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The Prague "*Parvus ordinarius*": Its Doctrine on Judicial and Extrajudicial Procedure

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Abstract

This paper focuses on the procedural manual *Parvus ordinarius* and its distinctive approach to conflict management. The work first appeared in Paris in two editions in the 1220s and 1230s. One of its copies, drawn up and glossed in the first half of the 14th century, was then brought to Bohemia. The main source for the study is this manuscript of the *Parvus ordinarius*, preserved until today in the National Library in Prague and bearing the reference VIII. G. 5. It has the advantage of being linked to a specific historical person who was demonstrably active in the legal profession and came to prominence during the Hussite Revolution (after 1419). According to the owner's note, the *Parvus ordinarius* from the Czech National Library at the Clementinum once belonged to Pavel of Slavíkovice. As shown in the first part of this paper, by 1436 Pavel had become a priest at the Church of St. Giles in Prague and a corrector, in other words, an ecclesiastical criminal judge who could benefit from the court manual in his daily routine. The second part of the text outlines the court procedure as reflected in the *Parvus ordinarius*. Here, the starting point of investigation is the basic triangle of persons involved in the proceedings before the court. In addition, principles and dynamics of the medieval Roman-canonical procedure are discussed, together with three fundamental procedural steps, i. e. a citation, a joinder of issue, and a final sentence. In the third part, a more detailed analysis of the doctrine of extrajudicial proceedings is conducted, drawing mainly on the rubrics *de compromissione* and *de transactionibus* and contextualizing the *Parvus ordinarius* with the teachings of medieval proceduralists.

Keywords

canon law – Roman-canonical procedure – procedural manuals – extrajudicial proceedings – Bohemia – Middle Ages

The Clementinum manuscript and its owner

The objective of this paper is to provide an introduction to the manual of court procedure known as the *Parvus ordinarius* and its distinctive approach to conflict management. Before doing so, however, it is necessary to justify the broader focus of this paper and explain why courts and judges also need to be addressed when discussing medieval arbitration. In that regard, we may recall an oft-repeated phrase by medieval jurists that goes "*arbitria imitantur iudicia*." Arbitration, they used to say, imitated the judicial process.[1] The *Parvus ordinarius* not only shares a similar idea but also includes two separate chapters devoted to arbitration and amicable settlements. Its importance for Czech legal historiography is due to the fact that the courtroom handbook is uniquely preserved in the collection of the National Library at the Clementinum (sign. VIII. G. 5.). The "Manuscripta juridica" online database records the *Parvus ordinarius* in 13 codices, scattered throughout Germany, Poland, England, Spain, France, Switzerland, and the Czech Republic.[2] Still, according to available research tools, only the codex in Prague is accompanied by a lengthy marginal gloss written by a legal expert (whose identity is shrouded in mystery) for use by practicing lawyers. The editor of the court book, Ludwig Wahrmund, was unaware of the manuscript at the Clementinum.[3] Therefore, the legal comments found exclusively in this copy have not provoked any significant response to date in the scholarly community.

In addition, the source in question has the advantage of being linked to a specific historical person who was demonstrably active in the legal profession. According to the owner's note, the *Parvus ordinarius* from the National Library once belonged to a certain Pavel of Slavíkovice.[4] This man, who came to prominence during the Hussite Revolution (after 1419), was a book collector. More importantly, though, he was also a law practitioner. He studied at the University of Prague, receiving a bachelor's degree in liberal arts in 1395. Shortly thereafter, he began to work as a notary. This was just the starting point of his career. In the light of the scarce evidence, we can assume that by 1436 Pavel had become a priest at the Church of St. Giles in Prague and a corrector, in other words, an ecclesiastical criminal judge who benefited from the court manual in his daily routine.

After clarifying the "life setting" of this procedural treatise, we have reached the point where a short remark on *ordines iudiciarii* is in place.[5] These documents are systematic

1 Litewski (1999), p. 584. Further, see Negro (2019), pp. 39 et seq. For their help with sources for this paper, I would like to thank Doc. Dalibor Havel, Dr. Lukáš Führer (Masaryk University in Brno), and Dr. Vojtěch Večeře (Institute of History of the Czech Academy of Sciences).

2 Manuscripta juridica. Available from: https://manuscripts.rg.mpg.de/, s. v. *Ordo iudiciarius „Parvus ordinarius"*, cited on 24th March 2024.

3 A critical edition, based on the manuscripts from Königsberg and Paris, was published by Wahrmund (ed.) (1901).

4 Národní knihovna České republiky Praha, sign. VIII. G. 5., on the front endpaper of the manuscript, as reproduced by Truhlář (1905), p. 589: "Iste liber est Pauli de Slauicowicz, qui debet dari ad librariam post mortem". On Pavel of Slavíkovice, see Tříška (1981), p. 439, and, with additions, Hruza (2002).

5 On the literary genre of the *ordines iudiciarii*, see, among others, Fowler-Magerl (1994 and 1984), both with an extensive bibliography.

treatises written from the 12th century onwards to explain the doctrine and conduct of judicial proceedings as a whole. Since they were a part of the culture of learned law, they were written in Latin and their users were trained, more or less, in *ius commune*. The *Parvus ordinarius*, which supposedly first appeared in Paris in two editions in the 1220s and 1230s, was an example of this kind of literature.[6] Its author remains nameless. What is certain is his way of working. The anonymous Parisian tended to simplify legal matters to a minimum and arrange them systematically, thus reducing the legal process to a sequence of fundamental procedural steps. Given this approach, the *Parvus ordinarius* is considered representative of popular legal literature. One of its copies, probably drawn up and glossed in the first half of the 14th century, came into the hands of Pavel of Slavíkovice without us knowing how or when. It is this Prague manuscript, once owned by the ecclesiastical judge Pavel, on which we shall concentrate here. Even if we might not expect this work to have made any substantial contribution to the development of canon law theory, we believe that it is nonetheless valuable for insight into the use of church law in judicial procedure and practice in medieval Bohemia.

Court procedure

Turning to the nature of the judicial process as reflected in the court manual of Pavel of Slavíkovice, it seems convenient to start with a quote: "Since the settlement of disputes has to be concluded by a pronouncement by the court, it is imperative to see what *causa* and *iudicium* is, what demands are made upon the court, and what order should be followed until a decision is reached."[7] These are the first words and, at the same time, the authorial plan according to which the *Parvus ordinarius* is arranged. As a result, readers get familiar with procedural acts and their logical sequence after they have mastered the basics of judicial organization.

What strikes us at first glance are the keywords given at the beginning of the treatise: *causa* and *iudicium*, each describing the process at different stages. *Causa* appears in various contexts but does not always have the same meaning. It is defined both generally as the controversy between the plaintiff and the defendant[8] or, more specifically, as the preparation of the case beginning at the summons of the parties to the first hearing.[9] The *iudicium*, or judgement, follows this stage, being a legal act involving three persons:

6 Wahrmund (ed.) (1901), pp. 3–14, or, more recently, Fowler-Magerl (1994), pp. 55, 88–89, and Fowler-Magerl (1984), pp. 149–151.

7 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 174r.: *"Quia causarum decisio per iudicium habet terminari, videndum est, quid sit causa, quid iudicium, quid exigatur ad iudicium et quo ordine procedatur ad decisionem causae."*

8 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 174r.: *"Causa est litigium inter actorem et reum."*

9 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 175r.: *"Causa incipitur, quando partes in iudicium evocatae in forma iuris."* Compare Litewski (1999), p. 76.

the judge, the plaintiff, and the defendant.[10] This three-person concept was commonplace in medieval jurisprudence. It expresses both the main participants' roles and the adversarial nature of the process, with two adversaries arguing over who is "right."

As usual in the writings of medieval proceduralists, the focus lies on the basic triangle of persons involved in the proceedings before the court. Simply put, the opening section tells us who is who in the courtroom. In the first place, the holder of judicial power, or *iudex*, comes up. The handbook refers to this person sometimes in the singular, sometimes in the plural. Occasionally, he even bears the title of official, that is, the bishop's alter ego for his area of jurisdiction. Considering the terminology, the most likely explanation for such inconsistency is that the book was a guide for ecclesiastical courts in general and did not target any particular institution.

Regardless of the title, the task for judges in Roman-canonical procedures was to decide a dispute. The *Parvus ordinarius* not only confirms this general view but adds a comment on a good judge, recognizable by the ability to put an end to the conflict between the parties once and for all.[11] In this respect, churchmen with judicial power differed from judges in medieval provincial courts, who presided over trials without having exclusive or even significant influence on their outcome. The reason is that, in line with provincial law, consensus had to be reached among the broader legal community. Despite what some textbooks have suggested, there was no unbridgeable gap between the "learned" and "unlearned" judiciary.[12] At the very least, a collective body of legal counselors shaped decision-making in the ecclesiastical forum, too. Although they were not always vital for the functioning of the judicial system, they frequently appeared in medieval writing on procedure.[13] The same is true for the *Parvus ordinarius*, which briefly mentions how advisors (*prudentes*, *boni viri*) could help a judge. Apparently, they quantified the costs suffered by the plaintiff due to a contumacious defendant or evaluated the evidence before the final decision.[14]

While elaborating on the figure of the decision-maker, the author of the *Parvus ordinarius* relied on the Roman legal concept of distributive justice.[15] Under the impact of Ulpian's dictum, revived in medieval jurisprudence, this text insisted that judging is

10 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 174r.: *"Iudicium ergo ita diffinitur. Iudicium est actus trium personarum, scilicet iudicis, actoris et rei."* Compare Litewski (1999), p. 51; Nörr (1967), pp. 7 et seq.

11 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 174r.: *"Iudex est, qui ... finem imponit litibus."*; fol. 179r.: *"boni iudicis est terminare causas."* Compare Litewski (1999), pp. 83–84, 87, and more generally, Schrage (1992), pp. 138–139.

12 Nehlsen-von Stryk (2012).

13 Summarized with bibliography by Litewski (1999), pp. 130–132, and Nörr (2012), pp. 19, 182 et seq. From a broader perspective, see Helmholz (2020).

14 Compare, e.g., Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 181r.: *"per bonorum virorum arbitrium expensae disponentur"*; fol. 184v.: *"de bonorum virorum consilio, ex quo testes eius non concordant."*

15 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 174r.: *"Iudex ... finem imponit litibus iustitia mediante. Iustitia est potentia, qua iudex unicuique tribuit, quod suum est"*. This concept of justice is addressed, among others, by Kuttner (1992), pp. 75–79, and Bejczy (2005). The medieval sources were also collected by Weigand (1967), pp. 14, 144, 242–243, 454 et seq.

nothing but giving each person their due. Through this recourse to the idea of *suum cuique tribuere*, it expresses the fundamental judicial task of helping individuals assert their rights. To make the point even clearer, the anonymous writer gives an example of injustice caused by awarding the plaintiff more than he was entitled.[16] We are talking about an overclaim already well-known to Roman jurists as *pluris petitio,* which resulted in the plaintiff losing his case.[17] The court book draws on the Justinian codification when defining justice and listing four ways overclaims are made (*causa*, *tempore*, *re*, *loco*).[18] Its novelty lies in using a mnemonic verse (*versus*), making it easier for the medieval reader to learn and remember details.[19]

In the chapter on the final sentence, one more directive is given to judges in their task: They should pass the final judgment according to the things alleged and proven by the parties, not according to their conscience.[20] In modern theory, this is regarded as one of the distinctive features of the process and labeled as an adversarial principle in the Continental tradition.[21]

Like other medieval *ordines*, the *Parvus ordinarius* offers a typology of judges.[22] While it is probably more common in the learned discourse in the Middle Ages to encounter Tancred´s threefold division between ordinary judges, delegated judges, and arbitrators, here, only two classes of judges emerge.[23] An "ordinary" judge (*ordinarius*) is mentioned as someone who obtained the jurisdiction attached to the office after being entrusted with that office. An "extraordinary" (*extraordinarius*) or delegated judge is treated as a separate category. As the title implies, such a judge received a mandate from a secular ruler, the pope, or a lower clergyman to pronounce judgment in a specific case. Although such judges had limited jurisdiction *ad hoc*, they could appoint subdelegates to conduct any stage of the proceedings, with or without reserving the right to decide the case on their own.[24] That said, the two types of judges shared common ground. Despite

16 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 174r.: *"per iustitiam plus petendi totius debiti summa evacuatur ... si peteretur plus malitiose et posset probari per testes, a tota causa deberet cadere ut dictum est."* The Königsberg manuscript has a better reading here. Wahrmund (ed.) (1901), p. 15: *"per iniustitiam plus petendi."*

17 On the Roman law, see Kaser–Hackl (1996), pp. 323–326, 586, or Babusiaux–Baldus–Ernst (2023), pp. 394–395, 457, both with references for further reading.

18 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 174r.: *"dicendum est, quot modis plus petitur, qui notantur in hoc versu: plus petitur causa, tempore, reque, loco."*

19 An excellent introduction to the topic is given by Black (2014).

20 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 184v.: *"iudex secundum rationes et allegationes debet formare motum animi sui."*

21 This subject is comprehensively treated by Nörr (1967), or, more briefly, in Nörr (2012), pp. 188–190.

22 For an overview, see Litewski (1999), pp. 93 et seq. One may also consult Brundage (2008), pp. 371 et seq.

23 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 174v.: *"iudicum alius ordinarius, alius extraordinarius sive delegatus, quod idem est ... Ordinarius est ille, cuius iurisdictionis interest, ex officio dignitatis commissae sibi sine appellatione vel delegatione officii quaerimonia mediante causas pertractare. Delegatus est ille, qui a domino papa vel a principe vel alio praelato est constitutus."*

24 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 174v.: *"delegatus ... potest alium sibi subdelegare ad principium et ad medium et ad finem si velit, potest tamen sibi sententiam reservare."*

the differences in the source of their power and the extent of their competence, the procedural order they observed in the court was uniform.[25]

Judges aside, the treatise could not ignore the parties as necessary trial participants. As noted earlier, these were the plaintiff (*actor*) and the defendant (*reus*), who faced one another in the courtroom. The judgment, *iudicium*, was a legal concept that included the two parties with conflicting interests. The proceeding could transpire only with them. The same is true of arbitration, as may be observed in the relevant chapter of the *Parvus ordinarius*, which contains a general reference to the parties (*partes*) submitting to the arbitrator.[26] Their roles and the entire procedural pattern for the litigation were based on Roman law.[27] The plaintiff was active, addressing the judge with a request for intervention on official authority.[28] His opponent, on the contrary, was passive and resisted the "attack" of the suing party.[29] The doctrine promulgated in the collections of papal decretals[30] and influenced by Isidore's Etymologies[31] then led the author of the court book to a statement similar to what we can find in the work of the *Ordo antequam.*[32] Just like there, the present text explains the Latin name for the accuser using *agere* (to sue), whereas the name for the defender derived not from *reatus* (wrongdoing), but from *res* (issue). This etymological digression is not an end in itself, for it highlights the fact that the judicial order applies equally to criminal and civil litigation.

If we piece together all the information scattered throughout the treatise, it turns out that the two conflicting parties were the driving force behind the process. According to procedural law, litigation could only be initiated with a citation, that is, by summoning the defendant to court. The court did not cite anyone on its own. It acted only at the request of the plaintiff[33] and followed the rule that the written citation should at least contain date, place, and participants of the hearing.[34] Naturally, litigation did not always have to result in a win–loss situation. If both parties agreed, they were free to choose an alternative method of conflict resolution. The downside was that the court could not hear the matter once it had been resolved in this manner.[35] It was entirely up to

25 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 180v.: *"Ne ergo credat aliquis, quod aliter iudiciario ordine procedatur in iudicio ordinario et aliter in extraordinario."*

26 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 188v.

27 Litewski (1999), pp. 145–155.

28 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 174r.: *"Actor est, qui agit impetendo aliquem coram iudice."*

29 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 174r.: *"Reus est ille, qui impetitur. Et nota, quod reus ibi non dicitur a reatu, sed a re illa, super qua impetitur ipse reus."*

30 X 5.40.10. Richter–Friedberg (eds.) (1959), col. 914.

31 For the background, see Loschiavo (2016); Loschiavo (2014).

32 Riedner (ed.) (1914), p. 8.

33 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 175r.: *"Negotium incipitur, quando citationis edicto aliquis ad judicium evocatur."* See also the rubrics *De citationibus* and *Forma citationis*, fol. 176r–177r.

34 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 177r.: *"Oportet ergo, quod et dies et locus et personae tam actoris quam rei in citatione exprimantur."* On the citation and its content in general, see Helmholz (2010), here esp. pp. 264–269.

35 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 175r.: *"multa sunt, quibus processus negotii de-*

the adversaries whether they preferred a settlement as a win–win outcome or took their problem to an arbitrator who had the advantage of their trust. Given that the parties had the subject matter and course of the dispute in their hands, it seems appropriate to speak about a party-controlled proceeding or *Parteiprozess*.[36]

Moving on from the participants to the principles of the medieval Roman-canonical procedure, we shall start with a couple of essential formal rules (*substantialia* or *naturalia iudicii*) that had to be followed under all circumstances. Although they were recognized by medieval jurisprudence in general terms, all kinds of exceptions were allowed.[37] A brief remark in the *Parvus ordinarius* inspired by general canon law relates to this particular case. The treatise briefly stated that there was no need to observe judicial order when prosecuting notorious criminals.[38] Needless to say, this is a reference to an abbreviated and simplified procedure, otherwise known as a summary procedure, applied to punish selected crimes that received publicity.

When dealing with the issue of due process, canonists found a great source of inspiration in the Code of Justinian. That Roman Emperor prescribed that a judgment contrary to the judicial order should become null and void.[39] Medieval scholars built on his codification, yet they did not reach a consensus on the list of conditions necessary for a fair trial. The present handbook could not avoid the topic either. It reproduced legal forms and, while doing so, explained a considerable number of clauses in the papal mandates of delegation.[40] On that occasion, with minimal theorizing, it also dealt with several obstacles that might prevent a judge from making a valid decision. It gave three examples: First, parties were not duly summoned and, as a result, failed to appear in person at the sentencing.[41] Second, a decision was made without an investigation of the disputed facts.[42] Third, a judgment was passed that violated the law, meaning that it infringed the right of the plaintiff (*ius litigatoris*) or the legal order (*ius institutionis*) set up by the ruler.[43]

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ducendi in iudicio praependitur, utputa compromissio sive arbitrium et transactio." The Königsberg manuscript has a better reading here. Wahrmund (ed.) (1901), p. 220: *"praepeditur"*. Compare Buchwitz (2020), p. 69.

36 Nörr (1993), pp. 90–94.

37 For orientation, see Nörr (2012), pp. 48–52; Nörr (2010); Nörr (1993), pp. 96 et seq.

38 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 186r.: *"Breviter dicimus, quod in notoriis non habet locum appellatio nec etiam in ipsis requirendus est ordo iuris."*

39 C 7, 45, 4. Krüger (ed.) (1877), p. 683.

40 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 176r.: *"diversis clausulis, quae in rescripto domini papae continentur."* On the influence of the papal chancery in general, see Sayers (1999).

41 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 175v.: *"Ista vero clausula: causam audiatis etc. apponitur, quia inter absentem maxime non citatum vel monitum non debet fieri sententia."* Compare Herde (1970b), p. 717, s. v. *citare*.

42 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 175v.: *"causam audiatis etc. apponitur, quod absque cognitione causae ad diffinitivam sententiam nullo modo est procedendum."* Compare Herde (1970a), pp. 200–201, 219 et seq.; Herde (1970b), p. 718, s. v. *cognitio*.

43 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 176r.: *"fine canonico etc. apponitur, quia non debet ferri sententia contra ius litigatoris vel contra ius institutionis. Ius institutionis dicuntur ipsa praecepta a principe constituta. Ius litigatoris est iustus titulus vel iusta causa, quam habet aliquis in re possidenda."* Compare Herde (1970b), p. 733, s. v. *decidere*.

Apart from these severe irregularities in the proceedings, formal requirements were imposed by canon law on how the judge and the parties should proceed during the trial. There is no doubt that the *Parvus ordinarius* testifies to the high standards of court recordkeeping and document handling in general. At the same time, it would be a mistake to conclude that everything that happened in court had to be written down. According to the famous constitution *Quoniam contra falsam,*[44] promulgated by the Fourth Lateran Council in 1215 and quoted in our court book, Roman-canonical procedure was partly oral and partly written.[45] Some procedural acts took a written form, such as a plaintiff's petition initiating the proceedings, known as the *libel*;[46] the sentence;[47] and, of course, the act book, the purpose of which was to record the "history" of the dispute.[48] In contrast, oral presentations by the plaintiff and the defendant were sufficient or even expected as normal at times, for example during the *litis contestatio* when the parties joined the issue to the libel thereby opening a path for a hearing on the merits.

Taking a closer look at the dynamics of the proceedings is the next point that can help us better understand what was going on in the courtroom. The content of the *Parvus ordinarius* is arranged logically in terms of what steps all participants in the trial took and in what order. Given that samples of related documents supplement the exposition of the law, they also increase the user-friendliness for medieval practitioners and modern historians. In addition, a medieval glossator attached a note to the first folio of the treatise. By simply taking a verse from the treatise *Ordo antequam*, he facilitated navigation through the text and provided his readers with a mind map:

> First, the judge summons the accused, then hands them the complaint and gives them time for deliberation; about the suit brought in court, the issue is joined; afterwards, oaths of calumny are sworn; witnesses and documents are gathered, then examined by the court and exposed to objections; and after that, let the final sentence be passed and if it be unjust, let the dissatisfied party be allowed to appeal.[49]

44 X 2, 19, 11. Richter–Friedberg (eds.) (1959), coll. 313–314. On its impact in Bohemia, see, e.g., Boháček (1967), pp. 290 et seq.

45 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 188r.: *"Quod autem dictum est extra de probationibus, c. Quoniam contra falsam, quod non est credendum iudicibus, nisi quatenus legitimis constiterit documentis, hoc introductum fuit, quia praesumitur, quod consensu utriusque partis ea, quae facta sunt, debeant sigillari et hoc, quam cito acta sunt, unde praesumitur, quod in scriptis fideliter fuerint redacta."*

46 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 178r.: *"libellus conventionalis debet scribi et etiam roborari."*

47 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 184v.: *"Conficientur litterae super diffinitiva sententia in hunc modum ..."*

48 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 179v.: *"acta iudicii debent redigi in scriptis."*

49 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 174r. (a gloss on the lower margin): *"Primo reum iudex citat et post hec liber illi fertur / inducie dantur; de reque petita / Lis contestatur; sequitur calumpnia partes; / Querantur testes ac instrumenta sequantur; / Producti manifestentur; super hiis placitetur; / Diffinitiva post hec sententia detur; / Que mala si fuerit, detur appellatio parti."* Compare Riedner (1914), p. 12, and commentary by Spiess (1994), p. 205.

In the remaining manuscript pages, the judicial trial is elaborated in greater depth. While we cannot cover all of the nuances here, we can highlight three crucial moments in the proceedings. The starting point is a citation. This act entails the plaintiff making a complaint to the court asking the judge to summon the defendant. Though not explicit, the purpose was to acquaint the court and defense with the nature of the claim and prepare the case for a hearing.

Although the citation practice of church courts is not described coherently, the overall picture is apparent. The plaintiff asked the court to give notice to the defendant, which the treatise says was done in writing using established forms (*edictum citationis*). The plaintiff could then appear in person at the court hearing on the appointed date or send a proctor on their behalf. Standing before the judge, the suing party recited the words of the opening statement: *"I am here on my own behalf and have brought before you on this day such and such a person or someone to represent him here."*[50] After this speech, the two disputants or their representatives are identified through letters of authorization, followed by a public declaration by the plaintiff about whom he was suing, why, and what for.[51] The opposing party could then take time for deliberation. Once the time had run out, the parties met again before the judge. A written complaint stating the reasons for the suit was presented and handed over to the defendant if the defendant wished it to be put into writing.[52] This had the effect of determining the subject matter of the dispute and the parties involved.

Skipping to the end, typically, trials concluded with the final sentence towards which the judge, the plaintiff, and the defendant directed their efforts. As we have seen, in theory, the decision is shaped in the judge's mind by only the knowledge gathered in the courtroom while listening to the parties' arguments and examining the evidence. Another strict requirement for the judge was the need to announce the verdict to both parties in open court (*in publicum*) and record it in writing (*litterae*). As a handbook for practitioners, the source at hand provides forms for both of these actions. According to these forms, the judge, in the sentencing, summed up what witnesses were presented and heard.[53] Unlike today, however, judges were not required to state how they dealt with

50 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 178r.: *"Statuta vero die et iudicibus sedentibus pro tribunali, id est in forma iuris, poterit poni ab actore, si sit praesens: Ego sum hic pro me et feci citari tales coram vobis ad hanc diem, si aliquis sit pro ipsis, hic compareat."*

51 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 178r.: *"Firmatis partibus in iudicio statim actor debet apponere in iudicio, quem appetat, propter quid et ratione cuius, cum in libello conventionali debeat contineri tam persona actoris quam rei."*

52 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 178r–178v.: *"libellus conventionalis debet scribi et etiam roborari et, quod plus est, adversario suo porrigi vel offerri. Ex hoc infertur, quod reus potest petere ab actore, petitionem scribi in libello et etiam sigillari et ab actore sibi."*

53 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 184v.: *"Diffinitiva sententia est pronuntiatio iudicis, per quam diffinitur super principali. Dies vero statuta ad audiendam difliuitivam sententiam, iudex in publicum recoliget ea, quae dicta sunt a testibus utriusque partis vel alterius tantum, si altera pars produxerit testes, et si visum fuerit iudici, quod alter probaverit intentionem suam, ita dicet: Quod alter dixit, ita testes ipsius in hoc concordant, secundum quod nobis visum est et de prudentium virorum consilio, rem, de qua erat contentio coram nobis, isti adiudicamus. Si vero actor non probaverit intentionem suam, de bonorum virorum consilio, ex quo testes eius non concordant, ipsum, contra quem testes inducti fuerunt, ab impetitione ipsius actoris absolvimus."*

the testimony in their reasons.[54] The defendant was either condemned to do something (*condemnare*, *adiudicare*) or absolved (*absolvere*), and here it is worth noting that the Roman legal terms were adopted.[55] If a party subsequently applied for compensation, the judge had to determine the cost of the proceedings.

When going through the stages of the trial, we also need to address joinder of issue. The reason is that in medieval doctrine this act was regarded as a significant milestone in progressing from the citation to the verdict.[56] The joining of issues was preceded in time by the presentation of the libel and followed by the calumny oath. A didactic verse reproduced in the court book makes it clear that by swearing this oath, the parties showed their determination to defend their rights in good faith, stick to the truth, and not cause delay. In the *Parvus ordinarius*, a special chapter deals with joinder of issue. From there, we learn that it was practically nothing but an exchange of words between the plaintiff and the defendant. A claim made by the plaintiff was either confirmed or denied by the defendant, with the result that in the first case their dispute concluded and in the second case the case was officially contested (*lis est contestata*) and the hearing started.[57]

This legal concept described by the *Parvus ordinarius* had a long tradition going back to the Code of Justinian. The same can be said of the effects of the plaintiff's allegation and the defendant's dismissive answer. On the one hand, dilatory exceptions were not permitted after a joinder of issue.[58] These weapons in the defendant's arsenal aimed to achieve a temporary stay in the proceedings and had to be made during the preparatory phase. On the other hand, only after joinder of issue was it possible to proceed to the examination of witnesses and, in general, the delivery of a judgment on the merits.[59] Thus, the sequence of procedural steps broke down into two separate phases, preparatory and adjudicatory, creating the dichotomy of the Roman-canonical process as its peculiar feature.[60]

54 For details, see Brundage (2008), pp. 377–382.

55 One may consult Heumann–Seckel (1914), pp. 5, 14, 87; Gradenwitz et al. (1903), coll. 67–68, 223–224, 870–874.

56 A good outline is provided by Helmholz (2000), here esp. pp. 76 et seq. In greater detail, see Schlinker (2008).

57 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 180r.: *"Habito autem tempore deliberationis et inscriptis diversis clausulis in libello conventionis cum suis articulis aut contendet aut cedet. Si cedat, non amplius deducetur causa in iudicium. Si contendat, fiat ergo litis contestatio super principali. Notandum est ergo, quod litis contestatio nihil aliud est, quam per affirmationem vel negationem partium alterultrarum responsio."*

58 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 179r.: *"dilatoriae vero post acceptationem iudicum vel ante litis contestationem solum habent locum."*

59 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 183v.: *"Lite vero contestata proceditur ad productionem testium et etiam ad diffinitivam sententiam."*

60 Nörr (2015), p. 22.

Extra judicial disputes

Apart from general rules for ecclesiastical courts, this procedural treatise has special provisions for arbitration agreements and amicable settlements, to which we will devote our remaining space. With that said, there is a caveat. The two chapters titled *De compromissione* and *De transactionibus* are disappointing in so far as they reveal very little about the dynamics of out-of-court conflict and its resolution.[61] The author's intention is different, attempting to clarify the essentials and eliminate any possible overlaps in the work of judges and arbitrators. Obviously, an effort was made to define the spheres of competence of each and limit judicial interference in arbitral proceedings. At the same time, the church's interest was protected in case of any danger of being affected by amicable composition or arbitration. Overall, one gets the impression that this court book places more emphasis on judicial economy than speed and cost savings, which were well-known incentives for disputing parties to avoid court.[62]

Exactly how arbitrators were to deal with disputes and how adversaries were to proceed when seeking a compromise is not explicitly set out in the manual. A short note in the arbitration agreement form about the "procedure of the dispute settlement" (*ordo compromissionis*) does not help much either.[63] Nowhere is it stated which procedural law (*ordo*) should be applied. Nevertheless, the fact remains that the chapter on arbitration is an integral part of the text for use by judges and it anticipates not only interactions with arbitrators but also familiarity with their practices. Given that the handbook did not provide its users with specific "instructions" applicable only to conducting arbitration, we may presume that it took for granted that the arbitrator (*arbiter*) was to follow the same rules as a judge.

From the readers' perspective, this question was resolved by an unknown glossator, who got hold of the manuscript in the mid-14th century and edited the original text. By the time Pavel of Slavíkovice could browse through the pages of the *Parvus ordinarius*, a simple note had already been added to the relevant section in the lower margin. The gloss reads as follows: "An *arbiter* shall respect the judicial order and the material rights of the parties, an *arbitrator* only the material rights of the parties, and an *amicabilis compositor* is bound by neither."[64] A search for the Latin term *arbitrator* in the treatise would be in vain, so we cannot elaborate on this matter. With the other two words, fortunately, we are on safer ground, and there is no doubt that the *arbiter* discussed in the treatise and its gloss was supposed to comply with the judicial order.

61 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 188v–189r.

62 See, inter alia, Murauer (2002), pp. 39–41, with further references.

63 Compare Litewski (1999), p. 584.

64 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 188v. (a gloss on the lower margin): *"Arbiter iuris ordinem servare debet et iura partium intueri. Arbitrator tenetur tantum iura partium intueri. Amicabilis compositor ad neutrum tenetur."* From a vast literature on the distiction between *arbiter*, *arbitrator* and *amicabilis compositor*, see, e.g. Lefebvre–Teillard (2008), pp. 377 et seq.; Martone (1984), pp. 73 et seq.; Fowler (1976), pp. 143 et seq.; Ziegler (1967), all with bibliography and references to the sources of the medieval learned law.

Arbitrators, described in Latin as *arbitri*, are dealt with in the context of an arbitration agreement (*compromissum*). Such an agreement entails that the contracting parties act "for the sake of peace"[65] and that "by their will, they consensually appoint one or more persons to decide some disputed question submitted to them."[66] While the doctrine was based on Justinian law,[67] its formulation is unique. Even Wiesław Litewski, a leading expert in this field, could not find any convincing parallel.[68] The sure thing is that, as a legal concept, arbitration agreements in the *Parvus ordinarius* encompassed several aspects, such as the consent of the parties, the appointment of arbitrators, the disputed claim limiting arbitral jurisdiction, the peaceful method of conflict resolution, and social harmony as the goal.

Concerning the form, most medieval proceduralists did not require a written agreement on the arbitrators, and the *Parvus ordinarius* was no exception. Nevertheless, even within arbitration, contractual freedom had certain limits. Under sanction of nullity, there had to be a fixed time limit for the arbitral award and additional security for the obligation provided by taking an oath, giving a promise of fidelity or stipulating a contractual penalty. If the arbitrators exceeded the time limit, they were no longer entitled to make a decision; if they did so, their award was unenforceable.[69]

The largest portion of the chapter on arbitrators concentrates on competence norms.[70] These include, above all, a prohibition on appealing an arbitrator's award. Such a provision was widespread in medieval learned law but was just as often broken by minor exceptions.[71] The *Parvus ordinarius* takes the different, more rigorous approach of not allowing any grounds for appeal at all. This position is theoretically justified by the nature of appeal (*natura*), conceived as a defense against the injustice caused by the judge and no one else.[72] A further safeguard against conflicts of competence is the rule that a judge could not hear a matter subject to an arbitration agreement or already decided by an arbitrator. If a party raised an exception based on the arbitration agreement, it would prevent the proceedings from continuing.[73]

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65 For a new perspective on the idea of *pro bono pacis*, see Jansen (2013), pp. 430 et seq.; Kumhera (2017), esp. pp. 16 et seq., 146 et seq.

66 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 188v.: *"In primis notandum, quod compromittere est in pronuntiationem alicuius vel aliquorum super aliqua quaestione proposita pro bono pacis assensu mutuo consentire."*

67 As summarized by Litewski (1994), pp. 194–196.

68 Litewski (1999), p. 579. Compare also Buchwitz (2020), p. 70.

69 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 188v.: *"Notandum ergo, quod arbitrium, ... debet vallari sacramento praestito vel fide interposita vel etiam appositione poenae praetaxatae. Terminus enim debet praefigi, infra quem debeat res per arbitrium terminari. Aliter enim non erit arbitrium, nisi vallatum fuerit poena et appositione termini coartata. Si vero infra terminum arbitrium non fuerit prolatum, deinde arbitri pronuntiare non possunt, nec etiam compellere ad arbitrium observandum."*

70 On this matter, compare Buchwitz (2020), pp. 164 et seq.

71 E.g., see Buchwitz (2020), pp. 259 et seq.; Wojciechowski (2010), pp. 198 et seq.

72 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 188v.: *"Item arbitris non est appellandum ... et hoc patet per naturam appellationis, quae est remedium contra gravamen a iudicibus illatum."*

73 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 188v.: *"Item si de re, de qua compromissum*

In contrast, judicial interference in ongoing arbitration was possible if someone deliberately violated the contractual basis for the arbitration. When this occurred, a party was to announce before the court that the arbitrator was unwilling to grant an award or was discouraged from proceeding further by the opposing party. The judge could then compel the arbitrator to act and order the opposing party who was impeding or disrupting the orderly conduct of arbitration to pay the cost.[74] Otherwise, cooperation in the enforcement of the award was necessary. This topic was controversial among medieval jurists. In our source, execution was entrusted to the ecclesiastical courts, which had exclusivity for the declaration of excommunication.[75] Arbitrators could also act as executors, but only if they were appointed by the judge and authorized to execute the sentence. If not, then the parties had to go directly to the judge to order the execution.[76]

Finally, there is an amicable settlement (*transactio*) as the second alternative to a court process, which the *Parvus Ordinarius* reflects and partially "judicializes." Our court book defines this legal institution as "a decision on a disputed and litigated matter made by the parties by either promising or keeping something."[77] At its core, Roman law is preserved.[78] Still, the stylization itself is almost a word-for-word reproduction of the *Summa decretalium* by the bishop and canonist of Bologna, Bernard of Pavia (d. 1213).[79] The attributes of a settlement are thus identical in the work of Bernard and the analyzed judicial manual: legal uncertainty, ongoing litigation, and compromise requiring mutual concessions. In addition, good faith is required (*bona fide*).[80] Using the term *decisio* suggests a similarity to a judicial decision, which is reasonable given the common purpose of removing the dispute definitively from the world.[81]

Other remarks on negotiating a dispute settlement are scattered throughout the same chapter on reconciliation contracts. Apart from the aforementioned aspects, emphasis is placed on social factors. *Transactio* is presented as a type of agreement (*pactum*) and

fuerit in arbitros vel pronuntiatum per arbitrium, moveatur quaestio coram iudice, poterit excipi de foro dicendo, de hoc fuisse compromissum vel etiam pronuntiatum per arbitrium."

74 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 188v.: *"Si e contrario quis asseveraverit, arbitrium non fuisse prolatum vel ab altera parte fuisse procuratum, quod minus arbitrium proferretur, iudex infra tempus determinatum poterit arbitros ad pronuntiandum compellere vel parte malitiose differentem arbitrium, nec puta illam partem, que arbitrium suum non habuit, prout debuit, si probari potuit, poterit in expensis condempnare."*

75 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 188v.: *"si aliquis iudex mandans aliter presbytero, quod denuntiaret aliquem excommunicatum."*

76 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 188v.: *"Item arbitri non possunt compellere ad arbitrium observandum nisi illud a iudice eis fuerit datum; sed in hoc casu debet ad iudicem fieri recursus, quia pronuntiando functi sunt officio suo."* Compare Buchwitz (2020), pp. 219 et seq.

77 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 189r.: *"Notandum ergo, quod transactio est super re dubia et lite mota aliquo vel promisso vel retento decisio."*

78 Litewski (1999), pp. 451–452. For more on the notion of *transactio* in the medieval learned law, see De Luca (1942), pp. 37 et seq.

79 Laspeyres (ed.) (1860), pp. 21–22.

80 On this aspect in greater detail, see Parini Vincenti (2016).

81 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 189r.: *"per transactiones bona fide factas lites multotiens deciduntur."*

an "act of peace" (*actum pacis*), harmonizing relations among people.[82] Its inviolability draws on the Church doctrine of *pacta sunt servanda*. As is well known, in opposition to Roman jurists, medieval canon law stipulated that informal conventions (*pacta*) were binding. Under the influence of the theology of sin, the majority of canonists held that the Christian God demanded fulfillment of a promise, regardless of its form. Therefore, whoever made a promise and failed to fulfill it without a justifiable reason was a sinner.[83] While the *Parvus ordinarius* ignores this deeper intellectual background, it maintains that, as an "act of peace," a settlement must be honored despite the Roman law (*lex*) stating that no action arises from a nude pact.[84]

As noted earlier, the treatise does not neglect the issue of church property threatened by reconciliation. It conditions an agreement's validity on consent from the (arch) bishop.[85] On the other hand, it refers to a restitution action, which is given to a church institution significantly damaged by an amicable settlement (*enormiter laesam*).[86] To make a claim, it prescribes a four-year limitation period (*quadriennium*), which was once introduced in Roman jurisprudence and then adopted by canon law.[87] Concern for the church's well-being is also apparent from the prohibition of agreements on succession to clerical property. Regarding this point, the *Parvus ordinarius* might have been perceived as insufficient because the range of forbidden settlements was broader in canon law.[88] For this reason, the glossator opted to add a school verse to the rubric, explaining in a brief and rather disparate list of seven items when a settlement was not permitted, such as in family and criminal cases.[89]

By focusing on the medieval procedural treatise *Parvus ordinarius* with its uniquely preserved gloss in the manuscript at the Clementinum in Prague, this paper sought to reveal its perspective on conflict resolution in and outside the courtroom. In addition, after a partial analysis of the *Parvus ordinarius*, it became evident that the court book sheds light on the transfer of legal knowledge within the church during the Middle Ages.

82 On the etymological connection between *pactum* and *pax*, see Treggiari (1992), pp. 327–329.

83 Among many others, see the succinct presentation by Landau (2013).

84 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 189r.: *"Quia vero pactum pacis est actum, secundum ius canonicum pacta servari, licet dicat lex, quod ex nudo pacto non oritur actio, quia de iure canonico [nihil est] inter verbum simplex et iuramentum; sic ergo pacta debent servari, nisi in se contineant illicitae pactionis speciem vel etiam compositionis."* The text is corrupted and reconstructed on the basis of Wahrmund (ed.) (1901), p. 222.

85 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 189r.: *"si compositio facta fuerit super aliquo spirituali de consensu episcopi vel archiepiscopi, tenebit."*

86 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 189r.: *"Item si aliqua transactio per quadriennium observata fuerit, postea retardari non potest, ante vero quadriennium posset, si ecclesia allegaret, se enormiter esse laesam, et probaret."*

87 Compare Hinschius (1897), pp. 131–136. For more on the concept of *laesio enormis* developed by the medieval canonists, see Baldwin (1959), pp. 22–27, or the book by Kalb (1992).

88 De Luca (1942), pp. 185 et seq.

89 Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 189r. (a gloss on the lower margin): *"Septem sunt casus quibus est transactio ulla. Accio famosa, sacrum, foriectio (fornicatio ?), crimen, res, que iudicio transit, coniunx, alimenta."*

With what we have found so far, it seems fitting to express hope that future studies of *ordines iudiciarii* such as this one will contribute significantly to our understanding of legal life in the Czech lands in the pre-Hussite period.

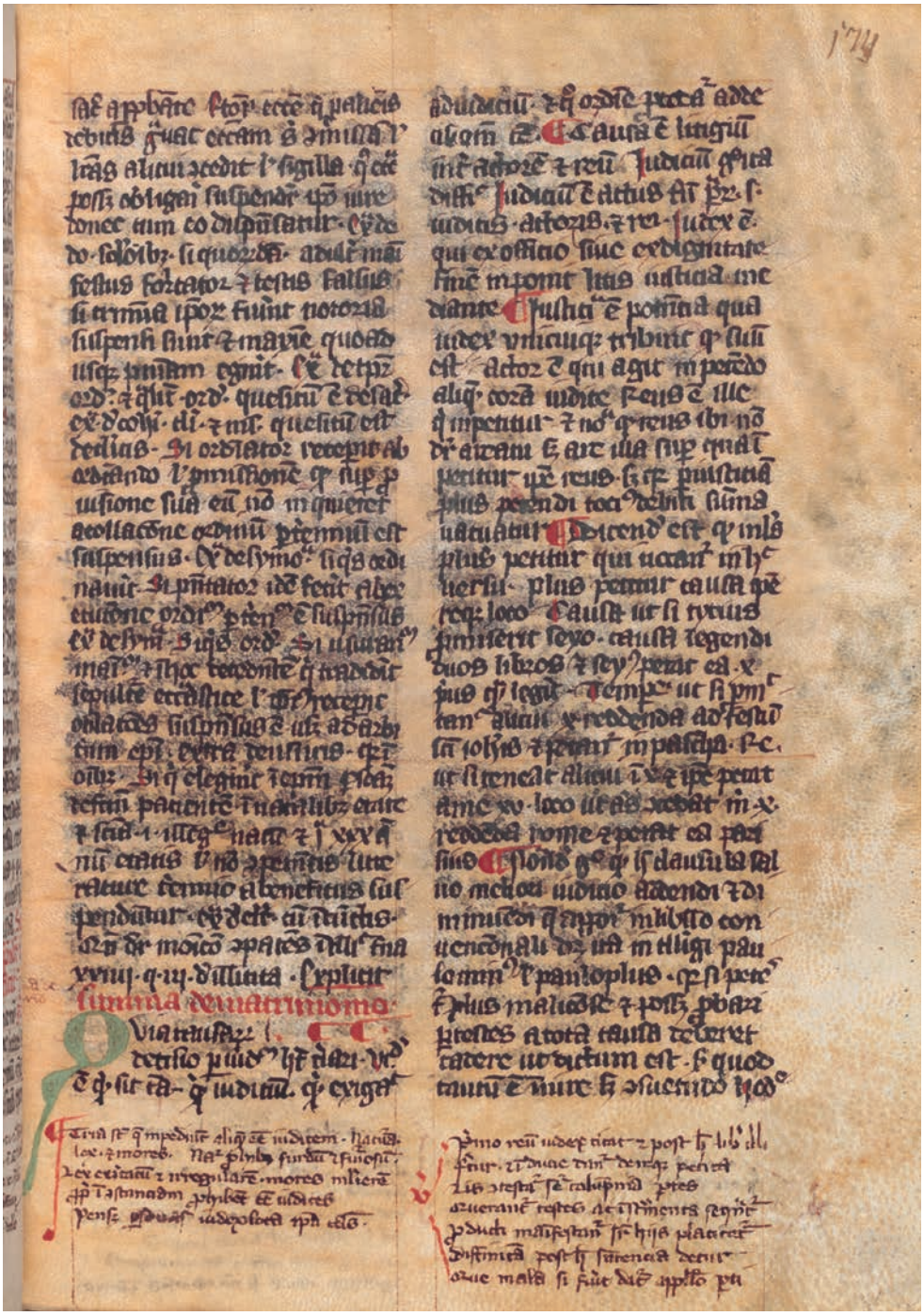

Fig. 1: The first folio of the Prague *Parvus ordinarius*.
Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 174r.

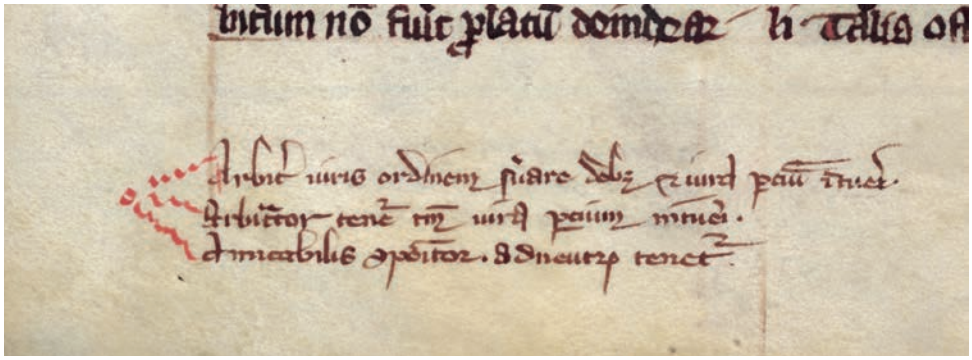

Fig. 2: The gloss defining the difference between arbiter, *arbitrator* and *amicabilis compositor*. Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 188v.

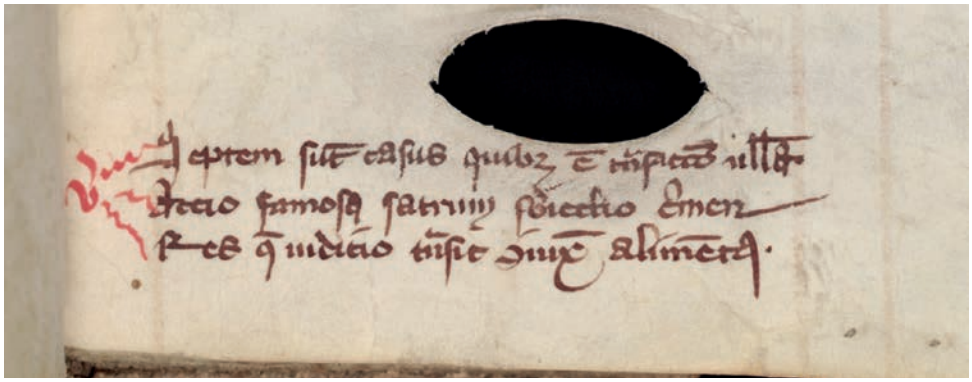

Fig. 3: The gloss on the obstacles to amicable settlements.
Národní knihovna České republiky Praha, sign. VIII. G. 5., fol. 189r.

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Pražský „Parvus ordinarius" a jeho doktrína o (mimo)soudním řízení

Příspěvek se zaměřuje na středověký procesní traktát Parvus ordinarius z hlediska jeho přístupu k řešení konfliktů soudní a mimosoudní cestou. Pramenným východiskem je opis díla uložený dnes v pražském Klementinu (sign. č. VIII. G. 5), jehož výhodou je fakt, že je spojen s konkrétní historickou osobou činnou v soudcovské profesi, konkrétně s korektorem kléru Pavlem ze Slavíkovic. Po představení juristické příručky a jejího ukotvení v právní kultuře českého středověku je nastíněn soudní proces tak, jak jej upravuje Parvus ordinarius, načež je podrobněji rozebrána doktrína mimosoudního řízení, obsažená především v rubrikách de compromissione a de transactionibus.