/3927464.pdf [access: 4.09.2020].

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formed the Targowica Confederation seeking Russia's support.[35] This led to the entry of Russian troops, which defeated Polish troops in the war in the Defense of Constitution, triggering the second partition of Poland between Prussia and Russia in 1793 (this time Austria did not intervene), and would eventually lead to the disappearance of Poland, absorbed by the third partition of 1795.[36]

In relation to the Spanish Constitution, it was in force from 1812 to 1814 with the return of Ferdinand VII. Napoleon, faced with the results of the War of Independence, which caused the departure of French troops and his brother Joseph I, decided to return power to Ferdinand VII through the treaty of Vallençay. King Ferdinand returned to Spain, but the situation had changed a lot since he left the country, and the Cortes asked the monarch to take an oath to the Constitution they had drawn up. But the king, far from accepting it, took advantage of the support he still had left in the country to put an end to the Constitution, which diminished his influence by introducing the separation of powers, and returning to absolutism.[37] However, it should be noted that the Constitution was again in force on two subsequent occasions in the history of Spain that were also of short duration, in 1820 until 1823 and in 1836 until 1837 (this time only partially).[38]

With regard to sovereignty, the Polish Constitution proclaims in Article V that "All authority in human society takes its origin in the will of the people" (popular sovereignty), and continues to establish the doctrine of separation of powers inherited from Enlightenment ideas, especially from Montesquieu, and also embodied in the previous republican political regime. Articles VI and VII describe the function and structure of executive and legislative power. The Sejm, on which the legislative power falls, would be composed of two chambers, one of deputies and the other of senators presided by the king.[39] The chamber of deputies was the "temple of legislation", where draft laws are decided, while the chamber of senators ratified or rejected laws passed by the chamber of deputies. In both chambers, it was decided by majority vote, and in the article itself the *liberum veto* is expressly abolished, as well as the right to form confederations. Executive power is reserved for the king in council, called the "Guardians of the Law". The formerly elected monarchy becomes hereditary, and Frederick Augustus of Saxony is established as the successor of Stanisław August Poniatowski who had no descendants. Judicial power was exercised by independent courts, made up of magistrates appointed for that purpose, and divided according to the country's administrative territories.[40]

[35] M. Péronnet, *op. cit.*, p. 89.
[36] P. Anderson, *op. cit.*, pp. 301–302.
[37] A. Torres del Moral, *op. cit.*, pp. 271–274.
[38] *Ibidem*, p. 276, 279.
[39] M. Hillar, *op. cit.*, p. 204.
[40] A. Torres del Moral, *op. cit.*, p. 212.

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Article III of the Spanish Constitution expressly states that sovereignty resides in the nation (national sovereignty) and also divides the exercise of power among various organs. Article XIV announces that the monarchy would be moderate and hereditary, and the following articles regulate the form of government. The Constitution expressly recognizes Ferdinand VII as the king who reigns in Spain. Article XV reserves legislative power for the Cortes, the single chamber, and the King. Article XVI attributes executive power to the king and finally Article XVII attributes judicial power to the courts established by law. In this way, the Constitution establishes the separation of powers, which, although not entirely rigid, seeks to moderate the monarchy by limiting its powers.[41]

Therefore, both constitutions, influenced by the ideas of the Enlightenment, establish as a form of government a hereditary and constitutional monarchy that abandoned the old political regime in Spain (absolutist monarchy) or deeply reformed in Poland (republican regimen) towards a constitutional regime by introducing Montesquieu's theory of separation of powers.

According to the religious question, the constitutions differ. In spite of the fact that both establish the Catholic religion as the national religion, the Constitution of 3 May 1791 recognizes in its first article a limited religious freedom, since it allows freedom of worship to other religions, but prohibits the change from the Catholic religion to any other under penalty of apostasy.[42] Nevertheless, while the Polish Constitution establishes a certain degree of religious tolerance, the Spanish Constitution maintains a rigid confessionalism, and in its Article XII expressly prohibits the worship of any religion other than Catholic.[43]

Another notable difference between both is related to the social system. The Polish Constitution, despite its enlightened influence and its attempt at reform, did not take up the idea of ending social classes and maintaining the three-estate society. Article II expressly points out the guarantee to the landowning nobility of "all liberties, freedoms, prerogatives and precedence in private and public life" and likewise confirms and recognizes as inviolable the rights and privileges previously granted.[44] However, the nobility without property, which depended on the support of the magnates and was manipulated by them, was the great victim of being deprived of its political rights.[45] These non-landowning nobles were somehow replaced by the bourgeois owners in the royal cities, who received certain rights recognized in the Free Royal Cities Act of 18 April 1791, later incorporated into the Constitution,

[41] *Ibidem*.

[42] Constitution of 3 May 1791, https://en.wikisource.org/wiki/Constitution_of_3_May_1791 [access: 5.09.2020].

[43] Constitución Española de 1812, https://es.wikisource.org/wiki/Constituci%C3%B3n_espa%C3%B1ola_de_1812#CAP%C3%8DTULO_II:_De_la_religi%C3%B3n [access: 5.09.2020].

[44] M. Hillar, *op. cit.*, p. 203.

[45] D. Stone, *op. cit.*, p. 64.

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such as limited parliamentary representation and easier ennoblement. The bourgeois also won civil rights, such as the right to property or not to be imprisoned without a previous sentence (*neminem captivabimus nisi iure victum*) and access to military, civil and ecclesiastical posts that had previously been restricted.[46] It should be noted, however, that the aforementioned rights were only granted to the nobles of the royal cities, and those of the non-royal cities, which were the majority, were excluded from them.[47]

With respect to the peasantry, which constituted the majority of the population, the Constitution did almost nothing and preserved the feudal system that kept them as servants in submission to their lords. However, Article IV placed the peasantry under the protection of the law with regard to their contracts with noble landowners, allowing peasants access to national courts to defend those contracts.[48]

On the contrary, the Spanish Constitution, in addition to creating a new political regime, configures a new social regime, putting an end to three-estate society. To this end, measures were taken, such as the suppression of the first-born right and especially the suppression of the lordships and vassals (Decree of 6 August 1811) that legitimized some nobles to govern a portion of the territory and to possess certain rights over the peasants.[49] Similarly, in order to achieve a definitive rupture of the privileged classes, a series of rights and freedoms are recognized in the Constitution, starting from a general clause contained in Article IV, which states that "the Nation is obliged to preserve and protect by wise and just laws the civil liberty, property and other legitimate rights of all the individuals that compose it".[50]

Despite the fact that in the Spanish Constitution there is an absence of an explicit declaration of rights, as is the case of the French revolutionary Constitution, by which it was inspired, its regulation of rights appears dispersed throughout the constitutional text.[51] The rights recognized in the Constitution were of two types, civil and political, the first were recognized to all Spaniards and the second only to those who had the status of citizen. Article V stated that Spaniards were considered free men born and living in any town in Spain and their children, plus foreigners with a charter of naturalisation or those who have been in the neighborhood for ten years in accordance with the law, and also "free men since they acquire freedom in Spain". It was a revolutionary definition, since it recognized citizenship not only for the men of the peninsula but also for those of the overseas territories, making

[46] *Ibidem*.

[47] M. Hillar, *op. cit.*, p. 203.

[48] D. Stone, *op. cit.*, p. 76.

[49] A. Fernández, *Las Cortes y la Constitución de Cádiz*, Madrid 2010, pp. 39–43.

[50] M.R. Arjona, *Derechos, libertades y deberes en la Constitución de 1812*, "Revista Aequitas: Estudios sobre historia, derecho e instituciones" 2013, no. 3, pp. 235–236.

[51] I. Fernández Sarasola, *La constitución de Cádiz: origen, contenido y proyección internacional*, Madrid 2011, p. 242.

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it clear that it was a constitution for both hemispheres, but the African slaves who lived in America were not recognized as Spaniards. Citizenship, on the other hand, was granted to the children of Spaniards by both lines that were adjacent in any town in Spain, Spanish foreigners who obtained a special citizen's card from the Cortes and the legitimate children of foreigners domiciled in Spain who met certain requirements.[52] The Constitution also regulated situations in which citizenship could be lost, such as obtaining employment from another government, or suspending the exercise of the rights to which it is entitled, such as not having a job or an occupation. Similarly, women are excluded since they are not even named in the Constitution. With concern to political rights, the Constitution recognized a quasi-universal and indirect active suffrage, for all men over 25 years of age, and a limited passive suffrage, since in order to be elected to Parliament it was required to have an annual income from personal property, however, the income quota was not fixed and the provision would be suspended until the quota was fixed by the Courts.[53]

Regarding civil rights and freedoms, the Constitution recognizes the right to freedom of political thought, the legal equality of all Spaniards, the right to the inviolability of the home, freedom of printing, the right to have a regular, brief and public process, the right to make a judicial declaration before being placed in prison, as well as the principles of jurisdictional and legislative unity as the basis of the principle of equality.[54]

The last feature to point out is that while the Spanish Constitution states that no article of the text may be altered or reformed until eight years after its entry into force, the Polish Constitution introduces an innovative aspect by expressly establishing in its Article VI, the need to review the constitution every twenty five years in an extraordinary Sejm, with the purpose of adapting it to the political-social context of the moment. However, neither of these intentions could be carried out due to the short period of force of both Constitutions propitiated by subsequent historical events.

THE FATE OF BOTH CONSTITUTIONS

Although both Constitutions were not in force for long, their importance was much bigger than their short life. They were of great significance for political and constitutional history, since they are considered as a great project of modernization

[52] M.R. Arjona, *op. cit.*, pp. 236–237.

[53] *Ibidem*.

[54] M.F. Masso Garrote, *Significado y aportes de la constitución de Cádiz de 1812 en el constitucionalismo español e iberoamericano*, "Iuris Tantum Revista Boliviana de Derecho" 2011, no. 12, pp. 152–155.

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of the country in a democratic way, giving a place to the ideas of the Enlightenment and ending the old regime, in order to establish a new contemporary liberal order. In addition, they influenced later liberalism and other later democratic movements.

The 1812 Constitution served as a boost to the territories of America on the road to achieving their independence from Spain, and also influenced the constitutions of the new American states in the next decade. The Spanish Constitution also played a large practical role in European countries, e.g. the Portuguese took the Spanish constitutional text as a reference of freedom and it also had an influence in Italy.[55]

Today, Poland still commemorates the anniversary of its first Constitution every May 3, which is a national holiday. It represents one of the greatest achievements of the country at this time and is considered one of the symbols of the struggle for Polish independence.

CONCLUSIONS

The comparative analysis of the two constitutions is both valuable and necessary to highlight the common response of both countries to a situation of institutional crisis. This resulted in a change to their political and social models, through their first written constitution. However, this feature was not exclusive to these two countries. Although the Polish Constitution is presented as the first in Europe, it is followed three months later by the French one, from which the Spanish Constitution also draws inspiration. The content of these constitutions highlights the fact, that the constitutional realities of these two countries are integrated into a broader reality: the emergence of a new political entity termed as "Nation". These new entities opened up to liberal ideas and left the Old Regime of Europe.

Years later, Spain and Poland, together with their neighboring countries, are once again part of a common historical reality: the European Union. A historical reality which again emerged, due to the crisis situation of the two world wars. Among the EU's objectives is the promotion of fundamental freedoms. To a certain extent, and with respect to these two countries, we could say that they had their starting point in these two historic constitutions. Both were short lived but also important milestones in a long constitutional tradition.

[55] I.F. Sarasola, *op. cit.*, pp. 292–304.

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Legal acts

Constitución Española de 1812.
Constitution of 3 May 1791.

ABSTRAKT

Celem artykułu było przeprowadznie krótkiej analizy porównawczej hiszpańskiej Konstytucji z 1812 r. oraz polsko-litewskiej Konstytucji z 1791 r. W tym celu przedstawiono najbardziej charakterystyczne cechy każdej z nich oraz poddano analizie historyczny i społeczny kontekst poprzedzający ich ogłoszenie, a także okoliczności, które doprowadziły do opracowania projektów obu aktów prawnych. Uchwycono podobieństwa i różnice modeli politycznych oraz praw i wolności ustanowionych w obu konstytucjach. Odniesiono się też do ojców założycieli konstytucji i kontekstu ideologicznego, który na nich wpłynął. Ponadto autorka wspomina o losie obu Konstytucji, które obowiązywały jedynie przez krótki okres. Celem artykułu było przybliżenie tych dwóch aktów prawnych, stanowiących kamienie milowe w konstytucjonalnej i politycznej historii obu narodów.

Słowa kluczowe: hiszpańska Konstytucja z 19 marca 1812 r.; polsko-litewska Konstytucja z 3 maja 1791 r.; akt prawny; prawa i wolności; kontekst ideologiczny