VILNIUS UNIVERSITY

Adam Stankevič

ACTIVITIES OF THE LITHUANIAN SUPREME TRIBUNAL IN THE LATTER HALF OF THE 18th CENTURY: APPLICATION OF THE NOBILITY LAW

Summary of Doctoral Dissertation

Humanities, History (05 H)

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SUMMARY OF THE DOCTORAL DISSERTATION

Introduction

In Warsaw diet on the first of March, 1581 the Sovereign of the Commonwealth of the Two Nations (CTN) Stefan Batory signed the provisions of the Grand Duchy of Lithuania (GDL) Supreme Tribunal. This act concluded the process of formation of the judicial system of the nobility, as a result of which the Monarch lost most of His legal powers. A new judicial institution has become a court of appeals for the land, castle and boundary courts that were founded in 1564-1566, during the time of the reform of the GDL courts and administration. In this way a principle was realised which declared that a defendant belongs not to the country's authorities but to the society itself. In comparison to other countries of that time, the GDL and Polish nobility managed to gain considerable legal authority and an exclusive right to participate in the system of justice administration. At the same time in the best part of Western Europe completely reverse processes prevailed. The model of absolute monarchy was being established and the process of administration of justice was slowly becoming an important tool for strengthening the powers of the monarch. In absolute monarchies there went on important processes of centralisation, establishment of modern administration and bureaucracy, that had a positive impact on the system of administration of justice. The concentration of power in one place allowed to guarantee effective execution of judgments precluding from solving conflicts in an illegal way, whereas the requirement for lawyers and advocates to have a university degree in law guaranteed a high quality of the court's work. It is exactly at this time that other important processes had begun – the dissociation of the court's functions from the administrative ones, the formation of the general court system for all the classes. At the same time the CTN justice system was quite complex, there intertwined various legal principles. Alongside the attitude common to the Middle Ages that members of different classes had to litigate in their own separate courts, the concept of legal jurisdiction also applied (territorially defined legal jurisdiction of persons belonging to different classes), priveleges of separate social groups: townspeople of the Magdeburg law, Jews, Tartars, the dichotomy of secular and spiritual jurisdiction, besides permanent, temporary courts operated. The work of

institutions administering justice received considerable attention from researchers, which is reflected in constantly growing historiography. However the attempt to evaluate the functioning of the GDL courts remains problematic. In fact, up until now, there have existed two completely adverse positions in literature, whereas some authors express very critical attitude towards the functioning and organisation of the administration of justice, and others – positive. There is a deeply rooted attitude in historiography that the CTN courts, until the middle of the 17th c., used to function properly and later, during the time of 'oligarchy of the nobility' (until the mid 18th c.) they functioned poorly and in the second half of the 18th c. their work was beginning to improve.

One the most pronounced negative evaluations of the activities of the GDL courts was given by Konstantinas Avižonis in his monograph published in 1940 "Nobility in the Public Life of Lithuania during the Times of Vaza". The fourth part of this study bears a telling title "The weakness of the Bar and its Defiance by the Nobility". According to the researcher, because of the advancing anarchy, the country's courts could not guarantee administration of justice and for this reason were frequently ignored. Besides, he criticised long legal proceedings, unprofessional conduct of judges and their corruptability, wrote about the lack of execution of the court's judgments, presented facts of the noblemen's impunity, drew up a conclusion about widely spread legal nihilism. However, after a while Jerzy Michalski has reached a completely contrary conclusion. He argued that corruption and perjury were really widely spread, however, generally, society was characterised by a specific understanding of legality, that obliged to follow legal conventions. In this way attacks just reflected a certain stage in the process of trial. The shortcomings in the work of courts (a weak mechanism of the execution of the court's judgments, formal theory of evidence, legal nihilism, the inteference of noblemen into the work of courts) were mentioned also by Jevgenijus Machovenko. According to him, the system of the GDL courts was imperfect, obsolete and complex, the work of courts was not fully effective and "comparative stability of the court system in 17-18th. c. was artificial", determined by the conservative outlook of the nobility.

One of the first who attempted to change the negative attitude that had spread already in the 19th c. towards the work of CTN courts was Tadeusz Korzon. Although the author acknowledged the faults of the system of administration of justice (the influence of noblemen, the lack of state prosecution, lack of prisons), however, in general, the functioning of the Tribunal and other central courts during the reign of Stanislaus Augustus, received a positive evaluation from him – as they reached judgments on a huge number of cases. Wishing to refute the opinion about criminals' impunity and show that the hand of law reached not only plebeians and common noblemen but also the highest officials as well as noblemen, he mentioned resounding cases of different courts (Tribunal, Estate marshals', War, Treasure Commission, Assesors', Diet and others). Russia, because of its cruel laws and non-declining number of criminal offences, was contrasted by him with the CTN, by giving examples of road and town security (there were almost no instances of attacks on generally poorly guarded transported money). According to Korzon, despite the weak repressive machinery, permanent public security in the CTN was guaranteed by respectful behaviour towards defendants, constant concern to guarantee courts' impartiality and independence, as well as moral influence exerted by courts. Recently historians began to notice more adavantages of the nobleman's system of administration of justice. These insights have been primarily conditioned by the thorough study of the court's records/documents, which allowed to better understand legal practice as well as to make valuable conclusions about the mentality of the noblemen. The Ukrainian researcher N. Starchenko noticed that at the end of the 16th c. the disputes among Voluines noblemen were most frequently resolved by the arbitrage. However this is connected not with deficiencies in the work of the common courts (just the opposite, they functioned well) but with the noblemen's outlook because the conception of chivalrous honour interpreted the court's judgment as the loss of reputation. The author stated that the negative evaluation of the CTN system of administration of justice was determined by the modern conception of the "observing and punishing" state, whereas it is important to understand that at that time there existed different, frequently not less effective, mechanisms of violence control. Meanwhile H. Lulewicz gave examples of the Lithuanian nobility's concern, when during the first interregnum they encountered the growth of crime, to restore the work of the common courts.

The pluralism of opinions is a common phenomenon in sciences. It is important to present well-grounded conclusions and to consider the issue of sources. Two things are important: justified conclusions and the problem of sources. Researchers' opinions of the CTN courts' activities were formed largely by the negative reviews of the contemporaries presented in their writings, memoirs, anonymous essays. However, sociologists know perefectly well that not a single case receives unanimous evaluation. To the side that loses the legal proceedings the court's judgment seems unfair, thus a negative evaluation very frequently does not have any legal grounds, only emotional ones. A lot of historians' evaluations appeared merely as a consequence of logical thinking, where, for instance, unprofessional lawyers were forced to lose to ones with the university degree. Also there was almost no deeper study of the archive materials compliled by courts. There are thousands of modern times books recording the activity of GDL courts that are kept in Lithuanian archives. Of course, the work with the courts' documents poses certain inconveniences (inacurate recordings, various degree and extent to which the documents survived, the subjectivity of the source, large volume), nevertheless, it allows to evaluate the court's activities according to quantitative (statistical data) and qualitative (application of legal norms) parameters. Up until now the researchers of modern times history of the GDL courts have made only a fragmentary use of the information from court books. Seperate books were used by I. Lappo in writings about lower order nobility courts (boundary, land and castle), by K. Avižonis in his work about the nobility of the first half of the 16th c. (he used several Ukmergė, Upytė and Raseiniai court books), by A. Filipczak-Kocur to determine the competence of courts ruling on treasury cases and their working hours. The most extensive research of the courts' practice was carried out by G. Bałtruszajtys, however, he did not use original books either, only diaries and official accounts recording the court's activities.

Research object

The research object is the history of the central GDL court institution – the Supreme Tribunal and its functioning in the latter half of the 18th c. The present work, based on the concept of the "efficient practice" and results of the research of modern legal theory and practice, gives a complex analysis of the administration of justice in modern times

society. It analyses the most important factors determining the court's activity: court's structure, competence, composition, procedural law, the legislative activity of the Diet, the effect of the outside influence. Thus it was important to describe the working practices (quantities and kinds of the cases heard, regularities of law application, reflection of the inner functioning of the court). Besides, in the research field of the dissertation there also appeared the problem of the development of the legal profession. Consequently an attempt was made to highlight the make-up of the Supreme Tribunal from the point of view of the legal profession (judges, lawyers, chancery clerks, procurators, and court prosecutors), compile their lists, describe the function performed by each of them. It was decided not to research the so called Tribunal Flag as it is a part of another institution – part of the military history, guaranteeing the functions of legal protection, safety in the workplace (town) and persecution of prisoners.

Already at the end of the 19th c. T. Korzon noticed that in order to properly evaluate the work of a particular court, one has to throughly analyse its documents, regularities of application of legislation in operation, to process statistical data reflecting its work (if there is no possibility to make precise calculations, approximate numbers are also valuable). However such programme was not implemented. Up until now, most frequently, only formal legal side has been reflected in the research, but not its practical implementation, there are discussed courts' competence, composition, description of practises, partially the process of trial, all the norms defining organization, content of implemented reforms. The implication of all that is that, infrequently, we get a deformed static picture of the courts' activities. Indirectly, the history of courts is reflected in the research on crime, in the analysis of separate trials or the application of legal norms. However, there is a need for a more thorough analysis of the courts' functioning and to reach an agreement as to the research methodology of their practice.

At this point the knowledge of the practice of modern courts and especially the concept of the "efficent court practice" can be useful. Since the beginning of the last decade of the 20th c. there have been held worldwide discussions about the ways of determining methods and indicators of the efficiency of courts' work that can help to calculate and evaluate the "products" of administration of justice. It is known that the theoretical

paradigm of the efficency of courts' activity, with its own object and research methods, developed even earlier. The latter points to the following stages of research: a) the discernment of factors influencing the court, estimation of their significance; b) calculation of the efficiency of the court's work using logical and mathematical methods (statistical data); c) detection of the weak points in the administration of justice. As there is no one single method of evaluation of courts' work, certain criteria are selected and investigated. First of all, an emphasis is put in literature on the importance of defining the concept, aims, means and functions of administration of justice. It is also agreed that the functioning of courts is influenced both by legal (legal norms determining the activity of the judicial system as a whole, precision and gaps in the applied law, the guarantee of the observation of certain legal norms) and social factors (the influence of relations between the court and warring parties on the judgment; the impact of social and psychological factors on the personality of the judge or another lawyer; the influence of social, economic, political factors on the court's work). As far as concrete evaluation techniques of the court's activity are concerned – there is a great diversity of them. Theoretical literature suggests to research the effectiveness of the separate stages of trial (the filing of litigation, consideration of the case, the judgment, execution of the judgment), of the court's activity and disposable resources (such as human resources, material and those that are imponderable, as for example, the organisation of courts and other legal bodies, legal norms reflecting the judicial activity as a whole, the level of legal culture and awareness, information stored by courts, etc.). The efficiency of the activity of modern courts is usually established by evaluating such criteria as: the cost of the court's activities and trial, the time used to consider a case, a number of legal procedures in a separate case.

With the aim of establishing the efficiency of the Tribunal activity, there were researched internal (related to its structure and competence) and external (not related to an organization but having an influence on it: the state of law and legal process, i.e. the clarity of norms and guarantee of the litigant's rights, as well as activities of the nobility courts, relations with other courts, class-based society, moral norms of the society and other) factors influencing the activity of the court, as well as weak points established in the administration of justice.

However in the investigation of the courts' work one cannot apply this method in a superficial fashion, mechanically, as one has to take into consideration such important factors as unprofessional lawyers, defects in legislative practice (lack of precision in the legal language, the fact that competence of different courts intertwined), the lack of uniformity of trials of different category cases, the phenomenon of clientele, and others. Thus one has to investigate the qualifications of judges and their assistants, the image formed in society of the functions delegated to them, the trial and different aspects of law application (court practice), the impact of external factors, social pressure and expectations. Only by setting up concrete criteria and their analysis, one can hope to properly evaluate courts' work, disclose quantitative and qualitative work parameters. Such an approach, when the court is analysed in the light of effective activity, differently from the traditional research on the institutional and organisational aspects, allows to see imperfections in the legal base, the influence of external factors, dynamics of change taking place in the system of administration of justice and to reveal the reasons that lie behind these processes as well as their outcomes.

Research methods

This work is based on the archive material of the Supreme Tribunal. With the reference to the tools of legal sociology, qualitative and quantitative methods of analysis of the legal documents (judgments) were applied. The former method allows to reveal facts about the requirements of the both warring sides, the procedural steps undertaken by them, legal motivation of the judgment (these are the evidents of how the law was understood and legal behaviour patterns). The quantitative analysis of the court's judgments allows to determine fairly accurately the number of the Tribunal's judgments.The method of synthesis allowed to summarise the data about the categories of the judged cases, the practice of law application. Logical-semantic research method was used to determine the ratio of clarity of the applied legal norms to ambiguity. The fact that a large amount of documents for the first time was introduced into circulation forced to make use of the descriptive research method. Serial data allowing to judge about the workload and the pace of activity of the justice admininstrating institution: a number of judged cases, an average length to try a case, were calculated statistically. To

such an extend the latter method was applied for the first time in the historiography of Lithuanian courts, although it is widely used abroad. Comparative method was applied only partially, where there was a lack of data on separate aspects of the Supreme Court activity, the reference was made to the facts from the functioning of the Polish Tribunal and other CTN courts.

Chronological limits

Considering the current level of investigation of the problem and insufficient use of the Supreme Tribunal archive, any attempts to investigate Court's organization and activity since its foundation in 1581 (the first sitting took place in April 30, 1582) up until the demise of the state in 1795 (actually this court did not function since July 6, 1792) are doomed to failure. In this kind of research it is impossible to escape oversimplification of the topic, use of stereotypical patterns, difficulties that arise making general conclusions. Much more productive could be analysis of separate time spans. There were such attempts made in historiography, however until now the problem of distinguishing separate periods of the Supreme Tribunal activity has not been discussed. The choice of caesura by researchers was determined by various criteria: adoption of important legal documents of the state (the year 1588 – adoption of the Third Lithuanian Statute and addition of the Samogitian deputies to the Tribunal; the year 1697 – introduction of the *Coaequatio iurium* law); memorable dates of political history (the year 1648), Tribunal reform (the year 1764). There exist in historiography only partly justifiable (common courts did not function in the inter-war periods) concepts of associating the Tribunal activity with a specific ruler or dynasty ruling period (models of evaluation). The former literary sources made a special emphasis on contrasting the ruling of Stanislaus Augustus to the so-called Saksonian period of ruling, as the period of universal chaos, legal nihilism and paralysis of the activity of courts. However such conceptions no longer correspond to the current level of historiography (the existance of the Saksonian period is denied altogether), there is no research carried out that would prove them. The author has chosen to consider as more justified the dates of the reform of the Supreme Tribunal – the years 1697, 1726, 1764, 1792 ir 1793. Such an approach allows to better identify problems that the Tribunal faced at different times and evaluate the effectiveness of the

different means used to solve them. The boundaries of the present work were set out by the results of legislative activity of the Warsaw Coronation Diet of 1764 and Gardinas Diet of 1793. Thus, a relatively short period spanning three decades was chosen. However, at that time there were introduced the most radical changes into the Tribunal's organisation and activity and society of that time was characterised by an increased interest in legal matters, accomplishing a noticeable development of legal science. Nevertheless, the essential factor that determined the choice of exactly this period was the state of the written sources. Only for the investigated period there is left a more or less complete collection of the Tribunal's records, which allows to carry out statistical calculations, while older sources are significantly fragmented.

Research aim and objectives

The principal aim of this work was to analyse the main factors influencing the activity of the GDL Supreme Tribunal. The aim was to carry out the complex analysis of this court's activity in the field of the administration of justice and to evaluate the efficiency of its work. This principle necessitated the research into various spheres: to analyse the competence of the court and acts defining the legal process as well as the court's practice, to investigate the understanding of the GDL legal profession in modern times based on the example of the court's composition (the trends of the professionalisation of persons providing legal services), to statistically evaluate the activity of the court settling litigation.

In order to reach this aim the following objectives were set:

- to analyse the reforms carried out in the latter half of the 18th c. in the sphere of organisation and competence of the GDL Supreme Tribunal and to show their influence on the qualitative parameters of the court's work,
- to investigate the objective (time, place, social and political) and subjective (the phenomenon of clientele, bribery, nepotism and others) factors that had an impact on the activity of the GDL Supreme Tribunal in the latter half of the 18th c.,
- to accurately describe the judged cases by the GDL Supreme Tribunal in the latter half of the 18th c. (according to the categories of cases and the stage of trial,

suability of the tried cases according to the estate and territory), to single out cases concerning the infringement of competence,

- to compile as comprehensive as possible lists of the lawyers, procurators, deputy chancery clerks and prosecutors, to determine the legal functions performed by them, describe different aspects of the formation of the legal profession in modern times,
- through the analysis of the legal proceedings to reveal the practice of the GDL Supreme Tribunal activity, regularities in the implementation of legal norms and principles that lie behind the argumentation of the court judgments,
- to calculate the dynamics of work of the GDL Supreme Tribunal in the latter half of the 18th c., with refernce to statistical calculation to determine the efficiency of the Court activity and the factors that conditioned the objectivity/subjectivity of the court judgments,
- to describe based on the GDL Supreme Tribunal legal practice the development of the nobility law and the legal awareness of the nobility.

Structure of the dissertation

The dissertation is composed of the introduction, four main parts of the body, conclusions, appendices, bibliography and literature. In the introduction the subject of the research, its object and the chronological limits are presented, the aim and objectives are set, methods used to achieve them, literature and sources, the topicality and novelty of the topic are described. In the first part of the body there are singled out the kind of the cases tried by the GDL Supreme Tribunal from 1764 to 1793 and the fact that the GDL courts' competences were intertwined, the issue of the foundation of the Tribunal is discussed. The second part gives a social description of the GDP Supreme Tribunal – the analysis of the activity of different representatives of the legal profession (judges, lawyers, procurators, prosecutors and deputies of the chancery clerks) and the functions they performed, revealing different aspects of the legal profession (professionalisation, education, career). In the third part there are examined some aspects of the practice, separate legal institutions are discussed (summons, judgment) and stages of the trial, there are also summarized regularities in the administration of law. In the forth part there are presented numbers reflecting the activity of the court: the ratio of cases heard to

cases left unsettled. Factors, influencing the functioning of the Tribunal (an evaluation of the activity of the lower level courts is given, factors, determining a certain quality of the court activity are singled out) and the content of its judgments are discussed. The conclusions, based on the concept of 'efficient activity', give generalised evaluation of the GDL Supreme Tribunal of 1765-1792 functioning and present the most important factors affecting its work. Empirical data about the GDL Supreme Tribunal is reflected in 8 appendices. The tables show the extend to which the Tribunal archive survived, specify the working times of the court. For the first time there are published the lists of the GDL Supreme Tribunal's lawyers, procurators, prosecutors and deputies of the fee collectors. At the end are presented the documents establishing the court's activity procedure adopted in 1785 are included.

Historiography of Research Problem

The research on the history of the GDL Supreme Tribunal had its beginnings in the works of Vincentas Daugėla Narbutas in the fifth decade of the 19th c., however, the proper investigations intensified only in the 20th century. At that time individual works devoted to the Tribunal were written by Mikolaj Jasinski, Ivan Lappo, Augustinas Janulaitis. Whereas other researchers were interested in particular episodes of the court's history (Władysław Konopczyński, Jerzy Michalski, Stanisław Konopczyński). The first scholarly publications of the Tribunal's judgments in the ninth decade of the 20th c. were edited by Vytautas Raudeliūnas, who wrote several articles on the history of the court. In the 21st c. in the most active way the Tribunal's issues were researched by the Polish scholars: a team of scholars headed by Andrzej Rachuba put together a list of the Tribunal judges and Iwona Wierzchowiecka defended the dissertation "The structure of the Lithuanian Supreme Tribunal in 1764-1797 in the light of its former organisation". Separate episodes of the court's activity were researched by other contemporary researchers: Andrzej B. Zakrzewski, Robertas Jurgaitis, Aivas Ragauskas, Magdalena Ślusarska, Mindaugas Paknys, Andrej Macuk, Hans–Jürgen Bömelburg an others.

Sources

The present research is based on the archival material of the GDL Supreme Tribunal. In the court's practice there got established a number of categories of the books kept: records of acts, proceedings of the records of acts, acts in operation, judgments, records of judgments, current affairs proceedings and the books of registers. For the period under the investigation there are 494 books (57 acts and judgments, 61 proceedings of the records of acts, 70 records of the current affairs and 60 of judgments, the rest is comprised by register books). However, other documents were not kept in the Tribunal archive, for example the speeches delivered by lawyers (the author managed to find speeches that were delivered during the sessions of 1779 and 1790 bound into separate. Also the author had to use narrative documents that gave a detailed account of the uncommon situations unfolding in courts and everyday episodes. The Tribunal's activity was recorded by the contemporary newspapers both printed and in manuscript. There are three journals describing the tribunal activity in the years 1762, 1781-1782, and 1791. There are also known several descriptions of the Tribunal opening ceremonies on the 7-14th of January in 1771 and in May of 1779. Several of the more interesting sources were recorded by the Tribunal's marshals. The great actuary of the GDL Mikołaj Tadeusz Lopaciński and the cupbearer of the GDL Robert Brzostowski assembled into separate books the documents from the time of their marshalhood (solemn speeches, description of the sessions and individual cases tried). Whereas in 1781 the Tribunal marshal Adam Czartoryski published anonymously several so-called letters, journalistic style works, in which he gave a description of the legal profession, judge's office and the Tribunal's activity.

No less important are other testimonies of the contemporaries, first of all their memoirs. Valuable facts about the system of the administration of justice were presented by the author of the best known GDL memoirs in 18th c. - Marcin Matuszewicz. Separate episodes of the Tribunal activity were also mentioned by others: W. Bagiński, J. Kossakowski, J. Niemcewicz, M. Zaleski.

In order to research the activity of the institution that administers justice one must have a considerable knowledge of the GDL legal norms. Thus the present work is based on the

principal sources of law and legal proceedings: Third Lithuanian Statute, Constitutions that were adopted by the Diet (collections of Volumina Legum), other important legal acts (provisions of the Tribunal, *Coaequatio iurium* law), projects of court reforms that were not implemented (documents of the years 1764, 1748, 1758); acts regulating legal proceedings passed by the Tribunal – arrangements (of 1648, 1698, 1699, 1708, 1710, 1713, 1718, 1719, 1723, 1724, 1726, 1781) contemporary works (Tomasz Umiastowski, Aleksander Korowicki) and manuscripts of the procedural literature.

CONCLUSIONS

1. The reforms of administration of justice implemented by the CTN in the seventh decade of the 18th c. had a direct influence on the activity of the GDL Supreme Tribunal. On the one hand, they narrowed the competence of the Tribunal (the cases related to taxes and their collection were transferred to the new Treasury Commisssion Court, whereas War Commission received cases related to the damage caused by the military), it tightened up the ruules on appeals, renwed the ban to by-pass lower level courts (in the analysed period the Tribunal consistently refused to try such cases), had forseen a possibility to appeal only against a part of the judgment. On the other hand, as the institution of appeals, the Tribunal had to hear a lot of cases performing the function of the lower court: accusations against the lower court officials (judges, clerks, deputies), cases concerning the violation of the security norms, as well as lawsuits against lawyers, procurators and ushers). According to the 1764-1766 laws the Tribunal was also forced to hear cases that did not constitute legal wrangle (applications to assign lower level court or a special court of boundaries, of exdivisions, special courts for cases about the contested noble origin; to establish officers to perform legal actions or define the conditions for the repayment of debts), and because of large numbers of such cases, it actually turned into an administrative institution. The Tribunal also had to judge on various situations that were not defined by laws (cases when there was an egual distribution of votes of the lower level court judges; in cases when it was forbidden to appeal by applying the improper article of law; appeals that were not made in time because of the objective impediments), it also received requests to

act as a cassation court (which, by the way, it used to become from time to time). Fairly contradictory was also the established legal practice of tolerating appeals in cases prohibited by law: the Tribunal heard appeals in cases about runaway subordinates and debentures and did not consequently fine for this offence by finding excuses for the arrival of litigants. The ban on appealing against intermediate judgments was inefficient as they were qualified as appeals to appoint the court which would hear the case. The reforms of the Grand Diet envisaged to eliminate major factors having a negative influence on the functioning of the Tribunal: it was planned to introduce a written form for the applications to assign the court that would hear the case, to consign debt related cases to the exclusive competence of the lower level courts, to consistently penalise for groundless appeals.

2. The functioning of the judicial system of the GDL was complex because of a great number of different level courts, as well as different legal principles existing at the same time (the requirement to send defendants to courts within their jurisdiction and, at the same time, free choice of a court level; an exclusive right to try certain kind of cases and the fact that competences of different courts were interconnected; the distinction of courts on the basis of the class and region of the country and the tendencies of development of the court common for all the classes; the existance of temporary and permanent courts) and the lack of a uniform appeal procedure (appeals against judgments of the land and castle courts could be considered by the Supreme and Spiritual Tribunals, Assessors' Court, Treasury Commission or even the ruler's estate marshal's court). The functioning of the GDL judicial system was negatively affected by the activities of the confederated courts of the Diet and General Confederation. As a result there were violated a great number of the GDL legal norms (the Tribunal was commissioned to judge on hundreds of the unfinished cases from the lower level courts that were altogether not within its competence and that had to be tried immediately) and which in the long run caused problems of legal nature (uncertainties about possibilities to appeal against judgments that were passed on by the court appointed by the Diet). There were also undefined jurisdictional boundaries of the clergy: in the latter half of the 18th c. there emerged a trend towards its

restriction, as the Tribunal more and more frequently, though inconsistently, judged on the cases assigned to this court. Because of the principle that allowed the Tribunal to try all people that violated the so-called court security norms, there were tried town-dwellers and Jews, even though other laws had clearly prohibited for these people to be tried by the Tribunal. Because of its position as the central GDL court, the Tribunal arrogated to itself the right to judge on the disputes over courts' competences and gave negative evaluations of the activity of the Permanent Council in this sphere, even though the Tribunal itself repeatedly tried cases that were outside its competence.

3. The requirement introduced by the Tribunal reform in 1764 for the deputies elected in dietines to swear an oath, conditioned the appearance of the problem of a legal nature as the oath did no longer guarantee the untrammelled right to hold the position of the judge of the Tribunal. In practice, cases when deputies did not meet the requirements imposed by the law (did not have an estate, did not match age limit or were incriminated in a criminal case) were extremely rare, however, quite frequently, the occupation of the position of a judge was impeded by judgments passed in absentia. The problems arose because of the unsettled procedure of the verification of documents certifying the election of the Tribunal judges, and the procedure of stating and considering objections against the judge or split of dietines. The form of the consideration of objections was not clear (whether based on the submitted application or through the legal proceedings), its stage (before elections of the marshal or after) and subject (judges of one term of office or two). Although the clash of the adverse political powers in the Tribunal in 1779 deprived the court of one month of work, however it initiated a discussion that allowed to define with greater precision, the consideration mechanism of the objections against judges (besides, in this case, not the physical force but legally sound arguments won). The problem of the split dietines was especially urgent in the years 1779-1791. Vaguely written laws (it was not determined which factor was more important: the place where dietines were to be held or the person that was supposed to chair them) allowed their manipulation while determening which dietines had to be recognized as legal based on what was more acceptable at that particular moment.

4. In 1764 the number of the Tribunal judges in sessions was halfed, but this could not solve the problem of the accumulation of cases (more radical reforms that provided for several Supreme Tribunals working at the same time or segmentation of the court to analyse different kind of cases, were not implemented) however, the new arrangement had a positive impact on the very organization of work and on the procedure of making judgments, was also more favourable for the noblemen who could devote less time to this post. The inner structure of the court was quite imbalanced as disproportional power was given to the marshal who controlled both process of the organization of work and reaching judgments. Attempts to limit its influence (by ordering to speak in accordance with the order of arrangment of the represented district or introduction of the secret ballot) proved to be ineffective because of it in 1792 the law abolished this post altogether. Other positions that were imposed on the Tribunal's judges (that of the court's clerk responsible for the court's office activity and that of the treasurer responsible for the court's income) were rather nominal which can be seen from the requirement for the people personally responsible to the court for these functions to be deputy clerks and deputy treasurers. One must give a positive evaluation of the implementation of the principle of censor's functions with the aim of guaranteeing a greater control of the most important moments of the court's activity (trial procedure, making judgments (voting) and collecting taxes) however, actually, one cannot talk about independence and real authority of these officials. The greatest problem arose because the judge's duties were linked not with the professional category but with other qualities, those of power, prestige and fame. That explains the arising temtation to take advantage of the position and judge their own cases or those of their relatives. Whereas the expulsion of the judges from the court was connected not with their judicial activity but with a specific political situation (the activity of the General Confederation), the fighting of the adverse factions and the protection of material interests of the noblemen. The analysis of the composition of the court showed that the position of the Tribunal judge was frequently occupied by people who had experience of legal work (previously the judges of other courts, court's office employees, lawyers and procurators) who usually were qualified enough to perform these duties. However

the unsolved issue of the payments from the state treasury grew up into a serious problem. The law introduced in 1768 that regulated this issue, was not executed in practice because of the difficult financial state of the country, and there persisted in the activities of the court the interest to benefit as much as possible from the litigants.

5. The removal of the district land court clerks from the Tribunal's office did not have any considerable impact on the quality of the Tribunal activity because in the period under investigation the court's office was actually headed by deputy clerks (although such situation was legalized only closer to the end of the 18th c.). In the activity of the Tribunal's chancery office there got actively engaged the clerks of the land and castle courts, thus the services of the chancery office were provided by experienced and qualified people. In practice there was established a system of the sworn (responsible for the books of judgments) and unworn (responsible fot the proceedings of the records of acts, acts and regeister books) deputy chancery clerks.They were originally from different professional strata; the former were professional employees from the court's office, wheres the latter were usually chosen from the Tribunal's procurators and applicants. There were attempts to reduce the damage made by the annual changes in the composition of the chancery by employing the same people to perform the duties of deputy clerks responsible for the preparation of the most important documents: judgment documents (original and copies). Only in 1792 the law allowed to solve this situation by permanently employing clerks to the Tribunal chancery. The lack of the permanent chancery was the cause of the heterogenious principles and rules of keeping written records, the lack of clear hierarchy of the responsible emplyees led to cases when the documents given to the court were not incorporated into the books and lost, whereas the principles of preparation of judgments (the requirement to prepare judgments based on the text of the original documents) caused difficulties faced by the opposition from litigators dissatisfied with the content of the verdict.
6. Legal services in courts were provided by lawyers and procurators – the former participated in the judicial proceedings, whereas the latter took care of the represented person's case and proper preparation of the case for the judicial

proceedings. Although up until 1793 the laws regulated not the activities of the GDL lawyers in general but the activity of concrete court defenders, however in the 18th c. in the development of an institution of a lawyer one can single out tendencies of professionalisation: records of defenders' activities were constantly renewed, the oath was introduced, there was guaranteed a certain mechanism of the examination of legal knowledge and control of the acceptance of new members. In fact, what deterred them from becoming a better defined professional group was undefined number of the lawyers, who were given permission to work in the court and the mechanism of leaving the profession, also not very clear and efficent procedure of removal from office, as well as the continuos view of the defender's activity as social duty. There was left unfullfiled the idea of the lawyers' self-governance (because of this the conception of their rights was unstable depending on the composition of separate courts). At the same time they themselves did not participate actively in the legislative process, which had a negative impact on the legislative practice when the lawyers' work was defined in terms of bans. Procurators, as providors of specific legal services, were people who could stand in for a litigator and were authorized to organise the defence of a litigator in court. Their activities were not regulated, however it is known that they could be mediators between litigators and lawyers, they had cases' documents at their disposal, arranged the questions of court taxes and, since the beginning of the eighth decade, more frequently independently participated in the trial (especially in the initial stage of the trial). Incidentally, this model of the judicial services provision was surprisingly close to the English one and guaranteed smooth enough functioning of the court. The most problematic was the legal knowledge acquisition model where the role of high schools was only fragmentary.

7. The Tribunal's public prosecutor had to secure order and peace in town, where the Tribunal operated, as well as to pursue the charges against defamation of the court or judges and violation of the court security norms, and to participate in the lawsuit together with those people who were not legally liable. These functions were very important, however the dependence on the court, the lack of regulation of duties in the laws and low prestige of the position (people holding this position

were treated as servants) were all negative factors that prevented the development of this profession. Actually people in this position had weak connections with the legal profession and acted as intermediaries between the court and the military unit in its service (responsible for the admission, custody and release of prisoners), between the court and the town's authorities (passing on regulations on the means of securing the order). Because of the inability of the local institutions to secure order and peace in the town where the Tribunal was stationed, this officer had the rights to use different means to achieve these aims. The consequences of such actions were twofold: positive (persecution of suspects, filing of lawsuits against criminals) and negative (violation of the local jurisdiction laws, attempts of interfering into various life spheres, e.g., attempts to control the activities of pharmacies, behaviour norms of people and others). The lack of fixed payment, control of activity and real responsibility, as well as granted considerable powers and rights to have the military at their disposal, conditioned the appearance of instances of malpractice, mercenary motives, involvement in protection racket. Actually prosecutors were given too many roles to perform, related not only to the securing proper working conditions for the court, but also to implementation of the court's judgments and participation in actions of judicial proceedings, and the laws passed at the end of the 18th c. added the duty to collect court's taxes.

8. The arrangement of hearing cases established in the Tribunal's provisions was presently substantially modified: cases started to be distinguished according to the object of dispute and its nature, the way of handling summons, stage of the process and others. This action was most likely related to the wish of the influential people (noblemen) presiding over the Tribunal's sessions to guarantee the possibility to judge on some cases without adhering to the principle of the order of registration of lawsuits (i.e. not keeping to their numerical order). The attempt of the 1764 constitution to change historically shaped way of hearing cases in the Tribunal – to connect registers not with days of the week but with the process of making judgments, was not successful. Firstly, the unfounded system of profiling of cases was kept, some kinds of cases (appeals, cases related to promissory notes) actually could be recorded into all the registers, as the decision

whether a case could be recorded in a concrete register, not only took up too much of the court's time, but infrequently concluded in making legally dubious judgments. Besides, this system was deprived of its purpose because of the widely spread practice to connect into one case lawsuits recorded in different registers. Secondly, the principle of the singling out privileged registers from the common order of using registers, was not abolished, which allowed to hear the cases recorded into the tactical register at any time, even simultaneously with another case. In order to get themselves recorded into this register, the litigants resorted to tricks. They began to make fictitious accusations against lawyers, procurators, ushers, and later even against the court's chancery clerks. And this practice was tolerated by the Tribunal. Because of such legal practice a lot of norms of law were violated (e.g., to hear cases according to the order of their recording, to ascribe a case to one of the sessions and others). Besides, the courts of different composition applied the practice that was not regulated by laws: to hear cases from one register as a whole, to send over the cases that were not judged to another session, to hear several cases at the same time.

9. The GDL trials were becoming complex because of the habit of connecting a lot of lawsuits into one case and because of the requirement for a great number of people, who were in one or another way connected with the object of dispute or the violated law, to participate in the process. Because of the legal liability and tit for tat principle, the possibility of participation of people of different classes and legal persons in the proceedings was not always clear. A plaintiff had also to bear in mind the possibility of being imprisoned. The formalised legal proceedings required to adhere to strict requirements of the summons' content, its delivering to the litigant (factors of place and time) and deposition of the summons in court. That required from a litigant to perform a great number of actions: to gather data of different nature about the defendant (their personal name, position and titles, possession of the estate, other people's connections with their possessions), also to see to it that a summons would be issued, to plan the way of delivering it and acknowledgment of its acceptance, to record the lawsuit into the court's books, to be ready for the possibility that the content of the summons or the fact of its delivery can be contested. In order to secure the participation of the litigant in the

proceedings, the plaintiff not infrequently took care of the preemtive imprisonment of the defendant, frequently without the court's sanctioning. It should be noted that if such an action was carried out, one had to be ready to cover the related expenses for the prisoner's food, transportation and medical treatment. A lot of the court's time was taken up by reaching the judgments on the requests to imprison or release, to determine credibility of the bailsman, ways of keeping and transporting prisoners and decision as to the necessity for the litigant to personally participate in the proceedings.

10. Despite the 1764 reform's ban, the Tribunal also postponed the trial of cases because some of them were heard there instead of the lower level courts. The trial was usually discontinued if a person at the same time participated in the work of the Diet or was involved in the civil service, even though in most of the cases there was no requirement to participate in the trial personally. Besides, frequently there arose legally undefined situations, when together with the appeal, the lawsuits against the lawyers, ushers or judges of the lower level courts were heard. As there was no homogeneous practice established, everything was determined by a specific composition of the court and the case. In such cases when the court did not agree to grant the requests of this nature, the litigants could simply agree to be convicted *in absentia* as apparently, such judgments, except for the fine for not appearing in court, had no serious consequences (such a situation was in accord with the nobility's interests, as it guaranteed that the case would not be tried by the possibly impartial judge or court). The possibility which was authorized by law, to kill the defendant for ignoring the summons, did not function in practice, and the final judgment was considered the one that was reached when all the parties concerned participated in the legal proceedings by definition. The litigants made active use of the possibilities authorized by law to delay the trial, however, at the same time, there were only a few utter nihilists, who would ignore the lawsuits filed against them.
11. The main stage of the trial used to extend because of the various requests filed by the litigants (to assign the order of speaking, to prescribe the opposing party to hand in documents to the court, to allow to get acquainted with the speech of the adversary lawyer, etc.) and because of the lawyers' practice to deliver long

speeches (there were attempts to stop this practice by imposing requirements on the duration and manner of such a speech). The preparation of speeches took a long time also because of the objective reasons: in the latter half of the 18th c. there was an established practice to use the services of the printing houses. While giving evidence, besides the traditional medieval theory of formal evidence, one can distinguish new trends of conducting investigation not only in criminal cases, of judges' wish to get acquainted with the greatest possible number of facts, to limit the use of torture and critically evaluate information obtained in such a way, and in some instances the court performing its own investigations. However, at the same time, an oath had remained and was widely used as an important part of evidence; besides, only in separate cases, the services of medical jurisprudence were requested.

12. The issue of the execution of judgments is closely connected with the trial: in order to force the parties to litigate, there were organized 'trips' during the trial, and later on the court could appeal against the resistance to the execution of its final judgment. Only at the end of 1788 there was adopted a provision allowing the Tribunal to grant the permission to use the services of the military, which freed the Tribunal from the necessity to control the process of executions of judgments. Contrary to what has been until now asserted in historiography, the final judgments passed by the Tribunal (especially concerning corporal and capital punishments) were usually executed. Meanwhile imprisonment as a punishment was frequently not adhered to, not because of the malignant resistance, but because of its weak connections with the category of guilt and because of the mentality of the nobility. Noblemen were inclined to settle their disagreement out of court or to get released from such punishments (the final judgment used to become a precondition to reach a settlement).
13. The work of the Tribunal was also affected by the problems that other courts encountered. Even though the Warsaw Coronation Diet of the 1764 attempted to address some of the shortcomings in the functioning of the lower level nobility courts, in the period under investigation, they did not operate successfully. Mainly so because of the judge factor: they were undisciplined, biased, corruptible, tried cases that were beyond their competence. Complicated practice of providing the

proof as well as casuistic or too abstract legislation and selective application of laws prevented from punishing the officials who abused their authority. Courts also used to encounter problems of organisational and legal nature Because of the poor quality of work of the lower level nobility courts (some of them did not work for a long time), the Tribunal's workload increased a number of times as it was forced to consider the applications asking to appoint another court to hear a case and to transfer lawsuits to the judges of the lowel level courts and their chanceries.

14. While investigating the Tribunal's history, one encounters difficulties in trying to determine factors characterising the efficiency of the court's activity such as the maintenance of the court (such data was not recorded) and the time it took to reach a judgment (it also depended on subjective factors).. However, the information acquired allows to calculate the number of lawsuits recorded in the Tribunal books and the number of judgments as well as an average length of time that passed from the recording of the lawsuit into the court's register until the time it was judged. Thus during the period of the twenty seven years of its activity, the Tribunal reached overall 5708 judgments, on average 222 anually, and during the session – 111 judgments (in separate sessions this number ranged from 109 to 497). It has to be stressed that in an absolute majority of cases we are dealing with in absentia announced or intermediary judgments, when there was no trial as such. During the first years of the Tribunal activities, there were more lawsuits judged that were recorded in register books of appeals and of resistance towards the execution of judgments, however, later, different kinds of register books prevailed, those from criminal and debts books from which in the period of 1769-1784 around 94 per cent of all the Tribunal judgments were announced. Aftewards, because of the requirement of the law, *pro determinatione* (i.e., the requests to appoint a court that would try the case) kinds of lawsuits were mostly judged, which made up 56 per cent of all the judgments and almost 30 per cent were devoted the registers of criminal and debt cases. Because of this there constantly accumulated the number of lawsuits recorded into other registers, which were not judged for a long time (each year on average there were recorded more than one thousand new lawsuits into the register books). In 1784 the number

of the unjudged lawsuits exceeded 6000 (the Tribunal headed by the marshal Adam Chmara in 1785-1786 managed to reduce this number almost by half and in 1792, when the Tribunal ceased its activity, the overall number of the unjudged lawsuits reached 3417, most of them – over 1600 were recorded in the register book of appeals). The trials of appeals and accusatory cases could take up more than a decade, whereas other cases, especially if there was used a practice of joining lawsuits recorded into register books into one case, and the practice of bringing fictitious charges against procurators and court's officials, could be judged in the same or the following year. There was a chance that crimes committed in the Tribunal could be tried within a couple of weeks. The growth of the number of the unjudged cases was determined by the wide competence of the court and the fact that it had to perform all the functions of the lower level court, because, essentially, the time devoted had to suffice, as no other court of the GDL could even compare to the Tribunal in terms of the length of its sessions. However, some time was taken away by the well-established traditions not to work during the first days of the session, during numerous religious and state holidays, as well as the destructive activity of the GDL confederation in 1772-1773.

15. The facts investigated in the present work allow to claim that the Tribunal's judgments were considerably affected by the outside factors: the judges' relations with litigants, influential people's (of the CTN ruler and the GDL nobility) patronage and a common corruption. Because of the prevailing attitude to tolerate such practice and not to punish for it severely (there are known only a few trials related to the bribery of judges and only one of concluded with the judgment which, by the way, was later overturned) there prospered the practice of writing pleading letters and litigants were actively searching for other possibilities of how to predetermine the judgment to their advantage. The legal practice shows that the Tribunal adhered to certain principles, related to the noblemen's mentality and legal awareness: justified the litigants' applications based on alleged reasons and avoided to administer severe punishments legalized by laws. While confronting cases unforseen by law and wishing to be responsive to the litigants' requests, the Tribunal passed original judgments which, because of the strict separation of the

court and the law creation functions, did not turn into general legal norms (with a few exceptions). Although under the CTN conditions, the prohibition of the case (precedent) law was justified (unlawful judgments, favourable to the noblemen could become a generally applied law), it still had a negative effect on the legal activities of the Tribunal, forcing to selectively judge each case (in this way wasting valuable time of the court's work) and in analogous situations to pass completely opposing judgments.

Lietuvos Vyriausiojo Tribunolo veikla XVIII a. II pusėje: bajoriškosios teisės raiška

Santrauka

Darbe buvo buvo tiriama centrinės LDK teismo institucijos – Vyriausiajo Tribunolo veikla XVIII a. II pusėje. Analizuojama laikotarpį įrėmina svarbiausios šio teismo reformos, įvykdytos 1764 ir 1793 m. Be to, tk nagrinėjamam laikotarpiui turime daugmaž pilną Tribunolo knygų komplektą, leidžiantį atlikti statistinius skaičiavimus, kai tuo tarpu senesni šaltiniai yra smarkiai defragmentuoti. Darbe, remiantis „efektyvios veiklos“ konceptu, šuolaikinės teisės teorijos ir praktikos tyrimų rezultatais, kompleksiškai tiriama teisingumo vykdymo naujųjų laikų visuomenėje problematika. Darbe tiriami vidiniai (susiję su jo struktūra ir kompetencija) ir išoriniai (nesusiję su organizacija, bet ją veikiantys – teisės ir teismo proceso būklė, t.y. normų aiškumas ir bylininko teisių užtikrinimas, kitų bajoriškų teismų veikla, luominė visuomenė ir jos moralinės normos) teismo veiklą įtakoję faktoriai. Svarbu buvo atskleisti darbo praktiką (nustatant sprendžiamų bylų kiekius, rūšis, teisės taikymo dėsningumus, teismo vidaus gyvenimą atspindinčius faktus), taip pat išryškinti Tribunolo sudėtį teisininko profesijos aspektu (buvo analizuojamos teisėjų, kanceliarijos darbuotojų, advokatų, agentų ir instigatorių atliktos funkcijos, sudaromi jų sąrašai). Darbe analizuojama aktuali tema, mat efektyvus teisingumo vykdymas svarbus kiekvienai visuomenei, nes užtikrina gyvybės, sveikatos ir turto apsaugą. Pirmą kartą istoriografijoje bandoma kompleksiškai, remiantis šiuolaikinėmis teismų darbo vertinimo metodikomis tirti praeityje veikusią Lietuvos teismo instituciją.

Tarpdisciplininis darbo pobūdis pareikalavo naudoti istorijos, teisės ir teisės sociologijos mokslų tyrimų metodus. Pasirinktą metodologiją nulėmė tiek analogiškų LDK Vyriausiajam Tribunolui naujųjų laikų Vakarų Europos centrinių teismų tyrimai, tiek šiuolaikinė patirtis, sukaupta bandant didinti teisminių institucijų veiklos efektyvumą. Darbui parengti reikalinga buvo susipažinti su LDK civilinės, baudžiamosios ir procesinės teisės normomis ir jų išskyrimo mechanizmais. Kadangi šio darbo pagrindas yra LDK Vyriausiojo Tribunolo archyvo medžiaga, todėl remiantis teisės sociologijos instrumentarijumi buvo naudoti teisinių dokumentų (sprendimų) *kokybinės* ir *kiekybinės analizės* metodai. Pirmasis leidžia atskleisti faktus apie ginčo šalių reikalavimus, jų procesinius veiksmus, teisinę sprendimo motyvaciją

(šie parodo teisės sampratą, teisinio elgesio modelius). *Kiekybinė teismo sprendimų analizė* įgalina nustatyti pakankamai tikslų Tribunolo sprendimų skaičių. *Sintezės* metodas padėjo apibendrinti duomenis apie sprendžiamų bylų rūšis, teisės taikymo praktiką. *Loginis-semantinis* tyrimų metodas naudojamas teismo taikomų teisinių normų aiškumo ir neapibrėžtumo santykiui nustatyti. Didelis pirmą kartą į mokslinę apyvartą įvedamų dokumentų skaičius vertė naudotis *aprašomuoju* tyrimų metodu. Serijiniai duomenys, leidžiantys spręsti apie teisingumo vykdymo institucijos veiklos tempus ir krūvį – išsprendžiamų bylų kiekius, vidutinę bylos nagrinėjimo trukmę, buvo apskaičiuoti remiantis *statistiniu* metodu. *Komparatyvistinis* metodas taikytas tik iš dalies – kai stigo duomenų apie atskirus LDK Vyriausio Tribunolo veiklos aspektus, remtasi Lenkijos Tribunolo ir kitų ATR teismų funkcionavimo faktais.

Disertaciją sudaro įvadas, keturios pagrindinės dėstomosios dalys, išvados, priedai, šaltinių ir literatūros sąrašas. Įvadinėje dalyje apibendrinta tyrimo problema, objektas ir jo chronologinės ribos, iškelti darbo tikslai ir uždaviniai, jų pasiekimui naudoti metodai, literatūra ir šaltiniai, pagrįstas temos aktualumas ir naujumas. Pirmoje dalyje išskirtos 1765-1792 m. LDK Vyriausiojo Tribunolo nagrinėtų bylų rūšys ir atskleista LDK teismų kompetencijos persipynimo problema, taip pat nagrinėjamas kasmetinio Tribunolo „įsteigimo“ klausimas. Antroji dalis skirta socialinei-profesinei LDK Vyriausiojo Tribunolo charakteristikai – analizuojama atskirų teisės specialistų (teisėjų, advokatų, agentų, instigatorių, regentų) veikla ir įstatymuose apibrėžtas jų funkcijų reglamentavimas, atskleidžiami įvairūs teisininko profesijos aspektai. Trečioje darbo dalyje gvildenami darbo praktikos aspektai, aptariami atskiri teisės institutai ir teismo proceso etapai, apibendrinami teisės taikymo dėsningumai. Ketvirtoje dalyje pateikiami ir analizuojami teismo darbą atspindintys skaičiai – nagrinėtų ir likusių neišspręstų bylų santykis, vidutinę laiko tarp bylos įrašymo į teismo registrų knygą ir jos nagrinėjimo, trukmę. Aptariami faktoriai, veikę Tribunolo funkcionavimą (vertinamas pirmosios instancijos teismų darbas, išskiriami veiksniai, lėmę tam tikrą teismo darbo kokybę) ir jo priimamų sprendimų turinį. Išvadose pateikiamas apibendrintas LDK Vyriausiojo Tribunolo 1765-1792 m. laikotarpyje funkcionavimo įvertinimas ir įvardijami svarbiausi jo darbą įtakoję faktoriai. Empiriniai duomenys apie LDK Vyriausiąjį Tribunolą užfiksuoti

aštuoniuose prieduose. Lentelės parodo Tribunolo archyvo išlikimo mastą, patikslina teismo darbo laiką. Pirmą kartą publikuojami analizuojamo laikotarpio LDK Vyriausiojo Tribunolo advokatų, agentų, regentų, instigatorių ir sukolektorių sąrašai. Pabaigoje publikuojami keli 1785 m. teismo priimti dokumentai.

Darbo tikslas – kompleksiškai išnagrinėti LDK Vyriausiojo Tribunolo veiklą teisingumo vykdymo srityje bei įvertinti jo darbo efektyvumą. Siekta išanalizuoti XVIII a. II pusėje vykdytų reformų LDK Vyriausiojo Tribunolo organizacijos ir kompetencijos srityse pobūdį ir atskleisti jų poveikį teismo darbo kokybinėms charakteristikoms, ištirti XVIII a. II pusės LDK Vyriausiojo Tribunolo darbą įtakojusius objektyvius (laiko, vietos, visuomeninių-politinių aplinkybių) ir subjektyvius (klientizmo, kyšininkavimo, nepotizmo ir kt.) veiksnius, sudaryti kuo tikslesnius 1765-1792 m. LDK Vyriausiajame Tribunole dirbusių advokatų, agentų, regentų ir instigatorių sąrašus, nustatyti jų atliekamas teisines funkcijas, aiškintis naujųjų laikų teisininko profesijos formavimosi aspektus.

Kompetencijos tyrimas atskleidė, jog XVIII a. septintojo dešimtmečio ATR įgyvendintos teisingumo vykdymo reformos turėjo tiesioginės įtakos LDK Vyriausiojo Tribunolo veiklai. Viena vertus, jos susiaurino Tribunolo kompetenciją, sugriežtino apeliacijos taisykles, atnaujino draudimą aplenkti pirmos instancijos teismus, numatė galimybę skųsti tik dalį teismo sprendimo. Kita vertus, kaip apeliacinė institucija, Tribunolas turėjo nagrinėti daug bylų, kaip pirmos instancijos teismas: kaltinimus žemesniųjų teismų pareigūnams (teisėjams, raštininkams, regentams), bylas dėl teismo saugumo normų pažeidimo, o taip pat ieškinius advokatams, įgaliotiniams ir vazniams. Pagal 1764-1766 m. įstatymus Tribunolas buvo priverstas svarstyti ir bylas, kuriose nebuvo teisinio ginčo sudėties, o dėl tokių bylų kiekio, jis faktiškai virto administracine įstaiga. Tribunolui taip pat teko spręsti įvairias įstatymuose neapibrėžtas situacijas (atvejus, kuomet pirmos instancijos teismo teisėjų balsai pasiskirstydavo po lygiai; kada buvo uždrausta apeliuoti, pritaikius netinkamą teisės straipsnį; laiku nepareiškus apeliacijos dėl objektyvių trukdžių), taip pat jis sulaukdavo prašymų būti kasaciniu teismu (ir, beje, retsykiais juo tapdavo). Gana prieštaringa buvo ir susiklosčiusi teisminė praktika toleruoti kreipimusis įstatymų draudžiamais atvejais: Tribunolas sprendė apeliacijas bylose dėl pabėgusių

pavaldinių ir skolinių įsipareigojimų, ir baudų už šį nusižengimą nuosekliai neskyrė, surasdamas bylininkų atėjimą tariamai pateisinančių aplinkybių. Neveiksmingas buvo ir draudimas teikti apeliacijas dėl tarpinių sprendimų, nes jos buvo kvalifikuojamos kaip kreipimaisi prašant paskirti bylą nagrinėsiantį teismą. LDK teismų sistemos funkcionavimas buvo sudėtinga dėl didelio teismo instancijų skaičiaus, tuo pat metu egzistavusių skirtingų teisinių principų ir vieningos apeliacijos tvarkos nebuvimo. LDK teismų sistemos funkcionavimą neigiamai veikė konfederuotų Seimų ir Generalinės konfederacijos teismų veikla, dėl kurios buvo pažeista daugybė LDK teisės normų ir kuri ateityje sukėlė teisinio pobūdžio problemas. Neapibrėžtos buvo dvasininkų jurisdikcijos ribos: XVIII a. II pusėje išryškėjo tendencija jas riboti, o ir Tribunolas vis dažniau sprendė šiam teismui priskirtas bylas, nors tai darė ir nenuosekliai. Dėl principo, leidusio Tribunolui teisti visus asmenis, kurie pažeistų vadinamojo teismo saugumo normas, čia buvo teisiami ir miestiečiai bei žydai, kuriuos teisti kiti įstatymai šiam teismui buvo aiškiai uždraudę. Dėl savo, kaip centrinio LDK teismo, pozicijos Tribunolas savinosi teisę spręsti teismų kompetencijos konfliktus ir neigiamai vertino Nuolatinės tarybos veiklą šioje srityje, bet, kita vertus, pats ne kartą sprendė jam nepriklausančias bylas.

Atlikus tyrimą paaiškėjo, jog vidinė teismo struktūra buvo gana išbalansuota, nes joje neproporcingai daug galių teko maršalkai, kuris kontroliavo tiek darbo organizavimo, tiek sprendimo priėmimo procesus. Kitos Tribunolo teisėjams tekusios (už raštinės veiklą atsakingo raštininko ir teismo pajamas atsakingo iždininko) pareigos buvo veikiau nominalios. Teigiamai vertintinas cenzoriaus funkcijų, siekiant užtikrinti didesnę svarbiausių teismo veiklos momentų kontrolę, įgyvendinimo principas, tačiau faktiškai apie šių pareigūnų nepriklausomumą ir realią valdžią kalbėti netenka. Didžiausia problema tapo teisėjo pareigų susiejimas ne su profesijos kategorija, bet su kitomis – galios, prestižo ir garbės – savybėmis. Dėl to kildavo noras pasinaudoti padėtimi, sprendžiant savo ar artimųjų bylas. Teismo personalinės sudėties analizė rodo, jog Tribunolo teisėjo pareigas dažnai užėmė teisminio darbo patirtį sukaupę asmenys (kitų teismų teisėjai, kanceliarijų darbuotojai, advokatai ir agentai), todėl kvalifikacijos atlikti šį darbą iš esmės jiems pakako. Pavietų žemės teismų raštininkų pašalinimas iš Tribunolo kanceliarijos lemiamos įtakos jos veiklos

kokybei neturėjo, nes analizuojamu metu kanceliarijos darbui faktiškai vadovavo regentai (nors teisiškai tokia situacija buvo įtvirtinta tik XVIII a. pabaigoje). Į Tribunolo kanceliarijos veiklą aktyviai įsijungė žemės ir pilies teismų darbuotojai, taigi raštinės paslaugas teikė patyrę ir kvalifikuoti asmenys. Praktikoje susiklostė prisiekusiųjų (atsakingų už sprendimų knygas) ir neprisiekusiųjų (atsakingų už einamųjų reikalų protokolų, aktų ir registrų knygas) regentų sistema. Jie buvo kilę iš skirtingų profesinių sluoksnių: pirmieji buvo profesionalūs kanceliarijų darbuotojai, o antrieji paprastai buvo pasirenkami iš Tribunolo agentų ir aplikantų. Žalą dėl kasmetinių kanceliarijos sudėties pokyčių buvo bandoma mažinti samdant tuos pačius asmenis sprendimų regentų, atsakingų už svarbiausių – sprendimo dokumentų (originalų ir kopijų) rengimą, pareigoms. Teisines paslaugas teismuose teikė advokatai ir agentai, pirmieji – dalyvaudami teismo procese, o antrieji, rūpindamiesi atstovaujamo asmens bylos procesu ir tinkamu bylos parengimu teismo nagrinėjimui. XVIII a. advokatūros institucijos raidoje įžvelgiamos profesionalėjimo tendencijos: nuolat buvo pildomas gynėjų veiklos aprašas, įvesta jų priesaika, užtikrintas tam tikras teisinių žinių tikrinimo mechanizmas ir papildymo naujais nariais proceso kontrolė. Tiesa, tapti uždaresne profesine grupe jiems neleido neapibrėžtas teisme galinčių dirbti advokatų skaičius ir pasitraukimo iš profesinės veiklos mechanizmas, ne visai aiški ir veiksminga pašalinimo iš advokatų procedūra, taip pat visą laiką išlikęs požiūris į gynėjo veiklą, kaip atliekamą visuomeninę pareigą. Agentai, kaip specifinių teisinių paslaugų teikėjai, buvo bylininką pakeičiantys asmenys, įgalioti organizuoti bylininko gynybą teisme. Pastarųjų veikla buvo nereglamentuota, bet žinome, jog jie tapdavo tarpininkais tarp bylininkų ir advokatų, disponavo bylos dokumentais, tvarkė teismo mokesčių klausimus, o nuo aštunto dešimtmečio pradžios vis dažniau savarankiškai dalyvavo teismo procese (ypač pradinėje teismo proceso stadijoje). Tribunolo instigatorius turėjo užtikrinti tvarką ir ramybę mieste, kur dirbo Tribunolas, taip pat palaikyti ieškinius dėl teismo ar teisėjų garbės įžeidimo ir teismo saugumo normų pažeidimo, ir dalyvauti procese kartu su teisiškai neveiksniais asmenimis. Šios funkcijos buvo labai svarbios, tačiau priklausomybė nuo teismo, pareigų nereglamentavimas įstatymuose ir žemas pareigų prestižas, buvo neigiami faktoriai, užkirtę kelią tokios profesijos klostymuisi. Dėl vietos institucijų nesugebėjimo užtikrinti tvarką ir ramybę mieste, kur dirbo Tribunolas, šiam pareigūnui būdavo

suteikiamos teisės imtis įvairiausių priemonių šiems tikslams pasiekti. Tokių veiksmų pasekmė buvo dvejopa: teigiama (įtartinų asmenų persekiojimas, ieškinių nusikaltėliams kėlimas) ir neigiama (vietos jurisdikcijų teisių pažeidimas, bandymai kištis į įvairias gyvenimo sritis, pvz., mėginimas reguliuoti vaistinių veiklą ir žmonių elgesio normas). Nustatyto atlyginimo, veiklos kontrolės ir realios atsakomybės nebuvimas, bei didelių galių ir teisės disponuoti kareiviais suteikimas lėmė tokių reiškinių, kaip piktnaudžiavimas pareigomis, savanaudiškų tikslų siekimas, turto prievartavimas, atsiradimą.

Teismo proceso analizė atskleidė, jog įstatymuose įtvirtintos bylų nagrinėjimo tvarkos greitai pradeta nesilaikyti, o bandymas šią situaciją pakeisti 1764 m. karūnaciniame seime baigėsi nesekme. Bylų profiliavimo sistema buvo nepagrįsta, o panaikintas privilegijuotų registrų išskyrimo iš bendros registrų naudojimo tvarkos principas, masino surasti priežastis į jį įrašinėti ieškinius. Dėl to pradėta kelti fiktyvius kaltinimus advokatams, įgaliotiniams, vazniams, o vėliau ir kanceliarijų tarnautojams, ir tokią praktiką Tribunolas toleravo. LDK teismo procesas darėsi sudėtingas dėl praktikos į vieną bylą jungti daug ieškinių ir dėl reikalavimo jame dalyvauti dideliam asmenų, vienaip ar kitaip susijusių su ginčo objektu ar pažeista teise, skaičiui. Formalizuotas teismo procesas reikalavo laikytis griežtų šaukimo turinio, jo įteikimo bylininkui (laiko ir vietos faktoriai) ir įteikimo paliudijimo teisme reikalavimų. Tas pareikalaudavo iš bylininko atlikti daug veiksmų: surinkti įvairiausio pobūdžio duomenis apie atsakovą, taip pat organizuoti šaukimų rengimą, įteikimą ir įteikimo patvirtinimą, per nustatytą laiką įrašyti ieškinį į teismo knygas, pasirengti galimybei, jog šaukimo turinys ar pats įteikimo faktas bus užginčytas. Kad užtikrintų bylininko dalyvavimą procese, ieškovai kartais pasirūpindavo preventyviu atsakovo įkalinimu, neretai – ir be teismo sankcijos. Tiesa, atlikus tokį veiksmą, reikėjo pasiruošti kitoms su tuo susijusioms išlaidoms – kalinio maitinimui, vežiojimui ir gydymui. Daug teismo laiko atėmė sprendimų priėmimas dėl prašymų įkalinti arba paleisti, nustatyti laiduotojo patikimumą, kalinių išlaikymo ir transportavimo būdų, dėl būtinybės bylininkui asmeniškai dalyvauti procese. Teismo procesai užtrukdavo dėl galimybių prašyti atidėti bylos nagrinėjimą, kuriomis aktyviai naudotasi. Pagrindinė teismo proceso stadija užsitęsdavo dėl bylininkų teikiamų įvairių prašymų, o taip pat dėl

advokatų įpročio ilgai kalbėti, kurį bandyta pažaboti, nustatant reikalavimus tokios kalbos būdui ir trukmei. Įrodymų pateikimo metu šalia tradicinės viduramžiškos formalių įrodymų teorijos galima pastebėti ir naujoviškas tendencijas: atlikti tyrimą ne tik baudžiamosiose bylose, teisėjų siekį susipažinti su kuo didesniu faktų skaičiumi, riboti kankinimus ir kritiškai vertinti tokia forma surinktą informaciją, o kai kada ir pačiam teismui atlikti tiriamuosius veiksmus. Su teismo procesu tampriai susijusi sprendimų vykdymo problema: reikėjo organizuoti „išvykas“ proceso metu, siekiant priversti bylinėtis, o vėliau galimai kreiptis dėl pasipriešinimo galutinio sprendimo vykdymui. Tik 1788 m. pabaigoje patvirtinta nuostata išduoti leidimą pasinaudoti kariuomenės pagalba išlaisvino Tribunolą nuo būtinybės kontroliuoti sprendimo įvykdymo procesą. Priešingai, nei iki šiol tvirtinta istoriografijoje, galutiniai Tribunolo sprendimai (ypač kūno ir mirties bausmes) dažniausiai buvo vykdomi. Tuo tarpu kalėjimo bausmių skyrimui dažnai buvo nepaklustama ne dėl piktybiško pasipriešinimo, o dėl menko jų ryšio su kaltės kategorija ir bajorijos mentalitetu. Bajorai buvo linkę ginčus galutinai išspręsti užteisminio susitarimo būdu arba nuo tokių bausmių atleisti (t.y. galutinis bylos sprendimas tapdavo tik prielaida susitarimui).

Tribunolo veiklai įtakos turėjo ir kitų teismų darbo problemos. 1764 m. karūnaciniame Varšuvos seime bandyta išspręsti kai kurias pirmos instancijos bajoriškų teismų funkcionavimo ydas, nepaisant to, analizuojamu laikotarpiu jie veikė blogai. Daugiausia, dėl teisėjų faktoriaus: jie buvo nedisciplinuoti, šališki, paperkami, nagrinėjo pagal kompetenciją jiems nepriklausančias bylas. Įstatymai nenumatė jų pasitraukimo iš pareigų dėl amžiaus ir sveikatos būklės, taip pat neaiškiai apibrėžė jų disciplininę atsakomybę. Nubausti padėtimi piktnaudžiavusius pareigūnus trukdė sudėtinga įrodinėjimo praktika, kazuistiška arba pernelyg abstrakti įstatymų bazė ir selektyvus jos taikymas. Teismai taip pat susidurdavo su organizacinėmis ir teisinio pobūdžio problemomis. Dėl nepatenkinamos pirmos instancijos bajoriškų teismų darbo kokybės (kai kurie jų nedirbo ilgą laiką) Tribunolui tenkantis krūvis padidėjo kelis kartus, nes jis buvo priverstas svarstyti prašymus bylos nagrinėjimui paskirti kitą teismą ir ieškinius žemesniųjų teismų teisėjams bei jų raštinėms.

Informacija, leidusi apskaičiuoti Tribunolo knygose įrašytų ieškinių ir priimtų sprendimų skaičių, taip pat vidutinę laiko tarp bylos įrašymo į teismo registrų knygą ir jos nagrinėjimo, trukmę, atskleidžia Tribunolo veiklos dinamiką ir efektyvumą. Taigi, per dvidešimt septynerius veiklos metus Tribunolas iš viso priėme 5708 sprendimus, per metus vidutiniškai – 222, o per kadenciją – 111 sprendimų (konkrečiose kadencijose šis skaičius svyravo nuo 109 iki 497). Tiesa, reikia pabrėžti, jog absoliučioje daugumoje atvejų turime reikalą su už akių paskelbtais arba tarpiniais sprendimais, kur nevyko bylos nagrinėjimas iš esmės. Pirmaisiais Tribunolo darbo metais daugiau spręsta bylų, įrašytų į apeliacijų ir pasipriešinimo sprendimų vykdymui registrų knygas, tačiau vėliau dominavo kitos – taktinis ir obligų bylų registrų knygos, iš kurių 1769-1784 m. laikotarpyje buvo paskelbta apie 94 procentus visų Tribunolo sprendimų. Vėliau dėl įstatymo reikalavimo daugiausiai spręsta „*pro determinatione*“ (t.y. prašymų skirti bylą nagrinėsiantį teismą) rūšies bylos, sudariusios 56 procentus visų sprendimų, o dar beveik 30 procentų teko taktiniam ir obligų bylų registrams. Dėl to nuolat kaupėsi kitose registrų knygose įrašytų, ilgą laiką nesprendžiamų, ieškinių skaičius (kiekvienais metais į registrų knygas buvo įrašoma vidutiniškai per tūkstantį naujų ieškinių), 1784 m. viršijęs 6000 (maršalkos Adomo Chmaros vadovaujamas Tribunolas 1785-1786 m. sugebėjo šį skaičių sumažinti beveik per pusę, o 1792 m. Tribunolui nutraukus darbą, iš viso liko nenagrinėtų 3417 ieškinių, daugiausiai – per 1600 – įrašytų į apeliacijų registro knygą). Tokią situaciją daugiausiai nulėmė ydinga bylų nagrinėjimo tvarka, kuri neadekvačiai nustatė prioritetus. Dėl to apeliacijų ir kalinamų asmenų bylų nagrinėjimas galėjo užtrukti ilgiau nei dešimtmetį, tuo tarpu kitos bylos, ypač pasinaudojant įvairiuose registrų knygose įrašytų ieškinių jungimo į vieną bylą ir fiktyvių kaltinimų įgaliotiniams ir teismo pareigūnams praktika, galėjo būti sprendžiamos dar tais pačiais ar sekančiais metais. Tribunolo darbo vietoje įvykdyti nusikaltimai turėjo galimybę būti išspręsti per porą savaičių. Neišspręstų bylų augimą lėmė plati teismo kompetencija ir visų pirmos instancijos teismo funkcijų atlikimas, nes darbui skirto laiko iš esmės turėjo pakakti (joks kitas LDK teismas kadencijos ilgumu negalėjo su juo lygintis). Tiesa, truputį laiko atėmė ir susiformavusios tradicijos – nedirbti pirmosiomis kadencijos darbo dienomis, gausių religinių ir valstybinių švenčių dienomis, o taip pat destruktyvi LDK konfederacijos veikla 1772-1773 m.

Darbe išanalizuoti faktai leidžia teigti, jog Tribunolo sprendimus svariai veikė pašaliniai faktoriai: teisėjų ryšiai su bylininkais, įtakingų asmenų (ATR valdovo ir LDK didikų) užtarimas ir paprasčiausia korupcija. Dėl vyravusios nuostatos tokia praktiką toleruoti ir už ją griežtai nebausti (žinomi vos keli dėl teisėjų papirkinėjimo kilę procesai ir tik vienas pasibaigė nuosprendžio, beje, vėliau panaikinto, priėmimu) klestėjo „užtariančiųjų“ laiškų rašymas, bylininkai aktyviai iekodavo kitų galimybių paveikti bylos nagrinėjimą sau naudinga linkme. Apie pašalinę įtaką liudija ir aiškiai neteisingi teisės normų taikymo atvejai. Tą iš dalies daryti leido neapibrėžtas senesnių (tame tarpe TLS normų) ir naujesnių įstatymų tarpusavio santykis, taip pat nepreciziška teisinė kalba, leidusi visus teisės neaiškumus interpretuoti savo naudai. Esminius pokyčius numatė Didžiojo Seimo projektai, smarkiai sugriežtinę atskomybę už neteisėtus veiksmus. Teisminė praktika rodo, jog Tribunolas laikėsi tam tikrų principų, susijusių su bajorijos mentalitetu ir teisine sąmone: tariamomis priežastimis pateisino bylininkų kreipimusis ir vengė skirti įstatymuose įteisintas griežtas bausmes (t.y. tiesiogiai taikyti teisės normas), priteisti dideles bylinėjimosi išlaidas. Be to, buvo paplitusi praktika, kad Tribunolo teisėjai tarpininkautų dėl teismui pateiktų ginčų išsprendimo neteisminiu keliu. Susidurdamas su įstatymuose nenumatytais atvejais, atsiliepdamas į bylininkų prašymus, Tribunolas priimdavo originalius sprendimus, kurie dėl griežto teismo ir teisėkūros funkcijų atskyrimo, bendrosios teisės normomis (su nedidelėmis išimtimis) netapdavo. Nors ATR sąlygomis precedento teisės uždraudimas turėjo pagrindo (neteisėti, didikams palankus sprendimai galėjo virsti plačiai taikoma teise), vis tik teisminę Tribunolo praktiką jis paveikė neigiamai, vertęs selektyviai vertinti kiekvieną atvejį (taip gaištant brangų teismo darbui skirtą laiką) ir analogiškose situacijose priiminėti vieną kitam priešingus sprendimus. Tribunolo veiklą XVIII a. II pusėje nulėmusių objektyvių ir subjektyvių veiksnių tyrimas atskleidė dviejų, viena kitai priešingų, tendencijų, teisės sistemoje ir teisingumo vykdyme, sampyną. Nevienareikšmį Tribunolo vaidmenį bajoriškoje visuomenėje lėmė, viena vertus, sudėtingi vidaus raidos ir tarptautinių santykių kontekstai, vertę modernizuoti teismo procesą ir skatinę tobulinti teisinę sistemą, bet, antra vertus, dalies anarchizuotos bajoriškos visuomenės siekis „užkonservuoti“ socialines bei politines struktūras ir specifinė bajoriškųjų laisvių samprata, kuri reformas stabdė ir archaizavo teisinę sąmonę.

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