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The Procedure at the Noble Courts of the Kingdom of Poland at the Turn of the 16th Century: the Ups and Downs*

Procedural law was the only branch of old Polish law that was regulated in a more complex manner by an act of parliament in the early modern period, and the law from 1523 remained in force until the partitions of the Polish-Lithuanian Commonwealth. The later laws changed or supplemented its rules merely in a fragmentary manner and a new comprehensive law was not issued.

The article presents this law in light of court records from the territory of Bielsk. These documents come from the turn of the 16th and 17th centuries. Consequently, the article describes some problems connected with the defendant's knowledge about citation and legal objections against it, as well as about the rules of evidence. But the most interesting aspect are the court's judgements concerning the admissibility of an appeal granted by judges contrary to statutory law. The court did not respect the defendants' written commitments in which they had waived their right to appeal.

This article attempts to evaluate the efficiency and effectiveness of these proceedings at the turn of 16th and 17th centuries. Unfortunately, Polish procedural law was full of formalities that delayed adjudication and execution. However, this does not mean that these proceedings had only disadvantages for the overall efficiency of judicial system.

Keywords: *court procedure in the Kingdom of Poland – history of Polish law – Old-Polish procedure law – Polish-Lithuanian Commonwealth*

Procedural law was the only branch of old Polish law[1] that was regulated in a more complex manner by an act of parliament in the early modern period. The law adopted in 1523 by the parliament (Sejm), which was initially to be applicable in Lesser Poland, and during the 16th century extended other parts of the kingdom as well, was formally binding until the partitions of the Polish-Lithuanian Commonwealth. This act – Formula processus iudiciarii[2] – was obviously modified in the following decades or supplemented by subsequent acts of the Sejm of the Kingdom of Poland, after 1569 the

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[1] The Polish law examined here, also known as land law (lat. ius terrestre), was governed primarily by the nobility, which according to the latest findings constituted about 7 % of the population of the Commonwealth. Unfortunately, there is a scarcity of comprehensive studies of Polish law and court proceedings in languages other than Polish (only AUGUSTYNIAK, History 133–134, 139–140), with the exception of contemporary works in Latin (e.g. ŁĄCZYŃSKI, Loci communes; DREZNER, Processus; NIXDORFF, Compendium). The most important studies include: BALZER, Przewód; KUTRZEBA, Prawo; RAFACZ, Proces; PAULI, Jan Nixdorff; BUKOWSKA, Tomasz Drezner.

[2] Text: OHRYZKO, Volumina Legum 1, 202–213; GRODZISKI, DWORNICKA, URUSZCZAK, Volumina Constitutionum 1/1, 392–407. Literature: MAISEL, Formula 211–227; MONIUSZKO, Principles 442–444.

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Polish-Lithuanian Commonwealth. However, the changes and additions were not systematic, but fragmentary and occasional. Moreover, Formula processus iudiciarii was not a complete regulation – apart from a number of important issues, it significantly contributed to the development of legal customs that had to fill the gaps in statute law. Therefore, the importance of customary law in court procedure gradually increased.

This situation, combined with the adoption of new laws without considering a broader perspective, made the Polish court procedure increasingly vague and complicated. Throughout the 16th century, the nobility pointed to legal representatives providing paid services (lat. procuratores) as guilty of this state of affairs.[3] However, the Polish-Lithuanian Commonwealth did not decide to carry out a thorough reform, the consequence of which would have been the adoption of another act, comprehensively regulating the principles and institutions of court proceedings. The aforementioned procedure was applicable to both civil and criminal cases, whereas differences were of secondary importance.

To cover all issues related to Polish procedural law and the courts applying them at the turn of the 16th and 17th centuries would be beyond the scope of this study. Therefore, I decided to introduce selected, the most riveting or crucial aspects related to the procedure. The study is based on the evaluation of the court records of the Bielsk land – part of the Podlachian Voivodeship (pol. województwo podlaskie), located on the border of the Polish Kingdom . Best preserved are the files of the castle court (pol. sąd grodzki, lat. iudicium castrense)[4] in Brańsk (one of the cities of the Bielsk land), from which I extracted the examples of court proceedings between the clergy and the nobility from the turn of the 16th and 17th centuries.[5] The choice of this period is not accidental – it was the time when lively discussions on the reform of the applicable law were taking place in the Sejm (which, however, did not bring results) and also numerous studies of various nature were published on Polish law and court proceedings (both syntheses, drafts of laws and polemical letters).[6] The limitation of the research to one territory and two decades results from the character of the sources used in the study, i.e. court records. Each of the courts – castle court and land court (pol. sąd ziemski, lat. iudicium terrestre)[7] – within a decade could produce up to two or three dozen books of different categories, each containing hundreds of entries.[8] I decided

[3] See AUGUSTYNIAK, History 139. We can observe the criticism of the plenipotentiaries' activities in the 16th century literature. See e.g. JELICZ, Antologia 170; REJ, Wybór pism 53–54; URUSZCZAK, Próba kodyfikacji 30.

[4] The competence of the borough court was primarily: 1. cases subject to the so-called four articles (lat. quatuor articuli iudicii castrensis) – arson, rape, assault on a house of a nobleman, assault on a public road, 2. civil and criminal cases against nobles, who did not possess any real estates, 3. executing judgments of other courts. The remaining civil and criminal cases fell within the jurisdiction of the land courts (pol. sąd ziemski, lat. iudicium terrestre). The parties to civil law relations could, however, agree that all disputes arising from a concluded agreement would be settled in a borough or other court, even excluding the jurisdiction of the land court. See e.g. AUGUSTYNIAK, History 135–136; BARDACH, Historia 2, 151, 264; URUSZCZAK, Historia 1, 259, 271, 294–295, 357.

[5] This limitation resulted from the volume of individual books, often having two to three thousand cards for one year in several volumes. However, I also considered disputes involving the closest family of the clergy, especially siblings.

[6] Examples are: SUSKI, Korrektura; ŁĄCZYŃSKI, Loci communes; DREZNER, Processus; Ulanowski, Dwie broszury; ULANOWSKI, Trzy broszury; KOLANKOWSKI, Zapomniany prawnik (here was issued as an annex another work of Jan Łączyński, from 1594).

[7] See AUGUSTYNIAK, History 135–136.

[8] A typical phenomenon was that the court office kept several series of books, each of which had entries of a

to choose a territory that did not have much political significance and was dominated by numerous and poor nobility. Consequently, it is possible to show the micro-perspective of the daily struggle of an average nobleman with the judicial apparatus and procedures. It shall make it possible to illustrate the functioning of procedural institutions in practice and indicate their advantages and shortcomings.

In Polish law, from the end of the 14th century at the latest, the written form of the lawsuit against the nobleman-land possessor was obligatory (with a few exceptions). This document was drawn up in two copies, one each for the plaintiff and defendant; the latter had it delivered by the court usher (pol. woźny, lat. ministerialis).[9] At the end, the usher submitted a statement about the fulfilment of this obligation in the registry of the castle court[10] – although such a submission was not absolutely necessary before, in the period under study it started to be required that plaintiffs presented official excerpts with the text of the lawsuit from the registry. However, in the sources studied, most of the defendants appeared in person or represented by their plenipotentiary only at the last stage of the enforcement proceedings,[11] carried out in the castle court.[12] Appearing in court, they reported that they knew nothing about any trial, sentences or execution against them, even declaring to prove it by their oath.[13] Furthermore, even if the plaintiff (or his representative) produced the statement of the usher (thus, a sworn court official) about the effective delivery of the lawsuit,[14] the borough court of Brańsk allowed the other party to take the oath (which, in fact, meant that they had not received any lawsuit).[15] The consequence of the oath was that the court found the entire trial by default (both substantive and enforcement) invalid; hence, it was necessary to call the defendant to reply to the first lawsuit. In such a case, the plaintiff obviously incurred the costs of the trial by default , not to mention the inevitable loss of time.

Problems related to the parties' proving their claims are also of great importance. Unfortunately, the court records do not always inform us about the positions taken by the parties of the trial and the motives that prompted the court to

different nature. In the papers of the borough court, for example, we can distinguish: 1. judgements and reports of hearings (lat. libri decretorum), testimonies regarding civil law actions (lat. libri inscriptionum), reports on procedural acts, medical examinations, entries of third-party documents (lat. libri relationum).

[9] About the ushers and their competences in the earlier period, see RAFACZ, Proces 79–83; RYMASZEWSKI, Woźny, and RYMASZEWSKI, Czynności. Unfortunately, there is no research on this office for the period from the end of the 16th century.

[10] It did not matter to which court the lawsuit was addressed.

[11] This applies not only to detailed investigations of disputes between the nobility and the clergy. The vast majority of entries in the judgement books of Brańsk (lat. libri decretorum) regarding the initial stages of enforcement proceedings indicate that the defendant did not appear and that the proceedings were conducted in absentia.

[12] Regardless of court issuing the judgement to be enforced, the enforcement itself belonged to the competences of the castle court proper to location of the defendant's property. It was the place where the usher delivered the first lawsuit.

[13] About the role of the oath in Polish procedure see MONIUSZKO, Oath 119–134; RAFACZ, Proces 172–177.

[14] In case the defendant was absent on the first hearing, the procedural rules ordered the plaintiff to issue lawsuits for the next (the second, which was already pending and where the case was resolved, and possibly a third, intended for voluntary redress of the defendant's claim). The enforcement proceedings could, however, consist of three court hearings – if the defendant did not appear or did not satisfy the claim after the first, the plaintiff issued a lawsuit for another, etc.

[15] See Nacyânalny gìstaryčny arhìŭ Belarusì (Mìnsk), fond 1708, vopìs 1, sprava 91, fol. 337r (sentence from 30. 4. 1601), fond 1708, vopìs 1, sprava 24, fol. 88r–88v (sentence from 5. 12. 1605); Archiwum Narodowe (Kraków), Zbiór Zygmunta Glogera, Hs. 5, pag. 213–216 (sentence from 28. 11. 1611).

issue specific judgements.[16] However, we can conclude that the court, when deciding on a claim, gave priority to one of the parties. This institution, known as proximitas probandi, literally proximity to the evidence (meaning the priority to submit evidence) enabled the privileged party to prove their claims, especially by an oath (the aforementioned claim of ignorance of the ongoing trial was settled in the same way).[17] The preliminary ruling[18] deciding this issue was therefore extremely important, because (unless the party endowed with this privilege failed in the proof) it determined the outcome of the trial – the final judgement.

Information about other means of proof, apart from the oath, can also be retrieved from the court records of Brańsk. For example, the borough court quite strictly stated that no obligation recorded in the court records can be considered fulfilled, unless the debtor presented the so-called receipts (lat. quietatio), i.e. the creditor's statement, also entered into such records.[19] Only sometimes did the judges state that it was also possible for the creditor to produce such a statement in writing.[20] There were two cases when the defendant presented such a private document in the court, whereas the plaintiff, alleging that it was forged, demonstrated their handwriting with a sample of writing produced in the presence of the court.[21] Finally, the court rejected the private document, not so much because of the difference of the handwriting, but – primarily – because of its form.[22] As for the court's practice on the admissibility of challenging ushers' statements, in one of their judgements, the judges indicated that the defendants could not challenge them by an oath.[23] However,

[16] Even if we find such information, it is often short or the statements of one party, which did not submit it in writing to the court office within three days of the hearing, are missing.

[17] As a rule, the disputing parties referred to various types of evidence (testimony of witnesses, documents presented or only mentioned). Sometimes, written law or custom would determine when a court should give priority to a claimant or defendant (RAFACZ, Proces 156–157). For example, the submission of a document by one of the parties to a case usually resulted in giving it the priority and admitting the oath. Similarly, the victim of a beating gained this right by presenting a description of the wounds in court (RAFACZ, Proces 157–158).

[18] The Polish procedural rules provided that when addressing the claims (e.g. regarding the postponement) and the allegations of the parties (both or only the defendants'), the court issued a judgement, which rejected the allegations or considered them to be right, or adjourned the case (or not). The order in which these claims and allegations were raised was also shaped. The first information on the shaping of the order dates back to the turn of the 16th and 17th centuries. See ŁĄCZYŃSKI, Loci communes 2r; KOLANKOWSKI, Zapomniany prawnik 83–84; DREZNER, Processus Dr; ULANOWSKI, Trzy broszury 14; NIXDORFF, Compendium 69–70; BALZER, Przewód 119–125; KUTRZEBA, Prawo 78; BUKOWSKA, Tomasz Drezner 182; BARDACH, Historia 2, 387–390; PŁAZA, Historia 1, 445–446; URUSZCZAK, Historia 1, 278–279.

[19] This is the position taken by a professor of law in Academy of Samosc , Tomasz Drezner, who pointed out that extracts from authentic records are always given faith that cannot be undermined. See DREZNER, Processus Dv: "Autentica documenta ex actis deprompta, utpote inscriptiones, quietationes, decreta et caetera id genus, quorum fides inconvincibilis", BUKOWSKA, Tomasz Drezner 183. See also KOLANKOWSKI, Zapomniany prawnik 101.

[20] However, this seems to have been an isolated view. See Nacyânalny gìstaryčny arhìŭ Belarusì (Mìnsk), fond 1708, vopìs 1, sprava 20, fol. 320r–320v, fond 1708, vopìs 1, sprava 23, fol. 620v–621v, (trial from 1603 and 1604). In this case this view was expressed by the plaintiff and indirectly accepted by the court.

[21] The plaintiff was a clergyman, so he was able to draw up the document and prove to the court that his handwriting did not match the hand that prepared and signed the document. However, we must remember that the vast majority of the nobility standing in the courts of the Bielsk land were illiterate.

[22] See Nacyânalny gìstaryčny arhìŭ Belarusì (Mìnsk), fond 1708, vopìs 1, sprava 24, fol. 255r–257v and 258v–260r (sentences from 16. 1. 1606).

[23] See Nacyânalny gìstaryčny arhìŭ Belarusì (Mìnsk), fond 1708, vopìs 1, sprava 24, fol. 255r–257v (sentence from 16. 1. 1606), another quite similar case: Archiwum

as I mentioned above, taking an oath was a much better solution to convince the court of the ignorance of the lawsuit than to accuse the usher of misleading the court with a false statement.

Yet, the most interesting are the court rulings regarding the admission of appeals.[24] The right to challenge the judgements was allowed against the Sejm Act of 1588,[25] which allowed appeals only in two situations: 1. when the final judgement was issued, 2. when a preliminary judgement that determined the outcome of the trial, was issued – for example, regarding the proximity to the evidence (see the example above) or rejecting evidence showing that the claim was satisfied before. Meanwhile, in Brańsk it was allowed to appeal in situations clearly beyond the limits of the laws of 1557 and 1588.[26] For example, according to the judges, the plaintiff could appeal in the following cases: 1. against the ruling granting the defendant the right to an oath affirming their ignorance about the pending trial, 2. when the court adjourned the trial because of the defendant's severe illness, 3. when the court ordered the plaintiff to document the course of the trial by default, which the defendant demanded, 4. when the court requested proof that the last lawsuit had been properly delivered (also upon the defendant's request). Neither of these cases qualifies as an appeal against the preliminary judgment determining the outcome of the dispute. Moreover, written law considered inadmissible appeals in enforcement proceedings,[27] a fact that the castle court in Brańsk apparently did not quite care about, often rejecting appeals against preliminary judgements but admitting those lodged against final judgements. In addition, in some cases, the judges did not heed the clause in contracts that the defendant waived the right to appeal. The borough court in Brańsk allowed the appeal if the creditor referred the case to the court, because of non-performance of the contract, and the defendant, regardless of the obligation, tried to appeal against an unfavorable judgement. However, there was a clear change in the second half of the first decade of the 17th century. The court of appeal, the Crown Tribunal (pol. Trybunał Koronny, lat. Iudicium Ordinarium Generale Tribunalis Regni),[28] not

Narodowe (Kraków), Zbiór Zygmunta Glogera, Hs. 4, pag. 539–545 (sentence from 5. 5. 1608).

[24] The appeal was introduced to the Polish court proceedings by the aforementioned Act of 1523 and only in part of the territory of the Kingdom of Poland (in Lesser Poland). However, in the course of the 16th century it was adopted in all provinces and lands. There is no doubt, however, that it had been used in judicial practice before. See BARDACH, Historia 2, 396–397; PŁAZA, Historia 1, 451–452; URUSZCZAK, Historia 1, 285–286.

[25] This was not the first regulation of this kind issued by the Sejm. The earlier ones were announced in 1543 and 1557 – see OHRYZKO, Volumina Legum 1, 281; URUSZCZAK, GRODZISKI, DWORNICKA, Volumina Constitutionum 1/2, 249; OHRYZKO, Volumina Legum 2, 12; GRODZISKI, DWORNICKA, URUSZCZAK, Volumina Constitutionum 2/1, 76.

[26] The Act of 1588 (OHRYZKO, Volumina Legum 2, 265; GRODZISKI, Volumina Constitutionum 2/2, 80), citing the law of 1557, only mentioned that the inability to appeal regarded the defendant, whereas the previous constitution did not contain such a restriction. The author of the mid-17th century Johannes Nixdorff, indicates that the plaintiff could appeal in any situation – see NIXDORFF, Compendium 172–173. This may suggest that subsequent practice considered the described cases of appeals by the plaintiff admissible.

[27] A contemporary lawyer commented on it in the following study: KOLANKOWSKI, Zapomniany prawnik 92. See also KUTRZEBA, Prawo 100. The enforcement proceedings consisted – in the absence of the defendant – of even three stages, each of which ended with a final judgement ordering the execution of the judgement under pain of specific penalties in the event of the defendant's resistance.

[28] About the Crown Tribunal see: AUGUSTYNIAK, History 136–137; BALZER, Geneza; BEDNARUK, Trybunał. Cases from Lesser Poland, Podlachia, Red Ruthenia, Volhynia and Ukraine were settled in Lublin during spring and summer. The Crown Tribunal decided the others (from Greater Poland, Pomerania and Mazovia) in Piotrków during autumn and winter.

agreeing with the above-mentioned position of the court in Brańsk, began to correct its judgements. As a result, the castle court began to treat the above-mentioned waivers of the right to appeal as well as the enforcement proceedings more seriously, preventing defendants from appealing in these cases.[29] Given that the essential records of the Crown Tribunal were burnt during World War II, this is a very important piece of information about the impact of the Tribunal rulings on the activities of local courts.

What was the efficiency and effectiveness of these procedures at the turn of the 16th and 17th centuries in the court in Brańsk? It is obvious that interested parties, especially the plaintiffs, sought to close the proceedings as soon as possible, naturally in their favour. It is also not surprising that some events such as epidemics, wars or vacancies at judicial offices hampered the activities of the courts.[30] Unfortunately, the Polish procedural rules were full of various formalities that delayed the delivery of the sentence or its enforcement. I have already mentioned the liberal approach to the admissibility of appeals or the annulment of sentences by default. Nevertheless, any serious mistake regarding the lawsuit (for example, if it was delivered too late)[31] meant that a lawsuit had to be reissued. In my opinion, the most serious problem was, however, the defendants' permanent absence at the time of the examination proceedings and in the first stages of enforcement. On the other hand, the enforcement proceedings envisaged specific financial and deprivation of honour imposed on absent debtors, whereas the final solution was to remove the non-cooperating debtor from his real estate and hand it over to the creditor for recovery.[32] However, as we already know, the defendant could easily disregard such an absence with little risk. As a consequence, the proceedings lasted several years, and some cases went to the Crown Tribunal more than once.

However, this does not mean that the described procedure was full of flaws only. It also had some advantages that are worth pointing out. First of all, it was still based on the principle of private prosecution, i.e. the victim's complaint. As a consequence, in the Kingdom of Poland a complaint process persisted, naturally dating back to the Middle Ages, used both in civil and criminal cases, with few instances of the use of the inquisitive model in the case of the latter. Extremely important for the nobility, especially the poorer (numerous in, for example, Podlachia or Mazovia), was the oral nature of the procedure used in noble courts.[33] The parties presented their claims in the land court, borough court or the Crown Tribunal in person or through

[29] We are dealing with the first such rulings in the last years of the 16th century – see e.g. Nacyânalny gìstaryčny arhìŭ Belarusì (Mìnsk), fond 1708, vopìs 1, sprava 18, fol. 35v–36v (sentence from 5. 4. 1599), fond 1708, vopìs 1, sprava 20, fol. 362r–363v (sentence from 26. 5. 1603), fond 1708, vopìs 1, sprava 24, fol. 258v–260r (sentence from 16. 1. 1606). However, they were not consistent – see Nacyânalny gìstaryčny arhìŭ Belarusì (Mìnsk), fond 1708, vopìs 1, sprava 93, fol. 330v–332r (sentence from 15. 3. 1604), fond 1708, vopìs 1, sprava 24, fol. 255r–257v (sentence from 16. 1. 1606 – sic!).

[30] In the examined period, in the years 1602–1603, the courts of the Bielsk land did not sit because of the plague. It was feared that meetings of the nobility in the court cities could contribute to the spread of the plague. See Nacyânalny gìstaryčny arhìŭ Belarusì (Mìnsk), fond 1708, vopìs 1, sprava 88, fol. 732r–732v, 800r, 810v, fond 1708, vopìs 1, sprava 20, fol. 4r. See also MONIUSZKO, Mazowieckie sądy 63–66.

[31] As a rule, the usher was required to submit a lawsuit one week before the start of the court date. See ŁĄCZYŃSKI, Loci communes 2v; DREZNER, Processus B2r; BALZER, Przewód 94–95; RAFACZ, Proces 122; PAULI, Jan Nixdorff 145–146.

[32] About the enforcement proceedings see KUTRZEBA, Prawo 94–95; RAFACZ, Proces 200–216; PAULI, Jan Nixdorff 114, 125; BARDACH, Historia 2, 402–405; PŁAZA, Historia 1, 454–455; URUSZCZAK, Historia 1, 288.

[33] MONIUSZKO, Principles 444–451; RAFACZ, Proces 5–8; URUSZCZAK, Historia 1, 271.

plenipotentiaries. It is true that, as we have already pointed out, they should present their statements in writing within three days, but often they did not comply with this obligation, which, moreover, did not involve any sanctions.[34] Paradoxically, an important advantage of this procedure was that the parties could decide on the course of the proceedings. For example, they were allowed to postpone the examination of the case by mutual consent without any restrictions.[35] This practice made it possible to end the dispute by settlement;[36] also, the court could issue a final judgement only when the debtor was able to pay or secure the claim of the creditor.

However, one should not ignore the constant complaints of the nobility over slow court proceedings, unlawful appeals and the Crown Tribunal being clogged with cases.[37] We can find many such regrets and suggestions for solving individual problems in lists of matters to be discussed and resolved during subsequent parliamentary sessions.[38] These lists were prepared during the assemblies of nobles from individual lands and provinces held before the Sejms ("sejmiks"), and then handed to selected parliamentarians. Unfortunately, no major reform of the law of 1523 was carried out during the period under study, although a number of various types of proposals and bills were made, and subsequent parliaments raised the matter of correcting the law, even appointing special committees to deal with the matter. On the other hand, the current state of affairs was paradoxically convenient for the nobility, who appeared in the courts as creditors or victims, as well as debtors or accused persons. So radical changes worsening the situation of the latter were not necessarily in their interest. As a consequence, bringing a case to court resulted in a waste of time, money and nerves, but it was one of the methods of forcing the opposing party – the debtor or the perpetrator – to accept a settlement, which resulted in satisfying at least some of the claims or getting justice at least partially.

[34] However, it cannot be ruled out that failure to deliver these statements resulted in the impossibility of invoking the arguments of the first instance at the Tribunal. It is worth mentioning that until the last days of the Polish-Lithuanian Commonwealth, Latin remained the language of court records and lawsuits in the Kingdom of Poland (see RAFACZ, Proces 36).

[35] MONIUSZKO, Principles 450–451; RAFACZ, Proces 7–8.

[36] Settlement of disputes, often long-lasting, by adjudicators appointed by the parties was very popular in the Polish-Lithuanian Commonwealth, mainly due to the length of court proceedings. See e.g. AUGUSTYNIAK, History 136; KUTRZEBA, Prawo 80–81; PŁAZA, Historia 1, 435, 557.

[37] AUGUSTYNIAK, History 137, 139–140.

[38] See e.g. DWORZACZEK, Akta 221; KUTRZEBA, Akta 146, 276, 333, 358. See also MONIUSZKO, III Statut 63–74.

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