Ondrášková, Veronika

Ecclesiastical dispute resolution in the diocese of Prague : arbitration proceedings of Vicar general and corrector of the clergy at the turn of 14th and 15th century

Studia historica Brunensia. 2024, vol. 71, iss. 2, pp. 125-142

ISSN 1803-7429 (print); ISSN 2336-4513 (online)

Stable URL (DOI): https://doi.org/10.5817/SHB2024-2-8
Stable URL (handle): https://hdl.handle.net/11222.digilib/digilib.80888

Studia historica Brunensia 71 / 2024 / **2**
https://doi.org/10.5817/SHB2024-2-8

Ecclesiastical Dispute Resolution in the Diocese of Prague: Arbitration Proceedings of Vicar General and Corrector of the Clergy at the Turn of 14th and 15th Century

Veronika Ondrášková / veronika.ondraskova@prf.cuni.cz

Department of Legal History, Faculty of Law, Charles University, Prague, Czech Republic /

Department of Auxiliary Historical Sciences and Archive Studies, Faculty of Arts, Masaryk University, Brno, Czech Republic

Abstract

The submission analyses the arbitrary practice within two of the archbishop's representative offices in the diocese of Prague. It focuses on the arbitrary agenda as documented in the *Acta iudiciaria* and *Acta correctoris cleri 1407–1410,* which served as judicial records for the vicar general and the corrector of the clergy (the ecclesiastical criminal judge). These selected offices provide an insight into the application of general canon law in bohemian practice. Subsequently, the paper addresses three main questions. The first question pertains to terminology issues and the potential distinction between "*Arbiter, arbitrator and amicabilis compositor*" before the judge, particularly considering that these terms held distinct meanings under canon law. The second question delves into an overview of the cases and focuses on the status of arbiters and their compliance with canon law. In the final analysis, the paper explores the procedural approach of the vicar general and corrector of the clergy, offering insight into the practices at the turn of the 14th and 15th centuries. Given the nature of out-of-court litigation, the submission also comments on the methods of coercion used in the recorded cases and the punitive measures applied within the proceedings.

Keywords

arbiter – arbitrator – amicabilis compositor – arbitration – corrector of the clergy – vicar general – ecclesiastical courts – ecclesiastical administration – diocese of Prague – turn of the 14th and 15th centuries

This research paper was supported by the Grant Agency of Charles University (project no. 114224), which is conducted at the Department of Legal History of the Faculty of Law of Charles University.

Arbitration as a form of extrajudicial dispute resolution, remains a prevalent practice in the contemporary legal proceedings, especially in the context of international property disputes. Its efficacy primarily stems from the expeditious and supple nature of proceedings and moreover allows the parties to select a neutral third party to settle the dispute. While the origins of arbitration can be traced back to Roman Law,[1] the theoretical delineation of the institute went further during the Middle Ages, especially through the treaties of contemporary legal scholars. Despite academic thesis examining definitions of medieval arbitration in the past,[2] the historical evolution of arbitration compels to further analysis, especially with focus on regional development, which can set into context execution of general canon law and reception of Roman law in different parts of the Latin world.

The submission examines the legal practice employed by the bishop's administrative offices at the turn of 14th and 15th centuries in the diocese of Prague.[3] The first part is focused on theoretical delimitation of the different forms of arbitration and the second part introduces the arbitrary practice in Bohemia. That is conducted based on the examination of the manuals of the vicar general[4] and the judicial acts of the corrector of the clergy, a penal judge of the late medieval Bohemia.[5] The main questions emphasized in the research are (1) whether the arbitration in Bohemia followed the legal rules of canon law collections and (2) did the practice distinguish between the established terminology of *arbiter, arbitrator* and *amicabilis compositor*? And finally (3) *how* was arbitration carried out and what were the usual merits of the proceedings?

The limit of the research lies in the fragmentation of analysed material. The manuals of the bishop's office burned in 1419 and on top of that the judicial practice of the corrector of the clergy is preserved in just one manual from 1407–1410. Nevertheless, the preserved sources allow relevant insight into the practice of ecclesiastical law in Bohemia.

The research outcome is based on the analysis of cases from *Acta iudiciaria*, held in the court of the vicar general, and from *Acta correctoria*, which is the agenda of the court of the corrector of clergy.[6] From the first-named source, the contribution tracks 91 cases

1 On arbitration in Roman law see: Milotić (2013); Milotić (2016), pp. 1–15; Boóc (2019), pp. 133–138. With an emphasis on Czech legal history, see also Růžička–Dostalík (2017).

2 Wojciechowski (2010); Kuehn (1987); Powel (1982), pp. 49–67; Biancalana (2005), pp. 347–382. From the Czech legal historian works see Malaníková (2008), who addressed arbitrary proceedings in terms of municipal law of Brno. Aim of her paper was to attempt a reconstruction of the arbitrary procedure in municipal law and focus on ritual aspects of the proceedings.

3 The selected period is considered a peak in the development of medieval ecclesiastical administration in Bohemia. Hledíková (2010), p. 204.

4 Available in Tadra (ed.) (1893a), years 1373–1379; Tadra (ed.) (1893b), years 1380–1387; Tadra (ed.) (1896), years 1392–1393, 1396–1398; Tadra (ed.) (1898), years 1401–1404; Tadra (ed.) (1899), years 1406–1407; Tadra (ed.) (1900), years 1407–1408.

5 Published in Adámek (ed.) (2018), years 1407–1410.

6 The study has been written with assistance of the database Czech Medieval Sources online, provided by the LINDAT/CLARIAH-CZ Research Infrastructure (https://lindat.cz), supported by the Ministry of Education, Youth and Sports of the Czech Republic (Project No. LM2023062). Language corrections were made using OpenAI's ChatGPT software.

from 1373–1379, 44 cases from 1380–1387, 25 cases from 1392–1393, 46 cases from 1396–1398, 32 cases from 1401–1404, 111 from 1406–1407 and 131 cases from 1407–1408. All together the research paper analyses 483 enrolments. In the judicial book of the corrector of the clergy out of 525 entries 5 % were examined, as they are dedicated to the arbitrary agenda, meaning in total 22 cases.

Theoretical legal distinctions between *arbiter*, *arbitrator* et *amicabilis compositor*

While the origins of arbitration can be traced back to Roman law, neither the pre-Gratian legal collections and nor the Decree of Gratian recognised different forms of the out of court settlement. The differentiation and detailed extra judicial proceedings were well-established through the works of medieval scholars. According to the findings of French historian Anna Lefebre-Teillard, the differentiation between *arbiter* and *arbitrator* was introduced by Bulgarus in the mid-12th century and later also adopted by Hugoccius in his *Summa*[7] on Gratian's Decree at the end of 12th century. However, a more consistent usage and distinction among these terms became apparent in the 13th century, followed by an introduction of the term "*amicabilis compositor*". According to Lefevbre-Teillard, the term was used as a synonym for the term arbitrator.[8]

The submission furthermore retrieves the legal definitions from works of *Rolandinus de Passageriis* (c. 1215–1300) and William Durand (c. 1236–1296), since their transcriptions were documented to serve as teaching script in medieval Bohemia,[9] implying the reception of general legal norms of canon and Roman law. In one of the Prague's notary manuscripts from 14th century,[10] we encounter a passage from *Rolandinus* and his *Summa artis notariae* (1250),[11] whose definition of arbitration was word-to-word transcribed into the handbook.[12] He defines arbiter as someone onto whom the parties delegate decision of their cause, and who is familiar with the rules of *ordo iudiciarius* just as an ordinary judge.[13] The arbitrary award named *arbitrium* does not admit any legal remedies against the sentence, meaning no legal possibility of appeal like in the traditional civil canon procedure is allowed. Arbitrator, on the other hand, is described as *amicabilis compositor* and according to *Rolandinus* he does not assess the case according to the rules of *ordo*

7 Lefebrve-Teillard (2009), p. 4.

8 Lefebrve-Teillard (2009), p. 3.

9 Kejř (1962), pp. 3–113.

10 Tadra connects the forms with the possibility that they were compiled by a notary from Charles University Tadra (ed.) (1893), p. 2.

11 A Lege (1574).

12 It can be also found word to word in Du Change's Glossarium, cf. Dufresne du Change (1840), p. 360.

13 Similarly, the role of arbiter is interpreted by Bartolus de Sassoferrato (1313–1357), who in his *Concilia, quaestiones et tractatus* makes also similar distinction between arbiter and arbitrator. He concludes that unlike the arbiter, arbitrator should decide based on justice, not the rules of classical procedure. Sassoferrato (1495), fol. 122.

iudiciarius. His role within the proceedings is to settle the matter amicably in within the parties. His arbitrary award is titled *laudum* and unlike *arbitrium,* allows the remedy of appeal.[14]

Few decades after *Summa notariae,* William Durand compiles one of the most influential canon procedural works; *Speculum iudiciale* (1271–1276).[15] In his first book, where Durand describes arbiters, arbitrators, and amicable compositors, he does not exceedingly differ from the basic definition given by *Rolandinus*, although his definitions are more source based and connected to the general norms of canon and Roman law. He derives the possibility of the parties to delegate their case by referencing *Decretum Gratiani* (C.2, q.6, c.33; *"a iudicibus"*).[16] Additionally, he connects the legal regulation of the less formal arbitrator to the 17th book of Digest and the title *"pro socio"* (Dig. 17.2.6).[17] Arbitrator is also described as *compositor amicabilis* (*"arbitrator est vero compositor amicabilis"*),[18] and as someone who does not carry an authoritative sentence, but rather serves as a mediator between the two parties. Leading them to the peaceful agreement about the legal question.

The fundamental element of arbitrary delegation of all kinds was a contract between the parties known as "*compromissum*". Integral to this contractual arrangement was the specification of arbiters in accordance with the requirements of canon law. Durand contends that *compromissum* can encompass any matters not explicitly forbidden. The merits of the contract could have had been concluded for instance about any civil case, but not about severe criminal cases, marriage disputes, slander, excommunication sentence, etc.[19] Concerning the termination of the contractual agreement, the *compromissum* is dissolved with the death of one of the contracting parties. The course of the arbitration highlights the distinct procedural rights of the arbiter compared to those of an ordinary judge within the legal framework. According to Durand, an arbiter lacks the authority to summon parties to a place other than explicitly stated in the *compromissum*.[20] Additionally, an arbiter lacks the prerogative to declare a non-appearing party contumacious, a common penalty for absence in romano-canonical procedure.[21] Likewise, the arbiter's authority to compel the presence of witnesses in court is restricted.[22]

14 Durandus (1592).

15 Mostly from so-called *Corpus iuris canonici* (especially the Decree of Gratian, Liber Extra compiled by pope Gregory IX, Liber Sextus compiled by pope Bonifacius VIII.) and additionally we find reception of various references to Roman law. Friedberg (ed.) (1959a), (1959b).

16 Friedberg (ed.) (1959a), p. 478.

17 (Dig. 17.2.6) "*Si societatem mecum coieris ea condicione, ut partes societatis constitueres, ad boni viri arbitrium ea res redigenda est: et conveniens est viri boni arbitrio, ut non utique ex aequis partibus socii simus, veluti si alter plus operae industriae pecuniae in societatem collaturus sit*."

18 Durandus (1592), p. 98.

19 Durandus (1592), p. 98.

20 Durandus (1592), p. 99.

21 Durandus (1592), p. 99.

22 Durandus (1592), p. 99.

Regarding the criteria governing the selection of arbiters and arbitrators, only honourable men could have been appointed as arbiters. The Decretals of Pope Gregory IX (X 1.43.4) indicate that while a single woman could not serve as an arbiter, if, prior to the delegation, she possessed secular authority, she could preside over the arbitrary case. As an example, the decretals present an occurred case decided by a Frankish queen.[23] But otherwise, women were excluded from being appointed as arbiters. Same rule was also adopted into the Mirror of procedure. Additionally, Durand adds that layperson cannot judge a spiritual matter,[24] unless the matter is delegated onto him by judicial authority. This should be supplemented by (X 1.43.9; "*Per tuas*" in finem), where Innocence III addresses a letter to archbishop of Pisa, where he proclaims that arbitrary award that was proclaimed by one cleric and two lay people should by no means be legally challenged, since the arbitration was done with the authorization of the archbishop.[25] Failure to meet the formal requirements could prompt the parties to raise a formal exception. Such exceptions, originating from Roman law doctrine,[26] found their way into the canon law, where they were extensively employed, as also apparent in the legal framework of Bohemia.[27]

In addition to the features of the arbiter, the canon law also emphasized the number of the arbiters to be odd. In fact, it is the first provision that introduces the section dedicated to arbiters in the decretals of pope Gregory IX (X 1.43.1)[28] and was also adopted into the decretals of Bonifacius VIII, underscoring the significance of that legal provision. The contract can furthermore specify that the even number of arbiters can elect a third one, in case of their discordance.[29] The arbitrary award would then be a unanimous decision or a vote of the majority.[30] Although the legal norms emphasized the necessity of a nod number of arbiters, provisions permitted an even number to render a decision in instances, where the third arbiter was absent.[31]

Upon the conclusion of the contract, the arbitrary award could have been pronounced. Although the arbitrary sentence is considered legally binding, the arbiter himself lacked the legal instruments for its enforcement. The arbitrary sentence sets exception *rei iudicatae* (X 1.43.11 "*Exposita nobis*"),[32] but the execution of the arbitrary sentence necessitated the intervention of an ordinary judge. Furthermore, a notable discrepancy between

23 Friedberg (ed.) (1959b), p. 231.

24 This is derived from referenced decree of pope Gregory IX that states: "*Cap. VIII. De rebus spiritualibus in laicum compromitti non potest. Idem in concilio generali. Contingit interdum, quod, quum actori [Et infra: [cf. c. 9. De col. Et cont. II. 14]). Ad hoc generaliter prohibemus, ne super rebus spiritualibus compromittatur in laicum, quia non decet, ut laicus in talibus arbitretur.*" Friedberg (ed.) (1959b), p. 235.

25 Friedberg (ed.) (1959b), pp. 235–236.

26 For more, see Stloukalová (2012).

27 Ondrášková (2023), pp. 11–34.

28 Friedberg (ed.) (1959b), p. 230.

29 See X 1.43.12 in Friedberg (ed.) (1959b), p. 237.

30 See X 1.43.1 in Friedberg (ed.) (1959b), p. 230; VI 1.22.1 in Friedberg (ed.) (1959b), p. 994.

31 Friedberg (ed.) (1959b), p. 994.

32 Friedberg (ed.) (1959b), p. 326.

the arbitral award and *sententia deffinitiva* was the absence of infamous effect. Durand argues with stance of other legal scholars that unlike the *compromissum* which can contain a hypothetical penalty, *arbitrium* should refrain from incorporating any kind of punishment to enforce the sentence itself. Instead, it ought to be should secured by a pledge or an oath.[33] This is furthermore detailed with reference Justinian's code (C 2. 55. 4), where the emperor emphasizes the arbitration contract not to be used only to stating to evade judge's decision and should be only done by respected and honourable persons.[34] Durand however does not agree with the differentiation of *compromissum* and *laudum*[35] and local sources of the Bohemian Crown, as suggested further on, follow this lead.

Arbitration practice in the judicial books of vicar general and the corrector of the clergy in late medieval Prague

During the course of 14th century, arbitration proceedings gained more and more popularity, reaching its peak at the beginning of 15th age. Since romano-canonical procedure incurred considerable expenses, it prompted a predictable shift towards arbitration proceedings as a more economically viable alternative. The rigorous character of civil procedure is for instance documented on series of charters preserved in the metropolitan chapter. They access an exchange between the chapter and their procurators, who were sent to advocate for chapter's interests before the papal court around the year 1404.[36] These documents illustrate instances wherein parties were compelled to seek amicable resolutions, strategically opting for conciliation rather than engaging in protracted and financially burdensome litigation before the curia. Notably, during one of the procedure *Jan Scholastik* went so far as to insinuate that the Papal judges deliberately prolonged the proceedings, so he pleads with the chapter to seek amicable resolution rather than continue the tedious dispute.[37]

Although arbitrary proceedings formally refer to "out-of-court" settlement, which may suggest a complete dissociation from the court, further examination reveals that such an interpretation can be misleading. While it cannot be determined precisely how many arbitrary cases occurred during the course of late 14th century, analysis can be conducted on the cases preserved in judicial registers. It can be assumed that parties often enrolled their arbitrary contracts into the judicial book, as in cases of contract breach

33 Durandus (1592), p. 95.

34 See C 2. 55.4 in *Institutiones Iustiniani* (1627) p. 531.

35 Durandus (1592), p. 95.

36 Eršil–Pražák (1956), p. 204.

37 See digitalised charter: Archiv Metropolitní kapituly u sv. Víta 624-XXIII/6 / Monasterium.net. Available from: Monasterium.net, URL <Monasterium.net/mom/CZ-APH/AMK/624-XXIII%7C6/charter>, cited on 31st March 2024. The difference between an ordinary judge and an arbiter is emphasized in an arbitrary award of Adam of *Nežetice*, vicar general in the year 1403, where he is referred to as "*tamquam arbiter et iurisperitus, non tamquam judex.*" In some cases, ordinary judges were simply referred to as arbiters, even though the nature of their settled proceeding inclined more towards the loose form of *arbitrator.* Tadra (ed.) (1898), p. 287.

or failure to respect arbiter's *arbitrium* or *laudum,* it was the court, that held the power to execute legal action, not the arbiter. This hypothesis is supported by the fact that arbitrations concluded outside the bishop's courts later sent their sentences to Prague to be enrolled in the registers.[38]

Regarding the terminological difference between *arbiter, arbitrator* and *amicabilis compositor* out of 483 enrolments documenting arbitrary contracts or arbitrary awards the most utilized form, in reference to the out-of-court dispute resolution, was the term *arbiter*.[39] The term *amicabilis compositor*[40] and *arbitrator*[41] is almost never used on its own and rather is in 58 cases part of the used form *arbiter, arbitrator seu amicabilis compositor.* Thus, simply referencing the out of court settlement and not particular form of arbitration. The same assumption can be made about the practice of corrector of the clergy, since less than half of the enrolled cases regarding arbitration, use the full form. The reason behind the generalization of the terminology can be probably attributed to the fact that the proceedings done by *arbiter* required knowledge of canon law and canon procedure and it seems rather unlikely the preachers from remote parishes or burghers, who were often named as arbiters, had any profound knowledge of *ordo iudiciarius*. This hypothesis is further explored onto the practice of vicar general and corrector of the clergy.

Although the intent to settle a legal dispute through arbitration may have been enrolled and expressed before concluding an arbitrary contract,[42] the *compromissum* represents first legally significant step in the out of court dispute resolution. Arbitrary contract represented the most important legal action because it delegated the power to settle a dispute between parties onto a third person, who did not exercise his judicial authority based on bishop's delegation, but solemnly on the party's will. And most importantly the arbitrary contract set precise procedural rights of the arbiter. The judicial book of vicar general from 1373 documents over 313 arbitrary contracts, out of which 182 were conducted after the year 1400. In *Acta correctoria* the number of enrolled arbitrary contracts is set to 18. The enrolled contracts regularly adhered to the following or similar structure:

(1) Name of the arbiter (*uberman*)[43]
(2) Merits of the contract
(3) Delegation clause towards the arbiter
(4) Renouncement of any further litigation
(5) Punishment inflicted if the arbitrary sentence was not respected

a. Compliance with any procedural act could have been secured by a surety

38 Tadra (ed.) (1899), pp. 60, 357.

39 This reference was used almost three times more than the complete form "*arbiter, arbitrator, amicabilis compositor.*"

40 Tadra (ed.) (1896), p. 205.

41 Tadra (ed.) (1893a), p. 253.

42 For example, in naming the procurators or advocates to represent the client before the court to a simple intent expressed in the acts for amicable resolution. Tadra (ed.) (1893a), p. 109.

43 Tadra (ed.) (1899), p. 408.

(1) *Naming the arbiter*. As cited above, canon law denied layperson alone to be appointed as arbiter in spiritual cases. Sufficient alternative was to appoint at least one cleric to a judicial chamber. Most cases follow this rule, although a regional practice chose not to abide by the decretals pleadings to select an odd number of arbiters. In 235 cases we encounter an even number of arbiters. Depending on diligence of the parties the judicial books quite frequently (92 cases) document appointment of *superarbiter*. The *superarbiter* constituted second instance, when the primarily selected arbiters did not come to a conclusion in predetermined period, or they did not come to an agreement about the arbitrary award.[44] The contract could predefine the name of the *superarbiter* beforehand, or the arbiters were empowered to select one on their own.[45] Although the judicial books do enrol some *superarbiter's* awards,[46] the overall impression implies that arbiters did usually conclude the case. If the (*super*)*arbiter* did not eventually want to take up on his role, he could simply release himself from this duty.[47] The renouncement of such position is documented for instance in cases demanding challenging legal interpretations. For example, on 6th February 1408 public notary *Ondřej* of *Jermericz* comes before the vicar general to renounce his arbiter role *"dicens eidem non posse propter certa et ardua negocia preesse nec intendere."*[48] Sometimes the parties let the arbiter delegate the case onto someone else, as in the case of advocate *Petr* of *Zderaz* against squire *Václav* dc. *Kanclerz*, who on 5th of October 1406 selected the archbishop *Zbyněk Zajíc* of *Házemburk* as their arbiter with a clause *"aut in illum, in quem dominus mandaverit,"*[49] leaving the selection entirely on the archbishop. This can be viewed as an anomaly since the practice was for the parties to each nominate one arbiter, who could have been geographically linked to the region of the parties' interest or was a respected legal expert.[50]

Against the legal rules of general canon law, the judicial acts record arbitration done by laypeople. In over two dozen cases the acts involve arbitrary contracts that name arbiters out of clergy. Usually, the arbiters selected were part of secular nobility or high secular offices such as purgraves, knights etc. But we also encounter burghers in the role of arbiters named by their peers. This supports the hypothesis the arbitration although labelled as "arbiter" in the judicial acts, was not strictly interpreted in the merits of canon law, because such proceedings would have to follow the rules of romano-canonical procedure and a doubt should arise, whether lay people had the knowledge to lead the proceedings according to such provisions.

44 In a case between preachers of *Albrechtice* and *Ústí*, the arbiters could not reach a unanimous decision and so they delegate the dispute on the the superarbiter *Jan Kbel*. Tadra (ed.) (1900), p. 82.

45 Tadra (ed.) (1898), p. 39; Tadra (ed.) (1899), p. 340.

46 Tadra (ed.) (1899), p. 359.

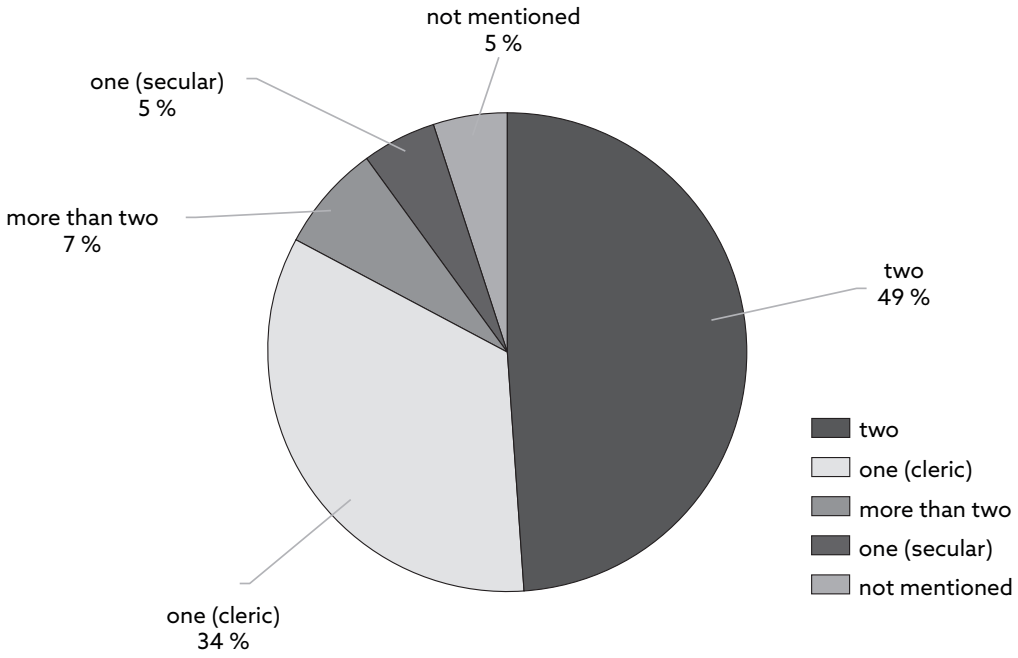
47 Tadra (ed.) (1900), pp. 118, 179, 226.

48 Tadra (ed.) (1900), p. 179.

49 Tadra (ed.) (1899), p. 230.

50 The most common selection befell onto the vicar general *Jan Kbel*, who were appointed in approximately 75/483 cases as an arbiter or superarbiter, in cca. 28/483 we encounter *Adam* of *Nežetice,* dozens of cases then befall onto *Ojíř* of *Domanic*, or on respected lawyers as Gregorius of *Bor.* Archbishop was elected in 15 cases, which almost all can be linked to *Zbyněk Zajíc* of *Házemburk*, but we also meet *Olbram* of *Škvorec* or *Jan* of *Jenstein*.

NUMBER AND STATUS OF ARBITERS IN *ACTA IUDICIARIA*



(2) *Merits of the contract*. The substantial part of the contract was usually introduced by a form "*super omnibus et singulis causis, litibus, questionibus et controversis inter ipsos vertentibus,*"[51] giving the arbiters right to decide any dispute the parties bring forward, or they were explicitly elected to a specific dispute between the parties. The judicial acts document arbitration contracts being concluded about disputes for instance over purchase,[52] detention,[53] various farm animals,[54] fees connected to ecclesiastical administration (tithes,[55] interests,[56] debts[57]), various disputes over defamation,[58] borders of parishes,[59] theft,[60] will,[61] dowry[62] etc. One case even suggests a settlement occurred

51 Tadra (ed.) (1896), p. 131.
52 Tadra (ed.) (1896), p. 85.
53 Tadra (ed.) (1893a), pp. 308–309.
54 Tadra (ed.) (1893a), p. 156.
55 Tadra (ed.) (1893a), p. 128.
56 Tadra (ed.) (1893b), p. 359.
57 Tadra (ed.) (1896), p. 191.
58 Tadra (ed.) (1893b), p. 200.
59 Tadra (ed.) (1893b), pp. 147–148.
60 Tadra (ed.) (1898), p. 257.
61 Tadra (ed.) (1896), p. 266.
62 Tadra (ed.) (1898), p. 215.

about a manslaughter,[63] which was against the rules of canon law, as heavy criminal cases couldn't be entrusted to arbitration. Furthermore, the judicial book presents the interconnection between the ecclesiastical and secular law, as in few cases we witness the contract being concluded also about cases *spirituali ac seculari.*[64]

(3-4) *Delegation of judicial power and renouncement of further litigation*. With delegation of *plenam potestatem*[65] within the contract, the parties didn't usually specify, which procedural rights were delegated onto the arbiters. The exceptions to this general statement are cases, where the *jurisperiti* are involved in the dispute. On 6th April 1406 provost *František* and doctor of decretals *Mikuláš Czeilsmeister* select their arbiter over a dispute regarding some vine obligation. They nominate cleric of Olomouc; canon *Záviš* of *Zap*, also doctor of decretals, who, on petition of both parties, is granted by the archbishop *"plenam auctoritatem testes producendi ad deponendum in huiusmodi causa...et eorum juramenta recipiendi, nec non alia ad huiusmodi actum necessaria faciendi."*[66] This demonstrates that the parties, as skilled in law, requested special delegation of procedural powers onto the arbiter, although that is perhaps why the very general clause *"plenam potestatem"* was used.

Next to delegation of procedural rights, the contracts routinely encompassed an explicit agreement wherein the parties willingly relinquished any pursuit of alternative legal steps or ongoing procedures, indirectly consenting to an extrajudicial settlement. For example, on the 23rd of November 1375, preacher *Mikuláš* from *Herrndorff* appeared before the *iudex ordinarius*, asserting his exemption from responding to the legal action initiated by *Jan* of *Obrzistwie*. This legal exception was grounded in the prior resolution of the matter through an arbitrary sentence (*arbitrium*). Legally, the proceedings could not proceed, if arbitrium had been pronounced. Consequently, the vicar general granted the party a grace period of five days to substantiate the conclusive resolution of the matter by the arbiter.[67] The contract could also renounce an ongoing proceeding before the ordinary judge or even before the papal court.[68] In one of the cases, the arbiter proclaims that the parties should renounce any ongoing procedure and if they were to continue in any legal action about the matter in the future, these legal proceedings should constitute no legal effect.[69] This underlines the private character of romano-canonical procedure and same legal effect as definite sentence. The enrolments also present renouncement of appeal,[70] which as a legal remedy would suggest the procedure to fall

63 Into the judicial registers was enrolled an arbitrary award of archbishop of Prague *Olbram* of *Škvorec* and provost *Vilém* of *Boleslav*, who made an amicable composition between *Prokop Nigrus* and *Oldřich Zagiecz*. The said *Prokop* was sentenced to give one hundred *sexagenas grossium* for the soul of someone called *Zeleny Zagiecz*. Tadra (ed.) (1896), p. 205.

64 Tadra (ed.) (1896), pp. 230, 332.

65 Tadra (ed.) (1893a), p. 93; Tadra (ed.) (1893b), pp. 36, 40, 54; Tadra (ed.) (1896), p. 256; Tadra (ed.) (1899), p. 273.

66 Tadra (ed.) (1899), p. 393.

67 Tadra (ed.) (1893a), p. 140. The matter is not mentioned anymore, which might suggest it was indeed conducted by the arbiter.

68 Tadra (ed.) (1893b), pp. 287, 325, 340; Tadra (ed.) (1900), pp. 30, 65.

69 Tadra (ed.) (1899), p. 408.

70 Tadra (ed.) (1900), p. 244.

under *arbitrator*, because canon law did not permit appeal against arbiter's decision and so formal renouncement would be with no legal consequences. The practice however suggests, the renunciation of appeal was done rather customarily, not being linked to specific type of arbitrary procedure.

(5) *Punishment*. An important element of the arbitrary contract was punishment that was bonded with *compromissum* by canon law. Although, the arbiters did not possess procedural right to execute the forfeiture of the punishment (the parties would then have to seek the execution by ordinary judge), the punishment sentence was included in practically all the enrolled contracts. The prescribed punishments were typically severe, emphasizing the importance of the contractual proceedings. Additionally, a common penalty included losing the case and facing excommunication if the party refused to comply with the imposed punishment. The punishment was usually significantly higher than the adjudicated sum; for example, in 1407 *Jan Kbel* was named arbiter to a case about 32 *groschen*, which contract was secured by 10 *sexagenas groschen*.[71] The sum of the punishment can be ruled out as the most trustworthy information enrolled by the notary, because the custom was that usually half of it was attributed to the reconstruction of Prague's church.[72]

The monetary sum could vary from none at all up to 1000 *sexagenam groschen*, which were set to set an arbitrary contract between abbot of *Břevnov* monastery *Divissius*, and squire *Václav Krater* of *Třebešovice*.[73] The monetary fines were usually accompanied by the penalty of losing the case, excommunication or prison. In over dozen cases, the parties entrusted the arbiter to set an according punishment.

Upon conclusion of arbitrary contract, the procedure could formally start. The legal precision of the arbitration was dependent on the chosen arbiter. Although canon law demanded the contract precise as to where the arbitration will take place, we encounter only few arbitrary contracts mentioning the place of the arbitration.[74] The judicial books suggest the arbiters conducted investigation of the case and could demand a written submission of evidence,[75] followed by witness statements.[76]

A noticeable difference that can be observed, as opposed to the cases governed by classic romano-canonical civil procedure, is that the arbitrary cases are usually concluded in a single or only couple of enrolments. The judicial book does document cases where examination of evidence or arbitrary sentencing was adjourned,[77] but the common

71 Tadra (ed.) (1900), p. 147.

72 Tadra (ed.) (1900), p. 168.

73 Tadra (ed.) (1899), p. 70.

74 An example can be drawn on dispute between noble *Vok* of *Valdstein* and Master of Law *Petr Zderas* on 17th November 1407, who are set to come before the court *"feria quarta proxima in quatuortemporibus proxime venturis in curia domini achiepiscopi Pragensis."* Tadra (ed.) (1899), p. 270.

75 A preserved means of evidence from 1345 was rewritten in 1408 into the registers to substantiate claims made by the parties. The written submission documents donation of an altar from *Vlach* of *Hostynie*. Tadra (ed.) (1900), p. 308.

76 Tadra (ed.) (1893a), p. 105; Tadra (ed.) (1893b), p. 203; Tadra (ed.) (1899), pp. 192, 367.

77 Tadra (ed.) (1893a), p. 109; Tadra (ed.) (1896), p. 274.

practice was to enrol the arbitrary contract and immediately, or on a set date, pronounce the sentence. This swift conclusion almost never happened in classical romano-canonical procedure, and we witnessed multiple and multiple adjournments slowing the judicial proceedings down. Although, at the turn of 14th and 15th centuries, we encounter a much more atomized approach to cases in the acts, and the parties' right to set the pronunciation date still notably sped up the proceeding.

During the proceedings, the parties could rely on the legal mechanism of exceptions for their defense. This institute, inherited from Roman law and integrated into the *ordo iudiciarius,* constituted an integral aspect of the classic romano-canonical procedure. This institute allowed each party the opportunity to challenge the procedural or substantial actions of the opposing party, without necessarily delving into the merits of the case. This principle is exemplified in a case between preacher *Jindřich* of *Všeruby* and another cleric referred to as *Bavarus.* In November 1374, they selected their arbiters, namely preachers from Pilsen and *Liticz*, tasked with rendering a decision or referring the case to the vicar. The proceedings resumed on May 22nd, during which the terms of the arbitrary contract were delineated for future arguments, particularly concerning the issues enrolled in the Land registers.[78] Both parties agreed to elect father *Sazem* as their arbiter. However, preacher *Jindřich* opted not to abide by the arbitrary sentence pronounced by father *Sazem,* choosing instead to disregard it and lodge an appeal and protest. The exceptions raised by *Jindřich* were dismissed by the vicar general, who asserted that the arbiter's character did not constitute an impediment to the case.[79]

A customary component of the arbitrary proceedings, particularly if the sentence was not promptly pronounced and was deferred to a later date, was the legal proclamation by the judge, urging the parties to commit to maintaining peace until the case reached resolution. This commitment is typically formalized through the stipulation "*Item treuge pacis debent servari per eos, donec dictum arbitrium per dictos arbitros terminetur.*"[80] Typically, this aspect was reinforced by a monetary fine[81] in cases of breach, or sureties were pledged as a security.[82]

Upon acquiring all the submissions from the involved parties, the arbiters were poised to render a decision based on legal principles, provisions and examinations,[83] referred

78 During the 13th century, land registers emerged alongside the Land Court as administrative records for the court's agenda. The oldest series were dedicated to court citations (*libri citationum*) and the registration of free immovable property belonging to the nobility (*libri contractuum*). Although the registers were further divided into series documenting debts on free immovable property (*libri obligationum*) and those recording the decisions of the Land Court (*libri memoriarum*), not much of the source material from before 1541 has been preserved in Bohemia, as the majority of the volumes were destroyed in the Prague fire of that year. Some of the remaining fragments were published in 19th century. Emler (ed.) (1870); Emler (ed.) (1872). More on the matter of later court's organization in Starý (2014).

79 Tadra (ed.) (1893a), p. 253.

80 Tadra (ed.) (1893a), pp. 309, 352; Tadra (ed.) (1893b), p. 148; Tadra (ed.) (1896), p. 315; Tadra (ed.) (1899), pp. 72, 270, 403, 405.

81 Tadra (ed.) (1898), p. 39; Tadra (ed.) (1900), p. 18.

82 Tadra (ed.) (1893b), p. 290.

83 Tadra (ed.) (1896), p. 264; Tadra (ed.) (1900), p. 187.

to as *arbitrium* or *pronuncciatio*.[84] In such cases, the arbitration award could result in one of three possible outcomes: (1) successful conciliation, where the arbiters facilitate an agreement between the parties, (2) a ruling favouring the party (partially[85] or fully). Although the initial terminological designation points to the formal proceedings of the *arbiter* rather than the *arbitrator*, the sentence was usually carried out quoted with the words "*arbitrati sunt, laudaverunt et diffiniverunt*"[86] implying an interconnectedness between different arbitrary practices in Bohemian legal tradition. Similarly to the classical romano-canonical procedure, notaries documented the case in a written instrument.[87] The arbitrary award was formalized towards the end of 14th century and typically followed similar structure; (1) proclamation of parties' sincere friendship (could be affirmed by shaking hands),[88] (2) structured arbitrary award, likely in accordance with the articles of the claim (3) determination of punishment or security, (4) willingness to subject to the arbitrary award. The quality of education has been also projected into the quality of pronounced sentences. Some of the arbitrary contracts and awards were pronounced in old Czech.[89] This occurred when the knowledge of Latin wasn't due to the selected arbiters particularly strong as in the case of preacher magister *Petr* of *Kostelec* and *Otík* tenant of *Buben,* who entrusted the arbitration *upon Jindřich Lacenbok* of *Chlum.* The arbitrary contract and award were then sent to Prague, to be enrolled into the judicial books.[90]

84 The parties secured independence of the judge's decision by each naming one arbiter; according to the source material, the arbitrary award did not necessarily have to involve two arbiters. In the case of a dispute between the preachers in *Libice* (?) and *Nebuželi*, each party appointed an arbiter, but only one of them was present. According to the source, based on the petition of both parties, he alone carried out the sentence. Tadra (ed.) (1896), p. 300.

85 Tadra (ed.) (1893b), p. 57.

86 Tadra (ed.) (1893a), p. 173.

87 Tadra (ed.) (1893a), p. 304.

88 Tadra (ed.) (1900), p. 140.

89 Tadra (ed.) (1896), pp. 309–310, The lack of Latin knowledge naturally serves as an explanation for pronouncing the arbitrary award in old Czech. However, on February 22nd 1407, *Adam* of *Nežetice* and *Řehoř* of *Bor* concluded an arbitrary award on behalf of *Jakub*, a preacher from *Beroun* and provost of the Dominican monastery, also in *Beroun,* which was written in old Czech as well. Both arbiters were doctors of decretals, skilled in canon law litigation. Moreover, over his life *Adam* of *Nežetice* held significant administrative offices of corrector of the clergy and bishop's official, indicating their undoubtedly high level of Latin proficiency. Additionally, the parties' status as clergy implies at least a basic knowledge of the Latin language. Perhaps in this case, the rationale lies in the merits as to why the arbitrary award was concluded in old Czech. Apparently, both parties incited the people of *Beroun* to conduct funerals through their institution. The arbiters deemed this action contrary to canon law, hence ruling that the parties should refrain from such behaviour. In the event of someone passing away without designating an institution to conduct their funeral, they should be buried by their parish district. Should anyone desire to choose the monastery as their final resting place, this action should be attested by two honourable witnesses, etc. Considering that the instrument would be read out loud in the parish to the inhabitants, the arbiters tried to ensure their understanding of the arbitrary award. It could be argued that this was the reason for the sentence to be drafted in old Czech, as the funeral proceedings touched on the public as well. Legally, this can support the claim that the official or vicar general, even if appointed as arbiters and not ordinary judges, wielded more procedural power than the other parties. This is because the award specifies the procedural steps of a funeral, thus making claims towards third-party subjects, which deviates from the legally derived arbitrary rights. Tadra (ed.) (1899), pp. 357–358.

90 Tadra (ed.) (1896), p. 310.

Contrary to the legal opinion presented by Durand, the decisions, much like the arbitrary contracts, in the vast majority, include a punishment clause in case of breach of the sentence. Although the arbiter did not possess the legal right to execute the sentence, the parties could have taken the arbitrary award to the ordinary judge in case of breach. Apart from the monetary fines, the punishments could also include prison or excommunication, a severe canon law penalty. No enrolment suggests the excommunication of the parties, but the practice rather suggest the punishments were included in certain sum as a customary norm. Sometimes, the set punishment could differ regarding the parties.[91] Depending on the amicable outcome of the arbitrary award, the costs of proceedings were either adjudicated to the losing party[92] or divided equally between the two.[93]

According to canon law, the arbitrary award should possess the legal force of a final court decision and could not be superseded by another sentence, thereby setting the legal obstacle of *rei iudicatae*. The practice of Bohemian arbitration suggests a very broad decision-making power of the arbiter, as evidenced by cases when the arbiter, within the arbitrary award, proclaims: *Item reservamus nobis potestatem a die hodierna computando ad medium annum, dictam nostrum pronuncciacionem corrigenda interpretandi addendi minuendi x. et eciam si opus fuerit de novo pronuncciandi."*[94] Although we encounter such a clause at the beginning of 15th century, a time of minor decadence of ecclesiastical administration, such a provision could be seen as a significant breach toward the legal certainty otherwise provided by immutable judgement. It can particularly be viewed as a massive breach of the free will of the parties that delegates power onto the arbiter in the first place. The source does not indicate that a change of the arbitrary award was common, and the additional legal forms can be attributed to the fact that the chosen arbiter was Doctor of Law *Jan Kbel*, it remains unclear, whether this institute was utilized.

Another peculiar customary practice was that the parties could overrule the definitive sentence with an arbitrary award. This likely applied only if they presented the matter to the vicar general. For instance, this is demonstrated in a proceeding on 7th June 1408 between *Jiří* of *Namislavia,* bachelor of decrees to whom *Heda* of *Slaná* apparently ceded the right to the disputed money, and *Humprecht* of *Zwolinawes*. Both parties chose the vicar general, *Jan Kbel,* as their "*arbiter*". He proceeded to pronounce the arbitrary award, presumably in favour of *Jiří*, as *Humprecht* was ordered to pay him 12 *sexagenas groschen* by the 25th of December. At the end of the award, he added "*Ibidem prefatus Georgius sentencie diffinitive, quam contra dictum Humprechtonem reportavit, ac omnibus juribus dicta causa sibi competendis cessit et renuncciavit."*[95] A pronounced definite sentence not challenged by appeal should be legally binding, so it seems peculiar the vicar general could

91 Tadra (ed.) (1899), pp. 352, 402.

92 Tadra (ed.) (1899), p. 310.

93 „*Item pronuncciavit, quod omnes impense et expense jincinde facte sompensatur."* Tadra (ed.) (1900), p. 140.

94 The case occurred between the wife of purgrave *Kuneš* of *Karlštejn Anežka* and preachers in *Lužce* that was conducted between the vicar general at the beginning of 15th century. The arbitration between the two parties was then carried out about 2 *sexagenam groschen* that were the legal costs of the previous dispute. The arbiter in this case was lawyer *Jan Kbel*. Tadra (ed.) (1899), p. 266.

95 Tadra (ed.) (1900), p. 292.

pronounce another sentence replacing the former one. A similar case was pronounced on the same day by *Jan* of *Kbely* and dean *Mikuláš*, a preacher in *Litoměřice*, implying that one of the parties already had a definitive sentence about the matter, which lost its effect with the pronunciation of the arbitrary award.[96] This shows that in specific cases, contrary to canon law, if the parties agreed, the arbitrary award could amend the previous proceedings.

With the delineation of arbitrary proceedings in Bohemia, last objective remains: to discern whether the practice distinguished between the proceedings conducted by an *arbiter*, *arbitrator* and *amicabilis compositor*. Previous interpretations hinted that the elements shifting the legal distinction towards one or the other proceeding were intertwined in the sources of medieval Bohemia. Consequently, the concluded theory, based on the source material, is that while legal commentaries formed part of curriculum of canon law at the University of Prague, and canon lawyers were quite aware of the distinction between the terms and knowledgeable about certain canon law requirements of the arbitration proceedings, the practice suggests that the forms of "*arbiter, arbitrator or amicabilis compositor*" were simply used to refer to the out-of-court settlements, rather than implying the type of the procedure. Additionally, since the out-of-court settlements were quite popular amongst public, maintaining differentiation with preachers or laypeople who lacked a legal degree would be rather challenging.

Conclusion

Medieval arbitration provided a welcoming alternative to the rigorous, legally, and formally strongly binding romano-canonical procedure. Bohemian legal history followed suit, with a notable increase in disputes seeking out-of-court proceedings by the end of the 14th century and into the turn of 15th century. Out of nearly five hundreds examined enrolments, around 277 were conducted after 1400, with over 174 taking place between 1407 and 1408, prompting questions about the preservation of the examined sources.

When *Zdeňka Hledíková* examined the development of the office of vicar general from its inception up until the Hussite revolution, she attributed the steep rise in disputes regarding ecclesiastical beneficium and rights of patronages in the 1380s to the fact that the jurisdiction over such disputes had been delegated to the vicar general from the bishop's official at that time.[97] The judicial registers of the official, apart from fragments, are not preserved today, leaving the direct explanation unclear, whether a similar shift couldn't have happened also with the arbitrary contracts.

In terms of the arbitrary proceedings, Bohemian practice demonstrates a loose implementation of canon law regulations. Arbitrary contracts and proceedings were conducted through customary forms, granting full jurisdiction to the arbiter rather than selecting specific procedural rights and diligently securing the abuse of power.

96 Tadra (ed.) (1900), pp. 292–293.

97 Hledíková (1972), p. 68.

The appointment of arbiters was carried out in compliance with the canon law, albeit against the pleas of the decrees of popes, who emphasized the importance of having an odd number in the arbitral collegium. However, Bohemian practice diverged, as 49 % of appointed arbiters were pairs. Nevertheless, the sources do not suggest that such appointments posed an issue in rendering judgements. Contrary to the canon law doctrine, laypeople were enlisted to preside over the cases, indicating the integration of other with other specific systems of medieval law. The disputes mainly revolved around property disputes; tithes and interests, although cases involving criminal law and inheritance law were also encountered.

The examination did not provide further evidence that the Bohemian practice, although aware of the theoretical distinction, recognized different types of arbitration. Instead of distinguishing between the legal terms, one form was utilized, encompassing all three terms, and referring to the wish of parties for an out-of-court settlement. A sole usage of the term *arbiter* thus did not indicate a specific type of procedure. On top of that the custom shows loose procedural norms and attribute great significance to the will of the parties in the arbitrary proceedings.

Bibliography

Unedited sources

Archiv Metropolitní kapituly u sv. Víta 624-XXIII/6 / Monasterium.net. Available from: Monasterium.net/mom/CZ-APH/AMK/624-XXIII%7C6/charter, cited on 31st March 2024.

Edited sources

Adámek, Jan (ed.) (2018): *Archiv český díl XLIII. Acta correctoris cleri civitatis et diocesis Pragensis annis 1407 –1410 comparata,* Praha.

Durandus, Gulielmus (1592): *Speculum iudiciale,* Francofurti.

Emler, Josef (ed.) (1870): *Reliquiae tabularum terrae regni Bohemiae anno MDXLI igne consumptarum. Tomus I,* Praha.

Emler, Josef (ed.) (1872): *Reliquiae tabularum terrae regni Bohemiae anno MDXLI igne consumptarum. Tomus II*, Praha.

Friedberg, Emil (ed.) (1959a): *Corpus iuris Canonici. Pars prior. Decretum magistri Gratiani,* Gratz.

Friedberg, Emil (ed.) (1959b): *Corpus iuris Canonici. Pars secunda. Decretalium collectiones,* Gratz.

Institutiones Iustiniani (1627), Lugduni.

A Lege, Leonardus (1574): *Summa totius Artis notariae Rolandini Rudolphi Bononiensis,* Venetiis.

Sassoferrato, Bartolus de (1495): *Concilia questiones et tractatus Bartolicum additionibus novis,* Venedig.

Tadra, Ferdinand (ed.) (1893): *Listář veřejného notáře ve XIV. století. Z rukopisu C. K. veř. a univers. knihovny pražské,* Praha.

Tadra, Ferdinand (ed.) (1893a): *Soudní akta konzistoře pražské I. (1373–1379),* Praha.

Tadra, Ferdinand (ed.) (1893b): *Soudní akta konzistoře pražské II. (1380–1387),* Praha.
Tadra, Ferdinand (ed.) (1896): *Soudní akta konzistoře pražské III. (1392–1393, 1396–1398),* Praha.
Tadra, Ferdinand (ed.) (1898): *Soudní akta konzistoře pražské IV. (1401–1404),* Praha.
Tadra, Ferdinand (ed.) (1899): *Soudní akta konzistoře pražské V. (1406–1407),* Praha.
Tadra, Ferdinand (ed.) (1900): *Soudní akta konzistoře pražské VI. (1407–1408),* Praha.

Literature

Biancalana, Joseph (2005): *The Legal Framework of Arbitration in Fifteenth-Century England*, in: The American Journal of Legal History 47/4, pp. 347–382.
Boóc, Adam (2019): *Comments on the Concept of Arbiter in Roman Law,* in: Journal on European History of Law 10/2, pp. 133–138.
Dufresne du Change, Charles (1840): *Glossarium mediae et infimae latinitatis*, Paris.
Eršil, Jaroslav – Pražák, Jiří (1956): *Archiv pražské metropolitní kapituly, 1. sv. Katalog listů a listin z doby předhusitské (1419)*, Praha.
Hledíková, Zdeňka (1972): *Úřad generálních vikářů pražského arcibiskupa v době předhusitské*, Praha.
Hledíková, Zdeňka (2010): *Svět české středověké církve*, Praha.
Kejř, Jiří (1962): *Les manuscrits du Décret de Gratien dans les bibliotheque thécoslovaques*, in: Studia Gratiana 8, pp. 3–113.
Kuehn, Thomas (1987): *Arbitration and Law in Renaissance Florence*, in: Renaissance and Reformation / Renaissance et Réforme 11/4, pp. 289–319.
Lefebrve-Teillard, Anna (2009): *L'arbitrage de l'histoire*, in: Archives de philosophie du droit 52, pp. 1–14.
Malaníková, Michaela (2008): *Rozhodčí a smírčí řízení jako součást brněnského městského práva*, in: Martin Nodl – Martin Wihoda (eds.): Rituál smíření. Konflikt a jeho řešení ve středověku, Brno.
Milotić, Ivan (2013): *An outline of the arbitrary procedure in Roman Law*. Available from: https://forhistiur.net/2013-01-milotic/?l=en, cited on 23rd March 2024.
Milotić, Ivan (2016): *Risks Associated with Arbitration Ex Compromisso in Roman Law,* in: Croatian Arbitration Yearbook 2016, pp. 1–15.
Ondrášková, Veronika (2023): *Vybrané instituty římsko-kanonického procesu v praxi soudů generálního vikáře a pražského oficiála ve 14. století. Exceptiones in ordine iudiciario*, in: Právněhistorické studie 53/2, pp. 11–34.
Powel, Edward (1982): *Arbitration and the Law in England in the late middle ages,* in: Transactions of the Royal Historical Society 33, pp. 49–67.
Růžička, Květoslav – Dostalík, Petr (2017): *Arbiter a arbitrium v římském právu a rozhodce a rozhodčí řízení v českém právu*, in: Petr Bělovský – Kamila Sloukalová (eds.): Caro Amico. 60 kapitol pro Michala Skřejpka aneb římské právo napříč staletími, Praha.
Starý, Marek (2014): *Přední klenot zemský,* Praha.
Stloukalová, Kamila (2012): *Exceptio jako římskoprávní institut a její druhy*, in: Michaela Židlická – Pavel Salák (eds.): Actiones, condictiones, exceptiones: 13. setkání právních romanistů České a Slovenské republiky, MU Brno 13.–14. 5. 2011, Brno, pp. 71–81.
Wojciechowski, Rafał (2010): *Arbitraż w doktrynie prawnej średniowiecza*, Wrocław.

Mimosoudní řešení sporů v pražské diecézi. Rozhodčí řízení před generálním vikářem a korektorem kléru na přelomu 14. a 15. století

Studie se věnuje právní praxi generálního vikáře a korektora kléru ve vztahu k zapisovaným rozhodčím řízením. Práce se zaměřuje na představení rozhodčího řízení v obecných normách kanonického práva, a to skrze právní sbírky Gratiánova dekretu a dekretálů papežů Řehoře IX. a Bonifáce VIII. Článek dále doplňuje výklad o právní sbírky právníků Rolandina a Duranda, které byly prokazatelně ke studiu a distribuci právních textů používány ve vrcholném středověku také v českých zemích. Cílem studie je odpovědět, jestli rozhodčí smlouvy a řízení, které byly do akt zástupných úřadů zapisovány, rozlišovaly mezi termíny *arbiter, arbitrator* a *amicabilis compositor*, k jejichž distinkci došlo právě díky středověkým juristům. Práce se dále věnuje otázce, jestli volení rozhodci odpovídali požadavkům norem kanonického práva, a jestli předmětné rozhodčí kontrakty byly uzavírány podle norem kanonického práva. Důraz je kladen na partikulární odlišnosti a pokus o rekonstrukci rozhodčího řízení od zanesení smlouvy do soudních manuálníků až po vynesení rozhodčího nálezu. K tomu účelu práce využívá metod obsahové analýzy skrze zpracování 483 zápisů generálního vikáře a 22 případů ze soudních akt korektora kléru.