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COMPROMISE AGREEMENTS AS A TOOL FOR JUDICIAL PROCEEDINGS IN OLD POLISH-LITHUANIAN COMMONWEALTH (BASED ON JUDICIAL MATERIALS OF THE RUTHENIAN VOIVODESHIP IN THE 17th – 18th CENTURIES)

Abstract. The purpose *of the study is to clarify the role and place of compromise agreements in the judicial system of Old Polish-Lithuanian Commonwealth.* ***The research methodology*** *is based on the principles of scientific historicism, the use of general scientific and highly specialized historical methods.* ***Scientific novelty*** *consists in a comprehensive analysis of the activities of compromise courts in the territory of the Ruthenian Voivodeship of the Polish-Lithuanian Commonwealth in the 17th – 18th centuries, as an integral part of judicial proceedings. The procedural aspect of the court's activities has been reconstructed: composition, prerequisites for formation, topics of cases considered, etc.* ***Conclusions****. Compromise agreements were widely used in an everyday legal practice of the Old Polish-Lithuanian Commonwealth society as a tool for resolving conflicts. The acts of the hrodsky (magistrates') and zemstvo courts contain hundreds of references and the agreements texts, and it testifies to their importance. The participants of compromise agreements were two parties who were*

on equal terms. Each of them was represented by the so-called "friend", it could be one or several people. In the 18th century the board of friends was headed by a super-arbitrator. Also in the 18th century the compromise court could use the services of vozny and other officials of local judicial and administrative institutions. Compromise agreements could be concluded between the parties who were conducting legal proceedings in the existing permanent courts. They could equally be concluded at different stages: at the beginning of legal proceedings, at the end, etc. Compromise courts covered a wide range of civil and criminal cases. Thus, they could make decisions that provided not only for material aspects, but also for imprisonment, deprivation of honour, etc.

Key words: *compromise courts, Ruthenian voivodeship, judicial proceedings of the Old Polish-Lithuanian Commonwealth, compromise agreements, mediation.*

МИРОВІ УГОДИ ЯК ІНСТРУМЕНТ СУДОЧИНСТВА ДАВНЬОЇ РЕЧІ ПОСПОЛИТОЇ (ЗА СУДОВИМИ МАТЕРІАЛАМИ РУСЬКОГО ВОЄВОДСТВА XVII – XVIII ст.)

Анотація. Мета дослідження*. З'ясувати роль і місце мирових угод у системі судочинства Давньої Речі Посполитої. Методологія дослідження оперта на засади наукового історизму, використанняі загальних наукових та вузькоспеціальних історичних методів.* ***Наукова новизна****: здіснений комплексний аналіз діяльності полюбовних (мирових) судів на теренах Руського воєводства Речі Посполитої у XVII – XVIII ст. як складової частини судочинства. Реконструйований процедурний аспект діяльності суду: склад, передумови формування, тематика справ, що розглядалися тощо.* ***Висновки****. Мирові угоди широко використовувалися у повсякденній правовій практиці суспільства Давньої Речі Посполитої як інструмент врегулювання конфліктів. Акти гродських і земських судів містять сотні згадок та самих текстів угод, що засвідчує їхню важливість. Учасниками полюбовних судів були дві сторони, котрі перебували в рівних умовах. Кожну з них представляв так званий "приятель", це могла бути одна або кілька осіб. У XVIII ст. колегію приятелів очолював суперарбітр. Так само у XVIII ст. полюбовний суд міг вдаватися до послуг возного та інших урядовців місцевих судово-адміністративних установ. Мирові угоди могли укладатися між сторонами, що провадили судовий процес у чинних постійних судах. Однаковою мірою вони могли укладатися на різних етапах: на початку судового процесу, наприкінці тощо. Полюбовні суди охоплювали широкий спектр цивільних та кримінальних справ. Вони могли приймати рішення, що передбачали не тільки матеріальні аспекти, але й ув'язнення, позбавлення честі тощо.*

Ключові слова: *мирові (полюбовні) суди, руське воєводство, судочинство Давньої Речі Посполитої, мирові угоди, медіація.*

Problem Statement. The judicial system of the Old Polish-Lithuanian Commonwealth combined the norms of customary and written law, which had been formed over centuries and had certain regional characteristics. Compromise courts were part of this system. The study of the activities of these courts enables us to find out how the principles of justice, compromise and voluntary settlement of disputes were implemented on a daily basis in a class society with its ethnic and confessional diversity. The study of the mechanisms for reaching compromise agreements creates an opportunity to reconstruct the level of legal culture, interaction among private individuals, judicial and administrative institutions, and the specifics of legal mentality of the then society. In the context of a growing role of compromise court institution as an alternative method of resolving disputes, it is advisable to study the historical experience of this legal practice.

Review of Historiography. Compromise courts as an integral part of the legal practice of the Old Polish-Lithuanian Commonwealth have been studied by the Polish lawyers since the 19th century. This can be found in the works of O. Balzer (Balzer, 1935, p. 35), P. Dąbkowski (Dąbkowski, 1910–1911, p. 456), S. Kutszeba (Kutszeba, 1927, p. 112), Ja. Rafacz (Rafacz,

1936, pp. 6–7), and Ju. Bardach (Bardach, 2009, p. 345) S. Płaza (Płaza, 1997, p. 237). However, the studies are limited to extremely concise considerations about the compromise agreements, indicating the general principles of their conclusion. In fact, their review does not go beyond the textbook scope and is not based on a specific factual material. The studies do not take into account regional specifics and time changes. In the Ukrainian historical and legal science, I. Boiko studied this issue but superficially (Boiko, 2009, p. 244). Yu. Hoshko (Hoshko, 1999), V. Inkin (Inkin, 1990), I. Smutok, V. Ilnytskyi and M. Haliv (Smutok, Ilnytskyi, & Haliv, 2024) did research on the legal traditions in the Carpathian region during the early modern period in more detail. Their publications contain interesting observations on the activities of compromise courts. The activities of compromise courts were studied by Yu. Zazulak (Zazulak, 2004; Zazulak, 2007) and V. Domino (Domino, 1938) in detail. However, the analysis is limited to the 15th – 16th centuries. Similarly, N. Starchenko studied the activities of these institutions, but in Volyn Voivodeship (Starchenko, 2004).

The purpose of the study is to determine the role and place of compromise agreements in the judicial system of the Old Polish-Lithuanian Commonwealth.

Research Results. The judicial system of the Old Polish-Lithuanian Commonwealth was based on certain foundations and principles that determined the forms and methods of resolving disputes and the nature of the legal process. In particular, the principle of appeal. The initiator of the beginning of the case consideration was one of the parties to the process (apparently the plaintiff). Therefore, the process began with a statement (complaint, protest, lawsuit, etc.). If the aggrieved party did not declare its rights, the court could not arbitrarily remedy the violation of law and order. The so-called principle of dispositivity meant that both parties to the conflict regulated the procedural aspects independently. They could freely determine the terms of the case consideration; they chose the court at their own discretion; they collected the evidence themselves; they could make mutual concessions and abandon part of the claims or put forward new ones. Ultimately, the parties could completely refuse the services of the state court and resolve the case peacefully. This process was also facilitated by the circumstance, or rather another principle – the lack of clear criteria for judges and people entitled to administer justice. The judicial bodies of the Old Polish-Lithuanian Commonwealth were staffed by people from the gentry (magistrates' courts – burghers), who did not receive legal education or pass qualifying exams. It was enough to know the general principles of legal proceedings. In the society of that time, a nobleman/burgher acquired this knowledge in practice, constantly conducting legal proceedings with neighbours, relatives, etc. It was possible to deepen the general principles of legal proceedings by working in the magistrates' and zemstvo courts. There were separate boards of young noblemen who were widely involved in the organization of legal proceedings at various stages (serving lawsuits, court hearings, executing sentences, etc.).

The combination of all these factors led to the widespread use of extrajudicial instruments for resolving legal disputes. These included, in particular, compromise agreements – decrees of friendly or compromise courts.

In documents of the 16th – 18th centuries, compromise agreements are called differently: "decretum commpromissum", "kompromis" (CSHAUL, f. 13, d. 1, c 30, p. 1328; c. 34, pp. 275, 434; c. 298, pp. 923–936; c. 154, p. 936; c. 214, p. 11; c. 216, p. 289; c. 221, p. 611; c. 222, pp. 53, 58; c. 225, c. 383), "complanatio / komplanacja", "complanatio amicabilis" (CSHAUL, f. 13, d. 1, c. 144, p. 249; c. 215, p. 190; c. 222, p. 144; c. 223, p. 563; c. 225, p. 280; c. 226, p. 70; c. 234, p. 111, 328; c. 404, p. 319), "postanowienie" (CSHAUL, f. 13,

d. 1, c 435, p. 1207; c. 444, p. 2120; c. 457, p. 693); "pomiarkowanie" (CSHAUL, f. 13, d. 1, c 457, p. 694).

Compromise agreements were widely practiced in the society of the Old Polish-Lithuanian Commonwealth. The Przemyśl town acts for the years 1710–1740 contain mentions of 3–4 agreements per year. However, it is worth noting that not all cases could be considered through reaching a compromise. In particular, insult to royal honour and high treason. Since 1726, cases concerning the state treasury and royal estates were not subject to compromise courts; it was forbidden to consider cases of minors without any participation of official courts.

In compromise agreements, there are two parties to the process. In this aspect they do not differ from other courts. In the Old Polish-Lithuanian Commonwealth, the trial involved two parties – a plaintiff and a defendant. There could be no third party. The obligations and rights of the parties were not the same. For example, if there were the same witnesses on both plaintiff and defendant's side, the evidence obtained from them was interpreted in favour of a defendant. In compromise agreements, such a division was not observed and the parties were actually on equal terms. Obviously, when operating with the concepts of a plaintiff or defendant, it was not necessarily about one person. As evidenced by compromise agreements, it could be several people (Anastasia Hulianytska on the one party and Mykolai, Oleksandr, Heorhiy Yavorsky Petrashovtchi on the other party (1688) (CSHAUL, f. 13, d. 1, c. 144, p. 249), or Andriy Strilbytsky, John Monastyrsky, Euphrosyne of Sozanska – on the one party and Andriy and his father also Andriy Sozansky Vorony – on the other party (1730) (CSHAUL, f. 13, d. 1, c. 236, p. 65). The parties to a compromise agreement could be certain institutions, such as monasteries (Dobromylsky Monastery on the one party and John and Mykolay Ilynytsky Yaninovychi on the other party (1736) (CSHAUL, f. 13, d. 1, c. 240, p. 225) (the Vysochansky family, represented by more than a dozen people on one party, and the Lavra monastery represented by the monastery procurator on the other party (1747) (CSHAUL, f. 13, d. 1, c. 248, p. 351). Often one of the parties is a town or village community (Bandrivsky and Kulchytsky – on one party and Sambir burghers led by the town magistrate – on the other party (1692) (CSHAUL, f. 13, d. 1, c. 457, pp. 1860–1864).

An indispensable condition for a compromise agreement was the presence of a representative from each part. In the documents they are called "friends" (*in Polish* – "przyjacieł", "przyjaciel do kompromissu", "proszony przyjaciel"). In the vast majority of cases, there was one person from each of a plaintiff/plaintiffs and defendant/defendants. However, this rule was not mandatory, as evidenced by individual documents. For example, in the agreement between the Klodnytski, two representatives were present from each party (1691) (CSHAUL, f. 13, d. 1, c.454, p. 968), and the dispute between the Komarnytski and the Druzhbychi was considered by five friends on each part (CSHAUL, f. 13, d. 1, c. 455, p. 2484). In some cases, a kind of board of friends was established, which elected a presiding judge (superarbiter) from among themselves and conducted the case as a court. In particular, this is how the dispute between Theodore and Alexander Yavorsky Pyrkovychi on the one part and Basil and Alexander Chernetski on the other (1694) was considered. The decision was made by the board consisting of 7 noblemen, headed by Oleksandr Humnytsky (CSHAUL, f. 13, d. 1, c. 460, p. 1383). We also encounter a super-arbitrator in the case between the Ilnytski Telepianovychi and the Matkivski (1715). Interestingly, in the latter case, the board of friends is called a court of compromise (*in Polish* – sąd niniejszy kompromissarski) and uses the services of a porter, and from that point on it is no different from a government judicial institution (CSHAUL, f. 13, d. 1, c. 500, p. 2994). In the 18th century, such boards

were established with the involvement of both "friends" and outsiders. This is indicated by the compromise agreement between the Kobyletski, which provides detailed details of its formation. Franciszk Nahuyowski, "z oboch stron superarbiter", Samuel Vynnytsky Radewych and Pavlo Kryvetsky on the side of Stanislav and Theodore Kobyletsky, Stanislav Nahuyowsky and Jan Pawlowski on the side of Maciej and Basil Kruszelnytski, and also "przy obecności panów Bazylego Manastyrskiego, Mikołaja Horodyskiego, Jana Winnickiego i innych do tego aktu zgromadzonych" (1710) (CSHAUL, f. 13, d. 1, c. 503, p. 1553). A court of compromise was formed in a similar way, which in 1737 considered disputes between Anton Kalynowski and Samuel Jaworski Dubyk. It was headed by the "superarbitr" Mykolai Soltyk, with whom two representatives from each side sat, and the work of this board was carried out in the presence of ten nobles, most of whom were government officials and clerks of the Przemyśl magistrates' court (CSHAUL, f. 13, d. 1, c. 563, pp. 205–206).

As evidenced by the agreements of the 18th century, courts of compromise could involve officials of local judicial and administrative institutions in their work. These were a steward, chancellors, and officials of the local town ("vozny", "subdelegatus", "vicegerent"). In some cases, depending on the subject of the legal dispute, other institutions and people with appropriate authorities could be involved. For example, in the case between Hryhoriy Horodysky Bratko and Marianna Mattuszewska, regarding the alleged rape of the latter, the relevant investigative actions (inquisitia) were carried out by representatives of the clergy (CSHAUL, f. 13, d. 1, c. 450, pp. 548–549). Courts of compromise and agreements between peasants and underprivileged social classes of the population were concluded with the participation of landowners or their representatives. If these were state lands, such agreements were under the local administration control. For example, in the Sambir starostvo, village officials and administration were involved in this case, and the relevant decrees were sanctioned by the sub-starosta (MD SL LNU, f.: Sambir starostvo, c. 520/III, pp. 182–183, 204–205, 220–221, 236–237).

Compromise agreements were concluded at different stages of the legal process. Initially, there was a clear division: having chosen one of the two ways to resolve the conflict (through a judicial institution or a compromise agreement), none of the parties could choose the other way. This is characteristic primarily of the Middle Ages. In the 17th and 18th centuries, these restrictions were no longer in effect. The parties could refuse the services of the state judiciary at any time and conclude a compromise agreement (Rafacz, 1936, pp. 6–7).

A cursory review of the preserved agreements shows that they were concluded at the beginning of the legal proceedings and the parties did not go to court. The evidence of this fact is the absence of any mention of legal proceedings. As a rule, these are property agreements, division of inheritance, settlement of debt obligations, etc. (CSHAUL, f. 13, d. 1, c.404, p. 318–320; c. 450, pp. 2012–2014).

However, in many cases, the parties had previously resorted to courts of various instances. It is often difficult to determine at what stage the case was in the courts before the parties decided to reconcile through a compromise agreement. The latter contains a mention of the process, but without a clear detailed outline. For example, in the dispute between Zhukhowska on the one party and her daughter and son-in-law, the Vynnytski, there is only a general mention of it (o czym processa prawne między niemi in actis pozachodzili) (CSHAUL, f. 13, d. 1, c. 435, p. 1331)

As appears from other agreements, the process could begin when one of the parties filed a complaint with the local court and a defendant accordingly received a claim. It was at

this stage that renegotiations continued, leading to the conclusion of an agreement between Marianna Matuszewska and Hryhoriy Horodyski Bratko on the other party (1680) (CSHAUL, f. 13, d. 1, c. 450, p. 549). As evidenced by the agreement between Tomas Zubrycki and Ilia Komarnicki Lezhan, the agreement conclusion could have been preceded by a trial in the Przemysl magistrates' court with a decision, and only after that the parties decided to settle the case on their own with the help of friends ("Panowie Komarniccy prawują się przez lat ośmnaście") (CSHAUL, f. 13, d. 1, c. 457, pp. 71–73).

In some cases, the case lasted more than one year, as is evident from the agreement between the Komarnytski and the Druzhbychi. The parties were at war with each other over land, and it lasted for 18 years (CSHAUL, f. 13, d. 1, c. 457, p. 695). There are agreements that were preceded by years of litigation that reached the Lublin Tribunal, as the highest appellate instance, and only then did the parties resort to arbitration. This was the case between the Kryvetski on the one party and the Vynnytski on the other party. As follows from the agreement, their dispute was considered at the Lublin Tribunal. Its decision in this case is unknown. However, immediately after the court session, without leaving Lublin, the parties concluded the agreement (1685) (CSHAUL, f. 13, d. 1, c. 442, pp. 1719–1720).

When considering a case, the compromise courts usually annulled the decision and disregarded all previous legal proceedings ("processa, manifestacje in antecessum między tronami zaszłe i wszelkie pretensje, tak o wojtóstwo, jako i o same osoby zachodzęcze cassantur et anihilantur") (1702) (CSHAUL, f. 13, d. 1, c. 500, p. 1593). Moreover, some of them contain a reservation that the parties accept the decision of the compromise court as final and will not appeal ("strony obydwie sine quavis apellatione juris kontonowac mają") (1723) (CSHAUL, f. 13, d. 1, c. 520, p. 1463)

Compromise courts covered a wide range of civil and criminal cases. In particular, the subject of consideration of compromise courts were property disputes and other disputes, debt obligations, and violations of property rights to movable and immovable property. Thus, in 1691, the Komarnytski Fedchaky and the Komarnytski Pavlykovychi settled a land conflict related to the division of the joint inheritance of Hrytsko Komarnytsky Pavlykovych (CSHAUL, f. 13, d. 1, c. 455, pp. 2483–2484). The following year, Hryhoriy, Jan and Oleksandr Komarnytski Druzhbychi attempted to make a compromise agreement. The disagreement between them arose over the land allotment of Oleksandr Kopystynski, who had sold it to the Druzhbychi, but when concluding the purchase and sale agreement, Hryhoriy's name was not included. This fact led to disagreement and mutual resentment among the relatives (CSHAUL, f. 13, d. 1, c. 457, pp. 694–696).

Inheritance, distribution of movable and immovable property, custody of minors and similar family matters were usually also resolved by compromise courts. In 1683, in particular, in this way, Oleksandr and Kostantyn on the one party and their brother Petro on the other party from the Blazhyvski family made the decision who would take care of the minor son and daughter of their late brother Heorhiy (CSHAUL, f. 13, d. 1, c. 444, p. 1731); In 1695, Yevrosinia Leszczyńska tried to settle a misunderstanding with her stepfather, Jan Białoskurski, regarding her paternal and maternal inheritance by a compromise agreement (CSHAUL, f. 13, d. 1, c. 463, pp. 767–769). In 1696, Mykola Rohozinski and Jan Dwernytski sought to resolve property disputes through arbitrators that arose after the marriage between Jan, the son of Mykola Rohozinski, and Olena, Dwernytski's stepdaughter (CSHAUL, f. 13, d. 1, c. 463, pp. 3295–3298)

Conflicts and clashes that resulted in material damage and bodily harm were also regularly considered at compromise courts. For example, in 1692, Dmytro Bandriwski, and Mykola,

Oleksandr Kulchytski Shtokaily, settled a conflict with Sambir burghers. The latter, under unclear circumstances, attacked these noblemen, inflicted wounds, and during the fight took away certain things and torn apart their clothes (CSHAUL, f. 13, d. 1, c. 457, pp. 1860–1864).

The subject of a compromise agreement could be insults to honour and dignity, accusations of illegitimate origin, etc. Typically, these agreements were concluded among the gentry. In particular, in 1691, Toma Zubrytsky settled the case with Ilia Komarnytski Lezhan, who accused him of a plebeian origin (CSHAUL, f. 13, d. 1, c. 457, pp. 71–73). Similarly, in 1702, Stefan Turetski and Oleksandr Chernetski agreed to end the legal proceedings that had lasted between them for many years and undertook to apologize to each other for the insult to their honour and dignity (CSHAUL, f. 13, d. 1, c. 491, pp. 1589–1591)

Compromise court also considered cases of murder, both intentional and unintentional. Moreover, under the conditions of that time, when blood feuds were considered a completely acceptable phenomenon, and the judicial authorities and the executive power could not prevent it, compromise agreements were the most effective tool for preventing blood feuds and preventing their further spread (Inkin, 1990).

Considering a wide range of civil and criminal cases, compromise courts were quite naturally given the right to make decisions, ranging from the regulation of imprisonment to deprivation of honour. Therefore, compromise courts often used the personnel and facilities of local judicial and administrative institutions to implement their decrees. For example, the agreement between the Krywetski and the Vynnytski in the case of robberies involving Pavlo Krywetski provided not only for material compensation to the injured party, but also contained a separate clause ordering the Krywetski to be imprisoned for one year in Przemyśl castle in one of its towers. In case of non-fulfillment of the provisions of the agreement, the Krywetski was the subject to execution (CSHAUL, f. 13, d. 1, c. 442, p. 1718). Similarly, in the case between Ilia Komarnytski Lezhanyk and Toma Zubrytski, regarding defamation, the punishment for the Komarnytski included imprisonment in the tower of Przemyśl castle for two weeks.

Conclusions. Compromise agreements were widely used in the everyday legal practice of the Old Polish-Lithuanian Commonwealth society as a tool for resolving conflicts. Acts of the magistrates' and zemstvo courts contain hundreds of references and the agreements texts, ant it testifies to their importance. Participants of compromise courts were two parties who were on equal terms. Each of them was represented by the so-called "friend", it could be one or several people. In the 18th century the board of "friends" was headed by a super-arbitrator. Also in the 18th century the compromise court could use the services of vozny and other officials of local judicial and administrative institutions. Compromise agreements could be concluded between the parties who conducted legal proceedings at operating permanent courts. They could equally be concluded at different stages: at the beginning of legal proceedings, and at the end, etc. Compromise courts covered a wide range of civil and criminal cases. Thus, they could make decisions that provided not only for material aspects, but also for imprisonment, deprivation of honour, etc.

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