

STAROSTA'S JUDICIARY AUTHORITY *VERSUS* OFFICIALS' OATH (VOLHYNIA OF THE LAST 3RD OF THE 16TH CENTURY)

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ABSTRACT

STAROSTA'S JUDICIARY AUTHORITY *VERSUS* THE OFFICIALS' OATH (VOLHYNIA OF THE LATE 16TH CENTURY)

The present article focuses on the authority of starostas and city officials based on the judicial system in the Volhynian Voivodeship from the 1560s, when castle courts were established, up until the end of the 16th century. I analysed the factors that affirmed the domination of starostas and defined the formal extent of their powers, as well as those that helped to maintain a certain degree of autonomy between a starosta and city officials, and facilitated the emancipation of the latter. The officials' oath, its perception in the gentry community and the judicial cases which concerned such issues were the focus of particular attention.

Key words: starosta, city officials, power, oath, Volhynia, judicial system

The assumption that princes dominated the Volhynian scene, exerting their influence through all key offices in the region, including those of starostas,¹ has become a historiographical commonplace. Their domination is often conceptualized as unchecked omnipotence based on wealth, their position in the social hierarchy, and their proximity to the seat of power. A number of informal factors that did indeed check, in one way or the other, the ostensible omnipotence of the elites often remain outside scholars' field of vision. The princes' domination was also curbed by the very nature of their power, based as it was on authority rather than on overt violence, implying

¹ Starting in 1566, when castle courts were first established, and up to the late 16th century, the office of starosta was occupied by: prince Bohusz Korecki, Oleksandr Zhoravnytskyi, prince Oleksandr Prons'kyi, Oleksandr Semashko, Marek Sobieski, Mykolai Semashko; prince Konstantyn Vasyl Ostroz'kyi, prince Konstantyn Ostroz'kyi, prince Konstantyn Vasyl Ostroz'kyi; prince Mykolai Zbaraz'kyi and prince Janush Zbaraz'kyi. See: *Urzednicy wołynscy XIV–XVIII wieku. Spisy*, oprac. M. Wołski, Kórnik 2007, p. 63, 97–98, 121–122.

adherence to unwritten yet commonly acknowledged rules. Those who broke the rules could lose their symbolic capital, and the community might refuse to extend a certain “vote of confidence” to them.²

I will focus on the judiciary authority of starostas, its formal extent and the factors that kept it in check as an aspect of power relations. I will focus primarily on the issue of the subjugation of castle courts (grod courts) to starostas as representatives of the king in each given powiat. Starostas arbitrarily promoted their servants and clients to all offices; at the same time, officials had their own agency, which appears ostensibly incongruous with their subjection to starosta as the head of court (and whose servants they often were).³ I will analyze the factors that, on the one hand, affirmed starostas’ dominance in castle courts, but on the other, undermined it in favour of officials’ autonomous agency.

It appears that starostas mostly chose officials from among their coterie, based primarily on their loyalty to the patron. In many cases, the servants’ relation to their lord was based on a service agreement sealed by a ritual handshake, and sometimes by an oath or its equivalent. Servants’ duties, often vaguely defined, included a willingness to serve, understood in the broadest terms. A lord interpreted his servant’s attempt to break this bond as treason and as a rejection of confidence that, accordingly, damaged his reputation.⁴ Starosta’s relations with city officials were apparently based not only on rational principles: in some cases, they implied strong emotional ties.

When dissatisfied with castle officials, gentry directed their complaints to the starosta. Only if he refused to “make justice,” the victim could address a complaint against the starosta himself to the king (the Second Statute of Lithuania, hereafter II SL, chapt. 4, art. 21). City officials, that is, were under the jurisdiction of the starosta, their lord. As was noted in one case, “the statute grants each lord the common right to judge and punish his gentry servants for each misdeed.”⁵

There were, however, several crucial factors that helped the parties in this relationship to maintain a certain liberty, and emancipated officials from their starosta, to a degree. Among the formal factors, one should underscore the fact that Volhynian

² On the nature of power in Volhynia, see: Н. Старченко, «Постерегаючи прав, волностей і свобод наших»: боротьба за домінування на волинському сеймику 1593 року [in:] *Theatrum humanae vitae. Студії на пошану Наталі Яковенко*, Київ 2012, с. 259–276.

³ There exists an extensive bibliography on the office of starosta, its origins and the extent of their authority (see in: J. Łosowski, *Kancelaria grodzka chełmska od XV do XVIII wieku. Studium o urządzie, dokumentacji, jej formach i roli w życiu społeczeństwa staropolskiego*, Lublin 2004, p. 33–65), yet little, if anything was written on interrelations between starostas and castle officials (with the exception of an analysis of relations between a starosta and castle chancellery officials, including clerks: R. Jop, *Środowisko urzędnicze kancelarii grodzkich w Chełmie, Lublinie i Krasnymstawie w drugiej połowie XVII wieku*, Lublin 2003). On patron-client relations between them, see: В. Поліщук, *Урядницький клан луцького старости Богуша Корецького (На прикладі луцького замкового уряду, 1561–1567 роки)*, “Український археографічний щорічник. Нова серія” 2004, вип. 8–9, т. 11–12, Київ – Нью-Йорк, с. 266–298.

⁴ More on relations between lords and their “hand-given” servants see in: Н. Старченко, *Честь, кров і риторика. Конфлікт у шляхетському середовищі Волині. Друга половина XVI – початок XVII століття*, Київ 2014, с. 97–134.

⁵ ЦДДАУК, ф. 28, оп. 1, спр. 22, арк. 642 зв. – 644.

Voivodeship joined the Crown Tribunal in 1589, that is, complaints against castle officials were directed to the appeal court rather than to their starosta.

Among the informal factors that facilitated the emancipation of castle officials from their starosta, one should note that the group consisted not only of the starosta's servants, but also of his clients, members of ancient Volhynian landlord families. For example, Volodymyr deputy starostas princes Kurcevych or Fedir Zahorovs'kyi, as well Lutsk judges Ostafii Malyns'kyi and Ivan Krasens'kyi, belonged to this group. The standing of a starosta and his level of integration into the life of the powiat and the region played a role too. Princes-starostas had more extensive symbolic and material resources to back their rule and domination than their gentry colleagues, such as Lutsk starostas Oleksandr Zhoravnyč'kyi or Oleksandr Semashko. Prince Oleksandr Prons'kyi, on the other hand, was not wholly "an insider" at Volhynia, which meant that those who became castle officials under his rule came largely from the cohort of his trusted servants, no locals either. Therefore, they were more dependent on Prons'kyi's good will than Volodymyr castle officials, local Volhynian gentry, depended on Ostroz'kyi. Moreover, the majority of Ostroz'kyi's estates were in the Lutsk powiat, and he visited Volodymyr infrequently (this was especially true of prince Konstiantyn Vasył), offering officials a larger degree of independence.

The oath sworn by castle officials had also buttressed their autonomy. Let us note that Lutsk city officials claimed that they answer not only to the king and the starosta, but also, to no lesser degree, "to our oaths, conscience and to our duties."⁶ Under II SL, all judges and clerks had to swear an oath, yet legal regulations do not specify that deputy starostas, as starosta's trustees, should swear an oath too. Notably, during the second interregnum Volhynian gentry had tried to address some of the fault lines in castle (grod) justice system. For example, the sejmik proclamation of May 5, 1575 demanded that all officials should have estates in their powiats, and that all town officials, including deputy starostas, should swear an oath.⁷ Local residents belonged to the gentry corporation and depended on it rather than on their lord the starosta exclusively, whereas an oath implied that officials were answerable to God and to their conscience first and foremost. The sejmik proclamation specified that, having missed court sessions due to an illness, officials had to swear under oath that they were ill.⁸ In the sejmik proclamation of August 17, 1575, gentry had also tried, among other things, to affirm another important legal principle, namely, "no one should be his own judge." Hence, the cases where the local starosta was one of the parties had to be handled in a neighboring castle. Should a starosta disregard these proclamations, he was liable to suffer repercussions.⁹

It might seem that an oath was a mere formality for those about to take office, yet one should not underestimate the importance of the sacred rite for a Christian. Numerous cases when a servant refused to swear or even broke ties with a lord who tried

⁶ Ibidem, ф. 25, оп. 1, спр. 35, арк. 674.

⁷ Ibidem, ф. 28, оп. 1, спр. 9, арк. 101 зв.

⁸ Ibidem, арк. 102 зв. – 103.

⁹ Ibidem, ф. 25, оп. 1, спр. 15, арк. 378 зв.

to force him to do so prove that this was not just a rhetorical trick.¹⁰ After all, those guilty of perjury would incur the wrath of God, “lost their conscience, and honour, and good glory.”¹¹

In castles, deputy starostas were often replaced by the so-called “assistant deputy starostas,” themselves often servants of the starosta, yet usually unsworn. They handled the day-to-day business of running a court, but did not have access to more important legal cases of gentry.¹² Volodymyr gentry refused to acknowledge the authority of Prokip Berezhnyts’kyi, sent by prince Kostiantyn Ostroz’kyi to replace the absent clerk Andrii Romanovs’kyi, on the grounds that he was not sworn in.¹³ It was the oath, this implies, that conferred the full authority of the legal system on men close to the starosta.¹⁴

In due time, oath became obligatory for deputy clerks, integral members of chancellery.¹⁵ According to III SL (chap. 4, art. 36), the men who were conferred the starosta office without holding the rank of senator and without swearing the oath could not enforce their authority without being sworn in at the following session of the castle court (based on the model set for district judges). For example, Lutsk starostas Marek Sobies’kyi and Mykolai Semashko had sworn their oaths before the first session of the castle court.¹⁶

District officials would usually be sworn in in the presence of a wider gentry community and of the local senators (II SL, chap. 4, art. 1).¹⁷ Fedir Kadian Shpanovs’kyi was sworn in to the office of a district judge in a church.¹⁸ It is more than likely that castle officials also had to be sworn in in the presence of a significant congregation of local gentry.¹⁹ Gentry might have justified their decision to not recognize Jakub Krushyns’kyi as a castle clerk (an office conferred by starosta Kostiantyn Ostroz’kyi) precisely with the fact that the broader gentry community was not present when he was sworn in. Both the clerk and castle officials maintained that, after Kruszyns’kyi brought the prince’s letter conferring the office on him, he was gratefully “accepted as a colleague,” and he was sworn in.²⁰ A significant portion of the gentry, however,

¹⁰ See: *ibidem*, ф. 25, оп. 1, спр. 31, арк. 616–618 зв.; ф. 28, оп. 1, спр. 22, арк. 175.

¹¹ *Ibidem*, ф. 28, оп. 1, спр. 23, арк. 174 зв. – 175.

¹² “...not being a sworn-in official, assistant deputy starosta does not have the right to conduct any courts of gentry men” (*ibidem*, ф. 28, оп. 1, спр. 23, арк. 154–155); see also: *ibidem*, ф. 25, оп. 1, спр. 34, арк. 266–266 зв.

¹³ *Ibidem*, ф. 28, оп. 1, спр. 11, арк. 259.

¹⁴ *Ibidem*, ф. 28, оп. 1, спр. 16, арк. 135 зв.

¹⁵ *Ibidem*, ф. 28, оп. 1, спр. 20, арк. 22 зв.

¹⁶ *Ibidem*, ф. 25, оп. 1, спр. 53, арк. 1–4 зв.; *ibidem*, спр. 61, арк. 1–4.

¹⁷ For example, a Lutsk district gentry court session could not be held because a newly-elected judge could not be sworn in the absence of the Voivode and the Castellan (*ibidem*, ф. 25, оп. 1, спр. 26, арк. 570 зв. – 571). The Constitution of 1593 made provisions for Masovian district officials to be sworn in at the first court session in the absence of *palatini et castellani*, but in the presence of other district officials and gentry (*Volumina constitutionum*, t. II, vol. 2 (1587–1609), Warszawa 2008, p. 205); subsequently, the authority of the Constitution of 1593 was extended to all Voivodeships of the Crown (*ibidem*, p. 241).

¹⁸ ЦДДАУК, ф. 25, оп. 1, спр. 460, арк. 90–91.

¹⁹ *Ibidem*, ф. 25, оп. 1, спр. 61, арк. 1–5 зв.

²⁰ *Ibidem*, ф. 28, оп. 1, спр. 19, арк. 243 зв.

would refuse to have their cases handled at court precisely because Kruszyns'kyi was not sworn in.²¹ In cases when starosta himself was one of the parties, the oath was often evoked as a guarantee of the autonomy of castle courts. For example, during a Lutsk castle court litigation in which starosta Oleksandr Semashko himself was the plaintiff, defendants claimed that they were under no obligation to appear before castle officials as representatives (“subdelegates”) of the starosta. The judges answered that, “Neither the starosta nor his subdelegates preside in this court. It is presided by castle officials who swore that they will judge justly, *being no man's servants*.”²² From this we can infer that it was the oath that made a group of men subordinate to a starosta to varying degrees into a functionally autonomous court.

However, in some similar cases gentry refused to recognize castle court's independence from the starosta, emphasizing that they were one and the same: “Being the starosta of the local Lutsk powiat, he brought a case to his court, *as if to himself*.”²³ Litigations offer many arguments justifying why starosta could not have his case handled in his own castle court: starosta had authority over castle officials (SL II, chap. 4, art. 21); a servant could not testify against his lord (SL II, chap. 4, art. 53); the chapter “on escapees” in the Constitution of 1578 notes that, in case of escapees from king's land or from starosta's estates, “the aggrieved may file a lawsuit against starosta in the closest castle in the same voivodeship;” an article “on robberies” offers a similar picture.²⁴ Although the fact that officials were sworn in was often emphasized in such conflicts, the fact that it did not guarantee them full agency was mentioned: “No man can judge his own case,” and no starosta, “and no official of his, *sworn as they might have been to judge without him*.”²⁵ After all, “starosta himself elects castle judges and deputy starostas, and confers offices on them;” hence, as his servants, they have to act “according to their lord's will.”²⁶

Obviously, such discussions emphasized not only officials' dependence on starostas, but also the importance of the oath. The sources that do not directly relate to the justice process also bespeak attention to the details of officials' oath. So, for example, when establishing an appeal instance for the Volhynian Voivodeship at the *sejmik* of May 5, 1575, in times of *interregnum*, the gentry included the full text of judge's oath in their resolution. The constitution that established the Tribunal in 1578 amended the text of deputies' oath too, including, among other things, a promise not to colude, not to warn or advice any party, not to accept gifts and not to seek offices in that same court.²⁷ Volhynian and Braclavian deputies had to swear an oath that included

²¹ Ibidem, ф. 25, оп. 1, спр. 35, арк. 673–675.

²² Ibidem, ф. 25, оп. 1, спр. 52, арк. 219–221.

²³ Ibidem, ф. 25, оп. 1, спр. 26, арк. 62.

²⁴ VC, t. II (1550–1609), vol. 1 (1550–1585), Warszawa 2005, p. 416. See a mention of the Constitution in a robbery case in: ЦДІАУК, ф. 28, оп28, спр8, See a m62.

²⁵ ЦДІАУК, ф. 25, оп. 1, спр. 57, арк. 814–814 зб.

²⁶ Ibidem, ф. 25, оп. 1, спр. 22, арк. 198.

²⁷ VC, t. II, vol. 1, s. 407. See also the Constitution of 1588 on the office of Chamberlain, specifying, among other things, the text of the oath, which was to include a promise to express neither favor nor disfavor to any party, and to take no gifts (ibidem, vol. 2 [1587–1609], s. 65).

a promise not to conspire or collude, not to take secret council, to not accept gifts, and to not seek election. Each deputy also had to swear that he is not a “hand-given” servant and that he is not serving any lord for Jahrgelt.²⁸

Naturally, an oath did not guarantee that an official would act in accordance with it, impartially, disregarding filial and familial ties, with “eyes on God alone, and on his holy justice, and on common law, and on his own conscience” (II SL, chap. 4, art. 1). This ideal might diverge from norms of day-to-day coexistence. The former did of course affect the notion of the “norm,” departing from ideal models and broadening the horizon of the permissible. For example, in complaints against officials who favored their friends or relatives during litigations, I have never seen claims that the party guilty of such acts broke the oath. After all, loyalty was considered an important virtue in the gentry society permeated by various connections.²⁹ It is also worth noting that judges seldom blatantly disregarded legal norms:³⁰ far more common were manipulations with initial stages of litigation that were either not well-defined in the Statute or allowed for divergent readings, creating, that is, “a grey zone” of the justice system.

Of course, certain aspects of relations of starostas and castle officials, and the extent of their authority and agency, were barely touched on or merely voiced as a hypothesis in the article. Therefore, they call for a more in-depth study with a close analysis of sources from the day-to-day functioning of the justice system of discrete judicial and administrative units.

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²⁸ Ibidem, p. 121–122.

²⁹ ЦДІАУК, ф. 11, оп. 1, спр. 1, арк. 130 зв. – 131.

³⁰ As proof, one may cite cases when men from higher stratas, closer to the starosta, lost to minor gentry. More on it in: Н. Старченко, *Честь, кров і риторика...*, с. 128–134.

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