VARIA

Robert Kucharski[1]

The origins of judicial institutions in medieval Poland

Abstract

The study describes in detail the development of judicial institutions of justice in the Polish lands during the tribal and feudal period of the Piast monarchy, whose origins date back to tribal times. The development of judicial institutions in Poland will be presented, considering the social peculiarities of the formation of their practice, organization and political principles. It is these disputes in the institutions and practice of Piast Poland and later the Polish nobility that should be traced to the origins of the judicial concepts and institutions we know today. The article discusses the development of courts in ancestral and tribal times, i.e. before the formal establishment of the Polish state, and in the Piast period, which was the beginning of the Polish judiciary.

Key words

Courts, judge, nobility courts, nobility, state courts, land courts.

This study describes in detail the development of judicial institutions of justice in Polish lands during the tribal and feudal Piast Dynasty, that go back to tribal times. The development of judicial institutions that have developed in Poland will be presented, considering the social specificity of the formation of their practice, organization and political principles. It is these disputes in the institutions and practice of Piast Poland and then the Polish Nobility that should be traced back to the origins of the concepts and judicial institutions that we know today. The article discusses the development of courts in ancestral and tribal times, i.e. before the formal establishment of the Polish State and in the Piast period, which constituted the beginning of the Polish judiciary.

[1] Robert K u c h a r s k i, Prosecutor of the District Prosecutor's Office in Czestochowa, Poland, ORCID: 0000-0002-2279-9496.

1. The ancestral and tribal period

The principle of guilt and punishment has its roots in the dawn of human history and it should be noted that it was naturally known to the Slavic tribes, as the progenitors of the Polish State. The areas inhabited by the groups that created the structures of the Kingdom of Poland were under the weak influence of the principles and institutions of Roman law in the early Middle Ages in Europe. The formation of state organization in the areas inhabited by Poles required the adoption and formalization of the principles governing the justice system. This happened thanks to the institution and practice of the Catholic Church, which had an extremely positive impact on the formation of the modern state organism.

Any transgressions committed by family members were met with a reaction: condemnation and retribution. Breaking the rules, customs and norms commonly accepted in ancestral communities was punished in the manner accepted in a given community. During the tribal period, the most severe punishment considered just was the exile of an individual from the family, which practically meant death. The individual could not function outside the family structures. Prohibited acts are distinguished as violating the interests of the public, where the public judges them at meetings, or violating the interests of an individual – where one could either resort to court or bloody revenge. The punishment imposed by the dispute resolution bodies had the nature of revenge. In order to give appropriate seriousness and to discourage other people from similar behavior, the physical administration of punishment was always accompanied by a ceremony containing solemn, severe elements, with signs of retaliation that was intended to inflict the same harm on the perpetrator as he himself had caused. It was intended as symbolic compensation, because in tribal times it was believed that the punishment imposed had to compensate for all the suffering and losses suffered by the injured party or the family he belonged to[2]. The requirement of proportionality and balance between guilt and punishment was assumed, which was a condition for society's acceptance of the decision. Naturally, for the sake of compliance and to meet the requirement to deter punishment, the authority imposing it had to have the legitimacy to act in this area. Such an organ in the Slavic tribal structure was a gathering, a "rally" or, sometimes, a person at the head of a given community. Revenge and retribution had sacred and sacred features[3]. In a situation where the dispute concerned two families, the principle of retribution resulted in fights between them, with the attacked family retaliating in kind, resulting in further retaliatory actions. This fueled a spiral of violence and caused losses in the personal and material structure

[2] S. K u t r z e b a, Dawne polskie prawo sądowe w zarysie, Warszawa 1948, s. 2.
[3] S. C i s z e w s k i, Wróżda i pojednanie, Warszawa 1900, s. 16.

of the quarreling families. Remnants of such practices can be found in Polish social customs practically until the end of the Middle Ages.

However, practice over time forced changes in the form of a written announcement of revenge, which was a response to the lack of bodies at that time that could judge the dispute in an impartial and acceptable manner to the parties. The bloody practices were sometimes devastating, which led to an emphasis on the practice of humility and ransom. The change in form did not interfere with the principle of material and moral remuneration for harm caused[4].

2. The period of the Piast Dynasty

Over time, however, when the family structure transforms into the structure of larger state organisms among the Slavs inhabiting today's Polish lands, the functions of resolving disputes are taken over by rulers who usurp the right to judge crimes, which is also an element of consolidating their power and supporting their claims to exercise superior authority in a given area. territory. In order not to lose the retributive functions and at the same time strengthen the social impact of the ruler's judgments, adjudication takes place at rallies, which are presided over by the ruler as a judge. It is to him that the parties present their positions and grievances. Community members present at the rally, who will eventually become elected nobles, add legitimacy to the decision and support the ruler's authority in this area. The ruler issues a judgment that is official and reinforced by the rest of society.

The process of assuming judicial power will accelerate after the Baptism of Poland in 966, when Polish rulers, managing the already well-formed state structure, strive to adopt modern judicial practices brought by the Catholic Church. The rulers of Poland and the nobles supporting them have the ambition to join the modern circle of rulers of Western Europe and thus strengthen their position in the circle of Christian civilization. The influence of the Catholic Church and the reception of Western practices and solutions resulted in the transformation of feudal Polish law into estate labor. Together with this process related to the formation of feudal estates in society, land law naturally becomes the law of the nobility estate, which strengthened its economic and political position in the Polish State of the Middle Ages[5].

The gradual consolidation of power in the hands of one ruler, related to the social and political development of the feudal state system, naturally forced the marginalization of the practice of performing ancestral revenge. Vassals are obliged to submit disputes to the feudal lord for resolution, and any contrary practice is strictly punished, including the death penalty. This

[4] P. D ą b r o w s k i, Zemsta, okup i pokora, Lwów 1896.
[5] K. S ó j k a - Z i e l i ń s k a, Historia Prawa, Warszawa 1993, s. 79.

results in the practice of the feudal lord issuing decisions and laws, the observance of which he requires and enforces. The social peace enforced by such a practice promotes economic development, social cohesion and the consolidation of the feudal lord's rule in a given area.

Naturally, the abandonment of old practices is not immediate and has continued gradually over several centuries. Polish court books in the 14th, 15th and even 16th centuries contain records of the still existing practices of blood vengeance carried out between the parties to the dispute, although it should be noted that these customs are disappearing and are met with increasing social condemnation as a manifestation of arbitrariness. In Polish lands, the social structure is gradually changing from ancestral to feudal, and Polish princes and kings concentrate political, military and judicial power in their hands. Their exclusive prerogative is the competence to judge conflicts and offenses, and the already formed and efficiently operating military apparatus is able to enforce obedience to the issued decisions. This state of affairs will continue until the prince, as Polish feudal rulers, begins to distribute privileges (immunities) excluding individual social groups from their judicial power (jurisdiction) and, consequently, from direct rule.

Polish princes, like other feudal lords, exercise their judicial power at rallies, i.e. meetings of elders in a given district. It was accompanied by a ceremonial ceremony aimed at emphasizing the importance and unique character of the ruler, his visit and the blessings he would give. Such meetings were held from spring to autumn, due to weather conditions and physical access to certain areas. The princes gathered in the fields near a larger town, outside or in special tents where the ruler sat on a special platform. At that time, rooms were not built large enough to accommodate all the participants of the meeting. Local nobles who came to the place of the judicial power meeting presented their cases. The parties to the dispute, i.e. the accused, the injured party (if he was alive) or his family when he was killed, presented their positions and the circumstances of the case. Over time, the oldest and most respected member of the community presented the case to the prince, who, after consulting members of his entourage, often versed in public customs and practices, issued a verdict. The ruling was also consulted with the lords of the most distinguished local families, which was intended to give the decision even more importance and respect. Disobedience to such a decision was not only a crime against the ruler, but also against the local community. The resolution of cases was often guided by previously issued judgments, which facilitated the application of the law and allowed for consistency in administrative activities. The period of the existence of the Polish State before the 11th century was a time when, similarly to the practice of other feudal states in Western Europe, there was no strict division between criminal and civil proceedings. This resulted in

the lack of development of the institution of the public prosecutor, which would appear in the Kingdom of Poland in the 16th century[6].

General courts, as these court meetings were called, had to have an appropriate setting, which is reflected in the ceremonial and surroundings accompanying the judging even today. The prince, dressed in sumptuous robes, sits on a dais, assisted by local nobles, and, supported by soldiers, issues judgments. These nobles have not the right but the obligation to participate in the year: they come because their lord calls them. In general, the judicial function at that time was not only related to the administration of justice, but was also an important element of internal politics (political considerations, defending the interests of local allies, oppressing political opponents, consolidating control over the local community, etc.). That period was characterized by the subordination of all secular and clerical nobles to the prince's jurisdiction.

As a judge, the prince rules uncompromisingly, sometimes without paying attention to the position of local lords. Historical literature cites the example of the case of the Krakow voivode Skarbimir, who, as a disloyal vassal, slandered Prince Bolesław Krzywousty[7], mocked him and even prepared an armed conspiracy to overthrow him. The prince reacted immediately and decisively. Bolesław issued an order to capture the traitor voivode, imprison him and blind him, removing him from office. Skarbimir survived this adventure, while a little earlier his brother Zbigniew was less lucky after being sentenced for treason, for he did not survive blinding.

The unification of Poland after the period of district division[8] was associated with the functional strengthening of the central power of the kings in the times of the last Piast Dynasty. An example of this positive trend was the introduction in the Polish lands by King Wenceslaus II[9] of the institution of a “starosta” at the beginning of the 14th century, who received judicial powers to judge subjects in a given territory, previously vested in the king. He was supposed to convene court meetings on behalf of and on behalf of the king and exercise court jurisdiction with the help of an adopted judge, deputy judge and a scribe appointed by the king. These were the seeds of land courts, which would become established during the times of Casimir the Great and take their final shape during the period of the noble monarchy. In practice, it is common that the numerous administrative duties of the starosta made it difficult for him to personally participate in all court rallies,

[6] R. K u c h a r s k i, Zarys historii Prokuratury, Prokuratura i Prawo 2021, nr 11, s. 40.

[7] Bolesław III Krzywousty (Wrymouth) – prince of Lesser Poland, Silesia and Sandomierz in the years 1102–1107, prince of Poland in the years 1107–1138, he led to the division of Poland.

[8] The period in Polish history lasting after the death of Bolesław Krzywousty in 1138 until the coronation of Władysław Lokietek in 1320 as the King of Poland.

[9] Wenceslas II – king of Bohemia in the years 1278–1305 and king of Poland in the years 1300–1305 from the Přemyslid dynasty. He introduced the Prague grosz into circulation and established the office of starosta in Poland.

therefore, with the king's consent, he delegates the presidency of the courts to judges. They select several assessors to help them, who were local knights, and in this group, cases are considered and sentences are issued on behalf of the king. The office of starosta survived until the end of the First Polish Republic, and after regaining independence at the beginning of the 20th century, he assumed administrative powers.

The existence of starostas does not prevent Władysław Lokietek[10] from personally exercising the right to judge his subordinates, towards whom he was strict and decisive, e.g. he judged and sentenced to behead the participants of the revolt of mayor Albert in Kraków and mayor Przemek in Poznań.

A similar practice was rightly adopted by his son, Casimir the Great, and he efficiently dealt with the Poznań voivode, Maciek Borkowic, who was sentenced to exile by the king for conspiring and sabotaging the decisions. Obeying the ruler's judgment, Maćko pretended to leave the country, quickly asking the king for forgiveness and showing remorse. Casimir pardoned the voivode, who, however, turned out to be an unfaithful person, because he joined the conspiracy again. Exiled from the country, he returned after 4 years and continued to plot against him. Captured in Kalisz, he was sentenced by the king to starvation in the dungeons under the main tower of the fortified castle in Olsztyn near Częstochowa. The prisoner received only a jug of water and a bundle of hay a day, which he endured for 40 days. King Casimir enjoyed the reputation of a strict but efficient judge: "Whoever committed robbery or theft, even if he was a nobleman, was ordered to be beheaded, drowned or starved to death. He again ordered the slanderers whom he could reach to be branded on their face with a hot iron[11].

The times of Casimir were also the period when the custom of holding courts in fixed places and on fixed days was established. Trials were usually held in such places three times a year, provided that the king came in person or sent a voivode instead.

Interestingly, none of the Piasts who ruled Poland, whose profiles are described in the Chronicle of Gallus Anonymus, was a legislator. They can rather be described as guardians of the law, judges of the law, but it is impossible to describe them as creators of the law. This does not mean that the first Polish rulers did not make laws at all. Historical sources have left some information in this regard, e.g. "Chronicle of Wielkopolska" mentions the Guardian Statute issued by Bolesław the Brave, regarding defense. However, this was rather a *quasi*-legislative activity, which could rather be described as issuing orders for immediate execution, but not as legislation.

[10] Władysław I Lokietek (born 1260- died 1333) – king of Poland in the years 1320–1333, 1292–1300 vassal of Wenceslas II

[11] Polska w okresie monarchii stanowej. Wybór tekstów, opr. R. Heck, Warszawa 1955, s. 104.

Historical sources of the judiciary indicate that law-making in Poland began in earnest only in the 13th century[12]. First of all, it appeared in the form of privileges, which were in fact "private laws". In the work "Ethymologiae" by Isidore of Seville (around 560–636), we find a definition of privilege that explains its legal nature: privilegium est privata lex[13]. As a privata lex, a privilege, in principle, contains norms that are exceptional in relation to general principles. It involves granting a single natural or legal person certain specific rights or competences.

In Piast Poland, until the 14th century, customary law played an important role in judicial practice. It was, by its nature, regionally diverse, developed on the basis of judicial practice with the significant participation of judges, who in their judicial practice considered some customs, omitted others, some customs were accepted as binding, others were eliminated.

A certain judicial independence of Polish judges is confirmed in the list of Polish customary law from the 13th century, the so-called "The Book of Elbląg", where we read: "You should also know that the Polish judge is not used to having lay judges. After all, if he sees capable people around him during the judgment, he invites them to his place and presents the case to them. And if someone's opinion seems right to him, he decides accordingly. However, when he does not like anyone's opinion, he decides according to his convictions, as justly as he can[14].

Summary

The period of rule of the Piast dynasty in Polish lands resulted in the development of judicial practices, which, over the course of the continued existence of the Polish state, led to the development of judicial institutions independent of the ruler. The period of the Polish-Lithuanian Commonwealth will develop a system of courts and prosecutors separate from the ruler, who will occupy a high position in the hierarchy of royal offices. However, their genesis is the gradual development of the practice and customs of judging perpetrators by the state apparatus. Judgments are still issued in the name of the King, but gradually moving from the system of ancestral revenge to the ground of practice and positive regulations, the ruler does not have to come to personally judge cases, but delegates these competences to local officials and, over time, to entities with special education to ensure the professionalism and objectivity of the issued decisions. This will not happen quickly or smoothly and will involve the states fighting for power and privi-

[12] O. B a l z e r, Regesta ustaw polskich średniowiecznych, (w:) t e g o ż, Corpus iuris Polonici Medii Aevi. Program wydania zbioru ustaw polskich średniowiecznych oraz regesta tychże ustaw, Lwów 1891, s. 41 i n.

[13] See: Ethymologiae, cap. 18. Compare: Dekret Gracjana, dist. 3, c. 3.

[14] Najstarszy zwód prawa polskiego. Das älteste polnische Gewohnheitsrechtsbuch, wyd. i opr. J. Matuszewski, Łódź 1995, s. 58 (§ 3).

leges. However, this ancestral and feudal Poland is the starting point for the formation of the Polish judiciary.

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Początki instytucji sądowniczych w średniowiecznej Polsce

Streszczenie

W opracowaniu szczegółowo opisano rozwój sądowych instytucji wymiaru sprawiedliwości na ziemiach polskich w okresie plemiennej i feudalnej monarchii Piastów, którego początki sięgają czasów plemiennych. Przedstawiony zostanie rozwój instytucji sądowych, które rozwinęły się w Polsce, z uwzględnieniem społecznej specyfiki kształtowania się ich praktyki, organizacji i zasad politycznych. To właśnie tych sporów w instytucjach i praktyce Polski Piastowskiej, a później szlachty polskiej należy doszukiwać się w początkach znanych nam dziś koncepcji i instytucji sądowych. W artykule omówiono rozwój sądów w czasach rodowych i plemiennych, tj. przed formalnym utworzeniem państwa polskiego oraz w okresie piastowskim, który stanowił początek polskiego sądownictwa.

Słowa kluczowe

Sądy, sędzia, sądy szlacheckie, szlachta, sądy stanowe, sądy ziemskie.